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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Williamsburg County

R. Ferrell Cothran, Jr., Circuit Court Judge

WILLIAM DAVID YARBOROUGH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000229

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

COURT OF GENERAL SESSIONS

William David Yarborough,

PLAINTIFFS,

v.

State of South Carolina,

DEFENDANT.

TRANSCRIPT OF HEARING
C/A #: 2008-GS-45-0129
2008-GS-45-0220

May 18, 2009
Kingstree, South Carolina

BEFORE:

HONORABLE HOWARD P. KING, PRESIDING

APPEARANCES:

Assistant Solicitor Kimberly Barr
For State of South Carolina

Steve McKenzie, Esquire
Attorney for William David Yarborough
(Indictment # 2008-GS-45-00219)

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no exhibits marked in this Plea)

HEARING

3

1 The Court: Alright Ms. Barr.

2 Ms. Barr: Your Honor, it please the Court, at this time the
3 State calls indictment #2008-GS-45-219. It's the
4 State versus William David Yarborough. Mr. Yarborough
5 was indicted by the Williamsburg County Grand jury
6 October the 9th, 2008 and was charged with criminal
7 sexual conduct as well as burglary first degree. Your
8 Honor, this case is being represented by Mr. Steve
9 McKenzie. Mr. Yarborough has also informed the Court
10 on Indictment Number 2008-GS-45-220. This is a true
11 bill indictment returned by the Grand Jury, also on
12 October the 9th, 2008. It's a two count indictment
13 for CSC, first degree and Burglary first degree.
14 He's represented on these charges by LeGrand Carraway.
15 He's entering a guilty plea as indicted. The State
16 has a six week leave of absence.

17 Bailiff: Place your left hand on the Bible and raise your
18 right. Do you solemnly swear to tell the truth, the
19 whole truth and nothing but the truth so help you God?

20 A: Yes ma'am.

21 The Court: Alright, counsel, just so that I make sure
22 that I have got the situation correctly summarized.
23 Mr. McKenzie, you represent Mr. Yarborough on
24 indictment number 08-GS-45-219. The incident
25 occurred on 2-15-2008, occurred in Williamsburg, is

HEARING

4

1 that correct?

2 Mr. McKenzie: Yes sir, that's correct.

3 Ms. Barr: Judge that should be indictment 219.

4 The Court: What did I say?

5 Mr. McKenzie: 218.

6 The Court: 218. I had it written down as 219. Mr.

7 Carraway you represent him on indictment 08-GS-45-220

8 occurring January 24 and 25th of 2007, is that

9 correct?

10 Mr. Carraway: That's correct Your Honor.

11 The Court: Alright, Mr. McKenzie, let me address you

12 first since the indictment you represent the Defendant

13 on is the earlier indictment. Have you explain the

14 charges contained in the indictment and his

15 constitutional rights including the right to a jury

16 trial?

17 Mr. McKenzie: I have Your Honor.

18 The Court: In your opinion, does he understand those

19 things.

20 Mr. McKenzie: He does.

21 The Court: Alright, excuse me just a minute. You have

22 explained to him the charges, the possible punishment

23 and is constitutional rights.

24 Mr. McKenzie: I have Your Honor.

25 The Court: Alright and Mr. Carraway, you represent the

THIRD JUDICIAL CIRCUIT

(803) 436-2150

HEARING

5

1 Defendant on the charges that have raised out of the
2 January 24, January 25, 2007. Have you explained to
3 him his rights, his constitutional rights to a jury
4 trial?

5 Mr. Carraway: I have Your Honor.

6 The Court: Alright, you are William David Yarborough?

7 Mr. Yarborough: Yes sir.

8 The Court: Alright, Mr. Yarborough before I can accept

9 your guilty plea, I need to make sure that the plea is
10 freely and voluntarily given, therefore I need to ask
11 you some questions. If you don't understand the
12 question or the words you tell me and I'll be glad to
13 explain them to you. You may talk to your lawyer at
14 any time or your lawyer at any time as we go through
15 this process, do you understand?

16 Mr. Yarborough: Yes sir.

17 The Court: How old are you?

18 A: Thirty years old sir.

19 The Court: How far did you go in school?

20 A: First year in college.

21 The Court: What kind of work do you usually do?

22 A: Anything with my hands sir. Mechanics, I do welding,
23 just about anything that you can learn, pick up.

24 The Court: Have you been treated, have you ever been
25 treated for the abuse of alcohol or drugs or fr mental

HEARING

6

1 illness?

2 A: I have been treated for alcohol, sir.

3 The Court: Tell me about that.

4 A: I was treated in the Marine Corps.

5 The Court: Was it in patient treatment or out patient
6 treatment? What kind of treatment?

7 A: It was in, out patient, where you come in every day
8 for six hours.

9 The Court: Yes sir.

10 A: And you do classes and reevaluate it. You have to
11 take random drug tests.

12 The Court: Did you complete that?

13 A: Yes sir, I did.

14 The Court: Have you taken any medication, drugs or
15 alcohol in the last twenty four hours?

16 A: Yes sir.

17 The Court: You have?

18 A: Medication.

19 The Court: Tell me about it.

20 A: I take medication for PTSD.

21 The Court: What kind of medication is that?

22 A: I take Trazodone for sleeping. I take, which I
23 haven't been given at the jailhouse cause they say I
24 can't have it. I forgot the name of it. I get it
25 through the VA.

HEARING

7

1 Mr. McKenzie: Your Honor, can I approach? I have a list
2 of his medication.

3 The Court: Yes, sir. Give me a moment to read over
4 this. All right, it appears that there are several
5 medications that you're on. One is, I can't pronounce
6 all of these, it looks like Metronidazole, which
7 apparently is a topical medication for a skin
8 situation.

9 A: Yes sir.

10 The Court: Alright, another one is Naprozen, which is
11 a pain medication.

12 A: Yes sir.

13 The Court: Okay, then there is Ranitidine, which
14 apparently is a stomach medication?

15 A: Yes sir.

16 The Court: Another is Optipranolol which I happen to
17 know about. It's a generic for nerve or ...

18 A: Yes sir.

19 The Court: Looks like Hydroxyzine for mood control and
20 then one you were talking about Trazodone, which is
21 for moods and for sleep. Is that right?

22 A: Yes sir.

23 The Court: Is that all the medications?

24 A: Yes sir.

25 The Court: Alright. How will those medications effect

HEARING

8

1 your ability to know and understand what you're doing
2 here today?

3 A: They don't sir. I'm totally, I'm fully aware of
4 what's going on.

5 The Court: Mr. McKenzie and Mr. Caraway do ya'll
6 believe the defendant knows and understands what's
7 going on here today?

8 Mr. McKenzie: Yes sir, Your Honor. I've spoken with him
9 numerous times. Every time I've spoken with David,
10 and I may call him David throughout the proceedings.
11 That's how I know him. Even though his first name is
12 William, he goes by David. But I've spoken to him
13 numerous times, Your Honor. Each time I've spoken to
14 him he's been engaged, he understands the charges and
15 has talked to me back and forth about those charges.
16 I believe he's fully competent to understand what's
17 going on.

18 The Court: Do you concur Mr. Caraway?

19 Mr. Caraway: I agree.

20 The Court: Alright. Alright, Mr. Yarborough, other
21 than those prescription medications that you told me
22 about are you today under the influence of any kind of
23 drugs or alcohol?

24 A: No sir.

25 The Court: Are you today aware of any physical,

HEARING

9

1 emotional, or nervous problem that would keep you
2 from understanding what you're doing today?

3 A: No sir.

4 The Court: Alright, you've heard your attorneys tell me
5 that they have explained to you the charges contained
6 in these two indictments, the possible punishment and
7 your constitutional rights and that you understand
8 those things. Is that correct?

9 A: Yes sir.

10 The Court: Alright, let's review the indictments.
11 First of all indictment number 219. It's a two count
12 indictment that charges you with criminal sexual
13 conduct in the first degree and burglary in the first
14 degree and alleges that on or about June 13, 2002,
15 that you did engage in sexual battery with the victim
16 through use or aggravated force while forcibly
17 confining or kidnaping the victim and that is a charge
18 of criminal sexual conduct in the first degree, do you
19 understand that charge?

20 A: Yes sir.

21 The Court: Do you understand that carries up to thirty
22 years in prison?

23 A: Yes sir, I do.

24 The Court: Also in that indictment is a count of
25 burglary in the first degree, entering the dwelling of

HEARING

10

1 the victim without consent with the intent to commit
2 a crime and that was a charge of burglary in the first
3 degree on June 13, 2002, do you understand that?

4 A: Yes sir.

5 The Court: Do you understand that for criminal sexual
6 conduct in the first degree you could get up to thirty
7 years in prison?

8 A: Yes sir.

9 The Court: And for burglary in the first degree carries
10 15 years to life. Do you understand that?

11 A: Yes sir.

12 The Court: Now, do you understand that both of these
13 are considered violent, most serious crimes? Do you
14 understand that?

15 A: Yes, sir.

16 The Court: Has your lawyer, Mr. McKenzie explained to you
17 what is meant by violent crime?

18 A: Yes sir.

19 The Court: And also by most serious, under our two
20 strikes, three strikes law, if you were to have, after
21 you serve your time on these, if you were to have
22 another most serious that you would be facing
23 mandatory life in prison, do you understand that?

24 A: Yes sir.

25 The Court: Do you also understand that these are no

HEARING

11

1 parole offenses, which means that you will have to
2 serve eighty five percent of your sentence of whatever
3 I sentence you to before you can be released to any
4 kind of community supervision. Do you understand
5 that?

6 A: Yes sir.

7 The Court: Do you also understand that these are
8 considered sexually violent offenses and also will
9 require you to register on the sexual offense
10 registry?

11 A: Yes sir.

12 The Court: You would also have to give a sample of your
13 bodily fluids to be registered with the DNA registry.

14 A: Yes sir.

15 The Court: All right now with regard to the other
16 indictment, they are also for criminal sexual
17 conduct first. It alleges in Williamsburg County
18 between January 24, 07 and January 25, 07 that you did
19 engage in a sexual battery with the victim through the
20 use of aggravated force and/or while forcibly
21 confining kidnaping the victim and that is the charge
22 of criminal sexual conduct in the first degree, for
23 which you could get the minimum, again thirty year in
24 prison. Do you understand that?

25 A: Yes sir.

HEARING

12

1 The Court: And the burglary in the first degree and that
2 Indictment as well which carries fifteen to thirty
3 years.

4 A: Yes, sir.

5 The Court: And again, just like the other offense, they
6 are both considered most serious offenses. If you have
7 a third or second most serious, that you would be facing
8 mandatory life in prison.

9 A: Yes sir.

10 The Court: And that you'll have to serve eighty five
11 percent of whatever I sentence you to. Do you
12 understand that?

13 A: Yes sir.

14 The Court: And it's considered a violent offense?

15 A: Yes, sir.

16 The Court: Of course involves the sexual registry as well
17 as the DNA registration. Do you understand that?

18 A: Yes, sir.

19 The Court: Do you have any questions at all about the
20 possible punishment for these offenses that you would
21 like to ask me?

22 A: No sir.

23 The Court: All right now Mr. Yarborough, when you plead
24 guilty you give up certain important constitutional
25 rights. You give up the right to remain silent, that

HEARING

13

1 is your privilege against self incrimination, your
2 right to say nothing at all. You cannot be required
3 to testify or provide evidence against yourself. You
4 give up the right to have a jury trial. That is your
5 right to have a jury decide whether you're guilty
6 beyond a reasonable doubt. The jury would base their
7 decision on evidence which the State presents and on
8 any evidence which you might wish to introduce. In a
9 trial you would be presumed to be innocent and the
10 State would have to present evidence that would
11 convince all twelve members of the jury of your guilt
12 beyond a reasonable doubt. And finally you give up
13 your right to confront the witnesses. That is require
14 the witnesses against you to come in to court and
15 testify and the right to have your lawyer cross
16 examine those witnesses and also the right to subpoena
17 and call witnesses on your own behalf, do you
18 understand those constitutional rights?

19 A: Yes sir.

20 The Court: Do you understand that when you plead guilty
21 you give up these constitutional rights?

22 A: Yes sir.

23 The Court: Do you understand that when you plead guilty
24 there will not be a jury trial. Do you understand
25 that?

HEARING

14

1 A: Yes sir.

2 The Court: Understanding then the nature of the charges
3 against you and the consequences of a guilty plea, how
4 do you wish to plead to these charges as I have
5 outlined them to you, guilty or not guilty?

6 A: Guilty.

7 The Court: Do you understand that when you plead
8 guilty, you're admitting to the truth of the charges
9 against you?

10 A: Yes sir.

11 The Court: You may have defenses to these charges, I
12 don't know whether you do or not, but do you
13 understand that when you plead guilty you give up any
14 defenses that you might have to these charges?

15 A: Yes sir.

16 The Court: You also may have given an incriminating
17 statement in this case. Again, I don't know whether
18 you have or not, but do you understand that when you
19 plead guilty you waive or give up your right to
20 challenge whether that statement was freely and
21 voluntarily given in accordance with your Constitution
22 rights?

23 A: Yes sir.

24 The Court: Plea negotiations, Ms. Barr?

25 Ms. Barr: Your Honor, the State is recommending a

HEARING

15

1 twenty-two year sentence.

2 The Court: Alright, the State is recommending that I
3 give you a sentence of twenty two years, do you
4 understand that is the recommendation of the state,
5 Mr. Yarborough?

6 A: Yes sir.

7 The Court: Mr. McKenzie is that what you understand the
8 state's recommendation is?

9 Mr. McKenzie: That's my understanding Your Honor.

10 The Court: Mr. Caraway?

11 Mr. Caraway: That is Your Honor.

12 The Court: That will be twenty two years concurrent.

13 Ms. Barr: Correct.

14 The Court: All right. You understand that the State is
15 recommending that I give you a sentence of twenty two
16 years, you understand that it's just a recommendation, I do
17 not have to follow that recommendation and I can sentence
18 you to whatever I think is appropriate as long as it is
19 within the law?

20 A: Yes sir.

21 The Court: Other than that recommendation, has anyone
22 promised you anything or held out any hope or reward
23 to get you to plead guilty.

24 A: No sir.

25 The Court: Are you pleading guilty freely and

HEARING

16

1 voluntarily?

2 A: Yes sir.

3 The Court: Has anyone threatened you or used any force
4 to get you to plead guilty?

5 A: No sir.

6 The Court: Has anyone used any pressure or intimidation
7 to cause you to plead guilty?

8 A: No, sir.

9 The Court: Have you had enough time to make up your mind
10 as to whether or not you want to plead guilty?

11 A: Yes sir.

12 The Court: Your plea is freely and voluntarily made?

13 A: Yes sir.

14 The Court: You're represented in this case, in one case
15 by Mr. Steven McKenzie. Are you satisfied with the
16 manner in which Mr. McKenzie has advised and
17 represented you?

18 A: Yes sir.

19 The Court: Have you talked to him for as often and as
20 long as you feel necessary for him to properly
21 represent you?

22 A: Yes sir.

23 The Court: Do you need any more time to talk to Mr.
24 McKenzie?

25 A: No, sir.

HEARING

17

- 1 The Court: Have you understood your talks with him?
- 2 A: Yes, sir.
- 3 The Court: Has he done everything for you that you feel
- 4 he could have or should have done on your behalf?
- 5 A: Yes sir.
- 6 The Court: And you are completely satisfied with his
- 7 services?
- 8 A: Yes sir.
- 9 The Court: On the other case you are represented by Mr.
- 10 LeGrand Caraway. Are you satisfied with the manner in
- 11 which Mr. Caraway has advised and represented you?
- 12 A: Yes sir.
- 13 The Court: Have you talked with him for as often and as
- 14 long as you feel necessary for him to represent you?
- 15 A: Yes sir.
- 16 The Court: Do you need any more time to talk with him?
- 17 A: No sir.
- 18 The Court: Have you understood your talks with him?
- 19 A: Yes sir.
- 20 The Court: And has he done everything you feel he could
- 21 have or should have done on your behalf?
- 22 A: Yes sir.
- 23 The Court: Has he done anything that you feel he should
- 24 not have done?
- 25 A: No sir.

HEARING

18

1 The Court: Are you completely satisfied with Mr.
2 Caraway's services?

3 A: Yes sir.

4 The Court: Do you have any complaint that you want to
5 make about either of your lawyers, the Solicitor or
6 any of the police officers?

7 A: No sir.

8 The Court: Have you understood my questions?

9 A: Yes sir.

10 The Court: Have your answers to me been truthful?

11 A: Yes sir.

12 The Court: Is there anything that you would like to ask
13 me about what we've been over?

14 A: No sir.

15 The Court: And you understand that you have the right
16 to appeal the guilty plea and sentence of the Court
17 and you must do so within ten days?

18 A: Yes sir.

19 The Court: All right. Ms. Barr, you want to give me
20 the factual background, please?

21 Ms. Barr: Your Honor, if it please the Court. In regard to
22 indictment 2008-GS-45-219, those offenses occurred
23 back on June 13, 2002 at a home here in Kingstree,
24 which is located in the County of Williamsburg at
25 about five thirty in the morning. The victim in the

HEARING

19

1 case, her initials are E.C. She was twenty-three
2 years old at the time. She called law enforcement at
3 about 5:42 in the morning to report that while she was
4 in the bed sleeping, she felt as if someone was
5 watching her and so she opened up her eyes and saw a
6 man standing in the bedroom. She thought she was
7 dreaming for a moment and closed her eyes and then
8 opened them back up. An unknown, white male came
9 toward her in the bed and put his hand over her mouth
10 and told her if she screamed or tried to do anything
11 that he would kill her child or hurt her child. So
12 then he turned her over on her stomach and removed her
13 clothing and forced her to engage in intercourse.
14 Apparently, at some point in time, the baby woke up
15 and started crying and the individual ran out the
16 door. That crime, first let me back up. Apparently,
17 the individual that committed that crime gained entry
18 to her house through the back door, of course, without
19 her consent during the nighttime. Judge, that crime
20 remained unsolved for six years and that takes me to
21 indictment number 2008-GS-45-220. That incident
22 occurred on the night of January 24th, leading up to
23 the morning of January 25th, 2007 here in Williamsburg
24 County. The victim in that case, her initials are
25 C.B. and she was seventeen years old at the time. She

HEARING

20

1 reported that had known the Defendant who had worked
2 for her father and at some point after leading up to,
3 I guess, 10:00 in the morning that she woke up and
4 felt that it was the Defendant who was in her room.
5 That he had something in his hand she thought was a
6 gun pressed to her temple. He told her if she tried
7 to scream or get away that he would hurt her little
8 brother and mother and he forced himself on and forced
9 her to engage in sexual activities with him. Her mom
10 was in the house sleeping at the time as well as her
11 brother. The police were called about five or six in
12 that morning and it was discovered that he had gained
13 entry in the house by coming through a kitchen window
14 and although it was dark in the room she did not see
15 his face. She indicated to the police she recognized
16 his voice. She knew the voice that she worked with in
17 her father's business. Judge, I think that's the
18 extent of the facts.

19 The Court: All right, the Court does find that there is
20 a substantial factual basis for the pleadings in both
21 cases on all of the charges and I find that the
22 Defendant is represented by counsel, separate counsel
23 in each case with whom he says he is satisfied. I
24 further find that he has freely, voluntarily,
25 knowingly and intelligently entered into this plea

HEARING

21

1 after having been advised by both counsel as well as
2 by the Court and the Court will accept the pleas. Ms.
3 Barr, I will be glad to hear from the victims if the
4 victims are here and if they would like to address the
5 Court. We've got somewhat of an unusual situation, I
6 would not necessarily require them to give their names
7 on the record if they would give their initials as you
8 have done that would be satisfactory and I would be
9 glad to hear from them if there is something they
10 would like to say.

11 Ms. Barr: Yes, sir. And Judge, if I may supplement
12 the record. I neglected to tell the Court and place on the
13 record the information about the DNA analysis.

14 The Court: Yes.

15 Ms. Barr: I forgot to tell you how we got to where we
16 are today.

17 The Court: Okay.

18 Ms. Barr: After the young lady in 2007 case identified the
19 Defendant as being the perpetrator, he voluntarily
20 submitted his DNA samples to be tested by SLED. As a result
21 of that there were positive findings as it relates to this
22 victim. His blood was then compared and placed in some
23 sort of system and it came back as a positive hit for the
24 2002 rape. We then got another sample from him to test
25 with the rape kit that was done on the 2002 victim. And we

HEARING

22

1 received the results on Friday indicating that it was a
2 positive hit.

3 The Court: Just to make sure I understood you, you had the
4 DNA on the subsequent case, the '07 which resulted in a
5 positive hit for the '02 and that's what solved the '02?

6 Ms. Barr: That's correct. Your Honor, they have indicated
7 that they do not wish to address the Court but I will place
8 on the record that the young lady that is involved in the
9 2002 case, she wanted me to express to the court that she
10 did not think that the recommendation made by the State was
11 enough time based on what was done to her, which was, of
12 course, a very serious crime. She believed it warrants
13 substantial more time. I want to share that with the
14 Court.

15 Also, for the record, the Defendant had a conviction
16 back in 2007 for assaulting a female that happened, I
17 believe in North Carolina.

18 The Court: All right. The Court will also find for the
19 record that the State has also complied with the terms of
20 the victims rights bill by keeping the victims advised of
21 what has been going on as far as the court proceedings are
22 concerned. In fact, the victims are present and have been
23 given an opportunity to address the Court but have
24 indicated that they do not wish to do so but the State has
25 presented their position to the Court.

HEARING

23

1 All right. Mr. McKenzie or Mr. Caraway,
2 whichever order you'd like to go.

3
4 Mr. McKenzie: Your Honor, since I have the first
5 indictment I'll go ahead and start with that.

6 The Court: All right.

7 Mr. McKenzie: As I told you earlier, I represent David,
8 even though his name is William David Yarborough, he goes
9 by his middle name of David. His mother Pam Gowdy and his
10 sister Kim are behind me to my left. Your Honor there is
11 absolutely no excuse for this type of crime. And I'm not
12 standing here to waste the Courts time and try to give you
13 an excuse for what happened. It happened. I can tell you
14 a little bit about David, about what he has done, what he
15 did between these two crimes. He distinguished himself as
16 a member of the United States Military, specially Your
17 Honor, in the United States Marine Corp and I'll hand you
18 his DD-214 to the Court. And Your Honor, I know you're
19 familiar with the DD-214 but under Declarations, medals and
20 awards under Item 13. I actually have that highlighted for
21 you, you'll note he has received the Marine Corp. Good
22 conduct medal, combat, action ribbon. In Afghanistan he
23 served eleven months in Afghanistan. He was actually in
24 one vehicle accident over there where he crushed his ankle
25 and draws ten percent disability for that crushed ankle.

HEARING

24

1. He was the, you notice he also has a global award terrorism
2. service medal, a global war on terrorism, National Defense
3. service medal, Navy Unit combination letter of appreciation
4. and then the rifle combination and all that that goes
5. along. Your Honor he served with the second marine
6. division out of Camp LeJune in North Carolina. That doesn't
7. excuse anything that he's done. It tells me that we have
8. two Davids and what I mean by that Your Honor is we have
9. David that can serve his county with honor and distinction,
10. which he has done. And we have this David that has and the
11. only common thread that I can see in this is the
12. alcoholism. Obviously, the incident I think Ms. Barr was
13. telling you from 2002 that I represent him on, I think
14. alcohol was related in that incident and when I talked to
15. David he lived in the neighborhood of the victim and
16. frequented a bar there and he related to me that he had an
17. alcohol problem. He went in the Marine Corp, and you'll
18. note the date of his service which is on the DD form 214
19. under line item 12. This incident happened in July of
20. 2002. He went in the service in August 2002, so he was
21. being treated in the Marine Corp for his alcohol addiction
22. and David informs me that when he drinks, he drinks to the
23. point of intoxication and does not recall events that
24. happens when he does drink. That is not an excuse.
25. Drinking and committing a crime is not an excuse. I

HEARING

25

1 understand that Your Honor, he understands that. I'm not
2 giving this as a way of an excuse to any of the victims and
3 I'm just telling the Court that this is an explanation as
4 to why we have two different Davids and alcoholism is a
5 disease and he has that disease. And he's been treated in
6 the Marine Corp for it and he needs to continue that
7 treatment, but Your Honor, he also needs to be punished and
8 he recognizes that he needs to be punished for what he has
9 done. And what he has done is a very personal and hideous
10 crime upon two young ladies and he has told me he is
11 greatly sorry for that, for what he has done, for how he's
12 personally violated each of these ladies and I would ask
13 the Court to consider his military service, but also
14 fashion a remedy or --- not a remedy Your Honor, but more
15 of a punishment towards him that enables him to understand
16 that he has committed a very hideous crime, but also Your
17 Honor that also takes into recommendation that there are
18 two Davids in this situation. And I think that the Court
19 can also recommend a ATU ...

20 The Court: Well, I could but it's not going to help
21 much now. With the budget cuts they have
22 cut the ATU out.

23 Mr. McKenzie: They've cut the ATU out.

24 The Court: At the Department of Corrections there is no
25 ATU.

HEARING

26

1 Mr. McKenzie: That's unfortunate. Your Honor any kind of
2 treatment he can get while he's in the Department of
3 Corrections he will be grateful for. We understand that
4 there's a minimum fifteen year sentence that the Court has
5 to sentence him to. We would ask the Court for less than
6 the recommended sentence but Your Honor we would ask the
7 Court for no more than the recommended taking into
8 consideration, like I said, his military service and the
9 fact that we do have two Davids. As I told you before I
10 do believe the alcoholism is the common thread. Since I've
11 met him and talked with him and he's been incarcerated for
12 over a year and a half and we'd ask the Court to give him
13 time for that or credit for that time he has served. Since
14 I have met him, I find him to be very engaging because he
15 has not been on any alcohol. I've found him to be a
16 pleasant person, so I do believe there are two Davids we're
17 talking about and I do believe he needs treatment. I
18 believe the Court needs to punish him accordingly but also
19 take into consideration what all he has done and what all
20 he has accomplished. And I'll turn it over to Mr. Caraway.
21 The Court: Alright, Mr. Caraway.
22 Mr. Caraway: I have nothing to add, Your Honor.
23 The Court: All right. Mr. McKenzie or Mr. Caraway, I'll
24 be glad to hear from members of the family or anyone else
25 you'd like to present, I'd be glad to hear from them.

HEARING

27

1 Mr. McKenzie: Your Honor, my client wants to speak, but
2 also I think his mother wants to speak.

3 The Court: I'm going to hear from him, but I was going to
4 give her an opportunity first.

5 Mr. McKenzie: Okay. Pam Gowdy would like to speak. She's
6 the mother of the Defendant, Your Honor.

7 The Court: All right.

8 Ms. Gowdy: I would like to apologize to anyone that David
9 has ever caused any harm, but the David I know lived with
10 my mother who is handicapped for two years after his
11 service in the Marine Core. I have seven brothers and
12 sisters. Each one of them would tell you the kindness and
13 the patience that he has shown. Alcohol has played a part
14 that David knows I have lectured, begged, plead over the
15 years. I just pray for your mercy on David that he at
16 some point in his life have some time, after his punishment
17 to still have a very functional life.

18 The Court: Thank you, ma'am. Anyone else?

19 Mr. McKenzie: Nobody else in the family except for my
20 client.

21 The Court: Alright Mr. Yarborough?

22 Mr. Yarborough: I apologize to this Court and the
23 victims and to their families for all the pain and
24 sorrow that I have caused anyone in this and I hope
25 that within itself will bring a little peace, for I

HEARING

28

1 know I can not give back what has been taken. And I
2 hope whatever time I get, it will be to benefit
3 myself, so that when I come out, I will be a better
4 person. I'm not---I'm not the kind of person, and
5 I've got many friends in here and you can ask them,
6 I'd never hurt anybody. I'm the one that if I see
7 somebody on the side of the road, I stop and help. I
8 do not have the nature or the intent to ever want or
9 to do any harm to anybody. I fell from my upbringing.
10 I was raised better and I took it under myself to
11 party. I partied too much and let the wrong things
12 happen and I just ask for forgiveness from all
13 parties. If they can not forgive me, then I can
14 understand.

15

16 The Court: Thank you, sir.

17 Mr. McKenzie: Your Honor, if I may add, I did hand up to
18 you a Consult Request. It's from the Veteran's
19 Administration Regional Office down in Charleston.

20 The Court: Yes, sir.

21 Mr. McKenzie: And in that there is a little summary about
22 his --- David was also diagnosed with Post Traumatic Stress
23 Disorder and the VA has recognized that as a 50% disability
24 rating to him, he has a combined rating from disability of
25 sixty percent. Again, he --- and it goes into detail a

HEARING

29

1- little bit about the combat experience that he had in
2- Afghanistan and what he observed. He's seen some of his
3- friends killed in action. He's also seen some of his
4- friends mortally wounded and he himself was wounded. Your
5- Honor, as I've told you before, I'm not here to give you an
6- excuse. The explanation is that we have here a man with
7- alcohol problem. I don't think they make him incompetent
8- by any means but I understand and I think the court
9- understands he has to be punished for what he did. Thank
10- you, Your Honor.

11- The Court: Give me just a minute.

12- Mr. McKenzie: Your Honor, if you'd look at page 65 they
13- asked him some questions about how often he drinks alcohol
14- he says daily he drinks 10 or more.

15- The Court: I see that.

16- (There was a pause in the proceedings)

17- The Court: All right. Those in the court room that know
18- me and have appeared before me before like Mr. McKenzie and
19- Mr. Carraway, Mr. Sabb, Ms. Barr and all of the others have
20- heard me say that the most difficult thing we as judges
21- have to do is impose criminal sentencing. My colleagues
22- told me this before I went on the bench thirteen years ago
23- and it is true. We have no crystal ball, we can only
24- impose a sentence that we think is appropriate under the
25- law based upon what we have heard using our best experience

HEARING

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1 but sometimes a sentence does not satisfy everyone,
2 sometimes it doesn't satisfy anyone. But we simply try to
3 hear the evidence and impose a sentence that is appropriate
4 for everyone and that's what I am going to do on this case.
5 I will say that I have taken into consideration Mr.
6 Yarborough your military record and that is probably the
7 only reason that you are not getting more than you would
8 get otherwise. But I still think a substantial sentence is
9 appropriate for these very serious crimes, these heinous
10 crimes that you have committed. I would say to the victims
11 that there is nothing that I can do to ease your pain in
12 connection with this. All I can do is impose a sentence
13 under the law that I think is appropriate but I hope that
14 this will at least bring some closure to the unfortunate
15 event in your lives and that you will be able to go
16 forward.

17 Mr. Yarborough, I will say to you that you are going
18 to serve a long time but I hope that you will make the most
19 of the prison time while you are there and that you will
20 come out a better person. Having said that. I do think
21 that the recommendation of the State is the appropriate
22 sentence in this case and therefore the appropriate
23 sentence is the Defendant is committed to the State
24 Department of Corrections for a term of 22 years. All to
25 run concurrent. That's 22 years on each burglary and 22

HEARING

31

1 years on each criminal sexual conduct first degree with
2 credit for time that he had served. And I'm going to place
3 on the sentencing sheet the recommendation of the ATU at
4 the South Carolina Department of Corrections but right now
5 the Abuse Treatment Unit is not functioning because of a
6 lack of funds but hopefully they will get it back in
7 sometime in the future and you will get some treatment for
8 your alcohol while at the Department of Corrections.

9 Mr. Yarborough: Yes, sir.

10 The Court: Good luck to you, sir.

11 Mr. Yarborough: Thank you.

12 Mr. McKenzie: Thank you, Your Honor.

13 The Court: All right. Thank you, Mr. McKenzie.

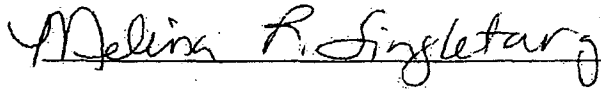
14 Mr. McKenzie: Yes, sir.

CERTIFICATE

This is to certify that the hearing in the matter of William David Yarborough vs. State of South Carolina, consisting of Thirty-one (31) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 25th day of August, 2011.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG)

WILLIAM DAVID YARBOROUGH)

INMATE NO.: 334712)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

201045000177
 Filed for Record in
 WILLIAMSBURG COUNTY SC
 CAROLYN WILLIAMS
 05-17-2010 At 02:07 pm.
 COMM PLEA 150.00

Book

Page

APPLICATION FOR

POST-CONVICTION RELIEF

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 clear to which question any such continued answer refers.

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

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

1. Place of detention Perry Correctional Institute
2. Name and location of Court which imposed sentence Williamsburg County General Sessions Court (Kingstree, South Carolina)
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-45-219; CSC 1st and Burglary 1st
 - (b) 2008-GS-45-220; CSC 1st and Burglary 1st
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

Revised 3/2003

- (a) May 18, 2009 (Sentenced to 22 years)
- (b) _____
- (c) _____
6. 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 nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial Counsel informed me that I did not have an appealable case
- (b) _____
- (c) _____

A CERTIFIED TRUE COPY
Carolyn F. Williams
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

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

- (a) Ineffective Assistance of Counsel
- (b) Involuntary and Unknowing Guilty Plea
- (c) Due Process Violations

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

- (a) Trial Counsel failed to inform me fully of the facts surrounding the DNA testing
- (b) Trial Counsel failed to point out inconsistencies in the testimony of the alleged

victims

(c) I reserve the right to amend these responses and supply the Court with a Memorandum of Law supporting these allegations

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

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

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

(a) the specific nature thereof:

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

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

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

A CERTIFIED TRUE COPY

(Carolyn F. Williams)
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

NOTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS

CLERK OF COURT

WILLIAMSBURG COUNTY

- (a) This is my first PCR
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Steve McKenzie, 2 North Brooks Street, Manning SC 29102
- ii. LeGrand Carraway, 125 W. Main Street, Kingstree SC 29556
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- New Trial
20. Are you now under sentence from any other court that you have not challenged?
- No

A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

201045000177
 Filed for Record in
 WILLIAMSBURG COUNTY SC
 CAROLYN WILLIAMS
 05-17-2010 At 02:07 pm.
 COMM PLEA 150.00

STATE OF SOUTH CAROLINA)

County of Williamsburg)

VERIFICATION Page-----

I, William D. Yarborough, 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.

William D. Yarborough

SWORN to and subscribed before me this 17
 day of May, 2010.

Wendy R. Small (L.S.)
 Notary Public

My Commission Expires: 11/21/2012

A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

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

C/A No.2010-CP-45-177

William David Yarborough -- Applicant,

-Vs-

State of South Carolina -- Respondent,

FILED
13 OCT 23 PM 4:46
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG, S.C.

AMENDED APPLICATION FOR POST CONVICTION RELIEF
PURSUANT TO RULE 15, SCRCP

William D. Yarborough
SCDC# 334712
BRCI
4460 Broad River Rd.
Columbia, SC. 29210

A CERTIFIED TRUE COPY
Sharon W. Staggars
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

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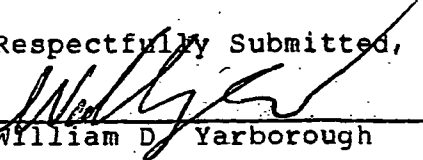
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)

William D. Yarborough) C/A No.2010-CP-45-177
Applicant,)
-Vs-) AMENDED APPLICATION FOR POST
State of South Carolina) CONVICTION RELIEF PURSUANT TO
Respondent,) RULE 15, SCRPC

COMES NOW, above captioned Applicant, William David Yarborough, by and through attorney of record, who respectfully moves this Honorable Court to amend the Original application in the above captioned case number pursuant to Rule 15, SCRPC.

Respectfully Submitted,

/s/


William D. Yarborough

FILED
13 OCT 23 PM 4:46
SHARON L. STAGGERS
CLERK OF COURT
KIMBERLY A. S.C.

ISSUE (A)

WAS COUNSEL INEFFECTIVE FOR GIVING APPLICANT
ERRONEOUS SENTENCING ADVICE?

FACTS

Applicant asserts he was denied the Sixth Amendment guarantee to the effective assistance of counsel when counsel told Applicant if he (Applicant) went to trial he would no doubt be found guilty and would receive a life sentence, thus in essence counsel told Applicant "he would spend the rest of his life in prison unless he pled guilty."

Here counsel's sentencing advice was obviously defective, if counsel had properly reviewed the allegations and charges against Applicant.

Applicant would assert that in conjunction with Issue (B), infra, Applicant would not have pled guilty but would have proceeded to trial in order to prove his actual innocence, but for counsel's erroneous advice and deficiencies, Applicant followed counsel's advice in order to prevent from dying in prison. Therefore based on Counsel's many deficiencies, prejudice is readily apparent and Applicant should receive a new trial.

Discussion

In *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), the United States Supreme Court set forth a two-part standard for evaluating claims of ineffective assistance of counsel.

The first part of the test requires that a defendant show that his counsel's performance was deficient such that it falls

below an objective standard of reasonableness.

The second part of the test requires that a defendant show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. This second part of the Strickland test has also been referred to as the "prejudice" requirement.

Although the United States Supreme Court decision in Strickland dealt with ineffective assistance of counsel in a capital sentencing proceeding, and was premised in part on the similarity between such a proceeding and the usual criminal trial, the same two-part standard was [extended] so as to apply to ineffective assistance of counsel claims arising out of the plea process in Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, (1985).

In Hill, the United States Supreme Court held that in the context of determining the voluntariness of a guilty plea that is entered upon the advice of counsel, the first half of Strickland would require an inquiry into whether counsel's advice was within the range of competence demanded in criminal cases. Simply put, the first inquiry is whether counsel's advice was deficient. According to Hill, the "prejudice" requirement of the Strickland test focuses on whether counsel's ineffective performance affected the outcome of the plea process.

In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

As is seen, supra, counsel advised Applicant that he would die in prison if he did not plead guilty. Applicant further alleged that counsel's sentencing advice was obviously defective, for if counsel had properly reviewed the charges against Applicant it would have been readily apparent that Applicant was not facing life in prison if he had proceeded to trial and ultimately been found guilty. Thus, the first prong of the Strickland and Hill test has been met.

In support of the second part of the Strickland and Hill test, the "prejudice" requirement, Applicant submits evidence which conclusively establishes that but for counsel's misadvice as to sentencing, he would not have pled guilty. In fact at this point the only evidence in the record on this point is Applicant's assertion and testimony that will be produced during any PCR hearing held in this matter, that "had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he would not have pled guilty.

Thus, the second part of the test has been met. Applicant would assert that counsel's improper sentencing advice induced Applicant's guilty plea, therefore this case should be reversed. See *Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989)(new trial granted where incorrect parole eligibility advice induced plea).

For the aforementioned reasons, Applicant respectfully prays this Court will grant the requested relief of a new trial.

ISSUE (B)

WAS COUNSEL(S) INEFFECTIVE FOR FAILING TO CONDUCT PRETRIAL INVESTIGATION BOTH FACTUAL AND LEGAL BEFORE ADVISING APPLICANT TO ENTER A PLEA OF GUILTY?

Facts

Applicant asserts he was denied his Sixth Amendment right to effective assistance of counsel, when counsel advised Applicant to enter a plea of guilty without, first conducting pretrial investigation, both, factual and legal. The instant claims of ineffective assistance of counsel arouse from Applicant being advised to enter a plea of guilty to two (2) separate and distinct offenses involving two (2) different incidents, involving two (2) different victims. In case no.08-GS-45-219, Applicant was represented by Mr. Steve McMinzie during the plea hearing, and in case number 08-GS-45-220 he was represented by LeGrand Carraway.

In order to establish that counsel was ineffective in failing to investigate, the Applicant must come forward with evidence that, if, counsel had investigated, would have found and been useful to the defense, that could have produced a different result. Applicant asserts that he was never provided any discovery prior to entering his guilty plea.

Indictment No.(08-GS-45-219)(Victim/Christine)(Plea Counsel Steve McKenzie).

Applicant would submit that after he was arrested on case no.(08-GS-45-219, Steve McKinzie, counsel) and incarcerated he was originally represented by Charles D. Barr, Esquire. Mr. Barr

represented Applicant during a bond hearing of the alleged victim ("Chritine") that was convened February 8, 2007 before the Honorable Clifton Newman, Presiding. The State was represented by Ms. Kimberly Barr, Assistant Solicitor for Williamsburg County. During the bond hearing, Applicant's counsel (Mr. Barr) informed the Court that "prior to the time that the incident was supposedly to have happened, Applicant, worked with the alleged victim's father. I think that through some altercation or some unfortunate circumstances, he was terminated. And I think that his termination probably had something to do with the alleged victim. Bond hearing ("BH.Tr.p.") tr.p.3, 11.1-9. Mr. Barr further argued that "we just certainly steadfastly maintain there was no CSC 1st, and there was no burglary, BH.tr.p.3, 11.16-17.

During the bond hearing the alleged victim (Christine) did not appear before the Court, but the victim's mother Ms. Belding did appear before the Court. Ms. Belding told the Court that she woke up at 6:00 am. took a shower. After taking a shower Ms. Belding walked down the hallway to the kitchen to fix coffee as always. When she approached the kitchen, the window over the sink was raised, both the inside window and the storm window. the door under the carport was ajar, and her pocketbook laying on the counter in the kitchen had been rummaged through. That's when she walked back down the hallway and checked on her son who also was sleeping. "I then opened her room door, and she was in bed. I woke her up. I assumed she was asleep.", BH.tr.p.5, 11.25-p.6, 11.1-11. "She laid in bed from the time he left until I got up and woke her up in fear", BH.tr.p.6, 11.18-20.

As is seen in the above bold sections, after Applicant was to allegedly have broken into the victim's house and raped her "she went back to bed and went to sleep", until Ms. Belding got up at 6:00am and woke her up.

Coming directly after, Applicant's counsel Mr. Barr advised the Court: "Judge he was working for her father at, I think it is Black River Mechanical. But, Judge I think that there was some disagreement between the father and him about the daughter. Because I believe he felt that she was too young. And but anyhow, he was fired from that job, BH.tr.p.9, 11.1-6.

As is seen in the above it is evident that Applicant and the alleged victim were having relations and once the father found out, he became upset at the age difference and fired Applicant. This evidence would have been helpful to Applicant in determining whether to make an intelligent decision, whether to proceed to trial or not.

Applicant asserts had he been provided this information, the information would have been useful before a jury, as a reasonable jurist could have seen that Applicant and the victim had prior relations, but the father did not like it because of the age difference. Applicant would assert that had counsel Steve McKenize researched and found, as McKinzie was clearly aware Applicant had been represented by prior counsel Mr. Charles D. Barr, Esquire, and therefore could have obtained the transcripts of the bond hearing. Applicant asserts that if he had been ~~provided this information he would not have pled guilty but would~~ have insisted on going to trial to prove his innocence.

Indictment No. (2008-GS-45-220)(Victim Ms.Chandler)(Plea Counsel Legrand Carraway).

This case stemmed from an incident that was to have occurred on or about June 13, 2002.

Applicant asserts he was denied the effective assistance of counsel when Mr. Carraway failed to conduct any pretrial investigation before advising Applicant to enter a plea of guilty. Applicant asserts he was never provided any discovery prior to entering the plea. Applicant asserts that if Mr. Carraway would have reviewed the discovery he would have seen that the alleged victim ("Ms. Chandler") gave multiple inconsistent statement(s) to police, and Carraway could have explained to Applicant that if Applicant proceeded to trial, Applicant could impeach any trial testimony Ms. Chandler placed before the jury with her prior inconsistent statement(s). This information would have been critical since Applicant's defense is premised solely on credibility. In order to sufficiently develop this issue, Applicant will provide specific facts of inconsistency during the PCR hearing, Rule 71.1(e), SCRCP.

Applicant would assert that had this information been provided to him prior to the plea, he would not have pled guilty but would have proceeded to trial to prove his innocence.

Discussion

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal, *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir.), cert. denied 393 U.S. 849 (1968).

The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation, See *Goodwin v. Swenson*, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolpy of issues -- to which the defendant, a layman, will be oblivious, *Garland v. Cox*, 472 F.2d 875, 879 (4th Cir.).

The notion that defense counsel must obtain information that the State and will use against the defendant is not simply a matter of common sense. The American Bar Association Standard for Criminal Justice, Prosecution and Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like this one: "it is the duty of the lawyer to conduct prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of a conviction. The investigation should always include efforts to information in the possession of the prosecution and law enforcement authorities, See ABA for Criminal Justice 4-4.1 (2nd ed. 1982 Supp.). The failure to investigate, research and prepare is equivalent to no representation at all, *Brubaker v. Dickson*, 310 F.2d 30, accord *Williams v. Beto*, 354 F.2d 698, and *Brooks v. Texas*, 381 F.2d 619.

To establish counsel failed to adequately investigate and prepare for trial, the Applicant must present evidence of what

counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared, Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Applicant here believes he has carried his burden of showing that counsel's conduct fell below the objective standard of reasonableness required for trial attorneys.

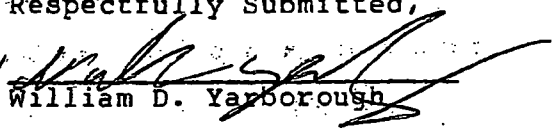
For the aforementioned, Applicant respectfully prays this Court will grant the requested relief of a new trial.

CONCLUSION

WHEREFORE, based on the foregoing, Applicant respectfully prays this Honorable Court will grant the requested relief sought herein, a new trial.

Respectfully Submitted,

/s/


William D. Yarborough

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)

William David Yarborough) C/A No.2010-CP-45-177

Applicant,)

-Vs-)

State of South Carolina)

Respondent,)

CERTIFICATE OF SERVICE

13 OCT 2013 PM 1:35
CLERK OF COURT
CLERK'S OFFICE

The undersigned hereby certifies that he has served a true and correct copy of the enclosed Amended Post Conviction Relief Application on Attorney for Respondent, Mr. Donald J. Zelenka, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211, by placing the copy of the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this ____ day of _____, 2013.

Sworn to and Subscribed Before Me

this 21 day of OCT, 2013

Eugene J. Kelly
NOTARY PUBLIC

MY COMM. EXPIRES

Respectfully Submitted,

/s/ William D. Yarborough
William D. Yarborough

Commission Expires Feb 4, 2013

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2010-CP-45-177

William David Yarborough, #334712,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post-conviction relief May 17, 2010, 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 Williamsburg County Clerk of Court. The Applicant was indicted at the October 2008 term of the Williamsburg County Grand Jury for Criminal Sexual Conduct—First Degree and Burglary—First Degree (2008-GS-45-0219; -220). Applicant was represented by Steven McKenzie and William LeGrand Carraway. On May 18, 2009, Applicant pled guilty as indicted before the Honorable Howard P. King and was sentenced pursuant to State recommendation to twenty two years imprisonment for each charge. The sentences were to run concurrently. Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel failed to inform me fully of the facts surrounding the DNA testing."
 - b. "Trial Counsel failed to point out inconsistencies in the testimony of the alleged victims."
2. Involuntary Guilty Plea.
3. Due Process Violation

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability

that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held.

Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

VII.

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

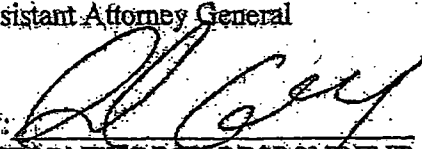
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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Senior Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
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November 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

William David Yarborough, #334712,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

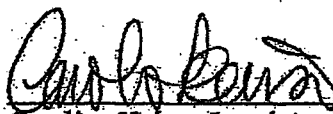
IN THE COURT OF COMMON PLEAS

2010-CP-45-177

AFFIDAVIT OF SERVICE BY MAIL

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

Charles T. Brooks, Esquire
 Law Office of Charles T. Brooks, III
 309 Broad St.
 Sumter, SC 29150

DATED this 15th day of November, 2013.


Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF COMMON PLEAS

William Yarborough,
PLAINTIFF,

v.

State of South Carolina,
DEFENDANT.

TRANSCRIPT OF MOTIONS
C/A No. 2010-CP-45-00177

Sumter County Courthouse
December 16, 2013

BEFORE:

HONORABLE R. FERRELL COTHRAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Attorney General Daniel Gourley
Attorney for State of South Carolina

Charles Brooks, Esquire
Attorney for William David Yarborough

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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(NO EXHIBITS MARKED DURING THIS HEARING)

WILLIAM DAVID YARBOROUGH VS. STATE OF SOUTH CAROLINA 3

1 THE COURT: Okay.

2 MR. GOURLEY: May it please the Court, Your Honor.

3 This is William Yarborough vs. State of South Carolina,
4 docket number 2010-CP-45-0177. He is presently confined
5 in the South Carolina Department of Corrections. He was
6 indicted at the 2008 term in front of the Williamsburg
7 County Grand Jury for criminal sexual conduct first
8 degree, burglary in the first degree. He was represented
9 by Steve McKenzie and Legrand Carraway May 18, 2009,
10 plead guilty as indicted before the Honorable Howard P.
11 King. Judge King sentenced him pursuant to State's
12 recommendation to 22 years in prison for each charge.
13 The sentence will run concurrently. He did not appeal
14 his guilty plea as sentenced. He subsequently filed a
15 post conviction relief application on May 17, 2010
16 alleging ineffective assistance of counsel, failing to
17 inform him of the facts surrounding the DNA testing, and
18 failing to point out the inconsistencies of the testimony
19 of the alleged victims, also an involuntarily guilty
20 plea, due process violation. He filed an amended post
21 conviction relief application on November 29, 2013
22 alleging ineffective assistance of counsel for failing to
23 conduct a pretrial investigation and failing to provide
24 discovery. The State made it's return on November 15,
25 2013. He's represented here today by Mr. Brooks.

WILLIAM DAVID YARBOROUGH VS. STATE OF SOUTH CAROLINA 4

1 THE COURT: Okay. Yes sir.

2 MR. BROOKS: How are you doing here today, Judge?

3 THE COURT: Good.

4 MR. BROOKS: Judge, at this time we would
5 respectfully ask the court for a continuance in this
6 matter. My client has informed me that he would prefer to
7 come back the next term of court in February. He would
8 like to do a little more research on some of his issues
9 that he would like to look into.

10 THE COURT: What is the State's position?

11 MR. GOURLEY: Your Honor, we would strongly object.
12 We are here today. Mr. McKenzie has cleared his calendar
13 to be here. And for those reasons, Your Honor, and the
14 State spending resources to drive over here today. Your
15 Honor, for those reasons we would object to the Motion.

16 THE COURT: Tell me what research he needs to do and
17 the difference in the time?

18 MR. BROOKS: Judge, in this situation as Mr. Gourley
19 has indicated there are issues about DNA and whether or
20 not he was fully informed, what the facts were against
21 him to basically go in and engage in this guilty plea.
22 We --- he wants to get a copy of the solicitor's file in
23 this case. We sent a letter to Ms. Barr requesting that
24 and have not gotten a response to that.

25 THE COURT: He's not going to get a copy of the

WILLIAM DAVID YARBOROUGH VS. STATE OF SOUTH CAROLINA 5

1 Solicitor's file. Outside of the Rule 5 or the Brady
2 material you're not going to get a copy of the
3 solicitor's file.

4 MR. BROOKS: Well, Judge, we made a request. This is
5 a civil request and that's what my client's position is.

6 THE COURT: Did you subpoena Ms. Barr and her file?

7 MR. BROOKS: I beg the Court's indulgence. We did
8 recently do that and had the investigator in this case,
9 Glenn Harrell, and that is something that we did request.

10 THE COURT: Where is Ms. Barr?

11 MR. BROOKS: We didn't subpoena her to be here we
12 wanted a copy of her file.

13 MR. GOURLEY: Your Honor, I would just for the
14 record, there is no allegations of Brady violations, Your
15 Honor.

16 THE COURT: No Brady violation or a Rule 5, I mean

17 ...

18 MR. BROOKS: His issue goes towards ineffective
19 assistance of counsel.

20 THE COURT: Well, they are not entitled to her file.
21 They are only entitled to Brady issues and Rule 5 issues,
22 so what, I mean, what Rule 5 issue do you have that we
23 can't dispose of today?

24 MR. BROOKS: Judge, as solicitors always do when they
25 send the discovery to defense lawyers there is about

Mr. Yarborough-Examination by Mr. Brooks:

6

1 twenty some odd things that they highlight. My client,
2 in his request from the file from Mr. McKenzie, he only
3 has about fifteen of those things. That's what prompted
4 us. So, my client's position is that somebody, either
5 the solicitor's office didn't fully disclose it or his
6 lawyer, his trial lawyer hadn't turned it over to him but
7 he doesn't have all --- that's what his position is. He
8 doesn't have all the facts that were ...

9 THE COURT: So if they got them or they don't ...
10 well, we'll proceed and after we hear it you may
11 bifurcate it or give you more time to get some more
12 information. Since I've got the lawyers and everybody
13 here let's see what we really do have. If there is
14 something missing I will - we can bifurcate this hearing
15 and set it up again if we need anymore information.

16 MR. BROOKS: I understand, Judge.

17 THE COURT: Okay.

18 MR. BROOKS: In light of Your Honor's ruling, we will
19 go ahead and call Mr. Yarborough to the stand.

20 BAILIFF: Place your left hand on the Bible and raise
21 your right hand, please.

22 (Witness complies)

23 WILLIAM DAVID YARBOROUGH, first being duly sworn or
24 affirmed, testified as follows:

25 MR. BROOKS: May I approach my client with his

Mr. Yarborough-Examination by Mr. Brooks:

7

1 materials?

2 THE COURT: Okay. Will you state your full name and
3 spell your last name for the record?

4 MR. YARBOROUGH: William David Yarborough, Y-A-R-B-O-
5 U-G-H.

6 MR. BROOKS: Are you ready, Judge.

7 THE COURT: Yes, sir.

8 MR. BROOKS: Okay.

9 DIRECT EXAMINATION BY MR. BROOKS:

10 Q. Now, Mr. Yarborough, how old are you?

11 A. I'm thirty-five years old.

12 Q. And, obviously, you are fully aware of this
13 transcript with Judge King, is that correct?

14 A. Yes, sir; I am.

15 Q. Now, in this case, who - who were your lawyers in
16 this case?

17 A. To tell you the truth, Steve McKenzie was my only
18 lawyer. I never see Legrand Carraway prior to
19 signing my plea agreement.

20 Q. Okay. Now, and you did plea?

21 A. Yes, sir; I did.

22 Q. Why did you plead?

23 A. I pled guilty, because my lawyer took me aside and
24 told me I had to plead. If I didn't plead, he had
25 already talked to the Judge and the Solicitor and

Mr. Yarborough-Examination by Mr. Brooks:

8

1 they would give me a life sentence if I didn't plead
2 and my trial would start the following day. I felt
3 like I had no other out. I was really forced into
4 pleading. He said with two facts, one the DNA
5 popped as a positive. He didn't mention the mixture
6 of DNA as a third-party guilt and they had a prior
7 suspect in 2002 and he said it was the statement of
8 the victim alone, the jury would find me guilty.
9 "There is no jury in the world that would not find
10 you guilty, Mr. Yarborough." I had just gotten out
11 of the Marine Corp.

12 Q. Okay.

13 A. I had not seen my family for a long time. With him
14 telling me I would get a life sentence if I did not
15 plead, I went off the -- I -- under my
16 Constitutional rights, when a lawyer comes to you
17 and under the ABA, American Bar Association, when
18 you're appointed or you're paying for a lawyer, you
19 get everything that lawyer is.

20 Q. Okay.

21 A. You get all his knowledge, everything.

22 Q. Okay.

23 A. He's supposed to represent you to the fullest, if
24 you admit guilt or innocence.

25 Q. Okay. And you feel Mr. McKenzie did not do that?

Mr. Yarborough-Examination by Mr. Brooks:

9

1 A. No, sir; not whatsoever.

2 Q. Now, you said something about he told you that there
3 was DNA and he told you there was a statement from
4 the alleged victim?

5 A. Yes, sir.

6 Q. Okay. Now, obviously, you take issue with that now?

7 A. Yes, sir, because I did not see it. I did not -
8 there's two -- there's two DNA reports.

9 Q. Okay.

10 A. The one I did, the one I paid for and there is one
11 SLED did. I did not see the SLED one until he sent
12 me my file at Perry after I had already been
13 convicted. Half this stuff I've never seen before.

14 Q. You didn't see it until after you plea?

15 A. Until after I pled and there's a lot of information
16 that I have as of right now as far as the Motion for
17 Discovery that I will show you where I requested two
18 files from Mr. McKenzie. Mr. McKenzie sent me both.
19 I have both complete files that he sent me and in
20 both of them, there is over ten things missing, so
21 either the - either the State didn't have them, the
22 State didn't turn them over or Mr. McKenzie withheld
23 them from me.

24 Q. What are the things that were missing after you got
25 your files --

1 A. The evidence.

2 Q. Hold on a minute, let me get this out.

3 A. Yes, sir.

4 Q. Let me finish the question, because you see this
5 later right here?

6 A. Yes, sir.

7 Q. She's got to take it down. I know you anxious, but
8 remember now and you got to give a verbal response,
9 but let me finish so that she can take all of this
10 down, otherwise, the transcript gets all jumbled up.

11 A. Yes, sir.

12 Q. So I'm going to - you going to get out. I promise
13 you, you going to get it out. Now, what are the ---
14 can you give us an idea of what those things are
15 that once you got your file from Mr. McKenzie that
16 they were not in the file?

17 A. DNA reports, victim statements, Miranda waivers for
18 the victim. Who gives a victim of a most serious
19 crime a Miranda waiver. Polygraph tests from the
20 victim. Who gives a victim of a most serious crime
21 a polygraph test? I was not told the results of
22 that. If I had known that, I would have went
23 straight to trial.

24 Q. So in your ...

25 A. I would have never pled.

Mr. Yarborough-Examination by Mr. Brooks:

11

1 Q. So you're saying that you seen polygraph results
2 afterwards?

3 A. Not results, sir. I've gotten in the file for them,
4 from the State.

5 Q. Okay.

6 A. So the State has them. So either the State withheld
7 them or Mr. McKenzie withheld them.

8 Q. Okay. So you never saw the results?

9 A. No, sir.

10 Q. Okay. And that's one of the things that you want to
11 see?

12 A. Yes, sir.

13 Q. Okay. Now, also you were talking a little bit about
14 the DNA. Tell us why that's critical in your case?

15 A. It's critical, because it shows third-party guilt
16 and it shows there's inconsistencies in the woman's
17 story. That she gives two statements to cops and
18 not written statements but verbal statements and
19 both of them vary. Now, with that being said, she
20 was found with two male DNAs in her. She was
21 claiming to be raped by one man and I ...

22 Q. And the State -- okay. All right. So you saying
23 that the DNA that came back from SLED ...

24 A. Yes, sir.

25 Q. -- had two different males?

Mr. Yarborough-Examination by Mr. Brooks:

12

1 A. Yes, sir.

2 Q. Okay.

3 A. So that would show any jury reasonable doubt to
4 believe a woman was raped when she's got two male
5 DNAs in her. She not only says only one individual,
6 but her statements, both of them don't match up.

7 Q. And you didn't get this information about the DNA
8 until after you had plead?

9 A. Till after I plead, sir. And see, we don't get a
10 file in County jail, so you don't know what you've
11 got. All you know is what the lawyer tells you.

12 Q. Okay. And what discovery did you go over with Mr.
13 McKenzie prior to your plea?

14 A. The arrest warrant which one of the arrest warrants
15 stated that I had a gun, which no gun was ever
16 recovered. No gun was ever seen, so they've got me
17 charged. Somebody give a false statement to the
18 magistrate judge to procure a warrant for my arrest.

19 Q. Okay. Let me -- let me bring you back. What --
20 more importantly what did you go over with Mr.
21 McKenzie prior to plea? You've already said you've
22 got two DNAs and the victim's stuff after you got
23 incarcerated after the plea. So what all did you
24 discuss with Mr. McKenzie?

25 A. Just that my DNA had popped for SLED.

Mr. Yarborough-Examination by Mr. Brooks:

13

1 Q. Uh-huh.

2 A. I went over the warrants with him and he showed me
3 -- he pretty much, that's basically it. I mean, he
4 showed me where he made of two motions which Charles
5 David Barr my previous lawyer made motions and he
6 just come to me and said, look, they've got another
7 --- I mean, I pled -- I mean, I sat here and told
8 them from the first day I went to County jail where
9 I spent ten months, and I told them from the time --
10 from the first time I talked to anybody, I'm
11 innocent, I'm still innocent. But yet, he
12 railroaded me into taking a plea by telling me I
13 would get a life sentence if I didn't. That he'd
14 already talked with the judge and solicitor and if I
15 did not take it, my trial would start the next day
16 and I'd be found guilty.

17 Q. So, obviously, if you knew then ...

18 A. What I know now; yes, sir.

19 Q. ... what you know now ...

20 A. Yes, sir.

21 Q. ... you would have gone to trial?

22 A. Yes, sir.

23 Q. And now we -- I'll ask you this and we talked about
24 this briefly. You understand that the only remedy
25 Judge Cothran can give you here today is to overturn

1 your guilty plea and give you a new trial?

2 A. Yes, sir.

3 Q. Sometimes, that's good and sometimes, that ain't
4 good. You could go back to trial and you could
5 potentially get more time? I mean, you understand
6 that?

7 A. Yes, sir. I understand fully beyond a shadow of a
8 doubt, I'll go home.

9 Q. And knowing that risk, it's your desire to still ask
10 the Court for a new trial?

11 A. Yes, sir.

12 Q. Okay. Now, when you met with Mr. McKenzie prior to
13 - well, how many times did you meet with Mr.
14 McKenzie?

15 A. To tell you the truth, I really don't recall. It's
16 probably four, maybe five times in that ten-month
17 period.

18 Q. Okay. Did --- and did he show you the DNA?

19 A. He showed me one where it said that I was a match.

20 Q. Okay. And what you are raising now is that once you
21 got the SLED report through requesting your file
22 from him after you were in SCDC, you saw where it
23 said two males?

24 A. Yes, sir.

25 Q. Two different males?

Mr. Yarborough-Examination by Mr. Brooks:

15

1 A. Yes, sir.

2 Q. Okay. Why is that so important the fact that it's
3 two different males? Why is that so important?

4 A. Well, it showed credibility of the witness. There
5 is -- I mean, you can't state one thing and have a
6 totally different thing. You can't state that
7 you've been raped and have two male DNAs in you, not
8 when you say one man raped you.

9 Q. Okay.

10 A. So evidently this woman was promiscuous and she just
11 got caught up in it.

12 Q. Yeah. This -- this victim or alleged victim, she
13 was of age, is that correct?

14 A. Yes, sir.

15 Q. Okay. So you -- you could have used the defense of
16 consensual sex?

17 A. Yes, sir.

18 Q. Okay. Did you, in fact, tell that to Mr. McKenzie?

19 A. Yes, I did.

20 Q. Okay. And what was his response?

21 A. What I told Mr. McKenzie, because this is two
22 different --- this is two different cases in one.

23 Q. I understand.

24 A. This is one from 2002 and one 2007.

25 Q. Okay.

Mr. Yarborough-Examination by Mr. Brooks:

16

1 A. I told him I couldn't remember ever having sex with
2 her. He says, "Well, how is that possible?" Well,
3 it'd been five years and a war. Like I told him,
4 I'd let him get my medical records from the VA.

5 Q. Now, when you say five years and a war, for those of
6 us who don't know your case, well, did you -- did
7 you serve in the military?

8 A. Yes, sir. I served in the Marine Corp.

9 Q. And did you go overseas?

10 A. Yes, sir; I did. I went to Afghanistan for almost a
11 year.

12 Q. Okay.

13 A. When I got back, I was treated at the VA Hospital
14 for PTSD, Post-Traumatic Stress Disorder. I was
15 also treated at the TBI clinic, the Traumatic Brain
16 Injury clinic, because I was having problems putting
17 things together. I was also diagnosed with
18 depression and anger problems.

19 Q. Okay.

20 A. They put me on medication for it.

21 Q. Okay. Now, a lot of these things were discussed in
22 your plea, is that correct?

23 A. Yes, sir.

24 Q. But, Mr. McKenzie certainly was aware of your
25 situation, your background?

Mr. Yarborough-Examination by Mr. Brooks:

17

1 A. Yes, sir. I made him very aware.

2 Q. Okay. And as a matter of fact, your -- as far as
3 you know, your mother was involved in your case?

4 A. Oh, yes, sir.

5 Q. Okay.

6 A. Yes, sir.

7 Q. And matter of fact, she's sitting in the back of the
8 courtroom, is that correct?

9 A. Yes, sir.

10 Q. When -- what else -- I want to make sure we get
11 everything out. Is there anything I'm missing that
12 you want to tell the Court that we haven't told the
13 Court about why you should get your plea overturned?

14 A. Oh, yes, sir. Yes, sir.

15 Q. Go ahead.

16 A. One, there was no mental evaluation done prior to
17 pleading. I mean, I'm not saying I'm crazy, but
18 with my -- with the stress that was put on me for
19 being in the County jail and the PTSD and everything
20 weighing on me, there should have been an evaluation
21 done, and I also have a failing defect of documents
22 and when I say failing defect, they do not state a
23 victim's name. An indictment is supposed to -- it's
24 a notice document.

25 Q. Correct.

Mr. Yarborough-Examination by Mr. Brooks:

18

1 A. It goes in front of the Grand Jury. There is no
2 name of the victim on there. Now, if they're not
3 viewing any victim statements, whose statement was
4 given to the Grand Jury to indict me? Was it the
5 officers? That can't be, because that is -- that is
6 hearsay.

7 Q. I understand. Now, back to the statements, have you
8 ever seen the statement by alleged victim in your
9 case?

10 A. No, sir. And it's not -- on one of the cases, it's
11 not even listed on the Rule 5.

12 Q. On the discovery checklist?

13 A. Yes, sir. It's not even listed on there.

14 Q. Okay. And that's one of the issues that you raise
15 in regards to Mr. McKenzie's representation?

16 A. Yes, sir.

17 Q. Is that he didn't fully disclose all of these things
18 to you...

19 A. Yes, sir.

20 Q. -- so that you were fully informed of what you were
21 doing?

22 A. Yes, sir.

23 Q. Is there anything else?

24 A. There was never a defense, I paid for a defense
25 lawyer. I didn't get that. What I got was somebody

Mr. Yarborough-Examination by Mr. Brooks:

19

1 that wanted a check and walked off. I can prove
2 that in my case.

3 Q. Okay.

4 A. Like in the first one in 2002, James Timmons was the
5 first one suspected. So, evidently, there is a
6 statement from the victim alleging that she had been
7 raped by James Timmons. There is a statement that
8 James Timmons gave and there's also the DNA. Now,
9 I've just got that. I've just got that report.
10 I've got those statements.

11 Q. Okay. Now ...

12 A. I ...

13 Q. Go ahead. Go ahead.

14 A. I've never seen any photos or statements from the
15 crime scene investigators as to what they found.
16 Now, I was informed by officers when I took -- after
17 I took my plea, they said, "Yarborough, why did you
18 take that plea?" And no, I didn't subpoena them
19 here today. I don't need to, because I know the
20 truth and if my -- if my case ever goes back to
21 court, it can be proven. The house that was broke
22 into, my fingerprints wasn't found, my boot prints
23 wasn't found. The only thing that link me there was
24 a statement. The door was broken from the inside of
25 the house.

- 1 Q. Okay. Now, the burglary, that was from a totally
2 different incident?
- 3 A. No, sir. These are all the same. They're all --
- 4 Q. They're all by the same incident?
- 5 A. There is a burglary first and CSC and a burglary
6 first and a CSC.
- 7 Q. But there are two different incidents?
- 8 A. One -- one from 2002 and one from 2007.
- 9 Q. Okay. All right. And there was DNA in how many of
10 those cases?
- 11 A. There's only DNA in one in 2002.
- 12 Q. Okay. And in one of those cases, there is none?
- 13 A. No, sir.
- 14 Q. Okay. All right. And what you, in fact, pled to
15 was kind of like a packaged deal?
- 16 A. Yes, sir.
- 17 Q. Okay. And one of those cases you knew to be
18 substantially weaker than the other one already?
- 19 A. Oh, yes, sir.
- 20 Q. Okay.
- 21 A. The one that actually -- see, when they arrested me
22 in 2007, they come to me, "Mr. Yarborough?" I said,
23 "Yes." They were like, "You're being accused of CSC
24 and burglary first." They was like, "Well, we --
25 you can make these easy -- see, I worked at the

Mr. Yarborough-Examination by Mr. Brooks:

21

1 Sheriff's Department. They said, "You can make this
2 easy and cooperate," and I said, "Okay, what do you
3 need?" They said, "Give me your clothes." I give
4 them my clothes, I give them my boots. I give them
5 everything they wanted. I give my fingerprints. I
6 give them my DNA. Nothing matched. That's the one
7 where the Mirandized the victim. They Mirandizing
8 somebody that's telling the truth. Who gives a
9 polygraph to somebody who's telling the truth.

10 Q. And this was the one that you had gone into the
11 military, and then gone overseas and then came back,
12 is that right?

13 A. Yes, sir. And I was working for the girl's father.
14 He got mad that me -- me and her had a relationship,
15 so he fired me.

16 Q. Okay. And why --

17 A. And when I say a relationship, I don't mean just
18 platonic at first.

19 Q. Right.

20 A. And then she had -- she told me to come to her house
21 one night and I did. The next morning, I was locked
22 up - well, not locked up, but I was accused of rape.

23 Q. Now, all of what you said your lawyer knew about?

24 A. Yes, sir.

25 Q. Okay. And then the other incident with the DNA from

1 two different males, that's from the '07?

2 A. That's from the '02.

3 Q. That's from '02.

4 A. That DNA I gave in '07.

5 Q. Okay.

6 A. When it went to SLED, it had a positive hit for an
7 unsolved case in 2002.

8 Q. Okay. Okay. All right. And that's when they came
9 and then arrested you for that one?

10 A. Yes, sir. Once they arrested me for the 2007, I
11 bailed out. Well, not at first. They left me on
12 the street, because they knew it was a lie.

13 Q. So you had a -- what kind of bond did you have?

14 A. Well, at first - at first I didn't need one, because
15 they didn't arrest me initially.

16 Q. Okay.

17 A. Because they didn't - they didn't believe the
18 victim.

19 Q. Well, once they arrested you --

20 A. I think it was a \$35,000.

21 Q. -- and you posted it and you out on the street?

22 A. Yes, sir.

23 Q. Okay.

24 A. Yes.

25 Q. And then after they took your DNA, you said they

Mr. Yarborough - Exam/Cross by Mr. Gourley:

23

1 hit on another case?

2 A. Then, they come and locked me up.

3 Q. And that's the other case that had DNA from two
4 different guys --

5 A. Yes, sir.

6 Q. -- you and another guy?

7 A. Yes, sir.

8 Q. That you didn't know about prior to your plea?

9 A. That's correct.

10 Q. Okay. Is there anything else you want to tell Judge
11 Cothran about why this plea should be overturned
12 that we have no covered? Take your -- take your
13 time.

14 A. That's it.

15 Q. All right. Answer any questions that Mr. Gourley.

16 A. Yes, sir.

17 CROSS-EXAMINATION BY MR. GOURLEY:

18 Q. Mr. Yarborough, how are you?

19 A. I'm doing good, sir. How about yourself?

20 Q. I'm fine, thank you. Mr. Yarborough, you stated
21 that you met with Mr. McKenzie about four or five times
22 prior to your guilty plea?

23 A. Something like that, sir, yes.

24 Q. How about Mr. Carraway?

25 A. I never.

Mr. Yarborough - Cross by Mr. Gourley:

24

1 Q. Now, do you recall a judge going over your
2 constitutional rights, your right to your jury trial
3 to present evidence on and so forth?

4 A. Yes, sir.

5 Q. All right. Now, you allege that Mr. McKenzie was
6 ineffective?

7 A. Yes, sir.

8 Q. And you stated your various reasons for your belief
9 of that?

10 A. Yes, sir.

11 Q. Now, you recall the judge asking you if you were
12 satisfied with your counsel's services?

13 A. Yes, sir.

14 Q. And what did you say?

15 A. I told him yes.

16 Q. Okay. And now today you're saying you're weren't
17 satisfied?

18 A. Yes, sir. For the simple fact, because I was trying
19 to avoid a life sentence.

20 Q. And you were facing life? Your sentence is - you
21 could be sentenced up to life for the offenses --

22 A. I could have.

23 Q. -- that you were charged with?

24 A. I could have, sir.

25 Q. Right.

Mr. Yarborough - Cross by Mr. Gourley:

25

1 A. My lawyer told me I would.

2 Q. And --

3 A. There's a difference. If I would have went to trial
4 and a jury find reasonable doubt, I'd be sitting
5 home right now instead of having this conversation,
6 but I was not given the information to defend my
7 case.

8 Q. So you pled to avoid a harsher sentence?

9 A. I pled -- I plead because my lawyer told me that I
10 would get a life sentence if I didn't.

11 Q. So you pled to avoid a life sentence?

12 A. Yes, sir.

13 Q. Okay. Do you recall the judge asking you if anyone
14 threatened you or used any force to get you to plead
15 guilty?

16 A. Yes, sir.

17 Q. And you said?

18 A. I said no.

19 Q. Do you recall the judge asking you if anyone
20 pressured you or intimidated you to get to plead
21 guilty?

22 A. And I said no. On the fact that, why would I go
23 against him. My lawyer had just told me that he had
24 talked with a solicitor and the judge and said my
25 trial would start the next day if I did not take a

1 plea for twenty-two years that they offered me.

2 Q. Okay.

3 A. So, therefore, why would I go against the judge and
4 the solicitor to get a life sentence.

5 Q. Did you ever bring this back up to the judge?

6 A. Why would I, sir. That's going against his own
7 word.

8 Q. Who's doing the time, Mr. Yarborough, you are your
9 attorney?

10 A. I understand that. Well, see, the thing of it is, I
11 didn't go to school for law and it's not -- it's not
12 your fault that I'm ignorant of the law.

13 Q. Right.

14 A. But now I hired counsel to present me in my best
15 interests and he did not. He fell below standards.

16 Q. And you didn't bring these issues up to the judge
17 prior to your guilty plea or entering a guilty plea?

18 A. Sir, I didn't understand half of what was going on
19 until I actually went to prison. People looked at
20 my file and once I got it and said, "What in the
21 world are you doing here."

22 Q. Do you recall a judge asking you if you -- if you
23 understood everything?

24 A. Yes, sir.

25 Q. And you told him that you did, right?

Mr. Yarborough - Cross by Mr. Gourley:

27

1 A. Yes, sir.

2 Q. Okay. He also asked you if you were pleading freely
3 and voluntarily?

4 A. Yes, sir.

5 Q. And you were at that point in time and you --

6 A. No, I wasn't.

7 Q. But you told him you were?

8 A. Yes, sir.

9 Q. And then when he asked you about Mr. Carraway's
10 representation, you told the judge that you were
11 satisfied with his representation as well?

12 A. Yes, sir.

13 Q. Despite the fact that you had never met with him?

14 A. Yes, sir.

15 Q. The judge also asked you if you had met with Mr.
16 Carraway as long as that you felt was necessary
17 prior to your guilty plea, remember that?

18 A. No, sir. I don't.

19 Q. Do you have a copy of the transcript?

20 A. Yes, sir; I do.

21 Q. If you'll turn to page seventeen, lines 13 through
22 15. You got it?

23 A. Yeah.

24 Q. Okay. Here, Mr. Yarborough, I got it. You can just
25 look at this one and see if it's right.

1 MR. GOURLEY: May I approach, Your Honor.

2 THE COURT: Yes, sir.

3 Q. So you did -- you did tell the judge that you felt
4 you had met with him long enough?

5 A. Yes sir.

6 Q. Now, the judge asked you if you had any complaints
7 about your attorneys or the solicitors and the
8 police officers in the case, you remember that?

9 A. Yes, sir.

10 Q. And you testified you didn't?

11 A. Yes, sir.

12 Q. And he asked if you had been truthful and you said
13 you had?

14 A. Yes, sir.

15 Q. Okay.

16 A. And, sir, I've been made out to be a liar, but when
17 you got your life on the line and you pay somebody
18 to represent you to the fullest and then there's
19 adequate knowledge, I mean, that would make a blind
20 man be able to see.

21 Q. Yes, sir.

22 A. And you don't use that to help your client and you
23 withhold that from your client and you tell your
24 client one and you know it's a different thing and
25 you tell him you got to get a life sentence if you

Mr. Yarborough - Cross by Mr. Gourley:

29

1 don't listen to him.

2 Q. Right.

3 A. Are you going to plead not guilty?

4 Q. I can't answer that.

5 A. I guarantee ...

6 Q. I'm here to ask you a questions. You can't ask me
7 questions, Mr. Yarborough, I apologize. Mr.
8 Yarborough, now you've alleged that there was -- do
9 you recall your DNA matching to the 2007 victim?

10 A. No, sir. I do not have any statement?

11 Q. You don't. But you recall a solicitor saying that
12 your DNA matched a 2007 victim?

13 A. No, sir.

14 Q. Okay. Can you read lines 18 through 21 for me,
15 please, sir?

16 A. Okay. It says that in that script, sir, but I've
17 seen no proof as to it matching.

18 Q. Do you have any proof here today that it wasn't
19 matching?

20 A. No, sir; because I was not provided with that.

21 Q. Okay.

22 A. Either the State withheld it or Mr. McKenzie
23 withheld it.

24 Q. Now, your DNA matches a 2002 victim, as well,
25 correct?

- 1 A. Yes, sir.
- 2 Q. And she was seventeen?
- 3 A. I'm not that -- no, she was actually twenty-three.
- 4 Q. She was twenty-three at the time of your trial, but
- 5 she was seventeen?
- 6 A. No, no, she was twenty-three at that time. I was
- 7 twenty-two.
- 8 Q. So the 2007 victim was seventeen?
- 9 A. Oh no -- yeah, she was seventeen.
- 10 Q. Okay. Which one was seventeen? I'm sorry.
- 11 A. The 2007.
- 12 Q. Okay. The 2007 was seventeen. Okay. Now, you
- 13 recall apologizing to the plea court for the pain
- 14 and suffering that you caused the family?
- 15 A. Yes, sir; I did. I was hoping that one of the girls
- 16 might step forth and tell the truth and not send a
- 17 man who was innocent to prison for twenty-two years.
- 18 Q. But you pled guilty?
- 19 A. Yes, I did under advice of counsel. Under erroneous
- 20 advice of counsel.
- 21 Q. But you told the judge you were pleading freely and
- 22 voluntarily?
- 23 A. Yes, sir; I did. But not -- I might have told that
- 24 judge that but that ain't what happened.
- 25 Q. And you pled just to avoid getting a life sentence,

Mr. Yarborough-Redirect Exam by Mr. Brooks:

31

1 right?

2 A. Yes, I did.

3 MR. GOURLEY: No further questions, Your Honor.

4 THE COURT: Okay. Anything further?

5 RE-DIRECT EXAMINATION BY MR. BROOKS:

6 Q. Mr. Yarborough, we talked about what Mr. Gourley was
7 going to ask you about in terms of the guilty plea,
8 is that correct?

9 A. Yes, sir.

10 Q. Your position is that you relied on Mr. McKenzie?

11 A. Yes, sir. 100 percent.

12 Q. So when he told you what he told you ...

13 A. Yes, sir.

14 Q. You took that as the gospel, is that correct?

15 A. Yes, sir.

16 Q. And you assumed that you had all of this evidence
17 that you have found out after being incarcerated?

18 A. Yes, sir.

19 Q. And that's why you feel like your plea was not
20 fully-informed and you did not give a fully informed
21 plea?

22 A. Yes, sir.

23 Q. You did not have voluntarily waive all of your
24 rights?

25 A. Yes, sir.

Mr. Yarborough - Recross Exam by Mr. Gourley:

32

1 Q. Okay.

2 THE COURT: No other questions.

3 MR. GOURLEY: Judge, just briefly.

4 RE-CROSS EXAMINATION BY MR. GOURLEY:

5 Q. Mr. Yarborough, do you recall the solicitor reading
6 the facts into the record, the facts of the two
7 incidences?

8 A. No, sir. Not right offhand; no, sir.

9 Q. And you recall her discussing the fact that you
10 allegedly broke into the house and snuck up to the victim
11 and, forcibly raped her? Do you recall that?

12 A. Yes, sir.

13 Q. You recall that also testified in the second
14 incident that the victim stated that someone put a gun to
15 her temple and tried to scream and get away and that you
16 allegedly threatened her, and then you forced her to
17 engage in sexual activities with her?

18 A. That's what was said, but did you go over the police
19 report, sir, as to what time that victim ...

20 MR. GOURLEY: You can't ask me questions.

21 Q. At any point in time as the solicitor read these
22 facts, did you state anything to the judge about you
23 disagreeing with these?

24 A. No, sir. But I -- since I can't ask it, I'll state
25 it.

Mr. Yarborough - Recross Exam by Mr. Gourley:

33

1 Q. Just answer my question, Mr. Yarborough. Did you
2 state anything to the judge?

3 A. No, sir.

4 Q. Did you disagree with the facts as read?

5 A. No, sir.

6 Q. And the fact that you did these things?

7 A. No, sir.

8 MR. GOURLEY: No further questions, Your Honor.

9 MR. BROOKS: I would ask if my client could be able
10 to explain. He looked like he wanted to explain a
11 question that Mr. Gourley had asked him.

12 THE COURT: Okay.

13 A. Sir, you're not going to lie in bed for over eight
14 hours after you've been raped. You're not going to go
15 back to sleep. You're not going to change clothes.
16 You're not going to do any of that. There were two other
17 people in the house when this alleged rape happened.
18 Now, they say I broke in, crawled, and the Sheriff's
19 Department said it's physically impossible for my size

20 for me to fit through a window of that small caliber then
21 crawl across a sink, walk through the house, know exactly
22 what door to go to, walk in, rape somebody, walk back
23 out, but broke the door from the inside leaving. There
24 is no way. It went from having a gun to a knife. Then
25 it goes back to a gun. Then it goes back to she don't

Mr. Yarborough - Recross Exam by Mr. Gourley:

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1 know what it was, but she does know it was something. My
2 story never changes. Theirs does.

3 MR. BROOKS: No other questions, Judge.

4 MR. GOURLEY: Nothing further, Your Honor.

5 THE COURT: You may have a seat.

6 MR. BROOKS: I beg the Court's indulgence?

7 THE COURT: Okay.

8 MR. BROOKS: I beg the Court's indulgence. I call
9 Pamela Gowdy to the stand.

10 THE COURT: Okay.

11 CLERK: Place your left hand on the Bible and raise
12 your right hand. State your name please?

13 MS. GOWDY: Pamela Gowdy.

14 CLERK: Do you solemnly swear or affirm the testimony
15 to the Court shall be the truth, the whole truth, nothing
16 but the truth, so help you God?

17 MS. GOWDY: Yes, sir.

18 CLERK: Thank you. Have a seat, please. Please
19 state your full name and spell your last name for the
20 record please?

21 MS. GOWDY: Pamela Gowdy, G-O-W-D-Y.

22 DIRECT EXAMINATION BY MR. BROOKS:

23 Q. All right. Ms. Gowdy, how are you doing today?

24 A. I'm good. Thank you.

25 Q. Now, what relation is Mr. Yarborough to you?

Ms. Pamela Gowdy-Examination by Mr. Brooks:

35

1 A. He is my son.

2 Q. Okay. Make sure you speak up again so this court
3 reporter can get everything down, because I know
4 you're a very soft-spoken lady. Did you have
5 conversations with Mr. McKenzie about your son's
6 case?

7 A. Yes, sir.

8 Q. Okay. And what can you tell us the gist of those
9 conversations?

10 A. What I will say from day-one as I told David the
11 same way I told Mr. McKenzie on the stand, the same way
12 I've told the solicitor and everybody else that I've
13 talked to, I paid for DNA tests, independent ones. I
14 told David, I told Mr. McKenzie, if the DAN matched and
15 the results of the rape kit matched, show rape, not
16 consensual sex but rape that when it came to the point of
17 his hearing, that if both of those thing matched, that
18 David needed to plead guilty.

19 Q. And now is that conversation that you had with Mr.
20 McKenzie?

21 A. I had that conversation with Mr. McKenzie. I've had
22 that conversation with everybody.

23 Q. Now, did you have discussions with your son about
24 him pleading guilty?

25 A. When I went to the jail before we had the DNA tests

Ms. Pamela Gowdy-Examination by Mr. Brooks:

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1 back or anything, that's the same conversation I had with
2 him. After the fact of when we got in the courtroom, no,
3 because I was not allowed to have any contact. It is like
4 it is here.

5 Q. But did you - so you - okay. Go ahead.

6 A. I have, I know the DNA matched from the 2002 test,
7 because I paid for him to take the test. And that
8 confirmed that his DNA was there.

9 Q. Okay.

10 A. I have never seen or been given any proof of an
11 actual rape. I hired another attorney after Mr.
12 McKenzie and spent three years waiting to get to
13 this PCR point to find out that he had been
14 disbarred.

15 Q. That was Mr. Ashley Boyd?

16 A. Mr. Ashley Boyd. I went and testified in front of
17 the South Carolina Bar Supreme Court and handled that
18 matter.

19 Q. Okay. And that's -- that may explain why it's taken
20 our son's case this long?

21 A. It has taken it this long.

22 Q. Okay.

23 A. During the time of David's, my husband died in April
24 of 2009. Four days later, I got custody of three of
25 my granddaughters. Less than four weeks later, we

Ms. Pamela Gowdy-Examination by Mr. Brooks:

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1 were in front of the court, but I was not -- I
2 worked as a paralegal for twelve years. I would not
3 have advised David to have plead guilty. Knowing
4 what was in the file after he plead and after I got
5 the information. Then, I spent three years waiting
6 on an attorney who was not an attorney to help me
7 unravel this. If he is guilty, he is where he needs
8 to be. If he is not, then he deserves a trial.

9 Q. Now, did your son go off on the military and ...

10 A. He did.

11 Q. ... and go overseas and fight?

12 A. He did.

13 Q. Okay.

14 A. David has very good friends, very good female
15 friends.

16 Q. To your --- let me ask you this, to your knowledge
17 does he suffer from any kind of PTSD, Post-Traumatic
18 Stress Disorder?

19 A. From his time in the war, yes.

20 Q. Yes, ma'am.

21 A. Probably from the -- if you'll allow me to answer.
22 I married a man who hurt my children. Went to
23 Court, put him in jail. Raised my children the best
24 way I can. I have a daughter that was raped
25 repeatedly. To my knowledge, I have sons that were

Ms. Pamela Gowdy-Examination by Mr. Brooks:

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1 probably raped repeatedly. Do I have a child that I
2 think would hurt anybody? No, I don't. Do I know
3 that maybe I don't know. That's why if the DNA
4 matches, there are positive rape kit results.
5 Consensual sex is different than forced sex.

6 Q. Now ...

7 A. We have never been given that.

8 Q. About a rape kit?

9 A. About a rape kit or about ...

10 Q. Prior to the plea you never got that?

11 A. No. No.

12 Q. And even till this day?

13 A. To this day, I do not have that.

14 Q. And that's what you had kind of hired Mr. Boyd to do
15 when you thought he was still a lawyer?

16 A. Right. And they're -- and he -- he spun a very
17 elaborate three-year waiting period, time of me
18 thinking something was going - was being done and
19 the information was -- and I know the legal system
20 is a hurry up and wait process.

21 Q. Now, Ms. Gowdy, when you say he, now you're
22 referring to Mr. Boyd?

23 A. To Mr. Boyd.

24 Q. Okay. I just want to make sure we're clear.

25 A. And there is a retired -- I want to say -- there is

Ms. Pamela Gowdy-Examination by Mr. Brooks:

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1 a retired attorney from the military who is going to
2 try and help me sort this out, because I don't know
3 what you do, where do we go and yes, he plead
4 guilty.

5 Q. All right.

6 A. Yes, he did. And in his shoes, I would have pled
7 guilty and at the time, I wanted him to plead guilty
8 ...

9 Q. Based on the information you had?

10 A. Based on the information that we had.

11 Q. At that time?

12 A. At that time.

13 Q. Okay. Is it fair to say that you were relying on
14 Mr. McKenzie's advice?

15 A. Yes. Yes, it is fair to say that. I don't have any
16 doubt in the 2007 case, the 2002 case. I don't have
17 a lot of doubt there either, but if -- I don't care
18 if it's my son, your son, your husband, your wife,
19 if somebody hurts someone else, they have to do the

20 time, but I do not want my son not to have at least
21 have had a chance. He went into the military.

22 Continued to stay in the military, tore his ankles
23 up in Afghanistan and had to have them -- they

24 reconstructed his ankles. He got -- he was

25 honorably discharged from whatever he has done and

1 stayed with my mother for two years and took care of
2 her night and day along with working, he worked in
3 between them. Hurt someone, would I say my son is
4 stupid? He's pretty stupid sometimes. But to hurt
5 somebody, no.

6 Q. Now, as far as hiring Mr. McKenzie, you were the one
7 that obviously facilitated that, is that correct?

8 A. I work for Jenkins, Jarrett and Kellahan. We -- I
9 could not ask them, because I worked for them. Not
10 for any -- not because I worked for them, but
11 because the case confidentiality. I hired Mr. Barr,
12 Charles David Barr, the first. During -- he and I
13 had a difference of opinion and it was not on
14 David's guilt or innocence. I know Mr. McKenzie.
15 I've known Mr. McKenzie for a long time. We've been
16 in Kingstree, South Carolina. It's little. You
17 know everybody. I raised four kids, basically, by
18 myself. I did not have a whole lot of money to be
19 doing any of this, but I hired Mr. McKenzie. I had
20 great faith in him. But have I ever seen the DNA
21 tests that I saw the results of is the DNA test that
22 I paid for. I have never seen anything else other
23 than Charles David Barr's Rule 5, which everybody
24 gets one of those in their case, but I've never seen
25 anything to indicate the rape kits.

Ms. Pamela Gowdy-Exam/Cross Exam by Mr. Gourley:

41

1 Q. Okay. All right. Answer any questions of the
2 Attorney General.

3 CROSS-EXAMINATION BY MR. GOURLEY:

4 Q. Ms. Gowdy, when did your son go to the military and
5 go overseas, do you recall?

6 A. Approximately, three weeks after the 2002 rape. I
7 think it was August the 22nd of 2002.

8 Q. Okay.

9 A. I think.

10 Q. And you got your independent analysis done on the
11 DNA as well for that case, correct, or was it the
12 2007 case?

13 A. I paid for the one in the 2002 case.

14 Q. And that DNA matched?

15 A. It did.

16 MR. GOURLEY: I have no further questions, Your
17 Honor.

18 THE COURT: Anything further?

19 MR. BROOKS: No other questions, Judge.

20 THE COURT: Thank you.

21 MR. BROOKS: Judge, that's the applicant's side of
22 the case.

23 THE COURT: Okay.

24 MR. GOURLEY: Your Honor, we'd call Mr. McKenzie to
25 the stand.

1 THE COURT: Okay.

2 CLERK: State your name please, sir?

3 MR. MCKENZIE: Steve McKenzie.

4 CLERK: Do you solemnly swear or affirm the testimony
5 to the Court shall be the truth, the whole truth, nothing
6 but the truth, so help you God.

7 MR. MCKENZIE: I do.

8 CLERK: Thank you and have a seat over here, please.

9 THE COURT: State your full name and spell your last
10 name for the record.

11 MR. MCKENZIE: Steven S. McKenzie. Steven with a V,
12 McKenzie, M-C-K-E-N-Z-I-E.

13 DIRECT EXAMINATION BY MR. GOURLEY:

14 Q. Mr. McKenzie, how long have you been practicing law?

15 A. Since 1994.

16 Q. And you were retained in this case?

17 A. I was.

18 Q. And how many times did you meet with the applicant
19 prior to his guilty plea, just a rough estimate if
20 you could?

21 A. He was incarcerated the entire time in the
22 Williamsburg County jail. I don't know, he -- four
23 or five times probably would be right. We talked a
24 good many times and it could have been more. It
25 wasn't less than that.

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 Q. Did you file any Rule 5 or Brady Motions?

2 A. I did.

3 Q. Did you review that with the applicant?

4 A. I did. The biggest or the amount of -- or the
5 greatest amount of evidence in this was the DNA
6 evidence, but yes I did.

7 Q. Can you discuss that a little bit?

8 A. Well, he -- you need to go back and understand there
9 were two -- there were basically two cases in this
10 and the one -- the first case involved the victim
11 which was Belding, the Belding victim, and she and
12 David and - and his name is William David Yarborough
13 and he goes by David. But David and the Belding
14 girl had been dating and William -- and David worked
15 for the Belding girl's father. I think he had HVAC
16 kind of a company over in Kingstree and he worked
17 for her father and they had been dating. I think
18 she answered the telephone. She was seventeen years
19 old. She claimed that he broke into her parents'

20 home with her parents there, this is her story, and
21 either held a gun or a knife, I'm not really sure,
22 to her head and raped her after they had broken up.

23 Q. Okay.

24 A. That was originally what I thought the case was
25 going to be about. I thought we had a very good

1 defense in that case. I felt like that, you know,
2 it was -- as David testified, the facts of the case
3 did not match. That he could not physically fit
4 through the area that they said that he had broken
5 into the home. I thought those -- that was a very
6 good case, that was a winnable case. The problem
7 that happened and in that, there was a -- there was
8 a Schmerber motion made by the State to get a DNA
9 sample and, of course, we consented to it, but it
10 was going to be granted anyway and that is a -- that's
11 a motion to collect DNA sample from the Defendant.

12 Q. Correct.

13 A. When they did that, they put the DNA sample into the
14 -- I think it's the CODUS system which is a
15 nationwide database of DNA samples that looks for
16 other sexual crimes and it matches up the DNA sample
17 with the DNA sample in the database. That came back
18 as a hit on what I'll call the Powell victim case
19 which was in 2002. Now, this would have been in
20 July 2002. A young lady by the name of Erica Powell
21 claimed that someone broke into her home, which was
22 a mobile home. Which if you're going out of
23 Kingstree toward, on 52 toward Lake City, it would
24 have been on the left before you get to Brown's
25 Barbecue, that area. She said that someone broke

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 into her home, put her -- put his hand over her
2 mouth and she had an infant child in the next room
3 and claimed that if she yelled out or did anything
4 that he would kill her and the infant child. This
5 was July of 2002. William David Yarborough goes
6 into the United States Marine Corp in July -- in
7 August of 2002 and William David Yarborough lived in
8 the same area with Erica Powell in a -- in that same
9 general area that I was talking about on Highway 52
10 in that same time frame, and so as a result of that
11 -- and there was a bar there that used to be called
12 Mama Gail's. I'm not sure what it's called now.
13 But it's -- that's a place that David had a -- he
14 used to hang out. One of David's problems prior to
15 going in the Marine Corp and after he got in the
16 Marine Corp, he had a severe problem with
17 alcoholism, and he was treated by the Marine Corp
18 for those alcohol problems, and so you have -- what
19 you have, essentially, is you have a 2007 case that
20 someone alleges, that I think was a good case that
21 we could have won, that someone alleges he rapes
22 them, and then that DNA sample coming -- going into
23 the national database system and coming back with a
24 hit on my client as being the possible perpetrator
25 in the 2002 case. So when that happened, they did a

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 -- the DNA test through SLED, and I have the results
2 here -- just a second. DNA test from SLED came back
3 as David being positive for the 2002 case. So at
4 that point in time, I talked to Ms. Gowdy and
5 discussed all ramifications. Discussed it with
6 David and said, "Listen, we've got a problem. We
7 got your DNA sample and we got your --- a sample of
8 your DNA in a victim in 2002 who was very, very
9 upset." This was an irate victim. She was at the
10 point -- and I think you'll see in the transcript,
11 she says on the transcript that she thought the
12 sentence should have been greater than twenty-two
13 years. Then, I went over the options with Ms. Gowdy
14 about what we could do -- then do and one of the
15 options was an independent analysis and this is the
16 test right here, results, from the 2002 case and
17 there were two subjects on here. One was a James
18 Timmons, the other was a William Yarborough, and the
19 reason that's important is, because Erica Powell
20 could not identify the victim[sic]. It was dark.
21 All she knows is someone put -- she woke up to
22 someone's hand over her mouth and that the person --
23 it was -- she never got a look at the person. So
24 there was two people in that area, I believe, that
25 were named or, well, James Timmons was named

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 originally as maybe being the suspect and he -- it
2 came back negative for him. On William Yarborough
3 said the DNA profile -- this is the results from
4 SLED, developed from the ceiling on Item 1.7 matches
5 the DNA profile of William Yarborough. The
6 probability of randomly selecting an unrelated
7 individual having a DNA profile that matching the
8 scene of this item is approximately one in 290
9 million. Considering there are 300 million people
10 in the United States, I think that's a match. Okay.
11 So I went over that with Mr. Yarborough. I went
12 over that with Ms. Gowdy, and then we asked the
13 Court and was granted an independent test and we had
14 an order -- I had to prepare an order. We did that
15 and we chose Quest Drug Screening here in Sumter for
16 the independent test. At that point in time -- I
17 can't think of his first name, but Detective Scott
18 over in Williamsburg County had to actually driver
19 over to Quality Drug Screening with all of the
20 samples and they had a copy and they have a
21 comprehensive report here in regards to the test and
22 there was other trace amounts of other semen found
23 in Erica Powell, but the largest amount of semen
24 that was found was that of David -- William David
25 Yarborough and I'll get to that in a second. I'll

1 read that report to the Court. It says that, "The
2 sexual assault kit and vaginal swabs, sperm
3 fraction. The DNA results indicate that the major
4 STR profile in this sample would be consistent with
5 the male profile, DNS test results are consistent
6 with a mixture of more than one DNA, which shows
7 that there was -- there was some other male donor
8 and are consistent with the record samples of
9 William Yarborough. Sample 0904307, William
10 Yarborough is not excluded as the DNA donor for this
11 sample. The minor STR profile appears at such low
12 levels that no conclusion can be drawn as to its
13 source. So other words, they had -- there was a
14 large sample with Mr. Yarborough's DNA match in it
15 and a smaller sample that they could not even get a
16 DNA profile out of it, so that would have been -- to
17 me that -- and I had discussed this with Ms. Gowdy
18 and discussed this with my client, this would have
19 shown that an old sample or old sexual encounter
20 with Ms. Powell previous to the one where she went
21 to the hospital. So we would have trace amounts of
22 DNA from somebody else that she had sexual contact
23 with previous to this, and then a larger sample that
24 was consistent with Mr. Yarborough's DNA sample.
25 But that kind of clarified of ...

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 Q. Thank you, Mr. McKenzie.

2 A. Okay.

3 Q. Did you discuss any possible defenses with him
4 regarding this?

5 A. The problem -- yeah, I did. I -- the defenses were
6 on the Belding girl I thought were, like I said and
7 before I thought we had a very strong defense. I
8 said and Mr. Yarborough is a big man and he -- there
9 was no way that he could have -- they alleged he
10 broke through a little small window I think in a
11 bathroom or another room, but the window was maybe a
12 two-feet by one-feet and Mr. Yarborough, obviously,
13 is bigger than that and could not have gotten
14 through there, okay. But the problem that we had in
15 this case was that the State would have had two
16 bites of the apple on this just before trial. The
17 first one would have been a woman who was
18 belligerent, Erica Powell, coming in saying I'm in
19 my bed sound asleep. It's two or three o'clock in
20 the morning. I wake up with a man's hand on my
21 face. That man tells me that if I yell out or say
22 anything -- and she was alone in the house with her
23 infant child, that I -- that he would kill me and
24 kill my child. That was her testimony. Okay. She
25 did not know who the man was. The DNA samples come

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 back and conclusively say it was William Yarborough,
2 in my opinion. The problem I think that the State
3 would have been successful in that. All they had to
4 do was convict him one time and he would have
5 received a life sentence, and they were correct. We
6 -- myself, the Solicitor, I think Mr. Carraway all
7 went back and talked to Judge King prior to this
8 plea. The trial was going to start the next day and
9 we said if no judge can conclusively give a -- the
10 -- what he is going to do, but we asked the judge
11 what he thought about this case and based on these
12 facts and he said if -- if he's convicted, he will
13 get a life sentence, and so I know Judge King, right
14 here. I know him very well and when he says that,
15 he meant it. And so the facts of that case where
16 the woman is saying, you know, she was -- she was
17 raped in her own bed, broken into her own home. You
18 had burglary first. He was looking at a life
19 sentence just on the burglary. Up to thirty years
20 on the CSC and that the perpetrator said I'm going
21 to kill you and your minor child if you don't -- if
22 you yell out. That was at tough case, and the only
23 DNA evidence that conclusively was shown to be in
24 her sample was from William David Yarborough.
25 Q. Did he give any leads or witnesses to investigate?

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 A. No. He just said he didn't -- he didn't -- David's
2 position was and I did get an -- he's correct. I
3 did get his medical records from the military. He
4 has -- I think he had fifty percent PTSD disability,
5 Post-Traumatic Stress Disorder from being in the
6 Marines, and I can tell you about David's service in
7 the Marines. He was a very distinguished Marine.

8 Q. Uh-huh.

9 A. And did this country a service by fighting for this
10 country in the Marine Corp. The problem that I had
11 in this was that the evidence was -- the DNA
12 evidence -- and we are in a culture where we are a
13 culture of CSI, we're in a culture of where
14 everybody is looking on TV these days and seeing
15 about how technology is solving cases. Juries are
16 now trained -- it has been my experience that juries
17 are now trained and have been customized to the fact
18 that if they see DNA evidence, they going to convict
19 them, and it was my opinion that he was going to get
20 convicted of that first case. Now, the second case,
21 I was not -- I was skeptical of whether or not they
22 could win the second case. The problem was getting
23 past the first case and that was the one they were
24 going to try, and it wasn't a tough case for the
25 Solicitor to try. It was a basically, here's the

1 DNA evidence, here's the sample that came back and
2 it would not have been a difficult case for a jury
3 to convict him, and Ms. Gowdy is correct also. She
4 told me that if my son did this, he deserves to do
5 some time, and it was my opinion based on the
6 evidence that we had that we were going to lose that
7 first trial.

8 Q. And did you review his constitutional rights with
9 him prior to his guilty plea?

10 A. I did. I did.

11 Q. And whose decision was it to plead guilty?

12 A. It was William David Yarborough's decision. Now, I
13 did tell him exactly what I just told you. It's my
14 position that we are going to lose this first trial.

15 Q. Uh-huh.

16 A. You have the right to a trial. You certainly have
17 -- can go forward, but my belief is we're going to
18 lose this first trial and if that is the case, this
19 judge who I have spoken to is probably going to give
20 you life in jail, and then we negotiated with the
21 Solicitor for a twenty-two year sentence. I was
22 trying to get less than that. The problem was Erica
23 Powell, the first victim, the one from 2002 was
24 adamant that he serve a life sentence, and we
25 negotiated and negotiated and finally we got the

1 Solicitor down to twenty-two years.

2 Q. Okay.

3 A. That meant that David had to serve eighteen years,
4 seven months and he's been in jail a little over a
5 year, so he's looking at basically seventeen years
6 in jail.

7 Q. Okay.

8 A. So that's what I -- and that's what I talked to him
9 about. I told him about all those things and I said
10 -- told him that we had a very, very upset witness.
11 In fact, I -- you -- like I said, you can look at
12 the transcript. She actually made a point -- the
13 Solicitor actually made a point of saying that Erica
14 Powell did not agree with the sentence that the
15 Court was going to impose.

16 Q. Correct. And, Mr. McKenzie, just to be clear, you
17 didn't promise or coerce Mr. Yarborough to plead
18 guilty?

19 A. No, I didn't coerce him. I just laid the facts out
20 to him. I said we had a judge that if you got
21 convicted, you were going to go to jail for the rest
22 of your life.

23 Q. And you told --

24 A. And that was not a coercion; that's a fact.

25 Q. Did you feel there was any basis to object to the

1 indictments?

2 A. No.

3 Q. Okay. Did you receive all the Rule 5 and Brady
4 material?

5 A. I did and you got to understand, when Pam testified,
6 she was correct. She picked her file up from David,
7 Charles David Barr.

8 Q. Uh-huh.

9 A. And Mr. Barr, I got some information from him. I
10 got some from the State's. I see all that
11 information here and then this -- and in the course
12 of all of this going on, a lot of this information
13 was given to -- I'd go to the jail to see Mr.
14 Yarborough, show him copies of things I had received

15 ---

16 Q. Uh-huh.

17 A. --- and yes, there was a lot of information that was
18 obtained in the file.

19 Q. Uh-huh.

20 A. And he asked for me -- in fact, sent me some letter
21 to the Office of Disciplinary Counsel saying I
22 wasn't turning over his file. My file is right
23 here. Everything that I had, I gave to him, and if
24 there are statements out there that I didn't get
25 from the Solicitor's Office, you know, I can't help

Mr. Steve McKenzie-Examination by Mr. Gourley:

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1 that. All I can do is ask for it and I did. I
2 asked for -- I did a Rule 5/Brady Motion and so did
3 Charles David Barr. He did a Rule 5 and Brady
4 Motion, and I have his copy in my file.

5 Q. Okay.

6 A. So both of those things were accomplished. It's an
7 -- it's just an unfortunate situation and as I told
8 the judge, in my mitigating circumstances to the
9 judge, I think this is a tale of two Davids. We
10 have David who goes to Afghanistan, fights for his
11 country, saves fellow Marines' lives, distinguishes
12 himself, but then we also have the David who has a
13 severe alcohol problem who he may not have had any
14 memory of even doing the first crime but the -- and
15 I said this to my statement to the judge, that
16 doesn't excuse the fact. Alcoholism doesn't excuse
17 the fact that you didn't -- that you didn't do the
18 crime. His problem is his DNA is in a woman who
19 says that she was raped and she was the one that
20 testified to that and she also testified at the
21 plea. So, I mean, I'm looking at this thing from
22 the standpoint of I got to get this guy the best
23 deal I can get him, because he's going to spend the

24 rest of his life in jail ---

25 Q. Right.

1 A. --- and he was too young to do that.

2 Q. Right.

3 A. And so my job and my obligation as an attorney at
4 that point in time or whenever I had a very
5 belligerent witness and victim who wants a life
6 sentence and a judge who could give one, then I have
7 to look for the best deal I could get and that was
8 the best one I could get.

9 Q. Mr. McKenzie, just for my clarification, what was
10 Mr. Carraway's representation in this case?

11 A. Mr. Carraway was originally a -- I think he was
12 originally appointed and I think his -- I think he
13 was more on the Belding than the other case. I was
14 hired to represent and -- but he was also appointed
15 and since we had two different cases going on, we
16 weren't -- we just kept Mr. Carraway in the case in
17 case there was some conflict that arose later on.
18 He -- I think that in the actual plea, he actually
19 states that he represented him on one of -- I think
20 the Belding case.

21 Q. Yes, sir.

22 A. And I represented Mr. Yarborough on the other case.
23 But the -- and I say -- again, the Belding case, I
24 thought we had a great defense.

25 Q. Right.

Mr. Steve McKenzie-Exam/Cross by Mr. Brooks:

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1 A. And I thought we could have -- but we wrapped both
2 of them up into one plea and it didn't do him any
3 harm to plead to the Belding case and that took care
4 of the Belding case. And so when he got out, you
5 know, and he was going to be on the Sex Offender
6 Registry anyway, he was going to be charged with
7 burglary first and CSC anyway, and these were the
8 identical crimes.

9 Q. Right.

10 A. You know, the identical things that were alleged in
11 2002 were alleged in 2007.

12 Q. Okay.

13 A. So we had -- also we had an issue and I don't know
14 if it would have been the -- but there was a State
15 vs. Lyle issue about whether or not these facts
16 would have been so closely connected that it could
17 have been a common scheme or plan. The problem
18 would have obviously been the five-year duration in
19 time frame, but that would have been something for
20 the judge to have decided at trial.

21 Q. So is it a fair characterization to say that you
22 represented Mr. Yarborough on all these charges that
23 he was facing?

24 A. Yes, I -- Pam and David looked to me to give them my
25 opinion based on all of this and Mr. Carraway was

Mr. Steve McKenzie-Exam/Cross by Mr. Brooks:

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1 there simply to say, you know, he was add another
2 legal mind to it and say that, you know, I concur
3 with what's going on.

4 Q. Okay. Thank you, Mr. McKenzie.

5 CROSS-EXAMINATION BY MR. BROOKS:

6 Q. Mr. McKenzie?

7 A. Yes, sir.

8 Q. How are you doing today?

9 A. I'm doing well.

10 Q. Now, the first case or the Powell case, that's the
11 case where the DNA came back as a hit according to
12 the system?

13 A. Yes, sir.

14 Q. And that is the case where the victim was very
15 belligerent ...

16 A. Yes.

17 Q. --- and that is the case where there was an
18 additional male sample taken as a part of that case,
19 is that correct?

20 A. Yes, sir. Yes.

21 Q. Okay. And in that case, you indicate -- well, let
22 me ask you this. Prior to Mr. Yarborough's plea,
23 did you inform him that there was an additional male
24 sample taken out of Ms. Powell?

25 A. Mister --- I don't know if I specifically did, but I

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 went over the SLED report with him and a copy, in
2 fact, Ms. Gowdy had a copy of this and Mr.
3 Yarborough did and yes, so I mean there was -- but
4 the suspect was ruled out. The other suspect was
5 ruled out.

6 Q. That would have been Mr. Timmons?

7 A. That's right. Mr. Timmons was ruled out.

8 Q. But what I'm saying is out of the swabs that were
9 taken from Ms. Powell ---

10 A. Uh-huh.

11 Q. --- there is an indication of two different sperm
12 samples, one belonging to Mr. Yarborough, after
13 going through the DNA test, and one belonging to
14 somebody else?

15 A. No, that's not my understanding.

16 Q. Okay.

17 A. My understanding was there was a suspect because
18 there is a report -- let me find it for you.
19 Apparently, when this originally happened in 2002,
20 they were trying to figure out who the person was
21 and Mr. Timmons apparently lived in that area. A
22 man by the name of James Timmons lived in that area,
23 and they asked him to come in and do a DNA sample

24 and I have that in my file. I just saw it a minute

25 ago. Let me find it. They asked him to come in and

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 do a sample. So they ruled him out in 2002.

2 Q. Okay.

3 A. Because he was the only one. Then, they did another
4 sample, and I've got this one right here, okay?

5 This one says and this is the 2002 report on October
6 17th, 2002 and the victim was Erica Powell. The

7 suspect, James Timmons, does not have Mr.

8 Yarborough's name on this one and this was from 2002

9 and SLED said, "DNA profiles were developed from all

10 items using short tandem repeat SCR DNA analysis and

11 DNA provided semen seen on item 1.7 does not match

12 James Timmons."

13 Q. Okay.

14 A. Okay.

15 Q. My question is you indicated on direct with Mr.

16 Gourley that there was two samples taken out of Ms.

17 Powell.

18 A. Yes.

19 Q. One that had been tested, was a large sample that
20 had, based on the test, belonged to Mr. Yarborough?

21 A. Right.

22 Q. But there was an additional sample different than
23 Mr. Yarborough, because it was a different sample

24 ...

25 A. Right.

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 Q. ... that that was taken out of her as well?

2 A. Right.

3 Q. Now, you went on to talk about it might have, might
4 not have been as much or it might have been an old
5 sample, whatever, but that was two samples taken out of
6 her?

7 A. Right.

8 Q. Was Mr. Yarborough informed of that prior to the
9 plea?

10 A. I don't recall whether he was or not.

11 Q. Okay.

12 A. I don't know.

13 Q. Okay. All right. Now, on that second sample, the
14 sample that's not Mr. Yarborough, the report indicate
15 that it was a smaller sample?

16 A. Right.

17 Q. Smaller quantity?

18 A. It was so small they couldn't identify DNA in it
19 and that ...

20 Q But clearly, they knew it was sperm and belonged to
21 somebody else, because they could clearly identify that
22 it wasn't his?

23 A. Yes, they could clearly identify that was his -- it
24 was not his.

25 Q. Okay.

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 A. Okay.

2 Q. And you said you do not recall whether or not Mr.
3 Yarborough was informed of that prior to the rendering
4 the guilty plea in front of Judge King?

5 A. He was informed that there was another sample.

6 Q. You -- and so wait a minute now. Okay. So you
7 saying now that he was informed there was a different --
8 there was two samples taken out of her, his and somebody
9 else's?

10 A. Let me tell -- let me explain that.

11 Q. Okay.

12 A. Okay. The reason is his mother had paid for a
13 separate test.

14 Q. True.

15 A. And in that separate test, it says on that separate
16 test, there is another sample in here, but it's so small,
17 so minute that we can't tell the DNA of it.

18 Q. Okay.

19 A. So that's why I was explaining to the Court that
20 that could have been an older sample. It could be James
21 Timmons' sample. We don't know.

22 Q. Okay.

23 A. Okay. But at that point in time, they could not --
24 they could not even analyze the sample, because it would
25 not show up and give a DNA marker sufficient to be able

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 for them to run a test.

2 Q. Okay.

3 A. And that's the one that they paid for and this is
4 the one that I went over with them and said yes, there is
5 another -- there was another sample, but it was probably
6 old or probably something ...

7 Q. So I want to make sure he ...

8 A. Right.

9 Q. What you saying that before he pled, he knew that
10 there was two samples taken out of her?

11 A. Yeah, because I gave them this report. This is the
12 one they -- I think they -- I think Pam paid \$6,000 for
13 this report.

14 Q. Before the plea?

15 A. Yes.

16 Q. Okay.

17 A. Yeah, this report date is May 1st, 2009.

18 Q. Okay. And the guilty plea was issued?

19 A. I'd have to look back, because I don't ...

20 Q. May ...

21 A. Right. It was after this report came back, that's
22 whenever -- I mean the State -- I had to turn it over to
23 the State.

24 Q. Right.

25 A. Because it's part -- that's in part of the order was

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 I had to turn this over to the State. This to them
2 bolstered their case. We actually helped make their
3 case.

4 Q. Okay. And did you discuss ...

5 A. Yeah. Sure.

6 Q. ... the ramifications of the second sample?

7 A. Yes, I did. I said, "If we go down this road, we
8 got to turn it over," and I said, "If it comes back and
9 it hurts us, it seals the deal. It puts another -- it
10 puts more evidence on top of William David Yarborough,
11 which it did.

12 Q. When I say second sample, I'm not talking about the
13 second test done by the ...

14 A. Yes.

15 Q. ... done by the independent expert. I'm talking
16 about the second sample of sperm taken from a victim, Ms.
17 Powell.

18 A. Okay.

19 Q. Did you discuss that with him?

20 A. Did I discuss that with him?

21 Q. For instance, did you say, hey, David, look, we got
22 your sample -- well, the test came back, we got your
23 sperm in her. We also got another remnants of sperm. We
24 can't -- we don't have -- the DNA people say it ain't
25 quite big to go and run a test to figure out who it is

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 but, clearly, we know it's clearly somebody different
2 than you.

3 A. Right.

4 Q. Do you know -- do -- was he aware of that?

5 A. All right. From what I recall, okay, we had -- I
6 had the copy of the James Timmons' report showing it was
7 negative on him.

8 Q. Okay.

9 A. Okay. So there was a rape protocol kit done of
10 Ms.[sic] Timmons at the time that she was alleged ...

11 Q. Ms. Powell?

12 A. I'm sorry. Ms. Powell.

13 Q. Okay.

14 A. At the time that she was alleged to have been raped.
15 James Timmons was a possible suspect. He was ruled out.
16 Okay. Had that from SLED. Then, whenever we submit his
17 sample pursuant to the Schmerber motion to CODUS, there
18 becomes a positive hit going back to 2002, okay? At that
19 point in time, SLED then analyzes James Timmons' sample
20 again. They analyze William David Yarborough's sample,
21 and they say William David Yarborough is the person,
22 because it's one in 290 million chance.

23 Q. Right.

24 A. Okay. And they exclude James Timmons. So that's
25 where I said to him when we did our test, I said okay

1 let's get an -- that's one of the reasons for the
2 independent test, because all of these things coincide,
3 because had there not been the James Timmons' test to
4 start with, I would not probably have suggested that she
5 do an independent test. Okay. So I threw this out there
6 and said, okay, we got some -- we got some stuff going on
7 here. We got -- she -- the victim -- obviously, this
8 suspect was obviously named at the beginning of the case
9 by somebody, but the DNA said that William David
10 Yarborough. Maybe we need to get our own test. So when
11 we do our own test, it comes back and says that William
12 David Yarborough's sample is consistent with being a DNA
13 sample inside of her at the time of this occurring and
14 the other samples were so small, our testing company
15 could not test it.

16 Q. Okay.

17 A. Okay. And so as I -- as I am explaining to you
18 there would be no reason for me to even suggest an
19 independent test if they didn't know about James Timmons.

20 Q. And you explained all of that to him about a second
21 gentleman's sample -- sperm being ...

22 A. Because I would not have even asked for this,
23 because there wouldn't have been a reason to, because the
24 SLED report would have said and because the SLED report
25 clearly says on here James Timmons, Erica Powell, William

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 Yarborough. So I'm sitting here thinking to myself,
2 well, there's another suspect. Maybe we need to get
3 another test.

4 Q. Okay.

5 A. And I discussed this with Ms. Gowdy and that's the
6 reason I recommended another test, because I said it's
7 either William or it's James Timmons, okay, and it came
8 back -- our test came back and said it was William.

9 Q. Could it -- that second sample, that second
10 gentleman's sperm taken out, even though it wasn't Mr.
11 Timmons', it could have been somebody else's other than
12 Mr. Yarborough?

13 A. I guess it could have been.

14 Q. Okay.

15 A. Okay.

16 Q. And did you ...

17 THE COURT: It was. But it was somebody else's.
18 They got two -- two tests.

19 MR. BROOKS: We got -- we got -- we got two guys'
20 stuff in there?

21 THE COURT: There's only one sample and two
22 contributors to this one sample.

23 MR. BROOKS: Right.

24 THE COURT: The one they can identify and one that's
25 not enough to identify.

1 MR. BROOKS: Okay.

2 THE COURT: I got that.

3 Q. Okay.

4 A. But here's the other thing, too, and you need to
5 understand this. Erica Timmons[sic] Timmons never said
6 she had a relationship with William David Yarborough.

7 Q. Powell.

8 A. I'm sorry, Erica -- Erica Powell never said she had
9 a relationship with William David Yarborough.

10 Q. Okay.

11 A. So how does his sample get inside of her if they
12 don't -- if they're not having sexual relations.

13 Q. Did you discuss that with him?

14 A. Yes.

15 Q. Okay.

16 A. Yes. I mean, what -- how did you -- how does he
17 have -- he told me he didn't even know this girl that
18 well. He knew her, but didn't know her that well. He
19 knew her when he saw her.

20 Q. Okay.

21 A. So how does -- how does his semen get in her vagina
22 and that's my question to him if it didn't happen the way
23 she said it happened.

24 Q. Did you explore whether or not that could have been
25 a consensual encounter?

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 A. I did. He said he didn't know her that well.

2 Q. But now you testified earlier on direct that Mr.
3 Yarborough had a drinking problem?

4 A. He did.

5 Q. Okay. And there was a spot that he used to hang
6 out?

7 A. Right.

8 Q. Did you hire an investigator to look into Ms.
9 Powell's past?

10 A. No.

11 Q. Okay. Now, follow me for a minute, Mr. McKenzie.

12 A. I'll follow you.

13 Q. You -- sometimes, you can't just dream this stuff up
14 but Ms. Powell lived in that area.

15 A. She lived in the area around Mama Gail's which is a
16 bar, yes.

17 Q. Okay. Now, you don't know whether nor not she
18 patronized that bar?

19 MR. GROULEY: Judge, I'm going to have to object.

20 A. I don't know whether she patronized it.

21 MR. BROOKS: Judge, I'd ask you for a little latitude
22 here, I mean.

23 THE COURT: All right.

24 MR. BROOKS: Okay. All right.

25 THE COURT: So this -- you know, and I'm not -- you

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 can deal with it -- I understand where you're coming
2 from, but he testified he didn't go there, basically.

3 MR. BROOKS: He didn't get an investigator.

4 THE COURT: Right. Go ahead.

5 Q. And the question was never asked of -- or Ms. Powell
6 was never thoroughly investigated as to whether or not
7 this could be a consensual encounter?

8 A. No, it was never investigated and -- because when my
9 client says I didn't -- I -- you know, I knew her but I
10 didn't have sex with her, and then his DNA shows up in
11 her, you know, that kind of -- well, it didn't give me
12 any reason to go in and out and I -- I -- and Pam's
13 right. I've known her all my life, and we -- we grew up
14 in Kingstree together and I -- you know, I hate that this
15 ended up the way it did but, from the beginning she said,
16 "If my son is guilty, he needs to do time," and in my
17 opinion, he's guilty, and I -- and I told him that I
18 believed that a jury would find him guilty. The evidence
19 is just there.

20 Q. So the -- really, the Belding case was just kind of
21 what wrapped that in end and just ...

22 A. Right. I mean, the Belding case kind of to me made
23 it all look -- makes some sense, because how in the world
24 would you go from 2002 -- and, again, you know, David, I
25 think, is -- he did a wonderful job for his country but,

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 obviously, his alcohol problems and things that -- other
2 problems that he had led him to do these things. You
3 know, I mean, I think the Belding case where he -- she
4 says that he forced himself upon her. Even though they
5 had been dating and they had had consensual sex in the
6 past.

7 Q. DNA didn't concern you in that case?

8 A. It did not concern me at all, because I felt like we
9 could argue, hey, they were -- you know, they had been
10 dating, they worked together every day. I felt like that
11 was a case we could win. But the problem that I had with
12 the other case is we have a woman who, like I said, at
13 3:00 o'clock in the morning, a hand comes across her
14 face. She's sound asleep. Pitch black dark. She cannot
15 see in the room at all and this man says, "If you scream
16 or yell out, I'm going to kill you and your infant
17 child." Okay? That concerned me. Putting those facts
18 in front of a jury with the DNA sample of my client
19 inside of the victim concerned me, and I think it would
20 concern any lawyer and having that -- facing those facts
21 where I had a judge who had told me facing those facts
22 that he probably would sentence my client to a life
23 sentence, I was trying to get the best deal I could for
24 my client.

25 MR. BROOKS: I beg the Court's indulgence, Your

1 Honor.

2 THE COURT: Yes, sir.

3 Q. And, Mr. McKenzie, just for clarification, you never
4 explored whether or not Ms. Powell had had consensual sex
5 with your client?

6 A. No.

7 Q. And you testified that that was because he said he
8 didn't remember or?

9 A. He remembered, from what my -- he remembered Ms.
10 Powell, but did not have a relationship with her. I
11 mean, he just -- I think he lived in the general area.
12 Let's see. All right. My notes on 10/3/08, and this is
13 just me jotting down notes talking with him. He says
14 that, according to -- and I must have been meeting with
15 him in jail. He said he had no memory of any incident
16 with Ms. Powell. Happened one month before going into
17 the Marines and he and Justin -- I don't know who Justin
18 would be -- said she lived close to where he lived at
19 that time. I went over the fact that she's told him --
20 she said -- her statement said that it was too dark for
21 her to see him. In her statement, apparently, it said
22 that "held her at knife point." I thought he had put a
23 hand over her head -- head -- or her mouth. But anyway
24 held her at knife point while he raped her and had a
25 child in the next room. He says he does not remember her

Mr. Steve McKenzie-Cross by Mr. Brooks:

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1 at all, according to my notes here. "Brother's wife is
2 cousins with Justin," and I'm not really sure who Justin
3 is. I can't remember what that was about and other than
4 he'd given those statements. But anyway, Justin
5 apparently -- so the brother's wife is cousins with
6 Justin and I'm not really sure what that relates to but
7 that answers your question. Yeah, I mean, I -- there
8 were a lot of times that we discussed her and so on that
9 particular occasion, he said he didn't remember her at
10 all, so that was on 10/3/08. Okay.

11 MR. BROOKS: Beg the Court's indulgence.

12 A. I found the Justin connection.

13 Q. What -- what's that connection?

14 A. Okay. Justin -- and from another note, 10/2/08,
15 "Erica Powell is divorced from Justin Powell," and they
16 apparently lived in Cedar Swamp. She lives in a mobile
17 home on the left going out of town before a flea market."
18 This is talking about Erica Powell. "Right before
19 Callahan Mobile Home Park in a brown and white mobile
20 home close to the road. She used to work for the Town of
21 Kingstree. She was separated at time of the alleged
22 arrest. At the preliminary hearing, she testified she
23 called 9-1-1 and said she was raped and taken to the
24 hospital. DNA sample was taken by hospital and that's
25 when it was put in CODUS.

1 MR. BROOKS: Your Honor, no other questions.

2 THE COURT: Okay. Anything from the State?

3 MR. GOURLEY: No, Your Honor.

4 THE COURT: Thank you. Thank you, sir.

5 MR. GOURLEY: No further witnesses, Your Honor.

6 THE COURT: Okay.

7 MR. BROOKS: Judge, I would like to call my client
8 to reply and I'll tell you simply is it's going to be
9 along the lines of whether or not he told him about a
10 possible consensual -- it's only for that issue.

11 THE COURT: Okay. You -- I'll remind you you're
12 still under oath.

13 MR. YARBOROUGH: Yes, sir.

14 Reply by Mr. Yarborough-Exam by Mr. Brooks:

15 Q. Mr. Yarborough, you've heard Mr. McKenzie talk
16 about, you know, his notes, his conversation with you
17 that you said you didn't know Ms. Erica Powell.

18 A. Yes, sir.

19 Q. Did -- was there -- did you know one?

20 A. Yes, sir; I did. And his statement is not fact. I
21 told him I couldn't remember the day and time if I did
22 sleep with here. I never refuted the fact that I knew
23 her. In fact, she's come to my little nieces birthday
24 parties with her husband while I was there. I've been to
25 parties at her trailer with her husband while she's

Mr. Yarborough-Reply testimony-Exam by Mr. Brooks: 75

1 there. I also went to several parties without her
2 husband with her right behind her house, Morgan
3 Hoffstead.

4 Q. So ...

5 A. I never refuted the fact that I knew her or she knew
6 me.

7 Q. So you could have potentially had a case where you
8 could have said this was a consensual encounter, you just
9 might not necessarily remember it?

10 A. Yes, sir. And I went with that the entire time, my
11 mom can tell you that. All I've ever said is I don't
12 remember having sex with her.

13 Q. It's not that you didn't know her at all?

14 A. No. No, sir.

15 Q. You knew her?

16 A. Yes, sir; I did.

17 Q. Okay. All right.

18 MR. BROOKS: No other questions, Judge.

19 THE COURT: Okay.

20 MR. GOURLEY: No other questions, Your Honor.

21 THE COURT: You can step down. Thank you.

22 MR. GOURLEY: That's the applicant's case.

23 THE COURT: Okay. All right. Anything else from

24 either side? All right. I will review this record and
25 let y'all know.

1 MR. GOURLEY: Thank you, Judge.

2 THE COURT: Now, you had asked me earlier that you
3 wanted a continuance, and I offered a bifurcation. Is
4 there any other issues or evidence that y'all think, you
5 need to let me know.

6 MR. BROOKS: Well, Judge, Mr. McKenzie did testify
7 that there was a different sample. He'd never heard
8 anything back about any and there's never been any
9 evidence or testimony about the rape kit saying anything
10 else other than the DNA, like there's no evidence of
11 tearing, bruising, anything like that from testifying,
12 so.

13 THE COURT: So I assume it wasn't present, I mean
14 other than samples, you know. But if, you know, usually
15 the doctor or the qualified nurse that does the rape kit,
16 either photographs or documents any trauma and so I
17 don't, you know, I don't know whether that was present or
18 not but even if it is, unless the State, you know,
19 presents that it's the strength of their case now. All I
20 have is the samples taken, you know, the rape kit, you
21 got a match. Is she -- you know, like Mr. McKenzie said,
22 you know, her story was that they went out on a date
23 together and he raped her, that's argument about
24 consensual. The issue in this case, she's asleep in her
25 bed. At least that's, you know, and then somebody comes

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1 in middle of the night that she couldn't identify and
2 raped her and, usually, you have a consensual sexual
3 issue, at least they could identify they had sex. The
4 argument is whether it was consensual or not, and then
5 trauma and tearing of panties and everything else becomes
6 a huge issue. Okay. But since you're -- and the only
7 reason I brought that up, you asked if there was other
8 information that you hadn't gotten, I'm trying to find
9 out this point after we've had this hearing what other
10 information you think you need or that I need to make a
11 decision in this case?

12 MR. BROOKS: Well, Judge, he never got -- as I said
13 he never got any true indication about what else would
14 have been in the rape kit.

15 THE COURT: How do you propose to get that? I mean,
16 and what I'm asking you wanted more time. What will more
17 time do to allow you to get that if you think that's
18 important and other than talking to Ms. Barr in the
19 Solicitor's Office and seeing what, in fact, exists, I'm
20 sure they have turned over whatever she had. I mean,
21 other than you contacting her and she's telling you
22 something there.

23 MR. BROOKS: Judge, at this point, obviously, I
24 think the crux of our case is whether or not his plea was
25 voluntarily given and whether or not we could have

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1 explored the avenue of consensual sex on that first case.

2 THE COURT: Well, I'll give you ten days before I
3 rule to talk to Ms. Barr and find out if there is any
4 other information that you think is important and if it
5 is, we'll reconvene this hearing.

6 MR. BROOKS: Thank you, Judge, I'll check with her
7 in at least about a day.

8 THE COURT: Okay.

9 MR. BROOKS: I may have Mr. Harrell, our
10 investigator, ask him to go down and check it out in
11 those ten days.

12 THE COURT: Okay.

13 MR. BROOKS: And, of course, like anything, I will
14 let Mr. Gourley know.

15 THE COURT: Okay. All right. Thank you.

16 MR. GOURLEY: Thank you, Your Honor.

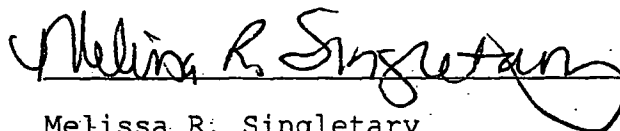
17 MR. BROOKS: Okay. Thank you, Your Honor.
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CERTIFICATE

This is to certify that the transcript in the matter of William David Yarborough vs. The State of South Carolina, consisting of Seventy-Eight (78) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 28 day of May, 2014.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

William Yarborough, #334712,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2010-CP-45-0177

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 17, 2010 and amended on October 29, 2013. Respondent made its return on November 15, 2013. An evidentiary hearing into the matter was convened on December 16, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was indicted at the October 2008 term of the Williamsburg County Grand Jury for Criminal Sexual Conduct—First Degree and Burglary—First Degree (2008-GS-45-0219; -220). Applicant was represented by Steven McKenzie and William LeGrand Carraway. On May 18, 2009, Applicant pled guilty as indicted before the Honorable Howard P. King and was sentenced pursuant to State recommendation to twenty two years imprisonment for each charge. The sentences were to run concurrently. Applicant did not

appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel failed to inform me fully of the facts surrounding the DNA testing."
 - b. "Trial Counsel failed to point out inconsistencies in the testimony of the alleged victims."
2. Involuntary Guilty Plea.
3. Due Process Violation

Applicant amended his application alleging he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. Counsel failed to conduct any pretrial investigation before advising Applicant to enter a plea of guilty.
 - b. Failure to provide discovery and review discovery with Applicant.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also called Pamela Gowdy (Gowdy), Applicant's mother. The State presented testimony from plea counsel, Steve McKenzie, Esquire (Counsel). This Court also had before it a copy of guilty plea hearing, the Sumter County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

At the start of the hearing, Applicant moved for a continuance in order to obtain a copy of the Solicitor's file. Applicant's PCR Counsel, Charles T. Brooks, III, stated he had previously made multiple attempts to obtain the solicitor's file. The Court denied Applicant's motion but stated he would allow Applicant ten days to review the Solicitor's file and present any additional

evidence based off of his review. This Court finds Applicant has failed to present any additional information.

During the evidentiary hearing, Applicant stated he was thirty five years old. Applicant stated, Steve McKenzie (Counsel) represented him during his plea and he never saw William Legand Carraway. Applicant stated he met with Counsel four to five times prior to his guilty plea. Applicant recalled the plea court reviewing his constitutional rights. Applicant stated that he told the plea judge that he was satisfied with Counsel's services. Applicant stated that he told the plea judge he had enough time to meet with Counsel and Counsel had done everything he felt was necessary. Applicant stated he told the plea judge that there was nothing else Counsel could have done to better represent him. Applicant stated he told the plea judge that no one had promised, coerced, or threatened him to get him to plead guilty. However, Applicant stated, Counsel told him he had no other choice but to plead guilty.

Applicant stated Counsel failed to inform of the facts concerning DNA evidence stemming from indictment 2008-GS-45-219¹. Applicant argued that he was unaware that there was a DNA reports prior to his guilty plea. Applicant argued the fact that DNA of two different males was found inside the victim goes to the credibility of the victim and could have been used to impeach her during trial. Applicant stated had he known about the DNA report he would not have pled guilty.

Regarding the facts concerning indictment number 2008-GS-45-220, Applicant argued that it was physically impossible for him to have broken into the house where the rape took place. Applicant argued that the victim's statement changed frequently and Applicant felt that

¹ Indictment number 2008-GS-45-0219 states that Applicant did in Williamsburg County on or about June 13, 2002, violated Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said Applicant engaged in sexual batter with the victim thru the use of aggravated force and/or while forcibly confining or kidnapping the victim. The sexual battery occurred under circumstances where victim was also victim of burglary, housebreaking or similar offense or act. Count two indictment charged Applicant with Burglary in First Degree.

this information could have been brought out during trial. Applicant stated had he known about the victim's statement changing he would not have pled guilty.

Applicant stated he suffered from Post-Traumatic Stress Disorder due to his service in the Marine Corp. Applicant stated he was mentally evaluated prior to his guilty plea and Counsel was aware of his background. Applicant recalled apologizing to the plea court for the pain and sorrow that he had caused. Applicant stated he pled guilty to the crimes he was charged because he did not want to face a potential life sentence.

Following Applicant's testimony, Pamela Gowdy was called by Applicant to testify. Gowdy stated she was the mother of Applicant. Gowdy explained Applicant was charged with two separate rapes among other charges. Gowdy explained that indictment number 2008-GS-45-219 occurred in June of 2002 and indictment number 2008-GS-45-220 occurred in January 2007. Gowdy explained that the rape kit of the 2002 victim contained DNA of two males. Gowdy stated she paid for an independent DNA analysis of the DNA found inside the victim of the 2002 case. Gowdy stated she was aware that Applicant's DNA matched the DNA found in the victim of the 2002 case.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel stated he had been practicing law since 1994. Counsel stated he was retained and was prepared to represent Applicant on both 2008-GS-45-219 and 2008-GS-45-220. Counsel stated he met with Applicant at least four to five times while Applicant was incarcerated in the Williamsburg County jail. Counsel stated he filed for and reviewed all Brady material with Applicant. Counsel stated he discussed Applicant's version of the facts. Counsel stated he discussed the possible defenses with Applicant. Specifically, Counsel stated he was first retained to represent Applicant on 2008-GS-45-220. Counsel stated Applicant had been charged with Criminal

Sexual Conduct in the First Degree and Burglary in the First Degree. Counsel stated Applicant worked for the victim's father HVAC Company and was dating the victim at the time the rape occurred. Counsel stated the victim claimed Applicant broke into her house and forcibly raped her while holding a gun or knife to her head. Counsel stated in his opinion Applicant had a viable defense to the rape and burglary charges because the facts did not match victim's statement. Specifically, Counsel stated it was almost physically impossible for Applicant to have climbed through the kitchen window as was alleged by the victim. Furthermore, Counsel stated Applicant voluntarily submitted his DNA for testing because they were prepared to argue consensual sex due to Applicant and victim's relationship, prior inconsistent statement's given by the victim, and the factual context of the case. Counsel stated Applicant's DNA was run through the Combined DNA Indexing System (CODIS) and Applicant's DNA matched both the DNA found for the victim in 2008-GS-45-220 and the DNA found inside the victim of 2008-GS-45-219.

Counsel stated he was prepared to represent Applicant on the 2008-GS-45-219 charges in addition to the 2008-GS-45-220 charges. Counsel stated the victim in the 2008-GS-45-219 claimed someone had broken into her house, put a hand over her mouth, held either a gun or knife over her throat, and forcibly raped her. Counsel stated the rape occurred in July 2002; approximately a month prior to Applicant being deployed overseas for the next five years. Counsel stated the facts in 2008-GS-45-219 were not favorable to Applicant. Counsel stated Applicant suffered from a drinking problem, prior to his deployment. Counsel stated the victim's house was directly behind a bar Applicant frequented. Additionally, Counsel stated Applicant told him he could not recall his whereabouts the night the incident occurred. Counsel stated the victim in the case could not provide a description of her assailant because it was dark

in her house. Counsel further stated that Applicant and victim did not have a previous relationship. Counsel stated the rape kit taken of the victim provided DNA for two males, Applicant and James Timmons (Timmons). Counsel explained Timmons was a suspect shortly following the rape in 2002. Counsel stated Applicant's DNA came back as a positive match and that it was 1 in 290 million chance that it was not Applicant. Counsel stated that Timmons DNA amounted to a small trace amount and there was no doubt Applicant was the main contributor. Counsel stated both Applicant and Gowdy had copies of the SLED DNA report, which ultimately ruled Timmons as a suspect.

Furthermore, Counsel stated both Applicant and Gowdy were highly upset about the outcome of the SLED DNA report. Counsel stated Gowdy paid approximately 6,000 dollars to have an independent analysis conducted of the DNA. Counsel stated he advised both Applicant and Gowdy if the results of the independent analysis came back as a positive match for Applicant it would only strengthen the State's case. Counsel stated that the independent analysis report showed Applicant's DNA matched the DNA found inside the victim and ruled out Timmons. Counsel stated it was Applicant's decision to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's and Gowdy's testimony are less credible. 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, (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). 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. 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 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective for failing to inform Applicant of facts surrounding the DNA testing.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to fully advise him of the facts surrounding the DNA evidence is without merit. This Court finds plea counsel had numerous meetings with Applicant prior to his plea and that they reviewed the discovery materials. Applicant alleges he was unaware that the rape kit taken from the victim in the 2002 case contained DNA for two males. However, Counsel stated both he and Gowdy were provided with SLED DNA report's showing that there were two male contributors. Counsel explained that Applicant's DNA was a positive match and that there was a 1 in 290 million chance it was not Applicant's DNA. Counsel further explained that the second male DNA belonged to James Timmons, a person of interest shortly following the rape in 2002. Counsel stated that the DNA matching Timmons was a small trace amount and Timmons was ultimately ruled out as a suspect. Counsel stated the DNA results revealed that Applicant was the main contributor. Counsel further stated Applicant and victim did not have a previous relationship and Applicant could not explain why his DNA was found inside the victim. Counsel further stated Gowdy paid for an independent analysis of the DNA results because the DNA found inside the victim matched two separate males. This Court finds Applicant was well aware that the SLED DNA reports. This Court finds Counsel's action were reasonable under professional norms. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Ineffective Assistance of Counsel for failing to conduct any pretrial investigation and failing to provide and review discovery with Applicant prior to his guilty plea.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to adequately investigate, provide and review discovery with Applicant is without merit. This Court finds plea counsel had numerous meetings with Applicant prior to his plea and they reviewed the discovery materials. The Court notes Counsel stated he filed for and reviewed discovery with Applicant prior to his guilty plea. Furthermore, Counsel stated he provided both Applicant and Gowdy a copy of the SLED DNA report which led to Gowdy paying for an independent analysis of the DNA. This Court finds the Applicant failed to articulate what more Counsel should have done to investigate and change the outcome of his proceedings. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and

defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that he was pleading guilty freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both counsel and the plea judge. The record reflects the Applicant at his plea proceeding told the court that he wished to plead guilty. (T. 14). The record also reflects that the Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (T. 15-16). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. Specifically, this Court notes Applicant stated "fully aware of what's going on." (T. 8). This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (T. 20).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. 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. BML 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.

CONCLUSION

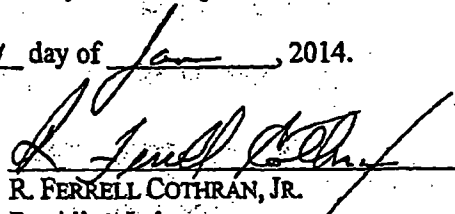
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

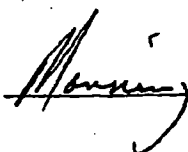
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 14 day of Jan, 2014.


R. FERRELL COTHAN, JR.
Presiding Judge
Third Judicial Circuit

 South Carolina

WITNESSES

SHERIFF'S OFFICE

Justin Whack

ARREST WARRANT NUMBER

J991055 & J 991054

D/A: 7/24/08

ACTION OF GRAND JURY

June Bell

Foreperson of Grand Jury

Date: October 9, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-45- 219

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

VS.

WILLIAM DAVID YARBOROUGH

WILLIAMSBURG COUNTY
CLERK OF COURT
CAROLYN F. WILLIAMS
Carolyn F. Williams
A CERTIFIED TRUE COPY

Indictment for

CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE AND BURGLARY - FIRST
DEGREE

C. KELLY JACKSON, SOLICITOR

08 OCT -9 AM 11:13

02 11 2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

**CRIMINAL SEXUAL CONDUCT - FIRST
 DEGREE AND BURGLARY - FIRST DEGREE**

At a Court of General Sessions, convened on October 13, 2008, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That **WILLIAM DAVID YARBOROUGH** did in Williamsburg County on or about June 13, 2002, violate Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said William David Yarborough engaged in sexual battery with the victim thru use of aggravated force and/or while forcibly confining or kidnapping the victim. The sexual battery occurred under circumstances where victim was also victim of burglary, housebreaking or similar offense or act.

COUNT TWO - BURGLARY - FIRST DEGREE

That **WILLIAM DAVID YARBOROUGH** did in Williamsburg County on or about June 13, 2002, enter the dwelling of the victim without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, and defendant also caused physical injury to victim during course of burglary, in violation of Section 16-11-311, South Carolina 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.

A CERTIFIED TRUE COPY
Carolyn F. Williams
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY
Kelly Jacobson
 SOLICITOR

81 NOV 6 - 2008

6-11-08

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE VS.

WILLIAM D. YARBOROUGH

AKA:

Race: White

Sex: Male

Age:

DOB: (

SS#:

Address:

Street, Kingstree, SC 29556

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-45-0219

A/W#: K246025

Date of Offense: January 24, 2007

S.C. Code §: 16-03-0652

CDR Code #: 0160

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS:TO: Criminal Sexual Conduct, 1st degreein violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 6 1 0
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Gymler V. Parr
SolicitorWilliam D. Yarbrough
DefendantSEB
Attorney for Defendant SC Bar # 6915WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 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: other count and 08-220☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Defendant Waives Hearing, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$58-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$58-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$90.11 TP (SCCJA Surcharge)

TOTAL

\$	\$
\$	\$
\$100	\$
\$100	\$
\$12	\$
\$500	\$
\$25	\$
\$190	\$
\$50	\$
\$40/ea	\$
\$	\$
\$5	\$
\$	\$

PTUP

CAROLYN E. WILLIAMS

CLERK OF COURT

Attend Voc. Rehab. for Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

Howard P. King
2 1 1 0 07
May 18, 2009

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE VS.

WILLIAM D. YARBOROUGH

AKA:

Race: White

Sex: Male

Age:

DOB:

SS#:

Address:

Kingstree, SC 29556

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-45-0219

AW#: K246024

Date of Offense: January 24, 2007

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Burglary in the First Degree

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0-1-7-1-7

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Shirley V. Parr
Solicitor

William D. Yarbrough
Defendant

[Signature]
Attorney for Defendant SC Bar # 691

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 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: other count and 08-220.

☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ RESTITUTION: ☐ Deferred ☐ Defendant Waives Hearing ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
\$90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

SPECIAL CONDITIONS OF PROBATION
WILLIAMSBURG COUNTY
Obtain GED
Attend Voc Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: ATU

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Carolyn J. Williams
Clerk of Court/ Deputy Clerk
Court Reporter: Melissa Singleton

PRESIDING JUDGE: [Signature]
Judge Code: 2
Sentence Date: May 18, 2009

ARREST WARRANT

K- 246024

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 WILLIAMSBURG CO.

 THE STATE
 against

YARBOROUGH, WILLIAM DAVID

 Address: REET
KINGSTREE, SC 29556
Phone: SSN: Sex: M Race: W Height: 6' 0 Weight: 250DL State: DL#: DOB: Agency ORI#: 900450000Prosecuting Agency: WMSB CO SHERIFFS DEPT.Prosecuting Officer: SGT. JUSTIN WHACKOffense: BURGLARY 1ST DEGREEOffense Code: 0079Code/Ordinance Sec: 16-11-0311
 This 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 YARBOROUGH, WILLIAM DAVID
 on 01/31/2007

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 ACKERMAN, WILLIAM E. JR
 10 COURTHOUSE SQUARE
 KINGSTREE, SC 29556

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 WILLIAMSBURG CO.

AFFIDAVIT

 Personally appeared before me the affiant JUSTIN WHACK who
 being duly sworn deposes and says that defendant YARBOROUGH, WILLIAM DAVID
 did within this county and state on 01/24/07-01/25/07 violate the criminal laws of the

 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of WILLIAMSBURG CO.)
 in the following particulars:

 DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREE
16-11-0311

 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:

 BETWEEN JANUARY 24, 2007 AROUND THE TIME OF 2300 HRS AND JANUARY 25 07
 AROUND THE TIME OF 0200HRS, WHILE AT DRIVE LOCATED IN THE
 AREA OF WILLIAMSBURG COUNTY WILLIAM DAVID YARBOROUGH DID COMMIT THE OFFENSE
 OF BURGLARY 1ST. THE DEFENDANT DID ENTER THE RESIDENCE OF DRIVE
 AT NIGHT WITHOUT CONSENT, WHILE ARMED WITH A WEAPON. ONCE INSIDE THE
 RESIDENCE THE DEFENDANT DID SEXUALLY ASSAULT ONE CHRISTINA BELDING AND
 THREATEN TO CAUSE HARM TO OTHERS IN THE RESIDENCE. BURGLARY FIRST DEGREE IS
 IN VIOLATION OF SOUTH CAROLINA CODE OF LAW. OCA 0700524

Signature of Affiant

 Affiant's Address 126 SOUTH JACKSON STREET
KINGSTREE, SC 29556
 Affiant's Telephone 843 355-6381 843 355-9696

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 WILLIAMSBURG CO.

ARREST WARRANT

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

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 01/24/07-01/25/07 defendant YARBOROUGH, WILLIAM DAVID
 did violate the criminal laws of the State of South Carolina (or ordinance of)
☒ County/ ☐ Municipality of WILLIAMSBURG CO. as set forth below:

 DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREE
16-11-0311
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

 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 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 its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on JANUARY 31, 2007Signature of Issuing Judge: Judge Code: 050ACKERMAN, WILLIAM E. JR
ORIGINAL
 Judge's Address 10 COURTHOUSE SQUARE
KINGSTREE, SC 29556
 Judge's Telephone 843 355-9321
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

 07 FEB -7 AM 9:33
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG CO.

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS**WITNESSES**

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

ARREST WARRANT

K- 246025

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 WILLIAMSBURG CO.

 THE STATE
 against

YARBOROUGH, WILLIAM DAVID

Address: KINGSTREE, SC 29556

 Phone: SSN:
 Sex: M Race: W Height: 6' 0" Weight: 250
 DL State: DL #:

DOB: Agency ORI#: 500450000

Prosecuting Agency: WMSBG CO SHERIFFS DEPT.

Prosecuting Officer: SGT. JUSTIN WHACK

Offense: CRIMINAL SEXUAL CONDUCT 1ST DEGREE

Offense Code: 0160

Code/Ordinance Sec: 16-03-0652

 This 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 YARBOROUGH, WILLIAM DAVID
 on 01/31/2007

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 ACKERMAN, WILLIAM E. JR
 10 COURTHOUSE SQUARE
 KINGSTREE, SC 29556

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 WILLIAMSBURG CO.

AFFIDAVIT

JUSTIN WHACK

 Personally appeared before me the affiant JUSTIN WHACK who
 being duly sworn deposes and says that defendant YARBOROUGH, WILLIAM DAVID
 did within this county and state on 01/24/07-01/25/07 violate the criminal laws of the

 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of
 in the following particulars:

 DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT 1ST DEGREE
 16-03-0652 CRIMINAL SEXUAL COND. 1ST

 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:

 THAT ON 012407 AROUND 2300 HRS AND 012507 AROUND 0200 HRS WHILE AT
 DRIVE IN KINGSTREE AREA OF WILLIAMSBURG COUNTY, THE DEFENDANT,
 WILLIAM DAVID YARBOROUGH DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL CONDUCT
 IN THE FIRST DEGREE DID SEXUALLY ASSAULT THE VICTIM, CHRISTINA BELDING, AFTER
 ENTERING THE RESIDENCE AT NIGHT, WITH A WEAPON WITHOUT THE VICTIM'S CONSENT.
 HE DID THREATEN TO CAUSE HARM TO OTHERS WHILE IN THE RESIDENCE. CRIMINAL
 SEXUAL CONDUCT IN THE FRIST IS IN VIOLATION OF SC CODE OF LAWS. OCA#0700524

Signature of Affiant

 Signature of Affiant
 Affiant's Address 126 SOUTH JACKSON STREET

KINGSTREE, SC 29556

Affiant's Telephone 843 355-6381 843 355-9696

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 WILLIAMSBURG CO.

ARREST WARRANT

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

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 01/24/07-01/25/07 defendant YARBOROUGH, WILLIAM DAVID
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of WILLIAMSBURG CO. as set forth below:

 DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT 1ST DEGREE
 16-03-0652 CRIMINAL SEXUAL COND. 1ST
 WILLIAMSBURG COUNTY

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed 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 its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on JANUARY 31, 2007

 Signature of Issuing Judge
 Judge Code: 050

ACKERMAN, WILLIAM E. JR

ORIGINAL

Judge's Address 10 COURTHOUSE SQUARE

KINGSTREE, SC 29556

Judge's Telephone 843 355-6381

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

BAIL set by

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, not: prob., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS