

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

RECEIVED

APR 23 2013

JEREMY T. DURANT,

S.C. Supreme Court

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213326

A P P E N D I X

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

v.)

TRANSCRIPT OF RECORD
09-GS-21-1584

JEREMY T. DURANT,)
DEFENDANT.)

July 27, 2011
Florence, South Carolina

BEFORE :

THE HONORABLE MICHAEL G. NETTLES, JUDGE;

APPEARANCES:

E. L. CLEMENTS, ESQ.
Solicitor

GRAYSON SMITH, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS

COURT'S:

No.	Description	I.D./EVD.
1	DMH report	3
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(Court's Exhibit Numbers 1 through 4 were marked and made a part of the record.)

MR. CLEMENTS: If it please the Court, Your Honor, the State would call indictment 2009-GS-21-1584, the State versus Jeremy Terrell Durant. Your Honor, this is an indictment for murder. He's here with his attorney Mr. Grayson Smith. Before going forward, Your Honor, the first thing we need to do is we need to have a Blair hearing, Your Honor. I've had four documents marked as Court's exhibits, Your Honor. Court Exhibit Number 1 is dated the March 10th, 2011. It is a report from the Department of Mental Health, Your Honor, with a finding of criminal responsibility and capacity to conform on Mr. Jeremy Durant. It is a report signed by Doctor Jeffrey E. Musick, Chief Psychologist Forensic Evaluation Service of the South Carolina Department of Mental Health. That's Court Exhibit Number 1. And Mr. Smith has seen all these. Actually, he made these copies, Your Honor.

THE COURT: Very good.

MR. CLEMENTS: Your Honor, Court Exhibit Number 2 was a report of Doctor Jeffrey Musick dated July 8th, 2010. At that time, Your Honor, they found a diagnosis of no mental illness, but they

thought there was a diagnosis of mental retardation. They offered no opinion on competency to stand trial and referred Mr. Durant to the South Carolina Department of Disabilities and Special Needs. And that's Court Exhibit 2.

Your Honor, Court's Exhibit Number 3 is a report from Gordan Brown, Jr., Offices of Clinical Services with the South Carolina Department of Disabilities and Special Needs. And it was a forensic evaluation, a copy of that evaluation, Your Honor, which found a provisional finding of yes on mental retardation for Mr. Durant. And on competency to stand trial found no, but likely to restore. That was dated August 25th, 2010.

Your Honor, on December 22nd, 2010 we have Court's Exhibit Number 4 which is Mr. Gordan Brown, Jr., Ph.D., copy of the forensic evaluation after Mr. Durant had completed of course their disabilities and special needs. And they found a finding of yes for mental retardation and a finding of yes for competency to stand trial. At that time, Your Honor, that is after that that Court's Exhibit Number 1 Department of Mental Health found him competent and with capacity to conform.

Your Honor, we'd submit that Mr. Durant is

competent to be here today to enter a guilty plea or to go to trial and that he had the knowledge of right and wrong and the capacity to conform his action at the time of this event, Your Honor, which was on May 21st, 2009, that he's criminally responsible pursuant to McNaughten.

THE COURT: All right. Mr. Smith, you're recognized. First of all, do you have any objection to the admission into evidence or at least as to Court Exhibits 1 through 4?

MR. SMITH: No objection, Your Honor.

THE COURT: Do you have any other evidence that that you would like to offer with regard to the issue of criminal responsibility or competency?

MR. SMITH: No, sir, I think the findings of the Department of Disabilities and Special Needs and the Department of Mental Health pretty much sum it up.

THE COURT: Very good. As I'm looking at the reports I'm making reference to the report dated March 10th, 2011, from the South Carolina Department of Mental Health that does indeed find and based on this report the Court finds, that he does have the ability to conform his conduct to the law and that he is indeed criminally responsible. And I'm

looking at Court's Exhibit Number 4, a letter from the Department of Disabilities and Special Needs dated December 22nd, 2010, and specifically find that after some training that he is indeed competent to stand trial and I so find.

Anything further with regard to the Blair hearing, Mr. Smith?

MR. SMITH: Nothing further, Your Honor.

THE COURT: All right. Mr. Clements, you're recognized.

MR. CLEMENTS: Thank you, Your Honor. Your Honor, first I'd like to introduce some people that are here, Your Honor. The victim in this case is Mr. Rush Vance Bass, a lifelong resident of Timmons ville, South Carolina, Your Honor, and I have several members of his family here. Your Honor, I'd ask for them to stand when I call their name so you'll know who they are, Your Honor. First, Your Honor, Ivaree (ph) Pettigrew Bass is the widow of Mr. Vance Bass. Your Honor, Shirley Bass is the mother of Vance Bass. Thomas Bramlett is the brother-in-law. Derwin Bass is the brother of Vance Bass. Terry Bass, sister-in-law. Mary Miles who is a family friend. Michael Bass, the brother of Vance Bass. Adam Bass, Vance's nephew. Sedena Bass --

and if I mispronounce your name I apologize. Sedena Bass, a sister; crystal Bass, Vance's daughter; and Selena Westbrook who is his sister. Your Honor, at the appropriate time there's some members of the family that would like to make a statement.

THE COURT: Very good.

MR. CLEMENTS: Also, Your Honor, I have Investigator Thomas McFadden of the Florence County Sheriff's Office who is the investigator on this case.

THE COURT: Very good.

MR. CLEMENTS: Your Honor, pursuant to this plea there is an indictment 2009-42 which is an indictment for lynching second degree with Mr. Jeremy Durant, and he had co-defendants, Your Honor, of Randy Baker and Latoria Teresa McFadden. Your Honor, this indictment is going to be dismissed against Mr. Durant pursuant to his plea on, that offense was on 10/20/08, Your Honor.

Mr. Randy Baker is also involved in this situation, Your Honor. We're going to take his plea at a later time. He's represented by Shannon Prosser of Johnsonville. I think he was court appointed, Your Honor. Your Honor, in a nutshell, on May 21st, 2009, Mr. Durant was hanging out in

Timmons ville which was his home. Randy Baker saw Vance Bass coming down the road and they knew Vance, and they were talking back and forth about I bet you won't mess with him. And I think there was some brass knuckles there. Mr. Baker had. Mr. Durant got these brass knuckles, and he went up to Mr. Bass, according to a witness, tapped him on the shoulder and then hit him a couple of times, beat him down with the brass knuckles. And then afterwards he went and retrieved the pole from behind a building that was a barn. Is that correct, Investigator McFadden?

THE INVESTIGATOR: Yeah.

MR. CLEMENTS: And went back and beat him some more with a pole, and it was the beating with the pole that actually killed Mr. Bass. And then he attempted to move his body into the road and told people there to tell everybody that he was hit by a car. And that was the story that he told everybody to tell, and then he left. He was found -- I think he was found with blood on his shoes. He ended up telling what happened. Randy Baker gave a statement. Subsequently, well down the road from the event, we put Randy Baker on a polygraph. He was going to testify for the State if this matter

went to trial, and we were going to determine to make sure we were accurate on his involvement and whether his story he was telling us was truthful before we were willing to use him as a witness. And he did tell the statement again that he did pass the brass knuckles to Mr. Durant, and he was truthful about that. He was truthful on everything on the polygraph, and but that he did not have any involvement with Mr. Durant getting the pole and going back and beating Mr. Durant some more. He didn't think that Mr. Bass was going to wind up getting killed as a result of this.

Mr. Durant spoke to people at the Department of Mental Health and Disability Special Needs, told them, you know, he knew it was wrong when he got the pole. He just kind of lost it for some reason and beat him with the pole and killed him. It's a very, very unfortunate, traumatic experience, Your Honor, for this family. They have been very broken hearted. This case has lingered on because we had to make sure the questions of competency were answered, that we could go forward with this trial. That's why it's been from May the 9th -- May 21st of '09, all the way to today that we get here today before Your Honor.

Your Honor, when the case first came in pursuant to our differentiated case management, we're required at initial appearance to make a plea offer. We did initially make an offer of 30 year on the murder. That was not accepted. We withdrew that plea after discussing that with the family, found out they were not at all in agreement with that. We withdrew that plea. Today Mr. Durant is pleading straight-up. The sentence is just going to be whatever you determine is appropriate, Your Honor. Mr. Smith and I, we've had no negotiations, no recommendations. The only thing is that the indictment for lynching second degree is being dismissed pursuant to this plea. Other than that, Mr. Durant, my understanding with Mr. Smith is he's just pleading to murder straight-up.

At this time, Your Honor, I defer to Investigator McFadden if there's anything he wishes to add.

THE COURT: Okay. I'm gonna talk with the defendant here, talk with him just a little bit before we get further into the facts. Do you have a sentencing sheet?

MR. CLEMENTS: Your Honor, I do. It's right there.

THE COURT: Very good. Mr. Durant, I'm going to have some discussion with you or your lawyer here momentarily. And but you've heard what Mr. Clements has said about the facts of this case, and I'm going to ask you about that momentarily.

But before that, Mr. Smith, you represent Mr. Durant?

MR. SMITH: Yes, Your Honor, I do.

THE COURT: Have you explained to him the offense of murder, the fact that he could receive up to life imprisonment for this, the fact that there's a minimum mandatory 30 years, the elements of the offense itself, potential defenses, and his constitutional rights?

MR. SMITH: Yes, Your Honor, I have.

THE COURT: And does he understand these things?

MR. SMITH: He does.

THE COURT: How does he wish to plead?

MR. SMITH: Guilty.

THE COURT: You agree with his decision to do so?

MR. SMITH: I do.

THE COURT: Do you feel if called upon to do so the State could prove him guilty beyond a

reasonable doubt?

MR. SMITH: Yes, Your Honor, I do.

THE COURT: Have you explained to him the collateral consequences of this plea and the fact that it's a violent offense, would adversely affect his custody status, the fact that it's a most serious offense subject to the two and three strike rules of this state, and the fact that he perhaps, most importantly, the fact he'll have to serve this sentence day for day subject to the 85 percent rule?

MR. SMITH: Yes, sir, I have. Once when it was just he and I and again, when his sister and his brother-in-law joined us. And I believe he fully understands all of those different classifications and collateral consequences.

THE COURT: Very good. And he understands that this is a non-parolable offense and when and if he ever gets out of the incarceration that he would be subjected to community supervision?

MR. SMITH: Yes, sir.

THE COURT: All right. Let's place Mr. Durant under oath if we could.

CLERK OF COURT: Please raise your right hand.

WHEREUPON,

JEREMY DURANT,
having been duly sworn by the Clerk of Court,
testified as follows:

THE COURT: All right. Mr. Durant, are you under the influence of any drugs or alcohol here today?

THE DEFENDANT: No, sir.

THE COURT: Are you experiencing any kind of physical or mental problem that could prevent you from understanding what we're doing here today?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Listen to my question once again. Are you experiencing any kind of physical or mental problem that could keep you from understanding what we're doing here today?

(Attorney confers with defendant.)

THE DEFENDANT: No.

THE COURT: You understand what we're doing here today?

THE DEFENDANT: No, sir.

THE COURT: Pardon?

THE DEFENDANT: No, sir.

THE COURT: All right. What don't you understand?

(Attorney confers with defendant.)

THE DEFENDANT: Yes, yes, sir.

THE COURT: You understand what we're doing here today?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Durant, you've heard the facts that have been related to the Court by Mr. Clements about what happened that night. Are those facts true?

THE DEFENDANT: Yes, sir.

THE COURT: Are you indeed guilty of murder?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You're standing before me pleading guilty but you don't have to plead guilty to anything. You could exercise your right to a jury trial. In that process the jury would determine whether or not the State could actually prove you guilty beyond a reasonable doubt. I would charge the jury as a matter of law that you're presumed to be innocent. No one could require that you to take the witness stand. However, if you wanted to you could. You could subpoena witnesses on your own behalf. In addition to that you and your lawyer could cross-examine the State's witnesses, have an opportunity to eyeball

them and confront them as they testified against you. You realize by pleading guilty you're giving up all these rights?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Plea negotiations, once again, if you can sort of summarize how the plea negotiations transpired once again, Mr. Clements.

MR. CLEMENTS: Your Honor, pursuant to the case management order, administrative order, where we're required to make a plea offer at the initial appearance we offered a plea to murder, 30 years. It was not accepted by docket appearance; and after discussing that with the family, we withdrew that plea offer. And the only thing here is that he is pleading guilty straight-up to murder. And also, Your Honor, indictment 2009-42 lynching second degree pending charge against Mr. Durant is being dismissed pursuant to this plea.

THE COURT: Okay. Essentially you're saying that the offer was made and it was not accepted. Because they didn't accept it it was withdrawn and then after further discussion with the family you have made a decision not to offer anything and it's a straight-up plea. Is that your

understanding?

MR. CLEMENTS: That is correct, Your Honor.

THE COURT: Is that correct?

MR. CLEMENTS: Yes, sir.

THE COURT: Is that your understanding of the plea negotiation, Mr. Smith?

MR. SMITH: Yes, Your Honor.

THE COURT: Is that your understanding, Mr. Durant?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Durant, are you satisfied with your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: Have you understood everything that y'all have talked about?

THE DEFENDANT: Yes, sir.

THE COURT: And you need any additional time to confer with him?

(Attorney confers with defendant.)

THE DEFENDANT: No, sir. No, sir.

THE COURT: All right. Has he done everything that you've asked him to do?

THE DEFENDANT: Yes, sir.

THE COURT: Has he not done anything that

you've asked him to do?

THE DEFENDANT: Yeah.

THE COURT: All right. You're saying that he's done everything that you've asked him to do?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Any complaints with your lawyer whatsoever?

THE DEFENDANT: No, sir.

THE COURT: All right. Has anybody promised you anything, threatened you, pressured you, mistreated you in any way shape or form in an effort to get you to plead guilty here today?

THE DEFENDANT: No, sir.

THE COURT: Has it been your decision to plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Are you indeed guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Have you understood all my questions?

THE DEFENDANT: Yes, sir.

THE COURT: Have your answers been truthful?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that you have

ten days to appeal any decision I might render here today?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Based on your testimony I find that there's a substantial factual basis for your plea, that your decision was freely and voluntarily entered into knowingly and intelligently with consent of competent counsel with whom you say you're satisfied.

Mr. Clements, you're recognized once again. You had made reference to your investigator. Do you need for there to be any other facts put on the record?

MR. CLEMENTS: Your Honor, I just defer to Investigator McFadden. I know he won't plow the same ground I've already plowed, but anything additional he wishes to speak to.

THE COURT: Mr. McFadden.

THE INVESTIGATOR: Yes, Your Honor. When, I guess they was talking about competency and to his detail, actually, we were out there with the highway patrol and crime scene because it was called in as a hit and run, as an accident, the way they had the scene set up so. Mr. Bass actually was headed home when he was attacked by Mr. Durant with brass

knuckles. He did get upset because Bass swung back at him or something and fell. That's when he got the pipe and struck him several times, hit him in the head with the pipe. The way he looked it would appear when they pulled him in the roadway he put in the intersection and there was a car one of the witnesses almost ran him over. So if they would have ran him over we would have thought he was struck by a car so when I asked him in his interview, which he admitted to in the interview in his statement what happened, but he actually pulled him in the intersection and a vehicle almost hit him but the person in the passenger actually saw him and told him stop. If they would have ran him over we would have thought he was going home, passed out, and got ran over by a car so we would have never known this happened until somebody else called and it did look suspicious that night. We stayed out there for hours and the next morning we found the pipe behind the residence, then did a search at his house, found -- they say shoes, the shoes wasn't bloody. They -- he actually washed them up that night. He cleaned the shoes up but there was a pair of shorts he had blood on them still which came back, some DNA came back to the victim of this case.

THE COURT: And your point of that is that he understood what he did was wrong.

THE INVESTIGATOR: Yeah.

THE COURT: And he was trying to cover it up ---

THE INVESTIGATOR: Yeah.

THE COURT: ---and then tried to cover it by putting the body in the ---

THE INVESTIGATOR: In the intersection.

THE COURT: ---in the road and cleaning off his shoes.

THE INVESTIGATOR: Cleaning off his shoes, cleaning up.

THE COURT: Anything further you would like to add?

THE INVESTIGATOR: No, Your Honor.

THE COURT: Mr. Clements, I'll be glad to hear from anybody, from the victim's family who would like to speak.

MR. CLEMENTS: Yes, Your Honor. First, Your Honor, I know Ms. Shirley Bass would like to speak.

THE COURT: Ms. Bass, please come forward. I tell you what, that will be fine if you feel comfortable standing there. Just state your full

name and speak loudly so I can hear you.

THE MOTHER: Sure. Shirley Bass, mother to Vance.

THE COURT: Yes, ma'am.

THE MOTHER: Your Honor, I wrote down -- on October the 5th in 1961 I was blessed with a beautiful baby boy, my first born. I was in heaven, joys of being a new mom for the first time, what more could one want. Well, now I want just to the fullest extent. I'm 73 years old now and a widow, which I have rapidly declining health. My son Vance would come out to my house and help me with things I couldn't do alone. He'd sometimes stay for days at that time to help me. Some days he would just come back to check on me and to make sure that I was all right. I recently had back surgery to correct a damaged disk and sciatic nerve. I was not even able to get out of bed to care for myself. If Vance was still living he would have been there. He would have been there to wait on me and to help me. Now he can't do anything to help me anymore. Now is the time in my life when I need him.

Vance was blessed with a wonderful gift. He was almost a genius. He could do anything with not any training, but he chose to live a simple life

and used his talents to help others. He'd work for little or nothing or worked for cheap labor because he just enjoyed doing carpentry work and anything to build anything and to help anyone.

On the 19th of July just as I was awakening I heard a frightening noise at the door, and I was so afraid that I was -- couldn't move, I couldn't speak. And suddenly there stood Vance over my bed. I know he came to see about me, and I know he's pleading for justice. And when he spoke and said, hey, and then he just disappeared. And that he wants justice as well. Your Honor, I'm begging for justice. Please give the maximum sentence possible for this cruel and heinous crime that my son has suffered. He not only took my son's life but he took part of me. He showed no mercy upon my son, and I plead you show no mercy. Show no mercy please.

Do not give him the opportunity to do this to another mother's son. A mother -- a son should bury his mother, not a mother bury her son. He didn't deserve to die, not like this, murdered for no reason.

THE COURT: I'm sorry for your loss. Thank you for being here. I'll certainly take that

into consideration. Thank you for being here.

MR. CLEMENTS: This is Vance's sister,
Your Honor. If you would state your name.

THE SISTER: Sedena Bass, Vance's sister.

THE COURT: Yes, Ms. Bass, I'll be glad to
hear from you.

THE SISTER: Vance was my oldest brother.
He's the one who taught me to tie my shoes, ride a
bike, and gave me away at my wedding. Being the
oldest naturally he moved out of our family home
first. All though he was starting his own life he
never stopped coming to our home and checking on us
children to make sure we were all right, and if
there was anything he could do to help out our
mother. Throughout the years Vance has lived with
me, near me, and away from me; however, he has never
failed to listen or to come to me when I needed him
regardless of how small or large the problem. Vance
was not only my brother, he was my friend, a friend
that was always there to lend a helping hand or an
encouraging word or to sit and listen. We shared
many life experiences together and were looking
forward to many more. However, this will never
happen because Vance was a victim of rage and a
senseless, senselessly murdered on an innocent walk

home one night.

Vance was 47 years old when he was murdered, a middle aged man with many years of life still to give. Now he will never share another moment with his family, mother, daughter, or friends. He will never know he has grandchildren, get to go to graduations or weddings, or see his mother grow old. I ask that this young man who stole Vance's life receive the maximum penalty allowed by law, life in prison. If not, this man will be returned into his life and family at the exact same age he took my brother's life. Where is the justice in that? He will be able to see his children, hold his mother's elderly hand and live the part of life that was stolen from Vance.

THE COURT: Thank you so much.

THE SISTER: Thank you.

MR. CLEMENTS: This is Derwin Bass, Your Honor, Vance's brother.

THE BROTHER: Your Honor, what they failed to mention is my daddy died from cancer when I was 9. Vance was 11 and everybody else here is younger than me. Vance was a mentor; he taught us all. My brother-in-law and me and my brother were in the construction business and Vance showed us everything

we know. We depended on him, we loved him, and we miss him a lot. And he took the place of my daddy and helped raise his family, and I don't believe that anything other than life imprisonment will be justice.

MR. CLEMENTS: This is Vance's daughter, Your Honor, Crystal Bass.

THE COURT: Ms. Bass, state your full name for the record, ma'am.

CRYSTAL BASS: Crystal Bass.

THE COURT: Thank you, Ms. Bass.

CRYSTAL BASS: Sometimes when you're growing up you don't appreciate your parents as you should, and I was just starting to get to the point where I understood my father. We had a great relationship, and we were just developing that bond that we didn't have when I was a child. And suddenly it was ripped away from me. And my father will never see my children. He'll never know how my life is turning out. He was a good man. I mean, he had his issues just like everybody else. He took care of everybody. There's not a person in Timmons ville who didn't like and love or had been helped by my father.

I ask that you just don't offer any mercy

someone who thoughtlessly and cruelly murdered him and took his life for what, a prank, because they were bored or whatever the choice was. I ask that you give us the justice that we're asking for and don't give him any mercy because he truly didn't think about giving mercy to my father.

THE WIFE: I'm his wife, and I truly miss Vance and Vance was good with everybody and there's nothing he wouldn't do. He would help everybody. He always, he went way out of his way. Even if they didn't have anything he'd work and do it for them. And I really miss Vance, and no one else would be

THE COURT: Yes, ma'am, your full name?

THE WIFE: Ivaree Bass. I wish it would have never happen. I just don't understand why they just did that to Vance. I don't understand why. He would have give him anything he had. And the family say more everything I feel like so whatever you decide, Your Honor.

THE COURT: Yes, ma'am, your full name?

THE SISTER: Selena Westbrook, I'm also Vance's sister. Sedena is my twin sister. And I'm going to approach it from a different perspective. I have always lived an hour or further away, and as

my brother stated, he did raise us after daddy died. And we loved Vance dearly. But every time I come home I saw Vance. Well, not a hundred percent of the time, probably 99 percent of the time I saw Vance. He never, did not listen to me or did not hold my hand or help me or do whatever was asked. Even though I was away there was still the family bond. And I too ask for justice. I have grandchildren and love my grandchildren. Vance will never have that opportunity. Crystal, his daughter, has always been my favorite niece. She was -- you know, I've always been there for her. And it's hard to get phone calls any hour of the night listening to her cry about what's going on.

Even though I probably wasn't as close to him as the other four children, there was still a bond and he would never ever turn me down. And if this young man gets out in 30 years he gets to his see grandchildren, he gets to help out his niece and nephew. You know, it takes all four of us to keep, keep her straight, and help mom and take, you know, it's a family effort to keep her going on a daily basis, and Vance was close enough that he was there to do that.

THE BROTHER: Your Honor, my name is

Michael Bass, and I'm his brother. The night that Vance died me and my mom and brother Derwin went to the emergency room. My brother was laying there dead. He had a hole in his forehead I could put that much of my hand in. It was no accident what happened to Vance. You don't beat a man that bad without intent to kill him without reserve for what happens after that. We had to have a closed casket funeral because even the morgue or the funeral home couldn't put Vance's face back together enough to even recognize him with the bare face that didn't look like my brother..

Ezekial 21:12 says if a man smolder another man so that he die he shall surely be put to death. God demands justice here and so does the Bass family. Thank you.

THE COURT: Anything further, Mr. Clements?

MR. CLEMENTS: No, Your Honor, other than we could figure no cause, no reason. So many times we're here with murders and it's drugs involved or it's robbery or there's some kind of relationship gone sour. I can't think of any for this. It's inexplicable except for maybe meanness and that's it.

THE COURT: All right. Mr. Smith, you're recognized. I'll be glad to hear from you and your client with regard to mitigation.

MR. SMITH: Thank you, Your Honor. May it please the Court. Your Honor, may I approach. I'm gonna pass up an affidavit of defendant for guilty plea and my certificate of counsel. I guess that would make Court Exhibit 5.

THE COURT: Very good. We'll make this affidavit, plea of affidavit and affidavit of the counsel part of the record as Court's 5.

Mr. Smith, you're recognized.

(Court's Exhibit Number 5 was marked and made a part of the record.)

MR. SMITH: Thank you, Your Honor, may it please the Court. Your Honor, there's no doubt we're here today because of tragedy. First of all, I'd like to offer my personal condolences to the victim's family. I think at the appropriate time Jeremy would like to address the Court and do the same. There's no doubt about it, we wish we weren't here today, Your Honor, just as I know the victim's family wishes they weren't here as well. I stand here today with Jeremy Durant to my left. He was 18 when this happened. He's 20 now. To his left are

his brother-in-law Daniel Smith and his sister Kim Durant. Jeremy was born in Timmons ville. He was raised by his mother Gloria. From an early age he was kind of shifted off into a special education track in the school system over in Timmons ville. In fact, school records show that he had an individualized education plan for mental disability. In other words, he was on track to get a district certificate rather than a high school diploma. I think that the evaluations that we had done were probably be his first form of legitimate counseling. Unfortunately they came after this tragedy happened.

They did find that he had a full scale IQ of 60 which does deem him mentally retarded. However, we accept the findings of the Department of Disability and Special Needs and the Department of Mental Health, and we understand that he is competent to stand trial and he -- they did find that he is criminally responsible and had the capacity to conform. And over my relationship with Jeremy meeting down at Effingham, we got the Solicitor's offer, the initial offer of negotiated 30 years, and I went down to speak with Jeremy about that offer and to introduce myself and to just get a feel for him. And during that first meeting he was

so out of touch with reality that he asked sincerely if he could get probation for this. That was a red flag obviously, Your Honor, knowing that gravity of this crime and that's when we decided to start the evaluation process. It turns out it was a legitimate request because at first they did find him mentally retarded but not competent although they restored his retardation and found him competent in the long run.

I can share with the Court that over the course of our relationship he and I have become much more connected. He is much more in tune with the gravity of the situation. I feel like he understands exactly what he's here doing today. I've spoken with the young man. We went through the affidavit of defendant which is very much like Your Honor's colloquy. He answered all those questions intelligently and right on as far as answer should have been. And when I ask that he reflect upon what happened that day he gets very emotional, Your Honor, as well as he should because it was a senseless act.

His co-defendant Randy Baker in this case is much different than Jeremy. Randy's got what seemed to be like quite a bit on the ball. He's a

good looking young man; he's intelligent. And it's our estimation of what happened that day that Randy Baker handed him the brass knuckles and dared him to go strike Mr. Bass. He did that. That was when Mr. Bass was on the sidewalk. He came over and fell in the road. And when he went to give the brass knuckles back to Randy, that's when Randy then said hit him with something, I dare you to hit him with something else, and that's when he went and got the pole. I understand that the Solicitor contests that second part of that story, and I'm not sure that it matters because the end result was the same. I think Mr. Solicitor said that Randy Baker didn't know that Mr. Bass was gonna die as a result of this. And I feel confident that Jeremy Durant did not know that either; but you know, there are consequences to your actions as we all know.

But I asked Mr. Durant what, you know, what did you do after striking him with the metal pole. He said, well, he said I kind of, you know, blacked out and you know, freaked out and then I think it was the summation of quite a few people there that the best idea was be to, you know, he was already in the road but to ease him down, ease Mr. Bass down the road a little bit to try to cover

it up. I don't think that was a solo effort on Mr. Durant's part. I think that was -- quite frankly, I think he was, you know, very much influenced by at least two of the folks that were on the scene that day not only in respect to actually doing this act but also in regard to trying to cover it up by moving Mr. Bass down to the intersection.

When asked what he did following this accident, he said, I ran home, I shut my door, I smoked a cigarette tried to calm my nerves, and I started crying uncontrollably, and I started praying to the lord that he would not die. I think that it had dawned on him the gravity of this situation and the consequences for Mr. Bass, probably not at that point in the family but logically that would follow. It also dawned on him how much trouble he was probably facing.

Upon arrest it's my understanding that he was very cooperative, didn't try to shun responsibility. The only reason we're only now coming in front of the Court, Your Honor, is because of these issues of competency. I wanted to make sure this young man was competent to stand trial, and that he was, in fact, able to be criminally responsible and had capacity to conform. Otherwise,

things would have been taken care of quite a long time ago. I think that when Mr. Solicitor made the offer of 30 years it was based on the facts of the case, and I think that's the correct assessment. I think balancing this young man's mental level and his mental retardation and the influence that these cohorts of his had on him and his youth, I think that's, you know, that weighs mercy and justice in this case and we would ask for the 30 year minimum. He will have to do every day of that. He understands that and he's still before the Court taking responsibility.

This was not a plot, an elaborate plot to murder Mr. Bass. Mr. Durant had been drinking that day. And Mr. Bass walked up, and you know, it was kind of things happen quickly. And before he knew it this tragedy had occurred. I do not feel like this is a murder that calls for life sentence. I feel like this is a murder that a 30 year sentence is appropriate, and I think that's -- that notion is bolstered by the fact that was Mr. Solicitor's gut on this, was a 30 year negotiated sentence, and we would ask for that.

As Mr. Solicitor represented, he has no adult convictions. He has one pending charge. We

appreciate the Solicitor dismissing that indictment in regard to this plea. He has absolutely no juvenile record which, quite frankly, is shocking standing in front of you now with a crime of this magnitude. You know, we've contacted family court to try to get a juvenile record and there weren't any. I was shocked at that. It's just such a contrast how this young man had lived his life up until this point and now where he stands.

Your Honor, Mr. Durant has done 797 days in Effingham. We certainly respect and feel for the family of Mr. Bass. I would urge the Court to consider a 30 year sentence in this case. I think it's appropriate. Considering this young man's mental deficiencies, his retardation, and how these facts unfolded on this particular day, his cooperation since, I think that's an appropriate sentence and we would ask the Court to hand down that sentence of 30 years, Your Honor. At the appropriate time I'd ask that Jeremy be given the opportunity to address the Court. I've spoken with Jeremy about how he needs to keep his comments directed towards the Court even though he may want to apologize directly to the family and hopefully he will be able to remember that when speaking.

THE COURT: Mr. Durant, I'll be glad to hear from you.

THE DEFENDANT: Your Honor, I'm sorry for what I've done. I know it was wrong for me in my doing, and I ask them to forgive me and I'm sorry for what I done. That's all I have.

MR. SMITH: May it please the Court, Your Honor, just briefly. One fact of this case it just shows how far out of touch he was. Earlier on in these transgressions where he actually wrote Ms. Shirley a letter apologizing and asking for forgiveness and for their leniency. If the Court would like I can pass this up.

THE COURT: I'll be glad to read it.

(Pause.)

THE COURT: I make that Court's Exhibit Number 6. Is that correct, Madam Court Reporter?

COURT REPORTER: Yes, sir.

(Court's Exhibit Number 6 was marked and made a part of the record.)

THE COURT: Mr. Smith.

MR. SMITH: Thank you, Your Honor, may it please the Court, just briefly in summation. I did go over with Jeremy in detail about how this crime is classified as a violent offense and as a most

serious offense and about how it's non-parolable. And he, I feel like he does understand those things. We went over them twice, once just he and I, and once his family showed up. And this young man has shown over the course of my relationship with him a marked change in just letting himself emotionally go back and re-live what happened that day. I can speak personally on that account. While I've counseled with him in depth, bigger picture about how the first step if ever it's able to be made right in making this right, is to admit what you've done wrong and then that's what you can do. That's all he has control over, and he can only hope for forgiveness. And we're here to do that today, Your Honor. We ask the Court to show mercy and to hand down the 30 year sentence.

THE COURT: Anything further?

MR. SMITH: Nothing further from defendant.

THE COURT: Anybody else like to speak on his behalf?

(There was no response.)

MR. CLEMENTS: Your Honor, there is one thing I'd like to address that I don't want the Court to get the wrong impression from what Mr.

Smith thinks why we made the offer what we did. That was not my -- that was not my reaction today as to what it should be or I'd be making that plea offer today. When I made that plea offer at the initial appearance on the limited information I had at first this thing looked like a fight possibly until we got all the information and I was able to meet with Investigator McFadden after that and meet with the family. And that's why that plea offer. It wasn't accepted to begin with and was withdrawn and not ever offered again. So I just didn't want Your Honor to think that that's what I'm thinking today.

THE COURT: All right. We'll stand at ease for five minutes.

(WHEREUPON, a recess was taken from the proceedings.)

THE COURT: In the responsibility of a circuit court judge criminal sentencing by fair is the most difficult. I practiced law for, in the criminal judicial system, for over 20 years and I've been on the Bench for about five, and it is the most difficult. You would think that it would get easier the longer you do it, the more exposure you have but it doesn't. It is the very most difficult thing

that I do. I can't help but to feel for the members of the family. I too am a parent. I too am a brother. I have sisters. I can only imagine the pain that y'all, that y'all are enduring, and my heart goes out to you for that. I can only imagine what you're going through, and I can see that it's very painful for you.

When I'm sitting down considering what the appropriate sentence is, when I first began practicing law in 1984, when a person were to be convicted of murder or plead guilty and they would get a life sentence, they would be eligible for parole after 20 years and that was the standard throughout the state. But now with the statutory reform life means life. If a person receives life that means that they stay there until they die. In all of the sentences pursuant to the murder statute are non-parolable offenses which mean they serve them day for day subject to the 85 percent rule.

One of the things that weighs most heavy on my mind about this case is the defendant's mental disabilities. Although the defendant clearly does not have a normal IQ, the report submitted by the Department of Mental Health and Disabilities and Special Needs clearly establish that he was able to

conform his conduct to the law; he knew right from wrong. He had the ability to conform his conduct to the law. The reports speak to that and are very convincing, and there's nothing to contradict that. But perhaps most importantly is the conduct of the defendant during this event. He participated in the activity to conceal the body or to put the body in the road in an effort to make it appear as if there was an accident which seems he understood what he was doing and had the ability to try to conceal his conduct. In addition to that, he made attempts to clean the blood from his shoes. Clearly he had the ability to conform his conduct, and he understood what he did was wrong.

And also, I've reviewed the letter that he wrote to the family, and it was clearly it was simple in its logic; but clearly he understood what he did was wrong. But from reviewing the letter it's clear that he doesn't have average intellect in order to write the letter and the things that he said in the letter shows that he has a substandard IQ. But the root and radical question presented here today is how much time is enough, what is the appropriate sentence? It's a very difficult question, but all we can do is the best we can do.

And Mr. Durant, on indictment
2009-GS-21-1584 on the offense of murder, the
sentence of the Court is that you be committed to
the State Department of Corrections for a period of
43 years and you're given 797 days credit for time
served. Good luck to you.

* * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

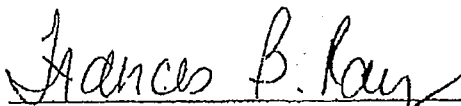
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

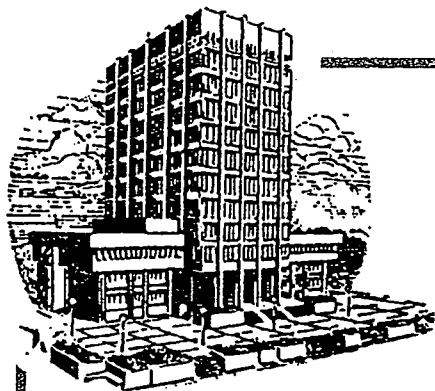
I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 20th day of March, 2012.



FRANCES BAKIS-RAY, RPR



CONNIE REEL-SHEARIN

Clerk of Court
 City-County Complex
 180 N. Irby Street, MSC-E
 Florence, SC 29501
 843-665-3031

March 21, 2013

RE: Jeremy Durant Court's Exhibits

Dear Mr. Flynn,

I'm sorry it has taken this long to get back with you concerning Jeremy Durant's exhibits. I have been in General Session court since 1st of March.

I have made you copies of Court's exhibits 1, 2, 3, 4, 5 and 6. Court's exhibits 1 thru 5 have been made through the public defender's file and court exhibit # 6 has been copied through the solicitor's file. Jack Greenan from the solicitor's office has viewed these copies. I have looked for the original exhibits and cannot find them at this time.

If you have any questions please do not hesitate to call me at (843)665-3017.

Sincerely,

Doris P. O'Hara

Deputy Clerk of Court, II

General Sessions

MAR 26 2013

RECEIVED

MAR 26 2013

CLERK OF COURT
 APPELLATE DIVISION

Attention: Doris O'Hara

RECEIPT FOR EXHIBITS

CASE NO. 09-6521-1584 JUDGE Michael G. Neettes
 PLAINTIFF: State PLTF'S ATTY. Ed Clements
 DEFENDANT: Jeremy Durant DEF'D ATTY. Gregory Smith
 DATE TRIAL STARTED: 7-27-11 DATE TRIAL ENDED: 7-27-11

Received of Frances Ray, Court Reporter for the above case, these exhibits:
Court's

		This space for Clerk of court's use
1.	DMH report 3-10-11	
2.	DMH report 7-8-10	
3.	SCODSN report 8-25-10	
4.	SCODSN report 12-22-10	
5.	affidavit of defendant for guilty plea	
6.	+ certificate of counsel	
7.	letter to Mr. Shuley	
8.		
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20.		

This 27th day of July 20 11

Page 1 of 1

FLORENCE COUNTY CLERK OF COURT

By: Michael Belcher

ELR 802
09-1584 45South Carolina
Department of
Mental HealthDivision of Inpatient Services
Forensic Evaluation and Treatment Services
Building #6
7901 Farrow Road
Columbia, South Carolina 29203
Information: (803) 935-5600
Fax: (803) 935-5544

March 10, 2011

Grayson Smith
Attorney at Law
180 N. Irby Street, Box-N
Florence, SC 29501Re: The State of South Carolina vs. Durant, Jeremy
DMH Case #: 1020-5796
Florence County, Court of General Sessions

Dear Attorney Smith:

In accordance with the court order issued by the Honorable Thomas A. Russo, evaluations of criminal responsibility and capacity to conform were conducted by the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. §17-24-10 (1976).

If the court order specifies either an "evaluation requested by either party after defendant's assertion of insanity defense" or an "evaluation requested by consent of both parties at any time," both the solicitor and the defense attorney will find a copy of the SCDMH report attached to this letter. However, if the court order specifies an "ex parte evaluation requested by defendant prior to assertion of insanity defense," only the defense attorney will find a copy of the SCDMH report attached to this letter.

This 8 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

3/10/11
Date

Jeffrey E. Musick, Ph.D., ABPP
Jeffrey E. Musick; Ph.D., ABPP
Chief Psychologist
Forensic Evaluation Services
Department of Mental Health

cc: E.L. Clements, III, Solicitor, 180 N. Irby Street, Box-Q,
Florence, SC 29501

JM/tl

Report on Criminal Responsibility/Capacity to Conform

Name: Durant, Jeremy T.

Date of Birth (Age): 02/22/1991 (20)

Date of Interview: 01/25/2011

Date of Report: 03/09/2011

Examiners: Michael D. Gassen, Psy.D. (presiding)
Carol David, LISW-CP

Opinion on Criminal Responsibility: Criminally responsible

Opinion on Capacity to Conform: Had capacity to conform

Referral Information

Mr. Durant is a 20-year-old male who is charged with Murder. The State of South Carolina, County of Florence, Court of General Sessions issued an order to evaluate his criminal responsibility and, if opined to be responsible, his capacity to conform his conduct at the time of the alleged offense. Pursuant to this order, Mr. Durant was evaluated on 01/25/2011 at the Forensic Evaluation Service of the South Carolina Department of Mental Health (SCDMH). At the time of the evaluation, Mr. Durant was detained at the Florence County Detention Center, and he was returned to that facility following the evaluation.

Notification

Prior to the interview, Mr. Durant was advised that he was here for a court-ordered evaluation, and the information he provided could be communicated to the defense counsel, the solicitor, and the judge. He displayed comprehension of the general nature of the evaluation and the limitations to confidentiality, and he read aloud and signed a form that explains these issues and agreed to proceed with the evaluation.

Sources of Information

- State of South Carolina, County of Florence, Court of General Sessions order for order for criminal responsibility/capacity to conform conduct evaluation
- County of Florence Arrest Warrant (K-615054) for the alleged offense
- Records from Florence County Sheriff's Office (case # 09-05-763)
- Records from Timmons ville Police Department (case # 09-05-0251)
- South Carolina Law Enforcement Division Forensic Services Laboratory Report (case no.: 0905763)
- Medical University of South Carolina (MUSC) Forensic Autopsy Final Report (Accession: FA-09-00276)
- Records from Timmons ville Educational Center
- Records from Florence County School District Four (from 05/14/2007 to 04/30/2008)
- Records from the South Carolina Department of Mental Health Forensic Evaluation Service (dated 06/23/2010)

- Records from SC Department of Disabilities and Special Needs (DDSN; dated 08/12/2010 to 12/20/2010)
- Records from Bryan Psychiatric Hospital Forensics (from 10/29/2010 to 12/21/2010)
- Records from the Florence County Detention Center (from 05/22/2009 to 01/05/2011)
- A Psychiatric Social Work Admission Assessment, completed by Carol David, LISW-CP, with information provided by Gorla Durant (on 06/15/2010)
- Clinical/Forensic interview of Mr. Durant on 01/25/2011 (approximately 2.0 hours)

Background Information

Family History

Mr. Durant reported he was born in Florence and raised primarily in Salters, SC, by "my mom." He described his childhood as "all right" and his relationship with his mother positively. He denied a history of abuse or witnessing domestic violence in the home. He also denied a family history of mental illness or substance abuse.

Mr. Durant reported he has never married or fathered any children. He said he was living in Timmonsville, SC, with "my mom" at the time of the alleged offense.

Educational History

Mr. Durant reported he discontinued his education during the 12th grade after he was "kicked out" of school. He said he was expelled because "my friends jumped somebody at school and blamed me." He said he typically earned "A's, B's, and uh C's" but acknowledged he was in special education for every class except "welding and health." He denied knowing the reason for his special education placement or his classification (e.g., Learning Disabled). He denied ever being retained. Mr. Durant said he was suspended on five or six occasions for "fighting and talking back to the teachers."

Records from Florence County School District Four (from 05/14/2007 to 04/30/2008) indicate Mr. Durant was classified as having a "mental disability" in school. He had difficulties in math and reading, and he was in a speech-language program for articulation difficulties. He was placed in self-contained classroom. He completed psychological testing on 10/14/1997, and his scores on a screening measure of intellectual functioning were in the borderline range, and his scores on a measure of academic achievement were also deficient. He also completed the Wechsler Intelligence Scale for Children - Third Edition (WISC-III), and his IQ scores were in the extremely low range of intellectual functioning. His scores on a measure of adaptive functioning indicated he had deficits in communications, socializing, and activities of daily living. He also was noted to have a number of behavior problems, including stealing, lying, having "temper outbursts, daydreaming during class, being easily distracted, and not cooperating with others."

Employment History

Mr. Durant reported he has worked "cutting people lawn" for approximately "four weeks." He said his only other employment was working for a "landscaping" company and "model inside the houses" but indicated those jobs lasted a day each because "we ain't had no more work to do." He did not report a history of receiving disability benefits but indicated his mother received money "for child support."

Medical History

Mr. Durant denied a history of diabetes, seizures, or a thyroid condition. When asked about the cause of a scar on his neck, he reported he "got cut" by a man wielding "a box cutter" when Mr. Durant attempted to stop the man from fighting "my little cousin." Regarding head injuries, he reported at age 16 or 17 he was hit on the "side of the head with a bat but it ain't knock me out." He denied subsequent problems or receiving medical treatment for the injury.

Substance Use History

Mr. Durant reported he first consumed alcohol at age 17 and drinks "once in a blue moon . . . probably on Fridays; sometimes on the weekdays." On questioning, he acknowledged a history of developing a tolerance to alcohol and experiencing alcohol-related blackouts. He said he last consumed alcohol on the "same night when I got the charge right here." Regarding illicit substances, he stated he first used marijuana at age 17 and typically used it "three days of the week and some on the weekend." He said he last used it on the morning after the alleged offense. Aside from trying "Xanax two to three times" and sniffing "gas one time" at age 16 or 17, he said has not abused medications or huffed a substance. He stated he has never used other illicit substances.

Mental Health History

Mr. Durant reported he has received mental health treatment at Columbia Care Center. He said he was at that facility for "60 days" for "evaluation." He otherwise did not report a history of mental health treatment. He stated he is not currently taking medications, and he said he has only taken medications in the past for the cut on his neck.

According to records from the South Carolina Department of Mental Health Forensic Evaluation Service (dated 06/23/2010), Mr. Durant was initially seen by Michael Ferlauto, M.D., for an evaluation of his competency to stand trial for his present charge. During that evaluation, Mr. Durant reported a history of special education classes, and it was noted his school records revealed his IQ scores in 1997 were in the mild mental retardation range and adaptive behavior scores were also far below average. It was suggested that he likely meets the diagnostic criteria for mild mental retardation, and it was recommended Mr. Durant be evaluated by DDSN.

Records from DDSN indicate Mr. Durant was evaluated by Alicia Hall, Ph.D., and G. Ed Brown, Jr., Ph.D. (on 08/12/2010). During the interview, he reported a history of special education

classes. His records were reviewed, which revealed IQ scores from 1997 in the mild mental retardation range and similarly low scores on a measure of adaptive functioning. He also reported a history of using marijuana on a daily basis. A history of mental health treatment was denied. On a mental status examination, he denied a history of psychotic symptoms. He was given a provisional diagnosis of "mental retardation," and it was opined that he was not competent to stand trial.

Records from Bryan Psychiatric Hospital Forensics (from 10/29/2010 to 12/21/2010) indicate Mr. Durant was admitted to the DMH forensic unit for competency restoration. On admission, he reported hearing voices, but it was noted that the "descriptions were atypical for genuine psychotic experiences." No thought disorganization was observed. During his admission, he did not display symptoms of a mental illness and was not prescribed psychotropic medications. His IQ scores in the mild mental retardation range were noted. On discharge, he was diagnosed with cannabis abuse, by history, and rule out mental retardation.

Records from DDSN indicate Mr. Durant was re-evaluated by Dr. Hall and Dr. Brown (on 12/20/2010) after he received competency restoration treatment. He reportedly completed intelligence testing on 11/15/2010, and his scores, which were reported in the 12/20/2010 report, are in the mild mental retardation range of intellectual functioning. He was diagnosed with "mental retardation," and it was opined he was competent to stand trial.

Legal History

Mr. Durant reported two previous arrests for "lynching at school" and "drunk in public." He indicated the former charge has not been disposed of, but he said he "paid a fine" for his drunk in public charge.

Current Presentation

Mr. Durant presented as a 19-year-old African American male of below average height and average build who appeared his stated age. He was dressed in detention center garb and was shackled. His grooming and hygiene were adequate. Aside from a scar on his neck and chest, no physical abnormalities were observed, and no oddities in posture or movement were noted. Mr. Durant appeared to be generally attentive, and he offered a normal amount of eye contact. On tasks used to assess concentration, he performed fairly well. More specifically, he completed a basic serial subtraction task with few errors, and he correctly spelled the word "world" backwards. His speech generally was of normal rate, rhythm, and volume, though he mumbled at times. No difficulties in articulation were observed. On questioning, Mr. Durant accurately stated his name, the city and state of his location, and the date. When asked about the reason for the evaluation, he responded, "I ain't know." He repeated a list of three words without difficulty, and he recalled one of the words after approximately five minutes had elapsed and a second word when a clue was provided. His ability to recall events from his past appeared generally intact. Based on his explanations of common proverbs and responses to questions about classifying similar objects, his capacity for abstract thinking appeared limited. His judgment for a hypothetical situation was adequate. His intellectual functioning was estimated to be in the extremely low range. His thought processes appeared generally clear and coherent. He described his mood as "good but . . . I'm ready to go home," but his affect (i.e., observed

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emotional expression) was restricted in range and intensity. Mr. Durant denied a history of experiences that would suggest he has had hallucinations (e.g., hearing voices). He also did not voice any beliefs indicative of a delusion (e.g., firmly held, fixed, false beliefs). He denied any current suicidal or homicidal ideation or intent.

Diagnostic Impressions

Mr. Durant's records reveal his intellectual functioning was assessed in 1997 as well as in November 2010, and his IQ scores were in the mild mental retardation range. His scores on a measure of adaptive functioning have been similarly far below average. Given these factors and that the most recent records from DDSN offer a mental retardation diagnosis, a diagnosis of mild mental retardation (per records) is offered at this time.

Information Relevant to Criminal Responsibility and Capacity to Conform Conduct

Records Pertinent to the Alleged Offenses

According to a County of Florence Arrest Warrant (K-615054), it is alleged that "on or about 5-21-09 the def. Jeremy T. Durant, along with a codef. did violate the SC code of laws sect. 16-3-0010, Murder, to wit, the def., Jeremy T. Durant, w/ malice aforethought, w/o provocation did strike the vic., Rush Vance Bass several times w/a metal pole causing death to Rush Bass . . . The incident occurred w/in the town limits of Timmons ville, SC, Flo. Co., near the intersect. of Orange and Byrd St."

Records from Florence County Sheriff's Office (case # 09-05-763) and Timmons ville Police Department (case # 09-05-0251) indicate Mr. Durant was identified as a possible suspect, and he was interviewed by investigators following the alleged offense. He reported to police that, on the date of the alleged offense, he was "at my cousin [sic] house (in Timmons ville) sitting down outside." He said he was "drunk at the time." He said he had "bout' [sic] five Cobra's that night, had 'bout two blunts; I smoked two blunts, and drank five cobra's, 40 oz." He reported that Randy Baker was "daring him to mess with Bass as he (Bass) was coming up the road drunk." He also indicated to police that he was worried Randy would tell other gang members that he had declined to accept the dare, which could result in Mr. Durant being assaulted by other gang members. Mr. Durant initially reported Randy hit Mr. Bass with brass knuckles, but he later stated he hit Mr. Bass several times with brass knuckles he had been given by Randy. He also said he hit Mr. Bass because Mr. Bass pulled a knife on him. He reported he then retrieved a metal pipe and used it to strike Mr. Bass "twice in the head while he was on the ground in the roadway." Mr. Durant reported he threw the pipe "into the bushes behind" a shed. He indicated he moved Mr. Bass "in the middle of the street [sic] see [sic] he's still alive" and subsequently "advised everyone who was there one being his girlfriend to say that a car hit him." He also reported that he "went home crying" that night and said to himself, "I should have never did that." He also said he was scared "after I hit him . . . cause [sic], he had die."

Records from Florence County Sheriff's Office (case # 09-05-763) and Timmons ville Police Department (case # 09-05-0251) indicate interviews were also conducted with Randy Baker. Mr. Baker acknowledged that he dared Mr. Durant to "mess with Bass" when they saw him coming towards them, and records from Timmons ville Police Department indicate Mr. Durant

first told Mr. Baker "he felt like fighting" and threw rocks at the alleged victim. Mr. Baker indicated Mr. Durant hit Mr. Bass with the brass knuckles, and he "then grabbed a metal pipe" and hit Mr. Bass several times with the pipe. He noted, "We were trying to tell him to stop, he kept - he constantly hit him, about five to six time [sic]."

Timmonssville Police Department records (case # 09-05-0251) indicate information was provided by Adonica Peterson, as she reportedly witnessed the alleged crime. She stated that "she saw the victim (Vance) walking from Main Street toward Byrd street when he was approached by Jeremy. Adonica stated that Jeremy . . . asked Randy . . . if he wanted to mess with the victim. The witness stated she saw Randy give Jeremy a pair of dark colored brass knuckles . . . [and] that she saw Jeremy strike the victim with the brass knuckles." She also reported "the victim asked Jeremy why he hit him." She indicated she then went inside her home, and, upon returning outside, "saw Jeremy dragging the victim's limp body from just in front of the driveway of the Salter's [sic] residence toward Byrd street." Adonica reported she ran inside to have someone call the police, and when she returned outside, observed Jeremy run "toward Byrd and Brockington."

Defendant's Account of the Alleged Offenses

Mr. Durant reported that, in the week leading up to 05/21/2009, he was feeling "happy" and said that it was a "normal week for me." On the date of the alleged offense, he reportedly spent the afternoon drinking beer with his cousin. He stated he drank six to seven big "King Cobra's." He said he played ball at his cousin's house, and then went to his uncle's house and drank "three more beers." He said he then went to another cousin's house, Keyanta Salters. He stated he smoked "weed" with people outside of the Salters' home. At that time, he saw Randy Baker and Vance (i.e., Mr. Bass) talking down the street. He reported Randy came over to his cousin's house, and "Vance started walking that way too." He reported, "I had said I feel like fighting, but I ain't talking 'bout Vance." He stated he felt like fighting because "I was drunk." He reported Randy gave him some brass knuckles, and he approached Vance and asked if "he was ok because he was staggering because he was drunk." He reported he then hit Vance in the face once with the brass knuckles, and then returned the knuckles to Randy. Mr. Durant said that Randy then "bet me to do something else to Vance." He said Randy bet him he wouldn't "hit him again with something else." Mr. Durant stated he therefore retrieved a pole from "behind the barn" and came back to the street. He said Vance had fallen and hit "his left side on the concrete" and was "struggling to get back up." He reported Vance then "pass[ed] out." Mr. Durant stated, "After that I had flipped out . . . I didn't know what I was doing . . . was shook up." He stated that, after he "got finished beating him with the pole, um, it was like, 'No, no no I didn't, no I didn't'." He stated he "freaked out after." He stated he then "took the pole and throw it behind the barn." When asked how he felt when he was taking the pole back, he responded, "Hurt . . . I was afraid because I know that I was about to get locked up." He stated he then left "and went to the store to get me a cigarette to calm my nerves." He reported, upon returning home that night, he "prayed to the Lord he ain't dead." Mr. Durant also acknowledged he cleaned his shoes because "they had blood on it." Upon inquiry about why he wanted to remove the blood, he responded, "So that it didn't know it was me." When asked if he would have punched Vance and hit him with the pipe if a police officer had been there, he responded, "No."

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. 'cause I ain't want to go to jail." He was asked why he did it, and he stated, "I was drunk; didn't know what I was doing."

Clinical Impressions Regarding Criminal Responsibility

Although Mr. Durant appears to qualify for a diagnosis of mild mental retardation, there is little information to suggest he lacked an understanding of the wrongfulness of the alleged criminal acts on 05/21/2009. Records indicate that, at the time of the alleged offense, he instructed those present to say the alleged victim was hit by a car, and he subsequently ran from the scene. During the current interview, he reported he cleaned the blood from his shoes upon returning home "so that it didn't know it was me." Such attempts to avoid detection and apprehension suggest he understood the wrongfulness of the alleged offense on 05/21/2009. Moreover, records indicate he said he cried upon returning home that evening because he knew "I never should have did that," suggesting an understanding of moral wrongfulness of the alleged crime. During the current interview, Mr. Durant stated he knew "I was about to get locked up" as he was taking the pole behind the home, which suggests he understood the legal wrongfulness of the alleged criminal acts at the time. While he stated he "flipped out" and "didn't know what I was doing" at one point during the assault, he related this to being intoxicated rather than symptoms of a mental disease or defect. Given this information, there is little to suggest that Mr. Durant, as a result of a mental disease or defect, was incapable of distinguishing moral or legal right from moral or legal wrong or recognizing the particular acts charged as morally or legally wrong.

Clinical Impressions Regarding Capacity to Conform Conduct

As noted above, Mr. Durant appears to have significant intellectual impairments, but he does not have a mental disorder that would be likely to result in a significant loss of ability to control his behavior. Even if he did have such a disorder, records indicate he generally was not behaving in a manner that would suggest he had a loss of capacity to control his actions on 05/21/2009. Additionally, he reportedly waited until he was dared to assault the alleged victim before committing the alleged offense, and he left the scene to retrieve the pole before returning to assault Mr. Bass with it. Such an ability to defer engaging in the alleged criminal acts suggests he had control over his actions at that time. Even if he appeared to lose control at times during these events, this would likely have been the result of voluntary alcohol intoxication rather than a mental disease or defect. Thus, it does not appear that Mr. Durant, at the time of the alleged offense, was suffering from a mental disease or defect that caused him to lack sufficient capacity to conform his conduct to the requirements of the law.

Michael Gassen, Psy.D. 3/9/2011
Michael Gassen, Psy.D. Date
Chief Psychologist

JEM

Exhibit #2

53



South Carolina
Department of
Mental Health

Division of Inpatient Services
Forensic Evaluation and Treatment Services
Building #6
7901 Farrow Road
Columbia, South Carolina 29203
Information: (803) 935-5600
Fax: (803) 935-5544

July 8, 2010

E.L. Clements, III
Solicitor
180 N. Irby Street, Box-Q
Florence, SC 29501

RECEIVED
JUL 15 2010
PUBLIC DEFENDER'S OFFICE
BY *[Signature]*

Re: The State of South Carolina v. Durant, Jeremy
DMH Case #: 1020-5796
Florence County, Court of General Sessions

Dear Solicitor Clements:

In accordance with the court order issued by the Honorable Thomas A. Russo, a competency to stand trial evaluation was initiated by the Department of Mental Health. However, as described in the attached report, there were indications of mental retardation or a related disability but no indications of mental illness. As such, per the court order and S.C. Code Ann. § 44-23-410, no opinion on competency is offered and this case is being transferred to the Department of Disabilities and Special Needs. As such, the Department of Disabilities and Special Needs will be responsible for preparing and disseminating the report regarding competency to the Court.

This 5 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

7/8/10
Date

Jeffrey E. Musick Ph.D., ABPP
Jeffrey Musick, Ph.D., ABPP
Chief Psychologist
Forensic Evaluation Services
Department of Mental Health

cc: Grayson Smith, Attorney at Law, 180 N. Irby Street, Box-N,
Florence, SC 29501
Melinda Fair, DDSN, PO Box 4706, Columbia, SC 29240

JM/tl

JEM

SCDMH South Carolina Department of Mental Health

 South Carolina Department of Mental Health		DMH Mailing Address - CBSH/Forensic Evaluation Center 7901 Farrow Road Building, #6 Columbia, SC 29203 (803) 935-5600	
HIPAA (PHI) FAX COVERSHEET			
To: E.L. Clements, III Esq. From: Tamika Lee Date: 07/08/10		TELEPHONE	FAX (843) 669-3947
		NO. PAGES INCLUDING THIS PAGE	TIME See Date Stamp
☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle			
SUBJECT: CST Report for J. Durant			
MESSAGE: Please see attached. Thank you. cc: Grayson Smith, Esq., Fax (843) 665-4041			
THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US VIA U.S. POSTAL SERVICE. THANK YOU.			

COMPETENCY TO STAND TRIAL EVALUATION

DATE OF EVALUATION: June 23, 2010

PRESIDING: Michael Ferlauto, M.D.

SECOND EXAMINER: Carol David, LISW-CP

DIAGNOSES: AXIS I: No Diagnosis
 AXIS II: Mild Mental Retardation (provisional)
 AXIS III: History of neck laceration

COMPETENCY TO STAND TRIAL OPINION: No opinion

DISPOSITION: Mr. Durant was transported back to the Florence County Detention Center.

STATEMENT OF NONCONFIDENTIALITY: Mr. Durant struggled to read an information sheet explaining the purpose of today's evaluation and the limits of confidentiality. After reading the form to him, he incorrectly reported that we would probably not be writing a report to the court. Upon further review, he expressed an understanding that this evaluation would result in the submission of a report to his attorney, the solicitor, and the judge. He elected to proceed with the evaluation.

IDENTIFYING INFORMATION: Mr. Durant is a 19-year-old African American male seen at the Forensic Evaluation Center pursuant to a court order from the Florence County Court of General Sessions. The order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d. 536 (1982) and S.C. Code Ann. §44-23-410 (1976). He is charged with Murder. The court order indicates that the evaluation was requested because "Based on the violent nature of the current offense, the defendant's inability to grasp the seriousness of the offense, the attorney's observations of the defendant, and the inability to communicate properly about his case, I feel he is in need of this evaluation."

SOURCES OF INFORMATION:

1. Florence County Court of General Sessions order for an evaluation of competency to stand trial.
2. Arrest warrant #K-615054.
3. Florence County Sheriff's Office Report dated 6/14/2009.
4. Narrative of Corporal Paul Bird dated 5/21/2009.
5. Narrative of Corporal Adam Moore (no date).
6. Narrative of Corporal Andrew Clendenin (no date).
7. Incident report by Officer Gibson.
8. Supplementary Report by Officer Palmer.

JEM

DURANT, JEREMY

1020-5796

OUTPATIENT EVALUATION

9. Narratives by officers identified as 7083 and 1682.
10. Voluntary statements by Keyanta Salters, Ketora Salters, Emma Allen, Morris Hickson, and Adonica Peterson.
11. Narrative by Investigator Lynch.
12. Transcripts of two statements by Randy Baker to Florence County Sheriff's Office.
13. Transcripts of three statements by the defendant to Florence County Sheriff's Office.
14. Forensic Autopsy Report for the victim.
15. SLED Forensic Services Laboratory Report.
16. Timmonsville Education Center records for the defendant.
17. Florence County Detention Center records.
18. Psychiatric social history gathered from the defendant's mother, Gloria Durant.
19. Forensic psychiatric interview with the defendant on June 23, 2010 lasting approximately 80 minutes.

PERSONAL HISTORY: Mr. Durant stated that he was born in Timmonsville, South Carolina on February 22, 1991. He said he was raised primarily by his mother because his parents separated when he was young. According to his mother, Gloria Durant, there were no complications during pregnancy and her son achieved developmental milestones at appropriate intervals. Mr. Durant stated that he has two half-sisters and five half-brothers. He described his childhood as "wonderful." He denied childhood neglect, physical abuse or sexual abuse. His mother also denied major behavioral problems (e.g. theft, fire setting or animal cruelty) during his early childhood.

Mr. Durant reported that he attended special education classes in the eighth grade. He said he was suspended 3-4 times for fighting and disrespecting teachers. He added that he was expelled in the 12th grade after he and several peers were charged with "ganging up" on another classmate. He said he was attending "adult ed" classes prior to his arrest for the current charge.

Mr. Durant stated that he worked on a landscaping crew for a few weeks, but he was unemployed at the time of his arrest. He has never been married and he has no children. He was living with his mother prior to his arrest.

Mr. Durant indicated that he is physically healthy. We noticed a large scar on his neck and he said it was the result of being attacked by a man with a box cutter two years ago. He said the wound was sutured in the emergency room without need for further medical care. He denied a history of seizures, surgeries or head injuries resulting in loss of consciousness. Florence County Detention Center records indicate he is not currently prescribed medications.

DIAGNOSTIC IMPRESSIONS: As noted earlier, Mr. Durant stated that he was in special education classes in school. School records confirm he had an individualized education plan (IEP) for "mental disability" and was on track to receive a district certificate rather than a high school diploma. In 1997, he was given the Wechsler Intelligence Scale for Children - Third Edition (WISC-III) and he achieved a full scale IQ of 60, Performance IQ of 65 and Verbal IQ of 62. On the Peabody Individual Achievement Test - Revised (PIAT-R), a measure of academic achievement, he scored below the 5th percentile in all subtests. In addition to his intellectual

JSM

DURANT, JEREMY

1020-5796

OUTPATIENT EVALUATION

limitations, he scored below average in all subtests of the Vineland Adaptive Behavior Scales (VABS). During our evaluation, Mr. Durant demonstrated poor reading skills, very poor math skills and a below average fund of knowledge. We did not suspect that he was feigning or exaggerating these cognitive deficits. In summary, Mr. Durant's performance during our interview and the results of his psychoeducational tests from 1997 lead us to believe that he has mild mental retardation. This diagnosis is being offered on a provisional basis only since an examiner from the Department of Disabilities and Special Needs (DDSN) was not present for the evaluation.

Mr. Durant reported that he had his first alcoholic drink when he was 17 years old. He said he typically drinks 3-4 beers on the weekend. He admitted that he spent one night in jail for "public drunk" but he denied social or medical complications from his alcohol use. He stated that he was smoking marijuana a few times per week in the year prior to his arrest, but he denied legal, medical or social consequences from his use. Based on the available information, it is our opinion that Mr. Durant's drug and alcohol use does not meet sufficient criteria for a substance use disorder.

According to the South Carolina Department of Mental Health database, Mr. Durant has never received mental health services in a state facility. During our interview, he reported that he has never received mental health treatment outside the state system either. He told us he has been depressed before, but not for more than 1-2 days. He indicated that he has never felt suicidal. He denied symptoms consistent with psychosis, severe anxiety or mania. During a separate telephone interview, his mother reported that he has a tendency to keep things to himself and in recent years she has seen him "stare" a lot. When we asked him about these behaviors, he shrugged and said he did not know what she meant by those comments. Based on the available information, it is our opinion that Mr. Durant does not currently satisfy criteria for a mental illness.

MENTAL STATUS EXAM: Mr. Durant was dressed in detention center attire. His hygiene and grooming were adequate. He was polite and cooperative. His speech was normal in rate and volume, but he had poor articulation. He described his mood as "alright." His affect, or externally observed mood, was within the normal range. His thought processing was logical and coherent. He denied suicidal or homicidal ideation. He also denied past or present symptoms indicative of psychosis and he did not appear to be responding to hallucinatory stimuli.

Mr. Durant was alert and grossly oriented. He initially stated that the year was "June" and that the state was "Columbia." With prompting, he correctly identified the year, month, date, city, and state. He could not estimate how many items are in one dozen and he guessed that the immediate past two presidents were "George Washington Bush" and "Lincoln." He was asked to list several states and he included Miami. He struggled to calculate the amount of change he would receive if he used a five-dollar bill to pay for \$2.35 worth of snacks. No clinically significant deficits in long-term memory were noted during our interview. He registered three words to short-term memory and recalled all three after a brief delay. He was attentive to the interview. His capacity for abstract thinking (assessed through the interpretation of simple proverbs and paired objects) was poor.

JEM

DURANT, JEREMY

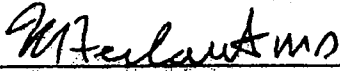
1020-5796

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: In accordance with the court order in this case, we are not rendering an opinion on Mr. Durant's competency to stand trial because it is our opinion that he is mentally retarded and not mentally ill.

RECOMMENDATIONS: An evaluation of Mr. Durant's competency to stand trial should be conducted by the South Carolina Department of Disabilities and Special Needs.



Michael Ferlauto, M.D.
Senior Psychiatrist
South Carolina Department of Mental Health

07/06/2010



DURANT, JEREMY
1020-5796

OUTPATIENT EVALUATION

CD Exhibit #3

COPY 39

Beverly A. H. Buscemi, Ph.D.

State Director

David A. Goodell

Associate State Director

Operations

Kathi K. Lacy, Ph.D.

Associate State Director

Policy

Thomas P. Waring

Associate State Director

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3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
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Kelly Hanson Floyd
Nancy L. Banov, M.Ed.

August 25, 2010

Ms. Connie R. Bell
Clerk of Court - Florence County
180 N. Irby Street, MSC-E
Florence, SC 29501

RE: Jeremy Terrell Durant

Dear Ms. Bell:

In accordance with the Court Order issued by The Honorable Thomas Anthony Russo, Judge of the General Sessions Court, an evaluation on the above named individual was conducted by the Department of Disabilities and Special Needs.

Please find the enclosed evaluation for the Court.

Please contact me at (803) 898-9694 should you have any questions or need additional information.

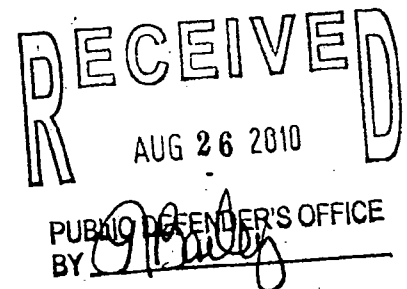
This five (5) page document is hereby certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. §44-23-410 or §17-24-10 (1976) et seq.

Sincerely,

Gordon Brown, Jr., Ph.D.
Office of Clinical Services
Division of Operations

Encl.

cc: Mr. E.L. Clements, III, Esq., 12th Circuit Solicitor's Office
Mr. Grayson Smith, Esq., 12th Circuit Public Defender's Office
Ms. Tana Vanderbilt, Esq., General Counsel-DDSN
File



DISTRICT I

P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

DISTRICT II

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

ct Exhibit 44

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Kelly Hanson Floyd
Nancy L. Banov, M.Ed.

December 22, 2010

Ms. Connie R. Bell
Florence County Clerk of Court
180 North Irby Street, MSC-E
Florence, SC 29501

RE: Jeremy Durant

Dear Ms. Bell:

In accordance with the Court Order issued by the Honorable Thomas A. Russo, Judge of the 12th Judicial Circuit, General Sessions Court, an evaluation on the above named individual was conducted by the Department of Disabilities and Special Needs.

Please find the enclosed evaluation for the Court.

Please contact me at (803) 898-9694 should you have any questions or need additional information.

This five (5) page document is hereby certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. §44-23-410 or 17-24-10 (1976) et. seq.

Sincerely,

Gordon Brown, Jr. Ph.D.

Gordon Brown, Jr., Ph.D.
Office of Clinical Services
Division of Operations

Enclosure

cc: E.L. Clements, Esq., Florence County Solicitor's Office
Grayson Smith, Esq., Defense Counsel
Tana Vanderbilt, Esq., General Counsel, DDSN
File

DISTRICT I

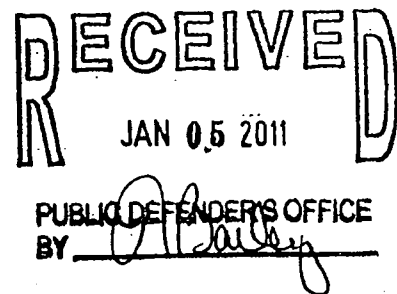
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FORENSIC EVALUATION

Name:	Jeremy Terrell Durant	Gender:	Male
County:	Florence	Race:	African-American
Date of Evaluation:	12/20/2010	Date of Birth:	02/22/1991
Place of Evaluation:	Crafts-Farrow DMH Columbia, SC	Age:	19 years

Examiners: Alicia V. Hall, Ph. D. – Lead Examiner
Gordon E. Brown, Jr., Ph.D. – Secondary Examiner

Charge(s): Murder

Purpose of Evaluation:

This evaluation was conducted pursuant to an order dated 09/21/2010 (received 12/20/2010) and signed by the Honorable Michael Nettles, Presiding Circuit Judge of the Florence County Court of General Sessions. The order required that Mr. Durant be reevaluated by the Department of Disabilities and Special Needs to determine his competency to stand trial subsequent a period of hospitalization and treatment in a SC DMH facility. The order was issued based upon "a report dated 08/25/2010, the examiners found the defendant is not competent to stand trial, but is likely with treatment to become competent in the foreseeable future."

Limits of Confidentiality:

Before the interview started, Mr. Durant was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation.

Summary of Evaluation Results:

Mental Retardation:	Yes
Competency to Stand Trial:	Yes

DISTRICT I

P.O. Box 239
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Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

Durant, Jeremy T.
SCDDSN Forensic Evaluation
12/20/2010

Evaluation Procedures:

Mr. Durant was initially evaluated with the Department of Mental Health at Crafts-Farrow on 06/23/2010 pursuant to an Order for Competency Evaluation. Because there was an indication mental retardation but not mental illness, the case was transferred to DDSN.

Mr. Durant was evaluated by the DDSN on 08/12/2010. It was opined after a two hours and 15 minutes interview that Mr. Durant was not competent but likely restorable. On 11/15/2010, the undersigned performed a cognitive evaluation with Mr. Durant. After a 60 day restoration program at SCDMH, he was evaluated by the DDSN on 12/20/2010 Mr. Durant was interviewed for approximately 75 minutes by the undersigned and Dr. Brown, who concurs with this report.

Sources of Information:

Court Order for Competency Evaluation
Florence County Arrest Warrants K-615054
Timmons ville Police Department Incident Report and Supplemental Reports
Timmons ville Police Department, Voluntary Statement of Ketura Salters (witness)
Timmons ville Police Department, Voluntary Statement of Emma Allen (witness)
Timmons ville Police Department, Voluntary Statement of Morris Hickman (witness)
Timmons ville Police Department, Voluntary Statement of Adonica Peterson (witness)
Florence County Sheriff's Department, Voluntary Statement of Randy Baker (co-defendant) taken by Thomas McFadden
Florence County Sheriff's Department, Voluntary Statement of Randy Baker (co-defendant) taken by Thomas McFadden
Florence County Sheriff's Department, Voluntary Statement of Jeremy Durant (defendant) taken by David Nichols
Florence County Sheriff's Department, Voluntary Statement of Jeremy Durant (defendant) taken by Jody Lynch
Florence County Sheriff's Department, Voluntary Statement of Jeremy Durant (defendant) taken by Thomas McFadden
Florence County Sheriff's Department Scene / Forensics Unit Narrative Reports of Corp. Paul Bird
Florence County Sheriff's Department Crime Scene / Forensics Unit Narrative Reports of Corp. Adam Moore
Florence County Sheriff's Department Scene / Forensics Unit Narrative Reports of Corp. Paul Bird
MUSC Forensic Autopsy Final Report on Don Reynolds
SC Law Enforcement Division Forensic Services Laboratory Report
Florence School District One Psychological Evaluation Report dated 11/12/1997
Florence School District four Individualized Education Program and Related Documents
Timmons ville High School Grade Report
Timmons ville High School Attendance Report
Timmons ville High School Discipline Report
SCDMH Psychiatric Social Work Admissions Assessment completed by Carol David, LISW-CP dated 06/15/2010
SCDMH Forensic Evaluation Transfer Report by Michael Ferlauto, M.D., dated 06/23/2010
Medical Record from Columbia Care dated 10/2010 to 12/2010
Clinical Interview 12/20/2010 for 75 minutes

Relevant History:

History in this section is as provided by the defendant in the interview on 08/12/2010 and supplemented by information available in other records. Mr. Durant was deemed to be an adequate historian. Currently, he is completing at restoration program at SCDMH. He is a 19-year-old African-American male who was born February 22, 1991. According to the SCDMH Psychiatric Social Work Admissions Assessment, Mrs. Gloria Durant, the defendant's mother, reported the defendant's birth and early development were unremarkable. He was living at home with his mother prior to his arrest. Mr. Durant reported he has one sister and two brothers, one of whom is deceased. He also reported five half brothers and a half sister. He related his childhood was "alright, we always had what we needed." He denied a history of physical and/or sexual abuse. Mr. Durant reported he has no children and has never been married.

Educational History

Mr. Durant reported he last attended Timmons ville High School where he was in the 12th grade. He stated he dropped of school after being expelled for "lynching." He reported being enrolled in Special Education classes. Mr. Durant stated he was in special education because he needed help with reading and his behavior problems. According to his IEP, he was a special education student who was Mental Disabled/Mild (MD). He was served in a self-contained program for MD

Durant, Jeremy T.
SCDUSN Forensic Evaluation
12/20/2010

students. Mr. Durant was identified for special education in the fall of 1997. He was placed in the speech-language program to address weaknesses in language and articulation. The child study team believed further evaluation was necessary for Mr. Durant to be placed in the proper educational setting. At the time, he was performing poorly academically in school. The results of the testing suggested he met criteria for mild mental disability. As a result he became a special education student with MD. Timmons High School discipline report showed he earned 7 discipline referrals in the 10th grade for disrespect, fighting, refusal to obey, disruptive in ISS, walking out of ISS, and truant. He received a total of 3 days of out of school suspension and 5 days of in school suspension for his behavior. Mr. Durant denied being involved in extracurricular sports or other activities. Previous psychological testing suggested his academic abilities were commensurate with his intellectual functioning.

Employment History

Mr. Durant has limited work experience. He reported he worked on a landscaping crew in the past. He stated his brother also worked with the company and helped him gain employment with the crew. He reported he worked for a few months but was laid off because "there wasn't any work."

Medical History

Mr. Durant reported no history of head injuries, seizures, or loss of consciousness. He denied a history of severe or chronic illness. Mr. Durant has a noticeable scar on his neck. When asked about its origin, he related he had been cut by a man two years ago with a box cutter. Mr. Durant stated he was seen in the emergency room where the laceration was "glued." He did not require any further medical care for the laceration.

Substance Abuse

Mr. Durant reported a history of alcohol use. He stated he drinks alcohol socially on the weekends. He reported he began drinking alcohol at the age of 17. He related he has never experienced problems, medical or social, from drinking. Mr. Durant reported a history of drug use. He stated he smoked marijuana on a daily basis. He reported he smoked as much as four blunts a day since the age of 17. Mr. Durant reported popping Xanax once. He denied trying other illicit substances such as cocaine, huffing, or meth to get high. He related he has never experienced problems, medical or social, from using marijuana. Mr. Durant acknowledged he smokes three cigarettes a day. Since being in the SCDMH restoration program, he has participated in the drug and alcohol education group.

Mental Health History

Mr. Durant has no history of psychiatric hospitalization or outpatient mental health treatment. He is not currently receiving services from the Department Mental Health. Mr. Durant is not currently receiving services from the Department of Disabilities and Special Needs nor is there a record of referral for services.

Hospitalization Course:

Currently, Mr. Durant is within days of being discharged from the competency restoration program at SCDMH. According to the record, he has been a model patient. He has attended all treatment groups and has not been involved in or caused any behavioral programs in the program. He has been diagnosed with Cannabis Abuse and Mental Retardation by History.

Behavioral Observations/Mental Status Examination:

Mr. Durant was seen at the SCDMH Crafts-Farrow Forensic Evaluation Service Center on December 20, 2010 and was brought to the appointment by law enforcement. He was short in height and average weight. He was dressed in hospital attire. Eye contact was within normal limits and facial expressions were appropriate. Sensory systems appeared intact. Mr. Durant's articulation was average and speech volume was low. There was no evidence of psychomotor agitation. Mr. Durant was alert and oriented to place, time, and situation. His concentration and attention skills were adequate. His thought process was logical and coherent. His affect was appropriate to the situation. He described his current mood as "alright" and his typical mood as "alright." Mr. Durant denied suicidal ideation and homicidal ideation. He denied visual and auditory hallucinations, and delusions.

Durant, Jeremy T.
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Mr. Durant was able to correctly state personal information such as his full name, date of birth, and age. He was able to spell the word *world* forwards and backwards, indicating adequate concentration. He was able to register and immediately recall three words. After a delay with intervening tasks, he was able to recall three of the three words without cueing. He stated there are 7 days in a week. He also knew the correct number of months in a year and was able to name them. He could tell time on an analog clock. He was able to complete simple math problems with his fingers. His abstract reasoning was adequate and his ability to identify similarities among objects was adequate. Judgment to hypothetical situations was adequate.

Psychological Test Results:

(Florence School District One)

11/12/1997	Wechsler Intelligence Scale for Children – III	Full Scale IQ	60
		Verbal IQ	62
		Performance IQ	65
	Vineland Adaptive Behavior Scale	Adaptive Behavior Composite	60
		Daily Living Skills	68
		Socialization	59
		Communication	60

(SCODSN)

11/15/2010	Wechsler Adult Intelligence Scale– IV	Full Scale IQ	61
		Verbal IQ	66
		Performance IQ	65

Mr. Durant's most recent IQ places him in the Extremely Low range (i.e. Mild Mental Retardation) of intellectual functioning. His performance on 11/15/2010 is similar to a previous measure of his intellectual functioning from the school district. All of Mr. Durant's scores are consistent with a diagnosis of Mild Mental Retardation.

Competency to Proceed:

Mr. Durant was able to state the formal charge against him, "Murder." He defined his charge as "Manslaughter." When asked for more information, he was able to state, "killing." He recognized his charge was serious. He was able to describe the seriousness of his charge in relation to a less serious charge. When asked if there was a charge more serious than Murder, he responded, "No." Mr. Durant was aware of the possible penalty he could receive if convicted of the charge, "Fifteen to thirty years in prison or life or the death penalty." Mr. Durant knew that his attorney is his best source of information regarding possible/likely sentences.

When asked for his lawyer's name, Mr. Durant stated "Grayson Smith." He stated he has met with his lawyer "seven times" regarding this case. Mr. Durant stated he could trust Mr. Smith and they could work together in his case. Mr. Durant defined his lawyer's role as "to tell me about my charges and to get me less time." He knew Mr. Smith was for him. He knew that his attorney would want him to get an easier rather than a harder sentence should he be convicted.

Mr. Durant was familiar with the pleas available in court. Initially he has some difficulty correctly defining the pleas in his own words. He repeatedly stated that *guilty* meant innocent and *not guilty* meant "not innocent." Mr. Durant was educated on the correct definitions of the terms. After education, Mr. Durant replied, "That's what I said." When asked what does innocent mean, he stated, "Found guilty." Thus it appears he was misunderstood the definition of innocent. Once he was educated on the meaning of the word innocent, he was able to correctly define the pleas *guilty* and *not guilty* in his own words. He defined *guilty* as "did it" and *not guilty* as "not did it." He was able to correctly state the consequences of the pleas. For example, Mr. Durant knew that pleading *guilty* means receiving a sentence, whereas pleading *not guilty* leads to a trial. He described the trial as "The jury sees if you are guilty or not guilty."

Mr. Durant was familiar with the roles of the various court officials. He was able to demonstrate he understood the adversarial nature of the courtroom situation. For example, he knew the defense attorney was for him and the solicitor was against him. Also, he knew he should not talk to the solicitor without his attorney present, but he appeared not able

Durant, Jeremy T.
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to state why he would not talk to the solicitor. Upon further questioning, he was able to state the solicitor would give any information he gave him to the judge which would be bad for him. He knew the jury consists of 12 members of the community who decide if he is guilty or not guilty. He also understood the jury's decision had to be unanimous. Mr. Durant knew that the judge would decide his sentence if he was found guilty. He could name the penalties at the judge's disposal (prison time, probation, community service, and house arrest). He was able to correctly define each of the possible sentences. Mr. Durant understood the use of evidence in a hypothetical court case and in his case. He understood the use of witnesses in a court case. He defined a witness as "a person been there at the crime when it happened and saw it happen." Mr. Durant knew that his attorney is his best source of information regarding evidence and witnesses in his case.

Mr. Durant was familiar with plea bargaining. He defined a plea bargain as "you say you're guilty to get lesser time." He knew his lawyer would be the person to assist him in getting a plea bargain, but it would be his decision to accept a plea bargain if one was offered. He appeared understand the exclusionary nature of a guilty plea. Mr. Durant was able to state the importance of appropriate courtroom behavior. He stated that he could not be forced to talk in court whether he wanted to or not. He also stated that if someone were on the witness stand giving false testimony that the appropriate course of action would be to "tell my lawyer."

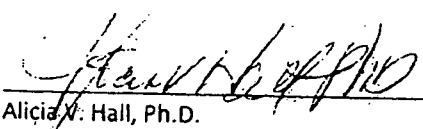
Conclusion:

Mr. Durant meets the criteria for a diagnosis of mental retardation, which requires concurrent deficits in intellectual and adaptive functioning, present before the age of 18. Previous psychological testing by the Florence County School District in 1997 and SCDDSN in 2010 places Mr. Durant's IQ in the extremely low to borderline range; in addition, his adaptive functioning has consistently been poor in all areas (communication, daily living skills, and social skills per Vineland, in functional academic skills, and employment). A recent evaluation by DMH indicated he does not suffer from mental illness.

Mr. Durant appreciates the gravity of his legal situation. He was able to demonstrate an understanding of his charges, as well as a factual and a somewhat rational understanding of legal proceedings. He demonstrated an adequate ability to assist his attorney in his defense and to participate meaningfully in a trial. In order to insure Mr. Durant is able to participate meaningfully in a trial, it will be important for his lawyer to take the time to make sure Mr. Durant understands information that will be presented in court and that he understands the consequences of any decisions he must make.

We therefore respectfully offer the following opinions:

Mental Retardation:	Yes
Competency to Stand Trial:	Yes


Alicia V. Hall, Ph.D.
Chief Psychologist
State-Level Psychological Examiner
SC License # 1068
SCDDSN Central Office

Date signed: 12/20/10

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

State of South Carolina

-VS-

Jeremy Durant

Defendant

IN THE COURT OF GENERAL SESSIONS

AFFIDAVIT OF DEFENDANT FOR
GUILTY PLEA

The Defendant states to the Court that the Defendant wants to plead guilty to the following charge(s): ABJIAN

In connection with the plea, I certify that the answers to the following questions are true:

BACKGROUND OF DEFENDANT

- 1) How old are you? 18
- 2) How far did you go in school? 12th
- 3) (a) Can you read and write the English language? ☒ YES ☐ NO
 (b) Are you able to read and understand this form? ☒ YES ☐ NO
 (c) If not, who is explaining it to you and filling out your answers?
 Name of person: Grayson Smith
- 4) What kind of work do you do? Unemployed
- 5) Have you ever been treated for abuse of alcohol or drugs or for mental illness?
☐ YES ☒ NO
 If so, when? N/A
 For How long? N/A
N/A Did you successfully complete the program? ☐ YES ☐ NO
- 6) Have you taken any medication, drugs or alcohol in the last 24 hours?
☐ YES ☒ NO
 If yes, What? N/A
 How much? N/A

When? N/A

today? N/A Does this affect your ability to know and understand what you are doing here
 _____ YES _____ NO

7) Are you today under the influence of any medications, ~~drugs~~ or alcohol?
 _____ YES _____ ☒ NO

8) Are you today aware of any physical, emotional or nervous problem that might keep you from understanding what you are doing?
 _____ YES _____ ☒ NO

9) Have you ever been ordered by a Judge to submit to a mental evaluation to determine your competency to stand trial?
 _____ YES _____ ☒ NO

WAIVER OF CONSTITUTIONAL RIGHTS

1) Do you understand that you have a right to remain silent, that is your rights against self incrimination? You cannot be compelled or forced to testify or give evidence against yourself. Do you understand this right?
 _____ ☒ YES _____ NO

Do you wish to give up this right and plead guilty?

_____ ☒ YES _____ NO

2) Do you understand that you have right to a jury trial; you have a right to have a jury decide whether or not you are guilty beyond a reasonable doubt? They would base their decision upon evidence which the state presents and on any evidence you might wish to introduce. In a trial, you would be presumed innocent, and the state would have to produce evidence that would convince all 12 members of the jury that you were guilty beyond a reasonable doubt. Do you understand this right?

_____ ☒ YES _____ NO

Do you wish to give up your right to a jury trial and plead guilty?

_____ ☒ YES _____ NO

3) Do you understand that you have the right to confront and be confronted by the witnesses against you, that is, the right to see, hear and cross examine any witness that may be called against you during the trial and the right to subpoena and call witnesses in your own behalf? Do you understand these rights?

_____ ☒ YES _____ NO

Do you wish to give up these rights and plead guilty?

_____ ☒ YES _____ NO

4) If your case has not been before the grand jury, you have the right to have the case presented to the grand jury. After hearing evidence, 12 of the 18 people on the grand jury would have to agree that you were probably guilty before the charge(s) against you could be reported out as a True Bill ready for trial. A grand jury might return a No Bill, which would mean that the charge(s) would be dismissed. Do you understand this right?

_____ YES _____ NO

N/A Do you wish to give up your right to have the grand jury examine your case?
 _____ YES _____ NO

5) Do you understand that when you plead guilty you give these constitutional rights?
☒ YES ☐ NO

Is that what you want to do? ✓ YES NO

Do you understand that you ~~will~~ not get a jury trial if you plead guilty?
✓ YES NO

NATURE OF THE CHARGE AND CONSEQUENCES OF PLEADING GUILTY

1) Has your attorney discussed with you the charge(s) and possible punishment for the charge(s)?

2) What acts did you do which causes you to think that you are guilty of the charge(s) to which you now want to plead guilty? _____

3) Are you pleading guilty for any reason other than the fact that you are guilty?
 YES NO

If so, what is the other reason?

4) As you understand, the maximum possible punishment for this charge is: 10 years

5) If an offense with graduated penalties: Do you understand that if you plead guilty to this offense and you are convicted at a later time of the same crime, the punishment will be higher the next time?

6) Do you have any questions about the nature of the charge(s) against you and the possible punishment?

If so, please write your question(s) here: N/A

7) Do you understand that when you plead guilty you admit the truth of the charge(s) against you?

8) You may have defenses to the charge(s) against you. The Judge does not know whether you do or not. Do you understand that if you plead guilty you will waive or give up any defense to the charge(s)?

☒ YES ☐ NO

9) You may have given an incriminating statement in this case. Do you understand that if you plead guilty you waive or give up the right to contest or challenge whether such a statement was freely and voluntarily given in accordance with your constitutional rights?

☒ YES ☐ NO

10) Understanding the nature of the charge(s) against you and the consequences of a guilty plea, do you still wish to plead guilty?

☒ YES ☐ NO

PLEA NEGOTIATIONS

1) Has any plea agreement been made by you with the Solicitor's Office?

☒ YES ☐ NO

If so, exactly what do you understand the agreement to be? probation

2) Do you understand that the recommendation of the attorneys is not binding on the court and that the Judge could still sentence you up to the maximum if he/she felt it appropriate?

☒ YES ☐ NO

3) Do you still wish to plead guilty? ☒ YES ☐ NO

VOLUNTARINESS OF PLEA

1) Has anyone promised you anything or held out any hope of reward to get you to plead guilty?

☐ YES ☒ NO

If yes, explain: N/A

2) Has anyone threatened you or used force to get you to plead guilty?

☐ YES ☒ NO

Has anyone used any pressure or intimidation to cause you to plead guilty?

☐ YES ☒ NO

3) Have you had enough time to make up your mind as to whether or not you want to plead guilty?

☒ YES ☐ NO

- 4) Are you pleading guilty of your own free will and accord?
☒ YES ☐ NO

SATISFACTION WITH ATTORNEY

- 1) Has your attorney reviewed this form with you and answered any questions you have about it? ☒ YES ☐ NO
- 2) Are you satisfied with the manner in which your attorney has advised and represented you? ☒ YES ☐ NO
- 3) Have you talked with your attorney as often and for as long as you feel necessary for him/her to properly represent you? ☒ YES ☐ NO
- 4) Do you need more time to talk with your attorney? ☐ YES ☒ NO
- 5) Have you understood your talks with your attorney? ☒ YES ☐ NO
- 6) Has your attorney done everything for you that you feel he/she could have done or should have done? ☒ YES ☐ NO
- 7) Has your attorney done anything in this case that you feel he/she should not have done? ☐ YES ☒ NO

If yes, explain:

N/A

- 8) Are you completely satisfied with your attorneys services? ☒ YES ☐ NO
- 9) Do you have any complaints you want to make about your attorney, the solicitor or any of the police officers? ☐ YES ☒ NO
- 10) Do you understand that you have a right to appeal your guilty plea and the sentence of the court and you must do so within 10 days of the sentence? ☒ YES ☐ NO

CONCLUDING QUESTIONS

- 1) Do you understand all of these questions?

☒ YES ☐ NO

If not, which ones do you not understand? N/A

- 2) Do you now want to plead guilty?

☒ YES ☐ NO

SIGNED BY ME IN THE PRESENCE OF MY ATTORNEY, this 9th

Day of April, 20 09

Jeremy Duncan
DEFENDANT

CERTIFICATE OF COUNSEL

- 1) Print your name and telephone number. A. Grayson Smith
843 665 3055
- 2) I represent the Defendant in this case.
- 3) I have read and fully explained to the Defendant the allegations contained in the indictment(s) in this case.
- 4) To the best of my knowledge and belief the statements, representations and declarations made by the Defendant in the foregoing petition are in all respects accurate and true.
- 5) I have explained to the Defendant the charge(s) contained in the indictment(s), the possible punishment and his/her constitutional rights including his/her right to a jury trial.
- 6) I have explained to the Defendant the right to have this case submitted to the grand jury for its consideration.
- 7) In my opinion, the Defendant understands the charge, the punishment and the constitutional rights in this case.
- 8) The defendant has indicated to me that he/she wishes to plead guilty.
- 9) The plea of guilty offered by the Defendant to count(s) 1
_____ accords with my understanding of the facts that the Defendant has related to me, is consistent with my advice to the Defendant, and, in my opinion, is voluntarily and understandingly made.

SIGNED BY ME IN PRESENCE of the Defendant and after full discussion of the contents of this certificate with the Defendant, this 9th day of April, 20 09.

A. Grayson Smith
ATTORNEY FOR THE DEFENDANT

ELC
09-1584

RECEIVED

NOV 12 P 1:54

JIM DEAR Shirley.

hey Ms Shirley I SORROW what happen to vance I
 Want to Know if it okay with you Ms. Shirley and the
 family to down the charge on me please when
 I get a job from the county Education Center job
 I will give you the money and
 family some money when I get a job from when
 I did to you I can vance I promise Ms. Shirley
 please MS. Shirley why I want you and your
 family to down the charge on me please
 I miss my family and this please I will give
 you some money I promise MS. Shirley you and
 the family cause I want to get back with my
 3 kids and my mommy and my family please
 when my kids and my mommy come up here to
 see me my 3 kids be cry for me MS. Shirley I
 promise I will give you and the family some
 money when I get a job to get back and my
 feet MS. Shirley I is so sorry about what
 happen MS. Shirley please down the charge
 on me I will pay you MS. Shirley and the family
 when I get my pay check but MS. Shirley you
 and the family get to down the charge on
 me so I can pay you and the family even Friday

Copy to ELC
8-17-10

Copy to G. Smith
8-19-10

evening Ms. Shirley Please help me out when I
 will help you and your family with some money
 Ms. Shirley please down the charge on me Ms. Shirley
 as I can't back with my kids and my mother
 please Ms. Shirley do this for
 me please I promise I will be back soon
 and your family soon when I get a
 job please Ms. Shirley If you do not down
 the charge on me I don't love you no.

Shirley Bais I need to get back with my
 kids soon please Ms. Shirley please
 let me get out here back with my son and
 my daughter and my mother and my family
 please Ms. Shirley my name is Shirley Durant
 I don't want you and your family Ms. Shirley
 but I don't want you and your family with
 my heart love Ms. Shirley.

Love

MS. Shirley

I

40

!

Florence County Detention Center

6719 Friendfield Road

Effingham, SC 29541

NAME: Jeremy Duncan

C-pod #208 / Booking # 00

FLORENCE SC 295

US ARMY 2010 PM 1 F



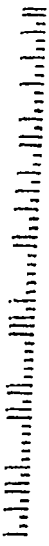
SEABIS UNIT

Shirley P.

141 Loiner Hwy

Tipton, SC 29521

2916139124



FORM 5

STATE OF SOUTH CAROLINA

County of FLORENCEJeremy T. DurantSCDC-347062

Full name and prison number (if any) of Applicant

IN THE COURT OF COMMON PLEAS

2012-CP-21-305FILED
2012 FEB -1 PM 12:26

v.

CERTIFIED: A TRUE COPY

APPLICATION FOR

State of South Carolina

Cynthia R. D. Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

POST-CONVICTION RELIEF

INSTRUCTIONS BE READ CAREFULLY

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

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

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

1. Place of detention Kirkland PTE Unit F-2-B-236
4344 Broad River Rd., Columbia, SC 29210
2. Name and location of Court which imposed sentence Court of General Sessions
Florence County, South Carolina
3. Name(s) of co-defendant(s) (if any) ---
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 89-GS-21-1584 Count One Murder

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) October 1st 2009
 (b) Pled to murder - 30 year sentence
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty yes
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
 (a) He filed a plea of guilty

- (b) id wish to change my plea to not guilty.
 (c) _____

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

- (a) he lawyer did ^{not} question the witness properly.
 (b) inadequate counsel.
 (c) Attorney failed to consult w/ husband much to testify

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

- (a) Witness did not see what was described
 (b) lawyer failed to question witness
 (c) Attorney failed to inform proper plea deal w/ court

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

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

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

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

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

- i. _____
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Attorney's dealing with court for long time asked
 (b) My attorney withdrew & lawyer sentenced without consent of Court
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? yes.
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

(a) the name and address of each attorney who represented you:

i. A. Grayson Smith - 2101 Elderberry Dr. Florence, SC 29505
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Bond hearing, indictment, trial and sentencing
 ii. _____
 iii. _____

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

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

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of FLORENCE)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jeremy Durant

SWORN to and subscribed before me this 26th
day of January, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires
My Commission Expires: October 8, 2014

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jeremy Durant
Applicant

SWORN or affirmed to and subscribed before me this
26th day of January, 2012.

[Signature]
Notary Public

My Commission Expires
My Commission Expires: October 8, 2014

2012 FEB - 1 PM 12:26

CLERK OF COURT, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	12-CP-21- 0305
	)	
Jeremy T. Durant, 347062	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed February 1, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the October, 2009 term of the Florence County Grand Jury for murder (2009-GS-21-1584). John Etheridge, Jr., Esquire represented Applicant. On October 19, 2009, Applicant plead guilty before the Honorable Michael Nettles, who sentenced Applicant to five years imprisonment. Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, the guilty plea transcript, and the inmate's records from the Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "the lawyer did not question the witness properly"
2. "ineffective counsel"
3. "attorney failed to consult with defendant on wish to testify"

Applicant does not appear to state the relief he is seeking as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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 professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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419, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2012-CP-21-0305

JEREMY T. DURANT, #347062)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

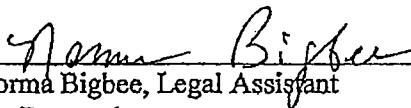
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Charles T. Brooks, III
 309 Broad St.
 Sumter, SC 29150

DATED this 9TH day of April, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2012-CP-21-305

JEREMY T. DURANT,

Plaintiff,

-vs-

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,

Defendant.

October 16, 2012
Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Judge

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

CHARLES BROOKS, Esquire
Attorney for the Plaintiff

TYSON ANDREW JOHNSON, SR., Esquire
Office of the Attorney General
Attorney for the Defendant

KRYSTAL J. SMITH
Official Court Reporter

I N D E X

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EXHIBITSNO.DESCRIPTIONID.EV.

(No Exhibits Presented)

1 OCTOBER 16, 2012

2 (WHEREAS this matter was scheduled for a PCR hearing, the
3 applicant appeared along with his counsel of record. The
4 hearing began at 11:45 a.m.)

5 MR. JOHNSON: Your Honor, this is Jeremy Durant versus
6 South Carolina. It's 12-CP-21-305. He'd indicted for murder.
7 The office of John Etheridge represented him, Grayson Smith.
8 On October 19th, 2009, he pled guilty before Judge Nettles who
9 sentenced him to 43 years imprisonment and he did not appeal.
10 He is represented today by Mr. Charles Brooks and at this
11 point we'll turn it over to Mr. Charles Brooks.

12 THE COURT: Mr. Brooks.

13 MR. BROOKS: May it please the Court, Judge. I'll go
14 ahead and call Mr. Durant to the stand.

15 THE COURT: All right. Sir, if you would, please come
16 around to the witness stand and, Mr. Durant, when you get
17 around there and you can get up there, I'm going to get you,
18 if you would, to place your left hand on the Bible and to the
19 extent you can just raise your right hand a little bit.

20 WITNESS: Yes, sir.

21 THE COURT: All right, sir. Do you swear or affirm that
22 the testimony you give in this hearing will be the truth, the
23 whole truth, and nothing but the truth, so help you God?

24 WITNESS: Yes, sir.

25 THE COURT: All right, sir. Thank you very much. You

DIRECT EXAMINATION OF JEREMY DURANT BY MR. BROOKS

1 may have a seat. All right, Mr. Brooks.

2 DIRECT EXAMINATION

3 BY MR. BROOKS:

4 Q: Mr. Durant, you pled guilty to these charges; is that
5 correct?

6 A: Yes, sir.

7 Q: You've got to speak up.

8 A: Yes, sir.

9 Q: Okay. Now, you've got to speak up because that lady
10 sitting right there with that thing in front of her face ---

11 A: Yes, sir.

12 Q: --- is taking down everything that we say and you've got
13 to talk. You can't talk like we were talking in the other
14 room where we just nod our head and say uh-uh or uh-huh. Do
15 you understand that?

16 A: Yes, sir.

17 Q: Okay. Now, you had Grayson Smith as your lawyer?

18 A: Yes, sir.

19 Q: Okay and you filed this post-conviction relief
20 application, PCR for short; is that right?

21 A: Yes, sir.

22 Q: And you're asking for Judge Russo to give you a new
23 trial?

24 A: Yes, sir.

25 Q: To overturn your plea; correct?

DIRECT EXAMINATION OF JEREMY DURANT BY MR. BROOKS

- 1 A: Yes, sir.
- 2 Q: Now, one of the things you told me was you were expecting
3 to get 30 years?
- 4 A: Yes, sir.
- 5 Q: And you ended up getting whether it was 43 ---
- 6 A: Forty-five.
- 7 Q: --- or 45 years; is that right?
- 8 A: Yes, sir.
- 9 Q: And that's your big gripe; is that correct?
- 10 A: Yes, sir.
- 11 Q: Okay and what else did you have an issue you wanted to
12 tell the judge about today?
- 13 A: My issues about today -- about in the mental health -- in
14 the mental -- I was in 60 days. Why you wasting it on the
15 mental health center to say two different things. That's ---
- 16 Q: Okay. I'm glad you reminded me of that.
- 17 A: Yes, sir.
- 18 Q: South Carolina Department of Special Needs ---
- 19 A: Yes, sir.
- 20 Q: --- DDSN ---
- 21 A: Yes, sir.
- 22 Q: --- they said you weren't competent to stand trial?
- 23 A: Yes, sir.
- 24 Q: And the Department of Mental Health ---
- 25 A: Say I was.

DIRECT EXAMINATION OF JEREMY DURANT BY MR. BROOKS

- 1 Q: They said you were?
- 2 A: Yes, sir.
- 3 Q: Okay and that was another issue ---
- 4 A: Yes, sir.
- 5 Q: --- you wanted to raise; is that right?
- 6 A: Yes, sir.
- 7 Q: All right and you think that maybe Mr. Smith should have
- 8 done something about that?
- 9 A: Yes, sir.
- 10 Q: Maybe had you evaluated again?
- 11 A: Yes, sir.
- 12 Q: Okay and -- and maybe he could have done something to try
- 13 to get you the 30 years instead of the 45?
- 14 A: Yes, sir.
- 15 Q: Okay. Is there anything else you want to tell the Court
- 16 about your PCR?
- 17 A: My other -- my other issue was about me having -- they
- 18 said they had agreed with the 30 years. He said him and
- 19 Grayson Smith and -- and ---
- 20 Q: The solicitor?
- 21 A: The solicitor had agreed.
- 22 Q: And you just want -- and you want to get that 30 years;
- 23 is that right?
- 24 A: Yes, sir.
- 25 Q: Okay. You felt that you were -- you were done wrong by

CROSS EXAMINATION OF JEREMY DURANT BY MR. JOHNSON

1 that; is that right?

2 A: Yes and my other -- my other issue is sign this plea, if
3 you don't sign this plea, you're going to trial and that day I
4 said, nah, I ain't about to go to trial because they got me
5 red-handed.

6 Q: They got you what?

7 A: Red -- red-handed.

8 Q: Red-handed?

9 A: Yes, sir.

10 Q: Okay, all right. Is there anything else you want to tell
11 Judge Russo?

12 A: No, sir. That's about it. That's all. That's all I got
13 to say.

14 Q: Okay. Answer any questions from Mr. Johnson.

15 CROSS EXAMINATION

16 BY MR. JOHNSON:

17 Q: Good morning, sir.

18 A: Good morning.

19 Q: I want to ask you a few questions about this plea and I
20 -- I'm not going to have too many questions.

21 A: Yes, sir.

22 Q: I want to ask you if you remember the solicitor, Mr.
23 Clements ---

24 A: Yes, sir.

25 Q: --- when he spoke. Do you remember him talking about how

CROSS EXAMINATION OF JEREMY DURANT BY MR. JOHNSON

1 ---

2 MR. JOHNSON: Just for the Court's reference, on page 10

3 of the transcript, about an inch down from the top.

4 Q: --- how we did initially make an offer of 30 years on the

5 murder ---

6 A: Yes, sir.

7 Q: --- but you chose not to accept it?

8 A: I -- I accepted 30 years. I signed -- I signed my plea

9 for 30 years -- 30 years also.

10 Q: And when -- when they made the offer of 30 years ---

11 A: Yes, sir.

12 Q: --- some time had passed where you were thinking about it

13 and at some point the State withdrew that offer.

14 A: Yes, sir.

15 Q: So it was no longer on the table. Do you remember that?

16 A: Yes, sir.

17 Q: And did you understand then when they withdrew the offer

18 that you could not accept it anymore?

19 A: No, I ain't -- I ain't been know that.

20 Q: You didn't understand that?

21 A: No, sir.

22 Q: Okay, but you do remember there was a time when that

23 offer was on the table that a lot of time was passing and you

24 were thinking about it?

25 A: Yes, sir.

CROSS EXAMINATION OF JEREMY DURANT BY MR. JOHNSON

1 Q: But during that point in time, there was no time when you
2 said yes, I'll accept it?

3 A: Right. At the time when I -- when I got sentenced, I --
4 I accepted it.

5 Q: When you got sentenced, it would have been too late to
6 accept the initial 30 year offer.

7 A: Oh, yes, sir. I -- I didn't know. I didn't know that at
8 that time.

9 Q: Okay. Was that not explained to you?

10 A: No, sir.

11 Q: Okay. Well, what Mr. Clements said, same page, page 10
12 about a third of the way down, was that you were pleading
13 straight up really with no -- with no deals.

14 A: Yeah.

15 Q: Do you remember that?

16 A: Yes, sir.

17 Q: Did you know then what straight up meant?

18 A: Not really.

19 Q: Okay, meaning that there's no deals on the table and the
20 judge can give you anything that he wanted to give you?

21 A: Yes, sir.

22 Q: Did you understand that then?

23 A: No.

24 Q: You certainly understand it now as I've explained it to
25 you?

DIRECT EXAMINATION OF JEREMY DURANT BY THE COURT

1 A: Not really because I ain't know -- I ain't know nothing
2 about no -- about no law.

3 Q: Okay. When they initially put that 30 year offer on you,
4 why didn't you just jump on that?

5 A: Because really I had wanted something lower than that.

6 Q: I can't -- I'm sorry?

7 A: Really I had wanted something lower than that. I wanted
8 like -- like less than 25 years.

9 Q: Yes, sir. Okay, thank you very much.

10 A: Yes, sir.

DIRECT EXAMINATION BY THE COURT

12 THE COURT: Mr. Durant, let me ask you something.

13 WITNESS: Yes, sir.

14 THE COURT: Let me ask you this question. If the judge
15 would have sentenced you to 30 years, would you have filed
16 this PCR application?

17 WITNESS: Yeah, trying to get something cut down a little
18 bit.

19 THE COURT: Okay. So your only -- your -- your concern
20 is that you just got more time than you think you should have
21 gotten?

22 WITNESS: Yes, sir.

23 THE COURT: And -- but did you understand or do you
24 understand that when the -- with the charge of murder.---

25 WITNESS: Yes, sir.

DIRECT EXAMINATION OF GRAYSON SMITH BY MR. BROOKS

1 THE COURT: --- the least amount you can get is 30 years?

2 WITNESS: Yes, sir.

3 THE COURT: Okay, all right. Anything further, Mr.

4 Brooks?

5 MR. BROOKS: No other questions, Judge.

6 THE COURT: All right, thank you very much.

7 WITNESS: All right.

8 THE COURT: Mr. Durant, you may step down, sir.

9 (Whereupon, the witness leaves the stand at 11:54 a.m.)

10 MR. BROOKS: Judge, I call Mr. Smith to the stand.

11 THE COURT: All right.

12 MR. BROOKS: Ready, Judge?

13 THE COURT: Yes, sir.

14 GRAYSON SMITH, testifies as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q: Mr. Smith?

19 A: Yes, sir.

20 Q: How are you?

21 A: I'm doing well.

22 Q: You represented Mr. Durant?

23 A: I did.

24 Q: And you were court-appointed?

25 A: I was.

DIRECT EXAMINATION OF GRAYSON SMITH BY MR. BROOKS

1 Q: Okay. Can you -- can you give a brief summary of what
2 the State's case was against Mr. Durant?

3 A: I think -- I'll try. Would you like to know my
4 recollection of the facts of the case? Is that what you're
5 asking?

6 Q: Yeah and what -- what the evidence the State had or what
7 -- you know, what was their case against him and a
8 recollection of facts?

9 A: Okay. Well, initially their case was -- or their version
10 of the facts were that Jeremy Durant and Randy Baker and a
11 couple other folks were hanging out on the stoop when Mr.
12 Vance Bass was walking down the street and that Randy Baker,
13 in my opinion the better looking and certainly much more
14 intelligent of the two young men, dared Mr. Durant to go hit
15 Mr. Bass and handed him brass knuckles to do it with.

16 I think both those young men had been drinking. I think
17 their version of the facts would have been that he did do
18 that. He approached Mr. Bass and that he hit him several
19 times and that then he went and got a metal pole and came back
20 and continued to strike Mr. Bass. Their version of the facts
21 would have also included something I found out on the date we
22 did the guilty plea for the first time, which was that there
23 were some allegations that either Mr. Durant or Mr. Baker or
24 both or both plus these other folks that were there attempted
25 to drag Mr. Bass down into an intersection so it would look

DIRECT EXAMINATION OF GRAYSON SMITH BY MR. BROOKS

1 like he got hit by a car after they realized the damage they
2 had done.

3 They -- shortly after Mr. Durant was incarcerated, he
4 wrote a very -- to his credit, I think it was somewhat of an
5 apology letter directly to the victim's family. That was
6 obviously against my advice. I had no idea he would be doing
7 that. So that became part of their case as well. If I
8 remember correctly, it was very much an admission and asked a
9 request for forgiveness.

10 Q: Thank you. Now, was there ever a deal of 30 years?

11 A: Initially, there was a deal of a negotiated 30 years. I
12 have the plea offer here in my file, 30 years negotiated to
13 murder. My first trip to the detention center, I sat down
14 with Jeremy, Mr. Durant, and spoke with him at length about
15 the seriousness of these charges and shared the deal with him.

16 He at that point in time asked -- after we talked about
17 the allegations and about his version of what happened, asked
18 if probation would be an option. That was a red flag to me.
19 Not only was our -- you know, Jeremy and I got to be close
20 over the course of my representation, but in the beginning --
21 I was already representing him on some other charges when this
22 happened, but at the beginning of our relationship I was very
23 concerned with his ability to communicate and whether that may
24 be indicative of some deeper-seated problems. That's when we
25 had him evaluated.

DIRECT EXAMINATION OF GRAYSON SMITH BY MR. BROOKS

1 Q: And what happened with that evaluation?

2 A: Do you mind if I refer to my notes?

3 Q: Sure.

4 A: It's my recollection that on August 12th, 2010, he was
5 evaluated by DDSN, Department of Disabilities and Special
6 Needs. They issued a report on August 25th, 2010, that said:
7 that as to mental retardation, yes, in parantheses,
8 provisional; as to competency to stand trial, no, and likely
9 restorable.

10 Q: And what happened after that?

11 A: Well, after that Judge Nettles, if I'm not mistaken,
12 signed -- let's see -- an order dated September 21st, 2010,
13 essentially saying that he is currently incompetent to stand
14 trial, but that he is likely to become competent in the
15 foreseeable future and then sent him to the South Carolina
16 Department of Mental Health. I took issue with even the
17 notion that somebody's mental retardation could be restored,
18 quite frankly in the spirit of full disclosure.

19 Q: And Mental Health said that he was competent to stand
20 trial?

21 A: I think on March 10th, 2011, the Department of Mental
22 Health opinion on criminal responsibility: criminally
23 responsible. Opinion on capacity to conform: had capacity to
24 conform. That was I think again on March 10th, 2011, and then
25 the date of the plea was July 27th, 2011.

DIRECT EXAMINATION OF GRAYSON SMITH BY MR. BROOKS

1 Q: Was there any intent to maybe get -- since you had
2 inconsistent reports from two agencies, was there any attempt
3 to perhaps get an independent evaluation done?

4 A: We did not do an independent evaluation. What mitigated
5 against doing an independent evaluation was the progression or
6 the progress that I felt Jeremy and I made in our
7 relationship. Looking back, should I have gotten an
8 independent evaluation? Maybe. I don't know, but again, over
9 the course of our relationship, Jeremy became much more in
10 tune, if you will.

11 As a matter of fact, if I recall correctly, Judge Ralph
12 King Anderson used to have a somewhat burdensome affidavit of
13 guilty plea and a certificate of counsel that we would have to
14 fill out and I remember doing that because of some of the
15 issues we had had in this case. If I recall correctly, I
16 think we made it the Court's exhibit that day. That to me
17 showed that Jeremy knew what was going on. He knew.

18 The change I saw in this young man over the course of my
19 representation was significant. He went from just being
20 completely out of touch to really understanding and was
21 visibly -- visibly affected by the consequences of his actions
22 and because I saw his mental comprehension evidenced in this
23 affidavit that we filled out and his emotional reaction to
24 what happened, I felt like, you know, we were ready to
25 proceed.

CROSS EXAMINATION OF GRAYSON SMITH BY MR. JOHNSON

1 MR. BROOKS: I have no other questions for this witness,
2 Judge.

3 THE COURT: Mr. Johnson?

4 CROSS EXAMINATION

5 BY MR. JOHNSON:

6 Q: Would you tell -- would you tell the Court a little bit
7 more about the -- the affidavit, the checklist? You were
8 asking me about that and I don't have it.

9 A: Right.

10 Q: Can you tell us what it is?

11 A: I think for the record I'll try to give a brief
12 description. I think that the Court is probably familiar with
13 it.

14 THE COURT: I've seen it, yeah.

15 A: It's 10 to 12 pages of what would be a pretty -- you
16 know, a thorough colloquy, if you will. You know, it goes
17 over their -- their rights with them, asks them if they've --
18 you know, if they've ever experienced any type of addiction or
19 drug or alcohol abuse, makes sure they haven't done anything
20 in the last 24 to 48 hours to affect their ability to
21 understand what they're doing, and it's much more detailed,
22 but I -- i don't recall it right now. And then at the end, it
23 has a place for the defendant to sign and then there's a
24 certificate of counsel typically attached where I, you know,
25 would sign.

CROSS EXAMINATION OF GRAYSON SMITH BY MR. JOHNSON

1 Q: All right. So it wasn't just the affidavit; there were
2 other things that you looked at that factored into your
3 analysis as to whether he was going to be competent to enter a
4 plea?

5 A: Yes.

6 Q: So in your professional judgment, what other things are
7 you looking at?

8 A: Well, my personal observations of him, of his -- again,
9 of his mental comprehension and of his emotional reaction to
10 the situation.

11 Q: What was his emotional reaction?

12 A: He was very upset I think once he -- once he, you know,
13 grasped what was going on and the consequences of his actions
14 that day.

15 Q: What did you make of him moving the body as if it were
16 going to appear to be a car accident?

17 A: Quite frankly, I don't know that that was true. That was
18 an allegation that the State made on the day of the plea and
19 that was the first time I had heard anything about it.

20 Q: Okay.

21 A: If you're asking me about what I -- what I think about
22 it, assuming that fact is true, then I can answer that
23 question.

24 Q: Yes, I am.

25 A: But if you're asking me what I think about those actions,

CROSS EXAMINATION OF GRAYSON SMITH BY MR. JOHNSON

1 I'm not sure if that happened or not is the point I'm trying
2 to make.

3 Q: Well, if we -- if we take that as truth, then what would
4 that seem to tell you about it?

5 A: If -- if we take that as truth, it would be speculation,
6 but that would at least -- and I think Judge Nettles may have
7 referenced it in the transcript at times. That would show
8 that he had the mental capacity to try to cover up his
9 actions.

10 Q: Now, in your professional experience, if you had any hint
11 or reservation about the competency of a client, in particular
12 this one, to enter a plea fully, knowingly, would you have
13 stopped the proceeding and say we can't -- we can't plea
14 because he doesn't understand?

15 A: I have had that happen before and we have stopped a plea.
16 You know, I've seen it happen. This is not something -- this
17 is not a case where, you know, I met a client at his initial
18 appearance and then his docket appearance and then we show up
19 on the date of plea and I realize that there may be a problem
20 with mental capacity in my conversation in the back room
21 before we go in front of the Court.

22 This is not that situation. I was -- you know, I met
23 with Jeremy numerous times and I was very aware that this was
24 an issue and I felt like that he knew exactly what he was
25 doing on the day we were in court.

1 MR. JOHNSON: No further questions, Your Honor.

2 THE COURT: Thank you and just for the record, I was
3 reviewing the transcript. On page 29 of the transcript is
4 where the Court recognizes Mr. Smith during the plea and prior
5 to his speaking on Mr. Durant's behalf, he does in fact enter
6 that affidavit of guilty plea and his certificate of counsel
7 before the Court. So that was done as part of the record. I
8 don't have it here in front of me, but it is a part of the
9 record. Mr. Brooks, any further questions of this witness?

10 MR. BROOKS: No, sir.

11 THE COURT: Thank you, Mr. Smith. You may step down,
12 sir.

13 WITNESS: Thank you, Your Honor.

14 (Whereupon, the witness leaves the stand at 12:10 p.m.)

15 THE COURT: Any further testimony, sir?

16 MR. BROOKS: No, sir. That's the applicant's case.

17 THE COURT: All right. Mr. Johnson, anything further
18 from the State as far as witnesses?

19 MR. JOHNSON: Nothing further, Your Honor.

20 THE COURT: All right. Mr. Brooks?

21 MR. BROOKS: May it please the Court, Judge. We would
22 respectfully ask the Court to grant Mr. Durant's post-
23 conviction relief based on the testimony presented by him plus
24 Mr. Smith. We just -- we submit to the Court that it's
25 sufficient to grant Mr. Durant a new trial.

1 THE COURT: All right.

2 MR. JOHNSON: And we're asking that the Court deny and
3 dismiss the case, Your Honor, as it's clear that Mr. Smith had
4 been in this situation before, had a good framework for
5 understanding what to do when your client is not capable of
6 understanding their plea is all about. This was not that case
7 and the evidence was that he used his experience to make a
8 decision to go forward.

9 He exercised his due diligence in asking the right
10 questions, looking at both evaluations with an eye toward
11 asking the question whether this young man would have had the
12 capacity to knowingly and voluntarily enter a plea, and made
13 the decision that he did. So looking at that decision conduct
14 in hindsight now would be improper and inappropriate so we
15 would ask the Court to deny and dismiss the application.

16 RULING OF THE COURT

17 THE COURT: I've reviewed the materials before the Court,
18 the transcript of the plea, listened to the testimony. I'm
19 going to respectfully deny the application. I think it --
20 unfortunately, I think that the main concern for Mr. Durant's
21 application is that he's -- he's not satisfied with the
22 sentence that was imposed. He wanted a reduction in that
23 sentence and, of course, that's certainly not the basis for
24 successful application.

25 In reviewing the transcript, I think it was -- at the

1 time of the plea, apparently the Court went over thoroughly
2 the -- in the Blair hearing, the issue regarding competence
3 and addressed all those issues throughout the proceeding. As
4 far as the offer, the recommendation by the State, any
5 negotiations, I think the State made it clear that those
6 offers were -- initially on the table were withdrawn and that
7 Mr. Durant was before the Court without any offer and that it
8 was just a straight up plea and based on everything that's
9 before the Court, I don't find that he's met his burden with
10 regards to his application. I'm going to respectfully deny
11 the application.

12 (Whereupon, the proceeding ends at 12:14 p.m.)

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14 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Florence County, South Carolina, on the 16th
12 day of October, 2012.

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

15
16 Krystal J. Smith

17 Court Reporter
18

19 Florence, South Carolina

20 December 20, 2012
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Jeremy T. Durant, # 347062,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

12-CP-21-305

ORDER OF DISMISSAL

FILED
2012 OCT 29 PM 3:05
CONNIE BEEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 1, 2012. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on October 16, 2012, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Grayson Smith, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the October, 2009 term of the Florence County Grand Jury for murder (2009-GS-21-1584). John Etheridge, Jr., Esquire represented Applicant. On October 19, 2009, Applicant plead guilty before the Honorable

1 of 5

CERTIFIED: A TRUE COPY

Connie Beel Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Michael Nettles, who sentenced Applicant to five years imprisonment. Applicant did not appeal the conviction or sentence.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "the lawyer did not question the witness properly"
2. "ineffective counsel"
3. "attorney failed to consult with defendant on wish to testify"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Mental competence allegation

Applicant testified his counsel was ineffective because he feels he should have had him mentally evaluated again to see if he was fit to enter a plea, and that he was under the impression he would receive thirty years imprisonment, instead of forty-three years imprisonment.

Counsel testified on August 12, 2010 Applicant was evaluated by the South Carolina Department of disabilities and special needs who issued a report that Applicant qualified as mentally retarded and was not competent to stand trial. On March 10, 2011, the Department of Mental Health indicated Applicant had the capacity to conform his conduct to the law and counsel determined his

client was competent to enter a guilty plea. Counsel testified further that Applicant's mental comprehension was evidenced in an Affidavit prepared in preparation and in counsel's analysis, considering the medical reports he had to work with coupled with his own professional experience, Applicant was mentally competent to enter a guilty plea. Counsel testified he has stopped a plea before, would do so again, and that if he had any reservation about Applicant he would not have hesitated to stop this plea. Counsel averred did not indicate that Applicant would receive thirty years instead of forty three. I find counsel credible in this regard, and I do not find Applicant's testimony credible.

I find that counsel's performance was not deficient under these circumstances. Applicant has not overcome the presumption that counsel rendered effective assistance, nor has he proven prejudice in this case. I find counsel's actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

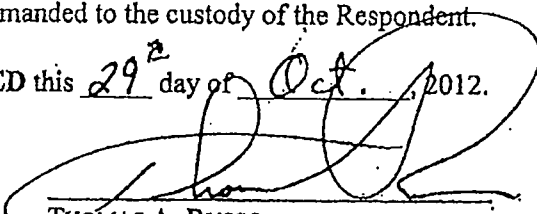
CONCLUSION

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29th day of Oct., 2012.

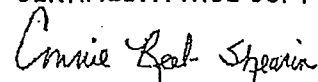

THOMAS A. RUSSO
Presiding Judge
12th Judicial Circuit

Florence, South Carolina.

FILED
2012 OCT 29 PM 3:05
CONNIE REEL-SHEARIN
CLERK & GS
FLORENCE COUNTY, SC

5 of 5

CERTIFIED: A TRUE COPY


CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Thomas McLadden Florence County Sheriff

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER TERM 2009

THE STATE

vs.

RANDY ANTONIO BAKER

JEREMY TERRELL DURANT

E. L. CLEMENTS, III

ARREST WARRANT NUMBER

K389968 K615054

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

For person of Petit Jury

Date:

2009 OCT -1 AM 9:52
CLERK
FLORENCE COUNTY

FILED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

MURDER

At a Court of General Sessions, convened on OCTOBER 1, 2009 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116

16-03-0010, 0020; 16-01-0060

That RANDY ANTONIO BAKER and JEREMY TERRELL DURANT did in Florence County, on or about May 21, 2009, feloniously, willfully and with malice aforethought kill one Rush Vance Bass, by means of beating him to death with brass knuckles and/or a metal pole in the town of Timmons ville, SC, and that the said Rush Vance Bass did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

JEREMY TERRELL DURANT

AKA:

Race: B Sex: M Age: 20

DOB: SS#:

Address:

City, State, Zip: Timmonsville, SC 291610000

DL#: SID#:

CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

O: MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-21-1584

A/W#: K615054

Date of Offense: 5/21/2009

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.TEST: CLEMENTS, III, E. L. 15295 SC Bar# Jeremy Durant Defendant Attorney for Defendant 74920 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 43 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and appliedby the State Department of Corrections. 797 days☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

Set by SCDPPPS

Recipient:

Fine:

4-1-206 (Assessments 107.5 %)	\$	
4-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
4-1-211(A)(2) (DUI Surcharge)	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
56-1-286 (DUI Breath Test)	\$25	\$
also 47.9 (Public Def/Prob)	\$500	\$
4-1-212 (Law Enforc. Funding)	\$25	\$
4-1-213 (Drug Court Surcharge)	\$150	\$
0-21-114 (BUI Breath Test Fee)	\$50	\$
5-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
also 90.5 (SCCA Surcharge)	\$5	\$ 5.00
to County (if paid in installments)	\$	\$
TOTAL		\$ 105.00

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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