

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

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OCT 23 2013

S.C. Supreme Court

ORLANDO SHIVER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000475

A P P E N D I X

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County of Richland)	2010-GS-40-2138
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THE STATE,)	
)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
ORLANDO SHIVER,)	
)	
DEFENDANT,)	

February 22, 2011
Columbia, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

APPEARANCES:

Craig Pisarik, Assistant Solicitor
Attorney for the State

George McElveen, Esq.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

WITNESSES:

{There were no witnesses called.}

EXHIBITS:

{There were no exhibits introduced.}

CERTIFICATE OF REPORTER

28

1 MR. PISARIK: Thank you, Your Honor. Standing
2 before you is the defendant, Orlando Shiver, represented
3 by attorney George McElveen.

4 He is pleading today to three counts: One count of
5 assault and battery with intent to kill, one count of
6 assault and battery of a high and aggravated nature.
7 That is the old common law of assault and battery of a
8 high and aggravated nature, and one charge of C.D.V.
9 second.

10 THE COURT: Is that right, Mr. McElveen?

11 MR. McELVEEN: That's correct, Your Honor.

12 THE COURT: Is that right, Mr. Shiver?

13 THE DEFENDANT: Yes, sir, it is.

14 THE COURT: And Mr. Shiver, on the offense of assault
15 and battery with intent to kill, do you understand that
16 that carries a prison sentence of up to 20 years?

17 THE DEFENDANT: I do.

18 THE COURT: And it is a most serious offense?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand if you are convicted
21 of two most serious offenses, you can be sentenced to
22 life without the possibility of parole?

23 THE DEFENDANT: I do.

24 THE COURT: Do you understand that assault and
25 battery of a high and aggravated nature carries a

1 sentence of up to ten years?

2 THE DEFENDANT: I do.

3 THE COURT: The criminal domestic violence second,
4 that's one year, isn't it, Counsel?

5 MR. PISARIK: Thirty days to one year, yes, Your
6 Honor.

7 THE COURT: It carries a maximum sentence of up to
8 one year. Do you understand that, sir?

9 THE DEFENDANT: I do.

10 THE COURT: Sir, do you understand that when you
11 plead guilty, you give up your right to a jury trial, your
12 right to offer any defense to these charges, your right
13 to remain silent with concern to these charges. Do you
14 understand that, sir?

15 THE DEFENDANT: I do.

16 THE COURT: And do you wish to give up those rights
17 and enter a plea of guilty to these charges?

18 THE DEFENDANT: Yes, Your Honor.

19 MR. McELVEEN: Your Honor, he's planning to plead to
20 Alford on the aggravated assault case.

21 THE COURT: Sir, do you understand that this plea
22 form indicates a negotiated sentence? Where there's a
23 negotiated sentence, I would accept a guilty plea and
24 impose a negotiated sentence, or I will not accept a guilty
25 plea?

1 THE DEFENDANT: I do.

2 THE COURT: And what is the negotiated sentence?

3 MR. PISARIK: Your Honor, we have worked out in
4 exchange, not only for the reduction in the charges to
5 what they are, but also a sentence range of 12 to 20
6 years.

7 THE COURT: Sir, do you understand that if I accept
8 this negotiated sentence, that you will receive a minimum
9 sentence of 12 years to a maximum of 20 years?

10 THE DEFENDANT: I do.

11 THE COURT: Do you understand that if I do not
12 accept your guilty plea, then the case will proceed for
13 trial?

14 THE DEFENDANT: I do.

15 THE COURT: And do you wish me to accept the
16 negotiated sentence and sentence you to at least 12 years
17 in prison but no more than 20 years in prison?

18 THE DEFENDANT: I do.

19 THE COURT: And are you guilty of these charges?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Solicitor?

22 MR. PISARIK: Thank you, Your Honor. This incident
23 occurred back on February 2nd, 2011, at [redacted]
24 here in the City of Columbia.

25 The defendant and the victim, who were married for

1 a period of time, from 2000 to 2002. They were separated
2 at the particular time, although still legally married.
3 They were together on that evening. They were having
4 drinks, and a verbal altercation ensued.

5 The defendant started using profanity and did
6 start an altercation, a verbal altercation, with the
7 victim.

8 It was at that time that the victim, who is present
9 here today, Your Honor. It's a Ms. Felicia --

10 THE COURT: Hold on just a moment, Mr. Pisarik.

11 Mr. Bailiff, would you have Mr. Truitt come in here?

12 (There was no response.)

13 Mr. Bailiff, would you have Mr. Truitt come in here?

14 THE BAILIFF: I'll get him for you.

15 THE COURT: All right. Go ahead, sir.

16 MR. PISARIK: Your Honor, as I mentioned, they were
17 having a verbal altercation. They were married for a
18 time, separated, and on this evening after this verbal
19 altercation, the victim, Ms. Shiver, who I did mention,
20 is here, along with the investigator in the case and some
21 representatives from Sistercare.

22 The victim asked the defendant to leave the
23 location. He did not, and that's when the physical abuse
24 started.

25 The defendant started by beating the victim with his

1 fist. At this time, the victim was holding a 22-month-old
 2 child, (phonetic) that's her grandson,
 3 in her arms when the abuse actually began.

4 So while the defendant was punching the victim in
 5 the face, he was also punching the child in the face.

6 Your Honor, if I may just approach. These are the
 7 pictures. Your Honor, these are some of the pictures of
 8 the abuse to the child during this.

9 You can notice some of the bruising to the child's
 10 face. This is while the -- all while the victim is
 11 actually holding this child in her arms.

12 At some point, she is able to put the child on the
 13 ground. That's when the defendant begins dragging her
 14 around the house, the location.

15 The defendant was grabbing her by her hair. You
 16 can -- I'll pass up some pictures momentarily. You can
 17 see clumps of hair as he is pulling out her hair as he
 18 is dragging her through the apartment.

19 He threw her into the wall several times, and at one
 20 point, this actually proceeds to the bathroom. Before
 21 it gets to the bathroom, he had actually hit her in the
 22 head with a coffee table, as well.

23 At some point, this altercation proceeds into the
 24 bathroom. It's at that point where the defendant throws
 25 the victim into a closet that is in -- into another wall.

1 closet that's in the bathroom.

2 The child, the 22-month-old child is in the bathroom
3 with her at this time. It's at that point that the
4 defendant took a bottle of vodka and poured it over both
5 the victim, Ms. Felicia Shiver and the child,
6 , and threatened to light them both on fire.

7 He told them not leave the bathroom. He was going
8 to get a match.

9 All throughout this whole physical abuse, Your
10 Honor, the defendant is verbally telling the victim that
11 he is going to kill not only her, but he's going to kill
12 the child, as well.

13 When he says that he is going to run and get a match
14 and that she is not to leave the bathroom, she does try
15 to flee the bathroom to get away from him.

16 He does catch her before she is able to get away,
17 begins choking her at this point. At some point there,
18 he then drags the victim to the bottom of a staircases
19 that is inside this apartment.

20 He takes a 10-pound dumbbell and smashes the victim
21 in the face with a 10-pound dumbbell causing a major
22 laceration over her face.

23 Your Honor, if I may approach, I'll just go ahead
24 and pass up -- these are -- these are the pictures of the
25 actual wound that she suffered as a result of the

1 dumbbell to the face and the other beating that she
2 sustained that evening.

3 According to the medical report, at some point, she
4 actually did lose consciousness during the assault, as
5 well.

6 She does, however, come to, and when she comes to,
7 the defendant is on the telephone at this point. He has
8 a screwdriver to the victim's throat, and he is
9 threatening to kill the victim at this point, Ms. Felicia
10 Shiver, as well, again, as the child, ~~Christina~~.

11 He's on the phone with his aunt at the time, on the
12 telephone, and he is telling the aunt if she can't say
13 anything to stop him, that he is going to kill both of
14 these people.

15 The aunt hears this on the telephone, and she
16 threads another telephone at the location she is on -- I'm
17 not sure if it was her land line or her cell, but she
18 picked up the other phone and 9-1-1 to have police come.

19 She is on the phone hearing the defendant continually
20 saying that he is going to kill her if -- not only
21 going to kill her but also to kill the child.

22 Eventually, the police do show up at the location.
23 He is apprehended at that point. The E.M.S. comes to treat
24 the victim at the location. She is immediately taken to
25 the hospital that next day.

1 The wounds to her head were so bad that she
2 actually had to be put under general anesthesia and go
3 through a full facial surgery. She did receive 60
4 stitches to her face in three different layers.

5 Your Honor, her eyes were closed for approximately
6 a month after this assault before her eyes actually
7 opened back up from the swelling. She does still suffer
8 from some issues from this.

9 I'll let her address that when it's her time to talk,
10 Your Honor.

11 Those are the facts from the incident, Your Honor.
12 I can give you his rap sheet whatever you're ready.

13 THE COURT: Do you dispute any of those facts,
14 Mr. Shiver?

15 MR. McELVEEN: Your Honor.

16 THE COURT: Yes, sir.

17 MR. McELVEEN: Mr. Shiver has issues with some of
18 the -- of the monologue that don't amount to any change.

19 THE COURT: Sure.

20 MR. McELVEEN: Or anything.

21 THE COURT: It doesn't change --

22 MR. McELVEEN: It doesn't change the nature of the
23 offense, Your Honor, and it doesn't change the fact that
24 he is guilty. So I -- again, he may -- and if he wants
25 to address the Court, I have no objection to that. I

1 just wanted the Court to know that.

2 (Pause)

3 THE COURT: All right.

4 MR. PISARIK: Just briefly, Your Honor, I know the
5 victim would like to address you on this charge. The
6 investigator is here, as well.

7 I don't know if he wants to add anything to what
8 I've already said, but I know that he would like a chance
9 to address you, and I can give you his prior record, if
10 you'd like, whenever you're ready.

11 THE COURT: All right. I'm happy to hear from the
12 victim, investigator, or anyone who wants to say
13 anything.

14 MR. PISARIK: Your Honor, this is Investigator
15 Brown from the City of Columbia.

16 THE COURT: Yes, sir.

17 INVESTIGATOR: How are you doing, Your Honor?
18 I've been in law enforcement about 32 years. I've
19 been doing criminal investigators and C.D.V.s for
20 about nine years.

21 This is one of the most savage beatings I've ever
22 seen of an individual who is actually able to be here
23 and not be either dead or severely brain damaged from
24 the type of blunt trauma that she got to her head.

25 I've seen -- as you can see from the pictures of the

1 laceration to her forehead, that just tells part of story.

2 When I saw her, and when I interviewed her at police
3 headquarters, her eyes were blackened. They were shut.
4 She had -- as the solicitor said, the large laceration
5 that had been surgically closed.

6 She was bandaged up. She was very shaky, very
7 weak. I've listened to the 9-1-1 calls that the aunt had
8 made to police headquarters to summons the police, and
9 the -- the way this defendant was and how calm he was
10 during the whole time that he supposedly has this
11 screwdriver up to her throat, telling his aunt -- or
12 telling her to tell his aunt that he does have a
13 screwdriver up to her throat.

14 I've recovered the barbell that he hit her with.
15 I've got pictures of the barbell and the blood that was
16 there at the scene.

17 I don't know how she was able to make it through
18 this, oh than the fact that she must be a very strong
19 woman.

20 I would just ask that the Court consider all of this.
21 This is not the first time that this man has assaulted
22 this woman.

23 I had a chance to interview her, and she gave that
24 information to me. I think his record will bear some of
25 that information to you.

1 I would just ask that the Court give that
2 consideration when you consider a sentence today.

3 THE COURT: All right. Thank you.

4 The incident location, here again, was where,
5 Officer?

6 INVESTIGATOR: This is on ~~Green Street~~ in the City of
7 Columbia. This was at a residence.

8 THE COURT: Where is ~~Green Street~~?

9 INVESTIGATOR: I'd have to look it up on a map, Your
10 Honor.

11 THE COURT: All right. Where is ~~Green Street~~?

12 THE VICTIM: It's off of Broad River Road near -- off
13 of Greystone Boulevard.

14 THE COURT: Okay.

15 Yes, ma'am?

16 THE VICTIM: One year ago this month, I was
17 brutally attacked by Orlando Shiver without
18 provocation. Aside from being bruised and having a
19 swollen face, I had to undergo surgery to repair the
20 laceration to my head for which I received more than 60
21 stitches in three different layers.

22 As the solicitor mentioned, this is not the first
23 time I've been attacked by Mr. Shiver.

24 THE COURT: What's your relationship with him?

25 THE VICTIM: He's my -- we are legally married. We

1 were separated since 2002, and -- however,
2 we -- throughout the years, we continued to maintain a
3 relationship for the sake of our children. We don't
4 share any children in common, but we share support of all
5 of our children.

6 He attacked me in 2002, which landed me in the
7 hospital, as well. That was what caused the separation.

8 Throughout this last year, 2010, it took more than
9 a month for the swelling and the bruises to go away for
10 me to be able to open my eyes and see.

11 It took, probably another five months, almost for
12 me to just thrive again. I lost my job as a result of
13 this attack, and I -- to this day -- as a matter of fact,
14 until last week, I've been unemployed.

15 After the grandchildren that I've raised, two
16 grandchildren that I've been having a difficult time
17 taking care of, not just because of the financial issues
18 but also because of my physical health.

19 I suffered dizzy spells, severe dizzy spells, that
20 caused me to blackout. Just talking to them in a general
21 conversation, just all of the sudden, I fall to the floor.
22 That's how severe these dizzy spells were as a result of
23 the neurological damages that I suffered from the blow
24 to my head.

25 THE COURT: The written statement that you're

1 reading from, of course, you're reading partially from
2 your written statement and partially talking, as well.

3 Is that what -- you said Sistercare?

4 THE VICTIM: Yes.

5 THE COURT: Is that part of the --

6 THE VICTIM: No, I wrote this statement myself.

7 THE COURT: I was just wondering, is that the protocol
8 that you have at Sistercare?

9 SISTERCARE REPRESENTATIVE: No, Your Honor.

10 THE VICTIM: No. There is no protocol.

11 THE COURT: All right. Well, thank you. All right.
12 Go ahead.

13 THE VICTIM: All right. If it's okay with you, Your
14 Honor, I'd also like to address a little bit to the
15 family.

16 THE COURT: Sure.

17 THE VICTIM: My heart goes out to the family because
18 not too long ago, I've been in your shoes. I'm sorry that
19 you have to go through this and that you have to go
20 through it with him.

21 I hope you can understand my position, and if not,
22 I'm sorry for that, too.

23 Nobody was there when I took those beatings, when
24 I took the blows to the face and when I was dragged around
25 the house and he kept on beating me, holding my

1 grandson, while in the meantime, he's taking these
2 beatings, as well.

3 Nobody was there when he poured the alcohol on us
4 and threatened to get a match, and every time I tried to
5 escape, he came back to beat me more.

6 Nobody was there when he beat me on the back of the
7 head with a coffee table, knocking me and choking me
8 unconscious so that when I came to, my head was busted
9 open.

10 My head was busted open to a degree that the doctor
11 mentioned to me -- his exact words were, "Less than a
12 quarter of a pound more force and your skull would have
13 been cracked."

14 I have to say that through all of this, I am
15 grateful that I am here to be able to give my statement
16 today because just the lighter and a little more
17 force, I wouldn't have been able to stand here and give
18 my story.

19 Your Honor, I want you to know that I respect any
20 decision that you make in this Court today. I do believe
21 this man should do every day of 20 years.

22 THE COURT: Thank you.

23 THE VICTIM: Thank you.

24 THE COURT: All right. Prior record?

25 MR. FISARIK: Prior record, Your Honor, he has a

1 1987 assault and battery. In 1994, a D.U.S. third or
2 above. He received a two-year probationary sentence and
3 90 days detention.

4 Then he was found guilty of a C.D.V. in 2002. That
5 was one that was mentioned already that landed the victim
6 in the hospital.

7 He does have two other C.D.V. arrests, however.
8 They were non-convictions. One was judicially dismissed
9 and one was not billed by the grand jury. That is the
10 extent of his prior record, Your Honor.

11 THE COURT: I got distracted in my mind with some of
12 those. Can you give me those?

13 MR. PISARIK: No problem, Your Honor. A 1987 assault
14 and battery charge, a 1994 D.U.S. third or above. That
15 one he received 90 days detention and two years'
16 probation, then a 2002 C.D.V. charge, C.D.V. first. That
17 was the one that the victim mentioned that landed her in
18 the hospital that he was found guilty of. Then he had
19 two other C.D.V. charges that were turned into -- they
20 were non-convictions. They were arrests, just no
21 convictions. One was judicially dismissed in 2001
22 against the same victim, and then one in 2008 against
23 another female was not billed by the grand jury.

24 Your Honor, just based on the extent of this beating,
25 the State is requesting the full 20-year sentence. I

1 mean, if this charge does not receive the maximum, I'm
2 not sure which charges do, Your Honor.

3 This was very close to a murder. I can't stress how
4 close she was to dying from this, Your Honor. We would
5 just respectfully ask that he do the full 20 years.

6 THE COURT: What is the basis for the negotiated
7 sentence?

8 (Pause)

9 MR. McELVEEN: Your Honor, I -- excuse me for one
10 second.

11 (Pause)

12 Your Honor, the injuries against the child were not
13 severe, and there was little evidence of intent to kill
14 in that case.

15 THE COURT: I'm not asking for the basis for the
16 negotiated charges he's pleading guilty to. What is the
17 basis for having a negotiated sentence?

18 MR. McELVEEN: Your Honor, we had initially -- I
19 think it was to avoid a trial. That would be my guess.

20 THE COURT: From the State's perspective?

21 MR. PISARIK: Your Honor, obviously, the charges
22 are very severe. There's always -- there's always a
23 chance, however, when you go to trial that this could
24 have turned out to be a not guilty situation.

25 I think, however, given the fact that the beatings

1 were so severe, it warrants a sentence range of the 12
2 to 20, as well as the -- you know, he gets the benefit
3 of the reduction of the charges for going forward without
4 a trial.

5 THE COURT: Well, I mean, he is facing 20 years for
6 assault and battery with intent to kill, two counts.
7 That's 40 years. Criminal domestic violence of a high
8 and aggravated nature, ten years. He's facing 50 years
9 in prison.

10 If you negotiated a sentence, always claiming that
11 the Court should give the maximum, the way that you
12 negotiated -- what's the purpose of a negotiated
13 sentence, if you believe he should get the maximum
14 sentence?

15 MR. PISARIK: Again, Your Honor, we're not -- we don't
16 believe that he's due the maximum of the total 50 years.
17 As mentioned, you know, the --

18 THE COURT: Maybe I would claim that he should do the
19 maximum 50 years. I want to know why the State feels the
20 need to negotiate a sentence?

21 MR. McELVEEN: Your Honor, I think the, Your Honor,
22 I don't want to speak for the State.

23 The purpose -- Your Honor, the State believes 20
24 years is appropriate. We believe that a lesser sentence
25 is appropriate.

1 THE COURT: So what the Judge believes doesn't
2 matter?

3 MR. McELVEEN: I think that it, Your Honor, I believe
4 that it probably does.

5 THE COURT: All right.

6 MR. McELVEEN: But it's just --

7 THE COURT: I'm not being respectful. Go ahead.
8 Finish.

9 MR. McELVEEN: Your Honor. Thank you.

10 Your Honor, the victim in this case and Mr. Shiver
11 have known each other for a long time, been married about
12 ten years ago.

13 They separated, very frankly, because of the
14 violence between them. About a year ago, the victim was
15 hospitalized for reasons unrelated to their
16 relationship.

17 He moved -- he didn't move back in, but he was there
18 on a very regular basis to assist her with just
19 raising her grandchild and the things she had to do from
20 day-to-day. That was a big mistake because they do have
21 a violently toxic relationship, and he should not have
22 been there. If he hadn't been there, obviously, this
23 wouldn't have happened.

24 Your Honor, on this particular day, they both had
25 been drinking. They had been home most of the afternoon.

1 Talk turned to unpleasant subjects and bickering turned
2 into arguing, arguing turned into yelling, and at some
3 point, Ms. Shiver told him to get out of the house.
4 That's when he hit her. That's what started this entire
5 chain of events.

6 He understands what he did, Your Honor, and he has
7 no desire to stand here and minimize that in the
8 slightest degree.

9 I can tell you that of all the clients I have ever
10 represented over the years, I've never seen a client quite
11 so wracked by remorse.

12 He told me from the beginning he didn't want any bond
13 reduction. He had no interest in getting out of jail.
14 He knew that's where he belonged. He didn't want her to
15 even have to worry for a moment about the fact that he
16 was on the street. He was going to sit right there, no
17 matter what happened.

18 Your Honor, as far as a trial is concerned, he tells
19 me that he knows -- he remembers when this attack began.
20 He remembers parts of the -- what happened throughout.
21 He knows he hit her with the barbell.

22 He has large gaps in his recollection of what
23 happened. He doesn't have any recollection of the
24 alcohol, and he doesn't have any recollection of striking
25 the child.

1 He tells me that certainly that was an accident.
2 Certainly, he didn't intend to strike the child.

3 He adamantly denied from the beginning, Your
4 Honor, any intent to kill, but he also understands the
5 case law that we discussed and the law that -- as it
6 relates to malice aforethought and how do you prove
7 that.

8 You know, quite frankly, Your Honor, I think he could
9 have killed her if he wanted to. He called -- his aunt
10 is here today, Your Honor. She is in the courtroom.

11 Would you stand up?

12 (complies)

13 This is the aunt that he called on the telephone,
14 Your Honor.

15 I think that he tells me, and I think that it's
16 fairly obvious, that he called her when he became so
17 shocked at what was doing.

18 Again, Your Honor, I just want the Court to know that
19 he is -- he is the most remorseful client I've ever dealt
20 with.

21 He has no appreciable record, other than the first
22 C.D.V., Your Honor. He has worked all of his life. He
23 is a long distance truck driver.

24 He is a high school graduate, and I represented him
25 on a number of other noncriminal matters. I've always

1 found him to be an honorable and a decent person.

2 Your Honor, this is a character defect that led him
3 to snap, led him to beat his wife. Again, he has no desire
4 to minimize that. He's not trying to minimize that in
5 the slightest.

6 He may want to address the Court. I don't
7 know -- once he got on the phone with his aunt, he sat
8 down and waited for the police to come. He didn't flee.
9 He didn't run. They didn't have to chase him around. He
10 sat there and waited.

11 Your Honor, he is here simply to say this is an
12 85 percent offense. He's going to do ten years if you
13 give him the minimum. That's a substantial period of
14 time.

15 He's 42 years old now. He'll be 52 when he -- even
16 if you give him the minimum, when his sentence is finally
17 over.

18 Your Honor, he is a productive person. He's always
19 been a productive person. He's got a lot of good things
20 about him. He's a lifetime church member. He's got a
21 supportive family.

22 He had -- when they got married, he had two
23 children. She had two children. He moved in and
24 voluntarily undertook the support of her children, no
25 questions asked, treated them as his own.

1 Your Honor, I would ask you to hand down a sentence
2 that would allow him to, at some point, resume his
3 productive contributions to society, which I know that
4 he can do.

5 I know that he and Felicia Shiver are never going
6 to be together again for this very reason.

7 Your Honor, I think in closing that a 12 year,
8 85 percent sentence is more than adequate to send anybody
9 a message in a case like this.

10 It's not going to -- a 20 year sentence isn't going
11 to rehabilitate him or a 12-year sentence would, but he
12 knows he deserves it.

13 THE COURT: All right. Yes, sir.

14 THE DEFENDANT: Yes, Your Honor. First of all, to
15 begin, I want to apologize to Felicia and her family and
16 my family.

17 I had written Felicia a letter before to tell her
18 how sincerely sorry I am for what -- how this came
19 about to be. I never had any intention of killing her
20 or harming the 23-month-old baby.

21 This comes from a lifelong drug and alcohol
22 addiction. I'm a functioning alcoholic and drug
23 addict. I can function and work, but I still have a
24 problem.

25 If drinking hadn't been involved, this wouldn't have

1 never happened, so I'm sorry that this happened to her.
2 I've turned my life over to Christ, and I wrote Felicia
3 and asked her to do the same thing for those kids, give
4 her a chance to raise those kids. I've always had them
5 in my prayers.

6 I'm sorry this happened. I'm not denying that I did
7 anything, but some things I don't think I intentionally
8 did or did at all. But I can't say, because I can't
9 remember.

10 I am truly sorry for this. Like I said, I actually
11 love Jesus Christ and have mercy on my soul. Thank you.

12 THE COURT: All right. What were you mad about?

13 THE DEFENDANT: We was -- I was around there fishing.
14 She was playing music on the computer, and the baby was
15 running around. I said, "Felicia, we probably will never,
16 ever put our marriage back together again."

17 She said, "You don't know that."

18 I responded with something else, and then she
19 responded. It kept going back and forth. It escalated.
20 Then she said, "Well, as a matter of fact, get out." That's
21 when I struck her, and it went from there.

22 So we wasn't really arguing about anything on that
23 thing. We wasn't mad at each other right then. It's
24 something that happened out of rage and drinking liquor.

25 THE COURT: All right.

1 MR. McELVEEN: Your Honor, his father is also here.
2 His father has been here many, many times over the past
3 few months.

4 THE COURT: Anything else from anyone else?

5 MR. McELVEEN: You -- would you like to say anything?

6 FATHER: Excuse me?

7 MR. McELVEEN: Would you like to speak to the Court?

8 FATHER: I don't really understand the law, but I
9 think he has responded. If she had called and said he
10 was there for us.

11 I wasn't there that night. I don't have no way of
12 knowing, but I don't believe that he intended -- this intent
13 to kill charge.

14 I don't believe that, but I guess that's the law.
15 I don't understand it, but the only thing I can say, I
16 just leave it to a higher power.

17 THE COURT: Well, the highest power you have in here
18 right now is me. Beyond that, he will be judged by others
19 and by the ultimate power.

20 Anything else?

21 MR. PISARIK: Nothing further from the State, Your
22 Honor.

23 THE COURT: All right, sir. The sentence of the Court
24 is that you be committed to the State Department of
25 Corrections for a period of 18 years on the assault and

1 battery with intent to kill; ten years for the assault
2 and battery of a high and aggravated nature, and one
3 year for criminal domestic violence.

4 The sentences will be run concurrent with each
5 other. You'll get credit for time served. Good luck to
6 you.

7 MR. PISARIK: Thank you, Your Honor.

8 MR. McELVEEN: Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded.)

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2011CP4002739

STATE OF SOUTH CAROLINA
County of RICHLAND

In the Court of Common Pleas

ORLANDO CEPEDA SILVER # 344878
Full name and prison number (if any) of Applicant.

STATE OF SOUTH CAROLINA
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2011 APR 25 AM 9:32
RICHLAND COUNTY
FILED
JANETTE M. MCGONIGLE
CLERK
P. & C.S.A.

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention KIRKLAND CORRECTIONAL INSTITUTIONAL

2. Name and location of Court which imposed sentence RICHLAND COUNTY COURT OF GENERAL SESSIONS 1701 MAIN ST COLUMBIA, SC 29201

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) SC CODE: 16-03-0620 / CDR CODE: 0014 ASSAULT AND BATTERY WITH INTENT TO KIL
 - (b) SC CODE: 16-03-0620 / CDR CODE: 0014 ASSAULT AND BATTERY WITH INTENT TO KIL
 - (c) SC CODE: 16-25-0065 / CDR CODE: 2988 CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED NATURE
- DOCKET NUMBERS 2010-GS-40-2133-2134-2140

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) FEBRUARY 22, 2011 18 YEARS CONCURRENT
- C FEBRUARY 22, 2011 10 YEARS CONCURRENT
- B FEBRUARY 22, 2011 DROPPED TO CDV 2ND OFFENSE / TIME SERVED

5. Check whether a finding of guilty was made

- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of not contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

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

(b) the result in each such Court to which you appealed:

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

(c) the date of each such result:

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

(d) if known, citations of any written opinion or orders entered pursuant to such results:

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) I WAS NOT ADVISED OF THAT OPTION BY MY COUNSEL
- (b) _____
- (c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) NEVER SHOULD HAVE BEEN CHARGED WITH 2 COUNTS OF ABTUIK
- (c) INVOLUNTARILY GUILTY PLEA

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) MY COUNSEL FAILED TO OBJECT TO MY CHARGES, INSTEAD USED A REMORSEFUL DEFENSE
- (b) MY WIFE'S GRANDSON WAS NEVER A PART OF THIS CRIME (KARSEEN HAZEL)
- (c) DUE TO INEFFECTIVENESS OF COUNSEL I FELT SURVIVAL TRIAL WAS NOT AN OPTION FORCING ME TO PLEA GUILTY

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) I WAS NOT ADVISED OF ANY OPPORTUNITY TO DO SO BY COUNSEL
- (b) _____
- (c) _____

16. 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? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you:
 - i. GEORGE MCELVEEN ATTORNEY AT LAW
 - 2229 BULL ST
 - ii. COLUMBIA, SC 29210
 - iii. _____

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

- i. PRELIMINARY HEARING
- ii. GUILITY PLEA / SENTENCING
- iii. _____

18. State clearly the relief you seek in filing this application.

MY WIFE'S GRANDSON WAS NEVER A PART OF THIS ACT SO ALL CHARGES AGAINST ME
KARSEEN DIAZEL BE DROPPED (DISMISSED)

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

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, ORLANDO SHIVER 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.

Orlando Shiver

SWORN to and subscribed before me this 13th

day of April, 2011

[Signature] (L.S.)
Notary Public

My Commission Expires: 10/8/2014

RICHLAND COUNTY
FILED
2011 APR 26 AM 9:32
JENNIFER W. MCBRIDE
C.D.P. & G.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, ORLANDO SHIVER 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 therefor.

Orlando Shiver
Applicant

SWORN or affirmed to and subscribed before me this

13th day of April, 2011

[Signature]
Notary Public

My Commission Expires: 10/8/2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2011CP4002739

Orlando C. Shiver, # 344878,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 13, 2011, 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 Richland County Clerk of Court. The Applicant was represented by George McElveen, Esquire. On February 22, 2010, the Applicant pled guilty and was sentenced by The Honorable Clifton Newman to the following:

Charge	Indictment Number	CDR - S.C. Code	Charge Description	Sentenced to	Sentenced to
Year	Number		Potential Sentence / Offense Description	Days	Less Offense
07-10	2010CS402140	0014 16-03-0520 * 20 *	Assault / Assault and battery with intent to kill (ABVNC)	<input checked="" type="checkbox"/> 18 CC	No
07-10	2010CS402138	0014 16-03-0520 * 20 *	Assault / Assault and battery with intent to kill (ABVNC)	<input checked="" type="checkbox"/> 18 CC	No
07-10	2010CS402139	2588 16-25-0005 * 10 *	Domestic / Criminal domestic violence (high and aggravated intent)	<input type="checkbox"/> 18 M	Yes

Sentenced to: 0672 16-25-0020(C) * 30 days * Domestic / Criminal Domestic Violence, 2nd offense within 10 years, or prior conviction of 16-25-0020(C) as a lesser offense.

NOTES	TOTAL	PROBATION
	18	00

1. The charges the defendant pled to involved him continually hitting his wife while she was holding their grandchild, pouring alcohol over his wife and grandchild, then threatening to burn them.

The Applicant did not appeal his guilty plea or sentence.

II.

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

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) NEVER SHOULD HAVE BEEN CHARGED WITH 2 COUNTS OF ABTICK
- (c) INVOLUNTARILY GUILTY PLEA

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) MY COUNSEL FAILED TO OBJECT TO MY CHARGES. INSTEAD USED A REMORSEFUL DEFENSE
- (b) MY WIFE'S GRANDSON WAS NEVER A PART OF THIS CRIME (KARSEN HAZEL)
- (c) DUE TO INEFFECTIVENESS OF COUNSEL I FELT JURY TRIAL WAS NOT AN OPTION FORCING ME TO PLEA GUILTY

10(b) THE ONE COUNT OF ABTICK AGAINST MY WIFE'S GRANDSON WAS DROPPED TO CDV 2ND AND I HAVE NEVER BEEN CONVICTED OF CDV 1ST OFFENSE. KARSEN HAZEL WAS NEVER A PART OF THIS ACT. IF COUNSEL HAD TO INVESTIGATE THEN HE WOULD HAVE FOUND OUT ALL OF THESE THINGS. MY WIFE'S STATEMENT CHANGED WHEN MY CHARGES CHANGED, I WAS ORIGINALLY CHARGE WITH CDV 1ST OFFENSE. I NEVER HIT MY WIFE WITH A DEADLY WEAPON WHEN WE FELL AT THE BOTTOM OF THE STAIRS, HER HEAD HIT (LANDED) ON THE BARBELL.

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

MY WIFE'S GRANDSON WAS NEVER A PART OF THIS ACT. SO ALL CHARGES AGAINST ME DA KARSEN HAZEL BE DROPPED (DISMISSED)

III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

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, 466 U.S. 668. 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 plea 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).

The Respondent submits that the 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, the 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent 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.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 25, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2011-CP-400-2739

Orlando C. Shiver, #344878

)
) 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(s) by depositing same in the United States mail, postage prepaid:

Orlando C. Shiver, #344878
KIRKLAND CORRECTIONAL INSTITUTION
4344 Broad River Road
Columbia, SC, 29210

DATED this 25th day of May, 2011.



Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	CASE NO. 2011-CP-40-2739
)	
ORLANDO SHIVER,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Defendant.)	
)	

August 17, 2012
Columbia, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, Judge

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

TRISTAN M. SHAFFER, Esquire
Attorney for the Plaintiff

ROB CORNEY, Esquire
Office of the Attorney General
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 AUGUST 17, 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 11:31 a.m.)

5 MR. CORNEY: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 MR. CORNEY: Your Honor, the State calls the PCR
8 application of Orlando Shiver. It's Docket Number 2011-CP-40-
9 2739. Mr. Shiver was true bill indicted at the July 2010 term
10 of the Richland County Grand Jury for criminal domestic
11 violence of a high and aggravated nature and two counts of
12 assault and battery with intent to kill.

13 He pled guilty February 22nd, 2011, before Judge Newman,
14 and I believe he pled to one count of assault and battery with
15 intent to kill as indicted, one count of the lesser included
16 criminal domestic violence second, and he entered an Alford
17 plea to one count of the lesser included assault and battery
18 of a high and aggravated nature as part of the negotiated
19 sentencing range as part of the plea offer for twelve to
20 twenty years imprisonment.

21 Mr. Shiver was sentenced to eighteen years imprisonment
22 on the assault and battery with intent to kill, ten years on
23 the assault and battery of a high and aggravated nature, and
24 one year on the criminal domestic violence second, all to run
25 concurrently. He did not have a direct appeal, but filed a

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 timely PCR application April 13th, 2011, and he is represented
2 today by Mr. Tristan Shaffer.

3 THE COURT: All right. All right. Yes, sir. I'll be
4 glad to hear from you.

5 MR. SHAFFER: Your Honor, the applicant calls George
6 McElveen to the stand.

7 THE COURT: All right. Mr. McElveen, if you would, come
8 around, please.

9 THE BAILIFF: Place your left hand on the Bible and face
10 the clerk for me.

11 THE CLERK: Do you swear or affirm the testimony you
12 shall give this Court to be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Please have a seat there, sir. State your
16 full name for the record and please -- please spell your last.

17 THE BAILIFF: Watch your step.

18 THE WITNESS: I am George R. McElveen the Third. That's
19 M-C-E-L-V-E-E-N.

20 GEORGE MCELVEEN, being first duly
21 sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. SHAFFER:

24 Q: All right. Mr. McElveen, tell us a little bit about
25 yourself. You're an attorney; right?

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 A: Yeah, I'm an attorney. I've been practicing here longer
2 than I care to remember.

3 Q: Okay and when's the first time you met -- you represented
4 Orlando Shiver?

5 A: I've known Orlando for a long time.

6 Q: Okay. You've represented him on some charges before
7 this?

8 A: Actually, some -- some non-criminal matters.

9 Q: Okay and involving this incident, how did you come to
10 represent him?

11 A: Well, he just came to me or called me. I think he was in
12 jail.

13 Q: Okay and you were retained?

14 A: I was.

15 Q: Okay. Tell us a little bit about the facts of the -- or
16 the allegations in this case?

17 A: Well, the allegations were that during a dispute at
18 Orlando's wife's house -- ex-wife's house, things had turned
19 violent and that Orlando had assaulted her with his fists and
20 with a barbell, poured lighter fluid over her and her child,
21 and threatened to burn them all, light them up on fire. He
22 caused a fairly severe injury to her head. That he had --
23 during the course of the -- of the assault, which was fairly
24 protracted, he had called his aunt to tell her what was going
25 on and asked her to please intervene. At one point, actually

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 put the victim on the phone to talk to the aunt and eventually
2 waited there while the police arrived.

3 Q: Okay and you -- you mentioned lighter fluid. Was there
4 -- in the ---

5 A: Yeah, I say lighter fluid. I think it was vodka.

6 Q: Okay.

7 A: Yeah.

8 Q: Okay. Now, whenever you first got retained on the case,
9 what were Mr. Shiver's expectations of what he wanted to do?

10 A: He knew -- he knew he was going to be in -- in jail for a
11 while. He didn't even want to have a bond hearing. He said I
12 know I've got to do some time. I might as well start now and
13 I don't want to even bother anybody with a bond reduction
14 hearing.

15 Q: Okay and was he planning on pleading or was he planning
16 on going to trial?

17 A: Well, that was sort of amorphous at the time. I mean,
18 again, he -- he indicated an understanding that he was going
19 to do time. We didn't -- you know, he didn't say from the
20 start I'm going to plead to this. I think he was looking to,
21 you know, come out with some sort of sentence that he could
22 live with, but as things progressed, you know, we discussed
23 the options of plea and trial.

24 Q: Okay and when you initially represented him, what was he
25 charged with? What were the actual charges?

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 A: Initially?

2 Q: Yeah.

3 A: If I recall correctly, two counts of AB -- let's see. I
4 believe it was AB -- ABIK, ABHAN, and CDVHAN.

5 Q: Okay and how much time was he looking at?

6 A: Fifty years, if I'm -- if I calculate correctly, but they
7 are twenty, thirty and forty. It would have been forty.

8 Q: It would have been forty?

9 A: Isn't that right? Twenty for the ABIK, ten for the AB --
10 CDV -- for the ABH -- for the ABHAN, and -- and for the -- the
11 CDVHAN ten. What's that? Twenty, thirty, forty.

12 Q: Okay.

13 A: I got it right.

14 Q: To expedite, I think -- if I told you he was charged with
15 two counts of ABIK and then ---

16 A: Yeah. That's what I thought.

17 Q: --- CDVHAN, would that ---

18 A: That's right. It was two counts of ABIK, not two -- not
19 -- it was reduced to the CDV -- to the A -- ABHAN.

20 Q: Okay.

21 A: So it would have been fifty years.

22 Q: Okay.

23 A: Which sounds like what I remember now.

24 Q: Okay and what was the -- what time would he actually have
25 served on that? I mean what percentage of that would be the

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 minimum he would have served?

2 A: Well, on the -- on the ABIK, he'd have had to do eighty-
3 five percent.

4 Q: Did you advise him of that?

5 A: I'm sure I did.

6 Q: Okay and did you advise him of his options if he went to
7 trial? What was -- what did you advise -- or did you advise
8 him of his options of going to trial?

9 A: He was well aware of his option of going to trial. We
10 had extensive discussions about going to trial and this was
11 towards the end when it became fairly obvious that the
12 solicitor was looking for an extensive sentence.

13 Q: Was your strategy at the beginning to try to get a
14 reduction or to get a reduced ---

15 A: Well, as usual, it was to negotiate the best deal I
16 could.

17 Q: Okay and toward the end what was your strategy or what
18 strategy -- trial strategy did you discuss with Mr. Shiver?

19 A: Well, Orlando maintained that -- that he didn't intend to
20 kill anybody. I discussed with him the -- the law as it
21 related to intent in an -- in an ABIK situation. I told him,
22 of course, he knew he could have a jury trial. I told him.
23 You know, I was very frank with him. I didn't think that his
24 chances at a jury trial were good and that if he lost on these
25 facts, he was going to get a whole lot of time.

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 Q: Okay.

2 A: I made that very clear to him.

3 Q: How much time would -- did you estimate the amount of
4 time that the judge would have given him?

5 A: No. I didn't try to do that. I think I just told him if
6 you lose on these facts, he's going to light you up. That's
7 what I told him.

8 Q: Did you explain to him the difference in concurrent and
9 consecutive sentences?

10 A: I don't recall the exact, you know, discussions that we
11 had, but I know that -- but -- but, of course, we discussed
12 concurrent sentences and consecutive sentences when it came
13 time to me explaining to him to what the offers were.

14 Q: Okay. Okay and do you think he understood that?

15 A: I'm sure he did.

16 Q: Okay.

17 A: I never -- never had the feeling that Orlando was
18 confused about any of that.

19 Q: Okay and real briefly, in your file there's a letter that
20 he wrote to you after -- after jail; right? Or after he had
21 gotten sentenced; right?

22 A: I think so.

23 Q: While he was in prison?

24 A: Yeah.

25 Q: Could you look at that? At that letter? I believe it's

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 -- at least yesterday it was in the very front. It's on a
2 yellow sheet of paper.

3 A: All right.

4 Q: How much time did he say -- say in that letter that he
5 received?

6 A: Do you want me to just read the letter?

7 Q: That would be fine.

8 A: The day of sentencing client's Aunt May said she spoke to
9 victim. Victim stated she would have been okay with five
10 years. Victim claimed that she did not tell the judge that
11 because solicitor and Assistant Care told her not to. Aunt
12 May said she told you two to three days later. I am claiming
13 ineffective assistance of counsel for failure to file a motion
14 to reconsider ---

15 Q: I ---

16 A: Huh?

17 Q: I believe that was actually a letter that I wrote to you
18 while we were in court.

19 A: Well, I didn't know. You said a yellow piece of paper.
20 That's what I see here.

21 Q: There should be a small yellow piece of paper with his
22 handwriting on it.

23 A: You seem to know exactly where it is. It's not yellow.
24 It's a -- it's a white piece of paper here.

25 Q: Oh. It's in a smaller sheet.

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 A: Yeah.

2 Q: I apologize.

3 A: That's all right.

4 Q: It might be a white piece.

5 A: Mr. McElveen, I'm writing you in regards to my
6 transcripts from my prelim in court. I also want and request
7 that you send me my entire motion. I'm not satisfied with my
8 sentence because I should have never been charged with
9 anything but CDVHAN. I'm sorry that my father's fee got me 28
10 years. There are -- which he didn't get 28. He got 18.

11 There are people that have charges a whole lot worse than
12 me who get three and five years' probation and only have a
13 public defender. I had no one in my defense and gave you a
14 list of people that you requested. The State used my
15 background along with the current charges to give me a life
16 sentence. So I am entitled to everything that has my name on
17 it. Please send it to me at your convenience.

18 No one was at that house but my wife and I. A lot of
19 things were said that didn't happen and could have been
20 argued. My aunt was not allowed to speak and she wanted to.
21 Her and my dad is over 65 years of age and they probably will
22 die before I get out of here.

23 Q: Now, I'll stop you there.

24 A: All right.

25 Q: I've gotten to the point unless you want to continue.

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

- 1 A: No, I'm not -- whatever you need.
- 2 Q: Okay. He -- he said in that letter that he got 28 years;
3 correct?
- 4 A: Right.
- 5 Q: Okay. He actually got ---
- 6 A: Eighteen.
- 7 Q: --- eighteen concurrent with a ten year sentence?
- 8 A: Right.
- 9 Q: Concurrent with a one year sentence; correct?
- 10 A: Right.
- 11 Q: Okay. Now, whenever -- whenever you came to it, do you
12 remember the -- whenever you came up for trial, do you
13 remember the morning that you were scheduled to go to trial?
- 14 A: Well, this was not a situation in which we agreed to
15 enter a plea the morning we were called for trial. I mean
16 this was a negotiated sentence in advance.
- 17 Q: Okay. It was a negotiated sentence?
- 18 A: Right.
- 19 Q: Okay. So you didn't tell him that they had a jury
20 downstairs the morning of?
- 21 A: I really don't remember that. I just -- this was a
22 negotiated sentence.
- 23 Q: Okay.
- 24 A: Yeah.
- 25 Q: How -- how many days prior to the sentencing did you

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 discuss this with him?

2 A: We had been discussing this for months.

3 Q: Okay.

4 A: I had called the victim in this case about a month
5 beforehand with this -- with this offer in place to ask her if
6 she could agree with the minimum range of the -- of the
7 negotiation.

8 Q: Okay.

9 A: So I know it -- I know that it was on the table for that
10 long.

11 Q: Okay and what did she say?

12 A: I asked her if she could go along with the twelve years.
13 The negotiated range was twelve to twenty and I called her and
14 asked her if she felt she could go along with the -- with the
15 minimum and she informed me that she could not, that he wanted
16 -- that she wanted him to do every day of twenty.

17 Q: Okay and that was a month before you pled?

18 A: That was a month, almost a month, yeah.

19 Q: Okay. Now, do you recall -- or what research had you
20 done of the potential trial issues?

21 A: I researched the element of intent as it related to
22 assault and battery with intent to kill.

23 Q: Do you -- do you recall a case *State v. Kinard*?

24 A: Not specifically, but I wouldn't put it -- I wouldn't
25 argue with you.

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

- 1 THE COURT: What was it? *Kinard*?
- 2 MR. SHAFFER: Yes, Your Honor.
- 3 THE COURT: Out of Saluda County?
- 4 MR. SHAFFER: Yes, Your Honor.
- 5 THE COURT: Okay, thank you. Go ahead. Terry or his
- 6 brother?
- 7 MR. SHAFFER: Timothy, Your Honor.
- 8 THE COURT: All right.
- 9 MR. SHAFFER: I believe it was Judge Keesley.
- 10 THE COURT: It was.
- 11 Q: Mr. McElveen, did you print out a copy of *State v.*
- 12 *Kinard*?
- 13 A: I may well have.
- 14 Q: Okay. Did you use Loislaw at the time?
- 15 A: I did.
- 16 Q: Does this appear to be a print-off from your Loislaw
- 17 account?
- 18 A: It's certainly consistent with that. Yeah, I'm sure
- 19 that's what this is.
- 20 Q: Okay and what was the date on that?
- 21 A: February 15th, 2011.
- 22 Q: Do you believe that that is an actual copy of the case
- 23 that you had printed out for him?
- 24 A: It may well be.
- 25 Q: Okay. All right.

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 MR. SHAFFER: I'll wait and move it in under my other ---

2 THE COURT: All right.

3 MR. SHAFFER: --- witness.

4 Q: Now, tell us what you told him in regard to this case.

5 Have you read this case recently?

6 A: No.

7 Q: Okay.

8 A: I can -- I can just tell you what I remember telling him
9 in -- with regards to the intent element of ABIK.

10 Q: Okay.

11 A: Was that it is a -- it is a question of general intent,
12 not specific intent. That the State doesn't have to prove an
13 actual express intent to kill; they only have to prove --
14 they're able to ask the jury to draw an inference from the
15 nature of the injuries, the -- the nature of the -- of the
16 assault and any -- you know, any other fact and circumstance
17 that -- that -- that -- that is put before them that's
18 admissible. You know, it's -- it's -- it doesn't have to --
19 he doesn't -- they don't have to say I'm going to kill you.
20 The difficulty in this case was he had said that, too.

21 Q: Okay. When did he say that? When during the assault had
22 he said that? Do you recall?

23 A: Well, I just -- you'll just have to look at the victim's
24 statement.

25 Q: Okay.

DIRECT EXAMINATION OF GEORGE MCELVEEN BY MR. SHAFFER

1 A: And even the aunt said that.

2 Q: Now, do you recall getting a call from the aunt a few
3 days after the sentencing?

4 A: Not specifically.

5 Q: Okay. Would you -- would you dispute the fact that --
6 that -- if the aunt testified that she did, would you dispute
7 that?

8 A: No. I don't recall whether she did or not.

9 Q: Okay.

10 A: She may well have. I know I talked to her. Whether it
11 was specifically before or after sentencing, I can't remember.

12 Q: Do you recall her telling you that the victim had spoken
13 to her and would be satisfied with five years?

14 A: The fact that the victim would be satisfied with a light
15 sentence was a recurrent theme throughout the pendency of this
16 case, but when I would talk to the victim, that's not what I
17 would get.

18 Q: Okay.

19 A: So, yeah, I mean I remember those -- those -- those
20 representations being made. Exactly when, I can't recall.

21 Q: Did you talk to the victim after the -- the sentencing?

22 A: I -- I did not.

23 Q: Okay.

24 MR. SHAFFER: The Court's indulgence?

25 THE COURT: Yes, sir, certainly.

CROSS EXAMINATION OF GEORGE MCELVEEN BY MR. CORNEY

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

2 THE COURT: Thank you. Thank you very much. Mr.
3 Attorney General?

4 MR. CORNEY: Yes, sir, Your Honor, just very briefly.

5 CROSS EXAMINATION

6 BY MR. CORNEY:

7 Q: Mr. McElveen, thank you for your patience with us this
8 morning sitting back there. What was the date on that letter
9 that you received from Mr. -- Mr. Shiver in this case? Is
10 there -- is it dated?

11 A: Well, the -- the -- the postmark is March 2nd of 2011.

12 Q: Okay. So you wouldn't have received that within the ten
13 day time period to file an appeal or post-trial motion?

14 A: No, apparently not.

15 Q: And as far as the intent -- the intent requirement to be
16 proved under ABIK, you said that was something you reviewed
17 with Mr. Shiver?

18 A: Yes, in detail.

19 Q: Okay and did you have any doubt the State would likely be
20 able to prove that beyond a reasonable doubt?

21 A: I felt like the -- the defense of "I did not intend to
22 kill anybody" was probably not going to be very successful at
23 trial.

24 Q: Okay, but you had -- I believe your testimony was you had
25 explained that to him and he knew it was a triable issue?

CROSS EXAMINATION OF GEORGE MCELVEEN BY MR. CORNEY

1 A: Oh, yeah.

2 MR. CORNEY: That's all the questions I have, Your Honor.

3 Thank you.

4 THE COURT: Any redirect?

5 MR. SHAFFER: Your Honor, no further questions at this
6 time.

7 THE COURT: Thank you. Thank you very much. Thank you,
8 Mr. McElveen.

9 THE WITNESS: Thank you, Your Honor.

10 (Whereupon, the witness leaves the stand at 11:50 a.m.)

11 MR. CORNEY: Your Honor, may he be released from his
12 subpoena?

13 THE COURT: Any objections?

14 MR. SHAFFER: No, Your Honor.

15 THE COURT: All right, sir. You're released, Mr.
16 McElveen. Thank you for being with us.

17 THE WITNESS: Thank you.

18 THE COURT: All right. You may call your next witness.

19 MR. SHAFFER: Your Honor, the applicant calls the
20 applicant, Orlando Shiver.

21 THE COURT: All right. Come around and be sworn please.

22 THE CLERK: Do you swear or affirm the testimony you
23 shall give this Court will be the truth, the whole truth, and
24 nothing but the truth, so help you God?

25 THE APPLICANT: I do.

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 THE CLERK: Please have a seat there, sir. State your
2 full name for the record and please spell your last name.

3 THE BAILIFF: Watch your step for me, please.

4 THE APPLICANT: Orlando Shiver, S-H-I-V-E-R.

5 ORLANDO SHIVER, being first duly
6 sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. SHAFFER:

9 Q: All right, Mr. Shiver. Briefly tell us about your
10 interaction with -- well, where are you from first off?

11 A: I'm from Gaston, South Carolina, in Richland County.

12 Q: Have you lived in Gaston your whole life?

13 A: All my life.

14 Q: Okay. When is the first time you met Mr. McElveen?

15 A: In 1995.

16 Q: Okay and when -- what were you doing whenever -- or what
17 was your interaction with him at that time?

18 A: I had some driving under suspensions and I -- he -- I
19 hired him to get me out of them to keep me from doing time.

20 Q: Okay and the night of the incident that -- that is the
21 subject of you being in prison, what -- what was your -- where
22 were you living at at that time?

23 A: Well, at that time I had moved back in with my ex-wife at
24 the time.

25 Q: Okay. So you moved back in with her?

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 A: Yes.

2 Q: Okay and whose -- at whose request was that?

3 A: That was at her request.

4 Q: Okay. Why did she request you to move back in with her?

5 A: She had attempted suicide and she had her grandchild
6 living with her and she needed help.

7 Q: Okay and what were -- how long had you been staying with
8 her up until the attack?

9 A: Roughly about three months.

10 Q: Okay and what did you do for her while you were staying
11 there?

12 A: Well, I took the grandbaby back and forth to the nursery
13 and give him his bath and feed him and she would mostly sleep
14 a lot and she just wasn't able to take care of him by herself.

15 Q: What was your romantic involvement with her? Were you
16 romantically involved?

17 A: Yes.

18 Q: Okay. Were y'all trying to get back together?

19 A: Yes.

20 Q: Okay. The night of the incident, tell me about that?
21 Tell me what events had led up to it?

22 A: Well, this particular night she had originally had a
23 birthday on the 11th month, the 17th day of 2009 and she -- I
24 was on the road driving truck, but she had some family members
25 came over. Excuse me. And they left a lot of alcohol there

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 and then that particular night she started making drinks and I
2 was cooking and we were listening to music and then her
3 grandbaby was running around in the house just, you know,
4 doing his normal thing. And when I set down, I asked her a
5 question and I said, well, Felicia, you know, we probably
6 won't be able to put our marriage back together. And then she
7 responded to it and I said something else and then something
8 in the past came up and we got into an argument.

9 Q: Okay. Now, at this point tell us what -- you eventually
10 told Mr. McElveen this; right?

11 A: Yes.

12 Q: Okay. Tell us what you had told him about the -- that
13 night?

14 A: Basically, that's what. He asked me how did it, you
15 know, got started and that's how I told him that's where it
16 started from. That's how the criminal domestic violence got
17 started.

18 Q: Okay and then did you tell him about the actual physical
19 altercation?

20 A: Yes, I did.

21 Q: Okay and what did you tell him about that?

22 A: Well, I told him she -- after we was arguing, she had
23 told me to get out and then when she told me to get out, I
24 told him that I had -- I did hit her and then she slapped me
25 back and then we -- we started fighting.

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

- 1 Q: Okay. Now, she had a gash in her head; is that correct?
- 2 A: Yes.
- 3 Q: Okay. How did that happen?
- 4 A: From my understanding at that night, I didn't knew she
- 5 had a gash in her head.
- 6 Q: Okay.
- 7 A: I was told later that she did.
- 8 Q: Okay. At some point there was an allegation about a
- 9 dumbbell; is that correct?
- 10 A: That's correct.
- 11 Q: What happened there? How -- how did she get hit with a
- 12 dumbbell?
- 13 A: She didn't get hit with the dumbbell.
- 14 Q: Okay.
- 15 A: We was fighting and when I was -- she was scratching.
- 16 She had her fingernails clawing in my face and I was pulling
- 17 her hair trying to pull her away from me and the baby usually
- 18 have toys all over the floor so she tripped over something on
- 19 the floor and she fell back down by the bottom of the
- 20 stairwell. She fell on her stomach and I fell on her back.
- 21 So the only thing I can say is her head hit those dumbbells
- 22 because that's where they was always sitting at the bottom of
- 23 the staircase.
- 24 Q: Okay.
- 25 A: But that night I didn't knew she had a gash in her head

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 and I don't think she knew either until she got to the
2 hospital.

3 Q: Okay and at some point there was also an allegation about
4 a screwdriver. Could you tell us about that and how that
5 happened?

6 A: Well, at that point she was on the phone with my aunt and
7 I was sitting on the couch across from her. She was sitting
8 at the bottom of the stairwell where she just turned around
9 and she sat down and I was looking at the screwdriver on top
10 of the entertainment system and I told her -- I said tell them
11 that I got a screwdriver to your neck and that's how that --
12 that's how that came about, but I never had it in my hand and
13 I never held it to her neck.

14 Q: Okay and -- and she was on the phone with your aunt why?

15 A: I gave her the -- my aunt asked to speak to her and I
16 gave her the phone.

17 Q: Okay.

18 A: And she was on the phone with her.

19 Q: Why -- why did you do that?

20 A: Well, my aunt asked me to give Felicia the phone.

21 Q: Now, your wife in some degree was involved doing
22 something with Assisted Care. Can you describe that?

23 A: Well, she's -- she used to work for Assisted Care.

24 Q: Okay. Was that prior to this incident?

25 A: Yes. She started in 2002.

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 Q: Okay and you -- after you were arrested, how long did you
2 stay in jail before you hired Mr. McElveen?

3 A: It had to be roughly a couple of weeks.

4 Q: Okay and you -- you hired Mr. McElveen and tell us about
5 your expectations of the case and what he was going to do for
6 you?

7 A: Well, when I first -- when he first came to see me, he
8 told me -- he said, Orlando, I'll get you out of this one way
9 or the other.

10 Q: All right.

11 A: That's the first thing he said.

12 Q: Okay and what were you expecting or what did you think
13 that meant?

14 A: That meant that the charges that they charged me with
15 would have been dropped and I would have initially just been
16 charged with criminal domestic violence of a high and
17 aggravated nature.

18 Q: Okay and were you planning on -- would you have pled to
19 that?

20 A: Yes, I would have.

21 Q: Okay. Did you -- did -- was that ever offered to you at
22 any point?

23 A: No.

24 Q: Okay. If it had been offered to you, you would have pled
25 to that?

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

- 1 A: Yes.
- 2 Q: Okay. What was your -- how did you feel about pleading
3 to assault and battery with intent to kill?
- 4 A: I didn't wanted to.
- 5 Q: Okay. You -- you didn't want to?
- 6 A: No.
- 7 Q: Did you tell him that?
- 8 A: I told Mr. McElveen that, yes.
- 9 Q: When did you first tell him that?
- 10 A: When we came up to court on the 22nd. Throughout the
11 times, he came to see me probably about three times and he
12 never mentioned nothing about pleading guilty. I kept telling
13 him I wanted to go to trial with it because I knew I wasn't
14 guilty of assault and battery with intent to kill.
- 15 Q: Okay and -- and you were -- you were saying you wanted to
16 go to trial?
- 17 A: I wanted to go to trial.
- 18 Q: How much time did he say you were facing if you went to
19 trial?
- 20 A: He said with the two counts of assault and battery with
21 intent to kill and the criminal domestic violence of a high
22 and aggravated nature, fifty years.
- 23 Q: Okay. Now, at -- at some point you got pulled over to
24 Richland County De -- or the judicial center; correct?
- 25 A: Yes.

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

- 1 Q: Okay. At the courthouse?
- 2 A: Yes.
- 3 Q: Were you aware that you were going to go to the
4 courthouse before you -- you were transported?
- 5 A: I knew I was, but I didn't know I was coming to go to
6 trial or either to a plea offer. I didn't know that.
- 7 Q: Okay and whenever you got here, was Mr. McElveen here?
- 8 A: Yes.
- 9 Q: What did he discuss with you that morning?
- 10 A: He told me that they was going to drop the charges on the
11 grandchild down to assault and battery of a high and
12 aggravated nature and the second count of criminal domestic
13 violence of a high and aggravated nature to my wife was going
14 to be to a CDV 2nd offense. He said I would have to -- I had
15 to plea to that and he said if not, they're going to take you
16 to trial. They already had a jury and you're going to go to
17 trial and if you lose, you're going to get fifty years.
- 18 Q: Okay and what did he tell you about your chances of
19 winning or losing?
- 20 A: He -- he said -- I said, well, I still want to go to
21 trial. He said, well, then I can't argue your case. You've
22 got to take this plea.
- 23 Q: He said what?
- 24 A: I cannot argue your case.
- 25 Q: He said you can't -- he cannot argue your case?

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 A: He said he can't argue it.

2 Q: Okay and did he tell you why he couldn't argue it?

3 A: Well, he kept mentioning about malice aforethought and

4 then he gave me that -- that -- he gave me that and then said

5 ---

6 Q: That's ---

7 A: He told me to read it.

8 Q: This one?

9 A: Yes.

10 Q: Okay.

11 A: About the two gentlemen that broke into the guy's house.

12 Q: Is this what he gave you?

13 A: Yes, that's what he gave me.

14 Q: Okay. What -- what does this say? What is it?

15 A: It is the *State v. Kinard*. It's assault and battery with

16 intent to kill on Timothy Terreal Kinard. It's where he -- do

17 you want me to read the facts?

18 Q: No, no. What did he tell you about that case?

19 A: He compared that to my case.

20 Q: Okay and why -- why did he compare it to your case? What

21 -- what did he say that meant -- that case meant?

22 A: He said that that meant that that was malice aforethought

23 and that meant that if I was to go to trial that this -- my

24 case was the same as this one and I would lose. Everybody

25 knows ---

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 Q: He said what was malice aforethought because of that
2 case?

3 A: What the -- what the gentle -- the young man that was in
4 this other gentleman's house struck him across the head with a
5 piece of iron.

6 Q: All right. So he said that was malice aforethought?

7 A: Yeah.

8 Q: Okay. Did -- did he say that it was possible to win your
9 case?

10 A: No.

11 Q: And what were his exact words regarding your case and
12 whether or not you should go to trial?

13 A: He said he couldn't argue it.

14 Q: He said he could not argue your case?

15 A: He could not argue my case.

16 Q: Okay. Why did you decide to plead guilty?

17 A: Mr. McElveen said he could not argue my case and I was
18 facing fifty years. So if he can't argue my case and I go to
19 trial, then that mean I'm going to lose.

20 Q: Did you feel pressured to go to -- to plead?

21 A: Well, it -- it put me in a corner and -- and they was
22 going to -- he said they offer you twelve years on the plea,
23 but I didn't want to plead to assault and battery with intent
24 to kill. But if he couldn't argue my case and I was -- and
25 that mean he'll lose the trial, then that mean I'll be facing

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 fifty years.

2 Q: Why didn't you want to plead to assault and battery with
3 intent to kill?

4 A: Because I -- I shouldn't have been charged with it.

5 Q: Why -- why shouldn't you have been charged with that?

6 A: Because I didn't intend to kill anyone.

7 Q: All right.

8 A: And I don't -- I don't agree with the charges that they
9 changed it to, but those were not my initial charges.

10 Q: If you went to trial, what -- what would you have
11 testified to about the incident?

12 A: About the incident? I would -- I would have testified --
13 because they -- they solely based it upon me picking up a
14 dumbbell and hitting her in the head and I didn't do that.

15 Q: Okay. You would have testified that you did not do that?

16 A: I did not do that.

17 Q: Okay. If Mr. McElveen had not said he could not argue
18 your case, would you have gone to trial?

19 A: I would have went to trial.

20 Q: Okay. Now, did he explain to you the difference between
21 consecutive and concurrent sentences?

22 A: No, he did not.

23 Q: Okay. How much time did you think you had whenever you
24 went to jail?

25 A: With the one year's time served, I thought I had twenty-

DIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 eight years.

2 Q: Okay. What -- when's the last time you spoke to Mr.
3 McElveen?

4 A: I called him the day I went back to the county that same
5 day and that's the last time I spoke to him.

6 Q: What did you tell him?

7 A: Well, he -- I didn't told him. He told me that he was
8 coming up the next week to see me because that Thursday I was
9 going to SCDC and he never came up there. I never heard from
10 him since.

11 Q: Okay. Now, at any point did you speak to any family
12 members about the case after you had gotten arrested or after
13 you had gotten sentenced?

14 A: Well, that same day after -- after I talked to George, I
15 did told him what my ex-wife had said about it. She would
16 have -- she didn't wanted me to get but five years because
17 after I done called home and talked to my Aunt May and she
18 told me that.

19 Q: Okay and you told George that?

20 A: Yeah. I called him after I talked to her.

21 Q: Why were you telling him that?

22 A: Well, it just seemed obvious that in the court she said
23 she wanted me to get every bit of twenty years and then she
24 turned around and said after that she didn't wanted me to do
25 but five.

1 Q: Okay. Do you think he could have helped you by telling
2 him that?

3 A: I thought he could have.

4 Q: Okay. Did he do anything?

5 A: No, he didn't.

6 Q: Did he say anything about that?

7 A: He -- he -- he didn't say anything. He just told me,
8 Orlando, I'll come up and see you next week and I never heard
9 from him.

10 Q: Okay.

11 MR. SHAFFER: The Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. SHAFFER: No further questions, Your Honor.

14 THE COURT: Thank you. Mr. Attorney General?

15 MR. CORNEY: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. CORNEY:

18 Q: Mr. Shiver, the night this incident was going on, you
19 told the victim that you were going to kill her; didn't you?

20 A: I told my aunt that when I was on the phone.

21 Q: That you were going to kill the victim in this case?

22 A: Yes.

23 Q: And you said that this hitting her in the head with a
24 dumbbell, that never happened throughout that night?

25 A: I didn't never hit her with the dumbbell, no.

CROSS EXAMINATION OF ORLANDO SHIVER BY MR. CORNEY

1 Q: Okay and you said you never held a screwdriver to her
2 neck?

3 A: Not -- no. I said I told her to tell them that, but I
4 never held it to her neck.

5 Q: Okay, but you're here today to testify that that never
6 happened throughout the entire night?

7 A: No.

8 Q: Okay, but didn't you agree or say at the plea hearing
9 that there were big chunks of that night you can't even
10 remember?

11 A: Did I say what?

12 Q: At the plea hearing, didn't you tell Judge Newman that
13 there were big chunks of that night you couldn't remember
14 anything from?

15 A: Not big chunks. There were just certain things that was
16 being said. That's what I meant.

17 Q: Okay. You have a prior criminal record; don't you, Mr.
18 Shiver?

19 A: Yes.

20 Q: Okay and one of those charges is actually a criminal
21 domestic violence charge against the same victim from 2002?

22 A: Yes..

23 Q: Okay and at the plea hearing at the end, the victim stood
24 up and on the record asked the judge to give you the full
25 twenty years saying you should serve every day of that;

CROSS EXAMINATION OF ORLANDO SHIVER BY MR. CORNEY

1 correct?

2 A: Yes, she did.

3 Q: Okay and I think you said a minute ago on direct
4 examination that you didn't want to enter this plea; you
5 wanted to go to trial?

6 A: Yes.

7 Q: Okay and when you stood there before the judge that day,
8 the first thing he did was review the plea negotiations with
9 you, what you'd be pleading guilty to, and the time that the
10 State was asking for or the -- or the sentences you could
11 receive and what the State was negotiating, and you said you
12 wanted to enter the plea under those terms; correct?

13 A: Mm-hmm.

14 Q: And you didn't speak up any time and say you didn't want
15 to do that?

16 A: I didn't say that at the time.

17 Q: Okay.

18 MR. CORNEY: That's all the questions I have, Your Honor.

19 THE COURT: Redirect?

20 MR. SHAFFER: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. SHAFFER:

23 Q: Why didn't you say at the time that there was -- why
24 didn't you say -- you didn't speak up?

25 A: Because I already spoke to Mr. McElveen and he had done

REDIRECT EXAMINATION OF ORLANDO SHIVER BY MR. SHAFFER

1 explained to me if I go to trial, he could not argue my case
2 and I was going to lose it and I would have been facing fifty
3 years.

4 Q: Okay and if he had not said that, would you have spoken
5 up?

6 A: Yes.

7 Q: What -- what would you have told the judge?

8 A: That I wanted to go to trial.

9 Q: Okay. Did the judge ever ask you if you had any
10 complaints against -- against Mr. McElveen?

11 A: No.

12 Q: Did he ever ask you if you were satisfied?

13 A: No.

14 Q: Okay. Were you satisfied with him at that point?

15 A: At that point, I wasn't satisfied, but that's -- that's
16 -- that's what he was offering me at the time.

17 Q: Okay. Why weren't you satisfied with him?

18 A: Because it's just assault and battery with intent to kill
19 it just -- I wasn't satisfied with the charges.

20 Q: Okay and would you have gone to trial if Mr. -- if Mr.
21 McElveen had told you that he could argue your case, but you
22 might lose and you would probably lose, would you have still
23 gone to trial?

24 A: I would have went to trial.

25 Q: Okay. Even if he told you you would likely lose?

RECROSS EXAMINATION OF ORLANDO SHIVER BY MR. CORNEY

1 A: If he -- if he had tell me he would have argued my case
2 and he had investigated it like I asked him, done things I
3 asked him to do, if he said he would have argued it, I would
4 have went to trial.

5 Q: Okay.

6 MR. SHAFFER: No further questions.

7 MR. CORNEY: Just two questions very quickly, Your Honor.

8 RECROSS EXAMINATION

9 BY MR. CORNEY:

10 Q: After the plea hearing, Mr. McElveen told the Court that
11 he had reviewed the law with you and how malice aforethought
12 relates to proving this crime; correct?

13 A: Mm-hmm.

14 Q: Okay and after that at some point in time I believe
15 towards the end after Mr. McElveen said that, you had the
16 opportunity to speak to the Court as well; right?

17 A: After he said it?

18 Q: Mm-hmm.

19 A: I spoke first and I wasn't allowed to say anything else.

20 Q: Okay. On page 22 of the transcript I think is where Mr.
21 McElveen talks about that he had reviewed malice aforethought
22 with you and the law as it kind of related to that and I think
23 on page 25 is where you addressed the Court saying you were
24 sorry and apologized, but you never mentioned during your
25 little colloquy that ---

RECROSS EXAMINATION OF ORLANDO SHIVER BY MR. CORNEY

1 A: That's what he ---

2 Q: --- Mr. McElveen wasn't telling the truth; did you?

3 A: No. That's what he wanted me to say, but after that
4 point I said everything he asked me to say.

5 Q: Okay. Mr. McElveen wasn't going to prison at the end of
6 this plea; was he?

7 A: No.

8 Q: Okay. It was -- it was you on the line, your plea, your
9 jail sentence after the plea was entered?

10 A: Yes.

11 Q: Okay.

12 MR. CORNEY: That's all the questions I have, Your Honor.

13 THE COURT: Thank you. Thank you very much. You may
14 step down.

15 (Whereupon, the applicant leaves the stand at 12:11 p.m.)

16 MR. SHAFFER: Your Honor, we have one brief witness.

17 THE COURT: You may call your next witness.

18 MR. SHAFFER: Yes, sir. Ms. May Lloyd.

19 THE COURT: Come around, please, and be sworn.

20 THE BAILIFF: Please place your left hand on the Bible
21 and raise your right hand and face the judge for me, please.

22 THE CLERK: Do you swear or affirm the testimony you
23 shall give this Court to be the truth, the whole truth, and
24 nothing but the truth, so help you God?

25 THE WITNESS: Yes.

DIRECT EXAMINATION OF MAY LLOYD BY MR. SHAFFER

1 THE CLERK: Please have a seat there, ma'am, and state
2 your full name for the record. Please spell your last name.

3 THE WITNESS: Okay.

4 THE BAILIFF: Watch your step for me there.

5 THE WITNESS: Okay. My name is May Francis Shiver Lloyd.
6 Lloyd is L-L-O-Y-D.

7 MAY FRANCIS SHIVER LLOYD, being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. SHAFFER:

11 Q: Hi, Ms. Lloyd.

12 A: Hi.

13 Q: Could you tell us a little bit about yourself? Where are
14 you from?

15 A: From Gaston, South Carolina.

16 Q: Okay. How old are you?

17 A: Sixty-seven.

18 Q: Okay and how are you related? How are you related to Mr.
19 Shiver?

20 A: That's my nephew.

21 Q: Okay and he -- and how long -- have you known him since
22 birth?

23 A: Oh, yeah.

24 Q: Okay.

25 A: Mm-hmm.

DIRECT EXAMINATION OF MAY LLOYD BY MR. SHAFFER

- 1 Q: Are you involved in his life?
- 2 A: Yes.
- 3 Q: At what point did you get in -- get involved in his life?
- 4 A: The only time I wasn't involved in his life was when we
5 was traveling in the military.
- 6 Q: Okay.
- 7 A: And that was about twenty years and then after that we
8 was back home and back with him.
- 9 Q: Okay and were you involved whenever he was incarcerated
10 at the county waiting on trial?
- 11 A: Yes.
- 12 Q: Okay and have you spoken to Mr. McElveen about this case?
- 13 A: Yes.
- 14 Q: Did he -- did you have permission to speak to him or did
15 he -- he speak freely to you about the case?
- 16 A: Well, I basically -- when he called his father and told
17 him to tell me he wanted to see me and I went to his office
18 and when I got to his office, that's when I found out they was
19 having the hearing. I didn't know they was having the hearing
20 because the -- the state attorney and the solicitor and one
21 more came to my house and they say we're going to let you know
22 about three days before the hearing and nobody never say
23 nothing after that no more.
- 24 Q: Okay. When -- when did you find out about the hearing?
- 25 A: When I went to Mr. McElveen's office the day of his hear

DIRECT EXAMINATION OF MAY LLOYD BY MR. SHAFFER

1 -- his trial, the day of it, and Mr. McElveen stated he just
2 really couldn't argue the case.

3 Q: Okay and then -- and when you -- you were -- you were the
4 aunt that was on the phone; correct?

5 A: Yes.

6 Q: During the argument?

7 A: Yes.

8 Q: Okay. So you knew about this situation?

9 A: Yes.

10 Q: And did you keep in contact with the victim?

11 A: Yes.

12 Q: Okay. How frequently did you contact her after the
13 alleged attack?

14 A: Well, she would call me and matter of fact, the day he --
15 his trial was, she called me that day.

16 Q: Okay.

17 A: Mm-hmm.

18 Q: What did she tell you that day?

19 A: She told me that she would have been -- that they ---

20 MR. CORNEY: Your Honor, I would object to hearsay on
21 anything that the victim said to her on the phone.

22 MR. SHAFFER: Your Honor, it's not offered for the truth
23 of the matter asserted. It's just what she's passing on to --
24 to Mr. McElveen.

25 MR. CORNEY: Your Honor, I have no objection to it if

DIRECT EXAMINATION OF MAY LLOYD BY MR. SHAFFER

1 it's offered to show whether or not counsel relied on that
2 information in his decisions to go forward or not, but part of
3 what she's saying is being offered for the truth of the matter
4 asserted and I think that's exactly what it is to prove this
5 is the information that Mr. McElveen relied upon. It was true
6 and it was given to him and he relied upon that. So I would
7 still object to it, Your Honor.

8 MR. SHAFFER: Your Honor?

9 THE COURT: Yes, sir?

10 MR. SHAFFER: Your Honor, the declarant in this situation
11 is the alleged victim. She spoke to -- to Ms. Lloyd. I'm
12 just asking, you know, what information she passed on to Mr.
13 McElveen essentially.

14 THE COURT: You can say what she said to Mr. McElveen.

15 MR. SHAFFER: Thank you.

16 THE COURT: Excuse me. Ms. Lloyd can say what she, Ms.
17 Lloyd, said to Mr. McElveen.

18 MR. SHAFFER: Thank you, Your Honor.

19 Q: Now, Ms. Lloyd, you -- this conversation that we were
20 just discussing ---

21 A: Mm-hmm.

22 Q: --- when did it take place?

23 A: The day aft -- the same day of the trial.

24 Q: The same day of the trial?

25 A: Mm-hmm, mm-hmm.

DIRECT EXAMINATION OF MAY LLOYD BY MR. SHAFFER

1 Q: And after that conversation, did you have a chance to
2 speak with Mr. McElveen?

3 A: Yes.

4 Q: When did you speak to him?

5 A: I think Mr. McElveen called me the same afternoon.

6 Q: Okay.

7 A: Mm-hmm, because he called me for to pick up his stuff
8 from Richland County.

9 Q: Okay and did -- what did you tell him about the
10 conversation you previously had?

11 A: I told him that Felicia had called me and she told me she
12 said she would have been satisfied if they had to give him
13 five years and I asked her why she went in court and painted a
14 picture of him as being a monster. She said because the ---

15 MR. CORNEY: Your Honor, same objection.

16 A: --- attorney and ---

17 MR. SHAFFER: Your Honor ---

18 MR. CORNEY: I'm fine with her testifying as to what she
19 understood from that conversation, but word for word quoting
20 what she says would still be the same, Your Honor.

21 MR. SHAFFER: Your Honor, what -- what did -- I'm asking

22 ---

23 Q: The actual question I asked was what did you tell Mr.
24 McElveen, which I think you were answering, but can you tell
25 me what you were -- what you told Mr. McElveen?

DIRECT EXAMINATION OF MAY LLOYD BY MR. SHAFFER

1 A: He ---

2 THE COURT: I sustain the objection as to her
3 conversation with the victim in the matter about why she went
4 into court and said twenty years. You can call the victim for
5 that.

6 MR. SHAFFER: Thank you, Your Honor.

7 Q: What did you tell Mr. McElveen?

8 A: That she said she would ---

9 MR. CORNEY: Your Honor, it's still hearsay and I must
10 propose the same objection. I'm not trying to be difficult.
11 It's the same thing.

12 THE COURT: She may be saying the five years again. I
13 don't know.

14 MR. CORNEY: Yes, sir, Your Honor. I just ---

15 THE COURT: Mr. McElveen brought up that the lighter
16 sentence was a continuing theme throughout the course of his
17 representation also. I don't know what she's going to say.

18 MR. CORNEY: Yes, sir, Your Honor, and I don't mean to --
19 to belabor the point, but ---

20 MR. SHAFFER: If I may?

21 THE COURT: Yes, sir.

22 MR. SHAFFER: I'm not asking to prove what she said or
23 what she didn't say. I'm just asking her to relay what she --
24 what Ms. Lloyd told Mr. McElveen about the conversation she
25 had with ---

DIRECT EXAMINATION OF MAY LLOYD BY MR. SHAFFER

1 THE COURT: I have ruled ---

2 MR. SHAFFER: I apologize.

3 THE COURT: --- that she can say the five years. If you
4 want to prove anything further, call the victim.

5 MR. SHAFFER: Okay. Thank you, Your Honor.

6 THE COURT: That's my ruling. Thank you.

7 Q: Now, you -- now, you told him five years?

8 A: Right, mm-hmm.

9 Q: That -- and you told him that that information came from
10 the victim?

11 A: Right and he asked me for her phone number and said he
12 was going to call her ---

13 Q: Okay.

14 A: --- to see whether she would tell him the same thing.

15 Q: Okay and you gave him her phone number?

16 A: Yes. I gave him her phone number several times.

17 Q: Did you speak to Mr. McElveen again?

18 A: No.

19 Q: Okay. That's the last time you spoke to him?

20 A: Just whenever he called and I gave him that phone number
21 and he said he would have to talk to her and she agreed. I
22 told him she agreed to talk to him.

23 Q: Okay.

24 MR. SHAFFER: No further questions, Your Honor.

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

CROSS EXAMINATION OF MAY LLOYD BY MR. CORNEY

1 Mr. Attorney General?

2 MR. CORNEY: Yes, sir, Your Honor.

3 CROSS EXAMINATION

4 BY MR. CORNEY:

5 Q: Ms. Lloyd, you weren't in that actual house the night of
6 this attack; were you?

7 A: No. I was at my house.

8 Q: Okay. So you were on the phone that night with -- with
9 the defendant the night it happened? Or the applicant?

10 A: Oh, Sopeeda [phonetic] called me.

11 Q: Okay. So the only way that you would have any knowledge
12 of what was going on is what you heard over the phone?

13 A: Right.

14 Q: What each person said on the phone that night?

15 A: Mm-hmm.

16 Q: Okay. Were you at the plea hearing the day that Mr.
17 Shiver entered his plea?

18 A: Yes.

19 Q: Okay and do you remember the investigator saying it was
20 the worst beating he'd seen in thirty -- in his thirty-two
21 years of law enforcement?

22 A: Not at court I didn't hear him say that.

23 Q: You don't remember him saying that at the plea hearing?

24 A: No.

25 MR. CORNEY: That's all the questions I have, Your Honor.

1 Thank you.

2 THE COURT: Redirect?

3 MR. SHAFFER: None, Your Honor.

4 THE COURT: Thank you. Thank you very much, Ms. Lloyd.

5 THE WITNESS: Thank you.

6 THE COURT: You may step down.

7 THE BAILIFF: Watch your step for me, please.

8 (Whereupon, the witness leaves the stand at 12:19 p.m.)

9 THE COURT: All right. You may call your next witness.

10 MR. SHAFFER: Your Honor, that -- that's the -- that
11 concludes the applicant's case.

12 THE COURT: All right. Thank you. Thank you very much.
13 Mr. Attorney General, you may call your first witness.

14 MR. CORNEY: No witnesses on behalf of the State, Your
15 Honor. Thank you.

16 THE COURT: All right. I'll be glad to hear from you on
17 behalf of the applicant.

18 MR. SHAFFER: Your Honor, part -- part of what we're
19 alleging here is ineffective assistance of counsel for failure
20 to essentially request a reconsideration of the sentence. I
21 believe that Mr. McElveen got the information that the victim
22 no longer wanted to get -- have him serve twenty years and
23 that at least puts a reasonable possibility that if he had
24 moved to reconsider it, the judge would have reduced the
25 sentence. I believe that his duty extends to that point of

1 all the post-trial motions and that he was ineffective for
2 failing to do that.

3 We also, of course, are alleging that the guilty plea was
4 actually involuntary. It was made involuntarily. Mr. Shiver
5 testified that he felt coerced by the fact that Mr. McElveen
6 told him that he could not argue his case and that that
7 essentially was why he pled guilty because he was afraid of
8 the fifty years that he would have gotten if he went to trial
9 with an attorney that could not argue his case and that is
10 essentially our argument, Your Honor.

11 THE COURT: All right. So first is on the issue of he
12 should have filed a motion to reconsider based on Ms. Lloyd
13 advising him of what the victim had told her she would be
14 satisfied with the five years?

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: And the second argument is the guilty plea he
17 felt was involuntary or coerced because of Mr. McElveen
18 advising him that he could not argue his case?

19 MR. SHAFFER: That's correct, Your Honor.

20 THE COURT: All right. Thank you. Thank you very much.
21 Mr. Attorney General?

22 MR. CORNEY: Yes, sir, Your Honor. I believe Mr.
23 McElveen's testimony was that he had called and spoke with the
24 victim and asked her to please request the minimum at the plea
25 hearing on his behalf -- on Mr. Shiver's behalf and the victim

1 had told him she couldn't go along with the minimum and wanted
2 Mr. Shiver to do the maximum every day of that sentence.
3 That's what she said at the plea hearing.

4 THE COURT: The minimum would have been twelve on the
5 plea offered?

6 MR. CORNEY: Yes, sir, Your Honor. I think the
7 negotiation was for twelve to twenty years. He got eighteen.
8 The State requested the maximum. The victim requested the
9 maximum. He got eighteen years.

10 Mr. -- Mr. McElveen also testified that this letter that
11 was allegedly sent to him saying that he wasn't -- Mr. Shiver
12 wasn't satisfied with the sentence, he didn't receive until
13 outside of the time -- the ten day time period to file a post-
14 trial motion or an appeal on his behalf. There's no way he
15 could have known that he wanted to appeal that at that point
16 in time, Your Honor.

17 As far as going to trial, I think that Mr. McElveen's
18 testimony kind of speaks for itself. He informed him of the
19 intent that's required that the State had to prove beyond a
20 reasonable doubt. He told him it was a triable issue. Mr.
21 Shiver decided he wanted to plead guilty. He pled guilty.

22 The transcript I would urge the Court to read, obviously,
23 and look at it and see the testimony that's in there where law
24 enforcement says this is the -- the investigating officer says
25 it's the worst beating he's seen in his thirty-two years of

1 law enforcement and the State's allegation is he essentially
2 hit the victim in the head with a ten-pound barbell, you know,
3 cutting her skull wide open.

4 Heinous, heinous facts. Mr. McElveen did the best he
5 could. He let Mr. Shiver know it was a triable issue and Mr.
6 Shiver decided to plead guilty to a negotiated sentence where
7 he knew he was going to get between twelve and twenty years.
8 He didn't even get the maximum after the State and the victim
9 both requesting it on the State's behalf.

10 He admitted guilt at the plea hearing, Your Honor, on
11 page 5, lines 19 and 20. He admitted his guilt to it, to all
12 of it except where he entered the Alford plea, and I believe
13 that as far as the -- the involuntary guilty plea, I think the
14 record speaks for itself beyond that.

15 He stood before the Court and said he wanted the
16 negotiated plea and went through all the steps, said it was
17 his decision. He understood the maximum and minimum
18 sentences. He -- you know, they went through the recitation
19 of the facts, talked about his constitutional rights. He said
20 he wanted to waive them and he pled guilty to this negotiated
21 sentence and got the benefit of the bargain for a lesser
22 included charges and the State would ask that you please
23 dismiss the application.

24 THE COURT: Anything in brief response?

25 MR. SHAFFER: Yes, Your Honor. I -- I feel the need to

1 correct a couple issues. I don't believe that some of the
2 Attorney General's argument was supported by the record. I
3 don't believe that McElveen -- Mr. McElveen ever testified
4 that it was a triable issue. The letter also is not our --
5 our -- in fact, I think he said that he -- he thought he would
6 lose. I don't think he ever specifically said this is a
7 triable issue or that he told him that.

8 I believe that the letter is not necessarily -- was not
9 introduced for the purposes of showing that we -- or was not
10 introduced to show that -- that he could have made a post-
11 trial motion. We're relying on the fact that he spoke to both
12 the client and his aunt the day after the plea or the day of
13 the plea to say that -- to say that he could have at that
14 point made it. That's certainly within the ten days.

15 The time that Mr. McElveen stated he spoke to the victim
16 and the only time he said he spoke to the victim, he said that
17 he did not speak to him -- speak to the victim again after.
18 It was approximately one month before he had pled guilty. It
19 was not during that ten day period or after the -- after the
20 sentencing or anything else.

21 I believe that's the only thing I caught in there, but
22 I'd like to correct it, Your Honor.

23 THE COURT: Thank you. Thank you very much.

24 MR. CORNEY: Your Honor, if I may? Just I know the
25 record will speak for itself, but I -- in my notes, I

1 specifically asked Mr. McElveen do you think the State would
2 have any problem proving the intent portion of the -- of the
3 statute beyond a reasonable doubt and he said I didn't. I
4 said did you discuss that with him and he said I discussed it
5 with him. He knew it was a triable issue and that's exactly
6 quoted in my notes and I'm not saying that I am a court
7 reporter, but the record will speak for itself in that regard.
8 But I wasn't meaning to misrepresent to the Court. That's
9 exactly what I had in my notes.

10 THE COURT: All right. Concurrent and consecutive?

11 MR. CORNEY: Yes, sir. Yes, sir. I don't -- I don't say
12 that I make a transcript of my notes, but that's exactly what
13 I quoted in my notes and the record will speak for itself in
14 that regard. But I think his exact words were he knew that
15 was a triable issue.

16 MR. SHAFFER: I apologize, Your Honor. That -- that is
17 the way the record shows it. I don't remember that exchange.

18 THE COURT: All right. Proposed orders in fifteen days,
19 e-mail.

20 MR. CORNEY: That would be perfect, Your Honor. Thank
21 you.

22 THE COURT: Thank you. Thank you very much. Good luck
23 to you, Mr. Shiver.

24 THE APPLICANT: Thank you.

25 THE COURT: Thank you very much, Mr. Shaffer.

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MR. SHAFFER: Thank you, Your Honor.

(Whereupon, the proceedings end at 12:26 p.m.)

--- END REQUESTED TRANSCRIPT ---

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 Richland County, South Carolina, on the 17th
12 day of August, 2012.

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

15

Krystal J. Smith

Court Reporter

16

17
18
19 Florence, South Carolina

20 May 20, 2013

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SHAR 03

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4002739

Orlando Cepeda #344878 Shiver

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

2013 FEB 13 AM 9:54
JEANETTE W. BRIDE
RICHLAND COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 February 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Orlando Cepeda #344878 Shiver Tristan M Shaffer Brian T. Perrano

ATTORNEY(S) FOR THE PLAINTIFF(S) ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____ Clerk of Court Jeanette W. Bride

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Orlando Shiver, #344878,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-02739

ORDER OF DISMISSAL

2013 FEB 13 AM 9:19
 RICHLAND COUNTY
 FILED
 JEANETTE N. McBRIDE
 C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 13, 2011. An evidentiary hearing into the matter was convened on Friday, August 17, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Tristan Shaffer, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's prior plea counsel, George McElveen ("counsel"), and Applicant's aunt, Mae Lloyd. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the July 2010 term of the Richland County Grand Jury for Criminal Domestic Violence of a High and Aggravated Nature and two (2) counts of Assault and Battery with Intent to Kill (2010-GS-40-2138, 2139, 2140). George McElveen,

Ab

SCANNED

Esquire, represented Applicant on the charges. On February 22, 2011, Applicant appeared before The Honorable Clifton Newman, where he pled guilty to one count of ABWIK as indicted and one count of the lesser included Criminal Domestic Violence – Second; as well as entered a plea pursuant to North Carolina v. Alford to the lesser included offense of Assault and Battery of a High and Aggravated Nature. The plea was entered for a negotiated aggregate term of imprisonment between twelve (12) and twenty (20) years. Judge Newman accepted the negotiations and sentenced Applicant to eighteen (18) years imprisonment for the ABWIK, ten (10) years imprisonment for ABHAN and one (1) year imprisonment for CDV – Second, with all sentences running concurrently. Applicant did not appeal his plea or sentences.

In his current Application, the Applicant alleged he is being held in custody unlawfully for the following reasons:

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) NEVER SHOULD HAVE BEEN CHARGED WITH 2 COUNTS OF ABWIK
- (c) INVOLUNTARILY GUILTY PLEA

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) MY COUNSEL FAILED TO OBJECT TO MY CHARGES, INSTEAD USED A REMORSEFUL DEFENSE
- (b) MY WIFE'S GRANDSON WAS NEVER A PART OF THIS CRIME (KARSEEN HAZEL)
- (c) DUE TO INEFFECTIVENESS OF COUNSEL I FELT JURY TRIAL WAS NOT AN OPTION FORCING ME TO PLEA GUILTY

10(B) THE ONE COUNT OF ABWIK AGAINST MY WIFE'S GRANDSON WAS DROPPED TO CDV 2ND AND I HAVE NEVER BEEN CONVICTED OF CDV 1ST OFFENSE KARSEEN HAZEL WAS NEVER A PART OF THIS ACT, IF COUNSEL HAD TO INVESTIGATE THEN HE WOULD HAVE FOUND OUT ALL OF THESE THINGS MY WIFE'S STATEMENT CHANGED WHEN MY CHARGES CHANGED, I WAS ORIGINALLY CHARGE WITH CDV 1ST OFFENSE. I NEVER HIT MY WIFE WITH A DEADLY WEAPON WHEN WE FELL AT THE BOTTOM OF THE STAIRS, HER HEAD HIT (LANDED) ON THE BARBELL

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented by both parties at the evidentiary hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

Ineffective Assistance of Counsel

Applicant alleges counsel was ineffective for failing to file a post-plea motion for reconsideration of the sentence, as well as alleges his guilty plea was entered involuntarily as a result of counsel's unwillingness to go to trial to challenge the required elements of the Assault and Battery with Intent to Kill ("ABWIK") charges.

Applicant testified he met counsel in 1995 when counsel represented him on unrelated matters. Regarding the incident from which the current charges stem, Applicant stated he had moved back in with his ex-wife roughly three (3) months earlier after she asked him to do so. He stated her grandchild was living with them at the time as well. On the night of the incident, Applicant said, he was cooking for his ex-wife's birthday at which time they got into an argument. When his ex-wife asked him to leave the house, Applicant testified he slapped her, from which a fight ensued. He went on to say he didn't realize she got a "gash" in her head until later on that night and he never hit her with a dumbbell as the solicitor stated at the plea hearing. Rather, Applicant said, during the fight the two fell down the stairs and landed on the weight at the bottom of them where his ex-wife hit her head against the dumbbell. Applicant also alleged he never held a screwdriver against his ex-wife's neck as stated at the plea hearing, but did tell his ex-wife to tell his Aunt Mae, who was on the phone at the time, that Applicant had a screwdriver to her neck.

Applicant testified he believed all of the charges against him except the CDV were being dropped at the plea and, had that been the case, he would have been happy pleading. He alleged counsel told Applicant he would get Applicant out of the charges "one way or another".

Applicant stated he told counsel he did not want to plead guilty to the charges, but counsel kept saying he couldn't argue Applicant's case. He said counsel kept mentioning "malice aforethought" and printed a copy of the Kinard v. State¹ case for Applicant's review in that regard. Applicant said he didn't feel he should have been charged with ABWIK because he never intended to kill anyone and never hit his ex-wife with the dumbbell. Applicant also stated that after his plea, he told counsel he had learned from his Aunt Mae that his ex-wife did not want him to receive any more than five (5) years in prison, but counsel never followed up on that information to get his ex-wife to tell the Court that at his plea.

On cross-examination, Applicant conceded he had a prior CDV charge against his ex-wife from 2002 which would have been very damaging had the State found a way to get it introduced at trial. He also conceded he had told the plea judge at his plea hearing he couldn't remember big portions of the incident, but said he was still sure he hadn't hit his ex-wife with the dumbbell or held a screwdriver to her neck at any point during the incident.

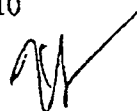
Also testifying was Applicant's aunt, Mae Lloyd ("Lloyd"). Lloyd testified she has been very involved in Applicant's life since he was young and had the chance to talk with counsel about Applicant's case prior to the plea hearing. She also noted she was the aunt on the phone with Applicant at the time the incident occurred. She went on to say that on the day of Applicant's plea hearing, she received a call from Applicant's ex-wife who relayed that she "would be okay" with Applicant receiving only a five (5) year prison sentence. Lloyd said she called counsel and let him know that information, as well as gave counsel the ex-wife's phone number to call her. Lloyd said she never talked with counsel after that time. On cross-examination, Lloyd conceded that she was not at the house on the night of the incident and only knew what she heard over the phone during the altercation.

¹ State v. Kinard, 373 S.C. 500, 646 S.E.2d 168 (Ct. App. 2007).

Counsel testified he had known Applicant for a long time before this particular incident happened as he had represented Applicant on non-criminal legal matters previously. He went on to say that after being retained by Applicant, he met with Applicant to review the charges, indictments, potential sentences, discovery materials and facts of the case. Counsel stated Applicant knew from the beginning he was going to jail for a while, so he told counsel he didn't want to file for release on bond. Counsel testified he and Applicant discussed the options of going to trial versus entering a plea, and Applicant was well aware of his ability to challenge the charges at trial. He went on to say the solicitor was going to request a substantial amount of time on the charges and Applicant was facing roughly sixty (60) years imprisonment at 85% time on the charges, both of which he discussed with Applicant.

Counsel noted his trial strategy was going to be based on Applicant's continuous assertion that he never intended to kill anyone, which was a portion of the law counsel reviewed in depth with Applicant during their meetings. He also said he reviewed the "intent" requirement of the ABWIK charge with Applicant and said he discussed with Applicant that he didn't believe it was a very strong argument since the jury could infer general intent from the evidence, plus Applicant had explicitly told the victim he would kill her during the assault which the victim was prepared to testify to. Counsel plainly stated Applicant "knew he could challenge" the elements of the crimes at trial if he wanted to, but ultimately made the voluntary decision to enter a plea under an advantageous negotiated sentencing range extended by the solicitor. Counsel testified he never estimated a particular amount of time Applicant should expect to receive, and that he did explain concurrent versus consecutive sentencing to Applicant.

Counsel said he recalled receiving a letter from Applicant well after the plea in which Applicant stated his ex-wife said she would be happy with him having received only five (5)



years in prison. Counsel stated he had talked to Applicant's ex-wife prior to plea in an attempt to get her to request the minimum sentence for Applicant at the plea, but she was adamant she would not "go along with the minimum" and wanted Applicant "to do every day of the maximum sentence", which she requested on the record at the plea hearing. Counsel finished by noting he received the post-plea letter from Applicant well outside of the ten days to file an appeal or post-trial motion, and stated he didn't think the state would have any problem proving the "intent" element of ABWIK at trial.

After a thorough review of the record before this Court and the testimony presented at the hearing, this Court finds counsel was not ineffective in his representation. This Court finds counsel's testimony to be credible, while conversely finding Applicant's testimony to not be credible. First, Applicant has failed to establish how counsel's performance was objectively unreasonable based on prevailing professional norms. Counsel reviewed the charges, potential sentences, Applicant's constitutional rights, the facts leading to the charges, and the contents of the discovery file with Applicant well in advanced of the plea to ensure Applicant was aware of all relevant issues pertaining to his case. Counsel credibly testified he reviewed the elements of each of the crimes with Applicant, making sure to specifically note his explanation of the "intent" element of ABWIK, and Applicant was fully aware of his ability to challenge those elements at trial. While Applicant's story of how the night unfolded may lend itself to more plausible defenses in hindsight, counsel spoke with the victim and was aware of her intention to testify at trial to a much more damaging set of facts than Applicant disclosed. Further, Applicant readily admitted under oath at his plea hearing he could not remember large portions of the incident; therefore, his adamant contention that he "did not" do certain things during the incident is not persuasive to this Court. Counsel personally spoke with the victim in an attempt to have

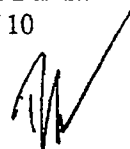


her speak on Applicant's behalf at trial; she made it clear to counsel she would be requesting Applicant do "every day of the maximum sentence" for his assault on her, regardless of what the victim may have told Applicant's aunt in a private telephone conversation.

This Court finds Applicant entered his plea freely and voluntarily after being fully and adequately advised of all relevant issues by competent counsel acting within the range of reasonableness based on professional norms. Boykin v. Alabama, 395 U.S. 238 (1969). "The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea." Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981); citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). "This rule applies to the claim that counsel was ineffective." Whetsell, Id. Accordingly, this Court finds no deficiency in this regard.

Regarding counsel's alleged failure to file a Motion for Reconsideration on Applicant's behalf, counsel didn't receive Applicant's letter setting forth his discontentment with the sentence until after the time period for filing had lapsed. Applicant pled guilty as part of a negotiated sentence and counsel had no reason to believe Applicant would want to file such a motion absent Applicant's letter. Accordingly, this Court finds Applicant's performance was objectively reasonable under prevailing professional norms.

Further, Applicant has failed to prove resulting prejudice. The record before this Court and testimony provided at the hearing firmly convince this Court there is no reasonable probability that, but for counsel's alleged deficiencies, Applicant would not have pled but rather would have gone to trial. In return for the plea, Applicant was given a very beneficial negotiated plea deal under which two of the three offenses were reduced to lesser included offenses and Applicant was guaranteed not to do more than twenty (20) years imprisonment. Applicant took



the benefit of the bargain freely and voluntarily in an effort to avoid a much longer term of imprisonment. He has failed to carry his burden in proving that, but for counsel's alleged deficiency, he would not have pled but rather would have proceeded to trial on the charges.

CONCLUSION

Based on all 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 must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

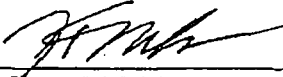
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


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 10 day of JAN ~~2012~~ 2013



R. Knox McMahon
Presiding Judge
Fifth Judicial Circuit


Columbia, South Carolina.

ARREST WARRANT

K-642233

STATE OF SOUTH CAROLINA

County/ Municipality of

THE STATE
against

Address:

Phone: SEX: _____

Sex: _____ Age: _____ Height: _____ Weight: _____

DL State: _____ DL# _____

DOB: _____ Agency Code: _____

Prosecuting Agency: _____

Prosecuting Officer: _____

Offense: _____

Code/Ordinance Sec: _____ Offense Code: _____

The Warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____ The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant on 01/25/20 at 5:10 PM
2100

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT

P.O. BOX 644
COLUMBIA, S. C. 29202

STATE OF SOUTH CAROLINA
County/ Municipality of

A F F I D A V I T

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on _____
State of South Carolina for substance of _____
in the following particulars:
DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named herein
has done so with intent that he/she should be held in custody for the following facts:

THE ASSAULT THE DUTY DID POOR LIQUOR ONTO THE VICTIM AND INFANTS HEAD WHILE
THREATENING TO KILL THE VICTIM AND THE BABY.

STATE OF SOUTH CAROLINA
County/ Municipality of

Affiant's address: _____
Affiant's Telephone: _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSERVABLE IN THIS COUNTY:

if appearing from the above defendant's name, I do hereby authorize you to arrest the said
defendant at the residence of the defendant or at any other place where he/she may be found.

DESCRIPTION OF OFFENSE: _____
I do hereby certify that the above is true and correct to the best of my knowledge and belief.

Having found probable cause and the above affiant having sworn before me, you are sworn and bound to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of his execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me

Signature of Constable/Law Enforcement Officer
Municipal Court

Judge's address: _____
Judge's telephone: _____
Issuing Court: Magistrate Municipal Circuit

Form Approved by
3-7-73
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

✓ (S) Jerry L. Brown - Columbia Police Department
✓ Felicia Shiver - Victim

DOCKET NO. 2010-GS-40-2138

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2010

94

ARREST WARRANT NUMBER

K642233

THE STATE

vs.

Orlando C Shiver

ACTION OF GRAND JURY

For Sponsor of Grand Jury Date: JUL 14 2010

[Handwritten signature]

VERDICT

Indictment for Assault and battery with Intent to Kill

SC Code 16-03-0820
CDR Code 0014

For person of Petit Jury Date:

After being fully advised as to my legal rights, I hereby waive, personally and in full, my right to a trial by jury and to the Grand Jury.

Defendant

I hereby appear in my own behalf, personally and plead guilty to the within indictment or to

FILED TRUE COPY ORIGINAL FILED JUL 14 2010 JERRY L. BROWN CLERK OF COURT RICHLAND COUNTY SOUTH CAROLINA

Defendant

Witness

C.C. PLS. AND G.S.

SOLICITOR

06 02/07/2011 16:02 8035761718

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)


INDICTMENT

At a Court of General Sessions, convened on July 14, 2010, the Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL
CDR:0014 16-3-620

That Orlando C Shiver did in Richland County on or about February 2, 2010, with malice aforethought commit an assault and battery upon one FELICIA SHIVER, with intent to kill the said victim, all in violation of §16-03-620 of the Code of Laws of South Carolina, (1976, as amended).

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



WARREN B. GIESE, SOLICITOR

COUNTY OF Richland
 STATE VS.
Orlando C Stiver
 AKA:
 Race: Sex: M Age: 42
 DOB: SS#:
 Address:
 City, State, Zip: Gadsden, SC
 DL# SID#:

INDICTMENT/CASE# 2010-CS-40-2138
 A/W# K642213
 Date of Offense: 2/2/2010
 S.C. Code §: 16-03-0620
 CDR Code #: 0014

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault and battery with Intent to Kill (ABWIK)

CONVICTED OF or PLEADS

In violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-43
 w/minor 1st or Lowd Act)

The charge is: As Indicted Lesser Included Offense Defendant Waives Presentment to Grand Jury (defendant's initials)
 The plea is: Without Negotiations or Recommendation Negotiated Sentence Recommendation by the State
 ATTEST: Pisarik Craig 76137 Defendant Attorney for Defendant 3802
SC Bar# SC Bar#

WHEREFORE the Defendant is committed to the State Department of Corrections County Detention Center
 for a determinate term of 1/4 ^{cal} days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$: _____ provided that upon the service of _____ days/months/years and/or payment
 of \$ _____ plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-15-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms:
 Set by SCOPPS:

Recipient: _____
 *Fines:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCGA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL:	\$	\$

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Amend 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
 prts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Condition Discharge, § 44-53-450(C) requires
 \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel
 § 47-12 requires \$500 be paid to Clerk
 during probation.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
[Signature]
 2/12/10
 COUNTY
 SOUTH CAROLINA

Clerk of Court Deputy Clerk: [Signature]
 Court Reporter: [Signature]
 SCCA 217 (06/2010)

Presiding Judge: _____
 Judge Code: _____
 Sentence Date: Feb 20 2010

WITNESSES

✓ (S) Jerry L. Brown - Columbia Police Department

✓ Felicia Shiver - Victim

DOCKET NO. 2010-03-40-2138

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM 2010

98

ARREST WARRANT NUMBER

K642236

ACTION OF GRAND JURY

Orlando C Shiver

THE STATE vs.

TRUE BILL

Coreperson of Grand Jury Date: JUL 14 2010

VERDICT

Indictment for CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED NATURE

SC Code: 16-26-0085
CGR Code: 2988

Coreperson of Fall Jury Date:

After being duly advised as to my legal rights, I hereby waive, accept and affirm my right to the Grand Jury.
Defendant
I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND ORIGINAL COPY OF THE ORIGINAL FILED IN THE CLERK OF COURT'S OFFICE IN RICHLAND COUNTY SOUTH CAROLINA
JUL 14 2010
JERRY L. BROWN
CLERK OF COURT

herby appear in my own person and plead guilty to the within indictment or to

Jerry L. Brown

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 14, 2010, the Jurors of Richland County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED NATURE

CDR: 2988 16-25-0065

That Orlando Shiver did in Richland County on or about February 2, 2010, commit an assault and battery which involved the use of a deadly weapon or resulted in serious bodily injury to a household member, FELICIA SHIVER, or assaulted, with or without an accompanying battery, which did reasonably cause a household member, FELICIA SHIVER, to fear imminent serious bodily injury or death, in violation of Section 16-25-65, 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.

W B Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS. Orlando C Shiver

INDICTMENT/CASE#: 2010-GS-40-2139
A/W#: K642236
Date of Offense: 2/2/2010
S.C. Code §: 16-25-0065
CDR Code #: 2988

AKA:
Race: B Sex: M Age: 42
DOB: SS#:
Address:
City/State/Zip: Gadsden, SC
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO Domestic Criminal domestic violence 2nd offense

in violation of: § 16-25-0020(A) of the S.C. Code of Laws, bearing CDR Code # 2672
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted Lesser Included Offense Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: Without Negotiations or Recommendation Negotiated Sentence Recommendation by the State

ATTORNEYS: PISARIK, CRAIG SC Bar# 76137 Defendant: SC Bar# 2602 Attorney for Defendant: SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 2 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS:

Recipient:

*Fees:

Table with 3 columns: Fee Description, Amount, Total. Includes items like § 14-1-206 (Assessments 102.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-216 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$940, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(B) (Vehicle Assessment) \$4/vea, Proviso 90.5 (SCJA Surcharge) \$5, § 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments), TOTAL.

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly payments of \$ beginning
\$ paid to Public Defender Fund
Other:

Condition Discharge: § 44-53-450(C) requires \$250 be paid to the Clerk prior to case disposition
Appointed PD or appointed other counsel: § 47.12 requires \$500 be paid during probation.

Clerk of Court/Deputy Clerk: Joannette W. McRaid
Court Reporter: K. Amick

Presiding Judge: Judge Code: Sentence Date:
GIVEN BY: JUDGE: SCOTT COUNTY SOUTH CAROLINA

ARREST WARRANT

K-642242 102830

STATE OF SOUTH CAROLINA

County of Columbia

THE STATE

ORLANDO C. SHIVER

Address: HADDEN SC 29000

Phone: Race: B Height: 5'02" Weight: 177

DOB: Agency: ORLA SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Offense: ABIK License Code: ABIK

Code/Ordinance Sec: 15-3-520

This Warrant is CERTIFIED FOR SERVICE in the County of Columbia

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant ORLANDO C. SHIVER

Signature of Const./Legal Enforcement Officer

RETURN WARRANT TO

STATE OF SOUTH CAROLINA County of Columbia

AFFIDAVIT

INU JL BROWN

Personally appeared before me the defendant ORLANDO C. SHIVER

did within this county and state of South Carolina for offense of ABIK

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AT 1530-B CANAL DRIVE WITHIN THE CITY LIMITS OF COLUMBIA, SC THE DEFENDANT DID DURING AN ASSAULT AGAINST VICTIM FELICIA SHIVER THREATEN TO KILL 23 MONTH OLD VICTIM KARCI HAZEL WHO VICTIM WAS HOLDING. DURING THE ASSAULT AGAINST VICTIM FELICIA SHIVER THE DEF. POUNDED RECORD OVER THE INFANTS HEAD, AND FELICIA SHIVERS HEAD STATING HE WAS GOING TO KILL THEM BOTH BY LIGHTING A MATCH. THE DEF ALSO STATED DURING A TELEPHONE CONVERSATION WITH HIS RUNT WIFE LLOYD THAT HE INTENDED TO KILL THE INFANT CHILD, AND FELICIA SHIVER.

Signature of Affiant

STATE OF SOUTH CAROLINA County of Columbia

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

II, appearing from the above affidavit that there are reasonable grounds to believe that defendant ORLANDO C. SHIVER did violate the criminal laws of the State of South Carolina (or ordinance of County of Columbia)

DESCRIPTION OF OFFENSE: ABIK

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the defendant and bring him or her before the court to answer to the charge.

Sworn to and subscribed before me on 02/02/2010

Signature of Issuing Judge Judge Code: 4034013

Notary Public Seal for South Carolina

ORIGINAL

WITNESSES

✓ (s) Jerry L Brown - Columbia Police Department
Follicia Shiver - Witness

DOCKET NO. 2010-GS-10-2140

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM 2010

ARREST WARRANT NUMBER

K642242

ACTION OF GRAND JURY

Orlando C Shiver

THE STATE vs.

Defendant

Witness

C.O.C. PLS. AND G.S.

THE GRAND JURY

Shiver, Orlando C
Esquire/son of Grand Jury
Date JUL 14 2010

VERDICT

Indictment for Assault and battery with intent to Kill

SC Code: 16-03-0520
CDR Code: 0014

Foreperson of Petit Jury
Date

After being fully advised as to my legal rights, I hereby waive my right to the Grand Jury.
Defendant
I HEREBY APPEAR IN MY OWN PERSON AND PLEAD GUILTY TO THE WITHIN INDICTMENT FOR TO
JERRY L BROWN
C.C.G.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 14, 2010, the Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL
CDR:0014 16-3-620

That Orlando C Shiver did in Richland County on or about February 2, 2010, with malice aforethought commit an assault and battery upon one KARSEEN HAZEL, with intent to kill the said victim, all in violation of §16-03-620 of the Code of Laws of South Carolina, (1976, as amended).

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

W. B. Giese
WARREN B. GIESE, SOLICITOR

COUNTY OF Richland
 STATE VS.
Orlando C Shiver
 AKA:
 Race: Sex: M Age: 42
 DOB: SS#:
 Address: D
 City, State, Zip: GADSDEN, SC 29201
 DL#: SID#:

INDICTMENT/CASE#: 2010-GS-40-2140
 A/W#: K642242
 Date of Offense: 2/2/2010
 S.C. Code §: 16-03-0620
 CDR Code #: 0014

SENTENCE SHEET

CONVICTED OF or PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Assault / Assault and battery of a High and Aggravated Nature

In violation of § 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 0013
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lowd Act) §17-25-45

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

ATTEST: Craig Piskis 26137 C. McElveen
 PISARIK, CRAIG SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

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

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

Pursuant to 18 U.S.C Section 922 it is unlawful for a person convicted of a violation of Section 16-25-30 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred; Def. Waives Hearing; Ordered PTUP
 Total: \$ plus 20% fee: \$
 Payment Terms:
 Set by SCDPPPS

Recipient:
 *Fiber

§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2955 (DUI Assessment)	\$12
§ 56-1-28b (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(C) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SOCJA Surcharge)	\$5
§ 44-53-450(C) (Conditional Discharge)	\$350
3% to County (if paid in installments)	\$
TOTAL	\$

 days/hours Public Service Employment
 Obtain GED
 Amend 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
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 \$ paid to Public Defender Fund
 Other:

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed Public Defender § 47-12 requires \$500 be paid during probation.

TRUE COPY
 ORIGINAL FILED
 Jannette W. McBride
 C. C. P. / P. G. S.
 RICHLAND COUNTY
 SOUTH CAROLINA
 Feb 22, 2010

Clerk of Court/ Deputy Clerk: Jannette W. McBride
 Court Reporter: J. Ambrose
 SOCA 217 (05/2010)

Presiding Judge:
 Judge Code:
 Sentence Date: