GROUND ONE

The State violated Petitioner's United States Constitutional Right under the 4th Amendment against Unreasonable Search and Seizure, the Petitioner's United States Constitutional Right under the 5th Amendment against Self-Incrimination, Petitioner's United States Constitutional Right under the 6th Amendment to Effective Assistance of Counsel and Self Representation, and Petitioner's United States Constitutional Right under the 14th Amendment to Due Process.

GROUND TWO

The State violated Petitioner's Due Process rights under the 5th and 14th Amendments of the United States Constitution, Due Process rights under Article I, Section I, Paragraph I of the Georgia Constitution of 1983, and the rights to Effective Assistance of Council and to Self-Representation under the 6th Amendment of the United States Constitution, by criminal and unethical acts resulting in the intentional intrusion into Core Original Work Product which formulated the Defense trial preparations, without any legitimate purpose, by which the State obtained insight into Defense strategy that the State exploited in its trial preparation to gain an unfair tactical advantage against Petitioner, resulting in prejudice against Petitioner.

GROUND THREE

Petitioner's Due Process rights under the 5th and 14th Amendments of the United States Constitution and under the Georgia Constitution of 1983, Article I, Section I, Paragraph I, were violated by deprivation of a fair and impartial judicial officer who was actually prejudiced against Petitioner and whose presiding over the case created an unfair probability of prejudice.

GROUND FOUR

Petitioner's Sixth Amendment right to Effective Assistance of Counsel was violated by the actions and omissions of Defense Attorneys Floyd M. Buford Jr. and Franklin J. Hogue. Petitioner's Defense Attorneys failed to raise challenges against Involuntary Statements of Petitioner, Prosecutorial Misconduct, and the intentional theft by State Agents of Petitioner's Core Opinion Work Product and research, which formed the Defense strategy, which was solicited by and in conjunction with Defense Attorneys. Defense attorneys failed to review, argue and or concealed discovery material from Petitioner resulting in the admission of a second consent search. Defense Attorneys failed to present and argue on behalf of the Petitioner, the denial of medical treatment at the time of the second consent search, despite having tangible evidence of the existence of such evidence.

IN THE SUPERIOR COURT OF RICHMOND COUNTY

STATE OF GEORGIA

STEPHEN MARK MCDANIEL,	)	
	)	
Petitioner,	)	Civil Action File No.: 2018-RCHM-2
	)	
VS.	)	
	)	
EDWARD PHILBIN,	)	
	)	
Respondent.	)	

ORDER

A two-day bi-furcated evidentiary hearing in this habeas proceeding was held August 17, 2018 and November 30, 2018.[1] (T-2, p. 216, lines 1-2, p. 135, line 22). The evidentiary record contains twenty-three exhibits on behalf of the petitioner and fifty exhibits on behalf of the respondent. Many of these exhibits are transcripts of trial court proceedings and filings duplicative of exhibits attached to the petitioner's application for writ of habeas corpus. The evidentiary record also contains testimonial evidence from petitioner's lead defense counsel, his co-defense counsel who served as petitioner's primary litigator[2], and the Assistant District Attorney ultimately assigned primary trial responsibility for his prosecution. The petitioner, Stephen Mark McDaniel, filed an affidavit but did not testify under oath during his evidentiary hearing.[3] This Court has thoroughly reviewed the evidentiary record and enters the following findings of fact and conclusions of law.

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[1] Citations to the August 17, 2018 hearing transcript are denoted herein as "T-1." Citations to the November 30, 2018 hearing transcript are denoted herein as "T-2."

[2] Counsels' testimony included matters growing out of the attorney client relationship and involved petitioner's claims that his plea of guilty was not entered freely and voluntarily and ineffectiveness. As such the communications are waived. Bailey v. Baker, 232 Ga. 84, 205 S.E.2d 278 (1974), citing United States v. Woodall, 438 F.2d 1317 (5th Cir. 1970); See also Waldrop v. Head, 272 Ga. 572, 532 S.E.2d 380 (2000); Roberts v. Greenway, 233 Ga. 473, 477, 211 S.E.2d 764 (1975) (attorney may testify when habeas petitioner challenges validity of guilty plea).

[3] In resolving disputed issued of fact, this Court gives greater credence to the transcript of evidence concerning the entry of McDaniel's plea of guilty than to his affidavit. See Wilson v. Hopper, 234 Ga. 859, 218 S.E.2d 573 (1975), citing Anglin v. Caldwell, 227 Ga. 584, 182 S.E.2d 120 (1971); O.C.G.A. § 9-14-48(a). The Court also credits the

Appendix B

I. Procedural History and Findings of Fact.

Background.

The petitioner, Stephen Mark McDaniel, challenges his April 21, 2014 conviction for malice murder entered in the Superior Court of Bibb County pursuant to his negotiated plea of guilty to indictment #13CR69874. (R-2, Indictment, R-49, Final Disposition). In response to what has been described as a vicious murder, dismemberment, and high-profile case, McDaniel was indicted for the offense of malice murder and the State sought the death penalty. (T-1, p. 162, lines 8-8, p. 56, lines 21-23, R-2, Indictment #11CR67684, R-3, Notice of Intention to Seek the Death Penalty).[4] McDaniel received a sentence of life imprisonment with the possibility of parole. (T-1, p.137, line 25, T-2, p. 138, lines 1-2).

McDaniel received a juris doctorate approximately one month before he admittedly murdered Lauren Giddings on or about June 30, 2011. He had also obtained an advanced certificate in legal research writing and drafting. (T-1, p. 87, lines 6-11). His victim, Ms. Giddings, also was a law school graduate as well as McDaniel's next-door neighbor in the apartment building where they lived. (T-1, p. 57, lines 9-13). McDaniel interned while in law school for the Bibb County District Attorney's Office in the spring semester of 2011. A Superior Court Judge for whom McDaniel previously served as a law clerk recused himself from McDaniel's criminal case. (T-1, p. 183, lines 11-15, p. 34, lines 16-21, T-2, p. 136, lines 10-12).

McDaniel became a suspect when a Macon Police Department Detective saw him give two television interviews on the day of the murder. (T-2, p. 150, lines 16-25, p. 151, lines 18-

undisputed testimonial evidence of counsel which shows McDaniel's plea of guilty was entered freely and voluntarily, knowingly and intelligently.

[4] The Grand Jury returned three indictments against McDaniel. The initial indictment filed November 15, 2011 alleged death caused by dismembering. However, the evidence would show that the dismemberment occurred post-mortem. (T-1, p. 61, lines 19-25, R-2, Indictment 11CR67684). A legal challenge to this indictment was avoided by an indictment filed October 29, 2013. (Id., p. 61, lines 23-25, p. 62, line 1, R-31, Indictment 13CR69874).

20). Local investigators and Detectives for the Mercer Campus Police Department, the Macon Police Department, District Attorney's Office, and Georgia Bureau of Investigation (GBI) participated in components of the resulting criminal investigation. McDaniel's attorneys were prepared to express severe criticism of the crime scene maintenance and investigative steps taken by law enforcement officials at trial. (T-1, p. 185, lines 11-20).

The GBI searched computers and electronic equipment obtained from McDaniel's apartment. (T-1, p. 63, lines 20-25).[5] Keys to Ms. Giddings' apartment door and every door in the building located within McDaniel's apartment, a hacksaw sleeve, and women's underwear which contained Ms. Gidding's DNA were among the most damaging pieces of physical evidence located and obtained from within McDaniel's apartment. (T-2, pp. 160-165). The computer evidence obtained by the GBI showed McDaniel peeping into Ms. Giddings' apartment and internet searches about having sex with dead people and things of that nature. (T-1, p. 141, lines 17-19, p. 142, lines 2-4).

In addition, the Macon Police Department outsourced more than two hundred pieces of evidence to the Federal Bureau of Investigation ("FBI") which carried out the bulk of the forensic work. (T-1, p. 149, lines 13-18). Relatively late in the case, the FBI also became involved for the purpose of recovering McDaniel's deleted video files. (T-2, p. 155, lines 17-19).

McDaniel was a highly knowledgeable and intelligent client with the benefit of both an undergraduate and post-graduate legal education who actively involved himself in his case. (Id.,

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McDaniel was named in a third indictment which alleged thirty counts of sexual exploitation of children. (R-19, Indictment 11CR67685).

[5] The prosecuting attorney with primary trial responsibility provided a thoroughly detailed summary of the seized evidence during her testimony in this proceeding which this court incorporates by reference within this Order. (T-1, p. 57, lines 9–25, p. 58, lines 1-25, p. 59, lines 1-5). Of note here, evidence obtained from McDaniel's computer also included images and materials depicting an interest in sexual gratification from dismembered bodies and

p. 159, lines 6-11). He assisted his attorneys by performing a substantial amount of legal research, providing it to his attorneys, and participating in the development of his defense theories and strategies. (T-2, p. 154, lines 11-15). McDaniel provided in excess of 800 pages of notes and legal research to his attorneys, made theoretical suggestions, and was particularly familiar with the record of his case. (T-2, p. 81, lines 1-3, p. 171, lines 1-15, p. 132, lines 3-4, p. 181, lines 2-11). While some of McDaniel's efforts were helpful, others reflected the perspective of a law student lacking trial court experience who had never been in a courtroom in his life until his case. (Id., p. 161, lines 10-14).

Trial Counsel.

Four retained attorneys with an estimated eighty-five years of trial experience, a consultant, and multiple experts characterized by McDaniel and his parents as a "dream team" represented McDaniel. (T-1-p. 136, lines 23-25, p. 160, lines 23-24, p. 169, lines 13-15). McDaniel's initially retained and lead trial counsel, Floyd Buford, Jr., has practiced law for approximately thirty-three years. Mr. Buford has a general trial practice in Macon, Georgia. Since beginning his practice in 1985, he has handled over 7,000 cases and consulted on an estimated 7,000 more. He has acted as lead counsel in 65 counties in Georgia and tried cases in federal and state courts. He is AV certified by Martindale-Hubbell and a member of the American Board of Trial Advocates. He is a life member of the National Association of Criminal Defense Lawyers and a graduate of the National College of Criminal Lawyers. (T-1, p. 168, lines 1-21). He is admitted to practice in the U.S. District Courts for the Northern, Middle, and Southern Districts of Georgia, the Eleventh Circuit Court of Appeals, and the United States

multiple internet searches of Ms. Giddings, whose torso was discovered in a trash can on the premises of the apartment complex where McDaniel and Ms. Giddings both lived. (T-1, p. 57, lines 23-25).

Supreme Court. He has handled death penalty litigation in the Eleventh Circuit and in the Supreme Court of the United States. (T-1, p. 187, lines 21-24).

Buford had early concerns about McDaniel's competency which soon dissipated as he and McDaniel got to know each other during several visitations in the weeks following Buford's retention, McDaniel started communicating, and it became apparent that McDaniel knew exactly what was involved in his case. (T-1, p. 84, lines 1-2, p. 159, lines 20-23). McDaniel and his attorneys got along very well, talked a lot about his case, and had a normal relationship. (T-1, p. 85, lines 23-25, T-2, p. 154, lines 9-10). Based on McDaniel's initial failure to verbally communicate with him, Buford was concerned that McDaniel was "faking" his behavior shortly before his arrest. Buford also considered whether McDaniel was malingering by alleging he could not walk which resulted in the use of a wheelchair during his initial appearance hearing. (T-1, p. 110, lines 21-23, p. 180, lines 8-15, p. 86, lines 1-7).

McDaniel's attorneys are experienced in addressing competency, and McDaniel was lucid, consistent, and engaged throughout their representation. (T-2, p. 154, lines 6-10, p. 182, lines 24-25). Neither McDaniel nor his family made counsel aware of any type of mental health history or condition and his attorneys had no basis on which to request any type of evaluation of Mr. McDaniel. (Id., p. 180, lines 13-23). In counsel's estimation, McDaniel is "smart as a whip" and competent, though socially awkward. (T-1, p. 182, lines 16-23). Indeed, no evidence to support a showing of McDaniel's incompetency to stand trial or otherwise has been presented to this Court.

McDaniel's attorneys maintained constant communication with him through a lot of visitations in the Bibb County Law Enforcement Center and they briefed McDaniel regularly about his case. (T-1, p. 172, lines 7-24, p. 170, lines 7-23). Except for the evidence of

pornography which McDaniel prohibited his attorneys from sharing with her, counsel also briefed McDaniel's mother about his case on a regular basis. (T-1, p. 174, lines 6-8). In addition, they facilitated a host of special privileges and advantages for McDaniel within the Law Enforcement Center such as enabling him to work out of the infirmary with the use of a computer. (Id., p. 99, lines 1-4). These privileges also included a special phone call to McDaniel's grandfather during his hospitalization. (T-1, p. 186, lines 19-22).

When the District Attorney pursued the case as a death penalty case, Buford felt like a defense team was needed as required under the unified appeal procedure for death penalty cases. (T-2, p. 119, lines 17-20). In consultation with McDaniel, Buford associated Frank Hogue and two of Hogue's Associates in January of 2012. The association pleased McDaniel's parents who were excited the attorneys had joined forces on the case. (T-1, p. 169, T-2, p. 172, lines 11-13).

Hogue was admitted to the State Bar in 1991 and has devoted his career to his private criminal defense practice. He estimates he has handled between eighty and one hundred murder cases, and about ten death-penalty cases. He has worked with Buford several times as co-counsel on behalf of clients accused of murder. (T-2, p. 179, lines 12-24, p. 180, line 1). He has also represented other clients accused of dismembering their victims. (Id., p. 103, lines 10-11).

McDaniel's attorneys spent many, many hours working on his case. (T-1, p. 110, lines 21-23). For many years, McDaniel's case was the major case and focus in counsel's office and part of counsel's day every day was spent on McDaniel's business. (Id., p. 160, lines 17-25). McDaniel's attorneys allocated the workload and divided responsibilities. (T-1, p. 169, lines 20-22). For example, Buford filed a motion to disqualify the District Attorney's Office, reviewed the video evidence produced during discovery, issued subpoenas to the District Attorney and several media outlets for unpublished photographs, and filed a motion to change venue for trial

which was granted. (T-2, p. 167, lines 12-16, T-1, p. 196, lines 14-15(T-1, p. 169), p. 170, lines 1-2). Hogue filed a lot of suppression motions and was successful in getting a portion of McDaniel's custodial statements held inadmissible. (T-1, p. 170, lines 2-3, T-1, p. 191, lines 10-13). As discussed more fully below, Hogue also worked on McDaniel's allocution based on facts conveyed by McDaniel. (T-1, p. 176, lines 14-24).

Hogue also reviewed everything he received in discovery, investigated, and talked with many witnesses who gave statements in connection with McDaniel's case. (Id., p. 61, lines 17-61, T-2, p. 174, lines 7-8, T-2, 62, line 25). He also sent an associate to the jail with a laptop computer so McDaniel could listen to audio files produced during discovery. (Id., p. 92, lines 2-12). Hogue provided some 1100 pages in initially produced discovery materials to McDaniel in written and digital form before he ultimately provided everything he received to McDaniel. (Id., p. 90, lines 5-12). As reflected in the Bibb County Case Display report, McDaniel's attorneys filed many motions. (T-1, p. 197, lines 22-25, p. 170, lines 1-6, R-1, Bibb County Case Display Report). The motions were very detailed, and McDaniel stated during his evidentiary hearing in this proceeding that he had "no complaints" concerning the motions that were filed. (T-1, p. 198, lines 2-3).

Counsel reviewed material produced during discovery in preparation for trial and spent a lot of time trying to figure out who other than McDaniel was criminally responsible. (T-1, p. 172, lines 1-2, p. 165, lines 8-11). Counsel worked a list of approximately thirty suspects and analyzed every registered sex offender who lived within a certain proximity to the law school. (T-1, p. 172, lines 1-10). Had the case gone to trial, counsel would have presented a classic reasonable doubt defense that McDaniel did not commit this murder. His attorneys thought until

the end that McDaniel had a good chance of going to trial and getting a hung jury. (T-1, p. 171, lines 1-25, T-1, p. 172, lines 16-21).

McDaniel asserts that counsel should have sought recusal of Superior Court Judge Howard Simms, the Judge ultimately assigned to his case after the retirement and recusal of previously assigned Judges. (T-1, p. 126, lines 13-24). McDaniel expressed concern about Simms' alleged lack of impartiality to his attorneys due to a previous application for a court order and Simms' finding of probable cause for issuance of one of the many search warrants issued in McDaniel's case. (T-1, p. 137, lines 4-8, T-2, pp. 129-132, P-8, P-9). Judge Simms granted McDaniel's consent motion for change of venue and ordered the trial to be held in the Superior Court of Henry County, Georgia due to pre-trial publicity. (T-1, p. 75, lines 15-18, p. 64, lines 4-5, P-22, Consent Order to Change Venue). Counsel discussed the issue of recusal with McDaniel, believed Judge Simms to be an honorable man and a hard-working Judge knowledgeable in the law, and therefore did not seek recusal as trial strategy. (T-1, p. 130, T-2, p. 137, lines 6-8). Counsel believed Judge Simms to be a very good judge and had no problems whatsoever with Judge Simms presiding over McDaniel's case. (T-1, p. 129, lines 20-23, T-2, p. 180, lines 22-23).

The Prosecution.

The District Attorney in office at the time of McDaniel's arrest served as the primary prosecutor in McDaniel's case until his elected successor took office on January 1, 2013. (T-1, p. 53, lines 6-13, 55, lines 1-5, T-2, p. 21, lines 13-15, p. 60, lines 7-18). Along with other prosecutors who were involved at the crime scene, he was very involved in the prosecution in the early stages of the case; and he kept the prosecution's file in his office. In addition, he conducted witness interviews and worked with Detectives. (Id., p. 55, lines 15-17) (T-2, p. 23, lines 7-11,

T-2, p. 165, lines 10-13). A newly elected District Attorney took office January 1, 2013 and carried out McDaniel's prosecution along with two other senior prosecutors. (Id., p. 56, lines 4-10, T-1, p. 56, lines 1-3)

The Chief Assistant District Attorney who ultimately shared the lead in preparing McDaniel's case for trial, Nancy Malcor, has served as a prosecuting trial attorney for more than twenty-three years in the Bibb County District Attorney's Office. Ms. Malcor has tried well over 100 cases and handled countless others. (T-1, p. 34, lines 16-18, p. 35, lines 14-15, p. 54, lines 18-21). She and McDaniel's attorneys spoke frequently about McDaniel's case. Malcor has worked with McDaniel's attorney's on other cases, has a good relationship with them, and considers them to be criminal defense attorneys of the highest caliber. (Id., p. 73, lines 3-14, p. 65, lines 1-7).

In January of 2013, when she discovered that a law clerk had compiled a notebook containing intercepted copies of appellate decisions and summaries requested by McDaniel while confined in the Bibb County Jail, she immediately provided the materials to McDaniel's attorneys without reading them.[6] (T-1, p. 37, lines 4-9, 22-23, T-1, p. 35, lines 20-25, p. 36, lines 1-13, p. 37, lines 1-23). As addressed more fully below, McDaniel's attorneys determined the materials had no relevance or significance whatsoever to his case and that the issue did not require their intervention. (T-1, p. 37, lines 4-9, T-1, p. 184, lines 10-12, T-2, p. 181, lines 11-12).

Discovery.

Discovery was conducted under the District Attorney's Office's long-standing open file policy and a standing Order whereby the prosecution produced all evidence in its possession.

[6] McDaniel requested in excess of 700 cases. (T-2, p. 122, lines line 12).

(Id., p. 62, lines 13-20). McDaniel's attorneys received the initial "batch" of discovery in April of 2012 and they kept him advised about the evidence as it continued to be produced. The prosecution produced thousands upon thousands of pages of discovery throughout McDaniel's case. (T-1, p. 146, lines 1-2, p. 170, lines 21-22, T-1, p. 99, lines 8-12, T-2, p. 21, lines 6-9, T-1, p. 63, lines 16-18, T-2, p. 146, lines 20-25).

When Hogue learned in January 2013 that the District Attorney's Office had received intercepted legal research requests, he did not consider the interception of McDaniel's legal research as "any big deal" because the prosecution would have known about the legal issues in the case without the materials. (T-2, p. 99, lines 23-25, p. 100, lines 1-6-13). While the materials may have provided insight into McDaniel's thinking, they did not reveal his attorney's evaluation of the case, defense theory, or strategy. (T-2, pp. 182-185). As such, they were simply non-material to the defense. (T-2, p. 181, lines 1-12).

Late Discovered Evidence.

A few weeks before trial was to begin, as prosecutors identified physical evidence to be transported from the Macon Crime Lab to Henry County for use during trial, a second digital camera was discovered which had not previously been forwarded to the GBI for analysis. The second camera was taken immediately to the GBI whereupon arrival a prosecuting attorney notified Hogue of the discovery and provided the content of the camera to him right away. (T-1, p. 64, lines 1-20, p. 139, lines 18-25, p. 140, lines 1-3).

The evidence obtained from the camera was a "significant find" which hurt the defense terribly during trial preparations. (Id., p. 172, lines 11-25) (Id, p. 146, lines 13-16). It contained surveillance footage of Ms. Giddings' apartment on the night ultimately determined as the time she was killed. (T-1, p. 59, lines 1-5). The evidence produced at the end of the case more than

strongly favored a trial conviction. (Id., p. 158, lines 7-9). In his attorneys' judgment, McDaniel would have been convicted and most definitely received a sentence of life without parole or worse had he gone to trial. (Id., p. 148, lines 2-7). Furthermore, in counsel's judgment, the federal government would have probably prosecuted McDaniel for child pornography and a separate life sentence likely would have been imposed upon conviction. (Id., p. 148, lines 8-10).

The late-discovered evidence disintegrated McDaniel's case because it directly linked and physically connected him to Ms. Giddings' apartment, and his attorneys informed McDaniel about it in an effort to keep him informed of the evidence and options available to him. (T-1, p. 173, lines 11-25). In light of the late-discovered and highly incriminating evidence, McDaniel decided that he did not want to go to trial, decided instead to plead guilty, and indicated that he wanted his attorneys to try to work out a plea bargain. (Id., p. 174, lines 20-25, T-1, p. 138, lines 9-10). McDaniel had been committed to going to trial before the relatively late production of the video evidence from the second camera, but the content of the additional incriminating evidence from this camera created a heavy, heavy evidentiary problem, and led to initiation of plea discussions by McDaniel's attorneys and McDaniel's ultimate decision to plead guilty. (T-1, p. 146, lines 6-8, p. 139, lines 18-25, p. 140, lines 1-3, 22-24, T-1, p. 64, lines 17-18, p. 65, lines 11-18, p. 142, lines 4-5, p. 146, lines 15-16). McDaniel's trial counsel had believed McDaniel was innocent until the relatively late production of this evidence and McDaniel's shocking confession to them that followed. (Id., p. 141, lines 15-16). Together, these developments formed the basis of McDaniel's decision to enter a knowing and voluntary plea of guilty. (T-1, p. 159, lines 6-11, p. 142, lines 16-25, p. 158, lines 9-13).

McDaniel's Confession.

Next, McDaniel startled his attorneys by talking openly with them about his entering Ms. Gidding's apartment and killing and dismembering her. (Id., p. 174, lines 13-22, p. 175, lines 1-8). McDaniel went into terrific graphic detail about how he killed Lauren Giddings, decapitated her, and carved up her body. He volunteered further that he went in Ms. Giddings' apartment with a mask on, walked on the floor and when it creaked, Ms. Giddings woke up, he jumped on her and she fought him. He stated that Giddings knocked his mask off, called him by name, and went under the bed for protection. He stated that her arms got trapped under the bed, her neck was exposed, and he choked her to death before he placed her in the tub around 4:30 a.m. He stated that he went to his apartment for a couple of hours, returned, and started dismembering Ms. Giddings. McDaniel described how he cut off every finger, thumb, and appendage on her hands and threw them in the toilet at one time and flushed it. (T-1, p. 141, lines 20-25, p. 142, lines 1-2). He stated that he took her head and limbs and placed them in a bag which he took across the street to the law school where he placed them in the dumpster, then left her torso in the dumpster at Barian (sic) Hall apartments. (T-1, p. 146, lines 21-25, p. 47, lines 1-14).

Anticipating that McDaniel's mother would not accept the fact that McDaniel had decided to plead guilty on the Monday morning when trial was to begin, his attorneys arranged for her to hear the news directly from McDaniel. (T-1, p. 142, lines 21-25, p. 179, lines 21-25). Counsel contacted the Sheriff, indicated that there was some movement on the McDaniel case, and coordinated a meeting in the Bibb County Law Enforcement Center where McDaniel informed his parents in the presence of his attorneys and consultant of his commission of the crime and his decision to plead guilty. (Id., p. 180, lines 1-7, p. 145, lines 1-12).

The Negotiated Plea Agreement.

The plea involved a deliberate exercise over a period of weeks. (T-1, p. 177, lines 12-15, p. 173, lines 1-3). After four or five days of hard discussions, McDaniel's attorneys were able to negotiate a carefully orchestrated plea bargain with the District Attorney and a global resolution of all matters which involved McDaniel. The District Attorney primarily handled the plea negotiations on behalf of the prosecution in consultation with the parents of Ms. Giddings. (Id., p. 175, lines 1-3, p. 177, lines 14-15). As a term of the agreement, the District Attorney insisted that McDaniel execute a written allocution which described the factual circumstances of the killing. (T-1, p. 67, lines 19-25, p. 68, lines 1-14, R-47, Allocution).

McDaniel's attorneys also worked out a deal with the United States Attorney's Office whereby McDaniel would not be prosecuted for child pornography if he entered a plea of guilty to murder in Superior Court. McDaniel possessed the most horrific child pornographic photos counsel had ever seen in his law practice. By pleading guilty, McDaniel avoided federal prosecution and potential sentencing enhancements for which he could have received a separate life sentence without the possibility of parole upon conviction. Also, a pending charge of burglary was dismissed. In addition, a civil case for wrongful death relating to the same killing pending in the United States District Court for the Middle District of Georgia, Macon Division, was resolved with the entry of a consent judgment as to liability against McDaniel.[7] (T-1, R-48, p. 10, 69, lines 4-15, p. 142, lines 7-14).

McDaniel's Plea of Guilty.

When notified of the plea agreement, the trial court specifically ordered plea forms to be filled out which McDaniel and his attorney's reviewed and executed on April 19, 2014. (T-1, p.

[7] Giddings et al v. McDaniel, 5:13-cv-00216 (M.D. Ga. 2013).

175, lines 22-25, p. 70, lines 4-20, p. 158, lines 19-24, R-45, Plea of Guilty: Acknowledgment and Waiver of Rights, R-46, Acknowledgment, Assertion of Habeas Corpus Rights or Waiver, R-47, Allocution). Two days later, the trial court conducted a hearing during which McDaniel entered his plea of guilty pursuant to his negotiated plea bargain. (R-48, Transcript of Plea Hearing). McDaniel plead guilty to malice murder and tendered his written allocution specifically laying out the elements of the crime. (R-48, p. 2, lines 2-20, R-47, Allocution).[8] The District Attorney presented impact testimony and moved to nol pros the child pornography case against McDaniel and to dismiss a burglary case against him. (Id.). As the parties negotiated and recommended, the trial court imposed a sentence of life imprisonment with the possibility of parole. (R-49, Felony Disposition).

The Guilty Plea Proceeding.

The Factual Basis and Plea Colloquy.

The following factual basis for the plea was presented to the trial court:

"THE COURT: All right, Mr. Cooke, tell me what the factual basis is for this plea is, please?

MR. COOKE: Your Honor, had we gone to trial the State would have shown that on June 30, 2011, the dismembered torso of Lauren Giddings was discovered in a trash can at Barristers Hall apartments where both she and the defendant lived here in Macon, Bibb County. Although the cause of death has never been determined, a subsequent autopsy determined that the manner of death was unknown homicidal violence. No signs of sexual assault were detected.

A hacksaw containing her DNA and that appears to have been used to cut up her body was discovered in a storage closet in the apartment building. The packaging for that hacksaw

[8] McDaniel was heavily involved in the allocution and approved it. (T-1, p. 148, lines 18-20).

was later discovered in the defendant's apartment along with an apartment master key that fit the closet where the hacksaw was found. The victim's apartment key and a pair of her panties were also inside McDaniel's apartment.

Additionally, police recovered a flash drive containing hundreds of deleted personal photos of the victim. In an email dated June 22, 2011, Lauren had reported that her flash drive matching that description was missing. A forensic analysis of the defendant's computer revealed an internet history that detailed his obsession with the victim and included research on the burglary bar security device that she used to lock her door.

The forensic analysis also revealed an interest in sadistically violent pornography involving the killing and dismemberment of women.

Interviews with former classmates proved that the defendant had a many years long fantasy of committing the perfect murder which involved the dismemberment of a victim and the hiding of the body parts in multiple locations in order to conceal the crime.

Finally an analysis of McDaniel's digital camera revealed videos taken to surveil and spy on the victim the night and early morning of her disappearance.

Those would have been the facts that we would have presented at trial, Your Honor."

The following colloquy and exchange is reflected within the transcript of the plea hearing:

"BY THE COURT:

Q: Mr. McDaniel, have you had a sufficient opportunity to discuss this case with your attorneys?

A: Yes.

Q: Have they advised you of your legal and Constitutional rights?

A: Yes.

Q: Are you satisfied with their representation in this matter?

A: Yes.

THE COURT: Mr. Hogue, Mr. Buford, have you had a sufficient opportunity to discuss this case with Mr. McDaniel?

MR. HOGUE: We have.

MR. BUFORD: We have.

THE COURT: Have you advised him of his legal and Constitutional rights?

MR. HOGUE: We have.

THE COURT: Are you aware of any defense or defect that would prevent the Court from accepting this plea?

MR. HOGUE: There is none, Your Honor.

THE COURT: I find there is a factual basis, the defendant fully understands his legal and Constitutional rights, and I will accept the plea." (R-48, pp. 5-8)."

The Knowing and Voluntary Waiver of Boykin[9] rights.

"MR. COOKE: And, Your Honor, the written plea has been tendered.

THE COURT: At this point, Mr. Cooke, if you would – let me ask this question first. Mr. Hogue, do you have the forms that Mr. McDaniel completed, the acknowledgement and waiver of rights under the Habeas Corpus law?

MR. HOGUE: I handed those up to Your Honor a moment ago.

[9] Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed 274 (1969).

THE COURT: Okay. You are right. Mr. McDaniel, did you go over these forms with Mr. Hogue and Mr. Buford, the acknowledgment of your rights under Georgia's Habeas Corpus law and the acknowledgment and waiver of your rights at a guilty plea?

DEFENDANT: Yes.

THE COURT: Did you understand them?

DEFENDANT: Yes.

THE COURT: Did they explain them to you?

DEFENDANT: Yes,

THE COURT: And did they sign these?

DEFENDANT: Yes." (R-48, p. 9).

THE COURT: I need to ask you some questions, okay?

BY THE COURT:

Q: Are you the Stephen [sic] Mark McDaniel named in this indictment?

A: Yes.

Q: How old are you, Mr. McDaniel?

A: Twenty-eight.

Q: Would you tell us what your educational background is, please?

A: I'm a graduate of law school. The Walter F. George School of Law.

Q: So you read, write, and understand the English language?

A: Yes, I do.

Q: Are you a citizen of the United States?

A: Yes.

Q: Mr. McDaniel, this indictment charges you with the offense of malice murder in one count. The maximum penalty for that offense in this case is life in the penitentiary without the possibility of parole. The minimum sentence in this particular case is life in the penitentiary. Do you understand that?

A: Yes.

Q: Do you understand there is a joint recommendation in this case that you be sentenced to life in the penitentiary and that these other outstanding criminal cases will either be dismissed or nol prossed; do you understand?

A: Yes.

Q: Do you understand that that is only a recommendation and the Court is not obligated to follow that recommendation; do you understand that?

A: Yes.

Q: Understanding the charge and possible penalty then, Mr. McDaniel, how do you plead to the offense of murder, guilty or not guilty?

A: Guilty.

Q: Are you pleading guilty freely and voluntarily?

A: Yes.

Q: Has anybody forced you or threatened you or coerced you in any way to get you to plead guilty?

A: No.

Q: Have you had any drugs, alcohol, or other medication that would affect your ability to understand fully the nature of these proceedings here today?

A: No.

Q: Mr. McDaniel, if you plead guilty you give up certain rights. In particular is your right to a trial by jury on all charges in this indictment. Along with that is the presumption of innocence that is now in your favor. Do you understand that?

A: Yes.

Q: Do you understand that you also, if you plead guilty, you give up the right you have to confront and face the witnesses against you and have them cross-examined?

A: Yes.

Q: Do you understand that you also give up the right to subpoena witnesses and the right to testify yourself and offer other evidence?

A: Yes.

Q: In addition by pleading guilty you also give up the right to have your attorneys with you at trial since there will not be a trial, and you give up the right you currently have against self-incrimination, in other words the right not to have to testify against yourself. Do you understand that?

A: Yes." (R-48, pp. 2-5).

The decision to plead guilty was totally McDaniel's. When asked about his level of certainty to which McDaniel entered his plea of guilty freely and voluntarily, Buford testified, "I can tell you the honest truth and I've probably done literally over 3,000 plus pleas in my life, his was knowingly and voluntarily, intelligently entered. He knew what he wanted to do. He elected to do this. I certainly was supportive of his efforts, but it was his decision and there was no doubt in his mind about it." (T-1, p. 178, lines 1-8). His attorney's believe McDaniel made the right decision to plead guilty, but that it was his decision. (T-1, p. 173, lines 1-3).

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The Allocution.

As indicated, McDaniel was required to submit his written allocution as a term of his plea bargain. McDaniel was heavily involved in the preparation of his allocution, and he and his attorneys worked on it to his satisfaction and approval before it was presented to the trial Court. Having somewhat described the chilling allocution herein, the Court incorporates its content by reference without further description or recitation. (R-47, Allocution, T-1, p. 148, lines 18-20).

Habeas Claims.

McDaniel filed his habeas application on February 20, 2018 through which he asserts four grounds for relief: (1) a search without a valid search warrant is per se unreasonable, (2) opinion work product is entitled to absolute protection as part of the Sixth Amendment right to effective assistance, (3) a defendant is entitled to a fair and impartial judicial officer as a basic requirement of Due Process, and (4) a defendant is entitled to the effective assistance of counsel in the context of the plea, and if the plea is caused by the ineffective assistance of counsel, the plea is not valid. (Habeas Petition, pp. 18-68). Respondent asserts that McDaniel's properly entered plea of guilty waived his defenses to the first, second, and third ground for relief premised on the challenged search, the seizure of alleged work product and legal research requests, and the alleged impartiality of Judge Simms. Respondent further asserts that McDaniel's plea of guilty was freely and voluntarily entered and that McDaniel's counsel provided effective assistance.

II. Conclusions of Law.

A. McDaniel waived his claims for relief asserted in grounds one, two, and three by entering a knowing and voluntary plea of guilty.

McDaniel has waived his claims for relief asserted in grounds one, two, and three in this proceeding by entering a knowing and voluntary plea of guilty. Once a defendant has solemnly

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