

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Berkeley County
G. Thomas Cooper, Circuit Court Judge

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S.C. Supreme Court

VERNON MICHAEL WILCOX,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000411

APPENDIX

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State of South Carolina)
County of Berkeley)

General Sessions

State of South Carolina,)

2010-GS-08-1728

versus.)

Vernon Michael Wilcox,)
Defendant.)

TRANSCRIPT OF RECORD

ORIGINAL

June 26, 2012

BEFORE:

The Honorable J.C. Nicholson

APPEARANCES:

Anne Williams, Esquire
Attorney for the State

Percy Beauford, Esquire
Attorney for Defendant

Melissa Singletary
Official Court Reporter

Reba C. Hayes, Official Court Reporter

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EXHIBITS

(No exhibits were marked to this proceeding.)

Reba C. Hayes, Official Court Reporter

PROCEEDINGS

THE COURT: Mr. Wilcox, if you'll stand please, sir. Would you raise your right hand?

(Defendant sworn)

THE COURT: I understand you -- earlier you said you would like to enter a guilty plea and I gave you time to talk to your attorney; is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: After speaking to your attorney, do you still want to proceed with your guilty plea?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Well, I'm going to ask you some questions. Okay? During the process if you want to ask your attorney a question or discuss it with your attorney please tell me and I'll give you an opportunity to do that. Okay?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You're charged with attempted murder. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: On the attempted murder charge you can receive up to 30 years. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: You're also charged with CDV ABHAN. You can receive from a year to 10 years. Do you

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1 understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: It's a mandatory minimum of one year.
4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: On kidnaping, you can receive up to
7 30 years. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: On the unlawful conduct toward a
10 child, you could receive up to 10 years. Do you
11 understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions about the
14 charges or the maximum time you could receive on each
15 charge?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. How old are you, Mr.
18 Wilcox?

19 THE DEFENDANT: Thirty.

20 THE COURT: Thirty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: I did about a year of college
24 work.

25 THE COURT: Where did you go to college?

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1 THE DEFENDANT: Marymount Central College.

2 THE COURT: What did you take? Just general
3 courses or did you specialize?

4 THE DEFENDANT: Business management,
5 international trade.

6 THE COURT: When did you finish ---

7 THE DEFENDANT: Never completed college.

8 THE COURT: Pardon?

9 THE DEFENDANT: I never completed college.

10 THE COURT: When did you finish the one year of
11 college?

12 THE DEFENDANT: '08.

13 THE COURT: '08?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you -- what have you been doing
16 since '08, for the last four years?

17 THE DEFENDANT: I was licensed to sell insurance.
18 I've done ---

19 THE COURT: Life insurance or ---

20 THE DEFENDANT: Yes, life and health insurance.

21 THE COURT: What company?

22 THE DEFENDANT: I started off with Bankers off of
23 78, Bankers Life and Casualty, and I went to
24 (inaudible). Since then I've done mostly warehousing
25 jobs, little odds and ends, some day labor work.

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1 THE COURT: Have you ever been married?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: When were you married?

4 THE DEFENDANT: In my military time. I married
5 in March of '03 and got divorced in 2005.

6 THE COURT: I understand you have one child; is
7 that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How old is your child?

10 THE DEFENDANT: She's seven.

11 THE COURT: Seven. Do you have custody of your
12 child or does your ex-wife have custody?

13 THE DEFENDANT: No, it's not by my ex-wife. She
14 is with another woman.

15 THE COURT: Have you had any drugs or alcohol in
16 the last 24 hours?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you taking any prescription
19 medication?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you ever been diagnosed with an
22 emotional, nervous or mental condition by a doctor?

23 THE DEFENDANT: It has been said I suffer from
24 PTSD.

25 THE COURT: With what?

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1 THE DEFENDANT: It has been said that I suffer
2 from PTSD.

3 THE COURT: What was the cause of that? Do you
4 know?

5 THE DEFENDANT: In deployment situations.

6 THE COURT: What?

7 THE DEFENDANT: Deployment to Iraq.

8 THE COURT: How long were you in Iraq?

9 THE DEFENDANT: I was there for a little over a
10 year.

11 THE COURT: Okay. Do you have a prior criminal
12 record?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What?

15 THE DEFENDANT: A couple of assaults.

16 THE COURT: Simple assault or what?

17 THE DEFENDANT: Simple assault.

18 THE COURT: When was this?

19 THE DEFENDANT: Simple assault was in 2003.

20 THE COURT: 2003?

21 THE DEFENDANT: Correct.

22 THE COURT: Do you have any other criminal
23 history?

24 THE DEFENDANT: I have two unlawful carrying of a
25 pistol charges. This was in -- I think in 2007.

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1 THE COURT: That was when?

2 THE DEFENDANT: I believe in 2007.

3 THE COURT: 2007?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Anything else that you remember?

6 THE DEFENDANT: Resisting arrest around the same
7 time, 2003.

8 THE COURT: Okay. Mr. Beauford, have you
9 explained to the Defendant his Constitutional rights?

10 MR. BEAUFORD: I did, Your Honor.

11 THE COURT: One of those Constitutional rights is
12 the right to a jury trial; is that correct?

13 MR. BEAUFORD: Yes, Your Honor.

14 THE COURT: And we had drawn a jury and I believe
15 the State was on its first witness after opening
16 statements; is that correct?

17 MR. BEAUFORD: That's correct, Your Honor.

18 THE COURT: Have you also explained to your
19 client his Fifth Amendment rights to remain silent?

20 MR. BEAUFORD: Yes, he understands that, Your
21 Honor.

22 THE COURT: And the obligation of the State to
23 find him guilty beyond a reasonable doubt?

24 MR. BEAUFORD: Yes, I have.

25 THE COURT: Did he appear to understand?

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1 MR. BEAUFORD: He understood, Your Honor.

2 THE COURT: In your opinion does the Defendant
3 understand the charge with respect to his rights?

4 MR. BEAUFORD: He does, Your Honor.

5 THE COURT: How does he wish to plead?

6 THE DEFENDANT: No contest, Your Honor.

7 THE COURT: Well, we're not pleading no contest.
8 We're either pleading guilty or not guilty.

9 THE DEFENDANT: Guilty.

10 THE COURT: Mr. Beauford, how does your client
11 wish to plead?

12 MR. BEAUFORD: Your Honor, I guess that's a
13 difficult situation because ---

14 THE COURT: You may not agree with it, but my
15 question to you, how does he wish to plead?

16 MR. BEAUFORD: May I state this first, Your
17 Honor?

18 THE COURT: Yes, sir.

19 MR. BEAUFORD: Just so you'll understand where
20 I'm coming from.

21 THE COURT: Yes, sir.

22 MR. BEAUFORD: A lot of this information he has
23 no recollection of.

24 THE COURT: I understand.

25 MR. BEAUFORD: So I'm asking him to plead guilty

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1 to something which, after listening to the witness, he
2 -- he feels that he doesn't want to go through this
3 situation, but a lot of it he didn't have any
4 recollection from day one. The -- talking to the
5 experts and the diagnosis and all that, so -- but he
6 wants to get this behind him. He wants to plead to it
7 but again, the question you were asking me is how does
8 he want to plead. He wants to plead guilty; however,
9 I'm cautious and based on the expert coming right
10 behind talking about his condition.

11 THE COURT: Okay. My question to you does he
12 want to plead guilty?

13 MR. BEAUFORD: Yes. Yes.

14 THE COURT: Okay. Do you agree with the decision
15 to plead guilty?

16 MR. BEAUFORD: Your Honor, looking at the facts
17 and what I think the State is going to present, I
18 think it's in his best interest.

19 THE COURT: All right. From your investigation
20 of the facts and the circumstances of the case, do you
21 feel the State would produce sufficient evidence to
22 convince the jury of the Defendant's guilt beyond a
23 reasonable doubt?

24 MR. BEAUFORD: I think so, Your Honor.

25 THE COURT: Okay. Have you had any difficulty

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1 communicating with your client?

2 MR. BEAUFORD: No, Your Honor.

3 THE COURT: Do you think he needs to have a
4 mental evaluation?

5 MR. BEAUFORD: No, Your Honor.

6 THE COURT: Are you aware of any physical,
7 emotional or mental condition that might affect the
8 Defendant's understanding of what he or she is going
9 to plea?

10 MR. BEAUFORD: No, Your Honor.

11 THE COURT: Based on the representation of
12 counsel and my personal observation of the Defendant,
13 I find the Defendant to be knowledgeable, perceptive
14 and well in control of his faculties, therefore
15 competent to enter this plea. Now, Mr. Wilcox, I'm
16 going to explain to you some Constitutional rights.
17 Okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And if you don't understand them
20 please tell me and I'll try to explain it better. If
21 you would like to talk to your attorney about any of
22 it, please let me know and I will allow you to do it.
23 Okay?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. When you enter a guilty

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1 plea, you have certain Constitutional rights. When
2 the Court accepts a plea, you no longer have those
3 rights. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Under the Fifth Amendment to the
6 Constitution you have the right to remain silent. Do
7 you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: No one can make you testify against
10 yourself. Do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: But when you enter a guilty plea, you
13 will be acknowledging your guilt. Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: When you acknowledge your guilt, you
16 are testifying against yourself. Do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you willing to give up your Fifth
19 Amendment rights to remain silent and enter your
20 guilty plea today?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, you're entitled to a jury trial.
23 Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: In a jury trial the State would be

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1 required to prove you guilty beyond a reasonable
2 doubt. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: All 12 jurors would have to vote to
5 find you guilty. Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Your attorney could cross-examine
8 witnesses, present testimony on your behalf if he so
9 chose, and challenge any evidence or statements that
10 you have made -- may have made to the police. Do you
11 understand?

12 THE DEFENDANT: Yes.

13 THE COURT: As a matter of fact, we are in the
14 first part of the trial. Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Do you want a jury trial?

17 THE DEFENDANT: No, no, sir.

18 THE COURT: Do you know -- do you have any
19 questions about your right to a jury trial?

20 THE DEFENDANT: I have no questions.

21 THE COURT: All right. Do you understand you
22 have the right to appeal this guilty plea 10 days from
23 today?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Has anybody forced you,

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1 coerced you or intimidated you to make you plead
2 guilty?

3 THE DEFENDANT: No.

4 THE COURT: Have any promises been made to you to
5 make you plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Have you had enough time to make your
8 decision to plead guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you pleading guilty of your own
11 free will and accord?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that you may have
14 defenses to the charge against you? I don't know
15 whether you do or not. Do you understand if you plead
16 guilty you will waive or give up these defenses to the
17 charges?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: Do you understand when you plead
20 guilty you admit the truth of the charges made against
21 you?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you want to tell me what you did?

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1 THE DEFENDANT: I honestly have -- I don't have a
2 solid recollection of that.

3 THE COURT: Well, based upon the sworn testimony
4 by Ms. Washington the Court will find those are the
5 facts as to what you did in this incident and the
6 Court will accept those facts. Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you understood all my questions?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you answered them truthfully and
11 correctly?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have any questions you want to ask
14 the Court or your attorney?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you satisfied with your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has he represented you in the matter
19 and advised you as you feel is appropriate?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any complaints whatsoever
22 against your attorney?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you talked with your attorney as
25 often and for as long as you feel necessary?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you need more time to talk to your
3 attorney?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you understood the conversations
6 and the talks that you have had with your attorney?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has he done everything you feel he
9 should have done?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is there anything else that you feel
12 like he should do?

13 THE DEFENDANT: No, sir.

14 THE COURT: Is there anything he's done that you
15 feel like he should not have done?

16 THE DEFENDANT: Say again?

17 THE COURT: Is there anything that he's done that
18 you feel like he should not have done?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you completely satisfied with
21 your lawyer's services?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any complaint that you
24 want to make about the lawyer, the Solicitor or any of
25 the police officers?

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1 THE DEFENDANT: Just I wish I would have had a
2 better understanding of the events that took place
3 instead of broad statements from the victim and just
4 it seems like the supplemental reports and the
5 affidavits and the statements of the victim were on
6 that night that I was (inaudible).

7 THE COURT: Okay. All right. Based upon the
8 testimony of Ms. Washington I find there's a factual
9 basis for the plea, and having asked questions of the
10 Defendant Vernon Wilcox and his attorney, Percy
11 Beauford, I find he has freely, voluntarily, knowingly
12 and intelligently made the decision to enter a guilty
13 plea with the advice of his attorney. All elements of
14 the charges have been met. I understand as far as
15 sentence is concerned -- the Court will accept his
16 plea. I understand as far as sentencing is concerned,
17 the State would like to offer some testimony or a
18 statement from a doctor?

19 MS. WILLIAMS: Yes, Your Honor.

20 THE COURT: Mr. Beauford, you also have a doctor
21 you would like for the Court to hear; is that correct?

22 MR. BEAUFORD: That's correct, Your Honor.

23 THE COURT: When can we do this?

24 MS. WILLIAMS: We would ask that we do it early
25 tomorrow morning and then maybe keep the jury at least

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1 on call just in case anything -- until after
2 sentencing so we could maybe have them called back

3 THE COURT: Are you talking about this panel?
4 Are you talking about this jury panel?

5 MS. WILLIAMS: Yes, Your Honor.

6 THE COURT: I've accepted the plea. The plea is
7 over. All we've got left is sentencing. There's no
8 need for a jury. I mean, he's not going to back out
9 at this point. He may ask but it's not going to
10 happen. I've accepted the plea. The only thing
11 that's left is sentencing and I will defer sentencing
12 to hear from the State doctor and the Defendant's
13 doctor and anybody else you would like me to hear
14 from.

15 (Whereupon, the hearing was concluded.)
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STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

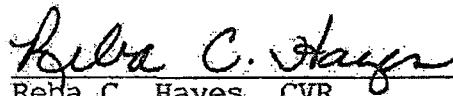
CERTIFICATE

Be it known that I, the undersigned Reba C. Hayes, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, transcribed the foregoing hearing in the above-referenced matter;

The foregoing transcript of 18 typewritten pages represents a true, accurate and complete transcription of the testimony so given and the evidence introduced at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 7th day of January, 2015.


Reba C. Hayes, CVR
Certified Court Reporter

Reba C. Hayes, Official Court Reporter

State of South Carolina	)	
	)	General Sessions
County of Berkeley	)	
	)	
State of South Carolina,	)	
	)	2014-GS-08-1728
	)	
versus	)	
	)	
Vernon Michael Wilcox,	)	TRANSCRIPT OF RECORD
	)	
Defendant.	)	
	)	

June 27, 2012

BEFORE:

The Honorable J.C. Nicholson

APPEARANCES:

Anne Williams, Esquire
Attorney for the State

Percy Beauford, Esquire
Attorney for Defendant

Melissa Singletary
Official Court Reporter

Reba C. Hayes, Official Court Reporter.

ATTORNEY GENERAL'S OFFICE

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EXHIBITS

(No exhibits were marked to this proceeding.)

Reba C. Hayes, Official Court Reporter

PROCEEDINGS

1
2 THE COURT: I believe we're here this afternoon
3 for sentencing on Vernon M. Wilcox. Who would like to
4 go first?

5 MS. WILLIAMS: Your Honor, if it is okay I would
6 like to give the Court just a couple of -- I was going
7 to give the Court just a few facts. I think you have
8 the factual basis based on Tamesha Washington's
9 testimony but just a couple of things that briefly I
10 think are important for the Court to consider that
11 would come out in testimony.

12 One of them is there was a friend of the
13 Defendant and the victim that saw the Defendant about
14 two weeks before the incident occurred. This was a
15 July 4th picnic at the home of Michael Mason's house,
16 and Mr. Mason saw himself as someone that was trying
17 to mentor Mr. Wilcox and trying to see him through
18 some problems he was having.

19 Mr. Wilcox indicated to Mr. Mason that he was
20 concerned that Tamesha was cheating on him, that he
21 was suspicious of her and if she ever tried to leave
22 him he would hurt her, and I think that's important
23 for the Court to consider because it shows that a full
24 two weeks before, he was already, kind of, festering
25 about this and thinking about harming her.

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1 Mr. Mason, for his part, counseled him to just
2 walk away and tried to reason with him, told him that
3 it's just not worth it to get into that kind of
4 dynamic.

5 As far as -- moving on to the next point, as far
6 as Mr. Wilcox not remembering things that happened,
7 during testimony it would have come out that about
8 three in the morning after the incident occurred, he
9 did call police officers and confess to the incident,
10 so he did remember it then.

11 About six or seven months later, he wrote a
12 letter to the mother of the victim ---

13 THE COURT: He called the police at three a.m.
14 that morning ---

15 MS. WILLIAMS: Yes, Your Honor. I think ---

16 THE COURT: --- and confessed?

17 MS. WILLIAMS: He confessed. He said I ---

18 THE COURT: What did he specifically tell the
19 police?

20 MS. WILLIAMS: He said I just assaulted my
21 girlfriend. I think she's hurt pretty bad and he told
22 them where it happened. He was actually very
23 persistent in confessing, because they kept
24 transferring him all around.

25 THE COURT: Okay.

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1 MS. WILLIAMS: And then he eventually ---

2 THE COURT: Nobody wanted to talk to him, huh, at
3 three a.m. in the morning?

4 MS. WILLIAMS: He was actually calling from
5 Walterboro where he had fled to. I think his family
6 was living in Walterboro.

7 THE COURT: So he told them where it occurred and
8 when it occurred and what occurred?

9 MS. WILLIAMS: And that he assaulted her.

10 THE COURT: Okay.

11 MS. WILLIAMS: He also -- Your Honor, while he
12 was in jail he wrote a rather lengthy letter to the
13 mother of the victim apologizing for harming her.
14 Now, he didn't go into the details of the assault, but
15 he said he knew that what he did was wrong and that he
16 felt awful about it.

17 THE COURT: Have we got a copy of the letter?

18 MS. WILLIAMS: We do, I think. It's very
19 apologetic. Mr. Wilcox takes responsibility
20 eventually for what he does. The concern the State
21 has is that he keeps doing it, which brings me to my
22 next point.

23 As far as his criminal history, the actual
24 criminal history is that in 2003 he had a resisting
25 arrest in Killeen, Texas.

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1 THE COURT: In 2003 he had criminal what?

2 MS. WILLIAMS: Resisting arrest.

3 THE COURT: Resisting. Okay.

4 MS. WILLIAMS: And then he had a causing bodily
5 injury to a family member, and this involved his wife
6 who was six weeks pregnant and the incident, I think,
7 is very similar to the one we have here, just not as
8 severe.

9 He assaulted his wife. He hit her in the head.
10 She had blood all over her face. I'm going to pass up
11 to the Court that incident report, because I think it
12 underlines ---

13 THE COURT: And this was in '03?

14 MS. WILLIAMS: This was in '03, Your Honor. He
15 went to Iraq in 2004.

16 THE COURT: Okay. Was he in the service at that
17 time?

18 MS. WILLIAMS: I do not know.

19 THE COURT: Okay.

20 MS. WILLIAMS: In 2008 he has two separate
21 convictions for unlawful carrying of a weapon and then
22 he also has a pending possession of contraband in the
23 jail which we will be dismissing.

24 THE COURT: All right.

25 MS. WILLIAMS: We also have a journal of Mr.

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1 Wilcox where he writes. I think it came out in the
2 testimony that he would write to his girlfriends and
3 they would write back. That was the way he dealt with
4 problems. But some of the things he writes is that
5 when he gets angry he hits and he hurts people.

6 THE COURT: That's in the ---

7 MS. WILLIAMS: That's in his journal that he was
8 writing back and forth and it was found in the
9 apartment.

10 THE COURT: Let me see a copy of that letter.

11 MS. WILLIAMS: Okay.

12 THE COURT: This occurred in Texas. Was he
13 stationed at Fort Hood at the time?

14 MR. BEAUFORD: That's correct, Your Honor.

15 THE COURT: Okay.

16 MS. WILLIAMS: And, Your Honor, we're going to be
17 finding that letter for you. This is just one
18 photograph in this case, I think, that we didn't get
19 to show and I just want to show it to you because I
20 think it's almost in exactly the same place that the
21 last woman was injured.

22 I'm going to have -- while we're retrieving the
23 letter and the journal, I'm going to retrieve the --
24 I'm going to ask Dr. Masiowski -- he was the emergency
25 room doctor that treated Tamesha Washington on the

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1 evening of the assault and I would just have him
2 address some of the injuries and how close it came to
3 being a much different kind of case.

4 THE COURT: Okay.

5 MS. WILLIAMS: Dr. Masiowski?

6 THE COURT: Yes, sir, how do you spell your last
7 name?

8 DR. MASIOWSKI: M-A-S-I-O-W-S-K-I.

9 THE COURT: Okay.

10 DR. MASIOWSKI: My name is Michael Masiowski.
11 I'm an emergency room physician in North Charleston
12 for the last 12 years. I've been a practicing
13 emergency medicine physician for the last 16 years.

14 I was the treating physician on the night of Ms.
15 Washington's injuries, which was July the 8th of 2010.
16 In review of my chart from that evening and the
17 pictures from that incident, I think it's important to
18 understand that in all the time I've been doing this,
19 this was probably -- I would put in the top two to
20 three percent in terms of the severity of injuries
21 I've seen associated with domestic violence.

22 Unfortunately we see a lot of cases of domestic
23 violence and this one I think was especially severe.
24 Ms. Washington sustained a severe injury to her head,
25 including a large scalp laceration which required

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1 extensive repair. She also had evidence of a closed
2 head injury. We did do a CAT scan which fortunately
3 did not show any internal bleeding.

4 I think based on the nature of the injuries, she
5 could have been very seriously injured including the
6 possibility of death in this type of an injury.
7 There's two ways -- the two most common ways that you
8 could sustain a life threatening injury in this type
9 of accident or injury revolve around bleeding inside
10 of the brain.

11 One of the ways is what we call a subdural
12 hemorrhage. There are some veins that connect the
13 brain to the thick layer around the brain called the
14 dura. If the brain in a -- is shaken those small
15 veins can rupture, cause bleeding, can cause an
16 extensive hematoma or collection of blood which can
17 cause the brain stem, the lower part of the brain, to
18 herniate through the bottom of the skull.

19 That herniation or pushing the brain through the
20 bottom of the skull can then pinch off areas of the
21 brain that are vital to life. Your breathing and
22 circulatory centers of the brain are found in that
23 region. That's the most common cause of bleeding on
24 the inside of the brain.

25 THE COURT: Is this what you commonly see when

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1 you see baby shaken syndrome?

2 DR. MASIOWSKI: Baby shaken syndrome is a
3 different thing. That's -- the whole brain is really
4 more like Jello and that would be like mixing layers
5 of Jello, and that's a different thing.

6 THE COURT: That's different than what you're
7 explaining?

8 DR. MASIOWSKI: This is a sudden
9 acceleration/deceleration from a blow, car accident --
10 -

11 THE COURT: A blood clot in the brain and it
12 expands?

13 DR. MASIOWSKI: Exactly. And there's -- we look
14 for two different types of blood clots: One is
15 subdural; the other one is an epidural. An epidural
16 is on the other side of the dura, which is in between
17 the dura, which is again a thick layer over the brain,
18 and the skull.

19 Ms. Washington's injury was on the right side of
20 her forehead just above the hairline about in this
21 area. Not far from that is the area that we all, kind
22 of, commonly call the temporal region. Right below
23 this region is the middle meningeal artery that
24 supplies a lot of the blood flow to the scalp and the
25 brain in this area.

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1 That far away a fracture in that area can tear
2 the middle meningeal artery which causes arterial
3 bleeding which can do the same process where it pushes
4 the brain down and herniates through the bottom of the
5 brain stem. That's a much quicker, much more rapid,
6 much more severe type of an injury.

7 Again, this was a -- I think a very serious
8 injury, especially in my experience, and could have
9 had long lasting effects. The other thing that we
10 always worry about with head injuries that don't rise
11 to that level of severity, any head injury can result
12 in long term effects.

13 The frontal part of the brain, the frontal lobe,
14 is the part of the brain that's directly involved with
15 memory, emotion, personality and some of the more
16 vague things that make us human, and an injury in that
17 area can have long term -- and when I say long term --
18 lifelong effects in those areas of a person's life.

19 THE COURT: Blood swelling in the brain that
20 causes frontal lobe injury or the blow to the frontal
21 lobe area?

22 DR. MASIOWSKI: A blow to the frontal lobe area.
23 You can separate -- you can separate head injuries
24 into those that would require surgery, ones that would
25 have a blood clot that you would need to get in and

12

1 evacuate, but those ones that are less well defined,
2 we term them concussions. Sometimes you can see those
3 on a CAT scan where you actually see bruising to the
4 brain. Sometimes you can't, but what we do know is
5 that concussions and brain injuries can have long term
6 effects in terms of the area that's been injured, and
7 the frontal lobe is particularly important in a lot of
8 the parts of our lives, interaction within
9 individuals, memory and personality issues.

10 THE COURT: Okay. Anything else you want to tell
11 me?

12 DR. MASIOWSKI: If you have any questions for me,
13 I'd be happy to answer them.

14 THE COURT: Well, I think you've done an
15 outstanding job explaining. Solicitor, is there
16 anything you would like to ask the doctor?

17 MS. WILLIAMS: No, Your Honor.

18 THE COURT: Mr. Beauford, I'm not asking you for
19 cross-examination but I will allow you to ask the
20 doctor any general questions about the injury, except
21 if you wanted to bring out something that he hasn't
22 brought out that you may think is pertinent to the
23 sentencing process. We're not going into cross-
24 examination so you can proceed if you want to.

25 MR. BEAUFORD: No questions.

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1 THE COURT: No questions. I want you to ask them
2 if you want to ask them.

3 MR. BEAUFORD: You have to determine whether it's
4 cross or not. On those different scenarios that you
5 explained, which one of them did she suffer from?

6 DR. MASIOWSKI: She suffered a closed head
7 injury. There was no evidence of intracranial
8 bleeding.

9 THE COURT: She didn't have a blood clot causing
10 severe head trauma ---

11 MR. BEAUFORD: Yes, Your Honor.

12 THE COURT: --- is what he's basically saying.
13 Also that she was very fortunate.

14 DR. MASIOWSKI: Yes, she was.

15 MR. BEAUFORD: No further questions.

16 THE COURT: Is that correct that she was
17 fortunate? What causes some of the bleeding in the
18 brain or not bleeding? Just the impact or the
19 severity of the impact?

20 DR. MASIOWSKI: The nature of the injury is very
21 important. Again, the -- the two. One, if it causes
22 a fracture to the skull over the middle meningeal
23 artery, that's very important to that type of injury.
24 The other injury is more of an
25 acceleration/deceleration. If you fall, hit your

1 head, and it goes from moving to all of a sudden
2 stopping, and the brain moves and sheers those
3 vessels, or a blow to the head or a car accident type
4 thing.

5 THE COURT: Okay. I want to thank you so very
6 much for taking your time and being here. Thank you
7 so very much.

8 MS. WILLIAMS: Your Honor, the only other person
9 -- the whole family is here, some of the victim's
10 family, and actually the neighbors that saw her as she
11 ran across the walk. We'd like Your Honor to know
12 that they are here. I really think it was a very
13 traumatic event for them as well, to have this woman,
14 this bloody woman, run into their apartment and we
15 thank them for doing the right thing in getting
16 involved.

17 The only person from the victim's family that
18 would like to address the Court is Sharee Cartwright
19 and she is the sister. So Sharee Cartwright would
20 like to address the Court.

21 THE COURT: Ms. Cartwright?

22 MS. CARTWRIGHT: Yes, Your Honor.

23 THE COURT: Ms. Cartwright, you may come around.

24 MS. CARTWRIGHT: Thank you.

25 THE COURT: Spell your full name for the record.

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1 MS. CARTWRIGHT: Aminta Sharee Cartwright.

2 THE COURT: How do you spell your first name?

3 MS. CARTWRIGHT: A-M-I-N-T-A.

4 THE COURT: Okay. Ms. Cartwright, I'll be glad
5 to hear from you.

6 MS. CARTWRIGHT: I'd just like to say I've lived
7 with my sister ever since she first met Vernon. I met
8 him around -- when she introduced me to him. I was
9 there when he moved in.

10 THE COURT: How long have they been going
11 together?

12 MS. CARTWRIGHT: Two years.

13 THE COURT: Two years?

14 MS. CARTWRIGHT: Yes, sir.

15 THE COURT: Okay.

16 MS. CARTWRIGHT: And I was there ---

17 THE COURT: Two years from now or ---

18 MS. CARTWRIGHT: Two years before it happened.

19 At first we all lived at my mother's house; Vernon, my
20 sister, myself, my ex-boyfriend and both of the
21 daughters and we were all like a family.

22 I also lived with them when we all lived at South
23 Point Apartments when the incident took place. We and
24 Vernon were very close. He was like a relative and we
25 would talk and there's been plenty of times where I've

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1 been to him and he's been to me and we'd talk about
2 situations or sit around and have a drink together.

3 And I never thought it would come to this. I
4 would have never expected it.

5 THE COURT: Why is that?

6 MS. CARTWRIGHT: The things that he would say. I
7 figured that when he vented that, you know, once you
8 get it off your chest, that that would help and it
9 wouldn't go any further.

10 THE COURT: How did he normally vent or how did
11 he vent his frustration, his anger? How did he vent?

12 MS. CARTWRIGHT: We'd just sit around and talk
13 and he'd tell me what was going on and we'd talk
14 about, you know, what was going on, try to come up
15 with solutions for something that was a positive way
16 to handle it and we've done that ever since we lived
17 together. We've always had a relationship like that
18 where we try to help each other out. If I didn't have
19 something and he had it, he'd give it to me and I'd do
20 the same as well.

21 And I know that the day the incident happened I
22 had just left and went to Atlanta and we had spoken
23 the night before. My sister was at work but she knew
24 that I was going to be leaving the following day to go
25 on a college campus. And I left all my information of

1 -- for emergency purposes of where I would be with him
2 and we talked about it. Everything seemed fine. I
3 would have never guessed that he would have attacked
4 my sister the very next day.

5 THE COURT: Have you ever seen him verbally
6 abusing your sister?

7 MS. CARTWRIGHT: I know that they would argue.
8 As far as I know, there was one incident that happened
9 a few weeks prior

10 THE COURT: What was that incident about?

11 MS. CARTWRIGHT: I was out and I guess they had
12 had an argument and he had pinned her down. And I
13 came home ---

14 THE COURT: Pinned her down? Tell me what you
15 mean.

16 MS. CARTWRIGHT: He pinned her down on the ground
17 and was holding her down over top of her. And I came
18 home ---

19 THE COURT: Did he leave any bruises?

20 MS. CARTWRIGHT: Not to my knowledge, sir. When
21 I came home I could tell that something had just
22 happened, but I wasn't sure what was going on. When I
23 came in the house, he left and went somewhere and I
24 talked to my sister and she told me, like, he held her
25 down and they were arguing, things like that.

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1 And at the time I didn't know how serious it was
2 because when she told me, she was, kind of, I guess,
3 shaken up and didn't really want to say anything about
4 it and I think had I done something then, maybe we
5 could have prevented this situation now.

6 THE COURT: Is that the first time you know of
7 any incident he had used physical force? I had asked
8 you about verbal abuse, but physical force?

9 MS. CARTWRIGHT: To my knowledge that was the
10 first time.

11 THE COURT: Have you ever seen him act out
12 violently towards anyone else outside of the family
13 relationship?

14 MS. CARTWRIGHT: No, sir.

15 THE COURT: Do you think he has a bad temper?

16 MS. CARTWRIGHT: Yes, sir, at times.

17 THE COURT: What generally triggers it?

18 MS. CARTWRIGHT: He can get frustrated and then
19 if you drink on top of that, I know it tends to make
20 the situation a whole lot worse.

21 THE COURT: Does he do that on a routine basis or
22 just periodically, where he gets angry and starts to
23 drink?

24 MS. CARTWRIGHT: Well, he drinks regularly.

25 THE COURT: He drinks on a regular basis?

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1 MS. CARTWRIGHT: Even when he's not upset.

2 THE COURT: Has he ever been in anything --
3 quoted to you or told you anything about his
4 experiences in Iraq?

5 MS. CARTWRIGHT: No, sir. We've talked about a
6 lot of stories and Iraq has never came up. I knew
7 that he had been in the military previously and only
8 thing I know about that was he was dishonorably
9 discharged. Other than that ---

10 THE COURT: He was honorably discharged?

11 MS. CARTWRIGHT: Dishonorably, I believe.

12 THE COURT: Dishonorably?

13 MS. CARTWRIGHT: Yes.

14 THE COURT: Do you know why?

15 MS. CARTWRIGHT: No, sir, we never went into
16 detail.

17 THE COURT: You never discussed it with him?

18 MS. CARTWRIGHT: No, sir.

19 THE COURT: Anything else you would like to tell
20 me? I just had those questions for you and I don't
21 mean to be cutting you off. Is there anything else
22 you'd like to tell me?

23 MS. CARTWRIGHT: No, sir, just even though that
24 he was like a brother to me and we were very close.

25 THE COURT: Well, it's a tragedy for both sides.

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1 MS. CARTWRIGHT: Yes, sir.

2 THE COURT: Anything else?

3 MS. CARTWRIGHT: No, sir.

4 THE COURT: Solicitor, do you have anything you
5 would like to add?

6 MS. WILLIAMS: Just one thing. The one thing the
7 family was telling me a lot about that really hasn't
8 come out is, was Mr. Wilcox voicing any frustrations
9 that were building about the situation between the two
10 of them with her having all of the control in the
11 relationship. Like, what was he -- that was what he
12 was venting about or ---

13 MS. CARTWRIGHT: Yes, ma'am. He'd be upset with
14 my sister working. He was doing daily laborer jobs
15 which weren't very stable, weren't bringing in a lot
16 of income, so I know that was a big frustration. If
17 he wanted something, he would have to go, you know,
18 and ask her for it because he didn't have any money of
19 his own, you know.

20 With her taking care of his daughter and things
21 like that, she provided everything, so it was
22 difficult and I know at times it would be difficult.
23 She doesn't like him to drink so that was an issue in
24 itself, that he wasn't happy about. You know, things
25 like that, have to sneak and drink.

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1 THE COURT: Would he drink on a daily basis?

2 MS. CARTWRIGHT: Yes, but he would have to sneak
3 and drink unless he did it when she was at work,
4 because she doesn't approve of drinking, things like
5 that, or smoking cigarettes, things like that, so I
6 know, like, that was a big issue in itself. And
7 having a lot of control issues, you know, with her
8 being in control.

9 He didn't have a vehicle; she had the vehicle.
10 If he wanted to go somewhere, you know, he'd be
11 allowed to drive at times but it was her car so, you
12 know, it was at her discretion. I know a lot of times
13 when she went to work she would leave the car so that
14 he was able to get around and things like that.

15 THE COURT: Apparently there's been some alluding
16 to the fact that he felt like maybe your sister was
17 maybe having a relationship with someone else. Do you
18 know anything about that?

19 MS. CARTWRIGHT: Yes, sir, I know times that he
20 came and asked me if she -- if she was cheating or
21 anything like that and I told him, you know, she's not
22 seeing anybody else. I know she really cares about
23 you. I know that she wants to be with you.

24 There was an incident where she had left for a
25 trip for her job for the weekend, and she got her hair

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1 done before she left and he was upset, and while she
2 was gone he was at the house with me and my boyfriend
3 and he did express to us that, you know, he was upset
4 and he was worried that she was probably going to see
5 someone else. Why would she get her hair done before
6 she goes out of town if it's for work? Things of that
7 nature.

8 THE COURT: So would you say he was extremely
9 jealous of her?

10 MS. CARTWRIGHT: I would say that he does have,
11 like, trust issues.

12 THE COURT: What?

13 MS. CARTWRIGHT: Has trust issues.

14 THE COURT: Trust issues?

15 MS. CARTWRIGHT: Yes, sir.

16 THE COURT: Was there any validity to the trust
17 issue that he had from your perspective?

18 MS. CARTWRIGHT: Probably just, I guess, some of
19 his relationships probably weren't the most honest
20 ones, and I could tell with that. And her being away
21 -- it would be fine when they were together but if she
22 was away, then it would be, you know, an issue. He'd
23 be upset because she was gone so.

24 THE COURT: Okay. Mr. Beauford, do you have
25 anything you'd like to ask?

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1 MR. BEAUFORD: No questions.

2 THE COURT: Where are you going to school in
3 Atlanta? Georgia State or where?

4 MS. CARTWRIGHT: No, I was at AIU in Atlanta and
5 after the incident, I came back.

6 THE COURT: Are you still going to school?

7 MS. CARTWRIGHT: Not right now, sir.

8 THE COURT: Well, good luck if you go back.
9 Okay? Thank you so very much for being here.

10 MS. CARTWRIGHT: Thank you.

11 MS. WILLIAMS: Your Honor, that is the only
12 witnesses we have. We would just respectfully ask the
13 Court to consider the higher end of the sentencing
14 range, recognizing that, you know, obviously Mr.
15 Beauford is going to be asking for the lower end of
16 the sentencing range.

17 I think the best indication of what someone is
18 going to do in the future, unfortunately, is what
19 they've done in the past and what we have here is
20 somebody that has shown a pattern of violent behavior.
21 It may not happen all the time but when it happens,
22 it's very explosive and that concerns us, not just
23 because of what happened with Ms. Washington but for
24 the next Ms. Washington.

25 So again we would just respectfully ask the Court

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1 to consider the higher range of the sentencing range
2 for Mr. Wilcox.

3 THE COURT: Okay. Is Ms. Washington in the
4 courtroom?

5 MS. WILLIAMS: She is, Your Honor.

6 THE COURT: Would you ask her to come around?
7 Ms. Washington, would you come around please? And you
8 can just stand beside the Solicitor, if that's okay.
9 I want to ask you a couple of questions. Okay?

10 Ms. Washington, you're very soft spoken. Would
11 you speak up so I can hear you? Do you mind if I ask
12 you a couple of questions?

13 MS. WASHINGTON: That's fine.

14 THE COURT: There will probably be several.

15 MS. WASHINGTON: That's fine.

16 THE COURT: Has he verbally or physically abused
17 you other than the time your sister said he held you
18 down and this incident that we're here for? Has he
19 ever physically assaulted you before?

20 MS. WASHINGTON: No.

21 THE COURT: Has he verbally abused you?

22 MS. WASHINGTON: Just argument-wise.

23 THE COURT: Argument-wise? What did y'all
24 generally argue about?

25 MS. WASHINGTON: I don't know. It ---

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1 THE COURT: You don't know?

2 MS. WASHINGTON: It wasn't a lot. It was every
3 couple months but when we argued, it was a big blowout
4 and then ---

5 THE COURT: When you had the big blowout, how did
6 he react? Would he act physically toward you,
7 violently towards you, or how ---

8 MS. WASHINGTON: He never touched me. He -- he
9 would be right here in my face like he was going to,
10 but he never touched me. He would, like -- he would
11 ball up his face and talk real close to my face, like,
12 in a threatening way, but he never touched me then.

13 THE COURT: How did you defuse the situation?
14 Walk away or what? Or would he just calm down?

15 MS. WASHINGTON: I argued back ---

16 THE COURT: Okay.

17 MS. WASHINGTON: --- and then we would stand
18 there until -- basically until we got quiet and then I
19 would just leave.

20 THE COURT: Did he try to, sort of, dominate all
21 your time and activities or ---

22 MS. WASHINGTON: No. I mean, when we -- when we
23 would break up he would cry.

24 THE COURT: How often -- how many times did y'all
25 break up?

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1 MS. WASHINGTON: Maybe three.

2 THE COURT: Pardon?

3 MS. WASHINGTON: Maybe three.

4 THE COURT: Three? Did you actually leave the
5 premises or the marital home? Well, it's not a
6 marital home but the place you were living?

7 MS. WASHINGTON: Yes.

8 THE COURT: How long did you stay gone?

9 MS. WASHINGTON: I didn't leave. He left.

10 THE COURT: He left. Okay.

11 MS. WASHINGTON: When we were at my mother's
12 house we broke up one time and he went outside in the
13 truck and cried real loud, and I heard him outside the
14 window and I went out and talked to him. I was, like,
15 what's wrong with you and he was, like, I just love
16 you so much. That's all he would say. I don't -- you
17 know, I don't want this to happen and I love you so
18 much.

19 I'm, like, there's no reason to cry about it. I
20 mean, we can talk about it and maybe, you know,
21 something different may happen but right now is not
22 the time. You know, so we go down the street, talk
23 about it or we would go places. Sometimes --
24 sometimes it would change right away.

25 I loved Vernon. I loved him more than probably

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1 anyone I've ever dated. Yeah, financially he wasn't
2 there but he had my heart so I would do anything for
3 him. To me, it was, like, he didn't work but he took
4 care of my baby while I was at work. I could come
5 home to my child. I could come home to a clean house,
6 to food cooked, to -- it was, like, we split roles.
7 He was, like, a housewife so I didn't mind.

8 But it was, like, different times when we would
9 argue and different times, like, I would feel like if
10 he wanted to he could hit me but I -- you know, but he
11 never did so I wasn't really that afraid. You know,
12 it was -- I don't know.

13 THE COURT: So you weren't really afraid of him.

14 MS. WASHINGTON: I wasn't.

15 THE COURT: I know you testified at trial that
16 this was totally unexpected and it surprised you.

17 MS. WASHINGTON: I never expected that.

18 THE COURT: Why do you say that?

19 MS. WASHINGTON: Because he was so sweet to me
20 and on his chest he has -- he has a tattoo that says
21 two sides to everything and he told me that there's
22 one side of me that you'll never see because I love
23 you that much. One side of me, that's my past. This
24 side of me, that's you because you have my heart and
25 he said that's a side of me you will never see and I

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1 will never show you because I love you, and I took it
2 like that. I believed him. I loved him and I had no
3 reason to believe he didn't love me.

4 THE COURT: What do you think brought on the
5 attack?

6 MS. WASHINGTON: I don't know. That night we did
7 -- after he stomped me with his bare feet it got
8 quiet. I -- like -- I was, like, I laid there for a
9 while and I was listening. I didn't hear anything so
10 I peeked around the corner and he had on one boot and
11 then when he -- he was putting on the other one and
12 when he turned around he just looked different. He
13 didn't look like himself. I don't know. He was just
14 -- I don't know.

15 I have no idea why he did it. Like, I feel
16 better that I can go on and say that I love him. That
17 was how I felt. But I don't know why he did it and
18 for the past two years I've been wondering and I
19 couldn't get past it. He said he loved me so much and
20 he hurt me like that. I didn't get it. I don't get
21 it so I don't know.

22 THE COURT: Let me ask you this: You don't have
23 to answer this question if you don't want to. What do
24 you think would be an appropriate punishment for him
25 in the sense of trying to help him as well as punish

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1 him?

2 MS. WASHINGTON: I don't know.

3 THE COURT: Pardon?

4 MS. WASHINGTON: I wouldn't know. I want him to
5 have time to think about what he did.

6 THE COURT: I'm sorry?

7 MS. WASHINGTON: I want him to have time to think
8 about what he did. I want him to have time to learn
9 how to fix himself, because I don't know if that was a
10 choice that he did or if that was just a really --
11 like I said, I don't know. But I want him to have
12 that time to sit back and really think about what
13 happened, think about why he did it.

14 THE COURT: After it was over, how did he react?
15 Did he appear to know what was going on or was he off
16 in a state of mind somewhere? How did he appear, or
17 were you hurting too bad to even know?

18 MS. WASHINGTON: The only time that he really
19 stopped was when I -- the final time when I tried to
20 keep him to the wall. He leaned into the wall and he,
21 like, cocked his head to the side and he looked at me
22 and then he walked away, and that's when I got out and
23 got to the neighbor's house. But even then he came to
24 their house and tried to get me. So -- but that look
25 changed right then, so I don't know.

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1 THE COURT: Solicitor, anything else you'd like
2 to bring up from this witness?

3 MS. WILLIAMS: No, Your Honor.

4 THE COURT: Ms. Washington, thank you so very
5 much. I'm sorry you had to endure all this. Okay?
6 Thank you very much. Anything else, Solicitor?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: Mr. Beauford?

9 MR. BEAUFORD: Please the Court, first of all I'd
10 like to apologize to the victim while she's on the
11 stand in each of my questions. I explain each of my
12 questions basically because from my client's
13 perspective, the first day I talked to my client he
14 admitted something happened but he actually didn't
15 really know everything that happened, and it was his
16 thing saying I know I did something wrong, I know I
17 hurt her, but the things that they say, I can't see
18 myself doing these things to her because I have so
19 much love for her.

20 So basically I did what most attorneys don't do,
21 is I ask questions I do know the answers because he
22 didn't know the answers and basically it was her
23 testimony when he saw her testifying there that he
24 knew whatever came out of her mouth had to have
25 happened. Even though he may never have remembered

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1 it, he said he believed what she said and that was
2 that moment where we (inaudible) trial, so it was her
3 testimony and seeing her and knowing how truthful she
4 is that he said it must have happened the way she
5 said, but I don't remember all the details of it.

6 Again, he's 30 years of age. He has one child,
7 not of his wife and he served in the military and he
8 gave me some of the experience that he had that he
9 didn't share with anybody. He was a platoon leader in
10 which they had these roadside bombs. He said he'd
11 physically have to remove some of his soldiers out of
12 burnt and charred Humvees. He described that and he
13 said he never told anybody about his experience.

14 And what I notice about most people who served
15 there is they don't talk to everybody about all the
16 experiences that they have. I do feel that from day
17 one he called 911. He was willing to stand up to what
18 -- he's always been willing to stand you to what he
19 did.

20 I have later on a forensic psychiatrist who's
21 going to testify based upon information provided to
22 him through all the Rule 5, and basically talking to
23 Vernon and what he feels is going on here. His family
24 is here, his mother, his stepfather, his sister, his
25 twin brother, his nephews. All of them are here to

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1 support him.

2 But, Your Honor, I do feel and he understands he
3 must be punished. An individual -- a crime has been
4 committed. There's a victim there but he does
5 understand that, but I do ask the Court to consider a
6 punishment with some form of a split sentence where
7 he'll serve active time but an opportunity that he can
8 come out. He is a veteran. He can go to V.A. They
9 have the facilities there that he can be treated for
10 whatever ailment he may have and the doctor will talk
11 a little bit more about that.

12 But I do feel and he understands that he's going
13 to go away. He's not sitting here under any kind of
14 assumption that he's going to get a probationary
15 sentence and he understands that, but I ask the Court
16 to fashion some kind of split sentence in which he can
17 come out, get the treatment and maybe move on. I do
18 feel -- that it was that testimony from Ms. Washington
19 saying to him if she said, because I know her and
20 normally they handled their situations in a non-
21 violent way, but if she said it happened that way, I'm
22 willing to accept that.

23 And it was at that point that he said I'm going
24 to plead to whatever she said happened. But I ask the
25 Court, the first one I have would be the mother to

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1 come forward or right here to speak to Your Honor if
2 you would like.

3 THE COURT: Yeah. Would you just give me a
4 chance, if you don't mind, to read this incident
5 report?

6 MR. BEAUFORD: Yes.

7 THE COURT: And I'll be glad to hear from anybody
8 you would like me to hear from.

9 (Whereupon, there is a pause in the proceeding.)

10 MR. BEAUFORD: That notebook contains incidents -
11 - it was '06 and beyond. It was prior to him meeting
12 Ms. Washington. That was part of the treatment for
13 his anger management, was to write things down. But
14 that was prior to him meeting Ms. Washington, those
15 entries that are in that notebook. So I want to make
16 sure the Court knows that those entries have nothing
17 to do with Ms. Washington.

18 THE COURT: It was back in '06.

19 MR. BEAUFORD: Correct. I call Mr. Gray. He's
20 the ---

21 THE COURT: Who?

22 MR. BEAUFORD: Mr. Gray.

23 THE COURT: Mr. Gray.

24 MR. BEAUFORD: The stepfather.. Do you want him
25 to stop right here or to the mic?

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1 MR. GRAY: My name is Arthur Gray.

2 THE COURT: Yes, Mr. Gray?

3 MR. GRAY: I want to thank the Court for allowing
4 me this opportunity to speak on behalf of my stepson
5 and all the family, his mom, his grandad, his twin
6 brother, first cousin, nephew, all the family.

7 And I'm very saddened this day. On July the
8 18th, 2010, I can remember it very well. Matter of
9 fact, that is my birthday and I received a call that I
10 needed to go and pick up my granddaughter and I went
11 to Trident Hospital and Ms. Washington, I wanted to
12 see you that night. You have my --- you have my
13 deepest sympathy.

14 I wanted to say that night I was sorry and I
15 really wanted to say that two years ago and I'm saying
16 this now. Our family is reeling. We feel your pain.
17 Your mom, I saw her and I spoke to her and we don't
18 condone this action. Okay?

19 Vernon has never -- he didn't come up in an
20 abusive household. I don't think Vernon had ever
21 heard me raise my voice to his mom and vice versa. We
22 didn't live that way. Okay? Vernon is a very smart
23 young man. Vernon has huge potential. I think
24 instead of him being sitting there, I think he even
25 has the ability to be sitting where you're at. He is

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1 a very smart individual.

2 And as we know what has taken place and he knows.
3 I'm positive that he is the sorriest person in this
4 room right now for what has happened. Okay? I saw
5 them together a couple of times and I felt good about
6 it because I saw them with the two children and I -- I
7 felt good because I said, okay, he looks like he's on
8 his way now. It looks like something positive is
9 going to happen here.

10 And when this incident took place that was a
11 major setback, but I still have belief in him.
12 Whatever may take place here today, I honestly believe
13 that he is going to come out positive. I think he is
14 going to be a good productive citizen because it's all
15 there.

16 Now, I can't speak on his military experience or
17 whatever, but I think with the proper treatment I
18 think that he will come out and he will be a good man,
19 a productive citizen. I really -- I honestly feel
20 that way. If there's any mercy from the Court, I'm
21 asking for it. Really, I am.

22 And once again, Ms. Washington, like I say, you
23 remember we met a couple of times. I love you. I'm
24 not angry. We are not angry with you and your family.
25 If there's anything that I can do or what have you,

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1 please feel free. I hope that you continue to get
2 well and for your treatment and your therapy and --
3 and I just wish the best. I'm just sorry this ever
4 happened but it's going to be okay. I really honestly
5 believe this. Okay? That's all I have to say.

6 THE COURT: Thank you, Mr. Gray.

7 MR. GRAY: Thank you.

8 MR. BEAUFORD: Can I have the Defendant himself
9 speak?

10 THE COURT: I'm sorry?

11 MR. BEAUFORD: Can I have the Defendant himself
12 speak?

13 THE COURT: That's fine.

14 THE DEFENDANT: I'd like to apologize to my
15 parents. You know, I never expected to put anybody,
16 especially my parents, in this situation right here.
17 I mean, they've actually supported me since day one.

18 I really would like to apologize to my victim's
19 family. From the beginning they opened their arms to
20 me and they welcomed me into their home. You know,
21 they didn't see me as an outcast. They saw me as one
22 of them and I need to apologize to my victim.

23 There's never been a day that I woke up ever
24 thinking that, you know, this would happen. I never
25 would have thought that me and her would end like

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1 this. You know, I mean, especially with our girls. I
2 was, like, their mannequin. You know, the girls, they
3 had their makeup kit and -- let's paint him up. I got
4 my nails done. They had to fight to get the lipstick
5 on me. We were family, you know. It was presented to
6 me today if you have a case I was involved in in Texas
7 between me and my ex-wife.

8 That case is what it is, Your Honor. I'm not
9 here to dispute that. I'm not trying to make excuses
10 but that case also made me a better person. Because
11 of that case right there I actually enrolled in anger
12 management, conflict resolution and Alcoholics
13 Anonymous classes.

14 That notebook right there that you were given is
15 part of the treatment that was given to me during the
16 classes I was taking. My mother acknowledged that she
17 would get on me about, you know, whatever is on my
18 mind, I never speak out and talk to anybody about it,
19 and because of that my instructors of these classes I
20 enrolled in after this case in Texas with my ex-wife,
21 they advised me to have some kind of release for my
22 tension and my angers and what have you, and that
23 right there was one of my methods.

24 They testified yesterday when situations would
25 arise most -- more than likely a situation came about

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1 where it was -- they had to -- we would have some kind
2 of arguments or what-not. If we knew about the
3 situation instead of them just spreading out like
4 that, you know, then yes, I would take my notebook and
5 I would -- if I had a question I would write the
6 question down and pass the notebook to her and she
7 would write her response and we would converse like
8 that.

9 It was all just spontaneous, Your Honor. I never
10 expected to wake up and say, you know, I'm going to
11 leave my first lady there and that's an honest heart.
12 You know, the United States, the first lady of
13 America, since day one she was my first lady. I never
14 expected this to happen. I sincerely apologize to the
15 family. I just don't know.

16 I want to apologize to the Court for taking up so
17 much of your time. There's so much that I've just
18 been at a loss. The affidavits were so big I just
19 didn't know what and I regret that it took me having
20 to put Tamesha back through what I initially put her
21 through just for me to know what I did. I swear that
22 day was not intentional. Thank you, Your Honor.

23 THE COURT: When you got a dishonorable
24 discharge, why was that?

25 THE DEFENDANT: That was -- actually I got a

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1 general discharge, Your Honor.

2 THE COURT: A general discharge or a dishonorable
3 discharge?

4 THE DEFENDANT: General.

5 THE COURT: General discharge?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Why were you discharged?

8 THE DEFENDANT: I decided to leave. My daughter
9 was going to soon be -- in 2003. She was born on my
10 birthday. I deployed March of 2004. I pretty much
11 missed the whole first year of my daughter's life.
12 When I got back to the -- as far as the date of my
13 original contract, I opted to leave to be a part of my
14 daughter's life.

15 THE COURT: How long were you in the Army?

16 THE DEFENDANT: I enlisted the year 2001.

17 THE COURT: 2001?

18 THE DEFENDANT: Right.

19 THE COURT: And you got out what? In '05?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What was your MO?

22 THE DEFENDANT: I was infantry.

23 THE COURT: Infantry?

24 THE DEFENDANT: Yes, sir. I was in mechanized
25 infantry.

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1 THE COURT: Mechanized infantry?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What rank did you achieve?

4 THE DEFENDANT: Sergeant, E5.

5 THE COURT: Staff sergeant?

6 THE DEFENDANT: Just sergeant.

7 THE COURT: Just sergeant?

8 THE DEFENDANT: Yes, sir. It is a minor
9 situation. If you open up that notebook you'll see a
10 heading that I have in there. It's we died young and
11 we lived fast. I have a few names on that same page
12 and it's a whole lot of -- a few of my friends that's
13 either died of car accidents. I have a couple that
14 was murdered and that's when I started actually with
15 that notebook right there. I had a lot of built up
16 frustrations with a whole lot I was going through at
17 that time. That's how that notebook came about.

18 THE COURT: Anything else you want to say?

19 THE DEFENDANT: I really -- my experiences in the
20 military, I -- I really don't share them with much.
21 The only person in this world that I would share my
22 experiences the way that I went through them would be
23 my twin brother. It just so happened we pretty much
24 patrolled the same area. So, I mean, if anybody, he's
25 the only one that have any idea what it is that I went

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1 through myself over there.

2 I really wish that I would have sought
3 professional help before it was too late. You know, I
4 really wish ---

5 THE COURT: Did you get any professional help
6 from '06 up until July the 18th, 2010?

7 THE DEFENDANT: No, sir, I did not. I never went
8 to get professional help from that time. I did after
9 the assault in 2003.

10 THE COURT: Why did you think you needed
11 professional help?

12 THE DEFENDANT: It's just I let a lot build up on
13 my shoulders and I -- I don't speak to people. I
14 don't just call my mom or my sisters or what-not,
15 like, this is what I'm going through now. I'm just
16 going to sit over here. To me, it's actually, like,
17 you're showing weakness. That's infantry. That's --
18 I wasn't accustomed to that.

19 THE COURT: Does your ex-wife live here?

20 THE DEFENDANT: No, sir, she's in -- she might
21 still be in Texas.

22 THE COURT: She's in Texas?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you get visitation with your
25 daughter?

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1 THE DEFENDANT: My daughter's not with her. I
2 don't have any children with her.

3 THE COURT: Oh, you don't have any children with
4 her?

5 THE DEFENDANT: No, sir.

6 THE COURT: Your daughter is with someone else?

7 THE DEFENDANT: Yes, sir. Yes, sir. Again, I
8 really do apologize to my family, my victim's family,
9 my victim especially. I do want to apologize to the
10 Court for taking up so much of your time, sir.

11 THE COURT: Thank you very much. Mr. Beauford,
12 anybody else you want me to hear from?

13 MR. BEAUFORD: Yes, I call Dr. Leonard Mulbry.

14 THE COURT: What's his name?

15 MR. BEAUFORD: Mulbry.

16 THE COURT: Mulbry? Okay.

17 MR. BEAUFORD: I think I laid his curriculum on
18 the desk.

19 THE COURT: Up here? Where did you put it?

20 MR. BEAUFORD: On the desk. Not up there. It's
21 your desk in the back. We're getting a copy.

22 THE COURT: Thank you very much. Dr. Mulbry?

23 MR. BEAUFORD: Yes, sir.

24 THE COURT: Just give me a chance to look at
25 this, if you don't mind. So you switched from

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1 orthopedics to psychiatry, huh?

2 DR. MULBRY: Yes, sir.

3 (Whereupon, there is a pause in the proceeding.)

4 DR. MULBRY: I was asked to see Mr. Wilcox back
5 in January of last year and I evaluated -- I did a
6 full evaluation. I talked to him for a couple of
7 hours, looked over Rule 5 and talked to a couple of
8 his family members. I came away with a strong sense
9 of a very responsible guy with some difficulty coping
10 with emotion who went off to Iraq and came back not
11 ruined, but a bit damaged.

12 You start with a good guy like him -- a lot of
13 guys like him take a sense of responsibility and have
14 a feeling that they still have to man up in most all
15 situations and have a hard time discussing things --
16 discussing things that bother them.

17 There's a pretty strong history of that going
18 back even before Iraq. The -- the flip side of that,
19 of course, is then discussing emotions becomes pretty
20 tough and emotions tend to build up. And so he comes
21 back from Iraq and there's pretty clear evidence of
22 PTSD, not the falling down, can't cope with the world
23 type of PTSD, but the kind that leaves you, sort of,
24 anxious and a little depressed and a little unsure of
25 yourself and perhaps a little detached from your

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1 surroundings and what goes on, difficulty with
2 emotions.

3 And that's the kind that I found in him and he's
4 got the classic stuff, the nightmares, the memories
5 back from the daytime. What's more striking I thought
6 was the overall generalized anxiety and sometimes
7 detachment from what was going on in his world. And I
8 think provisionally, based on my limited information
9 from that interview, that I do think he likely has
10 PTSD.

11 And I think that it contributes to what happened
12 in that the background of that anxiety and depression
13 made him more distressed, less able to discuss things
14 with loved ones, more likely to let emotions build up.
15 You don't feel like you can discuss a lot. I think --
16 I think in my mind there's pretty clear evidence of
17 that.

18 Moreover, I was really struck by the fact that
19 the violence with the anger is what we call
20 (inaudible). It's unpleasant to him, not natural for
21 him, doesn't feel right, feels that it shouldn't be
22 there, feels remorse and bad and that it's not him.
23 The reason that's important to someone like me is it
24 means it's treatable. He wants to get well. He wants
25 to do something about it.

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1 It's different from -- it separates him from a
2 psychopath, people who really just don't give a --
3 they just don't care. That can't be treated.

4 THE COURT: Don't you still use psychopath
5 terminology?

6 DR. MULBRY: Yes. Yes, sir, we do. In DSS, not
7 in DSM.

8 THE COURT: Don't have DSM anymore, took it out,
9 didn't you?

10 DR. MULBRY: Still -- they call it ---

11 THE COURT: Isn't antisocial behavior tendencies?

12 DR. MULBRY: Yes, sir, but it describes -- it's
13 such a -- a -- it's -- psychopathy is different in
14 that it's that, sort of, uncaring -- that's that
15 cornerstone, just no empathy for anybody around you
16 and uncaring about what your actions do to the people
17 who are around you.

18 THE COURT: Let me just ask you a couple of
19 questions, if I may.

20 DR. MULBRY: Uh-huh.

21 THE COURT: Were you aware of this criminal
22 domestic violence issue that occurred back in '03
23 toward his ex-wife ---

24 DR. MULBRY: I knew that ---

25 THE COURT: --- when you made your diagnosis?

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1 DR. MULBRY: Yes, sir, and, in fact, there's --
2 there's a resisting arrest ---

3 THE COURT: Right.

4 DR. MULBRY: --- and there's also -- I guess
5 there's some fracas with family members ---

6 THE COURT: Right.

7 DR. MULBRY: --- that go back there. Yes, sir.
8 This is not -- this isn't some sole product of his
9 Iraq experience.

10 THE COURT: Accumulation of life experiences, I
11 would assume?

12 DR. MULBRY: It -- it takes -- poor coping skills
13 ---

14 THE COURT: Well, why -- why wouldn't -- I guess
15 my concern, from having listened to what I've heard so
16 far, apparently he went through some counseling after
17 this '03 incident. I don't know if it was by the
18 military or who, but he apparently went through some
19 intensive anger management training, to the point that
20 he did basically fill up about half of this notebook
21 with issues, which was part of his training.

22 How does that play into your diagnosis and, I
23 guess, how you think he should be handled or treated?

24 DR. MULBRY: It's separate from -- it's separate
25 from my diagnosis. We know that people with poor

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1 coping skills are the ones most likely to get PTSD.
2 People with some sort of personality difficulties are
3 more prone to get PTSD, but it's separate and it has
4 to be treated separately.

5 PTSD can be treated fairly successfully with
6 medications frankly. That underlying issue, anger
7 management, is more difficult and it's going to
8 require intensive psychotherapy. Fortunately, he is
9 engaged. He wants to be treated. He accepts
10 treatment. He wants to get better, senses that it's
11 something that he needs to deal with and fortunately
12 he has access to one of the better -- what's becoming
13 one of the better psychiatric treatment systems in the
14 United States. That's the V.A. Hospital System.

15 He is a good candidate for treatment by virtue of
16 his desire to receive and the fact that he's eligible
17 for excellent services, including that -- that type of
18 counseling that can help him deal with anger
19 management.

20 THE COURT: What does the V.A. have available for
21 him?

22 DR. MULBRY: They would -- they have the mental
23 hygiene clinic, is I believe what they call it. I
24 worked in it. They'll assign him a physician who will
25 see him on an irregular basis; a caseworker that will

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1 see him on a very regular basis. If he needs
2 psychological counseling, they have psychologists who
3 will provide marital counseling, anger management
4 counseling. Those are available to him.

5 He could get medication management to assist, if
6 necessary, with the PTSD treatment from the physician.

7 THE COURT: Well, my concern is, sort of,
8 twofold. Another concern we haven't talked about is
9 protecting society from him -- okay -- and especially
10 the victim, and I was noticing on your original
11 psychiatric presentation you presented some violent
12 risk assessment, forensic data discovery at MUSC.

13 My concern is recidivism. I mean, assuming he
14 doesn't get treatment is he going -- what's the -- you
15 probably can't answer this question to any definite
16 determination, but I want to hear your thoughts on it.
17 My concern is him going out and hurting someone else,
18 because you heard the doctor talk about within an inch
19 of where the boot hit, she could be dead. There was a
20 real possibility she could be dead if he had hit her a
21 little further down so, I mean, my concern is
22 protecting other people from him.

23 DR. MULBRY: Untreated you would have to say that
24 he -- along with a risk assessment you would have to
25 say that he is at relative to moderate -- at least to

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1 moderate risk. You'd have to do a full assessment to
2 know for certain, but you have to say there is a risk.
3 It'll probably -- it almost exclusively looks like
4 it's in the context of relationships so that he's not
5 -- the probability of him walking into a gas station
6 and getting in a fight, based on everything I know so
7 far, it would be incredibly unlikely.

8 THE COURT: It would have to evolve from his
9 insecurity in relationships with the female sex ---

10 DR. MULBRY: With -- with ---

11 THE COURT: --- or males?

12 DR. MULBRY: Relationships. Unlikely males.
13 More likely ---

14 THE COURT: Because this is the second domestic
15 violence issue and that's, sort of, separate, from
16 what you're telling me.

17 DR. MULBRY: I think so. And dropping --
18 dropping kind of a level of personality there, there
19 are people who have real fears of abandonment, real
20 fears of what their life would be like when a loved
21 one leaves them and they can react extremely
22 emotionally to those types of situations. I sense
23 that when I listen and knowing Mr. Wilcox, so that
24 dangerousness to society in general, I think, is not
25 terribly high. Dangerousness to loved ones who would

1 be leaving him or having strife with him, you'd have
2 to say it's -- it's a little higher untreated, without
3 treatment. The treatment is necessary.

4 THE COURT: What type of treatment do you think
5 is appropriate? The only time I can force treatment
6 on him is a five-year probationary period. I'm
7 limited to five years.

8 DR. MULBRY: Five years in intensive treatment is
9 five good years of intensive treatment. That's a huge
10 -- that's a big help. I would anticipate that in five
11 years of intensive anger management, use of
12 medications, intensive counseling, I would anticipate
13 you could make significant progress.

14 THE COURT: I interrupted you with a question. I
15 didn't mean to cut off your presentation, but I just
16 had certain questions, but I wanted to hear what you
17 want to tell me. Do you want to add anything else? I
18 interrupted you but I wanted to know -- I wanted to
19 hear your responses to the questions I had.

20 DR. MULBRY: That's most of what I had to say,
21 except that in knowing Mr. Wilcox and everything I've
22 heard here today reinforces it, you get a sense of one
23 who sort of strives to step up, man up, take care of
24 his kids, have a good relationship, but a difficult,
25 difficult time facing emotions and that's why I think

1 therapy does have an opportunity to help. He does
2 care about other people and he needs other people and
3 he wants other people and to have other people, he's
4 going to have to have that treatment or he's going to
5 be out there in the wilderness by himself and I think
6 he knows that on some level.

7 THE COURT: That's probably true in 75 percent of
8 the people I see.

9 DR. MULBRY: And, I guess, the thing that strikes
10 me about Mr. Wilcox again is his desire to -- not just
11 to get -- to get off this, to get -- to get out of
12 jail, to get by with his charges, to get off. He
13 really genuinely seems to -- they say to write in
14 books and he does. He follows through with the
15 therapy that they give him, but there seems to be a
16 genuine desire to get better which frankly, as a
17 forensic psychiatrist, I don't really see all that
18 often. That's the thing that struck me about him.

19 THE COURT: I mean, that's the first step whether
20 it's alcoholics or whatever.

21 DR. MULBRY: I don't sense that he just wants to
22 go through the motions. He wants to really get
23 better.

24 THE COURT: Solicitor, is there anything else
25 that you would like to bring out from the doctor while

1 we have him here?

2 MS. WILLIAMS: Just one question: How many times
3 did you meet with Mr. Wilcox?

4 DR. MULBRY: Once.

5 THE COURT: Anything else?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: Mr. Beauford?

8 MR. BEAUFORD: Nothing further.

9 THE COURT: Doctor, thank you so very much for
10 taking your time to be here. I enjoyed talking with
11 you and good luck in your endeavors. How did you go
12 from a hand expert to psychiatry?

13 DR. MULBRY: Family. Changes in family and I was
14 looking at, you know, retirement from hand surgery
15 because of the hours, the nighttime hours. I just
16 really wasn't quite ready for retirement, I didn't
17 think.

18 THE COURT: Well, thank you so very much.

19 MR. BEAUFORD: Your Honor, that's all we want to
20 present. I just ask the Court to consider what's been
21 said here today.

22 THE COURT: I'm sorry. What?

23 MR. BEAUFORD: That's all the witnesses that we
24 want to present. We ask the Court to consider all the
25 witnesses and what they had to say and consider a

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1 possible split sentence.

2 THE COURT: Okay. Solicitor, anything you would
3 like to offer on sentencing since you started and I'll
4 give you an opportunity to possibly rebut anything
5 that Mr. Beauford has brought out to the Court?

6 MS. WILLIAMS: No, Your Honor. I just wanted to
7 bring to your attention that while the defense was
8 presenting their information, the sister of the victim
9 who had been up at the podium passed me some
10 information that she wanted me to pass on to the
11 Court.

12 I think it was just a letter. She got a little
13 nervous up at the podium and she wrote some more
14 information that she wanted the Court to consider.

15 THE COURT: Who is that? Ms. Washington?

16 MS. WILLIAMS: It was Ms. Cartwright.

17 THE COURT: Ms. Cartwright?

18 MS. WILLIAMS: Yeah, that you had up here. It's
19 a yellow piece of paper.

20 THE COURT: Oh, this yellow piece of paper?

21 MS. WILLIAMS: Yes, sir.

22 THE COURT: Okay. Okay. I'm sorry.

23 MS. WILLIAMS: And I apologize. I don't think I
24 showed it to Mr. Beauford.

25 THE COURT: Well, it's not for Mr. Beauford's

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1 edification. Okay? Thank you very much. Anything
2 else, Solicitor?

3 MS. WILLIAMS: No, thank you, Your Honor.

4 MR. BEAUFORD: Your Honor, just for the sake of
5 the record and just -- I felt that -- I don't know
6 what the Court is considering in the -- I don't know
7 what that letter says.

8 THE COURT: What letter?

9 MR. BEAUFORD: The note that was handed to the
10 Court.

11 THE COURT: Do you want to really read it? I
12 mean, it's nothing that hasn't been brought out.

13 MR. BEAUFORD: I mean, I'd just like to see it.
14 I don't know what it says.

15 THE COURT: I'll be happy to let you look at it.
16 If you feel like it's that important, I'll let you
17 look at it. I mean, it's basically everything
18 everybody's been saying, that Ms. Washington has some
19 emotional issues which, I think that's perfectly
20 normal. The CDV has a max of 10; is that correct,
21 Solicitor?

22 MS. WILLIAMS: Yes, Your Honor.

23 THE COURT: And the child is a max of 10 also;
24 right?

25 MS. WILLIAMS: Yes, Your Honor.

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1 (Whereupon, there is a pause in the proceeding.)

2 MR. BEAUFORD: July 18th.

3 THE COURT: Three years?

4 MR. BEAUFORD: Two years.

5 THE COURT: Two years?

6 MR. BEAUFORD: It will be two years July 18th.

7 THE COURT: The sister wrote and I did not give
8 you the opportunity to respond to it. Since you
9 wanted to read it, I'll be glad to give you an
10 opportunity to respond to it.

11 MR. BEAUFORD: No response, Your Honor.

12 THE COURT: All right. It's basically everything
13 that everybody's been saying, that her sister has got
14 emotional problems because of the beating.

15 MR. BEAUFORD: Yes, sir, I understood that but
16 again, I just didn't know what it said.

17 THE COURT: Okay. Mr. Wilcox, Indictment Number
18 1728, that's the attempted murder, sentence you to the
19 State Department of Corrections for a period of 10
20 years; give you credit for two years starting on July
21 the 18th, 2012. That's concurrent which means it runs
22 together. Indictment Number 1768, sentence you to the
23 State Department of Corrections for a period of eight
24 years. That's concurrent. Indictment Number 1942,
25 State Department of Corrections for a period of eight

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1 years. That's concurrent. And Indictment Number
2 1727, that's the kidnaping, you are sentenced to the
3 State Department of Corrections for a period of 20
4 years. That's the standard probation for five years.
5 Condition of probation: attend and follow the
6 treatment ordered as required by V.A. Mental Hygiene
7 Clinic when you get out. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Thank you very much. Probation will
10 be tolled while he's incarcerated. You have five
11 years after you get out. Do you understand?
12 Probation.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Good luck to you.

15 MS. WILLIAMS: Your Honor, one thing I forgot to
16 -- I think we need to put on the record that the
17 kidnaping, because it's not a sexual offense, it has
18 to be on the record that he not be put on the sexual
19 offender registry.

20 THE COURT: All right. Give me that indictment
21 and I'll write it on there. The kidnaping -- the
22 crime does not require sexual registry. Is there a
23 place to check that on here?

24 MS. WILLIAMS: I believe there -- there used to
25 be. I believe there is.

Reba C. Hayes, Official Court Reporter

1 THE COURT: Central registry is on here but I
2 don't think the sexual abuse is. They added the
3 central registry but it didn't add the sexual abuse.

4 MS. WILLIAMS: Okay. I think you can just write
5 it under other, Your Honor. Otherwise they -- they
6 come back all the time and then we have to do motions
7 in order to remove them from the central registry. I
8 apologize. I should have brought that up to begin
9 with.

10 THE COURT: All right. I've written on the
11 sentence sheet on the kidnaping. How about the CDV?
12 Do I need to put it on there also?

13 MS. WILLIAMS: I think it's just the kidnaping.

14 THE COURT: All right. Then sexual abuse
15 registration is not required.

16 MS. WILLIAMS: Thank you.

17 MR. BEAUFORD: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 (Whereupon, the hearing was concluded.)
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

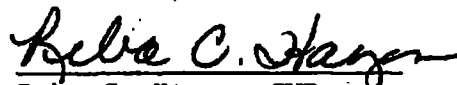
CERTIFICATE

Be it known that I, the undersigned Reba C. Hayes, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, transcribed the foregoing hearing in the above-referenced matter;

The foregoing transcript of 57 typewritten pages represents a true, accurate and complete transcription of the testimony so given and the evidence introduced at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 5th day of December, 2014.


Reba C. Hayes, CVR
Official Court Reporter

Reba C. Hayes, Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Berkeley)Vernon Michael Wilcox)SCDC #351460)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013 CP-08-553

2013 MAR -4 PM 2:46

FILED

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Broad River Corrections Institution
4160 Broad River Road Columbia SC 29210
2. Name and location of Court which imposed sentence Honorable J.C. Nicholson, Jr.
Berkeley County Court of General Sessions Moncks Corner SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-08-1727, 2010-GS-08-1728,

(b) 2010-GS-08-1942, 2010-GS-08-1768

(c) _____

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

(a) 27 June 2012; 10 years, 8 years, 8 years concurrent;(b) 20 years suspended to 5 years probation consecutive.

(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?

yes

8. If you answered Ayes@ to (7), list:

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Appeal denied

ii. _____

iii. _____

(c) the date of each such result:

i. I called Sharon Graham of the SC Commissionii. of Indigent Defense on 11 February 2013 and wasiii. told the appeal was denied "last year."

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

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

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

(a) Please see attached documents

(b) _____

(c) _____

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

(a) Please see attached documents

(b) _____

(c) _____

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 Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

2013 CP-08-55

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

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. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

2013 CP-08-553

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Direct appeal was denied
- (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? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Percy Beauford, Esq. Attorney at Law
204 N. Live Oak Dr. Moncks Corner SC 29461
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial, plea, and sentencing
- ii. _____
- iii. _____

2013 CP-08553

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

Petitioner asks the Court to vacate the sentence
and to remand the case for a new trial.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Berkeley)

I, Vernon Wilcox, 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.

Vernon Wilcox

SWORN to and subscribed before me this 28th
 day of February, 2013.

Susan H. Frye (L.S.)
 Notary Public

My Commission Expires: _____

FILED
 2013 MAR -4 PM 2:46
 CLERK OF COURT
 BERKELEY COUNTY, SC

2013 CP-03-553

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

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

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

Vernon Wilcox
Applicant

SWORN or affirmed to and subscribed before me this
28th day of February, 2013.

Susan H. Dye
Notary Public

My Commission Expires: _____

CLERK OF COURT
DEPT. OF COMMUNITY S.

2013 MAR -4 PM 2:46

FILED

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

2013 CP-0855

- a) The State violated the double jeopardy prohibition.
- b) The State violated Brady v Maryland by failing to disclose witness names, addresses, and statements.
- c) The State violated Brady v Maryland by failing to disclose exculpatory material in its possession in a timely manner.
- d) The State violated Brady v Maryland by failing to disclose essential information pertaining to an expert witness.
- e) Defense counsel, Mr. Percy Beauford, was ineffective by telling me that the Double Jeopardy Clause would not bar prosecution for, both, criminal domestic violence of a high and aggravated nature and attempted murder.
- f) Counsel was ineffective by knowingly engaging in dishonest conduct.
- g) Counsel was ineffective by failing to clarify to me the evidence in the State's possession.
- h) Counsel was ineffective by failing to investigate the facts and circumstances of the case.
- i) Counsel was ineffective by failing to receive witness names, addresses, and statements from the prosecutor.
- j) Counsel was ineffective by failing to explore discrepancies in the victim's two statements that she gave to the detectives during cross-examination.
- k) Counsel was ineffective by refusing to object to the admittance of the crime scene photographs as evidence to the jury during trial.
- l) Counsel was ineffective by failing to object to the emergency room doctor's "hypothetical" testimony when called as a witness by the State during the sentencing hearing.
- m) Counsel was ineffective by failing to provide me with discovery

material until after my plea of guilty.

- n) Counsel was ineffective by failing to raise any arguable issues when filing an Anders Brief.
- o) Counsel was ineffective by failing to inform me that my direct appeal was denied by the S.C. Court of Appeals.

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

- a) The State violated the double jeopardy prohibition by trying me for, both, criminal domestic violence of a high and aggravated nature and attempted murder. The conduct supporting the CDV/HAN conviction was the same conduct supporting the attempted murder conviction. The multiplicitous indictment prejudiced the jury, and the judge, against me by creating the impression of more criminal activity than in fact occurred.

Jivers v State, 304 S.C. 556, 406 S.E.2d 154 It would be a violation of the double jeopardy prohibition to try a defendant for both CDV and ABWIK.

Menna v N.Y., 423 U.S. at 62-63 (1975) Guilty plea could not waive double jeopardy claim because government may not prosecute defendant regardless of factual guilt.

U.S. v Blocker, 802 F.2d 1102, 1103-04 (9th Cir. 1986) Guilty plea did not waive claim that punishment imposed under two separate statutes violated double jeopardy because prosecution arose from single act of defendant.

I was not made aware that Anita Artoinette, Ashley Frelish, and Judy Frelish were listed as witnesses for the State until 25 June 2012, the day of jury selection. The State failed to disclose the names and addresses of these witnesses, and failed to disclose

2013 CP-08.55

summaries of the statements provided by these witnesses. Neither witness was mentioned in any of the discovery material that was given to me. Because of this, I would not have been prepared to defend myself against their allegations if I had proceeded with trial. Without these statements, I could not make an educated decision whether or not to plead guilty.

S.C. Rules of Criminal Procedure 5(e)(2) Disclosure by the prosecution within ten days after defendant serves his notice, but in no event less than ten days before trial, or as the court may otherwise direct, the prosecution shall serve upon the defendant or his attorney the names and addresses of witnesses upon whom the State intends to rely to establish the defendant's presence at the scene of the alleged crime.

U.S. v. Avellino, 136 F.3d 249, 255-58 (2nd Cir. 1998) Knowing and voluntary plea of guilty subject to challenge if Brady violation occurs; government's obligation to disclose Brady material pertinent to determination of whether or not to plead guilty.

) The State had possession of the boots since 20 July 2010. The additional discovery from Assistant Solicitor Anne Williams was dated 18 June 2012. This material consists of SLED's examination of the boots alleged to be the weapons. The result of the examination states: "The stains on the boots were consistent with being in/or near the location of an impact blood letting event." This report does not prove that these boots were used to assault the victim. I did not receive this report until after I entered a guilty plea. If I had been aware of this report, I would have proceeded with trial, and attempted to use this report to refute the victim's allegations.

Gibson v. State (S.C. 1999) 334 S.C. 515, 514 S.E.2d 320 Applicant for PCR could challenge voluntary nature of his guilty plea by asserting that

prosecution violated *Brady v. Maryland* by failing to disclose exculpatory material in its possession; when a defendant lacks knowledge of material evidence in the prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary.

S.C. Rules of Crim. Proc. 5(a)(1)(D) Upon request of a defendant, the prosecution shall permit the defendant to inspect and copy any results or reports of physical examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution; the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial.

S.C. Rules of Crim. Proc. 5(a)(3) The prosecution shall respond to the defendant's request for disclosure no later than thirty days after the request is made.

- 1) The State failed to provide a summary of the doctor's testimony and information as to his qualifications. This doctor treated the victim in the emergency room after the altercation. During the sentencing hearing, his testimony consisted of a lot of "but if's" to illustrate the extent of the victim's injuries. He did not rely on the actual injuries that the victim received. This testimony aroused sympathy and prejudiced the judge. Without this summary, I was not allowed to prepare my defense against the doctor's statements, nor was I able to make an educated decision whether or not to plead guilty.

U.S. v. Jackson, 51 F.3d 646, 651 (7th Cir. 1995) Requirement that government disclose content and basis of expert testimony satisfied by summary of testimony and information as to expert's qualifications.

- 1) Defense counsel, Mr. Percy Beauford, told me that the State could, and

would, take me to trial for, both, CDVHAN and attempted murder. Mr. Beauford did file a motion to elect. However, he was ill prepared to defend this motion. He did not present any cases to support this motion, nor did he challenge the charges as multiplicitous. When asked to justify this motion, Mr. Beauford responded something to the effect: "I believe that the State should have to choose one or the other." I had voiced my opinion about these two charges to Mr. Beauford repeatedly. Knowing that CDVHAN was punishable by up to ten years and attempted murder by up to thirty years, I felt that after hearing the victim's testimony, I was in jeopardy of receiving the full sentence allowed for these charges if I did not stop the trial and plead guilty. If not for counsel's erroneous advice and inadequate preparation, I would have proceeded with trial.

In *Jivers v State*, the Court stated that the "defendant was denied effective assistance of counsel when his attorney erroneously informed him that the double jeopardy clause would not bar his prosecution on the charge of ABWIK." The Court further stated that "counsel should have raised double jeopardy bar to assault and battery prosecution."

) During cross-examination, Mr. Beauford asked the victim/witness, "How did his nose get bloody?" I never suggested to Mr. Beauford that I was injured during this altercation. I believe that after hearing the victim respond that she never hit me, the jury began to view me as a liar trying any and everything to get out of trouble. *Fisher v Gibson*, 282 F.3d 1283, 1310-11 (10th Cir. 2002) But for counsel's "devastating" errors that undermined defendant's credibility, reasonable probability of different trial result...

) I wrote Mr. Beauford letters stating my belief that the injuries

received by the victim were not consistent with the assault described. This was because the victim's medical records that were given to me only indicated the victim suffering a laceration to the scalp, a wound to the nose, and a bruise to an arm. The pictures that were given to me did not show any other bruises. I was not made aware of the full extent of the victim's injuries until the State presented its pictures during trial. Because Mr. Beauford failed to clarify these issues to me, I was not able to make a knowledgeable decision as to my defense, or whether or not to accept a plea offer during negotiations if one were offered that was acceptable to me. According to the 41 Georgetown Law Journal Annual Review of Criminal Procedure 541 (2012), "counsel's failure to advise a client of important issues altogether... falls below objective standards of reasonableness."

) Counsel was deficient in failing to obtain an examination of the boots that were said to be used as the weapon during the altercation. I had repeatedly asked Mr. Beauford to have these boots examined by an expert. During one of our meetings, he responded that he would have them examined. It was not until the weekend before trial that I found out that he did not have the boots examined. This examination would have allowed Mr. Beauford to cross-examine the victim/witness more effectively. Because of this, there was no adversarial testing towards the State's case. I felt that I had no assistance from counsel and felt compelled to plead guilty.

In *Kolle v State*, 386 S.C. 578, 690 S.E.2d 73 (S.C. 2010), the Court ruled that "plea counsel was deficient in failing to procure pertinent discovery material which would have allowed effective cross-examination."

2013 CP-0855

And v. Caloe, 372 S.C. at 331, 642 S.E.2d at 597 A criminal defense attorney has a duty to perform a reasonable investigation.

Draughon v. Dretke, 427 F.3d 286, 296 (5th Cir. 2005) Counsel's failure to investigate forensics... was ineffective assistance because it deprived defendant of substantial argument.

Sonnier v. Quarterman, 476 F.3d 349, 357-58 (5th Cir. 2007) Counsel's failure to investigate for mitigating evidence, making it unlikely that effective evidence would be uncovered, was unreasonable strategy.

I was not made aware of Anita Antoinette, Ashley Frelish, and Judy Frelish being witnesses until Monday, 25 June 2012, the day of jury selection. Neither witness was mentioned in any of the discovery material that was given to me. I have never received any statements or summaries of their testimonies. Because of this, I would not have been prepared to defend myself against their allegations if I had proceeded with trial. Not knowing what these witnesses would testify to, I was not able to make a knowledgeable decision as to my defense, or whether or not to accept a plea during negotiations if one were offered that was acceptable to me.

English v. Romanowski, 602 F.3d 714, 728-29 (6th Cir. 2010) Counsel's failure to investigate any witnesses before trial was unreasonable because counsel had duty to develop reasonable trial strategy.

The victim's two statements varied in describing the altercation. In one, it is said that I left the residence, returned, and then the fight occurred. In the other, it is said that I awoke, and then the fight occurred. I have always questioned the events as described by the victim. When asked about these differences, the victim/witness responded that one of the statements was written for

her by a detective, and that the detective paraphrased what she had said. If counsel had explored these discrepancies thoroughly, he could have placed doubt in the minds of the jury as to what occurred during the altercation. Because Mr. Beauford refused to explore these conflicting statements, I felt abandoned by counsel, and felt that it was in my best interest to stop the trial and plead guilty to avoid receiving the maximum sentence allowed for the charges in the indictment.

Walker v State, 397 S.C. 226, 723 S.E.2d 610 Counsel's failure to cross-examine victim... about conflicting evidence... was deficient performance.

c) The victim was present during trial and was called as a witness at which time she was able to describe what occurred during the altercation. The pictures in question show blood on the walls, door, and floor. Because of the victim's testimony, these pictures were unnecessary to substantiate facts. These photographs were used to arouse sympathy and to prejudice the jury and the judge. I had previously asked Mr. Beauford to file a motion to suppress this evidence. Because Mr. Beauford failed to do so, I felt that I was not receiving assistance from counsel, and I felt forced to plead guilty to avoid receiving the maximum sentence allowed.

State v Salley, 727 S.E.2d 740 Photograph should be excluded at trial if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate facts.

1 This doctor treated the victim in the emergency room after the altercation. His testimony consisted of a lot of "but it's" to illustrate the extent of the victim's injuries. He did not rely on the actual injuries that the victim received. This testimony

aroused sympathy and prejudiced the judge. Counsel allowed this hypothetical testimony. At no time did he object or clarify that the doctor's statements did not actually pertain to the injuries that the victim received.

State v Slocumb, 336 S.C. 619, 521 S.E.2d 507 Even if admissible under the rules governing expert testimony, the determination of whether an expert may testify to the facts underlying an opinion must include an analysis as to whether its probative value is substantially outweighed by the danger of unfair prejudice.

Marshall v Cathel, 428 F.3d 452, 465-71 (3rd Cir. 2005) Counsel's failure to prepare for sentencing was ineffective assistance.

n) On Monday, 2 July 2012, days after my guilty plea, Mr. Beauford gave me a copy of the 911 transcripts and the supplemental reports dated 18 June 2012 and 20 June 2012. The 911 transcripts record me admitting to striking the victim with my feet. These transcripts are dated 20 July 2012. The supplemental report dated 18 June 2012 includes the SHED report of the alleged weapons and of the crime scene. The supplemental report dated 20 June 2012 is of an uncooperative witness. There is no justifiable reason why Mr. Beauford withheld this material from me. Without this information, I was not able to make a knowledgeable decision as to my defense, or whether or not to accept a plea during negotiations if one were offered that was acceptable to me.

1 In August of 2012, I sent Mr. Beauford a letter asking about the status of my appeal. He responded by sending me a copy of an Anders Brief, dated 20 August 2012, in which he states: "The Applicant's attorney, Percy Beauford, files this brief pursuant to

Anders v California, 386 U.S. 738 (1967), to withdraw from this appeal because of his belief that any ground for appeal are frivolous. Mr. Beauford sent me a letter dated 29 August 2012 in which he states, "... please be informed that I no longer represent you. I never asked Mr. Beauford to represent me on direct appeal. I only asked that he file the notice of appeal.

Mr. Beauford took it upon himself to go beyond the notice of appeal. Mr. Beauford submitted an Anders Brief without the use of the transcripts from my trial and sentencing hearing because he never ordered them. Mr. Beauford deliberately sabotaged my attempt of a direct appeal.

Evitts v Lucey, 469 U.S. 387, 396-99 (1985) The Due Process Clause of the 14th Amendment guarantees the right to effective assistance of counsel on a first appeal as of right in state court.

Delgado v Lewis, 223 F.3d 976, 980-82 (9th Cir. 2000) Counsel's failure to raise any arguable issues in appellate brief was ineffective assistance.

) On Monday, 11 February 2013, I called Sharon Graham of the Division of Appellate Defense. After asking her about the status of my appeal, she informed me that it was denied "last year", and that the S.C. Court of Appeals had sent Mr. Beauford notice stating such. Ms. Graham told me that Mr. Beauford was supposed to send me a copy of the Court's ruling denying my appeal. I have not received this notice from Mr. Beauford. Without this notice, I do not know the Court's reasons for denying my appeal. Without knowing the date of the Court's decision, I do not know the deadline for my PCR and my habeas relief.

Clerk of Court:

It has been brought to my attention that the South Carolina Court of Appeals has denied my appeal. On 11 February 2013, I spoke with Ms. Sharon Graham of the Division of Appellate Defense. She informed me that my appeal was denied "last year," and that my attorney, Mr. Percy Beauford, was notified of this denial. I have attempted to contact Mr. Beauford, myself. On 11 February 2013, my mother, Sandra Grey, spoke with Mr. Beauford's secretary in an attempt to have Mr. Beauford provide me with a copy of the appellate court's decision. This secretary assured my mother that Mr. Beauford would contact her, but, he has yet to do so. I have previously filed a prose motion to compel in an attempt to retrieve my case file from Mr. Beauford. This file is necessary in my attempt to seek relief for my conviction.

Please schedule a hearing for this motion to compel.

Also, please provide me with a copy of the appellate court's decision to deny my appeal.

My indictment numbers are 2010-GS-C8-1727; 1728; 1942; and 1768. The sentence was imposed by the Honorable J.C. Nicholson, Jr. on 27 June 2012.

My appellate case number is 2012-212-444.

hum
7-1-13

OFFICE OF THE
CLERK OF COURT
SOUTH CAROLINA
JULY 1, 2013

All correspondence should be sent to:
Vernon Wilcox, SCDC # 351460
Waterce 259
Broad River Corrections Institution
4460 Broad River Road
Columbia SC 29210

Thank you,

Vernon Wilcox
20 February 2013

The South Carolina Court of Appeals

The State, Respondent,

v.

Vernon M. Wilcox, Appellant.

Appellate Case No. 2012-212444

ORDER

13 FEB -6 PM 11:50
CLERK OF COURT
DEWEELEY COUNTY, S.C.

Hum

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Percy Beauford
Robert Michael Dudek
Salley W. Elliott

FILED

Y/S 12/21/12

Hum



RECEIVED

JAN 24 2013

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 24, 2013

The Honorable Mary P. Brown
PO Box 219
Moncks Corner, SC 29461

REMITTITUR

Re: The State v. Vernon M. Wilcox
Lower Court Case No. 2010-GS-08-1727, 2010-GS-08-1728, 2010-GS-08-1942, 2010-GS-08-1768
Appellate Case No. 2012-212444

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Percy Beauford
Robert Michael Dudek
Salley W. Elliott

13 FEB -5 PM 4:50
CLERK OF COURT
BERKELEY COUNTY, S.C.

hmm

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

2013-CP-08-0553

Vernon Michael Wilcox,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 4, 2013 and amended August 26, 2013, 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 Berkeley County Clerk of Court. The Applicant was indicted at the December 2010 term of the Berkeley County Grand Jury for kidnapping (2010-GS-08-1727), attempted murder (2010-GS-08-1728), unlawful conduct towards a child (2010-GS-08-1942), and criminal domestic violence of a high and aggravated nature (CDVHAN) (2010-GS-08-1768). The Applicant was represented by Percy Beauford, Esquire.

On June 27, 2012, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable J.C. Nicholson to confinement for a period of eight years for unlawful conduct towards a child and CDVHAN, ten years for attempted murder, and twenty years with five years probation for kidnapping.

The Applicant filed a timely Notice of Appeal. The Applicant's appeal was dismissed pursuant to rule 203(d)(1)(B)(IV). The Remittitur was issued on January 24, 2013.

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

II.

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

1. Ineffective assistance of counsel.

- a. Trial counsel told him double jeopardy did not bar prosecution for CDVHAN and attempted murder.
- b. Counsel engaged in dishonest conduct.
- c. Counsel failed to clarify evidence in State's possession.
- d. Counsel failed to investigate facts and circumstances of the case.
- e. Counsel failed to receive witness names, addresses, and statements from prosecutor.
- f. Counsel failed to explore discrepancies in the victim's two statements on cross-examination.
- g. Counsel refused to object to the admittance of the crime scene photos.
- h. Counsel failed to object to emergency room doctor's hypothetical testimony.
- i. Counsel failed to provide the Applicant with a copy of discovery after guilty plea.
- j. Counsel failed to raise any arguable issues in Anders brief.
- k. Counsel failed to inform me that the direct appeal was denied by the Court of Appeals.

2. Prosecutorial misconduct.

- a. State violated double jeopardy prohibition.
- b. State violated Brady v. Maryland by failing to disclose witness names, addresses, and statements.
- c. Failure to disclose exculpatory material.
- d. Failure to disclose essential information pertaining to expert witness.
- e.

III.

In this application, the Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the issue of ineffective assistance of counsel and that the remaining allegation be summarily dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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February 20, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

VERNON MICHAEL WILCOX

Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

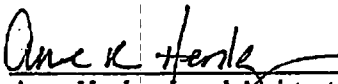
2013-CP-08-0553

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:

Lance S. Boozer, Esquire
1331 Park Street
Columbia, SC 29201
PO Box 288

DATED this 20th day of February, 2014


Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

VERNON M. WILCOX)

Applicant)

vs.)

STATE OF SOUTH CAROLINA)

Respondent)

THE COURT OF COMMON PLEAS

DOCKET NO. 2013-CP-08-0553

TRANSCRIPT OF RECORD

September 10, 2014

Charleston, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

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

LANCE S. BOOZER, ESQ.
Attorney for the Applicant

ASHLEIGH R. WILSON, ESQ.
Attorney for the State

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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APPLICANT

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1	Petitioner's amended PCR app.	23	/	23
2	Letter 8/26/13	24	/	24

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PROCEEDINGS

THE COURT: All right, Ms. Wilson, whenever you're ready.

MS. WILSON: May it please the court, Your Honor. This is Ashleigh Wilson versus [sic] the state of South Carolina -- Vernon Michael Wilcox, I meant, I didn't mean Ashleigh Wilson versus -- Ashleigh Wilson for the State of South Carolina versus the State of South Carolina. Vernon Wilcox versus the State, docket number 2013-CP-08-553.

Mr. Wilcox was indicted in December 2010 for one count of Kidnapping, Attempted Murder, Unlawful Conduct Toward a Child, and a Criminal Domestic Violence of a High and Aggravated Nature. He pled guilty on June 29, 2012. He was sentenced for Kidnapping to 20 years suspended to five years probation, for Attempted Murder for 10 years, for Unlawful Conduct Toward a Child he was sentenced to eight years, for Criminal Domestic Violence of a High and Aggravated Nature he was also sentenced to eight years.

He was represented during his guilty plea by Mr. Percy Beauford. He was sentenced to those by Judge Nicholson and he filed his application for post conviction relief on March 4, 2013 and he amended his application on August 26, 2013 and with -- with a pro se

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1 amendment. He's represented here today by Mr. Boozer and
2 I would just request that Mr. Boozer outline the
3 allegations that he intends to proceed on here today.

4 THE COURT: All right. So he got 20 suspended to
5 five probation, he got 10 on the Kidnapping? No, I'm
6 sorry ---

7 MS. WILSON: --- he got 20 on the kidnapping, and
8 these are all concurrent, Your Honor, he got 20 years
9 suspended to five years probation ---

10 THE COURT: --- right, so that's -- all right, go
11 ahead.

12 MS. WILSON: And then Attempted Murder 10 years,
13 Unlawful Conduct towards a Child, and the CDVHAN he got
14 eight years, so basically he got ten years ---

15 THE COURT: --- ten years ---

16 MS. WILSON: --- with five years probation. And,
17 Your Honor, I'd just ask considering the great benefit
18 that Mr. Wilcox received for pleading guilty, if you
19 would just advise him on the record of the remedy for
20 being granted post conviction relief.

21 THE COURT: All right. I assume Mr. Boozer's done
22 that, but ---

23 MR. BOOZER: --- and I would greatly appreciate the
24 court doing that as well.

25 THE COURT: Mr. Wilcox, do you understand what a

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1 | slippery slope is?

2 | MR. WILCOX: Yes, Your Honor.

3 | THE COURT: All right. I need to ask you, just for
4 | the record, do you understand that if your PCR is granted
5 | that you would then still be subject to the same original
6 | charges brought by the State.

7 | MR. WILCOX: Yes, Your Honor.

8 | THE COURT: And that you would have the right to a
9 | trial on all those different charges, but that the -- I
10 | hadn't read your plea transcript, but certainly the
11 | kidnapping charge could subject you to a, I believe a
12 | maximum penalty of 30 years, do you understand that?

13 | MR. WILCOX: Yes, Your Honor.

14 | THE COURT: And the Judge at the time of your trial
15 | would not have to run those sentences concurrently, he
16 | could run them consecutive, or she could run them
17 | consecutive. Do you understand that?

18 | MR. WILCOX: Yes, sir.

19 | THE COURT: And the risk that you take in pursuing
20 | a post conviction relief, if it were to be successful
21 | that you could end up -- it wouldn't be the end of the
22 | case by any means -- you could end up being subject to a
23 | lot more potential jail time than you already have, do
24 | you understand that?

25 | MR. WILCOX: Yes, sir.

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1 THE COURT: Based on that, have you consulted with
2 your attorney on whether you should proceed with this ---

3 MR. WILCOX: --- yes ---

4 THE COURT: --- post conviction relief?

5 MR. WILCOX: Yes, Your Honor.

6 THE COURT: What is your decision? Do you want ---

7 MR. WILCOX: --- I still want to continue.

8 THE COURT: You want to continue?

9 MR. WILCOX: Yes, sir.

10 THE COURT: All right. Very well. Let's proceed.
11 Mr. Boozer?

12 MR. BOOZER: Thank you, Your Honor. If it pleases
13 the court, Judge, I believe Madame Attorney General has
14 asked me to outline these allegations. There's no
15 deviation from the allegations that she -- that the State
16 responded to in its return which is A through K on page 2
17 of the return, as well as subsection 2. He did have an
18 amendment that was submitted and those are the two other
19 allegations -- those are the only ones he's proceeding on
20 ---

21 THE COURT: --- he did have a direct appeal?

22 MR. BOOZER: That's correct, Your Honor. But other
23 than that, we would be ready to present.

24 THE COURT: All right. Call your first witness.

25 MR. BOOZER: We'd be ready to present Mr. Wilcox.

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1 THE COURT: Come around here.
2 [Whereupon, Mr. Wilcox comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Speak into this mic and state your
6 full name and then spell your last name for the record.
7 THE WITNESS: Vernon Michael Wilcox, W-I-L-C-O-X.
8 THE COURT: Mr. Boozer, just before you begin.
9 Let me -- you said there's an amended application filed?
10 MR. BOOZER: Yes, sir, Your Honor.
11 THE COURT: I don't believe I have it.
12 MR. BOOZER: Your Honor, if I may have the court's
13 indulgence to look for my file?
14 THE COURT: I have his original application which
15 has numerous grounds for his post conviction relief.
16 MR. BOOZER: Your Honor, I've got in my file and
17 for some reason I don't have the file copy, but I have
18 the letter to where I sent this and copied Mr. Wilcox and
19 Madame Attorney General with PCR's submitted application.
20 It's just two amendments which basically go along with
21 his claims in his return. I'd be happy to hand it up to
22 the court.
23 THE COURT: Do you have that, Madame Attorney
24 General?
25 MS. WILSON: I do, Your Honor.

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1 THE COURT: All right. Let's proceed.

2 MR. BOOZER: Thank you, Your Honor.

3 THE COURT: It's on your stationary?

4 MR. BOOZER: Yes, sir.

5 THE COURT: All right. You can make it part of the
6 record later, that's fine.

7

8 VERNON M. WILCOX,

9 Having been first duly sworn,

10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BOOZER:

13 Q. Mr. Wilcox, do you know why you're here today?

14 A. Yes.

15 Q. All right. Why are you here?

16 A. Post conviction relief for my conviction in 2012.

17 Q. Okay. And that was for what? What were you
18 convicted of?

19 A. Criminal Domestic Violence of a High and Aggravated
20 Nature, Attempted Murder, Unlawful Conduct Towards a
21 Child, and also Kidnapping.

22 Q. Okay. And you ended up receiving twenty years
23 suspended to five on the Kidnapping?

24 A. Yes.

25 Q. Ten years for Attempted Murder?

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1 A. Yes.

2 Q. Eight years for Unlawful Conduct Toward a Child with
3 CDVHAN?

4 A. Yes.

5 Q. Okay. Those are all concurrent?

6 A. Yes.

7 Q. And as the court asked you today, you do understand
8 that if you're successful here today all that happens is
9 you basically start over and you get a new trial?

10 A. Yes.

11 Q. And you face those charges again and you face the
12 same evidence you faced before?

13 A. Yes.

14 Q. Okay. And knowing that, there is some exposure
15 there that's much greater than what you have left to
16 serve?

17 A. Yes.

18 Q. And what's your max out date?

19 A. January of 2019.

20 Q. Okay. And knowing all that, you still want to go
21 forward?

22 A. Yes.

23 Q. Okay. Now, you filed an application for post
24 conviction relief and you've alleged quite a number of
25 allegations. We can't raise anything new today ---

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1 A. --- okay ---

2 Q. --- okay, they're only things that you've raised.

3 Now, if you would, tell the court what your allegations
4 are.

5 A. I was convicted of C-D-V High and Aggravated Nature
6 and also Attempted Murder. My issue with that is I see
7 that's a violation of the double jeopardy claim whereas
8 the conduct supporting the conviction for the C-D-V High
9 and Aggravated Nature is the same conduct supporting the
10 conviction for the Attempted Murder.

11 Also, there were a number of witnesses that were
12 brought to my attention -- initially I started off with a
13 trial. We did jury selection and then the first day of
14 the trial was supposed to start it was brought to my
15 attention that there were a number of witnesses to be
16 called that I never was made aware of until the day of --
17 the first day of trial.

18 I feel that without having notification of these
19 witnesses or any information as to what they could
20 testify to, I had no way of preparing myself to defend
21 against their allegations.

22 You also have the situation where the State had
23 possession of boots that were said to be used as the
24 weapon. They got possession of these boots July 20 of
25 2010. I didn't receive the discovery information

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1 pertaining to these boots until the 18th of June 2012.

2 And the SLED's examination report stated that the stains
3 on the boots were consistent with being in or near the
4 location of an impact, blood-letting event.

5 With this report from SLED, it's my understanding
6 that these boots weren't even used to be -- used as the
7 weapon in this offense during this altercation. I didn't
8 receive this report until after I got my sentence.

9 The doctor who testified, he was the emergency room
10 physician at the hospital where my victim was treated,
11 when he testified at the sentencing hearing his entire
12 testimony consisted of a lot of but if's. His testimony
13 didn't stand firm on the injuries the victim actually
14 received, it was more so a hypothetical testimony.

15 But, if the victim was hit over here [indicates] it
16 could have been much more serious than what it was. He
17 didn't rely directly on the events that -- the injuries
18 that the victim received.

19 Now, as far as defense counsel, I was told by him
20 that the State could and would prosecute me for both High
21 and Aggravated Nature and Attempted Murder which is the
22 C-D-V High and Aggravated Nature and Attempted Murder.

23 And again I see this as a violation of the double
24 jeopardy claim. Again, these -- the same conduct that
25 supported the C-D-V conviction was the same conduct that

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1 supported the Attempted Murder conviction. During cross-
2 examination, like I said, I started off with a trial.
3 During cross-examination, Mr. Beauford was my trial
4 attorney at the time, he questioned the victim, you know,
5 well how did his nose get bloody? He insinuated that I
6 told him that the victim assaulted me.

7 You know, seeing the response from the jury when my
8 -- when the witness, which was the victim, responded no
9 it's more so the jury looked at me like a no he's just a
10 liar trying any and everything to get out of trouble. I
11 never told Mr. Beauford I suffered any injuries during
12 this altercation, but yet he initiated I guess you could
13 see a false testimony for whatever reasons.

14 I wrote Mr. Beauford a number of letters stating my
15 belief that the injuries that the victim received weren't
16 consistent with the assault described. The medical
17 records that I was given in my evidence and in my
18 discovery material only indicated the victim suffering a
19 laceration to the scalp, a wound to the nose, a bruise to
20 the arm.

21 The pictures that were given to me, that's pretty
22 much that I could see on the picture they was such a low-
23 grade of pictures. It wasn't until the State presented
24 their pictures at this trial that I could see the full
25 extent of the injuries that the victim received. Now,

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1 again, I stated my beliefs in numerous letters to Mr.
2 Beauford and yet he never clarified to me what the
3 situation really was. Again, it wasn't until I got to
4 trial that I could see the actual extent.

5 If I was aware of the extent, I could have made a
6 better decision whether or not to accept the plea that
7 was offered to me if it was something that was agreeable
8 to me.

9 I asked Mr. Beauford to have the boots that were
10 said to be used as a weapon, I asked him to have them
11 examined by just any office -- it's my belief still that
12 these boots were not used as the weapon in this assault.
13 During one of our meetings he did tell me that he would
14 have these boots examined, but it wasn't until, like, the
15 weekend before trial that he told me he never had them
16 examined.

17 I do believe that if he did have these boots
18 examined, he would be able to cross-examine the victim
19 more effectively. It would have showed pretty much the
20 same thing that the SLED report showed that these boots
21 were just near an impact, blood-letting event.

22 There were a number of witnesses, again, that were
23 brought to my attention the day -- the first day of
24 trial, Ms. Anita Antoinette [phonetic] and Ashley and
25 Judy Freelish [phonetic]. Again, I never received any

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1 information as to what these witnesses could testify to
2 because of this I had no way of defending myself against
3 their allegations. I mean, they would have been right
4 there on the stand -- now, I don't even know who these
5 two Freelish's [phonetic] are, Ashley or Judy; I don't
6 know who they are. I had no way of knowing what they
7 would testify to and I had no way of preparing myself to
8 defend against it.

9 The victim, she gave two different statements. In
10 one of the statements, she spoke about no, I left the
11 residence, I returned, then the fight happened. There
12 was another statement whereas that I woke up immediately
13 and started fighting. You know, I feel that she
14 contradicted herself in the way the events happened.

15 Again, I really don't recall what actually happened
16 that night, you know what I'm saying, the only thing I
17 have to rely on is the statements given by the witness
18 and the information included in my discovery.

19 I feel that Mr. Beauford would have explored these
20 discrepancies in more detail instead of just brushing
21 them off, her response when he asked her about the
22 discrepancies was that it was a one of the statements was
23 written for her by one of the detectives and he just
24 paraphrased what she said. And, I mean, I feel that if
25 he would have explored these discrepancies more in detail

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1 it would have showed that the way that the assault was
2 described was not the actual way it happened. Again,
3 just I'm being told that the boots are used as a weapon,
4 but the SLED office report said the boots were just near
5 the location of the event, you know what I'm saying.

6 I mean if he would have explored it more in detail I
7 think we would have had a better idea of what actually
8 occurred. Again, the victim was present during the
9 trial. There was a number of photographs that were used
10 ---

11 THE COURT: --- just hold on.

12 MR. WILCOX: There was a ---

13 THE COURT: --- just hold on a second, I got a
14 question. What trial?

15 MR. BOOZER: Your Honor, I can ask him about it or I
16 can tell the court, apparently this issue or case where
17 he initially went and began a trial and I believe that
18 they actually took a fair amount of testimony and then at
19 some point in the trial he decided there would be a
20 guilty plea.

21 THE COURT: I don't have that -- record of the
22 guilty plea.

23 MS. WILSON: Well, Your Honor, he pled guilty in the
24 middle of his trial ---

25 THE COURT: --- well ---

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1 MS. WILSON: --- we have -- go ahead.

2 THE COURT: That would be part of the record.

3 MS. WILSON: Well, Your Honor, we don't usually --
4 we don't, most of the time if someone is challenging
5 their guilty plea as a part of their application for post
6 conviction relief, we ordered a guilty plea transcript
7 and present that to the court.

8 THE COURT: Why don't we have it here?

9 MS. WILSON: Well, Your Honor, because we didn't
10 order it. We didn't order the trial transcript; we
11 ordered the guilty plea transcript.

12 THE COURT: Well I don't have the guilty plea
13 transcript, is what I'm saying.

14 MS. WILSON: I understand, Your Honor.

15 THE COURT: All I have is the sentencing portion; I
16 don't have this guilty plea.

17 MS. WILSON: Your Honor, this is the entire portion
18 of the plea, the part that you have.

19 THE COURT: He never says I'm guilty.

20 MS. WILSON: I agree.

21 THE COURT: There is no plea in this, what I have.
22 If you look at it ---

23 MS. WILSON: --- I understand ---

24 THE COURT: --- it looks like a sentencing. I
25 believe we're here this afternoon for a sentencing.

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1 MS. WILSON: Your Honor, I didn't know that, but
2 apparently there was -- the guilty plea portion took part
3 on a different day from the sentencing portion, so the
4 portion that we have is the sentencing portion.

5 THE COURT: Okay. I'm sitting here sort of
6 confused because ---

7 MS. WILSON: --- okay ---

8 THE COURT: --- all I have is the sentencing
9 hearing and no guilty plea and no evidence that there was
10 a trial. But, now that you've clarified that...

11 MS. WILSON: I understand, Your Honor.

12 THE COURT: But, I would like a copy of the
13 transcript of the -- I assume on cross-examination you're
14 going to ask him something about his guilty plea ---

15 MS. WILSON: --- okay ---

16 THE COURT: --- and there is no record of a guilty
17 plea that is in front of me.

18 MS. WILSON: I can order it, Your Honor. I was not
19 aware that it was on a different day.

20 MR. BOOZER: Your Honor, since we're on this topic,
21 are we still going to move forward with further testimony
22 on the case, or?

23 THE COURT: Well, I'm not sure what he's
24 challenging. I mean, he keeps talking about his trial
25 and things that went on during his trial and there was no

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1 trial transcript and there's no guilty plea transcript.
2 I mean, they exist, but if his grounds are based on
3 something that went on during the trial, it's kind of
4 hard all I have is his testimony. How many -- how long
5 was he in trial? How long was your trial?

6 MR. WILCOX: It started -- it was a Monday jury
7 selection, Tuesday trial started, and I stopped it that
8 Tuesday afternoon.

9 THE COURT: So, you had a full day?

10 MR. WILCOX: Yes.

11 THE COURT: Pretty much?

12 MR. WILCOX: Yes.

13 THE COURT: Trial transcript.

14 MR. BOOZER: Judge, I think the two kind of dove
15 tailed together. I think that his, from my conversations
16 with him his claims stem from ineffectiveness in the
17 trial led to him entering the plea. And he can certainly
18 present his own testimony, but that's my understanding of
19 his case.

20 THE COURT: Is that correct?

21 MR. WILCOX: Yes, Your Honor.

22 THE COURT: Okay. Well, let's proceed. Go ahead.

23 A. I was speaking -- during the trial the victim was
24 present. They presented a number of pictures. These
25 pictures were they just presented a lot of blood on the

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1 walls, blood puddles on the floor. When Mr. Beauford
2 first brought these pictures to my attention, his issue
3 was, you know, that we should be able to get them thrown
4 out pretty much for the simple fact that, for one you had
5 foot prints all throughout the blood on the floor; like
6 he said it looks like probably the detectives probably
7 trampled through it.

8 Pretty much the boots that was there to be used as a
9 weapon, they didn't have blood on the bottom of them.
10 neither did my shoes that I actually brought from the
11 residence. The State was that the pictures were so
12 graphic to the point that they produced prejudiced beyond
13 the jury and also the Judge at this trial.

14 I feel that because the victim was there to testify
15 as to what happened these pictures were pretty much just
16 prejudicial. They just inflamed the jury more so than
17 what was necessary.

18 Again, I spoke about some letters that I wrote to
19 Mr. Beauford describing these injuries that the victim
20 received. Again, it was a laceration to the scalp ---

21 Q. [Mr. Boozer] --- you -- and I don't mean to cut you
22 off, but we've talked about that context and that
23 allegation. Let's kind of keep moving through your
24 allegations. Just to get you back on track I think you
25 have one also that where you were -- you didn't get a

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1 copy of discovery until after.

2 A. Yes.

3 Q. Okay. Tell the court about that.

4 A. It was on -- I got sentenced June 27th, of 2012. On
5 July 2nd, of 2012, Mr. Beauford came to see me at Hill
6 Finklea Detention Center and he presented to me some more
7 discovery material.

8 He presented to me, this is -- again this is July
9 2nd, 2012, he presented to me some 9-1-1 transcripts that
10 apparently in these transcripts I admitted to striking
11 the victim. But these transcripts are dated July 20 and
12 it's only the second of July.

13 He also presented to me the supplemental report
14 where it was a couple of -- well, I won't say a couple,
15 it was a witness that the State was trying to get in
16 touch with and in the supplemental report it shows that
17 the witness was eluding them; the witness never came
18 forward.

19 And also, there was the SLED report where it gave
20 the examination from the boots. All of this I didn't get
21 until after I entered my guilty plea.

22 Q. Okay. What else do you have?

23 A. Mr. Beauford, I asked him to file a notice of appeal
24 immediately after my guilty plea. August of 2012 I sent
25 Mr. Beauford a letter asking him the status of my appeal.

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1 He responded by sending me a copy of the Ander's Brief
2 that he presented to the court asking to dismiss the
3 appeal because the grounds that he feels would be
4 frivolous. I never asked Mr. Beauford to file an Ander's
5 Brief, I only asked him to file the notice of appeal.

6 I feel that Mr. Beauford sabotaged my attempt at a
7 direct appeal by, I mean, he never even ordered the trial
8 transcripts or the sentencing transcripts in order to
9 prepare this Ander's Brief.

10 I spoke about earlier about the doctor's
11 hypothetical testimony. Mr. Beauford never even
12 clarified with the court that this was a hypothetical
13 testimony. He never made -- pointed out and made sure
14 the fact that, you know, it was -- he wasn't speaking on
15 the injuries that the victim actually received.

16 It's like he just bowed down and allowed this
17 hypothetical for the Judge to rely on these what ifs in
18 order to have an idea of what to sentence me to.

19 Q. Okay. Without going back over any of the
20 allegations you've already raised, what other allegations
21 that you've alleged in your application, nothing new, but
22 only in your application?

23 A. With the direct appeal, I didn't speak on this part
24 whereas Mr. Beauford didn't allow -- he didn't even
25 inform me as to the direct appeal being dismissed. And

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1 also, the Solicitor brought up a journal that I used to
2 keep some years back where that was used during my
3 sentencing hearing. And this journal, well, I'll put it
4 like this at the time of this journal, I had a number of
5 associates of mine who were murdered and in this journal
6 I was pretty much using it to vent.

7 And this journal was used during my sentencing
8 hearing more so as I think it was a part read out in the
9 sentencing hearing where he says -- that I like to hit
10 things whenever I'm upset. I was never aware that the
11 State even had this journal in their possession.

12 And, I feel that it was -- it prejudiced me greatly.
13 I had no way of even preparing a defense for it. I think
14 I did mention it at that time that the purpose was this
15 journal -- for this journal was for me to have some type
16 of positive release to vent my frustrations and what not,
17 but this journal was used completely different. It was
18 used to prosecute me.

19 MR. BOOZER: Your Honor, may I approach the witness?

20 THE COURT: Certainly.

21 Q. [Mr. Boozer] Mr. Wilcox, I'm going to hand you a
22 document and you take a look at that. Can you identify
23 that for me?

24 [Whereupon, the witness reviews document]

25 A. This is an amendment that I filed for my post

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1 conviction relief.

2 Q. Okay. And was one of those amendments addressing
3 what you were just discussing with regards to your
4 journal?

5 A. Yes.

6 Q. What was the other amendment?

7 A. The amendment was speaking about the -- with Mr.
8 Beauford about the Ander's Brief.

9 Q. Okay. And did you receive a copy of that?

10 A. The Ander's Brief? Yes.

11 Q. No ---

12 A. --- oh, this right here? Yeah.

13 Q. Okay. Is that something that you asked me to file
14 with the court?

15 A. Yes.

16 Q. Okay. And also, I'm going to hand you ---

17 MR. BOOZER: Your Honor, I'd go ahead and mark this
18 as exhibit 1 in evidence as part of the record.

19 THE COURT: Go ahead. Without objection?

20 MS. WILSON: No objection, Your Honor.

21 [Whereupon, plaintiff's exhibit number 1 is marked
22 by the court reporter]

23 [Whereupon, plaintiff's exhibit number 1 is entered
24 into evidence by the court]

25 Q. [Mr. Boozer] And with that did you also receive a

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1 letter from me showing that I was filing that with the
2 Clerk Of Court?

3 A. Yes, I did.

4 Q. Is that a copy of that letter?

5 [Whereupon, the witness reviews document]

6 A. Yes, it is.

7 MR. BOOZER: Your Honor, make it as exhibit 2 a
8 letter to the Clerk of Court for filing of the amendment.

9 THE COURT: Without objection.

10 [Whereupon, plaintiff's exhibit number 2 is marked
11 by the court reporter]

12 [Whereupon, plaintiff's exhibit number 2 is entered
13 into evidence by the court]

14 Q. [Mr. Boozer] Okay, Mr. Wilcox, you touched on your
15 amendments. Do you have any other allegations that
16 you've not addressed that were in your application?

17 A. No. I believe I covered everything.

18 Q. Okay. How many times did you meet with your
19 attorney prior to trial?

20 A. I got a notice March 1st that he was my attorney. I
21 believe our first meeting might have been around March
22 15th. A rough estimate, I'd say probably six that's
23 including his presence during a handwriting analysis that
24 was requested.

25 Q. Okay. Did you feel that he had a sufficient amount

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1 of time to meet with you to prepare for your trial?

2 A. I believe he had a sufficient amount of time. I
3 think my only issue is what we even spoke about as far as
4 what I believe needed to be done, he would agree to it
5 but then in the end it wouldn't be done.

6 It seemed more so as he would respond just to
7 satisfy me at that time and then go about things his own
8 way. I've asked him before, about a trial strategy and
9 he was more so that's up to me let me handle this my own
10 way.

11 Q. Okay. And you actually went to trial?

12 A. Yes.

13 Q. Did you know what the trial strategy was prior to?

14 A. I had no idea what the trial strategy was.

15 Q. Did you get any offers in this case?

16 A. I was offered, he brought this to my attention, it
17 was a plea for the High and Aggravated Nature and the
18 Unlawful Conduct, it was for 10 to 25 years.

19 From my understanding, the max for the High and
20 Aggravated Nature at the time of my offense was 10 years
21 the max for the Unlawful Conduct was 10 years and that's
22 what I brought to his attention.

23 If the max is 10 years, how is the plea they coming
24 at me with 10 to 25? When I brought that to his
25 attention, again he was appointed my counsel in March of

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1 2012, his response to me was he was under the impression
2 I just recently got incarcerated. I was incarcerated
3 since 2010. His idea was that I was incarcerated
4 somewhere near 2012.

5 Q. Why did you end up pleading in this case?

6 A. I felt like I had no assistance from Mr. Beauford.
7 Again, when I asked him to have the boots examined, he
8 responded he would. It was the weekend before trial; I
9 want to say it might have been that Saturday before
10 trial, that I was informed that he never had the boots
11 examined.

12 There was a statement made by one of the detectives
13 during some pre-trial motions, I believe, that I didn't
14 agree with and I wrote him a note during the detective's
15 testimony asking him to respond one way and he no it's
16 not going to make a -- I felt I was getting no assistance
17 from Mr. Beauford at all.

18 I felt it was in my best interest after hearing the
19 victim's testimony and especially after when he asked the
20 victim well how did his nose get bloody, the victim's
21 response and seeing the jury's response, I felt that it
22 was in my best interest to stop the trial in a hope that
23 I wouldn't receive the max that was allowed to me.

24 Q. And now, today, you want to have a new trial in this
25 case?

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1 A. Yes.

2 Q. Are there any other allegations that you have not
3 put on the record, that are in your application? I think
4 that we covered everything looking at it; I don't want
5 you to raise any new ones, anything that we haven't gone
6 over for the court?

7 A. No, I believe we did cover everything.

8 MR. BOOZER: Your Honor, I don't have any further
9 questions at this time.

10 MS. WILSON: Nothing from the State.

11 THE COURT: All right. You may come down.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 THE COURT: Further witnesses?

15 MR. BOOZER: No further witnesses.

16 THE COURT: What's the State's position?

17 MS. WILSON: The State would call Mr. Percy
18 Beauford.

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1 THE COURT: Come around, Mr. Beauford.
2 [Whereupon, Mr. Beauford comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Will you please state your full
6 name and spell your last name for the record.

7 THE WITNESS: Percy Beauford. Beauford is B-E-A-U-
8 F-O-R-D.

9

- - - - -

10 PERCY BEAUFORD,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WILSON:

15 Q. Good morning, Mr. Beauford.

16 A. Good morning.

17 Q. Can you tell the court how long you've been
18 practicing law and how much experience you have with
19 criminal matters?

20 A. I've been practicing practically 24 years and pretty
21 much started out as a general practitioner which included
22 criminal law.

23 Q. And do you recall when you were -- were you
24 appointed or retained to represent Mr. Wilcox?

25 A. Appointed.

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1 Q. And do you recall around the time you were
2 appointed?

3 A. I don't have the exact date.

4 Q. Do you know about how far before he started his
5 trial proceedings that was; months, or a year, or?

6 A. Maybe about a year or so.

7 Q. Do you recall how many times you met with him before
8 y'all started this trial proceeding?

9 A. I met with him many times; more than the six that he
10 said.

11 Q. And did you file Brady and Rule 5 motions on his
12 behalf?

13 A. I did.

14 Q. And the materials that you received from the State,
15 did you review them with Mr. Wilcox?

16 A. Yes, I did.

17 Q. And do you recall what type of materials were
18 included in your discovery?

19 A. Incident reports, statements, medical reports,
20 pictures, of course the warrants and different things of
21 that nature.

22 Q. And, do you recall talking to Mr. Wilcox about the
23 elements of the charges he was facing and what the State
24 had to prove to convict him on those charges?

25 A. I did.

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1 Q. And with that, did you talk to him about -- did he
2 talk to you about his thoughts about double jeopardy
3 preventing him from being convicted of CDVHAN and
4 Attempted Murder, did you ever talk about that?

5 A. Yes, he did.

6 Q. And what were your talks?

7 A. Well, basically there was a -- whether it was double
8 jeopardy and my view was that it wasn't. I researched
9 it, you know, he did some research he's pretty
10 intelligent. In addition, I did file a motion to have
11 the Solicitor elect and the Judge ruled that they did and
12 it was not double jeopardy.

13 Q. Did you talk to the applicant about his version of
14 the facts and if so, what was his version of facts?

15 A. Well, he didn't -- according -- he told me he didn't
16 remember what happened. However, the night of he called
17 in and sort of gave an admission to the actual act. But,
18 as it relates to the specific facts to me he said he
19 didn't remember.

20 Q. And did you talk to him about possible defenses
21 y'all could present at trial if y'all went to trial? And
22 if so, did you reach any conclusions about a type of
23 defense or the lack of defense?

24 A. Well, basically our defense -- basically because he
25 -- because of the statement was to try to chip away at

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1 the different elements and try to get a lesser charge.
2 Because I knew going into it, and I told him, we are
3 against the wall. Basically, they've got this, they've
4 got that and they going to be able, I think -- prove this
5 and that, however, you know, this is what we have to do.

6 So basically I was trying to minimize the damages.
7 Because I didn't feel, based on the facts and based off
8 his knowledge of not knowing the facts that we would be
9 coming out of that pretty clean.

10 Q. And could you briefly characterize what evidence the
11 State had against Mr. Wilcox?

12 A. Of course, they had the victim. They had the two
13 individuals in the hall who heard the fighting and who
14 saw her when she came out and saw when he left. They had
15 the police report and the recording which he called back
16 and said -- admitting to the crime and ---

17 THE COURT: --- was that admitted?

18 THE WITNESS: Excuse me?

19 THE COURT: Was that admitted?

20 THE WITNESS: Yes.

21 THE COURT: The statement?

22 THE WITNESS: Yes, it was.

23 THE COURT: Go ahead.

24 A. And pretty much that's the gist of the fact.

25 Q. [Ms. Wilson] Okay. And, did you -- what type of

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1 investigation, if any, did you have to do into -- in this
2 case?

3 A. Of course, I spoke to him and spoke to him about
4 what he knew about it and tried to get general
5 information from his family.

6 I went out to Hanahan, the site of which the
7 apartment was in which the incident took place and
8 reviewed that and looking at the different scenarios
9 based upon the statement and tried to align what could
10 have happened and what could not have happened.

11 Q. And, prior to him proceeding to trial, did you
12 engage in any plea negotiations on his behalf with the
13 State?

14 A. Well, they had already made an offer and basically
15 he had denied that -- that offer and so I knew we were
16 going to trial at that point.

17 Q. And at the start of trial, were you prepared to
18 proceed?

19 A. Yes I was.

20 Q. Just with regard to some of -- some of Mr. Wilcox's
21 allegations here today, he talks about not knowing what
22 some of the witnesses that the State intended to call at
23 trial. Did you review with him the statement from
24 witnesses that you received from the State at discovery
25 and, you know, were you aware of the State's ---

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1 A. --- yes ---

2 Q. --- witnesses and the testimony and able to prepare
3 for that?

4 A. Yes. Basically, Francis' [phonetic] statement,
5 that's a witness. The medical report, that's a witness.
6 So, when we went through the statements I said this is
7 what this person here is going to say, this is what this
8 person here is going to say, the medical.

9 So, we went through the statements and the evidence
10 and it had who presented that information to the State,
11 so we went down the information in that order.

12 Q. Okay. He also talks about the boots that were used
13 in the assault. Did you have any photos or anything of
14 that that you reviewed with him and did you have any
15 talks with him about testing the boots?

16 A. We did. We did. In the beginning there was the
17 term about the boots, of course that wasn't an element of
18 -- they're saying that was the weapon and we talked about
19 the boots being examined.

20 I physically went and examined it also; I knew SLED
21 had the boots and I don't remember, but I do think that
22 we may not have gotten the boots' results back until
23 after the hearing.

24 But, we talked about the boots. I physically
25 examined the boots and I saw what I saw then I came back

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1 and reported to him and we talked more about the boots.

2 But, yes, I did examine the boots.

3 Q. Okay. And this report that you got back later, was
4 it beneficial to Mr. Wilcox?

5 A. In the scope of the, I guess the entire case -- like
6 I said, again, there was blood on the boots. I examined
7 it for the blood, I see where the State can make their
8 case about it being the weapon, I did all of that.

9 Of course, you know, as a defense attorney I would
10 try to argue something a little differently, but the
11 evidence was there and so the report it didn't
12 necessarily help us and it didn't necessarily hurt us.

13 Q. Okay. Do you recall when you proceeded to trial,
14 what was your, I guess, your strategy for cross-examining
15 the victim?

16 A. Well, she, as he said she had given two statements.
17 And, one statement refers to some things that the others
18 didn't. So, basically they were the only two persons
19 there.

20 There were scenes there where there were bloods at
21 higher levels than she -- she was pretty short, so
22 basically the State's position was that all this blood
23 was her blood and all that. So, my position was to say
24 okay this was a almost a mutual combat and which that
25 sort of come out because she was a very feisty person and

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1 the level of blood that was on the wall, I mean -- so I
2 tried to create in the jury's mind that, you know, of
3 course a crime had been committed but it's not in the
4 same way that she said it happened. So, I had to, you
5 know, try to play on her statements.

6 But, even before we even got to all that point,
7 while I'm questioning her in the trial he calls me back
8 and said he wants to plea. So, I really didn't get into
9 it to the point that, you know, all the things that I
10 wanted to bring out.

11 Q. Okay. And did he give you any explanation about why
12 he wanted to plea?

13 A. This was somewhat of a unique trial in the sense
14 that even though she was testifying as the victim, you
15 could still see the love there and even when he was
16 sitting there I could still see the love that they still
17 had. And he called me back and said if she said it's
18 true, then it's true.

19 Q. And did you review, when you reviewed discovery, any
20 photos that you provided from the State about the --
21 showing the victim's injuries? Did you review those with
22 Mr. Wilcox?

23 A. Yes, I did.

24 Q. And did you going into trial still have some
25 strategy about how you would try to avoid the jury from

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1 seeing some of those photos?

2 A. Of course, you know I tried to get the Judge to
3 limit the amount. But, in any trial when the State is
4 presenting it's always going to, not always, but most of
5 the time it's prejudicial to the defendant.

6 So, it was prejudicial, however they were the facts
7 of the case. But they did limit some of the pictures
8 because they had many pictures. But they were, like you
9 said, graphic but again, that's the scene of what it was
10 at the time.

11 Q. Okay. Just one more question about the victim's
12 statement. You reviewed the two statements with Mr.
13 Wilcox, is that -- that's correct?

14 A. Yes. Yes.

15 Q. Okay. And how did you get to become Mr. Wilcox's
16 appellate attorney?

17 A. It was a course of Court Administration when you are
18 appointed, you must file the -- follow up with the appeal
19 and then, basically because it's a plea and when you plea
20 you're admitting to it I didn't see that as an issue.

21 So, again, the Ander's Brief, out of precaution, I
22 have to file it. But, I didn't see that that was any
23 issue that I can argue when the individual is standing in
24 front of the court and saying I'm guilty.

25 Q. Okay. And you didn't see any meritorious issues

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1 and so that's why you filed the Ander's ---

2 A. --- no ---

3 Q. --- from his guilty plea.

4 A. I didn't see any.

5 Q. Did you -- well, Mr. Wilcox today was talking about
6 the expert witness that the State presented and these
7 type of hypotheticals that were given. Do you -- did
8 that happen at trial or did it happen during sentencing?

9 A. That was during sentencing. And basically, during
10 that part of it before the doctor or whoever the person
11 was in the emergency room, I don't know if it was the
12 doctor, before he testified the Judge limited me in my
13 cross because he said, again, this is sentencing he's
14 already pled.

15 So, it wasn't as if it was a trial where I would,
16 lack of a better word, attack the doctor in the same way
17 because, first of all, I was limited by the court so and
18 then again I didn't want to upset the court because I
19 knew, basically, I had a doctor who's going to testify as
20 an expert basically, to mitigate and try to help in the
21 sentencing process.

22 Q. Okay. And could you kind of just expound on what
23 type of evidence you presented in mitigation when Mr.
24 Wilcox -- after sentencing?

25 A. Well, I brought a doctor in who evaluated Mr.

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1 Wilcox. And because he was a military and he had served
2 in one of the wars and he was suffering from Post-
3 Traumatic Stress Disorder, he sort of went through his
4 life in the military and said that basically, he had
5 suffered from that and certain things triggered him.

6 And as you noted earlier he had been treated earlier
7 by a doctor and that's where that journal came in at.
8 The journal, basically, was one of the according to what
9 he's told me, one of the doctors told him if ever these
10 thoughts come write it down and that's how he dealt with
11 it through that journal.

12 But, basically this doctor, I think he was probably
13 the best witness in the entire case in presenting to the
14 court as to who Mr. Wilcox was and basically, I know that
15 the sentencing reflect basically his doctor's testimony
16 based upon what he pled to and what the Judge actually
17 gave in sentencing.

18 Q. So, you would say your mitigation and what you
19 presented was effective?

20 A. Very effective.

21 Q. And do you recall during the sentencing, you were
22 able to present the testimony about his journal being,
23 basically, his treatment for PTSD, do you recall if that
24 came out during sentencing?

25 A. I don't -- I can't say I remember it, but I just

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1 remember he and I had conversations. But, I don't
2 remember what the sentencing document will say what it
3 says.

4 MS. WILSON: Beg the court's indulgence.

5 [Whereupon, Ms. Wilson reviews documents]

6 Q. [Ms. Wilson] Now, Mr. Beauford, after Mr. Wilcox
7 indicated to you during trial that he wanted to plead
8 guilty, did you talk to him about the consequences of
9 pleading guilty and that he would be waiving his right to
10 remain silent, his right to confront the witness if he
11 continued with the jury trial, did you talk to him about
12 that?

13 A. Yes I did, because again, I was shocked. Because I
14 was standing up doing my cross on the victim when I was
15 called back, so, you know, I guess the entire court was
16 shocked based upon where we were in court proceedings.

17 Q. Had you ever talked to him, you know, before his
18 guilty plea or prior to trial about his potential
19 sentences and, you know, what the court could sentence
20 him up to?

21 A. Yes I did.

22 Q. Did he ever indicate that he didn't understand
23 anything that was going on?

24 A. No he didn't.

25 Q. Thank you, Mr. Beauford.

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1 THE COURT: Cross?
2 MR. BOOZER: Thank you, Your Honor.
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1 CROSS-EXAMINATION
2 BY MR. BOOZER:
3 Q. Mr. Beauford, how you doing?
4 A. I'm doing just fine and you?
5 Q. I'm doing fine, thank you. Just a few questions for
6 you in going back over some of this; I was a little bit
7 confused, what was the offer that had been made to him
8 prior to the trial?
9 A. I'm thinking it was 10-20.
10 Q. Okay. Did you discuss this with him, obviously?
11 A. Yes we did.
12 Q. Okay. Do you know what it was -- what he would have
13 been pleading to, would it have been all those charges or
14 were they dropping some of them or what?
15 A. They were dropping some, but I'm thinking it was he
16 would be pleading to the Attempted Murder as the main
17 charge in the case.
18 Q. What was his response to that at that time?
19 A. He turned it down, yes.
20 Q. Okay. Were you provided with discovery from the
21 State pursuant to your Rule 5?
22 A. Yes I was.
23 Q. Was there anything that caught you off guard or
24 surprised you at trial that they had or anything like
25 that?

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1 A. No.

2 Q. Okay. Did you go over that discovery with Mr.
3 Wilcox prior to trial?

4 A. I did.

5 Q. How many witnesses were called before he ended up
6 pleading guilty?

7 A. I'd say maybe about four or five?

8 Q. Okay.

9 A. Four or five, sorry.

10 Q. How much of your cross were you able to get into
11 with the victim before he stopped it effectively?

12 A. I mean, that's a difficult question because many of
13 my time in cross is depending on the answer I'm getting
14 back.

15 But, I think I don't know I'm pretty sure I remember
16 we were at the point and she was getting agitated when I
17 was thinking -- talking about how the kind of person she
18 was, you know, whether when they used to get in an
19 argument how she used to respond and she was getting
20 agitated a little bit.

21 So, I didn't know whether that disturbed him a
22 little bit at that point or what. But, I think, I know
23 she was getting agitated based on the cross. To answer
24 your question, I really don't know how do you -- I wasn't
25 near finished, put it that way.

Vernon M. Wilcox v State of S.C.
Percy Beauford-Cross-Examination by Mr. Boozer
September 10, 2014

1 Q. Okay. How many witnesses were y'all going to call
2 for the defense, if any?

3 A. I guess, I know definitely I think he wanted to
4 testify and I had a doctor, I think just those two...

5 Q. Talking about the crime scene photos that he's
6 alleged, were you able to -- did you make some sort of
7 motion or objection to those photos or some of the photos
8 coming in?

9 A. Yes I did.

10 Q. Okay. What was the court's ruling on those?

11 A. Well, the court ruled that they would limit some of
12 them, but of course court said that yes they are
13 prejudicial but, you know, they're relevant as to what
14 the facts were because a lot of them was redundant, just
15 different angles, but so the court just limited to try to
16 for a particular shot say this would represent that shot.

17 Q. Do you recall the -- I know you talked about the
18 discovery materials being provided by the State, do you
19 recall when you would have reviewed those with Mr.
20 Wilcox?

21 A. That was maybe some weeks before the trial.

22 Q. Do you think he understood -- I mean, did you have
23 any problems communicating with him or anything that
24 would lead you to believe that he couldn't go forward
25 with this trial ---

Vernon M. Wilcox v State of S.C.
Percy Beauford-Cross-Examination by Mr. Boozer
September 10, 2014

- 1 A. --- no ---
2 Q. --- in his condition?
3 A. No.
4 Q. Now, you actually filed the appeal for Mr. Wilcox?
5 Is that right?
6 A. Correct.
7 Q. Okay. Is that -- do you normally do that for
8 criminal clients?
9 A. Don't have a choice.
10 Q. Don't have a choice -- you have to do it?
11 A. Yes.
12 Q. Okay. And ---
13 A. --- unless they get another appeal lawyer. But, in
14 the meantime, I have to submit it.
15 Q. Okay. And I may have missed this earlier, so if I'm
16 being redundant I apologize, did y'all have the boots
17 examined independently?
18 A. No, we didn't.
19 Q. Did you see a need to?
20 A. No. I didn't see a need.
21 Q. Did you have any -- did he want his journal to come
22 in at the sentencing hearing?
23 A. No. No, he didn't.
24 Q. He ---
25 A. --- he did not.

Vernon M. Wilcox v State of S.C.
Percy Beauford-Cross-Examination by Mr. Boozer
September 10, 2014

1 Q. Did he know it was coming in?

2 A. I don't think he did.

3 Q. And he -- what's your opinion on the journal, do you
4 think it helped or hurt in sentencing?

5 A. It did not hurt because, based on the facts of the
6 case and whatever and I'm saying this lightly, but he got
7 a great opportunity on that sentence.

8 Q. Did you tell Mr. Wilcox that his appeal had been
9 denied or did y'all have any conversation after you filed
10 the ---

11 A. --- no, I did not. I did not tell him that.

12 Q. All right.

13 MR. BOOZER: Court's indulgence, Your Honor.

14 [Whereupon, Mr. Boozer confers with his client]

15 MR. BOOZER: Your Honor, that's all the questions I
16 have for Mr. Beauford. Thank you, sir.

17 THE WITNESS: Yes, sir.

18 THE COURT: Anything further from the State?

19 MS. WILSON: Your Honor, just one question for Mr.
20 Beauford.

21

22

23

24

25

Vernon M. Wilcox v State of S.C.
Percy Beauford-Redirect Examination by Ms. Wilson
September 10, 2014

REDIRECT EXAMINATION

BY MS. WILSON:

Q. Mr. Beauford, you said that -- you said that you didn't have any problems communicating with Mr. Wilcox while you represented him. Was he able to assist you with his defense and that type of thing?

A. Yes.

Q. Thank you.

THE COURT: All right. You may come down.

[Whereupon, the witness is excused and exits the witness stand]

MS. WILSON: Beg the court's indulgence, Your Honor.

[Whereupon, Ms. Wilson reviews documents]

MS. WILSON: No further witnesses from the State, Your Honor.

THE COURT: All right. Anything further?

MR. BOOZER: Nothing further, Your Honor.

THE COURT: All right counsel, let me have proposed orders in thirty days.

MS. WILSON: Thank you, Your Honor.

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

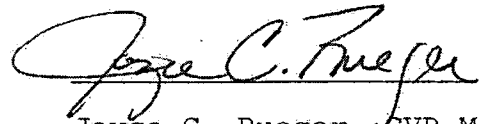
Vernon M. Wilcox v State of S.C.
Certificate of Court Reporter
September 10, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Berkeley County, South
Carolina on the 10th day of September, 2014.

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

April 4, 2015



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Vernon Michael Wilcox,
#351460,

Petitioner,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C/A No: 2013-CP-08-00553

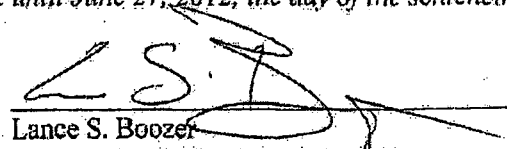
**PETITIONER'S AMENDED
PCR APPLICATION**

Petitioner respectfully requests and submits the following amendments to his current Application for Post-Conviction Relief filed on March 4, 2013:

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

(n) "*Percy Beauford violated Rule 602e(3) of the S.C. Appellate Court Rules.*"

(p) "*Solicitor violated Brady v. Maryland and S.C. Rules of Criminal Procedure 5(c), by failing to provide me with a copy of my journal which was presented to the Court during the sentencing hearing. I was not made aware that the State was in possession of this evidence until June 27, 2012, the day of the sentencing.*"


Lance S. Boozer
THE BOOZER LAW FIRM, LLC
1331 Park Street
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463
Email: lsb@boozerlawfirm.com

ATTORNEY FOR PETITIONER

Columbia, South Carolina

6/26, 2013

**PLAINTIFF'S
EXHIBIT**

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

1331 Park Street
Columbia, SC 29201Telephone: 803-608-5543
Fax: 803-926-3463Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

August 26, 2013

The Honorable Mary P. Brown
Clerk of Court
P.O. Box 219
Moncks Corner, SC 29461-0219**Re: Vernon Michael Wilcox v. State of South Carolina
2013-CP-08-553**

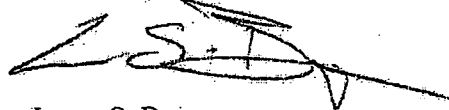
Dear Honorable Brown:

Enclosed for filing on behalf of my client, Mr. Wilcox, are the following documents in reference to the above-stated matter:

1. Petitioner's Amended PCR Application

Please file in your usual procedure and return the clocked-in copies to me via the enclosed self-addressed envelope provided. By copy of this letter, opposing counsel is being served with the same.

Yours very truly,



Lance S. Boozer

cc: Ashleigh R. Wilson, Assistant Attorney General
Vernon Michael Wilcox**PLAINTIFF'S
EXHIBIT**

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A29

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Vernon Michael Wilcox, #351460,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-08-0553

ORDER OF DISMISSAL

MAJ. P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2015 FEB 23 AM 9:18

FILED
CR

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

The Honorable G. Thomas Cooper
Lance Boozer, Esquire
Ashleigh R. Wilson, Esquire
Percy Beaufort, Esquire
September 10, 2014
Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 4, 2013 and amended August 26, 2013. The Respondent made its Return on February 20, 2014. An evidentiary hearing into the matter was convened on September 10, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Percy Beaufort, Esquire, also testified at the hearing. This Court had before it the guilty plea and sentencing transcripts, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's Return thereto, and the exhibits submitted by the Applicant and Respondent at the

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ATTORNEY GENERAL'S OFFICE

RECEIVED 2/23/15

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN ENDHAVE COPIES MADEROUTE TOORDER TRANSCRIPTPEN RECORDS CLERK RECORDSOTHER:

hearing¹.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the December 2010 term of the Berkeley County Grand Jury for kidnapping (2010-GS-08-1727), attempted murder (2010-GS-08-1728), unlawful conduct towards a child (2010-GS-08-1942), and criminal domestic violence of a high and aggravated nature (CDVHAN) (2010-GS-08-1768). Percy Beauford, Esquire, represented the Applicant. The Applicant pled guilty as indicted shortly after the start of a trial. The Honorable J.C. Nicholson sentenced the Applicant to confinement for eight years for unlawful conduct towards a child and CDVHAN, ten years for attempted murder, and twenty years suspended to five years probation for kidnapping. The sentences were to run concurrently. The Applicant filed a timely Notice of Appeal. His appeal was dismissed and the Remittitur was issued on January 24, 2013.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel advised the Applicant that double jeopardy did not bar prosecution for CDVHAN and attempted murder.
 - b. Counsel failed to obtain facts and circumstances of the case including witness names and statements.
 - c. Counsel failed to provide the Applicant with a copy of the discovery materials after he pled guilty.
 - d. Counsel failed to explore discrepancies in the victim's statements on cross-examination.
 - e. Counsel refused to object to the admittance of the crime scene photos.
 - f. Counsel failed to object to the emergency room doctor's hypothetical testimony.
 - g. Counsel failed to raise any arguable issues in the Anders brief.

¹ Applicant's Exhibit 1 is the Applicant's Amended PCR Application dated June 26, 2013. Applicant's Exhibit 2 is the cover page for the Applicant's Amended PCR Application. Respondent's Exhibit 1 is an email dated September 4, 2014.

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2. Prosecutorial error.

- a. Solicitor violated Brady v. Maryland by failing to disclose witness names, addresses, and statements.

At the hearing, the Applicant failed to present any evidence or testimony in support of any claims raised his application other than those listed above. This Court finds any other claims other than those listed above are hereby deemed abandoned by the Applicant.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of the Testimony

The Applicant was present and testified he did not receive his discovery materials until after his guilty plea. He testified he also never received a copy of the SLED report. The Applicant testified he never knew the State had possession of his boots until June 2012. He testified he asked counsel to have the boots examined. He testified the boots were near the impact of the assault.

The Applicant testified he was never made aware the witnesses against him until trial. He testified he never received any information about what the witnesses would testify about. The Applicant testified one of the witness' testimony was hypothetical and counsel did not clarify that for the Court. He testified the victim also gave two different statements. The Applicant testified he did not recall what happened the night of the incident, but counsel should have

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exposed the discrepancies in the victim's statements.

The Applicant testified he was told by counsel that he could be prosecuted for attempted murder and CDVHAN.

The Applicant testified he never told counsel he sustained any injuries during the assault and that he wrote letter to counsel about the victim's medical records. He testified the photos shown of the victim's injuries at trial were bad. He testified had he seen the full extent of the victim's injuries he may have decided to plead guilty sooner.

The Applicant testified he inquired about the status of his appeal in August 2012 and counsel sent him the Anders brief he filed. He testified he did not ask counsel to file an Anders brief.

Percy Beauford, Esquire, was also present and testified he was appointed to represent the Applicant approximately one year prior to trial. Counsel testified he has been practicing law for twenty-four years. Counsel testified he met with the Applicant many times prior to trial. He testified they met at least six times. Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he reviewed the discovery materials received with the Applicant. He testified the discovery included police incident reports, witness statements, photos, and medical reports.

Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove to convict him. He testified they also discussed whether double jeopardy barred the Applicant from being convicted of both CDVHAN and attempted murder. Counsel testified he researched the issue and found that it was not double jeopardy. He testified he also filed a motion to elect which was denied by the Court.

Counsel testified the Applicant did not remember the incident and had called police to

S&S at 4

admit assaulting the victim the night of the incident. Counsel testified he discussed potential defenses with the Applicant prior to trial. Counsel testified the evidence against the Applicant included the victim's testimony, a witness who heard the victim and Applicant fighting and saw the Applicant leaving the apartment, and the Applicant's recorded admission.

Counsel testified as a part of his investigation he spoke with the Applicant and his family and visited the scene of the assault. He testified he reviewed witness statements with the Applicant and discussed what the State's witnesses would say at trial. Counsel testified he was initially concerned about the boots because they were the suspected weapon. He testified he received the forensic report for the boots and the blood on the boots did not help or hurt the Applicant's defense. Counsel testified he also physically examined the boots and discussed his examination with the Applicant. Counsel testified he did not see a need to have the boots examined independently.

Counsel testified he also reviewed photos of the victim with the Applicant. He testified the photos were prejudicial to the Applicant and ultimately he was able to limit the photos presented at trial. Counsel testified the photos that were admitted by the court were relevant to the facts of the case.

Counsel testified the Applicant was made a plea offer for attempted murder which involved a sentence between 10-20 years and the *nolle prosequing* of some of the Applicant's charges. Counsel testified the Applicant rejected the State's plea offer and he began preparing for trial.

Counsel testified he reviewed the victim's statements with the Applicant prior to trial. He testified he questioned the victim about her two statements on cross-examination at trial. He testified it was the State's theory that the victim's second statement expounded on the victim's



first statement. Counsel testified it was his theory on cross-examination of the victim that the incident involved mutual combat. Counsel testified he was unable to finish his cross-examination of the victim because during his questioning of the victim the Applicant told him he wanted to plead guilty. Counsel testified this was a unique trial because it was clear the victim and Applicant still loved each other. He testified the victim told him that if the victim said he assaulted her then it must have been true.

Counsel testified they had only gotten through 4 or 5 witnesses before the Applicant decided to plead guilty. He testified the Applicant planned to testify at trial and they also planned to call an expert witness on the Applicant's behalf.

Counsel testified during the Applicant's sentencing he did not have the opportunity to question any of the medical testimony provided by the State because it was limited by the Court. He testified in mitigation he presented the testimony of an expert who evaluated the Applicant and concluded the Applicant's actions were related to the Applicant's PTSD. Counsel testified he was able to refute the Applicant's journal used by the State during sentencing by telling the Court that the journals were used by the Applicant as treatment for his PTSD. Counsel testified the Applicant's sentence reflects the success and effectiveness of the mitigation evidence he provided on behalf of the Applicant.

Counsel testified he filed a Notice of Appeal on behalf of the Applicant after he pled guilty. He testified there were no meritorious issues to raise on appeal since the Applicant pled guilty. He testified he filed an Anders brief of the Applicant's behalf. Counsel testified he did not recall telling the Applicant his appeal had been denied.

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Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. 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.

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).

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would

not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant acknowledged that he was guilty of these offenses. The Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds counsel provided credible testimony regarding his representation of the Applicant while finding the Applicant's testimony was not credible. This Court finds that Applicant's attorney demonstrated the normal degree of

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skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for advising him that double jeopardy did not bar his prosecution for both criminal domestic violence of a high and aggravated nature and attempted murder. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective in this regard. The double jeopardy clause of the Fifth Amendment protects against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. Grady v. Corbin, 495 U.S. at 516, 110 S.Ct. at 2090, 109 L.Ed.2d at 561 (1990); State v. Magazine, 302 S.C. 55, 393 S.E.2d 385 (1990). Under traditional double jeopardy analysis, multiple punishment is not prohibited where each offense requires proof of a fact that the other does not. Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932).

Based on an application of the Blockburger test, this Court finds counsel's advice to the Applicant regarding double jeopardy was accurate. A review of the elements of attempted murder and criminal domestic violence of a high and aggravated nature show that each offense contains an element that the other does not require. See S.C. Code Ann. §16-3-29 and §16-25-65. This Court finds no double jeopardy violation resulted from the State's prosecution of the Applicant for both attempted murder and criminal domestic violence of a high and aggravated nature. This Court finds counsel's advice to the Applicant did not result in deficient performance.

This Court finds further the Applicant has failed to show prejudice resulted from counsel's performance. The record reflects counsel filed a motion to elect charges on June 7, 2012 which was denied by the Court. Had counsel's advice regarding double jeopardy been improper any potential prejudice was cured by the trial court's denial of the Applicant's motion to elect. This Court finds this allegation is wholly without merit.

The Applicant alleges counsel was ineffective for failing to obtain witness names and statements from the State prior to trial. This Court finds this allegation is wholly without merit. Counsel provided credible testimony that he obtained and reviewed with the Applicant all witness statements including that of the victim. This Court does not find credible the Applicant's testimony that his counsel never discussed with him the testimony of the State's witnesses. This Court finds the Applicant has provided no compelling evidence that counsel proceeded to trial without obtaining witness statements from the State. This Court finds the Applicant has failed to carry his burden of proving counsel was deficient in this regard and that counsel's performance affected the outcome of his proceeding.

The Applicant also makes several allegations regarding counsel's performance during his trial which was ultimately halted when the Applicant chose to plead guilty. The Applicant alleges counsel failed to effectively cross-examine the victim and failed to object to the admittance of prejudicial crime scene photos. This Court finds these allegations are without merit. This Court finds the Applicant has failed to show how counsel's performance was deficient in these regards. This Court finds further the Applicant is unable to show prejudice resulted from counsel's performance during his trial since he halted his trial to plead guilty. This Court finds by halting his trial to plead guilty the Applicant waived his right to challenge the State's evidence and is therefore, unable to show how counsel's performance affected the

outcome of his trial or his decision to plead guilty. This Court finds telling counsel's testimony that he was just beginning his cross-examination of the victim when the Applicant indicated his desire to plead guilty. This Court finds these allegations are wholly without merit.

The Applicant alleges counsel was ineffective for failing to object to testimony presented by the State during the Applicant's guilty plea proceeding. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to object to the testimony of Dr. Masiowski presented by the State during sentencing. This Court finds Dr. Masiowski's testimony about the victim's injuries was not objectionable. This Court finds counsel's performance was not deficient in this regard. This Court finds further the Applicant was not prejudiced by Dr. Masiowski's testimony since counsel provided extensive mitigation evidence on behalf of the Applicant to counterbalance Dr. Masiowski's testimony about the victim's extensive injuries. In mitigation, counsel presented the remorseful testimony of the Applicant and Dr. Leonard Mulbry who evaluated the Applicant and told the Court that the Applicant's PTSD contributed to the Applicant's abusive behavior. (See Sentencing Hearing Transcript p. 39). This Court finds this allegation is wholly without merit.

The Applicant alleges counsel was ineffective for failing to provide the Applicant a copy of his discovery after his guilty plea proceeding. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective in this regard. This Court finds credible counsel's testimony that he reviewed the discovery material he received with the Applicant prior to the start of the trial. This Court finds further the Applicant has failed to show how counsel's alleged failure to provide him a copy of discovery materials affected the outcome of his proceeding. This Court finds this allegation is wholly without merit.



The Applicant alleges counsel was ineffective for filing a brief pursuant to Anders during his appeal proceeding. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective in this regard. This Court finds counsel was not deficient for filing an Anders brief on appeal from the Applicant's guilty plea. South Carolina appellate courts recognize counsel's discretion in filing a brief pursuant to Anders after concluding there are no meritorious issues on appeal. See State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991). This Court finds further no prejudice resulted to the Applicant by counsel's filing of an Anders brief since any issue not raised by counsel in the Anders brief could have been raised by the Applicant in his *pro se* brief to the Court. See State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002) ("The purpose of filing a brief under Anders is to ensure the *merits* of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.") This Court finds this allegation is wholly without merit.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

Prosecutorial error

Lastly, the Applicant alleges the solicitor failed to disclose witness names and statements

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in violation of Brady v. Maryland². This Court finds the Applicant has failed to carry his burden of proving the State committed a Brady violation. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). This Court finds credible and persuasive defense counsel's testimony that he received from the State and reviewed with the Applicant all witness statements including that of the victim. This Court finds this allegation is wholly without merit.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

² Brady v. Maryland, 373 U.S. 83 (1963).

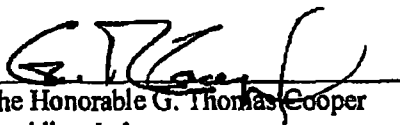
GL 13

(30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16 day of February, 2015


The Honorable G. Thomas Cooper
Presiding Judge
9th Judicial Circuit

Cause No. 13-00000, South Carolina.

CHU2010-07-01426

WITNESSES

Pam Nelson

Hanahan Police Department

J.K. [Signature] #29

AGENCY CASE NUMBER

1018108

ARREST WARRANT NUMBER

K398115

DATE OF ARREST

July 20, 2010

ACTION OF GRAND JURY

True Bill

[Signature]
Person of Grand Jury

Date: 12-15-10

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010-GS-08-1727

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

DECEMBER Term 2010

THE STATE

vs.

Vernon M Wilcox

DOB: [REDACTED]

B/M

Indictment for

KIDNAPPING

FILED
2010 DEC 15 PM 12:52
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

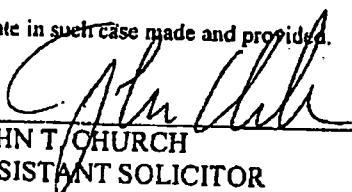
INDICTMENT

At a Court of General Sessions, convened on December 15, 2010 the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That Vernon M. Wilcox did in Berkeley County on or about July 18, 2010 willfully, unlawfully, knowingly and feloniously seize, abduct, confine or carry away Tameesha Washington, without the authority of law and against Tameesha Washington's will and consent. This is in violation of Section 16-3-910 of the 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.


JOHN T. CHURCH
ASSISTANT SOLICITOR