

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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OCT 03 2019

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Post Conviction Relief

S.C. SUPREME COURT

Honorable Walton J. McLeod, IV, Circuit Court Judge

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App. Case No: 2019-001060

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Andrew E. Torrence,

Petitioner,

vs.

State of South Carolina,

Respondent.

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APPENDIX  
VOLUME IV OF IV

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SCDC# 346350 TORRENCE JR, ANDREW E

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SIGNED OFF ON 01/23/12 @ 14:50 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 101 MENTAL HEALTH CLINIC 01/23/12 14:14 BROAD RIVER COMP  
THIS WAS MY FIRST VISIT WITH HIM. MS TRIPLIN AND DR. RANSOME ALSO ATTENDED.  
S: HE HAD VARIOUS COMPLAINTS, INCLUDING ANX., PANIC ATTACKS, AH, PARANOID I  
DEAS AND POSSIBLE HYSTERICAL NUMBNESS. HE HAD BEEN REFUSING HIS MEDS.  
O: GOOD SPEECH, AFFECT AND ACTIVITY LEVEL.  
A: DXS HAVE BEEN PSYCHOSIS, NOS; PERSONALITY NOS. TO THIS WE CAN PROBABLY A  
DD PANIC ATTACKS, H/O NONCOMPLIANCE, H/O HOARDING MEDS.  
P: RESUME HIS REGULAR LIQUID MEDS. ADD LIQUID VISTARIL FOR ANX.  
LABS: CMP, CBC.  
HYDROXYZINE HCL LIQ 10MG/5ML (USE FOR VISTARIL/ATARAX)  
SIG: 100 MG PO TID  
SIG:  
START DATE: 01/23/12 TOTAL DAYS: 167  
MD: POILETMAN, ROBERT M  
SIGNED OFF ON 01/23/12 @ 14:25 BY ROBERT M POILETMAN, PSYCHIATRIST  
MAR REFLECTED OF NEW MEDICATION.  
SIGNED OFF ON 01/23/12 @ 14:51 BY REBECCA L DURAN, UNCLASSIFIED

\*\* ENCOUNTER: 100 MENTAL HEALTH CLINIC 01/23/12 12:49 BROAD RIVER COMP  
INDIVIDUAL NOTE:  
D--MET WITH I/M ON TODAY WHILE BEING EXAMINED BY MEDICAL DUE TO STATING THA  
T HE WAS HAVING "PANIC ATTACKS". CCC ROBERTS ACCOMPANIED WRITER. I/M STATED  
THAT HE HAD BEEN FEELING "TIRED" WITH INCREASED "ANXIETY". I/M STATED THAT  
HE DID REFUSE MEDICATIONS DUE TO THOSE FEELINGS. WRITER SPOKE WITH NURSE B  
EECH ON THIS MORNING AND HE REPORTED WHAT I/M REPORTED TO WRITER ON TODAY.  
BEECH CONFIRMED THAT I/M HAD REFUSED MEDS ON YESTERDAY (01/22/12) AND TODAY  
(01/23/12). WRITER REQUESTED PSYCHIATRIST TO SEE I/M ON TODAY DUE TO HIS CO  
MPLAINTS AND RECENT MEDICATION CHANGES (LIQUID RISPERDAL AND PROZAC). I/M W  
AS INFORMED THAT HE WOULD BE SEEN BY PSYCHIATRIST ON TODAY.  
A--ALERT AND ORIENTED IN ALL SPHERES. MOOD--SEEMED TO HAVE BEEN CALM, NO BREA  
THING HARD, DID NOT APPEAR TO BE IN ANY DISTRESS DURING ASSESSMENT WITH WRI  
TER. I/M WAS ABLE TO SPEAK CLEARLY AND CALMLY. AFFECT--DID NOT APPEAR TO BE  
IN DISTRESS AT THE TIME. WAS ABLE TO EXPLAIN WHAT WAS GOING ON. DENIED SI/H  
I. NO REPORTED HALLUCINATIONS DURING THIS SESSION. THOUGHT PROCESS--LOGICAL/  
GOAL ORIENTED. THOUGHT CONTENT--APPROPRIATE. NO DELUSIONS, BIZARRE BEHAVIORS  
, PSYCHOSIS PRESENTED DURING SESSION. APPEARANCE--APPROPRIATE FOR SITUATION.  
P--PSYCHIATRIST WILL SEE I/M ON TODAY AND MENTAL HEALTH WILL CONTINUE TO FO  
LLOW PER POLICY.  
SIGNED OFF ON 01/23/12 @ 13:00 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I  
NOTED.  
SIGNED OFF ON 01/23/12 @ 14:51 BY REBECCA L DURAN, UNCLASSIFIED

\*\* ENCOUNTER: 99 NARRATIVE 01/21/12 17:42 BROAD RIVER COMP  
IM C/O FEELING ANXIOUS AND NERVOUS, DENIES AND SI/HI. INFORMED THAT HE WILL  
BE SEEN BY CCC STAFF ON 2/23/2012.  
SIGNED OFF ON 01/21/12 @ 17:44 BY HARVEY BEACH, LICENSED PRACTICAL NURSE  
WRITER INFORMED DR. POILETMAN DURING PSYCH CLINIC. WRITER HAS REQUESTED FOR  
I/M TO BE BROUGHT DOWN FOR PSYCH CLINIC TO DISCUSS SYMPTOMS AND MEDICATION

MDCI880D  
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
SCDC HEALTH SERVICES: MEDICAL SUMMARY

09/13/17  
C057031

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S.

SIGNED OFF ON 01/23/12 @ 11:25 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I  
ABOVE NOTED. NO NURSING INTERVENTIONS NEEDED AT THIS TIME  
SIGNED OFF ON 01/23/12 @ 14:44 BY TIANNA R RANDOLPH, UNCLASSIFIED

\*\* ENCOUNTER: 98 MENTAL HEALTH CLINIC 01/12/12 13:44 BROAD RIVER COMP  
INDIVIDUAL SESSION:

D--MET WITH I/M IN WRITER'S OFFICE. I/M REPORTED THAT HE WAS DOING WELL. WRITER INFORMED HIM ABOUT WHY HE WAS RECEIVING LIQUID MEDICATION. I/M ACCEPTED INFORMATION WITHOUT CHALLENGE. I/M STATED THAT HE DOES NOT HAVE TO PUT UP WITH ALL THE MESS THAT GOES ON WHEN ON THE YARD. I/M STATED THAT HE IS STILL EXPERIENCING A/V HALLUCINATIONS AND FEELS THAT SOMEONE HAS "HYPNOSIS ON ME". HE STATED THAT HE WOULD LIKE FOR "DR. SWARTZ" TO COME IN AND ASSESS HIM. WRITER INFORMED I/M THAT IF THE PSYCHIATRIST FEELS THAT OTHER TESTING NEEDS TO BE DONE, THEN HE/SHE WILL ORDER IT. WRITER INQUIRED ABOUT THE PILLS THAT WERE FOUND IN HIS BELONGINGS. I/M STATED THAT THE PILLS WERE "FOLIC ACID AND VITAMINS-NOT NARCOTICS, CRACK COKE OR ANYTHING LIKE THAT". HE ALSO STATED THAT HE DOES NOT FEEL THAT HIS MOTHER SHOULD BE "PUNISHED" FROM COMING TO SEE HIM. WRITER INFORMED I/M THAT SHE DOES NOT "THINK" THEY WILL MAKE ANY ACCEPTATIONS FOR THIS, BUT HE COULD CHECK WITH THE MAJOR. I/M STATED THAT HE JUST STARTED ON THE LIQUID MEDS LAST NIGHT AND WAS FEELING "TIRED" AND WANTED TO GO BACK TO GET IN THE BED UPON LEAVING THE SESSION.

A--APPEARANCE-DISHEVELED-SMU SUIT TORN. I/M STATED THAT IT WAS GIVEN TO HIM LIKE THAT. MOOD-CALM AND RECEPTIVE OF INFORMATION PROVIDED. AFFECT-FULL RANGE. THOUGHT PROCESS-ILLOGICAL IN REFERENCE TO SOMEONE HAVING HIM HYPNOTIZED, ALL OTHER CONVERSATION WAS LOGICAL/GOAL ORIENTED. DID NOT PRESENT TO BE IN ANY DISTRESS. APPETITE/SLEEP-WNL. I/M REPORTED THAT HE WAS ADJUSTING WELL TO LOCK UP. DENIED SI/HI. ACCORDING TO RECENT MARS, HE IS MED COMPLIANT. DX: PSYCHOSIS NOS; PERSONALITY D/O NOS (NARCISSISTIC). GAF: 70.

P--MENTAL HEALTH WILL CONTINUE TO FOLLOW PER POLICY.

SIGNED OFF ON 01/12/12 @ 14:03 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 97 MENTAL HEALTH CLINIC 01/10/12 15:36 BROAD RIVER COMP  
HE HAS A H/O NONCOMPLIANCE, AND HIS MEDS WERE D/C'D FOR THAT REASON. REPORTEDLY, HE IS WILLING TO TAKE MEDS.

I WILL ORDER LIQUID MEDS FOR HIM.  
RISPERDAL ORAL SOLN. 1MG/ML (RISPERIDONE)  
SIG: 3 MG PO BID

SIG:

START DATE: 01/10/12 TOTAL DAYS: 180

MD: POILETMAN, ROBERT M

FLUOXETINE ORAL SOLUTION 20MG/5ML (PROZAC)

SIG: 20 MG PO BID

SIG:

START DATE: 01/10/12 TOTAL DAYS: 180

MD: POILETMAN, ROBERT M

SIGNED OFF ON 01/10/12 @ 15:38 BY ROBERT M POILETMAN, PSYCHIATRIST  
NOTED. WILL UPDATE MARS PER ABOVE ORDERS.

SIGNED OFF ON 01/10/12 @ 15:52 BY MARGARET E JACKSON, UNCLASSIFIED

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- \*\* ENCOUNTER: 96 FOLLOW-UP DENTAL 12/28/11 7:25 BROAD RIVER COMP  
NO SHOW FOR APPT. ON 12/22/11  
SIGNED OFF ON 12/28/11 @ 7:25 BY DWIGHT D MCMILLAN, DENTIST
- \*\* ENCOUNTER: 95 FOLLOW-UP DENTAL 12/16/11 10:01 BROAD RIVER COMP  
I/M'S APPT CANCEL. I/M IS IN SMU-LOCK-UP UNIT. SEE HARD COPY.  
SIGNED OFF ON 12/16/11 @ 10:02 BY KIM M GREGGS, MEDICAL ASSISTANT TECH I
- \*\* ENCOUNTER: 94 OUTSIDE APPOINTMENT 02/23/12 10:07 BROAD RIVER COMP  
I/M HAS AN APPT WITH MUSC DERMATOLOGY ON 02/23/12 AT 115PM FOR EVALUATION A  
ND MANAGEMENT OF PSORIASIS AND DERMATITIS  
SIGNED OFF ON 12/14/11 @ 10:08 BY GINA M CRAIG, ADMINISTRATIVE ASSISTANT  
NOTED. NO NURSING INTERVENTIONS REQUIRED AT THIS TIME.  
SIGNED OFF ON 12/14/11 @ 10:16 BY MARGARET E JACKSON, UNCLASSIFIED
- \*\* ENCOUNTER: 93 NARRATIVE 12/13/11 14:47 BROAD RIVER COMP  
I/M'S APPT WITH MUSC DERMATOLOGY HAD TO BE CANCELLED. WE WILL RESCHEDULE AS  
AP.  
SIGNED OFF ON 12/13/11 @ 14:48 BY GINA M CRAIG, ADMINISTRATIVE ASSISTANT  
NOTED. NO NURSING INTERVENTIONS REQUIRED AT THIS TIME.  
SIGNED OFF ON 12/13/11 @ 16:23 BY MARGARET E JACKSON, UNCLASSIFIED
- \*\* ENCOUNTER: 92 MENTAL HEALTH CLINIC 12/08/11 10:04 BROAD RIVER COMP  
INCIDENTAL NOTE: WRITER SIGNED MENTAL HEALTH STATEMENT STATING THAT I/M DOE  
S UNDERSTAND RIGHT FROM WRONG. PER INCIDENT REPORT I/M HAD "PLASTIC BAG CON  
TAINING 15 OBLONG PILLS, 9 WHITE OBLONG PILLS W/1P190. & 500 ON THEM, 16 SMAL  
L YELLOW ROUND PILLS. I/M HAD BEEN COUNSELED ABOUT NON COMPLIANCE WITH HIS  
MEDICATION. NO DOCUMENTATION REGARDING IF IT WAS HIS MEDICATION OR SOMEONE  
ELSE.  
SIGNED OFF ON 12/08/11 @ 10:08 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I  
NOTED  
SIGNED OFF ON 12/08/11 @ 11:04 BY REBECCA L DURAN, UNCLASSIFIED
- \*\* ENCOUNTER: 91 MENTAL HEALTH CLINIC 12/01/11 15:37 BROAD RIVER COMP  
NO SHOW FOR PSYCH CLINIC.  
SIGNED OFF ON 12/01/11 @ 15:37 BY PEGGY C WADMAN, UNCLASSIFIED
- \*\* ENCOUNTER: 90 OUTSIDE RECOMMENDATI 11/29/11 13:28 BROAD RIVER COMP  
INMATE RETURNED FROM ORTHO WITH THE FOLLOWING RECOMMENDATIONS:  
36 Y/O RHD M 2.5 M.S/P LEFT SHOULDER DISLOCATION  
1. CONTINUE SELF PT  
2. FOLLOW UP 6 MONTHS FOR RECHECK, IF BETTER ROM BUT STILL DECREASE ST  
STRENGTH CONSIDER MRI FOR EVALUATION OF ROTOR CUFF.  
WILL FORWARD TO MD FOR FURTHER REVIEW AND DISPOSITION. Y. MUNRO LPN  
SIGNED OFF ON 11/29/11 @ 13:34 BY YVONNE S MUNRO, LICENSED PRACTICAL NURSE  
AS PER ABOVE RECOMMENDATIONS  
SIGNED OFF ON 11/29/11 @ 14:11 BY JOHN B TOMARCHIO, PHYSICIAN II  
CONSULTS FOR ABOVE COMPLETED PER NURSE MUNROE.  
SIGNED OFF ON 11/29/11 @ 16:06 BY MARGARET E JACKSON, UNCLASSIFIED

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- \*\* ENCOUNTER: 89 OUTSIDE APPOINTMENT 12/14/11 14:05 BROAD RIVER COMP  
I/M HAS AN APPT WITH MUSC DERMATOLOGY ON 12/14/11 AT 1PM FOR PSORIARIS INV  
OLVING EXTREMETIES  
SIGNED OFF ON 11/28/11 @ 14:06 BY GINA M CRAIG, ADMINISTRATIVE ASSISTANT  
ABOVE NOTED. NO OTHER NURSING INTERVENTIONS NEEDED AT THIS TIME.  
SIGNED OFF ON 11/28/11 @ 14:59 BY AMY OWENS, REGISTERED NURSE I
- \*\* ENCOUNTER: 88 MENTAL HEALTH CLINIC 11/23/11 14:51 BROAD RIVER COMP  
ANGER MGMT GROUP NOTE-  
INMATE WAS A NO SHOW TO GROUP THERAPY EVEN WHEN A SECOND ORDER TO REPORT WA  
S SENT TO HIM. HENCE, THIS WAS HIS THIRD CONSECUTIVE MISS FROM THIS ANGER  
MANAGEMENT GROUP THERAPY. INMATE WILL BE REMOVED FROM GROUP THERAPY.  
SIGNED OFF ON 11/23/11 @ 14:54 BY PATRICK F CARTER, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 87 NARRATIVE 11/21/11 13:37 BROAD RIVER COMP  
I/M RESCHEDULED FOR ORTHO CLINIC ON 11/28/11 FOR F/U APPT  
SIGNED OFF ON 11/21/11 @ 13:38 BY GINA M CRAIG, ADMINISTRATIVE ASSISTANT  
ABOVE NOTED WILL FORWARD TO MD FOR REVIEW  
SIGNED OFF ON 11/21/11 @ 13:40 BY TIANNA R RANDOLPH, UNCLASSIFIED  
SIGNED OFF ON 11/21/11 @ 14:00 BY JOHN B TOMARCHIO, PHYSICIAN II
- \*\* ENCOUNTER: 86 INSIDE APPOINTMENT 11/21/11 6:26 BROAD RIVER COMP  
INMATE TO MEDICAL TO SIGN REFUSAL TO GO TO KIRKLAND TO PHYSICAL THERAPY APP  
T. STATES HIS SHOULDER IS FINE. NOTHING IS WRONG WITH IT. IT DOES NOT HURT.  
TV'S ARE GIVEN OUT TODAY HE DOES NOT WANT TO MISS IT. XXXXXXXXXXXXXXXXXXXX  
THE INMATE WAS CALLED BACK TO MEDICAL BY THIS WRITER AND WAS COUNSELED OF  
THE IMPORTANCE OF FOLLOWING TREATMENT AND PHYSICIANS ORDERS. HE STATED TO  
ME THAT HE IS DOING BETTER AND DOES NOT HAVE COMPLETE RANGE OF MOTION TO  
HIS SHOULDER AND LEFT ARM BUT IT HAS IMPROVED TREMENDOUSLY. HE ALSO STATED  
THAT HE NORMALLY IS COMPLIANT BUT HE NEEDS TO BE IN THE DORM BECAUSE HE IS  
WAITING ON A TV THAT HAS TAKEN SEVERAL WEEKS TO BE DELIVERED. HE STATES  
THAT HE IS NOT REFUSING FUTURE PHYSICAL THERAPY TREATMENTS BUT FOR THIS PAR  
TICULAR APPT HE IS REFUSING TO GO. I HAD HIM FILL OUT AN ADDITIONAL REFUSAL  
FORM THAT STATES IN HIS OWN WORDS HIS REASON FOR THE REFUSAL. IT WAS SIGNED  
WITNESSED AND FORWARDED TO DR. TOMARCHIO FOR HIS REVIEW AND SIGNATURE.  
SIGNED OFF ON 11/23/11 @ 10:06 BY TAKISHA A SMITH, REGISTERED NURSE II
- \*\* ENCOUNTER: 85 MENTAL HEALTH CLINIC 11/18/11 8:47 BROAD RIVER COMP  
CORRECTION (ENCOUNTER 86): I/M WAS SEEN ON 11/17/2011 FOR MEDICATION COUNSE  
LING-NOT 11/18/2011.  
SIGNED OFF ON 11/18/11 @ 8:48 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I  
ABOVE NOTED WILL FORWARD FOR MD REVIEW  
SIGNED OFF ON 11/18/11 @ 9:12 BY TIANNA R RANDOLPH, UNCLASSIFIED  
IM TO BE ESCORTED TO PILL LINE BY SECURITY STAFF AT APPROPRIATE TIMES FOR A  
DMINISTRATION. HE MAY THEN SIGN REFUSAL IF HE DOES NOT WANT MEDICATIONS.  
SIGNED OFF ON 11/18/11 @ 9:17 BY JOHN B TOMARCHIO, PHYSICIAN II  
TELEPHONED SHIFT SUPERVISOR; OFC RIVERA-INFORMED THAT INMATE NEEDS TO ES-  
CORTED TO NOON PILL LINE TO TAKE MEDS AS ORDERED ABOVE. TELEPHONED  
DORM OFFICER AND INFORMED TO SEND DOWN TO NOON PILL LINE. PILL ROOM  
NURSES GIVEN REPORT TO "HAVE INMATE SIGN REFUSAL IF HE NO LONGER WANTS TO

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TAKE MEDS".

SIGNED OFF ON 11/18/11 @ 9:45 BY WANDA M BROWN, NURSE ADMINISTRATOR/MGR II  
SIGNED OFF ON 11/18/11 @ 9:47 BY WANDA M BROWN, NURSE ADMINISTRATOR/MGR II  
ENC WILL REMAIN UPON UNTIL REFUSAL IS SIGNED BY I/M  
SIGNED OFF ON 11/18/11 @ 10:07 BY REBECCA L DURAN, UNCLASSIFIED  
I/M WAS ESCORTED BY SECURITY AND TOOK HIS MEDICATIONS WITHOUT ISSUE. NURSES  
AT PILL WINDOW ESKEW AND GUESS.  
SIGNED OFF ON 11/18/11 @ 13:41 BY REBECCA L DURAN, UNCLASSIFIED

- \*\* ENCOUNTER: 84 MENTAL HEALTH CLINIC 11/18/11 8:41 BROAD RIVER COMP  
MEDICATION COUNSEL:  
D--MET WITH I/M ON TODAY WHILE ON THE YARD. WRITER INFORMED I/M THAT HE HAD  
BEEN MISSING DAYS OF HIS MEDICATION DESPITE COUNSELING. I/M REPORTED THAT  
HE HAD AND IT WAS BECAUSE HE COULD NOT MAKE HIMSELF GET UP TO COME TO NOON  
PILL LINE. I/M STATED THAT HE NEEDED IT SWITCHED TO THE EVENING BECAUSE HE  
WOULD BE ABLE TO GET UP AT THAT TIME. WRITER EXPLAINED TO HIM THAT HIS MEDI  
CATION TIMES HAD CHANGED TWICE TO ASSIST HIM WITH MEDICATION COMPLIANCE AND  
I/M STATED, "I KNOW, I TAKE FULL RESPONSIBILITY FOR IT, BUT I NEED THE TIM  
ES SWITCHED TO EVENING". WRITER INFORMED I/M THAT SHE HAD SENT DR. WADMAN A  
MESSAGE ABOUT HIS NONCOMPLIANCE. I/M STATED THAT HE WILL BE WILLING TO SEE  
DR. WADMAN AGAIN TO DISCUSS POSSIBLY CHANGING THE ADMINISTERING TIMES AGAIN  
. WRITER WILL SCHEDULE I/M FOR PSYCH CLINIC AGAIN.  
SIGNED OFF ON 11/18/11 @ 8:47 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I  
ABOVE NOTED. WILL FORWARD FOR MD REVIEW  
SIGNED OFF ON 11/18/11 @ 9:12 BY TIANNA R RANDOLPH, UNCLASSIFIED  
SIGNED OFF ON 11/18/11 @ 9:16 BY JOHN B TOMARCHIO, PHYSICIAN II
- \*\* ENCOUNTER: 83 MENTAL HEALTH CLINIC 11/17/11 15:50 BROAD RIVER COMP  
DISCONTINUE INVEGA AND ZOLOFT. NOT COMPLIANT.  
SIGNED OFF ON 11/17/11 @ 15:50 BY PEGGY C WADMAN, UNCLASSIFIED  
NEED TO SEE THIS INMATE IN CLINIC.  
SIGNED OFF ON 11/17/11 @ 15:51 BY PEGGY C WADMAN, UNCLASSIFIED  
NOTED.  
SIGNED OFF ON 11/18/11 @ 8:34 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 82 MENTAL HEALTH CLINIC 11/16/11 13:54 BROAD RIVER COMP  
ANGER MGMT NOTE-  
INMATE WAS A NO SHOW FOR GROUP THERAPY.  
SIGNED OFF ON 11/16/11 @ 13:55 BY PATRICK F CARTER, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 81 MENTAL HEALTH CLINIC 11/16/11 13:41 BROAD RIVER COMP  
INCIDENTAL NOTE- SAW INMATE ON 11-9-11..  
SPOKE WITH INMATE ABOUT NOT PARTICIPATING IN GROUP THERAPY AND HE REPORTED  
THAT HE THREW AWAY HIS ORDER TO REPORT. PER INMATE, HE FELT LIKE HE DID HAV  
E TO ATTEND GROUP BECAUSE OF THE WAY HE WAS TREATED I.E., NOT GETTING TO GO  
OUT OF THE PRISON TO THE HOSPITAL. NEVERTHELESS, HE AGREED TO PARTICIPATE  
IN GROUP THERAPY.  
SIGNED OFF ON 11/16/11 @ 13:53 BY PATRICK F CARTER, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 80 MENTAL HEALTH CLINIC 11/09/11 15:57 BROAD RIVER COMP

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MEDICATION COUNSEL: MET WITH I/M IN MEDICAL UPON LEAVING PSYCH CLINIC. I/M REPORTED THAT HE WAS IN THE GYM AND MISSED THE PILL LINE. I/M REPORTED THAT HE TOOK HIS MEDS ON TODAY AND WILL CONTINUE TO BE COMPLIANT. I/M ALSO STATED THAT HE RECEIVED AN OTR FOR ANGER MGMT GROUP AND WILL ATTEND ON NEXT WEEK. WRITER WILL CONTINUE TO MONITOR MEDICATION COMPLIANCE.  
SIGNED OFF ON 11/09/11 @ 16:01 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 79 MENTAL HEALTH CLINIC 11/09/11 15:47 BROAD RIVER COMP  
S: INMATE SEEN FOR F/U OF PSYCHOSIS NOS AND PERSONALITY DISORDER NOS. HIS CURRENT MEDS ARE INVEGA 6 MG NOON AND ZOLOFT 100 MG NOON. HE REMAINS DELUSIONAL BELIEVING THAT THERE IS "INSTRUMENTATION IN MY RIGHT EYE THAT TRACKS A AND PUTS ME UNDER HYPNOSIS, I THINK IT'S SOME TYPE OF TECHNOLOGY, SOME TYPE OF SATELLITE TECHNOLOGY THAT IS BEING BEAMED DOWN." HE SAID HE QUESTIONS WHETHER THIS INTERPRETATION IS TRUE OR NOT. HE CURRENTLY FEELS LIKE HE IS BEING "MANIPULATED" BY THIS TECHNOLOGY. HE SAID HE HEARS "KEY WORDS, LIKE 'CAREFUL', LIKE HYPNOSIS WORDS." REPORTS GOOD SLEEP.  
RECEIVED NOTICE THAT HE IS SOMETIMES NONCOMPLIANT WITH HIS PSYCH MEDS. ENCOURAGE HIM TO BE COMPLIANT.  
O: ALERT, ORIENTED, DELUSIONAL, DENIES SI/HT. PARANOID. ENTITLED  
A: AS ABOVE.  
P: INCREASE INVEGA TO 9 MG NOON. CONTINUE ZOLOFT 100 MG NOON.  
INVEGA 9MG  
SIG: ONE TAB P.O. Q NOON FOR PSYCHOSIS  
SIG:  
START DATE: 11/09/11 TOTAL DAYS: 180  
MD: WADMAN, PEGGY -  
ZOLOFT 100MG TABS (SERTRALINE)  
SIG: ONE TAB P.O. Q NOON  
SIG:  
START DATE: 11/09/11 TOTAL DAYS: 180  
MD: WADMAN, PEGGY -  
SIGNED OFF ON 11/09/11 @ 15:54 BY PEGGY C WADMAN, UNCLASSIFIED  
RX SCREEN REVIEWED, MAR UPDATED.  
SIGNED OFF ON 11/10/11 @ 6:25 BY JENNIFER B BALLESL, NURSE ADMINISTRATOR/MG

\*\* ENCOUNTER: 78 MENTAL HEALTH CLINIC 11/09/11 11:56 BROAD RIVER COMP  
ANGER MGMT NOTE-  
INMATE DID NOT SHOW UP FOR ANGER MGMT GROUP ON TODAY.  
SIGNED OFF ON 11/09/11 @ 11:56 BY PATRICK F CARTER, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 77 MENTAL HEALTH CLINIC 11/09/11 11:02 BROAD RIVER COMP  
INCIDENTAL NOTE: WRITER CALLED FOR I/M TO REPORT TO HER OFFICE IN REGARDS TO MEDICATION COMPLIANCE. PERIOD OF ABOUT TEN MINUTES HAD PASSED AND I/M HAD NOT SHOWN UP. WRITER CALLED UNIT (CONGAREE) AGAIN AND SPOKE WITH LT. TOLAND. LT. TOLAND INFORMED WRITER THAT HE WANTED TO EAT HIS LUNCH FIRST. WRITER ASKED LT. TOLAND TO CHECK WITH I/M TO SEE IF HE TOOK HIS MEDS NOVEMBER 1-3. WRITER PROVIDED EXT. TO CALL BACK. LT. TOLAND CALLED BACK A FEW MINUTES LATER TO INFORM WRITER THAT I/M REPORTED THAT HE ONLY MISSED ONE OF THOSE DAYS OUT OF NOVEMBER 1-3, BUT WAS COMPLIANT WITH THE OTHER DAYS. SO, PER I/M'S REPORT HE DID TAKE HIS MEDICATION WITH THE EXCEPTION OF ONE OF THOSE DAYS.

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WRITER WILL CONTINUE TO MONITOR MEDICATION COMPLIANCE WEEKLY. I/M IS AWARE OF THE IMPORTANCE OF TAKING HIS MEDICATIONS AS PRESCRIBED AND HAS BEEN COUNSELED A NUMBER OF TIMES BY VARIOUS COUNSELORS.

SIGNED OFF ON 11/09/11 @ 11:10 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 76 MENTAL HEALTH CLINIC 11/08/11 11:45 BROAD RIVER COMP  
INCIDENTAL NOTE: CHECKED MEDICATION COMPLIANCE ON YESTERDAY (11/7/2011). NOVEMBER 1-3 DID NOT HAVE ANY DOCUMENTATION. WRITER DID SEND HCA MESSAGE IN REGARDS TO NO DOCUMENTATION. I/M HAS BEEN COUNSELED ON 10/21/2011 IN REGARDS TO NON COMPLIANCE. MEDICATIONS HAS BEEN CHANGED TO NOON TIME TO HELP WITH MEDICATION COMPLIANCE. COUNSELOR FROM GPH HAS ALSO COUNSELED INMATE ON MEDICATION COMPLIANCE. NOVEMBER 1-3 WERE THE ONLY DAYS THAT DID NOT HAVE DOCUMENTATION-ALL OTHER DATES WERE COMPLIANT. WRITER WILL CHECK AGAIN ON NEXT WEEK-MAY BE JUST A NURSING ISSUE OF DOCUMENTATION. I/M UNDERSTANDS WHY HE HAS BEEN PRESCRIBED THE MEDS AND COUNSELED ON NUMEROUS OCCASIONS.  
SIGNED OFF ON 11/08/11 @ 11:52 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 75 PPD 11/01/11 16:16 BROAD RIVER COMP  
I/M RECEIVED PPD 0.1ML PLACEMENT ON 10/21/11 IN LEFT LOWER FOREARM  
PPD WAS READ ON 10/24/11 OMM NO COMPLAINTS VOICED  
SIGNED OFF ON 11/01/11 @ 16:17 BY TIANNA R RANDOLPH, UNCLASSIFIED

\*\* ENCOUNTER: 74 MENTAL HEALTH CLINIC 11/01/11 13:03 BROAD RIVER COMP  
INCIDENTAL NOTE-  
RECEIVED CALL FROM MR. DRAKE AT GPH WHO WAS INQUIRING WHEN INMATE TORRENCE WOULD BE SEEN IN PSYCH CLINIC. AS PER OUR CONVERSATION, MR. DRAKE SAW THAT INMATE HAD BEEN RECENTLY SEEN IN PSYCH CLINIC ON 10-20-2011; BUT HIS MEDICATIONS WERE ADJUSTED/INCREASED. ALSO, HIS MEDICATION TIMEFRAME WERE CHANGE FROM MORNING DOSAGES TO NOON DOSAGES AS THIS INMATE WAS NOT COMPLAINT WITH GETTING HIS MORNING MEDICATIONS. MORESO, BECAUSE THIS INMATE'S MOTHER WAS CALLING AND HAD CONCERNS ABOUT HER SON REPORTING THAT HE WAS CONTINUING TO HEAR VOICES, MISS WHITLEY ASK MR. DRAKE TO FIND OUT WHEN THIS INMATE'S NEXT PSYCH APPOINTMENT WAS TO BE HELD. MR. DRAKE WAS TOLD THAT THIS INMATE WOULD BE SEEN BY DR. WADMAN ON NOVEMBER 9, 2011. HENCE, MR. DRAKE SHARED THAT HE CAME OVER TO COUNSELLED THIS INMATE ON TODAY AT BROAD RIVER CORRECTIONAL INSTITUTION AT THE REQUEST OF MISS WHITLEY.  
SIGNED OFF ON 11/08/11 @ 18:23 BY AMY OWENS, REGISTERED NURSE I  
NOTED.  
SIGNED OFF ON 11/09/11 @ 11:00 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 73 MENTAL HEALTH CLINIC 11/01/11 12:38 BROAD RIVER COMP  
CONTINUED HSC ASSESSMENT NOTE: IN 2007. HE REPORTED THAT THE LOW DECIBEL NOISES BEGAN OCCURRING BEFORE HE HAD THE MENINGITIS. HE STATED THE CAT SCANS THAT HE HAD ALL CAME BACK NORMAL. HE REPORTED HE HAS BEEN ASKING HIS MOM TO GO ON THE INTERNET TO LOOK UP POSSIBLE TECHNOLOGY THAT CAN CAUSE WHAT HE EXPERIENCES. HE STATED HE GETS FRUSTRATED WITH HER BECAUSE SHE CALLS SOMEONE TO CHECK HIM OUT INSTEAD OF JUST LOOKING UP THE INFORMATION FOR HIM. HE REPORTED THAT HE KNOWS THAT WHEN HE TALKS ABOUT WHAT HE EXPERIENCES IT SEEMS BIZARRE BUT KNOWS THAT IT IS OCCURRING. A: INMATE REPORTS SLEEPING MUCH BETTER, EATING WELL AND IMPROVED COMPLIANCE WITH HIS MEDICATION. HE APPEARS VER

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Y CALM AND RELAXED DESPITE REPORTING THAT HALLUCINATIONS CONTINUE. APPEARS DELUSIONAL IN HOW HE BELIEVES THAT OTHERS ARE USING TECHNOLOGY ON HIM AND THESE HAVE REMAINED UNCHANGED. HE DOES HAVE SOME FLEXIBILITY IN THAT HE DOES CONSIDER OTHER REASONS THAT COULD CAUSE THIS. HE IS ALSO VERY CALM AND APPEARS UNDER NO DISTRESS WHEN TALKING ABOUT THEM AND DOES NOT APPEAR DISTRACTED OR INTERNALLY PREOCCUPIED. HIS THOUGHTS ARE VERY ORGANIZED AND NORMAL ON ANY OTHER TOPIC. DOES NOT APPEAR PARANOID OF OTHERS BUT BELIEVES PEOPLE ARE TRYING TO HELP HIM OR CHANGE HIS BEHAVIOR. IMPROVEMENT IN SLEEP BUT NONE IN FREQUENCY OF HALLUCINATIONS. STATED HE IS COPING WITH THEM MUCH BETTER AND THEY ARE NO LONGER AGITATING HIM. HE DENIES ANY THOUGHTS TO HARM HIMSELF OR OTHERS AND REPORTED HE DOES NOT FEEL HE NEEDS A HIGHER LEVEL OF CARE. HE STATED HE IS REALLY FINE BUT WOULD LIKE TO FIND OUT WHAT IS CAUSING THIS OR WHY IT HAPPENS. DOES NOT WANT TO GO TO GPH AND DOES NOT APPEAR TO BE A DANGER TO HIMSELF OR OTHERS. HE STATED HE WOULD SEE THE PSYCHIATRIST AGAIN WHEN SCHEDULED BUT DID NOT FEEL HE NEEDED ANYTHING AT THAT TIME. P: STAFF WILL CONTACT PATRICK CARTER TO SEE WHEN NEXT PSYCH STAFFING IS. MR. CARTER WAS CONTACTED AND INMATE WILL BE SCHEDULED TO SEE DR. WADMAN ON NOVEMBER THE 9TH. HE WAS SCHEDULED TO SEE HER AGAIN 90 DAYS FROM LAST VISIT BUT HAS BEEN ADDED TO THE NEXT WEEKS STAFFING LIST. MRS. WHITLEY WILL BE UPDATED. INMATE WAS COUNSELED DURING ASSESSMENT ON THE IMPORTANCE OF TAKING ALL MEDICATIONS AS PRESCRIBED, FOLLOWING ALL INSTITUTIONAL RULES AND COPING WITH STRESSORS. STAFF SHOULD MONITOR FOR MEDICATION COMPLIANCE. SIGNED OFF ON 11/01/11 @ 13:05 BY JAMES S DRAKE, HUMAN SERVICES COORD II

\*\* ENCOUNTER: 72 MENTAL HEALTH CLINIC 11/01/11 12:12 BROAD RIVER COMP  
HSC ASSESSMENT NOTE: I WAS ASKED TO SEE INMATE BY MRS. WHITLEY AS INMATE HAS REPORTED THAT HE IS STILL HEARING VOICES TO HIS MOTHER. HE WAS SEEN IN PSYCH. CLINIC ON 10/20 BY DR. WADMAN AND HE HAD NOT BEEN COMPLIANT WITH HIS MEDICATIONS AS THEY WERE PRESCRIBED IN THE MORNING AND HE HAD NOT BEEN GETTING UP FOR HIS MEDICINE. DR. WADMAN INCREASED HIS INVEGA DOSE TO 6MG AND CHANGED THE TIMES OF HIS ZOLOFT AND INVEGA TO NOON PILL PASS TO ASSIST WITH COMPLIANCE. HE WAS COUNSELED ON HIS COMPLIANCE BY HIS BRCI CASEWORKER ON 10/21 AND REPORTED HE WOULD TAKE THEM MORE DUE TO THE SCHEDULE BEING LATER IN THE DAY. DR. WADMAN HAS HIS CURRENT DIAGNOSIS LISTED AS PSYCHOTIC DISORDER, NOS AND PERSONALITY DISORDER NOS WITH NARCISSISTIC TRAITS. SHE REPORTED HE HAS DELUSIONS AND REPORTS AUDITORY AND VISUAL HALLUCINATIONS AND FELT IT COULD BE THE ONSET OF SCHIZOPHRENIA. INMATE WAS BROUGHT TO SEE ME AT 10:45AM ALTHOUGH THE APPOINTMENT WAS FOR 10. SECURITY WAS TRYING TO FIND A PLACE FOR ME TO TALK TO HIM, HE HAD TO EAT AND HE WAS ON CELL LOCKDOWN FOR MOST OF TODAY BECAUSE HE REFUSED TO GET OUT OF BED FOR STANDING COUNT. HE WAS IN A GOOD MOOD AND HE WAS CALM, COOPERATIVE AND POLITE. HIS MOOD WAS PLEASANT AND HE DID NOT APPEAR AGITATED OR IN ANY DISTRESS. HE STATED THAT HE DID NOT FEEL HE NEEDED TO GET UP FOR ANYONE ANYMORE AT 4:00 IN THE MORNING AS HE DID THAT FOR SOME TIME IN THE MILITARY. HE STATED THAT SOME OF THE OFFICERS DO NOT MAKE THAT BIG OF A DEAL OF IT SO HE FEELS HE SHOULD NOT HAVE TO AND THAT IS WHY HE WAS ON CELL LOCK DOWN TODAY. HE DENIED ANY OTHER PROBLEMS AND STATED THAT HIS ENVIRONMENT IS MUCH BETTER. HE STATED HE IS IN A NEW ROOM AND THAT HE GETS ALONG VERY WELL WITH HIS CURRENT ROOMMATE. HE STATED THINGS GOT MUCH BETTER WHEN HE WAS MOVED FROM MURRAY DORM AND HE IS MUCH MORE COMFORTABLE AND RELAXED. HE REPORTED THAT HE IS MEDICATION COMPLI

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ANT BUT DID MISS YESTERDAYS DOSE BECAUSE HE DID NOT FEEL LIKE WALKING ACROSS THE YARD. HE STATED HE DID NOT FEEL THAT HE HAD REALLY MISSED ANY OTHER DOSES AND THAT HE KNOWS HE NEEDS HIS MEDICATIONS BECAUSE THEY HELP. HE STATED THAT THE MEDICATIONS HELP HIM TO RELAX AND HAVE REALLY HELPED WITH HIS SLEEP. HE STATED HE IS SLEEPING SO MUCH BETTER NOW THAT THE INVEGA WAS INCREASED AND FEELS THAT THE INVEGA AND ZOLOFT HELP WITH HIS ANXIETY. HE STATED HE DOES NOT FEEL THAT HE HAS SEEN ANY REAL CHANGE IN THE VOICES OR VISIONS. HE STATED THAT HE STILL HEARS VOICES AND AGAIN STATED THEY ARE OUTSIDE HIS HEAD. HE STATED THAT WHEN HE PUTS HIS FINGERS IN HIS EARS THEY ARE MUFFLED OR GO AWAY. HE STATED HE STILL FEELS THAT IT IS SOME SORT OF TECHNOLOGY THAT SOMEONE IS USING ON HIM TO EITHER ANNOY HIM OR TO HELP HIM. HE STATED HE KNOWS THAT SEVERAL TYPES OF TECHNOLOGY EXISTS FROM HIS EXPERIENCE IN THE MILITARY AND FROM WHAT HE HAS READ. HE STATED THAT HE STILL HAS NOT BEEN ABLE TO DETERMINE IF HE IS "GOING CRAZY" OR IF THERE ARE PEOPLE USING LOW DECIBEL TECHNOLOGY ON HIM OR IF IT IS ADJUSTING AND COPING TO WHAT HAPPENED WITH HIS CHARGES. HE STATED THAT IT COULD EVEN BE THINGS IN THE DISTANCE THAT HE HEARS AS PART OF OTHERS CONVERSATIONS BUT DOES NOT THINK SO AS THEY ARE CONSISTANTLY SAYING THE SAME THING SUCH AS "WATCH OUT OR BE CAREFUL" OVER AND OVER. HE STATED HE IS COPING WITH THEM MUCH BETTER NOW. HE STATED IT IS ANNOYING TO HIM BUT IT NO LONGER AGITATES HIM. HE STATED HE IS MORE USED TO IT AND IS "JUST DEALING WITH IT" BY STAYING BUSY, PLAYING BASKETBALL AND DOING NORMAL ACTIVITIES. HE STATED HE DOES NOT FEEL IT COULD BE HIS OWN THOUGHTS AND THAT HIS INTUITION TELLS HIM THAT IT IS NOT IN HIS HEAD AND THAT IT IS A GROUP OF PEOPLE THAT ARE PLAYING WITH HIS MIND. HE SAID THAT HE GETS SOME COMFORT OUT OF IT AS HE FEELS IT IS STILL PEOPLE THAT HE KNOWS THAT ARE TRYING TO HELP HIM AND HELP WITH HIS APPEAL. HE ALSO DENIED ANY PARANOIA AND STATED HE DOES NOT FEEL ANYONE IS OUT TO HARM HIM. HE STATED THAT HE DOES WANT TO GET TO THE BOTTOM OF WHAT IS CAUSING THIS AND FEELS THAT HE NEEDS TO GET A CATSCAN OR MRI TO HELP RULE OUT WHAT IS GOING ON. HE STATED THAT HE HAS INSURANCE AND WILL PAY FOR THESE AND DOES NOT EXPECT THE STATE TO PAY FOR IT. HE REPORTED THAT HE HAS HAD SEVERAL OF THESE IN THE PAST WHEN HE WAS PUT UNDER A MEDICAL INDUCED COMA DUE TO SPINAL MENINGITIS (CONT. SIGNED OFF ON 11/01/11 @ 12:38 BY JAMES S DRAKE, HUMAN SERVICES COORD II

- \*\* ENCOUNTER: 71 NARRATIVE 10/27/11 14:18 BROAD RIVER COMP  
I/M HAS AN APPT WITH THE ORTHO CLINIC ON 11/21/11 FOR A ONE MONTH F/U  
SIGNED OFF ON 10/27/11 @ 14:19 BY GINA M CRAIG, ADMINISTRATIVE ASSISTANT  
NOTED  
SIGNED OFF ON 10/28/11 @ 17:43 BY REBECCA L DURAN, UNCLASSIFIED
- \*\* ENCOUNTER: 70 MENTAL HEALTH CLINIC 10/21/11 12:41 BROAD RIVER COMP  
INDIVIDUAL SESSION:  
D--MET WITH I/M ON TODAY. I/M REPORTED THAT HE BELIEVES THAT SOMEONE OR SOMETHING IS READING HIS FACIAL MOVEMENTS AND PERFORMING "BEHAVIOR MODIFICATIONS" ON HIM. I/M STATED, "I'M NOT 'CRAZY', BECAUSE I KNOW SOMETHING IS GOING ON, BUT I DON'T KNOW WHAT". I/M FEELS THAT SINCE HIS FAMILY HAS HIGH AUTHORITY AND THAT THE GOVERNMENT MAY BE TRYING TO HELP HIM IN HIS CASE. I/M STATED THAT TECHNOLOGY HAS IMPROVED SO, UNTIL THEY (GOVERNMENT OR SOMETHING) MAYBE UTILIZING HIGH TECH SOFTWARE TO READ HIM. I/M REPORTED THAT HE ASKS HIS PARENTS, BUT THEY DENY DOING ANYTHING AS SUCH.

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A--ALERT AND ORIENTED IN ALL SPHERES. MOOD-PLEASANT WITH BRIGHT AFFECT. THOUGHT PROCESS/THOUGHT CONTENT-DELUSIONAL AS EVIDENT BY INFORMATION PROVIDED. JUDGMENT-SEEMS TO BE INTACT. INSIGHT-LIMITED.-DOES UNDERSTAND THAT HIS THOUGHT PROCESS IS NOT LIKE IT SHOULD BE. DENIED SI/HI, BUT REPORTED A/V HALLUCINATIONS. STATED THAT HE SEE "CONS" AND HEAR FAMILIAR VOICES-"MOTHER, FATHER, BUTCH (FRIEND), AND DANIEL (FRIEND). I/M REPORTED THAT HE DOES NOT VERBALLY GET INTO CONVERSATION WITH THE VOICES, BUT HE DOES IN HIS MIND. STATED THAT HE HEARS HIS FATHER'S VOICE SAYING, "UH-HU, WE GOT HIM NOW". NO REPORTED PROBLEMS WITH SLEEP/APPETITE. SLEEP MORE TOWARDS THE MORNING DUE TO "BEING UP LATE THINKING".

DX: PSYCHOSIS NOS, PERSONALITY D/O NOS (NARCISSISTIC).  
GAF: 80.

P--MENTAL HEALTH WILL CONTINUE TO FOLLOW PER POLICY.

SIGNED OFF ON 10/21/11 @ 13:01 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 69 MENTAL HEALTH CLINIC 10/21/11 12:36 BROAD RIVER COMP  
MEDICATION COUNSEL: MET WITH I/M ON TODAY IN OFFICE TO DISCUSS MEDICATION NONCOMPLIANCE. I/M REPORTED THAT HE WAS GOING TO SLEEP LATE IN THE NIGHT WHICH MADE IT DIFFICULT TO GET UP EARLY IN THE MORNINGS FOR PILL LINE. I/M WENT TO PSYCH CLINIC ON YESTERDAY (10/20/2011) AND TIMES FOR MEDICATION WAS CHANGED AND DOSAGES INCREASED. I/M IS CURRENTLY ON ZOLOFT AND INVEGA. I/M REPORTED THAT HE WILL BE COMPLIANT DUE TO THE TIMES OF MEDICATION HAS BEEN CHANGED. WRITER ENCOURAGED I/M THAT MEDS SHOULD HELP WITH REPORTED SYMPTOMS AND NOT TO SKIP DOSAGES.  
SIGNED OFF ON 10/21/11 @ 12:40 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 68 INSIDE APPOINTMENT 10/21/11 12:02 BROAD RIVER COMP  
I/M WAS CALLED DWN TO CLINIC BC HE DID NOT REPORT ON 10-17 FOR THERABAND TREATMENT. I/M WILL BE ISSUED A NEW OTR  
SIGNED OFF ON 10/21/11 @ 12:03 BY KERRY M CLOUD-PERRY, MEDICAL ASSISTANT TECH

\*\* ENCOUNTER: 67 MENTAL HEALTH CLINIC 10/21/11 10:54 BROAD RIVER COMP  
INCIDENTAL NOTE: SENT OTR OUT ON 10/20/2011, CALLED TWICE. SPOKE WITH SGT. GLASS ON FIRST ATTEMPT AND LT. TOLAND ON SECOND ATTEMPT TO HAVE I/M COME TO OFFICE TO DISCUSS MEDICATION NONCOMPLIANCE. FIRST ATTEMPT-TB TESTING AND SECOND ATTEMPT (LT. TOLAND) I/M EATING. ALL ATTEMPTS WERE MADE BEFORE 11:00 A.M... OTR WAS FOR 9:00 A.M.. WILL TRY AGAIN LATER.  
SIGNED OFF ON 10/21/11 @ 10:58 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 66 MENTAL HEALTH CLINIC 10/20/11 16:12 BROAD RIVER COMP  
S: INMATE IS 31 YO WHITE MALE SERVING TIME FOR VOLUNTARY MANSLAUGHTER WITH MAX OUT DATE OF 2033. HE IS CURRENTLY PRESCRIBED INVEGA 3 MG A.M. AND ZOLOFT 100 MG HS. HE HAS CURRENT DIAGNOSES OF R/O MALINGERING, R/O PSYCHOSIS, R/O PERSONALITY DISORDER. HE DEMONSTRATES IMMEDIATE NARCISSISTIC TRAITS OF ENTITLEMENT, ASKING FOR SPECIAL TREATMENT AND PRIVILEGES.

FIRST PSYCH RELATED TREATMENT WAS AT INSIGHTS FOR ALCOHOL ABUSE WHEN HE WAS ABOUT 21 YEARS OLD. HE SAID HIS MOTHER MADE HIM GO OR ELSE SHE WAS GOING TO KICK HIM OUT AND CUT HIM OFF FINANCIALLY. HE WAS ADOPTED AS AN INFANT. HE MET HIS BIOLOGICAL PARENTS SEVERAL DAYS/WEEKS BEFORE HIS CRIME WHICH HE DESCRIBED AS "DEFENDING MYSELF" WHILE INTOXICATED. HE HAS BEEN THROUGH

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MANY SUBSTANCE TREATMENT PROGRAMS. HE STATES HE DOESN'T KNOW WHY HE IS TELLING ME THIS BECAUSE HE HAS ALREADY TOLD THIS STORY BEFORE.

HE IS IRRITABLE. ASKED IF HE HAS ANY PSYCHIATRIC PROBLEMS HE SAID HE THINKS HE HAS ANXIETY AND SLIGHT DEPRESSION. HE SAID HE HAS HAD "A LOT OF INJURIES TO MY BRAIN." HAD VIRAL MENINGITIS IN 2007 AND SUFFERED A CONCUSSION WHEN HE WAS HIT BY A CAR IN 2005. HE DOESN'T THINK HIS PERSONALITY CHANGED AFTER THESE EVENTS. HE SAID HE TOOK RITALIN AS A CHILD BUT IT MADE HIM "ANGRY." VERY ANGRY WITH HIS ADOPTIVE MOTHER.

HE SAID HE HEARS VOICES "ALL THE TIME" AND BELIEVES IT IS "PEOPLE GIVING ME SUGGESTIONS AND IDEAS TO HELP MY CASE." HE SAID THIS STARTED ABOUT A WEEK BEFORE HIS TRIAL IN JUNE 2011. HE SAID HE THINKS PEOPLE ARE "TONING IN ON HIM FOR BEHAVIOR MODIFICATION OR MAYBE MY APPEAL...I KNOW I'M NOT GOING CRAZY." HE SAID HE SEES "LITTLE DOTS OR CONES, LIKE PHOTONS ALWAYS MOVING...THAT'S WHY I THINK THERE'S SOME TYPE OF FACE READING TECHNOLOGY WITH A SATELLITE...." ODD. HE DISCUSSES MEETING WITH DR. SCHWARTZ-WATTS. HE IS LIKELY DELUSIONAL, PERHAPS IN EARLY STAGES OF SCHIZOPHRENIA.

O: ALERT, ORIENTED, GOAL-DIRECTED, PROBABLY DELUSIONAL, ENDORSES VISUAL HALLUCINATIONS AND AUDITORY HALLUCINATIONS. NO SI/HI.

A: PSYCHOSIS NOS. PERSONALITY DISORDER NOS (NARCISSISTIC)

P: INCREASE INVEGA TO 6 MG AND CHANGE FROM A.M. TO NOON. CHANGE ZOLOFT TO 100 MG NOON.

INVEGA 6MG

SIG: ONE TAB P.O. Q NOON FOR PSYCHOSIS

SIG:

START DATE: 10/20/11 TOTAL DAYS: 180

MD: WADMAN, PEGGY -

ZOLOFT 100MG TABS (SERTRALINE)

SIG: ONE TAB P.O. NOON

SIG:

START DATE: 10/20/11 TOTAL DAYS: 180

MD: WADMAN, PEGGY -

SIGNED OFF ON 10/20/11 @ 16:32 BY PEGGY C WADMAN, UNCLASSIFIED

MAR UPDATED

SIGNED OFF ON 10/22/11 @ 5:52 BY MELISSA SKINNER, REGISTERED NURSE I

\*\* ENCOUNTER: 65 OUTSIDE RECOMMENDATI 10/20/11 7:24 BROAD RIVER COMP  
INMATE RETURNED FROM ORTHO CLINIC WITH THE FOLLOWING RECOMMENDATIONS:

1. OUT OF SLING
2. BEGIN PT HIEP - ROM/ROTATOR CUFF STRENGTHING
3. NAPROXEN 500 MG 1 PO BID PRN PAIN
4. FOLLOW UP 1 MONTH TO RE CHECK ROM

ALSO SEEN IN ORTHO WITH THE FOLLOWING RECOMMENDATIONS:

1. PERFORMED ALL RX PROPERLY WITH LESS PAIN THAN BEFORE
2. EXERCISE DAILY USING RED THERABAND 1 HOUR EACH DAY FOR 3 MONTHS

WILL FORWARD TO MD FOR FURTHER REVIEW AND DISPOSITION.

SIGNED OFF ON 10/20/11 @ 7:59 BY YVONNE S MUNRO, LICENSED PRACTICAL NURSE

SIGNED OFF ON 10/20/11 @ 8:09 BY YVONNE S MUNRO, LICENSED PRACTICAL NURSE

AS PER ABOVE RECOMMENDATIONS

SIGNED OFF ON 10/20/11 @ 12:38 BY JOHN B TOMARCHIO, PHYSICIAN II

MAR UPDATED

MDCI880D  
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
SCDC HEALTH SERVICES: MEDICAL SUMMARY

09/13/17  
C057031

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SIGNED OFF ON 10/22/11 @ 5:47 BY MELISSA SKINNER, REGISTERED NURSE I  
OTR SENT FOR THERABAND DAILY EXERCISE. EXP 1/27/12  
SIGNED OFF ON 10/28/11 @ 17:47 BY REBECCA L DURAN, UNCLASSIFIED

\*\* ENCOUNTER: 64 DOCTOR'S CLINIC 10/17/11 10:55 BROAD RIVER COMP  
NYSTATIN CREAM (30GM)

SIG: APPLY TO AFFECTED AREA BID FOR 30 DAYS

SIG:

START DATE: 10/17/11 TOTAL DAYS: 30

MD: TOMARCHIO, JOHN B.

DIFLUCAN 100MG

SIG: TAKE ONE BY MOUTH DAILY FOR 3 DAYS

SIG:

START DATE: 10/17/11 TOTAL DAYS: 3

MD: TOMARCHIO, JOHN B.

IM PRESENTS ASKING FOR TREATMENT OF RASH UNDER LEFT ARMPIT AND BOTTOM BUNK  
PASS. IN FACT HE WOULD LIKE TO GO BACK TO KIRKLAND INFIRMARY FOR MORE CONVE  
NIENT PT ON HIS SHOULDER. HE THINKS THIS IS DUE TO HIS OWN LAZINESS AS HE D  
OES NOT FEEL LIKE GETTING UP TO GET THE BAND FROM THE MEDLINE. HIS RASH STA  
RTED AROUND A WEEK AGO AND HAS GOTTEN WORSE DESPITE USING TRIAMCINALONE OIN  
TMENT AND SELENIUM SULFIDE.

98F 78 16 118/85 WT 258

RRR

CTAB

SOFT NT ND OBESE

ERYTHEMATOUS RASH AND DRY SKIN UNDER LEFT FOREARM

CANDIDAL RASH: NYSTATIN CREAM AND DIFLUCAN FOR 3 DAYS. RETURN IF NOT IMPROV  
ED.

LEFT SHOULDER DISLOCATION: CONTINUE PT AND AVOID INJURY. DISCUSSED INFIRMAR  
Y HAD LIMITED BEDS AVAILABLE FOR ACUTE MEDICAL ISSUES. HE IS AMENABLE TO ST  
AYING HERE AND WILL DO HIS PT AS INSTRUCTED. HE SHOULD HAVE A BOTTOM BUNK B  
ED PASS FOR 90 DAYS DUE TO HIS SHOULDER INJURY.

ORDERS:

PLEASE ISSUE 90 DAY BOTTOM BUNK BED PASS

SIGNED OFF ON 10/17/11 @ 11:15 BY JOHN B TOMARCHIO, PHYSICIAN II

MAR UPDATED AS ORDERED

MED CLASS UPDATED

I/M ARRIVED TO MD APPT WITHOUT BRACE TO ARM. STATED "I KNOW I AM  
SUPPOSED TO WEAR MY BRACE, BUT I DONT WANT TO," ENCOURAGED TO WEAR  
BRACE AS ORDERED.

SIGNED OFF ON 10/17/11 @ 11:36 BY MARTI WATKINS BROWN, LICENSED PRACTICAL NUR

\*\* ENCOUNTER: 63 EMERGENCY INHOUSE 10/15/11 22:08 BROAD RIVER COMP  
S> I HAVE LEFT AXILLA YEAST INFECTION UNDER MY ARM AND PAINFUL.

O> TEMP=98.3 PULSE= 88 RESP=20 BP=132/ 80 WEIGHT=100 PPD= 0

I/M WASN'T WEIGHT. I/M ALERT AND ORIENTED X3 MAEW. GAIT STEADY. I/M REFUSED  
TO COME TO MEDICAL EARLIER BECAUSE HE HAD VISITORS. LEFT AXILLA ARM IS  
INFLAMMED SCALY SKIN AROUND THE RUM OF THE INFLAMMATION. I/M STATES THE  
ARM PIT IS PAINFUL. I/M STATED HE HAD FUNGUS CREAM NO IMPROVEMENT.

A> AS ABIVE

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P> ENLOE NP CALLED INFORMED HER WHAT I?M STATED ABOUT THE PRIOR TRATMENT.  
ENLOE NP ORDERED FOR I?M TO BE SEEN BY MD ON MONDAY. ORT GIVEN FOR MONDAY  
10/18/11 AT 0730.

SIGNED OFF ON 10/15/11 @ 22:18 BY GERTRUDE WILLIAMS, REGISTERED NURSE I  
SIGNED OFF ON 10/17/11 @ 7:30 BY JOHN B TOMARCHIO, PHYSICIAN II

\*\* ENCOUNTER: 62 NARRATIVE 10/15/11 13:18 BROAD RIVER COMP  
I/M REPORTED TO PILL LINE AND STATED "I'VE STILL GOT SOME REDNESS UNDER MY  
ARM, LOOKS WORSE". MYSELF, NURSE DURAN, ADVISED I/M TO COME TO MEDICAL SO T  
HAT AN ASSESSMENT OF THE AREA COULD BE COMPLETED. I/M SAID "I'VE GOT A FAMI  
LY VISIT NOW, BUT I'LL COME BACK LATER THIS AFTERNOON."  
SIGNED OFF ON 10/15/11 @ 13:20 BY REBECCA L DURAN, UNCLASSIFIED

\*\* ENCOUNTER: 61 MENTAL HEALTH CLINIC 10/12/11 16:56 BROAD RIVER COMP  
HSC ASSESSMENT NOTE CONTINUED 3RD ENCOUNTER) : LARGE PORTION OF HIS TIME TA  
LKG ABOUT THE VOICE / DECIBLE NOISE AND DOTS HE SEES. HE DENIED ANY THOUGH  
HT TO HARM HIMSELF OR OTHERS AND DENIED NEEDING TO SEE A PSYCHOLOGIST AT TH  
E MOMENT FOR ANYTHING. HE REPORTED MEDS. WERE WORKING WELL AND HE FEELS REL  
AXED ON CURRENT MEDICATIONS. HIS RECENT DIAGNOSIS IS LISTED AS RULE OUT MAL  
INGERING, RULE OUT PSYCHOTIC DISORDER NOT OTHERWISE SPECIFIED AND RULE OUT  
PERSONALITY DISORDER. HE DOES NOT APPEAR TO BE UNDER ANY DISTRESS AT THIS T  
IME AND IS NOT A DANGER TO HIMSELF OR OTHERS AT THIS TIME. P: STAFF PASSED  
ON REPORT TO DR. SOLOMON AND MRS. WHITLEY.  
SIGNED OFF ON 10/12/11 @ 17:00 BY JAMES S DRAKE, HUMAN SERVICES COORD II

\*\* ENCOUNTER: 60 MENTAL HEALTH CLINIC 10/12/11 16:02 BROAD RIVER COMP  
HSC ASSESSMENT NOTE (CONTINUED): HE REPORTED THAT THE MEDICATION IS MAKING  
HIM FEEL MORE RELAXED BUT DOES NOT REALLY WANT TO BE ON AN ANTIPSYCHOTIC AN  
D FEELS HE WANTS TO ONLY BE ON THE ZOLOFT. HE STATED THE MEDICATIONS HAVE N  
OT DONE ANYTHING TO DECREASE THE DOTS HE SEES OR THE NOISE/ VOICE HE HEARS.  
HE FINALLY WAS ABLE TO GIVE AN EXAMPLE OF WHAT THE VOICE SAYS AND STATED T  
HAT WHEN HE WOULD SMOKE A CIGARETTE IT WOYULD SAY "CRACK, CRACK, CRACK." AN  
D STATED "OTHER ANNOYING STUFF LIKE THAT." I ASKED HIM IF HE WAS HAVING ANY  
SIDE EFFECTS FROM THE MEDICATIONS. HE STATED THAT HE WASN'T BUT THAT HIS S  
TOMACH HAD STARTED HURTING AND HE BECOMES NAUSIATED THREE HOURS AFTER HE TA  
KES THE INVEGA. HE DENIED NEEDING TO SEE ANYONE FOR THIS AND STATED HE FEEL  
S IT MIGHT BE AN ULCER. HE WAS ENCOURAGED TO TALK TO BRCI MEDICAL ABOUT THI  
S AND HIS DOCTOR. I ASKED HIM IF HE WANTED TO SPEAK WITH A PSYCHIATRIST ABO  
UT HIS MEDICATIONS OR ANY OF HIS EXPERIENCES AND HE DECLINED STATING "I REA  
LLY DON'T THINK I NEED ANYTHING RIGHT NOW." HE WAS ASKED AGAIN AND HE CONTI  
NUED TO DENY NEEDING TO SEE ANYONE. HE THEN WAS ABLE TO ASSURE ME THAT IF H  
E HAD ANY PROBLEMS WITH THE MEDICATIONS OR SYMPTOMS THAT HE COULD NOTIFY ME  
NTAL HEALTH, SECURITY OR MEDICAL AND REQUEST TO SEE SOME ONE AND THE DOCTOR  
. HE STATED HE HAS BEEN EATING AND SLEEPING "VERY WELL." HE DENIED ANY MORE  
PROBLEMS FALLING ASLEEP. HE DENIED ANY FEELINGS OF BEING DEPRESSED AND  
STATED THAT HIS MOOD WAS GOOD. "I AM FINE REALLY." HE DENIED NEEDING TO GO  
FOR FURTHER TREATMENT AND DENIED ANY REASON FOR HIM TO BE HOSPITALIZED. HE  
STATED THAT HE DOES WNAT SOMEONE TO LOOK UP SOME OF THE TECHNOLOGY THAT IS  
OUT THERE TO SEE IF THAT COULD EXPLAIN WHAT IS GOING ON WITH HIM. HE ALSO S  
TATED THAT HE REFUSED TO SIGN ON TO GPH FOR VOL. ADMISSION BECAUSE HE DID N

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TORRENCE JR, ANDREW E

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OT WANT IT TO INTEREFERE WITH HIS APPEAL. HE STATED THAT HE HAS BEEN IN TRE  
ATMENT PLACS BEFORE AND KNOWS THAT PART OF IT IS TO WRITE DOWN THINGS THAT  
HE SAYS AND WHAT HIS BEHAVIOR IS AND HE DID NOT WANT TO JEPORDIZE HIS CHANC  
ES AT AN APPEAL OR SIGN ANYTHING WITH OUT HIS LAWYERS PERMISSION. HE TALKED  
ABOUT HIS CASE AND THE EVENTS THAT TOOK PLACE. HIS THOUGHTS WERE VERY LOGI  
CAL AND GOAL DIRECTED. HE STATED THAT HE DOES FEEL BAD THE WAY THE SITUATIO  
N HAPPENED AND HE FEELS REALLY BAD FOR THE VICTIMS FAMILY WIFE AND CHILD BU  
T HE WAS ALSO ONLY TRYING TO PROTECT HIMSELF. HE STATED THAT EVERYTHING WAS  
OKAY BUT HE SHOULD HAVE NEVER WALKED BACK IN AND SHOULD HAVE LEFT AND NONE  
OF THIS WOULD HAVE HAPPENED. HE WAS ALERT AND FULLY ORIENTED. HE WAS OFF B  
Y A DAY THINKING IT WAS 10/14/11. HE WAS ABLE TO RECALL THREE WORDS AFTER F  
IVE MINUTES AND COULD STILL RECALL THE WORDS THAT DR. WOOD HAD ASKED HIM TO  
REMEMBER IN THE INFIRMARY. HIS ABSTRACT THOUGHT AND REASONING WERE INTACT  
AND HE WAS ABLE TO REMEMBER PAST EVENTS. PROBLEM SOLVING WAS GOOD. HE WAS  
ANSWERED \$1.00-67= .33. A: INMATE STARTED OFF BEING TALKATIVE AND ALMOST EA  
GER TO TALK ABOUT THIS NOISE OR VOICE THAT HE HEARS. IT WAS DIFFICULT TO GE  
T QUESTIONS IN AT FIRST AS HE WOULD KEEP TALKING AS I STARTED TO ASK A QUES  
TION. HIS SPEECH WAS A NORMAL RATE AND RYTHEM AND THERE WAS NO PRESSURE NOT  
ED. HE COMPLAINED OF BEING ANNOYED, AGITATED AND DISTRACTED BY THESE VOICES  
AND DOTS THAT HE SEES "CONSTANTLY FROM WHEN I WAKE UP UNTIL I GO TO SLEEP"  
HOWEVER HE DID NOT ONCE APPEAR AGITATED, DISTRACTED, ANNOYED OR UNDER ANY D  
ISTRESS. IN FACT HE REPORTED HE IS DOING QUITE WELL AND THAT HIS MOOD IS G  
OD. HIS THOUGHTS WERE FULLY LOGICAL AND GOAL DIRECTED EXCEPT WHEN HE WAS TE  
LLING ME ABOUT THE VOICE AND DOTS. HIS THOUGHTS WERE A BIZARRE WHEN TALKING  
ABOUT THIS BUT HE WAS ALSO ABLE TO STATE THAT HE MAY BE JUST TRYING TO DEA  
L WITH THE SITUATION AS A COPING MECHANISM, OR THAT IT COULD BE FROM THE DR  
UG USE OR REPORTED BRAIN INFECTION. HE STATED THAT HIS BRAIN KEEPS TELLING  
HIM IT IS FROM THE OUTSIDE AND THAT THESE WERE "THEORIES" HE HAS COME UP WI  
TH TO HELP EXPLAIN WHAT IS GOING ON. HE IS EATING WELL SLEEPING WELL REPORT  
S NO THOUGHTS OF HARM TO SELF OR OTHERS. HE STATED HE DOES NOT CANCEL OUT P  
TSD OR THAT HE MAY "BE GOING CRAZY." HIS MOOD WAS GOOD. HE WAS VERY CALM AN  
D COOPERATIVE WITH A NORMAL AFFECT AND REPORTS FULL COMPLIANCE WITH MEDICAT  
IONS. HE APPEARED TO BE DOING VERY WELL DESPITE SPENDING A VERY (CONTINUED)  
SIGNED OFF ON 10/12/11 @ 16:56 BY JAMES S DRAKE, HUMAN SERVICES COORD II

\*\* ENCOUNTER: 59 MENTAL HEALTH CLINIC 10/12/11 15:41 BROAD RIVER COMP  
HSC ASSESSMENT NOTE: WRITER WAS ASKED TO GO TO BRCI TO ASSESS INMATE TODAY.  
THE WARDEN'S OFFICE SET UP AN APPOINTMENT FOR ME FOR 12 NOON. I SAW INMATE  
IN THE CONFERENCE ROOM OF THE CONGAREE DORM. HE WAS DRESSED APPROPRIATELY A  
ND NEAT AND CLEAN. HAD SLIGHT STUBBLE ON FACE BUT HIS HYGIENE APPEARED TO B  
E GOOD. HE EXPRESSED A NORMAL TO BRIGHT AFFECT AND REPORTED THAT HE WAS DOI  
NG "VERY WELL." HE STATED THAT HE WAS ADJUSTING WELL WITH NO PROBLEMS "EXCE  
PT FOR THIS LOW TONE OR DECIBLE THAT I KEEP HEARING." HE WENT ON TO EXPLAIN  
THAT HE HEARS DIFFERENT NOISES OR VOICES OF PEOPLE HE KNOWS SUCH AS HIS AT  
TORNEY THE "SHRINK I SAW", MY MOM AND DAD AND A FRIEND OF HIS. HE STATED TH  
AT THE SOUND IS EXTERNAL NOT INTERNAL AND THAT IS WHY HE DOES NOT THINK IT  
IS SCHIZOPHRENIA OR OTHER MENTAL DISORDER. HE STATED THAT HE THINKS IT IS A  
TYPE OF "TECHNOLOGY THAT IS BEING USED TO MESS WITH HIM AND AGGRAVATE HIM.  
HE STATED THAT IT OCCURS FROM THE TIME HE WAKES UP UNTIL HE GOES TO BED NO  
NSTOP. HE REPORTED THAT HE HAS SOME THEORIES ON THE NOISE AND THAT IT MAY B

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E THAT HIS PARENTS HAVE ARRANGED FOR THIS TO HAPPEN AS THEY "KNOW POWERFUL PEOPLE" AND THAT THEY COULD BE USING THIS AS A TYPE OF "BEHAVIORAL MODIFICATION OR BEHAVIORAL THERAPY." HE STATED THAT HE KNOWS FROM WATCHING TV AND READING THAT THERE IS TECHNOLOGY OUT THERE THAT CAN SCAN YOUR MIND AND THAT CAN HYPNOTISE YOU THROUGH SINGLE WORDS. HE STATED THAT THE "VOICES" HAVE BEEN OCCURRING FOR THE LAST FIVE YEARS AND STARTED WHEN HE WAS SITTING ON HIS PARENTS PORCH ONE DAY. HE STATED THEY DID GO AWAY OR MAY HAVE GONE TO A LOWER DECIBEL ONLY TO BE ON A SUBCONSCIENCE LEVEL. THEY DID NOT RETURN UNTIL ONE WEEK BEFORE HIS TRIAL. HE STATED HE WAS DOING JUST FINE BUT WAS MOVED OUT OF HIS ROOM WITH TWO GUYS HE HAD GOTTEN TO KNOW AND WAS PUT IN ANOTHER ROOM BY HIMSELF BEFORE THE TRIAL. HE STATED THE VOICES STARTED THEN. HE STATED THAT THE NOISE MAKES HIM ANGRY AT TIMES BECAUSE IT ANNOYS HIM BUT STATED HE COPE WITH IT WELL AND DEALS WITH IT. HE ALSO REPORTED THAT THE NOISE IS THERE TO HELP HIM AND DOES NOT THINK IT IS ANYONE TRYING TO HARM HIM. HE STATED THAT HE HAD NO THOUGHTS WHATSOEVER TO HARM HIMSELF. HE STATED THAT HE HAS NEVER TRIED TO HARM HIMSELF AND HE ONLY THOUGHT ABOUT IT ONCE WHEN HE WAS A TEENAGER BUT NEVER HAD ANY PLAN OR DID ANYTHING. HE STATED HE HAD BEEN HIT BY A CAR IN 2005 WHEN HE WAS CROSSING THE STREET. HE STATED IT KNOCKED HIM OUT FOR A COUPLE OF MINUTES BUT HE WOKE UP. HE STATED IT KNOCKED HIM 40 FEET AND THE CAR WAS GOING 45 MPH. HE STATED IT WAS A HIT AND RUN. HE REPORTED HE HAD A LACERATION ON HIS HEAD, A LACERATED SPLEEN AND 2 PINS IN HIS HIP. HE ALSO REPORTED VIRAL SPINAL MINIGITIS AND REPORTED HE HAD A BRAIN INFECTION IN 2007. HE STATED THAT MAYBE THE BRAIN INFECTION HAS SOMETHING TO DO WITH WHAT HE EXPERIENCES OR "MAYBE MY HEAVY DRUG AND ALCOHOL USE DOES." HE THEN REPORTED THAT HE SEES AN OBJECT ALMOST LIKE A FLOATER IN HIS EYE THAT APPEARS TO BE SEVERAL DOTS CONNECTED AND THEN A STRING OF DOTS COMING FROM IT. HE STATED THAT THESE ARE ALSO ALWAYS THERE NO MATTER HOW HE MOVES HIS EYES. HE STATED THAT HE HAS BEEN ALSO SEEING THINGS SINCE ONE WEEK BEFORE HIS TRIAL AND THEY NEVER GO AWAY. HE STATED THEY ARE LIKE FIBER OPTIC SITES LIKE THE MILITARY USES AND FEELS THAT SOMEONE HAS PUT THEM THERE TO SCAN OR TRACK HIS RETINAS. HE STATED THESE WERE EVEN MORE ANNOYING. HE STATED THAT HE HAS BEEN FEELING WELL. HE STATED THAT HIS SHOULDER IS DOING WELL AND IS BACK IN JOINT. HE STATED THAT HE DOES NOT HAVE HIS SLING ON BECAUSE HE WAS EATING BEFORE I GOT THERE. HE STATED THAT HE HAS BEEN DOING THE EXERCISES THAT HE WAS TOLD TO DO AND HIS DISCOMFORT LEVEL HAS ONLY BEEN A 3 OUT OF 10 LATELY. HE STATED HE TAKES PAIN MEDICATIONS WHEN IT BOTHERS HIM BUT HE HAS PRETTY GOOD RANGE OF MOTION NOW. HE STATED THAT HE WAS PUT ON CI AFTER THE INJURY OCCURRED BECAUSE HE KNEW IT WAS OUT OF JOINT AND WANTED TO BE SENT TO THE HOSPITAL TO GET IT FIXED. HE STATED HE WAS TOLD THAT HE COULDN'T GO AT THAT TIME AND SAID "WELL I'M GOING TO KILL MYSELF." HE STATED THAT HE ONLY SAID THAT TO GET HIS ARM FIXED AND HAD NO INTENTIONS OF HARMING HIMSELF. INMATE REPORTED HIS MEDICATIONS ARE WORKING WELL AND HE FEELS THE INVEGA IS A "NICE COMPLIMENT TO THE ZOLOFT." (CONTINUED)  
SIGNED OFF ON 10/12/11 @ 16:28 BY JAMES S DRAKE, HUMAN SERVICES COORD II

\*\* ENCOUNTER: 58 NARRATIVE 10/12/11 13:31 BROAD RIVER COMP  
I/M IS SCHEDULED WITH ORTHO CLINIC AT KCI ON 10/19/11 FOR F/U APPOINTMENT.  
SIGNED OFF ON 10/12/11 @ 13:32 BY SHERRELL A ORANGE, MEDICAL ASSISTANT TECH I  
ABOVE NOTED. NO OTHER NURSING INTERVENTIONS REQUIRED AT THIS TIME.  
SIGNED OFF ON 10/12/11 @ 14:09 BY AMY OWENS, REGISTERED NURSE I

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- \*\* ENCOUNTER: 57 MENTAL HEALTH CLINIC 10/12/11 13:27 BROAD RIVER COMP  
INDIVIDUAL SESSION:  
D-SPOKE WITH I/M ON TODAY WHILE SITTING IN THE SMU VISITATION ROOM. I/M REPORTED FEELINGS REGARDING HIS SHOULDER ISSUE, BUT STATED THAT EVERYTHING WAS "FINE" NOW. I/M STATED THAT HE HAS BEEN TRANSFERRED FROM THE MURRAY DORM TO THE CONGAREE DORM. I/M STATED THAT HE WOULD PREFER TO BE IN THE MURRAY DORM. PER I/M, HE WAS MOVED FROM MURRAY DUE TO THE INCIDENT OCCURRING IN THE MURRAY DORM. I/M STATED THAT HE KNOWS EVERYONE IN THE MURRAY DORM AND NOW HE HAS TO GET TO KNOW THE PEOPLE IN THE CONGAREE DORM.  
A--ALERT AND ORIENTED IN ALL SPHERES. MOOD-PLEASANT WITH BRIGHT AFFECT. DID NOT APPEAR TO BE IN ANY DISTRESS. SPEECH-COHERENT. THOUGHT CONTENT-APPROPRIATE. NO DELUSIONS, BIZARRE BEHAVIORS, OR PSYCHOSIS PRESENTED. JUDGMENT/INSIGHT-INTACT. NO REPORT OF SI/HI OR A/V HALLUCINATIONS. NO REPORTED PROBLEMS WITH SLEEP/APPETITE.  
P--MENTAL HEALTH WILL CONTINUE TO MEET WITH I/M PER POLICY OR IF REQUESTED. SIGNED OFF ON 10/12/11 @ 13:34 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 56 OUTSIDE RECOMMENDATION 10/11/11 15:09 BROAD RIVER COMP  
I/M BROUGHT TO BRCI MEDICAL FROM THE INFIRMARY. DX ANTERIOR DISLOCATION OF THE GLENOHUMERAL JOINT.  
VS: O2 SAT 98% ON ROOM AIR. LUNGS CLEAR IN ALL FIELDS. RESPIRATIONS ARE EVEN AND UNLABORED. PULSE 86. S1 AND S2 HEARD. HRRR WNL. B/P 118/76. TEMP 98.0. WEIGHT 254. STEADY GAIT. A&OX4. I/M LEFT ARM IN A SLING. REMOVED STRAPS NO REDNESS OR EDEMA NOTED. LEFT AXILLA AREA IS REDENED AND WARM TO THE TOUCH. I/M STATES THAT IT HAS BEEN THAT WAY FOR THE PAST WEEK. CAP REFILL < 4 SECOND S. I/M ABLE TO WIGGLE ALL FINGER ON THE LEFT HAND. I/M STATES THAT HIS PAIN IS A 7 ON PAIN SCALE OF 0-10. I/M LAST HAD PERCOCET AT 0845 AND WAS GIVEN IT AT 1500 PER MD ORDER.  
MEDICATIONS: ZOLOFT 100 PO HS  
TRIAVIL 2MG/25MG PO HS  
TRIAMCINOLONE CREAM BID TO ELBOW, KNEES, PSORIASIS AREAS NOT TO USE ON THE FACE (I/M GIVEN THIS KOP)  
PROCTOZONE HC 2.5 TO ANAL AREAS TID (I/M GIVEN THIS KOP)  
SELSUM BLUE APPLY AND OTHER TO FACE, BEARD, EARS, AND HEAD, LET SIT FOR A MINUTE MONDAY, WEDNESDAY, AND FRIDAY. (I/M GIVEN THIS KOP)  
ORTHO APPT ON 10/18/11.  
WILL FORWARD THIS ENC TO THE MD FOR REVIEW AND DISPOSITION.  
SIGNED OFF ON 10/11/11 @ 15:24 BY AMY OWENS, REGISTERED NURSE I  
PERCOCET #30 2 TABS PO Q6 HOURS PRN PAIN. (COPY OF SCRIPT PLACED IN PILL ROOM).  
TRAMADOL #30 GIVEN 1 PO TID AFTER PERCOCET COMPLETES (COPY OF SCRIPT PLACED IN PILL ROOM).  
SIGNED OFF ON 10/12/11 @ 7:44 BY AMY OWENS, REGISTERED NURSE I  
OK FOR PT HERE WITH RUBBER BAND INMATE MAY COME TO MEDICAL TO PERFORM THAT NO OTHER NEEDS AND HAS FOLLOW UP.  
SIGNED OFF ON 10/12/11 @ 9:53 BY LAWRENCE K BENNETT, UNCLASSIFIED  
NOTED. NO NURSING INTERVENTION NEEDED AT THIS TIME.  
INFORMATION NOTED.  
SIGNED OFF ON 10/12/11 @ 12:00 BY SERAPHINE U NIATI, REGISTERED NURSE I

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- \*\* ENCOUNTER: 55 NARRATIVE 10/11/11 12:02 KIRKLAND INFRM COMP  
INMATE BEING DISCHARGED TODAY ADMITTED ON 9/27/11 DUE TO SHOULDER DISLOCATI  
ON HE WAS SEEN BY ORTHOPEDIC WITH SHOULDER PLACED IN SLING. HE HAS F/U  
WITH ORTHO WITH X-RAYS. HE IS TO EXERCISE DAILY FOR 30MIN FOR 3 MONTHS  
AS DIRECTED BY PHY. TX.  
REGULAR DIET  
MEDS ZOLOFT 100MG Q HS  
TRIAVIL 2MG/25MG 1 Q HS  
TRIAMCISOLONE CREAM BID TO ELBOW KNEES PSORIASIS AREA (NOT TO USE ON FACE)  
PROCTOZONE HC 2.5 TO ANAL AREA TID  
SELSUN BLUE SHAMPOO MON. WED. FRI.  
F/U APPOINT. 10/18/11 WITH ORTHO  
DERM. APPOINTMENT 12/14/11  
REPORT CALLED TO NURSE MUNRO  
SIGNED OFF ON 10/11/11 @ 12:35 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II  
SIGNED OFF ON 10/12/11 @ 9:55 BY QUEEN L DESCHAMPS, LICENSED PRACTICAL NURSE
- \*\* ENCOUNTER: 54 X-RAY 10/10/11 12:34 KIRKLAND INFRM COMP  
I/M HAD XRAYS OF THE LEFT SHOULDER. IMAGES SENT TO IMAGECARE FOR OVERREAD.  
SIGNED OFF ON 10/10/11 @ 12:36 BY LUIS A YRIZARRY JR, TECHNICAL MEDICAL ASSO
- \*\* ENCOUNTER: 53 NARRATIVE 10/10/11 11:40 KIRKLAND INFRM COMP  
PER DR ELKINS  
CITRATE OF MAG LEMON  
SIG: ONE BOTTLE PO TODAY  
SIG:  
START DATE: 10/10/11 TOTAL DAYS: 1  
MD: ELKINS, ANTHONY -  
SIGNED OFF ON 10/10/11 @ 11:43 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II  
SIGNED OFF ON 10/10/11 @ 12:50 BY THERESA B NKRUMAH, REGISTERED NURSE I  
SIGNED OFF ON 10/12/11 @ 9:51 BY QUEEN L DESCHAMPS, LICENSED PRACTICAL NURSE
- \*\* ENCOUNTER: 52 MENTAL HEALTH CLINIC 10/07/11 15:51 KIRKLAND INFRM COMP  
HSC ADMISSION NOTE--D--IM ANDREW TORRENCE WAS VOLUNTARILY ADMITTED TO GILLI  
AM FROM BRCI BY WAY OF THE KR&EC INFIRMARY. THE IM REPORTED EXPERIENCING  
A/H SINCE THE YEAR 2008. THESE WERE DESCRIBED AS LOW RANGE AUDIO DECIBEL OF  
ACQUAINTANCES HE KNOWS. IM TORRENCE HELD THE BELIEF OF BEING CONTROLLED BY  
OTHERS. THE IM ALSO REPORTED V/H THAT HE DESCRIBES AS SEEING THINGS THROUGH  
HIS EYES. IM TORRENCE REPORTED THAT HE RECEIVED PRIOR TX AT LRADAC, INSIGHTS  
TREATMENT SERVICES AND DR. TOM HAMMEL, A MD SPECIALIZING IN ADDICTIONS. IM  
TORRENCE ALSO REPORTED SEEING DR. DONNA SCHARTZ-WATTS FOR HYPNOSIS. MOOD  
WAS EUTHYMIC WITH COMMENSURATE AFFECT. HE DID NOT ENDORSE ANY SI/HI, PLANS,  
OR MEANS. SLEEP HYGIENE WAS DISRUPTED BY DIFFICULTIES IN FALLING ASLEEP (DFA  
) . APPETITE WAS WNL. B/C IM TORRENCE REFUSED TO SIGN THE CONSENT TO TREAT  
AND VOLUNTARY ADMISSION FORM, HE WAS NOT ADMITTED. HE WAS SUBSEQUENTLY ES-  
CORTED BACK TO THE INFIRMARY. IM TORRENCE EMPHATICALLY STATED THAT HE WOULD  
NOT SIGN ANY FORMS W/O THE PRESENCE OF THIS ATTORNEY. --A--WORKING DX STA  
TED AS R/O PSYCHOSIS NOS, R/O MALINGERING; R/O MOOD DO NOS--P--IM WAS NOT A  
DMITTED DUE TO REFUSAL TO SIGN THE NECESSARY PAPERWORK.

MDCI880D  
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
SCDC HEALTH SERVICES: MEDICAL SUMMARY

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C057031

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BLAKE GORDON, LPC, HSC I  
SIGNED OFF ON 10/07/11 @ 15:59 BY JAMES B GORDON, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 51 NARRATIVE 10/07/11 11:01 KIRKLAND INFRM COMP  
DISCHARGE FROM KIRKLAND INFIRMARY TO GPH  
ADMITTED VOLUNTARY  
DX: LT SHOULDER DISLOCATION  
ALLERGIES: NKA  
MEDICATIONS:  
ZOLOFT 100MG PO QHS  
TRIAMCINOLONE ACETONIDE CREAM 1% BID TO AFFECTED AREAS  
LACTULOSE 30ML PO Q DAILY  
ENSURE IN CAN WITH MEALS TID  
INVEGA 3MG PO Q AM  
PROCTOZONE HC 2.5 APPLY TO ANAL AREA TID  
SELSUN BLUE APPLY AND LATHER TO FACE, BEARD, EARS, AND HEAD LET SIT FOR A  
FEW MINUTES AND RINSE MON, WED, FRI  
NUBAIN 10MG IM Q 6HRS PRN BREAKTHROUGH PAIN X 20 DAYS RX WRITTEN AND  
TAKEN TO PHARMACY FOR GPH USAGE (NO DOSAGE GIVEN THIS AM 10/7/11)  
PERCOCET 2 TABS PO EVERY 4-6 HOURS PRN PAIN X 20 DAYS RX WRITTEN AND  
TAKEN TO PHARMACY FOR GPH USAGE (LAST DOSAGE @ 810 THIS AM 10/7/11)  
LAB IN THE AM 10/10/11 CBC, CMP, TSH LAB SLIP TRANSCRIBED AND IN  
ENVELOPE  
MEDS IN ENVELOPE  
NOTIFIED OPERATIONS, REPORT CALLED IN TO NURSE BEAUCHAMPS RN, SECURITY  
NOTIFIED OF TRANSFER. JEAN FROM BED UTILIZATION NOTIFIED.  
SECURITY CLEARANCE COMPLETED, CHARTS SENT TO GPH,  
SIGNED OFF ON 10/07/11 @ 11:34 BY LISA A BROWN, REGISTERED NURSE I  
TREATMENT: SPLINT APPLIED TO LT SHOULDER  
SIGNED OFF ON 10/07/11 @ 11:34 BY LISA A BROWN, REGISTERED NURSE I  
SIGNED OFF ON 10/07/11 @ 16:03 BY ANTHONY B ELKINS, PHYSICIAN II  
SIGNED OFF ON 10/08/11 @ 10:35 BY QUEEN L DESCHAMPS, LICENSED PRACTICAL NURSE

\*\* ENCOUNTER: 50 MENTAL HEALTH CLINIC 10/07/11 8:56 KIRKLAND INFRM COMP  
S: IM WAS SEEN ON 10/04/11 AND AGAIN TODAY WITH MR. PAGE. HE REPORTS HEAR  
ING LOW LEVEL DECIBELS PLAYING WITH HIS MIND. HE THINKS SOMETHING WAS DONE  
TO HIM AT LEXINGTON OR BY FORENSIC PSYCHIATRIST AND THAT HIS PARENTS KNOW  
ABOUT IT. HE SAYS IT MAY HAVE BEEN DONE TO HELP HIM BUT IT IS P\*\*\*ING HIM  
OFF. HE THINKS SOMEONE IS TRYING TO MANIPULATE HIM. HE SAYS HE KNOWS IT I  
S NOT FROM INSIDE HIS HEAD. ROOMMATES HAD TO BE CLEARED FROM HIS ROOM IN TH  
E INFIRMARY LAST NIGHT BECAUSE IT WAS REPORTED HE WAS HOMICIDAL. HE SAYS T  
HE NURSE ASKED IF HE WANTED TO HURT HIMSELF OR OTHERS AND HE SAID HE WOULD  
HURT HIMSELF BEFORE HURTING OTHERS.  
O; SLEEP AND APPETITE ARE OK. INSISTS HE IS NOT "CRAZY" BUT SAYS OTHERS A  
RE DOING THIS SO HE WILL APPEAR CRAZY AND IT MAY HELP HIS COURT CASE. THIN  
KS HE IS BEING PLAYED. DENIES SI/HI. SLEEP AND APPETITE ARE OK. DOMINATE  
S THE CONVERSATION TALKING ABOUT WHAT IS BEING DONE TO CONTROL HIS MIND. AG  
REES TO TAKE MEDICATION. KEEPS INTERRUPTING AND OVER TALKING ME AS I TRY T  
O EXPLAINED SIDE EFFECTS.  
A: R/O PERSONALITY D/O, R/O MALINGERING, R/O PSYCHOSIS NOS

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P: ADMIT TO GPH  
LABS: CMP, CBC, TSH  
D/C TRIAVIL, TRIAL OF INVEGA  
INVEGA 3MG

SIG: TAKE ONE PO QAM

SIG:

START DATE: 10/07/11 TOTAL DAYS: 30

MD: WOOD, BEVERLY -

SIGNED OFF ON 10/07/11 @ 10:53 BY BEVERLY A WOOD, PSYCHIATRIST

SIGNED OFF ON 10/08/11 @ 10:30 BY QUEEN L DESCHAMPS, LICENSED PRACTICAL NURSE

\*\* ENCOUNTER: 49 X-RAY 10/05/11 10:30 KIRKLAND INFRM COMP  
I/M HAD LEFT SHOULDER XRAY/ SENT TO IMAGECARE FOR OVERREAD  
SIGNED OFF ON 10/05/11 @ 10:30 BY LUIS A YRIZARRY JR, TECHNICAL MEDICAL ASSO

\*\* ENCOUNTER: 48 MENTAL HEALTH CLINIC 10/04/11 15:38 KIRKLAND INFRM COMP  
ADMINISTRATOR NOTE: THIS IS A 31 YEAR OLD SINGLE, WHITE MALE SEEN BY DR.  
BEVERLY WOOD AND MYSELF FOR A MENTAL STATUS EXAM. HE PRESENTED IN A CALM,  
PLEASANT MANNER. AFFECT WAS APPROPRIATE. HIS THOUGHT PROCESSES WERE  
LOGICAL WITH NO LOOSENESS OF ASSOCIATIONS NOTED. HE REPORTED ON A SCALE OF  
ONE TO TEN THAT HE WAS A TWO IN TERMS OF DEPRESSION (ONE THE BEST, TEN THE  
WORST). SUICIDAL AND HOMICIDAL IDEATIONS WERE DENIED. HE DENIED PROBLEMS  
WITH HIS SLEEP OR APPETITE. HE IS ORIENTED X FOUR. EYE CONTACT WAS GOOD AND  
HIS SPEECH WAS LINEAR AND COHERENT. HE DID REPORT SEEING "LITTLE DOTS"  
THAT STARTED RECENTLY THAT HE ATTRIBUTES TO SENSORY DEPRIVATION. HE  
REPORTS BEING BORED WITH NOTHING TO DO WHILE BEING IN THE INFIRMARY. HE  
WAS INFORMED HIS MOTHER REPORTED THAT HE APPEARED DEPRESSED. HE DENIED  
FEELINGS OF DEPRESSION STATING "MY MOTHER ALWAYS WORRIES." HE REPORTS  
TAKING ZOLOFT FOR ANXIETY AND FEELS IT IS WORKING. A HISTORY OF ALCOHOL  
AND DRUG ABUSE WAS REPORTED. HE GRADUATED HIGH SCHOOL AND WAS A GENERAL  
LABORER ON THE STREET. HE WAS REASONABLY GROOMED. HE WAS OFFERED WORD  
SEARCHES AND SOME SUDOKU PUZZLES TO HELP ALLEVIATE THE BOREDOM.  
JIM PAGE, HA II  
SIGNED OFF ON 10/04/11 @ 15:52 BY JAMES E PAGE, ADMINISTRATIVE MGR I

\*\* ENCOUNTER: 47 INSIDE APPOINTMENT 09/30/11 16:51 KIRKLAND INFRM COMP  
OPENED IN ERROR .  
SIGNED OFF ON 09/30/11 @ 16:54 BY MARIE J HAY, LICENSED PRACTICAL NURSE

\*\* ENCOUNTER: 46 OUTSIDE APPOINTMENT 09/30/11 8:06 KIRKLAND INFRM COMP  
HAS AN APPT. WITH ORTHO ON 10/10/11 AT THE CLINIC FOR A FOLLOW-UP.  
SIGNED OFF ON 09/30/11 @ 8:07 BY PATRICIA D GARDENER, MEDICAL ASSISTANT TECH

\*\* ENCOUNTER: 45 NARRATIVE 09/29/11 16:18 KIRKLAND INFRM COMP  
NN  
PROCTOZONE-HC 2.5%  
SIG: APPLY TO AFFECTED (ANAL AREA) TID , MAY KEEP AT BE  
SIG: DSIDE.  
START DATE: 09/29/11 TOTAL DAYS: 30  
MD: ELKINS, ANTHONY -

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SIGNED OFF ON 09/29/11 @ 16:22 BY THERESA B NKRUMAH, REGISTERED NURSE I  
SIGNED OFF ON 09/30/11 @ 14:13 BY ANTHONY B ELKINS, PHYSICIAN II  
ENSURE  
SIGNED OFF ON 10/04/11 @ 13:01 BY QUEEN L DESCHAMPS, LICENSED PRACTICAL NURSE

\*\* ENCOUNTER: 44 NARRATIVE 09/29/11 9:50 KIRKLAND INFRM COMP  
SEEN BY DR ELKINS  
CITRATE OF MAG LEMON  
SIG:GIVE ONE BOTTLE TODAY  
SIG:  
START DATE: 09/29/11 TOTAL DAYS: 90  
MD:ELKINS,ANTHONY -  
LACTULOSE 10GM/15ML  
SIG:30ML PO Q DAY  
SIG:  
START DATE: 09/29/11 TOTAL DAYS: 90  
MD:ELKINS,ANTHONY -  
ENSURE (FORMULARY FOR INFIRMARY AND HIV INMATES ONLY)  
SIG:ONE CAN WITH MEALS DAILY  
SIG:  
START DATE: 09/29/11 TOTAL DAYS: 90  
MD:ELKINS,ANTHONY -  
SIGNED OFF ON 09/29/11 @ 9:54 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II  
SIGNED OFF ON 09/29/11 @ 13:28 BY ANTHONY B ELKINS, PHYSICIAN II  
BOOST PUDDING 1 PO TID WITH MEALS X STAY  
SIGNED OFF ON 10/03/11 @ 11:44 BY QUEEN L DESCHAMPS, LICENSED PRACTICAL NURSE  
SIGNED OFF ON 10/03/11 @ 13:45 BY ANTHONY B ELKINS, PHYSICIAN II  
SIGNED OFF ON 10/04/11 @ 13:05 BY QUEEN L DESCHAMPS, LICENSED PRACTICAL NURSE

\*\* ENCOUNTER: 43 NARRATIVE 09/29/11 7:50 KIRKLAND INFRM COMP  
ADMIT TO INFRM.  
ZOLOFT 100MG TABS (SERTRALINE)  
SIG:TAKE ONE TAB AT HS  
SIG:  
START DATE: 09/29/11 TOTAL DAYS: 90  
MD:ELKINS,ANTHONY -  
PERPHENAZINE/AMITRIPTYLINE 2MG/25MG  
SIG:TAKE ONE TAB AT HS  
SIG:  
START DATE: 09/29/11 TOTAL DAYS: 90  
MD:ELKINS,ANTHONY -  
TRIAMCINOLONE CR 80GM TUBE .1%  
SIG:APPLY ON DRY LESION NOT TO FACE  
SIG:  
START DATE: 09/29/11 TOTAL DAYS: 90  
MD:ELKINS,ANTHONY -  
PERCOCET 2TABS PO Q 6HRS PRN PAIN  
SIGNED OFF ON 09/29/11 @ 7:58 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II  
SIGNED OFF ON 09/29/11 @ 8:02 BY ANTHONY B ELKINS, PHYSICIAN II  
SIGNED OFF ON 09/29/11 @ 8:26 BY THERESA B NKRUMAH, REGISTERED NURSE I

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- \*\* ENCOUNTER: 42 NARRATIVE 09/28/11 12:03 KIRKLAND INFRM COMP  
SEEN BY DR ELKINS  
SELENIUM SULFIDE 2.5%  
SIG: APPLY & LATHER TO FACE BEARD, EAR AND HEAD LET SIT  
SIG: FOR FEW MIN. & RINSE  
START DATE: 09/28/11 TOTAL DAYS: 90  
MD: ELKINS, ANTHONY -  
NUBAIN 10MG/ML  
SIG: 10MG INJECT. Q 6HRS PRN BREAKTHROUGH PAIN  
SIG:  
START DATE: 09/28/11 TOTAL DAYS: 30  
MD: ELKINS, ANTHONY -  
SIGNED OFF ON 09/28/11 @ 12:10 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II  
DO NOT APPLY TRIAMCINOLONE CREAM TO FACE  
SIGNED OFF ON 09/28/11 @ 12:11 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II  
SIGNED OFF ON 09/28/11 @ 14:40 BY ANTHONY B ELKINS, PHYSICIAN II  
SIGNED OFF ON 09/28/11 @ 17:44 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II
- \*\* ENCOUNTER: 41 OUTSIDE RECOMMENDATI 09/27/11 19:25 KIRKLAND INFRM COMP  
I/M RETURNED TO BRCI MEDICAL FROM INFIRMARY.  
I/M'S LEFT ARM IS IN A SLING.  
VS: TEMP 97.8, PULSE 94, RESP 20, B/P 126/82, WEIGHT 256, 97% O2 SAT ON  
ROOM AIR.  
RESPIRATIONS ARE EVEN AND UNLABORED. S1 AND S2 HEARD. (+) 2 PULSES. <2 SEC  
CAP REFILL. I/M STATES THAT HIS PAIN IS A 8 ON A PAIN SCALE OF 0-10. NO  
EDEMA, REDNESS, OR WARMTH NOTED TO HIS LEFT ARM OR SHOULDER.  
OUTSIDE RECOMMENDATIONS PER ENC 40.  
I/M GIVEN AN OTR TO SEE MD IN THE AM AND NWP GIVEN FOR 5 DAYS AND TO HAVE  
MEALS SENT TO THE DORM FOR 3 DAYS. WILL FORWARD THIS TO THE MD FOR FURTHER  
REVIEW AND DISPOSITION.  
SIGNED OFF ON 09/27/11 @ 19:31 BY AMY OWENS, REGISTERED NURSE I  
SIGNED OFF ON 09/28/11 @ 8:02 BY ANTHONY B ELKINS, PHYSICIAN II  
SIGNED OFF ON 09/28/11 @ 11:28 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II
- \*\* ENCOUNTER: 40 INSIDE APPOINTMENT 09/27/11 18:04 BROAD RIVER COMP  
RECEIVED T.O. FROM DR. MOORE: 1) SEND INMATE BACK TO KIRKLAND INFIRMARY NOW,  
2) RESUME CURRENT MEDS: TRIAVIL 2/25MG PO EVERY HS  
ZOLOFT 100MG PO EVERY HS  
TRIAMCINOLONE CR BID TO AFFECTED AREA PSORIASIS  
( INMATE HAS ON POSSESSION)  
3) ADD PERCOCET 2 TABS PO EVERY 6HRS PRN PAIN X 5 DAYS  
T.O. DR. MOORE/ WANDA BROWN, RN HCA  
ABOVE IMPLEMENTED. TRANSPORTATION COODINATED WITH MAJOR SUTTON & WARDEN  
STEVENSON. INMATE MEDS & CHART PACKAGED FOR INFIRMARY. REPORT CALLED IN  
TO INFIRMARY.  
SIGNED OFF ON 09/27/11 @ 18:20 BY WANDA M BROWN, NURSE ADMINISTRATOR/MGR II  
AS PER ABOVE RECOMMENDATIONS  
SIGNED OFF ON 09/28/11 @ 6:43 BY JOHN B TOMARCHIO, PHYSICIAN II  
ABOVE NOTED. NO NURSING INTERVENTIONS REQUIRED AT PRESENT TIME; I/M AT INFI

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SIGNED OFF ON 09/28/11 @ 13:30 BY MARGARET E JACKSON, UNCLASSIFIED

\*\* ENCOUNTER: 39 NARRATIVE 09/27/11 15:28 BROAD RIVER COMP  
INMATE BEING DISCHARGED FROM INFIRM. WHERE HE WAS ADMITTED ON 9/20/11  
WITH LEFT SHOULDER PAIN. HE IS ON REGULAR DIET, CONT MEDS  
MEDS; ZOLOFT 100MG 1 HS  
TRIAVIL 2/25MG 1 HS  
CONSULT SENT NEED TO BE SCHED. FOR ORTHO CLINIC NEXT AVAILABLE CLINIC  
NEEDS APPROVAL  
REPORT CALLED TO NURSE JACKSON  
SIGNED OFF ON 09/27/11 @ 15:33 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II  
ABOVE NOTED. I/M SEEN UPON RETURN PER NURSE OWENS  
SIGNED OFF ON 09/28/11 @ 13:29 BY MARGARET E JACKSON, UNCLASSIFIED

\*\* ENCOUNTER: 38 MENTAL HEALTH CLINIC 09/21/11 14:38 KIRKLAND INFRM COMP  
INCIDENTAL/CONSULTATION NOTE:  
STAFF PRESENT: MELODY TRIPLIN, HSC I, JAN WRECSIS, R.N., WANDA BROWN, HCA,  
TAKISHA SMITH, R.N.-HEAD NURSE, DR. JOHN SOLOMAN, PATRICK CARTER, HSC I, AN  
D SYLINDA XANDERS-ADMINISTRATIVE ASSISTANT.  
MEETING WAS CALLED BY DR. SOLOMAN ON TODAY TO DISCUSS THE SEQUENCE OF EVENT  
S REGARDING I/M ANDREW TORRENCE # 346350 MEDICAL CARE DURING THE DATES OF 9  
/4/2011-9/16/2011. NOTES WERE REVIEWED AND DISCUSSED BY DISCIPLINES PRESENT  
AND CALL MADE TO STAFF NOT PRESENT (FREDDIE BROOKS, R.N.-BRCI) TO CLARIFY D  
OCUMENTATION. DR. SOLOMAN, ALONG WITH MS. WRECSIS WAS ABLE TO GET A CLEAR  
UNDERSTANDING OF WHAT TOOK PLACE AND FURTHER INSIGHT WAS PROVIDED FOR FUTUR  
E SITUATIONS.  
SIGNED OFF ON 09/21/11 @ 14:50 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 37 DOCTOR'S CLINIC 09/21/11 13:01 KIRKLAND INFRM COMP  
O> TEMP=000.0 PULSE= 0 RESP= 0 BP= 0/ 0 WEIGHT= 0 PPD= 0  
P> NUBAIN 10MG/ML  
SIG: GIVE 10MG IM EVERY 6 HOURS PRN PAIN  
SIG:  
START DATE: 09/21/11 TOTAL DAYS: 10  
MD: ELKINS, ANTHONY -  
SIGNED OFF ON 09/21/11 @ 13:02 BY ANTHONY B ELKINS, PHYSICIAN II  
SIGNED OFF ON 09/28/11 @ 10:59 BY ROSA N WILEY, NURSE ADMINISTRATOR/MGR II

\*\* ENCOUNTER: 36 MENTAL HEALTH CLINIC 09/21/11 10:30 KIRKLAND INFRM COMP  
INCIDENTAL/CONSULTATION NOTE:  
STAFF PRESENT: MRS. TRIPLIN, HSC I, MS. SMITH, R.N., MS. BROWN, HCA, DR. TO  
MARCHIO, M.D., WARDEN STEVENSON, A/W BARKLEY, MR. CARTER, HSC I, CPT. WASHI  
NGTON, CPT. STEPHON, NS. MURELL, WARDEN ADMINISTRATIVE ASSISTANT.  
BRCI WARDEN STEVENSON CALLED MEETING TO GET THE FACTS ABOUT WHAT TOOK PLACE  
FROM DAY ONE WITH I/M ANDREW TORRENCE # 346350. ALL STAFF VERBALIZED THEIR  
ACTIONS AND INTERACTIONS REGARDING THIS I/M. INITIALLY, I/M REPORTED THAT H  
E HAD BEEN "HORSE PLAYING" IN THE UNIT WHICH RESULTED IN HIS SHOULDER BEING  
DISLOCATED. I/M WAS DEMANDING TO BE SENT OUT TO PALMETTO RICHLAND HOSPITAL.  
. IN THE MEANTIME, I/M'S MOTHER HAD MADE A NUMBER OF CALLS TO THE INSTITUTI

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ON STATING HER SON NEEDED MEDICAL ATTENTION. PER CPT. WASHINGTON, IT SEEMED VERY SUSPICIOUS THAT MOTHER WAS MAKING A CALL REGARDING HER SON NEEDING MEDICAL ATTENTION IN WHICH AT THE TIME, I/M WAS WITH HIM. ALSO, I/M WAS STATING WHERE HE WANTED TO GO. I/M ENDED UP BEING PLACED ON CRISIS INTERVENTION STATUS BY THE ON-CALL MENTAL HEALTH COUNSELOR (RENEE WILLIAMS, HSC V) DUE TO I/M MAKING STATEMENTS THAT HE WAS GOING TO "CUT HIMSELF AND BLEED OUT"-C.I. FORM ONLY STATES-GOING TO CUT HIMSELF. MENTAL HEALTH SAW I/M DAILY AND DOCUMENTED DAILY AND COMMUNICATED WITH MEDICAL IN REGARDS OF I/M'S COMMENTS. MENTAL HEALTH SAW I/M DAILY FROM 9/6/2011-9/12/2011. I/M WAS TAKEN OFF C.I. ON 9/12/2011 BY DR. POILETMAN. DR. POILETMAN DID NOT DO A NOTE IN CRT. UPON ALL STAFF INVOLVED, WARDEN STEVENSON STATED THAT HE BETTER UNDERSTANDS WHAT ALL HAD HAPPENED AND UNDERSTOOD THE REASONING FOR WHAT HAD TRANSPIRED. I/M WAS ABLE TO GO OUT FOR X-RAY OF HIS SHOULDER AND DR. TOMARCHIO IS AWAITING THE OFFICIAL RESULTS. WRITER SPOKE WITH I/M UPON COMING BACK FROM MEDICAL RUN ON 9/15/2011. WHEN ASKED HOW HE WAS DOING, I/M NODDED HEAD, BUT STILL SEEMED TO HAVE HAD SOME SHOULDER PAIN. WITH THE EXCEPTION OF THE SHOULDER PAIN, I/M DID NOT REPORT ANY FURTHER PROBLEM OR CONCERNS. ALL INFORMATION WAS PROVIDED IN MEETING.

CONCLUSION:

IN LISTENING TO ALL FACTS PROVIDED, I/M WAS BEHAVIOR WAS DRIVEN BY HIS SHOULDER PAIN AND WANTING TO GO OUT FOR MEDICAL ATTENTION.  
SIGNED OFF ON 09/21/11 @ 14:38 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 35 OUTSIDE APPOINTMENT 09/19/11 17:55 BROAD RIVER COMP  
SEND TO PRMH FOR EVALUATION AND TREATMENT PER DR. MOORE.  
Y. MUNRO LPN  
SIGNED OFF ON 09/19/11 @ 17:55 BY YVONNE S MUNRO, LICENSED PRACTICAL NURSE  
SIGNED OFF ON 09/20/11 @ 7:18 BY JOHN B TOMARCHIO, PHYSICIAN II

\*\* ENCOUNTER: 34 FOLLOW-UP SICK CALL 09/19/11 16:41 BROAD RIVER COMP  
S> I/M SEEN FOR CONTINUING LEFT SHOULDER AND ARM PAIN. STATES THAT IT HURTS ALL THE TIME, 10/10.

O> TEMP=098.1 PULSE= 98 RESP=16 BP=138/ 94 WEIGHT=265 PPD= 0  
A&OX3. I/M WEARING SLING. X-RAYS TAKEN AT IMAGECARE ON 9-15-11 AND RESULTS IN CHART NOW. GOOD CAPILLIARY REFILL LEFT HAND AND 2+ PULSE.

A> SEE ABOVE.

P> PAGED ONCALL MD.

SIGNED OFF ON 09/19/11 @ 17:15 BY ROBERT N KINGSBURY JR, REGISTERED NURSE I  
TELEPHONED ON CALL PROVIDER AND GIVEN REPORT OF THE ABOVE; SHOULDER INJURY DAYS AGO & NEEDING SOMETHING FOR PAIN, TREATMENT, ETC.

NEW ORDERS GIVEN: 1) MAY GIVEN TYLENOL #3 ONE OR TWO TABS PO TID PRN FOR PAIN X 24HRS FROM FLOOR STOCK; 2) SCHEDULE TO SEE MD CLINC IN AM.

SIGNED OFF ON 09/19/11 @ 17:30 BY WANDA M BROWN, NURSE ADMINISTRATOR/MGR II  
RECEIVED A CALL FROM DR. MOORE WITH NEW ORDERS: 1) SEND TO PALMETTO HEALTH RICHLAND EMERGENCY DEPT NOW; 2) CONSULT USC ORTHOPEDICS FOR FURTHER TREATMENT TODAY.

SIGNED OFF ON 09/19/11 @ 17:33 BY WANDA M BROWN, NURSE ADMINISTRATOR/MGR II  
INMATE WAS ADMINISTERED TYLENOL#3 ONE TAB PO AS ABOVE. NEW ORDERS DR. MOORE IMPLEMENTED. CONSULTATION FORM FILLED OUT WITH TELEPHONE APPROVAL PER DR. MOORE. NOTED TO SEE USC ORTHOPEDICS WHILE AT PALMETTO RICHLAND.

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TELEPHONED REPORT TO PALMETTO RICHLAND ER NURSE DIANNE, RN.; WHO INFORMED ME THAT SCDC EMPLOYEE MUST ARRANGE FOR USC ORTHOPEDICS TO BE PAGED IN ORDER FOR THE INMATE TO BE SEEN BY THEM; OTHERWISE THE INMATE WOULD SIMPLY SEE WHOEVER IS ON CALL FOR ORTHOPEDICS. TRANSPORTATION HAS BEEN GIVEN PAPERWORK & INMATE TO OPERATIONS WITH SECURITY. REPORT GIVEN TO MS. MUNROE/ CONSULT NURSE TO CONTACT USC ORTHOPEDICS FOR CONSULT. SIGNED OFF ON 09/19/11 @ 18:17 BY WANDA M BROWN, NURSE ADMINISTRATOR/MGR II SPOKE WITH DR. WALKER. WILL SEE INMATE WHEN HE GETS TO THE ER. HAVE ER NURSE BEEP HIM. MS BROWN AWARE. SHE WILL CONTACT ER NURSE TO RELAY THE INFORMATION. Y. MUNRO LPN  
SIGNED OFF ON 09/19/11 @ 18:31 BY YVONNE S MUNRO, LICENSED PRACTICAL NURSE  
SIGNED OFF ON 09/20/11 @ 7:24 BY JOHN B TOMARCHIO, PHYSICIAN II

- \*\* ENCOUNTER: 33 MENTAL HEALTH CLINIC 09/16/11 8:40 BROAD RIVER COMP  
INDIVIDUAL SESSION/C.I. FOLLOW-UP  
D--MET WITH I/M ON 9/15/11- I/M COMING OFF MEDICAL RUN. I/M REPORTED THAT HE WAS DOING WELL WITH THE EXCEPTION OF HIS HURT ARM. I/M WAS ABLE TO RECEIVE THE MEDICAL ATTENTION IN REGARDS TO HIS SHOULDER. I/M'S ARM WAS IN A SLING. I/M SEEMED TO HAVE BEEN IN SOME DISCOMFORT IN REGARDS TO HIS SHOULDER. I/M IS NOW BACK IN THE MURRAY UNIT. NO REPORTED PROBLEMS.  
A--ALERT AND ORIENTED. NO REPORT OF SI/HI OR A/V HALLUCINATIONS. MOOD-IRRITABLE DUE TO SHOULDER PAIN. NO REPORTED PROBLEMS WITH APPETITE. SLEEP IS SOMEWHAT DISTURBED DUE TO SHOULDER PAIN.  
P--MENTAL HEALTH WILL CONTINUE TO FOLLOW PER POLICY.  
SIGNED OFF ON 09/16/11 @ 8:44 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 32 X-RAY 09/15/11 13:09 KIRKLAND COMP  
I/M HAD LEFT SHOULDER-HUMERUS XRAY/ SENT TO IMAGECARE FOR OVERREAD  
SIGNED OFF ON 09/15/11 @ 13:09 BY LUIS A YRIZARRY JR, TECHNICAL MEDICAL ASSO
- \*\* ENCOUNTER: 31 NARRATIVE 09/13/11 16:07 BROAD RIVER COMP  
MEDICAL NOTIFIED THAT I/M IS OFF CI AS OF 9/12/11. I/M IS ABLE TO BE SENT OUT FOR XRAY OF HIS LEFT ARM/SHOULDER. XRAY REQUISITION FOR COMPLETED AND FORWARDED. WILL FORWARD RESULT TO MD UPON RECEIPT.  
SIGNED OFF ON 09/13/11 @ 16:11 BY TAKISHA A SMITH, REGISTERED NURSE II
- \*\* ENCOUNTER: 30 MENTAL HEALTH CLINIC 09/13/11 9:13 BROAD RIVER COMP  
INCIDENTAL NOTE: I/M HAS BEEN RELEASED FROM C.I. STATUS AS OF 9/12/2011 DUE TO NOT BEING SUICIDAL AND ADMITTING TO UTILIZING MANIPULATION AS A MEANS TO RECEIVE MEDICAL ATTENTION. I/M HAS BEEN TRANSFERRED BACK TO MURRAY DORM. C.I. FORM WAS SIGNED BY DR. POILETMAN.  
SIGNED OFF ON 09/13/11 @ 9:18 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 29 MENTAL HEALTH CLINIC 09/09/11 10:07 BROAD RIVER COMP  
CRISIS NOTE-  
D- INMATE REPORTED THAT HE WAS NOT THINKING ABOUT HURT HIMSELF OR ANYONE ELSE. HE WANTED OFF OF CRISIS STATUS. INMATE WAS INFORMED THAT A PSYCHIATRIST WOULD NEEDED TO BE CONSULTED ABOUT HIM AND REASONS FOR HIM BEING PLACE ON CRISIS STATUS. HENCE, IN THE MEANTIME, THIS INMATE REQUEST TO HAVE A SHOWER.  
A- HIS HYGIENE WAS VERY BAD. A STRONG STINKY ODOR PERMEATING FROM HIS CELL.

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INMATE DENIED THOUGHT OF SUICIDE/HOMICIDE. DENIED ANY HALLUCINATIONS AS WELL AS HE DENIED ANY DEPRESSIVE SYMPTOMS. HIS PRIMARY FOCUS WAS GETTING TREATMENT FOR A MEDICAL ISSUE.

P- WILL DISCUSS WITH DR. POILETMAN ABOUT THIS INMATE ON MONDAY, 9-12-11. MEANWHILE THIS INMATE WILL REMAIN ON CRISIS STATUS. INFORMED LT. CARTER TO ALLOW THIS INMATE TO HAVE A SHOWER.

SIGNED OFF ON 09/09/11 @ 10:13 BY PATRICK F CARTER, HUMAN SERVICES COORD I NOTED

SIGNED OFF ON 09/09/11 @ 16:57 BY FREDDIE L BROOKS, REGISTERED NURSE I

\*\* ENCOUNTER: 28 MENTAL HEALTH CLINIC 09/08/11 10:39 BROAD RIVER COMP  
CI NOTE:

D--I/M WAS SEEN AT CELL 101 ON TODAY. I/M SEEM TO HAVE BEEN IN PAIN. I/M HAD SUICIDE BLANKET WRAPPED AROUND HIS BODY AND WAS SITTING ON FLOOR. I/M WOULD NOT RESPOND TO QUESTIONS ASKED BY WRITER. I/M DID PRESENT TO BE IN DISTRESS EVIDENCED BY HIS FACIAL EXPRESSION. WRITER INFORMED I/M THAT MS. SMITH-HEAD NURSE WAS CONTACTED ON YESTERDAY (9/7/2011) IN REGARDS TO HIS SHOULDER. MS. SMITH INFORMED WRITER THAT I/M COULD NOT BE SCHEDULED FOR X-RAY UNTIL HE IS CLEARED FROM C.I. DUE TO BEING A SECURITY RISK OF HARMING HIMSELF.

WRITER INFORMED I/M THAT HIS MANIPULATIVE BEHAVIORS OF SAYING HE WANTED TO KILL/HARM HIMSELF IN HOPES THAT WOULD GET THE MEDICAL ATTENTION HE WAS SEEKING CAUSED HIM THE OPPOSITE. WRITER ADVISED I/M NOT TO MAKE COMMENTS AS SUCH BECAUSE IT IS NOT TAKEN LIGHTLY AND NECESSARY PRECAUTIONS HAVE TO BE TAKEN. HOWEVER, WRITER DID INFORM I/M THAT THE PSYCHIATRIST WOULD BE AT BRCI ON THIS COMING MONDAY (9/12/2011) AND WOULD BE ABLE TO SEE HIM. WRITER ADVISED I/M TO BE PATIENT AND MAINTAIN. I/M WOULD NOT MAKE ANY COMMENTS.

A--ALERT AND ORIENTED. MOOD-AGITATED DUE TO SHOULDER PAIN. AFFECT-DISTRESS. I/M WOULD NOT ANSWER QUESTIONS FROM WRITER. WOULD NOT STATE IF HE HAD THOUGHTS OF HARMING SELF OR OTHERS.

P--MENTAL HEALTH WILL CONTINUE TO FOLLOW PER POLICY.

SIGNED OFF ON 09/08/11 @ 10:50 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 27 MENTAL HEALTH CLINIC 09/07/11 11:34 BROAD RIVER COMP  
INCIDENTAL NOTE: SPOKE WITH HEAD NURSE-SMITH. SHE INFORMED WRITER THAT I/M CAN NOT BE SCHEDULED FOR X-RAY AT KCI UNTIL HE COMES OFF CI STATUS DUE BEING A SECURITY RISK. DUE TO HIS COMMENTS OF SELF HARM, I/M WAS PLACED ON C.I.

STATUS. I/M DID REPORT THAT HE ONLY MADE THOSE COMMENTS IN ORDER TO RECEIVE MEDICAL ATTENTION. I/M HAS TO BE CLEARED BY THE PSYCHIATRIST WHICH DOES NOT COME UNTIL MONDAY (9/12/2011). UPON BEING CLEARED FROM C.I. STATUS, I/M WILL BE ABLE TO GO OUT FOR X-RAY ACCORDING TO MS. SMITH-BRCI HEAD NURSE. WRITER INFORMED CPL. FURGAL OF THIS UPDATE AND ASKED IF HE WOULD INFORM I/M. SIGNED OFF ON 09/07/11 @ 11:38 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 26 MENTAL HEALTH CLINIC 09/07/11 10:07 BROAD RIVER COMP  
CI NOTE:

D--MET WITH I/M IN SMU OFFICER STATION. I/M WAS IN SUICIDE BLANKET ONLY. I/M DOES NOT HAVE ANY PROPERTY AT THIS TIME. I/M STATED THAT HE DOES NOT WANT TO HARM SELF OR OTHERS; HE JUST WANT THE PROPER MEDICAL ATTENTION. I/M STATED THAT HE ONLY TOLD THE OFFICERS THAT HE WAS GOING TO "KILL" HIMSELF DUE TO TRYING TO GET MEDICAL ATTENTION. I/M STATED, "I HAVE A "WHOLE FIRM OF LA

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WYERS ON MY PAYROLL AND THEY ARE GOING TO HEAR ABOUT THIS". WRITER INFORMED I/M THAT KCI X-RAY HAD BEEN OUT OF OPERATIONS AND X-RAYS HAD TO BE RESCHEDULED, BUT DID NOT KNOW IF HE HAD ONE SCHEDULED IN THE FIRST PLACE. WRITER ALSO EXPLAINED THAT MONDAY WAS A HOLIDAY IN WHICH SOME OF THE DAILY OPERATIONS DO NOT OPERATE ON HOLIDAYS. I/M REPORTED THAT HE HAS NOT BEEN ABLE TO SLEEP DUE TO HIS SHOULDER PAIN AND WANTED TO KNOW IF HE COULD GET A MATTRESS. I/M STATED THAT HE DID NOT WANT TO HARM HIMSELF OR ANYONE, HE JUST WANTED PROPER MEDICAL ATTENTION. WRITER INFORMED I/M THAT IT WILL BE DOCUMENTED FOR I/M TO RECEIVE A MATTRESS. I/M REPORTED THE NURSE ASSURED HIM THAT HIS ISSUE WOULD BE DOCUMENTED. I/M ALSO COMPLAINED THAT HE HAS NOT HAD A SHOWER IN "72 HOURS".

A--ALERT AND ORIENTED IN ALL SPHERES. MOOD-AGITATED DUE TO SHOULDER PAIN. AFFECT-CONGRUENT WITH MOOD. JUDGMENT/INSIGHT-HAS IMPROVED SINCE YESTERDAY. NO REPORT OF A/V HALLUCINATIONS. DENIED SI/HI. SLEEP-POOR AND NO REPORTED PROBLEMS WITH APPETITE. THOUGHT PROCESS-LOGICAL AND GOAL ORIENTED. THOUGHT CONTENT-APPROPRIATE FOR SITUATION. NO DELUSIONAL OR PSYCHOTIC CONTENT PRESENT DURING SESSION. NO BIZARRE BEHAVIORS NOTED.

DX: ANXIETY D/O NOS; ETOH DEPENDENCE IN CONTROLLED ENVIRONMENT. GAF: 67.  
P--MENTAL HEALTH WILL CONTINUE TO FOLLOW PER POLICY. WRITER WILL APPROVE I/M TO HAVE A MATTRESS DUE TO NO EVIDENCE OF WANTING TO HARM SELF OR OTHERS. SIGNED OFF ON 09/07/11 @ 10:28 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I ABOVE NOTED.

SIGNED OFF ON 09/07/11 @ 10:43 BY AMY OWENS, REGISTERED NURSE I  
SIGNED OFF ON 09/07/11 @ 14:29 BY JOHN B TOMARCHIO, PHYSICIAN II

\*\* ENCOUNTER: 25 MENTAL HEALTH CLINIC 09/06/11 13:45 BROAD RIVER COMP  
CI NOTE:

D--I/M WAS SEEN TODAY DUE TO BEING PLACED ON CI. I/M HAD STATED THAT HE WAS GOING TO KILL HIMSELF. I/M REPORTED TO WRITER ON TODAY THAT HE HAD A DISLOCATED SHOULDER (LEFT) AND HE HAD NOT RECEIVED MEDICAL ATTENTION. I/M REPORTED THAT HE WILL DO WHATEVER HE HAD TO IN ORDER TO RECEIVE MEDICAL ATTENTION EVEN IF IT MEANT "KILLING HIMSELF". WRITER INFORMED I/M THAT HE WILL NOT BE ABLE TO RECEIVE ANYTHING MORE THAN SI BLANKET DUE TO HIS STATEMENTS. I/M STATED THAT CPT. JONES HAD TOLD HIM THAT HE WOULD BE ABLE TO GO GET X-RAYS ON TODAY. WRITER INFORMED HIM THAT SHE WAS NOT SURE HOW THAT WAS GOING TO BE HANDLED AND COULD NOT MAKE ANY PROMISES.

A--ALERT AND ORIENTED IN ALL SPHERES. MOOD-ANGRY DUE TO NOT BEING ABLE TO GET HIS SHOULDER X-RAYED. JUDGMENT-POOR AND INSIGHT-LIMITED. I/M HAS A SUICIDE BLANKET ONLY AND DUE TO HIS COMMENTS, I/M WILL NOT BE ABLE TO RECEIVE ANYTHING FURTHER AT THIS TIME. CONTINUES TO VERBALIZE THAT HE WILL DO WHATEVER HE HAS TO IN ORDER TO RECEIVE MEDICAL ATTENTION (I.E. "BANG HEAD ON WALL, KILL SELF, ETC"). I/M REPORTED THAT HE IS NOT A "CUTTER". HOWEVER, I/M IS A DEMAND ABOUT RECEIVING X-RAYS ON HIS LEFT SHOULDER AND IS WILLING TO GO TO EXTREME MEASURES TO RECEIVE TREATMENT.

DX: ANXIETY D/O NOS; ETOH DEP IN CONTROL ENVIRONMENT. GAF: 65.

P--MENTAL HEALTH WILL CONTINUE TO SPEAK WITH I/M PER POLICY AND WILL FORWARD ENCOUNTER TO MEDICAL.

SIGNED OFF ON 09/06/11 @ 14:00 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

SIGNED OFF ON 09/06/11 @ 14:38 BY AMY OWENS, REGISTERED NURSE I

SIGNED OFF ON 09/07/11 @ 6:58 BY JOHN B TOMARCHIO, PHYSICIAN II

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- \*\* ENCOUNTER: 24 EMERGENCY INHOUSE 09/05/11 1:10 BROAD RIVER COMP  
CALL RECEIVED FROM SGT THOMPSON STATING THAT I/M C/O PAIN TO HIS  
SHOULDER. PREVIOUS ENCOUNTERS REVIEWED (#22 & 23). EXPLAINED THAT  
I/M WAS DEEMED A SECURITY RISK AND THEREFORE WOULD NOT BE SENT FOR  
OUTSIDE MEDICAL CARE AT THIS TIME. INSTRUCTED TO APPLY ICE TO AREA,  
MAY TAKE MOTRIN/TYLENOL.  
SGT THOMPSON CALLED BACK APPROX 5 MINUTES LATER AND STATED THAT I/M  
REFUSED TO TAKE THE MEDICATION RECOMMENDED AND STATED THAT HE NEEDED  
TO GO TO HAVE X RAYS. SGT THOMPSON STATED THAT I/M STATED THAT HE  
PLANNED TO HURT HIMSELF AND CUT HIMSELF SO HE COULD GO OUT TO THE  
HOSPITAL.  
WILL PLACE ON CI: STRIPPED CELL, Q 15 MIN SECURITY CHECKS, FINGER  
FOODS. MAY HAVE SUICIDE BLANKET. SGT THOMPSON INSTRUCTED NOT TO LEAVE  
I/M UNATTENDED AT ANY TIME UNTIL PLACED IN CI CELL. PAPERWORK COMPLETED  
AND TAKEN TO CAPT STEPHAN.  
SIGNED OFF ON 09/05/11 @ 1:16 BY MARIE SHERMAN, LICENSED PRACTICAL NURSE  
O/C MH PAGED. RETURN CALL RECEIVED FROM RENEE WILLIAMS. INFORMED OF ABOVE.  
V/O RECEIVED TO CONTINUE WITH ABOVE PLAN: PLACE ON CI, STRIPPED CELL,  
FINGER FOODS, MAY HAVE SUICIDE BLANKET.  
SIGNED OFF ON 09/05/11 @ 6:06 BY MARIE SHERMAN, LICENSED PRACTICAL NURSE  
SIGNED OFF ON 09/06/11 @ 7:58 BY JOHN B TOMARCHIO, PHYSICIAN II
- \*\* ENCOUNTER: 23 NARRATIVE 09/04/11 17:42 BROAD RIVER COMP  
I/M RTC PER OTR TO HAVE LEFT SHOULDER REASSESSED. SHOULDER REMAINS RED REMAI  
NS MISALIGNED AND I/M CONTINUES TO C/O. CONTINUES TO HAVE POSTIVE PULES, OPEN  
AND CLOSE HAND, FLEX AND ROTATE. CONTIUES TO BE RESISTANT TO NURSE DOING PAS  
SIVE ROM ON LEFT ARM. V/S 98.5-88-18-130/90 O2 SAT 97%. ON-CALL MD NOTIFIED O  
F ASSESSMENT AND ISSUED INSTRUCTIONS TO SEND I/M OUT FOR X-RAY. OPERATIONS N  
OTIFIED. RECIEVED REPORT THAT I/M HAD INJURED HIS ARM HORSEPLAYING WITH PEE  
RS IN DORM AND NOT BY EXERCISING AS HE HAD SAID EARLIER. ALSO NOTED THAT WHE  
N I/M HAD RETURNED FROM MEDICAL FROM FIRST ENC. THAT I/M CONTINUED TO WRESTL  
E AND HORSEPLAY WITH PEERS IN NO APPARENT DISTRESS. IT WAS ALSO EXPRESSED TH  
AT I/M MAY POSE A SECURITY RISK AND WOULD LIKE TO HOLD OFF ON SENTING I/M O  
UT TO A PUBLIC HOSPITAL AND WOULD PERFER I/M GO TO KCI FOR XRAY. MD NOTIFIED  
AND AGREED TO REQUEST. I/M SLING WAS REAJUSTED AND PAIN MEDS GIVEN. NOTED THA  
T MISALIGNMENT OF SHOULDER APPEARS TO HAVE REDUCED. NURSING WILL CONTINUE TO  
MONITOR FOR COMPLICATIONS.  
SIGNED OFF ON 09/04/11 @ 18:04 BY FREDDIE L BROOKS, REGISTERED NURSE I  
FU MD CLINIC AS NEEDED  
SIGNED OFF ON 09/06/11 @ 7:37 BY JOHN B TOMARCHIO, PHYSICIAN II  
ABOVE NOTED.  
SIGNED OFF ON 09/06/11 @ 14:37 BY AMY OWENS, REGISTERED NURSE I
- \*\* ENCOUNTER: 22 EMERGENCY INHOUSE 09/04/11 10:26 BROAD RIVER COMP  
S> C/O "DISLOCATING MY SHOULDER" AND BEING IN PAIN  
O> TEMP=098.7 PULSE= 80 RESP=18 BP=130/ 78 WEIGHT=260 PPD= 0  
AMBULATING WITH STEADY GAIT HOLDING HIS LEFT ARM. SAYS HE INJURED HIS SHOU  
LDER DOING EXERCISE. HAS REDDEN AREA TO POSTERIA LEFT SHOULDER, DIFFICULT TO  
DETERMINE IF SYMETRICAL TO RT. SHOULDER DUE TO POSITIONING OF I/M AND NOT BE

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ING TOTALLY COOPERATIVE WITH EXAM. SAYS HE CAN NOT MOVE WITHOUT EXTREME PAIN  
NURSE ABLE TO DUE PASSIVE MOVEMENT BUT THIS IS ALSO LIMITED BY I/M GAURDING  
AND STOPING NURSE WHEN MOVEMENT IS PAINFUL. NO BRUISING OR DISCOLORATION  
A> MUSCULOSKELETAL DISCOMFORT

- P> 1. SEE S.O. #27.  
2. ACETAMINOPHEN 325 MG. TABS 2 PO QID X 3 DAYS OR IBUPROFEN 400 MG. TABLETS  
2 P.O. TID PRN X 3 DAYS. DOCUMENT MEDS GIVEN IN AMR.  
3. IF PALPABLE MUSCLE SPASMS PRESENT, CHLORZOXAZONE 500MG. TABS PO QID X  
3 DAYS.  
4. FOR LOWER BACK DISCOMFORT, USE A ROLLED TOWEL UNDER LOW BACK X 5 DAYS.  
5. WILLIAM FLEXION EXERCISE (SCDC FORM 24-146) FOR CHRONIC LOW BACK PAIN.  
6. RESTRICT STRENUOUS ACTIVITIES OR REST THE INVOLVED AREA.  
7. HEAT (BY SHOWER, MOIST COMPRESSES OR HOT WATER SOAKS) TO THE INVOLVED  
AREA QID X 3 DAYS.

NOTED. PULSE (+) CAP REFILL BRISK. ABLE TO CLOSE AND OPEN HAND, SQUEEZE OBJECTS  
AND SENSITIVE TO TACTILE STIMULATION. ON CALL MD NOTIFIED. INSTRUCTIONS GIVEN  
TO IMOBILIZE ARM, GIVE IBU 800MG AND CHLORZOXAZONE 1 TAB NOW AND TO RETURN  
TO CLINIC THIS EVENING FOR REASSESSMENT. MEDS GIVEN BUT I/M STATES HE KNOWS  
THIS WILL NOT WORK AND WANT TO SEE A MD. I/M INFORMED THAT THIS WAS NOT POSS  
IBLE BUT THAT APPROPRIATE TREATMENT WAS BEING GIVEN. STATES THE MEDICATION H  
E RECIEVED WAS JUST SUGAR PILLS AND HE WAS GOING TO CONTACT HIS LAWYER. OTR  
WAS GIVEN ALONG WITH INSTRUCTIONS TO REPORT BACK TO MEDICAL. STATED THAT HE  
WOULD BUT HE KNOWS "YALL AIN'T GOING TO DO NOTHING"  
SIGNED OFF ON 09/04/11 @ 10:59 BY FREDDIE L BROOKS, REGISTERED NURSE I  
SIGNED OFF ON 09/06/11 @ 7:57 BY JOHN B TOMARCHIO, PHYSICIAN II

- \*\* ENCOUNTER: 21 DENTAL CLINIC 08/19/11 11:06 BROAD RIVER COMP  
FOLLOW-UP APPT. COMPOSITE FILLING "B"-22. AMALGAM FILLING "O"-20. DONE BY  
DR. EDWARDS. SEE HARD COPY.  
SIGNED OFF ON 08/19/11 @ 11:11 BY KIM M GREGGS, MEDICAL ASSISTANT TECH I
- \*\* ENCOUNTER: 20 DENTAL CLINIC 08/12/11 12:15 BROAD RIVER COMP  
IOE. DONE BY DR. EDWARDS. SEE HARD COPY.  
SIGNED OFF ON 08/12/11 @ 12:19 BY KIM M GREGGS, MEDICAL ASSISTANT TECH I
- \*\* ENCOUNTER: 19 OUTSIDE RECOMMENDATI 08/09/11 11:22 BROAD RIVER COMP  
INMATE RETURNED FROM USC NEUROLOGY WITH THE FOLLOWING RECOMMENDATIONS:  
1. AVOID EXERCISES - FLEXION/EXTENSION  
2. CUSHION ELBOW WHEN READING ETC  
3. FOLLOW UP 6 MONTHS FOR REPEAT NCS IF SYSTEMS PERSIST.  
WILL FORWARD TO MD FOR FURTHER REVIEW AND DISPOSITION. Y. MUNRO LPN  
SIGNED OFF ON 08/09/11 @ 11:30 BY YVONNE S MUNRO, LICENSED PRACTICAL NURSE  
NOTED.  
HE MAY SIGN UP FOR SICK CALL IF SYMPTOMS PERSIST.  
SIGNED OFF ON 08/10/11 @ 13:59 BY J GLENN ALEWINE, UNCLASSIFIED
- \*\* ENCOUNTER: 18 OUTSIDE APPOINTMENT 08/08/11 11:01 BROAD RIVER COMP  
I/M HAS AN APPT WITH USC NEUROLOGY ON 08/08/11 AT 1230PM, FOR AN EVALUATION  
SIGNED OFF ON 07/29/11 @ 11:01 BY GINA M CRAIG, ADMINISTRATIVE ASSISTANT  
SIGNED OFF ON 07/29/11 @ 11:13 BY MELISSA SKINNER, REGISTERED NURSE I

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- \*\* ENCOUNTER: 17 MENTAL HEALTH CLINIC 07/28/11 16:02 BROAD RIVER COMP  
S: INMATE SEEN FOR FIRST TIME BY THIS MD. HE WAS SEEN AT KIRKLAND INTAKE BY DR. REDDY WHO DIAGNOSED ANXIETY DISORDER NOS AND CONTINUED ZOLOFT 100 MG HS WHICH INMATE SAID HE HAD TAKEN IN THE COMMUNITY. HE GIVES A HISTORY OF OF VIRAL MENINGITIS WITH ENCEPHALITIS IN APPROXIMATELY 2005. HE REPORTS SOME MEMORY PROBLEMS FROM THIS. HE SAID HE WAS HIT BY A CAR IN 2005 OR 2007 AND SUFFERED NUMEROUS SERIOUS INJURIES, INCLUDING SERIOUS HEAD INJURY WITH LONG SCAR ON THE BACK OF HIS HEAD, LACERATED SPLEEN, RIGHT HIP FRACTURE AND OTHER INJURIES. HE WAS INTOXICATED ON ALCOHOL AT THE TIME HE WAS HIT BY A CAR THAT DID NOT STOP. HE IS SERVING TIME FOR MANSLAUGHTER WITH MAX OUT DATE OF 2033. HE SAID HE WAS "DEFENDING MYSELF." HE SAID HE HAS USED COCAINE, LSD, ECSTASY IN THE PAST BUT HIS DOC WAS ALCOHOL. HE HAS BEEN IN SUBSTANCE TREATMENT IN THE PAST, INCLUDING A 28 DAY INPATIENT PROGRAM. HE HAS BEEN TO LRADAC BEFORE. HE HAS BEEN TREATED IN THE PAST FOR DEPRESSION AND ANXIETY WITH ZOLOFT, XANAX AND ATIVAN. MAX OUT DATE 1/24/2033.  
O: ALERT, ORIENTED, GOAL-DIRECTED, GOAL-DIRECTED, NO SI/HI. NOT PSYCHOTIC.  
A: ANXIETY DISORDER NOS; ALCOHOL DEPENDENCE, IN CONTROLLED ENVIRONMENT; BEN ZODIAZEPINE ABUSE IN PAST; OTHER SUBSTANCE ABUSE IN PAST.  
P: CONTINUE ZOLOFT 100 MG HS. TRIAVIL ONE TAB HS.  
ZOLOFT 100MG  
SIG:ONE TAB P.O. QHS  
SIG:  
START DATE: 07/28/11 TOTAL DAYS: 180  
MD:WADMAN, PEGGY -  
PERPHENAZINE/AMITRIPTYLINE 2MG/25MG  
SIG:ONE TAB P.O. QHS  
SIG:  
START DATE: 07/28/11 TOTAL DAYS: 180  
MD:WADMAN, PEGGY -  
SIGNED OFF ON 07/28/11 @ 16:13 BY PEGGY C WADMAN, UNCLASSIFIED  
PLACED ON MAR  
SIGNED OFF ON 07/29/11 @ 8:30 BY FREDDIE L BROOKS, REGISTERED NURSE I
- \*\* ENCOUNTER: 16 MENTAL HEALTH CLINIC 07/27/11 15:28 BROAD RIVER COMP  
TX TEAM NOTE: TX TEAM HELD ON TODAY. I/M REMAINS L-4. NO REPORTED PROBLEMS OR CONCERNS. DX:MOST RECENT IS ANXIETY D/O BY DR. REDDY. I/M IS SCHEDULED FOR PSYCH CLINIC AT BRCI. MEDICATIONS FROM PREVIOUS INSTITUTION:ZOLOFT.  
SIGNED OFF ON 07/27/11 @ 15:31 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I
- \*\* ENCOUNTER: 15 NARRATIVE 07/22/11 9:31 BROAD RIVER COMP  
2ND STEP PPD PLANTED. OTR GIVEN TO I/M TO COME BACK MONDAY @ 10AM TO CHECK PPD RESULT.  
SIGNED OFF ON 07/22/11 @ 9:32 BY JENNIFER B BALLESL, REGISTERED NURSE I
- \*\* ENCOUNTER: 14 INSIDE APPOINTMENT 07/21/11 13:07 BROAD RIVER COMP  
NEW INTAKE FROM KRE TO BRCI  
CURRENT MEDICATIONS: ZOLOFT  
MEDICAL PROBLEMS: DEPRESSION/ANXIETY AND QUESTIONABLE SCHIZOPHRENIA  
PENDING APPTS: HAS APPROVED CONSULT FOR USC NEUROLOGY FOUND IN CHART. WAS

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SCHEDULED TO GO TODAY 7/21/11 @ 9AM, BUT WILL NEED TO BE  
RESCHEDULED D/T JUST COMPLETING INTAKE.

REGULAR DIET

LAST PPD: 6/8/11 - 0 MM, NEG. STILL NEEDS 2ND STEP PPD

LAST RPR: 6/10/11 - NON REACTIVE

WILL FORWARD ALREADY APPROVED CONSULT FOR USC NEUROLOGY TO MEDICAL RECORDS  
FOR RESCHEDULING.

SIGNED OFF ON 07/21/11 @ 13:11 BY SHARON E MACDERMOTT, REGISTERED NURSE I

\*\* ENCOUNTER: 13 MENTAL HEALTH CLINIC 07/19/11 13:17 BROAD RIVER COMP  
INITIAL MENTAL HEALTH ASSESSMENT:

D--I/M WAS SEEN TODAY IN MEDICAL FOR INITIAL MENTAL HEALTH ASSESSMENT. I/M IS A 31 YEAR OLD CAUCASIAN MALE FROM LEXINGTON, SC. I/M REPORTED THAT HE STARTED TAKING "ZOLOFT" AFTER HIS CURRENT CHARGES. I/M STATED THAT HE HAS BEEN IN INPATIENT TREATMENT AT LRADAC AND GREENVILLE HOMES VIEW FOR ALCOHOL ABUSE TREATMENT. I/M REPORTED THAT HE HAS A HISTORY OF SUBSTANCE ABUSE (ALCOHOL, COCAINE, LSD, ECTASY). I/M ALSO REPORTED THAT HE WAS A SMOKER PRIOR TO INCARCERATION IN WHICH HE WOULD LIKE TO SMOKE CIGARETTES NOW, BUT SINCE SCDC DOES NOT PERMIT, HE DOESN'T. I/M REPORTED THAT HE IS SINGLE AND DOES NOT HAVE ANY CHILDREN. I/M GRADUATED FROM HIGH SCHOOL WITH A DIPLOMA AND GRADUATED FROM TRAINING IN THE MARINE CORP. I/M STATED THAT HIS RANK WAS "E-2". I/M REPORTED THAT HIS MOST RECENT JOB WAS WITH HAWK EYE SECURITY AND INVESTIGATIONS IN WHICH HE WENT TO DIFFERENT LOCATIONS AND WORKED AS A ARMED SECURITY OFFICER. I/M REPORTED THAT HE WAS ADOPTED AS A "BABY", BUT WAS ABLE TO MEET HIS BIOLOGICAL PARENTS IN 2008. I/M REPORTED THAT HE HAS FAMILY SUPPORT FROM HIS ADOPTED PARENTS AND STATED THAT HE WAS "SPOILED". I/M STATED THAT HIS ALCOHOL USE WAS TO "SELF MEDICATE". I/M DESCRIBED HIS PAST LIFE AS "FINE" UNTIL THIS MOST RECENT LEGAL CASE. I/M STATED THIS IS HIS FIRST AND "LAST" INCARCERATION AND HIS GOAL IS TO GET HOME WITH HIS FAMILY. I/M STATED THAT HE IS WILLING TO PARTICIPATE IN ANY PROGRAMS PROVIDED TO HELP HIM BETTER HIMSELF. I/M REPORTED THAT HE IS NOT INTERESTED IN WORKING IN THE KITCHEN, BUT WOULD LIKE TO SPEND TIME IN THE LAW LIBRARY WORKING ON HIS CASE. I/M REPORTED THAT HE ENJOYS READING AND LEARNING ABOUT DIFFERENT THINGS. I/M STATED THAT HIS FOCUS IS ON PSYCHOLOGY AND SOCIOLOGY. I/M REPORTED THAT HE DOES HAVE SOME COLLEGE EDUCATION IN WHICH HIS MAJOR WAS IN SOCIOLOGY. I/M REPORTED THAT HE DOES HAVE SOME MEDICAL ISSUES (PAST VIRAL SPINAL MENINGITIS W/ ENCEPHALITIS, TWO SCREWS RIGHT LEG, HIT BY CAR IN 2005, FEET PROBLEMS, BONE SPURS).

A--ALERT AND ORIENTED IN ALL SPHERES. MOOD-REPORTED "GOOD". THOUGHT PROCESS LOGICAL AND GOAL ORIENTED. THOUGHT CONTENT-APPROPRIATE. NO BIZARRE OR PSYCHOTIC BEHAVIORS NOTED. REPORTED THAT SLEEP HAS BEEN "ODD" DUE TO NOT BEING ON MEDS, BUT STATED THAT IT IS REGULATING. DENIED SI/HI AND A/V HALLUCINATIONS. REPORTED GOOD APPETITE. I/M SEEMS TO BE FUNCTIONING WELL WITH STAFF AND PEERS THUS FAR AND HAS A HIGH MOTIVATION FOR TREATMENT.

DX: ANXIETY D/O NOS (PER DR. REDDY) GAF:80.

P--MENTAL HEALTH WILL SCHEDULE PSYCH CLINIC AND CONTINUE TO FOLLOW PER POLICY. WILL ALSO SCHEDULE I/M FOR SUBSTANCE ABUSE AND ANGER MGMT.

SIGNED OFF ON 07/19/11 @ 13:48 BY MELODY A TRIPLIN, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 12 SICK CALL 07/11/11 7:44 KIRKLAND COMP

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S> INMATE TO MEDICAL WITH COMPLAINTS OF RASH ON HIS KNEES AND EARS.

O> TEMP=098.0 PULSE= 98 RESP=16 BP=159/100 WEIGHT=200 PPD= 0

INMATE HAS WHAT APPEARS TO BE PSORIASIS. SMALL SILVERY PLAQUES.

A> CONTACT DERMATITIS

P> 1. SEE S.O. #17.

2. COOL COMPRESSES TO LESIONS FOR 20 MINUTES 4-6 TIMES PER DAY FOLLOWED  
BY AN APPLICATION OF HYDROCORTISONE CREAM 1% X 3 DAYS

3. IF RASH IS SEVERE, ESPECIALLY IF IT INVOLVES THE FACE, EYES, GENITALIA,  
OR MUCOUS MEMBRANES, REFER TO M.D.

ISSUED HYDROCORTISONE CREAM AND RETURNED PRN. KAREN COOPER RN

SIGNED OFF ON 07/11/11 @ 7:49 BY KAREN C COOPER, UNCLASSIFIED

\*\* ENCOUNTER: 11 MENTAL HEALTH CLINIC 07/01/11 14:51 KIRKLAND COMP

S: HE WAS SEEN TODAY. HE IS 31 YEAR OLD WHITE MALE WHO IS SERVING 25 YRS  
FOR VOLUNTARY MANSLAUGHTER. HE SAYS THAT HE HAS A LONG HX OF ANXIETY SX  
INCLUDING SWEATY PALMS, JITTERYNESS, FEELING THAT EVERY THING IS CLOSING  
IN AND FEELS DEPRESSED BECAUSE OF THIS. HE REPORTS THAT HE IS TAKING ZOLOFT  
NOW (HAS BEEN ON IT FOR 1 1/2 YEARS) AND TOOK XANAX AND ATIVAN IN THE PAST.  
HE SAYS THAT HE SAW PRIVATE PSYCHIATRIST IN 2006 -07 AND SAW A PSYCHIATRIST  
AT LEXINGTON MED CTR IN 2007-08. HE SAYS THAT HE HAD SOME BRIAN RELATED  
PROBLEMS (ENCEPHALOPATHY OR SOME THING ELSE NOT SURE). CURRENTLY HAVING  
PROBLEMS WITH HIS NERVES AND PROBLEMS WITH HIS PINKY. HE SAYS THAT ZOLOFT  
HAS BEEN VERY HELPFUL AND DOES NOT CAUSE ANY SIDE EFFECTS. HE WAS EXPLAINED  
ABOUT ALL POSSIBLE SIDE EFFECTS. HE SAYS THAT HE HAS VOICES TELLING HIM TO  
TURN RIGHT OR LEFT. BUT DENIED ANY OTHER SPECIFIC SX RELATED TO PSYCHOSIS.  
HE SEES DOTS NEAR HIS EYES AND WAS ASKED TO SEE MEDICAL FOR THIS. HE TOLD  
THE WRITER THAT HE SCHEDULED TO SEE NEUROLOGIST.

O: HE IS ALERT AND OX3. DENIED ANY VOICES NOW. HE DENIED ANY DEPRESSIVE SX.  
FEELS LESS ANXIOUS ON ZOLOFT. DENIED ANY S/I OR H/I. THOUGHT PROCESS IS  
GOAL DIRECTED.

A&P: ANXIETY D/O NOS: CONTINUE THE ZOLOFT 100 MG PO QPM.

ZOLOFT 100MG

SIG: 1 TAB PO QPM.

SIG:

START DATE: 07/01/11 TOTAL DAYS: 90

MD: REDDY, SRINIVASA R.

SIGNED OFF ON 07/01/11 @ 15:02 BY SRINIVASA R REDDY, UNCLASSIFIED

MAR UPDATED

SIGNED OFF ON 07/05/11 @ 11:49 BY MYLENE ANTONIO, UNCLASSIFIED

\*\* ENCOUNTER: 10 DOCTOR'S CLINIC 06/29/11 9:51 KIRKLAND COMP

INMATE C/O PINKY BEING NUMB.

INMATE HAS FULL ROM AND GOOD STRENGTH

SOME SLIGHT DECREASED SENSATION ALONG ULNAR DISTRIBUTION

???? CUBITAL TUNNEL SYNDROME

CONSULT FOR NCS AT USC NEUROLOGY APPROVED

F/U AT MD CLINIC AFTER NCS DONE

SIGNED OFF ON 06/29/11 @ 9:54 BY THOMAS A MOORE JR, PHYSICIAN II

CONSULT HANDED TO MS BENDER FOR SCHEDULING

WILL AWAIT UNTIL SEEN AT USC NEURO BEFORE SCHEDULING F/U

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SIGNED OFF ON 06/29/11 @ 11:21 BY MYLENE ANTONIO, UNCLASSIFIED

\*\* ENCOUNTER: 9 NARRATIVE 06/20/11 15:02 KIRKLAND COMP  
ADDENDUM TO ENC#8, ERROR MADE  
MD CLINIC SCHEDULED FOR 6/29 INSTEAD OF 7/6  
SIGNED OFF ON 06/20/11 @ 15:04 BY PRECIOUS S SIMMONS, UNCLASSIFIED

\*\* ENCOUNTER: 8 SICK CALL 06/20/11 11:53 KIRKLAND COMP  
S> "MY PINKY IS NUMB."

O> TEMP=097.9 PULSE= 62 RESP=18 BP=120/ 78 WEIGHT=263 PPD= 0  
PER I/M HIS PINKY FINGER ON LEFT HAND IS NUMB.  
I/M STATES HE CAN'T FEEL THE PAD OF HIS RING FINGER.  
I/M IS ON ZOLOFT BUT STATES HE HASN'T TAKEN IT SINCE BEING AT KIRKLAND.  
PER I/M THE NUMBNESS HAS NEVER HAPPEN BEFORE.  
I/M DENIES ANY PAIN.

PMH-VIRAL SPINAL MENINGITIS 2007

I/M DOES STATE HE WAS SEEING A NEUROLOGIST WHILE HOME.

I/M WANTS MD TO BE AWARE.

A> DEFER TO MD FOR HIS REVIEW

P> NOTE FORWARD TO MD

I/M IN NAD

SIGNED OFF ON 06/20/11 @ 11:56 BY PRECIOUS S SIMMONS, UNCLASSIFIED  
MD CLINIC APPT

SIGNED OFF ON 06/20/11 @ 13:08 BY THOMAS A MOORE JR, PHYSICIAN II  
MD CLINIC SCHEDULED FOR 7/6/11

OTR SENT TO I/M

SIGNED OFF ON 06/20/11 @ 15:00 BY PRECIOUS S SIMMONS, UNCLASSIFIED

\*\* ENCOUNTER: 7 MENTAL HEALTH CLINIC 06/10/11 10:49 KIRKLAND COMP  
D: IM WAS SEEN ON REFERRAL FROM MEDICAL. IM IS A 31 YO SWM FROM WEST

COLUMBIA, SC WHO IS SERVING 25 YEARS FOR VOLUNTARY MANSLAUGHTER. IM  
REPORTED THAT THIS IS HIS FIRST TIME IN PRISON.

\*IM REPORTED RECEIVING MENTAL HEALTH SERVICES FROM PRIVATE PSYCHIATRIST  
DR. TOM HAMIL WHO IS ALSO AN ADDICTIONS SPECIALIST IN APPROXIMATELY  
2006 OR 2007. IM REPORTED THAT HE RECEIVED MENTAL HEALTH SERVICES FROM,  
DR. STEWART COOPER AT LEXINGTON MEDICAL CENTER IN 2007-2008. IM REPORTED  
THAT HE WAS DIAGNOSED WITH ANXIETY AND DEPRESSION. IM DENIES PAST OR  
CURRENT SI/HI. IM REPORTED SOMETIMES THAT HE HAS THOUGHTS TO HURT OTHERS,  
BUT DENIES CURRENT THOUGHTS TO HURT OTHERS. IM REPORTED A SUGGESTIVE  
VOICES TELLING HIM COMMANDS TO GO LEFT OR GO RIGHT. IM REPORTED VH OF  
SEEING WORMS AND DOTS (BELIEVES NEUROLOGICAL).

\*IM REPORTED THAT HE HAS TAKEN XANAX AND ATAVAN IN THE PAST AND LAST USED  
6/2010. IM REPORTED THAT HE HAS TAKEN ZOLOFT AND LAST USED 3 DAYS AGO (CC  
C NOTE: ZOLOFT PRESCRIBED 6/8/2011).

\*IM REPORTED SUBSTANCE ABUSE OF ALCOHOL, LSD, COCAINE, PCP, AND MDMA SINCE  
HIGH SCHOOL AND LAST USED 6/26/2010.

\*IM REPORTED RECEIVING SUBSTANCE ABUSE TREATMENT FROM HOMESVIEW IN  
GREENVILLE, SC, INSIGHT IN WEST COLUMBIA, LARADAC IN COLUMBIA, SC UNABLE TO  
RECALL WHEN HE WAS SEEN FOR TREATMENTS.

\*IM REPORTED HEALTH CONCERNS OF HEMROIDS AND "PINKY FINGER" NUMB.

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- \*IM DENIES PHYSICAL OR SEXUAL ABUSE.
- \*IM REPORTED THAT HIS HIGHEST LEVEL OF EDUCATION IS SOME COLLEGE.
- \*IM REPORTED SLEEP AND APPETITE O.K.
- \*IM DENIES ISSUES OR CONCERNS WITH CELL MATES.

A: IM MOOD AND AFFECT APPEARED FLAT. IM APPEARED ALERT, ORIENTED, AND COHERENT  
IM SPEECH AND THOUGHT PROCESS APPEARED NORMAL. NO DISTRESS NOTED.

P: CCC WILL CONTINUE TO MONITOR IM'S MENTAL HEALTH STATUS PER POLICY. CCC  
WILL REFER IM TO PSYCHIATRIST. CCC RECOMMENDS MH-4 (OPMH) AND SA- (SUBSTANC  
E ABUSE TREATMENT).

SIGNED OFF ON 06/10/11 @ 10:59 BY SHARLETA M WOODALL, HUMAN SERVICES COORD I

\*\* ENCOUNTER: 6 LAB CLINIC 06/09/11 8:21 KIRKLAND COMP  
RPR, HIV DONE  
SIGNED OFF ON 06/09/11 @ 8:21 BY YOLANDA D GILL, MEDICAL ASSISTANT TECH I

\*\* ENCOUNTER: 5 MENTAL HEALTH CLINIC 06/08/11 6:20 KIRKLAND COMP  
FOUND OPENED  
SIGNED OFF ON 06/13/11 @ 6:20 BY LISA A BROWN, LICENSED PRACTICAL NURSE

\*\* ENCOUNTER: 4 MENTAL HEALTH CLINIC 06/08/11 12:19 KIRKLAND COMP  
REQUESTING MENTAL HEALTH R/T SCHIZO, DEPRESSION AND ANXIETY  
SIGNED OFF ON 06/08/11 @ 12:20 BY CELINA A MCINTYRE, LICENSED PRACTICAL NURSE  
SIGNED OFF ON 06/08/11 @ 15:36 BY RENEE L WILLIAMS, HUMAN SERVICES COORD II

\*\* ENCOUNTER: 3 PHYSICAL EXAM 06/08/11 12:14 KIRKLAND COMP  
SCDC#: 00346350 TORRENCE JR, ANDREW E  
POB: RICHLAND, SC UNITED STATES DOB:  
AGE: RACE: WHITE SEX: M MARITAL STATUS: S  
COMMITTING COUNTY: LEXINGTON MAXOUT: 02/10/32 DORM: MO0174B  
SS#: \_\_\_\_\_

IN EMERGENCY NOTIFY: JE  
RELATIONSHIP: MOTHER  
ADDRESS: COLA, SC 29170 RICHLAND

FAMILY PHYSICIAN:  
DENIES

FAMILY HISTORY OF THE FOLLOWING ALIMENTS:-----  
HYPERTENSION  
STROKE

PATIENT ALLERGY HISTORY-----  
NKA  
ADDED ON 06/08/11

PATIENT MEDICAL HISTORY-----

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CHILDHOOD DISEASES:.....  
ALL

SURGERY:.....  
R-HIP 2 SCREWS INTACT 2005, R-WRIST

FRACTURES:.....  
R AND L ARM

GUNSHOT WOUNDS:.....  
DENIES

STAB WOUNDS:.....  
DENIES

PATIENT HAS A HISTORY OF-----  
ALCOHOL  
BLOOD TRANSFUSION  
STREET DRUGS  
HTN  
MENTAL HEALTH HISTORY  
SMOKER  
STD

CURR MED/DENTAL/MENTAL HX:-----  
HTN, SCHIZO, HEAR VOICES, ANXIETY, DEPRESSION, FACIAL RASH

CURRENT MEDICATIONS:-----  
ZOLOFT, NEVER BEEN ON BP MEDS, BENADRYL

GENERAL APPEARANCE:-----

BEHAVIOR:-----  
ALERT-PERS/PLACE/TIME  
COOPERATIVE

COMMENTS:-----  
DENIES

VITALS:-----  
HEIGHT: 5 FT10 IN WEIGHT: 261 TEMP: 098.2 PULSE: 98  
BP: 155/106 RESP: 18  
VISION SCREEN WITHOUT GLASSES: R:20/200 L:20/ 40  
WITH GLASSES: R:20/ 20 L:20/ 20

VACCINES:-----  
PPD GIVEN

SIGNED OFF ON 06/08/11 AT 12:19 BY CELINA A MCINTYRE, LICENSED PRACTICAL NUR

MDCI880D  
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
SCDC HEALTH SERVICES: MEDICAL SUMMARY

09/13/17  
C057031

SCDC# 346350 TORRENCE JR, ANDREW E

PAGE 115

PHYSICAL ABNORMALITIES:-----

ABDOMEN  
PSYCHIATRIC  
SKIN

CURRENT MEDICAL CONDITIONS:-----

OTHER PROBLEMS--DESCRIBE  
PSYCHIATRIC PROB-IDENTIFY  
SUBSTANCE ABUSE

PHYSICANS COMMENTS:-----

01 YO OBESE WM HX SCHIZOPHRENIA BUT HE SAYS ANXIETY/DEPRESSION NO HTN HX  
ABDOMEN  
OBESE  
PSYCHIATRIC  
FLAT AFFECT  
SKIN  
TATTOO FACE SEBORRHEA NO STREET RX

PHYSICANS ORDERS:-----

CCC & PSYCH FU PRN WT LOSS COUNSELED BP Q WK X 3 & FU PRN NEED FOR RX. F5  
SIGNED OFF ON 06/08/11 AT 12:53 BY JACK M VALPEY M D, PHYSICIAN II

NURSES RESPONSE:-----

CCC CONSULT ALREADY SENT. OTR SENT FOR BP CHECKS WEEKLY X3. MAR DONE.  
SIGNED OFF ON 06/08/11 AT 13:03 BY MARIA J CRUZ, UNCLASSIFIED

\*\* ENCOUNTER: 2 DNA TEST 06/08/11 8:21 KIRKLAND COMP  
DNA COMPLETED  
SIGNED OFF ON 06/09/11 @ 8:21 BY YOLANDA D GILL, MEDICAL ASSISTANT TECH I

\*\* ENCOUNTER: 1 PPD 06/08/11 0:45 KIRKLAND COMP  
S> NEGATIVE TST READ OMM  
O> TEMP=000.0 PULSE= 0 RESP= 0 BP= 0/ 0 WEIGHT= 0 PPD= 0  
SIGNED OFF ON 06/14/11 @ 11:36 BY KIMBERLY JOHNSON, REGISTERED NURSE I

\*\*\*\*\* END OF SICK CALL NOTES \*\*\*\*\*

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Andrew E. Torrence, Jr., #346350,

Applicant,

v.

State of South Carolina,

Respondent.

FILED  
IN THE COURT OF COMMON PLEAS  
2019 APR 22 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-32-01993

LISA M. COTNER  
CLERK OF COURT  
LEXINGTON, SC

**ORDER OF DISMISSAL**

This matter comes before this court by way of an application for post-conviction relief filed June 1, 2015, by Andrew E. Torrence, Jr. (Applicant). The State of South Carolina (Respondent) made its return on July 12, 2017, requesting an evidentiary hearing be held. Thereafter, on July 13, 2017, and October 26, 2018, through his counsel, Applicant filed two amendments to the application for post-conviction relief. An evidentiary hearing into the matter was convened on November 5-6, 2018, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Assistant Attorneys General Kelly Oppenheimer and Sherrie Butterbaugh, both of the South Carolina Attorney General's Office.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, as well as substantive proposed orders from both parties, this court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

**PROCEDURAL HISTORY**

The records before this court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County

Clerk of Court. During its August 2010 term, the Lexington County Grand Jury indicted Applicant for murder (2010-GS-32-02318). Thereafter, during its May 2011 term, the Grand Jury indicted Applicant for possession of a weapon during the commission of a violent crime (2011-GS-32-01440) and carrying a pistol or firearm onto the premises of a business selling alcoholic liquors, beers, or wines for on-premises consumption (2011-GS-32-01444). Wayne H. Floyd, Esquire represented Applicant. Deputy Solicitor D. Shawn Graham, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On May 31-June 3, 2011, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. The jury convicted Applicant on the weapons charges and of the lesser-included offense of voluntary manslaughter. Judge McMahon sentenced Applicant to twenty-five years for voluntary manslaughter and five years for each of the weapons charges. The sentences were to be served concurrently.

On June 8, 2011, Applicant moved for a new trial and reconsideration of his sentences. By written order dated June 15, 2011, Judge McMahon denied the motion for a new trial and motion for reconsideration of the voluntary manslaughter sentence. Judge McMahon did, however, amend Applicant's sentence for possession of a firearm on the premises of a business selling alcoholic liquors, beers, or wines for on-premises consumption from five years to three years.

Applicant filed a timely notice of appeal, and Blake A. Hewitt, Esquire, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Whether [Applicant] was entitled to a charge on involuntary manslaughter when he admitted intentionally firing his weapon, but other circumstances indicated that he did not intend to inflict serious injury or death?" Following briefing and oral argument, the South Carolina Court of Appeals issued an unpublished opinion affirming Applicant's convictions and sentences. *State v.*

*Torrence*, Op. No. 2013-UP-152 (S.C. Ct. App. Filed April 10, 2013). Applicant subsequently petitioned for rehearing, which was denied by written order on May 8, 2013.

Applicant then petitioned the South Carolina Supreme Court for a writ of certiorari to review the South Carolina Court of Appeals' decision. By written order dated November 7, 2014, the South Carolina Supreme Court denied Applicant's petition for writ of certiorari. The Remittitur was issued on November 17, 2014.

### **CURRENT APPLICATION**

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

1. Ineffective assistance of trial counsel; [and]
  - a. Failure to properly prepare Applicant prior to trial; [and]
  - b. Failure to call witnesses and utilize evidence.
2. Ineffective assistance of appellate counsel.
  - a. Failure to raise all meritorious issues on appeal

In his first amendment to the application for post-conviction relief, filed on or about July 13, 2017, Applicant raises the following allegations:

1. Ineffective assistance of trial counsel regarding Applicant's mental health;
  - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial;
  - b. Trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in mitigation in a plea; [and]
  - c. Trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert.
2. Trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, but not limited to:
  - a. Trial counsel was ineffective for failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue; [and]

- b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.
- 3. Ineffective assistance of counsel for the handling of the defense prior to and during trial;
  - a. Trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene;
  - b. Trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial;
  - c. Trial counsel was ineffective for failing to fully cross-examine the State's witnesses at trial;
  - d. Trial counsel was ineffective for failing to address the matter of bias at trial; [and]
  - e. Trial counsel was ineffective for failing to obtain an accident and involuntary manslaughter jury charge.
- 4. Trial counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant's prior conviction at trial; [and]
- 5. Appellate counsel was ineffective for, but not limited to, the following:
  - a. Failing to raise all meritorious issues on appeal.
    - i. The trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Transcript p. 201;
    - ii. Trial counsel's arguments regarding the issues of docket manipulation and the use of Applicant's prior conviction. Transcript pp. 451-64;
    - iii. The trial court's denial of the directed verdict motion. Transcript p. 408-10;
    - iv. Trial court's denial of the admission of the in car video. Transcript pp. 440-43, 460, 584-86;
    - v. Trial court's refusal to charge accident. Transcript pp. 616-617; [and]
    - vi. Trial counsel's objection to the State's closing argument. Transcript pp. 678.

In his second amendment to the application for post-conviction relief, filed on or about October 26, 2018, Applicant raised the following grounds:

- 1. Ineffective assistance of trial counsel regarding Applicant's mental health;
  - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial;
  - b. Trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in

- mitigation in a plea and/or trial; [and]
- c. Trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert.
  2. Trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, but not limited to:
    - a. Trial counsel was ineffective for failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue; [and]
    - b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.
  3. Ineffective assistance of counsel for the handling of the defense prior to and during trial;
    - a. Trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene;
    - b. Trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial;
    - c. Trial counsel was ineffective for failing to fully cross-examine the State's witnesses at trial;
    - d. Trial counsel was ineffective for failing to address the matter of bias at trial;
    - e. Trial counsel was ineffective for failing to ensure that the court gave a curative instruction following his objection to the State's closing argument. Transcript p. 678, 680-82. Additionally, ineffective assistance for not making an objection to the Solicitor's characterization of the victim as a "hero." Transcript p. 579, 678 [and]
    - f. Trial counsel was ineffective regarding the court's charge, for the following but not limited to:
      - i. For failing to obtain an accident and involuntary manslaughter charge;
      - ii. For failing to object to the contemptuous language charge;
      - iii. For failing to request a more detailed charge on citizen's arrest; and
      - iv. For failing to request a jury charge on the difference between "acting lawfully" and being "lawfully armed in self-defense."
  4. Trial counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant's prior conviction at trial; [and]
  5. Appellate counsel was ineffective for, but not limited to, the

following:

- a. Failing to raise all meritorious issues on appeal.
  - i. The trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Transcript p. 201;
  - ii. Trial counsel's arguments regarding the issues of docket manipulation and the use of Applicant's prior conviction. Transcript pp. 451-64;
  - iii. The trial court's denial of the directed verdict motion. Transcript p. 408-10;
  - iv. Trial court's denial of the admission of the in car video. Transcript pp. 440-43, 460, 584-86;
  - v. Trial court's refusal to charge accident. Transcript pp. 616-617; [and]
  - vi. Trial counsel's motions and arguments regarding prosecutorial misconduct.

At the hearing, Applicant proceeded forward on the claims of ineffective assistance of counsel raised in his second amendment to the application for post-conviction relief.

#### **STATEMENT OF FACTS ADDUCED AT TRIAL**

In the early morning hours of September 28, 2008, Applicant shot Zach Chaplin. Approximately six weeks later, Chaplin died as a result of the gunshot wounds. Tr. pp. 126, 137-40.

At trial, Applicant's former employer, Tonya Mozenko, testified for the State. Mozenko hired Applicant as a part-time security guard. Tr. pp. 162-63. Applicant wanted to be an armed guard; however, Mozenko's company did not have any armed positions available. Tr. p. 168. On several occasions, Applicant told Mozenko he wanted to be a police officer. Tr. p. 169. Eventually, Mozenko had to fire Applicant because Applicant could not do the job. Tr. p. 164.

A few hours before Applicant shot Chaplin, Applicant had a conversation with Mozenko and her friend, Stephen Smith, at Shaggy's Bar. Applicant told Mozenko and Smith he tried to buy Donna Muszynski a drink earlier that night, and he was upset Muszynski gave all of her

attention to Chaplin. Tr. pp. 174, 216-17. Applicant called Chaplin a "wolverine" and a "faggot." Tr. pp. 177, 216, 366. However, Chaplin did not respond. Tr. p. 175. Applicant repeatedly said: "I should go to my truck and get my gun and shoot him." Tr. pp. 177-78, 217. Sick and tired of Applicant's comments, Mozenko and Smith left the bar and went home. Tr. p. 178.

At trial, Lee Buchanan testified Applicant repeatedly called him gay. Tr. pp. 367-68. Buchanan told Applicant to leave him alone. Tr. p. 265. Applicant asked Buchanan if he wanted Applicant "to kiss his ass." Tr. p. 265. Throughout the night, Applicant made comments to Buchanan about Buchanan's sexuality. Tr. p. 266.

Eventually, Applicant and Chaplin got into a physical altercation. Tr. p. 268. Buchanan tried to stop the fight. Tr. pp. 268-69, 287-88, 314, 355, 480. After the fight was over, Buchanan helped Applicant find his glasses. Tr. p. 269. Thereafter, Buchanan told Applicant, "[l]et's all go home. It's over and done with." Tr. p. 269. Buchanan escorted Applicant out of the bar. Tr. p. 270, 301. After Applicant left, everyone settled down. Tr. p. 314.

However, a few minutes later, Applicant knocked on the bar door and asked to come inside. Tr. p. 270. Applicant reentered the bar with a gun in his hand. Tr. p. 271. Applicant told Buchanan, "this has nothing to do with you, this doesn't involve you . . . ." Tr. p. 271. Buchanan could not escape. Tr. p. 272. At that point, Chaplin threw a barstool at Applicant. Tr. p. 277. Buchanan heard two gun shots, which sounded like "bam (pause) bam." Tr. p. 272. Another witness testified the gun shots were approximately twenty seconds apart. Tr. p. 302.

In his defense, Applicant testified at trial. Applicant admitted he called Buchanan "gay." Tr. p. 477. Applicant claimed when he went to apologize to Buchanan, Chaplin assaulted Applicant. Tr. p. 480. After the fight was over, Applicant continued to make comments. Tr. p.

481.

Thereafter, Applicant went to his truck and grabbed his gun. Tr. pp. 481-84. According to Applicant, he went back into the bar in order to detain Chaplin and Buchanan for the earlier assault. Tr. p. 482-83. Applicant ordered Buchanan to put his hands on the bar. Tr. p. 485. While Applicant searched Buchanan for weapons, Chaplin threw a barstool at Applicant. Tr. pp. 485-86. Applicant went into a defensive position. Tr. p. 486. According to Applicant, when Chaplin came towards Applicant, he got scared and shot Chaplin twice. Tr. pp. 486-90. Applicant admitted to intentionally pulling the trigger twice. Tr. pp. 497, 546. One bullet struck Chaplin in the right arm, and the other bullet struck Chaplin behind the right ear. Tr. p. 129-33.

According to Dr. Janice Edwards Ross, Chaplin was either in a bent over position or on the ground when Applicant fired the second shot. Tr. p. 136. The bullet that struck Chaplin behind his right ear injured his spinal cord and paralyzed him from the chest down. Tr. p. 137. On November 12, 2008, Chaplin died from complications of his paralysis. Tr. pp. 126, 137-40.

#### **TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant presented the testimony of Tora L. Brawley, Ph.D., Donna Schwartz Maddox, M.D., Wayne H. Floyd, Esquire (Counsel), Peter G. Skidmore, Blake A. Hewitt, Esquire (Appellate Counsel), and Brenda Torrence. Respondent presented the testimony of Deputy Solicitor Graham. This court also had before it a copy of Applicant's trial transcript; the records of the Lexington County Clerk of Court; Applicant's appellate records; the record on appeal; Applicant's records from the South Carolina Department of Corrections; a copy of the motions hearing transcript taken April 16, 2018, before Judge William A. McKinnon; and the records from this current post-conviction relief action.

#### *Dr. Brawley's Testimony*

During the evidentiary hearing, Dr. Tora Brawley testified as an expert licensed in forensic neuropsychology. She was asked to evaluate the cognitive functioning of Applicant. She testified that during the clinical interview, Applicant stated he was under remote neuro-monitoring, which was affecting his concentration and memory, causing irritability, paranoia, and weight gain. Dr. Brawley testified she administered many psychological tests to measure areas of brain functioning, the results of which were the following: low average range IQ of 86, a decline in overall intellectual functioning, severe impairment of verbal learning, delayed recall, inability to copy a complex figure, low verbal fluency, and severe impairment of mental tracking. She further testified almost all of the examinations given placed Applicant in the first percentile, with the exception of a few areas of assessment being in the sixth through ninth percentiles. She testified she tested the effort Applicant was putting into the tests and determined the test results were valid, because he was not exaggerating or malingering. Dr. Brawley concluded Applicant had moderate to severe deficits in cognitive domains, suggestive of brain organicity, implying there may be areas of brain damage or the brain may not be working like it should. Furthermore, Dr. Brawley recommended a full neurological evaluation for Applicant. After conveying the test results to Dr. Maddox, who ordered the test, Dr. Brawley testified she conducted another malingering test the morning of the hearing and determined Applicant did not show signs of malingering that morning. Dr. Brawley testified it was highly likely Applicant had the deficits at the time of the crime because of several prior concussions and spinal meningitis, which would have impacted brain function.

During cross-examination, Dr. Brawley admitted she cannot say to a reasonable degree of medical certainty Applicant exhibited these deficits at the time of the crime, nor could she testify the concussions and the meningitis definitely contributed to the deficits. Dr. Brawley further

testified there was no baseline for Applicant's functioning; however, certain areas of functioning are considered crystallized and hold through early dementia or head injuries. Dr. Brawley further explained the administration of tests to look at different areas of the brain, verbal fluency, motor skills, and manual dexterity. She testified she was asked to conduct the testing well after the trial, but it is highly unusual to see a decline in functioning after being in prison because of the structured environment. Dr. Brawley indicated Applicant's IQ is high enough to know the difference between right and wrong, know the difference between the truth and a lie, and have the ability to make decisions for himself. She further testified Applicant understood what he was being asked resulting from his average working memory and verbal comprehension. Further cross-examination of Dr. Brawley showed Applicant was an armed security guard prior to the incident and had to undergo extensive SLED training. Dr. Brawley did not know if Applicant's level of functioning would have allowed him to complete the training, and she was not aware of any behavior Applicant exhibited during incarceration.

*Dr. Maddox's Testimony*

Applicant subsequently called Dr. Donna Maddox, an expert in forensic psychiatry. Dr. Maddox initially examined Applicant in 2010, at the Lexington County Detention Center pursuant to a request from Counsel. Dr. Maddox testified she spoke with Applicant's mother about his prior history of being diagnosed with meningitis, having lumbar punctures, and being involved in a hit and run with a moving vehicle. Dr. Maddox further testified that she recommended Applicant for further neuropsychological testing by Dr. Brawley. Dr. Maddox did not present any records from the 2010 evaluation because the records have been misplaced. Dr. Maddox testified that she did not testify at Applicant's trial because she was unaware of the trial until a later phone inquiry from Applicant's mother. She stated that if had she known about the

proceedings, she would have been involved to give her findings when needed.

During her testimony, Dr. Maddox explained the evidence from the case she reviewed including witness statements, surveillance videos, prior neurology clinic notes, emergency department records, emails between attorneys, 911 calls, results from Dr. Brawley's testing, and medical records from SCDC. Dr. Maddox then testified Applicant was adopted, so she was not able to look at any familial history, but he had a significant alcohol abuse problem. She further testified while confined in SCDC, Applicant became psychotic but was not treated because the psychologist determined Applicant was malingering. Dr. Maddox testified she had communications with Appellate Counsel's firm and gave them her file but did not hear from anyone until she was contacted to evaluate Applicant for the post-conviction relief hearing.

Dr. Maddox testified her findings of the most recent evaluation show Applicant has delusions and believes remote neuro-monitoring is implanted in his brain, possibly by his mother to stop the alcohol abuse. She further testified that at first, Applicant was benevolent about the device, but now he does not want it and believes the government may be involved. Dr. Maddox explained Applicant hears up to twenty voices in his head, which make him agitated and affect his ability to function. She further explained Applicant does not believe Chaplin or his father are dead. Dr. Maddox then testified to the mental status examination: his clean hygiene, rapid rate of speech, jumping from one topic to another and coming back to certain topics, and his disbelief that he is mentally ill. Dr. Maddox testified she is concerned with the conditions Applicant is currently living in after being able to observe him five different times, and she believes that her testimony of numerous impairments affecting his brain would have been a mitigating factor in his case. She also testified on how alcohol mixed with the underlying issues would have exacerbated his impulsive behavior. She testified she would not make a determination about his

competency to stand trial because she was not able to evaluate him prior to the trial, but if all of the facts would have been like they are today, she would have been most concerned about Applicant not thinking Chaplin was dead. She was more concerned with Applicant's ability to testify and still had a question about his ability to testify during the post-conviction relief hearing because delusions cause the inability to tell the difference between the truth and a lie. Dr. Maddox testified she would diagnose Applicant with unspecified schizophrenia, psychotic spectrum disorder, a major neurocognitive impairment, and alcohol abuse disorder. She further testified she did not believe he was malingering the symptoms. Dr. Maddox explained the delusions, voices, and hallucinations all could have affected his ability to know the difference between truth and a lie.

During cross-examination, Dr. Maddox testified she was not familiar with and did not administer an MMPI-2 test or a SIMS test. She further testified it is not strange for the voices to have conversations like the person is not there, and the voices can be good things. Dr. Maddox further testified she performed the initial evaluation before the trial, but the report was never completed because the neuropsychological testing was not done; however, after the first evaluation, she did not have any concerns about Applicant's competency. She explained that if she had concerns about Applicant's competency or mental health, she would have raised those concerns to Counsel, which she did not do. She further explained her opinions at the evidentiary hearing were not her opinions when she first evaluated Applicant, and her current opinions are in hindsight. Dr. Maddox testified to the symptoms of schizophrenia and how individuals are still able to function and may not appear in distress. Dr. Maddox further stated there was a time when Applicant was not complying with the prescribed treatment but requested an evaluation, and symptoms can become exaggerated without taking the medicine. She testified the cooling

off period when Applicant sat in the car and grabbed a gun before going back into the bar was both impulsive and not impulsive. Dr. Maddox explained Applicant exhibited poor judgment to retrieve the gun, but once Applicant came back into the bar, he was impulsive when firing.

During redirect examination, Dr. Maddox testified she needed the neuropsychological testing completed in order to diagnose Applicant to issue opinions and findings. She further testified Applicant was not compliant with his medication, but she had some issues with the medications he was receiving because he exhibited psychotic symptoms and was receiving antidepressants and antianxiety medications.

During re-cross examination, Dr. Maddox testified it is common for malingering patients to report exaggerated symptoms to one doctor and report nothing to another doctor in a very short time frame. She further testified scores on malingering tests can change from day to day.

#### *Counsel's Testimony*

Applicant then presented the testimony of Counsel. Counsel testified Applicant's mother retained him for the case. He further testified he remembered a conversation with Dr. Maddox after she evaluated him at the Detention Center, but he does not remember a report or further recommendations regarding treatment. Counsel recalled not utilizing the services of Dr. Maddox because she was unable to provide useful information at trial, particularly as to the issues of guilt or innocence and competency. He explained he discussed a mental health defense with Applicant but did not feel confident to raise it during trial. Counsel testified he did not discuss how Applicant's Zoloft affected him and did not use an expert to explore how Applicant could have been impacted by a traumatic event or how this could affect his ability to make decisions. He further testified he did not observe any abnormal behavior from Applicant during the trial.

Counsel also testified Applicant was offered a plea to voluntary manslaughter. He further

testified the State tried to manipulate the docket to prejudice Applicant, by calling the assault and battery case to trial before the murder case, should Applicant not accept the State's plea offer. Counsel believed the State wanted to call the cases in this manner so that Applicant would have a prior record before the murder trial. He further testified he objected to the docket manipulation but that motion and the motion for a continuance were denied.

Counsel further testified he performed the usual preparation for trial by looking at the evidence, going to the scene, and talking to potential witnesses. Counsel did not hire an investigator and did not recall the number of times he met with Applicant. He testified he only used the footage from Shaggy's bar provided to him and did not ask for additional footage. He further testified Tonya Mozenko's and Stephen Smith's testimony was very damaging because the defense was Applicant was effectuating a citizen's arrest, and the testimony of Mozenko and Smith provided a motive to counteract the defense. He explained the timeline stated by the witnesses and the timeline stated by Applicant did not match up, but he did not attempt to get video surveillance to support Applicant's statement that he was not at State Street Pub when Mozenko and Smith said he was. Counsel also testified he did not attempt to get any reports of incidents that took place at Applicant's job that night, and he was shown a report from the night listing Applicant as a supplement person during the time he was alleged to have been at the bar with the State's witnesses. Counsel explained the report would have been extremely important in the defense, but the State did not provide it to him in discovery<sup>1</sup>.

He testified he moved for a mistrial and a dismissal on the grounds of prosecutorial misconduct, but the trial court ruled it was a credibility issue and was going to give a curative instruction. He further testified he did not believe the trial court gave a proper curative

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<sup>1</sup> According to Deputy Solicitor Shawn Graham, the State did not possess this incident report and the State did not use this incident report during Applicant's trial.

instruction because the solicitor was implying Applicant faked his employment records and drank on the job.

He further testified that the footage of Applicant from the patrol car would have been helpful in the defense to show remorse and to show Applicant did not confess to the crime. He testified, however, that he withdrew his motion to admit the video into evidence because the trial court ruled the video could only be admitted without the audio.

Counsel testified that an involuntary manslaughter instruction would have been valuable to the defense because the defense argued citizen's arrest and accident, and the State would have to prove the homicide was not accidental beyond a reasonable doubt.

During cross-examination, he testified he spoke with Applicant at length about his trial and did not have any indication to believe Applicant did not understand what was happening. He explained Applicant did not exhibit any odd behavior. He further testified he spoke with Dr. Maddox, who never raised any concerns to him about Applicant's competency. He further testified he could not have raised a defense based on Applicant's mental health. He explained that after his conversation with Dr. Maddox, he realized he could not call her as witness as to the issue of guilt or innocence. Counsel testified Applicant did not want to plead to murder or voluntary manslaughter; thus, mitigation in a plea from Dr. Maddox was not necessary. He explained his witness lists always have more people than he intends to call during trial, and just because Dr. Maddox's name appeared on the witness list does not definitively mean he planned on calling her as witness.

He further testified the footage from the scene was adequate enough to show the actual interchange with the gun. He testified he attempted to contradict testimony from the State's witnesses through cross-examination and the introduction of documentary evidence, including

Applicant's timesheet from his place of employment. He explained he attempted to suggest on cross-examination of Mozenko and Smith they were lying about Applicant's whereabouts prior to Shaggy's. He further explained the incident report introduced into evidence at the evidentiary hearing did not state how long Applicant was at Rush's during the incident nor that Applicant remained at Rush's during the entire incident. Counsel provided that Applicant's manager at Rush's testified at trial she did not smell any alcohol on Applicant that night. He further testified the statements given by Mozenko and Smith were used to conclude malice for murder, but Applicant was convicted of voluntary manslaughter.

He also testified there was undisputed evidence Applicant went to Shaggy's, got into a fight with Chaplin, left the bar for a period of time, shot Chaplin twice with a gun, and admitted to intentionally shooting Chaplin. He further testified some people could construe Applicant's derogatory language as contemptuous, and all of Applicant's statements that he was going to go to his truck, grab his gun, and shoot Chaplin were made at Shaggy's. He testified there was ample testimony to the inappropriate language Applicant was using that night. He also explained the "Jekyll and Hyde" comment made at trial was a reference to Applicant's drinking. Counsel testified his reasoning in attempting to introduce the in-car video was in order to show remorse for the health of the victim, but the trial court ruled it was self-serving hearsay. He explained he did not want to show the video without the audio because, without the audio, the video did not help his defense.

Counsel testified he typically does not have defendants testify because they will get confused during cross-examination, but Applicant was adamant he wanted to tell his side of the story. He also testified he interpreted the traumatic event statement made by Applicant simply as a reaction to the incident and that statement did not raise any red flags to him about Applicant's

mental health. Counsel also testified that the trial court severely limited the amount of information that could come out at trial about Applicant's prior charge.

He also testified he made an objection during the solicitor's closing statement and later articulated his objection on the record. He explained the trial court stated that when taking the argument as a whole, the statement by the solicitor was not made to inflame the passions of the jury. Counsel further explained the trial court did, in fact, give a curative instruction that the jury could not base their decision on passion, emotion, or any consideration not connected to the case. Counsel testified he requested charges on involuntary manslaughter and accident, but the trial court did not give those charges to the jury. He explained Applicant's admission he fired the gun intentionally played a part in the trial court's refusal to charge involuntary manslaughter and accident. He further explained Applicant was not acting lawfully by bringing a loaded gun into a crowded bar. Counsel also testified he followed the appeal, where the South Carolina Court of Appeals ruled there was no evidence warranting a charge on involuntary manslaughter. He testified the jury was given an extensive jury charge on citizen's arrest and self-defense.

On redirect examination, Counsel testified there was due process and constitutional separation of powers concerns regarding the docket manipulation. He further testified it would have been useful to have more video footage. He testified the incident report from Applicant's work would have aided in his defense because the security guard likely would not leave a scene when there is an ongoing incident, and if he did, the manager would have noticed. Counsel did not recall who was used to mitigate the conduct, but he knew it was not an expert. He testified he believed the jury asked about the involuntary manslaughter charge because they did not think there was enough evidence for a voluntary manslaughter conviction, but they did not want Applicant to go free. He testified he believed there was enough evidence to support an accident

charge.

During re-cross examination, Counsel testified he did not see a need for a mental health expert. He testified it was possible Applicant left during his shift at work because the manager does not keep tabs on the security guards. He further testified Applicant was cooperative with law enforcement, and he was able to make that point through examination of witnesses, although the in-car video would have been useful to show remorse. He recalled Applicant testifying he was unaware if Chaplin touched the weapon. He also testified the jury was given the ability to convict Applicant of assault and battery of a high and aggravated nature.

*Peter Skidmore's Testimony*

Applicant next called Peter Skidmore, a private investigator retained by Applicant's mother. Skidmore testified the majority of his work is working with murder cases for the defense. In preparation, Skidmore testified he watched the video from the bar, identified the parties in the video, and discussed his reservations with review of the video, including the lack of a time/date stamp and the lack of prior footage to the incident. He testified he would have encouraged Counsel to obtain more video footage regarding the incident and would have asked the bar if there was another camera to see a different angle. Skidmore further testified the SLED agent narrated the video during the trial, but nobody addressed the video from the defense. He testified there would have been issues he could have raised to the defense regarding actions taken in the video, specifically about the potential drug use of Chaplin.

He further testified the in-car video would have corroborated the defense in trying to make a citizen's arrest and his attempt to contact law enforcement earlier. He testified the behavior exhibited by Applicant showed a lack of malice and concern for Chaplin.

Skidmore testified that when he met with Applicant, he was emphatic about not being at

State Street Pub when Mozenko and Smith testified he was because he was taking care of an incident at work. He testified that when he attempted to get the reports from this incident, a letter from the Sheriff's Department stated there were no incident reports. He further testified that after further investigation, a subpoena was issued and the reports were received. He testified if he had been retained around the same time as Counsel, he would have gone about the same process he did prior to the post-conviction relief hearing to interview witnesses and obtain reports. Skidmore testified he would not have relied on the solicitor's reports, as Counsel did, because an independent investigation allows one to be prepared to impeach the State's witnesses. He also testified when he met with Applicant, he was concerned with his mental health and would not have been comfortable working on the case without mental health experts.

During cross-examination, Skidmore testified he has only helped the State in a case once or twice in his twenty-five years of experience. He explained the majority of his work is for the defense, and he works with post-conviction relief counsel frequently. He further explained post-conviction relief counsel frequently calls him to investigate and testify in her post-conviction relief cases. He did not have the qualifications to testify to someone's mental health diagnosis. He testified that during the trial, Donna Muszynski testified she did not do cocaine with Chaplin, and although he did not have the additional footage from the bar, Skidmore believes the angle would have given more information. Skidmore testified there should have been at least an hour of footage viewed before the footage obtained in order to see Applicant drink the remaining beers and interact with the State's witnesses. He further testified Applicant could not escape the bar because he was allegedly being assaulted at the time he shot Chaplin and had been drinking in excess. Skidmore admitted he did not have video evidence from either Applicant's place of work or Shaggy's. He also admitted he did not have the 911 tapes.

During redirect examination, Skidmore testified he would have done parts of Applicant's cross-examination differently as it seemed Applicant was unprepared. He testified he would have pushed Muszynski regarding the cocaine in her purse due to the self-serving motive she had. Skidmore's biggest concern was with the lack of Counsel's independent investigation of the matter.

#### *Appellate Counsel's Testimony*

Applicant next called Appellate Counsel, who handled Applicant's direct appeal. He testified that his main focus was the transcript because it was a direct appeal. Appellate Counsel testified his representation began about a month after the notice of appeal. He testified during his many meetings with Applicant, at times he believed interactions were difficult because sometimes Applicant was not completely with it. Appellate Counsel testified during the initial visit, he was informed Dr. Maddox had been consulted but did not testify.

When asked specifically about the incident report, which placed Applicant at a different location during the time Mozenko and Smith claimed Applicant was at State Street Pub, Appellate Counsel testified it would have been helpful to poke holes in the credibility of the witnesses, but he was not sure if it rose to the level of a material consequence.

Appellate Counsel also testified he did not raise the docket manipulation argument during appeal because the case law was still unsettled, and he believed there were strong issues with what he raised on appeal. Appellate Counsel testified he did not raise an issue on appeal for an accident defense because he believed the most favorable outcome to Applicant, based on the record and his research, would have been trying to get a new trial based on involuntary manslaughter. He further testified there was not sufficient evidence in the record to present an accident defense on appeal because it was briefly mentioned during trial and would seem

contradictory to allege self-defense and accident. Appellate Counsel testified he did not raise the denial of the directed verdict motion on appeal because there was a scintilla of evidence presented. He further testified he did not raise the issue of the denial of the admission of the in-car video because evidence issues are an abuse of discretion standard. He also testified he did not raise prosecutorial misconduct issues because a curative instruction was given. Appellate Counsel testified to the complicated nature of the citizen's arrest charge and how the jury should have received more information between the difference of a lawful and unlawful act.

During cross-examination, Appellate Counsel explained his process of handling an appeal and the limitations on issues he can raise. He testified he starts with the motions made at the end of the trial and then works his way through the transcript chronologically. He further testified he tried to mark direct appeal issues and post-conviction relief issues, which he flagged in hindsight. He testified mental health was not an issue he could raise on direct appeal, because there was nothing in the record that would have led him to believe there were any mental health issues. He also testified in a jury trial, the jury makes credibility findings, and appellate judges do not make credibility findings.

Appellate Counsel testified he raised the involuntary manslaughter issue on appeal because, in his professional judgment, it was his strongest argument. Appellate Counsel testified he did not raise the issue of Chaplin's prior aggression on appeal because the prior violence would have had to be directed towards Applicant. He explained he did not think about that issue in any detail. He further testified he did not raise the docket manipulation issue because this case was before the *Langford*<sup>2</sup> case; and although the issue was being litigated, it was not getting a lot of traction. He also testified he did not raise the directed verdict issue because there was some evidence of murder. Appellate Counsel testified he did not raise an issue about the in-car video,

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<sup>2</sup> *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).

because it would not have had any bearing on his involuntary manslaughter argument. He further testified somebody intentionally pulling the trigger of a gun twice would not qualify as an accident under the law in South Carolina. He explained it would have been very difficult to argue accident in this case. He also testified issues as to prosecutorial misconduct did not seem to be stronger than the involuntary manslaughter issue he raised.

He testified that he raised what he believed was the strongest issue on appeal. He further testified that the South Carolina Court of Appeals found there was no evidence Applicant did not intentionally fire his weapon, so he was not entitled to a charge on involuntary manslaughter. Appellate Counsel further testified after the opinion was filed, he filed for a rehearing and a petition for certiorari, both of which were denied.

During redirect examination, Appellate Counsel testified to the motion for a new trial not mentioning the error for accident, although there was a catchall paragraph at the end which would include any other motions made during trial. He testified again to his ability to only argue issues raised in the transcript, but he tried to flag other issues for post-conviction relief.

#### *Brenda Torrence's Testimony*

Applicant next called Brenda Torrence, Applicant's mother. Ms. Torrence testified Applicant lived with her at the time of the incident, and she received a call the morning after from the police department when Applicant asked her to get an attorney. Ms. Torrence testified that she called Counsel, and he agreed to represent Applicant. She further testified she informed Counsel about the mental health problems Applicant experienced and was willing to pay for an examination. Ms. Torrence testified a doctor went to the detention center to examine Applicant, and Ms. Torrence paid the retainer for the evaluation. She further testified after speaking with Dr. Maddox about the evaluation, she knew Dr. Maddox was anticipating to testify at trial and

she believed the mental health issues would be addressed. Ms. Torrence testified she would have paid any fees necessary to get additional testing or get the expert to testify at trial. Ms. Torrence testified she called Dr. Maddox after the trial to see why she was not there and understood that Dr. Maddox did not know the trial took place. She also testified to Applicant's prior mental health treatment as a child and her concerns watching him throughout the trial, particularly on the stand. Ms. Torrence testified she gave the information about Dr. Maddox to Appellate Counsel before the appeal.

She testified Counsel was the only attorney she knew and she believed he needed more help with the case. Ms. Torrence testified she spoke with Mozenko before trial at the request of Applicant, and she raised these concerns to Counsel after Applicant told her Mozenko was lying. She further testified there was no follow up from Counsel after she gave him information from Applicant regarding investigation possibilities.

During cross-examination, Ms. Torrence testified she actively communicated with Counsel, to the point he said she was wearing his team out. She testified Counsel repeatedly told her he was "ok," and she trusted his decision as Applicant's attorney. She further testified she relayed information to Counsel about Rush's, and Counsel obtained Applicant's timesheet and introduced it at the trial. She also testified when she spoke with Mozenko, Mozenko was consistent in her story.

She testified she made Dr. Maddox aware of everything concerning Applicant, and she was very involved in his case. She explained she would have made Dr. Maddox aware of any prior treatment. She further testified prior to this incident, Applicant was merely diagnosed with attention deficit disorder or attention hyperactive deficit disorder. She also testified Applicant drank heavily. None of Applicant's prior medical records were available at the evidentiary

hearing.

During redirect examination, she testified the prior treatment Applicant went through was to see psychologists at the recommendation of a pediatrician. Ms. Torrence further testified Mozenko used to be Applicant's employer, and she called the witness because Applicant had asked her to. After Ms. Torrence's testimony, Applicant rested his case.

*Deputy Solicitor Graham's Testimony*

Respondent then called Deputy Solicitor Shawn Graham, who was assigned to prosecute Applicant's trial. Deputy Solicitor Graham went through the facts and evidence from the trial, including the altercation that occurred between Chaplin and Applicant prior to the shooting. The evidence to support the murder charge was the murder warrant, the prior threats from the bar, expressed malice, a cooling off period, and the second shot after Chaplin was on the ground. Deputy Solicitor Graham testified about the unsupported statement Applicant called 911 after the incident and his attempt to obtain more surveillance footage. Deputy Solicitor Graham testified about Muszynski not being charged with cocaine as a decision by the police after she gave her statement. Deputy Solicitor Graham testified there was no evidence of an accident, which was further supported by Applicant's testimony. He testified the evidence which supported a conviction was the videotape of the altercation, the absence from the bar when Applicant went to retrieve his gun, the choice of Applicant to bring the gun instead of handcuffs or pepper spray, and being under the heat of passion from the prior altercation. He further testified Chaplin throwing the chair could indicate provocation, but the second shot to the neck was the unlawful killing.

Deputy Solicitor Graham testified he called the subsequent assault and battery charge to trial first because he felt that incident would be ignored if he called the homicide case first. He

explained he also wanted a conviction to impeach Applicant with if he testified.

He further testified he did not argue against the citizen's arrest charge because if there were any justification for self-defense, he would rather lose at trial than lose on appeal. Deputy Solicitor Graham testified to the many options of charges the jury had to choose from, including murder and voluntary manslaughter for the killing, four types of assault and battery if the jury believed there was a causation issue, and the defenses of self-defense and citizen's arrest.

During cross-examination, Deputy Solicitor Graham testified that this case, like every other case, is about credibility and not about character. He testified to his motion to exclude drug use for the purpose of it not being relevant, as Chaplin stated in his hospital records he used cocaine the night before the incident. He further testified to having no intention of charging Muszynski because he could not grant immunity if she was not charged by law enforcement. Deputy Solicitor Graham testified he withdrew the objection to the drug possession based on strategy. He clarified that Muszynski testified during trial to having immunity in exchange for her testimony, but she could have misunderstood the term "prosecutorial immunity." He further testified that all witnesses he put on the stand were important and after his conversation with Muszynski, she understood she would not be charged with drug possession.

In response to the questions regarding the testimony of Mozenko and Smith seeing Applicant prior to the shooting, Deputy Solicitor Graham testified their testimony went to the timeline of the whole story and how Applicant behaved during the course of the evening. He testified the incident report potentially was exculpatory evidence, but he did not have it to turn over to Counsel. Further, he testified there were no surveillance cameras at Rush's, but he turned over a letter to Counsel summarizing the meeting he had with the Rush's manager. Deputy Solicitor Graham testified he called the Rush's manager after Applicant testified because

the manager did not see Applicant at work and would have been able to speak to Applicant's ability to leave and come back. He further testified the comments about lying during the closing argument were not directed at Applicant but could have been applied to any of the witnesses.

Deputy Solicitor Graham testified he wanted the prior conviction in order to impeach Applicant's credibility if he testified, and he usually has the defense counsel confirm a trial date or has the judge set a trial date if nobody can agree. At the close of cross-examination, Deputy Solicitor Graham testified he believed Applicant committed murder because of the malice, even though the jury convicted him of voluntary manslaughter.

During redirect examination, Deputy Solicitor Graham testified Mozenko and Smith were important for the murder charge in order to show malice, but they were not helpful for voluntary manslaughter because they were not present during the shooting. He further testified there were an abundance of witnesses who testified to Applicant's behavior at the bar where the shooting happened.

During re-cross examination, Deputy Solicitor Graham testified the direct statements Applicant made and his actions during the course of the evening supported malice. He further testified to his closing argument and his colloquy supporting the murder charge, not voluntary manslaughter. He testified there was no legal provocation resulting in a heat of passion

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. The court has also reviewed substantive and detailed proposed orders from both parties. Set forth below are the relevant findings of facts and

conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

### ***Ineffective Assistance of Counsel***

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 441, 334 S.E.2d 813, 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, an applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this court finds Applicant has failed to carry his burden in this action. Below are this court’s findings in regards to each of

Applicant's allegations of ineffective assistance of counsel.

*Counsel's alleged failure to properly utilize mental health experts  
prior to and during trial and alleged failure to develop a mental  
health defense*

Applicant alleges Counsel was ineffective for failing to utilize mental health experts prior to and during trial. In support of this allegation, Applicant presented the testimony of Dr. Brawley and Dr. Maddox. Dr. Brawley testified Applicant has moderate to severe deficits in several cognitive domains, suggestive of brain organicity. She testified, however, she cannot state Applicant was suffering from these deficits at the time of these crimes to a reasonable degree of medical certainty. She further testified although Applicant has an IQ of 86, which is in the low average range, Applicant would still be able to distinguish between right and wrong, know the difference between a truth and a lie, and be capable of making decisions for himself. Dr. Maddox testified she first examined Applicant in 2010, before his trial, and he did not exhibit any signs of psychosis. She explained at that time, she did not note any strange behavior on the part of Applicant, nor was there any evidence of psychosis. She further explained there was no prior history of psychosis in Applicant in 2010. She testified that if she had concerns about Applicant's competency or mental status in 2010, she would have reported those concerns to Counsel, which she did not do because she did not have any concerns at the time. Indeed, Dr. Maddox testified Applicant did not begin exhibiting symptoms until 2016, well after Applicant's trial. Additionally, Dr. Maddox testified, in her opinion, Applicant's intoxication during the commission of these crimes precluded a guilty but mentally ill defense. Because there were no indications Applicant was suffering from any mental health problems prior to and leading up to his trial and because Dr. Maddox never raised any concerns to Counsel about Applicant's mental health, Counsel had no reason to believe he needed to use a mental health expert at trial, nor did

Counsel have a reason to explore a mental health defense.

Furthermore, Counsel testified he did not utilize Dr. Maddox further after her initial evaluation of Applicant because he did not believe, based on their conversations, Dr. Maddox could provide anything useful at trial on the issue of guilt or innocence. He explained Dr. Maddox did not note any evidence of psychosis, nor were there any defenses to the act itself available at the time. “[N]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” *Strickland*, 466 U.S. at 689. Furthermore, “representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 693. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Although the court reasons that the above strategy is concerning with the benefit of hindsight, the court finds that Counsel employed a valid trial strategy in not utilizing Dr. Maddox, or any other mental health expert, particularly in light of the fact Dr. Maddox could not provide any beneficial information on the issue of guilt or innocence. Accordingly, this court finds Applicant has failed to establish Counsel was deficient.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. “A defendant is insane if, ‘at the time of the commission of the act constituting the offense, [he or she], as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.’” *State v. Senter*, 396 S.C. 547, 552, 722 S.E.2d 233, 236

(Ct. App. 2011) (quoting S.C. Code Ann. § 17-24-10(A) (2003)) (brackets in original). “[T]he key to insanity is ‘the power [of the defendant] to distinguish right from wrong in the act itself, to recognize the act complained of is either morally or legally wrong.’” *State v. Wilson*, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992) (quoting *State v. McIntosh*, 39 S.C. 97, 17 S.E. 446 (1893)) (brackets in original). Here, Dr. Brawley testified that Applicant currently has an IQ of 86, but his premorbid level of IQ was 111, which is suggestive of a decline in overall intellectual functioning. Even with the lowered IQ of 86, however, Dr. Brawley testified a person with an IQ of 86 can understand the difference between right and wrong. Furthermore, Dr. Brawley could not testify to a reasonable degree of medical certainty that Applicant suffered from these neuropsychological deficits at the time of the commission of these crimes. Because Applicant currently has the capacity to distinguish between moral or legal right and moral or legal wrong, even with the decline in functioning, and because there is no indication Applicant was suffering from these deficits to a reasonable degree of medical certainty at the time of the commission of these crimes, Applicant cannot establish he was legally insane at the time of these offenses.

Moreover, “a defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he [or she] had the capacity to distinguish right from wrong or to recognize his [or her] act as being wrong . . . but because of mental disease or defect he [or she] lacked sufficient capacity to conform his [or her] conduct to the requirements of the law.” S.C. Code Ann. § 17-24-20(A) (2014). A person may be mentally ill, but not legally insane. *State v. Curry*, 410 S.C. 46, 53, 762 S.E.2d 721, 725 (Ct. App. 2014) (citing *State v. Hornsby*, 326 S.C. 121, 130, 484 S.E.2d 869, 874 (1997)). “[V]oluntary intoxication, *where it has not produced permanent insanity*, is never an excuse for or a defense to [a] crime.” *State v. Hartfield*, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990) (quoting *State v. Vaughn*, 268 S.C. 119, 232 S.E.2d

328, 330 (1977)) (emphasis in original). Here, neither Dr. Brawley nor Dr. Maddox testified that Applicant's current mental health problems were the result of voluntary intoxication. Indeed, Dr. Maddox testified because Applicant was intoxicated the night he committed these crimes, a verdict of guilty but mentally ill was precluded. Because there is no indication Applicant's intoxication on the night of these crimes resulted in permanent insanity, particularly at the time of the trial, his voluntary intoxication was not a defense to these crimes and he was not entitled to present a defense of insanity or attempt to obtain a verdict of guilty but mentally ill. *See id.* (holding when a defendant has presented evidence that his use of drugs caused permanent and irreversible brain damage, which manifests itself in a mental illness, the defendant is entitled to present the defense of insanity or to attempt to obtain a verdict of guilty but mentally ill). Based on all of the foregoing, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to utilize mental health experts in mitigation*

Applicant alleges Counsel was ineffective for failing to utilize mental health experts in mitigation at a plea or at trial. As an initial matter, this court finds Counsel testified that Applicant did not want to take the State's offer to have him plead to voluntary manslaughter, so any allegations Counsel was ineffective for failing to present mitigation in the form of mental health experts at a plea is without merit.

"*Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing." *Wiggins v. Smith*, 539 U.S. 510, 533 (2003). Here, Applicant, his mother and father, his pastor, his aunt, and his life-long friend were all given ample opportunity to address the court prior to sentencing. *See Tr.* pp. 732-43. Each of these individuals highlighted Applicant's good moral

character and reputation. Furthermore, Counsel was able to highlight these attributes in Applicant as well. *See* Tr. p. 742. Additionally, as aforementioned, Counsel had no reason to consult with a mental health expert for sentencing, as Applicant exhibited no signs of psychosis prior to or during his trial. Given the mitigation presented prior to sentencing was extensive and Counsel had no reason to believe a mental health expert was necessary, this court finds Applicant has failed to establish sufficient deficiency on the part of Counsel.

This court further finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Applicant was convicted of voluntary manslaughter, an offense for which a convicted defendant “must be imprisoned not more than thirty years or less than two years.” S.C. Code Ann. § 16-3-50. Applicant was sentenced to twenty-five years, which is well within the proscribed sentencing range. In addition, Applicant could have faced two consecutive sentences carrying up to five years each on the two weapons charges rather than the concurrent five years he received. Moreover, as aforementioned, Applicant did not exhibit any evidence of psychosis prior to or during his trial. Accordingly, there is no indication the trial court would have reduced its twenty-five year sentence for voluntary manslaughter, particularly in light of the fact Dr. Maddox would not have been able to present any evidence Applicant was suffering from symptoms of psychosis or other mental disease or defect at that time. This allegation must be denied and dismissed with prejudice.

*Counsel’s alleged failure to utilize Applicant as a witness  
at trial without a mental health expert*

Applicant alleges Counsel was ineffective for failing to utilize a mental health expert during Applicant’s testimony at trial. Dr. Maddox testified she had no concerns regarding Applicant’s competency prior to trial; and if she had had any concerns regarding Applicant’s

competency, she would have informed Counsel, which she did not do because she had no concerns. She further testified Applicant did not report hearing any voices at the time she evaluated him prior to trial. Indeed, it is only since the trial Applicant alleges he heard voices while he was testifying. Moreover, Counsel testified he had no reason to believe Applicant did not understand the conversations Counsel had with him and the explanations about the case Counsel gave. Counsel further testified he did not notice any confusion on the part of Applicant while he was testifying at trial. Applicant's mother merely stated Applicant laid his head down during cross-examination, not that he was exhibiting any signs of hearing or talking to voices in his head. Indeed, Applicant's own statements at trial during the colloquy with the trial court indicate he understood what was going on at the trial and did not suffer from any physical or mental problem that would affect his thinking. Tr. pp. 456-57. Given the fact Dr. Maddox did not have any concerns regarding Applicant's competency and Applicant did not exhibit any particularly strange behavior or confusion on the stand (according to Counsel), other than what is typical of a criminal defendant on cross-examination, this court finds Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. A criminal defendant has a constitutional right to testify on his or her own behalf. *Rock v. Arkansas*, 483 U.S. 44 (1987). "It is one of the rights that 'are essential to due process of law in a fair adversary process.'" *Id.* at 51 (quoting *Faretta v. California*, 422 U.S. 806, 819 n. 15 (1975)). Indeed, "[e]very criminal defendant is privileged to testify in his [or her] own defense, or refuse to do so." *Id.* at 53 (quoting *Harris v. New York*, 401 U.S. 222, 230 (1971)). The decision on whether or not the defendant will testify ultimately rests with the defendant alone. *Jones v. Barnes*, 463 U.S. 745 (1983). Here, after being advised of his

constitutional rights, Applicant told the trial court he wanted to testify. Tr. pp. 455-57, 459. Counsel also testified at the evidentiary hearing Applicant wanted to tell his side of the story, so Applicant chose to testify. It was Applicant's decision, alone, to choose to testify in his own defense. Moreover, Applicant has failed to establish what benefit would have been realized from the aid of a mental health expert during Applicant's testimony, particularly in light of the fact Applicant exhibited no symptoms of psychosis prior to and during his trial. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to investigate Applicant's place of employment*

Applicant alleges Counsel was ineffective for failing to investigate prior to trial. Specifically, Applicant contends Counsel was ineffective for failing to obtain the incident report<sup>3</sup> and/or video surveillance from Applicant's place of employment to refute or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the commission of these crimes. "Counsel's concern is the faithful representation of the interest of his [or her] client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland*, 466 U.S. at 691; *Wiggins*, 539 U.S. at 521-22. Moreover, "failure to conduct an independent investigation does not constitute

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<sup>3</sup> A copy of the incident report from Rush's, located at Broad River Road, on September 27, 2008, was introduced into evidence as Applicant's Exhibit #1. Respondent stipulated to the introduction of this document.

ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 181, 810 S.E.2d 836, 839 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

At trial, Tonya Mozenko testified she met up with a friend, Stephen Smith, on September 27, 2008, at State Street Pub around midnight. Tr. pp. 165-66, 182, 190, 192. She testified as soon as they got into the bar, she saw Applicant. As they sat down, Applicant sat down with them to talk. Tr. pp. 167-68. She testified that Applicant was already intoxicated when Mozenko and Smith arrived, and he continued to consume alcohol and to take shots while she and Smith were at State Street Pub. Tr. pp. 169, 185. As Applicant became more intoxicated, Applicant became inappropriate, so Mozenko and Smith left to go to another bar. Tr. p. 169. Smith testified similarly. See Tr. pp. 213-15, 219. Applicant, however, alleged he was working at Rush’s on September 27, 2008, and he clocked in at 9:00 p.m. and did not clock out until 1:50 a.m. Tr. pp. 472-73, 501. Applicant alleged he never left Rush’s that night, and he did not arrive at State Street Pub until about 2:25 or 3:00 a.m. Tr. pp. 474, 503. He testified, however, he did see Mozenko and Smith in the early morning hours of September 27, 2008, at State Street Pub. Tr. pp. 523-24. In support of Applicant’s argument, Counsel introduced Applicant’s time sheet from Rush’s at trial. See Tr. p. 473. Counsel also was able to cross-examine the Rush’s manager as to whether or not she noticed any alcohol on Applicant when he signed out of work that evening, to which she responded she could not recall but if she had, she would have reported it. Tr. p. 609.

At the evidentiary hearing, Counsel testified in order to corroborate Applicant’s story he was at Rush’s until 1:50 a.m., Counsel obtained the timesheets from Rush’s and reviewed the

summary of the solicitor's meeting with the manager at Rush's. Counsel testified he attempted to prove Applicant was not at State Street Pub when Mozenko and Smith said he was through means other than the aforementioned incident report, including the time sheets, cross-examination, and the testimony of the Rush's manager. He explained at the time, he thought those means were sufficient.

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689. Indeed, the United States Supreme Court has cautioned against the distorting effects of hindsight:

After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the court of that reflection, to magnify their own responsibility for an unfavorable outcome. *Strickland*, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind.

*Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). Although Counsel did not uncover this specific incident report at the time of trial, he attempted to prove Applicant was not at State Street Pub at the time alleged through various other means. Counsel is not required to uncover every single scrap of evidence that might be beneficial, and it is all too convenient now, after an adverse verdict, for Counsel to ask if a different strategy at trial might have been more advantageous. Based on the foregoing, this court finds Applicant has failed to establish any deficiency on the part of Counsel.

This court further finds Applicant has failed to establish sufficient prejudice resulting from this alleged deficiency. With respect to surveillance video from Rush's on the night of

September 27, 2008, Applicant is unable to provide this court with these alleged videotapes, leaving this court only to speculate as to what they may have shown on the night of this incident. In fact, Deputy Solicitor Shawn Graham testified that there were no cameras at Rush's and, consequently, no videos. At trial, Applicant alleged the surveillance video at Rush's would have shown he did not leave work between the hours of 9:00 p.m. and 1:50 a.m. Tr. p. 503. Applicant's assertions as to what these alleged videotapes showed, if they existed, without more, do not give rise to the level of proof required for Applicant to meet his burden. *See Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357 ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."). *See also Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998) (holding a post-conviction relief applicant cannot establish prejudice from counsel's deficiency when he neither produces a favorable witness at the evidentiary hearing nor offers that testimony in some other manner consistent with the rules of evidence and merely speculates as to what that witness's testimony would have been).

With respect to the incident report, the report merely indicates Applicant was at Rush's at some time between 11:44 p.m. and 12:42 a.m. It does not indicate he remained at Rush's during the duration of that incident. Indeed, Applicant testified at trial it is about a fifteen minute drive from Rush's to State Street Pub. Tr. p. 521. Therefore, it is entirely conceivable Applicant could have been at Rush's at some point during the incident and left. Even assuming Applicant was at Rush's during the entirety of this incident, there is no question Applicant went to Shaggy's during the early morning hours of September 27, 2008, and that he was intoxicated. There is also no question Applicant and Chaplin got into a fight at the bar, after which Applicant went to his truck, sat there for some time, then returned to Shaggy's with a gun. Furthermore, Applicant

intentionally fired his weapon twice at Chaplin, as Chaplin charged him. Applicant's whereabouts in the time leading up to these crimes have little to no bearing on Applicant's actions during the commission of these crimes. Furthermore, Mozenko's and Smith's testimony was offered at trial to prove malice. However, the jury convicted Applicant of voluntary manslaughter, an offense for which malice is not an element. Accordingly, there is no indication the result of the proceeding would have been different even if Counsel introduced the incident report. This allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to question and/or obtain additional  
video footage from the scene*

Applicant further alleges Counsel was ineffective for failing to question and/or obtain additional video footage from Shaggy's bar. Specifically, Applicant contends Counsel should have obtained additional footage from the bar, not only showing a different angle but also showing the entire time Applicant was at the bar. Counsel testified in his investigation, he visited the crime scene, and there was nothing at the scene that drew his attention that he did not pick up on the video. He further testified the footage from the scene was adequate enough to show the actual interchange with the gun. Counsel, however, failed to testify as to what he was missing from the video footage provided or what benefit would have been realized from additional footage. Furthermore, Deputy Solicitor Graham testified the other camera at Shaggy's did not show anything of significance; and the video introduced into evidence at trial was the best footage they had. Based on the foregoing, this court finds Counsel's conduct was reasonable under the circumstances.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Applicant's assertions as to what these alleged videotapes showed,

without more, do not give rise to the level of proof required for Applicant to meet his burden. *See Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357 (“Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.”). *See also Bannister*, 333 S.C. at 303-04, 509 S.E.2d at 809-10 (holding a post-conviction relief applicant cannot establish prejudice from counsel’s deficiency when he [or she] neither produces a favorable witness at the evidentiary hearing nor offers that testimony in some other manner consistent with the rules of evidence and merely speculates as to what that witness’s testimony would have been).

Here, Skidmore testified extensively at the evidentiary hearing about what the additional footage would have shown. However, Applicant failed to provide this court with any additional footage from Shaggy’s on the evening of September 27, 2008. Indeed, the video introduced into evidence at trial showed the entire altercation between Chaplin, Buchanan, and Applicant and also showed Applicant leaving the bar for some time and returning with a gun. Furthermore, the video at trial shows Chaplin charging at Applicant, and Applicant shooting Chaplin twice. Because Skidmore can merely speculate as to what the additional video would have shown, Applicant did not produce additional video footage from the crime scene, and the video provided and introduced into evidence showed the entire altercation between Applicant and Chaplin, this court finds Applicant failed to show sufficient prejudice resulting from Counsel’s alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel’s alleged failure to properly prepare to utilize the in car  
video at trial*

Applicant alleges Counsel was ineffective for failing to properly prepare to utilize the in-car video at trial. Specifically, Applicant contends Counsel was ineffective for failing to

properly argue for this video's admission where it purports to show he had remorse for Chaplin immediately following the shooting. "[N]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 689. Furthermore, "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 693. Where counsel articulates a valid strategic reason for his [or her] action or inaction, counsel's performance should not be found ineffective. *Underwood*, 309 S.C. at 562, 425 S.E.2d at 22; *Stokes*, 308 S.C. at 548, 419 S.E.2d at 779.

At trial, Counsel attempted to offer the in-car video into evidence, as it showed Applicant's demeanor and state of mind at the time of the commission of the crimes. Tr. pp. 438-39. The trial court ruled the video could be played without audio, due to Applicant's self-serving statements made in the video. See Tr. pp. 439-43, 586-87. After the court's ruling Counsel decided to withdraw offering the video. Tr. p. 589. At the evidentiary hearing, Counsel explained he attempted to introduce the video in order to show Applicant had remorse for Chaplin immediately after shooting him. He further explained in the video, Applicant expressed concern for Chaplin, although most of the time he sat there quietly. Counsel testified he did not want to show the video without the audio, because, without the audio, the video did not show anything to support his case. Based on the foregoing, this court's finds Counsel employed a valid trial strategy in choosing not to offer the video into evidence when the audio could not be played for the jury. Because Counsel's decisions were based on a valid trial strategy, this court finds Applicant has failed to show any deficiency on the part of Counsel.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from

the alleged deficiency. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Evidence that is not relevant is inadmissible. Rule 402, SCRE. Here, Applicant’s defense was that he was effectuating a citizen’s arrest at the time he shot Chaplin. Whether or not he expressed concern for Chaplin shortly after the shooting has no relevance on whether or not Applicant was effectuating a lawful citizen’s arrest. As a result, the evidence was not relevant; and therefore, not admissible.

Moreover, “‘hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. The video at issue here contains two statements by Applicant, in which he expressed remorse or concern for Chaplin. Other than those two statements made, the remainder of the video shows Applicant calmly and quietly sitting in the back of the patrol car. Applicant contends the in-car video should have been admitted at trial to show he expressed remorse for Chaplin shortly after the shooting; however, such statements would merely be offered to prove the truth of the matter asserted therein. Furthermore, Applicant’s statements do not fall within any hearsay exception, which would allow the court to admit them into evidence. Based on all of the foregoing, this court finds this allegation must be denied and dismissed with prejudice.

*Counsel’s alleged failure to fully cross-examine the State’s  
witnesses at trial*

Applicant alleges Counsel was ineffective for failing to fully cross-examine the State’s witnesses at trial. This court finds this allegation is without merit. The record before this court indicates Counsel cross-examined each and every witness the State presented at trial. Moreover, Applicant has not identified what benefit would have been realized from additional cross-

examination by Counsel. Accordingly, this court finds Applicant can establish neither that Counsel was deficient nor that he suffered any resulting prejudice from the alleged deficiency. This court further finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to address the matter of bias at trial*

Applicant alleges Counsel was ineffective for failing to address the matter of judicial bias at trial. At the evidentiary hearing, Applicant withdrew this allegation. Therefore, this court finds the allegation is withdrawn with prejudice.

*Counsel's alleged failure to ensure the court gave a curative instruction following his objection to the State's closing argument*

Applicant alleges Counsel was ineffective for failing to ensure the trial court gave a curative instruction following his objection to the solicitor's closing argument. Specifically, Applicant contends Counsel was ineffective for failing to ensure a curative instruction was given after his objection to Deputy Solicitor Graham's closing argument. *See* Tr. pp. 678, 680-82. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004) (citing *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996)). Furthermore, a closing argument should stay within the content of the record and the reasonable inferences to be drawn therefrom and must not be intended to arise the passions or prejudices of the jury. *Id.* at 609-10, 602 S.E.2d at 744 (citing *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998); *Copeland*, 321 S.C. at 324, 468 S.E.2d at 624). Even if improper comments are made, they do not require reversal if they are not prejudicial to the defendant. *Brown v. State*, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009) (quoting *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002)). "The relevant question is whether the solicitor's comments so infected the trial with

unfairness as to make the resulting conviction a denial of due process.” *Id.* (internal quotation omitted).

Here, Counsel objected when Deputy Solicitor Graham stated: “If you believe [Applicant] is only guilty of assault and battery of a high and aggravated nature, then find him not guilty and let him have his gun back.” Tr. pp. 677-78. The trial court sustained Counsel’s objection. Tr. p. 678. Thereafter, Counsel articulated his objection to the closing argument outside of the presence of the jury. *See* Tr. pp. 680-81. The trial court specifically found the comments did not interject anything into the trial which would cause Applicant not to receive a fair trial, nor was it delivered in order to inflame the passions or prejudices of the jury. *See* Tr. pp. 681-82. In particular, the comments were made at the end of the closing argument, and Deputy Solicitor Graham did not harp on them. Furthermore, the trial court specifically instructed the jury he sustained Counsel’s objection. Additionally, in its charge to the jury, the trial court specifically instructed the jury they could not “be governed by sympathy or prejudice or passion or emotion or any other arbitrary factors that are not in evidence in this particular time.” Tr. pp. 709-10. In fact, the trial court thoroughly charged the jury they were only to consider the competent evidence—that which was presented through the witness stand and any exhibits made part of the record. *See* Tr. pp. 687. Based on the foregoing, it is clear the jury was explicitly given instructions not to consider any argument made during the trial, nor to base their verdict on any passion or prejudices. Furthermore, there is no indication the jury’s verdict was based on any bias, passion, prejudice, or emotion. Accordingly, this court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. This court further finds this allegation must be denied and dismissed with prejudice.

*Counsel’s alleged failure to object to references the victim was a  
“hero”*

Applicant alleges Counsel was ineffective for failing to object to Deputy Solicitor Graham's characterization of Chaplin as a hero. *See* Tr. pp. 579, 678. "A witness may be cross-examined on any matter relevant to any issue in the case." Rule 611(b), SCRE. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. All relevant evidence is admissible. Rule 402, SCRE. At trial, Applicant alleged he was effectuating a citizen's arrest at the time of the shooting. He further alleged he shot in self-defense after Chaplin, who had previously attacked him that night, threw a barstool at him and rushed towards him. In response, Deputy Solicitor Graham highlighted the fact Applicant chose to come back into the bar with a gun, after having being previously escorted out. Furthermore, he rationalized Chaplin's reaction to Applicant bringing a gun back into the bar by highlighting the fact it was a normal response to the circumstances. Deputy Solicitor Graham's questions were to cast doubt on Applicant's contention he was effectuating a citizen's arrest and shot in self-defense. Accordingly, there is nothing objectionable about the characterization of Chaplin as a hero.

Moreover, a closing argument should stay within the content of the record and the reasonable inferences to be drawn therefrom and must not be intended to arise the passions or prejudices of the jury. *Von Dohlen*, 360 S.C. at 609-10, 602 S.E.2d at 744 (citing *Simmons*, 331 S.C. at 338, 503 S.E.2d at 166; *Copeland*, 321 S.C. at 324, 468 S.E.2d at 624). In his closing argument, Deputy Solicitor Graham again highlighted the fact Chaplin was a hero for attempting to stop Applicant, when Applicant returned to the bar with a gun. He further highlighted the fact Chaplin had a right, as a citizen, to resist an unlawful or illegal arrest. Deputy Solicitor

Graham's comments about Chaplin and the actions he took at Shaggy's bar on September 28, 2008, were all reasonable inferences from the testimony presented at trial. Therefore, there was nothing to which Counsel must have objected. Based on all the foregoing, this court finds Applicant has failed to establish any deficiency on the part of Counsel.

This court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency.

"Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions."

*State v. Mouzon*, 321 S.C. 27, 31-32, 467 S.E.2d 122, 124-25 (Ct. App. 1995) (quoting *Herring v. New York*, 422 U.S. 853, 862 (1975)). Even if the comments made by the solicitor were improper, "[c]onduct that would otherwise be improper may be excused under the 'invited reply' doctrine if the prosecutor's conduct was an appropriate response to statements or arguments made by the defense." *Vaughn*, 362 S.C. at 169, 607 S.E.2d at 75. When the door has been opened to such comments, the comments must have "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). Furthermore, upon review of such comments, "a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations." *Id.* at 647. As aforementioned, Applicant contended he was effectuating a citizen's arrest and shot Chaplin in self-defense after Chaplin decided to charge Applicant. The comments made by the State at trial were designed to directly refute Applicant's theory of the

case. Therefore, the comments made during trial and closing were merely an invited response from Applicant—that Applicant chose to enter a bar, where he had already gotten into an altercation with Chaplin, and Applicant escalated the situation by choosing to bring a gun into the bar. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to obtain a charge on accident*

Applicant further alleges Counsel was ineffective for failing to obtain a jury charge on accident. Counsel requested a charge on accident, explaining he did not believe Applicant intended to kill anyone and the killing was unintentional. Tr. p. 616. Counsel further explained Applicant believed he was acting lawfully in order to effectuate a citizen's arrest. Tr. p. 616. He also stated Applicant did not point his gun at anyone "until he perceived that there was a threat of the weapon being taken from him." Tr. p. 616. Despite Counsel's assertion, the trial court denied Counsel's request to charge accident, finding it was not appropriate under the facts of the case. Tr. p. 616, 617. Because Counsel did, in fact, attempt to obtain a charge on accident, this court finds Applicant has failed to establish Counsel was deficient.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. "The law to be charged must be determined from the evidence presented at trial." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (quoting *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)). "For a homicide to be excusable on the ground of accident, it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of a weapon." *State v. Burriss*, 334 S.C. 256, 259, 513 S.E.2d 104, 106 (1999) (citing *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994)). If a defendant alleges he or she armed himself in self-defense while also alleging the actual shooting was accidental, "this combination of events can 'place the shooting in the context

of self-defense.” *Id.* at 260, 513 S.E.2d at 106. Indeed, “homicide is excusable on the ground of accident when it appears that the defendant was acting lawfully in self defense and the victim was shot by accident through the unintentional discharge of a gun.” *Goodson*, 312 S.C. at 280-81, 440 S.E.2d at 372. A person can be acting lawfully if he was entitled to arm himself or herself in self-defense at the time of the shooting. *Burriss*, 334 S.C. at 262, 513 S.E.2d at 108. To establish self-defense, the defendant must show: (1) he or she was without fault in bringing on the difficulty; (2) he or she must have actually believed he or she was in imminent danger of losing his or her life or sustaining serious bodily injury, or he or she actually was in such imminent danger; (3) if he or she believed he was in imminent danger, a reasonably prudent person of ordinary firmness and courage would have entertained the same belief, or, if the defendant were actually in imminent danger, the circumstances would warrant the reasonably prudent person to strike the fatal blow to save himself or herself from serious bodily harm or death; and (4) he or she had no other probable means of avoiding the danger. *Goodson*, 312 S.C. at 280, 440 S.E.2d at 371 (citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

Here, Applicant admitted he pulled the trigger of the gun twice intentionally. Tr. p. 497, 546. Moreover, Applicant was not acting lawfully at the time of the shooting, particularly in light of the fact he was not entitled to arm himself in self-defense at the time of the shooting. Indeed, Applicant brought on the difficulty and, therefore, cannot establish he acted in self-defense. After having been escorted from the bar, Applicant sat in his truck for some time, then decided to grab his gun and return to the bar. He chose to bring his gun, rather than any of the other non-lethal tools on his security belt. Applicant then entered the bar, with his gun visible to the other patrons, and had Buchanan put his hands on the bar. Because Applicant admitted to intentionally pulling the trigger and because Applicant was not acting lawfully at the time of the

shooting, Applicant was not entitled to a charge on accident. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to obtain a charge on involuntary manslaughter*

Similarly, Applicant contends Counsel was ineffective for failing to obtain a charge on involuntary manslaughter. During the charge conference, Counsel requested a charge on involuntary manslaughter, which the trial court denied. Tr. p. 630. Counsel again requested a charge on involuntary manslaughter after the jury sent a note asking if they could consider the crime of involuntary manslaughter. Tr. pp. 724-25. The trial court again denied the request, finding the facts did not support a charge on involuntary manslaughter. Tr. pp. 726-27. Because Counsel did indeed request a charge on involuntary manslaughter and even moved for a new trial on the basis the jury asked to be able to consider it, this court finds Applicant has failed to establish any deficiency on the part of Counsel.

Furthermore, this court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. “The law to be charged must be determined from the evidence presented at trial.” *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583 (quoting *Knoten*, 347 S.C. at 302, 555 S.E.2d at 394. “Involuntary manslaughter is: (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others.” *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011) (citing *State v. Cabrera-Pena*, 361 S.C. 372, 380-81, 605 S.E.2d 522, 526 (2004)). Generally, a charge of involuntary manslaughter is inappropriate where the defendant admits he or she intentionally fired a gun.

*See State v. Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366-67 (1996) (holding the defendant was not entitled to a charge on involuntary manslaughter because he admitted to intentionally shooting the gun). Here, Applicant admitted to firing the gun twice. As found by the South Carolina Court of Appeals in this case:

[B]ecause there is no evidence that [Applicant] did not intentionally fire his gun at Chaplin, he was not entitled to a charge of involuntary manslaughter. Moreover, this case does not fall under either prong of the involuntary manslaughter definition because: (1) firing a gun is considered conduct naturally tending to cause death or great bodily harm; and (2) [Applicant] was not acting lawfully by brandishing the gun in a bar.

*Torrence*, Op. No. 2013-UP-152. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to object to the contemptuous language charge*

Applicant further alleges Counsel was ineffective for failing to object to the contemptuous language charge given by the trial court to the jury. *See* Tr. p. 703. "The law to be charged must be determined from the evidence presented at trial." *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583 (quoting *Knoten*, 347 S.C. at 302, 555 S.E.2d at 394. "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (2003) (internal citations omitted). In a trial for homicide, the South Carolina Supreme Court Carolina has found:

It is always well to let the jury understand what was the condition of the accused as shown by his conduct and language preceding the deadly encounter. If the defendant was drunk, quarrelsome, insulting, these facts are relevant. It is always to be desired that the jury should understand how the accused was deporting himself immediately preceding the homicide.

*State v. Rowell*, 75 S.C. 494, 494, 56 S.E. 23, 28 (1906). Indeed, "the plea of self-defense is not

available to one who uses language so opprobrious that a reasonable man would expect it to bring on a physical encounter, and which did actually contribute to bringing it on.” *Id.* 75 S.C. at 494, 56 S.E. at 29. *See also State v. Woodham*, 162 S.C. 492, 492, 160 S.E. 885, 889 (1931) (finding no error when the trial court charged the jury that self-defense was not available to a person who uses such opprobrious language that is reasonably calculated to bring on a difficulty, and which does actually contribute to the coming about of the physical encounter).

There is testimony providing that while Applicant was at Shaggy’s, he was upset because Donna Muszynski, who he had been talking to, gave all of her attention to Chaplin. Tr. p. 174, 178, 216. Applicant proceeded to call Chaplin “faggot” and “Wolverine.” Tr. p. 175, 216. He repeatedly called Chaplin names. Tr. p. 177. Applicant also made derogatory comments towards Buchanan about Buchanan being gay and to Muszynski. Tr. p. 264, 266, 286, 298-99, 323, 353. Applicant also called Buchanan a “faggot.” Tr. 353. Indeed, Applicant asked Buchanan if Buchanan wanted Applicant to “kiss his ass.” Tr. p. 265. Multiple people in the bar told Applicant to stop using these derogatory terms. Tr. 265, 266, 287, 299, 354. Based on the foregoing, ample evidence was introduced at trial to support the contemptuous language charge and the trial court’s charge adequately covered the law. Accordingly, there was nothing objectionable about this charge, and this court finds Counsel was not deficient.

Similarly, this court finds Applicant has failed to establish sufficient prejudice resulting from the alleged deficiency. As aforementioned, Applicant repeatedly used derogatory terms in referring to Chaplin, Buchanan, and Muszynski. Indeed, Applicant’s language was so contemptuous, a reasonable person would expect it to bring on a physical encounter. Indeed, after being repeatedly told to stop and ignoring those requests, Chaplin hit Applicant. It cannot be said someone who repeatedly calls a man derogatory terms is not at fault in bringing on the

difficulty. In fact, Applicant's language was so contemptuous so as to preclude his allegation he shot Chaplin in self-defense. This court finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to request a more detailed charge on  
citizen's arrest*

Applicant further alleges Counsel was ineffective for failing to request a more detailed charge on citizen's arrest. A jury charge is correct if, when it is read as a whole, it contains the correct definition and adequately covers the law." *Adkins*, 353 S.C. at 318, 577 S.E.2d at 464. A jury charge which is substantially correct and covers the law does not require reversal. *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996). Furthermore, "the substance of the law is what must be charged to the jury, not any particular verbiage." *Adkins*, 353 S.C. at 318-19, 577 S.E.2d at 464 (emphasis added).

Where a statute defines the elements of a crime in plain and ordinary terms, it is proper for the court's charge to track the language of the statute. *Field v. Gregory*, 230 S.C. 39, 47, 94 S.E.2d 15, 20 (1956) ("As a general rule where the law governing a case is expressed in a statute, the court in its charge not only may, but should, use the language of the statute, and may, indeed, be guilty of error if it employs language which constitutes a departure in an essential respect from the statute.") (quoting 53 Am. Jur., Trial, para. 542, at p. 433); *United States v. Wills*, 346 F.3d 476, 494 (4th Cir. 2003) (approving of a jury instruction that "tracks the language of both the interstate stalking statute and of the indictment..."); *Accord State v. Zichko*, 129 Idaho 259, 264, 923 P.2d 966, 971 (1996) ("Ordinarily the language employed by the legislature in defining a crime is deemed to be best suited for that purpose, and error cannot be predicated on its use in jury instructions."); *Accord Lloyd v. State*, 152 A.3d 1266, 1271 (Del. 2016) ("An instruction

which tracks the statutory language is adequate to inform the jury.”); *People v. Fromuth*, 2 Cal. App. 5th 91, 108, 206 Cal. Rptr. 3d 83, 97 (Ct. App. 2016) (statutory language “is generally an appropriate and desirable basis for an instruction, and is ordinarily sufficient when the defendant fails to request amplification. If the jury would have no difficulty in understanding the statute without guidance, the court need do no more than instruct in statutory language.”). The trial judge may read the language of the statute verbatim, or he or she may phrase the statute in his or her own words. *Keel v. Seaboard Air Line Ry.*, 108 S.C. 390, 95 S.E. 64, 65 (1918) (“He read the statute to the jury, and that was sufficient. He had the right to read the statute to the jury, or, if the language of the statute was embodied in his own language, this was sufficient.”).

S.C. Code Ann. § 17-13-10 provides: “Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.” S.C. Code Ann. § 17-13-10. S.C. Code Ann. § 17-13-20 further provides: “A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person has committed a felony . . .” S.C. Code Ann. § 17-13-20(A). Furthermore, “in order to invoke the defense of justifiable killing in apprehending a fleeing felon, [the defendant] at minimum must show that he had certain information that a felony had been committed . . . and he used reasonable means to effect the arrest.” *State v. Cooney*, 320 S.C. 107, 111, 463 S.E.2d 597, 599 (1995). The determination of reasonableness is a question for the jury based on the facts and circumstances of the case. *Id.*

Here, Counsel requested a charge on citizen’s arrest, specifically directing the court to sections 17-13-10 and 17-13-20 of the South Carolina Code, as well as some case law. *See Tr.*

pp. 620-22. Thereafter, the trial court gave the jury the following charge on citizen's arrest:

I'm going to charge you the law in South Carolina as well on citizen's arrest, being the right that a citizen may have in making an arrest, a citizen's arrest.

There are statutes in South Carolina which address that issue in Title 17[-]13[-]10 and Title 17[-]13[-]20.

Upon A, a view of a felony committed, or, B, certain information that a felony has been committed, or, C, a view of larceny committed, any person may arrest the felon and take him to a judge or magistrate to be dealt with according to the law.

A citizen's arrest is unlawful unless a felony has been committed, or if no felony has been committed.

Under 17[-]13[-]20, a citizen may arrest a person in the nighttime by efficient means if the darkness and the probability of escape render it necessary, even if the life of the person may be taken if the person has committed -- when the person has committed a felony.

In order to invoke the defense of a justifiable killing, it must be shown that the felony has been committed and that the shooter used reasonable means to effect the arrest.

The determination of reasonable means depends upon the totality of the facts and circumstances in the case, even if -- even if it is later found that the person attempting to make a citizen's arrest, or the person that the arrestor is attempting to arrest did not commit a felony.

The arrest would still be lawful if there was reasonable cause for suspicion.

Tr. pp. 707-08. The charge given by the trial court included not only the statutory language of citizen's arrest but also relevant case law; therefore, there was nothing to which Counsel must have objected. Accordingly, this court finds Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, Applicant has failed to establish any resulting prejudice. The trial court gave

an extensive charge to the jury on citizen's arrest, and the jury was given the option to find Applicant not guilty based on a lawful citizen's arrest. After considering all of the evidence presented and the law as charged, including citizen's arrest, the jury chose to convict Applicant of voluntary manslaughter. There is no indication the jury would have been more persuaded by a "more extensive" charge on citizen's arrest. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to request a charge on the  
difference between "acting lawfully" and being "lawfully  
armed in self-defense"*

Applicant also contends Counsel was ineffective for failing to request a jury charge on the difference between "acting lawfully" and being lawfully armed in self-defense. To establish self-defense, a defendant must show: (1) he or she was without fault in bringing on the difficulty; (2) he or she must have actually believed he was in imminent danger of losing his or her life or sustaining serious bodily injury, or he or she actually was in such imminent danger; (3) if he or she believed he was in imminent danger, a reasonably prudent person of ordinary firmness and courage would have entertained the same belief, or, if the defendant were actually in imminent danger, the circumstances would warrant the reasonably prudent person to strike the fatal blow to save himself or herself from serious bodily harm or death; and (4) he or she had no other probable means of avoiding the danger. *Goodson*, 312 S.C. at 280, 440 S.E.2d at 371 (citing *Davis*, 282 S.C. at 46, 317 S.E.2d at 453). "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (quoting *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999)). Where the defendant's unlawful possession of a weapon is merely incidental to the defendant's lawful act of arming

himself in self-defense, the unlawful possession of the weapon will not prevent the use of self-defense. *Id.* at 71, 644 S.E.2d at 53 (citing *Burriss*, 334 S.C. at 262 n. 5, 313 S.E.2d at 108 n. 5. If, however, the weapon is the proximate cause of the killing, then the unlawful possession of a firearm can constitute unlawful activity so as to preclude self-defense. *Id.* Indeed, when a defendant approaches an altercation that is already underway with a loaded weapon at his side, such activity could be reasonably calculated to bring on the difficulty and the defendant is not merely in unlawful possession of a weapon and “may not avail himself on a charge on self-defense.” *Id.*

Here, as found by the South Carolina Court of Appeals, Applicant was not acting lawfully in brandishing the gun in a bar. Moreover, Applicant, after having been previously escorted out of the bar, returned with a loaded weapon at his side. Indeed, Applicant chose to approach an altercation that had been previously underway with a weapon. Such activity is reasonably calculated to bring on the difficulty, and Applicant’s unlawful possession of the weapon was the proximate cause of the killing, thereby precluding Applicant from availing himself of a charge on self-defense. Because Applicant was unlawfully in possession of the weapon and because he did not lawfully arm himself in self-defense by bringing on the difficulty, this court finds Applicant has failed to establish any deficiency on the part of Counsel, nor did he suffer any resulting prejudice from the alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel’s alleged failure to properly address the issues  
of docket manipulation and the use of Applicant’s prior  
conviction at trial*

Applicant further contends Counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant’s prior conviction at trial. Specifically,

Applicant alleges Counsel was ineffective for failing to properly address the fact the solicitor called Applicant's later charge of assault and battery on a correctional officer prior to his murder charge. Applicant contends Counsel should have made an argument similar to that in *State v. Langford*, specifically that Counsel should have argued S.C. Code Ann. § 1-7-330, which vests control over the trial docket to the solicitor, was unconstitutional. 400 S.C. 421, 735 S.E.2d 471 (2012). Counsel, however, is not required to anticipate or discover upcoming changes in the law at the time of trial. *Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993).

Here, Counsel argued the State merely wanted to call the assault and battery case to trial before the murder case because the State wanted Applicant to have a prior record with which he could be impeached. Counsel further argued although S.C. Code Ann. § 1-7-330 "seems to give the solicitor full reign to call cases as they deem fit, we don't think that discretion is unfettered." Applicant's Exhibit #12 p. 4. He explained the solicitor was "manipulating the docket in an attempt to gain an advantage in a collateral manner." Applicant's Exhibit #12 p. 4. He further argued the solicitor's control of the docket violated Applicant's rights to fundamental fairness, equal protection, and due process. Although Counsel did not specifically argue that S.C. Code Ann. § 1-7-330 was unconstitutional, he made the strongest arguments he could at the time. Moreover, *Langford* was decided in November 2012, approximately eighteen months after Applicant's trial. Because Counsel was not required to be clairvoyant as to changes in the law and because Counsel vehemently argued the solicitor was manipulating the docket simply to have a prior conviction with which to impeach Applicant, this court finds Applicant has failed to establish Counsel was deficient.

This court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. *Langford* still requires a defendant to show prejudice from the solicitor's

control of the docket. 400 S.C. at 436, 735 S.E.2d at 479. At trial, the court found the prejudicial effect of Applicant's prior conviction did outweigh its probative value but allowed the solicitor to question Applicant about it to the effect that Applicant had been convicted of a crime for which he could have been punished in excess of one year or up to three years. Tr. pp. 463-64. The trial court, however, would not allow the solicitor to question Applicant as to the nature of the offense. Tr. p. 465. Furthermore, Applicant's prior conviction was only mentioned once during the trial, during Applicant's direct examination, and the solicitor never asked Applicant about his prior conviction. Tr. p. 467. Accordingly, the trial court severely limited the manner in which the prior conviction could be raised at trial. This court, therefore, finds this allegation must be denied and dismissed with prejudice.

#### ***Prosecutorial Misconduct***

Applicant further alleges prosecutorial misconduct. Specifically, Applicant alleges the State violated *Brady*<sup>4</sup> in not disclosing the aforementioned incident report from Rush's. *Brady* requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. *Clark v. State*, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate: (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *Clark*, 315 S.C. at 388, 434 S.E.2d at 268 (citing *United States v. Bagley*, 473 U.S. 667 (1985)).

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<sup>4</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

Here, Deputy Solicitor Graham testified and confirmed that he did not have this incident report in his possession. Additionally, the evidence is not such that the result of the proceeding would have been different had it been disclosed by the defense. Specifically, the report merely questions Applicant's whereabouts in the hours before the shooting. In fact, the report simply makes it possible Applicant could have been at Rush's rather than State Street Pub around midnight on September 28, 2008. The shooting occurred at approximately 3:00 to 3:30 in the morning at Shaggy's bar. Multiple witnesses at trial, the video from Shaggy's, and Applicant himself placed him in Shaggy's and testified to Applicant's actions in the bar that evening. The hours preceding the actual shooting and the actions taken at a different bar, which Chaplin did not visit that evening, have no bearing on Applicant's actions at Shaggy's bar at approximately 3:00 in the morning. Because the report was not in the possession of the State and because it is not material to guilt or punishment, this court finds Applicant has failed to meet his burden. This court further finds this allegation must be denied and dismissed with prejudice.

#### ***Ineffective Assistance of Appellate Counsel***

A defendant is entitled to effective assistance of appellate counsel. *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. *See Ezell v. State*, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); *Southerland*, 337 S.C. 615-16, 524 S.E.2d at 836. *See also Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on

appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is “difficult to demonstrate that counsel was incompetent.” *Smith v. Robbins*, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” *Jones*, 463 U.S. at 754. Additionally, the South Carolina Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. *Tisdale*, 357 S.C. at 476, 594 S.E.2d at 167. “‘Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.’” *Smith v. Robbins*, 528 U.S. at 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

In order to meet his or her burden, an applicant must establish a reasonable probability that, but for appellate counsel’s failure to raise a specific issue on appeal, he or she would have prevailed on his or her appeal. *Smith*, 528 U.S. at 285-86.

*Appellate Counsel’s alleged failure to raise all meritorious issues on appeal*

Applicant alleges Appellate Counsel was ineffective for failing to argue all meritorious issues on appeal. On appeal, Appellate Counsel raised the following issue: “Whether Andrew Torrence was entitled to a charge on involuntary manslaughter when he admitted intentionally

firing his weapon, but other circumstances indicated that he did not intend to inflict serious injury or death.” The issue was thoroughly briefed not only at the South Carolina Court of Appeals but also at the South Carolina Supreme Court. The South Carolina Court of Appeals found Applicant was not entitled to an involuntary manslaughter charge because there was no evidence he did not intentionally fire his gun at Chaplin, and the South Carolina Supreme Court denied certiorari review of the issue.

Appellate Counsel explained his process of handling an appeal and the limitations on issues he could raise. He testified he looked at motions made at the end of the trial and worked his way through the transcript chronologically. Appellate Counsel further testified he marked direct appeal issues and post-conviction relief issues, which he flagged in hindsight. Appellate Counsel testified he raised the involuntary manslaughter issue on appeal because in his professional judgment, it was his strongest argument. Counsel explained, after the South Carolina Court of Appeals issued its opinion, he filed for a rehearing and a petition for certiorari, both of which were denied.

Regarding issues Applicant believes should have been raised, Appellate Counsel testified none of them were as strong as the one he raised. First, Appellate Counsel testified he did not raise the issue of Chaplin’s aggressive nature because there was no evidence he had ever been aggressive toward Applicant before the night of the deadly shooting. Next, Appellate Counsel testified he did not raise the docket manipulation argument in relation to Applicant’s prior conviction because the case law was still unsettled at the time of the direct appeal, and he believed the involuntary manslaughter issue was a stronger one to raise. Third, Appellate Counsel testified he did not raise the denial of the directed verdict motion because there was sufficient evidence of murder presented during trial so that it became something a jury must

decide. Fourth, Appellate Counsel testified he did not raise the issue of the denial of the admission of the in-car video because evidence issues are an abuse of discretion standard, meaning they are difficult to win a reversal on direct appeal. Fifth, Appellate Counsel testified he did not raise failure to charge accident to the jury because he believed the most favorable outcome to Applicant, based on the record and his research, would have been trying to get a new trial based on failure to charge involuntary manslaughter. Appellate Counsel further testified intentionally firing a gun twice would not qualify as an accident under the law in South Carolina. He explained it would have been very difficult to argue accident in Applicant's case. Finally, Appellate Counsel testified he did not raise prosecutorial misconduct issues because a curative instruction was given and it was not stronger than the involuntary manslaughter issue he raised.

This court finds Appellate Counsel's testimony credible and persuasive on all matters, noting Appellate Counsel is a respected appellate attorney in South Carolina. This Court finds Applicant has failed to establish the requisite deficiency of Appellate Counsel or prejudice entitling him to relief. First, this court finds Applicant has failed to show Appellate Counsel's performance was deficient, where there is no standard requiring appellate counsel to brief every possible meritorious issue and Appellate Counsel appropriately raised a stronger, meritorious issue on Applicant's behalf. Second, this court finds Applicant has failed to establish prejudice, as there is no reasonable likelihood Applicant would have prevailed on appeal.

Both the United States Supreme Court and the South Carolina Supreme Court have consistently ruled that appellate counsel has no duty to raise all meritorious issues on appeal. *See Jones*, 463 U.S. 745; *Smith*, 528 U.S. at 288; *Tisdale*, 357 S.C. 474, 594 S.E.2d 166. When appellate counsel reviews all possible issues and elects to raise those issues he or she deems most meritorious, he or she has performed in accordance with professional standards and is not

deficient. Throughout his testimony before this court, Appellate Counsel credibly stated he raised the argument on direct appeal he believed had the best chance of success after a thorough review of the record. As Appellate Counsel raised his strongest issue on appeal, his performance was in accordance with professional norms and this court finds this allegation must be denied and dismissed with prejudice.

Additionally, this court finds Applicant has failed to establish any prejudice from counsel's alleged deficiency. Applicant failed to demonstrate the result of his direct appeal would have been any different had Appellate Counsel raised any of the issues Applicant wished to be raised. First, as Appellate Counsel pointed out, whether Chaplin had an aggressive nature was not relevant where there was no evidence to show he had been aggressive toward Applicant prior to the night of the shooting so that Applicant would be in fear of his life. *See* Rule 404(a)(2), SCRE (providing for the circumstances when the character of the victim may be admitted). Further, when Counsel proffered the testimony of the witness who Applicant alleges would have said Chaplin had an "aggressive nature," the witness disagreed with Counsel's characterization of his statement. Tr. p. 208. The witness testified he did not say Chaplin was aggressive but said he had a short temper. Tr. p. 208. Given the abuse of discretion standard on appeal for admission of evidence, this court finds there is no prejudice to Applicant and he has failed to show the appellate courts would have reversed his conviction had Appellate Counsel raised this issue. *See State v. Martucci*, 380 S.C. 232, 247, 669 S.E.2d 598, 606 (2008) (explaining the admission or exclusion of evidence is left to the sound discretion of the circuit court, whose decisions will not be reversed on appeal absent an abuse of discretion or the commission of a legal error resulting in prejudice to the defendant) (citations omitted). This court finds this allegation must be denied and dismissed with prejudice.

Second, with regard to the failure to raise the docket manipulation allegation, this court finds Applicant cannot demonstrate prejudice where the issue, while argued, had not been decided at the time of his direct appeal, and Appellate Counsel testified there was little chance of success given the uncertainty of the law at the time. Further, as discussed above, the trial court limited the way in which Applicant's prior conviction could be used to impeach him. Tr. pp. 463-65; p.467; *see also* Rule 609(a)(1), SCRE (providing evidence of a defendant's prior crimes "shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused"). Accordingly, this court finds the issue would not have been successful in reversing Applicant's conviction had it been raised on direct appeal, and the allegation must be denied and dismissed with prejudice.

Third, this court finds Applicant fails to demonstrate prejudice regarding Appellate Counsel's alleged deficiency in not raising the denial of the directed verdict issue. Appellate Counsel testified he reviewed the record in its entirety and determined there was sufficient evidence of murder presented to submit the issue to the jury, and he presented the strongest issue on appeal. *See Brown v. State*, 307 S.C. 465, 468, 415 S.E.2d 811, 812 (1992) ("A case should be submitted to the jury if there is any substantial evidence, either direct or circumstantial, which tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced."); *see also State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2106) (explaining the jury must consider "alternative hypotheses" while the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt which is an objective test founded upon reasonableness, and the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt); *State v. Larmand*, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) ("[O]ur duty

is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was *any* evidence from which the jury could infer [the defendant's] guilt.") (emphasis in original). Further, this court finds even if Appellate Counsel had raised the directed verdict issue, a reasonable probability of a different outcome does not exist because Applicant would not be entitled to a reversal. Applicant was not convicted of murder but was, instead, convicted of voluntary manslaughter. Accordingly, this court finds Applicant failed to demonstrated prejudice and the allegation must be denied and dismissed.

Next, this court finds Applicant cannot demonstrate prejudice for any alleged deficiency in failing to raise the denial of admission of the in-car video. As discussed above, the trial court ruled the video could be played without audio, but Counsel decided not to offer the video into evidence. Tr. pp. 439-43; pp. 586-87; p. 589. Appellate Counsel testified he did not raise the issue given the abuse of discretion standard for evidentiary issues on direct appeal. Given that Applicant's alleged remorse did not have any relevancy to his defense that he was effectuating a citizen's arrest, and given the abuse of discretion standard on appeal, this court finds there is no prejudice to Applicant and he has failed to show the appellate courts would have reversed his conviction had Appellate Counsel raised this issue. See *Martucci*, 380 S.C. at 247, 669 S.E.2d at 606 (explaining the admission or exclusion of evidence is left to the sound discretion of the circuit court, whose decisions will not be reversed on appeal absent an abuse of discretion or the commission of a legal error resulting in prejudice to the defendant). This court denies and dismisses this allegation with prejudice.

Fifth, the court finds Applicant failed to demonstrate the outcome of his direct appeal would have been any different had Appellate Counsel raised the failure to charge accident. As

Appellate Counsel credibly and correctly testified before this court at the evidentiary hearing, the law in our State does not support the charge and this court finds it does not entitle Applicant to a reversal of his conviction. As explained above, Applicant admitted he fired the gun twice and he could not claim he was acting in self-defense because he brought on the difficulty. *See Goodson*, 312 S.C. at 280-81, 440 S.E.2d at 372 (explaining “homicide is excusable on the ground of accident when it appears that the defendant was acting lawfully in self defense and the victim was shot by accident through the unintentional discharge of a gun”). Accordingly, Applicant has failed to demonstrate prejudice and this allegation is denied and dismissed.

Finally, this court finds Applicant failed to demonstrate prejudice for Appellate Counsel’s failure to raise the prosecutorial misconduct claim made by Counsel. As Appellate Counsel testified, the trial court gave a curative instruction following Counsel’s objection to the solicitor’s cross examination of Applicant, cautioning the jury they were to disregard part of the questioning. *See Tr. pp.502-20*. Counsel did not object to the instruction given or otherwise seek a subsequent instruction. Had Appellate Counsel raised the issue on direct appeal, Applicant cannot show his conviction would have been reversed because the instruction given by the trial court was deemed to have cured any error. *See State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 911-12 (1996) (“If the trial [court] sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured.”). Accordingly, this court finds Applicant failed to demonstrate prejudice and the allegation must be denied and dismissed.

Therefore, this court finds Applicant failed to demonstrate either deficiency or prejudice for any of the claims of ineffective assistance of appellate counsel, and all of the claims are denied and dismissed with prejudice.

## CONCLUSION

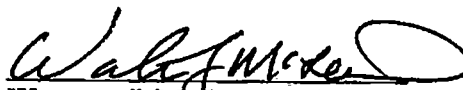
Based on all the foregoing, this court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this April day of 22, 2019.

  
WALTON J. McLEOD, IV  
Presiding Judge  
Eleventh Judicial Circuit

Lexington, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350, )  
Applicant, )

v. )

State of South Carolina, )  
Respondent, )

MOTION PURSUANT TO RULE  
59(a) & (e), SCRCP

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. Respondent filed a Return on July 12, 2017. Applicant through counsel filed an Amendment to Application for Post Conviction Relief on July 13, 2017. Applicant, through counsel, filed a superseding Amendment on October 26, 2018, which stated the following:

By and through his undersigned counsel, Applicant would move to amend his Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel regarding Applicant's mental health:
  - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial.
  - b. Trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in mitigation in a plea and/or trial.
  - c. Trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert.
2. Trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, but not limited to:
  - a. Trial counsel was ineffective for failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue.

- b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.
- 3. Ineffective assistance of counsel for the handling of the defense prior to and during trial:
  - a. Trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene.
  - b. Trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial.
  - c. Trial counsel was ineffective for failing to fully cross-examine the State's witnesses at trial.
  - d. Trial counsel was ineffective for failing to address the matter of bias at trial.<sup>1</sup>
  - e. Trial counsel was ineffective for failing to ensure that the court gave a curative instruction following his objection to the State's closing argument. Transcript p. 678, 680-82. Additionally, ineffective assistance for not making an objection to the Solicitor's characterization of the victim as a "hero." Transcript p. 579, 678.
  - f. Trial counsel was ineffective regarding the Court's charge, for the following but not limited to:
    - 1) for failing to obtain an accident and involuntary manslaughter charge;
    - 2) for failing to object to the contemptuous language charge;
    - 3) for failing to request a more detailed charge on citizen's arrest; and
    - 4) for failing to request a jury charge on the difference between "acting lawfully" and being "lawfully armed in self-defense."
- 4. Trial counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant's prior conviction at trial.
- 5. Appellate counsel was ineffective for, but not limited to, the following:
  - a. Failing to raise all meritorious issues on appeal:
    - i. The trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Transcript p. 201.
    - ii. Trial counsel's arguments regarding the issues of docket manipulation and the use of Applicant's prior conviction. Transcript pp. 451-64.
    - iii. The trial court's denial of the directed verdict motion. Transcript p. 408-10.
    - iv. Trial court's denial of the admission of the in car video. Transcript pp. 440-43, 460, 584-86.
    - v. Trial court's refusal to charge accident. Transcript pp. 616-617.
    - vi. Trial counsel's motions and arguments regarding prosecutorial misconduct.

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<sup>1</sup> This issue was abandoned on the record at the evidentiary hearing. PCR p. 251.

6. Pursuant to Rule 15(b), SCRCF, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On November 5-6, 2018, an evidentiary hearing was convened at the Lexington County Courthouse in front of the Honorable Walton J. McCleod, IV.<sup>2</sup> Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Kelly Oppenheimer, Assistant Attorney General, and Sherri Butterbaugh, Assistant Attorney General.

During the hearing, Applicant called Dr. Tora Brawley, Dr. Donna Maddox, Wayne Floyd, Esquire, Blake Hewitt, Esquire, Pete Skidmore, and Brenda Torrence to the stand. Respondent called Shawn Graham, Esquire, and recalled Wayne Floyd, Esquire. Applicant introduced thirteen exhibits, and Respondent introduced one exhibit.

At the close of the evidentiary hearing, this Court allowed the parties time to obtain the evidentiary hearing transcript. While the request for the transcript was pending, the Court requested proposed orders from both parties, which were submitted on or about March 15, 2019. On April 22, the Honorable Walton J. McCleod, IV, issued an Order of Dismissal, which was filed the same date. On April 26, 2019, Applicant's counsel received a copy of the signed and filed Order in the mail from the Lexington County Clerk of Court, from which this Motion timely follows.

#### GENERAL SESSIONS PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. During the August 2010 term of the Lexington County Grand Jury, Applicant was indicted for murder (2010-GS-32-

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<sup>2</sup> On April 16, 2018, a motion and/or scheduling hearing was held in front of the Honorable William A. McKinnon at the Lexington County Courthouse. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Sherri Butterbaugh, Assistant Attorney General. During the hearing, testimony was offered by Dr. Donna Maddox. The transcript of this hearing was provided to the PCR court for review. PCR p. 12.

02318). During the May 2011 term of Lexington County Grand Jury, Applicant was indicted for possession of a weapon during the commission of a violent crime (2011-GS-32-01440) and for carrying a firearm onto the premises of a business selling alcohol for on-premises consumption (2011-GS-32-01444).

On May 31, 2011, Applicant proceeded to trial in front of the Honorable Knox R. McMahon and a jury. Applicant was represented by Wayne Floyd, Esquire. The State was represented by D. Shawn Graham, Assistant Solicitor, and Alton H. Eargle, Assistant Solicitor. On June 3, 2011, the jury returned a guilty verdict on voluntary manslaughter and the weapons charges. The Honorable Knox R. McMahon sentenced Applicant to a term of twenty-five years for voluntary manslaughter and concurrent terms of five years for each weapons charge.

A timely notice of appeal was filed on Applicant's behalf and was perfected by Blake A. Hewitt, Esquire, and John S. Nichols, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Torrence, 2013-UP-152 (S.C. Ct. App. filed April 10, 2013). Certiorari was sought in the South Carolina Supreme Court and denied on November 7, 2014.

#### ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised and the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal ("Order"). Applicant submits the summary of trial record is incomplete and one sided. Applicant

further submits that the testimony addressed in the Order from the evidentiary hearing is incomplete, one sided and is lacking in citation to the record. Specifically, Applicant would urge the Court to address the testimony of trial counsel that amounted to admissions of ineffective assistance of counsel that is notably absent from the standing Order and addressed in the proposed Order, attached and incorporated herein.

In general, Applicant would move the Court to reconsider the standing Order and reconsider the proposed Order Granting Post Conviction Relief, which is attached herein and incorporated in this argument by reference. By way of this proposed Order, Applicant does not concede any of the issues raised as the Order was drafted based upon the request of the Court following the evidentiary hearing.

Specifically, Applicant would ask the Court to carefully reconsider and review the Order as it addresses the issues relating to mental health and counsel's failure to investigate and obtain the Rush's report. In light of the record before the Court, Applicant submits that a denial of these issues amount to a denial of his constitutional right to effective assistance of counsel and amounts to reversible error.

Regarding the mental health issues, Applicant would ask the Court to review the record as a whole, in conjunction with the proposed Order, attached and incorporated herein. Specifically, Applicant is concerned that the Order does not properly address counsel's failure to address Applicant's mental health in plea negotiations. Order p. 31. As to this issue, Applicant would ask the Court to review the records a whole and specifically pages 20-21 of the proposed Order. Additionally, the Order does not properly address the testimony of the experts and notably the testimony of Dr. Maddox that she recommended further testing be done, which contradicts the testimony of trial counsel. Applicant submits the record supports a finding that

counsel was deficient in his handling of matters related to Applicant's mental health to the degree that the outcome of Applicant's trial cannot be relied upon as having produced a just result.

As to the issue involving counsel's investigation and the Rush's report introduced at the evidentiary hearing, Applicant would ask the Court to review the record as a whole, in conjunction with the proposed Order, attached and incorporated herein. Applicant would further ask the Court to reconcile his finding that counsel's failure to obtain the Rush's report was not deficient and/or was justified by counsel's "reasonable" investigation with the following excerpt from the proposed Order that properly summarizes the testimony offered at the evidentiary hearing, with citations to the record:

When Wayne Floyd, Esquire, took the stand, he explained the investigation he undertook, as follows: "I studied the evidence, went out to the scene, talked to potential witnesses, researched, typical things you usually do to prepare for a trial." App. p. 100, Ins. 2-4. In response to whether he utilized a private investigator, he responded: "I don't think that I did." PCR p. 100, Ins. 8-10.

After going through the State's arguments and the testimony of Tonya and Steve, Mr. Floyd recalled that Applicant informed him from the pre-trial statements that the information was not accurate. PCR p. 103-4. Specifically, the following testimony was elicited:

Question: And did you have information from your client that he was not at State Street Pub at the time she was saying he was there?

Answer: Yes.

Question: And what did you do to look into that?

Answer: Well, independently of just talking to Drew about it, nothing.

PCR p. 103, Ins. 15-21. He acknowledged that Applicant's testimony contradicted the times given by Tonya and Steve. PCR p. 106. When asked to gauge how damaging the testimony of Tonya and Steve was to the defense, he responded: "Very damaging." PCR 105, Ins. 7-11. He explained that the Solicitor utilized their testimony to establish a motive for the shooting. PCR p. 105, Ins. 12-22.

Prior to discussing the time sheet he obtained from Rush's and the letter he received from the Solicitor regarding the interview of the Rush's manager, he acknowledged that he did not try to obtain video surveillance from Rush's. PCR p. 107. He did obtain Applicant's timesheet, but he did not speak to the Rush's manager, who was interviewed by the State and called in reply. PCR p. 113. He explained that it was a complete surprise when the Solicitor argued that Applicant was faking his employment records and that he was drinking on the job.

After being provided a copy of Applicant's Exhibit One, Mr. Floyd acknowledged that he was familiar with it since he had been provided a copy by Applicant's counsel prior to the evidentiary hearing. PCR p. 115. He affirmed that the address on the report was the Rush's location where Applicant was working on September 27, 2008 and the time on the report was "11:48:30 at night." PCR p. 115, Ins. 13-24. He also noted that Applicant's name was listed as the supplemental person and the incident report stated it was closed at "42 minutes, 48 seconds after midnight." PCR p. 116, Ins. 3-16.

After admitting that he did not get the report prior to trial, he agreed it confirmed the information he was provided by Applicant prior to trial. PCR pp. 116-7, 119-20. When asked how he would have utilized the report in the defense of Applicant, he responded: "I would use it to buttress his testimony and to show that Ms. Baldwin was incorrect in her testimony and also the two individuals, Steve and that Musynski, or the lady's last name, that they were incorrect in their testimony." PCR p. 117, Ins. 5-11, 172. He added that the report would have been "extremely important" to show that the testimony of Tonya and Steve wasn't accurate. PCR p. 118.

Mr. Floyd explained that felt the report would have been Brady material, as it was exculpatory to Applicant. PCR p. 120. Yet, he admitted that he did not try to subpoena it. PCR p. 120. He went on to explain: "I didn't anticipate the State Street Pub testimony or the Rush's testimony to be – I didn't expect it to be significant, yet it turned out to be kind of the main focus of the prosecution's case." PCR p. 120, Ins. 9-12.

Proposed Order pp. 27-28.

It must be noted that the Solicitor Graham testified that if he had known about the position that there had been an incident at Rush's during the timeframe in question, he would have obtained the report and turned it over. PCR p. 357. So, the question remains: How can counsel's investigation be deemed reasonable? By counsel's own admission he had information from Applicant that the State's witnesses timeline was incorrect due to the incident at Rush's, yet

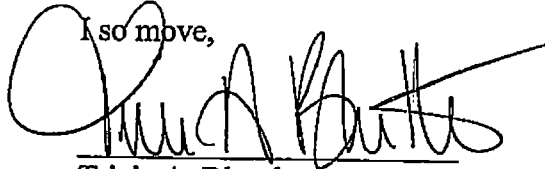
he failed to utilize that knowledge and obtain the report or alert the Solicitor, who admitted it would have been turned over if made known to him. Simply put, there is nothing reasonable about an investigation that does not result in the report being utilized as was done for the evidentiary hearing.

Not only would Applicant ask the Court to reconsider the finding regarding deficiency, but Applicant would also ask the Court to reconsider the finding as to prejudice. Again, Applicant would ask the Court to review the record as a whole, in conjunction with the proposed Order, attached and incorporated herein. As is addressed in the proposed Order, the State made it clear the case boiled down to credibility. Due to counsel's failure to obtain any records regarding the Rush's incident that would have shown that Applicant was at his place of employment interacting with law enforcement at the time he was allegedly drinking with the State's witnesses, the State's witnesses were allowed to testify without being impeached, Applicant was attacked on his credibility with no corroborating evidence, the seed was planted in the jury's mind that Applicant could have been drinking on the job and/or left the job, and the Rush's manager was called in reply to further attack Applicant's credibility. As is detailed in length in the proposed Order and is evident from the record as a whole, counsel's failure to properly investigate and obtain the Rush's report makes the entirety of Applicant's trial unreliable and unconstitutional, such that a new trial must be granted.

CONCLUSION

In conclusion, Applicant would request that the Court review the full record, including the evidentiary hearing transcript, reconsider the standing Order of Dismissal, reconsider Applicant's proposed Order Granting Application for Post Conviction Relief, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRPC.

I so move,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette  
Attorney for Applicant  
PO Box 2147  
Leesville, SC 29070

May 6, 2019

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350, )  
Applicant, )

v. )

ORDER GRANTING APPLICATION  
FOR POST CONVICTION RELIEF

State of South Carolina, )  
Respondent, )

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. During the August 2010 term of the Lexington County Grand Jury, Applicant was indicted for murder (2010-GS-32-02318). During the May 2011 term of Lexington County Grand Jury, Applicant was indicted for possession of a weapon during the commission of a violent crime (2011-GS-32-01440) and for carrying a firearm onto the premises of a business selling alcohol for on-premises consumption (2011-GS-32-01444).

On May 31, 2011, Applicant proceeded to trial in front of the Honorable Knox R. McMahon and a jury. Applicant was represented by Wayne Floyd, Esquire. The State was represented by D. Shawn Graham, Assistant Solicitor, and Alton H. Eargle, Assistant Solicitor. On June 3, 2011, the jury returned a guilty verdict on voluntary manslaughter and the weapons charges. The Honorable Knox R. McMahon sentenced Applicant to a term of twenty-five years for voluntary manslaughter and concurrent terms of five years for each weapons charge.

A timely notice of appeal was filed on Applicant's behalf and was perfected by Blake A. Hewitt, Esquire, and John S. Nichols, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Torrence, 2013-UP-152 (S.C. Ct. App. filed April 10, 2013). Certiorari was sought in the South Carolina Supreme Court and denied on November 7, 2014.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. Respondent filed a Return on July 12, 2017. Applicant through counsel filed an Amendment to Application for Post Conviction Relief on July 13, 2017. Applicant, through counsel, filed a superseding Amendment on October 26, 2018, which stated the following:

By and through his undersigned counsel, Applicant would move to amend his Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel regarding Applicant's mental health:
  - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial.
  - b. Trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in mitigation in a plea and/or trial.
  - c. Trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert.
2. Trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, but not limited to:
  - a. Trial counsel was ineffective for failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue.
  - b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.
3. Ineffective assistance of counsel for the handling of the defense prior to and during trial:
  - a. Trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene.
  - b. Trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial.
  - c. Trial counsel was ineffective for failing to fully cross-examine the State's witnesses at trial.
  - d. Trial counsel was ineffective for failing to address the matter of bias at trial.<sup>1</sup>
  - e. Trial counsel was ineffective for failing to ensure that the court gave a curative instruction following his objection to the State's closing argument. Transcript p.

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<sup>1</sup> This issue was abandoned on the record at the evidentiary hearing. PCR p. 251.

678, 680-82. Additionally, ineffective assistance for not making an objection to the Solicitor's characterization of the victim as a "hero." Transcript p. 579, 678.

f. Trial counsel was ineffective regarding the Court's charge, for the following but not limited to:

- 1) for failing to obtain an accident and involuntary manslaughter charge;
- 2) for failing to object to the contemptuous language charge;
- 3) for failing to request a more detailed charge on citizen's arrest; and
- 4) for failing to request a jury charge on the difference between "acting lawfully" and being "lawfully armed in self-defense."

4. Trial counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant's prior conviction at trial.

5. Appellate counsel was ineffective for, but not limited to, the following:

a. Failing to raise all meritorious issues on appeal:

- i. The trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Transcript p. 201.
- ii. Trial counsel's arguments regarding the issues of docket manipulation and the use of Applicant's prior conviction. Transcript pp. 451-64.
- iii. The trial court's denial of the directed verdict motion. Transcript p. 408-10.
- iv. Trial court's denial of the admission of the in car video. Transcript pp. 440-43, 460, 584-86.
- v. Trial court's refusal to charge accident. Transcript pp. 616-617.
- vi. Trial counsel's motions and arguments regarding prosecutorial misconduct.

6. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On November 5-6, 2018, an evidentiary hearing was convened at the Lexington County Courthouse in front of the Honorable Walton J. McCleod, IV.<sup>2</sup> Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Kelly Oppenheimer, Assistant Attorney General, and Sherri Butterbaugh, Assistant Attorney General.

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<sup>2</sup> On April 16, 2018, a motion and/or scheduling hearing was held in front of the Honorable William A. McKinnon at the Lexington County Courthouse. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Sherri Butterbaugh, Assistant Attorney General. During the hearing, testimony was offered by Dr. Donna Maddox. The transcript of this hearing was provided to this Court for review. PCR p. 12.

During the hearing, Applicant called Dr. Tora Brawley, Dr. Donna Maddox, Wayne Floyd, Esquire, Blake Hewitt, Esquire, Pete Skidmore, and Brenda Torrence to the stand. Respondent called Shawn Graham, Esquire, and recalled Wayne Floyd, Esquire. Applicant introduced thirteen exhibits, and Respondent introduced one exhibit.

At the close of the evidentiary hearing, this Court allowed the parties time to obtain the evidentiary hearing transcript. While the request for the transcript was pending, this Court requested proposed orders from both parties, from which this Order follows.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). Where an application for post conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. 466 U.S. at 686; see Butler v. State, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. Bell v. State, 321 S.C. 238 (1996); see also Cherry v. State, 300 S.C. 238 (1989); Rule 71.1(e), SCRPC.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117 (citing Strickland, 466 U.S. at 688).

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18.

In analyzing a claim of ineffective assistance of appellate counsel, the South Carolina Supreme Court has held that the lower court must apply the two prong Strickland test just as it would be to a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). In Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 277 (2009), the South Carolina Supreme Court explained that the lower court should “ask 1) whether appellate counsel’s performance was deficient, and 2) whether Petitioner was prejudiced by appellate counsel’s deficient performance.”

#### I. Issues Presented

As a threshold matter, this Court must pass upon the credibility of the evidentiary hearing witnesses. Generally, this Court finds the witnesses offered by both parties credible. Specifically, this Court has concerns with credibility as to the matters Wayne Floyd, Esquire, could not recall or qualified as possibly incorrect. This Court has incorporated specific credibility findings in the below discussion of the issues presented.

##### A. Mental Health

By way of the Amendment, Applicant alleged, ineffective assistance of trial counsel regarding Applicant’s mental health: trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial; trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in mitigation in a plea and/or trial; and trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert. At the beginning of the evidentiary hearing, Applicant’s counsel handed up Council v. State, Op. No.

26543 (S.C. Sup. Ct. filed Sept. 8, 2008), and indicated that she was not requesting a continuance, but counsel asked permission to revisit the issue, if needed. PCR pp. 14-15. Counsel explained that she did not intend to call Applicant due to the finding of Dr. Maddox and Dr. Brawley that he was not competent to take the stand. PCR pp. 15-16. Also, counsel offered her understanding the State did not intend to call Applicant. PCR p. 16. Prior to the conclusion of the evidentiary hearing, Applicant affirmed that he understood the relief that could be granted and that he wanted to proceed with his Application. PCR pp. 308-310.

In order to properly address the matters involving Applicant's mental health, this Court will first summarize the pertinent testimony elicited at the evidentiary hearing. As Applicant's first witness, Dr. Tora Brawley was called to the stand. PCR p. 17. Dr. Brawley's curriculum vitae was admitted (Applicant's Exhibit 5), and she was qualified as an expert in the area of neuropsychology. PCR pp. 18-20. She briefly explained neuropsychology, and she acknowledged that she conducted a neuropsychological examination on Applicant at the request of Dr. Maddox to assess his cognitive function. PCR pp. 20-21. Dr. Brawley identified her report, which was not admitted at that time, due to the State's objection. PCR p. 21-22. Dr. Brawley detailed the clinical interview she conducted during which Applicant informed her that he was "under remote neuromonitoring and this was affecting the way he was thinking." PCR p. 22, lns. 17-25. Specifically, she quoted him as saying: "They're doing inserts on me right now." PCR p. 21, ln. 1-2. She explained he reported concentration loss, memory loss, word finding difficulties, forgetting recent conversations, repeating himself, irritability and decreased tolerance. PCR p. 23. He also reported that he did not believe his mother was being honest about his father recently dying. PCR p. 23.

Dr. Brawley detailed the tests she administered and her findings. PCR pp. 23-25. She testified that Applicant performed "perfectly" on the test of memory malingering, and she determined that he was not malingering or exaggerating. PCR p. 25. She further testified that no inconsistencies were noted in her testing, so she did not have concerns with the validity of her test results. PCR p. 25.

In summary, she provided her findings, as follows:

He's having moderate to severe deficits in several cognitive domains, which is suggestive of brain organicity. He's also reporting some unusual symptoms that I talked about, as well as some vegetative symptoms. So I recommended that he may benefit from a full neurological evaluation.

PCR p. 26, ln. 23 – p. 27, ln. 3. She explained how Dr. Maddox serves as the quarterback and how she shared her findings with Dr. Maddox. PCR p. 27. She further explained that the term "suggestive of brain organicity" means "it appears that there may be some areas of brain damage or areas of the brain that aren't working as well as they should." PCR p. 27, ln. 23 – p. 28, ln. 3.

She addressed meeting with Applicant prior to the start of the evidentiary hearing because she had been asked by Dr. Maddox to administer a test to determine if Applicant was "malingering psychotic symptoms." PCR. p. 28. She explained in detail the results of the test, and she opined that Applicant was not malingering. PCR. pp. 28-29.

She agreed that she would have been willing to work on Applicant's case if contacted prior to his trial. PCR. p. 29. When asked if she could determine if Applicant's deficits were present at the time of the crime, she responded:

Yes. It's highly likely that, yes, those were present at the time. He has – he had – he had a history of several concussions as well as spinal meningitis, so, certainly, those could have impacted brain function.

PCR p. p. 30, lns. 7-19. On cross-examination, she agreed that she could not say to "a degree of medical certainty that he did exhibit these deficits at the time of the crime." PCR. p. 31, lns. 6-9.

Yet, she explained that there are “certain areas of functioning that are considered crystalized, meaning they hold through early dementia or head injuries and things like that.” PCR. p. 31, lns. 17-23. Thereafter, she again went through the battery of tests she administered to Applicant. PCR. pp. 31-33. When asked if it was possible that Applicant could have declined in functioning while incarcerated, she responded:

I usually do not see that. Usually they get better in prison because they’re in a structured environment, they’re getting three squares a day. It’s usually just the opposite. They either stabilize or get a little bit better. It’s highly, highly unusual that they decline, unless they’ve been in fights or, you know, had some kind of injury or illness.

PCR p. 33, ln. 23- p. 34, ln. 5.

Following Dr. Brawley, Dr. Donna Schwartz Maddox was called to the stand, and she was qualified as an expert in the area of forensic psychiatry. PCR pp. 37, 40. She recalled being originally retained by Wayne Floyd, Esquire, to evaluate Applicant at the Lexington County Detention Center in 2010.<sup>3</sup> PCR p. 41. She further recalled speaking with Applicant’s mother (Brenda Torrence) after the evaluation and learning about his “significant” history, which she explained. PCR pp. 41-42. She recalled recommending to trial counsel that neuropsychological testing be conducted by Dr. Brawley since she identified “symptoms consistent with organicity.”<sup>4</sup> PCR pp. 41-42, 77. She did not recall having any further contact with Mr. Floyd, but she did recall being contacted by Mrs. Torrence following Applicant’s trial. PCR p. 42. When asked by Mrs. Torrence about her absence from Applicant’s trial, she recalled responding that she was unaware that his trial had commenced. PCR pp. 42-43. If she had known about

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<sup>3</sup> She explained that she was testifying from memory since her records were no longer available from 2010 since her file was turned over to appellate counsel and could not be recreated. PCR pp. 41, 49-50.

<sup>4</sup> On redirect, she stated that she told Mr. Floyd that Applicant had impairment and needed neuropsychological testing. PCR p. 77, lns. 16-23. She further agreed that it would have been very premature for her to issue a report or make a diagnosis following one meeting with Applicant since she did not have the information needed to diagnosis him. PCR p. 77, lns. 16-22.

Applicant's trial, she responded that she "absolutely" would have been willing to assist Mr. Floyd, which would have included having testing done by Dr. Brawley. PCR p. 43. She said she would have been "glad" to assist and felt she would have been "helpful." PCR p. 65, lns. 13-17. She detailed communication she had with Applicant's appellate counsel and how she had provided her file to appellate counsel. PCR pp. 49-50.

Dr. Maddox addressed the items she recalled reviewing in 2010 and the items she reviewed prior to the evidentiary hearing. PCR pp. 44-48. Specifically, she addressed a history of "two major brain insults" that predated Applicant's offense. PCR p. 47. She also addressed the most significant events from Applicant's history. PCR p. 46.

She recalled that Applicant did not present symptoms of psychosis in 2010, and she admitted that she may have missed it if he was psychotic at the time. PCR p. 47, lns. 1-5. When she first met with Applicant in 2016, she found him to be psychotic. PCR p. 48. She explained the "delusions" Applicant endorsed to her, which included remote neuromonitoring and the belief that the victim and Applicant's father are not deceased. PCR pp. 50-52.

She detailed the tests she administered to Applicant and her findings. PCR pp. 52-55. She raised no concern with the validity of her tests. PCR pp. 54-55.

Since Applicant was intoxicated at the time of his offense, it was her opinion he would have been precluded from a guilty but mentally ill defense.<sup>5</sup> PCR p. 47, lns. 17-25, 56. Yet, she explained her findings could have been utilized in plea negotiations, mitigation and sentencing. PCR pp. 43-44, 56-7. Specifically, she addressed how his numerous impairments and underlying organicity affected his judgment, such as making him impulsive or irritable. PCR p. 57. She

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<sup>5</sup> She explained how the alcohol exacerbated all of his underlying pathology. PCR p. 58, lns. 1-3.

clarified: "But when I say impulsive, it's being driven by a brain disorder, not just a conscious choice." PCR p. 57, lns. 21-23.

Turning to the matter of competency, she opined that when she saw Applicant in 2010, "he was competent," but she did not evaluate his competency prior to his trial commencing. PCR p. 58, lns. 10-11. She stated that she would have needed to see him the morning of his testimony at trial to evaluate his competency. PCR pp. 78-79. She explained that Applicant reported suffering from hallucinations and effects of the remote neuromonitoring during his trial testimony. PCR pp. 58-9. She also addressed that he was suffering from the delusion that the victim was not dead. PCR p. 59, 65. Regarding this delusion, she explained:

My concern was more his competency to testify. To testify in court, you have to know the difference between truth and a lie. And, unfortunately, when you have delusions, you believe things that may not be true. And just similar to the hearing that we had last year, I would have had concerns about his ability to differentiate delusional thinking from the truth.

PCR p. 59, lns. 16-23. She addressed how a delusion that the victim was not dead could have "affected his capacity to assist in his defense" and "his rational competency." PCR p. 65, lns. 1-7. She also addressed how hallucinating could "affect his capacity to assist in his defense because he's listening to hallucinations instead of testimony." PCR p. 65, lns. 1-7. She explained that she did not hear back from Mr. Floyd after their phone call and that she would have been "glad" to assist further and felt she could be "helpful." PCR p. 65, lns. 13-17.

As to Applicant's competency to testify as the evidentiary hearing, she opined that he was not competent to testify. PCR pp. 59-60. She explained that she had advised Applicant's counsel accordingly. PCR pp. 59-60.

When asked, she provided her diagnosis, as follows:

Your Honor, for his psychosis, I'm calling it unspecified schizophrenia and psychotic spectrum disorder. The DSM-5 -- the DSM keeps changing, so every

edition, the unspecified kind of changes nuances. But what that means is I can't tell whether the psychosis is coming from his traumatic brain injury – you can have traumatic brain injuries and develop psychosis later over time – or if he, indeed, is very unfortunate and has both organicity and schizophrenia. So I left it in the unspecified characterization because I'm not sure. And at this point, I don't think anyone could be sure.

Then I also diagnosed him based on Dr. Brawley's testing with what's called a major neurocognitive impairment. And it's secondary to his history of meningitis, his history of closed head injuries, and also alcohol abuse over the years that he could contribute to that. And that means that he's got cognitive impairment in, I believe, it's four areas which Dr. Brawley mentioned: The concentration, the attention, the working memory, some verbal learning, those sorts of areas that she has already testified to.

And then, of course, I diagnosed him with alcohol abuse disorder. He's had a longstanding history of alcohol abuse over the years and he's not – according to his report, he has not had any alcohol since his department of corrections confinement, which may account for why Dr. Brawley also reported there was improvement. You could expect someone with organicity if they're no longer drinking to improve, their cognitive function to improve.

PCR p. 60, ln. 21- p. 62, ln. 4.

Additionally, she explained that she asked Dr. Brawley to conduct a malingering evaluation on Applicant prior to the evidentiary hearing. PCR p. 63. She stated that she never suspected Applicant was malingering, but he had been diagnosed with malingering by the South Carolina Department of Corrections (SCDC). PCR P. 63-4. She addressed Dr. Brawley's finding that Applicant was not malingering, and she indicated that Dr. Brawley's finding confirmed her opinion. PCR p. 64.

On cross-examination, the State admitted a portion of Applicant's medical and mental health records from SCDC. Respondent's Exhibit 1. Regarding the records, Respondent asked Dr. Maddox about Applicant's reports of hearing "voices or noises," while at SCDC. App. p. 69-70. When asked if "it is unusual that someone who's allegedly schizophrenic does not appear in any distress," she referenced her experience working on a forty-five bed unit with women that

were mostly schizophrenic and explained that often times the person can appear to be functioning and the symptoms are not continuous. PCR p. 72, lns. 3-14. On redirect, she opined that Applicant "doesn't show distress." PCR p. 82, lns. 9-17. She agreed that if someone did not know Applicant well or was not an expert in her capacity, he could present normally during the trial. PCR p. 82, lns. 18-23.

On cross-examination, Dr. Maddox was also asked about times when Applicant was not compliant with his medications while in SCDC and agreed that schizophrenia is treatable with medication. PCR pp. 73-4. On redirect, she explained her concerns with the SCDC reports and the medications Applicant was being prescribed. PCR pp. 79-81. She also identified where Applicant was reporting the symptoms to SCDC that he was reporting to her. PCR p. 81.

Finally, the State asked Dr. Maddox about Applicant returning to the bar and a "cooling off period," as follows:

Question: So that cooling-off period, would you agree that was not impulsive?

Answer: Yes and no. Not only impulsive though. You have to remember also, persons with organicity, they can be extremely irritable. And then when you combine that with alcohol – the impulse could have been at the time of the shooting. Impulse doesn't necessarily mean that you – cooling off period is kind of a legal term and impulsivity is a psychiatric term.

So for example, is it very poor judgment that he goes and gets his gun? Absolutely. But once he came into that bar, it's very impulsive when he's firing. So it's a combination of those things.

Question: And he didn't report that he was hearing voices at his trial until after the trial, correct.

Answer: I didn't see him until – I don't know when he originally reported them. He reported them to me in 2016 in March when I first saw him and told me at that time.

Question: But he did not report that to you in 2010 that he was hearing voices?

Answer: That's correct. I only saw him the one time. So what happened after the time I saw him, I have no idea.

PCR p. 76, ln. 10 – 77, ln. 9. On redirect, the following testimony was elicited:

Question: Dr. Maddox, just there towards the end, the State was asking you a series of questions. You were asked if you had no concerns that you shared with Mr. Floyd. You did actually share concerns with Mr. Floyd, didn't you, after that first evaluation?

Answer: Yes; that he had impairment and the he needed neuropsychological testing.

Question: And you recommended further testing by Dr. Tora Brawley?

Answer: Correct.

PCR p. 77, ln. 16 – p. 78, ln. 1

When Wayne Floyd, Esquire, took the stand he recalled being retained to represent Applicant by Mrs. Torrence, prior to Applicant's initial bond appearance. PCR. p. 87. He recalled Mrs. Torrence bringing up Dr. Maddox's name and retaining her services. PCR. p. 88. Following her evaluation of Applicant at the Lexington County Detention Center, he recalled communicating with Dr. Maddox over the phone, but he did not think he got a report. PCR p. 88. He could not recall her recommending the utilization of Dr. Brawley, but he also responded that he could not deny it either. PCR p. 88.

When asked why he did not further utilize her services, he responded: "If my recollection is correct, she was unable to provide us information that I thought would be useful at the trial on the issue of guilt or innocence. Nor on competency to stand trial." PCR p. 88, ln. 17- p. 89, ln. 2. He acknowledged that he did not have any notes, but he recalled her findings being consistent with her evidentiary hearing testimony that Applicant was "competent to stand trial," and "she

didn't feel like there was a defense to the act itself." PCR p. 90, Ins. 2-17, p. 98. He also acknowledged that Dr. Maddox was listed on the Defense Witness List, which was admitted as Applicant's Exhibit 8.<sup>6</sup> PCR p. 89.

Mr. Floyd explained how he worked to obtain a plea offer and identified the written plea offer dated February 15, 2011, which was "a straight up plea to voluntary manslaughter." Applicant's Exhibit 9, PCR p. 91. After acknowledging the wide range in the sentencing discretion with a voluntary manslaughter plea and sentence, he admitted he did not consider using Dr. Maddox to assist with mitigation or even with plea negotiations. PCR p. 92. He acknowledged that he only utilized a lay witness in sentencing mitigation. PCR P. 174.

Mr. Floyd reviewed the trial transcript where Applicant told the court he was on Zoloft and commented that he did not know how it affected him. Trial p. 456. Mr. Floyd admitted it was the first he heard about Applicant being on medication since he did not discuss it with him. Trial p. 456, PCR p. 92. He explained that he determined that Applicant was competent to testify based upon his meetings with him. PCR P. 93, 147. When asked about specific portions of Applicant's testimony, he admitted that he did not consider Applicant's decision making ability, impulse control or the impact of a traumatic event. PCR P. 94. He explained he did not recognize confusion with Applicant while he was on the stand, and he saw no need for redirect. PCR p. 95.

Thereafter, Pete Skidmore took the stand. Mr. Skidmore explained that he has been a licensed private investigator for twenty five years, and he explained how he was retained to assist with Applicant's PCR case. PCR pp. 180-1. When Mr. Skidmore was asked about his interaction with Applicant prior to the evidentiary hearing, he responded that he was absolutely concerned about Applicant's mental health based upon his behaviors and conversation. PCR p. 205.

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<sup>6</sup> Her name was listed as Dr. Schwartz-Watts. PCR p. 89.

Specifically, Mr. Skidmore acknowledged Applicant's conversations with him regarding brain waves and remote neuromonitoring. PCR pp. 205-7. He ensured that counsel was working with mental health professionals in preparing for Applicant's evidentiary hearing . PCR pp. 205-6. He responded that he was "shocked" that defense counsel did not utilize mental health professionals nor was mental health mentioned at trial. PCR p. 206.

Following Mr. Skidmore, Blake Hewitt, Esquire, took the stand. He explained that he primarily handles appellate cases and recalled his retainer on Applicant's direct appeal. PCR pp. 226-7. In one of his first meetings with Mrs. Torrence, he recalled being told that Dr. Maddox had been retained, but she had not testified at trial. PCR p. 227. When asked about his "gauge regarding Applicant's mental health," he qualified his answer that he was not a mental health expert, but he detailed serious concerns based upon his interactions with Applicant. PCR p. 229-230. He stated: "He said some strange things, things that struck me as strange, and gave the impression of sometimes of just not being completely with it." PCR p. 229, lns. 20-22.

When Brenda Torrence took the stand, she explained that she is Applicant's mother and detailed the events of September 27-28, 2008, which concluded with her contacting Attorney Wayne Floyd to meet with and represent Applicant. PCR pp. 276-279. From that date forward, Mr. Floyd represented Applicant, and she recalled asking him on several occasions if he needed help with the case. PCR pp. 280, 292. Regarding Applicant's mental health, she explained that she had sought treatment for him as a child and she addressed a history of brain injuries that she informed defense counsel about in person and email. PCR pp. 281, 293-4, 306. While on the stand, she addressed an email that was sent to Mr. Floyd's office regarding concerns she had

about her son's case and his mental health, whereby she discussed the utilization of Dr. Donna Schwartz-Watts.<sup>7</sup> PCR pp. 282-83.

She testified that she paid a retainer in the amount of one thousand five hundred dollars for the services of Dr. Schwartz-Watts, and she was aware that Dr. Schwartz-Watts went to the detention center to meet with Applicant. PCR p. 284. She recounted Dr. Schwartz-Watts calling her after leaving the detention center and explained her understanding that Dr. Schwartz-Watts knew what was wrong with her son, which gave her hope. PCR pp. 285-6. She knew that Dr. Schwartz-Watts was going to be called for trial and was very confused when she was not called. PCR pp. 286-287. She agreed that she was never asked for additional funds for expert services, but she would have provided such funds. PCR pp. 286-7, 292.

When asked about the trial, she stated that she "particularly" remembered Applicant being on the stand. PCR p. 294, Ins. 10-14. She said it was apparent he was struggling, and she detailed her perception, as follows:

I knew that he was struggling, and there was nothing I could do. I just had to sit there and watch him. At one point, I remember him just folding his hands and laying his head down on his arms. I knew about conversations I had had with Drew regarding this incident. I knew the remorse. And I just – the questioning, just kept badgering, it seemed to me. He had told me time and time and time again what happened, and they didn't want to believe him, I don't think, they just didn't. I just felt very sorry for him at that point.

PCR p. 294 ln. 16- p. 295, ln. 1.

Following the trial, she contacted Dr. Schwartz-Watts to find out why she was not at trial. PCR p. 287. She was informed that Dr. Schwartz-Watts was unaware that the trial had taken place, and she connected her with Applicant's appellate attorneys. PCR p. 287. She also detailed

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<sup>7</sup> This email was later admitted as Applicant's Exhibit 13. PCR p. 289. At the time of Applicant's trial, Dr. Schwartz Maddox was known as Dr. Schwartz-Watts.

the concerns she raised to appellate counsel regarding Applicant's mental health and trial counsel's handling of the issue. Applicant's Exhibit 14, PCR pp. 288-292.

On cross-examination, she was asked about counsel's testimony that he determined that Dr. Schwartz-Watts could not be utilized in the guilt or innocence phase of the trial. PCR p. 303. She responded that she did not recall him ever telling her that information. PCR p. 303.

The testimony before this Court establishes that after being provided information regarding Applicant's mental health and brain injury history by Applicant's mother, Mr. Floyd retained the services of Dr. Maddox, with the retainer being paid by Applicant's mother. It is also clear that Dr. Maddox met with Applicant at the detention center and had a conversation with Mr. Floyd and Applicant's mother after that meeting. From there, the witnesses memories differ and this Court must weigh the credibility of witnesses testimony and utilize the discretion vested in this court in drawing factual conclusions.

This Court does not find it is as simple as Mr. Floyd may have recalled at the evidentiary hearing. Mr. Floyd testified that he determined that Dr. Maddox could not be utilized in regards to guilt or innocence; therefore, he did not utilize her at trial. What is troubling with Mr. Floyd's testimony is that such information was not provided to Applicant's mother, Dr. Maddox was placed on the witness list, and Dr. Maddox did not recall reaching such a conclusion with Mr. Floyd. Dr. Maddox could not recall evidence of Applicant's psychosis from their initial meeting, but she could recall informing counsel that Dr. Brawley needed to conduct neurocognitive testing, and questioning, as Applicant's mother did, why she was not utilized prior to and during trial. As a result of the testimony and evidence offered, this Court is compelled to make a finding that trial counsel was deficient in how he handled the matter of Applicant's mental health to the

degree that the outcome of Applicant's trial cannot be relied upon as having produced a just result.

This court finds that trial counsel's testimony does not establish a reasonable trial strategy to weigh against his failure to properly address Applicant's mental health. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015) (Reversing the denial of post conviction relief reasoning that trial counsel was deficient for failing to discuss with Reeves hiring a medical expert to more thoroughly challenge the State's medical evidence presented at trial and finding that trial counsel did not present a legitimate trial strategy for failing to consult with an expert before trial or call an expert at trial.) This Court further finds that counsel not only failed to provide a reasonable trial strategy, but he failed to provide a reasonable basis for his failure to utilize mental health experts in a number of ways.

In Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017), counsel was found to be deficient for failing to obtain an independent competency evaluation prior to the entry of a guilty plea. Here, Dr. Maddox found that Applicant was not competent to testify at the evidentiary hearing. PCR pp. 59-60. She also opined that when she saw Applicant in 2010, "he was competent," but she did not evaluate his competency prior to his trial commencing. PCR p. 58. She stated that she would have needed to see him the morning of his testimony at trial to evaluate his competency, which obviously cannot be done at this juncture. PCR pp. 78-79. She explained that Applicant reported suffering from hallucinations and effects of the remote neuromonitoring during his trial testimony. PCR pp. 58-9. She also addressed that he was suffering from the delusion that the victim was not dead. PCR p. 59, 65. Regarding this delusion, she explained:

My concern was more his competency to testify. To testify in court, you have to know the difference between truth and a lie. And, unfortunately, when you have delusions, you believe things that may not be true. And just similar to the hearing

that we had last year, I would have had concerns about his ability to differentiate delusional thinking from the truth.

PCR p. 59, lns. 16-23. She addressed how a delusion that the victim was not dead could have “affected his capacity to assist in his defense” and “his rational competency.” PCR p. 65, lns. 1-7. She also addressed how hallucinating could “affect his capacity to assist in his defense because he’s listening to hallucinations instead of testimony.” PCR p. 65, lns. 1-7. She explained that she did not hear back from Mr. Floyd after their phone call and that she would have been “glad” to assist further and felt she could be “helpful.” PCR p. 65, lns. 13-17.

As stated, Dr. Maddox recalled recommending further testing by Dr. Brawley, and this Court finds her testimony, along with the testimony of Dr. Brawley, to be credible. As summarized above, Dr. Brawley testified at the evidentiary hearing regarding her neurocognitive testing of Applicant at the request of Dr. Maddox. She explained her findings that were “suggestive of brain organicity” meaning that “it appears that there may be some areas of brain damage or areas of the brain that aren’t working as well as they should.” PCR p. 27, ln. 23 – p. 28, ln. 3. When asked whether she could determine if Applicant’s deficits were present at the time of the crime, she responded:

Yes. It’s highly likely that, yes, those were present at the time. He has – he had – he had a history of several concussions as well as spinal meningitis, so, certainly, those could have impacted brain function.

PCR p. p. 30, lns. 7-19. On cross-examination, she agreed that she could not say to “a degree of medical certainty that he did exhibit these deficits at the time of the crime.” PCR. p. 31, lns. 6-9. Yet, she explained that there are “certain areas of functioning that are considered crystalized, meaning they hold through early dementia or head injuries and things like that.” PCR. p. 31, lns. 17-23.

This Court finds that trial counsel's failure to follow Dr. Maddox's recommendation to utilize Dr. Brawley was not only deficient but was also unexplained by trial counsel. PCR p. 88. At the evidentiary hearing, counsel recalled not utilizing Dr. Maddox since she could not address guilt or innocence, but he never addressed why he did not utilize Dr. Brawley. Also, this Court is not convinced of Mr. Floyd's excuse for failing to properly utilize Dr. Maddox, which counsel qualified by saying "if my recollection is correct." PCR p. 88.

This Court finds the instant case analogous to Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001). In Gill, the South Carolina Supreme Court held that the trial court did not err in refusing to charge diminished capacity because it is not recognized in South Carolina and the instructions, taken as a whole, properly presented the elements of malice. See State v. Fuller, 229 S.C. 439, 93 S.E.2d 463 (1956). Yet, in Gill, Dr. Harold Morgan, a forensic psychiatrist, was allowed to testify in front of the jury regarding Gill's intellectual capacity (I.Q.) and personality disorder and opine regarding his inability to handle problems or think of the consequences of his behavior. Id. at 220, 552 S.E.2d at 32. Here, trial counsel could have utilized the testimony of the mental health experts as was done in Gill to address the impulsive actions and irritability addressed by Dr. Maddox, if he was found to be competent to stand trial. PCR pp. 57. Counsel admitted he did not consider Applicant's decision making ability or impulse control. PCR p. 94. On cross-examination, Dr. Maddox explained how Applicant could have presented normally to someone without her expertise at trial or not shown distress.<sup>8</sup> PCR p. 82.

Additionally, Dr. Maddox explained how she could have assisted in other phases or areas of Applicant's defense, to address his diagnoses of organicity and schizophrenia. This Court

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<sup>8</sup> At the evidentiary hearing, Blake Hewitt, Esquire, testified that he was retained to handle Applicant's direct appeal, met with Applicant shortly after his trial, and had serious concerns stemming from his interactions with Applicant. PCR pp. 229-230. This Court finds Mr. Hewitt's testimony credible, and this Court finds his perceptions of Applicant call into question whether Applicant was "presenting normally" at the time of his trial.

finds that these other phases or areas are not covered by counsel's reasoning that she would not be helpful in the area of guilt or innocence.<sup>9</sup> Dr. Maddox explained how she could have assisted in plea negotiations, mitigation and sentencing. PCR pp. 43-44, 56-7. In Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009), counsel was found to be ineffective for failing to utilize mental health experts and evidence in capital sentencing mitigation. Here, counsel admitted that he did not consider utilizing Dr. Maddox in mitigation or sentencing despite the wide range in sentencing discretion with a voluntary manslaughter plea or sentence. Furthermore, he chose to only utilize a lay witness during a sentencing hearing where the court called his client Dr. Jekyll and Mr. Hyde. Trial p. 743.

Based upon the record before this Court, it is readily apparent that counsel's performance was deficient, and his deficient performance undermined the adversarial process afforded to Applicant to the extent that the outcome of Applicant's trial cannot be relied upon. In Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015) and McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2008), prejudice resulted from failure to refute the State's experts and failure to utilize an expert in the development of a defense, but here the deficiency and prejudice goes beyond that addressed in Reeves and McKnight. This Court finds that counsel's failure to properly address Applicant's mental health requires that a new trial be granted as both prongs of the Strickland analysis have been met.

#### B. Rush's report

By way of his Amendment, Applicant alleged that trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, he alleged trial counsel was ineffective for

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<sup>9</sup> As addressed above, in light of the testimony and evidence offered, this Court does not find credible or reasonable that Mr. Floyd's did not further utilize Dr. Maddox on this basis.

failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue. Alternatively, Applicant alleged prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.

At trial, the State called Tonya Mozenka ("Tonya") to the stand. She testified about seeing Applicant at State Street Pub before midnight on September 27, 2008. Trial pp. 166-7. She recalled he was getting more and more intoxicated, so she left with her friend, Stephen Smith, to get away from Applicant. Trial p. 169. She testified that Applicant was calling her attractive, but she would not repeat what he said to her. Trial p. 170. She remembered sharing six shots with Applicant while they were at the pub together for about an hour and fifteen minutes. Trial p. 171.

She testified about arriving at Shaggy's and seeing Applicant upon arrival. Trial p. 173. She found his demeanor to be "exactly the same way he was at State Street." Trial p. 174, lns. 11-13. She recounted Applicant getting upset with the victim and being very aggravated towards him. Trial p. 175. Specifically, she testified that Applicant stated: "I should go to my truck and get my gun and shoot him. Trial p. 177, ln. 13-14. She added that he made that statement several times. Trial p. 178, ln. 4.

When asked, she offered her opinion, without objection, that Applicant was inebriated on 911 call. Trial p. 181.

On cross-examination, trial counsel asked her about her statement. Trial pp. 183-4. He also asked her whether she was remembering the right night at State Street Pub, and she responded that she was sure she had the right night. Trial p. 182, lns. 3-11, p. 190, lns. 8-16. On

redirect, she also responded that she was telling the truth and she had “absolutely” no reason to make anything up. Trial p. 191, lns. 6-9.

When the State called Stephen Smith (“Steve”) to the stand, he recounted meeting Tonya at State Street Pub around 12:00 a.m. or a little after, and he testified that Applicant was there. Trial p. 213. On cross-examination, he affirmed that Applicant was already at State Street Pub when he arrived at midnight. Trial p. 219. When asked about his interaction with Applicant at State Street Pub, he responded: “He was intoxicated. He said he had been drinking since six o’clock that afternoon or evening. He was all over Tonya and Zachary – he said a few derogatory remarks. I don’t really recall what they were, but they kind of aggravated her.” Trial p. 214, lns. 7-11. He explained that they chose to leave because of Applicant and walked down to New Brooklyn Tavern. When they came back, Applicant had left. Trial p. 214.

When asked about encountering Applicant at Shaggy’s, he testified that Applicant was more drunk than he was at the pub, he was hitting on Tonya and upset with victim. Trial p. 216. He said that Applicant called the victim “a wolverine or faggot.” Trial p. 216, ln. 23 – p. 217, ln. 2. He also testified that Applicant said, between three and five times, he should go get his gun from his car and shoot the victim. Trial p. 217, lns. 3-11.

When Applicant took the stand, he identified and counsel introduced his timesheet that reflected that he was on duty at Rush’s from 9:28 p.m. to 1:50 a.m. Trial p. 473. He testified that he arrived at State Street Pub around 2:25 a.m. or 3:00 a.m. Trial p. 474.

On cross-examination, he was questioned about his timesheet, and he was adamant that he did not leave Rush’s during the time period reflected on his timesheet. Trial pp. 501-3. He responded that there were security cameras that would have shown he was there and even volunteered to take a polygraph. Trial p. 504. Thereafter, the Solicitor began questioning

Applicant about why his signatures appeared differently, which culminated in him being asked if he was “drinking alcohol between those hours.” Trial p. 504, lns. 1-21. Trial counsel objected, and the jury was sent out. Trial p. 504.

After moving for a mistrial for prosecutorial misconduct, trial counsel called the conduct “outrageous,” and explained:

They have a letter from the manager of the Rush’s on Broad River Road, and they gave me a copy of it. They asked if Mr. Torrence was there and if Mr. Torrence was drinking that night, and the response was we have no record of it. If we had noticed anything like that, we would have, of course, notified the security company, and we didn’t.

So there is no evidence of it. The evidence is that he was there doing his job. Their witnesses are lying in their testimony that he was at State Street at midnight, and they just won’t admit it.

There is no basis for asking that question except to try to prejudice him in the eyes of the jury.

Trial p. 504, ln. 14 – p. 505, ln. 1. Counsel moved for dismissal and agreed to withdraw his motion for a mistrial. Trial p. 506, lns. 2-6.

After the Solicitor responded, the court denied the motion for dismissal due to prosecutorial misconduct, and he reasoned it was an issue of credibility between Ms. Mozenko, Mr. Smith, and Applicant. Trial pp. 507-8. Trial counsel offered more argument, conferred with Applicant, and requested a curative instruction. Trial pp. 508-510. The court responded that a curative would be a comment on the facts and proposed a stipulation regarding Applicant not drinking while working at Rush’s. Trial pp. 510-11. In response, the Solicitor explained that he was trying to show Applicant could have left and come back not that he was drinking at Rush’s, and the court noted that the State had two witnesses that testified “that they saw him in a bar.” Trial p. 511.

Trial counsel responded that he was "still at a loss to understand." Trial p. 512, lns. 7-8. He explained that he understood prior to trial that the Solicitor's office had no evidence he was drinking at work or left, so he did not understand how it was possible for the Solicitor to imply otherwise. Trial p. 512. The Solicitor responded that his investigator informed him that the Rush's manager said it was conceivable for him to leave and come back and the purpose of the letter was to turn over information that the manager did not notice alcohol on Applicant's breath. Trial pp. 512-13. After further back and forth regarding the letter and a possible stipulation, the Solicitor concluded:

The only point I want to make out of this is that Tonya and Steve are not lying and that he left, went somewhere and came back during the hours, I guess, of midnight and one fifty.

That's the only point I'm trying to get out of in this cross examination.

Trial p. 517, lns. 10-15.

When the jury returned, the court provided a curative instruction, and cross examination resumed. Trial pp. 519-20. Applicant testified that it was impossible for him to go to State Street Pub and return to Rush's. Trial p. 521, lns. 1-12. In response to whether he saw Tonya and Steve at State Street Pub, he stated: "Not on that night." Trial p. 522, lns. 17-19. As the Solicitor continued to question him about seeing Tonya and Steve, Applicant kept asking which night he was referring to and ultimately responded that he saw them at State Street Pub in the early morning hours and invited them to Shaggy's. Trial pp. 523-4.

In reply, the State called Lynn Baldwin, Rush's manager, to the stand. Trial p. 605. She was unable to recall Applicant's face in the courtroom, but she did recall having a security guard on duty on the night of September 27-28, 2008. Trial pp. 605-6. She reviewed Applicant's timesheet and explained what she would have been doing during those hours. Trial pp. 606-7.

She said it would not be unusual to not see the security guard during the shift and she would have “no idea whether they are there are not because I’m busy doing my job.” Trial p. 607, lns. 20-25. She recalled that she did not leave that morning until 2:46 a.m. Transcript p. 608. She further recalled that the security guard did not walk her to her car that morning as Applicant had stated in his testimony. Trial p. 608. On cross-examination, she stated that if she had smelled alcohol on Applicant, she would have reported it. Trial p. 609.

In his closing argument, trial counsel addressed the statements and testimony of Tonya and Steve. Trial p. 638. He argued that their statements were not accurate, the entire premise was false and it was impossible for Applicant to leave work and be at State Street Pub at midnight. Trial pp. 638-9.

In the State’s closing argument, the Solicitor argued: “This is a case about credibility, who are you going to believe. Who is lying, who is telling the truth? Why would people lie?” Trial p. 652, lns. 14-16. Thereafter the Solicitor recounted the testimony of Tonya and Steve. Trial pp. 652-654. He asked the jury: “Why would they come in here and put their hands on the Bible and lie to you about something that happened? There is no reason given why they would lie.” Trial p. 13-18.

At the beginning of the evidentiary hearing, Applicant’s counsel admitted an “incident detail report and supporting exhibits” via stipulation. Applicant’s Exhibit 1, PCR p. 12. Counsel explained that the report was obtained via discovery order. Applicant’s Exhibit 4, PCR p. 13. She further explained that she subpoenaed the Richland County Sheriff’s Department, received a response and subpoenaed the Columbia City Clerk to obtain the report. Applicant’s Exhibit 2-3, PCR p. 13.

When Wayne Floyd, Esquire, took the stand, he explained the investigation he undertook, as follows: "I studied the evidence, went out to the scene, talked to potential witnesses, researched, typical things you usually do to prepare for a trial." App. p. 100, lns. 2-4. In response to whether he utilized a private investigator, he responded: "I don't think that I did." PCR p. 100, lns. 8-10.

After going through the State's arguments and the testimony of Tonya and Steve, Mr. Floyd recalled that Applicant informed him from the pre-trial statements that the information was not accurate. PCR p. 103-4. Specifically, the following testimony was elicited:

Question: And did you have information from your client that he was not at State Street Pub at the time she was saying he was there?

Answer: Yes.

Question: And what did you do to look into that?

Answer: Well, independently of just talking to Drew about it, nothing.

PCR p. 103, lns. 15-21. He acknowledged that Applicant's testimony contradicted the times given by Tonya and Steve. PCR p. 106. When asked to gauge how damaging the testimony of Tonya and Steve was to the defense, he responded: "Very damaging." PCR 105, lns. 7-11. He explained that the Solicitor utilized their testimony to establish a motive for the shooting. PCR p. 105, lns. 12-22.

Prior to discussing the time sheet he obtained from Rush's and the letter he received from the Solicitor regarding the interview of the Rush's manager, he acknowledged that he did not try to obtain video surveillance from Rush's. PCR p. 107. He did obtain Applicant's timesheet, but he did not speak to the Rush's manager, who was interviewed by the State and called in reply. PCR p. 113. He explained that it was a complete surprise when the Solicitor argued that Applicant was faking his employment records and that he was drinking on the job.

After being provided a copy of Applicant's Exhibit One, Mr. Floyd acknowledged that he was familiar with it since he had been provided a copy by Applicant's counsel prior to the evidentiary hearing. PCR p. 115. He affirmed that the address on the report was the Rush's location where Applicant was working on September 27, 2008 and the time on the report was "11:48:30 at night." PCR p. 115, lns. 13-24. He also noted that Applicant's name was listed as the supplemental person and the incident report stated it was closed at "42 minutes, 48 seconds after midnight." PCR p. 116, lns. 3-16.

After admitting that he did not get the report prior to trial, he agreed it confirmed the information he was provided by Applicant prior to trial. PCR pp. 116-7, 119-20. When asked how he would have utilized the report in the defense of Applicant, he responded: "I would use it to buttress his testimony and to show that Ms. Baldwin was incorrect in her testimony and also the two individuals, Steve and that Musynski, or the lady's last name, that they were incorrect in their testimony." PCR p. 117, lns. 5-11, 172. He added that the report would have been "extremely important" to show that the testimony of Tonya and Steve wasn't accurate. PCR p. 118.

Mr. Floyd explained that he felt the report would have been Brady material, as it was exculpatory to Applicant. PCR p. 120. Yet, he admitted that he did not try to subpoena it. PCR p. 120. He went on to explain: "I didn't anticipate the State Street Pub testimony or the Rush's testimony to be – I didn't expect it to be significant, yet it turned out to be kind of the main focus of the prosecution's case." PCR p. 120, lns. 9-12.

Following Mr. Floyd, Peter G. Skidmore took the stand, and he explained that he had been a private investigator for twenty-five years and worked on over one hundred fifty murder cases. PCR p. 180, 184. He testified about steps he typically takes to prepare a case. PCR pp.

184-5. He acknowledged that he had been retained by Applicant to investigate the case prior to the evidentiary hearing. PCR p. 180.

Regarding the incident report from Rush's, Mr. Skidmore testified that Applicant was emphatic that a report should exist that he asked defense counsel to get that would verify that he was at Rush's and not State Street Pub at the time testified to by Tonya and Steve. PCR pp. 197-198. Specifically, when asked what Applicant was emphatic about, he explained: "That he could not have been at State Street Pub because he had been taking care of an incident that happened at his employment where there were police officers called, first responders called, as well as ambulance." PCR p. 198, Ins. 2-7. He further recalled Applicant recalling that the person at the scene choked on something. PCR p. 198.

After addressing the steps taken to obtain the report, Mr. Skidmore recalled reviewing it and opined it "absolutely" confirmed the information provided by Applicant. PCR pp. 198-9. He explained how it could have been used to support Applicant's testimony at trial. PCR p. 219-221. He referenced the response received prior to the evidentiary hearing that a full incident report was not available, and he explained the steps he could have taken to further investigate the incident if utilized by Mr. Floyd when he as retained right after Applicant's arrest. PCR pp. 199-202. He was able to drive the distance between Rush's and State Street Pub and determined it was a fifteen minute drive. PCR p. 202. After being asked about counsel's reliance on the State's interview of the Rush's manager, he responded that his recommendation to counsel would have been: "To completely do an independent investigation so that you would have the proper materials to impeach the State's witnesses." PCR p. 204, Ins. 13-22.

When Brenda Torrence took the stand, she acknowledged that she had discussions prior to trial with her son and trial counsel about Tonya and Steve's account of Applicant being at State Street Pub. PCR pp. 295-6. She explained:

When Drew was at Lexington Detention Center, he told me to call Tonya Mozenko, I think that was her name. And, of course, I don't know her and I don't have her number. But by this time, they had given us back his cell phone. He said, her number is in my cell phone, and he told me to call her.

And I did call her and I had told her that was Drew's mother and he asked that I call her. And she asked me – I asked her what happened that night and she said, do you want to know? And I said, yes, I do want to know. And she told me her version of what happened.

So the next time I talked to Drew, I told him what she had to say. And that's when he told me. He said, she's lying, she's lying, I was not at the State Street Pub.

PCR p. 296, lns. 5-20.

She recalled reviewing the written statement of Tonya and bringing the matter to the attention of trial counsel. PCR pp. 296-7. At her son's urging, she asked counsel to obtain the surveillance from Rush's and look into a call he had to make to law enforcement regarding an intoxicated woman on the premises. PCR pp. 297-8. She also recalled providing money for a private investigator (Chip Johnson) and questioning where he was during trial and what he had done. PCR pp. 292, 298-9.

On cross-examination, she agreed that Tonya's testimony at trial was consistent with the information she provided during their phone call. PCR p. 301. On redirect, she further explained how and why she contacted Tonya. PCR pp. 307-8.

After Applicant rested, Respondent called Shawn Graham, Deputy Solicitor for the Eleventh Circuit, to the stand. PCR p. 311. Mr. Graham addressed the prosecution of Applicant. When asked to address the "significance of Steven and Tonya's testimony about his [Applicant's] whereabouts prior to being at Shaggy's that night," Mr. Graham responded, in part:

"That was there story. That was the time line they gave. They admitted they'd both been drinking a lot, but that was the time line they gave." PCR p. 318, lns. 20-25.

Mr. Graham explained how he is a "pebble turner," and he would have typically inquired about surveillance at both Rush's and State Street Pub. PCR p. 319. He testified that he did not "end up with video from either place." PCR p. 391, lns. 23-24.

When asked about his intent in asking Mr. Torrence about the difference in his signatures on his timesheet, he responded:

The story that Lee and Steve testified to in their time line would have had Mr. Torrence leaving the Rush's and going there and drinking. That is what they said happened in their time line. The question I had, I guess, was geared towards whether the change – because it was an obvious change in his signature. He acknowledged, and I think his testimony was, that it was because he was tuckered after his shift. My thought would be maybe because he was drinking.

PCR p. 320, lns. 3-12.

On cross-examination, Mr. Graham was asked about his closing argument that the case boiled down to credibility and his detailed review of Tonya and Steve's timeline. PCR pp. 341, 367-8. When asked about relating Applicant's conduct at Shaggy's back to State Street Pub and the importance of Tonya and Steve's testimony about State Street Pub, he responded, in part: "In my opinion, it went to their whole story of seeing him that night and then how he was acting and that he had been drinking and continued to drink." PCR p. 354, lns. 4-11.

Also, during cross examination, he explained that if he had been aware of Applicant's position that there had been an incident reported at Rush's, he would have tracked down the report and turned it over in discovery. PCR p. 357. He further explained that he called Lynn Baldwin to show that Applicant could have left Rush's during work hours as Tonya and Steve testified. PCR p. 350. He agreed he called Ms. Baldwin to show that Applicant was not being truthful. PCR p. 359.

As stated above, a defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Without a doubt, a criminal defense attorney has a duty to investigate, but that duty is limited to reasonable investigation. When evaluating the reasonableness of counsel's conduct, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Moreover, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007).

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the South Carolina Supreme Court reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The South Carolina Supreme Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. Lounds, 380 S.C. at 460, 670 S.E.2d at 649, See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). In McKnight, the South Carolina Supreme Court held: "This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable 'only to the extent that reasonable professional judgment supports the limitations on the investigation.'" McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)).

Here, the record is not clear as to whether counsel utilized a private investigator, but the record is clear that counsel failed to conduct an independent investigation into Applicant's assertion that the witness statements that he was at State Street Pub at midnight were false.

Counsel failed to obtain surveillance footage, relied upon the State's interview of the Rush's manager, and admittedly was "at a loss to understand" the State's strategy. Trial p. 512, lns. 7-8. If counsel had obtained the Rush's report, he would have been able to show that Tonya and Steve were lying instead of the Solicitor cross-examining Applicant for the admitted purpose of showing they were not lying. The record before this Court establishes that counsel failed to make the adversarial testing process work when he merely relied upon the State's summation of their interview with the Rush's manager and failed to independently investigate the matter.

By counsel's own admission, the testimony of Tonya and Steve was "very damaging," and the report and the information contained therein was "extremely important." PCR p. 105, lns. 7-11, p. 118, ln. 8. It is clear that the report that was introduced at the evidentiary hearing could have been utilized to impeach the timeline and testimony of Tonya and Steve, but it also could have been utilized to corroborate Applicant's testimony and avoid the entire portion of his cross-examination that led to counsel's request for dismissal and a mistrial.<sup>10</sup> Additionally, the report would have negated the reason for calling the Rush's manager in reply. By his own admission, Mr. Graham explained that he called the Rush's manager for the mere purpose of showing that Applicant was not being truthful. PCR p. 359.

At the evidentiary hearing, counsel explained: "I didn't anticipate the State Street Pub testimony or the Rush's testimony to be – I didn't expect it to be significant, yet it turned out to be kind of the main focus of the prosecution's case." PCR p. 120, lns. 9-12. Counsel's failure to anticipate and investigate amounted to prejudice that counsel himself addressed during his argument for a mistrial and dismissal at the trial.

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<sup>10</sup> This Court makes his findings based upon the report admitted at the evidentiary hearing, but this Court is mindful that at the time of trial additional evidence could have been available, i.e. surveillance, officer's reports, officer's testimony, that was not available at the time of the evidentiary hearing.

Furthermore, it resulted in the prejudice suffered by Applicant in the eyes of the jury when he was portrayed as a liar. Meanwhile, the Solicitor was able to argue that Tonya and Steve would not put their hands on the Bible and lie. At the evidentiary hearing, the Solicitor acknowledged the importance of the report when he testified that if he would have known about Applicant's position prior to trial or about the existence of the report he would have turned it over. PCR p. 357. Unfortunately, counsel knew about Applicant's position prior to trial and failed to obtain the report or do any form of independent investigation to corroborate Applicant's position. Therefore, this Court finds that counsel's deficiency undermines the confidence in the outcome of Applicant's trial. Since Applicant has met both prongs of the Strickland analysis, a new trial must be granted.

This Court also finds that Applicant's alternative claim of prosecutorial misconduct must be denied due to the above finding of ineffective assistance of counsel and based upon the testimony offered at the evidentiary hearing. Trial counsel testified that he was aware of Applicant's position, but he did not testify that he shared the information with Mr. Graham. Furthermore, Mr. Graham testified that if he had been provided the information, he would have tracked down the report and turned it over to the defense. PCR p. 357. Therefore, based upon the record before this Court, this alternative claim must fail.

### C. Handling of the Defense

By way of the Amendment, Applicant alleged ineffective assistance of counsel for the handling of the defense prior to and during trial. Specifically, he alleged trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene; trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial; trial

counsel was ineffective for failing to fully cross-examine the State's witnesses at trial<sup>11</sup>; trial counsel was ineffective for failing to address the matter of bias at trial<sup>12</sup>; and trial counsel was ineffective for failing to ensure that the court gave a curative instruction following his objection to the State's closing argument. Additionally, Applicant alleged ineffective assistance for not making an objection to the Solicitor's characterization of the victim as a "hero." Transcript pp. 579, 678.

### 1. Bar Video

By way of the Amendment, Applicant alleged trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene. In trial counsel's opening argument to the jury, he stated: "Now, we heard this morning, what the State is trying to weave about this night in question. We say this, thank God for the video, because, you see, this is what happened." Trial p. 88, ln. 24 – p. 89, ln. 2.

During Applicant's trial, the State called the bar owner, Sonny Narang, to the stand. Trial p. 193. He recalled arriving at his bar after the shooting and meeting with law enforcement. Trial p. 197. He explained the camera system in the bar, recalled law enforcement requesting copies of the camera footage and identified the videos he provided to law enforcement.<sup>13</sup> Trial pp. 197-8.

On cross-examination, he was asked about how the video footage was selected, and he responded that he "guessed" he was the one that chose where to start and stop the recording.

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<sup>11</sup> This Court finds that this issue has been encompassed by the above discussion and ruling regarding counsel's failure to obtain the incident report from Rush's. This Court further finds that Applicant offered no further testimony or evidence regarding witnesses that should have been further cross-examined at trial. Therefore, this claim does not need to be further addressed.

<sup>12</sup> This issue was abandoned at the evidentiary hearing. Therefore, this Court finds it is deemed abandoned and denied.

<sup>13</sup> Mr. Narang testified that there were two cameras inside the liquor store and two inside the bar area. Trial p. 198, lns. 15-16.

Trial pp. 210, lns. 5-14. He decided to provide the footage from the camera closest to the “occurrence.” Trial p. 210, lns. 13-14. He explained that he discovered that the system recorded in ten minute increments, and he agreed that he provided the increments following Applicant’s “initial interaction” with the victim. Trial p. 210, ln. 15-24. He responded that law enforcement did not ask for any prior increments of video, and he said the video would have been available on the hard drive for “probably about seven or eight days.” Trial p. 211, lns. 3-13.

At the evidentiary hearing, Mr. Floyd acknowledged that he was familiar with the video footage from the bar played and admitted at trial. PCR pp. 121-2. When asked, he conceded that he did not look into getting additional footage from the bar or contact the owner about it. PCR p. 122-3. On cross-examination, he explained that he did not agree that the video showed the entire incident. PCR p. 152.

When Mrs. Torrence was on the stand, she recalled raising concerns to counsel about the video footage from the bar. PCR p. 299. Specifically, she recalled asking if there was additional angles or any additional footage. PCR p. 299. She explained that she contacted Mr. Floyd within hours of her son being arrested. PCR p. 299.

As addressed above, Mr. Skidmore took the stand and explained steps he would have taken if retained prior to Applicant’s trial. PCR p. 185-6. Specifically, he explained that he would have raised a concern to defense counsel that there was likely additional video footage from the bar. PCR pp 187-8, 192-3, 216. He also provided his concerns regarding what the video contained versus what was portrayed at trial. PCR pp. 187-192. On cross-examination, he noted that there was testimony offered that there was an additional camera angled at the bar area that was not provided. PCR p. 216, Trial p. 198.

During the direct examination of Shawn Graham, he explained that he would have been assigned the case after the seven days the bar owner stated the video would have been retained. PCR p. 321. He recalled being provided the video surveillance that was obtained by law enforcement. PCR p. 321. He further recalled the other camera angle was not obtained "because it didn't show anything or it wasn't working where you could see well." PCR p. 321, Ins. 17-21.

Based upon the record and case law addressed above, this Court finds that counsel rendered ineffective assistance when he failed to conduct an independent investigation of the video footage available at the bar when he was retained within hours of Applicant's arrest. See Lounds, 380 S.C. at 460, 670 S.E.2d at 649, Ard, 372 S.C. 318, 642 S.E.2d 590 (2007). At the evidentiary hearing, Mr. Graham testified that he did not receive Applicant's case until after the seven days the owner testified the footage would have been retained, but the excuse of inheriting the limited footage obtained by law enforcement is not applicable to trial counsel.

At trial, the State offered testimony regarding Applicant's actions leading up to the time captured on the video footage to convince the jury of Applicant's guilt, but Applicant, alone, was left to refute the State's witnesses. Obviously, Applicant was prejudiced by counsel's failure to obtain additional footage that could have supported his testimony. Furthermore, this footage could have impeached or limited the testimony offered by the State's witnesses. Therefore, this Court finds that trial counsel rendered ineffective assistance that prejudiced Applicant when he failed to obtain the additional footage he questioned Mr. Narang about at the trial. Since Applicant has met both prongs of the Strickland analysis, a new trial must be granted.

## 2. In Car Video

By way of the Amendment, Applicant alleged that trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial. During pre-trial motions, the State moved to

admit the in car video footage of Applicant while in Officer Griffin's patrol car. Transcript p. 66. Officer Griffin was called in camera, and the State offered argument for admission. Transcript pp. 66, 71. Trial counsel informed the court that the defense did not object to the admission of the in car video. Transcript p. 71, ln. 25.

During the direct examination of Officer Griffin, he testified that he cuffed Applicant and placed him in the back of the patrol car. Transcript p. 437. On cross-examination, trial counsel moved to admit the in car video, and the State objected. Transcript p. 438. The jury was sent out, and both parties offered argument. Transcript pp. 438-439. The court determined that any portion that was not self-serving hearsay may be admissible and decided to address the admissibility following Applicant's testimony. Transcript pp. 440-43.

Following Applicant's testimony, the court ruled that the video amounted to self-serving hearsay and was inadmissible. Transcript pp. 584-6. After a brief discussion, trial counsel withdrew offering the video in to evidence. Transcript p. 589.

At the evidentiary hearing, Mr. Floyd explained he assumed the State would introduce the in car video based upon the pre-trial motion. PCR pp. 126-7. He acknowledged that he attempted to introduce it since it thought it was favorable evidence and beneficial to Applicant's defense. PCR p. 127, lns. 8-17. He further explained that he did not anticipate having to try to get it admitted at trial and did not conduct research on the issue. PCR p. 129.

Mr. Skidmore acknowledged that had reviewed the in car video and agreed with defense counsel that it was "absolutely" important to the defense strategy in the case. PCR p. 197. He addressed how Applicant was very concerned for the victim and remorseful. PCR pp. 193-97.

During the direct examination of Shawn Graham, he recalled objecting to the in car video and provided his recollection of its contents, as follows: "I think it was an hour, roughly an hour

in time, it showed him in the back of the patrol vehicle, a lot of the times silence. There were a few times where he asked about Zach and how Zach was.” PCR p. 323, lns. 14-18.

This Court finds that Applicant has failed to establish that counsel was deficient for unsuccessfully attempting to introduce the in car video and withdrawing his request to admit it. Trial counsel admitted that he anticipated that the State would introduce the video, and he wanted the video admitted as he found it beneficial to the defense. This Court finds that counsel’s belief that the State would admit the video is reasonable based upon the State’s pre-trial motion. Additionally, this Court finds that Applicant has failed to establish a basis by which the video would have been admissible. Therefore, this claim must fail under the first prong of the Strickland analysis and is hereby denied.

### 3. State’s Closing Argument

By way of the Amendment, Applicant alleged that trial counsel was ineffective for failing to ensure that the court gave a curative instruction following his objection to the State’s closing argument. Transcript p. 678, 680-82. Additionally, Applicant alleged ineffective assistance for not making an objection to the Solicitor’s characterization of the victim as a “hero.” Transcript pp. 579, 678.

At the evidentiary hearing, trial counsel was asked about his objection to the State’s closing argument and his failure to object to the Solicitor’s characterization of the victim as a hero. Trial counsel responded that he did not have a “tactical” reason for not objecting to the Solicitor’s characterization of the victim. PCR p. 131, ln. 17-21. When asked if he ensured that the court gave a curative instruction after his successful objection to the State’s closing argument, he responded that he did not recall.

As the record reflects, this Court finds that the lower court failed to give a specific curative instruction following counsel's successful objection, but the trial court's jury charge, as a whole, sufficiently cured the Solicitor's argument and properly addressed the Solicitor's characterization of the victim as a hero. Transcript p. 709, ln. 23 – p. 710, ln. 1. Therefore, Applicant has failed to show how counsel's performance fell below professional norms and was deficient, and any claims of prejudice are refuted by the trial court's jury instruction. As a result, these claims must fail under both prongs of the Strickland analysis.

#### 4. Jury Charge

By way of his Amendment, Applicant alleged trial counsel was ineffective regarding the Court's charge, on the following basis: for failing to obtain an accident and involuntary manslaughter charge; for failing to object to the contemptuous language charge; for failing to request a more detailed charge on citizen's arrest; and for failing to request a jury charge on the difference between "acting lawfully" and being "lawfully armed in self-defense."

Based upon the trial and appellate records, along with the testimony offered at the evidentiary hearing, this Court finds that trial counsel requested and was denied a jury instruction on accident and involuntary manslaughter. Trial pp. 616-7, 630. This Court further finds that Applicant has failed to show how counsel should have more effectively advocated for these charges. Even though the jury submitted a question about an involuntary manslaughter charge, this request does not amount to a showing of deficiency or prejudice. Therefore, this claim fails under both prongs of the Strickland analysis.

At the evidentiary hearing, counsel admitted that he did not object to the trial court's charge termed by Applicant as a contemptuous language charge. Transcript p. 703, ln 4, PCR p. 139. Mr. Hewitt also testified that he found the charge to be objectionable, but he could not raise

the issue on appeal without an objection by trial counsel.<sup>14</sup> PCR pp. 245-246. This Court finds that Applicant has failed to offer a viable basis on which counsel should have entered an objection. Additionally, Applicant has failed to show any resulting prejudice from counsel's failure to enter an objection. Therefore, this claim fails under both prongs of the Strickland analysis.

Finally, this Court finds that Applicant's claims that counsel was ineffective for failing to request a more detailed charge on citizen's arrest and for failing to request a jury charge on the difference between "acting lawfully" and being "lawfully armed in self-defense" must fail under the both prongs of the Strickland analysis. In both regards, counsel requested and obtained the standard charge. Transcript pp. 616-622, 624-627, 702. Therefore, Applicant has failed to show any deficiency or resulting prejudice.

#### D. Docket Manipulation

By way of the Amendment, Applicant alleged that trial counsel was ineffective for failing to properly address the issue of docket manipulation and the use of Applicant's prior conviction at trial. At the evidentiary hearing, trial counsel identified the letter he received from the Solicitor about calling a subsequent unrelated charge (assault on a correctional officer) for trial prior to the murder charge. Applicant's Exhibit 11, PCR pp. 140-1. He also identified the plea transcript from April 25, 2011 on the subsequent charge. Applicant's Exhibit 12, PCR p. 142. He explained that the Solicitor intended to call the subsequent charge first in order to utilize it as a prior conviction at Applicant's murder trial. PCR p. 141. He further explained that he objected to the proposal on the grounds of "docket manipulation," but he was unsuccessful. When the case

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<sup>14</sup> Mr. Hewitt qualified his response by stating that he could be wrong. PCR p. 246, ln. 16.

was called for trial, Applicant entered a guilty plea since he had already admitted he was guilty of it. PCR p. 142.

Trial counsel affirmed his familiarity with State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). He agreed that he was attempting to make the argument advanced in Langford at the plea proceeding and trial, and he explained: “I mean, I argued that to allow them to manipulate the docket was a denial of his right to a fair trial and due process of law.” PCR p. 143, lns. 9-21. He identified the argument he made in the trial transcript, and the court’s ruling that he would allow the State to ask Applicant about the prior conviction. Trial pp. 452-464. He also explained that he chose to ask Applicant about the prior conviction on direct, so it did not appear they were trying to hide it from the jury. Trial p. 467, PCR pp. 144-45. He agreed that it was an issue he anticipated being raised on appeal, and he explained that he thought it was a “pretty good issue.” PCR p. 145, ln. 24 – p. 146, ln. 5.

The record before this Court establishes that counsel repeatedly and vigorously argued against the State being allowed to call the subsequent charge first and against the use of the resulting prior conviction at trial. Therefore, this Court is at a loss to identify what if anything counsel should have further done in this regard. As a result, Applicant’s claim of ineffective assistance fails under the first prong of the Strickland analysis and must be denied.

#### E. Appellate Counsel

By way of the Amendment, Applicant alleged that appellate counsel was ineffective for failing to properly raise all meritorious issues on appeal. Specifically, he alleged ineffectiveness for failing to raise the following issues: the trial court’s denial of the defense’s request to question Mr. Narang about the aggressive nature of the victim; trial counsel’s arguments regarding the issues of docket manipulation and the use of Applicant’s prior conviction; the trial

court's denial of the directed verdict motion; the trial court's denial of the admission of the in car video; the trial court's refusal to charge accident; and trial counsel's motions and arguments regarding prosecutorial misconduct.

At the evidentiary hearing, Blake Hewitt, Esquire, took the stand and he explained that the majority of his practice is appellate matters, and he explained how he was retained to represent Applicant on his direct appeal, along with John Nichols, Esquire. PCR pp. 226-227. He provided an overview the steps he took in preparing and submitting the appellate brief, which included flagging the transcript for potential PCR issues. PCR pp. 252-254.

As a threshold matter, this Court finds Mr. Hewitt's testimony highly credible and finds that the appellate filings, along with his evidentiary hearing testimony, demonstrate that he exercised reasonable professional judgment in his selection and presentation of the issues raised on appeal. Nevertheless, this Court will address the specific issues raised by Applicant.

Mr. Hewitt explained how the primary focus of the appeal became the trial court's refusal to charge involuntary manslaughter. PCR pp. 234-241, 262-3. Thereby, he also explained why the trial court's refusal to charge accident was not raised as a standalone appellate issue. Based upon the record, including evidence of an intentional trigger pull, he concluded that it would have been very difficult to argue accident successfully. PCR pp. 241, 261, 263-4. Based upon the record before this Court, to include Mr. Hewitt's testimony and the appellate records, this Court is not convinced that Mr. Hewitt was deficient for failure to raise the court's refusal to give an accident charge. Therefore, this Court does not need to analyze whether Applicant was prejudiced since no deficiency has been established.

Regarding the issue of docket manipulation, Mr. Hewitt referenced the prior conviction when discussing the importance of the Rush's record to impeach the credibility of the State's witnesses.<sup>15</sup> As to the use of Applicant's prior conviction and not raising the issue on appeal, he reasoned that Applicant's case was prior to Langford and the "docket stuff was still unsettled." PCR p. 233, lns. 10-12. He acknowledged that were some lawyers raising the issue throughout the State, but he did not recall seriously evaluating it. PCR p. 233. Based upon the record before this Court, to include Mr. Hewitt's testimony and the appellate records, this Court is not convinced that Mr. Hewitt was deficient for failing to raise the issue of docket manipulation and/or the use of Applicant's prior conviction. Trial pp. 451-464. Therefore, this Court does not need to analyze whether Applicant was prejudiced since no deficiency has been established.

When asked about the trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim, Mr. Hewitt responded that it was his understanding that the case law required that prior incidents of violence "have to be directed to the defendant" to be admissible; therefore, he did not raise the issue. Trial p. 201, PCR p. 243, 257-8. When asked on cross-examination if he utilized reasonable professional judgment in deciding to not raise the issue, he responded: "I don't recall thinking about it in any detail. It did not strike me as – you know, I don't want to throw weak punches, I want to try and throw strong ones." PCR p. 258, lns. 6-11. Based upon the record before this Court, to include Mr. Hewitt's testimony and the appellate records, this Court is not convinced that Mr. Hewitt was deficient for failing to raise the trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Trial p. 201. Therefore, this Court does not need to analyze whether Applicant was prejudiced since no deficiency has been established.

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<sup>15</sup> This Court finds that Mr. Hewitt's testimony regarding the Rush's record further supports the granting of relief on this issue as addressed above. PCR pp. 231-33.

Turning to his reasoning for not raising the trial court's denial of the directed verdict motion, Mr. Hewitt explained that he could not argue that there was not a "scintilla" of evidence to justify the charges. Trial p. 408-10, PCR p. 243, Ins. 19-24. On cross-examination, he further explained that it struck him as a "weak murder case," but there was "some" evidence. PCR p. 259, Ins. 4-7. Based upon the record before this Court, to include Mr. Hewitt's testimony and the appellate records, this Court is not convinced that Mr. Hewitt was deficient for failing to raise the denial of the directed verdict motion. Trial pp. 408-410. Therefore, this Court does not need to analyze whether Applicant was prejudiced since no deficiency has been established.

As to the issue involving the in car video, Mr. Hewitt acknowledged that he was familiar with the video. Trial pp. 440-43, 460, 584-86, PCR pp. 243-4. When asked his reasoning for not raising the issue on appeal, he responded:

Evidentiary issues are an abuse of discretion. I mean, I certainly would have liked to have had it in. It's probative for the same – given that the State made Mr. Torrence's credibility about his mental state at the time an issue, is struck me that it should have come in, but it's an abuse of discretion on appeal.

PCR p. 244, Ins. 6-14. On cross-examination, he explained that he did not know how he could have used an argument regarding the in car video in conjunction with the issue raised on appeal. PCR p. 259. He further explained that if additional charges had been given or arguments preserved for appeal, the in car video exclusion may have been a more viable issue on appeal. PCR pp. 259-260.

It must be noted that the trial court offered to allow the defense to play the video without audio, and counsel chose to withdraw his request to admit the video. Trial p. 589. Therefore, the issue may not have been properly preserved for Mr. Hewitt to raise on appeal. Based upon the record before this Court, to include Mr. Hewitt's testimony and the appellate records, this Court is not convinced that Mr. Hewitt was deficient for failing to address the admissibility of the in

car video. Therefore, this Court does not need to analyze whether Applicant was prejudiced since no deficiency has been established.

Finally, Mr. Hewitt was asked about not raising trial counsel's motions and arguments regarding prosecutorial misconduct on appeal, to include Applicant's testimony about his timesheet and closing argument. Trial pp. 678, 680. He responded that he did not specifically remember the first instance, but he did recall the court giving a curative in response to issues raised regarding closing argument. PCR Pp. 244-45. On cross-examination, he explained that the prosecutorial misconduct issues "did not strike me as equal strength or stronger to the involuntary manslaughter issue that was raised on appeal." PCR p. 266, lns. 5-9. Based upon the record before this Court, to include Mr. Hewitt's testimony and the appellate records, this Court is not convinced that Mr. Hewitt was deficient for failing to raise the issue of prosecutorial misconduct on appeal. Therefore, this Court does not need to analyze whether Applicant was prejudiced since no deficiency has been established.

## II. Conclusion

As detailed above, this Court find that Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel, but Applicant has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel. This Court further finds that Applicant has failed to meet his burden of proof as to the allegation of ineffective assistance of appellate counsel as detailed above. This Court also finds that no further issues were raised that have not been ruled upon above.

Therefore, this Court finds that the Application for Post Conviction Relief is hereby granted, as detailed above, that Applicant's convictions be vacated, and that Applicant be granted a new trial. Applicant shall be transferred from the custody of South Carolina Department of

Corrections to the custody of Lexington County pending the disposition of his criminal case,  
with normal bond proceedings.

**IT IS THEREFORE ORDERED:**

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel as detailed above, but has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel as detailed above;
2. That Applicant has failed to meet his burden of proof as to the allegation of ineffective assistance of appellate counsel;
3. That the Application for Post Conviction Relief be granted, Applicant's convictions be vacated, and Applicant be granted a new trial;
4. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Lexington County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDRED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_

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Honorable Walton J. McCleod, IV  
Judge, Eleventh Judicial Circuit

\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350, )  
Applicant, )

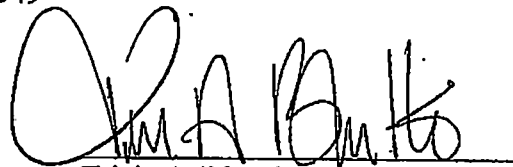
v. )

State of South Carolina, )  
Respondent, )

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I place in the United States mail this 6<sup>th</sup> day of May 2019 Rule 59, SCRPC, Motion to Taylor Z. Smith of the Attorney General's Office, at:

Office of the Attorney General  
Att: Taylor Z. Smith, Ast. AG  
P.O. Box 11549  
Columbia, SC 29211-1549



Tricia A. Blanchette  
PO Box 2147  
Leesville, SC 29070  
(803) 908-3266

May 6, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Andrew E. Torrence, Jr., #346350,

Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

2015-CP-32-01993

RETURN TO APPLICANT'S MOTION  
PURSUANT TO RULE 59(a) & (e), SCRCP

Respondent submits this Court's rulings are legally correct and supported by the record and the Court should deny Applicant's motion pursuant to 59(a) and 59(e), SCRCP, dated May 6, 2019. In support, Respondent would respectfully show the Court:

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections. In August 2010, a Lexington County grand jury indicted Applicant for murder. (2010-GS-32-2318). During its May 2011 term, the grand jury indicted Applicant for two weapons charges, possession of a weapon during the commission of a violent crime and carrying a pistol or firearm into a business selling alcoholic liquors, beers, or wines for on-premises consumption. (2011-GS-32-1440, -1444). On May 31, 2011, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Wayne H. Floyd represented Applicant. Deputy Solicitor D. Shawn Graham of the Eleventh Circuit Solicitor's Office prosecuted the case. The jury convicted Applicant on June 3, 2011, on the weapons charges and of the lesser-included offense of voluntary manslaughter. Judge McMahon sentenced Applicant to concurrent terms of twenty-five years for voluntary manslaughter and five years for each of the weapons charges.<sup>1</sup>

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<sup>1</sup> Judge McMahon later amended Applicant's sentence for carrying a firearm into a business selling alcohol for on-premises consumption from five years to three years.

Blake A. Hewitt represented Applicant on direct appeal. The South Carolina Court of Appeals issued an unpublished opinion affirming Applicant's convictions and sentences. *State v. Torrence*, Op. No. 2013-UP-152 (S.C. Ct. App. Filed April 10, 2013). Applicant petitioned for rehearing, which was denied by written order on May 8, 2013. Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari. By written order dated November 7, 2014, the Supreme Court denied Applicant's petition for writ of certiorari. The remittitur was issued on November 17, 2014.

#### **Current Post-Conviction Relief Action**

On June 1, 2015, Applicant filed an application for post-conviction relief. Applicant, through counsel, filed a first amended application on July 13, 2017. Applicant, through counsel, filed a second amended application on October 26, 2018, raising numerous additional grounds, sufficiently enumerated in the Order of Dismissal and Applicant's motion. An evidentiary hearing was convened November 5-6, 2018, at the Lexington County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present at the hearing and represented by Tricia A. Blanchette. Respondent was represented by Assistant Attorneys General Kelly Oppenheimer and Sherrie Butterbaugh, both of the South Carolina Attorney General's Office. At the hearing, Applicant proceeded on the claims raised in his second amendment to the application.

By written order signed and filed April 22, 2019, Judge McLeod denied and dismissed the application with prejudice. Applicant subsequently filed a Motion to Alter or Amend the Judgment pursuant to Rule 59(a) and (e), SCRCP. This return follows.

#### **Applicant's Motion to Alter or Amend**

In the motion to alter or amend, Applicant disagrees with the findings of fact and

conclusions of law set forth in the order of dismissal specifically related to the issues regarding mental health and trial counsel's failure to investigate and obtain the Rush's report. (Motion, pp.5-8). Applicant also argues the Court's summary of the trial record is "incomplete and one sided," as is the summary of witnesses' testimony presented from the evidentiary hearing. (Motion, pp.4-5). In sum, Applicant requests the Court reconsider his proposed order granting post-conviction relief which was attached to the motion, submit an amended order of dismissal, or reverse its prior rulings and grant him relief based on arguments that were denied by the Court in its order of dismissal.

In response, Respondent submits this Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; *see also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent asserts the Court fully ruled on all issues properly presented through Applicant's second amended post-conviction relief application. Specifically, the Court carefully considered the testimony from two experts who gave their opinion regarding Applicant's mental health, made specific findings of fact regarding both opinions, and related those opinions to the occurrences at trial. (Order, pp.28-34). Regarding the Rush's report, the Court considered and rejected the contention trial counsel was deficient for failing to obtain the report given he impeached witnesses using other means, and found Applicant failed to demonstrate prejudice. (Order, pp.34-38). The findings in the Order are supported by probative evidence in the record. *See Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (holding an appellate court must give deference to the PCR court's factual findings, and must uphold them if there is any evidence of probative value to support them). Respondent submits Applicant's request should be denied and dismissed.

Additionally, Respondent submits Applicant's contention the Court's summary of the record is "incomplete and one sided" is without merit. Respondent submits this Court's sixty-six page Order is detailed and does not omit or improperly include any relevant testimony from the trial or evidentiary hearing. Applicant is requesting the Court reconsider its ruling and grant him relief because he disagrees with the result of proceeding. In support of the request, Applicant attached his proposed order granting post-conviction relief, which was already considered and rejected by the Court. *See Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir. 1993) (stating "mere disagreement does not support a Rule 59(e) motion")); *Ridgeway v. Stevenson*, 2011 WL 1466325, at \*2 (D.S.C. Apr. 15, 2011) (explaining a motion to reconsider is not a vehicle for petitioning a court to change its mind, because "Rule 59 motions should not be used to rehash issues already ruled upon because a litigant is displeased with the result") (citation omitted). Such a request is more properly addressed through the appellate process, not a motion pursuant to Rule 59, SCRPC. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to, but not ruled upon by, the trial court).

As each properly raised allegation was addressed fully in the order, Applicant's assertions are without merit. Applicant's motion contains arguments previously presented to the Court, which this Court considered and rejected when making its ruling. Respondent submits this Court's rulings are legally correct and supported by the record, and this Court should deny Applicant's request to reconsider, alter or amend its ruling.

### **CONCLUSION**

Based on the foregoing, Applicant's motion should be denied and dismissed. Additionally, as Applicant has failed to raise any issues not previously ruled upon or any claim

requiring reconsideration, alteration, or amendment pursuant to Rule 59, SCRPC, Respondent requests the motion be dismissed without a hearing. *See* Rule 59(f), SCRPC (allowing a court, in its discretion, to consider a post-hearing motion based upon the motion and return submitted by the parties and the post-conviction relief file, and rule without a hearing if such a hearing will not aid the court in reaching its decision.)

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH  
Assistant Attorney General

BY:

  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

May 28, 2019.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

ANDREW E. TORRENCE, JR., #346350

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

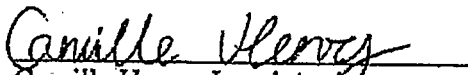
2015-CP-32-01993

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion Pursuant to Rule 59(a) & (e), SCRP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire  
Law Office of Tricia A. Blanchette, LLC  
Post Office Box 2147  
Leesville, South Carolina 29070

DATED this the 28<sup>th</sup> day of May, 2018.

  
Camille Henry, Legal Assistant

FILED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON 2019 MAY 3 ) PM 3:10 ELEVENTH JUDICIAL CIRCUIT

Andrew E. Torrence, Jr., #346350, ) 2015-CP-32-01993

Applicant,

v.

State of South Carolina,  
Respondent.

**ORDER DENYING APPLICANT'S  
MOTION PURSUANT TO RULE  
59(a) & (e), SCRCP**

This matter comes before the court by way of Applicant's Motion Pursuant to Rule 59(a) and (e), SCRCP, to alter or amend its order of dismissal denying the application for post-conviction relief.

#### Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. In August 2010, a Lexington County grand jury indicted Applicant for murder. (2010-GS-32-2318). During its May 2011 term, the grand jury indicted Applicant for two weapons charges, possession of a weapon during the commission of a violent crime and carrying a pistol or firearm into a business selling alcoholic liquors, beers, or wines for on-premises consumption. (2011-GS-32-1440, -1444). On May 31, 2011, Applicant proceeded to a jury trial before Judge R. Knox McMahon. Wayne H. Floyd represented Applicant. Deputy Solicitor D. Shawn Graham prosecuted the case. The jury convicted Applicant on June 3, 2011, on the weapons charges and of the lesser-included offense of voluntary manslaughter. Judge McMahon sentenced Applicant to concurrent terms of twenty-five years for voluntary manslaughter and five years for each of the weapons charges.<sup>1</sup>

<sup>1</sup> Judge McMahon later amended Applicant's sentence for carrying a firearm into a business selling alcohol for on-premises consumption from five years to three years.

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#### **Current Post-Conviction Relief Action**

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At the evidentiary hearing, Applicant presented the testimony of Tora L. Brawley, Ph.D., Donna Schwartz Maddox, M.D., trial counsel Floyd, Peter G. Skidmore, appellate counsel Hewitt, and his mother Brenda Torrence. Respondent presented the testimony of Deputy Solicitor Graham.

Following the hearing, this court requested proposed orders from both parties. After reviewing the proposed orders, all testimony, and other evidence presented at the hearing, along with records provided from previous proceedings, this court found there were no constitutional deprivations or other grounds on which to grant relief and denied and dismissed this application

with prejudice. This court signed a written order on April 22, 2019. Applicant subsequently filed a Motion pursuant to Rule 59(a) and (e), SCRCP, to alter or amend the judgment dated May 6, 2019, along with a proposed order. Respondent submitted a response on May 28, 2019, along with a proposed order.

**Applicant's Motion to Alter or Amend is Denied**

After careful review of the motion and response, this court declines to alter or amend its order. This court reasons that Applicant's request for reconsideration is more properly addressed through the appellate process, not a motion to alter or amend pursuant to Rule 59(e), SCRCP. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e), SCRCP, motion is to preserve issues raised to but not ruled upon by the trial court); *see also, Simmons v. South Carolina*, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016) (providing that "counsel has an obligation to review the order and file a Rule 59(e), SCRCP[] motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by [S.C. Code Ann. §] 17-27-80").

Furthermore, this court finds that its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP. The Order of Dismissal also sufficiently sets forth the reasons for those findings as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP. Having carefully reviewed the entire record in this matter, this court finds no basis for altering or amending its prior ruling.<sup>2</sup> Therefore, this court hereby denies Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

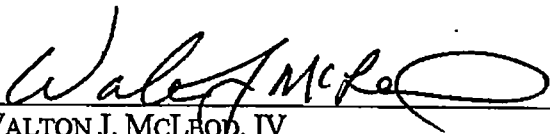
If Applicant desires appellate review of this Order and the Order of Dismissal, a notice of

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<sup>2</sup> The court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file because oral argument will not aid the court in reaching its decision. *See* Rule 59(f), SCRCP.

appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of the appeal has been timely filed.

AND, IT IS SO ORDERED this 31 day of MAY, 2019.

  
\_\_\_\_\_  
WALTON J. MCLEOD, IV  
Presiding Judge  
Eleventh Judicial Circuit

Lexington, South Carolina