

VOLUME II OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

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MAY 18 2016

SC SUPREME COURT

CLARK D. THOMAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002286

APPENDIX

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1 THE COURT: Mr.

2 Foreman, ladies and gentlemen,
3 the State has rested. There
4 are some matters of law that I
5 need to take up with the
6 attorneys. It will probably
7 take us about ten minutes,
8 maybe fifteen at the most.
9 During this break please do
10 not discuss the case. Please
11 leave your note pads in your
12 seats and if you need anything
13 please let the bailiffs know.
14 If you would go with the
15 bailiffs.

16 (Whereupon, the jury
17 leaves the courtroom at
18 10:30 a.m.)

19 THE COURT: Okay. Mr.
20 Bolus, you said you needed a
21 break?

22 MR. BOLUS: Yes.

23 THE COURT: You want to
24 do that before we hear
25 motions?

1 MR. BOLUS: Yes, ma'am.

2 THE COURT: Okay.

3 We'll be at ease for a moment.

4 Why don't everybody take a
5 restroom break. We'll be out
6 in about five minutes.

7 (Whereupon, a recess
8 was called at 10:31 a.m.)

9 (Whereupon, the judge
10 enters the courtroom at
11 10:37 a.m.)

12 MR. BOLUS: Your Honor,
13 I move for a non -- a motion,
14 I move for a directed verdict
15 on the indictment charging my
16 client with criminal sexual
17 conduct in the first degree
18 which is pursuant to 16-3-652.
19 That is, that statute is more
20 elaborated and restricted
21 severely in code section
22 6-3-658 where it obviously
23 says a person cannot be guilty
24 of these criminal sexual
25 conduct under sections

1 16-3-651 through 16-3-659 if
2 the victim is a legal spouse,
3 unless the couple is living
4 apart and the conduct
5 obviously fits.

6 My client was
7 originally arrested two weeks
8 after the incident and charged
9 with spousal sexual battery
10 which clearly covers normally
11 illegal sexual conduct if the
12 parties are living together.
13 If they're not living
14 together, if they're living
15 together, you'd be guilty of
16 spousal sexual battery. They
17 uplifted that on an
18 indictment, charged my client
19 with criminal sexual conduct
20 in the first degree, but they
21 have to prove, the State has
22 to prove that the couple is
23 living apart and we have
24 testimony from the victim and
25 her mother that this, that the

1 victim was living with David
2 Thomas. She lived with him
3 for months at Folly Beach.
4 They moved to Folly Beach, to
5 the hotel.

6 The only thing the
7 victim and her mother both
8 said was she, the victim is,
9 was thinking about separating
10 from her husband, in the
11 process of it. Her belongs
12 are still in the hotel room.
13 She admits to staying with Mr.
14 Thomas in the hotel room for
15 several weeks. They lived
16 there for several weeks,
17 several months. There's a
18 complete lack of proof that
19 they were not living together.
20 They were living together and
21 an analogy I was making is if
22 you leave your spouse for a
23 couple of nights just to get
24 some fresh air and to stay
25 with someone just to get away

1 from a situation and you come
2 back to your spouse's place
3 where she had been living like
4 she admitted she did. She put
5 on her favorite clothes. They
6 wanted some privacy. They
7 went back to the hotel room
8 where she lived for several
9 weeks at least after the Folly
10 Beach arrangement.

11 You can't then say
12 that we're not living together
13 and put this under the
14 criminal sexual conduct
15 statute. And I don't think
16 that a couple is living apart
17 is very scientific definition.
18 I think it's pretty much
19 understood what that means. A
20 couple is living apart. That
21 means people are estranged.
22 They're separated. They live
23 somewhere else. Her spending
24 one, maybe two nights
25 depending on whose testimony,

1 her mother or hers that you
2 want to believe, is not
3 living, is not living apart.
4 She's still living with her
5 husband and on that basis he
6 could have been charged, which
7 he was charged with spousal
8 sexual battery under a
9 warrant, but he was indicted
10 under the criminal sexual
11 conduct first degree and I
12 think there's a complete
13 failure of proof to, to have
14 that statute come into play in
15 this case, and that's my
16 motion.

17 THE COURT: Mr.
18 Williams, would you like to
19 respond?

20 MR. WILLIAMS: Yes,
21 your Honor. I think there
22 certainly has been evidence on
23 the day of the incident she
24 actually was living apart.
25 She still had some things

1 there but she, she testified
2 that she had moved in with her
3 mother and she stayed there at
4 night.

5 Your Honor, I think
6 that are some -- the concept
7 of living in a hotel is a
8 complicated one to begin with,
9 and I think even on that, even
10 without the testimony, the,
11 the concept that somebody
12 lives at a hotel I think is
13 foreign and I think that a
14 jury could find just on the
15 fact that they were in a hotel
16 where you have to pay every
17 night to stay there, it would
18 be hard to say that they were
19 living anywhere.

20 So I think to say
21 they were living apart or
22 living together I think
23 especially when you're talking
24 about a hotel is difficult to
25 begin with. But more

1 importantly the testimony has
2 been that when this happened
3 they were clearly -- she was
4 living apart from him. Now
5 where he was living was in a
6 hotel or staying in a hotel,
7 but she was clearly at that
8 point had decided to live with
9 her mother. In fact I think
10 that's the part of the motive
11 in this case. That's what
12 I'll argue to the jury. So at
13 least in the light most
14 favorable to the State, your
15 Honor, I don't feel that
16 there's anything there for a
17 directed verdict.

18 **THE COURT:** Thank you.

19 On a motion for a
20 directed verdict the Court is
21 not concerned with the weight
22 of evidence but the existence
23 or nonexistence of evidence.
24 The Court should grant the
25 motion if the evidence merely

1 raises a suspicion of the
2 defendant's guilt, however if
3 the State presents any
4 evidence which reasonably
5 tends to prove the defendant's
6 guilt or from which the
7 defendant's guilt can be
8 logi -- fairly and logically
9 deduced, the case must go to
10 the jury. Again the Court is
11 concerned with the existence
12 or nonexistence of direct
13 evidence or substantial
14 circumstantial evidence.

15 Mr. Bolus, your
16 arguments go really to the
17 weight to be accorded the
18 victim's testimony in this
19 case, that being whether she
20 was cohabiting with her
21 husband or not at the time of
22 this incident and it really
23 comes down to a factual issue
24 for the jury to sort out
25 because there is direct

1 testimony from the victim that
2 she was not living or
3 cohabiting with her husband
4 and that she intended to leave
5 him.

6 I agree with Mr.
7 Williams that the fact that
8 they were living in what could
9 be considered a transitory
10 state in a hotel creates a
11 whole nother issue about
12 cohabitation. Of course my
13 family court background gives
14 me a whole nother definition
15 of it. I don't think
16 cohabiting is a physical
17 locality. Cohabiting is when
18 you're living together as
19 husband and wife, whether it's
20 a hotel or house or wherever.

21 But I think it's for
22 the jury to sort out and I may
23 well contemplate, you know,
24 I've made a note to myself.
25 I may well include in the jury

1 charge the definition of
2 cohabitation from the
3 statutes, from the, from the
4 domestic statute as to what --
5 because there is a definition
6 of cohabitation.

7 MR. BOLUS: Yes, ma'am.
8 We appreciate it.

9 THE COURT: I think
10 there may well be a definition
11 of cohabitation in the
12 C. D. V. statute. I may not
13 have to go to the domestic
14 code, but I'll see. We'll
15 work on something because I, I
16 suspect that the jury is going
17 to ask what is that, what does
18 that term mean and how do we
19 define it, although I think
20 really you could rely on
21 common sense as to what
22 cohabiting means. That's
23 husband and wife.

24 But the bottom line
25 is I think it's a factual

1 issue for the jury to sort out
2 whether they were in fact
3 living together as husband and
4 wife at the time that this
5 incident happened and whether
6 the State has met their burden
7 of proof beyond a reasonable
8 doubt to establish that. So
9 the motion is denied. Now --

10 MR. WILLIAMS: Your
11 Honor, can I ask your Honor --

12 THE COURT: Sure.

13 MR. WILLIAMS: Maybe
14 it's something I need to ask
15 you later but --

16 THE COURT: I'm sorry.
17 I didn't hear you.

18 MR. WILLIAMS: Maybe
19 it's something I need to ask
20 you later, but I get the
21 impression that that's
22 actually a defense not a, not
23 an element that the State has
24 to prove. I mean I don't
25 think for C. S. C. first I

1 have to prove that they were
2 actually living together like
3 Mr. Bolus --

4 THE COURT: For
5 C. D. V. you have to prove the
6 familial relationship.

7 MR. WILLIAMS: But it's
8 not an element of C. S. C.

9 THE COURT: It is not
10 an element of C. S. C. but you
11 have a statute that says, and
12 I may well charge it, that if
13 they are cohabiting that --

14 MR. WILLIAMS: Okay. I
15 just want to make sure.

16 THE COURT: But I think
17 we have to sort it out. I'll
18 be thinking about it while
19 we're doing the rest of the
20 case and how to best present
21 it because he is correct. The
22 statute does provide a
23 defense, which is that if
24 they're cohabiting that he
25 cannot be found guilty of

1 that, and it may well have
2 been more appropriate to
3 charge him with spousal sexual
4 battery. I don't know, you
5 know. Hindsight is always
6 twenty/twenty.

7 MR. WILLIAMS: Thank
8 you, your Honor.

9 THE COURT: So based on
10 what you are presented with
11 I'm certain that you all dealt
12 with the facts as best you
13 could. Okay.

14 MR. BOLUS: And
15 obviously, your Honor, I would
16 not take that as a burden
17 shifting thing to me.

18 THE COURT: It is not.

19 MR. BOLUS: It's the
20 statute. Thank you very much.

21 THE COURT: You have no
22 burden in this case.

23 MR. BOLUS: Thank you.

24 THE COURT: No. But I
25 think that if you want the

1 statute I think I'm going to
2 have to give the jury some
3 context. I don't think you
4 can argue something about me
5 giving them a legal concept or
6 in other words if there was
7 not a statute provided for
8 that, you wouldn't be able to
9 argue it and so I'm going to
10 have to provide the jury with
11 the appropriate law that
12 reflects the facts of this
13 case.

14 MR. BOLUS: And I agree
15 with you.

16 THE COURT: I think
17 there is a part of the statute
18 that, that, in the domestic
19 code that -- because you see
20 the family court and the
21 circuit court have concurrent
22 jurisdiction on criminal
23 domestic violence with
24 different remedies. The
25 domestic code defines

1 cohabitation. I'm almost
2 certain. I hadn't looked at
3 it in a long time but I'm
4 going to look at it this
5 after -- I mean I'm going to
6 look at it shortly and see.
7 I'm almost certain. It
8 defines children, it defines
9 cohabitation, it defines -- it
10 gives you a, a whole
11 definitional section and I
12 think that may well give us
13 some guidance.

14 But, you know, my
15 memory is not infallible and I
16 may well be wrong, but I'm
17 going to look and see.

18 Are you going to call
19 any witnesses, Mr. Bolus,
20 other than your client's
21 daughter? I'm going to
22 question him but I just -- oh.
23 The gentleman, Mr. Greenhill.

24 **MR. BOLUS:** Mr.
25 Greenhill and then we have the

1 witness's daughter, Kristan
2 Thomas. I call her CiCi but
3 it's Kristan Thomas and she's
4 been out in the hall. She's
5 out there, but I'm going to
6 call Mr. Greenhill first and
7 my client will testify.

8 THE COURT: What is Mr.
9 Greenhill's first name? It's
10 Keith. Correct?

11 MR. BOLUS: Yes. Keith
12 Greenhill.

13 THE COURT: Mr. Thomas,
14 please stand and raise your
15 right hand to be sworn.

16 (Whereupon, the
17 defendant is sworn.)

18 THE COURT: Sir, state
19 your full name for the record.

20 THE DEFENDANT: Clark
21 David Thomas.

22 THE COURT: Sir, at
23 this time I'm going to explain
24 to you certain of your rights.
25 If you do not understand

1 anything that I say, please
2 let me know. If you want me
3 to explain anything in more
4 detail, please let me know.
5 Do you understand?

6 THE DEFENDANT: Yes,
7 ma'am.

8 THE COURT: Sir, we
9 have now reached the stage of
10 the trial where you may
11 present your defense. You
12 have the right to claim the
13 protections given to you by
14 the Fifth Amendment to the
15 Constitution of the United
16 States and that amendment
17 states in part that no person
18 shall be compelled in any
19 criminal case to be a witness
20 against himself. This means
21 that you can not be required
22 to testify in this case. You
23 have the right to testify on
24 your own behalf, however no
25 one can make you testify.

1 This is a personal right and
2 no one can waive this right
3 except you.

4 If you decide to
5 testify you will be subject to
6 the same rules that govern
7 other witnesses and you may be
8 examined, cross-examined on
9 any relevant issue in this
10 case. In addition, if you
11 have any convictions involving
12 dishonesty or false statements
13 or for crimes punishable by
14 imprisonment for more than one
15 year and this Court determines
16 that the probative value of
17 admitting this evidence
18 outweighs its prejudicial
19 effect to you, the solicitor
20 will be able to introduce your
21 record to attack your
22 credibility.

23 If you decide to
24 testify this decision on your
25 part must be made freely,

1 voluntarily, and intelligently
2 with knowledge of the
3 protections given to you by
4 the Fifth Amendment and the
5 consequences of your decision
6 to testify. If you decide not
7 to testify, I will instruct
8 the jury that they cannot give
9 the fact that you did not
10 testify any consideration
11 whatsoever, and there's to be
12 absolutely no prejudice to you
13 because you did not testify.
14 It is left entirely up to you
15 whether or not you testify.

16 You may speak with
17 your attorney, your family,
18 your friends, or others but
19 the final decision is left
20 entirely up to you.

21 What record would the
22 State be seeking to introduce
23 against Mr. Thomas?

24 **MR. WILLIAMS:** Your
25 Honor, obviously going back

1 ten years and using crimes
2 that were punishable felonies
3 by either in excess of one
4 year or crimes of dishonestly,
5 within that context, your
6 Honor, the first conviction I
7 have is a receiving stolen
8 goods, two hundred to a
9 thousand. That was -- the
10 conviction --

11 THE COURT: Two hundred
12 to a thousand, irregardless of
13 time what year was that?

14 MR. WILLIAMS: It
15 occurred in '95, however he
16 was sentenced to five years
17 concurrent to another case so
18 I'm thinking that it might
19 have been --

20 THE COURT: He actually
21 got five? It was actually
22 five?

23 MR. WILLIAMS: It looks
24 that way, Judge.

25 THE COURT: When was

1 his release date because
2 that's when the ten years
3 would start.

4 MR. WILLIAMS: Your
5 Honor, I show that he picked
6 up another charge in 2002, so
7 I'm guessing he was in the
8 Department of Corrections for
9 five years.

10 THE COURT: Well, he
11 would have served sixty-five
12 per cent of five years.

13 THE DEFENDANT: I know
14 my release date.

15 THE COURT: What was
16 that, sir?

17 THE DEFENDANT: June
18 twenty-eighth of 1999.

19 THE COURT: So the ten
20 years would run from June
21 twenty-eighth, 1999. June
22 twenty-eighth, 1999. So it
23 would be ten years old. Over
24 ten years old.

25 MR. WILLIAMS: Judge, I

1 believe the end of the
2 sentence was in '99 which
3 brings it within the ten
4 years. I believe it's any
5 part of the year.

6 THE COURT: June
7 twenty-eighth -- oh, 2009.
8 We're in 2008. I'm sorry. My
9 brain is already in 2009. I
10 apologize. You're absolutely
11 correct. It would be in the
12 ten years. Okay.

13 MR. WILLIAMS: And,
14 Judge, I believe along with
15 that charge he had concurrent
16 sentences for, I show forgery.
17 I don't have it -- two counts
18 of forgery. I don't have a
19 dollar amount but I believe
20 they were less than a
21 thousand. So those I would
22 look to bring in as well.

23 In 2002 he had an
24 obtaining signature or
25 property under false

1 pretenses.

2 2003, Judge.

3 **THE COURT:** Wait.

4 Wait. I need you to slow
5 down.

6 Okay. Next.

7 **MR. WILLIAMS:** A

8 C. D. V. HAN in 2003.

9 **THE COURT:** That I
10 would not let in. It's too
11 close to the offense and it
12 is, it would be prejudicial to
13 him.

14 **MR. WILLIAMS:** And then
15 in '03 he had a felony
16 conviction --

17 **THE COURT:** I'll think
18 about it. We'll see how we'll
19 handle it, but I won't let, I
20 wouldn't let you say it's a
21 C. D. V. HAN.

22 **MR. WILLIAMS:** Thank
23 you, your Honor. And I
24 believe --

25 **THE COURT:** And is

1 that -- and C. D. V. HAN was
2 not a felony at the time under
3 the statute. It was a
4 misdemeanor. It was just
5 recently changed to a felony
6 in the last year.

7 MR. WILLIAMS: Judge,
8 and I know the only other one
9 I have is a t hit and run with
10 personal injury. That was a
11 one-year offense.

12 THE COURT: I'm sorry.
13 I didn't hear you.

14 MR. WILLIAMS: I have
15 hit and run with personal
16 injury but I believe it's only
17 a one-year offense although a
18 --

19 THE COURT: It's only
20 one year. Zero to one. I
21 don't know. There are two
22 different parts of that
23 statute, isn't it?

24 MR. WILLIAMS: They're
25 in excess of one year.

1 THE COURT: Hit and run
2 with personal --

3 MR. WILLIAMS: With
4 minor --

5 THE COURT: Hit and run
6 with personal injury?

7 MR. WILLIAMS: Minor
8 personal injury.

9 THE COURT: What year
10 was that?

11 MR. WILLIAMS: That was
12 about three years ago.

13 THE COURT: So that
14 would have been 2005?

15 MR. WILLIAMS: Yes, and
16 he pled guilty in October of
17 '05.

18 THE COURT: Okay. And
19 anything else that you're
20 seeking to introduce?

21 MR. WILLIAMS: I think
22 that's all.

23 THE COURT: You said
24 minor injury on the hit and
25 run?

1 MR. WILLIAMS: Yes,
2 your Honor.

3 THE COURT: Yeah. One
4 with no great bodily injury,
5 that's a magistrate's level
6 offense. That's thirty days.
7 One year to thirty -- thirty
8 days to one year and it is a,
9 it's a misdemeanor so it would
10 not be subject to the -- sir,
11 I need you to remain standing.

12 So it would not be
13 subject to -- because it does
14 not carry over a year.

15 So for purposes of
16 your discussion with your
17 lawyer, the State will be able
18 to use the following
19 convictions to impeach your
20 credibility: Receiving stolen
21 goods; forgery, two counts;
22 obtaining signature with
23 prop -- obtaining property by
24 signature with false
25 pretenses. The C. D. V. HAN

1 is a misdemeanor, although it
2 carries over seven years -- it
3 carries ten years but at the
4 time that you would have been
5 charged would have been a
6 misdemeanor, and I would find
7 that it is too prejudicial to
8 ask if you had a C. D. V. HAN
9 in '03, so I don't know any
10 other way you'd be able to ask
11 it, Mr. Williams, because it
12 wasn't a felony, but I think
13 that that would be excluded
14 also and the hit and run would
15 not be eligible because it
16 does not carry over a year,
17 pursuant to the, pursuant to
18 the Rules of Evidence 609.

19 Sir, have you, have
20 you discussed with your lawyer
21 whether you should or should
22 not testify?

23 THE DEFENDANT: I'm
24 fixing to. You said I could
25 talk to my family about it as

1 well?

2 THE COURT: Actually
3 that was just a cursory
4 remark. It just means that
5 ultimately the decision is
6 yours.

7 THE DEFENDANT: Oh,
8 okay. I was just --

9 THE COURT: Have you
10 discussed with Mr. Bolus
11 whether you should or should
12 not testify?

13 THE DEFENDANT: Well,
14 we had talked about it but now
15 that I've heard this, I'm, I'm
16 --

17 THE COURT: Do you wish
18 to talk with your lawyer any
19 more at this time?

20 THE DEFENDANT: I do.
21 Yes, ma'am.

22 THE COURT: I'll give
23 you ten minutes to do that.
24 I'm going to let the jury take
25 a smoke break which they

1 requested and then we'll
2 resume after you had the
3 opportunity to talk with your
4 lawyer.

5 MR. BOLUS: I thought,
6 your Honor, we had this
7 settled. I don't know what
8 he's talking about, your
9 Honor, because --

10 THE COURT: Well,
11 that's why I asked what
12 record would --

13 MR. BOLUS: I don't
14 know if he's talking about the
15 crimes coming in or the
16 computer stuff coming out.

17 THE COURT: Well,
18 that's why I asked whether,
19 what, what the State would be
20 seeking to use to impeach his
21 credibility, so that you could
22 have a fully informed
23 discussion with him about it.

24 MR. BOLUS: Thank you.

25 THE COURT: Okay.

1 We'll be at ease for ten
2 minutes. You can take them
3 for a smoke break.

4 (Whereupon, a recess
5 is called at 11:02 a.m.)

6 (Whereupon, the Judge
7 enters the courtroom at
8 11:49 a. m.)

9 THE COURT: Mr. Thomas,
10 if you would stand, please.

11 THE DEFENDANT: Yes,
12 your Honor.

13 THE COURT: Have you
14 discussed with your lawyer
15 whether you should or should
16 not testify?

17 THE DEFENDANT: Yes,
18 your Honor.

19 THE COURT: Do you need
20 to speak with him any more at
21 this time?

22 THE DEFENDANT: No,
23 your Honor.

24 THE COURT: Sir, do you
25 wish to testify?

1 THE DEFENDANT: Yes, I
2 do.

3 THE COURT: Okay.
4 Please bring in the panel.

5 You may be seated.

6 Mr. Bolus, I assume
7 you're ready to proceed.

8 MR. BOLUS: Yeah.
9 Keith Greenhill. We had a
10 little extended recess because
11 the jury wanted to take a
12 smoke break and I needed to
13 have time for them to get
14 downstairs and get back
15 upstairs.

16 Sir, you may be
17 seated.

18 And I think you have
19 three witnesses.

20 MR. BOLUS: Yes, your
21 Honor.

22 (Whereupon, the jury
23 enters the courtroom at 11:50
24 a. m.)

25 THE COURT: Ladies and

1 gentlemen, I hope you enjoyed
2 your break. We'll now resume
3 with the trial of case.

4 Mr. Bolus, you may
5 proceed.

6 MR. BOLUS: Keith
7 Greenhill is my first witness.

8
9
10
11
12
13
14

15
16 KEITH GREENHILL,
17 having been called as a
18 witness, is duly sworn and
19 testifies as follows:

20 COURT CLERK: State
21 your full name and spell your
22 last name.

23 THE WITNESS: Keith
24 Larry Greenhill,
25 G-r-e-e-n-h-i-l-l.

GREENHILL -- DIRECT

1 THE COURT: You may
2 proceed, Mr. Bolus.

3 DIRECT EXAMINATION BY
4 MR. BOLUS:

5 Q Mr. Greenhill, I
6 previously told the Court that I
7 had not met you but when I saw you
8 down in the lock-up last --
9 yesterday, you had come in my
10 office at one time, had you not?

11 A Yes, sir.

12 Q You need to speak up.

13 A Yes, sir, I have.

14 Q And I recognized you
15 at that point?

16 A Yes, sir.

17 Q And it was about
18 another matter not concerning this
19 case?

20 A Yes, Mr. Bolus.

21 Q That was a few months
22 ago, wasn't it?

23 A Yes, sir.

24 Q And we had no contact
25 since then for any purpose whether

GREENHILL -- DIRECT

1 it was of the other situation that
2 you were involved in or dealing
3 with Mr. Thomas, have we?

4 A No, sir.

5 Q And were you
6 surprised to see me come into the,
7 the downstairs lock-up last night?

8 A Yes, sir.

9 Q Okay. And what are
10 you incarcerated for?

11 A Grand larceny.

12 Q Okay. And I didn't
13 represent you on that charge, did
14 I?

15 A No, sir.

16 Q And you're going to
17 serve what? Two years?

18 A Yes, sir.

19 Q Okay. Now you know
20 Mr. Thomas and the victim, alleged
21 victim, Rachel Crowley in the blue
22 dress?

23 A Yes, sir.

24 Q Okay. How long have
25 you known them?

GREENHILL - - DIRECT

1 A I've known David for
2 approximately six years and Rachel
3 when she moved in with David on
4 Folly Beach. Probably been four
5 years.

6 Q Okay. Now do you
7 know how long they lived together
8 on Folly Beach?

9 A Their landlord
10 evicted them because they was
11 fighting and arguing and they had
12 found out about it, the window got
13 broken. David and Rachel got
14 evicted from the apartment on
15 Folly Beach and I helped them
16 move.

17 Q Do you know what that
18 argument was about?

19 A No, sir, I don't.

20 Q So it was something
21 to do with an argument and some
22 broken window?

23 A Yeah. Window or
24 something got broken on the door
25 or something and the landlord

GREENHILL -- DIRECT

1 found out about it and evicted
2 them.

3 Q Now did you visit
4 David and Rachel at Folly Beach
5 often?

6 A Yes, sir. Sometimes
7 I worked with David on the
8 sideline. I was employed for
9 another company but sometimes I do
10 side work with David because I
11 also do electrical work.

12 Q What was your main
13 nature of socialization with David
14 and Rachel? What did it consist
15 of when you would go over their
16 house?

17 A Mostly doing drugs.

18 Q What kind of -- who's
19 doing the drugs?

20 A All of us.

21 Q What kind of drugs
22 would you do?

23 A Drank beer, smoked
24 crack, do heroin.

25 Q And when you say "do

GREENHILL -- DIRECT

1 heroin" would it be with syringes
2 and that type of thing?

3 A Yes, sir.

4 Intravenous.

5 Q And you would use
6 spoons and heat it up and all
7 that?

8 A Yes, sir.

9 Q And did all three of
10 you do heroin?

11 A Yes, sir. Usually
12 every time I was over there.

13 Q Okay. And this went
14 on for what?

15 A Years.

16 Q How long?

17 A Years.

18 Q And have you known
19 Rachel Crowley for -- since she's
20 been with David?

21 A Yes, sir, I have.

22 Q And would you
23 describe her as a heroin addict?

24 MR. WILLIAMS: Your
25 Honor, I'm going to object to

GREENHILL -- DIRECT

1 that. Relevance.

2 MR. BOLUS: I believe
3 it has something to do with my
4 case.

5 THE COURT: Please
6 approach.

7 (Whereupon, there was
8 an off-the-record bench
9 conference.)

10 THE COURT: It goes to
11 his personal knowledge. You
12 may proceed.

13 Q How, how often did
14 you see Miss Crowley do heroin?

15 A Usually about every
16 day I worked with David, which was
17 about five days a week.

18 Q Okay. You would
19 actually visit them five days a
20 week?

21 A Between visit them to
22 do drugs and work with David, yes,
23 sir.

24 Q Now, they got evicted
25 from Folly Beach maybe late March,

GREENHILL -- DIRECT

1 early April of '06?

2 A It was the beginning
3 of summer.

4 Q Somewhere around
5 there?

6 A Yes, sir.

7 Q Where did they move?

8 A Intown Suites on
9 Ashley Phosphate.

10 Q Okay. Did you --
11 were you still working for David
12 at that time?

13 A Yes, sir.

14 Q And --

15 A I got another job but
16 I worked with David usually in the
17 evenings and on the weekends.

18 Q How many times a week
19 would you visit David and Rachel
20 at the hotel?

21 A I'd say three or four
22 times a week.

23 Q Okay. How long did
24 this go on?

25 A At least a year when

GREENHILL -- DIRECT

1 they was at Intown Suites.

2 Q How -- did you ever
3 visit David at the Intown Suites
4 when Rachel was not present?

5 A No. She was usually
6 there, waiting on David to get off
7 work.

8 Q Okay. And when
9 she -- when you all were together
10 you all would do heroin?

11 A Yes, sir. That and
12 crack.

13 Q Was it apparent to
14 you that Rachel was living with
15 him at that time?

16 A Yes, sir.

17 Q What was there? What
18 would make you think she was
19 living with David?

20 A She was always there.
21 Her clothes was there. He would
22 call her from there and she'd call
23 David from there.

24 Q Okay. And did you
25 ever go over there in the daytime

GREENHILL - - DIRECT

1 with David to the Intown Suites?

2 A Yes, sir. Sometimes.

3 In between work and between breaks

4 and all we'd ride back and forth

5 to the motel and smoke crack in

6 the motel room.

7 Q And did you ever - -

8 and this, you'd do heroin and do

9 crack in the middle of the day?

10 A Yes, sir. Sometimes.

11 Q And who was at the

12 hotel room in the middle of the

13 day?

14 A Just Rachel.

15 Q Rachel?

16 A Yes, sir.

17 Q And was she giving

18 signs to you that she was being

19 held against her will at any point

20 in time?

21 A No, sir.

22 Q Did you ever witness

23 while she was under the influence

24 of heroin any violent rages or any

25 kind of, of abuse or anger

GREENHILL -- DIRECT

1 directed toward David from Rachel?

2 A No, sir.

3 Q You didn't? Not

4 personally?

5 A No, sir. Not

6 personally.

7 Q Did you have

8 knowledge of a video surveillance

9 camera that was in his room?

10 A No, sir.

11 Q You didn't have any

12 knowledge of that?

13 A He told me about it

14 but I never seen it there. He

15 said one time that he was going to

16 put something in there.

17 Q Okay. You didn't

18 have any knowledge of that?

19 A No, sir.

20 Q This incident

21 happened allegedly on June sixth,

22 2006, which is a Tuesday. When

23 was the -- knowing that, when was

24 the last time you went to the

25 hotel room and saw Rachel and

GREENHILL -- DIRECT

1 David together?

2 A It was either the day
3 before that or, or either the June
4 the sixth. I know I was doing a
5 job with David on the Isle of
6 Palms and I went there, parked my
7 car there, got in his van, got
8 some supplies, got material and he
9 gave me a ride and dropped me off
10 on the job on Isle of Palms.

11 Q Now, June the sixth
12 was a Tuesday. You're not telling
13 the jury you're sure you were
14 there on that Tuesday night?

15 A I can't say for sure
16 it was Tuesday night to tell you
17 the truth.

18 Q But do you believe
19 you were there within one or two
20 days of that Tuesday?

21 A Yes, sir. I know I
22 was.

23 Q And was Rachel still
24 living with her husband in the
25 hotel room?

GREENHILL - - DIRECT

1 A Yes, sir. She was
2 there as far as I knew. I didn't
3 know the difference.

4 Q Okay. Did she tell
5 you that she was separating from
6 David or was living with her
7 mother or indicated to you in any
8 fashion that she was no longer
9 living with David?

10 A No, sir.

11 Q Okay. What did you
12 all do the last, say the day or
13 two before June sixth? Did you do
14 something with Rachel and David?

15 A Yeah. Same thing we
16 always did.

17 Q And what was that?

18 A Do heroin. Smoke
19 crack.

20 Q Shoot heroin?

21 A Yes, sir.

22 MR. BOLUS: Okay.

23 That's all I have. Thank you.

24 THE COURT: Any
25 questions of the witness.

GREENHILL -- DIRECT

1 MR. WILLIAMS: Yes,
2 your Honor. Thank you.

3 THE COURT: You may
4 proceed.

5

6

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10

11 CROSS-EXAMINATION BY

12 MR. WILLIAMS:

13 Q You were friends with
14 the defendant in this case.

15 Right?

16 A Yes, sir.

17 Q You weren't friends
18 with Rachel?

19 A Well, I knew both of
20 them. We all done drugs together.
21 I worked with David on the side a
22 lot.

23 Q Were you friends with
24 her just --

25 A Oh, yeah.

GREENHILL -- CROSS

1 Q -- did drugs
2 together?

3 A Yes, sir. Like all
4 three of us got along.

5 Q Did she ever confide
6 in you?

7 A Did she ever what?

8 Q Confide in you? Tell
9 you anything that she was feeling
10 or anything that she was thinking?

11 A Well, I knew they had
12 little arguments, you know.
13 Anybody does drugs have arguments
14 so, you know, nothing unusual.

15 Q You were friends with
16 the defendant before you knew
17 Rachel?

18 A Yeah. For about a
19 year. Yes, sir.

20 Q He would confide in
21 you and tell you things that were
22 going on with him. Right?

23 A Sometimes. Yes, sir.

24 Q So you were a
25 confidant, a friend of his? He

GREENHILL -- CROSS

1 actually got you jobs. Right?

2 A Well, I had a
3 permanent job but I worked with
4 David on the side just for extra
5 money. Mostly so I could do
6 drugs.

7 Q So he would, he would
8 provide you with work so you could
9 get drugs?

10 A Sometimes. Yeah.
11 I'd get drugs.

12 Q He was basically one
13 of your lines for getting drugs?

14 A Well, I knew, I knew
15 where to get them also, but
16 just -- he done electrical work
17 and that's my trade also.

18 Q And he provided you,
19 though, with the money so you
20 could get those drugs?

21 A Sometimes, but like I
22 said I had my regular job.

23 Q In all the time you
24 knew Rachel she never came to you
25 and told you anything about what

GREENHILL -- CROSS

1 she was thinking about doing in
2 her personal life beyond what you
3 saw happen. Right?

4 A Yes, sir.

5 Q So if she was
6 thinking about leaving a guy who
7 is, is, what you said your friend
8 who you know before her, you
9 wouldn't expect her to tell you
10 that, would you?

11 A Probably not. No,
12 sir.

13 Q And if she actually
14 moved out, you'd go tell this
15 defendant that she was doing that.
16 Right?

17 A If she moved out I
18 wouldn't have to tell him. He
19 would know --

20 Q Okay.

21 A -- because she always
22 did that. She wasn't there.

23 Q If she was thinking
24 about doing something that would
25 get her in trouble or that this

GREENHILL -- CROSS

1 defendant wouldn't like, you would
2 tell him about it if you knew.

3 Right?

4 A Probably so.

5 Q Because you're his
6 friend?

7 A Yes, sir. I'm both
8 of them friend.

9 Q But what I'm getting
10 at, though, is he was more of a
11 friend. He was a confidant and
12 she was somebody that you knew
13 through him?

14 A Yes, sir.

15 Q He was a better
16 friend?

17 A Yeah. They both was
18 friends.

19 Q All right. I
20 understand they're both friends.
21 What I'm getting at, though, is
22 he's a better friend?

23 A Well, I knew him
24 first. I went, I went -- his van
25 was broken down and I give him a

GREENHILL -- CROSS

1 ride out to Adams Run to go pick
2 her up when she moved in with him
3 on Folly Beach.

4 Q Okay. So you would
5 help him out, but it would also
6 help her out?

7 A Correct.

8 Q He told you that he
9 was going to put a camera in?

10 A He mentioned doing
11 that because he thought she was
12 messing around on him.

13 Q So it was to watch
14 Rachel?

15 A Well, sometimes
16 people do cocaine, they get
17 paranoid and I didn't know if it
18 was because of that or for Rachel,
19 you know. I mean he would ask me
20 questions.

21 Q So he -- the
22 defendant was paranoid about
23 Rachel at least from what you
24 could tell?

25 A Yeah. Between that

GREENHILL - - CROSS

1 and doing cocaine you get kind of
2 paranoid, so - -

3 Q Paranoid enough to
4 put surveillance camera outside of
5 a window in the hotel room to
6 watch her?

7 A To watch her and
8 probably for the police because,
9 you know, it's illegal to do it
10 and we both knew that and it just
11 gets you kind of paranoid when
12 you're doing that.

13 Q But he told you that
14 he thought she was messing around
15 on him?

16 A Yes, sir. One time.

17 Q Did you ever see a
18 taser in there?

19 A No, sir.

20 Q Ever see handcuffs?
21 Leg irons?

22 A No, sir.

23 Q How many times have
24 you been in there?

25 A Many times.

GREENHILL -- CROSS

1 Q You've, you've been
2 in a lot of trouble as far as
3 convictions go?

4 A Yeah. Just mostly
5 misdemeanors.

6 Q Well, the last -- I'm
7 going to go back ten years. 1998,
8 property offense enhanced. That's
9 a ten-year felony. Right?

10 A Shoplifting a pack of
11 cigarettes. Yes, sir.

12 Q Again in 1998,
13 shoplifting under a thousand?

14 A Yes, sir.

15 Q 2000, a property
16 offense enhancement, another
17 ten-year?

18 A Shoplifting.

19 Q 2001, another one,
20 property offense enhancement?

21 A I've got about eight
22 of them.

23 Q 2001, a receiving
24 stolen goods?

25 A Yes, sir.

GREENHILL -- CROSS

1 Q As well as a property
2 offense enhancement?

3 A Yes.

4 Q 2002, receiving
5 stolen goods over five thousand, a
6 property offense enhancement, two
7 counts of shoplifting. Those are
8 all convictions?

9 A Not all of them.
10 Some of them was dropped. I was
11 convicted of some of them.

12 Q Property offense
13 enhancement in 2004. You pled to,
14 November ninth, 2004?

15 A Yeah.

16 Q You remember them
17 all?

18 A No. I can't remember
19 them all, but you got my record.

20 Q Right. That's what
21 I'm going from. 2006, four
22 property offense enhancements?

23 A Four of them? I
24 don't remember four.

25 Q Pled to four counts

GREENHILL -- CROSS

1 at one time?

2 A Dropped four counts
3 maybe.

4 Q And two days ago you
5 pled guilty to grand larceny, one
6 to five thousand?

7 A Yes, sir.

8 Q This defendant here
9 is a good friend of yours. Right?

10 A Yes, sir. He is.

11 MR. WILLIAMS: Nothing
12 else, your Honor.

13 THE COURT: Any
14 redirect of the witness?

15 MR. BOLUS: Thank you.

16

17

18

19

20

21 REDIRECT EXAMINATION

22 BY MR. BOLUS:

23 Q You've, you've
24 admitted to everything you've done
25 to this jury, haven't you?

GREENHILL -- REDIRECT

1 A Yes, sir, I have.

2 Q And we would -- would
3 you lie for this man?

4 A No, sir.

5 Q You told the truth
6 today?

7 A Yes, sir.

8 Q Thank you.

9 A I have.

10 THE COURT: Any
11 objection to the witness being
12 excused? From the State?

13 MR. WILLIAMS: None,
14 your Honor.

15 THE COURT: From the
16 defense?

17 MR. BOLUS: None.

18 THE COURT: Sir, you're
19 excused. You may call your
20 next witness.

21 MR. BOLUS: Kristan
22 Thomas is outside.

23

24

25

1 KRISTAN THOMAS,
2 having been called as a
3 witness, is duly sworn and
4 testifies as follows:

5 DIRECT EXAMINATION BY
6 MR. BOLUS:

7 COURT CLERK: Speak
8 into this microphone and say
9 your full name and spell your
10 last name.

11 THE WITNESS: My name
12 is Kristan Collier Thomas,
13 T-h-o-m-a-s.

14 THE COURT: You may
15 proceed.

16 DIRECT EXAMINATION BY
17 MR. BOLUS:

18 Q Kristan, are you, are
19 you David's daughter?

20 A Yes, sir.

21 Q Okay. And you
22 nervous?

23 A Yes, sir.

24 Q Okay. You ever
25 testified in big court before?

K. THOMAS - - DIRECT

1 A I've never been on
2 the stand before talking.

3 Q Okay. Can you relax
4 a little bit?

5 A Yes, sir.

6 Q Kristan, after
7 this -- your father was arrested
8 you recall meeting me maybe I
9 guess about, about a month later
10 at your, yours and your mom's
11 house?

12 A Yes, sir.

13 Q And we had a
14 conversation about the situation?

15 A Yes, sir.

16 Q Okay. Now, since
17 then I have not had contact with
18 you until this week. Is that
19 correct?

20 A That's correct.

21 Q Okay. And you
22 prepared to testify?

23 A Yes, sir.

24 Q Did you live with the
25 alleged victim Rachel Crowley in

K. THOMAS - - DIRECT

1 the blue dress and your father at
2 Folly Beach?

3 A Yes, sir.

4 Q And when were you all
5 living together?

6 A Around September,
7 2005 until March, 2006.

8 Q Okay. And who was
9 living there in the house?

10 A It was my dad,
11 Rachel, Jonathan Bull, and me.

12 Q Okay. And you and
13 John were staying together?

14 A Yes, sir.

15 Q Okay. Did you have
16 an occasion to know that your
17 father and Rachel were doing
18 drugs?

19 A Yes, sir.

20 Q How'd you know that?

21 A Because there was
22 paraphernalia and I could see
23 could see how they were acting.
24 My father has been on, on drugs
25 for a while and he's been trying

K. THOMAS -- DIRECT

1 to get off and like, you know, he
2 was trying.

3 Q You saw the evidence
4 of drugs?

5 A Yes, sir.

6 Q Was Miss Crowley
7 doing drugs?

8 A Yes, sir.

9 Q When you were living
10 there, did they have their own
11 bedroom?

12 A
13 Yes, sir.

14 Q Okay. And were you
15 privy or did you overhear certain
16 things from the bedroom?

17 A Yes, sir.

18 Q And did Miss Crowley
19 and David sleep together?

20 A Yes, sir.

21 Q Was it an every night
22 thing for the months she was
23 there?

24 A It was mostly they'd
25 argue a lot, but, yes, it was.

K. THOMAS -- DIRECT

1 Q Well, they would
2 argue and then what?

3 A And then it would
4 turn into sexual things.

5 Q Okay. What did you
6 observe? Describe a normal
7 argument they might have together.

8 A Just over little
9 things like if someone had drugs
10 and the other one didn't, they'd
11 argue about it because they did
12 their drugs and they'd fight and
13 then it was -- and then they'd
14 love each other and then they'd
15 hate each other and it was a
16 love-hate thing all the time.

17 Q Were they generally
18 under the influence of drugs?

19 A Yes, sir.

20 Q And what did you
21 observe that was kind of unusual
22 in your opinion in the time after
23 these, when these arguments were
24 going on?

25 A Well, I noticed that

K. THOMAS -- DIRECT

1 every time that Rachel had done
2 heroin she would throw up and she
3 had, she kept a bucket next to the
4 bed that she would vomit in every
5 night and I'd always see it and
6 I'd ask my dad what was going on
7 and she told me she had the
8 stomach flu but I knew that she
9 was allergic to heroin or very
10 weak to it.

11 Q But when they were
12 having their arguments, did, did
13 David and her engage in some
14 unusual activities?

15 A Yes, sir.

16 Q Well, describe those.

17 A They would hit each
18 other and push each other around,
19 but it wasn't -- like no one would
20 get upset like to where they'd cry
21 or be scared or anything, like
22 they liked it. Like it would
23 happen a lot.

24 Q And what would he do
25 to her? Did you see certain

K. THOMAS -- DIRECT

1 things?

2 A Yes, sir.

3 Q Well, tell us about
4 it.

5 A Like he'd duct tape
6 her and stuff like that, but. . .

7 Q Well, tell us about
8 the duct tape. What would happen?
9 They're arguing and then what
10 would happen?

11 A She would be in the
12 kitchen washing dishes and my dad
13 would come in and just put duct
14 tape around her and she wouldn't
15 be upset or cry or scream or
16 anything. He'd take her in the
17 room and they'd go in there and
18 she'd come out all happy, like
19 nothing had happened.

20 Q Now, when you say
21 duct tape, what, what part of her
22 body?

23 A Well, around her
24 mouth and --

25 Q Around the mouth?

K. THOMAS -- DIRECT

1 A Around the head and
2 all.

3 Q How about her hands?
4 A No.

5 Q Okay. And while
6 she's duct taped did she make any
7 motion or movement to escape from
8 David or the --

9 A No.

10 Q -- house?
11 A No, sir.

12 Q All right. What
13 would she do?

14 A She would just follow
15 him into the bedroom.

16 Q And then what would
17 happen? The door would close?

18 A The door would close
19 and then I would hear things that
20 I wouldn't want to hear and all.

21 Q Well, you're going to
22 need to talk about it today. How
23 old were you then?

24 A Fifteen.

25 Q And what did you

K. THOMAS -- DIRECT

1 hear?

2 A Like sexual things
3 going on in the room, stuff like
4 that like.

5 Q Well, I mean it would
6 be grunts and groans? What?

7 A Yes, sir. Stuff like
8 that.

9 Q And I mean you knew
10 what was going on?

11 A Yes, sir.

12 Q And after their
13 lovemaking activity and the
14 bedroom door would open, what
15 would happen? They would both
16 come out or --

17 A They would both come
18 out and be -- they wouldn't be
19 upset at all and they'd just
20 probably go and get more drugs to
21 do because that's what their
22 favorite hobby was.

23 Q Did you hear them
24 talk about it on many occasions?

25 A Yes, sir.

K. THOMAS -- DIRECT

1 Q Before and after they
2 had sex about running out of
3 drugs?

4 A Well, it's not like
5 my dad did it blatantly in front
6 of me. He did try to keep it away
7 from me a lot, but I was -- I've
8 been around it for my whole life.
9 I know what happens. I know what
10 goes on. I've been around this
11 since I was born and my dad was
12 taken away from me when I was five
13 and he was brought back and he
14 changed and he wasn't on drugs for
15 the longest time and since he was
16 a habit or he did drugs in the
17 past, he got back on them and when
18 Rachel was around, he was straight
19 until he was around her and then
20 they both were on drugs together.

21 Q You're certainly not
22 blaming Rachel --

23 A Oh, no. I'm not --

24 Q -- for your dad's --

25 A -- blaming that --

K. THOMAS - - DIRECT

1 no.

2 Q Okay.

3 A No. No. No.

4 Q Okay. He had a

5 problem?

6 A Yes, he did. He

7 always - -

8 Q He still has a

9 problem?

10 A Yes. He does.

11 Q Did these two people
12 help each other with their problem
13 or did they get worse?

14 A They got worse. Like
15 if my dad wasn't on it, she'd want
16 to do it. And if she wasn't on
17 it, my dad would want to do it and
18 it was just a mutual thing with
19 them. Like they'd did drugs all
20 the time.

21 Q Well, okay. How
22 about in the middle of the night.
23 Would any one of them or both of
24 them leave the house to go get
25 drugs?

K. THOMAS -- DIRECT

- 1 A I -- yeah.
- 2 Q Well, did --
- 3 A I mean like once -- I
- 4 don't even know. Like I had
- 5 school and stuff. I. . . I was
- 6 kept up some nights because of
- 7 what they were doing but I -- they
- 8 did leave a lot. They were gone,
- 9 so. . .
- 10 Q Did you ever, while
- 11 you were living with your father,
- 12 see a taser?
- 13 A He showed one to me.
- 14 Q He showed one to you?
- 15 A Yes, sir.
- 16 Q And you know what a
- 17 taser is?
- 18 A Yes, sir.
- 19 Q And you know what it
- 20 sounds like when it goes off?
- 21 A Yes, sir.
- 22 Q What's it sound like?
- 23 A It's like clickety,
- 24 click, click. Like that.
- 25 Q And have you seen

K. THOMAS -- DIRECT

1 shows where people are tased and
2 all that?

3 A Yes, sir.

4 Q I mean I don't know,
5 have you ever watched --

6 A Uh-huh. Yes.

7 Q And what do you know
8 about that taser?

9 A Well, I know that she
10 is very physical and he, I guess
11 they're physical together when
12 they're in their bedroom because
13 he'd always have bite marks on him
14 and she'd have scratch marks and
15 he'd have scratch marks and it was
16 just something they did. It
17 wasn't, you know, it was just how
18 they. . .

19 Q Well, did you ever
20 hear the taser being used in the
21 bedroom?

22 A I heard, you know, I
23 heard clicking. Well, my room was
24 right next to his. There's a thin
25 wall right in between our bedrooms

K. THOMAS - - DIRECT

1 and I could hear everything and
2 there was a clicking at nighttime
3 and she would scream but not like
4 in pain, like out of pleasure, and
5 he would be in there with her.

6 Q And what did you
7 think about all this?

8 A I've been in
9 situations my whole life, like
10 everything is, you know, I black
11 out things. I've had trauma and
12 I've been seeing therapists since
13 I was four years old. I mean I've
14 been in situations like this.

15 Q Okay. And your
16 mother, your natural mother has - -

17 A My mom does - - my
18 mom, she's a drug addict as well.

19 Q But she's been in
20 remission and off the drugs?

21 A Yes, sir.

22 Q But you come from a
23 family that your natural father
24 and your natural mother were drug
25 addicts?

K. THOMAS -- DIRECT

1 A Yes, sir.

2 Q Okay. And you're not
3 liking that, are you?

4 A No, sir.

5 Q You're not on drugs,
6 are you?

7 A No, sir. I'm in
8 college right now and I guess I --

9 Q Seriously?

10 A Yes, sir.

11 Q Where do you go?

12 A Trident Technical.

13 Q And how old are you
14 now?

15 A I'm seventeen.

16 Q Now was there an
17 incident in March of '06 where the
18 police were called to the house?

19 A Yes, sir.

20 Q And what was going on
21 at that time?

22 A My dad had left. He
23 was at work. Rachel, Rachel --

24 MR. WILLIAMS: Your

25 Honor, I'm going to object at

K. THOMAS -- DIRECT

1 this point. Can we approach?

2 THE COURT: Please

3 approach.

4 (Whereupon, there was

5 an off-the-record bench

6 conference.)

7 THE COURT: Overruled.

8 You may proceed.

9 Q In March of '06 were
10 the police called?

11 A Yes, sir.

12 Q And what was that
13 about?

14 A Rachel had gone or
15 Rachel Crowley had gone to see --
16 Goal, Joel -- I don't know his
17 last name -- and I were in the
18 house. My dad was at work at the
19 time. Rachel had drank two
20 bottles of wine and she was very
21 intoxicated and she made a phone
22 call to some guy -- I don't, I
23 don't know who he was -- and she
24 was talking to him and I guess he
25 said something to her and she just

K. THOMAS -- DIRECT

1 out of nowhere just started
2 throwing things. Like there'd be
3 a bowl of fruit sitting there and
4 she'd pick it up, throw it across
5 the room. She went in the
6 bathroom, broke all the shower
7 curtains. Go in my dad's room.
8 Pull the T. V.'s down, throw them
9 across the room. Break everything
10 she could.

11 And it scared me and
12 I'm sitting there on the couch and
13 there's nothing I can do. I'm,
14 you know, and I was scared. I
15 didn't know -- she was out of
16 control and then she goes running
17 out of the house and I locked the
18 door immediately.

19 I had made a phone
20 call to the police and I told them
21 what was going on and that she had
22 ran down the road and I was scared
23 that she would come back and
24 because I -- she didn't know what
25 she was -- you know, she was out

K. THOMAS -- DIRECT

1 of control. And then she came
2 back and punched through the
3 window and her hands were bleeding
4 and got in the door and --

5 Q And blood everywhere?

6 A Yes. There was --
7 she was flinging blood everywhere
8 I know she is, has done needles
9 before, I was scared that, you
10 know, blood would get on me or
11 something. So we tried to hold
12 her down so where she couldn't
13 hurt anyone so she came up to me
14 and pushed me and jumped on John's
15 back and bit him a few times and
16 we held her on the floor until the
17 cops got there so she wouldn't
18 hurt anyone and as soon as the
19 cops got there they picked her up
20 and they -- she was flinging blood
21 everywhere, cussing at the cops.

22 Q Slinging blood at the
23 cops?

24 A Slinging -- trying to
25 put her hands on the cops, put her

K. THOMAS -- DIRECT

1 hands on people while there was
2 blood pouring off of her and they
3 pulled out taser guns. I turned
4 around and I closed my eyes
5 because I didn't want to see what
6 was going on and I heard the
7 clicking noise of the taser and I
8 turned around. She was on the
9 floor.

10 Q You heard the tasers
11 click?

12 A Yes, sir.

13 Q And she dropped?

14 A And she was on the
15 floor and she was laughing, saying
16 do it again, do it again, I like
17 that, do it again. And when,
18 after that happened they picked
19 her up off the floor and put her
20 in the back of the police car
21 where she was spitting all over
22 the car, trying to kick the window
23 out. And after this happened
24 about two weeks later I moved out
25 of the house because I didn't want

K. THOMAS -- DIRECT

1 to be around that any more.

2 Q That was it?

3 A Yes, sir.

4 Q And where did you go?

5 A I stayed with my

6 boyfriend at the time.

7 Q Okay. Now where do

8 you live?

9 A I live back with my

10 mother.

11 Q But do you have some

12 semblance of stability now?

13 A Yes, sir.

14 Q They call you CiCi?

15 A Yes, sir.

16 Q This is an important

17 case. Do you know what take the

18 oath means? You've --

19 A Yes.

20 Q -- sworn to tell the

21 truth?

22 A Yes. Yes, sir.

23 Q Have you told the

24 truth today?

25 A Yes, sir.

K. THOMAS -- DIRECT

1 Q Have you --

2 A I love my, I love my
3 dad and I don't want to see
4 anything happen to him but I'm
5 going to tell the truth because I
6 know it's what you all need to
7 hear and --

8 Q Well, who needs to
9 hear it?

10 A What everyone here
11 needs -- I mean I don't want to
12 lie to get anyone, you know, or
13 anything like that, but I don't
14 want to see anything happen to
15 him.

16 Q But you have
17 absolutely no idea what happened
18 in that hotel room?

19 A I didn't even know
20 that he was staying in that hotel.
21 I had no idea until I was woken up
22 with the newspaper in front of me
23 saying your dad's back in prison
24 and I cried and I made a phone
25 call just to make sure, and he

K. THOMAS - - CROSS

1 was.

2 MR. BOLUS: Thank you.

3 Answer any questions the
4 prosecutor has.

5 THE COURT: Mr.
6 William, you may proceed.

7 MR. WILLIAMS: Thank
8 you, your Honor.

9 THE COURT: You're
10 welcome.

11

12

13

14

15

16 CROSS-EXAMINATION BY

17 MR. WILLIAM:

18 Q When was it that this
19 thing happened at Folly Beach?

20 A What? The incident
21 with Rachel?

22 Q Yeah. What day was
23 it?

24 A March sixth.

25 Q How do you know it

K. THOMAS - - CROSS

1 was March sixth?

2 A Because I have a
3 police report stating that.

4 Q You read the police
5 report?

6 A Yes, sir. I have a
7 copy.

8 Q Where'd you get that
9 from?

10 A I was -- I just have
11 a copy of it.

12 Q Where did you get
13 that from? Are you -- where'd you
14 get it from?

15 A My lawyer.

16 Q Who's your lawyer?

17 A I'd rather not answer
18 his questions.

19 MR. WILLIAMS: Your
20 Honor, this is three questions
21 in.

22 THE COURT: Well --

23 A Uh-huh.

24 THE COURT: Would
25 counsel approach for me,

K. THOMAS - - CROSS

1 please.

2 A I don't know what to
3 say.

4 (Whereupon, there was
5 an off-the-record bench
6 conference.)

7 THE COURT: Ma'am,
8 please answer the question.

9 A I got a copy of the
10 police report from Tommy Bolus.

11 Q That's - - Mr. Bolus
12 is right here. He's the one who's
13 defending your father?

14 A Yes, sir.

15 Q He doesn't represent
16 you as far as - -

17 A Oh, I didn't - - I
18 mean - -

19 Q When you say he's
20 your lawyer, you're not saying
21 that - -

22 A All right. Yes, sir.

23 Q - - he represents you
24 in court or anything. You're just
25 saying that - -

K. THOMAS - - CROSS

1 A Yes, sir.

2 Q But you --

3 A Sorry.

4 Q But when you say he's
5 your lawyer, you consider him your
6 lawyer?

7 A No. I don't consider
8 him. I just didn't know how else
9 to -- I'm just nervous right now
10 and I'm just answering. I don't
11 know.

12 Q So Mr. Bolus gave you
13 the police report from that
14 incident and that's how you
15 remember what the date was?

16 A That's how I remember
17 what -- I have statement that I
18 have in my house about what
19 happened with the date on it.

20 Q And you, you read
21 through the report?

22 A Yes, sir.

23 Q The police didn't say
24 anything about tasing anybody, did
25 they?

K. THOMAS - - CROSS

1 A No. They did not.

2 Q How long ago - - you
3 said March of 2006?

4 A Yes, sir.

5 Q When was the last
6 time you lived with your father?

7 A Approximately two
8 weeks after that I left but I was
9 staying there from August, 2005
10 until March or so, the end of
11 March, April. Around that time.

12 Q So spring of 2006?

13 A Yes.

14 Q So you haven't seen
15 your father with Rachel living
16 together since about two and - -
17 two, over two years ago?

18 A I - - yes, sir. That
19 was the last time I seen them live
20 together.

21 Q So that was over two
22 years ago before you were close
23 enough to be with him or see him
24 or anything?

25 A Yes, sir.

K. THOMAS -- CROSS

1 Q Had you seen any of
2 the letters that your father was
3 writing on his computer?

4 A No, sir.

5 Q You don't know
6 anything about what the status of
7 their relationship was most
8 recently?

9 A No, sir.

10 Q How did -- let me ask
11 you this. How often have you been
12 speaking with your father since he
13 got arrested?

14 A As of this time?

15 Q Yeah.

16 A I've spoken with him
17 maybe twice and it was only for
18 like five minutes.

19 Q He's talked to you
20 about this case?

21 A No. He asked me
22 about, to get his -- if I could
23 get his the car and he talked to
24 me, I mean, I guess he was trying
25 to get me to get everything out of

K.THOMAS -- CROSS

1 there, get his tools, keep them in
2 a safe place, which I have done,
3 and things like that. He just
4 wanted to make sure all of his
5 possessions were taken care of. I
6 went to the house where he was
7 staying and I got all of his
8 possessions out of there so they
9 would not be stolen and I haven't
10 heard anything.

11 Q You found out about
12 this case by being contacted by
13 Mr. Bolus?

14 A Yes, sir.

15 Q He talked about what
16 the case was about?

17 A Yes, sir.

18 Q He told you what the
19 issues were in the case?

20 A He told me it was for
21 the Rachel incident like.

22 Q But I mean he, he
23 went so far as to bring you the
24 police report and tell you about
25 that this prior stuff was

K. THOMAS - - CROSS

1 important and what this case was
2 about?

3 A Well, I forget a lot.
4 Like I told you, as I said before
5 that I have trauma and I have a
6 hard time remembering things, so I
7 have to look over and I can
8 remember a few things but not
9 everything and he showed that to
10 me just to remind me about what
11 happened.

12 Q But you and he,
13 obviously, because this came up,
14 talked about what would be
15 important in this case?

16 A Yes.

17 Q So he, he talked to
18 you about what was going to be an
19 important issue in this case?

20 A He asked me - -

21 Q When he talked to you
22 - -

23 A - - what I knew. He
24 asked me what I've seen and I told
25 him from what I remember what I've

K. THOMAS -- CROSS

1 seen.

2 Q And then you knew
3 what the allegations were in this
4 case. Correct?

5 A All the information
6 I've told to him was new
7 information that he didn't know
8 anything about until he asked me
9 the questions, like what I've seen
10 around, like how they treated each
11 other, just ...

12 Q And you talked to
13 your father about it as well?

14 A No. I haven't talked
15 to him since he was locked up.

16 Q You said you heard
17 about that he'd been arrested and
18 what it was about?

19 A Yes, but he didn't
20 talk to me about it.

21 Q Okay. But you knew
22 what the allegations were?

23 A Yes.

24 Q You said you love
25 your father?

K. THOMAS - - CROSS

1 A Yes, sir.

2 Q He didn't do a great
3 job maybe of raising you but he
4 did raise you?

5 A Yes, sir.

6 Q You don't want to see
7 anything happen to him?

8 A He didn't do a bad
9 job raising me. It was just that
10 he was on drugs and he tried as
11 hard as he could. He got me in
12 school. He always told me that --
13 I mean he's always been there for
14 me. Even though he had his
15 problems, he's always been a great
16 dad to me and I'd hate to see him
17 in jail again. He's all I have.

18 Q He's been a great
19 father to you and you would be a
20 great daughter for him?

21 A Yes, sir. And in my
22 eyes he's perfect, but I know he
23 has problems.

24 Q You said he's always
25 been there for you?

K. THOMAS -- CROSS

1 A Yes.

2 Q And you'd always be
3 there for him. Right?

4 A Yes, sir. But I
5 wouldn't --

6 Q He's your father?

7 A Yes, sir.

8 MR. WILLIAMS: Nothing
9 else.

10 THE COURT: Any
11 redirect?

12 MR. BOLUS: Yes.

13

14

15

16

17

18 REDIRECT EXAMINATION

19 BY MR. BOLUS:

20 Q Rachel, at that
21 first, that first conference that
22 I went to see you at your mama's
23 house, this -- you didn't even
24 tell me about tasers and things
25 like that, did you?

K. THOMAS -- REDIRECT

1 A You didn't --

2 Q We didn't talk about
3 that, did you?

4 A I didn't talk about
5 anything involve -- the duct tape
6 or anything like that.

7 Q But I didn't have the
8 report then either, though, did I?

9 A No, sir.

10 Q Okay. And when I
11 get -- I gave you the report
12 recently. Right?

13 A Yes, sir.

14 Q And who brought up --
15 did I -- who brought up the taser
16 stuff?

17 A I did.

18 Q Okay. And did I put
19 any words into --

20 A I told you --

21 Q -- your mouth?

22 A No, sir. All I --

23 Q What did I tell you
24 to do if you came to court?

25 A Please tell the

K. THOMAS -- REDIRECT

1 truth.

2 Q Okay. And is that
3 what you've done today?

4 A Yes, sir.

5 Q Do you feel like I've
6 coached you in any way?

7 A No, sir. All you've
8 done is ask me questions and I've
9 answered them honestly and I've
10 given you information that
11 obviously no one knew about that I
12 didn't want to bring up because it
13 hurts me to remember that kind of
14 thing. I try to forget. But it's
15 apparent that I have to bring it
16 up and I have to live through it
17 again so. . .

18 Q And, and most of this
19 information I, I did not know last
20 year, did I?

21 A No, sir.

22 Q And you didn't tell
23 me about that, did you?

24 A No, sir.

25 MR. BOLUS: Okay.

1 Thank you.

2 THE COURT: Any
3 objection to the witness being
4 excused? From the State?

5 MR. WILLIAMS: No, your
6 Honor.

7 THE COURT: From the
8 defense?

9 MR. BOLUS: None.

10 THE COURT: Ma'am,
11 you're excused.

12 You may call your
13 next witness.

14 MR. BOLUS: Judge, she
15 was sequestered. I'd like her
16 to --

17 THE COURT: As long as
18 you're not -- she's not
19 subject to being recalled
20 again, she may remain.

21 MR. BOLUS: Thank you.
22 She won't be.

23 THE COURT: You may
24 call your next witness.

25 MR. BOLUS: We would

C. THOMAS - - DIRECT

1 call Clark David Thomas.

2 CLARK DAVID THOMAS,

3 having been called as a

4 witness, is duly sworn and

5 testifies as follows:

6 COURT CLERK: Please

7 speak into the mike and state

8 your full name and spell your

9 last name.

10 THE WITNESS: Clark

11 David, Clark David Thomas.

12 T-h-o-m-a-s.

13 THE COURT: You may

14 proceed.

15

16

17

18 DIRECT EXAMINATION BY

19 MR. BOLUS:

20 Q David, were you and
21 your wife living together at the,
22 the hotel on the night in
23 question?

24 A Yes, sir.

25 Q And how long had you

C. THOMAS - - DIRECT

1 been living at the hotel with her?

2 A Let's see. March,
3 April, May, June. Approximately
4 three months.

5 Q Three months. And
6 where did you live prior to that?

7 A
8 Folly Beach.

9 Q Okay. And did you
10 all - - you all got evicted because
11 of this March - -

12 A Excuse me. I'm
13 sorry. That was
14 was the number of the room at
15 the Intown Suites.

16 Q And you were evicted
17 because of the March second
18 incident of '06?

19 A Well, I believe it
20 was March sixth. And - -

21 Q All right.

22 A Yeah. Yes, sir. I
23 came home and my landlord told me
24 that because of the window being
25 broken out that we were going to

C. THOMAS - - DIRECT

1 have to leave and I was noticing
2 that Mr. Greenhill made comment
3 that it was a fight that she and I
4 had had there. As you heard from
5 the testimony and the report, I
6 was at work. I had no involvement
7 with that whatsoever.

8 Q You weren't even
9 there?

10 A No, sir. I was at
11 work. I came home and found that
12 I was homeless.

13 Q And a claim being
14 made that she was not living with
15 you at the hotel, is that true?

16 A She had gone to her
17 mother's house for one night the
18 previous day and that evening that
19 she was gone we had - - Keith was
20 over and two other employees.
21 Roger, I can't remember Roger's
22 last name. I was running a job
23 and it wasn't actually Isle of
24 Palms. It was Mount Pleasant.
25 But at any rate we were, we were

C. THOMAS - - DIRECT

1 celebrating the finishing that job
2 and we were all in there partying
3 and smoking crack. Incidentally,
4 that was one of the nights that,
5 where she claimed that she was
6 being tortured in my room or our
7 room, actually.

8 Q Prior to that, did
9 she spend any nights with - - three
10 months in the hotel. Did she
11 spend any nights with her mother?

12 A You know I want to
13 say that there was an occasion
14 where she did spend the night or
15 maybe a night. I just don't
16 recall any specific date other
17 than the night prior to the
18 alleged incident.

19 Q There's been some
20 talk of separation from
21 time-to-time during your marriage?

22 A Separation was in my
23 mind. I felt that she wanted to
24 separate previous to the event
25 there, but we were starting to get

C. THOMAS -- DIRECT

1 things working out in my mind.
2 She never made any statement about
3 a separation. That was never any,
4 any, any indication verbally made
5 by her that she wanted to
6 separate. We were -- I was making
7 a good bit of money at the time
8 and there was -- there was a lot
9 of black tar heroin in town and I
10 would bring several hundred
11 dollars' worth of heroin. I'd
12 leave her with the crack and
13 heroin and she could sit home and
14 do heroin all day, so she was very
15 content being with that.

16 She had a habit and
17 that would be another reason that
18 she wouldn't be gone long because
19 when you're on heroin you require
20 daily fixes or you go through
21 withdrawals and she couldn't stay
22 away from me very long because she
23 had to have her daily fix
24 otherwise she would go into
25 withdrawals. So she did not --

C. THOMAS - - DIRECT

1 now that I think about it, that's
2 a specific fact. There's no way
3 she could have stayed away for
4 very long.

5 Q But you really
6 couldn't stay away from the heroin
7 very long either, could you?

8 A I was on methadone
9 and heroin. I was on a methadone
10 program. I was way up there. I
11 was drinking a hundred milligrams
12 of methadone a day, shooting a
13 hundred, hundred and fifty
14 dollars' worth of black tar
15 heroin, and smoking a hundred
16 dollars' worth of crack every day.
17 I don't know how I was able to
18 even perform but I went on like
19 some kind of Superman.

20 Q And at this time you
21 even had a advertisement in the
22 Yellow Pages, Daray Electrician or
23 something like that?

24 A Yes, sir. I had
25 named my company Daray. I put

C. THOMAS -- DIRECT

1 David and Rachel to, you know,
2 give her something.

3 Q Okay. And why did
4 she even go home the night before
5 the alleged incident? This
6 happened on June sixth on a
7 Tuesday. That meant she would
8 have been home Monday night?

9 A Let's see. She went
10 there on Sunday afternoon. I
11 picked her up at approximately
12 5:30, six o'clock p. m. contrary
13 to her mother's testimony that I
14 got there between 12:30, twelve
15 and 12:30 because --

16 Q What date?

17 A Oh, on March --

18 Q No. In June?

19 A Oh, I'm sorry.

20 June -- let's see. June fifth was
21 Monday.

22 Q She let --

23 A So I picked her up on
24 June fifth at approximately 5:30,
25 six p. m. at Adams Run at her

C. THOMAS - - DIRECT

1 mother's house and we drove there
2 straight to the Intown Suites
3 because my wife made reference in
4 her testimony to the fact that she
5 got there just before dark and
6 made -- and said it had ended just
7 dark the next day, so there was a
8 five-hour lapse there.

9 Q But why did she even
10 go home that day? Was a there
11 discussion?

12 A Oh, it was just that
13 I think her mother was trying to
14 initiate some more relations with
15 her. Her mother and her have
16 always had their basic, you know,
17 she would come around, live with
18 her mother a while, then they'll
19 be fine, and then Rachel would go
20 into these tirades and get sick of
21 her and take off and, you know,
22 over, over her lifetime, so she,
23 she's always had a rocky road
24 relationship with her mother.
25 Well, she has a rocky road

C. THOMAS -- DIRECT

1 relationship with anybody.

2 Q So did she just tell
3 you she wanted to be with her
4 mother for the night?

5 A That was basically
6 just -- what I got out of it and
7 her mother wanted to spend time
8 with her. In fact her mother
9 actually came over and would watch
10 movies at the room with her and I
11 would leave the room so they could
12 spend quality time together.

13 Q During your stay at
14 the hotel?

15 A Right. Her mother
16 would come over and stay. And,
17 you know, during the day. Not
18 spend the night or anything, of
19 course. It was a one-room
20 efficiency apartment. We paid
21 weekly by the way.

22 Q So this thing about
23 being a hotel room, was that your
24 house?

25 A We were official

C. THOMAS - - DIRECT

1 residents there. When you stay in
2 a, an Intown Suites or something
3 like that for an extended period
4 of time, after three months they
5 eliminate the -- there's a tax
6 that's applied to motel rentals
7 and once you've established that
8 three month time period, that tax
9 is eliminated and the rates go
10 down drama -- approximately forty,
11 fifty dollars a month. So we were
12 established residents at the
13 Intown Suites at this time, and
14 that can be verified.

15 Q And did she have a
16 key to the room?

17 A Absolutely.

18 Q And when you'd go to
19 work she could leave when she
20 wanted to?

21 A She was totally free
22 to do what she wanted to do.

23 Q Okay. Now, your sex
24 life with her, strange to say the
25 least?

C. THOMAS -- DIRECT

1 A Excuse me. Yes, sir.

2 Q And what do you --

3 what's the reason for that? What
4 would be the cause for that?

5 A I've -- I guess I've
6 always had some sort of issues,
7 self-esteem issues and all that.
8 I'm, I'm an old man in my opinion.
9 I'm forty-six years old. She's
10 twenty-three years my senior -- my
11 junior, and I've always felt
12 inadequate and, you know, I'm not
13 endowed enough, I'm not
14 good-looking enough. So I was
15 always worried about making her
16 happy. I wanted her to be happy.
17 I'd give her anything she wanted.
18 I love my wife more than anything
19 in this world.

20 These documents that
21 are going to come into play are
22 going to demonstrate my extreme,
23 you know, love for my wife. So
24 anyway, back to the sex life.
25 Yeah. It was very peculiar, me

C. THOMAS - - DIRECT

1 trying to please her any way that
2 I could to make her happy so I
3 could keep my young beautiful
4 wife.

5 Q But what's the deal
6 about the duct tape and taser and
7 all that?

8 A Like she was into - -
9 she, she liked the beach. She,
10 she was into being tied to the
11 bed. We were trying to locate a
12 picture that I had of her tied to
13 the bed from years back when I
14 first met her. She wanted me to
15 do the choking thing during orgasm
16 but I was too nervous to do that
17 because I heard of people dying
18 doing that and I'd never hurt
19 anybody like that before, but she,
20 she was, she was a very wild
21 woman.

22 And I - - in fact
23 there's friend of mine in
24 Columbia, Jack Swerling, he's an
25 attorney. I told him - - he and I

C. THOMAS - - DIRECT

1 were on the phone and I told him
2 about marrying Rachel, and he
3 goes, "Clark, you could keep up
4 with that?" And I didn't really
5 understand what he meant then, but
6 the sex drive of a twenty,
7 nineteen, twenty year-old young
8 woman is quite a task to keep up
9 with at the age of forty.

10 Q But do you blames
11 drugs for some of this? I mean - -

12 A Oh, absolutely. I
13 had, I experienced E. D. or
14 erectile dysfunction which
15 displeased her quite a bit.

16 Q But how about the
17 duct tape? When did that start,
18 the duct tape?

19 A Oh, I've been taping
20 her up and tying her down since,
21 oh, God, before we even married.
22 A house we had in West Ashley when
23 we had actually started out, used
24 to use these silk ties, but - -

25 Q Started out with silk

C. THOMAS - - DIRECT

1 ties?

2 A Well, I had a whole
3 bunch of tie racks, ties on a
4 rack, and when we moved into the
5 motel I didn't have those.

6 Q Would you consider
7 the fact that you all were on the
8 drugs as increasing this what
9 one - - some people might call
10 perversion?

11 A Yeah. It made me do
12 some really kinky stuff. I, I
13 would have never pictured myself
14 even getting involved in
15 domination because I always
16 thought that was kind of weird,
17 but I just thought of, you know,
18 trying - - I mean I want my wife to
19 be happy so I'm starting to try
20 and do what it takes.

21 Q Well, you got into
22 domination?

23 A Yes.

24 Q What's dominations,
25 sado-mach - - what is that?

C. THOMAS -- DIRECT

1 A Sado-mas -- well, I'm
2 going to presume that. I'm not a
3 professional on these sexual
4 deviate, deviate, deviate
5 behaviors, sexually deviant
6 behaviors, but my interpretation
7 of dominatrix is being tied down,
8 whipped, and biting. She would
9 bite, claw, scratch, slap.

10 Q This was your regular
11 sexual activity or did it happen
12 every now and then or what?

13 A It was pretty
14 regular.

15 Q And when you all had
16 sex was it generally under the
17 influence heroin or crack cocaine
18 or what?

19 A Oh, always under the
20 influence of heroin or we'd be in
21 withdrawals and we loved the crack
22 if we had the money, which we
23 always did, yes. So your answer
24 is yes.

25 Q Okay. Now, what

C. THOMAS -- DIRECT

1 happened on the day, the day, June
2 sixth? You'd picked her up that
3 day or was it the day before?

4 A I picked her up on
5 June fifth, approximately 5:30
6 p. m.

7 Q And she wore those
8 clothes?

9 A Yes, sir.

10 Q Was it pre-planned by
11 both of you to go to your -- back
12 to the room where you all lived?

13 A Yes, sir. There --
14 she was coming home. She said
15 she'd -- come pick me up, I'm
16 come, coming home.

17 Q Okay. And she'd been
18 away what, twenty-four hours?

19 A Approximately. Yes,
20 sir.

21 Q Was her stuff and her
22 belongings still in the, the hotel
23 room?

24 A I don't think she
25 took anything out there.

C. THOMAS -- DIRECT

1 Q Where?

2 A Out to her mother's.

3 In other words, yes, sir,

4 everything was in the room.

5 Q Well, what kind of

6 stuff was still in the hotel room?

7 A I mean hygiene, tooth

8 brush, panties, bras. You know,

9 whatever, what, you know, there,

10 there were various clothing,

11 clothing items. You know, we both

12 were living out of suitcases

13 basically.

14 Q Okay. But other than

15 the hotel room, had you all ever

16 lived anywhere else after Folly

17 Beach except that hotel room?

18 A No. To be honest

19 with you, I was afraid to move

20 into any place and put down a

21 deposit and everything because of

22 the fear of her going off on one

23 of her rages and, you know,

24 getting us evicted again. We'd

25 been evicted from numerous places.

C. THOMAS -- DIRECT

1 I've lost numerous contracts.
2 There's been jealousy issues.
3 It's just been a, it's been a
4 roller coaster. It's been quite
5 a -- it's been quite an ordeal.

6 Q What -- when is the
7 last time that she went home for
8 that evening? When was the time
9 before that you all did do any
10 drugs together? Before she went
11 to her mother's house I'm talking
12 about?

13 A Well, on -- most,
14 most certainly that day and I'm
15 almost positive she had took drugs
16 out there with her because she was
17 going over a twenty-four hour
18 period. Heroin only has a, a,
19 a -- heroin will only sustain an
20 addiction for a period of
21 approximately eight to twelve
22 hours. Well, maybe even a little
23 less than that before sickness
24 begins to set in. So if she was
25 gone over twenty-four hours,

C. THOMAS -- DIRECT

1 there's no way she could have gone
2 out there without something to
3 keep her held over. She might
4 have taken methadone with her.

5 Q Did you have a
6 surveillance situation out there?
7 Obviously you did.

8 A Yes, sir. I did.

9 Q What's that all
10 about?

11 A Well, I used to think
12 that it was to watch my van
13 because I was concerned about a
14 security issue being in the area
15 and someone stealing, but in
16 reality it was because of the fact
17 when you smoke crack cocaine, Mr.
18 Greenhill had it right. You get
19 very, very paranoid. I can tell
20 you stories of me hiding in some
21 very obscure locations because I'm
22 fearing the police coming.

23 I had friends that
24 would come over. You could reach
25 up behind the curtain and pan the

C. THOMAS - - DIRECT

1 camera through the parking lot and
2 they would just go, "This is the
3 greatest," because we could see if
4 anybody was coming to get us, you
5 know, because we were in there
6 smoking that crack, and that's
7 the, and that's the madness of it.
8 Why would you want to spend money
9 and smoke something that makes you
10 so scared, scared, terrified out
11 of your mind, but you keep doing
12 it. It's, it's a sickness that
13 I'm, you know, but that was what
14 the surveillance was for.

15 Q On the night in
16 question did you drive your wife
17 to the hotel room?

18 A Yes, sir.

19 Q And then did you keep
20 her against her will there?

21 A Absolutely not.

22 Q What happened?

23 What - - tell me. You left her
24 mother's house. She's in your,
25 your van or your car?

C. THOMAS - - DIRECT

1 A We're in my van.

2 Q Okay. And then take
3 us to the hotel room?

4 A We go to the room.
5 We come in. We start, you know,
6 partying. She gets - - we get
7 high.

8 Q What were you getting
9 high on?

10 A Heroin and shooting
11 crack.

12 Q Okay. Did she have
13 any?

14 A Have any what?

15 Q Any heroin or crack?

16 A Oh, she definitely
17 had heroin and I don't, I don't
18 know - - yes, she did. She had a
19 little bit of the crack. I think
20 that last syringe that had crack
21 it in was hers but she, she didn't
22 like to shoot it as much as she
23 liked to smoke it.

24 Q What did - - and who
25 did you all do the most?

C. THOMAS -- DIRECT

1 A In the drugs?

2 Q That night?

3 A Oh, that night.

4 Well, I was a little heavier that
5 night.

6 Q Okay. And what, what
7 transpired? Did you all both get
8 high?

9 A Yes, sir.

10 Q And then what
11 happened?

12 A Well, we, we went
13 into the sex thing and, you know,
14 we tied -- she tied me down and
15 she tried to get me to get erect
16 but I couldn't get erect. That
17 kind of frustrated her so I
18 thought I would try to -- I'm kind
19 of nervous about it. I don't like
20 talking about it.

21 But anyway, then it
22 was her turn, and I'd strap her
23 down and I was going off, doing
24 oral sex on her and, and she liked
25 that taser thing, you know, so

C. THOMAS -- DIRECT

1 she -- I would hit her with that.

2 She, she liked that. I, I, she

3 hit it me, too. I'm an

4 electrician. I get shocked a lot

5 so it wasn't a big deal to me to

6 get hit.

7 But we just -- you

8 know, she -- we both did each

9 other and, and then I let her up

10 when she asked me to, of course.

11 Well, I asked -- well, she -- and

12 I duct taped her, too. Like I

13 used -- I've been doing that for a

14 long time. I always kept duct

15 tape around.

16 Q What's the, the
17 shackles thing? Is that something
18 new for the night or was that --

19 A Uh-huh. I was trying
20 to get all the stuff to do the
21 shackles but I didn't have all the
22 parts so I just took one, put it
23 on the chair and the handcuffs
24 were in the drawer. I didn't
25 really even use the shackles. It

C. THOMAS - - DIRECT

1 was the ties and the duct tape and
2 I was trying to make - - I was
3 clipping the ties together to make
4 them long enough to go around and
5 catch the post on the bed and,
6 and, you know, tie her down. I
7 wish I had that picture with us to
8 show it. It's actually artsy,
9 believe it or not.

10 Q What picture?

11 A The, the picture. I
12 tried to get my family to find it
13 and they said they couldn't locate
14 it. I've got a picture of her
15 tied to my bed when she was - -
16 well, several years earlier before
17 we were married, with silk ties
18 and she's kind of arching her
19 back. You know, you can - - it's
20 really kind of an exotic picture,
21 but I've always liked having it
22 and I wanted to demonstrate that
23 she, she was beautiful then, you
24 know. Like I say it was art.
25 Art.

C. THOMAS -- DIRECT

1 Q You had -- it started
2 out silk ties and moved up into
3 this other stuff?

4 A Well, I didn't have
5 the silk ties with me and she
6 wanted to be tied down so. . .

7 Q And this happened
8 fairly often?

9 A Whenever we did it.

10 Q Okay.

11 A I mean I wasn't
12 always im, im, impotent, you know.
13 I was able to perform on occasion
14 when I wasn't doing so much drugs.
15 I did research on it and read up
16 on it on the internet and looked
17 in the reasons and the causes for
18 it. But during the -- may I
19 continue or --

20 Q Sure.

21 A During the course of
22 this I, I -- Rachel has cheated on
23 me throughout our relationship.
24 She has never, ever remained
25 faithful to me. And that was

C. THOMAS - - DIRECT

1 another problem for my low
2 self-esteem issues. I, I would
3 have done anything in the world to
4 stop her. I begged her. I
5 pleaded. I started a journal
6 which you guys are going to get a
7 copy of and it's going to
8 demonstrate my lack of
9 self-confidence and my
10 insecurities, and my concerns, and
11 worries, and paranoias, and all of
12 that stuff. Everything that I
13 wanted to -- that I wanted to work
14 out with her.

15 These, this cheating
16 on me had gone on for years
17 throughout the beginning of our
18 relationship. She went to work
19 for escort services. She, she --
20 I remember I was in my room in my
21 house in West Ashley and some guy
22 had come over and I'd left and
23 then went to work and the guy
24 called me up and he said ah,
25 you're a cool guy. I just want to

C. THOMAS -- DIRECT

1 tell you, your old lady is very --

2 MR. WILLIAMS: Your

3 Honor, I object. Hearsay.

4 THE COURT: Sustained.

5 Hearsay.

6 THE WITNESS: Okay.

7 Q This journal that was
8 taken off your computer, it's your
9 writing?

10 A Oh, yes, sir.

11 Q But it's, it's dated
12 like in April and May of 2006?

13 A Yes, sir.

14 Q And this is stuff you
15 were writing to who? Did anybody
16 get it or was it your own thoughts
17 or what --

18 A The, the -- I labeled
19 them for you. The defense doesn't
20 have it labeled. As a matter of
21 fact I'd like for the jury to --

22 Q Well, hold it. Just
23 answer my question.

24 A Okay. I'm sorry.

25 Q They're going to put

C. THOMAS - - DIRECT

1 two of them in there and I think
2 one's dated in April and one's
3 dated in May. Right?

4 A Yes, sir.

5 Q And this is a month
6 or two months before you all are
7 even -- you all were still in the
8 hotel room at that time.

9 A Right.

10 Q Right?

11 A Right.

12 Q So who -- did you --
13 she get a copy of this or is this
14 just for you?

15 A That is just mine.
16 That was all mine. I never gave
17 her the letters. She would fly
18 into a rage and it indicates in
19 the letter that if I would have
20 given it to her she'd have gone
21 into a rage. She never read any
22 of that. There's entries in there
23 were I said okay, you're getting
24 out of the shower. I guess I'll
25 finish this later. But --

C. THOMAS - - DIRECT

1 Q But this, these were
2 your private thoughts at the time
3 that you all were still living
4 together until at least the date
5 of the incident?

6 A Oh, yeah. I never
7 said anything.

8 Q Okay. And did you
9 ever act upon any of this, I mean?

10 A Never did anything
11 except, well, that night, that
12 night - - you want me to go ahead
13 and tell you what transpired
14 through the - -

15 Q Go ahead.

16 A Okay. That, that
17 night after all the sex and
18 everything, I could tell that she
19 had been with someone else. And I
20 told her, I told her that I, I
21 suspect that. But I didn't think
22 about it.

23 But anyway, the next
24 morning, we were up all night
25 partying or whatever, and in the,

C. THOMAS - - DIRECT

1 in the morning I had to go to the
2 methadone clinic which is on the
3 corner of Azalea and Cosgrove.

4 Q You were going?

5 A Yeah. And she was
6 riding with me. And I was so
7 distraught thinking about how, you
8 know, it's just crazy to continue
9 on with this relationship. And I
10 didn't take the second exit which
11 circled back around, coming from
12 North Charleston eastbound on 26.
13 I took the first one.

14 So I'm heading into
15 West Ashley on Highway 7, crossing
16 the north bridge. And as I'm
17 coming over the bridge I tell her
18 that's it. I'm, I'm, you know, we
19 just got to split up. I can't
20 deal with this any more, you know.
21 I used to -- you know, I'm, I'm
22 going crazy. I can't function.

23 And she starts
24 flipping out and as I'm turning
25 off of the road, I'm going to go

C. THOMAS - - DIRECT

1 cut through and come around and
2 come up underneath the bridge to
3 reverse my direction. Instead of
4 going down to that light and
5 turning around in the business
6 park, a little shorter route to
7 get back heading back to Azalea
8 and Cosgrove to go to the
9 methadone clinic. And she jumps
10 from the van and takes off running
11 screaming and freaking out,
12 because I told her that we were
13 ending it.

14 And you got to
15 understand, I was her crutch, I
16 was her connection, I provided her
17 drugs. She had a carefree life
18 style where all she did was sit
19 around in motel rooms, spend
20 money, eat wherever she wanted to
21 do, and do all the drugs she
22 wanted. I was a very good
23 provider for her as far as drugs
24 were concerned.

25 I took off after her

C. THOMAS - - DIRECT

1 because I was afraid that she was
2 going to kill herself.

3 Q Had she ever tried a
4 maneuver in your car before that
5 endangered anyone?

6 A My daughter and I
7 were traveling eastbound on 26
8 coming back from a Columbia, from
9 Columbia on a visit with my mother
10 and we were talking and I looked
11 at Rachel and I made a, a gesture,
12 a smile or something that was
13 insignificant. It was nothing of
14 any consequence whatsoever and all
15 of a sudden she grabbed the
16 steering wheel. I just bought a
17 brand new Mustang. This is like
18 2002 or 2001. I bought the car
19 the year before. Brand new car.
20 She grabs the
21 steering wheel and tries to slam
22 us into the, into the, the
23 barrier, the wall in between. My
24 daughter can verify that. Just
25 out of the blue. Crazy things

C. THOMAS - - DIRECT

1 like that.

2 Q Did she have her fits
3 of rage?

4 A Oh, my God.

5 Q Do you contribute
6 that to the drugs?

7 A No. I could
8 contribute that to bi-polar
9 because of the fact that she could
10 be -- let me tell you. My wife,
11 when she's not upset, when she's
12 happy, she's the most beautiful,
13 wonderful person you'll ever meet
14 in your life. She's
15 compassionate, friendly. My God.
16 Articulate. I used to call her my
17 Muse. And suddenly --

18 Q Your what?

19 A My Muse.

20 Q M-u-s-e, like the
21 poets call a Muse?

22 A Right. And then
23 suddenly she could just flip.
24 Like grabbing that steering wheel.
25 We're doing sixty, seventy miles

C. THOMAS - - DIRECT

1 an hour riding down the
2 Interstate. She tries to kill all
3 three of us.

4 One night there was
5 an argument at my house and I
6 called her mother and her mother's
7 boyfriend Cecile sitting over
8 there, and I asked them to come
9 get her because she was in another
10 rage, just standing out in front
11 of my house and out of the blue
12 Rachel just swings out and knocks
13 the shh -- the starch out of me.

14 Q Okay.

15 A And, and Cecile goes,
16 whoa, whoa, and he comes and grabs
17 her and he pulls her off. He goes
18 no, we aren't going to have that.
19 So, you know it's just, it's,
20 it's -- I don't -- you know, in,
21 in retrospect if I weren't such a
22 drug addict and, and, and my mind
23 had been so sedated I would have
24 gotten out of this relationship
25 years ago.

C. THOMAS -- DIRECT

1 Q It would have been
2 good for both of you?

3 A Absolutely.

4 Q All right. Dave, you
5 have of a prior criminal record
6 of, consisting of some receiving
7 stolen property convictions?

8 A Yes, sir.

9 Q Forgeries on checks?

10 A Yes, sir.

11 Q Obtaining --

12 financial false pretences?

13 A Yes, sir.

14 Q And that's the
15 history that you had is basically
16 stealing money or getting money
17 for doing what you're not supposed
18 to do?

19 A Yes, sir. My
20 business is seasonal and --

21 Q Well, I mean --

22 A Yeah.

23 Q Did you serve time
24 for that?

25 A Yes, sir, I have.

C. THOMAS - - DIRECT

1 Q And these are, those
2 were dishonest acts, were they
3 not?

4 A Yes, they were.

5 Q You did rip people
6 off for money?

7 A Yes, I did.

8 Q Okay. And you admit
9 to that?

10 A Yes, sir.

11 Q And you've served
12 your time for all those crimes?

13 A Yes, sir, I have.

14 MR. BOLUS: Okay. And
15 answer any questions the
16 prosecutor has for you.

17 THE WITNESS: Yes, sir.

18 THE COURT: Mr.
19 Williams.

20 MR. WILLIAMS: Thank
21 you, your Honor.

22

23

24

25

CROSS-EXAMINATION BY

C. THOMAS -- CROSS

1 MR. WILLIAMS:

2 Q You stopped the car
3 on -- the van on Cosgrove. Right?

4 A Yes, sir.

5 Q She gets out and runs
6 away from you. Right?

7 A Yes, sir.

8 Q You chase after her?

9 A Yes, sir.

10 Q You grab her
11 physically?

12 A Not precisely like
13 that.

14 Q But you grabbed her?

15 A She was sitting on
16 the ground and I sat down beside
17 her and I said come on, baby, it's
18 going to be all right. And she
19 was crying and that's when I
20 picked her up.

21 Q Well, she didn't want
22 to go with you?

23 A She didn't throw up
24 any resistance to me at first.

25 Q At some point she

C. THOMAS -- CROSS

1 started to resist you?

2 A She started kicking
3 because she was thinking that, I
4 guess thinking about the fact that
5 I was leaving her, but I never did
6 tell her I wasn't going to leave
7 her. I just didn't want to leave
8 her sitting on the side of the
9 road. It's not -- I don't think
10 that would have been a good move
11 to just drive off and leave my
12 wife sitting on the side of the
13 road with no way to get around.
14 She was wearing her pajamas.

15 Q She was clearly in
16 distress?

17 A Well, sure she was.

18 Q She was upset?

19 A Absolutely.

20 Q And you picked her up
21 and took her somewhere that she
22 didn't want to go?

23 A No.

24 Q She wanted to go with
25 you?

C. THOMAS - - CROSS

1 A She wasn't offering
2 resistance to going with me. She
3 was offering resistance to the
4 idea, the way I interpreted.

5 Q Well - -

6 A She didn't say let me
7 go, put me down. Those words
8 never came from her mouth.

9 Q To go back, I thought
10 you said earlier that she wasn't
11 resisting at first?

12 A No. She wasn't
13 resisting me picking her up. She
14 was resisting what I interpreted,
15 because she never said let me go,
16 I want to stay, I want to stay.

17 Q She wanted to go with
18 you?

19 A She didn't offer any
20 resistance to go so obviously
21 that - -

22 Q Okay.

23 A I would say that she
24 would - - I would say yes, sir,
25 yes, she did.

C. THOMAS -- CROSS

1 Q Why didn't she walk
2 with you then?

3 A Pardon me?

4 Q Why didn't she get up
5 and walk with you if she wanted to
6 go?

7 A I guess I was trying
8 to offer some, an endearment of
9 infection -- excuse me.
10 Affection.

11 Q So you think she
12 wanted you to carry her?

13 A Well, yes, I do.
14 We've been married five years.
15 There was no reason for her not to
16 want to go with me.

17 Q And you thought that
18 it would just be endearing if you
19 picked her up and carried her in a
20 romantic way?

21 A I've done it numerous
22 times.

23 Q She didn't have any
24 physical reason why she couldn't
25 get up and walk with you if she

C. THOMAS -- CROSS

1 wanted?

2 A No. Absolutely not.
3 Other than being upset.

4 Q At some point you
5 said she wouldn't move. You
6 decided that you would pick her up
7 and carry her?

8 A It wasn't like that.
9 You're trying to paint a picture
10 that doesn't exist.

11 Q Did you try to pick
12 her up and carry her away?

13 A I picked her up
14 before and I before I even got two
15 steps North Charleston run up on
16 us and told me to put her down.

17 Q Was she kicking?

18 A I say she was -- I
19 say -- no. I don't really say
20 kicking. She was just squirming.
21 You know, like, like she was just
22 upset with me. Wasn't like she
23 was trying to get away from me.
24 There was no reason for her to.
25 She was, she was pissed off

C. THOMAS - - CROSS

1 because of the fact was losing her
2 man.

3 Q She was upset but not
4 trying to get away?

5 A No. I don't
6 interpret it as that.

7 Q What was she
8 squirming for?

9 A She was upset. She
10 was crying.

11 Q She wasn't kicking at
12 you?

13 A Not kicking at me.

14 Q She was kicking to
15 try to get away?

16 A No.

17 Q She wasn't pushing at
18 you?

19 A No. I don't
20 interpret any of those acts being
21 committed.

22 Q She wasn't yelling?

23 A No, sir.

24 Q You could have just
25 left her sitting there. Right?

C. THOMAS -- CROSS

- 1 A Yeah. And just dump
2 my wife on the side of the road.
3 I guess you're right. I could
4 have.
- 5 Q You had a phone with
6 you?
- 7 A Excuse me?
- 8 Q You had a phone with
9 you. Right?
- 10 A Yes.
- 11 Q You could have called
12 the police?
- 13 A Why would I call the
14 police?
- 15 Q She didn't want to go
16 with you. Right?
- 17 A She didn't offer any
18 resistance to go with me is what
19 I'm trying to tell you.
- 20 Q If she wanted to stay
21 there you could have called the
22 police?
- 23 A Yeah. If she wanted
24 to stay there. Yes, I could have.
- 25 Q And you clearly were

C. THOMAS - - CROSS

1 concerned about her?

2 A Well, sure. I was
3 afraid she was going to hurt
4 herself.

5 Q What was she - - how
6 was she going to hurt herself
7 running underneath the bridge to
8 hide?

9 A Running under the
10 bridge? She wasn't under the
11 bridge.

12 Q She ran to the side
13 of the bridge. Right?

14 A She was going up to
15 the side by the road and then she
16 sat down and then I went and sat
17 down by her and I said, "Come on,
18 baby. Let's go." And she was
19 crying. And I picked her up and
20 turned around and then the police
21 walked up on us.

22 Q So I mean, go back
23 again. You said, "Come on, baby.
24 Let's go." She didn't do that so
25 you picked her up and carried her?

C. THOMAS - - CROSS

1 A No. I didn't say,
2 "Come on, baby. Let's go." And
3 then she didn't get up. So I
4 said, "Come on, baby." And then
5 picked her up. "Let's go. I'll
6 carry you back."

7 Q Sufficient to say
8 that that was against her will?

9 A No. I would not say
10 that at all.

11 Q She didn't ask you to
12 do it?

13 A She didn't tell me
14 not to.

15 Q I see. So if she
16 doesn't tell you to do something,
17 you can do it?

18 A If she doesn't tell
19 me to do something I can - -

20 Q Yeah. If she doesn't
21 say don't do this, then you can do
22 it. I mean does that give you the
23 - -

24 A Well, if she would
25 have said let me go, I want to

C. THOMAS -- CROSS

1 stay here, and was kicking and
2 screaming in that, in that sort of
3 a way, I would have put her down.

4 Q And she decided to
5 sit down by herself, away from you
6 and don't see that as her not
7 wanting to be next to you? She
8 got out of your car and ran away.

9 A Because I had told
10 her we were splitting up.

11 Q Clearly wanted to get
12 away from you. Right?

13 A I interpret it -- I
14 interpret it as going to hurt
15 herself.

16 Q She was trying to get
17 away from you.

18 A If that's what you
19 say.

20 Q And then you went and
21 carried her back to the car?

22 A No, I didn't even get
23 two steps and she wasn't offering
24 resistance at this point.

25 Q You picked her up and

C. THOMAS -- CROSS

1 started carrying her back?

2 A That was the
3 intention. But when the police
4 came I, I put her down as they
5 told me to. I didn't see anything
6 was wrong. I didn't, I didn't
7 have any, any concern about
8 anything being done.

9 Q As far as the, the
10 sex acts that are alleged in this
11 case, you're basically saying
12 that -- you've heard her testify.
13 That all -- that the sex acts
14 happened but that's the way that
15 she wanted it to happen?

16 A Yes.

17 Q You've seen the taser
18 in this case. Right?

19 A Yes, I have. I've
20 been stunned by it.

21 Q It hurts. Right?

22 A No, it doesn't,
23 unless you're accustomed to it,
24 using it in certain acts. If
25 you'd like me to stun myself with

C. THOMAS - - CROSS

1 it now, I'd be happy to.

2 Q That doesn't hurt?

3 A No.

4 Q Would it hurt if you
5 were stunned twice with it?

6 A I've been stunned
7 with it several times. You can do
8 it on me now.

9 Q Would it hurt if you
10 were stunned twice with it?

11 A I don't think so.

12 Q How about three
13 times?

14 A You're not talking --
15 we're not talking about continual
16 pumping like. We've talking about
17 over a, you know, hours of time.

18 Q Would it hurt if you
19 were stunned with it three times?

20 A Pardon me?

21 Q Would it hurt if you
22 were stunned with it three times?

23 A During what, during
24 what, during what duration of
25 time?

C. THOMAS - - CROSS

1 Q In succession.

2 Within an hour?

3 A Oh, no.

4 Q How many times would
5 it take before it would hurt?

6 A I imagine if you put
7 it up next to somebody and just
8 continue to pull the trigger then
9 it would be a painful thing.

10 Q Well, how many times
11 would it take before you would
12 decide somebody was hurt by it?

13 A Well, I imagine
14 pushed up against somebody and
15 continually pulled.

16 Q How about different
17 times?

18 A Oh, no. It's not
19 used as -- that's being used as a
20 malicious act today. You're
21 describing a malicious act. We
22 were making love.

23 Q That taser was making
24 love?

25 A Yeah. According to

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1 us.

2 Q If somebody was
3 stunned with it ten times you
4 don't think that would hurt?

5 A Over an hour's
6 period, no?

7 Q How about fifteen
8 times, over an hour?

9 A No. Like I said,
10 you'd have to continue holding it.

11 Q How about twenty
12 times over an hour. Would that
13 hurt?

14 A Maybe. I don't know.
15 I don't -- I don't -- I've never
16 counted. I've never --

17 Q Back up. You said
18 you've been stunned with that
19 before?

20 A Yes.

21 Q You know what it
22 feels like?

23 A Right. But I've
24 never done it, I've never counted
25 how many times we've done it.

C. THOMAS -- CROSS

1 You're asking me information I
2 don't have knowledge of.

3 Q I'm asking you based
4 on what you do have knowledge of.

5 A Well, that what I'm
6 telling you. I don't have
7 knowledge of being stunned like
8 that.

9 Q Well, based on the
10 knowledge you have of it happening
11 one time, if that happened twenty
12 times in an hour, would that hurt?

13 A I don't think so.

14 Q How about if you were
15 stunned with it twenty-five times.
16 Would that hurt?

17 A I don't know. I
18 don't know. I've never counted.

19 Q Based on your
20 recollection of being stunned with
21 it once, if you were stunned by it
22 twenty-five times in an hour,
23 would that hurt?

24 A Twenty-five times in
25 an hour, that would mean

C. THOMAS -- CROSS

1 approximately two times every, at
2 what, every couple of minutes?

3 What is that? Twenty-five --

4 Q Twenty-five times in
5 an hour would be every two
6 minutes, approximately.

7 A Yeah.

8 Q Would that hurt?

9 A One every two
10 minutes. No, I don't think so.

11 Q How about thirty
12 times, getting stunned once every
13 two minutes. Would that hurt?

14 A No.

15 Q How about forty
16 times?

17 A That might start to
18 sting a little bit. But that was
19 never done.

20 Q So basically what
21 you're telling this jury is you
22 could stun somebody with this
23 taser about forty times an hour
24 before it would start to hurt, in
25 your opinion?

C. THOMAS - - CROSS

1 A Like I said, you're
2 asking me to speculate, sir.

3 Q Didn't you just say
4 in your testimony that thirty
5 times would be okay but forty
6 times would start to hurt?

7 A No. What you heard
8 me say was that I had never done
9 it that much. I had never counted
10 it. I had no information to give
11 you with solid background on it to
12 tell you that one definitively,
13 one way or the other.

14 Q Okay. But - -

15 A But you asked me to
16 presume or assume and I did it for
17 you.

18 Q Let me go back. You
19 said you'd been stunned by that
20 before. Right?

21 A Right.

22 Q You said you know
23 what it feels like. Right?

24 A Yes, sir.

25 Q You said you could

C. THOMAS -- CROSS

1 get stunned with it twice and it
2 would be fine.

3 A Yes, sir.

4 Q My question to you
5 then is knowing what it feels like
6 to get stunned twice in your
7 personal knowledge, you're saying
8 that you could get stunned with
9 that about forty times in an hour
10 before it would start to hurt?

11 A Sir, what I'm telling
12 you is that we never counted. I
13 don't know. My wife was into
14 hurting herself. She liked pain.
15 I never sat there and said okay,
16 one minute, two minutes, three
17 minutes. I never did anything
18 like that. We're having sex.
19 We're doing drugs. We're out of
20 our minds.

21 Q So it could hurt?

22 A I don't know what you
23 want me to say because of the fact
24 that I've never done it. I don't
25 know how many times I could, what

C. THOMAS -- CROSS

1 different ways I have to put that
2 to you.

3 Q Well, I'm trying to
4 find how much it hurts and what
5 you think is painful.

6 A What you're asking me
7 to do is yes, it seems like that
8 would be, what is that, oh, God, I
9 can't think of the legal term but
10 it just seems like you're asking
11 me to speculate.

12 Q Yes.

13 A I don't know. I've
14 never done it.

15 Q Well, you have at
16 least twice, though?

17 A Have at least what?

18 Q Tased yourself this
19 way.

20 A I've been tased more
21 than twice, but I mean I don't
22 know how many times. In fact
23 when, whenever I would tase her I
24 would get shocked at the same time
25 because we were touching.

C. THOMAS - - CROSS

1 Q So what you're
2 saying, if I have this right, is
3 you do know what it feels like to
4 get tased twice, but you don't
5 want to try to figure out if it
6 would hurt after twenty times?

7 A I didn't say that.
8 Would you like to do that? We can
9 do that if you'd like.

10 Q You can't give that
11 opinion?

12 A No, I don't think
13 because I don't have definitive
14 knowledge to that effect, but I'd
15 be happy to try it, I mean.

16 Q The camera that was
17 in front of your room, that was
18 there because you thought that
19 Rachel was cheating on you.
20 That's what you're trying - -

21 A I heard Keith say
22 that. I don't recall ever telling
23 him that. I wanted to put a
24 camera in there but there was no
25 way to hide one so I just put it

C. THOMAS - - CROSS

1 in on the outside, you know,
2 because it works so well watching
3 the parking lot.

4 Q You put that camera
5 there in part because you wanted
6 to keep an eye on Rachel?

7 A How am I going to
8 keep an eye on Rachel watching the
9 parking lot?

10 Q Is that a no?

11 A Well, let me ask you
12 a question. Did you guys find any
13 recording equipment? Was it a
14 live feed onto a video monitor
15 that was recording it?

16 THE COURT: Sir, please
17 answer the questions yes or no
18 and then you can explain your
19 answer.

20 A I'm sorry.

21 Q You put that out
22 there so you could watch Rachel
23 because you were paranoid about
24 her cheating on you?

25 A No, because I would

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1 have had to have some sort of
2 device to record what was going on
3 out there. To have a live feed to
4 a monitor and being at work all
5 day, that's kind of, you know, not
6 going to be any use to me because
7 you have to record it and I don't
8 believe that there were any
9 recording devices recovered from
10 the room.

11 Q You had a journal
12 that you kept on your computer?

13 A I did.

14 Q You were reading over
15 all the journals, looking at it
16 during this trial. Right?

17 A Yeah. I read it the
18 second time since I saw you
19 produce it into evidence. I
20 thought I'd be a little more
21 familiarized with it. Yes, sir.

22 Q You had a chance to
23 review those documents?

24 A Yes, I have.

25 Q The first one was "My

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1 wife, April first of 2006"?

2 A Yes, sir.

3 Q In that letter you
4 talked about having or
5 experiencing erectile dysfunction?

6 A Yes.

7 Q Right?

8 A Yes, sir.

9 Q You actually
10 underlined it at one point. This
11 is a very serious problem?

12 A Yes, it is. Don't
13 you think so?

14 Q You also wrote on
15 there, "I am -- I actually am
16 feeling totally rejected. It has
17 been approximately ten minutes
18 since I typed this paragraph and
19 paranoia is telling me that you
20 have" and then it leads off, it
21 leaves off. You felt rejected
22 because of your erectile
23 dysfunction?

24 A Yes, sir.

25 Q Rejected by your

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1 wife?

2 A Yeah. She never
3 expressed it verbally, but I just
4 felt rejection.

5 Q Your -- that problem
6 was causing problems in your
7 relationship. Correct?

8 A It was never -- well,
9 actually it was specified because
10 she felt like she didn't turn me
11 on. It had nothing to do with it
12 and that's why I didn't finish --
13 you'll notice in the journal --
14 I'm sorry. I don't mean to. . .

15 Q At one point you
16 said, you wrote to her about your
17 problem of getting it up. You
18 said, "That is of no consequence
19 for you, no consequence for you
20 because if you act like a good
21 wife and try to help me with my
22 problem then you can't blame me
23 for lack of affection, thus
24 creating the grounds for you to
25 leave."

C. THOMAS -- CROSS

1 I'm going to take
2 that -- that means basically you
3 felt like your sexual problems
4 were going to cause her to leave?

5 A Well, of course.
6 Wouldn't you?

7 Q So you were worried
8 about her leaving you?

9 A Well, sure. If you
10 can't satisfy your wife, why would
11 she stay?

12 Q You also thought for
13 that same reason she was cheating
14 on you?

15 A No. I didn't feel
16 that was the same reason. I knew
17 that.

18 Q All right.

19 A She's always been
20 cheating on me.

21 Q So she was cheating
22 on you because of your sexual
23 inadequacies?

24 A No. I think she was
25 cheating on me because she's a

C. THOMAS -- CROSS

1 highly sexually active woman.

2 Q At one point you said
3 that, "If you are disgusted with
4 performing oral sex as I know you
5 are, I will never get it up and
6 this, too, is a good reason for
7 you to just leave."

8 You were concerned
9 that because of your sexual
10 inadequacies, inadequacies she was
11 going to leave you?

12 A Yes, sir. I think we
13 just said that a minute ago.

14 Q And you also thought
15 that she was cheating on you?

16 A Yeah. I think we
17 said that, too, as a matter of
18 fact. I'm not trying to be smart,
19 but I mean you're being repetitive
20 and I've already concluded that.

21 Q You were worried
22 about her leaving you. You didn't
23 want her to confront you with
24 these things. You kept it a
25 secret. Right?

C. THOMAS - - CROSS

- 1 A As I said, if you
2 can't satisfy your wife she's
3 going to seek satisfaction
4 elsewhere.
- 5 Q But you didn't want
6 her to leave?
- 7 A Excuse me?
- 8 Q You didn't want her
9 to leave?
- 10 A Well, of course not.
11 I loved her.
- 12 Q And at one point you
13 wrote, "By the way, if you want to
14 see me get crazy then try
15 screaming at me and twisting these
16 facts around, just some twisted my
17 fault scenario"?
- 18 A Yes, sir.
- 19 Q So if she would have
20 blamed you for your own
21 inadequacy, that would have made
22 you get crazy?
- 23 A It would have angered
24 me.
- 25 Q You said "you want to

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1 see me get crazy". Right?

2 A Angered. Yes. I did
3 say that.

4 Q She in one, one of
5 the letters at some, at some point
6 asked for a, at least according to
7 your journal, had asked you for a
8 sex toy?

9 A Right.

10 Q A dildo kind of --

11 A Yes, sir.

12 Q Not a taser?

13 A No. We already had a
14 taser.

15 Q You were jealous that
16 she may have been sleeping with
17 other people and for that reason
18 you thought that's why she wanted
19 a sex toy?

20 A I felt like she
21 wanted a sex toy because of the
22 reason that I've repeated over and
23 over again, because her husband
24 was having a problem getting an
25 erection and it upset me that she

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1 wouldn't have been willing to then
2 spend more time and as the
3 document states, worrying, working
4 on my problem, trying to figure
5 out ways to resolve it as opposed
6 to just moving on to other
7 measures.

8 Q So when you talk
9 about toys and all of these
10 things, the toys that she asked
11 you to buy was not a taser?

12 A We already had the
13 taser. That was the toy we
14 already had. I just had a problem
15 with a dildo.

16 Q And in another letter,
17 you wrote, "I am not what she
18 really wants. Why would she ask
19 me to buy her a toy in order that
20 she wouldn't go get sexual
21 satisfaction. That's what she's
22 been doing since the beginning."

23 So you had to buy
24 that toy you thought to keep her.
25 Right?

C. THOMAS -- CROSS

1 A I'm having trouble
2 trying to --

3 Q Well, let me see if I
4 ask you this way. In another
5 passage you said that "she knew
6 you were insecure and all she had
7 to do was to raise the thought in
8 your head that there was something
9 wrong and you would feel so
10 insecure that you couldn't do
11 anything."

12 So guess she, she
13 knew you were insecure and then
14 she would mention that to you and
15 that would capitalize on your
16 insecurity and cause a problem?

17 A God, why am I having
18 trouble with that?

19 Q Quote, she knew that
20 I am insecure.

21 A Right.

22 Q All she had to do was
23 create the thought in my head that
24 there was something wrong with me
25 and I would feel so insecure that

C. THOMAS - - CROSS

1 I would be unable to make love to
2 her.

3 A Oh, yeah.

4 Q So - -

5 A Yeah.

6 Q It's her fault that
7 she mentioned this to you and
8 causes your problem?

9 A No. I - - there's a
10 specific incident where I was - -
11 actually had attained an erection
12 and I was preparing to start
13 making love to her and she says
14 no, make love to me this time, as
15 if I was thinking of someone else
16 because of her jealousy, and it
17 immediately killed what I had and
18 I think there's - - that's in
19 reference to that specific
20 incident, if I'm not mistaken.

21 Q So in that specific
22 incident?

23 A It was her fault.

24 Yes. In that specific incident.

25 Q Because she mentioned

C. THOMAS - - CROSS

1 to you what your problems were?

2 A No. Because she said
3 make love to me, not someone else.
4 It's, it's clearly written out in
5 there. That's not the paragraph
6 that I'm referring to then.

7 You're going to have to read more
8 of it so you can refresh my memory
9 to where you're at so I can more
10 accurately answer your question.

11 Q You're saying if she
12 says something like that to you,
13 that you have a sexual problem,
14 it's her fault for mentioning it?

15 A If she mentions that
16 I have a sexual problem? Oh, no.
17 Absolutely not. The sexual
18 problem was my own drug addiction.
19 I read up on it. It's the drugs
20 and insecurities, several
21 self-esteem issues, things like
22 that.

23 Q And for her - -

24 A And I think my age.

25 Q You were frustrated

C. THOMAS -- CROSS

1 with her, you were frustrated with
2 your relationship. Right?

3 A I was frustrated with
4 myself more than anything else and
5 really, yeah, I guess you could
6 say the relationship, too.

7 Q You were frustrated
8 that you couldn't perform and you
9 thought she was cheating on you
10 with other people to satisfy her?

11 A At that particular
12 time I couldn't perform. It just
13 become a recent problem. It
14 hadn't been something that was on,
15 you know, long-going. The
16 cheating is something that's been
17 going on during the entire time of
18 our relationship, beginning back
19 in 2002, 2001 when we met.

20 Q So --

21 A We met in December of
22 2001, two.

23 Q So you weren't able
24 to perform. You thought she was
25 cheating on you to get sexual

C. THOMAS -- CROSS

1 satisfaction and that frustrated
2 you?

3 A Oh, over seven years
4 it kind of became second nature.
5 I just kind of got used to it.

6 Q And all these
7 journals basically scream out
8 frustration with the situation.

9 A I didn't think of it.
10 I'd just gotten the computer so
11 started documenting things. I was
12 starting to write my life story,
13 as a matter of fact, and I believe
14 you've got the first page of that,
15 and I'm sure you'll get to it.

16 Q And the first page of
17 your life story it says, "All my
18 life I've constantly been my worst
19 enemy, yet I seem to always come
20 through the most disastrous
21 situations smelling like a rose."

22 A Right.

23 Q You always get away
24 with stuff. Right?

25 A No, sir. I do not.

C. THOMAS -- CROSS

1 Q Smelling like a rose
2 is not getting away with it?

3 A I'm receiving to
4 living. I'm alive -- I'm -- I'm
5 grateful to be alive.

6 I have O. D.'ed so
7 many times and that's what my
8 ex-wife used to say to me. I
9 don't know how you, maybe you come
10 out of that smelling like a rose,
11 alive and clean and I -- for
12 instance, when I got out of prison
13 I rebuilt my life, bought a new
14 car, started another band. I'm a
15 musician and my business grew and
16 I made money and things were going
17 great.

18 Q So you're, you're
19 hoping to come through this one
20 smelling like a rose. Right?

21 A I guess you could use
22 that euphemism, yes, sir. But --

23 MR. WILLIAMS: Your
24 Honor, I have no further
25 questions.

1 THE COURT: Any
2 redirect of the witness?

3 MR. BOLUS: None.

4 THE COURT: Sir, you
5 may step down.

6 THE COURT: Anything
7 further from the defense?

8 MR. BOLUS: No, ma'am.

9 THE COURT: The defense
10 rests?

11 MR. BOLUS: Yes, ma'am.

12 THE COURT: Are there
13 going to be any rebuttal
14 witnesses.

15 MR. WILLIAMS: None.

16 THE COURT: We'll
17 reserve the motions -- pardon
18 me?

19 MR. WILLIAMS: No, no
20 further witnesses for the
21 State.

22 THE COURT: All right.
23 Mr. Foreman, ladies and
24 gentlemen, both the State and
25 the defense have rested their

1 cases. We have reached the
2 stage of the trial where we
3 will hear closing argument and
4 the Court's instructions. I
5 am going to go ahead and let
6 you all go to lunch. We're
7 going to be working, however,
8 probably, probably actually
9 another thirty minutes or so
10 before we break for lunch, so
11 I'm going to give you all an
12 hour and fifteen minutes for
13 lunch. So I would ask that
14 you be back at 2:30.

15 During this break
16 please have no discussion
17 about the case among
18 yourselves or with anyone
19 else. Please don't have any
20 contact with anyone in or
21 about the courthouse. Please
22 leave your notepads in your
23 seats, and if there are any
24 media accounts of this case,
25 please be extra careful not to

1 read, watch, or listen to any
2 of those accounts, and don't
3 do any independent research
4 regarding any issue or matter
5 involved in this case on the
6 Internet.

7 I hope that you have
8 a good lunch and we'll see you
9 at 2:30.

10 (Whereupon, the jury
11 leaves the courtroom at 1:32
12 p.m.)

13 THE COURT: Are there
14 any motions?

15 MR. BOLUS: Yes, ma'am.

16 THE COURT: You may
17 proceed.

18 MR. BOLUS: Your Honor,
19 I would renew my motion for
20 directed verdict on the
21 criminal sex conduct in the
22 first degree charge on the
23 indictment. We plead total
24 failure of proof to show that
25 the parties were not living

1 together as required by the
2 criminal sexual conduct
3 statute. Where people are
4 married it's incumbent upon
5 the State of South Carolina to
6 prove they're not living
7 together. It's a complete
8 failure in that regard. Every
9 witness puts her only away
10 from the house, the marital
11 abode for one night, possibly
12 two. No intention to stay
13 separated was ever mentioned.
14 There's no court orders,
15 family court orders separating
16 anybody.

17 The victim has
18 admitted to living in the
19 hotel room. Everybody
20 associated with the case knows
21 they were living in the hotel
22 room. My client testified
23 that they were residents, had
24 been there for months. The
25 State just can't go forward on

1 the criminal sexual conduct
2 indictment. They have a
3 choice to charge him with the
4 spousal sexual battery which
5 is in fact what he was
6 arrested, arrested for.
7 That's an appropriate charge
8 in this case, but there's no
9 way that a reasonable jury can
10 reasonably find beyond a
11 reasonable doubt that the
12 parties were not living
13 together. If they did, it
14 would just be a prior,
15 prejudice of passion against
16 my client. Maybe not liking
17 the sexual acts involved, but
18 to follow the law there's no
19 way that a rational,
20 reasonable people could come
21 to a different conclusion
22 except that the parties were
23 in fact living together. So I
24 would renew my motion on that
25 count. Thank you.

1 THE COURT: Well, Mr.
2 Williams, would you like to
3 respond?

4 MR. WILLIAMS: Your
5 Honor, I think the, we're in
6 the same exact posture that we
7 were before which is Mr. Bolus
8 has not met that defense in
9 any way.

10 I do, your Honor,
11 want to say that I don't think
12 we have to prove that they
13 weren't living together. I
14 think it's a defense. I don't
15 think it's an element of C. S.
16 C. first but, but that's
17 otherwise my motion, my
18 response to his motion to the
19 Court.

20 MR. BOLUS: Which
21 brings me, your Honor, I
22 don't -- I do think it's part
23 of the statute that I was
24 quoting originally. Certainly
25 restricts the application of

1 C. S. C. statute. I mean it's
2 clear in 16-3-658, it says
3 where the victim is a spouse
4 there's no criminal sexual
5 conduct unless the couple is
6 living apart and that clearly
7 means, since it's a criminal
8 statute must be drawn most,
9 strictly against the State.
10 Certainly doesn't any that
11 defense has to prove anything
12 about living or not living
13 apart, although I think that
14 I've proved that they were
15 living together.

16 THE COURT: Motion for
17 the directed -- the renewed
18 motion is denied. The Court
19 finds for the record that
20 there's direct and substantial
21 circumstantial evidence
22 reasonably tending to prove
23 the guilt of the accused which
24 rises above the level of mere
25 suspicion of the defendant's

1 guilt. This guilt certainly
2 can be fairly and logically
3 deduced.

4 The arguments that
5 have been made, Mr. Williams
6 is correct, the statute
7 provides a defense which the
8 Court will charge. Whether
9 they lived together or did not
10 live together is a factual
11 issue for the jury to sort
12 out. There was certainly
13 contravening opinions.
14 regarding that. The motion is
15 denied.

16 Are there any other,
17 other motions before the Court
18 proceeds with the charge
19 conference?

20 MR. BOLUS: No. Not
21 from the defense.

22 THE COURT: State?

23 MR. WILLIAMS: No, your
24 Honor.

25 THE COURT: From the

1 defense?

2 MR. BOLUS: None.

3 THE COURT: All right.

4 I will give them a general
5 charge regarding their
6 responsibility and my
7 responsibility. I will give
8 them a general instruction
9 regarding how they're to judge
10 witness credibility and
11 believability.

12 Give them the general
13 instruction from State versus
14 Rapon (phonetic) regarding
15 direct and circumstantial
16 evidence as well as a general
17 charge regarding the prior
18 record of a witness for
19 purposes of credibility, as
20 well as the prior record of
21 the defendant, limited for
22 impeachment purposes, which is
23 the same thing, credibility.

24 Give them the general
25 charge regarding expert

1 witness testimony. Also give
2 them the general charge
3 regarding and instructing that
4 the charge, the arrest, and
5 the indictment are not
6 evidence, as well as on the
7 presumption of innocence.

8 Charge Victor versus
9 Nebraska on reasonable doubt.
10 Then charge the elements of
11 kidnapping, which is 16-3-910.
12 I'll then charge the elements
13 of the criminal domestic
14 violence of a high and
15 aggravated nature, which is
16 16-25-65, which basically just
17 incorporates the elements of
18 assault and battery of a high
19 and aggravated nature within
20 the definition of criminal
21 domestic violence, also
22 defining a household member.

23 MR. WILLIAMS: Your
24 Honor, we'd ask that you
25 include spouse for C. S. C.

1 THE COURT: Pardon me?

2 MR. WILLIAMS: We'd
3 include spouse for C. S. C.

4 THE COURT: There's a
5 statutory definition of
6 household member.

7 MR. WILLIAMS: For
8 CDVHAN? That includes spousal

9 --

10 THE COURT: If that's
11 in there, that's going to be
12 included, defining household
13 members.

14 Now, will there be
15 any requests for any lesser
16 included charges such as
17 C. D. V.?

18 MR. BOLUS: No.

19 THE COURT: None for
20 the record?

21 MR. BOLUS: No.

22 THE COURT: I'll
23 charge, then charge the
24 elements of criminal, of
25 criminal sexual conduct in the

1 first degree, which comes
2 directly from 16-3-652. Will
3 there be any requests for any
4 lesser included charges?

5 MR. WILLIAMS: Your
6 Honor, I would request spousal
7 sexual battery as a lesser
8 included.

9 THE COURT: I'm sorry.
10 I can't hear you.

11 MR. WILLIAMS: I would
12 request spousal sexual battery
13 as a lesser included.

14 THE COURT: Is that a
15 lesser included offense?

16 MR. WILLIAMS: I think
17 it has the same elements, your
18 Honor. I -- it certainly has
19 -- it's like a negation, it's,
20 it basically, it's a funny
21 statute that says, it's the
22 same thing as C. S. C. first
23 if they don't, if they're not
24 living together, like. It's
25 almost a . . .

1 THE COURT: I'm going
2 to have to look and see what
3 the standard elements say.

4 MR. BOLUS: I believe
5 that it's two-fold. One, the
6 common law was changed
7 specifically to cover this and
8 states, the legislature has
9 created spousal battery that
10 specifically --

11 THE COURT: I am almost
12 inclined to agree with Mr.
13 Bolus. I'm going to tell you
14 why, Mr. Williams. You can't
15 have it both ways. Either
16 they were living together or
17 they weren't, and for me to do
18 what you've asked me negates
19 this entire defense, which is
20 that they were not living
21 together. So you all had an
22 opportunity, you could chosen
23 to, you could have proceeded
24 under the spousal portion or
25 you could have proceeded under

1 C. S. C. You made a strategic
2 decision and proceeded with
3 C. S. C.

4 MR. WILLIAMS: Your
5 Honor --

6 THE COURT: So to do
7 what you're doing, asking me
8 to do would be burden-shifting
9 and would require the
10 defendant to have to negate --
11 you would negate his entire
12 defense which has been their
13 theory of this entire case
14 from opening.

15 MR. WILLIAMS: I think
16 he said in the opening the
17 proper charge in this case is
18 spousal sexual battery. I
19 don't think he ever said that.
20 I mean I think what he said
21 was --

22 THE COURT: But you
23 didn't, it would really
24 blind-side their entire
25 defense. It would gut it, and

1 I don't -- they tried their
2 entire case on the theory that
3 they were not living together
4 therefore he's not guilty of
5 this C. S. C. period.

6 MR. WILLIAMS: That
7 they were living together.

8 THE COURT: And that
9 was it was consensual.

10 MR. WILLIAMS: Well,
11 that's what I -- I mean, your
12 Honor, I think their -- I
13 don't think it guts their
14 entire defense. I mean their
15 defense really is consent and
16 then also the second defense
17 --

18 THE COURT: I'm going
19 to do some research. There's
20 no case law on it. I don't
21 know that it's going to meet
22 the elements test, and I'll
23 have to see, but I, at this
24 moment I am, I am thinking
25 that I will not because it

1 will negate this entire
2 defense and the State is --
3 you really have a choice of
4 what you're charging him. You
5 could have charged him with
6 one where they lived together,
7 in which case the defense he's
8 trying to use would not be
9 available to him and the only
10 available, the only defense,
11 it would have to be consent.

12 But I'll think about
13 it over lunch.

14 **MR. WILLIAMS:** Thank
15 you, your Honor.

16 **THE COURT:** Yes, sir.

17 **MR. BOLUS:** And I do
18 agree, the elements
19 prescription clearly takes it
20 outside of the lesser
21 included, the different
22 element being living together,
23 not living together. There's
24 two different statutes.
25 Change in the common law.

1 That's what the legislature
2 did. I would request that
3 obviously if you're going to
4 charge 16-3-658, saying what
5 criminal sexual conduct isn't,
6 it isn't if you're married and
7 living together --

8 THE COURT: Let me
9 finish the charge conference
10 and then --

11 MR. BOLUS: Okay. I'm
12 sorry. I had no --

13 THE COURT: That's all
14 right. I will charge
15 16-3-652, that the defendant
16 used aggravated force to
17 accomplish the sexual battery.
18 I will then define aggravated
19 force, that the victim
20 submitted to sexual battery
21 while -- it should be or, the
22 victim while being victim of a
23 kidnapping, or the defendant
24 caused the victim without the
25 victim's consent to become

1 mentally incapacitated or
2 physically helpless by
3 administering, distributing,
4 dispensing, or causing to be
5 under a controlled substance.
6 That there is some testimony
7 in the record that he tried to
8 force her into using drugs, or
9 controlled substance, which
10 can be caused by illness, and
11 that also comes within the
12 parameters of her allegations
13 that he used the taser to
14 incapacitate her, being that
15 she was under the influence of
16 a substance or some other
17 cause, and then I will define
18 the physically helpless
19 meaning which is to render the
20 person unconscious, asleep, or
21 for any other reason
22 physically unable to
23 communicate consent to the
24 battery.

25 I will then charge

1 that the defense contends that
2 there was consent to the
3 battery, that the defense
4 raised, the defendant has
5 raised the defense that the
6 victim voluntarily consented
7 to the sexual intercourse.
8 The defendant does not have to
9 prove that the victim
10 consented, instead, instead
11 the State must prove beyond a
12 reasonable doubt that the
13 victim did not consent. If
14 you find that the victim
15 consented to the sexual
16 intercourse then you must find
17 the defendant not guilty.

18 I will then charge
19 the portion of the statute
20 which is 16-3-658, which is
21 that a person cannot be guilty
22 of criminal sexual conduct if
23 the victim under the
24 applicable section, if the
25 victim is the spouse -- bear

1 with me one second.

2 I'll instruct them

3 that pursuant to 16-3-658,

4 when a person cannot be guilty

5 of criminal sexual conduct,

6 I'm going to eliminate those

7 references to 16-3-651 and

8 16-3-659-1 because those are

9 just definitional sections

10 which define, which define

11 aggravated force or physically

12 helpless, states that are

13 already articulated within the

14 charge, and but I will charge

15 that a person cannot be guilty

16 of criminal sexual conduct if

17 the victim is the legal

18 spouse, unless the couple is

19 living apart and the offending

20 spouse's conduct constitutes

21 criminal sexual conduct in the

22 first degree as defined by

23 16-3-652, which is what I will

24 be charging, the elements of

25 C. S. C. first, and I will be

1 eliminating any reference to
2 criminal sexual conduct in the
3 second degree.

4 And then I will
5 eliminate the rest of the
6 statute because it's just not
7 applicable for our purposes.

8 And also then upon
9 further reflection I had
10 indicated that I might use
11 some definition of
12 cohabitation, but I think the
13 statute is fairly clear in its
14 plain and ordinary meaning in
15 the language that's used, and
16 I think anyone, a lay person
17 is capable of interpreting
18 that language that says if the
19 victim is the legal spouse,
20 unless the couple is living
21 apart, and I don't think that
22 the common parlance, common
23 parlance you know what's meant
24 by living apart, so I think
25 we've been using the term

1 cohabitation but that's not
2 what the statute uses, so I
3 don't feel the need to further
4 elaborate on that. I think
5 it's within the jury's common
6 sense to determine what living
7 apart is.

8 I'll then charge the
9 elements of kidnapping, which
10 is 16-3-910. I'll then
11 instruct the jury that the
12 defendant is charged with
13 several offenses. That they
14 must consider each one
15 separately and independent,
16 and that he may be acquitted
17 on all or convicted on all,
18 and I will then give the, the
19 forms of the verdict and my
20 clerk is going to print those
21 for you right now so that you
22 can look at them, and we will
23 then attach those to the
24 indictment and those will be
25 sent into the jury.

1 Are there any
2 exceptions to the charges
3 proposed? From the State?

4 MR. WILLIAMS: No, your
5 Honor.

6 THE COURT: From the
7 defense?

8 MR. BOLUS: Your Honor,
9 what is your charge on the
10 State having, being incumbent
11 to prove every fact, every
12 part --

13 THE COURT: That's a
14 general quote from the -- it's
15 within the entire charge.

16 MR. BOLUS: I'm not --
17 I'm going to argue, obviously
18 argue that they have the duty
19 to prove beyond a reasonable
20 doubt that the parties were
21 living apart. I don't want, I
22 don't want that the
23 prosecution should be able to
24 argue that I am, it was my
25 obligation to prove otherwise.

1 THE COURT: I may add
2 some language to the statute
3 similar to the consent
4 language that says it is not
5 --

6 MR. BOLUS: Yes, ma'am.

7 THE COURT: -- the
8 defendant's burden to prove
9 that he was living, living
10 with his wife but it is the
11 State's burden to prove that
12 they were living apart.

13 MR. BOLUS: That's my
14 request.

15 THE COURT: Or
16 something along those lines,
17 the same as -- because he
18 doesn't have to prove
19 anything.

20 MR. BOLUS: Right.

21 THE COURT: And it is
22 your burden to prove that they
23 were living apart.

24 MR. BOLUS: Yes.

25 THE COURT: It will say

1 something along the, the same
2 language as the consent which
3 says the defendant does not
4 have to prove that the parties
5 lived -- I don't know. I'm
6 going to think about that over
7 lunch. I got to think -- I
8 got to think over that a
9 little bit. I got to see what
10 the statute says.

11 Is there something
12 where the statute is worded
13 where you have a
14 responsibility to -- I don't
15 know. I need to think through
16 that a little bit because it's
17 not a "shift burden" but I
18 don't want to misstate it,
19 that the State has a burden
20 they don't have, and I need to
21 review it again. What does
22 the statute say?

23 MR. BOLUS: Your Honor

24 --

25 THE COURT: Yes, sir?

1 **MR. BOLUS:** Just a
2 suggestion. I, my thought was
3 that the defense has no burden
4 to prove that the parties are
5 living together, but that the
6 State has the burden to prove
7 that the parties are living
8 apart.

9 **THE COURT:** I'm going
10 to, I'm going to think about
11 it.

12 **MR. BOLUS:** Something
13 like that.

14 **THE COURT:** I need to
15 read the statute again.

16 **MR. BOLUS:** Yes, ma'am.

17 **THE COURT:** And to see
18 what would be appropriate.

19 **MR. BOLUS:** Yes, ma'am.

20 **THE COURT:** And I'll
21 let you know that before you
22 -- before we start back.

23 Is there anything
24 else before we have our very
25 abbreviated lunch? From the

1 State?

2 MR. WILLIAMS: Nothing,
3 your Honor.

4 THE COURT: From the
5 defense?

6 MR. BOLUS: Nothing.

7 THE COURT: And if you
8 all just give her one moment
9 and she's going to print this
10 and you can look at them, or
11 you can look at them when you
12 get back. The verdict forms
13 are just guilty and not
14 guilty.

15 MR. BOLUS: I've seen
16 them.

17 THE COURT: Yes.

18 MR. BOLUS: 2:30, your
19 Honor.

20 THE COURT: Yes, sir.
21 2:30. Have a good lunch.

22 (Whereupon, a
23 luncheon recess is called at
24 1:54 p.m.)
25

1 AFTERNOON SESSION

2 (Whereupon, the Judge
3 enters the courtroom at
4 2:45 p. m.)

5 THE COURT: Is the
6 State ready to proceed?

7 MR. WILLIAMS: Yes,
8 your Honor.

9 THE COURT: Is the
10 defense ready to proceed?

11 MR. BOLUS: Yes, your
12 Honor.

13 THE COURT: Okay. What
14 I have figured out in terms of
15 the language, I stayed a
16 little bit later than you all
17 and figured it out before I
18 left, is that what I will add
19 to 16-3-658 is that the
20 defendant does not have to
21 prove that the parties were
22 living together. The burden
23 remains on the State to prove
24 each and every element of the
25 offense of criminal sexual

1 conduct in the first degree
2 beyond a reasonable doubt.

3 MR. BOLUS: Thank you.

4 THE COURT: Is that
5 acceptable to the State?

6 MR. WILLIAMS: That's
7 fine, your Honor.

8 MR. BOLUS: Thank you,
9 your Honor.

10 THE COURT: Is that
11 acceptable to the defense?

12 MR. BOLUS: Yes, ma'am.

13 THE COURT: I am not
14 going to charge the spousal
15 sexual battery statute based
16 on the reasoning that I
17 articulated already before we
18 went to lunch, and you all
19 have looked at the forms of
20 the verdict. I think I may
21 have already asked this. I'm
22 sorry if I'm being redundant.

23 MR. BOLUS: We have.

24 MR. WILLIAMS: We
25 already have seen them.

1 THE COURT: Is there
2 any exception to the form of
3 the verdict from the State?

4 MR. WILLIAMS: No, your
5 Honor.

6 THE COURT: From the
7 defense?

8 MR. BOLUS: None.

9 THE COURT: I am going
10 to staple these to the
11 indictments and they will go
12 in with the jury. And I sent
13 my clerk in a little ahead to
14 have you all look at the
15 evidence, and you've already
16 done that. Correct?

17 MR. BOLUS: Yes.

18 MR. WILLIAMS: Yes,
19 your Honor.

20 THE COURT: And
21 everything is in order?

22 MR. WILLIAMS: It is,
23 your Honor.

24 MR. BOLUS: Yes, ma'am.

25 THE COURT: Okay.

1 Please bring in the panel.

2 (Whereupon, the jury
3 enters the courtroom at
4 2:46 p.m.)

5 THE COURT: You may be
6 seated. Mr. Foreman, ladies
7 and gentlemen, I hope that you
8 all had a restful lunch. I
9 can tell you from firsthand
10 experience I rarely leave the
11 building but I did today and
12 it was hot, so I hope that you
13 all had an opportunity to cool
14 off. I know that it is sort
15 of warm in here and I have
16 them checking the temperatures
17 so we can figure out what
18 happened between our breaks,
19 so that they can cool it off a
20 little bit. We have now
21 reached the stage of the trial
22 where we will hear closing
23 arguments and the Court's
24 instructions on the law. You
25 will hear from Mr. Bolus,

1 after which you will hear from
2 Mr. Williams, and then I will
3 gauge it and see if we do need
4 to take a break and, you know,
5 being mindful that you all
6 just had lunch and you may
7 need a restroom break in
8 between argument and charge,
9 but I'll sort of wing that,
10 see how we're doing at the
11 time.

12 I would ask that you
13 give the attorneys your
14 undivided attention.

15 Mr. Williams, you may
16 proceed when you're ready.

17 **MR. WILLIAMS:** Your
18 Honor, I'm going to waive any
19 opening.

20 **THE COURT:** I'm sorry.
21 I forgot that. I apologize.
22 Mr. Bolus. And I said that
23 and it slipped my mind just
24 that quickly.

25 Mr. Bolus, you may

1 proceed when you're ready.

2 MR. BOLUS: Thank you.

3 THE COURT: You're
4 welcome.

5 MR. BOLUS: Ladies and
6 gentlemen, thank you for your
7 interest and attention. I
8 know it's not, it's not the
9 best two days that you'll ever
10 spend in your life. This kind
11 of stuff is on T. V. every
12 night if you care to watch it
13 on some channel. Our country
14 has reached the state of Sodom
15 and Gomorrah, drugs, perverted
16 sex, all kinds of stuff.
17 Unfortunately -- well,
18 fortunately or unfortunately
19 some of the stuff used to be
20 against the law, you couldn't
21 do certain things to people.
22 Now we've reached our
23 enlightened age, I guess,
24 right before the end of times
25 that if people, consenting

1 adults, would want to do
2 something, it doesn't matter
3 how sick or revolted it may
4 make you feel, if it's
5 consensual it's not a crime.
6 You may think it should be a
7 crime, and lot of people, you
8 know, will beat on the Bible
9 about it and all that, but you
10 have to decide first of all
11 was there a consent here. Two
12 kinds of consent. Was the
13 victim kidnapped? Did she
14 stay voluntarily? Was she
15 unable to leave? Did she have
16 part -- she went con --
17 consensually to the, to the
18 place? We'll get to that
19 later.

20 But first of all, you
21 took an oath. Put your hand
22 up. It wasn't just to say hi
23 to the judge or wave at me.
24 You put your hand up. The
25 president of the United States

1 puts his hand up, he swears an
2 oath to the Constitution of
3 the United States to preserve
4 and defend it. Well, the
5 people on a jury in South
6 Carolina put their hand up to
7 preserve and protect the
8 statutes of South Carolina.
9 And these statutes are there
10 for a reason, and, and common
11 law, a husband and wife were
12 incapable of committing a
13 sexual crime against each
14 other. That is the common law
15 that's ruled for about a
16 thousand years.

17 But in our
18 enlightened age with some
19 things about our enlightened
20 age, there are some changes.
21 You can be living together and
22 a husband cannot forcefully
23 have sex with his wife, even
24 if they are, you know, living
25 together. That's called

1. spousal sexual battery.

2. But, ladies and
3. gentlemen, there's not -- now
4. that's, that's not the charge
5. today. The charge is criminal
6. sexual conduct of the first
7. degree.

8. Now this prosecutor
9. who's had a lot of experience
10. in drawing up indictments, has
11. a lot of experience in trying
12. cases, he wins most of his
13. cases. I have to tell you
14. that. I've seen him in
15. action. He's real good. He's
16. alleged criminal sexual
17. conduct of the first degree
18. and that, his Honor, her Honor
19. is going to tell you what that
20. is. Basically it's raping
21. someone. Taking advantage of,
22. sexual battery and force.

23. But the State of
24. South Carolina you may say in
25. its infinite wisdom or

1 infinite, whatever you want to
2 call it, it said a person
3 cannot be guilty of criminal
4 sexual conduct -- which is
5 what's alleged in this, this
6 indictment -- if the victim,
7 alleged victim is the legal
8 spouse unless the couple is
9 living apart.

10 Now, you know some of
11 the junk I see on T. V. I
12 don't like. It should be
13 against the law and maybe
14 people might not like this
15 statute. But you took an oath
16 and you swore to it that you'd
17 observe the State of South
18 Carolina statutes unless the
19 couple is living apart.

20 There's not one shred
21 or iota of evidence in this
22 case, that the State has
23 failed ultimately in its proof
24 to show, which is their
25 burden, that the couple was

1 living apart. One night with
2 mom is not living apart.

3 Same where we're
4 talking about a separation or
5 we're thinking about it.
6 Ladies and gentlemen, it's not
7 living apart. Everybody
8 that's testified, everybody
9 that's testified including the
10 victim and her mother, we all
11 agree, the parties were living
12 together. Every witness said
13 that.

14 The only thing we got
15 from the victim and her mother
16 is well, she spent one night,
17 the night before the incident,
18 with her mother. Well, you
19 know, I spend the night
20 sometimes with my brother at
21 his house on Folly Beach when
22 we, you know, want to be
23 together as brothers. I'm not
24 living apart from my wife. I
25 go home the next day. I've

1 never -- I haven't lived apart
2 from my wife.

3 Now you might not
4 like what happened in that
5 hotel room. Whether it was
6 consensual or not, this
7 statute acts as bar. If you
8 take your oath seriously, the
9 only way you can find David
10 Clark Thomas guilty of the
11 indictment charging him with
12 criminal sexual conduct, since
13 they are married and there's
14 no family court order
15 separating them or anything,
16 the only way you can do that
17 is to completely ignore your
18 lawful duty and just ignore
19 the statute. You'd have to
20 say well, I don't care what
21 was said in court; we feel and
22 we find beyond a reasonable
23 doubt, beyond a reasonable
24 doubt, and the judge will tell
25 you, the State proves beyond a

1 reasonable doubt all aspects
2 of this case. You have to
3 find beyond a reasonable doubt
4 that the parties were living
5 apart. That is just not true,
6 and from that count, that
7 count alone, exercise your
8 lawful duties, you have to
9 find Clark Thomas not guilty.

10 Now, that brings us
11 to other things. He's charged
12 with kidnapping. He's charged
13 with criminal -- domestic
14 abuse, high and aggravated
15 nature. That statute
16 obviously does not apply to
17 those two crimes. It's kind
18 of, kind of weird but
19 kidnapping, you can kidnap
20 your spouse if you're living
21 with them but you can't have
22 criminal sexual conduct with
23 your spouse if you're living
24 with them under that statute.
25 It's kind of weird, but that's

1 the statute.

2 You can kidnap
3 anybody or your son, your
4 daughter, or whatever, if you
5 take someone where they don't
6 want to go, that's kidnapping.
7 It has nothing to do whether
8 you're married to somebody or
9 whether they're living with
10 you or you're not, you're
11 living apart. So the only
12 defense in that case is was
13 Rachel kidnapped or not?

14 Now, you heard her
15 story. You heard David's
16 story. You heard people
17 testify about their sexual
18 activities, what they go
19 through. She's had experience
20 in certain areas. They've
21 both basically, to put it
22 bluntly, both a couple of drug
23 addicts. The debauchery of
24 the country and the use and
25 abuse of drugs has led to a

1 lot of activity in this
2 country we wouldn't allow for
3 a societal morality aspect
4 years ago. Now it's just
5 happens all the time.

6 Personally, bondage?
7 Bondage is depicted on T. V.
8 all the time. I don't know
9 two people that want to be
10 duct taped or tied up and made
11 love to in a bed, but it's
12 depicted on T. V. People says
13 what's on T. V. has got to be
14 true. I guess T. V. has
15 depicted something that is
16 partially true somewhere. But
17 just because someone is duct
18 taped or tied in a bed does
19 not mean automatically
20 kidnapping, automatically some
21 other crime, and that in and
22 of itself is not domestic
23 abuse, high and aggravated
24 nature.

25 This taser thing. I

1 don't know why they liked to
2 do that. I mean I really
3 don't. But there's testimony
4 that she had done it before.
5 David's daughter, David's
6 daughter had a bedroom right
7 next to them for months. She
8 said yeah, they had one.
9 That's what they were doing.
10 She saw them duct taped. She
11 used duct tape before. This
12 is where it stopped.

13 But, you know, then
14 you got to say well, do we
15 convict David Thomas based
16 just on morality? We don't
17 like his morals? We don't
18 like their sexual activities?
19 You can't do that. You'd be
20 violating your oath again.
21 You have to decide, did he
22 kidnap her at the time she was
23 in that hotel room, at the
24 time when the police came on
25 the scene? Yeah, because if

1 it was consensual, it was not
2 kidnapping. Is there a motive
3 for her to come back at him?
4 Well, maybe, you know, maybe
5 after she cleaned up, you
6 know, took her another year to
7 get cleaned up. This thing is
8 two years old. She went to
9 Morris Village. She admitted
10 it. She had drug problems.
11 Maybe when she cleaned up,
12 maybe when she cleaned up she
13 saw how low her life had sunk.
14 Maybe you can blame David for
15 that.

16 You know, a lot of
17 people say the husband is the
18 head of the house. I mean
19 she's twenty, twenty-five
20 years old and a young woman,
21 well, you know, he led her
22 into a life of drugs. That
23 doesn't mean he kidnapped her,
24 though, and I'm not making
25 excuses for him. I know this

1 is an ugly case. It, it just
2 smells. It's just, the whole
3 thing, and I know how people,
4 you get together as civilized
5 human beings in a courtroom
6 and have to listen to this
7 kind of stuff, but that's what
8 we have to do. That's where
9 our society has gone, and you
10 have to decide, as low as this
11 case is, how bad it stinks,
12 and the way these people act
13 and the way they take the
14 drugs and the way they have
15 their sex, whatever, does that
16 mean someone goes to jail for
17 a long time? Well, if it's a
18 crime, that's what you've got
19 to do. You've got find
20 somebody who -- you've got to
21 convict him, send him to jail,
22 if that's what you find.

23 It's kind of
24 interesting, though, you know,
25 she, there's a few things that

1 she doesn't report and you
2 kind of heard it all. I mean
3 I know certain things, people
4 don't say everything. But,
5 you know, when she's at the
6 scene with the policeman the
7 first time, okay, let's give
8 her a break. She's excited.
9 But he, he wrote down a long
10 statement. There's no mention
11 of forceable sex or anything.
12 I mean she might have gotten
13 mad at David for some other
14 reason. He was, he was going
15 to the, the methadone
16 treatment. She didn't want to
17 go. I don't know.

18 But it seemed to me
19 that if you had, you or I get
20 beat up or whatever, great.
21 Well, what would stay on my
22 mind would be hey, this is
23 what happened. Now let's just
24 give her a break. She's under
25 trauma. She just kind of

1 crawling. You know, he just
2 picked her up and all that.
3 Then she goes to the hospital
4 and they say well, she didn't
5 have chance to explain to them
6 because they gave her
7 medication. Well, what's the
8 ten-day deal here? What is
9 the ten-day deal all about?
10 Is that time for her to
11 reflect on, well, how mad she
12 really is at her husband? I'm
13 just going to go and tell --
14 now, it's ten days later. Ten
15 days later before she sees the
16 same detective who saw her at
17 the hospital. Ten days later
18 she goes in and makes a
19 statement about the sexual
20 situation.

21 But you have to
22 remember, the sexual situation
23 is different and distinctive
24 from the alleged kidnapping,
25 because the position the

1 defense takes it no matter
2 what happened in that hotel
3 room from a sexual standpoint,
4 David Clark cannot be
5 convicted of that crime
6 because the statute acts as an
7 absolute bar and her Honor,
8 her Honor is going to tell you
9 about that statute, instruct
10 you about that and tell you.

11 If the parties were
12 living together, basically
13 it's not up to us to prove
14 that they were living
15 together, although I think we
16 did prove it, it's up to the
17 State to prove they were
18 living apart and they did not
19 do that.

20 You know, reasonable
21 doubt is an elusive thing, but
22 it's basically just common
23 sense. You don't have to
24 find, you have to find
25 everything beyond a reasonable

1 doubt to convict. If you have
2 any doubts on any charge
3 whatsoever -- and I don't
4 think there's anything but
5 reasonable doubt on the C. S.
6 C. statute. I think the
7 statute tells you as twelve
8 jurors you've got to find him
9 not guilty of that.

10 But you have a lot of
11 discretion here. You've got
12 two charges. You've got the
13 domestic abuse, high and
14 aggravated. That's a heavy
15 felony. And you've got
16 kidnapping. That's a heavy
17 felony. You've got a lot of
18 discretion. You can convict
19 on both or you can acquit on
20 both, or you can find him
21 guilty of one and find him not
22 guilty on the other one. It's
23 your decision, and I just hope
24 that you think this over and,
25 and it obviously has to be

1 unanimous. If there's any
2 doubt whatsoever, the law says
3 you resolve it in favor of the
4 defendant. You've got to be
5 absolutely sure that it was a
6 forceable kidnapping here, and
7 everything else is just the
8 way the State has portrayed
9 it.

10 Now, I don't know if
11 Mr. Williams is going to do
12 the buzz effect for you again,
13 but I assume he will. Buzz,
14 buzz, buzz. We know what the
15 taser sounds like now. Come
16 on, now. See, all the bells
17 and whistles, we don't need to
18 hear that any more. People do
19 get tased. People do some
20 strange things in a bedroom,
21 people do, and, and you know
22 what? It's a shame. Some
23 people get tried in a criminal
24 court for it and some people
25 get Academy Awards for it in

1 the movies. Think about the
2 movies. Just think about
3 what's happened in this
4 country, what people do in the
5 bedroom. Not all of it's a
6 crime. We give awards to some
7 people for that. And I'm not
8 making any excuses. If it's a
9 crime you've got to convict
10 him and send him away, but
11 just because the bell goes off
12 or the lights go off a certain
13 way, if somebody is doing a
14 different position or that
15 thing goes buzz, buzz, buzz,
16 some people, hey, some people
17 do like it, and some choke
18 people, and there are people
19 that die in sexual acts where
20 they're choked, and that's a
21 shame. They call it suicide
22 or, or an accidental death.
23 But there's people that die
24 that way because we're always
25 searching for something

1 better, and the only point is
2 when we lose our sensitivities
3 as human beings, our normal
4 sex, when we start going down
5 this, this, this road that
6 goes nowhere, we end up,
7 that's all there is to it, at
8 the end of the highway, and
9 it's not a good place to be.

10 I'm glad that Rachel
11 Crowley has come back to
12 reality, to the world. I hope
13 she stays that way. Drug
14 addiction is a heck of a
15 thing. I'm not sure David
16 Clark Thomas is ever going to
17 beat the situation, you know.
18 He's in his forties. And I
19 don't know. It may be too
20 late for him. I hope it's not
21 too late for Rachel.

22 Thanks.

23 THE COURT: Mr.
24 Williams, you may proceed.

25 MR. WILLIAMS: Thank

1 you, your Honor. If it please
2 the Court, your Honor.

3 THE COURT: Yes, sir.

4 MR. WILLIAMS: This is
5 a case about control. It's
6 about violence, it's about
7 force used to maintain
8 control. This defendant had a
9 wife who was leaving him. It
10 frustrated him. It made him
11 angry, and he used force and
12 violence to maintain control
13 over her.

14 Now you all have been
15 sitting here. This has been a
16 pretty quick trial in terms of
17 amount of information. I
18 think there's forty some
19 exhibits here. I'm not going
20 to go over all the evidence in
21 the case, however I do want to
22 talk about the evidence that
23 does convict this defendant of
24 the charges that he's charged
25 with in this case, and I don't

1 want to talk about testimony
2 right now. I want to talk
3 about the physical evidence.
4 When I say physical evidence I
5 mean evidence that you can put
6 your hands on. Evidence that
7 really doesn't even depend on
8 people's perception, on their
9 background, on their history.

10 And we have all kinds
11 of physical evidence in this
12 case. And I'll tell you right
13 now Mr. Bolus isn't going to
14 want to talk about some of it.
15 I don't blame him.

16 Physical evidence in
17 this case is really all you
18 need to convict this
19 defendant. When I say
20 physical evidence, I'm talking
21 about Rachel Crowley. Not
22 what she said, but her
23 condition. The injuries she
24 had is physical evidence. The
25 marks on her wrists, the tape

1 on her chin, the burn marks
2 all over her body are physical
3 evidence. That has nothing to
4 do with her background. It
5 has everything to do with what
6 a doctor saw.

7 And this taser is
8 physical evidence. But, more
9 importantly, it was what was
10 done to her or what was seen
11 on her body that's physical
12 evidence.

13 Beyond that, what
14 else do we have? Well, we
15 have a car that's pulled off
16 the side of a freeway that
17 shows us somebody was in a
18 hurry. Somebody was going
19 after somebody. Somebody was
20 trying to get somebody. That
21 shows emergence.

22 We have Officer
23 Talbott saying that there's
24 somebody kicking. And when I
25 say physical evidence, her

1 behavior. Kicking. Trying to
2 get away. Yelling. Physical
3 activity. What does that tell
4 us? She was trying to get
5 away. She didn't want to be
6 carried away by him.

7 Physical evidence
8 that's found at the second
9 crime scene, back in the
10 hotel. It's that taser. But,
11 you know, it's more than just
12 a taser. If you look at those
13 pictures, there's a battery
14 beside one of the drawers.
15 There's a battery up on a, on
16 a side table, a nine volt that
17 is used to activate that. So
18 it's a taser. The battery is
19 right next to it.

20 There's cuffs, but
21 they're not just regular
22 cuffs. They're on a chair.
23 There are zip-ties, and
24 they're all over the room. On
25 top of things, showing that

1 they've been recently used.

2 And it goes on and
3 on. There's drug
4 paraphernalia all over inside,
5 again showing recently being
6 used.

7 There's a bag of ties
8 not sitting with someone's
9 electrodes or equipment, but
10 sitting up on top of the bed
11 showing again recent use.

12 So although all of
13 those items are certainly
14 important, the taser, duct
15 tape, and the, and the duct
16 tape again found inside the
17 garbage can, recently used as
18 well, although all of those
19 things are there and show us
20 what happened, they also show
21 us based on their placement
22 that everything was used
23 recently.

24 The final piece of
25 physical evidence I want to

1 talk about are these letters,
2 journal entries. These were
3 essentially physical evidence
4 taken off of a computer, and
5 I'll talk a little bit more
6 about these later, but these
7 journals show nothing short of
8 a man on the edge, a man about
9 to boil over. These are full
10 of anger, jealousy. Nothing
11 more than pure venom towards
12 the victim in this case, that
13 was eventually displayed. You
14 want to know what he was going
15 to do? Nothing more than
16 jealousy, paranoia, anger
17 towards the victim in this
18 case. Physical evidence.

19 Based on that
20 physical evidence alone, you
21 have enough in this case to
22 convict of the criminal
23 domestic violence of a high
24 and aggravated nature and the
25 kidnapping. Let's imagine for

1 a moment that when Rachel
2 Crowley was taken to the
3 hospital from the scene, the
4 ambulance got in an accident
5 and she was in a coma until
6 today and she couldn't come in
7 and testify. What would we
8 know if she never came in here
9 and testified, that she was
10 still in that coma? We would
11 know from what this officer
12 told us that she was being
13 carried up an incline,
14 kicking, pushing, wearing her
15 pajamas, trying to get away
16 from this defendant. And if
17 you look at what the
18 kidnapping statute says, it
19 says carried away unlawfully.

20 The only witness you
21 need for kidnapping in this
22 case is Officer Talbott
23 because he tells you she was
24 carried away while she was
25 kicking. That under our law

1 is kidnapping.

2 What else do we have
3 that we don't need to hear
4 from Rachel for? Well, all
5 those injuries. And then what
6 do they find in the hotel
7 room? We know what caused the
8 injuries. So if you just look
9 at the physical injuries to
10 Rachel Crowley, you know
11 there's no way you consent to
12 being tased that many times
13 with that amount of pain.

14 The defendant wanted
15 to get up here and play his
16 games about well, you could be
17 tased thirty times and have --
18 in an hour and you'd be fine.
19 Forty, maybe not. That's
20 ridiculous. He wants to live
21 in that fantasy world, let him
22 live there by himself.
23 There's no world that we all
24 live in where you can get
25 tased by that taser that many

1 times and say somehow that's
2 good. That's nothing more
3 than torture. That's really
4 all it is.

5 So if we just have
6 only that physical evidence,
7 if Rachel never came in, we
8 wouldn't know that she had
9 been tied up with those
10 zip-ties based on the marks,
11 that she had been shackled in
12 there, that she'd been tased,
13 that she'd been hurt, and
14 that's really the criminal
15 domestic violence. The
16 assault. The whole bit. It's
17 about the relationship. And
18 we would know that she'd been
19 kidnapped, based on the
20 testimony of this officer,
21 Chris Talbott.

22 So without even
23 talking about Rachel Crowley,
24 you have all the proof beyond
25 any reasonable doubt. And I

1 say reasonable because there's
2 always possible doubt, and the
3 defendant's got a lot on his
4 mind. But is it reasonable
5 enough for you all to convict
6 him? There's no doubt in this
7 case from the physical
8 evidence and the testimony of
9 this officer that this
10 defendant is guilty of
11 kidnapping and criminal
12 domestic violence of a high
13 and aggravated nature.

14 I do want to talk
15 about Rachel Crowley for a
16 second. And I think what she
17 said, what she testified to,
18 is believable for two reasons.
19 One, the physical evidence
20 that I'll talk about in a
21 moment. But second of all,
22 because she came in here and
23 told you all what happened.
24 You all saw her and you all
25 had the chance to evaluate her

1 demeanor, to look at how she
2 testified, what she thought,
3 what she said. And I don't
4 think there's any one of us
5 who sat here and watched what
6 she said and not see that she
7 was telling the truth.

8 I want you to think
9 also what else she's done.
10 She immediately upon seeing
11 this officer told him exactly
12 what happened in detail. As
13 soon as she is, is put on the
14 ground and is stable, she
15 tells Officer Talbott all the
16 things that happened. And
17 then she goes to the doctor
18 and tells the doctor and the
19 nurses what happened.

20 And you know what?
21 Mr. Bolus had a chance to see
22 all those statements, pages of
23 detailing, and not once did he
24 say well, didn't you tell the
25 doctor this but the officer

1 that? Everything she said was
2 consistent.

3 And then she talks to
4 Detective Jim Rowan and the
5 only thing that Detective
6 Rowan with all his experience
7 that he gets in talking to
8 people gets that's additional,
9 not different, is just that a
10 sexual assault is involved.
11 And of course she's
12 embarrassed about that. Of
13 course she is.

14 But Detective Rowan
15 gets several pages of
16 testimony, statements. Does
17 Mr. Bolus ever say well, Miss
18 Crowley, you, you told
19 Detective Rowan this but you
20 told Officer Talbott that, but
21 you told the doctor this. Or
22 you told somebody something
23 different somewhere else.
24 Never once was there any
25 detail in her statements that

1 were different.

2 So she has told now
3 Officer Talbott, nurses,
4 doctors, Detective Rowan, and
5 what else? She comes in here
6 and tells all to you all. And
7 she has to sit up here in
8 front of twelve, thirteen
9 strangers, judges, court
10 clerks, deputies, people in
11 the audience, thirty, forty,
12 fifty people, and relate to
13 them what has to be the most
14 horrible event of her life.
15 To put herself through all of
16 that all over again and not
17 once do we hear well, didn't
18 you tell somebody something
19 different?

20 She has been
21 consistent since the start.
22 The only thing Mr. Bolus did
23 say, well, she didn't disclose
24 the C. S. C., the, the sexual
25 assault immediately. Can you

1 really blame her for that? Is
2 that something you want to
3 come in and talk with the jury
4 about and tell the detectives
5 about? Of course not. She's
6 ashamed. That's
7 understandable.

8 As much as what
9 Rachel said is believable
10 because of her consistency,
11 because of her accuracy in
12 attention to detail. What's
13 also interesting is the
14 physical evidence in this
15 case, and I talked a little
16 bit earlier about how physical
17 evidence tells us what
18 happened. Well, it does
19 something else. It
20 corroborates. What I mean by
21 that, is when somebody makes
22 something up, you often find
23 that things just don't fit.
24 Sometimes somebody says
25 something and it just not --

1 it just not clicks. It, it
2 doesn't work that way. It
3 didn't happen that way.

4 But if you think
5 about the evidence in this
6 case, every single piece of
7 evidence corroborates what
8 Rachel says. And this is a
9 horrible fact situation, a
10 horrible event to happen to
11 Rachel Crowley. You have to
12 believe when Officer Talbott
13 is standing on the side of the
14 road when he heard this, he
15 had to be shocked. She'd been
16 tied up for hours. She'd been
17 tased. That's a horrible,
18 horrible situation for anyone
19 to be going through.

20 And, and it is on its
21 face a scary thing that we
22 don't want to think that it
23 really happened. But guess
24 what happens after that? She
25 says she was tased and she has

1 all the injuries. She says
2 she was tied up. They find
3 leg irons in the room. She
4 says that he used several
5 batteries, and there's
6 batteries in the room. She
7 says duct tape was put over my
8 mouth. And there's duct tape
9 in the garbage in the room.

10 Every single piece of
11 physical evidence in this case
12 corroborates what she says.
13 Don't you think that if she
14 were coming up with this,
15 there'd be something, some
16 piece of evidence that says
17 that's not how it happened?
18 None of it. Everything she
19 says is corroborated by
20 physical evidence.

21 This might be my
22 favorite one, and this is one
23 that Mr. Bolus didn't want to
24 talk about. She cut her own
25 clothes off? She'd ruin her

1 own pants? This has nothing
2 to do with consent. He didn't
3 explain these because he
4 can't. It'd make his client
5 guilty. Can you imagine if
6 she said he tore my clothes
7 off, Officer Talbott went back
8 there and there weren't any
9 cut clothes? That would be
10 when the physical evidence
11 would not corroborate what the
12 victim said. But in this case
13 all the physical evidence
14 corroborates what she says
15 happened.

16 You can believe her
17 because she came in here and
18 told you all the truth. But
19 you have to believe her
20 because the physical evidence
21 tells you she's telling you
22 the truth.

23 The law in this case,
24 the judge is going to read to
25 you. I'm not going to go

1 through each element, what we
2 call elements or parts of the
3 law that have to be proven.
4 Kidnapping is a big law.
5 You're going to hear, has all
6 kinds of different parts to
7 it. But what it comes down to
8 is, it doesn't have to be the
9 kind of kidnapping where
10 somebody gets locked in a room
11 or put in a trunk and then a
12 ransom has been asked for.
13 The State of South Carolina
14 has a very broad definition
15 and, well, everywhere has a
16 pretty broad definition of
17 what it considers kidnapping,
18 and it's nothing more than
19 carrying somebody away,
20 because the law tells you
21 carried away against their
22 will, without any kind of
23 legal reason for it.

24 And this defendant
25 wanted to dance around, well,

1 you know, I sat next to her
2 and I had to pick her up, and
3 this and that. You know, he
4 thinks he's the smartest guy
5 in the room, and he isn't. He
6 lives in his own world. But
7 absolutely no question based
8 on the testimony of this
9 officer alone, there was a
10 kidnapping in this case.

11 Criminal sexual
12 conduct is really aggravated
13 force with sexual penetration.
14 In this case it was vaginal
15 penetration.

16 Mr. Bolus wants to,
17 to get it onto you that well,
18 they were living together.
19 That is really a matter of
20 what the evidence is telling
21 you, and the evidence, the
22 undisputed evidence was that
23 Rachel had moved out and had
24 gone back to get some things
25 of hers. Her mother said

1 that. Rachel said that.

2 Mr. Greenhill even

3 said that that camera was put

4 up there because he was kind

5 of worried about the, about

6 Rachel cheating on him. He

7 said those cameras were for

8 watching, watching, and yet

9 the defendant said that's not

10 true. He had to believe that

11 maybe they were staying

12 together that day so Mr.

13 Greenhill may have seen them

14 in that hotel room. I don't

15 think anybody's argued that

16 she hadn't gone to that hotel

17 room. But the evidence about

18 them living together is quite

19 simply that she had moved out

20 and left him. He was in her

21 yard. Well, her yard,

22 according to Rachel's mother,

23 watching her. So the evidence

24 in this case, except for the

25 defendant's fantasy version of

1 it, of them living together,
2 it was his motive to do what
3 he did.

4 The violence started
5 in this case, the criminal
6 domestic violence of a high
7 and aggravated nature, that's
8 something, nothing more than
9 an assault with circumstances
10 of aggravation, and using that
11 taser is aggravation. The
12 judge will tell you those
13 things.

14 You know, all of
15 these charges are met based on
16 the physical evidence and the
17 testimony of Rachel, and again
18 the physical evidence
19 corroborates that testimony.
20 And the judge will tell you
21 that you need to find this
22 case beyond a reasonable
23 doubt, the proof in this case
24 beyond a reasonable doubt, and
25 she'll tell you what that

1 means. But essentially what
2 she'll tell you is that you
3 have to be firmly convinced of
4 the defendant's guilt before
5 he's convicted, and she'll
6 tell you there's, there's
7 nothing in life that you
8 really know with absolute
9 certainty.

10 If you all did know
11 it with absolute certainty,
12 you all need witnesses, you'd
13 hear their testimony. The law
14 doesn't require that. And to
15 find what happened behind
16 closed doors, don't have that
17 kind of thing going, this case
18 well certainly has proof that
19 will leave anyone firmly
20 convinced, the physical
21 evidence and the testimony of
22 Rachel.

23 Now I want to talk
24 for a second about what the
25 defendant's story is, and to

1 be quite blunt, you all can be
2 certain it borders on being
3 insulting. It borders on me
4 having to talk about this
5 taser to him. To stand up
6 here and submit to you, twelve
7 reasonable people, that that
8 taser was consensual, is
9 outright embarrassing. That
10 somebody getting hit once,
11 twice, in any circumstance
12 would be excruciatingly
13 painful. This officer
14 testified to it. To stand
15 here and try to tell you that
16 that was consensual, is
17 insulting.

18 If somebody found a
19 dog with those injuries,
20 there'd be no question
21 whatsoever that was the most
22 horrific, horrible thing to do
23 to any living thing. For this
24 defendant to stand here, get
25 on this stand and have you

1 believe that treating a person
2 like you would treat a -- I
3 wouldn't even think about
4 treating a dog. Sometimes
5 it's okay because, well, he's
6 got some story to spin. That
7 taser was a weapon. It's made
8 to hurt and it inflicts pain,
9 and he's trying to talk his
10 way out of it.

11 The second thing
12 about the defense's theory
13 that makes no sense
14 whatsoever, is that somehow
15 Rachel Crowley would, and I
16 don't -- based on what he's
17 trying to sell, would consent
18 to all of these things, great
19 times, everybody's happy,
20 everybody's friendly,
21 everybody loves everybody,
22 based on his story, and then
23 moments later all of a sudden
24 decided to jump out of the car
25 and run away. And what does

1 he tell you the reason for
2 that is? Because he was going
3 to leave her. That she is so
4 desperate for him that if he
5 is going to leave her, she's
6 going to jump out of the car
7 and say all these things, make
8 up all this story, talk with
9 the police officer and, you
10 know, trick him and tell him
11 the whole story, then go to
12 the hospital to be checked out
13 by a doctor and trick him and
14 tell him and the nurses, too,
15 fool all of them, make up all
16 of that, give police reports,
17 lie to the police, after that
18 talk to a detective in a, in a
19 hospital room, going through
20 all those medical procedures,
21 to get in trouble the guy who
22 she just had this great
23 consensual affair with,
24 according to him, and then not
25 just that but two years later

1 come into a courtroom and to a
2 bunch of strangers and
3 everybody else, tell that same
4 thing. And in the process of
5 saying that, admit your worst
6 problems. Admit your
7 background. Admit what you've
8 gone through. Have to hear
9 all these things.

10 You're trying to tell
11 me that they were so in love,
12 that he was so important to
13 her, and he was helping her
14 lead this carefree, great
15 lifestyle, that when he said
16 she -- he was going to leave
17 her, she decided to get him in
18 all this trouble and do, do
19 all this? That's ridiculous.
20 That makes absolutely no sense
21 that she would make up all
22 this to get back at him
23 because he was going to leave
24 her.

25 I have a suspicion

1 that if she said he was going
2 to leave her, be the greatest
3 thing that ever happened in
4 her life. That she would go
5 through all this to keep him,
6 to get him in trouble because
7 she's mad at him? That
8 stretches credibility. It's
9 ridiculous.

10 Finally, the, the
11 defense theory, I'm going to
12 have to refer to my notes on
13 this one. The defense theory
14 is attacking the victim. Flat
15 out attacking Rachel Crowley.
16 Been writing down what Mr.
17 Bolus has been saying about
18 her. Degradation of two
19 people, deviants, two people
20 completely obliterated, this
21 loss of humanity and morality.
22 People do strange things to
23 each other. Sodom and
24 Gomorrah. Sick and revolting.
25 Use of drugs, debauchery in

1 society. The way that these
2 people act. Blame the victim.
3 Insulting, too,
4 because can you imagine if
5 Chris Talbott thought that?
6 She came in here and told you
7 what her problems were. Can
8 you imagine if Officer Chris
9 Talbott said strange people do
10 strange things. I don't know
11 about drugs. Keep my hands
12 clean. I know nothing about
13 this.

14 There's a quote I use
15 in a, in a lot of cases and it
16 was, and I don't what Caesar
17 it was, he basically said that
18 justice, justice denied anyone
19 is justice denied everyone.
20 And Chris Talbott doesn't like
21 being called a hero and he
22 doesn't like being called the
23 person that came to somebody's
24 aid, but he is what we expect
25 from law enforcement. He is

1 what we say is North
2 Charleston's finest example,
3 because you know what he did?
4 He saw Rachel Crowley in
5 distress. He realized she had
6 problems and he didn't just
7 throw up his hands as Mr.
8 Bolus would think you would
9 have to because she had some
10 problems.

11 The entire North
12 Charleston Police Department
13 did what -- search warrants,
14 going to the hospital, talking
15 to everybody. You don't just
16 throw up your hands and say
17 strange things happen. This
18 is a crime. We don't just
19 throw up your hands. To say
20 all of those things and imply
21 that somehow this case is less
22 important again makes me want
23 to take a shower to, to argue
24 that based on what their
25 reputations are.

1 What that defense is
2 is a defense of desperation.
3 And really Mr. Bolus is stuck
4 with it. It's, it's the same
5 desperate defense that this
6 defendant threw out there when
7 he overheard Officer Talbott
8 talking to other officers.
9 First thing that came to his
10 mind and it's a bad defense.
11 It's ridiculous and I talked
12 about that.

13 But really what
14 happened in this case, well,
15 we know what happened, what
16 happened. This defendant was
17 about to boil over. Those
18 letters. He is paranoid.
19 He's loosing it. He can't
20 trust his wife. He's having
21 sexual problems. He's jealous
22 of her. He thinks she's
23 cheating on him. He put up a
24 camera in front of his room.
25 He's on the edge. And you

1 know what she does then? She
2 leaves him, and he can't
3 handle that. He losses
4 control.

5 One of the letters.
6 You want to see me go crazy?
7 Well, he goes crazy. When she
8 comes in, he shows her who's
9 in charge. He tases her. He
10 ties her up. And we see all
11 that evidence. We see the
12 tape on her chin. We see the
13 marks on her arms from the
14 taser, taser marks all over
15 her. And I'm not going to go
16 through all the horrible
17 things that happened to her
18 that night, but it was a
19 horrible day, day and a half.

20 He have runs out of
21 drugs then and he has to go
22 get more and he takes her and
23 he notices she's in pajamas
24 and a T-shirt as if she's
25 going to some methadone clinic

1 with him for the day. Yeah.
2 Give me a break. He drags her
3 out to the car. She goes
4 along with him. And when she
5 has a chance, she jumps out of
6 the car and runs for her life.
7 This officer gets
8 there right at the right time
9 and he sees nothing short of a
10 kidnapping. Somebody carrying
11 somebody back to a car
12 kicking, screaming, and this
13 defendant realizes, you know
14 what, I've got a problem here.
15 Now all of a sudden I've got
16 officers here. I'm carrying
17 her. And he waits. And she's
18 talked to and then he
19 overhears this officer saying
20 taser, overhears the officer
21 saying kidnapping, overhears
22 him talking about the case
23 with the other officers, and
24 what's he say? First thing he
25 can think. That's how she

1 likes it. That's the best he
2 can come up with on the spot.

3 And that's what Mr.
4 Bolus is stuck with and that's
5 what he then comes in here now
6 and, and says is what
7 happened. That's how she
8 likes it. The best thing he
9 can come up with on the spur
10 of the moment and it's just
11 absurd.

12 Mr. Bolus talked
13 about you all raising your
14 hand and taking an oath and
15 when that oath is given, you
16 all swear to find the truth.
17 And the truth in this case is
18 not hard. The truth is this
19 defendant got caught. He
20 ain't going to come out of it
21 smelling like a rose. He may
22 be able to talk his way out of
23 everything, but you can't talk
24 your way out of those injuries
25 and you can't talk your way

1 out of this one.

2 He doesn't come out
3 of this smelling like a rose.
4 He was angry. She was leaving
5 him and this case in the end
6 is about control. You all
7 took an oath to find the
8 truth, and the truth is not
9 that people do strange things
10 to each other, but that people
11 do horrible things to each
12 other. People do horrendous
13 things to each other that we
14 don't talk about outside this
15 courtroom because the
16 newspapers don't like to
17 print, horrible things like
18 what happened to Rachel back
19 in 2006.

20 You can say we don't
21 want to think about it. You
22 can say well, it's just
23 strange. It's not strange.
24 It's horrible. And what you
25 all have heard is nothing

1 short of a horror story. What
2 the truth is, that's what this
3 defendant did. He victimized
4 her. He controlled her. The
5 truth in this case, and as
6 horrible as it is, is not
7 difficult.

8 You all took an oath
9 at the start of this case to
10 find the truth and that truth
11 has been proven. I'm going to
12 ask that you find this
13 defendant guilty. I'm going
14 to ask that you hold him
15 accountable and find him
16 guilty of criminal sex conduct
17 in the first degree,
18 kidnapping, criminal domestic
19 violence of a high and
20 aggravated nature.

21 **THE COURT:** Does anyone
22 need to use the restroom? My
23 charge is going to be about
24 twenty minutes, give or take.
25 Maybe twenty-five minutes.

1 You all need a restroom break
2 before we get started?
3 Everybody comfortable? Why
4 don't you stand up for me and
5 stretch a little bit. You
6 just had food. If you're
7 anything like me, you get a
8 little sleepy. Gets your
9 blood circulating.

10 A JUROR: I need a
11 break.

12 THE COURT: Pardon me?

13 A JUROR: I need a
14 break.

15 THE COURT: Yes. Go
16 right ahead. We'll wait on
17 you. Does anybody else need
18 to go?

19 (Whereupon, a brief
20 recess was called.)

21 THE COURT: During this
22 trial, ladies and gentlemen,
23 you and I have certain duties
24 to perform. As the trial
25 judge it is my responsibility

1 to preside over the trial of
2 this case and I also have the
3 duty to rule upon or pass upon
4 the admissibility of evidence
5 offered during this trial.

6 You are to consider
7 only the competent evidence
8 that is before you. You are
9 to consider only the testimony
10 which has been presented from
11 the witness stand together
12 with any exhibits which have
13 been made a part of the record
14 in this case and any exhibits
15 which may have been entered
16 into the record.

17 I have the additional
18 duty to charge you the law
19 applicable to this case. As
20 the presiding judge I'm the
21 sole judge of the law of this
22 case and it is your duty as
23 jurors to accept and apply the
24 law as I now state it to you.
25 If you have a preconceived

1 idea as to what the law is of
2 what the law ought to be in a
3 case or in this case and it
4 should not agree with what I
5 now tell you the law is, you
6 are obligated under the oath
7 which you have taken to
8 abandon this preconception on
9 your part because you are
10 sworn to accept the law and
11 apply the law precisely as I
12 now state it to you.

13 In every case tried
14 in this Court before a jury,
15 the jury becomes the sole and
16 exclusive judge of the facts.
17 You, the jury, are the judges
18 of the facts in this case.
19 The Court is the judge of the
20 law. The Constitution of our
21 state has declared that a
22 trial judge shall not
23 intimate, state, comment upon,
24 or make any statement to a
25 trial jury about the facts in

1 a case. Since you, the jury,
2 are the sole judges of the
3 facts in this case, you are
4 not to infer anything from
5 what I've said during the
6 progress of this trial in
7 ruling upon the admissibility
8 of evidence or otherwise, or
9 anything that I now say to you
10 during the course of this
11 instruction that I have any
12 opinion about the facts in
13 this case. The law does not
14 permit me to have an opinion
15 about the facts. This is a
16 matter solely for you, the
17 jury, to determine.

18 As jurors then it is
19 your duty as I've instructed
20 you to determine the effect,
21 the value, the weight, and the
22 truth of the evidence
23 presented during this trial.
24 Necessarily you must assess
25 the credibility of witnesses

1 who have testified.
2 Credibility is simply a
3 legalistic term that we use
4 meaning believability of each
5 witness who has testified in
6 this matter. It becomes your
7 duty then as jurors to analyze
8 and to evaluate the evidence
9 and determine that evidence
10 which convinces you of its
11 truth.

12 I instruct you that
13 in determining the question of
14 the credibility or
15 believability of witnesses who
16 have testified in this case,
17 you may believe one witness as
18 against several witnesses or
19 several witnesses as against
20 one witness. You may believe
21 a part of the testimony and
22 reject the remaining part of
23 the testimony of that same
24 witness. If you have a good
25 and sound reason, you may

1 believe the testimony of a
2 witness in its entirety or
3 reject the testimony of a
4 witness in its entirety. You
5 may consider whether any
6 witness has exhibited to you
7 any interest, any bias, any
8 prejudice, or other motive in
9 this case. You may consider
10 the demeanor of the witness.
11 That is, the appearance and
12 manner of the witness from the
13 witness stand. You can
14 believe as much or as little
15 of each witness's testimony as
16 you think proper. Throughout
17 this process, ladies and
18 gentlemen, you have but one
19 objective, to seek the truth,
20 regardless of its source.

21 There are two types
22 of evidence which are
23 generally presented during a
24 trial; direct evidence and
25 circumstantial evidence.

1 Direct evidence is the
2 testimony of a person who
3 asserts or claims to have
4 actual knowledge of a fact,
5 such as an eyewitness.
6 Circumstantial evidence is
7 proof of a chain of facts and
8 circumstances indicating the
9 existence of a fact. The law
10 makes absolutely no
11 distinction between the weight
12 or value to be given to either
13 direct or circumstantial
14 evidence, nor is a greater
15 degree of certainty required
16 of circumstantial evidence
17 than of direct evidence. You
18 should weigh all of the
19 evidence in this case. After
20 weighing all of the evidence,
21 if you are not convinced of
22 the guilt of the defendant
23 beyond a reasonable doubt, you
24 must find the defendant not
25 guilty. Conversely, if you

1 are convinced of the guilt of
2 the defendant beyond a
3 reasonable doubt, then you
4 must find him guilty.

5 Ladies and gentlemen,
6 I instruct you that a person
7 who has a past criminal record
8 is competent to testify during
9 a trial. A past record does
10 not affect the ability of that
11 person to testify. The past
12 record may only be considered
13 by you, if at all, in
14 determining the witness's
15 believability. Remember, you
16 are the sole judges of the
17 facts and of the believability
18 of any and all of the
19 witnesses.

20 I further instruct
21 you that you have heard
22 evidence that the defendant
23 was convicted of a crime other
24 than the one for which the
25 defendant is now on trial.

1 This evidence may be
2 considered by you if you
3 conclude it as true only in
4 deciding whether the
5 defendant's testimony is
6 believable, and for no other
7 purpose. You must not
8 consider the defendant's prior
9 record as any evidence of the
10 defendant's guilt of the
11 charge we are trying today.

12 In addition, the
13 rules of evidence ordinarily
14 permit witnesses to testify to
15 opinions or conclusions. An
16 exception to this rule exists
17 for witnesses we call expert
18 witnesses. A witness who by
19 education and experience has
20 become an expert in some art,
21 science, profession, or
22 calling may state an opinion
23 as to relevant and material
24 matters in which the witness
25 claims to be an expert and may

1 also state the reasons for
2 that opinion. You should
3 consider any expert opinion
4 received in evidence in this
5 case like any other evidence.
6 Give it the weight you think
7 it deserves. If you decide
8 that the opinion of an expert
9 witness is not based on
10 sufficient education and
11 experience or if you conclude
12 that the reasons given in
13 support of the opinion are not
14 sound, or that the opinion is
15 outweighed by other evidence,
16 you may disregard the opinion
17 entirely. An expert witness's
18 testimony is to be given no
19 greater weight than that of
20 other witnesses simply because
21 the witness is an expert.
22 Further, you are not required
23 to accept an expert's opinion
24 even though it is not
25 contradicted.

1 Ladies and gentlemen,
2 I instruct you that the fact
3 that the defendant was
4 arrested, charged, and
5 indicted in this case is not
6 evidence in this case and
7 cannot be considered by you as
8 evidence of guilt in this
9 case, nor does it create any
10 presumption or inference of
11 guilt. This documentation,
12 ladies and gentlemen, are
13 simply the formal written
14 instruments which contain the
15 charge or charges made against
16 a criminal defendant. It
17 serves as the formal documents
18 by which the case is processed
19 or brought into this court.

20 The defendant has
21 pled not guilty to the
22 indictments and that plea
23 casts the burden on the State
24 to prove the defendant guilty
25 because a person charged with

1 committing a criminal offense
2 in South Carolina is never
3 required to prove himself
4 innocent. I instruct you that
5 it is a cardinal and important
6 rule of the law of evidence
7 that the defendant in a
8 criminal trial, no matter what
9 the seriousness of the charge
10 made against him may be, will
11 always be presumed to be
12 innocent of the crime for
13 which he is indicted, unless
14 his guilt has been proven by
15 evidence satisfying you of
16 that guilt beyond a reasonable
17 doubt.

18 This presumption of
19 innocence does not cease when
20 you retire to deliberate, but
21 it accompanies the defendant
22 from the time of his
23 appearance, throughout the
24 trial, until you reach a
25 verdict based upon evidence

1 satisfying you beyond a
2 reasonable doubt.

3 Our Supreme Court has
4 said that the presumption of
5 innocence is like a robe of
6 righteousness placed about the
7 shoulders of the defendant and
8 it remains with him and
9 assigns him to the -- to that
10 class, the innocent, until
11 that presumptive robe of
12 righteousness has been
13 stripped from his person by
14 evidence satisfying you of
15 that guilt beyond a reasonable
16 doubt.

17 Madam -- Mr. Foreman,
18 ladies and gentlemen, the
19 presumption of innocence is
20 not mere legal theory. It is
21 not just a legal phrase. It
22 is a substantial right to
23 which every defendant is
24 entitled, unless you, the
25 jury, are satisfied from the

1 evidence of his guilt beyond a
2 reasonable doubt.

3 You may ask what is a
4 reasonable doubt in the law.
5 The State has the burden of
6 proving the defendant's guilt
7 beyond a reasonable doubt.
8 Some of you may have served as
9 jurors in civil cases where
10 you were told that is only
11 necessary to prove that a fact
12 is more likely true than not
13 true. In criminal cases the
14 State's proof must be more
15 powerful than that. It must
16 be beyond a reasonable doubt.

17 Proof beyond a
18 reasonable doubt is proof that
19 leaves you firmly convinced of
20 the defendant's guilt. There
21 are very few things in this
22 world that we know with
23 absolute certainty and in
24 criminal cases the law does
25 not require proof that

1 overcomes every possible
2 doubt. If based on your
3 consideration of the evidence
4 you are firmly convinced that
5 the defendant is guilty of the
6 crime charged, you must find
7 him guilty. If on the other
8 hand you think there is a real
9 possibility that he is not
10 guilty, you must give him the
11 benefit of the doubt and find
12 him not guilty..

13 The defendant is
14 charged with kidnapping. The
15 State must prove beyond a
16 reasonable doubt that the
17 defendant knowingly and
18 unlawfully seized, confined,
19 inveigled, decoyed, kidnapped,
20 abducted, or carried away
21 another person without
22 authority of law.

23 To do a thing
24 unlawfully is to do it
25 willfully against the law.

1 Knowingly means with
2 knowledge. Consciously, not
3 accidentally. Knowingly means
4 with knowledge. I'm sorry. I
5 apologize. I repeated myself.

6 Seize means to take
7 hold of suddenly or forcibly.
8 Confine means to limit,
9 restrict, or enclose within
10 bounds, imprison or shut in.
11 Inveigle means to lure,
12 entice, or lead astray by
13 false representations,
14 promises, or other deceitful
15 means.

16 Decoy means to lure
17 by or as if by decoy. A decoy
18 is something to entice a
19 person into a trap. Kidnap is
20 to remove a person against his
21 will by unlawful force or by
22 fraud.

23 Abduct means to carry
24 off secretly or by force for
25 an illegal purpose. Carry

1 away means to remove.

2 The State does not
3 have to prove that the
4 defendant did all of these
5 things. Instead if you find
6 beyond a reasonable doubt that
7 the defendant did any of these
8 things, you may find the
9 defendant guilty of
10 kidnapping.

11 Something done
12 without authority of law is
13 something which the law does
14 not sanction, permit, allow,
15 condone, or provide
16 justification for. The
17 kidnapping does not have to be
18 done for any personal or
19 monitary gain, for any illegal
20 purpose, but may be for any
21 reason whatsoever.

22 The defendant is
23 charged with criminal domestic
24 violence of a high and
25 aggravated nature. The State

1 must prove beyond a reasonable
2 doubt that the defendant
3 committed an assault and
4 battery which involves the use
5 of a deadly weapon or results
6 in serious bodily injury; or
7 the defendant committed an
8 assault, with or without an
9 accompanying battery which
10 would reasonably cause a
11 person to fear imminent
12 serious bodily injury or death
13 to a member of the defendant's
14 own household, and the
15 elements of assault and
16 battery of a high and
17 aggravated nature are present.

18 A household member is
19 a spouse, a former spouse, a
20 parent, a child, a
21 grandparent, a brother, a
22 sister, a grandchild, a person
23 with whom the defendant has a
24 child in common, and a person
25 of the opposite sex with whom

1 the defendant is living or has
2 lived in the past.

3 Assault and battery
4 of a high and aggravated
5 nature is the unlawful act of
6 violent injury to the person
7 of another, accompanied by
8 circumstances of aggravation.

9 An assault occurs
10 when a person unlawfully
11 attempts or offers to commit a
12 violent injury upon another
13 person and has the present
14 ability to complete the
15 attempted injury. An assault
16 is the intentional creation of
17 a reasonable fear of immediate
18 bodily harm. It is not
19 necessary that the attempted
20 injury or harm actually take
21 place. For example, if I walk
22 up to you and when you're
23 within arm's reach I draw back
24 and hit you, that is an
25 assault. A battery is the

1 unlawful touching of another
2 person by a person who has
3 committed the assault. An
4 unlawful touching can be
5 caused by a part of the
6 accused's body or by any
7 object the accused puts into
8 motion. A battery is the
9 completion of the assault by
10 using or applying force to
11 another person however slight,
12 in a rude, angry, or resentful
13 manner, without legal
14 justification for doing so.
15 Using my earlier example, if I
16 carry through with the assault
17 by hitting you, then that is a
18 battery.

19 The State must also
20 prove a circumstance of
21 aggravation. Circumstance of
22 aggravation include the use of
23 a deadly weapon. The
24 following are examples of
25 instruments which may be

1 deadly weapons: A pistol, a
2 shotgun, a rifle, a dirk, a
3 dagger, a knife, a slingshot,
4 metal knuckles, a razor,
5 gasoline, a firebomb, a
6 Molotov cocktail, and lighter
7 fluid. A gun may be a deadly
8 weapon even if, if it is not
9 operating. A hand or a fist
10 is not normally considered a
11 deadly weapon, however under
12 some circumstances, depending
13 on the manner and means of its
14 use, the wounds inflicted and
15 other relevant facts, a hand
16 or fist may be considered a
17 deadly weapon. And ordinary
18 objects may become deadly
19 weapons when the facts show
20 that they have been used to
21 inflict serious bodily harm or
22 death. Again, these are
23 simply examples of deadly
24 weapons, and are, and are
25 evidentiary facts to be

1 considered by you along with
2 the other evidence in the
3 case, and you may give it the
4 weight, if any, you decide it
5 should receive.

6 In addition, the
7 State must prove in terms
8 of -- I apologize.

9 Also included within
10 the definition of a
11 circumstance of aggravation is
12 the intent to commit a felony,
13 the infliction of serious
14 bodily injury, a great
15 disparity between the ages or
16 physical conditions of the
17 parties, a difference in the
18 genders of the parties, the
19 taking of indecent liberties
20 or familiarities with a female
21 through the use of force, a
22 purposeful infliction of shame
23 and disgrace, and the
24 resistance of lawful
25 authorities. These again are

1 only examples of circumstances
2 of aggravation and evidentiary
3 facts to be considered by you,
4 along with the other evidence
5 in the case, and you may give
6 the weight, if any, you decide
7 it should receive.

8 The defendant is
9 charged with criminal sexual
10 conduct in the first degree.
11 The first element which the
12 State must prove beyond a
13 reasonable doubt is that the
14 defendant engaged in a sexual
15 battery with the victim. A
16 sexual battery is sexual
17 intercourse, cunnilingus,
18 fellatio, fellatio, anal
19 intercourse, or any intrusion,
20 however slight, of any part of
21 a person's body or of any
22 object into the genital or
23 anal openings of another
24 person's body, except when the
25 intrusion is accomplished for

1 a medically, medically
2 recognized treatment or for
3 diagnostic purposes. If you
4 find that the State has not
5 shown beyond a reasonable
6 doubt that a sexual battery
7 occurred, you would stop
8 deliberating and your verdict
9 would have to be not guilty.

10 If you find that a
11 sexual battery did occur, you
12 must then decide whether the
13 State has proven beyond a
14 reasonable doubt any one or
15 more of the following
16 circumstances: That the
17 defendant used aggravated
18 force to accomplish the sexual
19 battery. Aggravated force
20 means the use of physical
21 force or physical violence of
22 a high and aggravated nature
23 to overcome the victim. This
24 includes the threat of using a
25 deadly weapon. That the

1 victim submitted to sexual
2 battery while the victim was
3 also the victim of forceable
4 confinement, kidnapping,
5 robbery, extortion, burglary,
6 housebreaking, or any other
7 similar act or offense. That
8 the defendant caused the
9 victim, without the victim's
10 consent, to become mentally
11 incapacitated or physically
12 helpless, by administering,
13 distributing, dispensing,
14 delivering, or causing to be
15 administered, distribu --
16 distributed, dispensed, or
17 delivered a control -- a
18 controlled substance to
19 control his or her conduct.
20 This condition may be caused
21 by illness, defect, the
22 influence of a substance, or
23 some other cause.

24 Physically helpless
25 means that the victim was

1 unconscious, asleep, or for
2 any other reason physically
3 unable to communicate consent
4 to the sexual battery.

5 I further instruct
6 you, ladies and gentlemen,
7 that South Carolina Code
8 Annotated 16-3-658 provides as
9 follows: That a person cannot
10 be guilty of criminal sexual
11 conduct under Code Section
12 16-3-651 through 16 -- and
13 actually, I apologize. Let me
14 restate that for you. I
15 further instruct you that a
16 person cannot be guilty of
17 criminal sexual conduct if the
18 victim is the legal spouse,
19 unless the spouse -- unless
20 the couple is living apart and
21 the offending spouse's conduct
22 constitutes criminal sexual
23 conduct in the first degree as
24 defined by Code Section
25 16-3-652; the definition of

1 which I just instructed you,
2 which is the definition for
3 criminal sexual conduct in the
4 first degree.

5 The defendant does
6 not have to prove that the
7 parties were living together.
8 The burden remains on the
9 State to prove each and every
10 element of the offense of
11 criminal sexual conduct in the
12 first degree beyond a
13 reasonable doubt.

14 I further instruct
15 you that the defendant has
16 raised the defense that the
17 victim voluntarily consented
18 to the sexual intercourse.
19 The defendant does not have to
20 prove that the victim
21 consented; instead, the State
22 must prove beyond a reasonable
23 doubt that the victim did not
24 consent. If you find that the
25 victim consented to the sexual

1 intercourse, you must find the
2 defendant not guilty.

3 Ladies and gentlemen,
4 there are several different
5 indictments in this case, each
6 of which alleges a different
7 offense. They are indictment
8 2006-GS-10-12295, which is an
9 indictment for kidnapping, and
10 these will go back into the
11 jury room with you so you
12 don't have to write those
13 down. And indictment
14 2006-12296, which is criminal
15 domestic violence of a high
16 and aggravated nature. And
17 2007-3499, criminal sexual
18 conduct in the first degree.
19 Each indictment charges a
20 separate and distinct offense.
21 You must decide each
22 indictment separately on the
23 evidence and the law
24 applicable to it, uninfluenced
25 by your decision as to any

1 other indictment. The
2 defendant may be convicted or
3 acquitted on any or all of the
4 offenses charged. You will be
5 asked to write a separate
6 verdict of guilty or not
7 guilty for each separate
8 indictment.

9 Ladies and gentlemen,
10 there are six possible
11 verdicts in this case which
12 you may find. There is no
13 significance whatsoever to the
14 order in which I state these
15 possible verdicts. It is
16 simply that one must be stated
17 first and so forth, and they
18 are as follows, and again
19 these verdict forms will go
20 into the jury room with you.

21 We, the jury, by
22 unanimous consent find the
23 defendant guilty of kidnapping
24 or not guilty. We, the jury,
25 by unanimous consent find the

1 defendant guilty of criminal
2 domestic violence of a high
3 and aggravated nature, or not
4 guilty. We, the jury, by
5 unanimous consent find the
6 defendant guilty of criminal
7 sexual conduct in the first
8 degree, or not guilty. Again,
9 there is no significance
10 whatsoever to the order in
11 which I've stated these
12 potential verdicts.

13 Ladies and gentlemen,
14 your verdict must be a
15 unanimous one, which means
16 that all twelve of you must
17 agree in reaching a verdict.
18 Mr. Foreman, it will be your
19 responsibility to knock on the
20 door and advise the bailiffs
21 when the jury has reached a
22 verdict. It will also be your
23 responsibility to fill out the
24 verdict forms and to sign and
25 date them. It will also be

1 your responsibility if the
2 jury has any questions during
3 the deliberations to write
4 those out, knock on the door,
5 advise the bailiff of that so
6 that the Court can take up
7 those questions.

8 Ladies and gentlemen,
9 I would, I will advise you in
10 advance that if you have any
11 questions there will be a
12 delay in us responding, and it
13 is not that we're ignoring
14 you. It is simply that there
15 is a procedure that we must
16 follow in answering your
17 questions, so know that any
18 delay is attributable to us
19 following that procedure.

20 I'm going to ask that
21 you return to your jury room
22 but I'm also going to ask that
23 you not begin your
24 deliberations. There's some
25 matters of law that I need to

1 take up with the attorneys and
2 as a result of those I might
3 need to give further
4 instruction or clarify an
5 instruction. However, if
6 there is not any further
7 instruction we will send in
8 the verdict forms, your note
9 pads, and the evidence. So if
10 you would leave your note pads
11 in your seats for me. Again,
12 please do not begin
13 deliberations, and we will
14 give you further instructions
15 momentarily.

16 If you would go with
17 the bailiffs.

18 (Whereupon, the jury
19 leaves the courtroom at
20 3:56 p. m.)

21 **THE COURT:** Okay. Are
22 there any exceptions from the
23 State?

24 **MR. WILLIAMS:** No, your
25 Honor.

1 THE COURT: Any
2 exceptions from the defense?

3 MR. BOLUS: None, your
4 Honor.

5 THE COURT: Can you all
6 look through the evidence for
7 me just one more time so we
8 can make sure everything's in
9 place so I can send it back
10 with the bailiffs, and do we
11 need to send some gloves back
12 there? There's some clothing
13 in it that may have some, some
14 bodily fluids.

15 MR. WILLIAMS: There's
16 also some, I think like grit
17 powder on some of the things.

18 THE COURT: Yeah. Why
19 don't we -- can you send some
20 gloves back there?

21 MR. WILLIAMS: Is it
22 all right for us to put it in
23 the box after we go through
24 it?

25 THE COURT: That will

1 be very helpful to the
2 bailiffs. And then here are
3 the verdict forms, and if you
4 could collect the note pads,
5 and if you all would stay with
6 me to also -- also so that I
7 can dismiss the alternate.

8 **MR. WILLIAMS:** Judge,
9 do you want to send the taser
10 back? Is it all right if we
11 take the battery out?

12 **THE COURT:** Well, you
13 were demonstrating it. I
14 think you -- I just probably
15 need to tell the foreperson,
16 don't, nobody be trying to use
17 that, and actually I probably
18 should, if you all want me to
19 do that, I will bring them
20 back in and instruct them that
21 we're sending the taser back
22 with the batteries, but I need
23 to strictly instruct them that
24 they are not to conduct any
25 sort of experiments on their

1 own, because that could
2 potentially happen. Somebody
3 could put it to -- in -- in --
4 but they're not supposed to do
5 that. Yeah.

6 You all think I need
7 to do that, or you think I
8 need to tell the foreperson
9 that to communicate it to the
10 rest of the jury?

11 MR. WILLIAMS: I think
12 it would be good --

13 THE COURT: Stranger
14 things have happened.

15 MR. BOLUS: Common
16 sense.

17 THE COURT: Yeah, but
18 the common sense ain't so
19 common. Mr. Williams, do you
20 have a preference?

21 MR. WILLIAMS: I think
22 it's probably something that
23 Mr. Bolus would --

24 THE COURT: Because for
25 them to put it to their skin

1 would be an independent sort
2 of, of an experiment and they
3 are not allowed to do that.

4 MR. WILLIAMS: Yeah.
5 You should probably tell them
6 not to. You could take the
7 battery out but they may want
8 to look at it.

9 THE COURT: Well, they
10 may want to see it, you know.
11 I think they're entitled to
12 see what it does, but I don't
13 think -- I don't want any of
14 them, you know, putting it to
15 them, putting it to their,
16 putting it to their bodies.

17 Is there any
18 exception to me doing that?

19 MR. WILLIAMS: No, your
20 Honor.

21 MR. BOLUS: None.

22 THE COURT: I need to
23 look at something.

24 What I'm going to say
25 to them is that we're leaving,

1 we're sending back all of the
2 evidence and that includes the
3 taser, but you may use, you
4 know, there's nothing that
5 prohibits you from looking at
6 the taser and demonstrating
7 it, but you cannot conduct any
8 independent experiments on
9 your own, and will caution
10 you, you know, to be careful
11 so that you don't cause
12 yourself any injury. Is that
13 acceptable, Mr. Bolus?

14 MR. BOLUS: Yes.

15 THE COURT: Is that
16 acceptable, Mr. Williams?

17 MR. WILLIAMS: Yes,
18 your Honor.

19 THE COURT: Please
20 bring in the panel for me.

21 (Whereupon, the jury
22 enters the courtroom at
23 4:02 p. m.)

24 THE COURT: You may be
25 seated.

1 Ladies and gentlemen,
2 at this time I'm going to
3 release you to begin your
4 deliberations. I would
5 caution you, however, that
6 with the evidence we're
7 sending back the taser and we
8 are leaving the batteries in
9 it. And I -- you are free, of
10 course, to look at any of the
11 evidence but I would strictly
12 instruct you that the law
13 prohibits you from conducting
14 any type of independent
15 experiments on your own, so
16 that means that you should not
17 put the taser to your skin,
18 you should not put it to your
19 body. That would be
20 considered an independent
21 experiment. Okay. And I
22 instruct you in that regard
23 out of an abundance of
24 caution. Okay.

25 So I'm going to

1 excuse you now with the
2 bailiffs to begin your
3 deliberations. They have the
4 evidence, the verdict forms,
5 and your note books. And if
6 you would go with your
7 caretaker. If the alternate
8 would remain with us.

9 (Whereupon, the jury
10 leaves the courtroom and
11 begins deliberations at
12 4:04 p. m.)

13 THE COURT: Any
14 exceptions to the Court's
15 additional instruction from
16 the State?

17 MR. WILLIAMS: Nothing,
18 your Honor.

19 THE COURT: From the
20 defense?

21 MR. BOLUS: No, your
22 Honor.

23 THE COURT: Sir, we
24 want to -- you may be seated.
25 We thank for your time and

1 your attention to this case.
2 Being an alternate is such a
3 thankless job.. You get to do
4 all the work except
5 deliberate. You are welcome
6 to remain with us if you'd
7 like. You are also welcome to
8 leave. I will -- I dismissed
9 the panel for the week so
10 you're excused for the
11 remainder of the week.

12 THE ALTERNATE: I'd,
13 I'd like to remain for a
14 while, see if --

15 THE COURT: Certainly.
16 Oh, yes, sir. You're -- and I
17 was going to say you're
18 welcome to stay with us if
19 you'd like. I have a place
20 the bailiffs can put you so
21 that you can wait.

22 THE ALTERNATE: All
23 right.

24 THE COURT: In, in,
25 with some -- comfortably.

1 THE ALTERNATE: Okay.

2 THE COURT: And you're
3 welcome to discuss this case
4 if you'd like, but I would ask
5 that you not do that until the
6 jury has concluded its
7 deliberations, until the,
8 until the case is concluded.
9 Also you don't have to discuss
10 the case and if someone should
11 per, persist in trying to talk
12 to you, please let us know so
13 that we can take action to
14 protect you. You, if you need
15 a work excuse for today, we
16 will get one for, for you from
17 downstairs, but if not your
18 work excuse and your check
19 will be mailed on Friday.

20 THE ALTERNATE: Okay.

21 If it please, your Honor, I
22 would like to have one for
23 today but I --

24 THE COURT: Certainly.

25 We will get one for you. Can

1 we, can we do that? Actually,
2 what you can do is you can go
3 on downstairs to the clerk --
4 you will get one for him?
5 Mike will get it for you and
6 then if you would go with the
7 bailiffs, they will have a
8 place for you to wait while
9 the jury's deliberating.
10 Thank you so much.

11 (Whereupon, the
12 alternate leaves the courtroom
13 at 4:18 p.m.)

14 THE COURT: Is there
15 anything else we need to take
16 up before we stand in recess?
17 From the State?

18 MR. WILLIAMS: No, your
19 Honor.

20 THE COURT: From the
21 defense?

22 MR. BOLUS: No, your
23 Honor.

24 THE COURT: I would
25 just ask that you all stick

1 close, probably around 5:30 I
2 will ask the jury if they want
3 dinner. I don't know, Mike.
4 You think 5:30 or six? What
5 time did they get lunch?
6 Two -- 1:30, 1:15.

7 COURT CLERK: Yes.

8 THE COURT: Probably
9 about six o'clock we'll see if
10 they want dinner and they
11 we'll abide what they, if they
12 request that they want snacks,
13 we'll just give them snacks,
14 but if they want dinner, we'll
15 order them dinner. If they
16 say they want dinner and we're
17 deliberating at that time I
18 will let you all know a time
19 table so that you all can go
20 get something to eat as well.
21 Okay?

22 If you all would
23 stick close for me, that would
24 be wonderful, in the event
25 that we have any questions.

1 MR. WILLIAMS: Thank
2 you.

3 THE COURT: You're
4 welcome. And it's been a
5 pleasure, gentlemen.

6 (Whereupon, a recess
7 is called at 4:22 p.m.)

8 (Whereupon, the judge
9 enters the courtroom at
10 4:28 p.m.)

11 THE COURT: You may be
12 seated. The jury has sent a
13 note which says "Copy of
14 judge's explanation,
15 kidnapping and criminal
16 domestic violence."

17 How I would respond
18 to them is that "Ladies and
19 gentlemen of the jury, our
20 procedures do not allow for a
21 copy of the jury charge,
22 slash, instructions to be
23 given to you, but if there is
24 a specific instruction that
25 you would like given again or

1 the entire instruction, please
2 advise us and I will
3 accommodate your request
4 immediately."

5 Is there any
6 exception to the response from
7 the State?

8 MR. WILLIAMS: No, your
9 Honor.

10 THE COURT: From the
11 defense?

12 MR. BOLUS: None.

13 THE COURT: And we'll
14 have this marked as a Court's
15 exhibit.

16 (Whereupon, the
17 jury's note is received and
18 marked as Court Exhibit No. 1
19 for purposes of the record.)

20 THE COURT: Okay.
21 We'll stand at ease and we'll
22 see.

23 (Whereupon, a recess
24 is called at 4:34 p.m.)

25 (Whereupon, the judge

1 enters the courtroom at
2 4:56 p.m.)

3 THE COURT: You may be
4 seated. The jury has reached
5 a verdict. The jury has
6 reached a verdict. I'm
7 waiting on my alternate. The
8 alternate wanted to remain.
9 Let him sit with the bailiffs.

10 (Whereupon, the
11 alternate enters the courtroom
12 at 4:58 p.m.)

13 THE COURT: Please
14 bring in the jury. While
15 we're waiting on the jury, I
16 know that this is a highly
17 emotionally charged situation
18 and I'm going to instruct the
19 gallery that I do not expect
20 there to be any outbursts or
21 any other show of emotion at
22 the reading of the verdicts.
23 Anyone that does that will be
24 removed from the courtroom by
25 security.

1 (Whereupon, the jury
2 enters the courtroom at
3 4:59 p.m.)

4 THE COURT: You may be
5 seated.

6 Where's the alternate
7 juror?

8 THE ALTERNATE: I'm
9 here, your Honor.

10 THE COURT: Mr.
11 Foreman, is it accurate that
12 the jury has reached a
13 verdict?

14 THE FOREMAN: Yes,
15 ma'am.

16 THE COURT: If you
17 would give it to the bailiff
18 for me, please.

19 You may proceed.

20 COURT CLERK: Thank
21 you, your Honor.

22 THE COURT: You're
23 welcome.

24 COURT CLERK: The
25 defendant should stand. The

1 verdict form, the State of
2 South Carolina versus Clark
3 David Thomas, defendant. As
4 to indictment number
5 2006-GS-10-12295, we, the
6 jury, by unanimous consent
7 find the defendant guilty of
8 kidnapping. Signed Joseph P.
9 Giacinto, foreperson of the
10 jury, on July tenth, 2008.

11 Ladies and gentlemen
12 of the jury, if this was your
13 verdict, please raise your
14 right hand.

15 (Whereupon, all
16 members of the jury raise
17 their right hands.)

18 **COURT CLERK:** Thank
19 you. Please let the record
20 reflect that all twelve jurors
21 raised their right hand.

22 In the matter of the
23 State of South Carolina versus
24 Clark David Thomas, defendant,
25 as to indictment number

1 2006-GS-10-12296, we, the
2 jury, by unanimous consent
3 find the defendant guilty of
4 criminal domestic violence of
5 a high and aggravated nature.
6 Signed, Joseph P. Giacinto,
7 foreperson of the jury, on
8 July tenth, 2008.

9 Ladies and gentlemen
10 of the jury, if this was your
11 verdict, please raise your
12 right hand.

13 (Whereupon, all
14 members of the jury raise
15 their right hands.)

16 COURT CLERK: Thank
17 you. Please let the record
18 reflect that all twelve jurors
19 raised their right hand.

20 In the matter of the
21 State of South Carolina versus
22 Clark David Thomas, defendant,
23 as to indictment number
24 2007-GS-10-3499, we, the jury,
25 by unanimous consent find the

1 defendant, Clark David Thomas,
2 find the defendant not guilty
3 of criminal sexual conduct
4 first degree. Signed Joseph
5 P. Giacinto, foreperson of the
6 jury, on July tenth, 2008.

7 Ladies and gentlemen
8 of the jury, if this was
9 verdict, please raise your
10 right hand.

11 (Whereupon, all
12 members of the jury raise
13 their right hands.)

14 **COURT CLERK:** Thank
15 you. Please let the record
16 reflect that all twelve jurors
17 raised their right hand.

18
19 **THE COURT:** Any request
20 to poll the jury from the
21 State?

22 **MR. WILLIAMS:** No, your
23 Honor.

24 **THE COURT:** From the
25 defense?

1 MR. BOLUS: None.

2 THE COURT: You may be
3 seated, sir.

4 Please make sure you
5 get all the appropriate
6 documentation filled out for
7 me, Mr. Williams.

8 Mr. Foreman, ladies
9 and gentlemen, we thank you
10 for your time and your
11 attention to this case. I
12 know that jury service is a
13 great sacrifice to you, both
14 to your personal and your
15 professional responsibilities.
16 I hope, however, that this has
17 been an educational experience
18 for you and I hope that you've
19 learned that real court is
20 nothing like what you see on
21 television. It's not like
22 Judge Judy, it's not like
23 Judge Joe Brown, it's not like
24 the People's Court. Law and
25 Order, while extremely racy, I

1 wish we could -- no. Actually
2 I'm not sure I wish we could
3 do that because I think that
4 we'd probably have complete
5 anarchy, but nevertheless, it
6 is entertaining.

7 I hope that you've
8 learned that real court is
9 nothing like that. Those
10 shows, while they look like
11 court, really are arbitration
12 by their very nature and while
13 extremely entertaining, are
14 nothing like the real thing.
15 So I hope that you will leave
16 this experience knowing how
17 important you are. Our system
18 is the only system where
19 twelve individual act as
20 fact-finders and render
21 verdicts. While it is a tough
22 spot and quite frankly I am --
23 have a great deal of respect
24 for all of those who complete
25 that form of civic service.

1 You are welcome to
2 remain with us for sentencing
3 if you would like. You are
4 also welcome to be, to be
5 excused if you would like and
6 I'm excusing you for the rest
7 of the week. This concludes
8 the cases that we'll be trying
9 this week.

10 You also can get a
11 work excuse today if you'd
12 like or you can wait until we
13 mail them out on Friday, as
14 well as your checks.

15 You are welcome to
16 discuss this case if you would
17 like. By the same token you
18 are welcome not to discuss it.
19 If someone should persist in
20 trying to speaking with you,
21 please make the Clerk's Office
22 aware of it so that the Court
23 can appropriate action to
24 protect your privacy.

25 You're excused with

1 the Court's profound thanks.
2 If you would go with the
3 bailiffs and you can let them
4 know if you'd like to stay.

5 I'll hear post trial
6 motions and the sentencing in
7 a moment.

8 (Whereupon, a recess
9 is called at 5:14 p.m.)

10 (Whereupon, the judge
11 enters the courtroom at
12 5:48 p.m.)

13 THE COURT: Okay. Are
14 there any post trial motions?

15 MR. WILLIAMS: Not by
16 the State, your Honor.

17 THE COURT: Any from
18 the defense?

19 MR. BOLUS: No.

20 THE COURT: Do we have
21 the paperwork filled in?

22 Anything from the
23 State regarding sentencing?

24 MR. WILLIAMS: Yes,
25 your Honor. If it please the

1 Court, I want to thank Officer
2 Talbott and Investigator Gray
3 from our office for getting
4 the case together. Your
5 Honor, I do want to go through
6 his criminal record.

7 THE COURT: That would
8 be helpful.

9 MR. WILLIAMS: And I do
10 want to give the victim a
11 chance to speak.

12 THE COURT: Absolutely.

13 MR. WILLIAMS: Your
14 Honor, I have great
15 appreciation for the jurors in
16 this case. Your Honor, I
17 realize that there was a
18 difficult legal issue in this
19 case, your Honor, and that is
20 spousal battery, and I think
21 that's a difficult conundrum.
22 And I think that kidnapping,
23 it reflects conduct that your
24 Honor, your Honor heard about
25 from this trial, and I'm going

1 to give Miss Crowley and her
2 mother a chance to speak when
3 the Court feels it's
4 appropriate. Obviously your
5 Honor knows the facts.

6 Your Honor, the
7 defendant's prior record
8 consists of prior, prior
9 convictions and I can go
10 through all those, and I will.
11 It begins in 1980 with
12 conspiracy to violate the
13 narcotics laws, the sale of
14 controlled substances. 1981,
15 a D. U. I. Operating an
16 uninsured vehicle. Improper
17 vehicle license. Nineteen --

18 THE COURT: Please slow
19 down for me.

20 MR. WILLIAMS: 1981,
21 three counts of fraudulent
22 check. 1984, malicious injury
23 to real property. 1985 --

24 THE COURT: Hold on.
25 Is that magistrate's court?

1 MR. WILLIAMS: I'll
2 check notes. I don't think
3 they were felonies, your
4 Honor.

5 THE COURT: Yeah.
6 They -- what year was that?

7 MR. WILLIAMS: That was
8 in 1984.

9 THE COURT: '81? Then
10 the next one was --

11 MR. WILLIAMS: '83 was
12 a trespass.

13 THE COURT: That was
14 magistrate's level?

15 MR. WILLIAMS: Yes.
16 Next was malicious injury to
17 real property.

18 THE COURT: That was
19 also a magistrate's level?

20 MR. WILLIAMS: I think
21 so, your Honor.

22 THE COURT: Oh. You
23 don't have to -- I'm assuming
24 that.

25 MR. WILLIAMS: 1985 was

1 financial transaction card
2 fraud; fraudulent check, three
3 counts. 1987, a D. U. I. and
4 a D. U. S.; failure to stop
5 for a blue light.

6 THE DEFENDANT: I never
7 had, never had one of those.

8 MR. WILLIAMS: Actually
9 , your Honor, the failure to
10 stop, it may have been --

11 THE COURT: Yeah. Do
12 you have a disposition for
13 that or you just have an
14 arrest?

15 MR. WILLIAMS: Let me
16 find the certified convictions
17 for that. The failure to stop
18 on police command was in '87.

19 THE COURT: '87?

20 MR. WILLIAMS: Yes,
21 your Honor. In 1990,
22 fraudulent check. 1991, the
23 violation of check law, three
24 counts of forgery. 1994, a
25 total of twelve counts of

1 fraudulent check. 1995,
2 receiving stolen goods and
3 obtaining goods by false
4 pretence. 1996, forgery, two
5 counts, as well as fraudulent
6 check. 2002, obtaining goods
7 by false pretense. In 2005,
8 C. D. V. HAN which I believe
9 was with the same victim as
10 well as a count for unlawful
11 use of telephone and a 2005
12 hit and run with minor
13 personal injury, which I
14 believe he got fifteen months
15 of probation on. It may have
16 been drug court.

17 Your Honor, that's,
18 that's what I show for a prior
19 record. I will say, your
20 Honor, on behalf of the State
21 quite simply, your Honor, this
22 defendant's record shows that
23 only time he doesn't commit
24 crimes is when he is
25 incarcerated. He has be

1 through every type of program.
2 He's had every opportunity
3 into the world and all he does
4 when he's not in prison is
5 that he keeps breaking the
6 law.

7 I'm going to ask your
8 Honor to sentence him to the
9 maximum sentence on the
10 kidnapping. I believe his
11 conduct indicates and calls
12 for that degree of sentence I
13 also believe his prior record
14 shows that he, he really won't
15 stop breaking the law unless
16 he is incarcerated and
17 prevented from doing so.

18 Your Honor, Miss
19 Meree would probably like to
20 speak.

21 THE COURT: Be glad to
22 hear from them. If you could
23 state your name for the record
24 and speak very loudly and
25 clearly for the court

1 reporter.

2 MS. MEREE: My name is
3 Kathy Meree. I'm Rachel
4 Crowley's mother. I know this
5 man for approximately seven
6 years and he has terrorized
7 this family. I had him
8 arrested for phone harassment.
9 He doesn't know how to
10 function in the real world.
11 He has told me many times that
12 he knows how to beat the
13 system and I'm asking your
14 Honor, please, give this man
15 the maximum sentence. When he
16 gets out he is going to do the
17 same thing and I would hate
18 for him to do this to somebody
19 else, but that's all he knows
20 how to do.

21 Please, your Honor,
22 give him the maximum.

23 RACHEL CROWLEY: I'm
24 Rachel Crowley. I just wanted
25 to first of all thank Officer

1 Talbott and Nathan Williams
2 and - -

3 THE COURT: Ma'am, I'm
4 sorry. I'm not trying to be
5 insensitive. There's a fan
6 that blows over our heads and
7 it's very difficult for us to
8 hear you. If you could speak
9 a bit louder.

10 RACHEL CROWLEY: Is
11 this better?

12 THE COURT: Yes. Thank
13 you.

14 RACHEL CROWLEY: I'm
15 Rachel Crowley and I want to
16 thank Officer Talbott and
17 Nathan Williams for everything
18 they've done, and also want to
19 thank the judge, and I just
20 wanted to say that this has
21 been, other than those two
22 days themselves, this has been
23 the longest two days of my
24 life. I don't know what I'm
25 feeling right now. I don't

1 have -- I'm -- I'm just scared
2 that if he does get out that I
3 won't have another chance to
4 get away and. . . that's all.

5 THE COURT: Thank you,
6 ma'am.

7 Anything further.
8 Mr. Williams?

9 MR. WILLIAMS: No, your
10 Honor. Thank you.

11 THE COURT: You're
12 welcome. Anything further for
13 the record, Mr. Bolus?

14 MR. BOLUS: I think his
15 daughter wants to say
16 something.

17 KRISTAN THOMAS: Yes.

18 MR. BOLUS: Yes.

19 THE COURT: If you
20 would speak loudly and clearly
21 your name for the record?

22 KRISTAN THOMAS: My
23 name is Kristan Thomas. I'm
24 Clark Thomas's daughter.
25 Rachel and my father have been

1 together and there has been a
2 charge of criminal domestic
3 violence of a high and
4 aggravated nature before. If
5 she was so scared of him then,
6 why did she keep coming back
7 to him and then bring another
8 charge? If he already abused
9 her, if he was so abusive, why
10 would she keep coming back? I
11 don't understand. They, if
12 there was already a charge for
13 that, why would she go back
14 with him if she's scared? She
15 wants pity from everyone and
16 she wants everyone to see her
17 way, if she keeps coming back
18 to this man that terrorized
19 her life? It doesn't make any
20 sense to me. And I've seen
21 this happen. I'm his
22 daughter, I was living with
23 him. I've seen this
24 happening. This woman is
25 crazy. She has abused him. I

1 just don't understand. One
2 moment she's normal, the next
3 moment she is a completely
4 different person. She can be
5 very sweet. She is very
6 sweet, normally, when she's
7 normal. But when she changes,
8 she changes, she changes,
9 she's a completely different
10 person.

11 **MR. WILLIAMS:** Your
12 Honor, I have to object at
13 some point.

14 **THE COURT:** It's, it's
15 argument in mitigation. I
16 don't think there's a basis
17 for the State to object. I'm
18 going to allow the victim to
19 speak and anyone that wants to
20 speak on behalf of the
21 defendant. I think it would
22 be an abrogation of his of
23 constitutional rights for me
24 to restrict them in any way
25 and create an issue on appeal

1 that we don't need.

2 **MR. WILLIAMS:** Thank
3 you, your Honor.

4 **THE COURT:** You're
5 welcome.

6 Yes, ma'am?

7 **KRISTAN THOMAS:** All my
8 life my father told me never
9 to lie about anything and I
10 know, you know, he been a very
11 good dad to me, other than the
12 drugs. He has a drug problem
13 and we have seen it, you know,
14 and when you do drugs for so
15 long it can take hold of you,
16 but it, you know, he helped me
17 through school. He's always
18 been there for me. My mom
19 hasn't been there for me and
20 my dad was always there when
21 she wasn't. And when Rachel
22 entered his life it was like
23 she took her from me -- she
24 took him from me. It's like
25 he wasn't my dad any more

1 then, he was so involved with
2 her. All he wanted from her
3 was to love him and she
4 wouldn't do that. All she did
5 was cheat on him. That's all
6 she did. She lied. She
7 cheated. All he wanted was
8 love from her and he couldn't
9 get that because she wouldn't
10 allow it. That's all I have
11 to say.

12 **THE COURT:** Thank you,
13 ma'am.

14 Anything further, Mr.
15 Bolus?

16 **MR. BOLUS:** No. Judge,
17 I think you know the story.
18 You heard it many times.
19 Drugs and --

20 **DEFENDANT'S MOTHER:** I
21 will say something.

22 **MR. BOLUS:** Well, just
23 let me finish.

24 **DEFENDANT'S MOTHER:** A
25 I right.

1 DEFENDANT'S MOTHER: Ok

2 ay.

3 MR. BOLUS: The drugs I
4 think destroyed his life. I,
5 I met him about four or five
6 years ago at Folly Beach. He
7 was in a suit. He was
8 clean-cut. He has a good
9 business going. Took me to
10 lunch a couple times. I
11 didn't know his past or
12 anything and he became a
13 client. I thought he was a
14 successful person.

15 When this happened I,
16 I looked at the picture and
17 read the paper and didn't even
18 know it was him. I got a call
19 from the jail and he said
20 get -- hey, get -- and I
21 didn't know what he was
22 talking about. I got out my
23 paper again because that's how
24 surprised I was, and I've seen
25 him when he's -- I've seen him

1 when he's sober. I frankly
2 think he looks like, he looks
3 like a mess right now but he
4 was, just a few years ago when
5 he was off the juice and
6 whatever he was on, he was
7 impressive.

8 But that's all I can
9 say. I don't apologize for
10 him. I appreciate the, the
11 jury paying attention to the
12 legal issues and I do
13 appreciate that one verdict of
14 not guilty and they obeyed the
15 law and I'm not going to
16 contest the jury verdict, but
17 just to let you know, he,
18 he's, he may be a disaster now
19 but he hadn't always been a
20 disaster and he might not
21 always be a disaster, and any
22 leniency you can give would be
23 appreciated, but he, he hasn't
24 been convicted of a serious
25 crime and he made his bed and

1 he's got to lie in it and it's
2 the drugs that did it and
3 it's, you know, nobody else's
4 fault except your own when you
5 get hooked on drugs.

6 **THE COURT:** Did
7 someone, another member of his
8 family want to be heard?

9 **MR. BOLUS:** I think his
10 mother did.

11 **THE COURT:** Yes, ma'am.
12 If you would state your name
13 for the record.

14 **DEFENDANT'S MOTHER:**
15 Carol Ann Cook.

16 **THE COURT:** I'm going
17 to need you to speak up a
18 little bit more than that for
19 me, if you would.

20 **DEFENDANT'S MOTHER:**
21 Carol Ann Cook.

22 **THE COURT:** Yes, ma'am.

23 **DEFENDANT'S MOTHER:**

24 I'm his mother. And he has
25 always been a very loving son

1 and he would not intentionally
2 hurt anybody. And I think if
3 he received the maximum it
4 would be a terrible injustice
5 and he can rehabilitate in
6 jail and he will. I'm going
7 to move to Columbia when he
8 does get out of jail and I'll
9 have a family life for him
10 because his past seven years,
11 his marriage were not happy
12 ones for him and he, he
13 deserves a chance being a
14 family man and in Charleston
15 he doesn't any family except
16 his daughter and he's not a
17 bad person. He doesn't do
18 violent things. And this I
19 feel like was related to drugs
20 and it won't take a maximum
21 sentence to get him off drugs.
22 A reasonable, I, I beg for a
23 reasonable sentence because he
24 can rehabilitate and I have
25 every confidence that he will.

1 He will have support of his
2 family and he's talented and,
3 and he has so many skills,
4 trade skills and all. He, he
5 will be a, a good citizen.
6 Just give him his chance and I
7 know he won't ever have
8 anything to do with that
9 previous situation and he, I'm
10 sure he will never have
11 anything to do with Rachel
12 or -- and she has no reason to
13 fear him, none whatsoever.
14 This is bad enough getting a
15 sentence to prison, bad
16 enough. He's not going to do
17 anything, so please be lenient
18 with him.

19 THE COURT: How old is
20 your client, Mr. Bolus?

21 THE DEFENDANT: Forty-
22 six.

23 THE COURT: How far
24 have you gone in school, sir?

25 THE DEFENDANT: Finishe

1 d the twelfth grade.

2 THE COURT: And you
3 were an electrician. Is that
4 correct?

5 THE DEFENDANT: Con-
6 tractor. I was in business,
7 my own business.

8 THE COURT: I'm sorry.
9 I didn't hear you, sir.

10 THE DEFENDANT: I'm a
11 contractor and electrician as
12 well. Electrical contractor.
13 Licensed. State licensed
14 contractor.

15 THE COURT: Anything
16 further, Mr. Bolus?

17 MR. BOLUS: No, ma'am.

18 THE COURT: Sir, do you
19 wish to be heard for the
20 record?

21 MR. BOLUS: You can
22 stand up when you talk.

23 THE DEFENDANT: You
24 know, my record reflects my
25 lack of violent behavior in

1 and of itself. There has
2 never been a violent act
3 committed on my record other
4 than this, related to this. I
5 haven't had problems with her
6 mother for thirteen years and
7 numerous other relationships
8 throughout, I've never had a
9 domestic violence in my life.
10 I've never been guilty of
11 anything like that. I've
12 never hurt anybody. I can't
13 think of one or two fights
14 I've ever been in my entire
15 life. I was out on bond for a
16 year, a year and three months.
17 I never got near her. I ran
18 into her at Andolini's Pizza
19 when she was with her mom
20 sitting out in the car. She
21 looks up and she says I want
22 to hug you, and I'm, I'm
23 staying away from her.

24 I called my bondsman.
25 I said why am I wearing this

1 monitor if gets close to me
2 and there's nothing going on
3 and she's, she's text
4 messaging me. I don't want
5 anything to do with her, yet
6 she thinks she fears for me,
7 for, that I'm going to come
8 back and get her?

9 My life is over.
10 There's no reason. I don't
11 know what to say. I mean I've
12 always helped everybody that's
13 come my way. I've brought
14 people into my home and given
15 them a place to live and given
16 them jobs and helped them get
17 on their feet because I'm a
18 compassionate person and a
19 kind person. I was never been
20 a vicious, malicious person.
21 Always loved with all my heart
22 and believed the best in
23 people and tried to help
24 everybody that came along,
25 even after I was done over and

1 over and over done wrong, and
2 if I was such a horrible,
3 dangerous person then why did
4 come back to me? I don't
5 understand it either.

6 But my daughter has
7 lost her father now and I beg
8 the Court's leniency for her.
9 Thank you for your time.

10 THE COURT: You're
11 welcome, sir.

12 Anything further, Mr.
13 Bolus?

14 MR. BOLUS: No, ma'am.

15 THE COURT: Anything
16 further from the State?

17 MR. WILLIAMS: No, your
18 Honor.

19 THE COURT: Sir, if you
20 would stand for sentencing.
21 Sir, on the charge of criminal
22 domestic violence of a high
23 and aggravated nature,
24 indictment 2006-GS-10-12296,
25 you are sentenced to the State

1 Department of Corrections for
2 a period of ten years. The
3 A. T. U. will be available to
4 you if it is available within
5 the Department of Corrections
6 so that you might get
7 treatment. That sentence is
8 concurrent and you will
9 receive credit pursuant to
10 24-13-40 if that becomes
11 applicable.

12 As regards, sir, the
13 charge on kidnapping you are
14 sentenced to the State
15 Department of Corrections for
16 a period of twenty years.
17 You'll get credit for any time
18 that you served. That
19 sentence will be concurrent
20 and I order the A. T. U. unit
21 if it's available in the
22 Department of Corrections and
23 give you credit pursuant to
24 24-13-40 if that becomes
25 applicable, and that will be

1 calculated by them?

2 THE DEFENDANT: Do I
3 get credit for time --

4 THE COURT: Yes, sir.
5 Absolutely. We're in recess.

6 THE DEFENDANT: Thank
7 you, your Honor.

8 THE COURT: You're
9 welcome, sir.

10 Anything further from
11 the State?

12 MR. WILLIAMS: No, your
13 Honor.

14 THE COURT: Anything
15 further, Mr. Bolus?

16 MR. BOLUS: No, your
17 Honor.

18 THE COURT: Thank you,
19 gentlemen. It was a pleasure.

20 (Whereupon, the
21 matter was concluded at
22 6:02 p.m.)

23

24

25

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

I, the undersigned HEATHER GAYLE BURNS, Official 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 the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on the 10th day of July, 2008.

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

DATED: 12-31-08

Heather RDR

HEATHER GAYLE BURNS, R.D.R.
9TH CIRCUIT COURT REPORTER

NSW 20060600385

WITNESSES

JEFF OSBURN AND/OR

MATT CASEY

TALBOTT, NCPD

2006021048

ARREST WARRANT NUMBER

K120149

JUNE 7, 2008

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury

VERDICT

Guilty

Forfeiture of Petit Jury

Date:

DOCKET NO. 2006-GS-10-12295

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE

vs.

CLARK DAVID THOMAS

CG-3259(601)

Indictment for

KIDNAPPING

FILED

DEC 18 2008

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)

CLERK, C.P. & G.S.

By *[Signature]*

DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on December 11, 2006 the Grand Jurors of Charleston County present upon their oath:

That Clark David Thomas did in Charleston County on or about June 5, 2006, seize, abduct, confine or carry away Rachel Crowley, without the authority of law and against Rachel Crowley's will and consent. This is in violation of §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.

Nathan Callhams
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Mackenzie Han
DEPUTY CLERK

NSW 20060600385

WITNESSES

JEFF OSBURN AND/OR

MATT CASEY

TALBOTT, NCPD

2006021048

ARREST WARRANT NUMBER

K120150

JUNE 7, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-10-10276

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2006

THE STATE

vs.

CLARK DAVID THOMAS

06-3259 (02)

Indictment for

CRIMINAL DOMESTIC VIOLENCE OF A HIGH
AND AGGRAVATED NATURE**FILED**

DEC 18 2006

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK, C.P. & G.S.

By

Mark H. Hester

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT FOR
 CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
 AGGRAVATED NATURE

At a Court of General Sessions, convened on December 11, 2006 the Grand Jurors of Charleston County present upon their oath:

That Clark David Thomas did in Charleston County on or about June 5, 2006, unlawfully cause physical harm to a household member, Rachel Crowley, and was accompanied by circumstances of aggravation, including, but not limited to the infliction of bodily injury, a disparity between the ages and physical conditions of the parties, and a difference in the sexes. This is in violation of §16-25-65 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.

Detton Williams
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & P.C.
 By *[Signature]*
 DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATEVS.
CLARK THOMAS

AKA:

Race: W Sex: M Age: 46DOB: SC SS#: SCAddress: SCDL#: SC SID#: SC

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS1012295A/W#: K120149Date of Offense: 6/5/2006S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Kidnappingin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Nathan Williams
Williams, Nathan

Defendant

Michael Holmes
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$ plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 06-GS-10-12296☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 35-13 (Public Def/Prob) \$500 \$ § 73.3. 1B TP (Law Enforce. Funding) \$25 \$ 25.00§ 33.7. 1B TP (Drug Court Surcharge) \$100 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75§ 90.11 TP (SCCJA Surcharge) \$5 \$ TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Bailey B. B. days/hours Public Service EmploymentObtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ATU if avail able.☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Judge Code: 211Sentence Date: 7/10/08

SCCA217 (07/2008)

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

By:
CLERK, C.D. & P.C.
RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
CLARK THOMAS

AKA: _____

Race: W Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

DL#: _____ SC
SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS1012296A/W#: K120150Date of Offense: 6/5/2006S.C. Code § : 16-25-0065CDR Code #: 2988

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: CDVHAN/Criminal Domestic Violence-High and Aggravated Nature

in violation of § 16-25-0065 of the S.C. Code of Laws, bearing CDR Code # 2988

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

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Prosecution to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

Nathan Williams

Williams, Nathan

Defendant

Michael T. Bolus 760

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
 of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 06-GS-10-12295☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCA Surcharge)

TOTAL

\$ 128.75

Clerk of Court Deputy Clerk

Court Reporter: Guyle Burr

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

ATU if available.

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

PRESIDING JUDGE A. L. JeffersonJudge Code: 21Sentence Date: 7/10/08

SCCA217 (07/2008)

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK, C.P., GS. & P.C.

By Nathan Williams
DEPUTY CLERK

SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Clark D. Thomas, aka George
Keith Nichols, SCD # 187845

Case No.:

2012-CP-10-8354

APPLICATION FOR
POST-CONVICTION RELIEF

Applicant,

vs.

State of South Carolina,

Respondent.

FILED
2012 DEC 21 PM 4:31
JULIA L. LONG
CLERK OF COURT

1. Place of Detention: Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina 29210.
2. Name and location of Court which imposed sentence: Charleston County Court of General Sessions.
3. Name(s) of co-defendant(s), if any: None.
4. The indictment number or numbers (if known) upon which and the offenses for which the sentence was imposed
 - a. 2006-GS-10-12295 Kidnapping
 - b. 2006-GS-10-12296 Criminal Domestic Violence, High and Aggravated Nature
5. The date upon which sentence was imposed and the terms of the sentence:
 - a. July 10, 2008, Kidnapping, 20 years, concurrent
 - b. July 10, 2008, Criminal Domestic Violence, High and Aggravated Nature, 10 years, concurrent
6. Check whether a finding of guilty was made
 - a. After a plea of guilty
 - b. After a plea of not guilty XX
 - 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 "yes" to (7), list:
 - a. The name of each Court to which you appealed:
 - i. The South Carolina Court of Appeals.
 - b. The result in each such Court to which you appealed:

- i. Appeal dismissed.
- c. The date of each such result:
- i. Submitted July 2, 2012, Filed August 8, 2012
- d. If known, any citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2012-UP-486
9. If you answered "no" to (7), state your reasons for not so appealing: Not applicable.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of counsel. Defense counsel's conduct was ineffective to the extent that it "undermined the proper functioning of the adversarial process and trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984).
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- Defense counsel failed to effectively cross examine the victim by failing to highlight contradictions in the victim's statements and testimony and failing to impeach victim with evidence of prior behavior and prior statements.
 - Defense counsel failed to investigate and obtain the medical, dental, and toxicology records of the victim generated after this alleged incident. Accordingly, these documents were not used by defense counsel for impeachment purposes.
 - Defense counsel failed to object to items entered into evidence which were unreliable, unauthenticated, and irrelevant in this matter. Defense counsel did not ensure that a proper chain of custody was maintained as to these items.
 - Defense counsel failed to obtain all evidence collected from Defendant's computer by the digital evidence unit to evaluate said evidence for potential relevance to the Defense's case.
 - Defense counsel improperly requested that the Court not charge the lesser included offense of criminal domestic violence for the jury to consider.
 - Defense counsel made negative statements regarding the defendant during trial which were excessive and extreme and could not be reasonably considered to be within his trial strategy. In doing so, defense counsel also was ineffective in his closing argument.
 - Defense counsel did not meet with or consider additional witnesses offered by Defendant who would have provided relevant information to assist the jury. Defense counsel did not allow relevant witnesses to testify on the Defendant's behalf.
 - Defense counsel refused to present character evidence on behalf of the Defendant even though he was aware of multiple witnesses willing to testify.
 - Defense counsel failed to properly object during the State's cross examination of the Defendant when the prosecutor badgered the witness by repeatedly asking the

ATTORNEY GENERAL'S OFFICE

RECEIVED 1/2/13

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END

HAVE COPIES MADE

ROUTE TO

ORDER TRANSCRIPT

FEN RECORDS CHECK RECORDS

OTHER

- same questions and refusing to allow the Defendant to complete his answers. Defense counsel then failed to rehabilitate Defendant on re-direct.
- j. Defense counsel failed to object when Assistant Solicitor incorrectly stated Defendant's prior record during sentencing.
 - k. Defense counsel failed to request that the Judge, in her discretion, consider not requiring the Defendant to register on the Sex Offender Registry.
 - l. Defense counsel failed to sufficiently meet with Defendant and prepare for trial.
 - m. Defense counsel failed to sufficiently assert client's right to a speedy trial.
 - n. Defense counsel failed to object when the Prosecutor repeatedly vouched for the victim's credibility.

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-conviction 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? Yes.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- a. The specific nature thereof: Declaratory Judgment Action against the North Charleston Police Department for failure to respond to FOIA request related to chain of custody documents relevant to Applicant's underlying criminal conviction.
 - b. The name and location of the Court in which each was filed: Charleston County Court of Common Pleas.
 - c. The disposition thereof: Judgment by the Court that the FOIA request was complied with.
 - d. The date of each disposition: Judgment filed July 11, 2012. Motion to Alter or Amend denied October 4, 2012.
 - e. If known, citations of any written opinions or orders entered pursuant to each such disposition: Documents related to this matter are posted on the Charleston County Central Index under case number 2009-CP-10-6247.
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? Yes.
15. If you answered "yes" to (14), identify:
- a. Which grounds have been presented: All grounds set forth in response ten (10) were previously presented to the Charleston County Court of Common Pleas during a Malpractice action against trial counsel, case number 10-CP-10-4820.

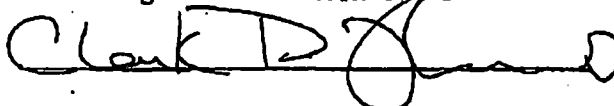
- b. The proceedings in which each ground was raised: All grounds set forth in response ten (10) were previously presented to the Charleston County Court of Common Pleas during a Malpractice action against trial counsel, case number 10-CP-10-4820.
16. If any ground set forth in (10) has not previously 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: This Post-Conviction Relief Action is the appropriate venue for claims regarding ineffective assistance of counsel.
17. Were you represented by an attorney at any time during the course of:
-
- a. Your arraignment and plea? N/A
- 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? Yes.
- e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.
18. If you answered "yes" to one or more parts of (17), list:
- a. The name and address of each attorney who represented you:
- i. Trial and sentencing - Michael Bolus, 2127 Dorchester Road, North Charleston, South Carolina 29405
 - ii. Appeal - Katherine Hudgins, South Carolina Commission on Indigent Defense, Appellate Division, 1330 Lady Street, Post Office Box 11589, Columbia, South Carolina 29211.
- b. The proceedings at which each such attorney represented you:
- i. Trial
 - ii. Sentencing
 - iii. Appeal
19. State clearly the relief you seek in filing this application: To have the verdict and sentence vacated.
20. Are you now under sentence from any other court that you have not challenged? No.

STATE OF SOUTH CAROLINA)

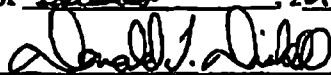
VERIFICATION

County of CHARLESTON)

I, CLARK DAVID THOMAS, 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.



SWORN to and subscribed before me this 19th
day of December, 2012.



(L.S.)

Notary Public

My Commission Expires
August 25, 2015

My Commission Expires: _____

SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Clark D. Thomas, aka George
Keith Nichols, SCDC # 187845

Case No.:

2012-CP-10-8354

Applicant,

CERTIFICATE OF SERVICE

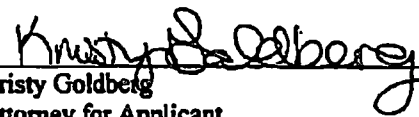
vs.

State of South Carolina,

Respondent.

FILED
2012 DEC 21 PM 4:31
JULIE H. HARRIS
CLERK OF COURT

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 19th day of December, 2012

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Clark Thomas aka George Keith Nichols,
187845,

Applicant,

v.

State of South Carolina,

Respondent.

2012-CP-10-8354

RETURN

2013 OCT -2 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 21, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the December 2006 term of the Charleston County Grand Jury for kidnapping (2006-GS-10-12295) and criminal domestic violence of a high and aggravated nature (CDVHAN) (2006-GS-10-12296). The Applicant was represented by Michael T. Bolus, Esquire.

On July 10, 2008, the Applicant proceeded to trial and was convicted of kidnapping and CDVHAN. Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of twenty (20) years for kidnapping and ten (10) years for CDVHAN. The sentences are to be served concurrently. The Applicant filed a timely notice of appeal and a *pro se* brief. After review of the brief pursuant to Anders v. California, 386 U.S. 738 (1967), the Court of Appeals

dismissed the Applicant's appeal. State v. Clark David Thomas, 2012-UP-486 (S.C. Ct. App. August 8, 2012).

Attached herewith and incorporated herein are the records of the Charleston 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. "Defense counsel failed to effectively cross examine the victim by failing to highlight contradictions in the victim's statements and testimony and failing to impeach victim with evidence of prior behavior and prior statements.
- b. Defense counsel failed to investigate and obtain the medical, dental, and toxicology records of the victim generated after this alleged incident. Accordingly, these documents were not used by defense counsel for impeachment purposes.
- c. Defense counsel failed to object to items entered into evidence which were unreliable, unauthenticated, and irrelevant in this matter. Defense counsel did not ensure that a proper chain of custody was maintained as to these items.
- d. Defense counsel failed to obtain all evidence collected from Defendant's computer by the digital evidence unit to evaluate said evidence for potential relevance to the Defense's case.
- e. Defense counsel improperly requested that the Court not charge the lesser included offense of criminal domestic violence for the jury to consider.
- f. Defense counsel made negative statements regarding the defendant during trial which were excessive and extreme and could not be reasonably considered to be within his trial strategy. In doing so, defense counsel also was ineffective in his closing argument.
- g. Defense counsel did not meet with or consider additional witnesses offered by Defendant who would have provided relevant information to

assist the jury. Defense counsel did not allow relevant witnesses to testify on the Defendant's behalf.

- h. Defense counsel refused to present character evidence on behalf of the Defendant even though he was aware of multiple witnesses willing to testify.
- i. Defense counsel failed to properly object during the State's cross examination of the Defendant when the prosecutor badgered the witness by repeatedly asking the same questions and refusing to allow the Defendant to complete his answers. Defense counsel then failed to rehabilitate Defendant on re-direct.
- j. Defense counsel failed to object when Assistant Solicitor incorrectly stated Defendant's prior record during sentencing.
- ~~k. Defense counsel failed to request that the Judge, in her discretion, consider not requiring the Defendant to register on the Sex Offender Registry.~~
- l. Defense counsel failed to sufficiently meet with Defendant and prepare for trial.
- m. Defense counsel failed to sufficiently assert client's right to a speedy trial.
- n. Defense counsel failed to object when the Prosecutor repeatedly vouched for the victim's credibility."

III.

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

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

IV.

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

V.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Ah R. Wilson
ATTORNEYS FOR RESPONDENT

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

October 1st, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CLARK THOMAS aka KEITH NICHOLS
#187845

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-8354

AFFIDAVIT OF SERVICE BY MAIL

BY

JULIE J. ARMSTRONG
CLERK OF COURT

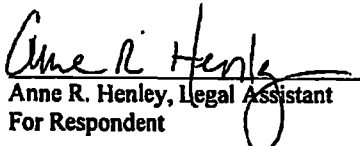
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FILED

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:

Ms. Kristy Grafton Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 301
Columbia, SC 29201

DATED this 1st day of October, 2013


Anne R. Henley, Legal Assistant
For Respondent

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801. 9/2/14

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2012-CP-10-8354

Clark D. Thomas,

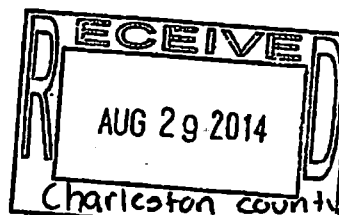
Applicant,

Vs.

State of South Carolina,

Respondent.

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**



1. Place of Detention: Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina 29210.
2. Name and location of Court which imposed sentence: Charleston County Court of General Sessions.
3. Name(s) of co-defendant(s), if any: None.
4. The indictment number or numbers (if known) upon which and the offenses for which the sentence was imposed
 - a. 2006-GS-10-12295 Kidnapping
 - b. 2006-GS-10-12296 Criminal Domestic Violence, High and Aggravated Nature
5. The date upon which sentence was imposed and the terms of the sentence:
 - a. July 10, 2008, Kidnapping, 20 years, concurrent
 - b. July 10, 2008, Criminal Domestic Violence, High and Aggravated Nature, 10 years concurrent
6. Check whether a finding of guilty was made
 - a. After a plea of guilty
 - b. After a plea of not guilty XX
 - 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 "yes" to (7), list:
 - a. The name of each Court to which you appealed:
 - i. The South Carolina Court of Appeals.
 - b. The result in each such Court to which you appealed:
 - i. Appeal dismissed.

- c. The date of each such result:
 - i. Submitted July 2, 2012, Filed August 8, 2012
 - d. If known, any citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2012-UP-486
9. If you answered "no" to (7), state your reasons for not so appealing: Not applicable.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- a. Ineffective assistance of counsel. Defense counsel's conduct was ineffective to the extent that it "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, 686 (1984). The result of defense counsel's conduct was to violate Applicant's right to the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- a. Defense counsel was ineffective when he deliberately curtailed the duration of Applicant's trial by failing to subject the prosecution's charges of kidnapping and CDVHAN to meaningful adversarial testing in order that his conflict of interest in a timely departure to Costa Rica could be achieved. The result of defense counsel's ineffectiveness was to violate Applicant's right to be free from unreasonable searches and seizures, due process of law, a speedy trial, to be fully heard in his defense by himself or by his counsel or by both, to have compulsory process for obtaining witnesses in his favor, and effective assistance of counsel as guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - b. Defense counsel was ineffective when he failed to effectively cross-examine the alleged victim by failing to highlight contradictions in the alleged victim's statements and testimony, and failing to impeach alleged victim with evidence of prior behavior and prior statements. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - c. Defense counsel was ineffective when he failed to object to prosecution's failure to disclose *Brady* materials consisting of the chain of custody establishing the inadmissibility of State's Exhibits 1-2 and 41-45, and the evidence to impeach the alleged victim consisting of medical records and the prosecution's arrangement enabling the alleged victim to elude convictions for acts of aggression in exchange for her testimony. Defense counsel was also ineffective when he failed to preserve these issues for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and

- effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- d. Defense counsel was ineffective when he improperly requested that the Court not charge the lesser included offense of criminal domestic violence for the jury to consider. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - e. Defense counsel was ineffective when he made negative statements regarding the Applicant during trial which were excessive and extreme and could not be reasonably considered to be within his trial strategy. In doing so, defense counsel was also ineffective in his opening statement and closing argument. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - f. Defense counsel was ineffective when he did not meet with or consider additional witnesses offered by Applicant who would have provided relevant information to assist the jury. Defense counsel was ineffective when he did not allow relevant witnesses to give testimony who attended trial seeking to testify on Applicant's behalf. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law, to have compulsory process for obtaining witnesses in his favor, and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - g. Defense counsel was ineffective when he refused to present character evidence on behalf of the Applicant even though he was aware of multiple witnesses who attended trial seeking to testify on Applicant's behalf. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law, to have compulsory process for obtaining witnesses in his favor, and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - h. Defense counsel was ineffective when he failed to properly object during the State's cross-examination when the prosecutor shifted the burden to Applicant to prove that he was not attempting to kidnap the alleged victim when he was arrested and that Applicant's consensual use of a stun gun during sex was not a malicious assault centered on inflicting bodily injury upon the alleged victim by badgering Applicant and repeatedly asking the same questions and refusing to allow the Applicant to complete his answers. And defense counsel was ineffective when he then failed to rehabilitate Applicant on re-direct. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.

- i. Defense counsel was ineffective when he failed to seek during sentencing the stipulation that because Applicant was found not guilty of the criminal sexual conduct offense, his conviction of kidnapping did not require that he register as a sex offender. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- j. Defense counsel was ineffective when he failed to meet with Applicant to prepare for trial or even inform him that a trial was about to take place. Defense counsel was also ineffective when he only apprised Applicant that they were going to trial after he was transported to the courthouse. And defense counsel was ineffective when he refused Applicant's request that he seek a continuous to prepare for trial. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- k. Defense counsel was ineffective when he failed to sufficiently assert Applicant's right to a speedy trial and seek the dismissal of the charges against him or otherwise preserve the issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to a speedy trial, due process of law, and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- l. Defense counsel was ineffective when he failed to object when the prosecutor repeatedly vouched for the alleged victim's credibility and asserted his personal opinion during closing arguments that Applicant's defense was insulting and made him want to take a shower, and that he would not treat a dog the way Applicant is alleged to have treated the alleged victim to arouse the passions and prejudices of the jurors. Defense counsel was also ineffective when he failed to preserve these issues for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- m. Defense counsel was ineffective when he failed to properly object during closing arguments when the prosecutor shifted the burden of proof to Applicant by instructing the jury that they had sworn an oath to seek the truth. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- n. Defense counsel was ineffective when he failed to present the credible evidence of Applicant having suffered criminal domestic violence at the hands of the alleged victim making him eligible for early parole pursuant to S.C. Code of Law §16-25-90. Defense counsel was also ineffective when he failed to preserve this

- issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- o. Defense counsel was ineffective when he failed to see that Applicant was allowed to properly groom at the county jail, and that he was appropriately attired prior to being seen by the jury. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - p. Defense counsel was ineffective when he failed to challenge the sufficiency of the aggravating elements in the indictment for CDVHAN. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - q. Defense counsel was ineffective when he failed to object to the prosecutor leading the alleged victim during direct-examination and knowingly using her perjured testimony. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - r. Defense counsel was ineffective when he failed to object to the introduction of articles of clothing marked as State's Exhibits 1 & 2 and the prosecution's suppression of the chain of custody exposing the corruption of this evidence. Defense counsel was also ineffective when he failed to preserve these issues for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to be free from unreasonable searches and seizures, due process of law, and effective assistance of counsel as guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - s. Defense counsel was ineffective when he failed to object to the introduction of inadmissible documents marked as State's Exhibits 41-45 and the prosecution's suppression of the chain of custody exposing the corruption of this evidence. Defense was also ineffective when he failed to request a *Franks* hearing to challenge the probable cause to search Applicant's computer. And defense counsel was ineffective when he failed to preserve these issues for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to be free from unreasonable searches and seizures, due process of law, and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
 - t. Defense counsel was ineffective when he failed to object to the alleged victim's testimony that she had to have her teeth fixed as a result of allegedly having been

struck in the mouth by Applicant during the alleged incident and had been undergoing mental health counseling, therapy and a 12-Step Program when there were no records to corroborate these claims. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.

- u. Defense counsel was ineffective when he failed to properly cross-examine the alleged victim's mother by highlighting that her testimony to having last seen the alleged victim two days prior to the alleged incident was inconsistent with her testimony to having received notification from police that the alleged victim was in the hospital the morning after she had left her house. Defense counsel was also ineffective by failing to seek to impeach her. And defense counsel was ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- v. Defense counsel was ineffective when he failed to properly cross-examine the arresting officer by highlighting that his statement in the Incident Report that the alleged victim was crying and appeared frustrated was inconsistent with his testimony that she was kicking, screaming, was very frustrated, and had a busted lip when he first saw her. And defense counsel was ineffective by failing to seek to impeach him. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- ww. Defense counsel was ineffective when he failed to object when the prosecutor knowingly used perjured testimony from the investigating then-detective that Applicant was the alleged victim's estranged husband at the time of the alleged incident when investigating then-detective's affidavit stipulates that they were living together. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- x. Defense counsel was ineffective when he failed to properly cross-examine the investigative then-detective by highlighting contradiction in his affidavit and testimony. And defense counsel was ineffective by failing to seek to impeach him. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution South Carolina law.

- y. Defense counsel was ineffective when he failed to object to testimony from the alleged victim's physician grounded on medical records suppressed by the prosecution. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- z. Defense counsel was ineffective when he failed to properly cross-examine the digital forensic's supervisor by highlighting his testimony to having received Applicant's computer after police had seized it from the alleged crime scene when it had been delivered by the alleged victim's mother to police eight months after having stolen it from Applicant's residence after he was arrested. And defense counsel was ineffective by failing to seek to impeach him. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to be free from unreasonable searches and seizures, due process of law, and effective assistance of counsel as guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- aa. Defense counsel was ineffective when he failed to object when the prosecutor's cross-examination of Applicant was grounded on the inadmissible evidence of State's Exhibits 41-45. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- bb. Defense counsel was ineffective when he failed to enter into evidence a photo of the alleged victim nude and voluntarily tied to the bed she shared with Applicant. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- cc. Defense counsel was ineffective when he advised the jury during closing arguments to find Applicant guilty of kidnapping and CDVHAN. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- dd. Defense counsel was ineffective when he failed to object and seek curative instructions when the trial court erroneously charged the jury with the elements of kidnapping. Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.
- ee. Defense counsel was ineffective when he failed to object and seek curative instructions on the confusion of circumstances of aggravation that developed

when the trial court improperly charged the jury with the elements of assault and battery of a high and aggravated nature (ABHAN). Defense counsel was also ineffective when he failed to preserve this issue for appellate review. The result of defense counsel's ineffectiveness was to violate Applicant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law.

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-conviction 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 way or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - a. The specific nature thereof: Declaratory Judgment Action against the North Charleston Police Department for failure to respond to FOIA request related to chain of custody documents relevant to Applicant's underlying criminal conviction.
 - b. The name and location of the Court in which each was filed: Charleston County Court of Common Pleas.
 - c. The disposition thereof: Judgment by the Court that the FOIA request was complied with.
 - d. The date of each disposition: Judgment filed July 11, 2012, Motion to Alter or Amend denied October 4, 2012.
 - e. If known, citations of any written opinions or orders entered pursuant to each such disposition: Documents related to this matter are posted on the Charleston County Central Index under case number 2009-CP-10-6247.
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? Yes.
15. If you answered "yes" to (14), identify:
 - a. Which grounds have been presented: All grounds set forth in response ten (10) were previously presented to the Charleston County Court of Common Pleas during a Malpractice action against trial counsel, case number 10-CP-10-4820.
 - b. The proceedings in which each ground was raised: All grounds set forth in response ten (10) were previously presented to the Charleston County Court of Common Pleas during a malpractice action against trial counsel, case number 10-CP-10-4820.

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: This Post-Conviction Relief Action is the appropriate venue for claims regarding ineffective assistance of counsel.
17. Were you represented by an attorney at any time during the course of:
- Your arraignment and plea? N/A
 - Your trial, if any? Yes.
 - Your sentencing? Yes.
 - Your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.
18. If you answered "Yes" to one or more parts of (17), list:
- The name and address of each attorney who represented you:
 - Trial and sentencing – Michael Bolus, 2127 Dorchester Road. North Charleston, South Carolina 29405
 - Appeal – Katherine Hudgins, South Carolina Commission on Indigent Defense, Appellate Division, 1330 Lady Street, Post Office Box 11589, Columbia, South Carolina 29211.
 - The proceedings at which each such attorney represented you:
 - Trial
 - Sentencing
 - Appeal
19. State clearly the relief you seek in filing this application: To have the verdict and sentence vacated.
20. Are you now under sentence from any other court that you have not challenged? No.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2012-CP-10-8354

Clark D. Thomas, ... Applicant,

V.

State of South Carolina, ... Respondent.

**MEMORANDUM OF LAW
IN SUPPORT OF
POST-CONVICTION RELIEF**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 AUG 29 PM 1:56

FILED

INTRODUCTION

The Applicant, Clark D. Thomas, brings this matter before this Court in the interest of his acquittal of criminal sexual conduct 1st (CSC-1st); and his erroneous convictions and aggregated 20 year sentence for kidnapping and criminal domestic violence of a high and aggravated nature (CDVHAN).

Preservation of Issues

This *Memorandum* also serves to preserve Thomas' issues—should he be denied relief—and to enable counsel, Tristan M. Shaffer, to make a plenary determination of the issues to raise in the obligatory 59(e) motion. “Even if the court only issues a form order in response to a[n] ... [issue], and a party does not make 59(e) motion, if the arguments in support of the [issue] are included in the record on appeal, they are preserved.” (Citation omitted). Jean Hoefer Toal, Shahim Yafai, Robert A. Muckenfuss, Appellate Practice in South Carolina 60 (2nd Edition 2002). “Even after an order is filed, counsel has an obligation to review the order and file 59(e), SCRCR, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings....” (Citation omitted). Marlar v. State, 653 S.E.2d 266, 267 (S.C. 2007).

Preparation for Trial

Thomas was in jail when this case was scheduled to be heard, and defense counsel never did meet with him to prepare a defense. In fact, Thomas was first informed that there was going to be a trial after having been blindly transported to the courthouse for *voir dire* proceedings. And when Thomas asked defense counsel to seek a continuance for time to prepare for time to develop a trial strategy he refused to do so. “[T]he court

having jurisdiction of the matter may grant any necessary or reasonable continuance.”

State v. Barnes, 753 S.E.2d 545, 564 (S.C. 2014).

In the case at bar, Thomas was in dire need of a shave, shower and suitable clothing because he was being held in the jail’s solitary confinement unit. But defense counsel did not object to Thomas’ attire, or make an attempt to see that these matters were resolved prior to Thomas’ appearance before the jury. And in response to Thomas’ requests that he be allowed to properly groom, defense counsel informed the trial court that he was tired of hearing Thomas complain about it. (R. p. 423, lines 12-13). Yet, defense counsel inexplicably expressed his opinion during sentencing that Thomas looked a mess and was a disaster. (R. p. 820, lines 2-18). “When a defendant is represented by counsel, the burden is on the defendant, not the court, to raise an objection to the defendant’s attire.” United States v. Partman, WL 1613904, page 3, C.A. 4 (S.C.), April 23, 2014 (No. 13-4212).

Abbreviating Tactics

Defense counsel’s only request during pretrial motions in the instant matter was that his *protected day* be observed; which had been scheduled to ensure a timely departure for Costa Rica. (R. p. 51, lines 1-8; p. 64, lines 6-12). To that end, defense counsel did not dispute the allegations of kidnapping and CDVHAN for the purpose of clearing the way for a swift conclusion to the State’s case. And by (1) refusing to seek from Thomas’ witnesses the evidence supporting his innocence; (2) allowing the prosecutor to badger Thomas during cross-examination; and (3) declining to pursue re-direct examination to rehabilitate and mitigate the damaging impact of that badgering: defense counsel managed to trim Thomas’ defense down to a paltry 85 minutes.

As for the timeliness of the jury's 30 minutes of deliberation before reaching a verdict, defense counsel facilitated the brevity of that decision-making process by requesting that they not be charged with the lesser included offense of CDV, (R. p. 675, lines 14-18); and by overriding Thomas' pleading of innocence when advising the jury to find Thomas guilty of kidnapping and CDVHAN during closing arguments. (R. p. 713, lines 10-18). "Nothing ... can possibly support a contention that counsel for defendant can override his client's desire expressed in open court to plead not guilty and enter in the name of his client another plea...." Brookhart v. Janis, 384 U.S. 1, 7-8 (1966). [A]lmost anything other than an open confession of complete guilt should withstand an ineffectiveness claim." Clozza v. Murray, 913 F.2d 1092, 1100 (4th Cir. 1980).

Prejudicial Remarks

Defense counsel also told the jury in the case at bar that Thomas led the alleged victim, Rachel M. Crowley, into a life of drugs even though her mother, Cathy Merece, gave testimony for the prosecution that Crowley was on drugs before she had first met Thomas. (R. p. 708, lines 16-22; p. 279, lines 9-23). Therefore, defense counsel essentially gave contradictory testimony that did not support Thomas' account of what happened and critically damaged his defense. "[P]etitioner's own counsel damaged the defense case because the closing argument did not support petitioner's account of what happened." Lounds v. State, 670 S.E.2d 646, 652 (S.C. 2008). "[W]here defense counsel put up a witness who gave testimony contradictory to the petitioner's defense and was therefore 'quite damaging' to the defense, the Court found ineffective assistance of counsel." (Citation omitted). (Quotation marks in original). *Id.*

Defense counsel even went so far as to tell the jury in the case *sub judice*, among other things, that Thomas was so hopelessly addicted to drugs that he would likely never recover. (R. p. 716, lines 13-20). (See Exhibit B, pp. 42-43). In other words, whereas Thomas has consistently maintained his innocence of all the allegations against him, defense counsel's methods fall far beyond any semblance of an objectively reasonable trial strategy. "[C]ounsel must articulate an objectively reasonable strategy to avoid a finding of ineffectiveness." (Citation omitted). Ard v. Catoe, 642 S.E.2d 590, 598 (S.C. 2007).

Furthermore in the case at hand, defense counsel's ineffectiveness and denigration of Thomas is so extreme in terms of treachery as to suggest collusion with the prosecution to deprive Thomas of his rights. With that in mind, the court in Turner v. State of Maryland, 303 F.2d 507, 510 (4th Cir. 1962), made the following observation:

"We cannot agree that to establish a claim of inadequacy of legal representation it is necessary to show an extreme situation of counsel treacherously conniving with the prosecutor to defraud the client of his rights. Without this feature a trial may still be so lacking in fundamental fairness as to constitute a denial of constitutional rights."

I.

Thomas' right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth, Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to object to the prosecution's failure to disclose *Brady* materials.

Rule 5 Discovery

The media has publicized time and time again allegations made by esteemed members of the legal profession that during Scarlett Wilson's term as Solicitor for the

Ninth Judicial Circuit: her office has frequently suppressed evidence, among other things, to ensure convictions. And this *Memorandum* provides the irrefutably reliable facts necessary to corroborate those allegations. For example: from June 23, 2006, through February 28, 2008, defense counsel filed and served upon the prosecution five discovery motions pursuant Rule 5; and wrote three letters specifically seeking from the prosecution, *inter alia*, copies of any photographic evidence and/or medical records.

However, the only *Brady* material provided by the prosecution are the documents marked as State's Exhibits 41-45 that were extracted from Thomas' computer—and that was on the day of trial, (R. p. 73, lines 3-13); and defense counsel failed to contemporaneously object to preserve this issue for appellate review. "Failure to contemporaneously object ... precluded review of the issue on appeal." South Carolina Dept. of Motor Vehicles v. Brown, 753 S.E.2d 524, 525 (S.C. 2014).

Impeachment Evidence

Crowley falsely testified without opposition from defense counsel to having had teeth fixed that were cracked by Thomas when she claims he punched her in the mouth during the alleged incident, and that she was undergoing mental health counseling and therapy when there were no medical records made known to support any of these claims. (R. p. 159, lines 1-24; p. 172, lines 17-25—p. 173, lines 116; p. 211, lines 8-25). And when the physician who examined Crowley on the day in question later began testifying on the content of her suppressed medical records, defense counsel failed to challenge the admissibility of this evidence as well. Nor did defense counsel seek at that moment when those records were made known to confirm that Crowley's teeth had been cracked, or if there was even an injury to her mouth. (R. pp. 445-458). Defense counsel also failed to

make a contemporaneous objection to preserve these issues for appellate review.”
SCDMV, 753 S.E.2d at 525.

With that in mind, the prosecution’s *status quo* decision to suppress Crowley’s medical records was a *Brady* violation to the extent that this evidence was necessary to impeach Crowley for having made the foregoing false injury claims. And even though defense counsel did request from the prosecution Crowley’s medical records, he was ineffective in failing to issue a *subpoena* commanding they be produced for use at trial. “[F]ailure to disclose requested impeachment evidence that defense could use to conduct an effective cross-examination of important prosecution witnesses constitutes constitutional error of the first magnitude requiring automatic reversal.” (Citation and quotation marks omitted). *United States v. Bagley*, 473 U.S. 667, 676 (1985). “[T]rial attorney was ineffective in failing to subpoena and use at trial medical records....” *Dove v. State*, 523 S.E.2d 459, 461 (S.C. 1999).

Prosecutorial Favors

What’s more, the prosecution in the instant case persuaded Crowley to falsely testify against Thomas by, among other things, arranging for her to elude convictions for acts of aggression—a fact which the prosecution also suppressed. The first of those charges was initiated when Crowley assaulted Thomas’ then minor-child while he was at work on March 2, 2006. Moreover, decedent John Kiegel is the only reason Crowley was prevented from using a knife during that attack; and because Kiegel interfered, Crowley jumped on his back and bit his ear. And Crowley’s second arrest of a hostile nature was for disorderly conduct and resisting arrest on March 3, 2008; which the prosecution saw to the dismissal as well. By way of explanation, Crowley’s court date for assaulting

Thomas' daughter and Kiegel was on April 7, 2006, and she failed to appear. So by the time of the alleged incident on June 7, 2006, a bench warrant had been issued for Crowley's arrest. Soon thereafter, the prosecution had that bench warrant rescinded and those charges dismissed.

To that end, it appears that Crowley reneged on her agreement to testify against Thomas in exchange for that dismissal because Crowley sent intermediaries to defense counsel to reveal that she was evading the prosecutor, and ^{that she} did not want to prosecute Thomas. And defense counsel entered those facts into the record during Thomas' speedy trial motion hearing with the prosecutor's approval on February 9, 2007. (R. p. 839, lines 20-23). However, Crowley appears to have contacted the prosecution seeking help with her arrest on March 3, 2008, because those charges were also dismissed; and the prosecutor stated on March 21, 2008, that Crowley was now on board to testify. (R. p. 849, lines 15-16). In other words, the prosecution arranged for the dismissal of these charges exposing Crowley's propensity to violence; and suppressed having done so to conceal evidence that would have been used by an effective defense counselor to impeach Crowley and qualify Thomas for an early parole in the unlikely event that he was found guilty. "[F]ailure to disclose impeachment evidence is 'even more egregious' than failure to disclose exculpatory evidence 'because it threatens the defendant's right to confront adverse witnesses.'" (Citation omitted). (Internal quotation marks). *Bagley*, 473 U.S. at 676.

Thomas began seeking *Brady* materials three months after his trial in the case at bar on October 17, 2008, with FOIA requests to (1) State Law Enforcement Division (SLED); (2) Charleston Count Clerk of Court, Julie Armstrong; (3) Sgt. Robert Andrew

Coker with the North Charleston Police Department (NCPD); (4) then-Chief of Police of NCPD, Jon Zumalt; (5) Counsel for the City of North Charleston (CNC), J. Brady Hair; and (6) the Ninth Circuit Solicitor, Scarlett Wilson. And only by way of an action for declaratory judgment against NCPD was Thomas finally able to secure the *chain of custody* of his computer; which NCPD categorically denied the existence of until Thomas convinced the court otherwise. Moreover, upon receiving that *chain of custody* it was revealed that in addition to Thomas' computer, *inter alia*, Merece had also given to Coker eight months after Thomas' arrest the articles of tattered clothing marked as State's Exhibits 1 & 2.

Therefore, it should be determined that the prosecution's *status quo* decision to suppress the evidence of this *chain of custody* was made because it supports Thomas' contention that State's Exhibits 1-2 and 41-45 were fabricated and inadmissible. And this evidence is material to the erroneous finding of his guilt and influenced the severity of his sentences. "The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment." Brady v. Maryland, 373 U.S. 83, 87 (1963). "[T]he Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence.... There can be no retreat from that principle." (Internal citations omitted). Miller v. Pate, 386 U.S. 2, 6 (1967).

After more than eight years of endless diligence in the case at hand, Thomas has yet to be provided with copies of the photographic evidence or any of the documents that were used by the prosecution at trial with the exception of State's Exhibits 41-45. Thomas even served Wilson with a *subpoena* commanding that she produce this Rule 5

evidence, but she was able to have it quashed on grounds that most of these materials are not within her custody or control; and that some of Thomas' requests involve either attorney work product or are otherwise privileged.

With that in mind, Thomas was obviously prejudiced by these flagrant Rule 5 violations because his erroneous convictions were reached with the assistance of this evidence. "The prosecution has the duty to disclose regardless of whether the defendant makes a specific request. This rule extends to evidence that is not in the actual possession of the prosecution but known by others acting on the government's behalf in the particular case, including the police." (Citations omitted). State v. Kennerly, 503 S.E.2d 214, 220 (S.C.App. 1998). "Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation." (Citations omitted). *Id.*

II.

Thomas' right to be free from unreasonable searches and seizures, due process of law, and effective assistance of counsel as guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to request a *Franks* hearing to challenge the *probable cause* to search Thomas' computer.

Probable Cause

Sgt. Robert Andrew Coker (NCPD) presented his affidavit of *probable cause* for a warrant to search Thomas' computer on August 8, 2007. To that end, Coker swore to having appropriated Thomas' computer from Mere. However, Coker failed to disclose that this acquisition had occurred on February 20, 2007; and that Mere had stolen it from Thomas eight months prior to that on June 8, 2006. (See Search Warrant, p. 3). With that in mind, because the data in Thomas' computer would logically be considered

fungible evidence under these circumstances, Coker seems to be implying that a strict chain of custody was maintained on Thomas' computer. "[T]he chain of custody requirement is strict where fungible evidence is involved...." State v. Frieburger, 620 S.E.2d 737, 741 (S.C. 2005).

The evidence in the case at hand indicates that Coker's failure to disclose how long the alleged victim's mother had custody of Thomas' computer was intentional. Therefore, Coker's reticence to tell the whole truth should be observed as a falsehood that was knowingly and intentionally made for the finding of *probable cause*; which defense counsel failed to contemporaneously object to in order to properly preserve this issue for appellate review. *SCDMV*, 753 S.E.2d at 525. And defense counsel's failure to request a hearing on that *probable cause* was to deny Thomas' right to the exclusion of the fruits of that search. To that end, the Court in Franks v. Delaware, 438 U.S. 154, 155-156 (1977), made the following determination:

"If after a hearing, a defendant establishes by a preponderance of the evidence that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless disregard for the truth, and the false statement was necessary to the finding of probable cause, then the search warrant must be voided and the fruits of the search excluded from the trial to the same extent as if probable cause was lacking on the face of the affidavit."

The warrant to search Thomas' computer was granted on August 8, 2007. However, Coker waited eight days before executing this dubious *Search Warrant* on the digital evidence unit of the City of Charleston Police Department (CPD) on August 16, 2007; and documents marked as State's Exhibits 41-45 were then alleged to have been extracted. Be that as it may, the date of inventory of the fruits of that search was changed from August 17, 2007, to August 23, 2007, without having been initialed by the party

making that alteration; which seems to indicate that the search of Thomas' computer may have been conducted before the warrant to do so was executed. (See Search Warrant, p. 4).

With that in mind—while thinking back to Mere's participation in the *chain of custody*—the analyst who performed this search, Sgt. William Gary Roberts (CPD), testified that Coker delivered Thomas' computer to him after having procured it from the alleged crime scene. (R. p. 485, lines 9-16). In other words, it appears that Roberts was also focused on concealing their inappropriate *chain of custody*. "[T]he Fourteenth Amendment necessarily requires that evidence illegally obtained ... not be admissible in state criminal proceedings." (Internal citation and quotation marks omitted). Mapp v. Ohio, 367 U.S. 643, 673 n.5 (1960).

III.

Thomas' right to be free from unreasonable searches and seizures, due process of law, and effective assistance of counsel as guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to object to the admission of State's Exhibits 1-2 and 41-45.

Inadmissibility & Prejudice

The articles of clothing marked as State's Exhibits 1-2 and Thomas' computer from which documents were extracted and marked as State's Exhibits 41-45 were delivered to the prosecution by the alleged victim's mother, Cathy Mere. And the *change of custody* reveals that Mere made this transfer eight months after the alleged incident that Thomas was still in jail for at the time; and the alleged victim, Rachel Crowley, had been living with Mere since Thomas' arrest. With that in mind, the

prosecution *most probably* suppressed the *chain of custody* of State's Exhibits 1-2 and 41-45 because of the belief that they were likely fabricated; which also explains why Coker concealed Mere and Crowley's protracted possession of these Exhibits in his affidavit of *probable cause*.

As for the prejudice component, the prosecutor utilized the tattered condition of State's Exhibits 1 & 2—which Thomas did not even know existed prior to trial—to persuade the jury to believe that Thomas had maliciously attacked Crowley prior to allegedly raping and torturing her. (R. pp. 155-180). And with regard to State's Exhibits 41-45: by exploiting Thomas' notes regarding his erectile dysfunction, the prosecutor spuriously portrayed Thomas as a sexually frustrated man who snapped because his wife had sought pleasure elsewhere. To that end, the record reveals that Thomas could not recall having written a segment used by the prosecutor to paint this deceptive picture; which clearly supports Thomas' claim that Mere and/or Crowley tampered with these documents. (R. p. 658, lines 16-25—p. 659, lines 1-18).

Suppression of Exhibits

Notwithstanding the clear and convincing evidence supporting a Fourth Amendment claim, defense counsel failed to move to suppress State's Exhibits 1-2 and 41-45. "[A] good Fourth Amendment claim alone will not earn ... relief. Only those ... who can prove under *Strickland* that they have been denied a fair trial by the gross incompetence of their attorneys will be ... entitled to retrial without the challenged evidence." Kimmelman v. Morrison, 477 U.S. 365, 382 (1986). "PCR Judge erred in ruling that [petitioner] received effective assistance of counsel when his counsel did not move to suppress evidence that was obtained in violation of the Fourth Amendment of

the United States Constitution.” Sikes v. State, 448 S.E.2d 560, 562 (S.C. 1994). In the case at bar, defense counsel also failed to contemporaneously object when State’s Exhibits 1-2 and 41-45 were entered into evidence to preserve the issue of their admissibility for appellate review. *SCDMV*, 753 S.E.2d at 525.

IV.

Thomas’ right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to object to the sufficiency of the indictment for criminal domestic violence of a high and aggravated nature (CDVHAN).

Sufficiency of Indictment

The elements of aggravation alleged in the indictment for CDVHAN merely support a misdemeanor CDV since they do not establish the felonious aggravating circumstances pursuant to S.C. Code of Laws §16-25-65. By way of explanation, the elements of aggravation set forth in this charging instrument are “the infliction of bodily injury, a disparity between the ages and physical conditions of the parties, and a difference in the sexes[] ... in violation of §16-25-65....” (R. p. 834). However, §16-25-65 instructs that the elements of aggravation are when a “person commits an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or an assault with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.”

With that in mind, Thomas can demonstrate by preponderance of the evidence that the assault and battery allegations against him are grounded on the lesions Crowley sustained by the consensual use of a stun gun during sex; and that any other veritable

injuries were self-inflicted. Moreover, even if Crowley had not consented to being subjected to a stun gun, the one in evidence is an over-the-counter purchase of nominal voltage that cannot reasonably be construed as a deadly weapon. And much less so would it be reasonable to infer that a person would fear imminent serious bodily injury; let alone death under threat of the device in question.

In fact, the Taser used by law enforcement is significantly higher in voltage yet even those are classified as being non-lethal. In other words, it appears the prosecutor deliberately misled the grand jury by failing to accurately define the elements of CDVHAN. Therefore, they were not in the position to issue a sufficient indictment. "The defendant has a constitutional and statutory right to demand that a properly constituted grand jury consider his case and decide whether to issue a sufficient indictment." State v. Means, 626 S.E.2d 348, 353 (S.C. 2006).

"In South Carolina, an indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offence charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided." (Citation and internal quotation marks omitted). *Id.* at 354.

Furthermore, the CDVHAN indictment in the case at hand alleges that the *infliction of bodily harm* is an element of aggravation; which is synonymous with *causing physical harm* and is the reason it merely alleges a misdemeanor CDV. (R. p. 834). Therefore, defense counsel's failure to highlight these discrepancies and discuss the lesser included offense of CDV with Thomas before requesting that the trial court not charge the jury with those elements clearly prejudiced Thomas. (R. p. 675, lines 14-18).

"[P]etitioner was prejudiced by ... counsel's failure to advise petitioner of the lesser included offense. Kerrigan v. State, 406 S.E.2d 160, 162 (S.C. 1991).

As for the remaining elements of aggravation in the instant matter, the citation of §16-25-65 does not cure the State's failure to charge every essential element in the body of the indictment for CDVHAN. "Every essential element of an offense must be charged in the body of the indictment, and the inclusion of a reference to the statute will not cure the failure to do so." (Citation omitted). United States v. Daniels, 973 F.2d 272, 274 (4th Cir. 1992). "[A] statutory citation does not ensure that the grand jury has considered and found all essential elements of the offense charged." United States v. Pupo, 841 F.2d 1235, 1239 (4th Cir. 1988).

And finally, the CDVHAN caption of that indictment in the case at bar is as close as that charging instrument gets to the language of §16-25-65. In other words, had defense counsel timely objected to the sufficiency of that indictment prior to the jury being sworn in: it would *most probably* have been quashed. "The State may not support a conviction for an offense intended to be charged by relying upon a caption to the exclusion of the language contained in the body of the indictment." (Citation omitted). *Means*, 626 S.E.2d at 354. "When a defendant timely objects to the sufficiency of the indictment, before the jury is sworn in, a ruling that an indictment is not sufficient will result in the quashing of the indictment...." (Citation omitted). *Id.* Furthermore, defense counsel's failure to make a contemporaneous objection in the case *sub judice* also precluded appellate review of this issue. *SCDMV*, 753 S.E.2d at 525.

V.

Thomas' right to due process of law, effective assistance of counsel, and a speedy trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to move for a dismissal grounded on delay of trial.

Speedy Trial

Whereas Crowley had fabricated the allegations in the instant matter, Thomas was confident that she would not testify against him. Therefore, within a few weeks of his arrest on June 7, 2006, Thomas began insisting that defense counsel file a motion for a speedy trial; and it was nearly two months before defense counsel finally capitulated and did so on September 8, 2006. To that end, decedent Eraine Biering's *deposition* provides evidence enforcing Thomas' belief that Crowley would not appear at trial; and that Crowley is extremely jealous and was still in love with him. In fact, Biering is the intermediary that defense counsel was referring to when making known that Crowley was refusing to testify and avoiding calls from the prosecutor; which went on record unopposed (R. p. 839, lines 22-23; p. 840, lines 7-11).

However, the prosecutor claimed on March 21, 2008, that Crowley was on board to testify and, that in addition to the congestion of the docket created by a backlog of murder trials, the delay in trying Thomas was also caused by the burdensome task of analyzing the data in Thomas' computer; and that he was only alerted to that alleged fact five or six days prior. (R. p. 849, lines 15-21; p. 851, lines 15-18). In other words, Crowley did not intend to appear for a trial because she wanted to reunite with Thomas. Yet defense counsel did not oppose the prosecutor's dilatory maneuvers that went on for

more than 26 months for no other reason than his hope that a tactical advantage would develop.

In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider "the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered." (Citations omitted). State v. Langford, 735 S.E.2d 471, 482 (S.C. 2012). "Depending on the nature of the charges, the lower courts have generally found that post-accusation presumptively prejudicial at least as it approaches one year." (Citations and quotation marks omitted). *Id.* "[A] nineteen months delay presumptively prejudicial in trial for murder, aggravated assault, and firearms offenses." (Citation omitted). *Id.* at 483. With that in mind, a murder charge in and of itself far exceeds in both nature and severity the totality of all the allegations and resulting charges against Thomas in the case *sub judice*.

In further support of the prejudice factor, Thomas' refusal to reunite with Crowley is what ultimately led to his demise; which would not have happened absent the prosecutor's deceptive delay tactics. By way of explanation, when Thomas was erroneously charged for being in the company of an alleged prostitute—which was later dismissed and expunged—the prosecutor *most probably* told Crowley about that arrest. By doing so, Crowley was compelled by her jealousy and having been scorned to finally do as she promised in exchange for the second time the prosecution had charges against her dismissed: to falsely testify against Thomas.

This argument is also reinforced by the fact that a trial that had been delayed for two years was suddenly scheduled within days of Thomas having been taken into custody. And Crowley's proclivity to jealous rage explains why she made so many

inconsistent statements. (See *infra* Exhibit A, pp. 34-41). "A deliberate attempt by the State to delay the trial as a means of impairing the accused ability to defend himself should be weighed heavily against the government." (Citation and internal quotations omitted). *Langford*, 735 S.E.2d at 483. Furthermore, defense counsel's failure to make a contemporaneous objection in the case at hand precluded appellate review of this issue. *SCDMV*, 753 S.E.2d at 525.

VI.

Thomas' right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to impeach witnesses for the prosecution and object to their perjured testimony.

Perjured Testimony & Leading

Not one of Crowley's prior statements is consistent, and they were time and time again in conflict with her testimony. (See *infra* Exhibit A, pp. 34-41). With that in mind, prosecutor's only alternative to dismissing the charges against Thomas was to guide Crowley through her tangled web of deception. However, even the prosecutor's hints and suggestions were not enough to prevent Crowley from contradicting herself while on the stand. In other words, the prosecutor knowingly used Crowley's perjured testimony. But instead of impeaching Crowley, defense counsel allowed the prosecutor to lead her to falsely testify that Thomas confined, inveigled, decoyed, and carried her away because she was leaving him for someone else. "[C]ounsel was ineffective for failing to impeach victim...." *Mayo v. State*, 556 S.E.2d 380, 383 (S.C. 2001).

Therefore, Thomas was clearly prejudiced in the case at bar by defense counsel's failure to object to the prosecutor leading Crowley because the jury obviously inferred his

ineffectiveness to be an implicit validation to what was essentially the prosecutor's own testimony. (R. p. 145, lines 5-6; p. 152, lines 7-14; p. 162, lines 10-16; p. 139, lines 14-25—p. 140, lines 1-2). "[C]ounsel was ineffective for failing to object to solicitor's leading questions...." Springs v. State of South Carolina, 2002 WL 32079465 D.S.C. 2002. Moreover, defense counsel in the instant matter failed to make the contemporaneous objection necessary to properly preserve this issue, or any of the forthcoming issues involving the impeachment of prosecution witnesses for appellate review. *SCDMV*, 753 S.E.2d at 525.

Meree's Perjured Testimony

Crowley's mother, Cathy Meree, falsely testified that Crowley left her house with Thomas two days prior to the alleged incident. By way of explanation, Meree unwittingly confirmed that this was a lie when she later testified to having received notification from police that Crowley was in the hospital the morning after she left with Thomas. (R. p. 262, lines 7-20; p. 270, lines 4-25—pp. 271-272). With that in mind, Defense counsel was ineffective in failing to impeach Meree. *Mayo*, 556 S.E.2d at 383. This Court should also know that Meree testified at Thomas and Crowley's divorce trial to have given Thomas' computer to police the same day she stole it when the *chain of custody* revealed it to have been eight months later.

Talbott's Perjured Testimony

The arresting officer, Chris Talbott (NCPD), stated in his *Incident Report* that when he first encountered Thomas and Crowley, she was crying and appeared to be frustrated with no mention of facial injuries. (See Incident Rpt, p. 2). And during trial, Talbott testified that she was kicking, screaming, was very frustrated, and had a busted

lip. (R. p. 304, lines 3-7; p. 310, lines 4-5). Therefore, Defense counsel was ineffective in failing to impeach Talbott. *Id.*

Rowan's Perjured Testimony

The investigator for NCPD, then-detective James W. Rowan, II. executed an *affidavit* to support a warrant against Thomas for sexual battery on spouse expressly stating that Thomas and Crowley were legally married and living together. However, the prosecutor later decided to pursue a conviction for CSC-1st instead; which is only possible if a legally married couple is separated when a sexual assault is alleged pursuant to S.C. Code of Law §16-3-658. With that in mind and, for no other apparent reason than to clear the way to seek a CSC-1st conviction, Rowan gave the perjured testimony that Thomas was Crowley's estranged husband. (R. p. 408, lines 1-4). Be that as it may, defense counsel was ineffective in failing to impeach Rowan. *Mayo, 556 S.E.2d at 383.*

In the case of State v. Stanley, 615 S.E.2d 455, 460 (S.C.App. 2005), the court made the following determination:

““[Witnesses] initial trial testimony directly contradicted his prior testimony given in a police statement. Giving false information in a document or report required by the laws of this State is perjury.... Thus, if the information given to [police] was false, [witness] was guilty of perjury. If the information was true, [witness] perjured himself on the stand....”” (Citation omitted).

In other words, the evidence indicates that the prosecutor in the case *sub judice* knowingly used Crowley and Rowan's perjured testimony. In fact, the media has also made known the allegations made by Scarlett Wilson's colleagues that her office deliberately uses perjured testimony to win convictions; and once again, the indisputable facts in this *Memorandum* support those accusations.

"[T]he knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves a corruption of the truth-seeking function of the trial process." (Internal quotation marks omitted). (Citation omitted). *Bagley*, 473 U.S. at 678. And if the prosecutor in the case at bar is determined to have persuaded Rowan, ^{and Crowley, Ed} to give perjured testimony, the prosecutor may be guilty of subornation and fraud on the court. "[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court." (Citation omitted). *Chewning v. Ford Motor Co.*, 579 S.E.2d 605, 611 (S.C. 2003).

VII.

Thomas' right to due process of law, effective assistance of counsel, and to have compulsory process for obtaining witnesses in his favor as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel refused to subpoena material witnesses and would not allow witnesses present at trial to testify.

Defense Witnesses

Crowley implied that she experienced the effect of a stun gun for the first time when claiming that Thomas used one to torture her with during the alleged incident. (R. p. 148, lines 16-22; p. 149, lines 19-21). However, Thomas contends that it was commonplace for them to use a stun gun during sex because she liked it that way. (R. p. 319, lines 1-4). With that in mind: when Crowley was arrested for assaulting Thomas' daughter, Christen Boyer, police used a Taser in their efforts to subdue her; during which, Crowley asked to be tased again and told the arresting officers that she liked it. Yet defense counsel refused Thomas' request that these officers be compelled to testify.

There were also other eye-witnesses that were not related to Thomas who would have testified to Crowley's statements while being tased during that arrest, but defense counsel was only willing to allow Boyer to testify. In fact, Boyer was the only witness that defense counsel planned to seek evidence from. (R. p. 66, lines 21-25—p. 69, lines 1-7). However, defense counsel failed to properly prepare Boyer for her first-ever appearance on a witness stand: and allowed the prosecutor to discredit her testimony by, among other things, implying that Boyer had committed a crime when reading the *Incident Report* to refresh her memory.

What's more, because of his *conflict of interest* in a timely departure for Costa Rica, defense counsel did not seek that the trial court explain to the jury that pursuant to Rule 612, SCRE, it is permissible for witnesses to read notes and reports prior to taking the stand. By way of explanation, the jury was left to believe that Boyer had broken the law. And because the prosecutor implied that Boyer was lying to protect her father, the jury *most probably* observed Boyer's distress to the belief that she would be criminally charged for reading that *Incident Report* to indicate that she lacked candor.

In other words, if defense counsel had performed his duty to rebut, rehabilitate and mitigate the impact of this erroneous appearance of impropriety: the jury would have been less likely to render their decision—after less than an hour of deliberating—at 4:56 pm on the eve of defense counsel's *protected day* that had been reserved to ensure a timely departure for Costa Rica. (R. pp. 580-590; p. 790, lines 9-12; p. 797, lines 2-6). “[D]efense counsel must ... rebut any aggravating evidence that may be introduced by the prosecutor.” (Citation and quotation marks omitted). Nance v. Ozmint, 626 S.E.2d 878, 883 n.8 (S.C. 2006).

Crowley also alleges that she lived in fear for her life because of Thomas. However, Thomas maintains that Crowley made the allegations against him for having wanted a divorce and, that after he was released from jail on satellite monitoring, Crowley persistently sought to be reunited with him. In fact, Teddy and Krystal Martin had personal knowledge of text messages and voice mail from Crowley pining to reconcile with Thomas.

The Martins had also witnessed Thomas fleeing from Crowley's attempt to embrace him in a restaurant. And because Thomas was on satellite monitoring: the owner of the company tracking his movement, Larry Ballard, would have confirmed that the alarm was not sounded to Thomas' close proximity to Crowley at that restaurant because she was not carrying the pager programed with Thomas' ankle monitor.

In other words, these facts in evidence would have supported Thomas' account of what happened. However, defense counsel refused to allow the Martins to testify when they appeared at trial to do so; and defense counsel refused Thomas' request to seek Ballard's testimony. And as proof that defense counsel's *conflict of interest* influenced his decision to violate Thomas' right to enter their testimony into evidence; Thomas' mother, his aunt Cynthia Gordon, and the Martins all heard defense counsel say that Thomas' trial posed a threat to his Costa Rican vacation.

Then there is the probative value of the testimony of decedent Eraine Biering: she had known Crowley to act violently and physically abuse Thomas and, that Crowley was insanely jealous of any woman who came in contact with him. Biering also had knowledge of Crowley being coerced into testifying against Thomas; and would have verified that Crowley was not afraid of him. This evidence has been preserved in

Biering's *deposition* along with statements to her willingness to testify to these realities. And in addition to other salient facts: Thomas' mother, Carol Ann Cook, would have provided tangible proof to support her assertion that Crowley extorted money from her by implying that she would give perjured testimony against Thomas.

However, despite Thomas' numerous attempts to persuade defense counsel to seek the testimony of all these witnesses: he either flat-out refused to put them on the stand, or was otherwise disinclined to conduct interviews and make an independent investigation of the facts they were privy to. "[A]t a minimum, counsel has a duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case." (Citation omitted). (Emphasis in original). *Lounds*, 670 S.E.2d at 649. In the case of Washington v. State of Texas, 388 U.S. 14, 19 (1967), The Supreme Court made the following findings:

""The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.... This right is a fundamental element of due process of law.""

In other words, defense counsel's *conflict of interest* is the reason the adversarial testing process did not work in the case at hand. "[T]he truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts in involved in a case...." (Citation and quotation marks omitted). *Id.*, at 22. "[T]he court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial process work in the particular case." *Strickland*, 466 U.S. at 690.

Character Evidence

Thomas also had witnesses at trial in the instant matter requesting to testify to his good character; and attorney Jack Swerling provided defense counsel with his opinion of Thomas' benevolence, trustworthiness, and reliability. Moreover, Thomas has since procured the *affidavits* of 14 others expressing their willingness to have testified on his behalf. However, defense counsel was also disinclined to present any mitigating evidence to the jury to create doubt of Thomas' guilt.

"The United States Supreme Court has recently recognized that defense counsel must conduct a reasonable investigation to discover *all reasonably available* mitigation evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." (Emphasis in original). (Citation and quotation marks omitted). *Nance*, 626 S.E.2d at 883 n.8. "It is well settled that a criminal defendant may introduce evidence of his good character." (Citations omitted). *State v. Lee-Grigg*, 692 S.E.2d 895, 898 (S.C. 2010). "[E]vidence of good character and good reputation may in and of itself create doubt as to guilt and should be considered by the jury." *Id.*

In fact, it should reasonably be concluded that defense counsel's failure in the case at bar to compel the testimony of material witnesses—or even seek evidence from those who attended trial to testify on Thomas' behalf—singularly establishes that defense counsel was deficient under prevailing professional norms; and that Thomas was prejudiced to the extent that the result of his trial would have been different. "The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced defendant to the extent that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'"

(Emphasis and internal quotation marks in original). Cherry v. State, 386 S.E.2d 624, 625 (S.C. 1989).

VIII.

Thomas' right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to enter into evidence an exculpatory photograph and proof of entitlement to early parole.

Exculpatory Evidence

Defense counsel failed to enter into evidence a photograph of Crowley nude and voluntarily tied to the bed she shared with Thomas. The relevance of this issue is that Crowley implied that she was tied to the bed against her will during the alleged incident. "Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears." (Citation omitted). Hicks v. State, 443 S.E.2d 907, 908 (S.C. 1994).

Defense counsel also failed to present the credible evidence in the case at bar of Thomas having suffered criminal domestic violence at the hands of Crowley in order that he be eligible for early parole pursuant to S.C. Code of Law §16-25-90. To that end: Thomas' daughter, Christen Boyer, had witnessed numerous occasions where Crowley had also physically assaulted Thomas. And Teddy Martin, among other people, has seen Crowley attack Thomas as well. In fact, Crowley pled guilty to assaulting her step-father, Cecil Terry, while living with her mother in 2007. "Eligibility for early parole under section 16-25-90 requires the accused to demonstrate by preponderance of the evidence that criminal domestic violence was suffered at the hands of the victim." (Citation omitted). State v. Blackwell-Selim, 684 S.E.2d 208, 210 (S.C.App. 2009).

IX.

Thomas' right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to object when the prosecutor shifted the burden of proof.

Burden of Proof

When the arresting officer first came upon Thomas, he was carrying Crowley in his arms. With that in mind, the prosecutor began cross-examination insisting that Crowley was trying to escape from Thomas' grasp. And on those rare occasions when Thomas was given the opportunity to respond, he emphasized that Crowley was not offering any resistance because he was helping her.

However, the prosecutor pressed on for what amounted to ten pages of transcript rephrasing the same subject of inquiry time and time again. In other words, by way of his badgering the prosecutor shifted the burden to Thomas to prove that he had not unlawfully seized, confined, kidnapped, or carried Crowley away. (R. pp. 630-640, lines 1-8). "[C]ounsel was ineffective in failing to object to solicitor[] ... badgering witnesses." *Springs*, WL 32079465. "A shifting of the burden of proof would ... obliterate the presumption of innocence." *State v. Attardo*, 211 S.E.2d 868, 870 (S.C. 1975).

During the next nine pages of transcript in the case *sub judice*, the prosecutor repetitively asked Thomas how many strikes with a stun gun would be required to induce pain. To that end, the prosecutor was focused on persuading the jury to believe that Thomas' consensual use of a stun gun during sex with Crowley during the time in question was actually a malicious assault centered on inflicting bodily injury upon her.

However, despite the fact that Thomas is not an expert on Taser technology or a medical doctor, the prosecutor relentlessly badgered Thomas without an objection from the defense counsel; even when Thomas was asked to speculate defense counsel remained silent. *Springs*, WL 32079465. Consequently, the burden of proving that Crowley was not a willing participant in the intimate use of a stun gun was handed to Thomas. (R. p. 640, lines 9-25—p. 649, lines 1-15). “The accused ... was entitled to have his guilt or innocence determined without the onus of the burden of proof being placed upon him.” *Attardo*, 211 S.E.2d at 871.

The prosecutor in the case at hand also shifted the burden of proof to Thomas when concluding his closing argument. By way of explanation, the prosecutor instructed the jury that they had taken an oath when Thomas’ trial began requiring them to find the truth. (R. p. 751, lines 8-10). “Jury instructions ... to ‘seek the truth’ are disfavored because they run the risk of unconstitutionally shifting the burden of proof to defendant.” (Citation omitted). (Internal quotation marks in original). *State v. Logan*, 747 S.E.2d 444, 452 (S.C. 2013). What’s more, defense counsel in the instant case failed to make the contemporaneous objection required to preserve these foregoing instances of badgering and burden shifting for appellate review. *SCDMV*, 753 S.E.2d at 525.

X.

Thomas’ right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to object when the prosecutor vouched for Crowley’s credibility and made insulting comments about Thomas to arouse the jurors’ passions and prejudices.

Bolstering, Passion and Prejudice

The prosecutor repeatedly vouched for Crowley's truthfulness. He also told the jury that Thomas' defense was insulting and made him want to take a shower; and that he would not even treat a dog the way Thomas is alleged to have treated Crowley. Furthermore, defense counsel failed to make the contemporaneous objection necessary to preserve these issues for appellate review. *SCDMV*, 753 S.E.2d at 525. (R.p. 727, lines 20-25 —p. 728, lines 1-2; p. 729, lines 20-21; p. 733, lines 16-18; p. 740, lines 1-4; p. 745, lines 11-23). "A prosecutor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness's truthfulness." (Citation omitted). *State v. Shuler*, 545 S.E.2d 805, 817 (S.C. 2001). "A solicitor's closing argument must not appeal to the personal biases of the jurors or be calculated to arouse the jurors' passions or prejudices." (Citation omitted). *Humphries v. State*, 570 S.E.2d 160, 166 (S.C. 2002).

XI.

Thomas' right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to object when the trial court erroneously charged the jury with the elements of kidnapping and CVDHAN.

Improper Jury Instructions

Defense counsel failed to object and seek curative instructions when the trial court erroneously charged the jury with the elements that constitute kidnapping. To that end, the trial court told the jury that the finding of any one of the four elements of kidnapping would require a finding of guilt. (R. p. 766, lines 13-25—p. 767—p. 768, lines 1-10).

"The crime of kidnapping requires proof that the defendant: (1) unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away; (2) any other person; (3) by any means whatsoever; and (4) without authority of law." State v. Owens, 352 S.E.2d 474, 475 (S.C. 1987).

Defense counsel in the case *sub judice* also failed to object to and seek curative instructions on the confusion of circumstances of aggravation that developed when the trial court improperly charged the jury with the elements of assault and battery of a high and aggravated nature (ABHAN). By way of explanation, the trial court told the jury that a great disparity of ages, a difference in genders, the taking of indecent liberties, and purposeful infliction of shame and disgrace—all of which defense counsel did not dispute—would also constitute CDVHAN. (R. p. 768, lines 22-25—pp. 769-773—p. 774, lines 1-3). "[T]he trial court is required to charge only the current and correct law of South Carolina." Clark v. Cantrell, 529 S.E.2d 528, 539 (S.C. 2000). And defense counsel in the instant matter failed to make a contemporaneous objection to preserve these jury charge issues for appellate review. *SCDMV*, 753 S.E.2d at 525.

XII.

Thomas' right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated when defense counsel failed to make certain that Thomas would not be classified as a sex offender.

Sex Offender Registry

Defense counsel failed to seek during sentencing the stipulation that because Thomas was found not guilty of the criminal sexual offense, his erroneous conviction of kidnapping did not require that he register as a sex offender. By way of explanation, the

Supreme Court confirmed that “if the court makes a finding on the record that the offense did not include a criminal sexual offense, then a defendant convicted of kidnapping would not be required to register as a sex offender.” (Citation omitted). Hazel v. State, 659 S.E.2d 137, 139 (S.C. 2008). And defense counsel in the case at bar failed to make a contemporaneous objection to preserve this issue for appellate review. SCDMV, 753 S.E.2d at 525.

XIII.

Thomas’ right to be free from unreasonable searches and seizures, due process of law, a fair and speedy trial, to have compulsory process for obtaining witnesses in his favor, to be fully heard in his defense by himself or by his counsel or by both, and effective assistance of counsel as guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law were violated by defense counsel’s *conflict of interest* in a Costa Rican vacation.

Conflict of Interest

Defense counsel had a *conflict of interest* in a timely departure to a Costa Rican vacation. To that end, defense counsel curtailed the duration of Thomas’ trial by purposefully failing to defend him against the charges of Kidnapping and CDVHAN. In other words, as far as these allegations are concerned, defense counsel’s ineffectiveness resulted in the violation of Thomas’ right to present a complete defense. “Pursuant to the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing norms of fundamental fairness. This standard requires criminal defendants be afforded a meaningful opportunity to present a complete defense. (Internal citation omitted). State v. Hutton, 595 S.E.2d 876, 881 (S.C.App. 2004).

Therefore, Thomas' trial in the case *sub judice* cannot be relied upon as having produced a just result whereas this is one "of the rare cases where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing." (Citation and internal quotation marks omitted). *Nance*, 623 S.E.2d at 881. Moreover, defense counsel's conduct in the case at bar "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, 686 (1984).

In the case at hand, the evidence presented herein clearly reveals that defense counsel's *conflict of interest* severely affected the adequacy of his representation to the extent that prejudice should be presumed. In fact, that *conflict of interest* is the underlying reason for the guilty verdicts in Thomas' trial. "[A] defendant must demonstrate that a conflict of interest actually affected the adequacy of his representative." (Citation and internal quotation marks omitted). Mickens v. Taylor, 535 U.S. 162, 168 (2002). "We have presumed prejudice when counsel labors under an actual conflict of interest.... An actual conflict for Sixth Amendment purposes, is a conflict of interest that adversely affects counsel's performance." (Citation omitted). *Id.* at 173 n.5.

Cumulative Error

In the case at bar, Thomas has established by ~~clear and convincing~~ ^{a preponderance of the CDB} evidence that, *inter alia*, the combination of numerous errors committed by defense counsel should also entitle him to relief pursuant to the cumulative error doctrine. "The combination of numerous errors ... compels us to reverse and remand for new trial." State v. Peterson, 335 S.E.2d 800, 801 (S.C. 1985). When "each point of error raised alone is insufficient

to warrant a new trial, the cumulative effect is enough to require that relief." State v. Freeman, 459 S.E.2d 867, 875 (S.C.App. 1995).

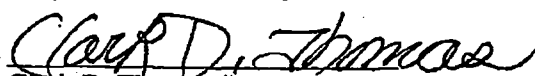
Prejudice Component

Defense counsel's ineffectiveness in the instant matter is so pervasive that he did in fact bolster the prosecution's case against Thomas. Therefore, it should be determined that a prejudice analysis is unwarranted. "We find it most compelling that ... counsel abandoned his role as defense counsel and in fact helped to bolster the case against his client." *Nance*, 626 S.E.2d at 883. "[T]his type of consistently inept form of lawyer conduct is not acceptable in this state, nor will we employ a prejudice analysis, for defense counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary." (Citations omitted). (Internal brackets and quotation marks omitted). *Id.*

In light of the foregoing facts, and binding authorities, this court should vacate Thomas' convictions and sentences.

August 27, 2014
Columbia, SC

Respectfully submitted,



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EXHIBIT A**INCONSISTENT STATEMENTS****Injury Allegations**

Crowley did not allege that Thomas had assaulted her with his hands or fists in the *Incident Report*. However, Crowley said that Thomas punched her in the side now and then in her *1st Witness Statement*, (See *1st Wit State*, p. 2); and in her *2nd Witness Statement*, Crowley alleges that Thomas punched her in the ribs, and slapped her face several times. (See *2nd Wit State*, p. 2). And in the *affidavit* Crowley executed for the Department of Probation, Parole and Pardon Services (DPPPS), she claimed that Thomas violently beat her in the face throughout the night.

At trial, Crowley testified that her lip was lacerated when Thomas allegedly punched her in the face. (R. p. 184, lines 20-24). However, photographs marked as State's Exhibits 17-18 & 23-26 do not depict the busted lip or bruising to support Crowley's claim to having been brutally beaten for 36 to 40 hours. And when these pictures were entered into evidence, Crowley's explanation for the lesions that were on her body also failed to support her allegations. (R. pp. 195-200, lines 1-12).

Abduction & Torture Scenarios

It was first alleged in the *Incident Report* that Thomas unexpectedly arrived at Cathy Mere's house, and that he offered to take Crowley to their residence to retrieve some things. (See *Incident Rpt*, p. 2). Crowley later claims in her *1st Witness Statement* that Thomas called three or four times asking her to come watch movies at their residence; and that she told him to come pick her up. (See *1st Wit State*, p. 1). To that end, Crowley would not have testified to this alleged deception involving movies if the

prosecutor had not led her to do so. (R. p. 145, lines 5-6). And in Crowley's *affidavit* for DPPPS, she states that Thomas called her repeatedly wanting to pick her up; and that when he showed-up at her house that afternoon, she decided to go with him.

According to the *Incident Report*, Crowley said that when they entered their residence at the Intown Suites: Thomas pushed a stun gun into her back and shoved her onto the floor; and that she was shackled to a chair for the next 36-40 hours. (See Incident Rpt, p. 2). However, Crowley alleges in her *affidavit* for DPPPS that after crossing the threshold of their residence, she turned around to hug Thomas when he shocked her with a stun gun—which implicitly alleges that Thomas first used a stun gun on her abdomen. Thereafter, Crowley goes on to claim that Thomas used duct tape and zip-ties to restrain her on their bed.

Another version set forth by Crowley in her 1st *Witness Statement* is that a couple of hours after arriving at their residence, Thomas picked her up from the floor and ripped her clothes off; then tied her to their bed. (See 1st Wit State, p. 2). And when articles of clothing alleged to be those in question were entered into evidence, Crowley first explained that their tattered condition was the result of Thomas having ripped them from her body; then she changed her testimony to the allegation that Thomas had cut them into pieces with scissors. (R. p. 155, lines 4-10; p. 157, lines 15-24).

Crowley also alleged in her 2nd *Witness Statement* to have remained tied to their bed overnight, and that she left the Intown Suites with Thomas the following morning. (See 2nd Wit State, pp. 2-3). However, Crowley testified at trial that after her attempt to hug Thomas and he used a stun gun on her, that he tied her up on the floor. (R. p. 146,

lines 22-25—pp. 147-150). To that end, it was also commonplace for Crowley to insist that she be tied to their bed during sex.

Presence of Stun Gun

To imply that she had never been subjected to the effects of a stun gun or Taser before, Crowley testified that Thomas' allegedly non-consensual use of a stun gun on her was the most terrifying thing she had ever been through; that it was like being *on fire* and *punched*. (R. p. 148, lines 20-22; p. 149, lines 19-21). Contrary to this suggestion, Christen Boyer testified to having seen the stun gun Thomas and Crowley kept in their bedroom when she was living with them on Folly Beach; and that she had heard them using it on each other through her bedroom wall. (R. p. 570, lines 10-24; p. 571, lines 19-25—p. 572, lines 1-5). Boyer further testified that when Crowley was arrested for assaulting her: the police used a Taser on Crowley when taking her into custody; and that Crowley told them that she liked it and asked to be tased again. (R. p. 577, lines 1-17).

Alleged Motive

In the regard of a motive, the prosecutor asked Crowley if Thomas was saying anything during this alleged assault with a stun gun and she replied: *[Thomas] thought I was leaving him for someone else, I guess*. However, the prosecutor pressed Crowley to respond with certainty by inferentially countering, *Did [Thomas] tell you at that point that he thought you were leaving him for somebody else?* In other words, that suggestion posed as a question was obviously Crowley's signal to contradict her speculative reply made only seconds earlier because she then answered with a conclusive *Yes*. (R. p. 152, lines 7-14).

Confuted Rape Claims

There were no allegations of a sexual assault made in the *Incident Report* or Crowley's 1st *Witness Statement*. However, when giving her 2nd *Witness Statement* Crowley alleged that Thomas forced his penis into her mouth once; and that he penetrated her vaginally three times. (See 2nd Wit State, pp. 2-3). Yet shortly after making that statement, Crowley executed her *affidavit* for DPPPS wherein she abandoned her claim to having been raped. But Crowley did put into evidence at trial that Thomas had penetrated her vaginally once, and that she could not remember how many times orally. And soon thereafter, Crowley testified that Thomas had penetrated her both vaginally and orally a total of three times. (R. p. 176, lines 14-25—p. 177, lines 1-5; p. 240, lines 7-15).

The Duct Tape Allegations

Crowley claims that Thomas kept duct tape on her mouth for virtually the entire 36-40 hours she alleges to have been held captive by him. With that in mind, Thomas and Crowley were living between the thin walls of an extended-stay motel. And if Crowley had not asserted a logical reason why she was unable to call for help, she would have otherwise had to explain how Thomas allegedly managed to torture her with brutal beatings and a stun gun for 36-40 hours without alerting the other tenants.

However, Crowley claims in her 2nd *Witness Statement* that Thomas forced her to take pills; and that when awakened by Thomas to be raped, Crowley indicated that she was freely able to beg him to stop immediately upon opening her eyes. (See 2nd Wit State, pp. 1-2). And during trial, Crowley testified that Thomas forced her to perform oral sex so many times that she lost count. (R. p. 177, lines 1-5). Crowley even testified

that during the course of allegedly being pummeled—within seconds of testifying that Thomas had duct taped her mouth shut so she could not scream—that she kept telling Thomas that he was her husband and did not have to do it like that. (R. p. 176, lines 1-13). In other words, Crowley's statements and testimony are replete with exposure to the extent that, *inter alia*, she frequently engaged in oral activities during the alleged incident that would not have been possible if her mouth had actually been duct taped shut.

Shackled to a Chair

The *Incident Report* reveals that Crowley claimed to have remained shackled to a chair for 36-40 hours. (See *Incident Rpt*, p. 2). However, Crowley only alleges to have been tied-up on the floor, and restrained to or tied-up on their bed in both of her *Witness Statements* and her DPPPS *affidavit*. In fact, the chair was only brought to light again during trial when the prosecutor asked Crowley, *When you say [Thomas] shackled you, where was that and what did he shackle you to?* Crowley responded, *A chair, he shackled me and put me in a chair; yeah, he shackled me to a chair.* (R. p. 162, lines 10-16). In other words, it is unlikely that this allegation would have surfaced again if Crowley had not been led to do so.

Drug Use Allegations

The *Incident Report* quotes Crowley saying that after having been tortured for 36-40 hours, Thomas forced her to leave their residence with him and would not say where they were going. (See *Incident Rpt*, p. 2). However, Crowley alleges in her 2nd *Witness Statement* that Thomas told her that they were going to get more drugs. (See 2nd *Witness State*, p. 3). Crowley also alleged that Thomas forced her to take drugs in her 2nd *Witness Statement*. In fact, she claimed in that document to have swallowed four pills with the

understanding that she would die from an overdose. (See 2nd Wit State, pp. 1-2). Yet Crowley told the emergency room doctor that Thomas had only attempted to stick her with needles and give her drugs without success. (R. p. 456, lines 7-8).

Be that as it may, Crowley also testified that she persuaded Thomas to allow her to chase the alleged pills down with a canned drink. And that by doing so, she managed to only swallow one or two because she was able to secretly spit an unspecified number of pills into that can. (R. p. 180, lines 17-25—p. 181, lines 1-2). With that in mind, there was no mention of a *can* in Crowley's 2nd *Witness Statement* because she claimed to have swallowed all of the alleged pills. (See 2nd Wit State, p. 2). Crowley also claims that Thomas said he was going to kill her and commit suicide; then leave town. (R. p. 182, lines 1-4).

Passage of Time

The *Incident Report* reflects Crowley saying that Thomas tortured her for 36-40 hours, (See Incident Rpt, p. 2); and *overnight* in her 2nd *Witness Statement*. (See 2nd Wit State, p. 3). Crowley then said in her DPPPS *affidavit* that Thomas' alleged attack lasted through the night; which is also consistent with her trial testimony to having watched a video monitor all night long. (R. p. 164, lines 1-4). However, Crowley soon reverts to her 36-40 hour scenario when testifying that it was dark when she first arrived at their residence; and that daylight again fell into night prior to the morning she began making the allegations against Thomas. (R. p. 179, lines 4-7). And Crowley said during sentencing that other than the two days in question: the trial had been the longest two days of her life. (R. p. 813, lines 19-24).

Arrival of Arresting Officer

The arresting officer, Chris Talbott, documented in his *Incident Report* that when he first came upon Crowley, Thomas was carrying her in his arms. (R. p. 303, line 25—p. 304, lines 1-4). However, Crowley said in her 2nd *Witness Statement* that Thomas was dragging her back to his van when Talbott arrived. (See 2nd Wit State, p. 3). To that end, the prosecutor led Crowley to give the testimony he wanted the jury to hear by asking if Thomas had picked her up; and was she kicking or scratching him in an effort to get away. Crowley obligingly replied: *Yes, yes, I was kicking and trying to get away.* (R. p. 139, lines 14-25—p. 140—p. 121, lines 1-2).

Knowledge of Missive

There was not a single moment during Crowley's direct-examination when she was unable to answer with specificity; or otherwise willingly follow the prosecutor's lead to the testimony he was seeking. However, Crowley expressed great difficulty in answering defense counsel's questions and she frequently recanted. For example, when defense counsel began cross-examination he asked Crowley if the *Note* entered as *State's Exhibit 29* pertained to her and she replied, *I have no idea.* After this *Exhibit* referring to someone being pimped out for crack was read aloud for the second time defense counsel asked, *You and [Thomas] had conversations about your father pimping you out for crack; isn't that the truth?* Crowley recanted and said, *That was my ex's assumption, yes.* (R. p. 215, lines 8-25—pp. 216-218, lines 1-13).

Issue of Residence

When defense counsel asked Crowley how long she had been staying with Thomas when she made the allegations in question against him, she was evasive and

claimed that she did not remember; that she was trying hard to block this out of her memory and was struggling to remember things. However, after being confronted with the *Incident Report* establishing that two people were living at the Intown Suites together, (See Incident Rpt, p. 3), Crowley testified that she was in the process of leaving Thomas; and that she had separated from him about a month before. (R. p. 222, lines 7-25—pp. 223-230).

With that in mind, Crowley had testified during direct-examination that she had been living with her mother, Cathy Meree, just a day or two; and Meree also testified that Crowley had come back to live with her two days prior to the alleged incident. (R. p. 142, lines 13-20; p. 265, lines 4-8). And during Thomas and Crowley's divorce trial: Crowley both testified and stipulated to having separated from Thomas the day he was arrested on June 7, 2006. To that end, Crowley even denied having a key to their residence at the Intown Suites. However, Crowley finally admitted to having a key when defense counsel asked how she gained entry to their home when Thomas was at work. (R. p. 254, lines 19-25—p. 255, lines 1-8).

Protracted Rape Allegations

Defense counsel also asked Crowley why instead of her *1st Witness Statement* she waited until giving her *2nd Witness Statement* nine days later to accuse Thomas of rape. Crowley answered that she was embarrassed. (R. p. 236, lines 10-17; p. 239, lines 9-10). However, Crowley had told the jury during direct-examination that her *2nd Witness Statement* was given the day after she gave the first one. (R. p. 191, lines 8-25—p. 192, lines 1-13).

EXHIBIT B**Excerpts from**
Defense Counsel's Opening Statement

““This case is about the degradation of [Thomas and Crowley], degradation that began about when they were married; when they became drug addicts. It's about ... how low [Thomas and Crowley] can get when they are under the influence of shooting heroin, shooting crack cocaine, taking Xanax, taking hydrocodone—which is lortabs, [and] shooting and taking methadone.... You're going to hear about nasty sex.... No matter what they ever do, no matter how debauched, degraded, sickening, and stupid it is.... When you go back into that jury room, the only thing you [will] have in your stomach is a sense of revulsion and don't [sic] want to hear no more.... We're dealing with two people who lost their morality, lost their humanity, and degraded themselves.... Both [Thomas and Crowley] are drug addicts....”” (R. pp. 126-134).

Excerpts from Defense Counsel's Closing Argument

““This kind of stuff is on TV every night, if you care to watch it.... Our country has reached the state of Sodom and Gomorrah; drugs, perverted sex, all kinds of stuff.... I don't know two people that want to be duct taped, or tied up and made love to in a bed.... We don't like [Thomas'] morals.... A lot of people say the husband is the head of the house ... [Crowley's] twenty, twenty-five years old and a young woman, [Thomas] led her into a life of drugs.... I know this is an ugly case: it just smells, ... the whole thing; and I know how people ... get together—as civilized human beings in a court room—and have to listen to this kind of stuff; but that's what we have to do; that's where society has gone, and you have to decide, as low as this case is, how bad it stinks, and the way [Thomas and Crowley] take the drugs, and the way they have their sex.... I don't think there's anything but reasonable doubt on the CSC Statute. I think the statute tells you as twelve jurors you've got to find him not guilty of that. But you've a lot of discretion here: you've got the domestic abuse, high and aggravated—that's a heavy felony; and you've got kidnapping, that's a heavy felony.... Drug addiction is a heck of a thing. I'm not sure Clark David Thomas is ever going to beat the situation. He's in his forties, it may be too late for him; I hope it's not too late for [Crowley].””
(R. pp. 697-716).

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CLARK D. THOMAS,)

Plaintiff,)

v.)

STATE OF SOUTH CAROLINA,)

Defendant.)IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-8354

CERTIFICATE OF SERVICE

I, Deborah Evans, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Plaintiff **Amended Post-Conviction Relief and Memorandum in Support** to Defendant by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Ashleigh R. Wilson, Esquire
SC Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211



Deborah Evans
Paralegal to Tristan M. Shaffer

August 29, 2014
Myrtle Beach, South Carolina

FILED
2014 AUG 29 PM 1:36
JULIE A. HARRIS, CLERK
CLERK OF COURT

STATE OF SOUTH CAROLINA)

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

DOCKET NO. 2013-CP-10-8354

CLARK D. THOMAS)

Applicant)

vs.)

STATE OF SOUTH CAROLINA)

Respondent)

TRANSCRIPT OF RECORD

December 8, 2014

Charleston, South Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JUDGE

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

TRISTAN M. SHAFFER, 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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PROCEEDINGS

THE COURT: All right. Ms. Wilson if you would call the case or state the name please, ma'am.

MS. WILSON: Thank you, Your Honor. May it please the court? This is Ashley Wilson for the State of South Carolina. This is Clark Thomas versus the State, docket number 2012-CP-10-8354. Mr. Thomas was indicted in December 2006 for one count of kidnapping, one count of criminal domestic violence of a high and aggravated nature, and one count of criminal sexual conduct in the 1st degree.

He proceeded to trial on July 10, 2008. He was found guilty of kidnapping, he was found guilty of criminal domestic violence of a high and aggravated nature and he was acquitted on criminal sexual conduct in the 1st degree. He was represented at trial by Mr. Michael Tommy Bolus. He was sentenced by Judge Jefferson to 20 years for kidnapping and 10 years for the CDVHAN. Mr. Thomas filed ---

THE COURT: --- were they concurrent?

MS. WILSON: Yes, Your Honor.

THE COURT: Okay.

MS. WILSON: Mr. Thomas filed a timely notice of appeal. His appeal was -- his convictions were affirmed and the remittitur was issued in that on August 24, 2012.

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1 Mr. Thomas was represented at that time by -- the office
2 of the public defense. He filed his application for post
3 conviction relief several months later on December 21,
4 2012.

5 He is represented by Mr. Tristan Shaffer and in his
6 application for post conviction relief he alleges several
7 claims of ineffective assistance of counsel. And Mr.
8 Shaffer has since then I believe on December 1st -- or
9 maybe he filed it today but he submitted his application
10 to allege 22 new allegations and ---

11 THE COURT: --- are all the allegations related to
12 ineffective assistance of counsel?

13 MR. SHAFFER: Yes, Your Honor. There is a due
14 process violation.

15 THE COURT: Are they all related to the ineffective
16 assistance? You got one due process violation?

17 MR. SHAFFER: Yes, Your Honor.

18 THE COURT: What is that?

19 MR. SHAFFER: That they failed to disclose medical
20 records, Your Honor.

21 THE COURT: I'm sorry; what?

22 MR. SHAFFER: That they failed to disclose medical
23 records; a Brady issue.

24 THE COURT: Okay. Failure to disclose medical
25 records; disclose whose medical records?

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1 MR. SHAFFER: The victim's medical records, Your
2 Honor.

3 THE COURT: How many grounds of ineffective
4 assistance allegations do you have?

5 MR. SHAFFER: Twenty-one, Your Honor.

6 THE COURT: Twenty-one?

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: And you've one due process and failure
9 to disclose the victim's medical records under Brady is
10 that correct?

11 MR. SHAFFER: Yes, Your Honor.

12 THE COURT: What was exculpatory in those records?

13 MR. SHAFFER: Your Honor, there was no indication
14 in the medical records that she had a busted lip. In her
15 testimony as well as the statement her testimony was that
16 she had been punched in the face and had a broken tooth
17 and a busted lip. One of the officers will say that he
18 didn't remember any sort of tooth injury but did testify
19 about her lip. There is no indication in there that
20 there was any ---

21 THE COURT: --- so the officer testified about her
22 lip but no indication to tooth damage is that correct?

23 MR. SHAFFER: Yes, Your Honor.

24 THE COURT: And the medical records didn't show any
25 indication of either or one or the other?

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1 MR. SHAFFER: Of either, Your Honor.

2 THE COURT: Okay.

3 MR. SHAFFER: And Your Honor if you will just give
4 me just one moment.

5 THE COURT: Okay.

6 MS. WILSON: Your Honor, the State has a motion
7 before you ---

8 THE COURT: --- I understand. Let me hear what
9 he's doing first and then I'll hear your motion okay?

10 MS. WILSON: Thank you, Your Honor.

11 [Whereupon, Mr. Shaffer reviews documents]

12 MR. SHAFFER: Thank you, Your Honor. I was just
13 checking on something that Mr. Williams had told me about
14 a little while ago.

15 THE COURT: I'm sorry; you were doing what?

16 MR. SHAFFER: I was checking an allegation, Your
17 Honor. You had said that you wanted to hear the rest of
18 my issues?

19 THE COURT: I'm sorry, what now?

20 MR. SHAFFER: Your Honor, would you like me to read
21 into the record ---

22 THE COURT: --- yes, if you would I just want you
23 to read the 21 issues that he alleges an ineffective
24 assistance of counsel. And then the State has a motion
25 and I'll hear that and then we will proceed to trial.

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1 MR. SHAFFER: Thank you, Your Honor.

2 THE COURT: I don't know what her motion is. I
3 assume we'll proceed to trial. Go ahead.

4 MR. SHAFFER: And this amendment I believe was
5 mailed last week the final version. It says pursuant to
6 Cronic, Your Honor we believe that trial counsel was
7 ineffective for basically abbreviating his trial so that
8 he would leave early for vacation. Applicant was denied
9 4th -- his 6th and 14th Amendment right -- this is
10 allegation number two -- applicant was denied his 6th and
11 14th Amendment right to effective assistance of counsel
12 when trial counsel was ineffective for failing to bring
13 up contradictions in the victim's testimony and previous
14 statements.

15 Three, applicant was denied his 6th and 14th
16 Amendment rights to effective assistance of counsel when
17 trial counsel was ineffective for failing to call
18 witnesses demonstrating that the victim previously made
19 statements that she liked to be tased.

20 Issue number four on this motion was a due process
21 violation that was raised involving the medical records.
22 Issue number five was an alternative to issue number four
23 that trial counsel was ineffective for failing to impeach
24 the victim with her medical records. Issue number six is
25 the applicant was denied his 14th Amendment right to due

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1 process when the State failed to disclose information
2 concerning a plea offer with the victim. And I
3 apologize; there were two due process violations there.
4 Issue number seven is alternative to number six is that
5 trial counsel was ineffective for failure to impeach with
6 evidence of a plea offer.

7 Issue number eight is that applicant was denied his
8 14th Amendment right to due process when the State failed
9 to disclose the prior police reports. Nine is that
10 applicant was denied his 6th and 14th Amendment rights to
11 effective assistance of counsel when trial counsel was
12 ineffective for failing to request a lesser included
13 charge of CDV.

14 Ten is applicant was denied his 6th and 14th
15 Amendment right to effective assistance of counsel when
16 trial counsel was ineffective for failing to present
17 evidence that Mr. Thomas was entitled to a sentence
18 pursuant to S.C. Code section 16-25-90; that's 16-25-90.

19 Issue number 11 is the applicant was denied his 6th
20 and 14th Amendment right to effective assistance of
21 counsel when trial counsel was ineffective for failing to
22 object to a kidnapping instruction. And the kidnapping
23 instruction ---

24 THE COURT: --- was that raised on appeal?

25 MR. SHAFFER: No, Your Honor it was not objected

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1 to.

2 THE COURT: Pardon?

3 MR. SHAFFER: It wasn't preserved at trial, Your
4 Honor.

5 THE COURT: Okay.

6 MR. SHAFFER: You will find the part about
7 kidnapping instruction at 766, line 13 through 768 line
8 19.

9 THE COURT: Okay.

10 MR. SHAFFER: Specifically about kidnapping
11 instruction the Judge comes back and says, and I'm
12 paraphrasing because I don't have it in front of me, but
13 the Judge comes back and says you don't have to find all
14 these things happened in order to find him guilty of
15 kidnapping.

16 Issue number 12 is the applicant was denied his 6th
17 and 14th Amendment right to effective assistance of
18 counsel when trial counsel was ineffective for failing to
19 -- for making negative statements about the applicant
20 throughout his opening and closing statements.

21 THE COURT: You got a transcript and the line and
22 what was said?

23 MR. SHAFFER: Your Honor, I actually don't have the
24 cite right here. I can pull it for you. And Your Honor
25 the opening statement is at transcript pages 126 through

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1 134. Essentially he calls and I'll read you just an
2 excerpt from that. This is what defense counsel had
3 said. [Reading] This case is about the degradation of
4 Thomas and Crawley, degradation that begins about when
5 they were married. When they became drug addicts it's
6 how low Thomas and Crawley can get when they are under
7 the influence of shooting heroin, shooting crack,
8 cocaine, taking Xanax, taking Hydrocodone, which is
9 Lortab and shooting and taking Methadone.

10 You're going to hear about nasty sex. No matter
11 whatever happened -- no matter what they overdo, no
12 matter how debauched, degraded, sickening, and stupid it
13 is when you go back to the jury room the only thing you
14 will have in your stomach is a sense of revulsion and
15 don't want to hear no more. We're dealing with two
16 people who lost their morality, lost their humanity,
17 degraded themselves. Both Thomas and Crawley are drug
18 addicts. That was an opening statement.

19 THE COURT: Okay. Go ahead.

20 MR. SHAFFER: In the closing statement here is one
21 of the excerpts.

22 THE COURT: What is the closing statement page?

23 MR. SHAFFER: Your Honor, the entire page is 126
24 through 124 [sic] for opening statement ---

25 THE COURT: --- that's the opening statement; what

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1 is the closing?

2 MR. SHAFFER: 697 through 716.

3 THE COURT: Through 716?

4 MR. SHAFFER: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. SHAFFER: And that excerpt started on page 126
7 what I was reading to you.

8 THE COURT: Okay. Instead of you just reading
9 each one of these allegations let me just go through
10 them. I've got a copy of it and see if I have any
11 questions of you about them, okay?

12 MR. SHAFFER: Thank you, Your Honor.

13 THE COURT: All right. On number 13, failure to
14 call witnesses. What witnesses are we talking about?

15 MR. SHAFFER: On 13 Your Honor the witness that we
16 would actually call regarding that is Joel Longenecker.
17 He is a -- he lived with them at one point. I mean he
18 frequented their place in Folly Beach.

19 THE COURT: He wasn't called? What was he supposed
20 to have said?

21 MR. SHAFFER: He'll talk about how the victim used
22 to keep a stun gun in her bedroom and used to like having
23 sex with the stun gun or electroshock device. He's also
24 going to ---

25 THE COURT: --- okay. Let me see, number 14 what

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1 character witnesses are we talking about?

2 MR. SHAFFER: Your Honor, we have Kristen Boyer who
3 was called at trial but she wasn't able to get into all
4 the character evidence. Joel Longenecker ---

5 THE COURT: --- so they didn't offer any character
6 evidence is that correct?

7 MR. SHAFFER: Yes Your Honor, that's correct.

8 THE COURT: Okay. Number 15 I'm not sure what
9 you're talking about here.

10 MR. SHAFFER: Your Honor, he was ---

11 THE COURT: --- I mean that was up to the court
12 after the conviction. That would be an appellate
13 situation. What does that have to do with counsel?

14 MR. SHAFFER: And Your Honor I guess they ---

15 THE COURT: --- I mean number 15 doesn't have
16 anything to do with counsel. I mean CSC is automatically
17 -- what was he convicted of; CSC what?

18 MR. SHAFFER: He was acquitted ---

19 THE COURT: --- CD -- what was the conviction? CSC
20 1st he was acquitted. Criminal domestic violence high
21 and aggravated he would automatically go on the sexual
22 registry. What does that have to do with anything?

23 MR. SHAFFER: And Your Honor, I think the CSC he
24 was acquitted of and the kidnapping is the basis for the
25 criminal sexual conduct ---

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1 THE COURT: --- what was he -- he was acquitted of
2 CSC 1st is that correct?

3 MR. SHAFFER: Yes, Your Honor, that's correct.

4 THE COURT: But he was found guilty of criminal
5 domestic violence high and aggravated?

6 MR. SHAFFER: Yes, Your Honor.

7 MS. WILSON: And kidnapping, Your Honor.

8 THE COURT: Pardon?

9 MS. WILSON: And kidnapping. He was indicted for
10 CDVHAN, Kidnapping, and CSC 1st.

11 THE COURT: Right.

12 MS. WILSON: He was acquitted of CSC 1st but he was
13 convicted of CDVHAN and of kidnapping so the sexual
14 registry came with the kidnapping.

15 THE COURT: Okay. That was -- go ahead. Let me
16 go to number 16 and see what you're talking about here.

17 [Whereupon, the court reviews documents]

18 THE COURT: On number 19 exhibits 41 through 45
19 what was wrong with them and what is your position? Why
20 weren't they admissible?

21 MR. SHAFFER: Your Honor, essentially he was
22 already -- the letters -- there were statements that were
23 made or written in a computer; letters on a computer.

24 THE COURT: These were five emails or?

25 MR. SHAFFER: Your Honor, they were actually typed

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1 out letters.

2 THE COURT: Okay.

3 MR. SHAFFER: And what had happened the ---

4 THE COURT: --- why weren't they admissible at
5 trial?

6 MR. SHAFFER: The actual objection he had been
7 planning on making a chain of custody argument for that.
8 I imagine ---

9 THE COURT: --- did defense counsel object to the
10 exhibits?

11 MR. SHAFFER: No, Your Honor. And I'm actually
12 withdrawing the issue on that. My client and I have
13 differences of opinion on this. He believed they would
14 have had to establish a chain of custody for the
15 computer. I was under the opinion that the chain of
16 custody was not required and that's why I am withdrawing
17 it.

18 I do want to put on the record that my client did
19 wish to pursue that issue and wanted witnesses here today
20 to pursue that issue. That is an issue though that I
21 don't think is actually -- I don't think it's correct at
22 all that you actually need it.

23 THE COURT: All right. Number 11 you talk about
24 kidnapping and instructions and again you talk about it
25 in number 21. What's the difference? They are both

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1 talking about kidnapping instructions. Are they
2 duplications? It says ineffective for failing to object
3 to kidnapping instructions and 21 says the same thing.
4 How are they different?

5 MR. SHAFFER: And Your Honor that is a duplicate,
6 Your Honor.

7 THE COURT: That's duplication isn't it?

8 MR. SHAFFER: That is a duplicate.

9 THE COURT: All right. Was the instructions on
10 the CDV raised at appeal?

11 MR. SHAFFER: No, Your Honor.

12 THE COURT: All right.

13 MR. SHAFFER: There wasn't a request for the lesser
14 included.

15 THE COURT: Okay. Let me clear something up on the
16 medical records from your position. You say in number 5
17 that they failed to impeach the victim with her medical
18 records. And you said earlier on your due process
19 arguments that the medical records were not produced.
20 Which is it?

21 MR. SHAFFER: Your Honor, that is actually ---

22 THE COURT: --- did you have the medical records or
23 did you not have the medical records?

24 MR. SHAFFER: Your Honor that is a question that I
25 hope we can clear up today. And that's the reason I

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1 claimed it sort of in the alternative, Your Honor.
2 Either they weren't produced or they didn't impeach it.
3 We received a copy or the applicant received a copy of
4 his lawyer's file but did not contain any medical
5 records. That being said if his trial attorney is going
6 to say that he received them but didn't send them to his
7 client then in which case I think he could have impeached
8 him with the information from the medical records.

9 THE COURT: Is there anything in the record to show
10 whether he had the medical records or didn't have the
11 medical records? Ms. Wilson, do you know?

12 MS. WILSON: Your Honor, it was brought to my
13 attention earlier that it may have been submitted at
14 trial by the State as an exhibit.

15 THE COURT: It was presented by the State as an
16 exhibit?

17 MR. SHAFFER: Your Honor, it was not.

18 MS. WILSON: It doesn't appear that it was, Your
19 Honor.

20 THE COURT: It was not presented?

21 MS. WILSON: No, Your Honor, there was just
22 testimony elicited from the doctor about it and an
23 officer.

24 THE COURT: Okay. Anything else before I hear the
25 State's motion?

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1 MR. SHAFFER: Your Honor, one other thing. My
2 client wanted me to go back and briefly put on the record
3 his position about the computer. He believed the failure
4 -- he believed that the computer and there was some
5 articles of clothing that were not -- that did not have a
6 chain of custody. I've told him that you wouldn't need a
7 chain of custody in order to admit those items.

8 He was under the impression that the failure to
9 produce the chain of custody actually goes to a Brady
10 issue because you can argue that there might have been a
11 problem with it or it might not be in the same condition
12 that it came in. Your Honor that's one of those issues
13 that I still don't think it rises to the level of a P-C-R
14 obligation. My client believes that it does so I want to
15 put on the record that he does believe that it does.

16 THE COURT: Okay. Thank you very much. What's
17 the State's motion?

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23
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Motion-Remarks by Ms. Wilson
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1 MS. WILSON: May it please the court, Your Honor?
2 This is the State's motion regarding allegation number
3 10. Allegation number 10 is that counsel failed to
4 present evidence that Mr. Thomas was entitled to a
5 sentence pursuant to S.C. Code section 16-25-90. And the
6 State would just move to dismiss this claim on two bases.

7 And Your Honor just for the record a factual
8 background in this case. Mr. Thomas was accused and
9 convicted of holding the victim who was his wife at the
10 time in a hotel room over the course of two days.
11 According to the victim's testimony she was zip tied to
12 this hotel bed by Mr. Thomas and tased, hit, abused
13 physically and sexually over this course of time.

14 Eventually the victim was able to escape. Mr.
15 Thomas led her out of the hotel room in the car and she
16 was able to stop -- jump out the car on the side of the
17 highway and a concerned citizen called the police once
18 they saw her jump out. Mr. Thomas was basically carrying
19 her back into the car when the police pulled up so they
20 have Mr. Thomas there with the victim over his shoulder
21 kicking and screaming and that's how eventually the
22 victim is freed. And Your Honor pursuant to S.C. Code
23 section 16-25-90 a person who is convicted of an offense
24 against a household member after showing credible
25 evidence of a history of criminal domestic violence, and

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1 that's criminal domestic violence as defined under the
2 statute, suffered at the hands of the household member is
3 entitled to early parole after serving 25 percent of his
4 sentence.

5 It's the State's position today that this claim
6 should be dismissed for two main bases. The first basis
7 is that assuming that Mr. Thomas will testify as he did
8 at trial he is unable to show first that he suffered a
9 prior criminal domestic violence at the hands of the
10 victim. And second that any prior ---

11 THE COURT: --- did he testify at trial that she
12 had abused him?

13 MS. WILSON: No, Your Honor.

14 THE COURT: Okay. Is there any criminal history
15 of abuse?

16 MS. WILSON: Not -- there is a history of criminal
17 abuse by Mr. Thomas on the victim ---

18 THE COURT: --- but I think ---

19 MS. WILSON: --- but not on the victim ---

20 THE COURT: --- the statute is talking about the
21 victim right?

22 MS. WILSON: That's correct Your Honor; there is no
23 history of criminal ---

24 THE COURT: --- was there any testimony at the
25 trial about abuse on the victim on the defendant? I

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1 guess in this case it's easier to say the wife or the
2 husband.

3 MS. WILSON: The only testimony on the wife, -- from
4 Mr. Thomas about this wife abusing him was basically in
5 the context of them just having a violent relationship
6 because the record reflects that they were both heavy
7 drug users at the time. So just the volativeness of a
8 relationship in that instance there was never any
9 testimony about ---

10 THE COURT: --- what kind of proof do you think
11 would be necessary to show that under the statute?

12 MS. WILSON: Your Honor, you'd have to show a
13 history of continuing criminal domestic violence. And
14 it's the State's position that the level of violence has
15 to raise to the level of criminal domestic violence under
16 the statute. And I believe that is reflected in the
17 statute Your Honor. I'm going to read it ---

18 THE COURT: --- how would you do it; by convictions
19 or by testimony at the P-C-R hearing I guess is my
20 question to you?

21 MS. WILSON: Your Honor, I think it's the State
22 states the position that it is a combination of both.

23 THE COURT: But isn't he entitled to at the P-C-R
24 hearing to try to prove that?

25 MS. WILSON: Yes, Your Honor. But -- however the

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1 State believes he is unable to prove that; that's why we
2 are making the motion. Also, Your Honor ---

3 THE COURT: --- I understand but he hasn't had the
4 opportunity yet.

5 MS. WILSON: Well Your Honor he testified at trial
6 and he presented no testimony that would support that
7 claim now.

8 THE COURT: I guess my question to you to prove
9 that in this case the wife had systematically abused the
10 husband okay; does that have to appear at trial? And
11 then at the P-C-R the court makes the determination yes,
12 he's entitled to the early release or does he have that
13 opportunity at the P-C-R hearing and trial? I guess
14 that's my question.

15 MS. WILSON: That kind of testimony according to
16 the statute can be presented at trial during the
17 sentencing phase and mitigation.

18 THE COURT: Right.

19 MS. WILSON: It can also be presented at the post
20 conviction relief, Your Honor. But it's the State's
21 position that based on what testimony Mr. Thomas gave at
22 the trial and assuming his testimony today will be the
23 same as it was at trial and that's -- basically that's
24 not what the legislature intended. And Your Honor in the
25 case of State v Hall that's citation 399 S.C. 211 the

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1 court basically stated what their intent was for the use
2 of the statute and it said that it was to permit some
3 middle ground for those instances where there would be
4 insufficient evidence of abuse to maintain a battered
5 spouse defense but sufficient evidence of abuse to
6 mitigate the non-parolable nature of murder and other
7 serious offenses.

8 And at trial Mr. Thomas he never presented testimony
9 about basically his actions towards the victim being a
10 result of -- or resulting from some domestic violence.
11 His testimony at trial Your Honor was that they were
12 having consensual sex; that was the way that they
13 interacted. So it's just the State's position that this
14 type of case and this fact setting as presented at trial
15 by Mr. Thomas's testimony is not what the legislature
16 intended.

17 THE COURT: Do you think the statute would apply to
18 kidnapping?

19 MS. WILSON: Your Honor it doesn't specify in the
20 statute. It just says -- I believe it specifically says
21 a violent offense. I'm going to read it exactly because
22 maybe the language might be a little bit clearer. But
23 S.C. Code section 16-25-90 that says notwithstanding any
24 provisions of chapters 13 and 21 of Title 21 -- 24 and
25 notwithstanding any other provisions of law an inmate who

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1 was convicted of or pled guilty or nolo contendere to an
2 offense against a household member is eligible for parole
3 after serving one fourth of his prison term. So it
4 doesn't specify what type of offense; it just says
5 offense against a household member.

6 And then it goes on to say when the inmate at the
7 time he pled guilty to nolo contendere or was convicted
8 of an offense against a household member or in a post
9 conviction relief proceeding pertaining to the plea or
10 conviction presented credible evidence of a history of
11 criminal domestic violence as provided in section 16-25-
12 20.

13 So whatever they present has to be equivalent to
14 criminal domestic violence pursuant to the statute and it
15 has to be suffered at the hands of the household member.

16 THE COURT: Okay. Thank you very much.

17 MS. WILSON: Thank you, Your Honor.

18 THE COURT: All right Mr. Shaffer, what's your
19 position on her motion?
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Clark D. Thomas v State of S.C.
Motion-Remarks by Mr. Shaffer
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1 MR. SHAFFER: Your Honor, I at least get the chance
2 to present the evidence here today. And to support that
3 I have witnesses that will testify that while they were
4 married essentially that there was some...

5 THE COURT: All right. Ms. Wilson, I appreciate
6 your motion but I think he can present it at the P-C-R
7 hearing today. Now obviously you can impeach him from
8 his testimony at trial, obviously, but I don't think the
9 court -- I think the statute allows presenting certain
10 testimony at the P-C-R hearing. And the court is going
11 to have to make a factual determination on whether it
12 believes it or doesn't believe it as far as that
13 testimony is concerned okay.

14 MS. WILSON: Thank you, Your Honor.

15 THE COURT: So on that basis I deny your motion.
16 Now are you ready to proceed Mr. Shaffer? You want to
17 call your first witness.

18 MR. SHAFFER: I will Your Honor. Is there any way
19 I can actually get one of my client's hands free so he
20 can write notes?

21 THE COURT: I don't know. That's up to the...

22 THE DEPUTY: If you say so, Judge.

23 THE COURT: Pardon? Are you comfortable with it?

24 THE DEPUTY: Yes, that's not a problem.

25 THE COURT: That's up to security. I'm not

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1 involved in security; they are. If they want to release
2 one hand that's fine but if they don't that's fine too.

3 [Whereupon, the defendant's hand is released]

4 THE DEFENDANT: Thank you, Your Honor.
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Clark D. Thomas v State of S.C.
Lasonya Epps-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: Your Honor, at this time we would
2 call Lasonya Epps.

3 THE COURT: Okay.

4 [Whereupon, Ms. Epps comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 CLERK OF COURT: Please state your first and last
8 name into the microphone and spell your last name for the
9 record.

10 THE WITNESS: Lasonya Epps, E-P-P-S.

11 THE COURT REPORTER: Would you spell your first name
12 as well?

13 THE WITNESS: Lasonya that is L-A-S-O-N-Y-A.

14 - - - - -

15 LASONYA EPPS,

16 Having been first duly sworn,

17 Was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SHAFFER:

20 Q. Ms. Epps where are you employed?

21 A. Roper Hospital.

22 Q. And what's your job there?

23 A. I'm a medical records specialist.

24 Q. Okay. So is it your job to keep track of the
25 medical records essentially?

Clark D. Thomas v State of S.C.
Lasonya Epps-Direct Examination by Mr. Shaffer
December 8, 2014

1 A. Yes, sir.

2 Q. Okay. I've requested several medical records
3 regarding Rachel Crawley. You received a subpoena from
4 us correct?

5 A. Yes, sir.

6 Q. You've brought them here today correct?

7 A. Yes, sir.

8 Q. And you have them up there?

9 A. Yes, sir.

10 Q. Would you mind if I actually saw those?

11 A. Yes.

12 [Whereupon, Mr. Shaffer and Ms. Wilson review
13 documents from witness]

14 MR. SHAFFER: May I get these marked?

15 THE COURT: Ms. Wilson, do you have any objection
16 to the medical records?

17 MS. WILSON: Yes, Your Honor. I have an objection
18 based on hearsay because from what I understand from
19 reviewing the records Ms. Epps isn't the person that
20 prepared the medical doctors or made -- prepared the
21 medical documents or made any diagnosis ---

22 THE COURT: --- well all of it is not hearsay.
23 Which part do you think is hearsay and we can redact
24 that?

25 MS. WILSON: Your Honor, the portions that were

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Lasonya Epps-Direct Examination by Mr. Shaffer
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1 from I believe -- I can't pronounce the doctor's last
2 name; it starts with a P, about what he actually
3 witnessed from the victim. And also, Your Honor we don't
4 have the doctor here to cross-examine him on any of the
5 findings he found that are reflected in those documents.

6 MR. SHAFFER: Your Honor, I can get them in through
7 his business records. I can connect it up for relevance
8 later on before ---

9 THE COURT: --- well even if its business records
10 there is a certain part of it you can still exclude for
11 hearsay.

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: Is that correct or incorrect?

14 MR. SHAFFER: Yes, Your Honor. The statements I
15 have Your Honor I believe that you can exclude certain
16 parts. I don't think you can exclude the part she is --
17 well, I guess I need more specifics of what part
18 specifically she's asking.

19 THE COURT: Well, show it to her and then let me
20 hear what part she is specifically concerned about on the
21 hearsay issue.

22 [Whereupon, Mr. Shaffer and Ms. Wilson review
23 documents]

24 THE COURT: Ms. Wilson while you're looking at it
25 look at 803(4) the statements for purpose of medical

Clark D. Thomas v State of S.C.
Lasonya Epps-Direct Examination by Mr. Shaffer
December 8, 2014

1 diagnosis or treatment because I think -- I don't know
2 what you're looking at and what you object to but...

3 MS. WILSON: Well, Your Honor, also we're objecting
4 under Rule 803(6) which says that even if you're trying
5 to admit medical records as a business record that the
6 subjective opinion and judgments found in the business
7 records are not admissible ---

8 THE COURT: --- I just said you can exclude ---

9 MS. WILSON: --- that's the basis Your Honor.

10 THE COURT: That's why I want to know what you want
11 to exclude.

12 MS. WILSON: Yes. I'm pointing it out to him now.

13 THE COURT: Okay point it out to him.

14 [Whereupon, Mr. Shaffer and Ms. Wilson review
15 documents]

16 MS. WILSON: Your Honor, the State will withdraw
17 its objection.

18 THE COURT: Pardon?

19 MS. WILSON: The State will withdraw its objection.

20 THE COURT: I mean the Rule says subjective
21 opinions not what the doctor observed.

22 MS. WILSON: Right. Well Your Honor ---

23 THE COURT: --- I mean if it's what the doctor
24 observed I'm going to let it in. If he's saying some
25 hey, this man caused it or this man did it that's an

Clark D. Thomas v State of S.C.
Lasonya Epps-Direct Examination by Mr. Shaffer
December 8, 2014

1 opinion I will strike.

2 MS. WILSON: I understand, Your Honor. I'll
3 withdraw my objection.

4 THE COURT: Okay. Thank you very much.

5 [Whereupon, defendant's exhibit number 1 is marked
6 by the court reporter]

7 Q. [Mr. Shaffer] I'm showing you what has been marked
8 applicant's exhibit 1, it's marked as defendant's exhibit
9 1 on there, are those records the records that you
10 provided?

11 A. Yes.

12 Q. Are they kept in the regular course of business?

13 A. Yes.

14 Q. Okay. And are you the custodian of those records?

15 THE COURT: I thought she said she withdrew her
16 objection.

17 MR. SHAFFER: Okay. Then I'll go ahead and enter
18 them, Your Honor. Thank you.

19 THE COURT: I guess plaintiff's number 1 or
20 applicant's number 1.

21 [Whereupon, defendant's exhibit number 1 is entered
22 into evidence by the court]

23 MR. SHAFFER: Thank you, Your Honor. No further
24 questions.

25 THE COURT: Any cross-examination?

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Lasonya Epps-Direct Examination by Mr. Shaffer
December 8, 2014

1 MS. WILSON: No questions for Ms. Epps.

2 THE COURT: You may step down; and have a safe trip
3 back to Roper.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: Call your next witness please sir.

7 MR. SHAFFER: The applicant would call -- Your
8 Honor, may I step in the hallway for one of my officers.

9 THE COURT: The bailiff can get him if you'll just
10 give him the name.

11 MR. SHAFFER: It's actually -- Your Honor, I
12 apologize I lost my list.

13 THE COURT: I can't help you because I don't have a
14 list.

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Clark D. Thomas v State of S.C.
Chris Talbott-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: I apologize, Your Honor. We would
2 actually call Chris Talbott.

3 THE COURT: Chris Talbott?

4 MR. SHAFFER: Yes.

5 [Whereupon, Mr. Talbott comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: State your first and last name into
9 the microphone and spell your last name for the record
10 please.

11 THE WITNESS: Chris Talbott, T-A-L-B-O-T-T.

12 - - - - -

13 CHRIS TALBOTT,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SHAFFER:

18 Q. Mr. Talbott or Officer Talbott where are you
19 employed?

20 A. North Charleston Police Department.

21 Q. How long have you worked there?

22 A. Approximately 11 years.

23 Q. What is your involvement in Clark Thomas or the
24 George Nichols trial?

25 A. On the incident date I responded to the area of the

Clark D. Thomas v State of S.C.
Chris Talbott-Direct Examination by Mr. Shaffer
December 8, 2014

1 Northbridge in reference to an unknown situation
2 involving a female jumping out of a car.

3 Q. Okay. And tell us about what you had observed that
4 day.

5 A. I pulled up to the area just across the Northbridge
6 on the West Ashley side and observed a van partially in
7 the roadway. Dispatch advised that a white male had been
8 running after a female underneath the Northbridge.

9 I began to walk in that direction underneath the
10 bridge and observed the male subject carrying the female
11 back to the van.

12 Q. Okay. You ended up arresting Mr. Thomas correct?

13 A. Correct.

14 Q. Okay. Do you -- tell us about the condition the
15 female was in. Do you remember vividly to this day?

16 A. Yes. She was clearly upset. While on the scene she
17 said that she was in fear for her life. She showed --
18 she pulled up her shirt and showed various marks to her
19 abdomen; like burn marks.

20 Q. Do you remember her face?

21 A. Yes, I suppose so.

22 Q. Did she have any injuries to her face that you
23 recall?

24 A. If you asked me to recall now I would say no, I
25 don't recall.

Clark D. Thomas v State of S.C.
Chris Talbott-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. Do you recall any injuries to her teeth?

2 A. No.

3 Q. Okay. You testified at Mr. Thomas's trial correct?

4 A. I did.

5 Q. Do you recall what you testified to?

6 A. No.

7 Q. Now do you know if -- do you recall specifically
8 whether or not you testified about any tooth injury at
9 her trial -- at his trial?

10 A. I don't have personal recollection of that testimony
11 and I haven't reviewed my testimony from that day.

12 Q. Is it safe to say that whatever your testimony was
13 at the day of the trial that it would be an accurate
14 depiction of what you had seen at the scene at that time?

15 A. Yes.

16 Q. Okay. No further questions.

17 THE COURT: Cross-examination?

18 MS. WILSON: Just briefly, Your Honor.

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Clark D. Thomas v State of S.C.
Chris Talbott-Cross-Examination by Ms. Wilson
December 8, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Officer Talbott is your testimony that you don't
4 recall what your testimony was at trial is that correct?

5 A. Correct.

6 Q. And you haven't had an opportunity to review the
7 trial transcript is that correct?

8 A. Correct.

9 MS. WILSON: Your Honor, may I approach the
10 witness?

11 THE COURT: Yes, ma'am.

12 Q. [Ms. Wilson] Officer Talbott, what I am directing
13 your attention to is page 309 of the transcript starting
14 at line 6 and I'm going to go to page 310 line 5. If you
15 just review this portion of the transcript I'm going to
16 ask you some questions about it.

17 [Whereupon, the witness reviews document]

18 THE COURT: What line and page are you referring to
19 in the transcript?

20 MS. WILSON: Your Honor, I believe I said 309 and
21 310.

22 THE COURT: 309 and 310 okay, what line?

23 MS. WILSON: Starting on I think line 5 or 6 on 309
24 and over to I think maybe 5 or 6 on 310.

25 THE COURT: Okay.

Clark D. Thomas v State of S.C.
Chris Talbott-Cross-Examination by Ms. Wilson
December 8, 2014

1 Q. [Ms. Wilson] Have you had the opportunity to review
2 the portion of the transcript I pointed out to you?

3 A. Yes.

4 Q. Does it reflect your testimony about the victim's
5 injuries at trial?

6 A. Yes.

7 Q. And do you recall based on that what your testimony
8 was regarding any injuries to the victim's face at trial?

9 A. Repeat the question.

10 Q. Based on what you reviewed do you recall what your
11 testimony was about any injuries to the victim's face
12 when you first saw her?

13 A. Yes.

14 Q. Okay. Can you tell the court what it was?

15 A. I referred to her as having 20 to 25 marks that
16 appeared to be from like an over the counter taser and
17 residue from duct tape on her wrist and possibly marks
18 from handcuffs or some kind of restraint and a busted
19 lip.

20 Q. Thank you.

21 MR. SHAFFER: Court's indulgence.

22 THE COURT: Any redirect?

23 MR. SHAFFER: Yes, Your Honor, just briefly.

24 [Whereupon, defendant's exhibit number 2 is marked
25 for identification only by the court reporter]

Clark D. Thomas v State of S.C.
Chris Talbott-Cross-Examination by Ms. Wilson
December 8, 2014

1 MR. SHAFFER: Your Honor, I believe we are going to
2 introduce defendant's exhibit 2 by stipulation, Your
3 Honor.

4 MS. WILSON: Oh, I didn't stipulate.

5 MR. SHAFFER: Oh, I'm sorry ---

6 MS. WILSON: --- I'm sorry, I didn't hear you. I
7 reviewed it and I have an objection based on it.

8 MR. SHAFFER: Okay.

9 MS. WILSON: Your Honor, the State would just
10 object ---

11 THE COURT: --- what is it?

12 MR. SHAFFER: It's the incident report ---

13 THE COURT: --- pardon?

14 MR. SHAFFER: Incident report from the officer,
15 Your Honor.

16 MS. WILSON: Your Honor, my objection is two-prong.
17 One based on relevance because I'm not sure how that is
18 relevant. We have Officer Talbott. Officer Talbott
19 testified at trial. Also, Your Honor, this is post
20 conviction relief proceeding. We're not here to retry
21 Mr. Thomas' trial so I think that going into this
22 incident report and all of its contents is something that
23 Mr. Bolus and the Solicitor did at trial so we don't have
24 to do that here, Your Honor. So I object on the basis of
25 relevance.

Clark D. Thomas v State of S.C.
Chris Talbott-Cross-Examination by Ms. Wilson
December 8, 2014

1 MR. SHAFFER: Your Honor, may I just -- I can
2 withdraw the attempt to introduce it and just mark it for
3 I.D. purposes. Could I have him refresh his memory about
4 it?

5 THE COURT: Yes, let him refresh his memory.

6 MR. SHAFFER: Thank you, Your Honor.

7 THE COURT: Was all this brought out at trial?

8 MR. SHAFFER: Your Honor, parts of it was.

9 THE COURT: Well then get to the parts that you
10 think...

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Clark D. Thomas v State of S.C.
Chris Talbott-Redirect Examination by Mr. Shaffer
December 8, 2014

1 REDIRECT EXAMINATION
2 BY MR. SHAFFER:
3 Q. Officer Talbott, I'm showing you applicant's exhibit
4 2 for identification.
5 [Whereupon, the witness reviews document]
6 Q. Could you review that document -- well, first of all
7 that document is your incident report correct?
8 A. Correct.
9 Q. Could you review that document briefly?
10 A. I reviewed it this morning.
11 Q. Okay. Does anywhere in there reference anything
12 about a busted tooth?
13 A. No.
14 Q. Or a broken tooth?
15 A. No.
16 Q. Cracked tooth?
17 A. No.
18 Q. No further questions.
19 THE COURT: Any recross?
20 MS. WILSON: Nothing from the State, Your Honor.
21 THE COURT: Okay. You may step down Officer
22 Talbott. Thank you so very much.
23 [Whereupon, the witness is excused and exits the
24 witness stand]
25 THE COURT: Call your next witness.

Clark D. Thomas v State of S.C.
Teddy Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant will call Teddy Martin.

2 [Whereupon, Mr. Martin comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: If you'll state your first and last
6 name into the microphone and spell your last name please.

7 THE WITNESS: Teddy Martin.

8 - - - - -

9 TEDDY MARTIN,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHAFFER:

14 Q. Mr. Martin, where are you from?

15 A. Hanahan originally.

16 Q. What do you do for a living?

17 A. Right now I do junk cars and buy and resell.

18 Q. Okay. And how long have you lived in Hanahan?

19 A. I live in Summerville currently. I'm from Hanahan.

20 I've been living in Summerville about 10 years.

21 Q. Are you familiar with Clark Thomas?

22 A. Yes.

23 Q. How are you familiar with him?

24 A. We met a long time ago. I was his roommate at one

25 time. He had a room for rent in West Ashley. He helped

Clark D. Thomas v State of S.C.
Teddy Martin-Direct Examination by Mr. Shaffer
December 8, 2014

- 1 me do various things. At that point in time I didn't
2 have a license. He helped me get my license back and car
3 on the road and helped me get a little business started.
- 4 Q. Are you friends with Mr. Thomas or were you friends
5 with Mr. Thomas?
- 6 A. Yes. Yes sir.
- 7 Q. Okay. In fact y'all were pretty close friends
8 right?
- 9 A. Yes, sir.
- 10 Q. Did you spend a lot of time around him?
- 11 A. Yes, sir.
- 12 Q. Prior to him getting locked up about how often did
13 you see him?
- 14 A. I talked to him every day.
- 15 Q. Are you familiar with Rachel Crawley?
- 16 A. Yes, sir.
- 17 Q. How are you familiar with her?
- 18 A. I was around at the time when he met Rachel and then
19 I was around him the whole time he was with Rachel.
- 20 Q. Did you see them around each other?
- 21 A. Yes.
- 22 Q. On a frequent basis?
- 23 A. Uh Huh.
- 24 THE COURT REPORTER: Is that yes?
- 25 THE WITNESS: Yes.

Clark D. Thomas v State of S.C.
Teddy Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. [Mr. Shaffer] Have you ever seen Rachel Crawley
2 abuse or physically assault the applicant; Mr. Thomas?

3 A. Yes, sir.

4 Q. How often did you see that?

5 A. Towards the end it was frequent; like it was a bad
6 situation.

7 Q. What do you mean by bad situation? Explain that a
8 little bit.

9 A. It was violent. It was just...

10 Q. Was she violent towards him?

11 A. Yes, sir.

12 Q. Was he violent towards her?

13 A. At times. I mean they went back and forth.

14 Q. Okay. So basically they would fight each other?

15 A. Uh Huh.

16 Q. Have you ever seen her hit him whenever he didn't
17 instigate the fight or start a fight?

18 A. Yes, sir.

19 Q. Tell us a little bit about some of the times that
20 you saw Rachel hit Clark.

21 A. I remember one instance we were in a grocery store.
22 She wasn't around him but she come out of nowhere and
23 attacked him and I had to get in between them and break
24 them up. And then there were a couple of times at the
25 Folly Beach address where she would like attack him,

Clark D. Thomas v State of S.C.
Teddy Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 throw stuff at him, lock herself in the room, take the
2 keys to the truck; stuff like that.

3 Q. Okay. And did you ever speak to a Tommy Bolus?

4 A. I spoke to him I want to say like when we came to
5 the trial, when my wife and I came to the trial we talked
6 to him that morning.

7 Q. And did you offer to testify?

8 A. Yes, sir.

9 Q. What would you have said about Clark if you would
10 have been able to testify?

11 A. He's never been a violent person and he's still not
12 a violent person. He had his issues and I think the
13 violent person in the situation was Ms. Crawley, Rachel
14 Crawley and...

15 Q. Did Tommy want you to testify -- did Mr. Bolus want
16 you to testify?

17 A. I don't recall exactly how it went down or what was
18 said at the time. But I know we were here and we didn't
19 testify. I know he wanted me to testify on his behalf
20 and I was here.

21 Q. He being Clark?

22 A. Yes.

23 Q. Did you ever hear Mr. Bolus mention anything about
24 his vacation plans?

25 A. He did.

Clark D. Thomas v State of S.C.
Teddy Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. What did he say about that?

2 A. I can't recall it specifically. He was getting
3 ready to go on vacation because we talked about it after
4 the trial that it seemed like he was in a rush to get the
5 trial done with. And I was under the impression that he
6 had a plea offer but wouldn't take it; when we were in
7 the hallway.

8 Q. Mr. Bolus told you that?

9 A. That's -- I mean I can't recall exactly what was
10 said so...

11 Q. Okay. And you said in your perception Ms. Crawley
12 was the violent one in the relationship?

13 A. Yes.

14 Q. Tell us a little bit about how she acted. Was she
15 calm, stable?

16 A. She was but I guess there was substances, drugs
17 involved and that's what made the situation bad.

18 Q. Okay.

19 A. And then she would I don't know if it was lack of
20 not getting them or not being able to get them at times
21 or whatever the case may be she flipped. Or maybe she
22 was up for two or three days and then...

23 Q. But in your time that you were around them did you
24 ever see her scared of him?

25 A. No. Even after the -- after he was arrested she was

Clark D. Thomas v State of S.C.
Teddy Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 not scared of him. She was still trying to get to him
2 and be with him.

3 Q. After he was arrested you witnessed her actually
4 attempt to contact him correct?

5 A. Yes, sir.

6 Q. When was that or tell us about that.

7 A. We were at Andolini's Pizza. I believe we were at
8 the beach that day and we went to Andolini's Pizza on
9 Folly Road. And we were all sitting there and she walked
10 inside and he was just like in shock.

11 He looked like a ghost; I think that was the first
12 time he'd seen her. She was looking at him and said I
13 want to hug you, I love you. My mom is outside. He had
14 an ankle bracelet on and he wasn't -- at the time he
15 wasn't allowed to be around her at all. And like he
16 didn't know what to do; he was just in shock.

17 Q. Okay. But did she appear scared of him?

18 A. Oh no, she wanted to -- she wanted him -- I love
19 you, I want to hug you right now, I want to be with you.
20 Very -- and I believe after that point too he started
21 receiving phone calls from her.

22 Q. Okay. Did you tell Mr. Bolus this information?

23 A. I don't recall really ever talking to Bolus about
24 it.

25 Q. Okay. What did Mr. Bolus ask you about the case do

Clark D. Thomas v State of S.C.
Teddy Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 you recall?

2 A. I don't recall.

3 Q. Okay. No further questions.

4 THE COURT: Cross-examination.

5 MS. WILSON: Thank you, Your Honor.

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Clark D. Thomas v State of S.C.
Teddy Martin-Cross-Examination by Ms. Wilson
December 8, 2014

CROSS-EXAMINATION

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2 BY MS. WILSON:

3 Q. Mr. Martin, it's your testimony that the victim and
4 Mr. Thomas had a violent relationship is that your
5 testimony?

6 A. They did.

7 Q. And you said that it was your perception that the
8 violence was fueled by drugs?

9 A. And Rachel because I've seen Mr. Thomas -- well,
10 I'll just answer the question.

11 Q. But you also gave testimony that the defendant you
12 didn't know him to be a violent person. You didn't know
13 Mr. Thomas to be a violent person is that correct? Is
14 that your testimony today?

15 A. He's not a violent person and wasn't a violent
16 person in his other relationships.

17 Q. Okay. So you're saying that the defendant is not a
18 violent person but you testified earlier today that Mr.
19 Thomas was also violent towards Ms. Crawley is that
20 correct?

21 A. No, it was he had no choice I mean it was just...

22 Q. So your testimony is that you have seen Mr. Thomas
23 be violent towards Ms. Crawley?

24 A. Not -- yes, after he was in -- he never initiated
25 it.

Clark D. Thomas v State of S.C.
Teddy Martin-Cross-Examination by Ms. Wilson
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1 MS. WILSON: Your Honor, I would just ask that you
2 ask Mr. or whoever is in the courtroom not to answer for
3 the witness because I can hear it in the background.

4 THE COURT: Who is answering?

5 MS. WILSON: I couldn't hear it but ---

6 UNIDENTIFIED SPEAKER: --- I apologize.

7 THE COURT: Get out of the courtroom.

8 THE DEPUTY: Step out, sir.

9 THE COURT: Get out of the courtroom now and don't
10 come back. Go.

11 UNIDENTIFIED SPEAKER: I apologize to the court.

12 THE COURT: Go.

13 [Whereupon, the individual exits the courtroom]

14 MS. WILSON: Thank you, Your Honor.

15 Q. [Ms. Wilson] Now Mr. Martin you talked about Ms.
16 Crawley's drug use. Mr. Thomas has also abused drugs is
17 that correct?

18 A. Yes.

19 Q. And would it be your testimony that the violence in
20 the relationship between Ms. Crawley and Mr. Thomas was
21 kind of mutual violence? Would you agree with that?

22 A. It was a...

23 Q. It was a back and forth between the two?

24 A. It was a weird violence. Like one minute they are
25 fighting and then one minute they are making love. It

Clark D. Thomas v State of S.C.
Teddy Martin-Cross-Examination by Ms. Wilson
December 8, 2014

1 was just like sometimes the violence it was almost -- I
2 don't know. It's a crazy relationship they did have.

3 Q. Thank you.

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Clark D. Thomas v State of S.C.
Teddy Martin-Redirect Examination by Mr. Shaffer
December 8, 2014

1 REDIRECT EXAMINATION

2 BY MR. SHAFFER:

3 Q. Do you recall if Mr. Thomas ever struck Ms. Crawley?

4 A. No, sir.

5 MS. WILSON: Objection, Your Honor, I don't recall
6 having any -- bringing up any issues regarding physical
7 abuse.

8 THE COURT: I'm sorry; what?

9 MS. WILSON: Your Honor, I would object to his
10 questions outside the scope of my cross-examination of
11 Mr. Martin.

12 THE COURT: Overruled. Go ahead.

13 Q. [Mr. Shaffer] Tell us what you meant about the
14 violence that Mr. Thomas exhibited towards her. Do you
15 mean physical violence, verbal violence; what do you mean
16 by violence that he exhibited?

17 A. I'm not sure.

18 Q. How was he violent?

19 A. He was violent in the fact that -- not like a -- he
20 was mad, angry, upset. She's locked herself in the room.
21 She took the keys, he can't go to work.

22 Q. Was he physically violent towards her?

23 A. I have never seen him physically violent toward her.
24 Never put his hands on her, never threw nothing at her
25 where I've seen her throw things at him.

Clark D. Thomas v State of S.C.
Teddy Martin-Redirect Examination by Mr. Shaffer
December 8, 2014

1 Q. She was physically violent towards him?

2 A. Yes, sir.

3 Q. Okay. No further questions.

4 THE COURT: Any recross?

5 MS. WILSON: Beg the court's indulgence, Your
6 Honor.

7 [Whereupon, Ms. Wilson reviews documents]

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Clark D. Thomas v State of S.C.
Teddy Martin-Recross-Examination by Ms. Wilson
December 8, 2014

1 RECROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Mr. Martin you testified just now that you've never
4 seen Mr. Thomas physically violent towards the victim.

5 Do you know anything about Mr. Thomas being arrested for
6 any assault towards the victim?

7 A. Do I know...

8 Q. Did you know that ---

9 A. --- yes ---

10 Q. --- he was arrested? Do you recall the resolution
11 of that?

12 A. No, I don't recall.

13 Q. But you were aware he was arrested for abuse of the
14 victim?

15 A. I was arrested -- I'm aware.

16 Q. You are aware he was arrested?

17 A. Yes.

18 Q. Thank you.

19 THE COURT: You may step down. Thank you very
20 much.

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23 THE COURT: Call your next witness.

24

25

Clark D. Thomas v State of S.C.
Crystal Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant would call Crystal
2 Martin.

3 [Whereupon, Ms. Martin comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please state your first and last
7 name in the microphone and spell your last name for the
8 record.

9 THE WITNESS: Crystal Martin, M-A-R-T-I-N.

10 - - - - -

11 CRYSTAL MARTIN,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SHAFFER:

16 Q. Good morning Ms. Martin. Where are you from?

17 A. Summerville.

18 Q. And you're married to Teddy Martin correct?

19 A. Yes.

20 Q. Are you familiar with Clark Thomas?

21 A. Yes.

22 Q. How are you familiar with him?

23 A. I met him through my husband.

24 Q. About how long did you know Clark Thomas before he
25 got locked up or before he went to prison?

Clark D. Thomas v State of S.C.
Crystal Martin-Direct Examination by Mr. Shaffer
December 8, 2014

- 1 A. I'm not sure exactly how long; a few years.
- 2 Q. Okay. Were you around then on a regular basis?
- 3 A. Yes.
- 4 Q. Were you around Rachel Crawley on a regular basis?
- 5 A. No.
- 6 Q. Did you ever see Clark interact with Rachel?
- 7 A. Very few times.
- 8 Q. Now while he -- while Clark was out on bond do you
- 9 recall going to Andolini's Pizza and running into Rachel
- 10 Crawley one day?
- 11 A. Yes.
- 12 Q. Did she appear scared of him?
- 13 A. No.
- 14 Q. Tell us a little bit about the incident.
- 15 A. We were sitting having lunch. Me and my husband
- 16 were in front of David and David looked behind us and she
- 17 was standing at a register paying for food and she
- 18 glanced over and saw him and then she walked over and
- 19 wanted to approach him.
- 20 And David was really scared and asked my husband
- 21 what do I do because he had the monitor on. She wanted
- 22 to speak to him and then she said her mom was outside and
- 23 she had to leave and then she left.
- 24 Q. And David is the same as saying Mr. Thomas correct?
- 25 A. Yes.

Clark D. Thomas v State of S.C.
Crystal Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. Okay. Have you ever seen Mr. Thomas physically
2 abuse Ms. Crawley?

3 MS. WILSON: Your Honor, I'm going to object. This
4 witness just testified that she doesn't know the victim
5 and that she hasn't seen them interact frequently.

6 THE COURT: I'll sustain the objection.

7 MS. WILSON: Thank you, Your Honor.

8 Q. [Mr. Shaffer] You had said that you had seen Ms.
9 Crawley. Am I correct in saying you saw Ms. Crawley
10 three or four times?

11 A. Correct.

12 Q. Okay. And were those around David?

13 A. Uh Huh.

14 Q. Have you ever seen in those three or four times were
15 they ever arguing?

16 A. Not that I recall.

17 Q. Okay. Prior to trial you met with Mr. Bolus is
18 that correct?

19 A. Yes, sir.

20 Q. What did you talk about? What did you tell him
21 about?

22 A. Well, I just saw him here. I didn't really -- I
23 don't recall what we exactly talked about.

24 Q. Okay. Did you ever offer to testify?

25 A. Yes.

Clark D. Thomas v State of S.C.
Crystal Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. What would you have said if you testified on his
2 behalf?

3 A. That he was -- I never saw him as a violent person.
4 What I did see of him and Rachel they were -- you know, I
5 never seen them physical or...

6 Q. And the amount of time that you saw Clark on his own
7 or David on his own, Mr. Thomas, you -- would you
8 characterize him as a good person?

9 A. Yes.

10 Q. So from what you knew he was a good person?

11 A. Yes, sir.

12 Q. Did you let him around your kids?

13 A. Yes sir, they call him Grandpa.

14 Q. What did Mr. Bolus tell you about whether or not --
15 or whether you should testify or not? Did he tell you
16 anything?

17 A. He said that I wasn't needed and that -- that was
18 about it.

19 Q. Okay.

20 MR. SHAFFER: Court's indulgence.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Shaffer confers with his client]

23 Q. [Mr. Shaffer] Do you recall Mr. Bolus telling you
24 that he had a plea deal, a plea offer?

25 A. I can't recall exactly what he was saying.

Clark D. Thomas v State of S.C.
Crystal Martin-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. Okay. No further questions.
2 THE COURT: Cross-examination?
3 MS. WILSON: Thank you, Your Honor.
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Clark D. Thomas v State of S.C.
Crystal Martin-Cross-Examination by Ms. Wilson
December 8, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Ms. Martin, it's your testimony today that you've
4 never witnessed Ms. Crawley and Mr. Thomas arguing or
5 getting physical with each other during the times that
6 you'd seen them together is that correct?

7 A. Yes, ma'am.

8 Q. You also were talking today about interactions with
9 Mr. Bolus. Is it your testimony that you spoke to Mr.
10 Bolus or you saw him in the courtroom during the trial?

11 A. I saw him in the hallway before trial.

12 Q. But you didn't speak to him?

13 A. No, I think we just kind of spoke in a group if I
14 recall correctly.

15 Q. He didn't speak to you ---

16 A. --- directly? No, I don't remember that.

17 Q. Okay. Thank you.

18 THE COURT: Any redirect?

19 MR. SHAFFER: None, Your Honor.

20 THE COURT: Okay. Ms. Martin you may step down.
21 Thank you very much.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness.

25

Clark D. Thomas v State of S.C.
Joel Longenecker-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant calls Joel Longenecker.

2 THE COURT: I'm sorry; what's the name?

3 MR. SHAFFER: Joel Longenecker.

4 THE COURT: Okay.

5 [Whereupon, Mr. Longenecker comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: State your first and last name into
9 the microphone and spell your last name for the record.

10 THE COURT: Before we get started on his testimony
11 we're going to take about a ten minute break. All right.

12 MR. SHAFFER: Thank you, Your Honor.

13 [Whereupon, court is in recess from 12:10 p.m. to
14 12:15 p.m.]

15 THE COURT: Are you ready Mr. Shaffer?

16 MR. SHAFFER: Yes, Your Honor.

17 THE COURT: Please proceed.

18 MR. SHAFFER: Thank you, Your Honor.

19 - - - - -

20 JOEL LONGENECKER,

21 Having been first duly sworn,

22 Was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SHAFFER:

25 Q. Mr. Longenecker where are you from sir?

Clark D. Thomas v State of S.C.
Joel Longenecker-Direct Examination by Mr. Shaffer
December 8, 2014

1 A. Folly Beach, but originally from Pennsylvania,
2 Redding.

3 Q. Okay. About how long have you lived at Folly
4 Beach?

5 A. For about 20 years.

6 Q. And you know Clark Thomas?

7 A. Yes. It's been a while because -- I have a head
8 injury, which makes it very hard for me to remember
9 things.

10 Q. Okay. So you've had a head injury?

11 A. Yes sir, in the past.

12 Q. Do you know when you had the head injury?

13 A. It was when I used to live in Greenville.

14 Q. Okay.

15 A. That was a really long time ago. I mean that was
16 before I knew Thomas. I knew Thomas and when I knew
17 Thomas he was a very nice guy. He lived right by Bert's
18 and his daughter was there and John was there and John
19 knew how to play the guitar.

20 Q. And you knew Rachel too right?

21 A. I tried to stay away from her.

22 Q. Okay. Why did you try to stay away from her?

23 A. Because I noticed that the father would get violent
24 when she was around and she would get very violent and
25 stuff like that.

Clark D. Thomas v State of S.C.
Joel Longenecker-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. Okay.

2 A. And I don't remember a taser. All I remember is a
3 taser box.

4 Q. Okay. What do you mean by a taser box?

5 A. It was like one of those old fashioned just like an
6 AM FM wood box with a positive and negative wires on it.
7 That's it.

8 Q. Okay. And what was that -- where was that taser
9 box located at?

10 A. In the bedroom. And she liked it.

11 Q. What do you mean she liked it?

12 A. She would get aroused.

13 Q. So she would shock herself to get aroused?

14 A. Sometimes. She's done that in front of me sexually.
15 Not like we had sex but like you know on a female's chest
16 as appropriate.

17 Q. So she would shock herself on her chest?

18 A. And down there.

19 Q. Okay.

20 A. I don't want to say that out of respect.

21 Q. Do you remember Rachel or Ms. Crawley attacking
22 Clark?

23 A. I can't vouch for that.

24 Q. Okay.

25 A. Because I can't say who hit who because like I said

Clark D. Thomas v State of S.C.
Joel Longenecker-Direct Examination by Mr. Shaffer
December 8, 2014

1 my memory is shot.

2 Q. Okay.

3 A. I can't even remember what happened last week
4 really. That's just because I think it's the front left
5 lobe or front right lobe was the affected part in my
6 brain.

7 Q. Okay.

8 A. That's off the case; I'm sorry.

9 Q. But you do remember Rachel Crawley shocking herself
10 to get sexually aroused?

11 A. Yes.

12 Q. Okay.

13 A. It was awkward, very awkward.

14 Q. No further questions.

15 THE COURT: Cross-examination?

16 MS. WILSON: Beg the court's indulgence, Your
17 Honor.

18 [Whereupon, Ms. Wilson reviews documents]
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Clark D. Thomas v State of S.C.
Joel Longenecker-Cross-Examination by Ms. Wilson
December 8, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Good afternoon Ms. Longenecker.

4 A. Thank you, ma'am. Good afternoon to you.

5 Q. So is your testimony today that you thought Mr.

6 Thomas was a nice guy but that he was violent when Ms.

7 Crawley was around?

8 A. They would both yell at each other and say profanity

9 words. She would start and arouse a fight and then he

10 would just like a regular person just tell her to be -- I

11 don't want to swear in this room, ma'am but ---

12 Q. --- okay that's fine, thank you.

13 A. Yes, ma'am.

14 Q. You also testified that you didn't recall Rachel

15 attacking the defendant, that's correct?

16 A. They were both attacking each other like one would

17 push the other; you know how people get. It always takes

18 one to start the other fighter.

19 Q. But you testified when Mr. Shaffer asked you that

20 you didn't recall Ms. Crawley ---

21 A. --- I can't remember actually anything going on.

22 Q. So you don't recall anything going on?

23 A. I can't even remember the policeman in front of the

24 house to tell you the truth. I mean that was six years

25 ago you know. Both my grandpas died; I mean I had a lot

Clark D. Thomas v State of S.C.
Joel Longenecker-Cross-Examination by Ms. Wilson
December 8, 2014

1 in my own family that happened you know.

2 Q. Okay.

3 A. I mean I'm sorry but...

4 Q. No, it's fine. I'm sorry you had that injury.

5 Thank you.

6 THE COURT: Redirect?

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Clark D. Thomas v State of S.C.
Joel Longenecker-Redirect Examination by Mr. Shaffer
December 8, 2014

1 REDIRECT EXAMINATION

2 BY MR. SHAFFER:

3 Q. Mr. Longenecker do you recall writing an affidavit
4 and ---

5 MS. WILSON: --- Your Honor I'm going to object.
6 Not only is this ---

7 THE COURT: --- I'll sustain the objection. She
8 hadn't gone into any affidavits. She asked I think two
9 questions; two questions or three questions?

10 MS. WILSON: Three questions, Your Honor.

11 THE COURT: Three questions. Okay, you're limited
12 to those three questions now.

13 MR. SHAFFER: Thank you, Your Honor.

14 Q. [Mr. Shaffer] Do you recall -- you had mentioned
15 that there was a cop. You don't recall the cop. What do
16 you mean you don't recall the cop?

17 MS. WILSON: Your Honor, I didn't ask him any
18 questions about any cops. This was in his rambling about
19 how he didn't recall anything.

20 MR. SHAFFER: He mentioned it. I'm just...

21 THE COURT: He said he didn't -- he said he had a
22 bad memory. He didn't even remember the cop. It wasn't
23 in response to any question.

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

Clark D. Thomas v State of S.C.
Joel Longenecker-Redirect Examination by Mr. Shaffer
December 8, 2014

1 MS. WILSON: Nothing further.

2 THE COURT: You may step down. Thank you very
3 much.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: How many more witnesses do you have?

7 MR. SHAFFER: Your Honor, we have five more
8 witnesses, Your Honor.

9 THE COURT: Call your next witness.

10 MR. SHAFFER: Actually seven more witnesses with
11 the applicant.

12 THE COURT: I'm sorry; what?

13 MR. SHAFFER: Seven more witnesses with the
14 applicant.

15 THE COURT: All right. Call your witness.

16 MR. SHAFFER: Thank you, Your Honor.

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Clark D. Thomas v State of S.C.
Thomas Harbeson-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant would call Kristin Boyer
2 -- I apologize Your Honor, Randy Harbeson.

3 THE COURT: Randy Harbeson?

4 MR. SHAFFER: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. WILSON: Your Honor, I believe this is the
7 gentleman that you excused from the courtroom earlier.

8 THE COURT: This is what?

9 MS. WILSON: This is the person who you kicked out
10 of the courtroom earlier.

11 THE COURT: What's he going to testify to?

12 MR. SHAFFER: Your Honor, he was one of the
13 character witnesses that should have been there. He also
14 saw -- my belief is that he saw Rachel Crawley physically
15 assault Clark Thomas.

16 THE COURT: Okay. Go ahead and call him.

17 MR. SHAFFER: Thank you, Your Honor.

18 [Whereupon, Mr. Harbeson comes forward]

19 [Whereupon, the witness is duly sworn by the Clerk
20 of Court]

21 CLERK OF COURT: State your first and last name in
22 the microphone and spell your last name for us for the
23 record.

24 THE WITNESS: Thomas Harbeson. H-A-R-B, as in Bob,
25 E-S-O-N.

Clark D. Thomas v State of S.C.
Thomas Harbeson-Direct Examination by Mr. Shaffer
December 8, 2014

1 THOMAS HARBESON,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. SHAFFER:
6 Q. Mr. Harbeson, you also go by Randy is that correct?
7 A. That's correct.
8 Q. Where are you from sir?
9 A. Charleston.
10 Q. What do you do for a living?
11 A. I wait tables at the Boathouse restaurant on Isle of
12 Palms.
13 Q. And you know the applicant Clark Thomas?
14 A. Yes.
15 Q. How do you know him?
16 A. We've known each other for I guess almost 20 years
17 now, 15 to 17 years; somewhere in there. We play guitar
18 together. We did work together. He did electrical work
19 on my house. And we met at Coastal Release Center over
20 on Leeds Avenue.
21 Q. Okay. And you're friends is that correct?
22 A. Yes.
23 Q. Okay. What were you incarcerated for?
24 A. Marijuana.
25 THE COURT: We don't need to go into all that,

Clark D. Thomas v State of S.C.
Thomas Harbeson-Direct Examination by Mr. Shaffer
December 8, 2014

1 okay.

2 MR. SHAFFER: Thank you, Your Honor.

3 THE COURT: I mean you said you're calling him for
4 a character witness and saw an assault. Let's get to the
5 point okay.

6 MR. SHAFFER: Thank you, Your Honor.

7 Q. [Mr. Shaffer] Now have you ever seen -- do you know
8 Rachel Crawley as well?

9 A. Yes.

10 Q. Have you ever seen Rachel Crawley around Mr. Thomas?

11 A. Yes.

12 Q. Have you ever seen Rachel Crawley assault him?

13 A. Yes.

14 Q. Tell us about how that happened and where that
15 occurred.

16 A. I was called by David and he called me to come to
17 his house because there was some issue between the two of
18 them. By the time I got there she was punching him and
19 going crazy on him and so I said I was going to leave
20 because it was an uncomfortable situation.

21 And she proceeded to tell me that she didn't want to
22 be there and he asked me if I would give her a ride to
23 Adams Run to her mother's house. And I said okay because
24 it looked very volatile.

25 Q. Was he hitting her or was she just hitting him?

Clark D. Thomas v State of S.C.
Thomas Harbeson-Direct Examination by Mr. Shaffer
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- 1 A. No, he was not hitting her.
- 2 Q. Okay.
- 3 THE COURT: I'm sorry, what did you say?
- 4 THE WITNESS: He was not hitting her.
- 5 THE COURT: Okay.
- 6 Q. [Mr. Shaffer] Have you ever seen him hit her?
- 7 A. No.
- 8 Q. Is that the only time you ever saw her physically
- 9 assault him?
- 10 A. No.
- 11 Q. Tell us about another time.
- 12 A. We were over having a guitar session at the house.
- 13 I don't know what it was over -- I think it was over the
- 14 previous guitar, John who is now deceased. And he was
- 15 upset with their -- she was sleeping with him and it was
- 16 verbal and then she smacked him.
- 17 Q. Okay. Have you ever -- were there any other times
- 18 that you saw Rachel assault him?
- 19 A. Not that I can think of.
- 20 Q. And the one where she smacked him when you said it
- 21 was verbal beforehand did Mr. Thomas do anything to
- 22 threaten her in any way?
- 23 A. Not a physical threat.
- 24 Q. Okay.
- 25 A. They were arguing like lovers do.

Clark D. Thomas v State of S.C.
Thomas Harbeson-Direct Examination by Mr. Shaffer
December 8, 2014

1 Q. Had you been called to trial would you have
2 testified to this?

3 A. I'm sorry?

4 Q. Had you been called to trial at the sentencing
5 hearing would you have testified to this?

6 A. Yes.

7 Q. The same way you're testifying now?

8 A. Yes.

9 Q. Did anyone ever contact you to testify?

10 A. No.

11 THE COURT: Mr. Shaffer, let me just ask you a
12 question. I thought you were offering this for the
13 statute for a reduction in time. How would this have
14 been relevant at trial?

15 MR. SHAFFER: And Your Honor I ---

16 THE COURT: --- I mean how would it have possibly
17 been relevant at the trial for the charges he was charged
18 with is what I've heard so far about the two slaps or the
19 two hits; however you want to determine it -- describe
20 it; excuse me.

21 MR. SHAFFER: Your Honor, I think it would have
22 been relevant to the sentencing hearing.

23 THE COURT: All that was brought out at the
24 sentencing. All the -- I think the defendant's mother
25 and the defendant's who?

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1 LAW CLERK: The mother and a couple of friends I
2 believe.

3 THE COURT: I mean all of that was brought out at
4 sentencing.

5 MR. SHAFFER: Yes, Your Honor.

6 THE COURT: About he wasn't violent and she was
7 violent. So what does it have to do now with -- I will
8 accept it on the issue of whether his sentence should be
9 changed or not changed but whether he should be eligible
10 after what percentage?

11 MR. SHAFFER: Twenty-five percent ---

12 THE COURT: --- twenty-five percent. I'll accept
13 it for that but I don't see where it has anything to do
14 with ineffective assistance of counsel. Please educate
15 me if I'm wrong.

16 MR. SHAFFER: And Your Honor, I believe none of the
17 questions I just asked specifically about that have
18 anything to do with it. The character evidence there was
19 an allegation that he was ineffective ---

20 THE COURT: --- that's fine. You haven't gotten to
21 the character evidence yet.

22 MR. SHAFFER: Yes, Your Honor. I'll ---

23 THE COURT: --- you were asking him will you
24 testify to this at trial and I'm saying I don't know how
25 it would be relevant at trial.

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1 MR. SHAFFER: Yes, Your Honor. I apologize. I'll
2 get to the character evidence.
3 THE COURT: All right.
4 Q. [Mr. Shaffer] In the time that you've know Clark how
5 would you describe him?
6 A. He's always been relaxed. A good friend; always
7 been there for me even bending over backwards to anything
8 that I've ever needed from him.
9 Q. Okay. Is he generally a good person?
10 A. Yes.
11 Q. Okay. Did he have a violent character -- I mean
12 was he violent?
13 A. I've never known him to be violent.
14 Q. Okay. If you were asked would you have presented
15 that at trial?
16 A. Yes.
17 Q. Thank you. No further questions.
18 THE COURT: Okay. Cross-examination?
19 MS. WILSON: Just briefly Your Honor, thank you.
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Clark D. Thomas v State of S.C.
Thomas Harbeson-Cross-Examination by Ms. Wilson
December 8, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Mr. Harbeson, were you ever aware that Mr. Thomas
4 was convicted of criminal domestic violence against Ms.
5 Rachel Crawley?

6 A. You mean what he's in jail for now?

7 Q. No, prior to that.

8 A. No.

9 Q. Thank you.

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

11 THE COURT: Okay. You may step down. Thank you
12 very much. You're welcome to stay if you'll keep your
13 mouth shut.

14 THE WITNESS: I will.

15 THE COURT: Can you do that?

16 THE WITNESS: Yes sir, I can.

17 THE COURT: Okay. You're welcome to stay in the
18 courtroom.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 THE COURT: Call your next witness.
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Clark D. Thomas v State of S.C.
Cecil Terry-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant would call Cecil Terry.

2 THE COURT: I'm sorry, who?

3 MR. SHAFFER: Cecil Terry.

4 THE COURT: Cecil Terry?

5 MR. SHAFFER: Yes, Your Honor.

6 [Whereupon, Mr. Terry comes forward]

7 [Whereupon, the witness is duly sworn by the Clerk
8 of Court]

9 CLERK OF COURT: Please state your first and last
10 name into the microphone and spell your last name for the
11 record.

12 THE WITNESS: Cecil Terry, T-E-R-R-Y.

13 - - - - -

14 CECIL TERRY,

15 Having been first duly sworn,

16 Was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SHAFFER:

19 Q. Mr. Terry how do you know Rachel Crawley?

20 A. She's my stepdaughter.

21 Q. Okay. And how do you know Clark Thomas?

22 A. Because he used to be at the house. He lived with
23 us for a long time.

24 Q. Okay. I have one matter to talk to you about. At
25 one point Rachel was arrested for assaulting you is that

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- 1 correct?
- 2 A. No.
- 3 Q. Okay. At one point the cops were called because
- 4 she was violent?
- 5 A. Yes.
- 6 Q. Do you recall whether she ever hit Clark? Have you
- 7 ever seen her hit Clark?
- 8 A. Yes.
- 9 Q. Okay. Tell us about the context of when she hit
- 10 Clark. What was she ---
- 11 A. --- she was getting the crap beat out of her. She
- 12 called and asked if we would come and pick her up. We
- 13 come there. There was an indication between both of them
- 14 that they had been into a major fight. He said something
- 15 to her and she reached over and slapped him.
- 16 Q. Okay. At the time where was he at?
- 17 A. He was walking outside, inside; he was in the living
- 18 room at the time.
- 19 Q. Okay. At the time was he assaulting her at the
- 20 time she hit him?
- 21 A. Not at the time, no, just prior to that though.
- 22 There were marks on her.
- 23 Q. There were marks on him as well?
- 24 A. No.
- 25 Q. You testified that he was beating -- that they were

Clark D. Thomas v State of S.C.
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1 beating the crap out of each other is that what ---

2 A. -- I didn't say each other. I said he was beating
3 her.

4 Q. Okay. You said it was a major fight?

5 A. Any fight where you hit a girl is a major fight I
6 would think. I don't know if you feel that way but I
7 feel that way.

8 Q. Were you present at the fight?

9 A. No, I got there right after. That's why we came
10 there because she was crying for us to come and get her.

11 Q. And you said that you were just talking -- or that
12 he was talking to you -- or talking and she reached
13 around and hit him?

14 A. Yes. But you're trying to make that look like it's
15 her fault. There is more to it than this and I can't
16 explain in just a couple of seconds with the questions
17 that you're asking me.

18 Q. No further questions.

19 THE COURT: You're welcome to explain any answer
20 you want to explain, okay.

21 THE WITNESS: I am?

22 THE COURT: Yes, sir.

23 THE WITNESS: Okay. You got to look at when he
24 met Rachel she was a minor. She was underage. He was
25 twice her age.

Clark D. Thomas v State of S.C.
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1 MR. SHAFFER: Your Honor, we would just object to
2 this.

3 THE COURT: I understand, but he's entitled to
4 explain his answer.

5 MR. SHAFFER: Thank you, Your Honor.

6 THE WITNESS: Through their whole time together it
7 was a violent relationship both of them. But the stuff
8 about the taser and stuff like that she worked with him
9 an electric contractor where she was deathly afraid of
10 playing with electrics. So why would she enjoy a taser.

11 There were several things that he got her corrupted
12 into which was the needles, the heroin; all the stuff
13 like that. He brought her from underage to the age she
14 is now taking away her life.

15 Now he's like a puppeteer. He controls everybody
16 like he is controlling his lawyer. His other lawyer said
17 it best when he brought the opening statements to court
18 what it was. Now these people coming in here saying that
19 they know him nobody ---

20 THE COURT: --- that's enough.

21 THE WITNESS: Thank you, sir.

22 THE COURT: Now the court has allowed that
23 testimony because your position is its ineffective
24 assistance of counsel for not calling this witness. I
25 allowed that testimony for the record to show he really

Clark D. Thomas v State of S.C.
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1 wasn't a very friendly witness to your client, okay.

2 MR. SHAFFER: Yes, Your Honor. Thank you.

3 THE COURT: Call your next witness. I assume y'all
4 don't have any cross-examination.

5 MS. WILSON: Your Honor, I do have questions.

6 THE COURT: All right, go ahead.

7 MS. WILSON: Thank you, Your Honor.

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Clark D. Thomas v State of S.C.
Cecil Terry-Cross-Examination by Ms. Wilson
December 8, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Mr. Terry, you talked about witnessing violence in
4 the relationship between Ms. Crawley and Mr. Thomas.

5 What type of violence did you witness?

6 A. Several violence where he is controlling like he is
7 today. He's controlling his lawyer. He controlled his
8 last lawyer in the court. He's always wanting his way.
9 He's controlling his family, his mom taking money. There
10 are so many ways that he controls people that people
11 don't see that.

12 I told him one time to leave the house because they
13 were in this altercation and it hadn't got violent yet
14 and I told him I said this is an ugly relationship. You
15 guys you're going to fight, he's going to end up spending
16 20 years in the jail because he hits her; that came true.

17 And he's still controlling everybody. And what I
18 can't understand is if he gets off an early case why
19 can't the Judge entertain the consecutive 10 and 20
20 together. Why can't he separate those make him do the
21 full 30?

22 Q. Okay. Now did you ever witness any physical
23 injuries on Rachel Crawley as a result of Mr. Thomas'
24 abuse?

25 A. Yes and they are still visible today.

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Cecil Terry-Cross-Examination by Ms. Wilson
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1 Q. And this violence that you are talking about today
2 between Mr. Thomas and Ms. Crawley was it usually one-
3 sided meaning that Mr. Thomas was violent towards Rachel
4 Crawley?

5 A. No, I can't say that. I'm saying they had a bad
6 relationship together.

7 Q. Thank you.

8 THE COURT: Any redirect?

9 MR. SHAFFER: Nothing, Your Honor.

10 THE COURT: You may step down. Thank you very
11 much.

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

14 THE COURT: Call your next witness.
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Clark D. Thomas v State of S.C.
Kristen Boyer-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant would call Kristen Boyer
2 to the stand.

3 THE COURT: Kristen Moyer?

4 MR. SHAFFER: Boyer.

5 THE COURT: Boyer?

6 [Whereupon, Ms. Boyer comes forward]

7 [Whereupon, the witness is duly sworn by the Clerk
8 of Court]

9 CLERK OF COURT: State your first and last name
10 into the microphone and spell your last name for the
11 record.

12 THE WITNESS: Kristen Boyer, B-O-Y-E-R.

13 - - - - -

14 KRISTEN BOYER,

15 Having been first duly sworn,

16 Was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SHAFFER:

19 Q. Ms. Boyer, how do you know Clark Thomas?

20 A. He's my dad.

21 Q. Okay. You testified at the trial here correct?

22 A. Yes, sir.

23 Q. Tell us a little bit about your father. Do you
24 think he's a good person?

25 A. My father, we had a very close relationship until he

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Kristen Boyer-Direct Examination by Mr. Shaffer
December 8, 2014

1 met Rachel. And he had a very close relationship with
2 his entire family. And it seemed like as the time went
3 on we all starting fading away. He spent more time with
4 her than with me. She didn't want him spending time with
5 me or pretty much his family.

6 She didn't want him to go to work by himself. She
7 wanted to be there. If she wasn't there she wanted to be
8 on the phone with him the entire time. And I even wrote
9 him letters explaining to him that I would want to be
10 more in his life and that I felt that Rachel was becoming
11 more important than me and he let me know that according
12 to God ---

13 MS. WILSON: --- Your Honor, I'm going to object.
14 I'm not sure how this is relevant to Mr. Thomas'
15 character.

16 THE COURT: I'll sustain the objection. Get to why
17 we're here, okay. I understand she wants to speak for
18 her dad and that's fine; I appreciate that. But we're
19 here on ineffective assistance of counsel on what
20 testimony would where there is a reasonable probability
21 that the trial results would have been different based on
22 the failure of the lawyer to call these witnesses. So
23 far I haven't heard a whole lot.

24 MR. SHAFFER: Thank you, Your Honor.

25 THE COURT: We're not here to retry this case.

Clark D. Thomas v State of S.C.
Kristen Boyer-Direct Examination by Mr. Shaffer
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1 MR. SHAFFER: Yes, Your Honor.

2 Q. [Mr. Shaffer] Mr. Bolus represented him at trial
3 correct?

4 A. Yes, sir.

5 Q. Prior to the trial did you ever speak to Mr. Bolus
6 about what his defense was going to be?

7 A. We spoke personal. He was representing my mother
8 for a case that was ---

9 MS. WILSON: --- Your Honor, I'm going to object.
10 I'm not sure how that is relevant in this case.

11 THE COURT: I'll sustain the objection.

12 Q. [Mr. Shaffer] Did he ever specifically talk to you
13 about your -- did he ever specifically talk to you about
14 the substance of your testimony?

15 A. That was during that time he spoke to me about my
16 father's case.

17 Q. Okay. What did he tell you about the substance of
18 your testimony?

19 A. While he was assisting with that I offered him
20 evidence that Rachel was recorded on tape and I had many
21 tapes and many things I wanted to say. He told me they
22 were not necessary; he would not accept them.

23 He pretty much said that there is nothing that can
24 be done to save him, that it was a lost cause. He was
25 selfish and things of that sort. But he was not there

Clark D. Thomas v State of S.C.
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1 for that reason. It was...

2 Q. Okay. Do you ever recall Ms. Crawley assaulting
3 you?

4 A. Me? Yes, sir.

5 MS. WILSON: Objection, Your Honor.

6 THE COURT: I'll sustain the objection. What does
7 that have to do with anything?

8 MR. SHAFFER: Your Honor, it ---

9 THE COURT: --- we're not here to try Ms. Crawley
10 as a bad person, okay.

11 MR. SHAFFER: Yes, Your Honor, I understand.

12 THE COURT: Okay.

13 MR. SHAFFER: The one thing I need to get to ---

14 THE COURT: --- well, get to it. Whatever you
15 think is relevant get to it.

16 MR. SHAFFER: Thank you, Your Honor.

17 Q. [Mr. Shaffer] As a result of that incident the Folly
18 Beach police arrived correct?

19 MS. WILSON: Your Honor, I'm still going to object
20 particularly because I think that this testimony is
21 supposed to be with regard to whether or not he would be
22 eligible for early parole. But the State statute
23 specifically states that it has to be abuse suffered by
24 the defendant at the hands of the victim. And if Ms.
25 Boyer here was the victim of any assault by the victim,

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Kristen Boyer-Direct Examination by Mr. Shaffer
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1 that is not relevant.

2 THE COURT: Where are you headed?

3 MR. SHAFFER: Your Honor ---

4 THE COURT: --- I don't know where you are headed.

5 MR. SHAFFER: Your Honor, I'm getting somewhere
6 that is not related to that claim. I just can't get to
7 it without answering a few preliminary questions. Your
8 Honor, it's related to whether impeachment evidence
9 should have been ---

10 THE COURT: --- well then get to it, okay.

11 MR. SHAFFER: Thank you, Your Honor.

12 THE COURT: Please do.

13 MR. SHAFFER: I apologize, Your Honor.

14 Q. [Mr. Shaffer] When the police arrived at the scene
15 do you recall that she was tased?

16 A. Yes, sir.

17 Q. Okay. What did she tell the police officers after
18 she had been tased?

19 A. She laughed and asked them to do it again.

20 Q. Okay. And at trial she testified that she had
21 never been tased other than by ---

22 THE COURT: --- I'm sorry; what did she say the
23 answer to the taser -- I didn't hear. What did you say;
24 I'm sorry.

25 THE WITNESS: When the police arrived at the house

Clark D. Thomas v State of S.C.
Kristen Boyer-Direct Examination by Mr. Shaffer
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1 she was acting hysterical. She was uncontrollable and
2 the police ---

3 THE COURT: --- she was acting hysterical when the
4 police got there?

5 THE WITNESS: Yes sir, that's in the police report.

6 THE COURT: Okay. Thank you. I didn't hear you.
7 Thank you very much.

8 Q. [Mr. Shaffer] And the police officers tased her?

9 A. Yes, sir.

10 Q. Okay.

11 THE COURT: When did all this occur? I mean what
12 timeframe are we talking about?

13 Q. [Mr. Shaffer] Do you recall the timeframe?

14 A. I believe it was 2005 or 2006.

15 Q. It was prior to the trial ---

16 A. --- 2006.

17 Q. Is that correct?

18 A. I believe maybe -- I don't have a copy in front of
19 me.

20 Q. It was prior to the trial?

21 A. Yes, sir.

22 Q. Okay. And her response to the taser was what?

23 A. She laughed and asked them to do it again.

24 Q. Okay. At the trial she testified that the only
25 time she had ever been tased was by your father is that

Clark D. Thomas v State of S.C.
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1 correct?

2 A. Yes, sir.

3 Q. Okay. Do you recall Ms. Crawley trying to cause a
4 motor vehicle accident while you were in the car with Mr.
5 Thomas?

6 MS. WILSON: Your Honor, I would object to
7 relevance.

8 MR. SHAFFER: It goes to the CDV, Your Honor.

9 THE COURT: Pardon?

10 MR. SHAFFER: It goes to the CDV. If she's trying
11 to kill him in a car I think that would qualify as a CDV.

12 THE COURT: Was the defendant in the car?

13 MR. SHAFFER: Yes, Your Honor.

14 THE COURT: Go ahead.

15 Q. [Mr. Shaffer] Do you recall an incident where you
16 were riding with the applicant Mr. Thomas, your father
17 and Ms. Crawley in a vehicle and she grabbed the steering
18 wheel?

19 A. Yes, sir.

20 Q. She jerked the steering wheel off the road is that
21 correct?

22 A. We were on a bridge I believe or some road with a
23 concrete wall to our right. And I believe something he
24 said maybe made her jealous; I don't remember exactly
25 what it was but I know she did grab the steering wheel

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Kristen Boyer-Direct Examination by Mr. Shaffer
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1 and the car did swerve towards the wall. He gained
2 control of the vehicle. She then said -- I can't
3 remember ---

4 MS. WILSON: --- objection, Your Honor. Your
5 Honor, this testimony is not relevant. She doesn't even
6 know what was said in the course of the conversation.

7 THE COURT: Well she just said she grabbed the
8 steering wheel. I haven't heard what happened when she
9 actually grabbed it. Mr. Shaffer?

10 Q. [Mr. Shaffer] What happened after she grabbed the
11 steering wheel?

12 A. We swerved and almost hit the wall. My father
13 gained control of the vehicle.

14 Q. Where were you sitting?

15 A. I was in the backseat.

16 Q. From your perception did it appear like she was
17 trying to cause a vehicle accident?

18 A. Yes, sir.

19 THE COURT: So you're talking about attempted CDV
20 now is that where you're headed?

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: Okay.

23 Q. [Mr. Shaffer] Have you ever witnessed other times
24 where your father was assaulted by Ms. Crawley?

25 A. I cannot. I know there have been times that objects

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Kristen Boyer-Direct Examination by Mr. Shaffer
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1 have been thrown in his direction.
2 Q. Okay. So you can't recall specifics?
3 A. Um...
4 Q. It's okay.
5 MR. SHAFFER: Court's indulgence.
6 [Whereupon, Mr. Shaffer confers with his client]
7 MR. SHAFFER: No further questions.
8 THE COURT: Cross-examination?
9 MS. WILSON: Yes, Your Honor.
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Clark D. Thomas v State of S.C.
Kristen Boyer-Cross-Examination by Ms. Wilson
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1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Just to start it off have you recently been married?

4 Maybe not recently but have you been married since trial?

5 A. Yes.

6 Q. Okay. And what was your former last name?

7 A. Thomas.

8 Q. Okay. So now you are now Kristen Boyer is that
9 correct?

10 A. Boyer, yes.

11 Q. Boyer, thank you. Kristen, are you referring to any
12 documents up there to assist you in your testimony?

13 A. These are just my personal notes.

14 MS. WILSON: Your Honor, I would just move to
15 strike her testimony based on the fact that Mr. Shaffer
16 hasn't allowed the victim to refresh her recollection
17 based on any notes or any statements that she made prior
18 to ---

19 THE COURT: --- I'll let you review the notes. Why
20 don't you review the notes and cross-examine her on the
21 notes.

22 MS. WILSON: Thank you.

23 THE COURT: Since she's been using them to testify
24 I'll let you review them, okay. If you want to cross-
25 examine her on the notes please feel free. Your motion

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1 to strike the testimony is denied.

2 MS. WILSON: Thank you. Your Honor, I just beg the
3 court's indulgence for the opportunity to review the
4 notes.

5 THE COURT: Yes, ma'am.

6 MS. WILSON: Thank you.

7 [Whereupon, Ms. Wilson reviews documents]

8 [Whereupon, Ms. Wilson confers with Mr. Bolus]

9 MS. WILSON: Your Honor, I'm going to move to --
10 I'm going to once again move to strike her testimony
11 based on these notes because the notes reflect that they
12 are Mr. Thomas' notes and his daughter is testifying
13 based on notes that he presented.

14 THE COURT: You can cross-examine her on that,
15 okay. I'm not going to strike her testimony, okay.

16 MS. WILSON: Thank you.

17 THE COURT: But you're welcome to impeach her with
18 the notes if you so choose okay.

19 MS. WILSON: Thank you, Your Honor.

20 Q. [Ms. Wilson] So Ms. Boyer I have these notes that
21 you were referring to in your testimony. So you referred
22 to these notes in your testimony is that correct?

23 A. Today?

24 Q. Yes?

25 A. Yes, ma'am.

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Kristen Boyer-Cross-Examination by Ms. Wilson
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1 Q. And you agree that these notes were not prepared by
2 you is that correct?

3 A. Most of what I said since I haven't really looked at
4 anything but has gone by memory.

5 Q. Okay. But what I'm asking you is the notes that
6 you were referring to they were prepared by someone else
7 is that correct?

8 A. Yes.

9 Q. And you would agree that they were prepared by your
10 father is that correct?

11 A. I cannot say that.

12 Q. Okay. Well, I'm going to hand them back to you and
13 I would just like for you to read this first line right
14 here [indicates] starting at this part right here, number
15 two.

16 [Whereupon, the witness is shown document]

17 A. Boyer, Kristen
18 South Carolina 29169 in Lexington County
19 Boyer is my daughter and as required because she can
20 testify to the following facts.

21 Q. So based off of that it would appear as if your
22 father presented or I guess drafted those notes is that
23 correct?

24 A. The reason behind the notes I get very nervous ---

25 Q. --- that's not really my question here. It appears

Clark D. Thomas v State of S.C.
Kristen Boyer-Cross-Examination by Ms. Wilson
December 8, 2014

1 that your father prepared those notes and presented to
2 you is that correct?

3 A. Yes, ma'am.

4 Q. Thank you.

5 MS. WILSON: Beg the court's indulgence, Your
6 Honor.

7 THE COURT: Yes, ma'am.

8 [Whereupon, Ms. Wilson reviews documents]

9 MS. WILSON: Your Honor, at this time the State
10 would move to have these notes entered into as State's
11 exhibit 1.

12 THE COURT: I'm sorry; what?

13 MS. WILSON: The State would like to admit these
14 notes that Ms. Boyer was referring to as State's exhibit
15 1.

16 THE COURT: Any objection?

17 MR. SHAFFER: I don't know why exactly we're
18 admitting them but...

19 MS. WILSON: Well, Your Honor, because the
20 substance ---

21 THE COURT: --- do you have an objection? Do you
22 have a legal objection?

23 MR. SHAFFER: Your Honor, may I review them
24 briefly?

25 THE COURT: Pardon?

Clark D. Thomas v State of S.C.
Kristen Boyer-Cross-Examination by Ms. Wilson
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1 MR. SHAFFER: Yes, Your Honor, hearsay, relevance,
2 403, foundation as well.

3 THE COURT: Overruled.

4 MS. WILSON: Thank you, Your Honor. I'd ask the
5 Clerk to mark it as State's exhibit 1.

6 [Whereupon, State's exhibit number 1 is marked by
7 the court reporter]

8 [Whereupon, State's exhibit number 1 is entered into
9 evidence by the court]

10 MS. WILSON: Nothing further from the State, Your
11 Honor.

12 THE COURT: Any redirect?
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Clark D. Thomas v State of S.C.
Kristen Boyer-Redirect Examination by Mr. Shaffer
December 8, 2014

1 REDIRECT EXAMINATION

2 BY MR. SHAFFER:

3 Q. What was the purpose behind the notes?

4 A. I get very nervous in front of people. And there
5 are things that on the back that actually when I came up
6 here was stuff I scribbled on the back to help me
7 remember from my own memory and not from a piece of paper
8 or anything like that.

9 Q. Prior to receiving the notes did you talk to your
10 father about what you planned on testifying to?

11 A. No, sir.

12 Q. Okay. Is what is depicted in the notes true and
13 accurate?

14 A. Yes, sir.

15 Q. No further questions.

16 THE COURT: Okay. Ms. Wilson any recross?

17 MS. WILSON: Just one question, Your Honor.

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Q. Ms. Boyer its correct that you just testified that you didn't discuss your testimony with Mr. Thomas your father is that correct or did I hear you wrong? Did you just say that?

Q. Thank you.

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