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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
R. Scott Sprouse, Circuit Court Judge

South Carolina Court of Appeals Case No. 2016-000526
Opinion No. 5624 (S.C. Ct. App. filed Feb. 13, 2019)

THE STATE,

Petitioner,

v.

TREY C. BROWN,

Respondent.

APPENDIX

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MELODY J. BOWN
Senior Assistant Deputy Attorney General

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ATTORNEYS FOR PETITIONER

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ATTORNEY FOR RESPONDENT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

Trey Brown

Appellant.

RECORD ON APPEAL

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Carolina*

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10/7/2009
4

STATE OF SOUTH CAROLINA

COUNTY OF Abbeville/Greenwood

IN THE PROBATE COURT

EX PARTE:

Solicitor Jerry Peace
(Petitioner / Applicant)

JUDGEMENT AND ORDER

IN THE MATTER OF:

Trey Brown
(A Person Alleged to be Mentally Ill)

[Handwritten signature]
Probate Court
Abbeville County, S.C.

After a full hearing on the issues involved herein and consideration of the testimony and record,

IT IS ORDERED AND ADJUDGED:

That the above-named person is mentally ill and,

(Strike through a., or b., or leave both if applicable.)

- a. Because of his/her mental condition lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment; or
- b. Because of his/her condition, there is a likelihood of serious harm to himself or others, and therefore,

IT IS ORDERED.

(Strike through the two which do not apply)

(forensics unit)

- a. That said person be committed to a state mental health facility for in-patient care and treatment as provided in Section 44-17-580, S.C. Code, 1976, as amended. *
- b. That said person undergo an out-patient treatment program at _____
mental health facility for a period not to exceed _____ months. And, furthermore, that this Court shall retain jurisdiction over said person to insure compliance with this Order, pursuant to Section 44-17-580, S. C. Code, 1976, as amended.
- c. That it having been requested by _____ that said person be admitted to _____, whose director has agreed thereto, the said person is ordered admitted to said hospital for care and treatment as provided for in Section 44-17-610, S. C. Code, 1976, as amended.

Dated this 7th day of

October

, 20 09

[Handwritten signature]

(SEAL)

Judge of Probate Court
Special Probate Judge for Abbeville County

SCDMH FORM
REV FEB 95 M-122B
MH-FCC-2

* Should Mr. Brown regain competency, he shall be discharged to the Abbeville County Detention Center, and the Solicitor shall be notified pursuant to state law.

COUNTY OF Abbeville
 STATE VS.
Trey Chavez Brown

AKA:

Race: AFRICAN AME Sex: M Age: 41DOB: [REDACTED]Address: [REDACTED]City, State, Zip: Anderson, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

INDICTMENT/CASE#: 14GS01-0111

5

A/W#: 2014D0100100110Date of Offense: 9/9/2006S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

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

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:

Andrews, Demetrios G.71651
SC Bar#Trey Brown
DefendantJamelle A. [Signature]
Attorney for Defendant70306
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ 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

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	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

A TRUE COPY

Shandal Boag
 CLERK OF COURT

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2752Sentence Date: 2-29-16

R

2

STATE OF SOUTH CAROLINA
COUNTY OF Abbeville
STATE VS.
Trey Chavez Brown
AKA:
Race: AFRICAN AME Sex: M Age: 41
DOB: SS#:
Address:
City, State, Zip: Anderson, SC
DL#: SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 14GS01-0112 6
A/W#: 2014D0100100111
Date of Offense: 9/9/2006
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life witho

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ 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: *Demetrius G. Andrews* SC Bar# *Demetrius G. Andrews* Defendant *James A. Ash* Attorney for Defendant *James A. Ash* SC Bar# 70306

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014 GS 01-0111
☒ 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. 3 years 1 month and 11 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
14-1-211(A)(2) (DUI Surcharge)	\$100
56-5-2995 (DUI Assessment)	\$12
56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
14-1-212 (Law Enforce. Funding)	\$25
14-1-213 (Drug Court Surcharge)	\$150
50-21-114 (BUI Breath Test Fee)	\$50
56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
% to County (if paid in installments)	\$
TOTAL	\$

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:
A TRUE COPY
Shanda B. Boyd
CLERK OF COURT

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

Clerk of Court/ Deputy Clerk *Demetrius G. Andrews*
Court Reporter: *Diane Marcouille*
CA/217 (03/2011)
Presiding Judge *Demetrius G. Andrews*
Judge Code: 2752
Sentence Date: 2-29-16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ABBEVILLE	)	FOR THE EIGHTH JUDICIAL CIRCUIT
THE STATE	)	
v.	)	Indictment Number(s): -14GS0100111; -112
Trey Chavis Brown	)	
	)	Consent Order Amending Sentence

This matter came before the court on the motion of the defendant, Trey Chavis Brown, for an order Amending his Sentence to include the time he has served in pre-trial confinement from the time of his reindictment on these charges on February 7, 2014 until the date he was sentenced, February 29, 2016.

At sentencing, this Court found that Defendant was not entitled to credit for time served during the time of his commitment to the Department of Mental Health between October 20, 2009, and the time of his reindictment on February 7, 2014. However, the Court found that Defendant was entitled to credit for time served while these charges were pending against him, from September 9, 2006 until October 20, 2009, and again from February 7, 2014 until February 29, 2016.

Therefore, the sentence is amended to give Defendant credit for time served for a period of 5 years and 63 days. This Consent Order is in no way intended to preclude Defendant from pursuing an appeal of the Court's denial of credit for time served from October 20, 2009 until February 7, 2014.

IT IS SO ORDERED.

A TRUE COPY
BY Shandal Boopp
CLERK OF COURT

RSS
R 4

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2016 MAR -2 AM 9:46
EMILY Y. MCINTOSH
CLERK OF COURT

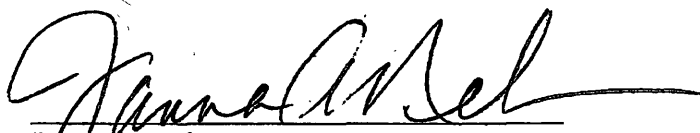
State v. Trey Chavez Brown
Consent Order Amending Sentence
Page 2

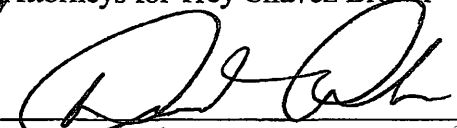


R. Scott Sprouse
Presiding Judge, Eighth Judicial Circuit

3.2, 2016
Abbeville, South Carolina

Consented to by:



Janna A. Nelson
E. Charles Grose, Jr.
Attorneys for Trey Chavez Brown

Demetri Andrews
Deputy Solicitor, 8th Judicial Circuit

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
THE STATE

vs.

Trey Brown

IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case Number(s): 2014-GS-01-0111, 0112

**Motion to Reconsider Denial of Credit for
Time Served During Involuntary
Commitment for Lack of Competency to
Stand Trial**

Following his guilty plea to murder and possession of a weapon during the commission of a violent crime, the defendant, Trey Brown, requested the Court to grant him credit for time served, pursuant to S.C. Code Ann. § 24-13-40, since he was taken into custody on September 9, 2006 because Mr. Brown remained in custody of the State pursuant to statutory procedures, S.C. Code Ann. § 44-23-410, *et. seq.* The Solicitor opposed Mr. Brown receiving credit for time served during the involuntary commitment, and the Court agreed.¹ Section 44-23-460(2), however, would have barred prosecution of Mr. Brown if he had "been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which [he] could have been sentenced if convicted as charged." Based on this statute expressing the intent that time during the involuntary commitment be credited towards the maximum possible sentence, Mr. Brown wanted to provide the Solicitor and the Court and opportunity to reconsider their positions before he files a notice of appeal.

(signature on next page)

¹ By consent order, the Court is amending the amount of credit for time served announced in court to properly reflect the time Mr. Brown served from arrest to dismissal of the original indictments and from the date of the new indictments to the guilty plea. Although consenting to this amendment, Mr. Brown still maintains he is entitled to credit for time served since September 9, 2006.

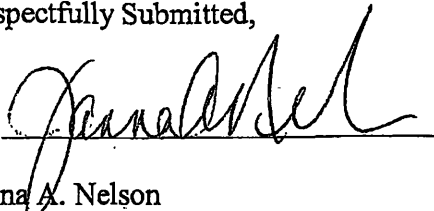
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BY Shandal Boopp
CLERK OF COURT
R 6

Denied
3-2-16
RJS

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
MAR -2 AM 9:46
CLERK OF COURT

IT IS SO MOVED.

Respectfully Submitted,

By 

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Eighth Circuit Public Defender
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Greenwood, SC 29646
jnelson@pdgreenwood.com
(864) 229-9505

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
E-mail: charles@groselawfirm.com

Attorneys for the Defendant

March 7, 2016
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

THE STATE)

vs.)

Trey Brown)
_____)IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH JUDICIAL CIRCUIT

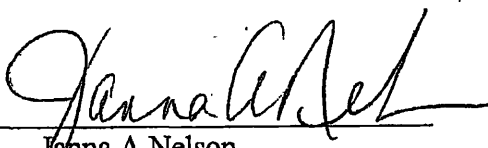
Case Number(s): 2014-GS-01-0111, 0112

Motion to Reconsider Denial of Credit for
Time Served During Involuntary
Commitment for Lack of Competency to
Stand Trial

I certify that I have served a copy of this pleading on the State of South Carolina by hand delivering a copy, on date reflected below, addressed as follows:

Demetri Andrews, Esquire
Eighth Circuit Solicitor's Office
Suite 203, Park Plaza
P.O. Box 516
Greenwood, SC 20648

By

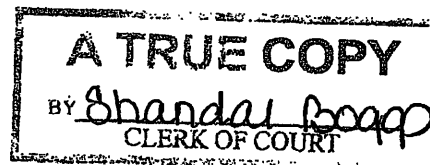

Janna A Nelson

Attorney for Defendant

March 1, 2016

Greenwood, South Carolina

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2016 MAR -2 AM 9:48
EMILY Y. MONTGOMERY
CLERK OF COURT



12

WITNESSES

Raymond Vandiver

WARRANT NUMBERS

95635

Foreman of the Grand Jury

OCT 13 2006

VERDICT

True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

October Term, 2006

Indictment # 06GS01 - 582

THE STATE

vs.

TREY CHAVEZ BROWN

Nolle Prosequi w/ leave to
re-indict.

[Signature]
Dep. S. C.
10/20/09

CNOB

INDICTMENT FOR

MURDER

A TRUE COPY
BY *Shandae Bogg*
CLERK OF COURT

Δ Was declared incompetent
admitted to DMH.

R 9

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

INDICTMENT FOR

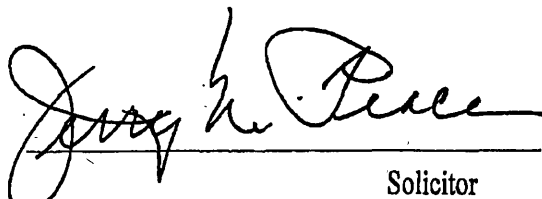
MURDER

At a Court of General Sessions, convened on the 13th day of October, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That TREY CHAVEZ BROWN, did in Abbeville County, state aforesaid, on or about the 9th day of September, 2006, wilfully, feloniously, and with malice aforethought kill one James Keith Kennedy by means of shooting him and that the said James Keith Kennedy did die in Abbeville County as a proximate result thereof on or about the 9th day of September, 2006, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended

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


Solicitor

1
WITNESSES

Raymond Vandiver

WARRANT NUMBERS

INFO

[Signature]
Foreman of the Grand Jury

Date: OCT 13 2006

VERDICT

True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

October Term, 2006

Indictment # 06GS01 - 583

THE STATE

vs.

TREY CHAVEZ BROWN

*Notle Prosequi w/leave
to re-indict*

[Signature]
Dep. Svt.
10/20/06

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

A TRUE COPY

BY

[Signature]
CLERK OF COURT

R 11

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

INDICTMENT FOR

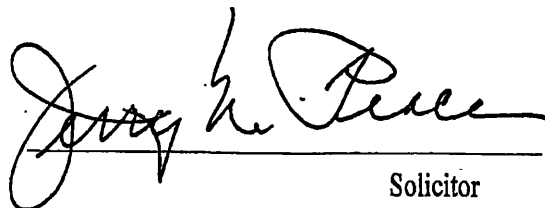
**POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on the 13th day of October, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That TREY CHAVEZ BROWN, did in Abbeville County, state aforesaid, on or about the 9th day of September, 2006, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

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


Solicitor

WITNESSES

Chris Wilkie
Abbeville Police Department

WARRANT NUMBER

201400100100110

Jack Cochran

Foreman of the Grand Jury

Date: FEB 07 2014

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2014

Indictment # 14GS01-0111

THE STATE

vs.

Trey Chavez Brown

INDICTMENT FOR

MURDER
16-03-0010

CUR: 0116

A TRUE COPY

BY

Shandae Boop

CLERK OF COURT

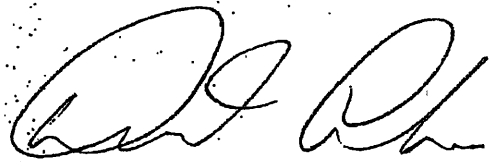
R 13

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF ABBEVILLE****MURDER
16-03-0010**

At a Court of General Sessions, convened on the 7th day of February, 2014, the Grand Jurors of Abbeville County present upon their oath:

That Trey Chavez Brown, in Abbeville County, on or about September 9, 2006, committed the unlawful act of Murder, as defined in Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended, in that he willfully and with malice aforethought, killed James Keith Kennedy by means of shooting him.

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



Deputy Solicitor

WITNESSES

Chris Wilkie
Abbeville Police Department

WARRANT NUMBER

2014D0100100111

Joel Cohen

Foreman of the Grand Jury

Date: FEB 07 2014

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

February Term, 2014

Indictment # 14GS01-0112

THE STATE

vs.

Trey Chavez Brown

INDICTMENT FOR

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME
16-23-0490

CDR: 0549

A TRUE COPY

BY *Shandal Boag*

R 15

THE STATE OF SOUTH CAROLINA

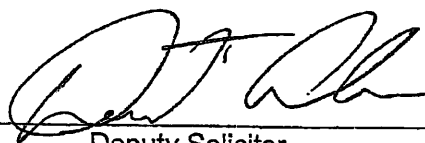
COUNTY OF ABBEVILLE

INDICTMENT FOR**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME
16-23-0490**

At a Court of General Sessions, convened on the 7th day of February, 2014, the Grand Jurors of Abbeville County present upon their oath:

That Trey Chavez Brown, in Abbeville County, on or about September 9, 2006, possessed a firearm during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

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



Deputy Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
 State of South Carolina,)
)
 vs.)
)
 Trey Chavis Brown,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE EIGHTH JUDICIAL CIRCUIT

**NOTICE OF INTENTION
 TO SEEK LIFE WITHOUT
 THE POSSIBILITY OF PAROLE**

TO: Trey Chavis Brown and Charles H. S. Lyons, III, Esquire

YOU WILL PLEASE TAKE NOTICE that the State of South Carolina, by and through the undersigned attorney, Benjamin L. Shealy, Deputy Solicitor of the Eighth Judicial Circuit, hereby intends to seek life without the possibility of parole (LWOP) against the above referenced Defendant, Trey Chavis Brown, on indictments 2006-GS-01-582 for the murder of James Keith Kennedy which occurred on or about September 9, 2006, in Abbeville County. This action is taken pursuant to South Carolina Code Ann. § 17-25-45, *et seq.*, of the South Carolina Code of Laws, 1976, as amended.

Pursuant to South Carolina Code Ann. § 17-25-45, *et seq.*, of the South Carolina Code of Laws, 1976, as amended, the defendant has previously been convicted of a "most serious" offense which the State intends to rely upon for sentencing on indictment 2006-GS-01-582 as follows:

- (1) The defendant was previously convicted of Kidnapping in 1996-GS-02-691 in violation of S.C. Code of Laws § 16-3-910 which is classified as a "most serious" offense pursuant to S.C. Code of Laws § 17-25-45. As such should Mr. Brown be convicted of the pending murder which is also classified as a "most serious" offense pursuant to § 17-25-45 it is mandatory that he be sentenced to LWOP.

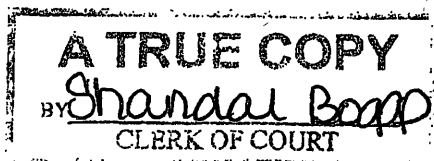
This notice of intention to seek the death penalty is given pursuant to South Carolina Code Ann. § 17-25-45 *et seq.*, of the South Carolina Code of Laws 1976, as amended.

Benjamin L. Shealy
 Benjamin L. Shealy
 Deputy Solicitor, Eighth Judicial Circuit

Greenwood, South Carolina

August 8, 2008

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 AUG 8 AM 9 11
 EMILY Y MCMAHAN
 CLERK OF COURT



STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

The State

v.

Trey Chavez Brown,
DEFENDANT.

COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

NOTICE OF INTENT TO SEEK
LIFE WITHOUT PAROLE

Indictment Number
2014-GS-01-111, 112

Pursuant to S.C. Code §17-25-45(H), the Defendant, Trey Chavez Brown, is hereby notified that the State of South Carolina intends to seek a sentence of life imprisonment without the possibility of parole.

On May 10, 1996, Mr. Brown was convicted of Kidnapping in Aiken County. Kidnapping is defined as a "most serious offense" in S.C. Code §17-25-45(C)(1).

Mr. Brown is charged with Murder and Possession of Weapon During the Commission of a Violent Crime. Murder and Voluntary Manslaughter are both defined as a "most serious offense" in S.C. Code §17-25-45(C)(1). Pursuant to S.C. Code §17-25-45(A), upon a conviction for Murder or Voluntary Manslaughter, Mr. Brown must be sentenced to a term of imprisonment for life without the possibility of parole.

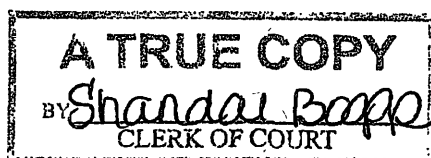
Respectfully submitted,



Demetrios G. Andrews
Deputy Solicitor
Eighth Judicial Circuit

October 27, 2015
Abbeville, SC

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2015 OCT 28 AM 9 23
EMILY Y MCMAHAN
CLERK OF COURT



1 State of South Carolina
2 County of Abbeville In the Court of General Sessions

3
4 State of South Carolina,)
5) 2014-GS-01-00111 & 112
6 -vs-) February 29, 2016
7 Trey Chavez Brown,)
8 Defendant.)
9) Transcript of Record
Plea & Sentencing

10
11 B E F O R E:

12 The Honorable R. Scott Sprouse, Judge
13

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

15 Demetrious George Andrews, Esquire
16 Attorney for the State

17 E. Charles Grose, Jr., Esquire
18 Janna A. Nelson, Esquire
Attorneys for Defendant

19
20
21 Diane L. Marcengill, RPR, CRR
22 Circuit Court Reporter
23
24
25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 1:00 p.m.)

4 MR. ANDREWS: Thank you, your Honor. Good
5 afternoon. Sir, we are here before you on the case of
6 State versus Trey Chavez Brown on two indictments,
7 2014-GS-01-111, that is an indictment for murder,
8 2014-GS-01-112. Mr. Brown is represented by Janna
9 Nelson, chief public defender, and Mr. Charles Grose,
10 both of Greenwood. Your Honor, this is a guilty plea
11 straight-up to both charges. Both of these charges
12 have been true billed by the Abbeville County Grand
13 Jury. Mr. Grose and I have discussed it.

14 Since we don't disagree, Mr. Grose is going to
15 call Dr. Richard Frierson of the Department of Mental
16 Health as a witness just to get all that stuff on the
17 record for your Honor.

18 THE COURT: All right. And it's my understanding
19 from talking to counsel for both sides prior to this
20 hearing that, Mr. Grose, your client has had a recent
21 evaluation; is that correct?

22 MR. GROSE: That's correct.

23 THE COURT: Okay. What I would like you to do,
24 put that evaluation in as a court exhibit and also
25 question your mental health expert.

1 MR. GROSE: Just for the record, your Honor,
2 Mr. Andrews has already marked a batch of reports as
3 Court's Exhibit 1. The document the stamp is actually
4 on is the February 22nd evaluation from this year.
5 There's also two reports from an April 28th and
6 June 2nd, 2014, evaluation. One is criminal
7 responsibility, the other is competency to stand trial.
8 There is a report from June 8th of 2009, March 6th, and
9 April 3rd of 2009, August 15th and November 28th of
10 2007, and another report for August 15, 2007. Now,
11 those are all cumulatively marked as Court's Exhibit 1.

12 Okay. And at this point in time I call
13 Dr. Frierson.

14 RICHARD FRIERSON, M.D.,
15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. GROSE:

18 Q Dr. Frierson, where are you employed?

19 A I am employed with University of South Carolina
20 School of Medicine Department of Neuropsychiatry.

21 Q And as part of your professional work, do you do
22 competency and criminal responsibility evaluations for
23 the Department of Mental Health?

24 A Yes.

25 Q And how long have you been doing that?

1 A Since 1993.

2 Q And your speciality would be as a forensic
3 psychiatrist?

4 A Yes.

5 Q All right.

6 MR. GROSE: I believe, your Honor, that the State
7 is going to stipulate that Dr. Frierson is an expert in
8 forensic psychiatry.

9 MR. ANDREWS: That's correct, your Honor.

10 THE COURT: It's stipulated that Dr. Frierson is
11 an expert in forensic psychiatry.

12 BY MR. GROSE:

13 Q I'm going to hand you the group of documents that
14 have been identified as Court's Exhibit Number 1. Are
15 you familiar with those?

16 A Yes.

17 Q Okay. And are those reports that you've been
18 doing since 2007?

19 A Yes.

20 Q Okay. When was the first time that you saw
21 Mr. Brown?

22 A I first saw Mr. Brown on August 15th of 2007.

23 Q And the most recent time that you saw him -- well,
24 you saw him today, but -- and briefly, but the most
25 recent time that you saw him for an evaluation was

1 when?

2 A February 22nd of this year.

3 Q So a week ago?

4 A A week ago today.

5 Q All right. Can you, I guess, share a little bit
6 of the history of Mr. Brown with regard to his
7 competency from 2007 until now.

8 A Yes. To make a long story short, because this is
9 a -- could potentially be a very long story, Mr. Brown
10 has a long history of involvement with the forensic
11 service division of the Department of Mental Health. I
12 first saw him for competency in August of 2007. Let me
13 say that Mr. Brown had no documented history of mental
14 illness prior to his arrest but appeared to
15 decompensate in the jail and has a very strong family
16 history of severe mental illness, both his mother and
17 sister, which put him at risk of developing a mental
18 illness.

19 Q And his mother and his sister have schizophrenia;
20 is that right?

21 A Yes. So there is a genetic predisposition. So in
22 the course of being jailed, we saw him August 15th of
23 2007 in the jail and at that time did not believe that
24 he was competent to stand trial because he appeared to
25 be delusional and paranoid about things that were going

1 on with him in the jail. So at that time we issued a
2 report that he was not competent but likely to be
3 restored, and the Court ordered him for 60 days of
4 competency restoration.

5 It is during that 60 days that the plot began to
6 thicken, so to speak. During that 60 days, Mr. Brown
7 was felt by some of the staff at the hospital to
8 potentially be exaggerating things, his symptoms. And
9 he underwent some psychological testing that is
10 specifically designed to detect when people are
11 exaggerating symptoms, and he failed that test. In
12 other words, he was exaggerating symptoms on those
13 particular instruments. It's what they're designed to
14 detect.

15 So at that point the doctor's thinking, "Well,
16 look, there's no prior history of mental illness. The
17 current symptoms appear to be malingered. They were
18 not genuine." And so we sort of reversed our opinion
19 that he was incompetent and stated to the Court at that
20 time that we thought these were likely malingered
21 symptoms and that he was competent. That was in 2007.

22 So time goes by, and apparently during the
23 intervening time between 2007 and 2009, he was
24 having -- his attorneys were having great difficulty
25 working with him. And I actually received a call from

1 the prosecutor's office stating, you know, the jail is
2 telling me that something is wrong with Mr. Brown.
3 Could you see him again? So the Court ordered a
4 reevaluation and I saw him first on March 6th of 2009
5 and then April 3rd of 2009. Saw him twice. And what
6 had happened in the intervening time is, number one,
7 Mr. Brown was alleging that some devices had been
8 implanted inside of his body and were causing him all
9 sorts of shocks and taserings and pains and a variety
10 of other experiences that he found unpleasant. His
11 paranoid -- his paranoia increased to the point where
12 he stopped eating. He lost a total of 81 pounds over
13 several months, a little over a year.

14 In addition to this massive weight loss, he
15 endured some very uncomfortable procedures including
16 what's called an esophagogastroduodenoscopy or EGD
17 where they stick a tube down your throat all the way
18 into your stomach to look for ulcers or other pathology
19 that could be causing his symptoms. He also had a
20 colonoscopy in the jail, a tube all through his large
21 colon. These are not pleasant things to endure. He
22 underwent all of that. And it was my opinion that, you
23 know, this is not malingered. This is not.

24 So, to make a long story short, we have
25 somebody -- it's not either he's mentally ill or he's

1 malingering. Sometimes it's both, that someone has a
2 mental illness, but from time to time they can
3 exaggerate.

4 But, anyway, in 2009 I was convinced that this was
5 not malingered. He was readmitted to the hospital for
6 15 days of observation. His treating doctor, who had
7 thought he was malingering previously said, "No, I
8 think we missed it. We basically screwed up, and I do
9 believe that he is genuinely mentally ill." So there
10 was an effort. I submitted a report to the Court
11 stating I did not believe he could work with his
12 attorneys and I did not believe that he was competent
13 back in 2009, ordered 60 days of restoration.

14 Let me add to this that when he is sent to the
15 hospital at this time, he doesn't want medication for
16 psychiatric illness because he's alleging that, "I'm
17 not mentally ill. Something is wrong. I don't need
18 medicines for mental health. I'm not mentally ill.
19 These things are inside of me. They implanted them.
20 They need to come out." So if he were malingering, it
21 would be an incredibly sophisticated way to want us to
22 think that he's mentally ill but at the same time tell
23 us "I'm not mentally ill, I don't want your medicines."

24 But in any event, he underwent 60 days of
25 restoration in 2009. And at the end of that 60 days, I

1 saw him again in June of 2009, and I believed at that
2 time that he still was not competent to stand trial and
3 I recommended that he be civilly committed through
4 probate court.

5 Q And was there, in fact, a hearing involving the
6 probate court?

7 A There was a big hearing. I remember it well. It
8 was in the Greenwood County -- it was actually held in
9 general sessions courtroom, but it was a probate
10 hearing in Greenwood County.

11 Q And was Mr. Brown committed to the Department of
12 Mental Health because he was not competent to stand
13 trial?

14 A Yes.

15 Q And there is, of course, statutory procedures that
16 are mandatory in those circumstances?

17 A Correct.

18 Q And between 2009 and 2014, which I believe was the
19 next time you saw him, did Mr. Brown continue to reside
20 in the Department of Mental Health?

21 A Yes. He's been in the Department of Mental Health
22 forensic hospital since 2009.

23 Q And so in 2014 you saw Mr. Brown again for
24 competency?

25 A Yes.

1 Q And can you tell the judge what happened or what
2 your observations and opinions were at that time.

3 A Sure. Apparently, just to give some background,
4 at some point Mr. Brown had improved. And his
5 treatment team believed he's improved significantly
6 that we need to start looking at does he need this
7 inpatient level of care or could he go to some sort of
8 supervised community residential treatment center. So
9 they actually, I think, had been looking at specific
10 facilities that he might step down to off of inpatient.
11 It's my understanding that solicitor's office, when
12 they heard of this, wanted the reevaluation -- decided
13 to reindict him in 2014, and wanted a reevaluation of
14 his competence. So that's why I saw him. And, indeed,
15 Mr. Brown was interested in potentially pursuing the
16 possibility of an insanity defense, and in order to do
17 that, he realized, you know, we don't do those
18 evaluations unless we believe they're competent.

19 So I did a competency evaluation in 2014. He had
20 been attending competency education classes. He
21 performed very well. He -- hold on. I have the wrong
22 one here. He clearly understood what he was charged
23 with, what could happen. He knew that manslaughter was
24 a lesser included offense. He knew that he could
25 receive a sentence of life without parole. He reports

1 he received a letter from the former solicitor,
2 Mr. Peete, stating that he was seeking life without
3 parole. He knew his attorney's name, the job of his
4 attorney is to represent me to the best of their
5 knowledge and wisdom. He was fairly positive about his
6 relationship with his attorney. The judge, he
7 described, is the referee in the court and keeps law
8 and order and passes along the sentence or the verdict.
9 He knew that the solicitor was trying prove him guilty.

10 He still believed that -- had some concerns about
11 whether he would receive a fair trial because the
12 victim's family has friends in high places. But he was
13 not going to let that thought interfere with his
14 ability to work with his attorney, told me "I'm just
15 trusting in God." Knew what a jury did, knew there was
16 a unanimous requirement for a jury verdict. He was
17 aware of the pleas of guilty, not guilty, not guilty by
18 reason of insanity, and guilty but mentally ill. He
19 knew the dispositional outcomes of those verdicts. He
20 understood what a plea bargain was and described it as
21 taking a lesser sentence as opposed to the maximum you
22 would have gotten. And he knew that he had to plead
23 guilty. He knew how to behave in court. He was able
24 to rationally discuss evidence. He knew that the 911
25 call could be evidence.

1 So, based on the totality of that evaluation, and
2 I saw him twice, it was my opinion that he now was
3 competent to stand trial.

4 Q Now, you said he still thought he had the
5 implants?

6 A Yes, but he wasn't focused on them.

7 Q All right. So this is, I think, an important
8 point. You're still seeing the presence of mental
9 illness?

10 A Yes. He is mentally ill.

11 Q It's just that -- of course, the delusional
12 thinking and other symptoms go to the ability to
13 cooperate with your lawyer and to assist counsel in
14 your own defense; is that correct?

15 A Yes.

16 Q And so prior to 2014, I guess in 2009, because of
17 his mental illness symptoms and their state of not
18 being treated as well and under control, that
19 interfered with his ability to assist in his defense?

20 A Back in 2009, yes.

21 Q Right, in 2009. And while he still had the
22 symptoms in 2014, they were present but under control?

23 A Yes.

24 Q Okay. I don't know that I've asked you this
25 because we did talk about his mother and his sister,

1. but what is Mr. Brown's diagnosis?

2. A His diagnosis is schizophrenia.

3. Q And at one time was he diagnosed as a paranoid
4. schizophrenic?

5. A Yes. I mean, in the intervening years, we have
6. gone from what was called the DSM-IV, the Diagnostic
7. and Statistical Manual of Mental Disorders 4th Edition
8. to the same book 5th Edition, and the subtypes of
9. schizophrenia, like paranoid type, have been deleted in
10. the diagnostic way we -- I could go into a whole reason
11. as to why that is, but we just call it schizophrenia
12. now. We don't specify a type anymore.

13. Q And paranoia can be a symptom of schizophrenia?

14. A Yes.

15. Q As well as delusional thinking?

16. A Delusional thinking, hallucinations, paranoia,
17. disorganized thinking.

18. Q All right. And he, Mr. Brown, has had those types
19. of symptoms in his -- the history that's been
20. documented in the Department of Mental Health?

21. A Yes.

22. Q And I think this is obvious, but you have had
23. access to his chart, his entire chart, at the
24. Department of Mental Health?

25. A Yes.

1 Q So jumping now to 2016, as this court date was
2 approaching, you were again asked to do an evaluation,
3 right?

4 A Correct.

5 Q And this was, I guess, at the request of the
6 solicitor's office but really both sides?

7 A It was a court order.

8 Q Right. And there were some concerns that were
9 expressed about maybe some paranoia and the ability to
10 work with counsel?

11 A That's correct.

12 Q All right. And so you saw him a week ago today?

13 A Yes.

14 Q Okay. And can you tell the Court what was
15 significant about that evaluation?

16 A Well, first of all, he understands the charges,
17 what everybody does in court, the pleas, what a plea
18 bargain is, what evidence is. There's never been that
19 big of a concern about his factual understanding of
20 what happens in court and what things are in court.
21 It's been more about the rational understanding, the
22 way he's thinking about his options. And although he
23 expressed dissatisfaction with his attorney, I mean, he
24 still was conversing with his attorneys and meeting
25 with them, but he was able to explain a little bit more

1 about his thoughts about his attorneys and that was
2 that they recommended to me that I take a certain plea
3 offer that he didn't think was good. And so if I don't
4 like it and they're telling me this is what I should
5 do, they must be against me. And there are lots of
6 criminal defendants without mental illness that if they
7 don't like what's being presented to them, they sort of
8 blame the attorney rather than looking at the reality
9 of their situation. I did not think that any of his
10 thoughts about that were to such -- were delusional,
11 paranoia. He clearly understood what's going on in his
12 case. He would rather be found insane, or if that's
13 not, be found not competent to stand trial. He made
14 that very clear to me because he doesn't want to go to
15 prison.

16 Q And he's comfortable in the mental hospital where
17 he's treated?

18 A Right. He feels that he would be better served
19 where he could get more adequate treatment, as he sees
20 it, for his mental illness. I tried to explain that
21 they have treatment available as well in corrections,
22 but I still believe that he is competent to understand
23 both factually and rationally what's going on in court
24 and to assist an attorney with a defense if he so
25 chooses and to make a decision whether to enter a plea

1 or go to trial.

2 Q Okay. Now, Trey is on some medication right now?

3 A He's on a lot of medicine.

4 Q And some of them aren't related to the mental
5 illness but some are?

6 A Correct.

7 Q Can you tell us, at least through Friday and
8 Saturday when he was at the Department of Mental
9 Health, what medication he was on?

10 A Yes. He takes a monthly injection of a
11 long-acting antipsychotic medication called Haldol.
12 It's a medicine that's slow release, it acts over the
13 course of a month, and he gets it through an injection.

14 Q And that's to treat the symptoms of schizophrenia?

15 A That's for schizophrenia. That and another
16 medicine called ziprasidone, otherwise known as Geodon,
17 which he takes by mouth. That is also an antipsychotic
18 medication that is used to treat schizophrenia.

19 Q And he takes that daily?

20 A Twice a day, uh-huh.

21 Q Is he also on lithium?

22 A He is on lithium, which is a mood stabilizing
23 medication, and he is on a medicine for anxiety called
24 Klonopin.

25 Q Okay. And you're aware of what we discovered when

1 he was brought to the Greenwood jail?

2 A Unfortunately, yes.

3 Q All right. Were they, because of a policy, had
4 discontinued the Klonopin?

5 A Yes.

6 Q All right. And you still think he's competent
7 despite that?

8 A Yes.

9 Q But that does have some implications as far as his
10 anxiety symptoms?

11 A Yes. He's going to be more anxious off the
12 Klonopin, and it's really not a medicine that should be
13 stopped quickly because people can actually get
14 withdrawal symptoms. It's a medicine similar to
15 Valium, and it just can't be stopped, so I'm just sort
16 of semi concerned that the jail would do that.

17 Q And we had noticed some shaking in him yesterday
18 and a little bit today. Is that a withdrawal symptom
19 from Klonopin?

20 A Potentially, yes.

21 Q And nausea, can that be?

22 A Yes.

23 Q Okay. As far as evaluating Trey's affect as he
24 sits in the courtroom and presents, is some of that
25 related to his -- the side effects of the medication?

1 A His facial expressions or affect is what I would
2 call blunted or constricted. You don't see a whole lot
3 of facial expression. That is both a potential symptom
4 of schizophrenia, and that's also a side effect of
5 Haldol. So both of those cause him to have a relative
6 lack of facial expression. It doesn't mean he doesn't
7 feel emotions, but the body doesn't express them like
8 you or I would.

9 Q And, in fact, I had talked with you about the
10 possibility of explaining that to the jurors if Trey
11 were to have testified in the trial this week?

12 A Yes.

13 Q Okay. As far as the judge's decision on
14 competency or understanding Trey's presentation in the
15 guilty plea, is there anything of any significance that
16 I've overlooked?

17 A Not that I'm aware.

18 Q All right.

19 MR. ANDREWS: I just had a couple of brief
20 questions for you, sir.

21 CROSS-EXAMINATION

22 BY MR. ANDREWS:

23 Q I think your conclusion is even despite this
24 hiccup, for lack of a better term, with the medication
25 in the Greenwood County jail, it's your opinion that

1 Mr. Brown is competent to stand trial?

2 A Yes.

3 Q Okay. I think you touched on this earlier, but I
4 just wanted to get into detail about it just a little
5 bit. Was there any evidence of malingering or
6 exaggeration that you saw in your most recent
7 evaluation?

8 A Yes. There was some mild evidence that he may
9 have been exaggerating some or claiming some memory
10 deficits that I don't think are present, and there was
11 some evidence that he was still trying as recently as
12 the night before my Monday evaluation to figure out is
13 there anything that he could say to make him more
14 eligible for consideration of an insanity defense.

15 Q Okay.

16 MR. ANDREWS: Your Honor, if I could beg the
17 Court's indulgence just very briefly.

18 Q Just one last question for you, sir. Did -- are
19 you aware of an incident where he went to the nurse's
20 station and asked them to look up "not guilty by reason
21 of insanity" on their computers?

22 A Yes.

23 Q Can you just go into detail about that? What
24 happened there?

25 A Well, that happened the night before my

1 evaluation. He goes to the nurse's station, asked
2 them, "Can you look up on the Internet what I need to
3 say to be found not guilty by reason of insanity
4 because I have an evaluation in the morning?" And they
5 told him they don't have access to the Internet, and he
6 asked them, "Well, can you get someone to fax
7 something," which, you know, he is mentally ill and he
8 is in a legal predicament because of the charges and,
9 you know, he's trying to find an outcome that he would
10 prefer to have. I don't know that he understands the
11 specifics of what would be required to be found insane
12 and how the fact pattern of the alleged criminal acts
13 do not fit an insanity finding.

14 Q All right. So this is what led you to conclude
15 ultimately on the last page of your report that, "Or he
16 simply does not want to face the music"?

17 A Correct.

18 Q Okay. All right.)

19 A I mean, these are the difficult cases, when
20 someone is mentally ill and at the same time at times
21 tends to exaggerate symptoms for secondary gain.

22 Q Okay.

23 A It's easy to fall in a trap of it's either this or
24 that. And sometimes it's both. And that's what makes
25 these cases the more difficult, challenging ones for us

1 as professionals.

2 MR. ANDREWS: Thank you, Dr. Frierson.

3 Your Honor, I have no additional questions.

4 MR. GROSE: Just very briefly in reply.

5 REDIRECT EXAMINATION

6 BY MR. GROSE:

7 Q This is one of the more challenging cases, is it
8 not?

9 A Yes, in my career, certainly.

10 Q One of the things -- this may go a little bit more
11 towards not necessarily sentencing but considerations
12 following sentencing. I mean, Trey still needs mental
13 health treatment?

14 A Absolutely. He will for probably the rest of his
15 life.

16 Q And one of the, I guess, good things with our
17 mental health system and long-term treatment is that
18 people begin to get some insight into their condition
19 and the need for treatment; is that fair to say?

20 A Some do, yes.

21 Q And does he have more insight into that now than
22 he did, say, in 2009?

23 A Yes.

24 Q And so it would be important to continue with
25 quality mental health treatment in the Department of

1 Corrections to ensure that he keeps that insight and
2 keeps his symptoms under control?

3 A Yes.

4 Q One of the things the solicitor asked and you said
5 that the factual scenario didn't fit an insanity
6 defense, that's because he gave kind of a rational
7 explanation of what happened?

8 A There are -- I actually completed a criminal
9 responsibility evaluation in 2014.

10 Q Right.

11 A And I think, from the way he described the alleged
12 offense, he does not relate symptoms of his mental
13 illness to the victim, and he expressed remorse within
14 minutes of the alleged offense. He called 911 and
15 said, "I've done something wrong." So if he indeed --

16 Q And he turned himself in?

17 A And he turned himself in. This would be
18 indication that he knew he did something that could be
19 viewed as something wrong.

20 Q Right.

21 A And that's the test of insanity is did you know
22 legal or moral right from legal or moral wrong at the
23 time of the offense.

24 Q Right. And the description of the events involved
25 a struggle over a gun, and that's something that we see

1 in cases where mental illness is not even involved?

2 A Right. It was -- he described a struggle over the
3 gun.

4 Q And like you said, he did express remorse that
5 same day?

6 A Yes.

7 Q Thank you.

8 THE COURT: Anything further from the State?

9 MR. ANDREWS: No, your Honor.

10 THE COURT: Could I see the exhibits. Could we
11 hand up the exhibits?

12 THE WITNESS: I think they're mixed up at this
13 point.

14 I can make sure you get one of everything.

15 THE COURT: Okay. Would the State come forward,
16 whichever solicitor. Let's make sure we have all our
17 exhibits.

18 I have what's been marked as Court's Exhibit
19 Number 1, which has a date of February 22, 2016.

20 Doctor, you testified that you felt the defendant
21 was competent, and I'm reviewing your latest report
22 February 22, 2016, in which you made the finding that
23 your opinion was that he is current -- that he's
24 competent to stand trial, he understands the charges
25 against him, and you said, "It is my opinion that at

1 the present time he continues to have the ability to
2 consult with his attorney and assist in his defense."

3 Now, counsel for the defendant asked you a
4 question earlier, did you, in fact, meet with the
5 defendant today?

6 THE WITNESS: Just very briefly.

7 THE COURT: Okay. Did you see anything in your
8 meeting with the defendant or hear any statements by
9 him or have any indication of any change in his
10 condition that would make it necessary for you to
11 change your opinion from your February 22nd report?

12 THE WITNESS: No.

13 THE COURT: So as of today and in the courtroom
14 today, you still consider the defendant competent to
15 stand trial?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Thank you. That's all.

18 Does either attorney have a question in response
19 to the Court's question?

20 MR. GROSE: No, sir.

21 MR. ANDREWS: No, your Honor.

22 THE COURT: Thank you, Doctor. You can step down.

23 MR. ANDREWS: Your Honor, we were going to excuse
24 Dr. Frierson. He's also under subpoena by the defense.

25 MR. GROSE: We have no objection.

1 THE COURT: Doctor, you are excused. Thank you.
2 Okay. Let's put a clip around these together
3 since they're marked as one exhibit.

4 Okay. Mr. Grose, anything further from the
5 defense as to the competency issue?

6 MR. GROSE: No, sir.

7 THE COURT: Anything from the State? Any further
8 evidence from the State as to the competency issue?

9 MR. ANDREWS: No, your Honor.

10 MR. GROSE: I would just say that we did have a
11 privately retained expert see him on Friday and with
12 consistent conclusions.

13 THE COURT: Okay. All right. Based on the
14 testimony from the expert witness, I find that
15 defendant is competent to stand trial.

16 Now we will proceed.

17 All right. You are Trey Chavez Brown; is that
18 correct, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, you are represented by Ms. Nelson
21 and Mr. Grose in this case; is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have two charges against you, the
24 charge of murder and the charge of possession of a
25 weapon during the commission of a violent crime. Do

1 you understand those charges?

2 THE DEFENDANT: Somewhat.

3 THE COURT: Okay. Do you need to go off the
4 record and talk to your attorneys about the charges?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. Now, you understand the
7 potential penalties for murder are 30 years up to life
8 in prison? Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the possession of a weapon during
11 a violent crime can be a five-year sentence if you are
12 not sentenced to life on the murder. Do you understand
13 that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand that this is a case in
16 which there is no recommendation from the State. It's
17 also known as a straight-up plea, meaning the State is
18 not recommending a particular sentence for you if the
19 Court accepts a plea. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Knowing the potential penalties and
22 knowing that the State is not recommending any
23 particular sentence, how do you wish to plead to the
24 charge of murder?

25 THE DEFENDANT: Guilty.

1 THE COURT: How do you wish to plead to the charge
2 of possession of a weapon during a violent crime?

3 THE DEFENDANT: Guilty.

4 THE COURT: Now, Mr. Brown, are you under the
5 influence of any drugs, alcohol, or anything that might
6 affect your ability to understand the proceedings or
7 your judgment today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Now, I heard from your doctor that did
10 your evaluation, and he mentioned the medications that
11 you're on. With the fact that you take these
12 medications as established in the record, I have to ask
13 you this question: Do those medications cloud your
14 judgment or make it to where you can't understand what
15 we're doing here today?

16 THE DEFENDANT: When I go without it.

17 THE COURT: But are you current on your
18 medication?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. What medication did you not
21 take?

22 THE DEFENDANT: Klonopin.

23 THE COURT: Without the -- then that was the
24 problem that the doctor mentioned regarding the jail
25 wouldn't give you your Klonopin; is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, with that stated, that you didn't
3 have your Klonopin, are you still able to understand
4 what we're doing here today?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Now, are you entering this plea
7 of guilty of your own free will?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And has anyone threatened you or
10 forced you or coerced you in any way to enter a plea of
11 guilty?

12 MS. NELSON: Do you not understand? Do you need
13 us to explain what he's asking?

14 THE COURT: Go off the record for a minute and let
15 him converse with his attorneys.

16 (WHEREUPON, an off-the-record discussion was.
17 held between the defendant and his counsel.)

18 THE DEFENDANT: No, sir.

19 THE COURT: You understand what I mean by
20 threatened and coerce. Did anyone threaten you with
21 violence, threaten to beat you up or harm you
22 physically or put any sort of improper pressure on you
23 to come forward and plead guilty? Has anyone done
24 those things to you?

25 THE DEFENDANT: No, sir.

1 THE COURT: Okay. Now, Mr. Brown, when you plead
2 guilty, you give up rights that you would have had as a
3 defendant. The first and foremost of those rights is
4 to have a trial by jury on this charge. That's where
5 12 of your peers, a jury of your peers, would hear the
6 evidence in this case, and in order for you to be
7 convicted, they would have to be unanimous in finding
8 you guilty. Do you understand that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You would have had the right to call
11 witnesses on your behalf, the right to confront and
12 cross-examine the witnesses against you, the right to
13 remain silent and it couldn't be held against you, and
14 also the opportunity to present any defenses that you
15 might have to the charges. Do you understand those
16 rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The State would have had the burden of
19 proving you guilty beyond a reasonable doubt. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, you have been represented in this
23 action by Ms. Nelson and Mr. Grose. Have you had
24 enough time to talk to them?

25 THE DEFENDANT: Yes.

1 THE COURT: Have they answered your questions?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions of your
4 attorneys now?

5 THE DEFENDANT: Just whether I'm making the right
6 decision or not.

7 THE COURT: Okay. Let's go off the record and let
8 you talk to your attorneys. Take a step back and ask
9 your attorney any questions that you might have.

10 (WHEREUPON, an off-the-record discussion was
11 held between the defendant and his counsel.)

12 THE COURT: Mr. Brown, have you had the
13 opportunity to talk with your attorneys?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have they answered your questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And with that, do you have any further
18 questions of your attorneys?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you satisfied with the services of
21 Ms. Nelson and Mr. Grose in representing you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right.

24 Mr. Solicitor, tell me the facts.

25 MR. ANDREWS: Thank you, your Honor. And just at

1 the outset, I realize this is an extremely serious
2 case, but there are a number of people in the courtroom
3 who would like to speak with you, so I'm going to keep
4 the facts relatively briefly in this case.

5 Your Honor, this incident occurred on or about
6 September 9th of 2006 here in Abbeville County. It
7 occurred at the home of the victim in this case,
8 Mr. Keith Kennedy. He lives at [REDACTED]. That
9 morning, your Honor, Mr. Kennedy walked out of his
10 house, jogged over to the neighbor's house saying that
11 he had been shot. The two neighbors present, your
12 Honor, Joe Scoggins and Darren Gray, noted what
13 appeared to be gunshot wounds on him. A third neighbor
14 came by, Ms. Lottie Ibold. They attempted to do what
15 they could to treat what appeared to be gunshots. They
16 called 911. EMS arrived. Unfortunately, your Honor,
17 Mr. Kennedy did not survive.

18 A little while later someone called 911 in
19 Greenwood County. Turned out it was Mr. Trey Brown.
20 To the 911 operator he said, "I've done something
21 really bad." He added, "He kept lying to me. I need
22 to call my lawyer." Eventually the call was
23 disconnected. Mr. Brown later turned himself in to the
24 Aiken County Sheriff's Office that night. His clothes
25 were collected. The vehicle that he had been driving

1 that day was a white Dodge Stratus. As it turned out
2 from the investigation, your Honor, that white Stratus
3 belonged to his aunt, who was at the time a Ms. Gloria
4 Calloway. After talking with Ms. Calloway, officers
5 determined that Ms. Calloway and Mr. Brown had agreed
6 to switch vehicles on the morning of the 9th.
7 Ms. Calloway took Mr. Brown's truck to her place of
8 work in Anderson, and Mr. Brown took the white Dodge
9 Stratus. Again, the white Dodge Stratus was recovered
10 in Aiken around the same -- just a little bit before
11 Mr. Brown turned himself in at the Aiken sheriff's
12 office. SLED was thoroughly involved in this case,
13 your Honor. SLED agents, from the home of Mr. Kennedy
14 and from Mr. Kennedy's body, were able to recover what
15 appeared to be fired 9mm rounds. They also discovered
16 several fired 9mm cartridge cases. Your Honor, after
17 having looked at the pictures, there were several
18 bullet holes at the house, one of which appears to have
19 passed through a bedroom door, and the way the blood is
20 smeared against the bedroom door, it certainly could
21 lead one to conclude that someone was pressed against
22 the door at the time a bullet was fired through the
23 bedroom door. Like I said, Mr. Brown eventually turned
24 himself in at the Aiken County sheriff's office, your
25 Honor.

1 THE COURT: Okay.

2 MR. GROSE: Also, I forgot to add, SLED did find,
3 from the outside of the vehicle and from Mr. Brown's
4 shoes and socks, they did find DNA that matched
5 Mr. Kennedy. Oh, and also, your Honor, I guess the
6 most important part, Mr. Kennedy, before he died, was
7 able to tell three witnesses and a police officer in
8 response to the question, "Who shot you," he responded
9 along the lines of, "My son-in-law, Trey Brown."

10 At the appropriate time I do have the criminal
11 record in this case. Again, there are several members
12 of Mr. Kennedy's family who do want to speak with you.
13 Just at the very end, if I could just mention one more
14 thing to you.

15 THE COURT: I'll give anyone an opportunity who
16 wishes to address the Court.

17 All right. Mr. Brown, did you hear the facts as
18 stated by the solicitor?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you agree that those are the facts
21 of the case?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. All right. Again, let's go off
24 the record and you can speak with your attorneys.

25 I'd like you to isolate what facts with which he

1 disagrees.

2 (WHEREUPON, an off-the-record discussion was.
3 held between the defendant and his counsel.)

4 THE COURT: Mr. Grose.

5 MR. GROSE: Your Honor, I think we're ready to go
6 forward. He had some questions about Mr. Kennedy's
7 statements to the neighbors which is in the discovery.
8 Of course, he wouldn't have been there during that part
9 of it anyway. I was concerned that, you know, had we
10 gone to trial, there would have been some additional
11 facts that, if Mr. Brown testified, that he would have,
12 you know, been able to bring into evidence that
13 supported some of what Dr. Frierson had been told about
14 there being a struggle. And, certainly, I don't know
15 that the forensic evidence necessarily confirms it, but
16 it doesn't really rule it out either, and we had
17 consulted a crime scene expert who we would have had to
18 testify about some of that if we had to go to trial.

19 THE COURT: Thank you, Mr. Grose.

20 Ms. Nelson, anything you would like to add?

21 MS. NELSON: No, sir. That was everything.

22 THE COURT: Mr. Brown, taking into account what
23 your attorney just told me, that you weren't there when
24 Mr. Kennedy made these statements so you can't verify
25 one way or the other what was said, if I take that into

1 consideration, do you agree that those are the facts of
2 the case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, Mr. Brown, after I have
5 explained your rights to you and had the facts put into
6 the record and gone over all of this questioning, do
7 you still wish to plead guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Did you know what you did was
10 wrong?

11 THE DEFENDANT: Yes, sir, but I wasn't at fault.

12 THE COURT: Okay. Say that again, Mr. Brown.

13 THE DEFENDANT: I wasn't at fault.

14 THE COURT: Okay. Well, Mr. Brown, when you plead
15 guilty, you are admitting guilt to the charge that's
16 before the Court. Now, if you're saying you're
17 innocent of that charge, then I'm not going to accept
18 your plea. But I'm going to allow you again to go off
19 the record and discuss with your attorneys because I'm
20 not going to let an innocent man be convicted, so go
21 off the record and talk to your attorneys.

22 (WHEREUPON, an off-the-record discussion was.

23 held between the defendant and his counsel.)

24 THE COURT: All right. Mr. Brown, have you been
25 able to talk with your attorneys?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I'm going to ask you the question
3 again: Did you know what did you was wrong?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you accept responsibility for
6 it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. All right.

9 Mr. Grose, I'll start with you. Do you feel that
10 you have been over all of the facts of the case and all
11 of the applicable law with your client?

12 MR. GROSE: Yes, sir.

13 THE COURT: And are you satisfied that he
14 understands his rights, is competent to proceed today,
15 and concur in his decision to plead guilty?

16 MR. GROSE: Yes, sir.

17 THE COURT: Ms. Nelson, I'm going to ask you the
18 same thing.

19 MS. NELSON: Yes, sir.

20 THE COURT: Have you been able to go over the
21 facts of the case and the applicable law with your
22 client?

23 MS. NELSON: Yes, your Honor.

24 THE COURT: And are you satisfied that he
25 understands his rights and that he is competent and you

1 concur with his decision to plead guilty?

2 MS. NELSON: I do concur with his decision,
3 believe he's understood, and I certainly can't discount
4 the opinions of the many doctors who have seen him in
5 relation to his competency, your Honor.

6 THE COURT: Okay. All right. I will accept the
7 plea. I find there is a factual basis for the plea.
8 The defendant pleads guilty freely, voluntarily, and
9 knowingly with the advice of competent counsel with
10 whom he is satisfied. I also further note for the
11 record the previous finding of the Court that the
12 defendant was competent after reviewing the mental
13 health records submitted and the testimony of the
14 forensic psychiatrist.

15 All right. Let's do this. Let me hear from the
16 folks that the State wants to present, and then I'll
17 turn it over to the defense and the defense can present
18 what they would like to.

19 MR. GROSE: Thank you, your Honor. All right. As
20 to whomever wants to come up, to just come up to the
21 microphone, make sure they state their name on the
22 record, direct any comments they have to the Court.

23 THE COURT: Yes, ma'am.

24 MS. GRAY: Your Honor, my name is Gloria Gray, and
25 I'm James Keith Kennedy's sister. And as I stand

1 before you today, my heart is very heavy. It has been
2 almost ten years since we lost our little brother.
3 It's not a day go by that I don't see his face, his
4 smile, his gentleness, his caring. He was a person
5 that had a big heart whom he would give his last to
6 anyone he met, even a stranger. He would greet them
7 with a smile, and if he could do something to help
8 them, he would do it.

9 And as I've watched my mother these past ten
10 years, she has grieved herself to where she don't even
11 leave the house. She comes to -- [crying]. A mother
12 should not see her child go. A child should see their
13 parents go, should see their parents go. And we watch
14 her every day, how she has just given up on life
15 because of him. He didn't deserve to die the way that
16 he did. He didn't deserve that. We didn't deserve to
17 have to go through this with all the pain, the
18 heartache. We don't even sleep anymore because of what
19 has happened. And I just ask you today, your Honor,
20 that justice be done here today because we have
21 suffered, suffered so much, and I do ask that justice
22 be done here today.

23 THE COURT: Thank you, ma'am.

24 Anyone else?

25 MR. GATES: Judge, my name is William Gates.

1 Keith was my youngest brother. What you see, our
2 family really miss our brother. More or less, as my
3 sister said, my mother. Just to see the state she's in
4 really, really hurts a lot. We know we're not put here
5 to stay, your Honor, but we are not here to be taken
6 tragically by someone else. We just ask that we
7 continue to stand as a family to grow stronger because
8 we know we're going to see our brother one day and that
9 is in Heaven.

10 Judge, your Honor, we just -- we have grieved over
11 and over again. And as my sister said, just to see my
12 mother, just to see her in so much misery is enough to
13 really tear your heart out. And her heart has been
14 broken by a loved one we have lost, especially when you
15 live and you see someone come into the world as a child
16 and leave as a young man, it's tragedy. It's just so
17 much grieving and hurt in our hearts. And if you see
18 our facial expression today, you see it, Judge, your
19 Honor. We just ask that everything is going to be all
20 right. We know that God is in control of everything.
21 He have to put this on your heart as well as ours.

22 THE COURT: Thank you.

23 MS. KENNEDY: Your Honor, I'm Latanya Kennedy.
24 And James Keith Kennedy is my father. First of all, I
25 want to say that he was a loving father. He cared for

1 all of his kids. I just miss him so much. But when it
2 comes to Trey, I lived with him, your Honor. He was an
3 abusive man, not only to me, to his other kids' mom.

4 He pulled a gun out on her, so, I mean, he's violent.

5 The night that I left -- well, the night before I
6 left -- I left the next morning -- he hit me a couple
7 of times and hit me in front of my son, and that was
8 the final straw for me. I said then if I wake up to
9 see the next morning that I would never go back and I
10 didn't. He told me that I wasn't going to make it
11 until the morning. But God has spared me. So when I
12 got up that morning while he was at work, I had to pack
13 up everything I could and take my kids. While I was
14 gone, he came looking for me. The guy that lived in
15 the house that we were -- that he thought we lived in
16 that we used to live in, he said he could see it in his
17 eyes that he was violent and I should stay away from
18 him.

19 The night before he went to my dad's house he was
20 trying to find out my address from me, but I wouldn't
21 give it to him. When he got to my dad's, he was trying
22 get my dad to give him the address. And all I can say
23 is my dad saved me, he saved me. If it wasn't for his
24 life, it would have been mine. And if he gets out, I
25 just fear for the life of my life and my kids. I can't

1 even see how I would make it if he is free.

2 THE COURT: Thank you, ma'am.

3 Anyone else?

4 MR. AGNEW: Yes, sir, your Honor. Your Honor, I'm
5 Paul Agnew. Keith Kennedy was a very dear and personal
6 friend of mine. He was a good man whose life was cut
7 needlessly short for this senseless act of violence.
8 He was kind of a giant in this community, your Honor.
9 He worked with children to better his community. He
10 loved his family so dearly, and he loved his immediate
11 family, but also his West Carolina family. He was an
12 employee there. I happen to be their attorney, and I
13 know how deeply they loved him and cared for him and he
14 just made people feel better everywhere he went. This
15 community still mourns for him every day, your Honor,
16 even after this period of time. He's talked about in
17 the community, all the great things he did, all the
18 people's lives he touched. He had his own story to
19 tell, and he shared that with people who he thought
20 would enrich their lives and it did enrich a lot of
21 lives throughout this community because he was one of
22 those guys that was given a second chance, and he never
23 looked back from it. He went forward and kept making a
24 positive difference in everyone's lives and touches his
25 family as often as he could, going back to his

1 community and trying to enrich it and make it better.

2 The week before his life was taken, we went to a
3 Red's game together and we have some deep conversations
4 about life and a lot of things that we enjoyed speaking
5 about, and he didn't deserve to have it cut so short,
6 your Honor. And he would have continued to this day
7 making a profound difference in every life that he came
8 across, and he was denied that opportunity. And he's
9 still loved by me and loved by so many people
10 throughout this community, so many people that he
11 worked with at West Carolina, his family, who has kind
12 of acted on his legacy to continue to try to benefit
13 their community and make a difference. Just a good
14 man, your Honor. He was a giant in this community, and
15 we still mourn his life to this day.

16 THE COURT: Thank you.

17 MS. SINGLETON: Your Honor, my name is Nedra
18 Singleton. I'm Keith Kennedy's niece. More like a
19 daughter to Keith. I never thought September the 8,
20 2006, would be the last conversation that I would have
21 with him. We were supposed to go to Atlanta to his
22 grandson's birthday party that morning, September 9th.
23 We was deciding what vehicle should we go in. And he
24 called and he was like, "Yeah, what vehicle are we
25 going to go in?" I said, "Well, get my car. We'll go

1 in my car." He said, "No, Baby. We'll go in my car."
2 I said, "We?" "We'll drive my car." I said, "We?
3 We're not going to drive, I'll drive." Keith never did
4 like to drive. He would always go to sleep, so he was
5 very cautious when it was him traveling a long way. So
6 he said, "Well, I'll see you in the morning, Baby. I
7 love you." I said, "I love you, too." That morning I
8 woke up, Keith stayed on my mind, to call Keith, call
9 Keith. And I told my mom, "I need to call Keith
10 because it's late. We're supposed to be leaving by
11 now." And then she said, "Well, give him a few
12 minutes." Keith was always the type of person, he was
13 always late. So I said, "Yeah, you're right," because
14 two weeks prior we had went to Atlanta to see Taya and
15 the kids and Brook, and he was late that morning. And
16 that Saturday morning when he was late, he said, "Oh,
17 Baby, I had to wash Elaine's car. That's why I was
18 running late." So that's what I took it as that
19 morning. I never knew the reason why he was on my mind
20 that morning was because that would be the last time,
21 that Friday, that I would talk to my uncle. He was
22 more like my daddy than my uncle. All of my uncles
23 were more like my daddy, but I could talk to Keith more
24 than I could my mama. So he took my father away from
25 me, not my uncle. And, your Honor, this is my Uncle

1 Keith. And that's how he was, a smile always on his
2 face. He wouldn't hurt a fly. And I just hate that my
3 daughter -- my baby girl was six months old when he
4 died, and she never really got to know the man that we
5 all got to know. But once she was older to talk, she
6 said she had three daddies. And she said, "Keith is my
7 daddy." Only thing he would just have to look at that
8 little fat girl and she would smile. But to this day
9 that great man has been taken away from all of us, your
10 Honor, and I just ask that you would give us justice
11 and give Trey the time that he deserves for taking a
12 wonderful person out of his family's life. And that's
13 all I have to say. Thank you.

14 THE COURT: Thank you, ma'am.

15 Any further?

16 MR. ANDREWS: Your Honor, I just wanted to tell
17 the Court a little bit about defendant's criminal
18 record.

19 THE COURT: Okay.

20 MR. GROSE: Your Honor, I know you heard that
21 Mr. Brown was served with notice of life without
22 parole. That's from a kidnapping conviction in May of
23 1996. Looks like he was at the same time convicted of
24 unlawful use of telephones, unlawful carrying of
25 pistol. The next sentence on that charge was 15 years

1 suspended to 164 days followed by three years of
2 probation. He has a criminal domestic violence
3 conviction along with malicious injury to real
4 property. That's from April of 1998. He has a simple
5 assault and battery conviction, April of 1999, and what
6 appears to be a PWID marijuana, appears to be a
7 probationary sentence. That's from September of 2001.

8 And your Honor, there was some talk, I believe, in
9 chambers about credit for time served. What I do want
10 to bring to the Court's attention is that this case was
11 nonpros'd on October 20th of 2009. It was nonpros'd
12 after the finding that Mr. Brown was not competent and
13 not likely to restore. The case was reindicted on
14 February 7th of 2014. Mr. Brown was in custody on
15 September 9th of 2006, and from that the date of
16 nonpros is three years, one month, eleven days. The
17 case remained nonpros'd for four years, three months
18 and 18 days. I can't remember the code section right
19 off the top of my head. I do know it is in Title 24.
20 We would argue that for the four years, three months
21 and 18 days that the case had been nonpros'd that
22 Mr. Brown would not be entitled to credit for time
23 served for that time, your Honor, as the case has been
24 nonpros'd.

25 Your Honor, just one other thing I did want to

1 note before the Court heard from Mr. Brown or imposed
2 sentence. I do want the Court to take into
3 consideration the findings made by Dr. Frierson,
4 especially some of those findings that related to and
5 quoted out to Dr. Frierson his conclusion that
6 Mr. Brown was unwilling to face the music. I do
7 believe that that should be a material consideration in
8 the Court's sentencing, your Honor.

9 THE COURT: Tell me again, what is the State's
10 position of how much time served Mr. Brown is entitled
11 to?

12 MR. ANDREWS: Your Honor, it looked like Mr. Brown
13 was arrested on September 9, 2006, and the case was
14 nonpros'd on October 20th of 2009. And according to --
15 I just plugged it into a date calculator on the
16 Internet, your Honor, that's three years one month and
17 eleven days.

18 THE COURT: Okay.

19 MR. GROSE: And then the case had been nonpros'd
20 for four years, three months and 18 days.

21 THE COURT: Okay. All right. Thank you.
22 Anything further from the State?

23 MR. ANDREWS: No, your Honor. Thank you.

24 THE COURT: All right.

25 Ms. Nelson, Mr. Grose, who wants to go first?

1 MR. GROSE: With regard to the credit for time
2 served issue, that seems like a good place to start.
3 Mr. Brown has been in the custody of the State of South
4 Carolina since September 9th of 2006. And our position
5 is that he's entitled to credit since that date. You
6 have heard testimony from Dr. Frierson about how the
7 enactments of the General Assembly were followed in
8 this case. When Trey was found not competent and not
9 likely to restore, the statute required that he be --
10 that the solicitor's office petition the probate court
11 for his judicial commitment, and that if committed,
12 that the charges be nonpros'd. That is not -- that's
13 just a legal technicality. The fact of the matter is
14 is that his custody has been continuous for almost ten
15 years now. And so we believe that when you look at all
16 the enactments of the General Assembly and the
17 procedure in this case, that he's entitled to credit
18 for that time.

19 I don't think the State disputes the probate court
20 commitment was done on their petition as required by
21 statute.

22 MR. ANDREWS: We do not dispute that, your Honor.

23 MR. GROSE: Okay. I don't want to belabor the
24 facts a lot, but I do think we need to address one
25 thing that has come up which, for Ms. Nelson and I,

1 this was the first time that we had heard that there
2 was a belief that Trey went to Mr. Kennedy's house to
3 look for his ex-wife or to look for the address of his
4 ex-wife. I'm sure that she probably has some sincere
5 beliefs about that but, what I can tell you, your
6 Honor, is that after the separation, according to
7 pleadings that Trey verified on August 31st of 2006
8 before, you know, several -- well, a week before --
9 more than a week before this happened, Trey had been to
10 see former solicitor attorney Druanne White in Anderson
11 and had initiated the process for divorce. The
12 pleadings indicate that they had been separated since,
13 I believe, August 8th.

14 THE DEFENDANT: 8th.

15 MR. GROSE: And in the pleadings, Trey was, among
16 other things, he was asking for his ex to have custody
17 of the children -- well, to have placement of the
18 children, joint custody, and for Trey to have
19 visitation and for them to divide everything equally.
20 It does, from our conversations with Trey, it does
21 appear that some of the disagreement, the argument
22 between him and Mr. Kennedy that day did have to do
23 with the divorce. But we think it was in a little bit
24 different posture based on what Trey had been doing.

25 I have these pleadings if you want to look at

1 them.

2 THE COURT: Let me look at them.

3 MR. GROSE: Initially Trey had different counsel
4 and there was different prosecutors in 2006 to 2009. I
5 first became aware of Trey's case probably not long
6 after it had happened, but while he was being
7 represented by other counsel at the time, I was in the
8 public defender's office and Trey would periodically
9 call the office and sort of reached out to us. Of
10 course, I couldn't do anything for him at that point
11 because he had privately retained counsel. When these
12 charges came back, I had gone into private practice,
13 and he was with the public defender's office. Trey had
14 initially contacted me about representing him, but it
15 was apparent that he would not be able to retain me.
16 So what I ended up doing was getting involved in his
17 case on a pro bono basis largely because he had been
18 reaching out to me over the years and I knew a lot
19 about what had gone on with his mental illness. I had
20 just happened to be in attendance that day in Greenwood
21 that Dr. Frierson testified about when there was the
22 commitment hearing to the Department of Mental Health.

23 I appreciate your patience with Trey this morning.
24 Trey -- and I don't mean this in a negative way -- Trey
25 takes a lot of patience. He has called the office a

1 lot and he's asked a lot of questions, and sometimes
2 you do have to go over things with him more than once.
3 I think a lot of that is probably the symptoms of the
4 mental illness or the side effects of the medication.

5 I'm not trying to argue that he's not competent.
6 I think that it just takes some time to work through
7 some of this stuff with Trey. As Dr. Frierson said, it
8 is, as the mental health cases go, it's much more
9 complicated. I have handled so many over the years,
10 and I would put it in the top handful as far as how
11 challenging it has been just given the history that he
12 has. And I think it's significant that he has been
13 diagnosed with a major mental illness and he's been
14 treated for that, and I think that he will be able to
15 go into the Department of Corrections and be treated.
16 I, to some extent, understand his hesitancy of wanting
17 to go there. We all know about the litigation that has
18 been going on. That's no secret. And we've tried to
19 talk with Trey about the availability of the treatment
20 and the fact that, as a result of that litigation, the
21 Department of Corrections is rewriting its policies and
22 how they deal with the mentally ill. And I think
23 that's also been kind of a lot for him to absorb and
24 take in, given, you know, the change in placement over
25 a period of time.

1 I can tell you, you know, during the conversations
2 there has sometimes been some paranoia about the
3 connections that Mr. Kennedy's family has and those are
4 undeniable. You have seen some of them here today to
5 talk to the Court about their feelings and their love
6 for Mr. Kennedy and missing him. I can tell you that
7 Trey has never spoken a bad word about Mr. Kennedy to
8 me. I do think that what Dr. Frierson said when he --
9 about Trey making the call and realizing that he had
10 done something wrong, he's very emotional in that
11 telephone call. That would have been played, I'm sure,
12 for the jurors. While we have had to talk with Trey
13 about the accounts, his accounts of what happened that
14 day, you know, he's been somewhat reluctant in part, I
15 think, because he did have a lot of respect for
16 Mr. Kennedy, and I do think that he feels remorse for
17 what happened.

18 And I think, Trey, you wanted to say something,
19 didn't you?

20 THE DEFENDANT: Yes, sir.

21 To the Kennedy family, I truly deep down in my
22 heart apologize for what happened. I wish it never
23 would have happened. And my heart goes out to you all.

24 And I apologize to the Courts for my error.

25 MR. GROSE: And Trey had told us earlier today

1 when we were talking about, you know, the necessary
2 things to go through in order to do this plea, that he
3 wanted to ask your Honor for mercy. Of course, mercy
4 has a long tradition in our society in the criminal
5 justice system, and I believe in this case a sentence
6 of 30 years with the gun charge concurrent would be
7 appropriate, would be justice, and would be mercy.

8 THE COURT: Thank you, Mr. Grose.

9 Ms. Nelson, anything you would like to tell me?

10 MS. NELSON: Just a few things, your Honor. As to
11 the credit for time served, I would just add, this
12 facility that Trey has been in since 2009 and, of
13 course, in the jail prior to that, he's behind a barbed
14 wire fence where you have to go through a lot of
15 locking doors. He is certainly in confinement. And
16 it's my understanding that after this case was
17 nonpros'd with leave that there has been at least a
18 yearly call from the solicitor's office to the
19 Department of Mental Health to check on Trey's status.
20 So while the case may not have technically been
21 pending, there certainly was continued interest in the
22 prosecution of this case depending on Trey's status.
23 And as soon as the solicitor's office was informed
24 about the possibility of a step down facility, that's
25 when everything cranked back up again with the

1 reindictment. So I think all of those factors also
2 play into our request that he be given for this time he
3 has served in confinement. He would not be in DMH
4 custody but for the initiation of these charges to
5 begin with.

6 I would also ask the Court to consider his actions
7 both before and after this happened. There's not any
8 indication in any of the discovery we received that
9 Trey went to Mr. Kennedy's home armed. There is an
10 indication that there was at least one firearm in the
11 home that was found sometime later and given by
12 Ms. Kennedy to someone else and was eventually
13 recovered by law enforcement in 2009. I certainly am
14 not -- and as we told your Honor in chambers, there was
15 also a nightstand drawer in the master bedroom that had
16 bullets that appear to be of the same caliber of those
17 that were fired in the home.

18 So the only point I'm trying to make with that is
19 that I firmly believe that Trey did not go there with
20 the purpose when he arrived with the purpose of hurting
21 anyone. I think that's something that developed
22 during -- during the visit, and exactly what happened,
23 only Trey knows. He was there, it's my understanding
24 also, for several minutes, time for Ms. Kennedy to
25 finish a bath and getting dressed and then leave to go

1 walk, before anything happened. So, again, I think
2 that goes, your Honor, to just the fact that he didn't
3 go there with the purpose of doing harm. And I think
4 where the shots were also goes to that point, that they
5 were -- because of where they were on the body. And
6 would also ask you to remember that not long after the
7 incident, Trey did call 911 himself very distraught,
8 admitting that he had done something bad and then
9 subsequently turned himself in voluntarily in Aiken
10 County. And Aiken County is where his parents lived at
11 the time. They now live near Beaufort and Saint
12 Helena. But that also goes, I think, to contradict
13 this idea that Trey doesn't want to face the music
14 because, obviously, he was afraid of what was going to
15 happen to him on the 911 call. He said, "I'm scared"
16 over and over again, "I'm scared." And he is facing
17 the music, your Honor. He's standing here even though
18 this whole process is difficult, and as Mr. Grose has
19 explained, has been difficult to get through with Trey,
20 but he is standing here facing the music, your Honor.
21 He's not requiring the State to prove this case against
22 him beyond a reasonable doubt. He's up here like a
23 man, accepting responsibility. I know that nothing can
24 take away what this family has lost, but they at least
25 now do not have to go through several days of trial

1 where everything -- everything under the sun about this
2 case has to be hashed out because -- because Trey, with
3 the support of his family today, was able to do this,
4 your Honor. And I would ask you to keep all those
5 things in mind.

6 His father, Johnny Mack Brown, is here with us.
7 He's got other family members in the audience. His
8 mother is seated here on the first row. His sister was
9 in the courtroom, your Honor. And another family
10 member, Mr. Brown's son-in-law, is also here and they
11 were instrumental today in helping Mr. Grose and me get
12 Trey to this point where he came to the realization
13 that this was the best and the right thing to do. And
14 I appreciate them being here.

15 I don't know whether Mr. Brown wants to address
16 the Court, but we'd like to give him that opportunity,
17 your Honor.

18 THE COURT: Mr. Brown, do you have anything you
19 would like to say?

20 MR. BROWN: Judge, my heart goes out to the
21 Kennedy family but it also goes out to my family
22 because my daughter is sick. My son, he's sick. I
23 just lost a son. Didn't just, but lost him in 2009.
24 He was just 25. Well, he come from the state with
25 Latanya and all of them. But all I want to say is

1 there's no winners in this case. You speak of justice.
2 There's no justice. I never knew Mr. Kennedy. Never
3 saw him before in my life, you know, but my heart goes
4 out. But we can't bring Mr. Kennedy back. But I got a
5 wife here who's had two strokes. She can't hardly go,
6 but we made it from Saint Helena to come up here. She
7 only have this one son left now, you know what I'm
8 talking about, and she love him just as much as they
9 love Mr. Kennedy. But like I said, we can't bring
10 Mr. Kennedy back, but we're asking for justice also for
11 my son because there is no justice actually. There's
12 no winners in this case. We're all losers. We're just
13 one big family suffering. Their family suffers.
14 They're not the only family that suffers. My family
15 having to suffer through this, too, back and forth to
16 the hospitals, all these places, lawyers, and a bunch
17 of money being spent and everything. So nobody wins in
18 this case. So I just ask for you to have mercy upon my
19 son and my heart goes out to the Kennedy family. We
20 love Latanya. She spent nights down there with us and
21 all. We still love her. She got grandkids, used to
22 call us, we call. After this happened, we tried to
23 speak with them, and she got to talk, but I think some
24 of the family members told her, "Don't mess with these
25 people no more," whatever. But we haven't seen the

1 grandkids in all these years. So we're all losers.
2 But I ask in my heart and I ask that the Lord bless
3 this family just as well as my family and that we's
4 always here and she can always call us if she need us,
5 and we'd like to see our grandkids if there's any kind
6 of way possible. We'll probably never see them, but we
7 don't have no love lost. We all lost in this case.

8 THE COURT: Thank you.

9 Any others, Mr. Grose?

10 MR. GROSE: Judge, it's a tragic situation, and we
11 just ask for the mercy of the Court.

12 THE COURT: Okay.

13 MR. ANDREWS: Your Honor, if I could just make one
14 factual correction. Ms. Nelson mentioned something
15 about a firearm being recovered in the house. There
16 was a firearm recovered in the home. We do believe
17 that it was owned by Mr. Kennedy; however, it was a
18 .32-caliber, I believe it was a Rossi revolver. I know
19 it was a .32-caliber revolver. The rounds, the spent
20 rounds, and the shell casings recovered from the home,
21 and that includes the round recovered from
22 Mr. Kennedy's body, were all 9mm, your Honor.

23 MS. NELSON: Your Honor, my point with that was
24 the only weapon that was recovered and that there was
25 indication that that one or another one may have come

1 from the nightstand, and it was a .38 Charter Arms
2 Undercover Special is what I remember from the
3 discovery.

4 THE COURT: You're not alleging that was the gun
5 that inflicted the wounds?

6 MS. NELSON: No, sir. What I was saying is there
7 isn't any indication that Trey actually went there with
8 a weapon. That was the only point I was trying to
9 make, your Honor.

10 THE COURT: Okay.

11 This truly is a tragic case, and this is one of
12 the worst aspects of my job is when I have to see
13 families that come to this court who have suffered, and
14 all indications are, from what I've heard, this was a
15 fine, fine man, and it's just a tragedy. I also see
16 another life that's permanently, permanently affected,
17 and it's -- there's no good solution to this.

18 But if there's nothing further, this will be the
19 sentence of the Court: On 2014-GS-01-0111, Trey Chavez
20 Brown be confined to the Department of Corrections for
21 a term of 30 years. On 2014-GS-01-0112, Defendant Trey
22 Chavez Brown will be confined in the Department of
23 Corrections for a term of five years consecutive. He
24 would receive credit for time served of three years
25 one month and 11 days.

1 Good luck to you, sir.

2 MR. GROSE: Your Honor, if I may, can we just
3 place on the record your rationale for the credit for
4 time served.

5 THE COURT: I accept the State's argument that the
6 time that he spent under a civil commitment should not
7 count toward his time served.

8 MR. GROSE: All right. And can you consider this
9 our motion to reconsider for the reasons that we argued
10 before and grant time served since September 9, 2006?

11 THE COURT: I'll note that for the record and I'll
12 deny that motion.

13 MR. GROSE: Thank you, your Honor.

14 MR. ANDREWS: Thank you, your Honor.

15 (WHEREUPON, the hearing ended at 2:39 p.m.)

16 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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1 Certificate of Reporter
2

3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Abbeville County, South
10 Carolina, on the 29th day of February 2016.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 April 29, 2016

16 *Diane L. Marcengill*

17
18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
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25

CAPACITY TO STAND TRIAL EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE: February 22, 2016

PRESIDING: Richard L. Frierson, MD, Professor of Clinical Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Katie Chambers, MD, Resident in Psychiatry
University of South Carolina School of Medicine

OTHERS PRESENT: Lauren Pace, Fourth-Year Medical Student
University of South Carolina School of Medicine

DIAGNOSES: DSM-5: Schizophrenia.
Alcohol Use Disorder, by history.
Cannabis Use Disorder, by history.

OPINION REGARDING CAPACITY TO STAND TRIAL: Mr. Brown currently has the capacity to stand trial.

DISPOSITION: Mr. Brown returned to the inpatient psychiatric unit at the South Carolina Department of Mental Health Forensic Hospital after conclusion of this interview.

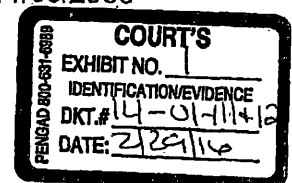
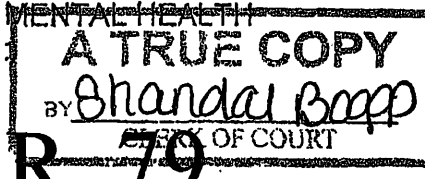
IDENTIFYING INFORMATION: Trey Chavis Brown is a 41-year-old African American male who was seen at the Forensic Inpatient Service of Bryan Psychiatric Hospital pursuant to a court order from the Abbeville County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State vs. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S. C. Code Ann. §44-23-410 (1976). He is currently charged with Murder and Possession of a Weapon during the Commission of a Violent Crime.

According to the court order, it was issued for the following reasons: "This case is [sic] set for trial on February 29, 2016. This case was *nolle prossed* in 2009 because SCDMH examiners determined that Mr. Brown was not competent and not likely to restore, but subsequent examinations have resulted in finding that Mr. Brown is competent. In addition, Mr. Brown has expressed his mistrust of his current attorneys and has recently asked for other counsel to be appointed to represent him, which request was denied. His parents have also sought private counsel for Mr. Brown but have been unable to hire private counsel as of this date. Out of abundance of caution, DMH shall conduct this competency evaluation as quickly as possible." This order was signed by the Honorable Frank

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Addy, Jr. on February 17, 2016 and received by the Division of Forensic Evaluation Services on February 28, 2016.

Prior to participating in the evaluation, Mr. Brown was informed of the limitations of confidentiality. He was informed that the evaluation was court ordered. He was informed that the evaluators were working for the South Carolina Department of Mental Health and were not being paid by his attorney or the solicitor in the case. He was informed that after the evaluation was completed a report would be submitted to the judge, the solicitor, and his attorney. He also was informed that the evaluators could be called to court to testify at a hearing related to his competency to stand trial. With prompting, he was able to answer questions regarding this information correctly.

SOURCES OF INFORMATION: The court is referred to a prior report dated April 28, 2014 and June 2, 2014 which contained a listing of the sources of information that were reviewed in the performance of this evaluation. Additionally, this examiner has reviewed medical records from Bryan Psychiatric Hospital Forensic Services that date from June 2, 2014 to the present. Mr. Brown participated in a one hour and 15 minute interview on today's date.

CLINICAL AND PSYCHIATRIC HISTORY: As mentioned in the previous report, Mr. Brown has a very complicated history with the Forensic Evaluation Service of the South Carolina Department of Mental Health. This case has been made difficult by the fact that Mr. Brown has a major mental illness and also exaggerates his symptoms for secondary gain (i.e. avoiding prosecution) at times.

This examiner first saw him on August 15, 2007 for a competency to stand trial evaluation. At that time this examiner opined that Mr. Brown appeared to be suffering from Schizophrenia and was not competent to stand trial but was likely to be restored to competency with appropriate inpatient treatment. He was subsequently admitted to Bryan Psychiatric Hospital Forensic Services in October pursuant to a court order for restoration of his competency. He was prescribed antipsychotic medication. During this hospitalization the treatment team became concerned that Mr. Brown appeared to be exaggerating or faking some of his symptoms. He underwent a psychological evaluation by Camilla Tezza, PhD which indicated that he was exaggerating his symptom reporting which was characteristic of malingered psychosis. At that time his treating physician stopped all medication and concluded that Mr. Brown appeared to be malingering. This examiner subsequently reevaluated Mr. Brown and a report was submitted to the court dated November 28, 2007 stating that Mr. Brown was likely malingering his symptoms and therefore was actually competent to stand trial.

One year and four months after the November 28, 2007 evaluation his trial was scheduled for the week of March 16, 2009. This examiner was contacted by the solicitor prior to that trial and was informed that Mr. Brown was still alleging he was being mistreated in the jail. His attorney was also reporting that he was having great difficulty working with Mr. Brown. The court subsequently ordered a reevaluation of his capacity to stand trial. He was initially seen for this evaluation on March 6, 2009 but at that time a decision was made to conduct a 15-day period of inpatient hospitalization. What was noteworthy was that prior to that evaluation the jail had placed him on antipsychotic medication and no longer believed he was malingering. He was alleging that a device had been implanted inside his body. The jail had performed numerous medical procedures, most of which are not pleasant, in

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an effort to assure Mr. Brown that there was nothing wrong with him. He had a CAT scan of his abdomen which was negative. He also had an esophagogastroduodenoscopy (EGD) which involves placing a scope (long tube) down his throat into his stomach and early intestine to look for signs of ulcers or other pathology. He also underwent a colonoscopy which did not reveal likely etiology for his complaint of stomach pain and weight loss. We also noted, at that point, that he had lost a significant amount of weight. Medical records indicate he weighed 211 pounds in October 2005. He weighed 179 pounds on his first admission to the Forensic Hospital in 2007. In 2009 when he was admitted again he only weighed 147 pounds (a 32 pound weight loss in just over a year and a 64 pound weight loss since 2005). Apparently he had been refusing to eat meals in the jail because he believed the food was poisoned. We note that during this 15-day period of inpatient observation his treating psychiatrist, Michael Ferlauto, MD, stated that he now believed that Mr. Brown was significantly mentally ill despite the fact that a previous impression had been that Mr. Brown was likely malingering. Dr. Ferlauto wanted to start antipsychotic medication but Mr. Brown had refused, insisting that he was not mentally ill but a device had been implanted. He shared belief with the Patient's Advocate that he felt the physicians at the Forensic Hospital wanted to harm him. He also expressed some degree of suicidal ideation. His treating psychiatrist felt that his condition had deteriorated to the point that he was a danger to himself so he was involuntarily medicated. A subsequent report was sent to the court dated April 3, 2009 stating that Mr. Brown was once again not competent to stand trial but likely to be restored with treatment. He was maintained in the hospital for competency restoration. By June 8, 2009, 60 days later, he was reevaluated and report was submitted to the court stating that he remained incompetent and was unlikely to be restored in the foreseeable future. The report recommended that he be civilly committed. After a contentious Probate Court Hearing, he was civilly committed to the Forensic Hospital and has been continuously hospitalized since November 6, 2009.

This examiner evaluated Mr. Brown again on April 28, 2014 and June 2, 2014, his last forensic evaluation. At that time, Mr. Brown wanted to be found competent to stand trial so that he could potentially enter an insanity defense. He presented in suit and tie and was neatly groomed. Although he continued to believe he had implanted devices when asked, he stated they were not bothering him. He performed extremely well on the competency evaluation and it was our opinion that he was competent to stand trial.

Since the evaluation in 2014 Mr. Brown was informed last year by his attorneys that there was a plea offer for 30 years. Mr. Brown has been extremely distraught by this. Mr. Brown has repeatedly stated that he wished to be found Not Guilty by Reason of Insanity. During today's evaluation he also reported that he wanted to be found Not Guilty by Reason of Insanity or Incompetent to Stand Trial because he did not want to go to prison. In the past several months hospital staff members have been concerned that Mr. Brown frequently exaggerates symptoms in an effort to avoid going to trial. According to the medical record, a note dated October 2015 indicated there was significant concern about possibly malingering. The treating physician wrote, "Mr. Brown is somewhat acquainted with psychiatric terminology as he reported, 'I have racing thoughts and a failure to communicate.'" Mr. Brown was seen in General Sessions Court on October 28, 2015 where he was informed that the solicitor intended to seek a sentence of life imprisonment without the possibility of parole. Since that time Mr. Brown has expressed feelings of helplessness and hopelessness. However, by January

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2016 he was reporting a stable mood and reports indicated that he was considered "at a stable baseline."

On January 31, 2016 Mr. Brown took a handful of pills in front of a security officer. He was witnessed taking the medication and he reported that he had been holding onto medications for a while. He was sent by ambulance to Palmetto Health Richland for evaluation. It is noteworthy that he took these medications in front of a security officer where it was witnessed, which makes the likelihood that this was a serious suicide attempt less likely. He was evaluated at Palmetto Health Richland. He told the emergency room physician that he had taken forty 80 mg ziprasidone (Geodon®) tablets. Geodon® is an antipsychotic medication. However, according to the emergency room physician, "He is not exhibiting any adverse effects of the Geodon® and I highly doubt that he took as much as he says he did as he has stayed awake, although slightly drowsy, throughout the emergency department stay." He was eventually discharged from the emergency room and returned to the hospital.

Mr. Brown continues to report that he experiences auditory hallucinations. However, he has not appeared internally distracted when interviewed. On February 6, 2016 he approached the charge nurse on his unit and reported that he needs to see a doctor immediately to get him to diagnose him with schizophrenia in order to beat his murder charge because his trial is scheduled at the end of this month. Apparently Mr. Brown stopped an on call psychiatrist for this purpose. According to the same note, "The patient allegedly hearing strange voices, people telling him to die. These seems to be a case of further malingering psychosis."

On the day before this evaluation, February 21, 2016, Mr. Brown had approached the nurses' station and stated, "Can you go on line and look and print out how I can get Not Guilty by Reason of Insanity (NGRI) on my case." He was told that the nurses do not have internet access so he asked another nurse if she could have someone fax it. He explained that he was going to the Review Board (this evaluation) in the morning and wished them to do the Not Guilty by Reason of Insanity.

Mr. Brown is currently prescribed a monthly injection of long-acting antipsychotic medication, haloperidol (Haldol Decanoate®). He also is prescribed another antipsychotic medication, ziprasidone (Geodon®). He is prescribed lithium, a mood stabilizer. He is also prescribed clonazepam (Klonopin®), a medication for anxiety. Mr. Brown's presentation over the past year has been complicated by evidence that he may be exaggerating symptoms at times to avoid the possibility of prosecution. This makes forensic evaluation of him very difficult as we do believe he has an underlying major mental illness.

PSYCHIATRIC HISTORY: Mr. Brown was evaluated at Aiken/Barnwell Mental Health Center in 1998 after a physical altercation with his father. He was diagnosed with an Adjustment Disorder with a Disturbance of Conduct, a disorder characterized by bad conduct that is in response to a stressful situation. This is not a major mental illness.

He was evaluated after his incarceration in the detention center and the evaluating clinicians initially believed that he was likely malingering. However, at some point they placed him on antipsychotic medications due to his significant weight loss and his repeated insistence that a micro device had

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been implanted inside of him. He refers to these as a RFID or an RFMD. He reports that this stands for Radio Frequency Information Device or Radio Frequency Micro Device. However, during today's evaluation, while he mentioned these things, he was not as focused on them as he has been in previous evaluations (i.e. 2007 and 2009).

ALCOHOL AND SUBSTANCE USE HISTORY: Mr. Brown, in previous evaluations, had described daily alcohol use, blackouts, and difficulty controlling his drinking. His drinking also led to problems in relationships. He had been diagnosed with Alcohol and Cannabis Abuse in 1996. He also has had legal difficulties for Possession of Marijuana. He would meet DSM-5 criteria for Alcohol Use Disorder and Cannabis Use Disorder, by History.

MEDICAL HISTORY: He had a herniorrhaphy as an infant. He has never had a head injury that resulted in a loss of consciousness. He wore braces on his feet as a child. He has a history of gastroesophageal reflux disease (GERD), dyslipidemia secondary to antipsychotic medication, a history of a thyroid goiter, and possibly sarcoidosis.

SOCIAL HISTORY: He was born in Augusta, Georgia and raised in Graniteville, South Carolina by his parents and grandparents. There is a family history of mental illness. His mother and sister have both been diagnosed with Schizophrenia. His father has been diagnosed with hypertension. His mother has had several strokes and also has hypertension and diabetes. He reports that a brother died of a seizure at age 25.

He reports some physical abuse during his childhood from his father and he ran away from home on one occasion. He attended public school and made it to the tenth grade at Midland Valley High School. He reported that he was held back in the ninth grade due to poor academic performance. He was suspended a few times for fighting. After high school he worked construction. He reported that at times he was homeless. He eventually obtained his GED and apprenticed as a barber. After getting his barber's license he opened the Anderson Barber Academy in Anderson, South Carolina where he reports he averaged four to five students. He married Latonia Kennedy around age 25 and they had been married for four and a half years at the time of his arrest. He reports that she was unfaithful. He reports a total of six children but only his youngest two are by his wife. His prior legal history is remarkable for Unlawful Use of a Telephone, Unlawful Carrying of a Pistol and Kidnapping for which he received five years of probation. He also has other charges of Fraudulent Checks and one Criminal Domestic Violence Charge.

MENTAL STATUS EXAMINATION: On today's date he was alert and oriented to person, place, day, date and time. His hygiene was fair but he was not as sharply dressed as he was during the 2014 evaluation. There were no abnormal movements noted. His speech was normal in rate and volume. He was able to register three objects but he could not recall them after five minutes. He recalled one of them when given a prompt. Even with multiple choice answers he could not recall the other object. We note that when asked about his January 31 overdose he reported, "It messed up my memory." Mr. Brown was administered the Rey 15-item test, a screen for possible malingering of memory deficits. The Rey-15 is a visual recall task in which 15 items are presented for 10 seconds in a 3x5 array. The stimuli are removed, and the participant is immediately asked to reproduce the

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stimuli. Poor performance is said to be suggestive of malingering when less than nine items are correctly reproduced (Spreen & Strauss, 1998)¹. Mr. Brown obtained a score of eight, which is just below the cutoff that indicates likely malingering. His performance was poorer than what would be expected given his overall intellectual functioning. He was able to name the current President. He was also aware of recent events and the fact that Donald Trump had won the South Carolina Republican Primary. His performances on tests of concentration were poor. He made one error when trying to spell the word *world* backward and made one error when trying to spell the word *earth* backward. He demonstrated capacity for abstract reasoning as evidenced by his ability to place similar objects into abstract categories and to interpret a proverb. He described his mood as depressed but rated it as three on a one to ten scale with one being severely depressed and ten being euphoric. He reported suicidal thoughts occasionally and reported that he had thought about how he could attempt suicide but would not tell this examiner. This appeared to be somewhat cagey. His treatment team was notified that he had expressed some suicidal ideation during our interview. He denied homicidal ideas. He reports that "I'm trying to do the best I can but I'm not doing well enough." When asked what he meant by *not doing well enough* he reported, "to pass this test." When asked what would happen if he did not pass this test he reported that he would be found Incompetent to Stand Trial. He states that he was aware he would stay in the hospital and "won't have to go to prison - it's hard in prison - here is more like a safety net." He reports occasional auditory hallucinations that say people are against him. He continues to have chronic delusions about implanted devices, although he is not focused on them to the point of not being able to engage in other rational conversations.

DIAGNOSTIC FORMULATION: He has a long history of psychotic symptoms which would meet the diagnostic criteria for Schizophrenia. He has had paranoid delusions in the past. There is a strong family history of mental illness. We note the history of alcohol and cannabis use disorders as well.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Brown initially stated he felt he had been locked up for approximately 15 years. When we reviewed the date of his arrest he understands that he has been incarcerated for approximately ten years. He expressed remorse about all of the things have changed since he has been incarcerated and that a lot of people that he thought were his friends have turned their back on him. He states that the purpose of the evaluation was "to bring me before you to find me Competent to Stand Trial to give me life without parole and throw away the key." He is aware that he is charged with Murder and was able to state the name of the alleged victim. He is aware of potential defenses, including self-defense. He identified Manslaughter and Involuntary Manslaughter as lesser included offenses. He states "both carry the same time." According to his attorney, Mr. Charles Gross, if he were to be convicted of Manslaughter he could still receive life without parole under the two strikes law. He identified his attorneys by name as Charles Gross and Jenna Nelson. He states, "They are supposed to defend me to the fullest." He also added, "I've been scared of them too - they're trying to throw me under the bus." In discussion he believes that the attorneys' recommendation that he accept a 30-year plea offer was evidence that they were not on his side. He states, "They wanted me to plead to 30 years - that's my whole life."

¹ Spreen, O., & Strauss, E. (1998). A Compendium of neuropsychological tests. New York: Oxford University Press.

At that point he reported that he was hearing voices that were telling him his attorneys were coming to tell him that he could never get out.

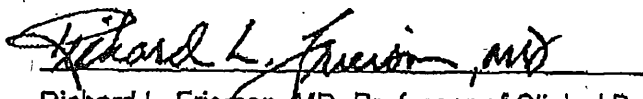
He states that several months ago prior to his last competency evaluation, the hospital was considering placing him in a boarding home. He reports that he toured three separate boarding homes but then "the solicitor said he was going to re-indict me." He reported that he had been scheduled to go to a boarding home in Monetta, South Carolina.

He states that the job of the solicitor is to send me to prison. He states that the solicitor's name is Demetrius Andrews. He states that the job of the judge is to pass out the sentence. He identified the possible sentences as Guilty, Not Guilty, Nolle Prose and Not Guilty by Reason of Insanity. He was able to define each of these pleas. He states that the job of the jury is "to decide if he did it or not." He was not aware that there were 12 jurors and initially stated there were only six jurors on a jury. He was aware of the unanimous requirement for a jury verdict.

He was able to state the concepts involved with plea bargaining. He states, "You plead to a lesser charge for a lesser sentence." He described evidence as "what they collect against you." He described fingerprints, gunshot residue, and other types of evidence. If someone were lying about him in the courtroom he stated he would need to object. I asked him who was supposed to do that for him and he stated "my attorney".

Mr. Brown has a sufficient factual understanding of the legal system. Although he continues to believe that there might be a microchip inside of him, this was not a focus of his conversation. It is our opinion that his reported paranoid thoughts about his attorneys are not necessarily due to delusions or symptoms of his mental illness. Rather, he believes his attorneys are out to harm him when they present him with information that he does not wish to hear. This phenomenon has been seen in individuals involved in the legal system who do not have mental illness. In this case there is difficulty concluding whether Mr. Brown is mentally ill to the point that he cannot stand trial or whether he simply does not want to "face the music". Although he reports paranoia toward his attorneys, he is still talking to them, conversing with them and providing them with information. He states he can tell them everything he knows about the charges against him. Therefore, it is my opinion that at the present time he continues to have the ability to consult with his attorney and assist in his defense. Therefore, it is our opinion that he is current competent to stand trial.

As stated previously, Mr. Brown has made statements that he would kill himself if he is sent to prison. If he is convicted of his charges and sentenced to incarceration, it is this examiner's recommendation that this information be provided to the jail and the Department of Corrections so that he can be assessed.



Richard L. Frierson, MD, Professor of Clinical Psychiatry
University of South Carolina School of Medicine

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D: 02/23/2016

RT/EM: 02/23/2016

F/EM: 02/24/2016

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CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION: April 28, 2014 and June 2, 2014

PRESIDING EXAMINER: Richard L. Frierson, M.D.,
Professor of Clinical Psychiatry,
University of South Carolina School of Medicine

SECOND EXAMINER: Odette Anderson, M.D., Resident in Psychiatry,
University of South Carolina School of Medicine (April 28)

Carol David, LISW-CP (June 2)

OTHERS PRESENT: Janna A. Nelson, Attorney for the Defendant

DIAGNOSES: AXIS I: Schizophrenia, Paranoid Type
 Alcohol Abuse, by History
 Cannabis Abuse, by History
 AXIS II: No Diagnosis
 AXIS III: Sarcoidosis
 Dyslipidemia
 History of Multinodular Thyroid Goiter

OPINION REGARDING CRIMINAL RESPONSIBILITY: Responsible.

OPINION REGARDING CAPACITY TO CONFORM: Capable of conforming.

DISPOSITION: Mr. Brown returned to the inpatient psychiatric unit at the South Carolina Department of Mental Health Forensic Hospital at the conclusion of this interview.

NOTE: During this evaluation Mr. Brown stated that if he is convicted he would commit suicide and that if he accepted a plea to a lesser included offense, there is a 50/50 chance that he would commit suicide. As such, if either of these outcomes occur or appear to be imminent, he should be assessed immediately for suicide risk by a qualified mental health professional and any necessary suicide precaution measures should be implemented.

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IDENTIFYING INFORMATION: Trey Chavis Brown is a 39-year-old African-American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Abbeville County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and capacity to conform his behavior to the requirements of the law on or about September 9, 2006 pursuant to S.C. Code Ann. §17-24-10 (1976). He is currently charged with Murder and Possession of a Weapon during the Commission of a Violent Crime.

According to the order, it was issued for the following reasons: "Both parties consent to this evaluation. In addition, since his arrest for these charges, Mr. Brown has been examined at least four times by forensic psychiatrists at the South Carolina Department of Mental Health (SCDMH). In three of these examinations, the examining psychiatrist diagnosed Mr. Brown with schizophrenia, and there are also members of Mr. Brown's immediate family who have been diagnosed with the same mental illness. Because it appears that there is a question regarding Mr. Brown's mental state at the time of the alleged offenses, I am ordering an evaluation for criminal responsibility and capacity to conform."

Prior to participating in the evaluation, Mr. Brown was informed of the limitations of confidentiality. He was informed that the evaluation was court ordered and that the evaluators were employed by the South Carolina Department of Mental Health and were not being paid by his attorney or the solicitor. He was informed that after the evaluation a report would be submitted to the court and given to his attorney. He was informed the report could also go to the judge and the solicitor. He was also informed that the evaluators could be called to court to testify.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest Warrant #J-095635 for Murder.
3. Indictment for Murder and Possession of a Firearm or Knife during Commission of a Violent Crime.
4. Abbeville Police Department Incident Report for the alleged offense.
5. Aiken County Sheriff's Department incident report for the alleged offense.
6. Statement of Michael A. Eaton dated September 13, 2006.
7. Statement of Joe Scoggins dated September 9, 2006.
8. Statement of Darren Ray dated September 9, 2006.
9. Statement of Elaine Fuller Kennedy dated September 9, 2006.
10. Statement of Lottie Ibel dated September 9, 2006.
11. Statement of Virginia A. Glover dated September 27, 2006.
12. Statement of Connie Kennedy Wardlaw dated September 25, 2006.
13. Abbeville County coroner's report.
14. Autopsy report on the alleged victim.
15. South Carolina Law Enforcement Division (SLED) laboratory report.
16. Aiken-Barnwell Mental Health Center evaluation records (August 12, 1998 through November 17, 1998).
17. Forensic Social Work Assessment.
18. Beckman Center for Mental Health evaluation records.

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19. National Crime Information Center (NCIC) record for the defendant.
20. Report of a psychological evaluation by Camilla Tezza, Ph.D. on November 1, 2007.
21. Anderson Area Medical Center records for the defendant.
22. Aiken Regional Medical Center records for the defendant.
23. Aiken Center for Alcohol and other Drug Services record for the defendant from April 24, 1996 through January 16, 1997.
24. Abbeville County Detention Center records.
25. Columbia Care Center records of psychiatric inpatient admission for restoration of competency to stand trial from October 5, 2007 through November 29, 2007.
26. Prior forensic evaluations of the defendant by the Department of Mental Health.
27. Medical records from the Greenwood ENT.
28. Note from John Tollinson dated January 26, 2009 with photos of Anderson Barber Academy and Anderson Express Barber Salon.
29. Selected writings of the defendant.
30. Columbia Care Center records of psychiatric inpatient admission of March 26, 2009 through June 8, 2009.
31. 911 recording of Trey Brown.
32. Medical records from the South Carolina Department of Mental Health Forensic Hospital dated November 6, 2009 to the present.
33. A 1-hour and 40-minute forensic evaluation on April 28, 2014.
34. A 1-hour clinical forensic interview on June 2, 2014.
35. Telephone conversation with Andy Hedgepath, MD, Mr. Brown's treating psychiatrist.

CLINICAL HISTORY: Mr. Brown has a very complicated history with the forensic evaluation service of the Department of Mental Health. He was first evaluated for competency to stand trial on the current charges on August 15, 2007. A report was submitted to the court at that time opining that Mr. Brown suffered from Schizophrenia, Paranoid Type, and was incompetent to stand trial but likely to be restored with psychiatric treatment. He was subsequently admitted to the Columbia Care Center on October 5, 2007 pursuant to a court order for restoration of competency to stand trial. He was initially prescribed antipsychotic medication. Mr. Brown underwent psychological testing on November 1, 2007 due to concerns that he might have been malingering or faking some (or all) of his psychiatric symptoms. Results from the test designed to detect intention of production of psychotic symptoms revealed atypical exaggerated symptom reporting which was characteristic of malingered psychosis. The conclusion of this report was that "clinical presentation and testing results indicate that Mr. Brown is malingering psychosis at present". He was subsequently reevaluated and a report was submitted to the court dated November 25, 2008 stating that Mr. Brown was likely malingering or faking his psychotic symptoms and that he was actually competent to stand trial.

Approximately four months later, his trial was scheduled for the week of March 16, 2009. Prior to his scheduled trial, this examiner was contacted by the solicitor who provided information that Mr. Brown was still alleging that he was being mistreated in the jail. His attorney was also reporting great difficulty working with Mr. Brown. This court subsequently ordered a reevaluation. Mr. Brown was initially seen for the evaluation on March 6, 2009. At that time, a decision was made to conduct a 15 day period of

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inpatient observation. Prior to that evaluation, we noted that the jail had placed him on antipsychotic medication and was concerned about his mental status and his allegations of mistreatment in the jail. It would appear that he did not take this medication in the jail. Of note, he was noted to have lost significant weight. Initially, in October 2005, medical records revealed that he weighed 211 pounds. On his first admission to the forensic hospital in 2007, he weighed 179 pounds. On his admission to the forensic hospital in 2009, he weighed 147 pounds. He had been refusing to eat meals in the jail because of his belief that his food was poisoned. He had complained of stomach pain and believed that a device had been implanted inside of his body. His complaint had been extensively investigated by the detention center medical staff. He had a CT scan of his abdomen which was negative. He also had an esophagogastroduodenoscopy (EGD) and a colonoscopy which did not reveal likely etiology of his complaint of stomach pain or weight loss. We note that during this 15 day period of observation, his treating psychiatrist, Michael Ferlauto, M.D., stated that after observation he now believes that Mr. Brown may indeed be significantly mentally ill despite the fact that his previous impression had been one of malingering. He had stated that he wanted to start antipsychotic medication but Mr. Brown had refused. He had met with a patient's advocate in April 2009 and shared beliefs that he believed the physicians at the forensic hospital were against him and wanted to harm him. He also expressed some degree of suicidal ideation, stating that he might have well kill himself before he let his perceived persecutors kill him. His treating psychiatrist felt that his condition had deteriorated to the point that he was a danger to himself so she certified involuntary medication for Mr. Brown. A report was sent to the court dated April 3, 2009 stating that Mr. Brown was not competent to stand trial but was likely to be restored to competency with treatment. He was subsequently admitted for inpatient competency restoration. He was reevaluated on June 8, 2009 and at that point a report was submitted to the court stating that Mr. Brown remained incompetent and we recommended that he be civilly committed. Eventually, Mr. Brown was civilly committed to the forensic hospital. He has been continuously hospitalized since November 6, 2009.

According to the current medical record, he is currently prescribed antipsychotic medication, ziprazadone (Geodon®). He is also prescribed a mood stabilizing medication, lithium (Eskalith®). Finally, he has been placed on the medication for anxiety, clonazepam (Klonopin®). He also takes other medications for his medical problems.

Mr. Brown reports a good appetite and variable sleep pattern. He states that he is under considerable stress due to the fact that his mother has been in and out of the hospital and he is concerned about his legal charges. He states that the current treatment team had wanted to discharge him to an outpatient resident treatment program called Pathways. Mr. Brown reports that he thinks that his medication is working well for him. He reports that he is not experiencing psychotic type visual hallucinations but he continues to believe that there is a microchip still planted inside of him. He adds, "However, but I don't talk about it." He also says that although the microchip is still there, it is not bothering him any longer.

PSYCHIATRIC HISTORY: Mr. Brown was first seen at the Aiken-Barnwell Mental Health Center in 1998 after a physical altercation with his father. At that time, he was diagnosed with Adjustment Disorder with Disturbance of Conduct, a disorder characterized by a disturbed conduct thought to be a response to a stressful inner situation.

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Mr. Brown was evaluated him shortly after is incarceration in the jail on his current charges. The evaluating clinicians initially believed that he was likely malingering. However, at some point they placed Mr. Brown on antipsychotic medication due to concerns about his mental status and his belief that a micro device had been planted inside of him. He has no other significant psychiatric history.

DRUG AND ALCOHOL HISTORY: In previous interviews, Mr. Brown stated that he previously was an alcoholic and described daily alcohol use, blackouts (periods of memory loss that occur while drinking) and difficulty controlling his drinking. He also had relationship difficulties related to his drinking. Records from the Aiken Center of Alcohol and Other Drug Services indicate that Mr. Brown was diagnosed with Alcohol and Cannabis Abuse in 1996. Mr. Brown also has a history of arrests for Possession of Marijuana.

MEDICAL HISTORY: Mr. Brown underwent repair of a hernia as an infant. He has also suffered previous head injuries from assaults but denies ever being knocked unconscious. He had to wear braces on his feet as a child. He has a history of gastroesophageal reflux disease (GERD). More recently, he has been treated for dyslipidemia which is frequently seen as a side effect from second generation antipsychotic medication such as Geodon.

SOCIAL HISTORY: He was born in Augusta and raised in Graniteville, South Carolina by his parents and grandparents. There is a significant family history of mental illness. His mother has been diagnosed with Paranoid Schizophrenia as has his sister. His father, Johnny Mack Brown, has hypertension. His mother has had four strokes and has hypertension and diabetes. He reports that a brother died of a seizure at age 25. His mother has been disabled and his dad worked construction.

Mr. Brown reports that he was beaten by his father as a child and he ran away on one occasion. He reports that he attended public school and made it to the 10th grade at Midland Valley High School. He states he was held back in the 9th grade due poor academic performance. He reports that he was suspended a few times for fighting in school. He states that at age 12 or 13 he accused of breaking into a neighbor's house, but after investigation he was cleared. After high school, he worked construction but reports that at times he was homeless. He eventually obtained a GED and got a license to be a barber with an on-the-job-training permit. He then opened Anderson Barber Academy in Anderson, South Carolina where he reports he averaged four or five students. He married at age 25 or 26 to Latonya Kennedy and they had been married four and a half years at the time of the alleged offense. He reports that she was unfaithful. He has a total of six children but only his youngest two are by his wife. His legal history is remarkable for Unlawful Use of a Telephone, Unlawful Carrying of a Pistol and Kidnapping for which he received 5 years of probation. His only other charges were Fraudulent Check and a Criminal Domestic Violence charge.

MENTAL STATUS EXAMINATION: On April 28, he was alert and oriented to person, place, day, date, and time. He was neatly groomed wearing a coat and tie and clearly wanted to make a good impression on the examiners. He was able to register three objects and recalled all three objects after five minutes. He was able to recall significant past personal information. We found no evidence of clinically significant long or short term memory impairment. He was able to name the current President

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and past Presidents in correct order to Jimmy Carter. He was able to perform a calculation. He was able to concentrate as evidenced by his ability to spell the word *world* and *house* backwards correctly. He demonstrated the capacity for abstract reasoning as evidenced by his interpretation of proverbs and similarities. Hence, *You Can't Judge a Book by It's Cover* means "Don't judge a person by their outer appearance." He describes his mood as highly stressed. He denied current suicidal or homicidal ideas but expressed the notion that if he is convicted and has to go to prison he might kill himself. He denied current auditory or visual hallucinations. Although he reports he still believes a microchip is inside of him, he is not focused on this and this was certainly not the center of conversation as it had been during previous evaluations. This was not mentioned at all during the June 2, 2014 interview. His thinking was logical and goal directed without loosening of associations or flight of ideas. There was no evidence of disturbed thought processes.

DIAGNOSTIC FORMULATION: We are assigning a diagnosis of Schizophrenia, paranoid type to reflect his longstanding history of psychotic symptoms that have been poorly controlled in the past with standard antipsychotic medications. He has expressed paranoid delusions about food being poisoned in the jail in the past and lost a significant amount of weight. His mother reports that he has also experienced ideas of reference where he believed he saw other people on the television laughing at him. This is a type of symptom that is very common in schizophrenia. He has experience significant social and occupational impairment because of this disorder.

We are also noting his prior history of alcohol and cannabis abuse.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Brown suffers from a major mental illness, Schizophrenia. However, there is no documented history of this illness prior to the alleged offense. The first *documented* symptoms occurred in the Abbeville County Detention Center after his arrest.

On April 28, 2014 Mr. Brown gave the following account of the events leading up to the alleged offense: Mr. Brown reports that he had been separated from his wife (the victim's daughter) for several weeks prior to the alleged offense. He states that during this time he and the victim had spoken and the victim told him that he had urged his daughter to allow the defendant to see his children. He states that he had filed paperwork for a legal separation with attorney Dru Ann White because he saw text messages that led him to believe his wife was unfaithful. He states that on the day of the alleged offense he had called his aunt and asked her to help run his barber academy so he could go to a technical school to take a driver's education class and get points back on his driver's license. He states he switched cars with his aunt to save gas in driving to the technical school. He reports that he heard a "voice" tell him to take money to his father-in-laws house for his children. He states that upon arrival he sat down with his father-in-law and told him he had filed for a separation from his wife and that he wanted possession of the house. He states that while he was at the incident location his father-in-law called the defendant's wife several times. Mr. Brown states that during the last call he told his father-in-law that he was leaving and his father-in-law called him to the back of the house. He states the alleged victim then pointed a gun at him and told him, "I am going to kill you son of a bitch for beating my daughter." Mr. Brown states that they fought over the gun and the gun went off. Mr. Brown reports that he initially thought he had been

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shot and he drove himself to Self Memorial Hospital. He states when he realized he was not injured, he thought he must have shot the victim. He then called 911. [According to the 911 recording his initial comment was "Mam, I've done done [sic] something really, really, really bad." Later in the conversation the 911 operator asked him who had he hurt and he reported "my father-in-law". He also reported that his father-in-law kept lying to him. He mentions needing to call his lawyer twice. He also told 911 that he was scared. Later in the conversation he tells 911 that he was going to turn himself in.] Mr. Brown sounded highly distraught on the 911 phone call. During this evaluation Mr. Brown reports he just kept driving and driving. He reports seeing an officer on the road and he thought that the officer would turn around and get him. He stated that he (the defendant) even pulled over but the officer kept going. He state he went to one of his son's mother's house and told her what had happened. He states they called authorities and he went and turned himself in at the Aiken County Sheriff's office.

During the June 2 interview, Mr. Brown reports that he had symptoms of mental illness prior to his arrest. He states that he heard voices tell him to take money to his father-in-law's house for his son's upcoming birthday. He also reports experiencing that he thought was his house being broken into two nights before the alleged incident when he awoke and saw a figure over his bed and he thought it was his father-in-law. He states the figure ran and he ran after it but when he got to the back door he realized the door was still locked and no one was there. Regarding the alleged incident he reports that his father-in-law threatened to kill him. He added, "I heard voices telling me to kill him". However, he states they fought over the gun and the gun went off. His narrative did not differ significantly about what happened afterwards other than he said he heard voices telling him there was a helicopter coming. He reports he turned himself in because something bad had happened.

From police reports and from Mr. Brown's report, regardless if he was experiencing symptoms of mental illness around the time of the alleged offense, there is evidence from his statements and behavior that he was capable of distinguishing legal and moral right from legal and moral wrong. He repeatedly said he had done something bad, that he needed to turn himself in, and that he needed a lawyer. Therefore it is our opinion that he would have been criminally responsible on or about September 9, 2006 pursuant to S.C. Code Ann. §17-24-10 (1976).

OPINION REGARDING CAPACITY TO CONFORM: Mr. Brown's report of symptoms around the time of the alleged offense has varied and the reliability of his report appears questionable. According to this treating psychiatrist in a note dated May 20, 2014, "clearly has issues of primary and secondary gain influencing what symptoms he endorses at specific points in time." Additionally he writes, "noted vested interest in client to make sure he either receives a NGRI verdict or remains incompetent. This desire results in frequent revision of his narrative."

Although in his second evaluation interview on June 2 he reports hallucinations telling him to kill the alleged victim, he still reports that there was a struggle with the gun and it went off. He does not report a delusional thought about the alleged victim. It is our opinion that Mr. Brown would not have lacked the capacity to conform his conduct to the requirements of the law on or about September 9, 2006.

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Richard L. Frerenson, M.D., DFAPA
Professor of Clinical Psychiatry
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RLF/mh

D: 05/10/14

T: 05/12/14

F/EM: 06/03/14

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

DATE OF EVALUATION: April 28, 2014 and June 2, 2014

PRESIDING EXAMINER: Richard L. Frierson, M.D.,
Professor of Clinical Psychiatry,
University of South Carolina School of Medicine

SECOND EXAMINER: Odette Anderson, M.D., Resident in Psychiatry,
University of South Carolina School of Medicine (April 28)

Carol David, LISW-CP (June 2)

OTHERS PRESENT: Janna A. Nelson, Attorney for the Defendant

DIAGNOSES: AXIS I: Schizophrenia, Paranoid Type
 Alcohol Abuse, by History
 Cannabis Abuse, by History
 AXIS II: No Diagnosis
 AXIS III: Sarcoidosis
 Dyslipidemia
 History of Multinodular Thyroid Goiter

OPINION REGARDING COMPETENCY TO STAND TRIAL: Competent.

DISPOSITION: Mr. Brown returned to the inpatient psychiatric unit at the South Carolina Department of Mental Health Forensic Hospital at the conclusion of this interview.

NOTE: During this evaluation Mr. Brown stated that if he is convicted he would commit suicide and that if he accepted a plea to a lesser included offense, there is a 50/50 chance that he would commit suicide. As such, if either of these outcomes occur or appear to be imminent, he should be assessed immediately for suicide risk by a qualified mental health professional and any necessary suicide precaution measures should be implemented.

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IDENTIFYING INFORMATION: Trey Chavis Brown is a 39-year-old African-American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Abbeville County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). He is currently charged with Murder and Possession of a Weapon during the Commission of a Violent Crime.

According to the order, it was issued for the following reasons: "On four prior occasions, Mr. Brown was examined by Forensic Psychiatrists at the South Carolina Department of Mental Health (SCDMH) for the purposes of determining his competency to stand trial on these charges. On June 8, 2009, Dr. Richard L. Frierson ultimately concluded that Mr. Brown was not competent to stand trial, noting that Mr. Brown 'remains delusional, and his delusions significantly interfere with his ability to rationally work with his attorney in the preparation of a defense.' State subsequently nol-prossed the charges and Mr. Brown was committed for inpatient care and treatment on October 7, 2009. On August 19, 2013, SCDMH filed the request for discharge believing to a reasonable degree of certainty that Mr. Brown was no longer in need of inpatient hospitalization. In light of a prior diagnosis of Malingering and the absence of any mention in the discharge request of the delusions noted in Dr. Frierson's opinion, the state re-indicted Mr. Brown. Because the question about Mr. Brown's competency remains, I am ordering a new evaluation for competency to stand trial."

Prior to participating in the evaluation, Mr. Brown was informed of the limitations of confidentiality. He was informed that the evaluation was court ordered and that the evaluators were employed by the South Carolina Department of Mental Health and were not being paid by his attorney or the solicitor. He was informed that after the evaluation a report would be submitted to the court and given to his attorney, the judge, and the solicitor. He was also informed that the evaluators could be called to court to testify at a hearing related to his competency to stand trial.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest Warrant #J-095635 for Murder.
3. Indictment for Murder and Possession of a Firearm or Knife during Commission of a Violent Crime.
4. Abbeville Police Department Incident Report for the alleged offense.
5. Aiken County Sheriff's Department incident report for the alleged offense.
6. Statement of Michael A. Eaton dated September 13, 2006.
7. Statement of Joe Scoggins dated September 9, 2006.
8. Statement of Darren Ray dated September 9, 2006.
9. Statement of Elaine Fuller Kennedy dated September 9, 2006.
10. Statement of Lottie Ibel dated September 9, 2006.
11. Statement of Virginia A. Glover dated September 27, 2006.
12. Statement of Connie Kennedy Wardlaw dated September 25, 2006.
13. Abbeville County coroner's report.
14. Autopsy report on the alleged victim.
15. South Carolina Law Enforcement Division (SLED) laboratory report.

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16. Aiken-Barnwell Mental Health Center evaluation records (August 12, 1998 through November 17, 1998).
17. Forensic Social Work Assessment.
18. Beckman Center for Mental Health evaluation records.
19. National Crime Information Center (NCIC) record for the defendant.
20. Report of a psychological evaluation by Camilla Tezza, Ph.D. on November 1, 2007.
21. Anderson Area Medical Center records for the defendant.
22. Aiken Regional Medical Center records for the defendant.
23. Aiken Center for Alcohol and other Drug Services record for the defendant from April 24, 1996 through January 16, 1997.
24. Abbeville County Detention Center records.
25. Columbia Care Center records of psychiatric inpatient admission for restoration of competency to stand trial from October 5, 2007 through November 29, 2007.
26. Prior forensic evaluations of the defendant by the Department of Mental Health.
27. Medical records from the Greenwood ENT.
28. Note from John Tollinson dated January 26, 2009 with photos of Anderson Barber Academy and Anderson Express Barber Salon.
29. Selected writings of the defendant.
30. Columbia Care Center records of psychiatric inpatient admission of March 26, 2009 through June 8, 2009.
31. 911 recording of Trey Brown.
32. Medical records from the South Carolina Department of Mental Health Forensic Hospital dated November 6, 2009 to the present.
33. A 1-hour and 40-minute forensic evaluation on April 28, 2014.
34. A 1-hour clinical forensic interview on June 2, 2014.
35. Telephone conversation with Andy Hedgepath, MD, Mr. Brown's treating psychiatrist.

CLINICAL HISTORY: Mr. Brown has a very complicated history with the forensic evaluation service of the Department of Mental Health. He was first evaluated for competency to stand trial on the current charges on August 15, 2007. A report was submitted to the court at that time opining that Mr. Brown suffered from Schizophrenia, Paranoid Type, and was incompetent to stand trial but likely to be restored with psychiatric treatment. He was subsequently admitted to the Columbia Care Center on October 5, 2007 pursuant to a court order for restoration of competency to stand trial. He was initially prescribed antipsychotic medication. Mr. Brown underwent psychological testing on November 1, 2007 due to concerns that he might have been malingering or faking some (or all) of his psychiatric symptoms. Results from the test designed to detect intention of production of psychotic symptoms revealed atypical exaggerated symptom reporting which was characteristic of malingered psychosis. The conclusion of this report was that "clinical presentation and testing results indicate that Mr. Brown is malingering psychosis at present". He was subsequently reevaluated and a report was submitted to the court dated November 25, 2008 stating that Mr. Brown was likely malingering or faking his psychotic symptoms and that he was actually competent to stand trial.

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Approximately four months later, his trial was scheduled for the week of March 16, 2009. Prior to his scheduled trial, this examiner was contacted by the solicitor who provided information that Mr. Brown was still alleging that he was being mistreated in the jail. His attorney was also reporting great difficulty working with Mr. Brown. This court subsequently ordered a reevaluation. Mr. Brown was initially seen for the evaluation on March 6, 2009. At that time, a decision was made to conduct a 15 day period of inpatient observation. Prior to that evaluation, we noted that the jail had placed him on antipsychotic medication and was concerned about his mental status and his allegations of mistreatment in the jail. It would appear that he did not take this medication in the jail. Of note, he was noted to have lost significant weight. Initially, in October 2005, medical records revealed that he weighed 211 pounds. On his first admission to the forensic hospital in 2007, he weighed 179 pounds. On his admission to the forensic hospital in 2009, he weighed 147 pounds. He had been refusing to eat meals in the jail because of his belief that his food was poisoned. He had complained of stomach pain and believed that a device had been implanted inside of his body. His complaint had been extensively investigated by the detention center medical staff. He had a CT scan of his abdomen which was negative. He also had an esophagogastroduodenoscopy (EGD) and a colonoscopy which did not reveal likely etiology of his complaint of stomach pain or weight loss. We note that during this 15 day period of observation, his treating psychiatrist, Michael Ferlauto, M.D., stated that after observation he now believes that Mr. Brown may indeed be significantly mentally ill despite the fact that his previous impression had been one of malingering. He had stated that he wanted to start antipsychotic medication but Mr. Brown had refused. He had met with a patient's advocate in April 2009 and shared beliefs that he believed the physicians at the forensic hospital were against him and wanted to harm him. He also expressed some degree of suicidal ideation, stating that he might have well kill himself before he let his perceived persecutors kill him. His treating psychiatrist felt that his condition had deteriorated to the point that he was a danger to himself so she certified involuntary medication for Mr. Brown. A report was sent to the court dated April 3, 2009 stating that Mr. Brown was not competent to stand trial but was likely to restored to competency with treatment. He was subsequently admitted for inpatient competency restoration. He was reevaluated on June 8, 2009 and at that point a report was submitted to the court stating that Mr. Brown remained incompetent and we recommended that he be civilly committed. Eventually, Mr. Brown was civilly committed to the forensic hospital. He has been continuously hospitalized since November 6, 2009.

According to the current medical record, he is currently prescribed antipsychotic medication, ziprazadone (Geodon®). He is also prescribed a mood stabilizing medication, lithium (Eskalith®). Finally, he has been placed on the medication for anxiety, clonazepam (Klonopin®). He also takes other medications for his medical problems.

Mr. Brown reports a good appetite and variable sleep pattern. He states that he is under considerable stress due to the fact that his mother has been in and out of the hospital and he is concerned about his legal charges. He states that the current treatment team had wanted to discharge him to an outpatient resident treatment program called Pathways. Mr. Brown reports that he thinks that his medication is working well for him. He reports that he is not experiencing psychotic type visual hallucinations but he continues to believe that there is a microchip still planted inside of him. He adds, "However, but I don't talk about it." He also says that although the microchip is still there, it is not bothering him any longer.

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PSYCHIATRIC HISTORY: Mr. Brown was first seen at the Aiken-Barnwell Mental Health Center in 1998 after a physical altercation with his father. At that time, he was diagnosed with Adjustment Disorder with Disturbance of Conduct, a disorder characterized by a disturbed conduct thought to be a response to a stressful inner situation.

Mr. Brown was evaluated him shortly after is incarceration in the jail on his current charges. The evaluating clinicians initially believed that he was likely malingering. However, at some point they placed Mr. Brown on antipsychotic medication due to concerns about his mental status and his belief that a micro device had been planted inside of him. He has no other significant psychiatric history.

DRUG AND ALCOHOL HISTORY: In previous interviews, Mr. Brown stated that he previously was an alcoholic and described daily alcohol use, blackouts (periods of memory loss that occur while drinking) and difficulty controlling his drinking. He also had relationship difficulties related to his drinking. Records from the Aiken Center of Alcohol and Other Drug Services indicate that Mr. Brown was diagnosed with Alcohol and Cannabis Abuse in 1996. Mr. Brown also has a history of arrests for Possession of Marijuana.

MEDICAL HISTORY: Mr. Brown underwent repair of a hernia as an infant. He has also suffered previous head injuries from assaults but denies ever being knocked unconscious. He had to wear braces on his feet as a child. He has a history of gastroesophageal reflux disease (GERD). More recently, he has been treated for dyslipidemia which is frequently seen as a side effect from second generation antipsychotic medication such as Geodon.

SOCIAL HISTORY: He was born in Augusta and raised in Graniteville, South Carolina by his parents and grandparents. There is a significant family history of mental illness. His mother has been diagnosed with Paranoid Schizophrenia as has his sister. His father, Johnny Mack Brown, has hypertension. His mother has had four strokes and has hypertension and diabetes. He reports that a brother died of a seizure at age 25. His mother has been disabled and his dad worked construction.

Mr. Brown reports that he was beaten by his father as a child and he ran away on one occasion. He reports that he attended public school and made it to the 10th grade at Midland Valley High School. He states he was held back in the 9th grade due poor academic performance. He reports that he was suspended a few times for fighting in school. He states that at age 12 or 13 he accused of breaking into a neighbor's house, but after investigation he was cleared. After high school, he worked construction but reports that at times he was homeless. He eventually obtained a GED and got a license to be a barber with an on-the-job-training permit. He then opened Anderson Barber Academy in Anderson, South Carolina where he reports he averaged four or five students. He married at age 25 or 26 to Latonya Kennedy and they had been married four and a half years at the time of the alleged offense. He reports that she was unfaithful. He has a total of six children but only his youngest two are by his wife. His legal history is remarkable for Unlawful Use of a Telephone, Unlawful Carrying of a Pistol and Kidnapping for which he received 5 years of probation. His only other charges were Fraudulent Check and a Criminal Domestic Violence charge.

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MENTAL STATUS EXAMINATION: On April 28, he was alert and oriented to person, place, day, date, and time. He was neatly groomed wearing a coat and tie and clearly wanted to make a good impression on the examiners. He was able to register three objects and recalled all three objects after five minutes. He was able to recall significant past personal information. We found no evidence of clinically significant long or short term memory impairment. He was able to name the current President and past Presidents in correct order to Jimmy Carter. He was able to perform a calculation. He was able to concentrate as evidenced by his ability to spell the word *world* and *house* backwards correctly. He demonstrated the capacity for abstract reasoning as evidenced by his interpretation of proverbs and similarities. Hence, *You Can't Judge a Book by It's Cover* means "Don't judge a person by their outer appearance." He describes his mood as highly stressed. He denied current suicidal or homicidal ideas but expressed the notion that if he is convicted and has to go to prison he might kill himself. He denied current auditory or visual hallucinations. Although he reports he still believes a microchip is inside of him, he is not focused on this and this was certainly not the center of conversation as it had been during previous evaluations. This was not mentioned at all during the June 2, 2014 interview. His thinking was logical and goal directed without loosening of associations or flight of ideas. There was no evidence of disturbed thought processes.

DIAGNOSTIC FORMULATION: We are assigning a diagnosis of Schizophrenia, paranoid type to reflect his longstanding history of psychotic symptoms that have been poorly controlled in the past with standard antipsychotic medications. He has expressed paranoid delusions about food being poisoned in the jail in the past and lost a significant amount of weight. His mother reports that he has also experienced ideas of reference where he believed he saw other people on the television laughing at him. This is a type of symptom that is very common in schizophrenia. He has experience significant social and occupational impairment because of this disorder.

We are also noting his prior history of alcohol and cannabis abuse.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Brown states that he is charged with Murder and states that this means that he "intentionally killed someone." He understands that Manslaughter would be a lesser included offense. He states that this charge is very serious and that he could receive a sentence of life without parole. He reports having received a letter from former solicitor Jerry Peace stating that he was seeking life without parole. He identified his attorney as a person to ask questions about his case. He was able to state his attorney's name. He states the job of his attorney is to "represent me to the best of their knowledge and wisdom." He states that April 28 was the first time that he had met his attorney but he had talked to her previously on the phone several times. He states that he is trying to stay positive in his relationship with her. He states that the job of the solicitor is to "to try to prove me guilty of the alleged crime. He states that the judge is "the referee in court, keeps law and order, and passes along the sentence or verdict." He states that the judge is supposed to be unbiased. However, he adds that he feels that his case is very high profile and that the family of his alleged victim has money and friends in high places and so he was wondering about whether he would actually receive a fair trial. However, despite the fact that he believes the victim's family is against him and may pay money under the table to the sheriff, he adds that he is not going to let this belief system affect his ability to work with his attorney. He added, "I'm just trusting in God." He

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understands that the jury is there to decide whether or not he is guilty or innocent. On the April 28th interview he reported that there is a unanimous requirement for a jury verdict and if they cannot all agree will end in a hung jury and a mistrial. During the June 2 interview he thought that the verdict required a simple majority. He was unsure whether there were 6 or 12 jurors on this jury but he was educated regarding this. He was able to define the pleas of *guilty*, *not guilty*, *not guilty by reason of insanity*, and *guilty but mentally ill*. He did not know the exact definition of not guilty by reason of insanity but states it meant "You are not in your right state or frame of mind." He was also aware of the dispositional outcomes of the aforementioned verdicts. He states a plea bargain is when you take a lesser sentence as opposed to the maximum you would have gotten. He understands that he would have to plead guilty if he was to accept a plea bargain. He was able to solve a hypothetical problem involving a lying witness in the courtroom. He understands the importance of appropriate courtroom behavior. He understands that evidence consists of "facts they have against you or stuff that can help you." When asked about specific evidence against him, he spoke about having blood on his clothes, having gunshot residue on his hands, the car that he was driving, and his 911 call. When asked why the 911 call was evidence, he stated, "Because I said I believed I had done something bad." He was able to state a desired outcome in his case. However, he states, "I would love to be found not guilty but the only thing going is not guilty by reason of insanity." He states that if he were to be convicted he thinks he would just kill himself. When asked if he was offered a plea to a lesser included offense, he states, "There is still a 50/50 chance he would kill himself."

Mr. Brown has a sufficient factual understanding of the legal system. In previous interviews, he was so focused on having a microchip inside of him that he could talk about little else and he was not working with his attorney because he believes this attorney was part of a conspiracy against him and was not doing anything to help him. However, currently he is now no longer focused on this delusional system although it is present. Even though it is present, it does not appear at the present time to be interfering with his ability to consult with his attorney or assist in his defense. Therefore, it is our opinion that he is currently competent to stand trial. The court should be on notice, however, that Mr. Brown may not do well in the Abbeville County Detention Center given his past history perceived mistreatment there and it is possible that his competency could deteriorate in that environment.



Richard L. Frierson, M.D., DFAPA
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

RLF/mh

D: 05/10/14
T: 05/12/14
F/EM: 06/03/14

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SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 7 64737

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COMPETENCY TO STAND TRIAL EVALUATION

DATE OF EVALUATION: June 8, 2009

PRESIDING: Richard L. Frierson, M.D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Ashley Jones, M.D.
Resident in Psychiatry
University of South Carolina School of Medicine

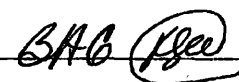
DIAGNOSES: - AXIS I: Schizophrenia, paranoid type, provisional
Alcohol Abuse, by history.
Cannabis Abuse, by history.
AXIS II: No Diagnosis.
AXIS III: Gastroesophageal Reflux Disease.
History of Sarcoidosis.
History of Multinodular Thyroid Goiter

COMPETENCY TO STAND TRIAL: No, recommend civil commitment.

DISPOSITION: Mr. Brown returned to his inpatient psychiatric unit at the Columbia Care Center following the conclusion of the interview.

IDENTIFYING DATA: Trey Chavis Brown is a 32-year-old male who was seen at the Forensic Evaluation Center pursuant to a court order from the Abbeville County Court of General Sessions. This court order requests an evaluation of his competency to stand trial following a 60 day period of competency restoration pursuant to S.C. Code Ann. §44-23-430 (3) (1976). The defendant is currently charged with Murder and Possession of a Weapon during a Violent Crime.

Mr. Brown has a complicated history with the Forensic Evaluation Service. He was first evaluated on August 15, 2007. A report was submitted to the court at that time opining that Mr. Brown suffered from Schizophrenia, paranoid type and was incompetent to stand trial but likely to be restored with psychiatric treatment. He was subsequently admitted to the Columbia Care Center on October 5, 2007 pursuant to a court order for restoration of competence to stand trial. He was initially prescribed antipsychotic medication. Mr. Brown underwent psychological evaluation and testing on November 1, 2007 due to concerns that he may have been malingering (faking) his psychotic symptoms. Results from the Structured Interview of Reported Symptoms (SIRS), a test designed to detect intentional production of psychotic symptoms in forensic populations, revealed atypical and exaggerated symptom reporting which is characteristic of malingered psychosis. The conclusion of this report was



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ADMITTED: 10/05/07

that "clinical presentation and testing results indicate that Mr. Brown is malingering psychosis at present." Mr. Brown was subsequently reevaluated and a report was submitted to the court dated November 25, 2008 stating that Mr. Brown was likely malingering (faking) his psychotic symptoms and was therefore competent to stand trial.

His trial was scheduled for the week of March 16, 2009. Prior to his scheduled trial, this examiner was contacted by the solicitor who provided information that Mr. Brown was still alleging mistreatment in the jail. His attorney was reporting great difficulty in working with him. The court subsequently reordered an evaluation (court order signed March 3, 2009) and Mr. Brown was initially seen for this evaluation on March 6, 2009. At that time a decision was made to conduct a period of inpatient observation. A bed became available on March 26, 2009 and he was admitted to the Columbia Care Center on that date. Subsequently, a report was submitted dated March 6 and April 3, 2009 with an opinion stating that Mr. Brown was not competent but likely to be restored to competency with appropriate psychiatric treatment. The current court order was signed April 15, 2009 authorizing a 60 day restoration period.

LIMITATIONS OF CONFIDENTIALITY: Mr. Brown was informed of the reason for the interview. He was informed that the material discussed during the interview would be reported to the court in the format of written and/or oral report and, as such, would not be confidential. Mr. Brown stated that he understood that the report would not be confidential. He consented to proceed with the interview.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest warrant #J-095635, Murder.
3. Indictments for Murder and Possession of a Firearm or Knife during Commission of a Violent Crime.
4. Abbeville Police Department Incident Report for the alleged offenses.
5. Aiken County Sheriff's Department Incident Report for the alleged offenses.
6. Statement of Michael A. Eaton dated September 13, 2006.
7. Statement of Joe Scoggin dated September 9, 2006.
8. Statement of Darren Gray dated September 9, 2006.
9. Statement of Elaine Fuller Kennedy dated September 9, 2006.
10. Statement of Lottie Ibel dated September 9, 2006.
11. Statement of Virginia A. Glover dated September 27, 2006.
12. Statement of Connie Kennedy Wardlaw dated September 25, 2006.
13. Abbeville County Coroner's report.
14. Autopsy report.
15. South Carolina Law Enforcement Division (SLED) laboratory report.
16. Aiken-Barnwell Mental Health Center evaluation records (August 12, 1998 – November 17, 1998).
17. Forensic social work assessment.
18. Beckman Center for Mental Health evaluation records.

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hospital after having lost significant weight in the detention center. He reports auditory hallucinations that say bad things to him. However, he states that they are overall improved and he relates the improvement to his medication. He remains delusional about what he perceives the jail staff and his ex-wife are doing to him though a device implanted in his body. He attributes constipation and breathing difficulties to this implanted device. He believes the device contains Human Innocular Vision (HIV) which allows the jail staff to see on a computer at the jail what he sees with his eyes. He believes his thoughts are being monitored.

DIAGNOSTIC IMPRESSION: Mr. Brown was originally diagnosed with Schizophrenia based upon his reports of hallucinations and delusions, ambivalence and hygiene deficits, and his tangential thought processes. Hygiene deficits, denial of mental illness, and disrupted thought processes (as opposed to merely reported hallucinations and delusions) are uncommon in malingered psychosis. Mr. Brown also has a strong family history of Schizophrenia, which increases the likelihood that he would have this disorder due to a strong genetic predisposition.

The diagnosis of Alcohol and Cannabis Abuse are based on the defendant's report that he was previously "an alcoholic", regularly consumed excessive amounts of alcohol, and suffered consequences of his alcohol use including blackouts and relationship difficulties. It is not clear if the defendant's pattern of alcohol use would reach the diagnostic threshold for Alcohol Dependence. Mr. Brown has also taken part in drug and alcohol treatment, where he was diagnosed with both Alcohol and Cannabis Abuse.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Brown was aware of the charges against him and the seriousness of these charges. He initially stated the maximum potential sentence he could receive if convicted as the death penalty and stated that he had received paperwork that the death penalty was being sought against him. After a call to the solicitor's office this was clarified as being an error on a form. The solicitor is seeking life without parole. He was able to state his attorney's name. He states that the job of an attorney is to "exercise my right to due process." He then stated that his attorney has done nothing. According to staff on the inpatient unit, he has filed grievances about his attorney with the S.C. Office of Disciplinary Counsel. He stated he has fired his attorney because "he's been paid off by my ex-wife's family and the jail staff." He initially stated that if he was appointed a new attorney "it would be great." However, he also stated that a new attorney could get "paid off" as well. He stated the solicitor is trying to find him guilty. He stated that the judge "keeps law and order" and is in charge of the court. He was aware of the role of the judge in sentencing. He stated that a jury decides the verdict. He is aware of the number of jurors and the unanimous requirement for a jury verdict. He was aware of the meaning and consequences of pleas of *guilty* and *not guilty*. Mr. Brown understood the basic elements of a plea bargain and knew that it involved a *guilty* plea in exchange for "lesser time." He was able to solve a hypothetical problem involving the court. He appreciates the importance of appropriate court behavior.

Mr. Brown displays a very good factual understanding of the nature, objectives, and process of the legal proceedings against him. However he remains delusional and his delusions significantly

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interfere with his ability to rationally work with his attorney in the preparation of a defense. Therefore
is our opinion that although he is improved, he currently remains incompetent to stand trial.

RECOMMENDATIONS:

It is opined that Mr. Brown is not competent to stand trial and unlikely to become competent in the foreseeable future. If he is adjudicated not competent and unlikely to become competent, it is requested, in accordance with South Carolina Code of Law 44-23-430 (2), that the solicitor initiate judicial admission proceedings within 14 business days. If commitment proceedings are initiated, it is requested that orders declaring Mr. Brown incompetent and authorizing his judicial commitment be forwarded to the Forensic Evaluation Service.

Respectfully submitted,



Richard L. Frierson, M. D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

RLF/rif

F/EM: 6/8/09 (RLF)



BROWN, TREY
983-4963

ADMITTED: 10/05/07

COMPETENCY TO STAND TRIAL EVALUATION

DATES OF EVALUATION: March 6, 2009 and April 3, 2009

PRESIDING: Richard L. Frierson, M. D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Randi Pickens, LISW-CP
South Carolina Department of Mental Health

OTHERS PRESENT: Michael Gassen, Ph.D. (March 6, 2009 only)
South Carolina Department of Mental Health

DIAGNOSES: AXIS I: Schizophrenia, paranoid type, provisional
 Alcohol Abuse, by history.
 Cannabis Abuse, by history.
 AXIS II: No Diagnosis.
 AXIS III: Gastroesophageal Reflux Disease.
 History of Sarcoidosis.
 History of Multinodular Thyroid Goiter

COMPETENCY TO STAND TRIAL: No, likely to be restored with treatment.

DISPOSITION: Mr. Brown returned to his inpatient psychiatric unit at the Columbia Care Center following the conclusion of the interview.

IDENTIFYING DATA: Trey Chavis Brown is a 32-year-old male who was seen at the Forensic Evaluation Center pursuant to a court order from the Abbeville County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). This evaluation is a reassessment of the defendant's competency to stand trial, as he has been evaluated twice previously. The defendant is currently charged with Murder and Possession of a Weapon during a Violent Crime.

Mr. Brown has a complicated history with the Forensic Evaluation Service. He was first evaluated on August 15, 2007. A report was submitted to the court at that time opining that Mr. Brown suffered from Schizophrenia, paranoid type and was incompetent to stand trial but likely to be restored with psychiatric treatment. He was subsequently admitted to the Columbia Care Center on October 5, 2007 pursuant to a court order for restoration of competence to stand trial. He was initially prescribed antipsychotic medication. Mr. Brown underwent psychological evaluation and testing on November 1,

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2007 due to concerns that he may have been malingering (faking) his psychotic symptoms. Results from the Structured Interview of Reported Symptoms (SIRS), a test designed to detect intentional production of psychotic symptoms in forensic populations, revealed atypical and exaggerated symptom reporting which is characteristic of malingered psychosis. The conclusion of this report was that "clinical presentation and testing results indicate that Mr. Brown is malingering psychosis at present." Mr. Brown was subsequently reevaluated and a report was submitted to the court dated November 25, 2008 stating that Mr. Brown was likely malingering (faking) his psychotic symptoms and was therefore competent to stand trial.

His trial was scheduled for the week of March 16, 2009. Prior to his scheduled trial, this examiner was contacted by the solicitor who provided information that Mr. Brown was still alleging mistreatment in the jail. His attorney was reporting great difficulty in working with him. The court subsequently reordered an evaluation (court order signed March 3, 2009) and Mr. Brown was initially seen for this evaluation on March 6, 2009. At that time a decision was made to conduct a period of inpatient observation. A bed became available on March 26, 2009 and he was admitted to the Columbia Care Center on that date.

LIMITATIONS OF CONFIDENTIALITY: Mr. Brown was informed of the reason for the interview. He was informed that the material discussed during the interview would be reported to the court in the format of written and/or oral report and, as such, would not be confidential. Mr. Brown stated that he understood that the report would not be confidential. He consented to proceed with the interview.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest warrant #J-095635, Murder.
3. Indictments for Murder and Possession of a Firearm or Knife during Commission of a Violent Crime.
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7. Statement of Joe Scoggin dated September 9, 2006.
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9. Statement of Elaine Fuller Kennedy dated September 9, 2006.
10. Statement of Lottie Ibel dated September 9, 2006.
11. Statement of Virginia A. Glover dated September 27, 2006.
12. Statement of Connie Kennedy Wardlaw dated September 25, 2006.
13. Abbeville County Coroner's report.
14. Autopsy report.
15. South Carolina Law Enforcement Division (SLED) laboratory report.
16. Aiken-Barnwell Mental Health Center evaluation records (August 12, 1998 – November 17, 1998).
17. Forensic social work assessment.

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18. Beckman Center for Mental Health evaluation records.
19. National Crime Information Center (NCIC) arrest record for the defendant.
20. Report of Psychological Evaluation by Camilla Tezza, Ph.D. on November 1, 2007.
21. Anderson Area Medical Center records for the defendant.
22. Aiken Regional Medical Center records for the defendant.
23. Aiken Center for Alcohol and Other Drug Services records for the defendant from April 24, 1996 through January 16, 1997.
24. Abbeville County Detention Center records.
25. Columbia Care Center records of psychiatric inpatient admission for restoration of competence to stand trial from October 5, 2007 – November 29, 2007.
26. Interview with the defendant at the Forensic Evaluation Center on August 15, 2007 for approximately two and one-half hours.
29. Interview with the defendant at the Forensic Evaluation Center on November 28, 2007 for approximately two hours.
28. Medical records from Greenwood ENT.
29. Note from John Tollison dated January 26, 2009 with photos of Anderson Barber Academy and Anderson Express Barber Salon.
30. <http://www.rfmd.com/>
31. Competency to Stand Trial Evaluation dated August 15, 2007.
32. Competency to Stand Trial Evaluation dated November 28, 2007.
33. Interview with the defendant at the Forensic Evaluation Center on March 6, 2009 for approximately two hours.
34. Interview with the defendant at the Forensic Evaluation Center on April 3, 2009 for approximately one hour and twenty minutes.
35. Writings by the defendant.
36. Columbia Care Center records of psychiatric inpatient admission March 26, 2009 – present.

PERTINENT HISTORY: Mr. Brown was raised by his parents in Aiken County, South Carolina. The defendant's father reported that the defendant's mother and sister have both been diagnosed with Schizophrenia and undergone psychiatric hospitalizations. There is also a maternal uncle who has been hospitalized for treatment of mental illness. There is a strong family history of seizures as well.

Mr. Brown attended school through the 10th grade. He also took classes in computer technology, business management, and at a beauty college, but finished none of these degrees. He has obtained a GED. He has worked in industrial, fast food and construction settings, and he reported he was a licensed barber and had previously owned his own barber shop. He later opened Anderson Barber Academy where he worked at the time of his arrest.

PSYCHIATRIC HISTORY: Medical records reveal that Mr. Brown was seen at the Aiken-Barnwell Mental Health Center in 1998 after a physical altercation with his father. There he was diagnosed

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with Adjustment Disorder with Disturbance of Conduct, a disorder characterized by disturbed conduct (i.e. fighting) thought to be a response to a stressful event or situation. The defendant was also evaluated at the Beckman Center for Mental Health during his incarceration. There, clinicians noted inconsistencies in his presentation: "He is not disorganized in his thinking nor does he display any behavior indicative of an individual experiencing active psychosis which he claims. My opinion is that this inmate is malingering for secondary gain. After lengthy examination Dr. Hardin concurs with the likelihood of malingering".

More recently, Mr. Brown has been placed on antipsychotic medication in the jail, haloperidol (Haldol®), due to concerns about his mental status and his allegations of mistreatment in the jail. Thus someone in the jail now believes he is genuinely mentally ill. However on admission to Columbia Care Center on March 26, 2009, he was discovered to have hoarded many Haldol tablets on his person and appears to have been non-compliant with medication.

Mr. Brown has lost a significant amount of weight in the jail. In 2005, medical records reveal that he weighed 211. On admission to the Columbia Care Center in October 2007, he weighed 179. Upon his recent admission to the Columbia Care Center, he weighed 147. The source of his weight loss appears unclear. However, he has refused to eat many meals in the jail because of his belief that the food was poisoned.

DRUG AND ALCOHOL HISTORY: In prior interviews, Mr. Brown believed that he was previously an "alcoholic" and described daily alcohol use, blackouts, difficulty controlling his alcohol use, and relationship difficulties due to drinking. He noted past drug use, "a little of everything." Records from Aiken Center for Alcohol and Other Drug Services document that Mr. Brown was diagnosed with Alcohol and Cannabis Abuse in 1996.

MEDICAL HISTORY: Mr. Brown underwent hernia repair as an infant. He said he had suffered previous head injuries from assaults, but denied being knocked unconscious. His father reported that the defendant had problems with his feet as a child and had to wear braces. Mr. Brown reported difficulties with "acid reflux" and medical records document that he was previously treated for sarcoidosis, an inflammatory disease of the lungs.

Mr. Brown had an ENT consultation from the jail in February 2009. Of note, the consulting physician, Kevin Rust, M.D., believed Mr. Brown was displaying symptoms of Schizophrenia.

Mr. Brown has lost significant weight in jail and has complained of stomach pains which he attributes to an "implanted device". His complaints of stomach pain have been extensively investigated by the detention center medical staff. A Computerized Tomography (CT) scan of his abdomen was negative. He has also had an esophagogastroduodenoscopy (EGD) and colonoscopy which did not reveal a likely etiology of stomach pain or weight loss. Likewise, his thyroid function tests are normal and not indicative of hyperthyroidism (a potential cause of weight loss).



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hygiene and grooming were adequate. He was able to register three objects and he recalled two of them spontaneously at five minutes. He was able to recall the third object with a prompt. We found no evidence of clinically significant memory impairment. He was able to perform a calculation. His performance on a test of concentration was fair. His fund of knowledge was in the average range. He described his mood as "vexed - stressed over the device". He reported occasional suicidal ideation but not a plan. He denied homicidal ideations. He reports poor sleep but a good appetite. He reported hallucinations, stating "they" are going to get him.

Mr. Brown's presentation was significantly different on April 3, 2009. When I asked him about whether he was still having problems from the implanted device, he responded, "Don't ask, don't tell." In fact, he used this response to most inquiries of symptoms of mental illness. It is noteworthy that by this interview he had been approached about taking medication for mental illness by his treating psychiatrist. (He also has been hoarding his pills from the jail, consistent with his reported belief that he is not mentally ill and does not need treatment.). It is likely that he has realized that talking about the implanted device makes others believe he is mentally ill and in need of medication and he does not believe he is mentally ill, and therefore does not want to appear mentally ill to others. He was oriented with intact memory, abstraction ability, concentration, and cognition. He described his mood as "in pain - y'all are going to tell me it's in my mind". He denied suicidal or homicidal ideations.

DIAGNOSTIC IMPRESSION: Mr. Brown was originally diagnosed with Schizophrenia based upon his reports of hallucinations and delusions, ambivalence and hygiene deficits, and his tangential thought processes. Hygiene deficits, denial of mental illness, and disrupted thought processes (as opposed to merely reported hallucinations and delusions) are uncommon in malingered psychosis. Mr. Brown also has a strong family history of Schizophrenia, which increases the likelihood that he would have this disorder due to a strong genetic predisposition.

However, Mr. Brown's behavior and reported symptoms did not initially withstand psychological testing for malingering and continuous observation during his inpatient admission. With this additional data, it was opined that his reported symptoms are more consistent with malingering than a true psychotic disorder. Evidence supporting the diagnosis of malingering is outlined in the report sent to the court dated November 28, 2007. While no single behavior or observation listed in that report is diagnostic or pathognomonic of malingering, taken together they created strong evidence for malingering. Also, as pointed out in that report, the presence of malingering does not negate the possibility of underlying mental illness. The most consistent symptom that Mr. Brown has reported is that a device has been implanted in him and is shocking him. While this type of delusion is typical of Schizophrenia, even if it is genuine, it is not sufficient to establish this diagnosis. Furthermore, in 2007 this reported symptom was viewed suspiciously in light of his lack of prior mental health history and the abundance of other symptoms which are clearly malingered. At that time, there was an insufficient basis to believe that this symptom is not also malingered.

However, the intervening 15 months since his last competency evaluation has provided additional evidence for consideration which would suggest at least part of his presentation is not malingered.

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1. His complaints of a device implanted in him have been consistent over the intervening period, both to his family and to his attorney. They are also consistent during this admission with statements made during prior admissions.
2. He has been willing to submit himself to relatively painful, unpleasant medical procedures, including esophagogastroduodenoscopy (EGD) and colonoscopy in search for the cause of his alleged abdominal pain which he believes is secondary to an implanted device.
3. He has lost 32 pounds over the past year (179 → 147), going from a Body Mass Index (BMI) of 26 to 21. This appears, in part, due to his fear of the food in the jail and belief that he is being poisoned.
4. He has demonstrated recent disorganization in his thinking, a symptom that is very difficult to malingering.
5. He maintains vehemently that he is not mentally ill which, while not inconsistent with malingering, is generally less common in malingerers who generally want to appear mentally ill.
6. If he is malingering, the secondary gain from such behavior is unclear. He maintains he does not want to be in the hospital and that he is competent to stand trial. He has not malingered factual deficits relating to competency, scoring a perfect score on a test assessing factual knowledge of court issues. If his intended goal was to appear incompetent, there would be easier ways to accomplish this. He does not relate his symptoms to the alleged offense, and does not suggest that he is interested in an insanity defense.
7. It is possible that his past intentional production of symptoms on the Structured Interview of Reported Symptoms (SIRS) was an effort to "up the ante" to get people to believe a device has been planted inside of him and to say whatever he thought would get people to believe this. He is well aware that many people do not believe him.
8. Thought control override delusions (implanted devices controlling one's thinking or body) are typical of major mental illness. Unless he had witnessed such symptoms in his mentally ill family members, it is unlikely that he could come up with these symptoms on his own.

Because of these symptoms and the bizarre content of his delusions, we are returning to our original provisional diagnosis of Schizophrenia, paranoid type.

The diagnosis of Alcohol and Cannabis Abuse are based on the defendant's report that he was previously "an alcoholic", regularly consumed excessive amounts of alcohol, and suffered consequences of his alcohol use including blackouts and relationship difficulties. It is not clear if the

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medications in his treatment. Competency to stand trial is unlikely to be restored with less intrusive means and medication is the medically appropriate treatment for his current mental illness.

Respectfully submitted,



Richard L. Frierson, M. D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

RLF/rhf

RT/EM: 4/6/09
F/EM: 4/8/09 (RLF)



EVALUATION SERVICE OF FORENSIC DIVISION

DATES OF EVALUATION: August 15, 2007 and November 28, 2007

PRESIDING: Douglas R. Morris, M. D., Fellow in Forensic Psychiatry,
University of South Carolina School of MedicineSECOND EXAMINER: Richard L. Frierson, M. D., Associate Professor of Psychiatry
University of South Carolina School of MedicineOTHERS PRESENT: Natalie March, 4th year Medical Student, Creighton University
(November 28th only)

DIAGNOSES: AXIS I: Malingering of Psychotic Symptoms.
 Alcohol Abuse.
 Cannabis Abuse.

 AXIS II: No Diagnosis.

 AXIS III: Gastroesophageal Reflux Disease.
 History of Sarcoidosis.

COMPETENCY TO STAND TRIAL: Yes.

DISPOSITION: Mr. Brown returned to his inpatient psychiatric unit at the Columbia Care Center following the conclusion of the interview.

IDENTIFYING DATA: Trey Chavis Brown is a 32-year-old male who was seen at the Forensic Evaluation Center pursuant to a court order from the Abbeville County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). This evaluation is a reassessment of the defendant's competency to stand trial after a 60-day court-ordered hospitalization for competence restoration. The defendant is currently charged with Murder and Possession of a Weapon during a Violent Crime.

PURPOSE OF THE INTERVIEW: Mr. Brown was informed of the reason for the interview. He was informed that the material discussed during the interview would be reported to the court in the format of written and/or oral report and, as such, would not be confidential. Mr. Brown stated that he understood that the report would not be confidential. He consented to proceed with the interview.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.

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2. Arrest warrant #J-095635, Murder.
3. Indictments for Murder and Possession of a Firearm or Knife during Commission of a Violent Crime.
4. Abbeville Police Department Incident Report for the alleged offenses.
5. Aiken County Sheriff's Department Incident Report for the alleged offenses.
6. Statement of Michael A. Eaton dated September 13, 2006.
7. Statement of Joe Scoggin dated September 9, 2006.
8. Statement of Darren Gray dated September 9, 2006.
9. Statement of Elaine Fuller Kennedy dated September 9, 2006.
10. Statement of Lottie Ibel dated September 9, 2006.
11. Statement of Virginia A. Glover dated September 27, 2006.
12. Statement of Connie Kennedy Wardlaw dated September 25, 2006.
13. Abbeville County Coroner's report.
14. Autopsy report.
15. South Carolina Law Enforcement Division (SLED) laboratory report.
16. Aiken-Barnwell Mental Health Center evaluation records.
17. Forensic social work assessment.
18. Telephone conversations with the defendant's father, Johnny Brown, on August 15, 2007, August 18, 2007 and November 14, 2007.
19. Telephone conversation with the defendant's attorney, Charles S. Lyons, III on August 16, 2007.
20. Beckman Center for Mental Health evaluation records.
21. Telephone conversation with Frank Jones, LMSW, Beckman Center for Mental Health, on August 16, 2007.
22. National Crime Information Center (NCIC) arrest record for the defendant.
23. Report of Psychological Evaluation by Camilla Tezza, Ph.D. on November 1, 2007.
24. Anderson Area Medical Center records for the defendant.
25. Aiken Regional Medical Center records for the defendant.
26. Aiken Center for Alcohol and Other Drug Services records for the defendant.
27. Abbeville County Detention Center records.
28. Columbia Care Center records of psychiatric inpatient admission for restoration of competence to stand trial from October 5, 2007 - present.
29. Interview with the defendant at the Forensic Evaluation Center on August 15, 2007 for approximately two and one-half hours.
30. Interview with the defendant at the Forensic Evaluation Center on November 28, 2007 for approximately two hours.

PERTINENT HISTORY: Mr. Brown was raised by his parents in Aiken County, South Carolina. He has five children, three with his current wife. The defendant's father reported that the defendant's mother and sister have both been diagnosed with Schizophrenia and undergone psychiatric hospitalizations.

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Mr. Brown attended school through the 10th grade. He also took classes in computer technology, business management, and beauty college, but finished none of these degrees. He has worked in industrial, fast food and construction settings, and he reported he was a licensed barber and had previously owned his own barber shop. He worked at Anderson Barber Academy at the time of his arrest.

Mr. Brown said he was previously convicted of Kidnapping and Unlawful Use of a Telephone and spent six months in the county jail on these charges. He also reported arrests for Criminal Domestic Violence and some "drug charges." National Crime Information Center (NCIC) records also list convictions for Simple Assault and Battery, Malicious Injury to Property, and check fraud.

PSYCHIATRIC HISTORY: Medical records reveal that Mr. Brown was seen at the Aiken-Barnwell Mental Health Center in 1998 after a physical altercation with his father. There he was diagnosed with Adjustment Disorder with Disturbance of Conduct, a disorder characterized by disturbed conduct (e.g. truancy, reckless driving, fighting) thought to be a response to a stressful event of situation. The defendant was also evaluated at the Beckman Center for Mental Health during his incarceration. There, clinicians noted inconsistencies in his presentation: "He is not disorganized in his thinking nor does he display any behavior indicative of an individual experiencing active psychosis which he claims. My opinion is that this inmate is malingering for secondary gain. After lengthy examination Dr. Hardin concurs with the likelihood of malingering". Mr. Brown has been hospitalized at the Columbia Care Center since October 5, 2007 for court-ordered restoration of competence to stand trial.

DRUG AND ALCOHOL HISTORY: Mr. Brown believed that he was previously an "alcoholic" and described daily alcohol use, blackouts, difficulty controlling his alcohol use, and relationship difficulties due to drinking. He noted past drug use, "a little of everything." Records from Aiken Center for Alcohol and Other Drug Services document that Mr. Brown was diagnosed with Alcohol and Cannabis Abuse in 1996.

MEDICAL HISTORY: Mr. Brown underwent hernia repair as an infant. He said he had suffered previous head injuries from assaults, but denied being knocked unconscious. His father reported that the defendant had problems with his feet as a child and had to wear braces. Mr. Brown reported difficulties with "acid reflux" and medical records document that he was previously treated for sarcoidosis, an inflammatory disease of the lungs.

HOSPITAL COURSE TO DATE: Mr. Brown was admitted to the Columbia Care Center for court-ordered restoration of competence to stand trial on October 5, 2007. After his initial competency to stand trial interview, we opined that Mr. Brown suffers from Schizophrenia with delusional thoughts and auditory and visual hallucinations. On admission to the Columbia Care Center, his treating psychiatrist began treatment with risperidone (Risperdal®), an antipsychotic medication. While hospital staff initially believed his reported psychotic symptoms were legitimate (as did these examiners on August 15, 2007), they began to question these symptoms in the days following his admission as Mr. Brown appeared to be in no objective distress despite his complaints of

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torturing hallucinations and delusions. His facial expression, mood, and behavior were inconsistent with his reported distressing symptoms. After approximately twenty days, Mr. Brown's antipsychotic medications were discontinued. He displayed no changes in his behavior or reported symptoms after these medications were stopped. As his hospitalization progressed, Mr. Brown continued to describe elaborate, constantly evolving delusional material of a bizarre nature and complained of constant auditory hallucinations despite no objective evidence of these symptoms. Staff believed he increased his efforts to convince them of his symptoms and constantly spoke about his symptoms, but continued to show discrepancies in his behavior from his reported distress. Due to continued suspicions of malingering, Mr. Brown was referred for psychological testing. The results of this testing were consistent with malingering of psychotic symptoms.

PSYCHOLOGICAL TESTING: Mr. Brown underwent psychological evaluation and testing on November 1, 2007 due to concerns that he was malingering his psychotic symptoms. Results from the Structured Interview of Reported Symptoms (SIRS), a test designed to detect malingering of psychotic symptoms in forensic populations, revealed results that indicated atypical and exaggerated symptom reporting which is characteristic of malingered psychosis. The SIRS has eight primary scales and each of them is rated honest, indeterminate, probable malingering, or definitive malingering. Out of the eight primary scales, Mr. Brown scored in the definitive malingering range on four of them and probable malingering range on three. The conclusion of this report was that "clinical presentation and testing results indicate that Mr. Brown is malingering psychosis at present."

MENTAL STATUS EXAM: During the clinical interview on November 28, 2007, Mr. Brown continued to report he was "being attacked every day." He described multiple voices attacking him and burning his face, arm and leg. He has named these hallucinations. He noted odd physical sensations and said "sometimes I can't even control my body." He described visual sensations of a "blue screen" coming from his head with three men on this screen. Mr. Brown said "voices" threatened to cut him and "burn him up from the inside." He described multiple graphic visual hallucinations, including hallucinations of small blue "plasma" men and one of a large woman "yanking on me."

Mr. Brown wore blue hospital clothing. His hygiene and grooming were adequate. He constantly attempted to divert the conversation to his reported hallucinations and odd experiences. His facial expression was reactive. He described his mood as "rich" and said that he was "rich in faith." He described auditory and visual hallucinations as noted above. He also described thoughts of his wife trying to kill him and he noted vague out-of-body experiences. Mr. Brown denied active thoughts of suicide, though he believed that the voices were trying to kill him. He denied violent thoughts towards others. Despite his insistence on his psychiatric symptoms, Mr. Brown denied that he suffered from mental illness. His thought processes were loose and he jumped from topic to topic. However, he did this constantly through the interview, and this appeared contrived at times. Mr. Brown occasionally interrupted the interview with odd laughing and noted that the voices were playing television theme songs in his head (i.e. *The Jeffersons*, *Married with Children*, etc.). Mr. Brown's descriptions of his

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psychotic symptoms were vivid and graphic; however, his description of these symptoms often became more vague when discrepancies in his story were noted.

Mr. Brown believed the month was either November or December. He was oriented to year, city, and day of the week. His short term memory was tested using three-word recall. He was able to register three items and recall two of them after a delay of several minutes. His concentration was tested by asking him to spell the word *world* backwards, which he was not able to do. He said that \$1.00 minus 57¢ equaled "30 something odd cents." Mr. Brown's fund of knowledge was estimated to be adequate based on his ability to recall the four most recent Presidents, however, he believed that Clinton served before the older President Bush's term. Mr. Brown's ability to perform abstract interpretations was estimated to be fair based on his ability to describe similarities between pairs of items and his ability to interpret proverbs. His judgment was fair. Mr. Brown gave a reasonable answer to how he would handle a hypothetical dangerous situation. However, his judgment is questionable per his falsification of his psychiatric symptoms. Mr. Brown's intelligence was estimated to be in the average range based on his vocabulary and sentence structure.

DIAGNOSTIC IMPRESSION: Mr. Brown was originally diagnosed with Schizophrenia based upon his reports of hallucinations and delusions, ambivalence and hygiene deficits, and his tangential thought processes. Hygiene deficits, denial of mental illness, and disrupted thought processes (as opposed to merely reported hallucinations and delusions) are uncommon in malingered psychosis. Mr. Brown also has a strong family history of Schizophrenia, which increases the likelihood that he would have this disorder. However, Mr. Brown's behavior and reported symptoms have not withstood psychological testing for malingering and continuous observation during his inpatient admission. With this additional data, it is opined that his reported symptoms are more consistent with malingering than a true psychotic disorder.

The diagnosis of Malingering of Psychotic Symptoms is based upon the defendant's exaggeration and falsification of his claimed hallucinations and delusional thoughts. Psychological testing has also revealed that Mr. Brown is feigning psychotic symptoms. Continuous observation during his current inpatient hospitalization has also led his treatment team to believe that his reported symptoms are manufactured.

Further evidence of malingering is as follows:

- Mr. Brown continues to describe vivid hallucinations and physical sensations of being tortured. However, he displays little objective distress from these reported experiences. It would be unlikely for someone describing Mr. Brown's degree of distress to display so little evidence of distress.
- Despite endorsing auditory hallucinations of multiple voices interrupting his thinking, Mr. Brown displays little evidence of thought disruption from these hallucinations and does not appear to be responding to internal stimuli. He is able to focus on the questions being asked without

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difficulty. Mr. Brown often displays clear and coherent thought processes despite his claims of distracting hallucinations.

- Mr. Brown describes psychotic symptoms that are atypical for true psychotic hallucinations including occasionally seeing hallucinations in black and white, seeing hallucinations of small men, and experiencing constant, unremitting hallucinations. Naming one's hallucinations is also atypical in true psychosis and more consistent with malingering.
- Mr. Brown has expressed belief that his treatment team is involved in a conspiracy against him, but he constantly attempts to bring his concerns about his symptoms to his treatment team. It is unlikely that someone who believed his treatment team was conspiring against him would continuously attempt to enlist their aid.
- Mr. Brown's psychological testing returned results strongly suggestive of malingering and revealing that his "clinical presentation and testing results indicate that Mr. Brown is malingering psychosis at present."
- Family members report that Mr. Brown complained of no psychotic symptoms prior to his incarceration. Development of psychotic symptoms only after arrest for serious legal charges is suspicious for malingering.
- Mr. Brown has exhibited marginal performance on his cognitive and competency to stand trial testing which is much lower than would be expected from someone of his education and experience.
- Although initially convincing and not often seen in malingering, tangential thinking such as Mr. Brown's can be feigned. Mr. Brown constantly diverts attention to his apparent tangential thoughts that are displayed in a "stream of consciousness". Simply put, Mr. Brown appears to be overplaying his part and these thought processes begin to appear contrived.
- During psychological testing and interactions with his inpatient psychiatric staff, Mr. Brown has been seen referring to a paper where he had written his reported symptoms. Someone with the degree of distress Mr. Brown professes would be unlikely to require a written reminder of these symptoms. His notes are suspicious for an attempt to "keep his story straight."
- Mr. Brown has a strong incentive for feigning his psychotic symptoms, as he is facing serious legal charges.

While no single behavior or observation listed above is diagnostic of malingering, taken together they create strong evidence for malingering. It is our opinion to a reasonable degree of medical certainty that Mr. Brown is malingering his psychotic symptoms.

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The presence of malingering does not negate the possibility of underlying mental illness. The most consistent symptom that Mr. Brown has reported is that a device has been implanted in him and is shocking him. While this type of delusion is typical of Schizophrenia, even if it is genuine, it is not sufficient to establish this diagnosis. Furthermore, this reported symptom must be viewed very suspiciously in light of his lack of prior mental health history and the abundance of other symptoms which are clearly malingered. At this time, there is an insufficient basis not to believe that this symptom is not also malingered.

The diagnosis of Alcohol and Cannabis Abuse are based on the defendant's report that he was previously "an alcoholic", regularly consumed excessive amounts of alcohol, and suffered consequences of his alcohol use including blackouts and relationship difficulties. It is not clear if the defendant's pattern of alcohol use would reach the diagnostic threshold for Alcohol Dependence. Mr. Brown has also taken part in drug and alcohol treatment, where he was diagnosed with both Alcohol and Cannabis Abuse.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Brown said he was charged with "eight counts of murder." He eventually admitted that he was accused of killing his father-in-law. While first stating he was uncertain what sentence range a murder charge would carry, he eventually believed it might carry "twenty-five to life." Mr. Brown had an accurate understanding of probation and knew that one must report to probation officers and would return to jail if violating probation.

Mr. Brown was aware of the meaning and consequences of pleas of *guilty* and *not guilty*. He believed one would go to a hospital if found *not guilty by reason of insanity*. Mr. Brown also displayed accurate knowledge of typical court participants and their roles. When asked about the desired outcome of the proceedings against him, Mr. Brown said, "I'm ready to go home." Mr. Brown knew his lawyer's name, but said, "I don't know him." He said he did not trust his lawyer because the Bible said, "put your trust in no man." He did believe he should tell a lawyer important information and said he had no reason to hide information from his lawyer, stating, "I'm not a hider." Mr. Brown understood the basic elements of a plea bargain and knew that it involved a *guilty* plea in exchange for "lesser time."

Mr. Brown expressed some disbelief that his father-in-law was actually dead and claimed that he saw him in court the previous March. He also reported beliefs that his wife's "whole family is in cahoots" and referenced that they were "money hungry" and seeking \$300,000 from him. Of note, the defendant required more prompting during questions of factual court procedures and participants than during the previous competency assessment on August 15, 2007. He also sought to constantly interweave odd thoughts and promote his hallucinations and delusional thoughts during the competency assessment. He purposefully evaded answering questions in order to report his symptoms and at times he attempted to control the interview.

Although Mr. Brown was originally opined as not competent to stand trial due to delusional beliefs and disorganized thinking, his continuous observation over the past two months has raised serious doubts

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about the validity of his reported symptoms. Mr. Brown had been diagnosed with Malingering of Psychotic Symptoms based both on continuous observation by his inpatient treatment team and psychological testing. Based upon this information, it is also our conclusion that Mr. Brown is feigning his psychotic symptoms at present.

Despite these feigned symptoms, Mr. Brown displays an adequate understanding of the nature of objectives of the legal proceeding against him. He should also be able to adequately assist counsel in his defense, but is intentionally falsifying and exaggerating his psychiatric symptoms and attempting to appear less capable of working with counsel than he actually is. Mr. Brown is not believed to have true symptoms of a mental disease or defect that would impair his ability to understand the nature and objectives of the proceedings against him or assist counsel in his defense if he so chooses. Therefore, it is opined that the defendant would be competent to stand trial pursuant to S.C. Code Ann. §44-23-410 (1976).

RECOMMENDATIONS: Despite his continued reports of bothersome hallucinations and delusional thoughts, it is currently opined that the defendant is malingering and these symptoms are feigned, or at the very least, grossly exaggerated. However, Mr. Brown is highly invested in his portrayal of these symptoms, and it is expected that he will continue to display such symptoms and may increase his reports of these symptoms and erratic behavior when forced to confront the charges against him. At present, we would recommend that Mr. Brown return to the detention center. He does not require psychiatric medication at present, but detention center staff should be alerted that he may act out or engage in dramatic behavior either from distress about his legal proceedings or in further attempts to convince others that he has a serious mental illness.

Respectfully submitted,

Douglas R. Morris, M.D.

Douglas R. Morris, M.D.
Fellow in Forensic Psychiatry
University of South Carolina

Richard L. Frierson, M.D.

Richard L. Frierson, M. D.
Director, Forensic Psychiatry Fellowship
Associate Professor of Psychiatry
University of South Carolina

DRM/RLF/cj

D: 11/29/07
RT/EM: 11/30/07
F/EM: 12/04/07 (DRM)

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EVALUATION SERVICE OF FORENSIC DIVISION

DATE OF EVALUATION: August 15, 2007

PRESIDING: Douglas R. Morris, M.D., Forensic Psychiatry Fellow
University of South Carolina School of MedicineSECOND EXAMINER: Richard L. Frierson, M.D., Associate Professor of Psychiatry
University of South Carolina School of Medicine

DIAGNOSES: AXIS I: Schizophrenia, Paranoid Type.
 Alcohol Abuse.

 AXIS II: No Diagnosis.

 AXIS III: Gastroesophageal Reflux Disease,
 Possible History of Lymphoma.

COMPETENCY TO STAND TRIAL: No, likely to be restored with psychiatric treatment.

DISPOSITION: Mr. Brown returned to the Abbeville County Detention Center following the conclusion of the interview.

IDENTIFYING INFORMATION: Trey Chavis Brown is a 32-year-old man who was seen at the Forensic Service Center pursuant to a court order from the Abbeville County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 273 S.E. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). The defendant is currently charged with Murder and Possession of a Weapon during Commission of a Violent Crime.

PURPOSE OF THE INTERVIEW: Mr. Brown was informed of the reason for the interview. He was informed that the material discussed during the interview would be reported to the court in the format of written and/or oral report and, as such, would not be confidential. Mr. Brown stated that he understood that the report would not be confidential. He was initially ambivalent about consenting to the evaluation and we attempted to call his lawyer who we were told was in court. We also read several aspects of the court order to him regarding his participation. After reading this, he finally consented to proceed with the interview.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest warrant #J-095635, Murder.

BROWN, TREY
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OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

R 12 121 1

3. Indictments for Murder and Possession of a Firearm or Knife during Commission of a Violent Crime.
4. Incident report, Abbeville Police Department dated September 9, 2006.
5. Incident report, Aiken County Sheriff's Department dated September 9, 2006.
6. Statement of Michael A. Eaton dated September 13, 2006.
7. Statement of Joe Scoggin dated September 9, 2006.
8. Statement of Darren Gray dated September 9, 2006.
9. Statement of Elaine Fuller Kennedy dated September 9, 2006.
10. Statement of Lottie Ibel dated September 9, 2006.
11. Statement of Virginia A. Glover dated September 27, 2006.
12. Statement of Connie Kennedy Wardlaw dated September 25, 2006.
13. Abbeville County Coroner's report.
14. Autopsy report.
15. South Carolina Law Enforcement Division Laboratory Report.
16. Aiken-Barnwell Mental Health Center evaluation records.
17. Forensic social work assessment.
18. Telephone conversation with the defendant's father, Johnnie Brown, on August 15, 2007.
19. Telephone conversation with the defendant's attorney, Charles H. S. Lyons III, on August 16, 2007.
20. Beckman Center for Mental Health evaluation records.
21. Telephone conversation with Frank Jones, LMSW, Beckman Center for Mental Health, on August 16, 2007.
22. Telephone conversation with the defendant's father, Johnnie Brown, on August 18, 2007.
22. National Crime Information Center (NCIC) arrest record.
23. Interview with the defendant at the Forensic Service Center on August 15, 2007 for approximately 2 1/2 hours.

SOCIAL HISTORY: Mr. Brown said he was born in Augusta, Georgia and grew up with his parents, brother, and sister in Aiken County, South Carolina. He felt his childhood was generally "okay." Mr. Brown said he married at age 26 or 27. He has five children, a 2-year-old and 3-year-old with his current wife and three older children from different mothers. He declined answering questions about past physical or sexual abuse. According to the defendant's father, the defendant's mother and sister have both been diagnosed with Schizophrenia and undergone psychiatric hospitalization. The defendant knew his mother and sister had had "mental health" difficulties. He said "they're just different," and he did not know their specific diagnoses.

EDUCATIONAL HISTORY: Mr. Brown said he attended school through the 10th grade. He said he stopped school because he was "not encouraged to stay in school and had a baby." He later received his GED. He said he attended Aiken Technical College where he took some classes in computer technology and business management. He also attended a beauty college, but finished none of these degrees.

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EMPLOYMENT HISTORY: Mr. Brown said he had worked in industrial, fast food, and construction settings. He said he was a licensed barber and his longest period of employment was as a barber. He reported working at Anderson Barber Academy at the time of his arrest. The defendant's father said the defendant had owned his own barber shop for 5 - 7 years and also previously started a barber school.

LEGAL HISTORY: Mr. Brown said he was convicted of Kidnapping and Unlawful Use of a Telephone in 1995 or 1996, and he spent six months in the county jail on these charges. He also reported arrests for Criminal Domestic Violence and some "drug charges." He thought he received probation for the drug charges. He denied a history of juvenile arrests. A National Crime Information Center (NCIC) record also listed convictions for Simple Assault and Battery, Malicious Injury to Property, and check fraud.

PSYCHIATRIC HISTORY: Mr. Brown said he had occasionally heard voices since childhood. He said these voices started getting worse "after a couple months in jail." He reported these voices maintained constant conversations with him and about him. The voices told him he "might as well go ahead and kill yourself," and these voices also told him that others sought to harm him. He noted past difficulties with feelings of depression that might last for days or weeks. He said he had thought about suicide for "for years" because he had experienced a "rough life." Mr. Brown denied suicide attempts, though said "I've put a gun to my head, but I don't know if you would call that trying."

Medical records reveal that Mr. Brown was seen at Aiken-Barnwell Mental Health Center in 1998 after a physical altercation with his father. There he was diagnosed with Adjustment Disorder with Disturbance of Conduct, a disorder characterized by disturbed conduct (e.g., truancy, reckless driving, fighting) thought to be a response to a stressful event or situation. The defendant was also evaluated at the Beckman Center for Mental Health during his incarceration. There, clinicians were suspicious that his reported hallucinations and odd thoughts were feigned and consistent with malingering.

DRUG AND ALCOHOL HISTORY: Mr. Brown felt that he was previously an "alcoholic," and would drink at least a half-pint of liquor daily. He noted past blackouts, difficulty controlling his alcohol intake, and trouble in his relationships due to alcohol use. He was not certain if he had experienced withdrawal symptoms after stopping drinking. He noted past drug use of "a little of everything," but would not give more specific details other than denying that he had ever used IV drugs.

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BROWN, TREY
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SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

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MEDICAL HISTORY: Mr. Brown's father said the defendant underwent hernia repair as an infant. The defendant said he had suffered previous head injuries from assaults but denied being knocked unconscious. His father reported that he had problems with his feet as a child and had to wear braces. The defendant reported difficulties with "acid reflux" and said he had previously been treated for lymphoma, a blood cancer. His father, on telephone interview says he did have some problem with his lymphatic system and he believes he was told it was lymphoma.

CURRENT MEDICATIONS: Mr. Brown denied currently receiving prescribed medications.

MENTAL STATUS EXAM: Mr. Brown wore orange jail clothing. His fingernails were long and his hair was somewhat unkempt. He maintained good eye contact with the interviewers and was generally cooperative, though voiced suspicions about the interviewers and our intentions at times. His speech was normal in rate, tone, and volume. He was physically calm during the interview, and no abnormal movements were noted other than occasionally wincing in pain, stating he was being internally shocked by some device that had been placed inside of him through his rectum. He described his mood as "depressed in body, but lifted in spirit." His facial expression was restricted in range, though generally appropriate to the subjects discussed except for occasionally laughing to himself. Mr. Brown said that he currently heard multiple voices talking to him and about him. He said these voices were distracting and could come from his stomach, ears, air vents, or the air purifier in his cell. He claimed the voices said they were going to kill him and could affect him up to a "50 mile radius." He said he was "tasered", burned and shocked daily by devices that had been implanted in his arm and through his rectum. He believed that these devices were implanted by the police and that the government was involved. He said "I'm like some sort of top secret experiment." He noted that the voices say they can give him HIV, which he said was "human inocular vision" and said that through this "HIV" others could see and hear everything he said or did. He said the voices told him they had "a 1500 PSI of bomb in me." He expressed frustration that his lawyer would not believe these complaints, and felt that the police, his lawyer, and we (the examiners) were conspiring against him. He pointed to a scar on his left arm where he said he had used his teeth to attempt to remove the device implanted in his arm. He expressed disbelief that his father-in-law was dead, stating, "That's crazy." Mr. Brown's thought processes were generally goal-directed, though he displayed notable ambivalence at times and sometimes appeared to be distracted by an internal dialog. He declined to comment on suicidal thoughts, though he denied violent thoughts and said, "I don't believe in hurting people."

On cognitive testing, Mr. Brown was oriented to person, place, and time. His short-term memory was tested by using three word recall. He was able to register three items and recall all three after a delay of several minutes. His concentration was tested by asking him to recite the months of the year and the days of the week in reverse order. He was not able to complete these tasks, though was able to accurately spell the word *world* backwards. His fund of knowledge was estimated to be fair as he was able to identify the four most recent Presidents, though did not know that Clinton served between the older and younger Bush presidencies. He was accurately able to subtract \$.57 from \$1.00. His ability to perform abstract interpretations was estimated to be adequate based on his ability to identify

BROWN, TREY
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OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

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Mr. Brown said he was hoping for the best and his desired outcome was to "go back home." He was aware of basic court procedure including that if he plead *not guilty*, his case would go to trial. He expressed frustration with his attorney, saying his attorney would not answer his telephone calls and would not believe his report that he was being "tasered" daily. He said that because his lawyer did not believe him, he therefore did not believe what his attorney was saying, and he reported that "the voices said they (the police/government) paid him off."

Mr. Brown understood the role of witnesses and that they were meant to tell the truth. The risk of unmanageable behavior in the courtroom was estimated to be low as the defendant knew he could not yell out in court.

Based on the clinical interview, during which the defendant showed an accurate appreciation of the charges against him and possible penalties he faced, understood the meaning and consequences of *guilty* and *not guilty* pleas, understood the roles of court participants, and showed a basic awareness of courtroom procedure and the role of witnesses; it is our opinion that the defendant is currently capable of understanding the nature and objectives of the legal proceedings against him despite his mental illness.

However, the defendant currently harbors a delusional belief system that devices have been implanted inside him which allow others to monitor his speech and actions. He said his lawyer was in conspiracy with those persecuting him and said he did not trust his lawyer because his lawyer did not believe his complaints of being daily burned and shocked by these. During the clinical interview, Mr. Brown appeared to be distracted by an internal dialog at times, and he said that he answered some questions based on what the voices told him to say. He would likely continue this behavior in court which would impair his ability to testify relevantly or rationally discuss his defense with his attorney. Therefore, due to his symptoms of active mental illness, including paranoia, delusional thoughts, and ongoing distracting auditory hallucinations, it is our opinion that the defendant is not currently capable of assisting counsel in his defense and is therefore not competent to stand trial.

RECOMMENDATIONS: Although it is opined that Mr. Brown is not currently competent to stand trial, the symptoms rendering him incompetent are often remediable. As such, it is also opined that with treatment he will likely become competent in the foreseeable future. Therefore, in accordance with S.C. Code of Law §44-23-430 (3), it is recommended that if he is adjudicated not competent, he be court ordered for hospitalization in the Forensic Division of the Department of Mental Health for up to 60 days in order to help him attain competence. If Mr. Brown is ordered to be hospitalized, it is requested that the order be forwarded immediately to the Forensic Evaluation Service so that he can be placed on the waiting list for admission.

Additionally, Mr. Brown does not believe that his current symptoms are the result of a mental illness, and it is not clear whether he will voluntarily consent to take medications for these symptoms. His psychotic thoughts will not be effectively treated without antipsychotic medications, and we would request a court order directing his hospitalization contain permission to administer psychiatric

BROWN, TREY
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SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

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medications in his treatment. Competency to stand trial is unlikely to be restored with less intrusive means and medication is the medically appropriate treatment for his current mental illness.

Douglas R. Morris, M.D.

Douglas R. Morris, M.D.
Forensic Psychiatry Fellow
University of South Carolina School
of Medicine

Richard L. Frierson, M.D.

Richard L. Frierson, M.D.
Director, Forensic Psychiatry Fellowship
Associate Professor of Psychiatry
University of South Carolina School
of Medicine

DRM/khr

D: 08/16/07
RT/EM: 08/17/07
F/EM: 08/17/07 (DRM)

TR

BROWN, TREY
983-4963

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

2014-GS-01-0111, 0112

State of South Carolina

Respondent

vs.

Trey Brown

Appellant.

Notice of Appeal

Trey Brown appeals his sentence in this case imposed on February 29, 2016. Following Mr. Brown's guilty plea, the Honorable R. Scott Sprouse imposed sentences of thirty years for murder and five years for possession of a firearm during the commission of a violent crime. The sentences are consecutive. This appeal is taken from Judge Sprouse's orders dated March 2, 2016 amending the sentence and denying Mr. Brown's request for additional credit for time served. Pursuant to Rule 203(d)(1)(B)(iv), Mr. Brown will explain the reasons for this appeal.

On September 9, 2006, the State arrested Mr. Brown on these charges. He has continuously remained in the custody of the State of South Carolina ever since. Mr. Brown's competency to stand trial was assessed multiple times pursuant to S.C. Code Ann. § 44-23-410, *et. seq.*, resulting in his involuntary commitment to the Department of Mental Health pursuant to these statutory procedures. Mr. Brown requested the

sentencing judge order credit for time served since September 9, 2006, noting that Mr. Brown was continuously in custody of the State pursuant to these statutory procedures. The Solicitor opposed the sentencing court granting Mr. Brown credit for time served pursuant to S.C. Code Ann. § 24-13-40 during the period of time of Mr. Brown's involuntary commitment. The sentencing court agreed with the Solicitor. After asking the sentencing judge to explain the rationale for not providing full credit for time served since September 9, 2006, Mr. Brown moved the court to reconsider. This motion was denied.

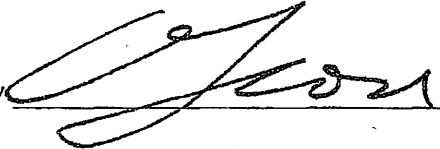
On March 1, 2016, Mr. Brown again asked the sentencing judge to reconsider based on S.C. Code Ann. § 44-23-460(2) expressing the intent that the time during the involuntary commitment be credited towards the maximum possible sentence. The sentencing judge denied this motion on March 2, 2016 by writing "denied" on the face of the motion.

Also on March 2, 2016, the sentencing judge issued an order clarifying the amount of credit for time served is "from September 9, 2006 until October 20, 2009, and again from February 7, 2014 until February 29, 2016," which is "a period of 5 years and 63 days." This order expressly states, "This consent order is in no way intended to preclude Defendant from pursuing an appeal of the Court's denial of credit for time served from October 20, 2009 until February 7, 2014."

Denial of credit for time served following a guilty plea is reviewable on appeal. *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010) (plea judge's denial of jail credit for time defendant served in pretrial detention based upon state's decision to drop charge against defendant from armed robbery to strong arm robbery was an error at law).

See also *State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002) (Trial court could not deny defendant credit for time served prior to trial and sentencing based on fact that court had not given defendant a life sentence); *Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000) (defendant, who was jailed in another county on unrelated charges and had "hold" place on him for current robbery charge, was entitled to credit for time served from date on which sheriff's department issued warrant for his arrest for robbery); and *State v. Dozier*, 263 S.C. 267, 210 S.E.2d 225 (1974) (defendant was entitled to credit on his sentence for time spent in prison in Georgia while contesting extradition to South Carolina).

Respectfully Submitted,

By 

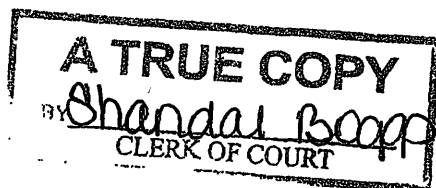
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Attorneys for the Defendant

March 2, 2016
Greenwood, South Carolina

(other counsel of record on next page)



3

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STATE OF SOUTH CAROLINA
COUNTY OF ABERDEEN
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CLERK OF COURT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

134

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

2014-GS-01-0111, 0112

State of South Carolina

Respondent

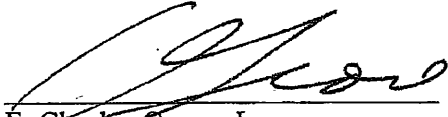
vs.

Trey Brown

Appellant.

Notice of Appeal

I certify that I have served the notice of appeal on the State of South Carolina by personally delivering a copy to the Office of the Solicitor for the Eighth Judicial Circuit, at Suite 203, Park Plaza, 600 Monument Street, Greenwood, South Carolina on the date reflected below.


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March 2, 2016

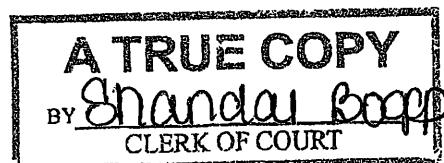
Accepted by


Eighth Circuit Solicitor's Office

Date: 3/2, 2016

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COUNTY OF ABBEVILLE
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CLERK OF COURT

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R 131

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

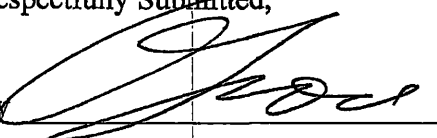
Trey Brown

Appellant.

Rule 210(g), SCACR Certification

Pursuant to Rule 210(g), SCACR, the undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By 

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May 30, 2017
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

Trey Brown

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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*Attorneys for Respondent State of South
Carolina*

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STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

State of South Carolina)

CONSENT ORDER

vs.)

Trey Chavis Brown)

Defendant)

This matter came before me upon motion of the State and with the consent of the Defendant, Trey Chavis Brown and his attorney Charles H.S. Lyons, III, requesting hospitalization in the Forensic Division of the Department of Mental Health for up to 60 days, pursuant to SC Code Section § 44-23-410 of said Defendant charged with Murder and Possession of a firearm during the commission of a violent crime. The Defendant was evaluated by South Carolina Department of Mental Health on August 15, 2007 and found to be suffering from Paranoid Type Schizophrenia. Doctors found him incompetent to stand trial but believe that he could reach competency through medical treatment

After hearing the motion, I find that the State is entitled to the hospitalization of the Defendant, THEREFORE IT IS ORDERED that the defendant be transported from Abbeville County Detention Center to Forensic Division of the Department of Mental Health for the purpose of mental health treatment.

IT IS SO ORDERED, this 4TH ^{OCTOBER} day of ~~September~~, 2007

William P. Keesley
The Honorable John C. Hayes III
Presiding Judge /S/ WILLIAM P. KEESLEY

Abbeville, South Carolina

2007

A TRUE COPY
By Shandal Boggs
Deputy Clerk of Court

I SO MOVE

Benjamin I. Shealy
Deputy Solicitor

I SO CONSENT

Charles H.S. Lyons, III
Charles H.S. Lyons, III
Attorney for the Defendant

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Filed 10-5 A.D. 2007
at 8:30 o'clock A M
Shandal Boggs
Deputy Clerk of Court

Suppl. R. 1

*General Sessions Order following Blair Hearing on Defendant's Competency To Stand Trial
Finding Defendant Not Competent, but Likely to Become Competent
§44-23-430(3)*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ABBEVILLE	)	Indictment No(s): 2006-GS01-582, 583
	)	A/Warrant No(s):
	)	
The State of South Carolina,	)	FINDING OF PRESENT LACK OF
	)	COMPETENCE TO STAND TRIAL
	)	BUT LIKELY TO BECOME COMPETENT
	)	WITH TREATMENT
vs.	)	
	)	
	)	ORDER OF COMMITMENT UP TO SIXTY DAYS
Trey Chavis Brown	)	
Defendant.	)	

This matter is before me pursuant to S.C. Code Ann. §44-23-430 (1976) for a hearing on the issue of Defendant's competence to stand trial.

Defendant is charged with Murder and Possession of a firearm during the commission of a violent crime. Pursuant to a previous Court order, Defendant's competence to stand trial has been evaluated. In a report dated April 4, 2009, the examiners found that Defendant is not currently competent to stand trial, but is likely with treatment to become competent in the foreseeable future. The report was statutorily admitted into evidence pursuant to S.C. Code Ann. § 44-23-420(C), and a copy of the report is attached hereto.

Based upon the examiner's report, I find that the Defendant is currently incompetent to stand trial for the reasons set forth in S.C. Code Ann. §44-23-410, but likely to become competent in the foreseeable future.

THEREFORE IT IS ORDERED that Defendant be hospitalized through the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. §44-SCCA 221(b) (11/2007)

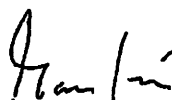
Page 1 of 2

Suppl. R. 2

23-430(3) for up to sixty (60) days for observation and treatment in an effort to restore Defendant's competence to stand trial. The Defendant shall be immediately taken into custody by the Sheriff, and the Sheriff's office is hereby authorized and required to transport Defendant to the facility designated by SCDMH following confirmation that a treatment bed is available.

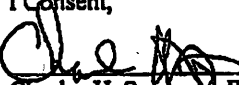
IT IS FURTHER ORDERED that examiners shall re-examine Defendant's capacity to stand trial following the period of hospitalization and treatment and subsequently render a report to the Court, solicitor, and defense counsel. Thereafter, upon motion by a party, this Court shall determine whether Defendant is at that time competent to stand trial, or whether final judicial commitment proceedings commenced by the Solicitor pursuant to S. C. Code Ann. § 44-17-510 et. seq. are appropriate.

IT IS SO ORDERED.



The Honorable D. Garrison Hill
Presiding Judge
Eighth Judicial Circuit

I Consent,

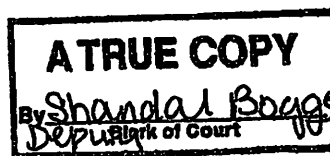

 Charles H. S. Lyons, III
 Attorney for the Defendant

Date: 4/15/2009

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
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 CLERK OF COURT

SCCA 221(b) (11/2007)

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Suppl. R. 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

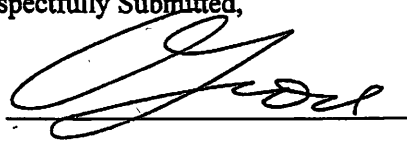
Trey Brown

Appellant.

Rule 210(g), SCACR Certification

Pursuant to Rule 210(g), SCACR, the undersigned counsel certifies that the Record on Appeal and Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By 

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Attorneys for the Appellant

June 6, 2017
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

Trey Brown

Appellant.

Certificate of Service

I certify that I have served the Supplemental Record on Appeal on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

Caroline M. Scrantom, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211


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June 7, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

Trey Brown

Appellant.

Final Brief of Appellant

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Attorney for Appellant Trey Brown

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STATE'S STATEMENT OF QUESTION PRESENTED

Did the trial court err when it denied Trey Brown full credit for time served from September 9, 2006, the date of his arrest, when Mr. Brown remained in the custody of the State of South Carolina pursuant to his arrest and the procedures mandated by S.C. Code Ann. § 44-23-410, *et. seq.*?

STATEMENT OF THE CASE

The State charged the appellant, Trey Brown, with the September 9, 2006 death of his father-in-law, Mr. Keith Kelley. Mr. Brown called 911 and later turned himself in to the authorities. The Abbeville County Grand Jury indicted Mr. Brown for murder and possession of a firearm during the commission of a violent crime. Record on Appeal (hereinafter "R.") 9-12. Pursuant to S.C. Code Ann. § 17-25-45, the Solicitors Office served notice of intent to seek life without the possibility of parole if Mr. Brown were convicted of a "most serious" offence. R. 17.

Prior to calling this case for trial, Dr. Richard Frierson of the South Carolina Department of Mental Health (hereinafter "DMH") concluded that Mr. Brown was not competent to stand trial. R. 106-12. The Honorable Frank R. Addy, Jr. committed Mr. Brown to DMH for sixty days for restoration of competency. R. 1. Because Mr. Brown's competency to stand trial could not be restored in sixty days, the State petitioned the Probate Court to commit Mr. Brown to DMH. R. 1. The Probate Court granted the State's petition. R. 1. On October 20, 2009, the Solicitor's Office dismissed Mr. Brown's charges. R. 9, 11.

On February 7, 2014, the State obtained new indictments for murder and possession of a firearm during the commission of a violent crime. R. 13-16. As the result of evaluations conducted on April 28 and June 2, 2014, Dr. Frierson opined that Mr. Brown was competent to stand trial. R. 95-101. On October 28, 2015, the State once again served notice of intent to seek life without the possibility of parole if Mr. Brown were to be convicted of a "most serious" offense. R. 18.

On February 29, 2016, Mr. Brown pled guilty to murder and possession of a firearm during the commission of a violent crime. The Honorable R. Scott Sprouse sentenced Mr. Brown to thirty years for murder and five years for possession of a firearm during the commission of a violent crime. The sentences are consecutive. R. 2, 3, 76-77. Mr. Brown requested credit for time served while committed to DMH. The Solicitor opposed Mr. Brown receiving credit for time during the civil commitment to DMH during the period of time that not indictments were pending. Judge Sprouse agreed with the Solicitor and denied Mr. Brown credit for time served during the civil commitment. R. 63, 65, 76-77.

On March 2, 2016, Judge Sprouse entered a consent order amending the amount of credit for time served to correct an error in calculating the amount of time. R. 4-5. Also, on March 2, 2016, Judge Sprouse denied Mr. Brown's motion to reconsider the denial of credit for time served during the period of the civil commitment when no indictment was pending. R. 6-7.

This appeal follows.

ARGUMENT

Did the trial court err when it denied Trey Brown full credit for time served from September 9, 2006, the date of his arrest, when Mr. Brown remained in the custody of the State of South Carolina pursuant to his arrest and the procedures mandated by S.C. Code Ann. § 44-23-410, *et. seq.*?

“In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the circuit court unless clearly erroneous. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Dennis*, 402 S.C. 627, 634–35, 742 S.E.2d 21, 25 (Ct. App. 2013) (internal quotations and citations omitted).

The facts are not in dispute, and the sole issue before this Court is whether the trial court judge erred as a matter of law in denying Mr. Brown credit for time served during the civil commitment when no indictment was pending. S.C. Code Ann. § 24-13-40 controls. A court must abide by the plain meaning of the words of a statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* 341 S.C. at 85, 533 S.E.2d at 581. When a statute is penal in nature, the rule of lenity requires that any ambiguity must be construed strictly against the State and in favor of the defendant. *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Mr. Brown requested the Court to grant him credit for time served, pursuant to S.C. Code Ann. § 24-13-40, from when the State took him into custody on September 9, 2006 and because Mr. Brown remained in custody of the State pursuant to statutory procedures, S.C. Code Ann. § 44-23-410, *et. seq.* The Solicitor opposed Mr. Brown receiving credit for time served during the involuntary commitment, and the Court

agreed. Section 44-23-460(2), however, would have barred prosecution of Mr. Brown if he had "been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which [he] could have been sentenced if convicted as charged." Our General Assembly, therefore, expressed its intent that a person adjudicated not competent to stand trial be credited, towards any eventual sentence, with the time served while confined to DMH.

Denial of credit for time served is reviewable on appeal, and our appellate courts consistently enforce S.C. Code Ann. § 24-13-40 and credit individuals with time served in pre-trial detention. *State v. Boggs*, 388 S.C. 314, 696 S.E.2d 597 (Ct. App. 2010) (plea judge's denial of jail credit for time defendant served in pretrial detention based upon state's decision to drop charge against defendant from armed robbery to strong arm robbery was an error at law). *See also State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002) (Trial court could not deny defendant credit for time served prior to trial and sentencing based on fact that court had not given defendant a life sentence); *Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000) (defendant, who was jailed in another county on unrelated charges and had "hold" place on him for current robbery charge, was entitled to credit for time served from date on which sheriff's department issued warrant for his arrest for robbery); and *State v. Dozier*, 263 S.C. 267, 210 S.E.2d 225 (1974) (defendant was entitled to credit on his sentence for time spent in prison in Georgia while contesting extradition to South Carolina).

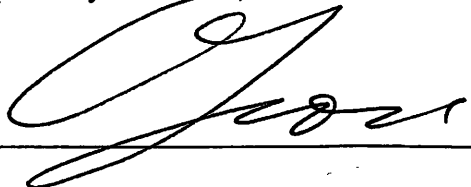
This Court should reverse the trial court.

CONCLUSION

This Court should reverse the trial court judge and enter an order granting Mr. Brown full credit for time served from September 9, 2006, the date of his arrest.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

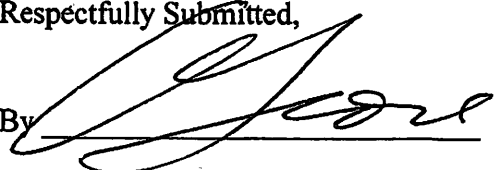
Trey Brown

Appellant.

Rule 211(b), SCACR Certification

The undersigned counsel certifies that the Final Brief of Appellant complies with
Pursuant to Rule 211(b), SCACR.

Respectfully Submitted,

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

**Appeal from Abbeville County
Honorable R. Scott Sprouse, Circuit Court Judge**

THE STATE,

Respondent,

v.

TREY C. BROWN,

Appellant

Appellate Case No. 2016-000526.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

Did the trial court err when it denied Trey Brown full credit for time served from September 9, 2006, the date of his arrest, when Mr. Brown remained in the custody of the State of South Carolina pursuant to his arrest and the procedures mandated by S.C. Code Ann. § 44-23-410, *et. seq.*?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Whether the trial court accurately denied Appellant credit for time served between the dates of October 20, 2009, and February 7, 2014, during which time no charges were pending against Appellant, and during which time Appellant remained in the care of the Department of Mental Health due to a separate civil commitment governed by S.C. Code Ann. § 44-17-580 rather than S.C. Code Ann. § 44-23-410.

STATEMENT OF THE CASE

Appellant Trey Chavez Brown pled guilty to the September 9, 2006, murder of his father-in-law, Mr. James Keith Kennedy, and for the possession of a firearm during the killing. (R. pp. 2-3). The Abbeville County Grand Jury first indicted Appellant for these charges during its October 2006 convening. (R. pp. 9-12). The State subsequently served Appellant with notice of intent to seek life without the possibility of parole. (R. p. 17).

Pursuant to S.C. Code Ann. § 44-17-580 (2005), Appellant was civilly committed to the South Carolina Department of Mental Health ("DMH") on October 7, 2009. (R. p. 1). The State dismissed Appellant's charges on October 20, 2009. (R. pp. 9-12).

On February 7, 2014, the State sought and obtained Appellant's re-indictment for the same charges. (R. pp. 13-16). The State again served Appellant with notice of intent to seek a life sentence. (R. p. 18).

Appellant pled guilty on February 29, 2016, before the Honorable R. Scott Sprouse. (R. pp. 2-3). The State made no sentencing recommendation. (R. p. 44, lines 15-19). Judge Sprouse sentenced Appellant to 30 years for murder and a consecutive five years for the weapons charge. (*Id.*).

At the time of sentencing, Appellant received credit for time he served between his initial arrest and the State's October 20, 2009, dismissal of the charges against him. (R. p. 64, lines 9-18; R. p. 76, lines 23-25). The court calculated that time to total three years, one month, and eleven days. (*Id.*; R. pp. 2-3). The court denied time served credit to Appellant concerning the period of time in which he was civilly committed with no charges pending against him. (R. p. 77, lines 2-12).

A few days later, Judge Sprouse issued a consent order amending the credit for time served to also include Appellant's pre-trial confinement spanning from his February 7, 2014, re-indictment until his February 29, 2016, guilty plea and sentence. (R. pp. 4-5).

Appellant also moved for the court to reconsider the denial of credit for time served during the period when Appellant was solely civilly committed. (R. pp. 6-7). The court denied the motion. (*Id.*). Notice of this appeal followed. (R. pp. 127-31).

STATEMENT OF FACTS

The facts concerning Appellant's convictions are not in dispute. (R. pp. 49-53). The relevant facts instead pertain to Appellant's diagnosis of schizophrenia, which has at times rendered him not competent to stand trial and led to a period of civil commitment to DMH. (See R. p. 31, lines 2-21).

Prior to entry of Appellant's guilty plea, the court received testimony from Dr. Richard Frierson, whom the parties stipulated to as an expert in forensic psychiatry. Dr. Frierson testified on Appellant's behalf regarding a number of competency evaluations conducted during the course of Appellant's incarceration and civil commitment. (R. p. 22, lines 3-11).

Appellant was first evaluated for his competency to stand trial on August 15, 2007. Dr. Frierson found him genetically predisposed to mental illness and further found that, regardless of an absence of a personal history of mental illness, Appellant did not appear competent to stand trial at that time. (R. p. 23, lines 8-25; R. pp. 121-26). The court responded by ordering 60 days of competency restoration. (R. p. 24, lines 1-6; Supp. R. p. 1). During this time frame, DMH evaluations noted that Appellant presented in a manner indicative of malingering. (R. pp. 113-20). It appeared he may be feigning psychosis. (R. p. 24, lines 2-21).

Spawned by concerns by jailhouse officials and defense counsel, the court again ordered Dr. Frierson to evaluate Appellant in early 2009. (R. p. 24, line 22 – p. 25, line 23). A March 6, 2009, evaluation gave rise to a finding of genuine mental illness, another order for a 60-day commitment for competency restoration, and Appellant's second hospitalization at DMH. (R. p. 26, lines 4-13; R. pp. 106-12; Supp. R. pp. 2-3).

Following this second 60-day stint at DMH, Dr. Frierson found that Appellant's competency had not been restored and recommended a civil commitment. (R. p. 26, line 24 – p.

27, line 14; R. pp. 102-05). Following a hearing, a civil commitment order was issued October 7, 2009. (R. p. 9, lines 1-14; R. p. 1). The State subsequently dismissed the charges against Appellant on October 20, 2009. (R. pp. 9-12).

In 2014, Appellant's condition improved and DMH considered releasing him from inpatient treatment. (R. p. 28, lines 1-10). The State sought Appellant's re-evaluation for competency, and Dr. Frierson found Appellant mentally ill but competent to stand trial. (R. p. 28, line 13 – p. 30, line 23). The State then re-indicted Appellant on February 7, 2014. (R. pp. 13-16).

Between October 20, 2009, and February 7, 2014, Appellant remained in the custody of DMH's forensic hospital pursuant only to an order of civil commitment as provided in S.C. Code Ann. § 44-17-580 (2005). (R. p. 27, lines 18-22; *see* R. pp. 9-16). Except for both 60-day commitments, Appellant was housed at the county detention center until this October 2009 civil commitment. (*See* Supp. R. pp. 1-3). Once civilly committed, Appellant remained at DMH until the day before his plea. (*See* R. p. 34, line 7 – p. 35, line 22).

One week prior to the guilty plea, Dr. Frierson again evaluated Appellant and found him competent to stand trial. (R. p. 32, line 12 – p. 35, line 14; R. pp. 79-86). At this February 22, 2016, evaluation, Dr. Frierson opined that Appellant exhibited some signs of malingering. (R. p. 37, line 3 – p. 39, line 1). When Appellant pled guilty on February 29, 2016, Dr. Frierson affirmed his competency finding. (R. p. 42, lines 3-16).

ARGUMENT

- I. The trial court did not err when it denied time served credit for the period of Appellant's civil commitment because during the time frame at issue, Appellant had no charges pending upon which he could accrue time served credit, and was civilly committed for reasons other than the criminal charge to which he ultimately pled.**

Appellant fails to distinguish that the civil commitment at issue occurred pursuant to a separate probate court proceeding and was not part of the criminal penalty faced as a result of the shooting.

In a criminal case, the appellate court sits to determine whether the trial court abused its discretion by basing a ruling upon an error of law. *State v. Halcomb*, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009). "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. In such cases, the appellate court is not required to defer to the trial court's legal conclusions." *State v. Sweat*, 379 S.C. 367, 373, 665 S.E.2d 645, 649 (Ct. App. 2008) (quotation and citation omitted), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010).

At issue is the trial court's acceptance of "the State's argument that the time that [Appellant] spent under a civil commitment should not count toward his time served." (R. p. 77, lines 5-7). For a period of four years, three months, and eighteen days, Appellant had no charges pending against him and, as posited by the State, would therefore "not be entitled to credit for time served." (R. p. 63, lines 16-24).

- A. The statute governing calculation of time served does not instruct an award of time served credits for periods of time during which no charges are pending.

The pertinent section of the South Carolina Code mandates that time served "must be calculated from the date of the imposition of the sentence." S.C. Code Ann. § 24-13-40 (2013). And "in computing the time served by a prisoner, full credit against the sentence must be given

for time served prior to trial and sentencing.” *Id.* Credit should not be given (1) when the prisoner is an escapee and (2) when the prisoner is already serving time for one offense and awaiting trial on a second. *Id.*; *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000).

“The issue of interpretation of a statute is a question of law for the court.” *State v. Sweat, supra*. “Where the terms of a statute are clear, the court must apply those terms according to their literal meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope.” *Allen v. State, supra* (citations omitted). Of particular import in this case, this Court has interpreted the applicable statute as mandating the trial court apply credit for time served unless one of the two aforementioned exceptions applies. *State v. McCord*, 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002) (“this matter is not discretionary with the trial court”); *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (same). Neither statutory exception applies here.

The straightforward, common sense reading of § 24–13–40 in relation to the case at bar instructs that the trial court must credit a prisoner with time served awaiting disposition of his charges. S.C. Code Ann. § 24–13–40 (2013). Considering the foregoing, if no charges are pending against a prisoner, then time served credits cannot accrue. There is not an active indictment for any credits to accrue towards. Thus, the State posits that the trial court appropriately denied the motion to credit Appellant for the period of his civil commitment stemming from the October 20, 2009, dismissal of charges to his February 7, 2014, re-indictment. Time served credit is not warranted for the period in question because no charges remained pending and, as a result, Appellant could not accumulate time served credit.

Similarly, the statutory scheme Appellant cites in support of applying time served contemplates that criminal charges at all times remain pending against a hospitalized defendant

in order for him to be credited for the period of hospitalization at a later sentencing proceeding. S.C. Code Ann. § 44-23-460 (2011) (denoting procedure for hospitalized defendant who is mentally ill or intellectually disabled and barring prosecution where hospitalization exceeds maximum possible penalty for crime charged)¹; *see also In re: State v. Linkhorn*, Op. No. 27684 (S.C. Sup. Ct. filed Nov. 16, 2016) (Shearouse Adv. Sh. No. 44 at 55) (concluding that “if an individual cannot be involuntarily committed to DDSN following judicial admission proceedings, the individual *may* be confined in jail if there are criminal charges pending against him”). Factually, Appellant cannot garner time served credits for the time period at issue because his criminal charges were not continually pending.

B. The reason for Appellant’s confinement during the time in question was not penal in nature and time served credits are not applicable for periods of confinement unrelated to the ultimate conviction.

An additional rationale supports the trial court’s decision. Appellant’s civil commitment does not stem from his criminal adjudication, but rather occurred pursuant to the doctrine of *parens patriae*. The State may order an individual be confined for reasons other than those penal in nature. *E.g.* S.C. Code Ann. § 44-23-410 (2016), *et. seq.* (emergency admission of person likely to cause serious harm; procedures; court review; assessment by examiners; initiation of emergency commitment procedures; hearing; right to counsel).

Although a proceeding for the involuntary hospitalization of an individual considered, by those seeking commitment, to be mentally ill and to meet other statutory requirements for compulsory care is similar to a civil action, in personam, it is more in the nature of a special proceeding. It is a proceeding by the state not truly adversary in character, but based on the state’s authority of “*parens patriae*” and the state’s police power.

¹ Note that in this case, Appellant’s period of civil commitment does not come close to exceeding the maximum possible period of imprisonment for murder. *See* S.C. Code Ann. § 16-3-20 (2010).

8 S.C. Jur. Mental Health § 22.

Appellant's liberty was not lost during his period of civil commitment as a punitive consequence of the murder to which he ultimately pled guilty. Appellant was civilly committed pursuant to S.C. Code Ann. § 44-17-580 (2005). (R. p. 1). That is, Appellant's commitment stemmed from a judicial finding that he lacked sufficient insight or capacity to make responsible decisions with respect to his treatment, or due to a likelihood of serious harm to himself or others as a result of his mental condition. S.C. Code Ann. § 44-17-580 (2005).

The dismissal of Appellant's charges during the period of civil commitment denotes a shift in the State's interest and purpose in confinement. While the State initially acted to punish a criminal act, Appellant's confinement became, for a period of time, solely the result of the State's non-adversary interest in protecting the mentally ill. Thus, during the period in question, Appellant was not accumulating good time credits in relation to any past or future charge.

Specifically, conduct credit cannot be awarded for pretrial confinement on a finding of incompetency to stand trial, because sentence credits for good behavior are "particularly inconsistent" with the therapeutic goals of treating a defendant so that his competency can be restored. "The purpose of confinement is to restore the mental ability to stand trial. . . . [T]hat goal would be hindered if mere institutional good behavior and participation automatically reduced the therapy period." In short, the therapeutic purpose of incompetency confinement in a state hospital has little if anything to do with the statutory conduct credit incentive available to a competent criminal defendant held in jail prior to trial. The therapy must not be artificially shortened by a factor unrelated to psychiatric concerns.

People v. Callahan, 144 Cal. App. 4th 678, 686-87, 50 Cal. Rptr. 3d 677, 682-83 (Cal. Ct. App. 2006), *as modified* (Nov. 9, 2006) (internal citations and quotations omitted).

Between October 20, 2009, and February 7, 2014, Appellant underwent mental health treatment as a result of a judicial proceeding separate and unrelated to any criminal charge. Under such circumstances, time served credits are not due for the period of time during which Appellant had no charges pending against him. *People v. Mendez*, 151 Cal. App. 4th 861, 864,

60 Cal. Rptr. 3d 182, 184 (Cal. Ct. App. 2007) (“A defendant is entitled to credit for presentence custody only if he shows the conduct that led to his conviction was the sole reason for his loss of liberty during the presentence period.”) (jurisdiction requiring credit for time served in presentence custody) (citing *People v. Callahan*, *supra*); see *State v. Johnson*, 744 N.W.2d 376 (Minn. 2008) (denying time served credits for time spend in civil commitment where the commitment occurred prior and was unrelated to the criminal charge); *State v. Stafford*, 2002 WL 31859518 at *1, 2002-Ohio-7184, ¶ 4 (Oh. Ct. App. 2002) (unpublished) (per curiam) (no time served credits for period of civil commitment because commitment stemmed from loss of competency and therefore “cannot be treated as confinement arising out of the offense under which he was convicted”).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should affirm Appellant’s convictions and sentence for murder and possession of a weapon during the commission of a violent crime.

Respectfully submitted,

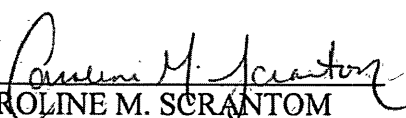
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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Abbeville County
Honorable R. Scott Sprouse, Circuit Court Judge**

THE STATE,

Respondent,

v.

TREY C. BROWN,

Appellant

Appellate Case No. 2016-000526.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

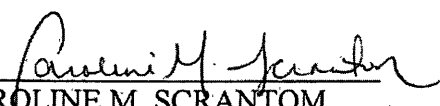
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TREY C. BROWN,

Appellant

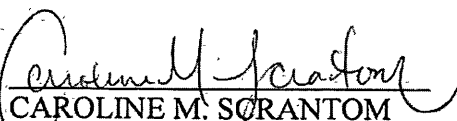
Appellate Case No. 2016-000526.

PROOF OF SERVICE

I, Caroline M. Scrantom, counsel for the Respondent, certify that I have served the within Final Brief of Respondent by depositing two (2) copies of the same in the United States mail, addressed to his attorney of record at:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

Trey Brown

Appellant.

Final Reply Brief of Appellant

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ARGUMENT

Did the trial court err when it denied Trey Brown full credit for time served from September 9, 2006, the date of his arrest, when Mr. Brown remained in the custody of the State of South Carolina pursuant to his arrest and the procedures mandated by S.C. Code Ann. § 44-23-410, *et. seq.*?

The State contends this matter is governed by S.C. Code Ann. § 44-17-580 without regard for the provisions of § 44-23-410, *et. seq.* This argument is without merit because § 44-23-430 expressly limits the application of §§ 44-17-510 through 610 by the provisions of § 44-23-460.¹ Section 44-23-460 requires Mr. Brown receive credit for time he was committed to the Department of Mental Health ("DMH"). Based on a finding of lack of competency, § 44-23-430(2) required the Solicitor to "initiate judicial admission proceedings" for Mr. Brown. The Respondent's Brief, however, mischaracterizes Mr. Brown's commitment to DMH as a civil commitment separate from the criminal charges for which the trial court sentenced Mr. Brown to a term of imprisonment. Because Mr. Brown's commitment to DMH directly resulted from the State's criminal prosecution, the statutory scheme contemplates Mr. Brown receiving credit for the time of his DMH commitment. Section 44-23-460(2) expressly contemplates a person receive credit for time served during a commitment for lack of competency.

The Respondent's Brief misstates the rules followed in California and Minnesota. The cases cited in the State's brief involved commitments that actually were separate from the charge for which the defendant sought credit for time served. *People v. Callahan*, 144 Cal.App.4th 678, 50 Cal.Rptr.3d 677 (2006) (as modified Nov. 9, 2006),

¹ In fact, § 44-23-460 very arguably prohibits the Solicitor from dismissing the charges so that the General Sessions Court retains jurisdiction.

involved a 1997 insanity commitment for one set of charges. In 2004, while still hospitalized under the 1997 commitment, Callahan committed a battery on a hospital guard. The California court held that the time hospitalized under the insanity commitment did not apply to the new battery charge. In *People v. Mendez*, 151 Cal.App.4th 861, 60 Cal.Rptr.3d 182 (2007), while hospitalized on an unrelated insanity commitment, Mendez assaulted another patient with a deadly weapon. *Mendez* followed the rule in *Callahan*. Essentially, these two individuals were “serving a sentence for one offense and awaiting trial and sentence for a second offense,” which would not result in credit for time served under S.C. Code Ann. § 24-13-40. That was not the case for Mr. Brown who did not have any other charges.

In reality, California long ago held that a defendant committed to a state hospital prior to trial is entitled to credit for that time. *People v. Cowsar*, 40 Cal.App.3d 578, 581, 115 Cal.Rptr. 160, 161 (1974) was concerned about the “unconstitutional disparity in treatment between those confined in jail and in a state hospital prior to trial.” *And see In re Banks*, 88 Cal.App.3d 864, 152 Cal.Rptr. 111 (1979) (held equal protection and due process of law mandate that, in calculating maximum duration of an incompetency commitment, credit must be given for pre-commitment confinement attributable to same criminal prosecution).

In a similar manner, the State misstates the rule in Minnesota. In *State v. Johnson*, 744 N.W.2d 376 (Minn. 2008), while serving a civil commitment as a sexual offender, Johnson made terroristic threats against members of the hospital staff. Under these circumstances, the Minnesota Supreme Court did not allow credit the time for the prior civil commitment towards the new criminal charge. In reality, Minnesota ordinarily

requires a defendant receive credit for time served in a secure state hospital facility after a finding of incompetency to stand trial. *State v. Bonafide*, 457 N.W.2d 211 (Minn. 1990).

The Kansas Supreme Court explained the rationale for the rule followed in *Bonafide*:

The physical place of confinement is not important as the appellant technically continued to be in jail while held in custody at the hospitals. He was not free on bail, had no control over his place of custody and was never free to leave the hospitals. For all practical intents and purposes, he was still in jail. The court takes judicial notice that the state mental hospitals have the facilities to enforce confinement of their patients, which brings them within the dictionary definition of a "jail."

State v. Mackley, 220 Kan. 518, 519, 552 P.2d 628, 629 (1976).

Other states follow the same rule as California, Minnesota, and Kansas. *E.g. Tal-Masso v. State*, 515 So.2d 738, 739-40 (Fl. 1987) ("there is 'no meaningful distinction ... between incarceration before trial in a county jail, and state enforced confinement in a mental hospital in preparation for trial.'"); *State v. La Badle*, 87 N.M. 391, 534 P.2d 483 (1975) (held that defendant who was ordered confined in state mental hospital under maximum security conditions after he had been found incompetent to stand trial during evidentiary hearing in criminal proceedings which involved felony charges was held in "official confinement on suspicion or charges of the commission of a felony" within meaning of statute providing for credit on sentences for time spent in presentence confinement.). *Commonwealth v. Jones*, 211 Pa.Super. 366, 236 A.2d 834 (1967) (held that defendant who was charged with arson and committed to state hospital prior to plea of guilty was in custody so that he was entitled to have time spent in hospital credited toward sentence received for crime charged); *State v. Ewell*, 234 Md. 56, 60, 198 A.2d 275, 277 (1964) ("time spent under detention in a mental institution should be counted as

a part of the sentence served”); *People ex. rel. Molina v. Noble*, 28 Misc.2d 646, 216 N.Y.S.2d 541 (1961) (held that a prisoner detained in the New York City correctional institution was entitled to credit on his sentence for the time he was incarcerated prior to conviction in the Matteawan State Hospital for the criminally insane); *Petition of Stearns*, 343 Mass. 53, 175 N.E.2d 470 (1961) (writ of habeas corpus on the ground that if the time spent in a state hospital by the petitioner were deducted from his sentences the petitioner would be entitled to an immediate discharge).

DMH placed Mr. Brown at the Columbia Regional Care Center, located on DMH property on Farrow Road in Columbia, South Carolina, operated by Correct Care Solutions “in partnership with the SC Department of Mental Health and Bryant Psychiatric Hospital,” and self-described as “the only private detention healthcare facility in the United States.” An overhead photograph of the facility, found on Correct Care Solutions website, demonstrates the secure nature of this “detention healthcare facility,” confirming the State detained Mr. Brown in the same manner has a county detention center.²

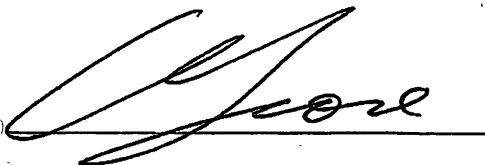
The plain meaning of § 44-23-410, *et. seq.* mandates a defendant hospitalized for lack of competency receive credit for time served while committed to DMH. As pointed out by the California courts, a contrary interpretation would violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. *See State v. McGrier*, 378 S.C. 320, 663 S.E.2d 15 (2008) (“legislative acts are to be construed in favor of constitutionality and will be presumed constitutional absent a showing to the contrary”). *See also* S.C. Const. Art. I, § 3.

² <http://www.correctcaresolutions.com/our-services/crcc/> (last viewed Jan. 22, 2017).

CONCLUSION

This Court should reverse the trial court judge and enter an order granting Mr. Brown full credit for time served from September 9, 2006, the date of his arrest.

Respectfully Submitted,

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May 31, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

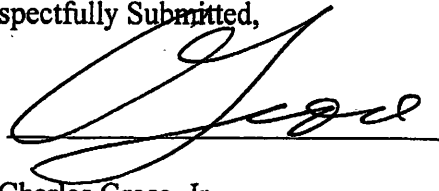
Trey Brown

Appellant.

Rule 211(b), SCACR Certification

The undersigned counsel certifies that the Final Reply Brief of Appellant complies with Pursuant to Rule 211(b), SCACR.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case Number 2016-000526

State of South Carolina

Respondent

vs.

Trey Brown

Appellant.

Certificate of Service

I certify that I have served the Final Brief of Appellant and Final Reply Brief of Appellant on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

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June 6, 2017

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

The State, Respondent,

v.

Trey Chavez Brown, Appellant.

Appellate Case No. 2016-000526

Appeal From Abbeville County
R. Scott Sprouse, Circuit Court Judge

Opinion No. 5624
Submitted September 19, 2018 – Filed February 13, 2019

REVERSED AND REMANDED

E. Charles Grose, Jr., of Grose Law Firm, and Janna A. Nelson, both of Greenwood, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
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THOMAS, J.: Trey C. Brown appeals the circuit court order amending his sentence for murder and possession of a weapon during the commission of a violent crime and denying his request for additional credit for time served. On appeal, Brown argues the circuit court erred by denying him credit for time served

for the entire time period between his arrest date and the date of his guilty plea and sentencing. We reverse.

In 2006, Brown turned himself in to the Aiken County Sheriff's Office for the murder of his father-in-law and was indicted for murder and possession of a weapon during the commission of a violent crime. On August 15, 2007, Dr. Richard Frierson evaluated Brown and found him incompetent to stand trial. As a result, on October 4, 2007, the circuit court ordered Brown to be committed to the South Carolina Department of Mental Health (the Department) for sixty days for competency restoration. In February 2009, the circuit court ordered that Brown be re-evaluated. On March 6, 2009, and April 3, 2009, Dr. Frierson evaluated Brown and found he had a genuine mental illness. Accordingly, the circuit court ordered Brown be committed to the Department for sixty days for competency restoration. After Brown completed his second sixty-day commitment to the Department, Dr. Frierson found Brown was still incompetent and recommended that Brown be civilly committed. Following a hearing, on October 7, 2009, Brown was committed to the Department pursuant to section 44-17-580 of the South Carolina Code (2017). Except for both sixty-day commitment periods, Brown was housed in the county detention center from his arrest until his civil commitment on October 7, 2009. The State dismissed the charges against Brown on October 20, 2009.

In early 2014, the Department began to consider releasing Brown due to his improved condition. As a result, the State re-indicted Brown for murder and possession of a weapon during the commission of a violent crime on February 7, 2014, and requested that Brown be evaluated by Dr. Frierson, who found Brown mentally ill but competent to stand trial. On February 22, 2016, Dr. Frierson evaluated Brown and, again, found him competent to stand trial. Brown remained committed in the Department until the day before he pled guilty. Brown pled guilty on February 29, 2016, and the circuit court sentenced him consecutively to thirty years' imprisonment for murder and five years' imprisonment for possession of a weapon during the commission of a violent crime.

At the sentencing, the circuit court gave Brown credit for time served between his arrest on September 9, 2006, and the State's dismissal of his charges on October 20, 2009, amounting to three years, one month, and eleven days credit for time served. However, the court denied Brown credit for time served for his civil commitment, the time period after the State dismissed his charges. A few days later, the circuit court issued a consent order amending Brown's credit for time served to also include credit for Brown's pre-trial confinement between February 7,

2014, when the State re-indicted Brown, and February 29, 2016, when Brown pled guilty and was sentenced. The circuit court denied Brown time-served credit "during the time of his commitment to [the Department] between October 20, 2009, and the time of his re[-]indictment on February 7, 2014."

"In criminal cases, the appellate court sits to review errors of law only." *State v. Halcomb*, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009). "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the [circuit] court properly applied the law to those facts. In such cases, the appellate court is not required to defer to the [circuit] court's legal conclusions." *State v. Sweat*, 379 S.C. 367, 373, 665 S.E.2d 645, 649 (Ct. App. 2008) (quoting *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 242, 597 S.E.2d 165, 167 (Ct. App. 2004)).

In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

S.C. Code Ann. § 24-13-40 (2018).

In *Blakeney v. State*, our supreme court defined time served as used in section 24-13-40 as "the time during which a defendant is in pre-trial confinement *and* charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction)." 339 S.C. 86, 88, 529 S.E.2d 9, 10–11 (2000) (emphasis in original). Blakeney was arrested and jailed on August 21, 1992, in Berkeley County for a charge that was unrelated to the one for which he was ultimately convicted. *Id.* at 87, 529 S.E.2d at 10. On August 31, 1992, the Beaufort County Sheriff's Department placed a hold on Blakeney relating to a robbery that occurred in Beaufort County on August 19, 1992. *Id.* On September 1, 1992, Beaufort County issued an arrest warrant but did not serve it. *Id.* Berkeley County dismissed the charges against Blakeney in late 1993. *Id.* On December 2, 1993, the Beaufort County Sheriff's Department arrested Blakeney on the robbery charge, and Blakeney was subsequently convicted and sentenced. *Id.* The

Department of Corrections (DOC) gave Blakeney credit for time served after his arrest on December 2, 1993. *Id.* Blakeney filed a post-conviction relief action, and the PCR judge ordered the DOC to give Blakeney credit for time served from September 1, 1992, the date Beaufort County issued the arrest warrant but chose not to serve it. *Id.* at 88–89, 529 S.E.2d at 11. The supreme court affirmed, finding Blakeney was confined as a result of the hold and charged pursuant to the arrest warrant as of September 2, 1992. *Id.* The court noted:

If Beaufort County had executed the arrest warrant on September 1, 1992, [Blakeney] would have been entitled to bail; if unable to post a bond, he would have been given credit for time served in the Berkeley County jail while awaiting trial on the Beaufort County charge. Beaufort County's decision not to execute the arrest warrant until December 2, 1993, fifteen months later, should not preclude [Blakeney] from receiving credit from September 1, 1992.

Id.

Although Brown was not technically charged with an offense between October 20, 2009, and February 7, 2014, a finding that Brown is not entitled to time-served credit would conflict with the General Assembly's mandate that prisoners receive credit for all time served. *See Hayes v. State*, 413 S.C. 553, 559, 777 S.E.2d 6, 10 (Ct. App. 2015) ("The requirement that a prisoner receive credit for time served is mandatory."). The statute demands prisoners receive credit for all time served unless "either (1) they were an escapee or (2) the prisoner was already serving a sentence on a different offense." *Id.* at 560, 777 S.E.2d at 10. Brown was confined as a result of the prosecution of his original charges. The State chose to dismiss Brown's charges when he was deemed incompetent to stand trial. However, when the State discovered Brown was likely to regain competency, it re-indicted him on the same charges. We find this scenario is similar to *Blakeney*, where the supreme court held a defendant was entitled to credit for time served even though a county waited to execute an arrest warrant for over a year after they issued it. *See Blakeney*, 339 S.C. at 87–89, 529 S.E.2d at 10–11. Had the State left the charges pending against Brown, he would have definitely been entitled to credit for the time he was confined to the Department. *See id.* ("If Beaufort County had executed the arrest warrant on September 1, 1992, [Blakeney] would have been entitled to bail; if unable to post a bond, he would have been given credit for time served in the Berkeley County jail while awaiting trial on the Beaufort County

charge. Beaufort County's decision not to execute the arrest warrant until December 2, 1993, fifteen months later, should not preclude [Blakeney] from receiving credit from September 1, 1992."). Denying time-served credit in this scenario would be at odds with the General Assembly's express language in the statute that prisoners receive credit for all time served. *Hayes*, 413 S.C. at 560, 777 S.E.2d at 10 ("Where the terms of a statute are clear, the court must apply those terms according to their literal meaning." (quoting *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000))).

According to the probate court's 2009 order finding Brown incompetent to stand trial, Brown was ordered to be committed to the "forensics unit" at the Department.¹ Thus, for the entire period Brown was committed, he was housed in the secure facility of the forensics division and kept separate from other patients. Further, the probate court's order has a handwritten notation stating, "Should Mr. Brown regain competency, he shall be discharged to the Abbeville County Detention Center, and the Solicitor shall be notified pursuant to state law." According to section 44-23-460 of the South Carolina Code (2018), if the superintendent of a hospital "believes that a person against whom criminal charges are pending no longer requires hospitalization, the court in which criminal charges are pending shall be notified." Although charges were no longer pending against Brown as of October 20, 2009, the State continued to receive information about Brown and was notified, pursuant to the probate court's order, as soon as the Department believed Brown could be released due to his improved condition in early 2014. After the State was notified, it re-indicted Brown for the same charges on February 7, 2014, and requested another competency evaluation. Thus, it is clear from the probate court's order and the subsequent actions of the solicitor that the State intended to prosecute Brown as soon as he regained competency.

Moreover, section 44-23-460(2) of the South Carolina Code (2018) would have barred the prosecution of Brown if he had "been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged." Thus, if Brown had been committed for longer than the possible sentence for his crime, the State would not

¹ According to the Department's website, "Patients in the [G. Weber Bryan Psychiatric Hospital]'s Forensics Division are primarily referred by jails and criminal courts from throughout the state, and are housed separately from patients in the Adult Services Division in a more secure area of the hospital." *See Hospital / Program Services Directory*, South Carolina Department of Mental Health, https://www.state.sc.us/dmh/dir_facilities.htm#Bryan1 (last visited Feb. 7, 2019).

have been able to re-indict him. The time-served statute mandates prisoners be given "*full credit* against the sentence . . . for time served prior to trial and sentencing." § 24-13-40 (emphasis added). We find, under the limited and unique facts of this case, Brown is entitled to credit for time served even though there were no charges pending against him. Although the charges were technically dropped, the result was functionally the same as if the charges were still pending against Brown. He was confined before trial as a result of his criminal charges and he pled guilty to those charges when he was later re-indicted. *See State v. Higgins*, 357 S.C. 382, 384, 593 S.E.2d 180, 182 (Ct. App. 2004) ("Generally, penal statutes are to be construed 'strictly against the State and in favor of the defendant.'" (quoting *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991))). During this period of time, Brown was held in a secure facility with other criminal patients and never released from custody. Thus, we hold Brown is entitled to credit for time served for the period of time he was civilly committed but no charges were pending against him. We remand to the circuit court to give Brown credit for time served between October 20, 2009, and February 14, 2014.

REVERSED AND REMANDED.²

LOCKEMY, C.J., and GEATHERS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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

**Appeal from Abbeville County
Honorable R. Scott Sprouse, Circuit Court Judge**

THE STATE,

Respondent,

v.

TREY C. BROWN,

Appellant

Appellate Case No. 2016-000526.

PETITION FOR REHEARING

Respondent requests rehearing pursuant to Rule 221(a), SCACR. While the result reached by this Court may be equitable, Appellant is not entitled to time served as a matter of law. Respondent submits this Court has misapprehended the statute governing time-served. This case was scheduled for oral argument and instead submitted on the briefs pursuant to Rule 15, SCACR, following the closures caused by September 2018's Hurricane Florence. Respectfully, Respondent seeks rehearing due to a perceived misapprehension of the law in the result reached by this Court.

"The computation of the time served *by prisoners* under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence." S.C. Code Ann. § 24-13-40 (eff. June 11, 2010) (emphasis added). If the sentencing court designates

“a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from th[at] date of the commencement.” *Id.* “In every case in computing the time served *by a prisoner*, full credit against the sentence must be given for time served prior to trial and sentencing.” *Id.* (emphasis added). Credit should not be given (1) when the prisoner is an escapee and (2) when the prisoner is already serving time for one offense and awaiting trial on a second. *Id.*; *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000). In a 2013 amendment, our General Assembly reconsidered time-served by prisoners and added that it “may be given for any time spent under monitored house arrest.” S.C. Code Ann. § 24–13–40 (eff. June 7, 2013); 2013 South Carolina Laws Act 34 (H.B. 3193). The plain language of the statute instructs no more and no less.

“Where the terms of a statute are clear, the court must apply those terms according to their literal meaning.” *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000). “The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope.” *Id.* “However, [a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *State v. Higgins*, 357 S.C. 382, 385, 593 S.E.2d 180, 182 (Ct. App. 2004) (internal quotations omitted). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The time-served by prisoners requirement is mandatory, *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010), and its plain-language applicability is premised upon the pendency of criminal charges against the accused. In *State v. Higgins*, *supra*, this

Court found the plain and ordinary meaning of § 24-13-40's term "prisoner" indicated a legislative intent to award sentencing credit only "to those who actually spend time confined in a penal institution." 357 S.C. at 385, 593 S.E.2d at 182. The calculation of time-served has elsewhere been strictly interpreted to commence upon submission to the custody of the South Carolina Department of Corrections, and not merely upon affirmance of a defendant's conviction and sentence. *Robinson v. State*, 329 S.C. 65, 68, 495 S.E.2d 433, 435 (1998) (time-served calculation for persons released on appeal bond).

Our General Assembly has not spoken to the meaning of time-served as it pertains to detainment in a mental health facility pursuant *only* to an order of civil commitment, as is the case here. Our General Assembly may speak on this issue yet, but the plain meaning of the statute as written and as previously interpreted by our courts does not allow for or contemplate the award granted Appellant. The statute relied upon by this Court's time-served calculation in fact contemplates that criminal charges at all times remain pending against a hospitalized defendant in order for the defendant to receive time-served credit for the hospitalization period. S.C. Code Ann. § 44-23-460 (2011) ("Procedure when superintendent believes *person charged with crime* no longer requires hospitalization" (emphasis added)). The Court's construction of § 44-23-460 in this case is at odds with the plain meaning of the time-served statute. Both Appellant and this Court fail to distinguish that Appellant's period of civil commitment occurred pursuant to a separate probate court proceeding and was not part of the criminal penalty faced as a result of the shooting.

The trial court denied Appellant credit for time served between the dates of October 20, 2009, and February 7, 2014, because no criminal charges were pending against him. During this time, Appellant could not be construed as a "prisoner" subject to the statute governing

computation of time-served. S.C. Code Ann. § 24-13-40; *State v. Higgins, supra*. Rather, Appellant was civilly committed to the South Carolina Department of Mental Health (DMH) under separate, non-prosecutorial proceedings governed by the discernible S.C. Code Ann. § 44-17-580. (R. p. 1). In October 2009, Appellant was not committed pursuant to S.C. Code Ann. § 44-23-410 (determining fitness to stand trial), which was relied upon in this Court's opinion. Nor was Appellant a pretrial or presentence detainee under § 24-13-40. Rather, Appellant was subject to involuntary hospitalization by judicial procedure completed within the jurisdiction of the South Carolina Probate Court. S.C. Code Ann. § 44-17-510, *et. seq.* Factually, Appellant cannot garner time served credits for the time period at issue because his criminal charges were not continually pending, his commitment was not a result of a hearing to determine his fitness to stand trial, and no statutory interpretation allows for time-served credit in Appellant's circumstance. *State v. Higgins, supra* (denying time-served credit for pretrial detention served on house arrest where the plain meaning of § 24-13-40 did not allow it).

As noted in this Court's opinion, *Blakeney* and *Crooks* have elsewhere defined "time served" in § 24-13-40 as meaning "the time during which a defendant is in pre-trial confinement *and* charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction)." *Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10-11 (2000) (emphasis in original). But *Blakeney* interpreted a hold from another county sheriff's office as allowing time-served. *Id.* Thus, the *Blakeney* court's opinion only spoke to "time-served" relating to a prisoner's presentence incarceration in another jurisdiction. That case remains distinguishable from Appellant's condition of confinement within DMH, as Appellant (1) was not in any pretrial or presentence confinement when there were no pending charges; (2) and as it cannot be said that the State held the intent to prosecute Appellant, who had been found not

competent and not likely to restore, and whose criminal charges had had been *not prossed* by the State following the probate proceeding. To the extent this Court considered the conditions of Appellant's confinement at DMH as the functional equivalent of another sheriff's office's hold upon the defendant in *Blakeney*, that consideration is not only incongruent, but mooted by the absence of pending criminal charges during the time frame at issue.

Moreover, this Court's interpretation of the conditions of confinement as a premise supporting the application of time-served is mooted by the nature of Appellant's civil commitment proceedings. Civil commitments hold a purpose entirely different from that of any statute pertaining to the computation of time-served credit for prisoners. *E.g.* S.C. Code Ann. § 44-17-410 (2016), *et. seq.* (emergency admission of person likely to cause serious harm; procedures; court review; assessment by examiners; initiation of emergency commitment procedures; hearing; right to counsel). The State may order an individual be confined for reasons other than those penal in nature. An involuntary hospitalization "is a proceeding by the state not truly adversary in character, but based on the state's authority of 'parens patriae' and the state's police power" enacted in the interest of the mentally ill—not the criminal. 8 S.C. Jur. Mental Health § 22. This Court should not overlook the difference between a penal confinement and a person's commitment for mental health treatment.

Critically, Appellant's liberty was not lost during his period of civil commitment as a *punitive* consequence of the murder to which he ultimately pled guilty. Appellant was civilly committed pursuant to S.C. Code Ann. § 44-17-580 for symptoms later developed in pre-trial

confinement.¹ (R. p. 1). That is, Appellant was committed because a judicial officer found that he lacked sufficient insight or capacity to make responsible decisions with respect to his treatment, or because of a likelihood of serious harm to himself or others as a result of his mental condition. S.C. Code Ann. § 44-17-580. The dismissal of Appellant's charges during this period of civil commitment denotes a shift in the State's interest and purpose in confinement. While the State initially acted to punish a criminal act, Appellant's confinement became, for a period of time, solely the result of the State's non-adversarial interest in protecting the mentally ill. *See* 8 S.C. Jur. Mental Health § 22. Thus, during the period in question, Appellant was not accumulating good time credits in relation to any past or future charge, and his time could not be counted as that of a "prisoner" as required by the time-served statute.

Finally, if undisturbed, the Opinion of this Court leads to an ambiguous result for future applications. As noted by this Court, the question of this Appellant's accumulation of time-served credit derives from a unique factual posture. However, the decision reached is built upon the presupposition that a civilly committed one-time criminal defendant will regain the competency required for prosecution. The decision reached also presupposes that the State always has an intent to prosecute regardless of the competency of the defendant. Both presuppositions are contrary to the record in this case because the State *not* *prossed* Appellant's charges when Appellant was evaluated as genuinely mentally ill and not likely to restore competency to stand trial.² (R. pp. 9-12, 26-27, 63). In a scenario capable of repetition, Appellant

¹ Of relevance on this point, Dr. Frierson testified that Appellant's evaluations from DMH during his first 60-day commitment, which occurred prior to October 2009, noted that Appellant presented in a manner indicative of malingering. (R. pp. 24, 113-20; *contra* R. p. 25-26).

² To the extent the Court relies upon the lower court's handwritten language on the civil commitment Order that directed Appellant be returned to the custody of the detention center, that Order was made prior to the charges being *not* *prossed*. (R. p. 1). After the State rescinded the

served mutually exclusive timeframes of confinement as both a pre-trial detainee and as a mental health patient. Yet this Court's award of time-served credit veers away from the plain meaning of "prisoner" utilized in § 24-13-40. Now, an individual may garner time-served credit for periods of time in which he or she was actually not charged with any crime, yet was undergoing mental health treatment in the care and custody of DMH, and regardless of any future intent to prosecute for then-unlevied criminal acts.³ This is a result the plain meaning of the time-served statute could not intend. The purpose of Appellant's confinement during the time period in question was only for that of mental health treatment, regardless of the type of mental health facility housing the individual. Would this Court reach the same conclusion if the record in this case evidenced that Appellant spent time in a privatized facility as a result of the same civil commitment proceeding? Is the type of mental health facility in which a person who later regains competency and is later prosecuted for a prior criminal act a proper consideration at the time of sentencing, where sentencing is a matter of statutory law and not equity?

The straightforward, common sense reading of § 24-13-40 in relation to the case at bar instructs that the trial court must credit a prisoner with time served awaiting disposition of his charges. S.C. Code Ann. § 24-13-40. If no charges are pending against a prisoner, and there is no active indictment, then time served credits cannot accrue. Accordingly, the trial court's denial of time-served during Appellant's period of civil commitment did not amount to an error of law.

charges (and prior to such time as they were reinstated), the detention center would not have had the authority to take Appellant into custody because he was not eligible to be kept as a prisoner. See S.C. Code Ann. § 24-5-60 (2010).

³ For which there is no statute of limitations or other bar. See S.C. Code Ann. § 44-23-460(2) (prosecution barred if defendant subject to mental health hospitalization "for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged").

State v. Halcomb, 382 S.C. 432, 438, 676 S.E.2d 149, 152 (Ct. App. 2009) (enunciating applicable standard of review). Between October 20, 2009, and February 7, 2014, Appellant underwent mental health treatment as a result of a judicial proceeding separate and unrelated to any criminal charge. Under such circumstances, time served credits are not due for the period of time during which Appellant was not a prisoner and did not face any criminal penalty.

For the foregoing reasons, it is respectfully submitted that this Court should grant rehearing to consider a more narrow reading of S.C. Code Ann. § 24-13-40 in light of *State v. Higgins, supra*, and the juxtaposition of the plain and ordinary meaning of the term prisoner with the purpose of confinement as a result of a civil commitment.

Respectfully submitted,

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February 28, 2019
Columbia, South Carolina

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

Respondent,

v.

TREY C. BROWN,

Appellant

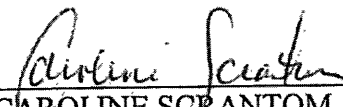
Appellate Case No. 2016-000526.

PROOF OF SERVICE

I, Caroline M. Scrantom, counsel for the Respondent, certify that I have served the within Petition for Rehearing by depositing two (2) copies of the same in the United States mail, addressed to his attorney of record at:

E. Charles Grose, Jr.
The Grose Law Firm, LLC
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I further certify that all parties required by Rule to be served have been served this 28th day of February, 2019.


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The South Carolina Court of Appeals

The State, Respondent,

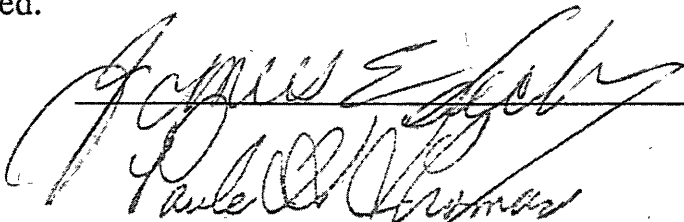
v.

Trey Chavez Brown, Appellant.

Appellate Case No. 2016-000526

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

FILED

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March 21, 2019

David Matthew Stumbo, Esquire
The Honorable R. Scott Sprouse