

VOLUME III OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

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

RECEIVED
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SC SUPREME COURT

CLARK D. THOMAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002286

APPENDIX

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Clark D. Thomas v State of S.C.
Carol Cook-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant calls Carol Cook.
2 THE COURT: I'm sorry; Carol Cook you said?
3 MR. SHAFFER: Yes, Your Honor.
4 [Whereupon, Ms. Cook 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: Carol Ann Cook. I'm just getting
11 over laryngitis. And Cook is C-O-O-K.
12 - - - - -
13 CAROL COOK,
14 Having been first duly sworn,
15 Was examined and testified as follows:
16 DIRECT EXAMINATION
17 BY MR. SHAFFER:
18 Q. Ms. Cook you're Mr. Thomas' mother correct?
19 A. Yes.
20 Q. Okay. Were you active -- excuse me, you hired Mr.
21 Bolus correct?
22 A. Yes I did.
23 Q. Were you involved in his preparation for planning
24 the trial?
25 A. You mean with Mr. Bolus?

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1 Q. Yes, ma'am?

2 A. I don't think there was much discussion on actually
3 preparing the trial. We would -- my son was writing up
4 his notes for the trial and the few occasions I talked to
5 Mr. Bolus I tried, of course you know my son had all the
6 knowledge of it. He wrote extensively things, people to
7 witness. He had all these people he knew that would come
8 to his defense and testify for him that knew what was
9 going on.

10 And I had conversations with him when Rachel -- he
11 would call me about different things and Rachel was
12 insanely jealous and would take the phone from him and
13 didn't want him -- well she was jealous, she was very
14 jealous and didn't want him talking to me.

15 But I would relay to Mr. Bolus things that occurred
16 that I felt like should come up at the trial and he never
17 wanted to use anything I said.

18 Q. What things did you relay to him do you recall
19 anything specific?

20 A. Well there was one situation where her mother had
21 told me she had ---

22 MS. WILSON: --- objection, Your Honor, hearsay.

23 THE WITNESS: No, it's not hearsay. Her mother
24 told me -- why it is hearsay?

25 THE COURT: Hold on just a second. She is going to

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1 testify what the victim's mother told her is that correct
2 Mr. Shaffer?

3 Q. [Mr. Shaffer] I'm sorry. If you could you were ---

4 THE COURT: --- if that's the case I'll sustain the
5 objection.

6 MR. SHAFFER: Yes, Your Honor.

7 Q. [Mr. Shaffer] Who are you talking about?

8 A. The victim's mother told me she had ---

9 Q. --- we can't talk about what she said ---

10 THE COURT: --- I'll sustain the objection if she
11 is going to testify to what somebody else told her ---

12 THE WITNESS: --- well, I'm telling you ---

13 THE COURT: --- you can testify to what you told
14 the lawyer and what the lawyer told you okay.

15 THE WITNESS: Okay.

16 THE COURT: Or anything you saw or you observed in
17 this relationship you can testify to.

18 THE WITNESS: What I'm trying to say is things that
19 I thought Mr. Bolus should bring up at trial that should
20 be covered. The fact that she told me she had his
21 computer ---

22 MS. WILSON: --- objection, Your Honor, hearsay.

23 THE WITNESS: I don't understand.

24 MR. SHAFFER: Your Honor...

25 THE WITNESS: I don't understand.

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1 THE COURT: I'll let her testify what she told the
2 attorney that the mother was going to say under the guise
3 that he could have subpoenaed the mother okay. Go ahead.

4 MR. SHAFFER: Thank you, Your Honor.

5 Q. [Mr. Shaffer] What exactly did you tell Mr. Bolus?

6 A. That her mother had his computer and she would give
7 it to me after she was getting information off of it;
8 that she was keeping it to get information off of it and
9 then I would get it.

10 THE COURT: What's going on?

11 THE DEPUTY: I was putting his cuff back on.

12 MR. THOMAS: I apologize, Your Honor. I was just
13 nervous tic.

14 THE COURT: What's he doing?

15 THE DEPUTY: Pointing his pen, Your Honor.

16 THE COURT: All right. Just sit quiet please.

17 MR. THOMAS: Yes sir, Your Honor.

18 THE COURT: I don't know if that is a signal to her
19 or what okay.

20 MR. THOMAS: Oh, no.

21 THE COURT: Okay. I believe she said something
22 about the computer is that right? Is that what we're
23 talking about?

24 MR. SHAFFER: Yes, Your Honor, we are.

25 THE WITNESS: I thought that was important

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1 information that she was wanting to contact me about his
2 computer. And I relayed that to him.

3 Q. [Mr. Shaffer] So the victim's mother was in
4 possession of Clark's computer?

5 A. Right.

6 Q. And it ended up -- do you recall at trial ---

7 MS. WILSON: --- Your Honor, I'm going to object.
8 He's leading the witness.

9 THE WITNESS: I can tell you this ---

10 THE COURT: --- ma'am, be quiet please. When
11 somebody stands stop talking. I will allow him to lead
12 the witness. The witness is wanting to say certain
13 things and she's going to say it regardless so I will
14 allow him to lead the witness okay.

15 MS. WILSON: Yes, Your Honor.

16 THE COURT: Please proceed. Get to the point Mr.
17 Shaffer.

18 MR. SHAFFER: Thank you, Your Honor.

19 Q. [Mr. Shaffer] How did that computer end up being
20 relevant at the trial?

21 A. I don't know if they got information off of it or
22 not but it was withheld for like eight months before the
23 police ever got it.

24 Q. By withheld you mean the victim's mother had it?

25 A. Yes, before turning it over to the police.

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1 Q. At some point Ms. Crawley contacted you directly
2 correct?

3 A. Yes. Rachel called me and wanted money several
4 times. And I talked to Mr. Bolus about that. And she
5 called and left messages on my cell phone, which I --
6 they were voice mail messages so they were saved. And I
7 kept saving them because just from hearing on T.V. you
8 need evidence for everything.

9 And I ended up putting it on a cassette and then
10 getting it made into a C.D. A couple of her calls where
11 she called me you need to call me. I don't know if
12 you're trying to avoid me. You need to call me. And
13 when I would call her back she was wanting money.

14 THE COURT: Mr. Shaffer, get to something relevant
15 please, sir.

16 MR. SHAFFER: Thank you, Your Honor.

17 THE WITNESS: I told Mr. Bolus ---

18 THE COURT: --- please.

19 MR. SHAFFER: Yes, Your Honor.

20 Q. [Mr. Shaffer] Regarding those messages and those
21 statements that Ms. Crawley made did she ever promise or
22 threaten you in any way in order to try to get money out
23 of you?

24 A. She ---

25 THE COURT: --- what does that have to do with

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1 anything that is before the court Mr. Shaffer ---

2 THE WITNESS: --- she said that she would not ---

3 THE COURT: --- ma'am, be quiet when I'm talking
4 and don't interrupt anybody please. I've already told
5 you one time. Mr. Shaffer, what's the relevancy of that?

6 MR. SHAFFER: Issue number two Your Honor involves
7 failure to impeach the witness with prior statements that
8 she had made.

9 THE COURT: That she tried to solicit money from
10 this lady?

11 MR. SHAFFER: Yes, Your Honor.

12 THE COURT: So what? What does that have to do
13 with the trial for the kidnapping?

14 MR. SHAFFER: Your Honor, I believe they will be
15 relevant if she was making promises or threats to elicit
16 money from the defendant's mother I think it would be
17 relevant to impeach her with at the trial.

18 THE COURT: Be relevant to what?

19 MR. SHAFFER: Impeach the victim with at the trial.

20 THE COURT: Impeach her about what?

21 MR. SHAFFER: About prior statements that she had
22 made where she had requested money. It would give her
23 motivation to lie. It would be biased evidence, Your
24 Honor.

25 THE COURT: Okay. Go ahead.

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1 Q. [Mr. Shaffer] Did she ever promise or threaten you
2 in any way?

3 A. She just said she wouldn't testify and I felt like
4 she was saying that if I gave her money ---

5 THE COURT: --- don't testify to what you thought
6 she was saying, okay. Just testify to what she said
7 please, ma'am. I don't care what you thought she was
8 thinking or saying.

9 Q. [Mr. Shaffer] What did she say specifically, do you
10 recall?

11 A. You need to call me and I want money and I won't
12 testify.

13 Q. Okay. And you actually have those voicemails saved
14 correct?

15 A. Yes, sir.

16 Q. They are on a C.D. correct?

17 A. Yes.

18 Q. And you've presented them previously or you made
19 them available to me?

20 A. Yes.

21 MR. SHAFFER: Court's indulgence.

22 THE COURT: Yes ma'am -- yes sir.

23 MR. SHAFFER: Your Honor, may I actually have the
24 witness step down. I was going to try to introduce the
25 audio tape.

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1 MS. WILSON: Your Honor, I'm going to object to
2 that. One, on the basis of relevance. Obviously it's a
3 recording of someone else's voice. And Your Honor, I'm
4 not really sure how it's relevant that the victim called
5 Ms. Cook here to ask her for money and ---

6 THE COURT: --- I thought she said I thought she
7 just said I may not have heard it properly, that the
8 victim called her and said if you'll call me I won't
9 testify.

10 MS. WILSON: And give her money she wouldn't
11 testify?

12 THE COURT: Pardon?

13 MS. WILSON: I thought she said that the victim
14 called her and said if you give me money I won't testify.

15 THE COURT: Right.

16 MS. WILSON: Okay. That's what I thought I heard.

17 THE COURT: Now if that's on the tapes that makes
18 it relevant. Does it or does it not?

19 MS. WILSON: Your Honor, I'm not sure which claim
20 it is relevant to because I'm not understanding how that
21 is some type of necessarily statement from the victim.
22 We don't have anything to authenticate the victim's
23 voice. We don't know ---

24 THE COURT: --- the defense counsel on cross-
25 examination could say did you tell Ms. Hood [sic] that if

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1 she paid you money she wouldn't testify. I mean I think
2 that would be impeachable testimony. Do you disagree?

3 MS. WILSON: I don't disagree, Your Honor.

4 THE COURT: Pardon?

5 MS. WILSON: I don't disagree.

6 THE COURT: Okay. So that's where he's heading.
7 We're sort of stumbling through all this but we're ---

8 MS. WILSON: --- thank you for the clarification,
9 Your Honor ---

10 THE COURT: --- hopefully getting there. Is this
11 on the tape?

12 MR. SHAFFER: Yes, Your Honor, it is. What I would
13 like to do ---

14 MS. WILSON: --- I've not heard the tape.

15 THE COURT: Have you provided the tapes to opposing
16 counsel?

17 MR. SHAFFER: No, Your Honor.

18 THE COURT: Then why are you coming in here today
19 because she's entitled to listen to it?

20 MR. SHAFFER: And Your Honor, I apologize ---

21 THE COURT: --- we're breaking for lunch. Anything
22 else on that tape you want in?

23 MR. SHAFFER: I will let her hear the entire tape.
24 It's not very long. It's about -- I think its three
25 messages ---

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1 THE COURT: --- now I still haven't heard when was
2 this tape made and was it given to the defense counsel or
3 what?

4 MR. SHAFFER: Your Honor, I believe that she said
5 that she told Mr. Bolus that she had it ---

6 THE COURT: --- I didn't ask you that. I said was
7 the tape given to defense counsel?

8 MR. SHAFFER: No, Your Honor, but I think the
9 substance of it was conveyed to the defense counsel.

10 THE COURT: All right. Let Ms. Wilson listen to
11 it over lunch.

12 MR. SHAFFER: Thank you, Your Honor.

13 THE COURT: Ms. Wilson, are you handling that
14 motion at 2:30 or is somebody else coming from the State?

15 MS. WILSON: Your Honor, I'm involved with it.

16 THE COURT: Is somebody else?

17 MS. WILSON: Someone else is coming, yes Your
18 Honor, from the office.

19 THE COURT: But you want to be here too?

20 MS. WILSON: I would appreciate it Your Honor.

21 THE COURT: How long do you think it's going to
22 take?

23 MS. WILSON: I think it will be pretty brief, Your
24 Honor. I don't anticipate maybe less than 30 minutes ---

25 THE COURT: --- so if we bring this back ---

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1 MS. WILSON: --- right after that ---

2 THE COURT: --- at 2:45 would 15 minutes on that
3 motion be sufficient?

4 MS. WILSON: I think that should be sufficient,
5 Your Honor. It should be brief.

6 THE COURT: All right. We'll adjourn this hearing
7 until 2:45 but as far as court I've got a motion at 2:30
8 in another matter, okay.

9 MR. SHAFFER: Thank you, Your Honor. Your Honor,
10 if I may ---

11 THE COURT: --- thank you very much. And let her
12 hear the tape.

13 MR. SHAFFER: Yes, Your Honor, I will. May I? My
14 witness is trying to get our attention. Do you want to
15 hear anything from her?

16 THE COURT: No, I don't want to hear anything from
17 her.

18 MR. SHAFFER: Thank you, Your Honor.

19 THE COURT: I want you to let her listen to this
20 tape okay.

21 MR. SHAFFER: Yes, Your Honor, I will.

22 THE COURT: Ms. Hood [sic] during lunch don't
23 discuss this case with anybody do you understand?

24 THE WITNESS: There was one thing I need to ---

25 THE COURT: --- did you hear me?

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1 THE WITNESS: Yes.

2 THE COURT: Don't talk to anybody about this case
3 during lunch. Do you understand?

4 THE WITNESS: Yes.

5 THE COURT: See you at 2:45. Have a good lunch.
6 Thank you very much. You may step down.

7 [Whereupon, the witness exits the witness stand]

8 [Whereupon, court is in recess from 1:10 p.m. to
9 3:10 p.m.]

10 THE COURT: All right. Ms. Cook, is she here?
11 Come on around Ms. Cook.

12 [Whereupon, Ms. Cook returns to the witness stand]

13 THE COURT: Let me see the attorneys up here
14 please.

15 [Whereupon, an off the record bench conference is
16 held]

17 THE COURT: Do you want to finish your testimony of
18 Ms. Cook?

19 DIRECT EXAMINATION OF CAROL COOK RESUMES

20 BY MR. SHAFFER:

21 Q. Now Ms. Cook at some point -- you had testified
22 earlier that you had hired Mr. Bolus correct?

23 A. Yes.

24 Q. And at some point you had planned on firing him is
25 that correct?

Clark D. Thomas v State of S.C.
Carol Cook-Direct Examination by Mr. Shaffer
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1 A. Yes.

2 Q. Why did you not fire him?

3 MS. WILSON: Your Honor, I'm going to object to
4 this line of questioning. I'm not sure how it's relevant
5 to any of Mr. Thomas' claims ---

6 THE COURT: --- what's the relevancy of his
7 competency as a trial attorney on whether she was going
8 to fire him or not fire him?

9 MR. SHAFFER: Your Honor, the only -- I can move
10 on.

11 THE COURT: Pardon?

12 MR. SHAFFER: I can move on.

13 THE COURT: For the record I'll sustain the
14 objection.

15 MS. WILSON: Thank you, Your Honor.

16 Q. [Mr. Shaffer] Ms. Cook, did you ever have any -- did
17 you ever suggest any character witnesses that should be
18 called to Mr. Bolus?

19 A. Yes.

20 Q. And what was his response to those?

21 A. I didn't know the names in particular for the
22 character witnesses. But every time I suggested
23 witnesses he'd say he left calls and they wouldn't return
24 his calls and they were all drug addicts.

25 Q. Okay. So he said he wouldn't call them because

Clark D. Thomas v State of S.C.
Carol Cook-Direct Examination by Mr. Shaffer
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1 they were drug addicts?

2 A. [No response]

3 Q. Does that -- is that what you just testified to; I'm
4 sorry?

5 A. Yes.

6 Q. I know your voice is failing.

7 MR. SHAFFER: Court's indulgence.

8 THE COURT: Yes, sir.

9 [Whereupon, Ms. Shaffer confers with his client]

10 MR. SHAFFER: No further questions.

11 THE COURT: Cross-examination?

12 MS. WILSON: Nothing from the State, Your Honor.

13 THE COURT: Ms. Cook you may step down. Thank you
14 very much. Be careful stepping down.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness please.

18

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Clark D. Thomas v State of S.C.
Nathan Williams-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant would call Nathan
2 Williams.

3 THE COURT: Who?

4 MR. SHAFFER: Nathan Williams.

5 THE COURT: Nathan Williams?

6 MR. SHAFFER: Yes, Your Honor.

7 THE COURT: Okay.

8 [Whereupon, Mr. Williams comes forward]

9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court]

11 CLERK OF COURT: State your first and last name
12 into the microphone and spell your last name for the
13 record.

14 THE WITNESS: The first name is Nathan and the last
15 name is Williams, W-I-L-L-I-A-M-S.

16 - - - - -

17 NATHAN WILLIAMS,

18 Having been first duly sworn,

19 Was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SHAFFER:

22 Q. Mr. Williams you prosecuted this case correct?

23 A. Yes.

24 Q. Okay. At some point you requested medical records
25 is that right?

Clark D. Thomas v State of S.C.
Nathan Williams-Direct Examination by Mr. Shaffer
December 8, 2014

1 A. Yes, by subpoena.

2 Q. Okay. Those medical records were for Ms. Crawley
3 is that correct?

4 A. Yes they were.

5 Q. Okay. And you received those medical records?

6 A. I believe so.

7 Q. Were they turned over to opposing counsel?

8 A. I believe they were. I have -- I went through the
9 Solicitor's file last week. I have a copy of the letter
10 we sent to the hospital as well as the subpoena that was
11 sent with proof of service. I have one page of the
12 records that would have been returned from that subpoena.

13 And I went back through the transcripts and based on
14 the testimony of Doctor Paraschos which begins at page
15 438 there is clear reference in his testimony to the
16 records that he testified to; basically the foundations
17 for the statements made in furtherance of medical
18 treatment as well as the business records.

19 And then there is a follow up question by Mr. Bolus
20 at about page 440 -- I'm sorry; 457 where he also makes
21 reference to the records. So I would have turned -- I
22 definitely had them. I don't have all of them but I also
23 have from that file my notes from my direct examination
24 of the doctor. And I could give those to you. I suspect
25 that my notes will probably be very close to what the

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1 records show. I had notes regarding nurse records,
2 different descriptions of pain and then patient complains
3 so. I can mark this as an exhibit if you want but it
4 should essentially indicate what is in there I would
5 guess.

6 MR. SHAFFER: Do you mind if I admit it.

7 MS. WILSON: I don't know what it is about. I've
8 never seen it before.

9 MR. SHAFFER: I apologize.

10 [Whereupon, Ms. Wilson reviews documents]

11 Q. [Mr. Shaffer] Mr. Williams I'm showing you
12 applicant's exhibit 1.

13 [Whereupon, the witness is shown document]

14 Q. Could you review that document real quick?

15 A. Yes, so the first page -- I will, I've reviewed it.
16 And I'm referencing the first page of the exhibit is the
17 same page that was left in the Solicitor's office file.

18 When I reviewed the testimony of Doctor Paraschos
19 for the trial it appeared that rather than trying to
20 redact certain information off the records we simply I
21 had him testify to it. It was a little bit easier but he
22 clearly was referring to his records.

23 And I sort of remember the diagram on here. I could
24 not find anything but that first page in the record -- in
25 the Solicitor's office records but having said that they

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Nathan Williams-Direct Examination by Mr. Shaffer
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1 are maintained for purposes of P-C-R's. Whatever was in
2 there was there. I'm not sure it was complete from what
3 I had at trial.

4 Q. Okay.

5 A. And then I would guess based on my notes that are on
6 that page they probably are going to reflect statements
7 that are in these records otherwise. So I would have had
8 the records ---

9 THE COURT: --- what number are you marking his
10 notes?

11 MR. SHAFFER: Three, Your Honor.

12 THE COURT: Three? Any objections to 3?

13 MS. WILSON: No objection, Your Honor.

14 [Whereupon, defendant's exhibit number 3 is marked
15 by the court reporter]

16 [Whereupon, defendant's exhibit number 3 is entered
17 into evidence by the court]

18 A. For instance one of my notes indicates that the
19 victim stated that she was beaten by the defendant's
20 hands and the fifth page notes that when she came into
21 the hospital she complained to have been beaten by the
22 defendant's hands.

23 So I clearly had these records and we would have
24 given them over in the normal course of discovery to Mr.
25 Bolus. I don't think there was anything in the case that

Clark D. Thomas v State of S.C.
Nathan Williams-Direct Examination by Mr. Shaffer
December 8, 2014

1 wasn't turned over.

2 Q. [Mr. Shaffer] Okay. Do you recall anywhere in those
3 notes or in your notes or in the medical records that
4 indicate that she had a broken tooth or a mouth injury?

5 A. She had a mouth injury. I think there was a picture
6 taken by law enforcement. I don't recall it being in the
7 actual medical records but that's just my recollection.

8 Q. No further questions.

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Clark D. Thomas v State of S.C.
Nathan Williams-Cross-Examination by Ms. Wilson
December 8, 2014

1 CROSS-EXAMINATION
2 BY MS. WILSON:
3 Q. Mr. Williams was anything in those medical records
4 exculpatory or benefitted Mr. Thomas?
5 A. Not in my opinion.
6 Q. Thank you.
7 THE COURT: Any redirect?
8 MR. SHAFFER: Nothing, Your Honor.
9 THE COURT: You may step down. Thank you very much
10 Mr. Williams.
11 THE WITNESS: May I be excused, Judge?
12 THE COURT: Yes, sir.
13 [Whereupon, the witness is excused and exits the
14 witness stand]
15 THE COURT: Call your next witness.
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Clark D. Thomas v State of S.C.
Clark Thomas-Direct Examination by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: The applicant would call Clark Thomas.

2 THE COURT: Come around and be sworn. And the
3 deputies can accompany him over on the other side please.

4 [Whereupon, Mr. Thomas comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 CLERK OF COURT: State your first and last name into
8 the microphone and spell your last name for the record
9 sir.

10 THE WITNESS: Clark Thomas, T-H-O-M-A-S.

11 - - - - -

12 CLARK THOMAS,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHAFFER:

17 Q. Mr. Thomas where are currently housed at?

18 A. Broad River Correctional Institution in Columbia.

19 Q. What sentence are you currently doing?

20 A. Twenty years. Twenty for kidnapping and ten for CDV
21 High and aggravated; run concurrent.

22 Q. Now you were represented by Mr. Bolus at trial?

23 A. He was there.

24 Q. Now you retained Mr. Bolus to represent you correct?

25 A. Yes, that was the intention.

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1 Q. Okay. At some point -- well tell me this. Were
2 you incarcerated when you retained Mr. Bolus?

3 A. I had been arrested for a bench warrant on child
4 support obligations. And I had given a girl a ride to a
5 motel and she was going there to -- for whatever reason.
6 I was charged with aiding and abetting prostitution,
7 which was ---

8 MS. WILSON: --- Your Honor, I'm going to object to
9 relevance.

10 THE COURT: You may lead your witness to get to the
11 relevant issues, okay.

12 MR. SHAFFER: Thank you, Your Honor.

13 A. Yes, I was in jail.

14 Q. [Mr. Shaffer] And -- but at some point you got
15 bonded out correct?

16 A. No, I never did. When we contacted Mr. Bolus to get
17 me out he refused because he had taken on one of my first
18 wife's D-U-I case ---

19 MS. WILSON: --- Your Honor, I'm going to object to
20 this because this is not relevant in any way to any of
21 Mr. Shaffer's allegations.

22 THE COURT: Is he talking about the first charge or
23 this charge?

24 MR. SHAFFER: Yes, Your Honor, the ---

25 THE COURT: --- the first charge doesn't have

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1 anything to do with this. Please get to something
2 relevant to this issue, i.e. the ineffective assistance
3 of counsel.

4 MR. SHAFFER: Okay.

5 Q. [Mr. Shaffer] Was your wife scared of you?

6 A. Absolutely not. I was scared of her.

7 Q. There are incident -- could you tell us did you ever
8 strike her?

9 A. No.

10 Q. Okay. Did she ever strike you?

11 A. Numerous times; time and again.

12 Q. And I know you testified at trial about the details
13 of yours and her sex life so I'm not going to go through
14 that right now.

15 But tell me if you could -- you were planning -- at
16 some point you asked Mr. Bolus to relieve himself as your
17 counsel right?

18 A. Yes, I did.

19 Q. Why did you withdraw that request or did you
20 withdraw that request?

21 A. Well we were stuck with him. He wouldn't give us
22 any of the money back and we couldn't get another lawyer.
23 And he seemed to be showing some interest in representing
24 me when I came -- see I was arrested and they violated
25 the probation I was on. And when I came back he -- I had

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1 pushed him for a speedy trial motion. And he said those
2 were -- that made a significant change in the
3 circumstances and he may be able to help me get bond.
4 When he did that of course we were encouraged by that
5 conduct and thought we could perhaps rely upon him to do
6 what we had paid him to do.

7 I was released on a PR bond because my wife was
8 stalking me wanting to get back together as the testimony
9 told earlier. And then I couldn't reach him anymore.

10 And the next thing I know I was in jail on a child
11 support bench warrant and couldn't get out. I was
12 transported here to the courthouse, I didn't even know
13 why, and they said I was going to trial for these
14 kidnapping allegations ---

15 Q. --- did you ever have a plea offer in your case?

16 A. Well, he claimed there was one but...

17 Q. Did he ever come to you and offer you to allow you
18 to plea?

19 A. The first time I saw him since I was released on
20 bond he came to the courthouse that morning when I had
21 just found out that we were going to trial and he said he
22 had a plea negotiated to ten years to kidnapping and CDV
23 high and aggravated. And Mr. Williams got on the stand
24 and said there was no plea in place that he had to get 20
25 to 30 years whether I was convicted or not. But I

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1 rejected that plea because I was innocent ---

2 Q. --- okay ---

3 A. --- I am innocent.

4 Q. So you've maintained your innocence this entire
5 time?

6 A. Exactly.

7 Q. Okay. What conversations did you have about what
8 your strategy or what you wanted presented at your trial?

9 A. I never could get a strategy set forth with him.
10 The probation violation I spoke of I asked him to get
11 time served ---

12 MS. WILSON: --- Your Honor, I'm not really sure
13 how probation revocation is relevant ---

14 THE COURT: --- I understand. Move -- go ahead.
15 Overruled.

16 Q. [Mr. Shaffer] If you could tell me specifically what
17 you told Mr. Bolus about what you wanted to presented at
18 the trial?

19 A. Well, I was on probation for a hit and run with
20 minor injuries leaving the scene of an accident. And I
21 had been on probation almost ten months and there was two
22 months left. And I asked him to see about getting time
23 served. He went ---

24 Q. --- what did you tell him about -- I'm talking about
25 this charge that you got convicted of. What specifically

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1 did you tell him about -- did you tell him any witnesses
2 you wanted to present at the trial?

3 A. Oh, I gave him a number of witnesses and he ---

4 Q. --- what witnesses did you tell him you wanted to
5 present?

6 A. I told him I wanted the police officers who were
7 involved in the arrest, Folly Beach, when Ms. Crawley
8 destroyed the home and attacked my daughter.

9 I told him I wanted the man that controlled my
10 satellite monitoring bracelet to confirm that I had never
11 violated the terms the conditions of my bond. In other
12 words that she approached me and I wanted him to get
13 Teddy and Crystal Martin on the stand.

14 When he made that plea offer to me he said -- of
15 course I'm paraphrasing, I've got you a 10 year plea,
16 blah, blah, blah to kidnapping, CDV high and aggravated
17 and if you don't take it I'm going to get on a plane and
18 go to Costa Rico and you'll be going to prison; and those
19 were his words.

20 Q. Okay. Did he tell you why he wouldn't call the
21 witnesses?

22 A. The best I can recall is they wouldn't do any good
23 and I seem to recall this drug addict thing but Teddy and
24 Crystal Martin aren't drug addicts. The police certainly
25 were not, and my daughter certainly wasn't. But you

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1 know...

2 Q. Did you want him to present a character defense?

3 A. Of course. I had my mother, my aunt; some other
4 people had tried to come in the courtroom. But like I
5 said I had no time to prepare any kind of a strategy
6 whatsoever.

7 I went in there blind. I couldn't even get properly
8 dressed; I looked a mess. It was a disaster. And I
9 quote Mr. Bolus at the end of my trial he said he looks a
10 disaster. I don't look a disaster when I've had an
11 opportunity to properly prepare for something.

12 Q. Did he explain to you that even -- that if you
13 presented good character evidence that they could have
14 presented -- brought up your past convictions?

15 A. He didn't discuss anything with me, nothing;
16 absolutely nothing.

17 Q. You did have past convictions correct?

18 A. Yes, all non-violent misdemeanors.

19 Q. Okay. Knowing that would you have -- if I was to
20 tell you that you could present a character defense but
21 your past convictions would come up would you still want
22 a character defense presented?

23 A. Of course.

24 Q. Okay.

25 A. I did want to go on to say that -- it just skipped

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1 on me. Go ahead, I'll see if I can try to remember.

2 Q. Now I'm going to switch subjects. I'm going to ask
3 you about your allegation involving the contradictions
4 between the victim's previous statements.

5 You've alleged that you wanted -- you felt that Mr.
6 Bolus was ineffective for failing to bring up
7 inconsistencies in the statements. What inconsistencies
8 did you want brought up?

9 A. Should I read them?

10 Q. Well, just in your own words. You can refer to your
11 notes if necessary but don't read directly from your
12 notes. Just tell me in your own words.

13 A. She gave a two-part witness statement the incident
14 report which of course was grounded on her allegations.
15 And she gave an affidavit to my probation officer from
16 the Department of Parole and Pardon Services.

17 I tallied about 48 inconsistent statements to begin
18 with. She did not allege that I hit her with any hands
19 or fists in the incident report, but that changed in the
20 witness statement the first part and the second part.

21 And then by the time it got to the affidavit I
22 brutally beat her for three days, which incidentally
23 turned out to be we weren't together much more than 14
24 hours. She testified that I split her lip when I punched
25 her in the mouth but that didn't happen and I've never

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1 been able to get any of the Brady material in my case.
2 I've never had the photographs; nothing was provided to
3 me. I've been trying for eight years to get that and
4 they refuse to give it to me. And I would have been more
5 than happy to pay for them too if that was the matter ---

6 Q. --- let's go ahead ---

7 A. --- they say that I unexpectedly arrived at her
8 mother's house to retrieve some things -- to take her to
9 my place to retrieve some things. And then another
10 statement was that I called three or four times asking
11 her to watch movies.

12 Let's see, and in her affidavit she said I just kept
13 calling her and wanted to pick her up and she finally
14 decided just to go with me with no reasoning behind it.

15 She says when she first walked in the motel our
16 place at the In Town Suites that I pushed a stun gun in
17 her back and then on the floor and shackled her to a
18 chair. Then in another statement she says I stunned her
19 in the stomach and pushed her down and tied her to the
20 bed.

21 Let's see clothing, she claims I ripped her clothes
22 off of her and tied her to the bed. And when she
23 testified about it she said it was from me ripping them
24 from her body and then she says because I cut them with
25 scissors. And incidentally those clothes remained in her

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1 mother's possession, her and her mother together out at
2 her residence for eight months before they were turned
3 over to the prosecution. And the reason I was so
4 concerned about that chain and custody is because ---

5 MS. WILSON: --- Your Honor, I'm going to object to
6 this because I'm not sure how it's relevant to any of his
7 claims. He's talking now about the chain of custody not
8 in response to any question or anything by Mr. Shaffer.

9 MR. SHAFFER: And Your Honor regarding the chain of
10 custody I can get him back on topic. He was directly
11 asking about -- I was directly asking about issue number
12 2 and the inconsistencies that he thought should be
13 brought up.

14 MS. WILSON: Well, Your Honor, that shouldn't be
15 one because he withdrew his claim regarding the chain of
16 custody ---

17 MR. SHAFFER: --- and you're right...

18 THE COURT: Stick to the inconsistencies for now if
19 you would please.

20 MR. SHAFFER: Thank you, Your Honor.

21 Q. [Mr. Shaffer] If you could just stick to the
22 inconsistencies.

23 A. Okay. We can revisit the...

24 Q. Just stick to the inconsistencies.

25 A. Because I never did want to deny -- I didn't want to

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1 -- when it was first discussed I kept emphasizing how
2 important it was that that was.

3 Q. If you could just continue.

4 A. Okay. Let's see in her first -- second witness
5 statement -- the first witness or the incident report she
6 claimed that she was tortured for 40 hours, 36 to 40
7 hours. And in her second witness statement she claims
8 that she was just tied to the bed overnight. She was
9 shackled to a chair in the first witness statement or the
10 incident report; excuse me I don't mean to be confusing.

11 Then it goes on to she described the effects of a
12 stun gun or taser as like being on fire and punched. She
13 was implying that she had never experienced it before but
14 she was well versed in the effects of a taser, which I
15 wanted to have those police officers present to testify
16 to that fact but Mr. Bolus said that wasn't necessary or
17 that it wouldn't do any good or.

18 One particular instance it appears the prosecutor
19 was seeking to elicit a motive for my conduct, alleged
20 conduct please. He asked if I was saying anything to her
21 in this alleged assault with the gun she replied he
22 thought I was leaving him for someone else I guess.

23 And then Mr. Williams rephrased the question
24 instantly within the next two lines it says did Thomas
25 tell you at that point that he thought you were leaving

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1 him for someone else and she then goes yes. So there's
2 another significant recantation. The sexual allegations
3 in the incident report there were no allegations of
4 sexual assault.

5 In the second witness statement I alleged to have
6 forced my penis into her mouth once and penetrated her
7 vaginally three times. And then right after that she did
8 the affidavit for D-P-P-P-S and she abandoned her claim
9 of being raped.

10 Then she put into evidence at trial that I
11 penetrated her vaginally once and that she couldn't
12 remember how many times orally. And then soon after that
13 she testified that I penetrated her both vaginally and
14 orally a total of three times.

15 Then there are the duct tape allegations. She
16 claims that I kept duct tape on her mouth for virtually
17 an entire 36 to 40 hours. But we were living in an
18 extended stay hotel -- thin walls. And my logic on that
19 is if I had been beating her and torturing her ---

20 Q. --- and let's get specifically to what her
21 statements were versus...

22 A. She claims that I also forced her to take pills and
23 that when awakened to be raped by me she indicated she
24 was freely able to beg me from stopping her --
25 immediately begged me to stop immediately upon opening

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1 her eyes.

2 Q. And that would have been inconsistent because of the
3 fact that she said ---

4 A. --- yes, she said her mouth was taped the whole
5 time.

6 Q. Okay.

7 A. Then later on she testified that I forced her to
8 perform oral sex so many times that she lost count. Then
9 she testified that during the course of being brutally
10 beaten within seconds of that and within seconds of
11 having said that I duct taped her mouth shut so she
12 couldn't scream. She kept telling me that I was her
13 husband and did not have to do it like that.

14 Being shackled to a chair she claimed for 36 to 40
15 hours but all the other statements she claimed she was
16 either tied up on the floor restrained or tied up on the
17 bed or in both in her witness statements and in her
18 affidavit.

19 Q. So the timeframe was off in all of these ---

20 A. --- and the only reason the chair was revisited was
21 because Mr. Williams said when you were shackled what was
22 that and what were you shackled to, and I quote.

23 And then she goes -- of course she would have had to
24 have been in a chair -- he shackled me and put me in a
25 chair. Yes, he shackled me to a chair. And it was

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1 pretty clear -- should have been pretty clear that that
2 was like...

3 Q. Well let's go directly to what -- continue ---

4 A. --- quit with speculation and ---

5 Q. --- tell me what ---

6 A. --- remain with the facts; I apologize. The
7 incident reports says that after she was tortured for 36
8 to 40 hours I forced her to leave with me and would not
9 say where we were going. And that was in the incident
10 report. Then in her second stage of her witness
11 statement she said that I told her we were going to get
12 more drugs.

13 She also alleged that I forced her to take drugs in
14 the second witness statement. In fact she claimed that
15 she swallowed four pills with the understanding she would
16 die from an overdose, yet Crawley told Doctor Paraschos,
17 the emergency room doctor that I had only attempted to
18 stick her with needles and give her drugs without
19 success.

20 Q. And that was not brought up at the trial correct?

21 A. No.

22 Q. Okay.

23 A. Crawley also testified that she persuaded me to
24 allow her to chase the alleged pills down with a canned
25 drink and that by doing so she managed to swallow only

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1 one or two because she was able to secretly spit an
2 unspecified number into a can. But there is no mention
3 of a can in her second witness statement because she
4 claimed she swallowed all the pills.

5 She also said that I was going to kill her, commit
6 suicide and then I was going to leave town. Then more
7 specific on the time the 36 to 40 hours she claimed in
8 the incident report and in her second witness statement
9 and in her second witness statement she referred to the
10 timeframe as being overnight.

11 And in her affidavit she said it lasted through the
12 night, which is consistent with what she said during
13 trial at one point to having watched a video monitor all
14 night long.

15 But then she goes back to her 36 to 40 hour
16 scenarios saying that it was dark when she first arrived.
17 Daylight fell again into night prior to the morning she
18 began making the allegations against me.

19 Then she goes to during sentencing and says that
20 during sentencing that the two days in question the trial
21 was the longest two days of her life so.

22 Q. Now is that all the inconsistencies?

23 A. For her, no. There are more. There was a note.
24 Laying the foundation of the note -- well, I'll just try
25 it and see how it goes -- I had accused her father oh,

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1 excuse me, how do I approach this?

2 Q. Lets speak specifically about what -- what did she
3 say in this other inconsistency?

4 A. Okay, that's clearer. There was a note that was
5 written describing...

6 Q. What did she say specifically?

7 A. Mr. Bolus asked her about a note and she claimed she
8 didn't know anything about this note. And then he read
9 the note again for the second time it was read, the note
10 was read. Let's see...

11 Q. And where is that contradicted that she knew
12 something about it?

13 A. Well he read the note again and then she goes yes,
14 yes, that was his -- she admitted that she did know of
15 the origin of the note where it came from.

16 Q. Okay. And what was the substance of that note?

17 A. She had told me her father had ---

18 MS. WILSON: --- Your Honor I'm going to object to
19 this because this line of questioning exactly almost took
20 place at trial. And the note was reviewed and referred
21 to on cross-examination by Mr. Bolus, Your Honor. I'm
22 not sure about its relevance.

23 Q. [Mr. Shaffer] Where did she -- where did she --

24 MR. SHAFFER: I apologize, Your Honor.

25 THE COURT: I'll sustain the objection.

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1 MR. SHAFFER: Thank you, Your Honor.

2 Q. [Mr. Shaffer] Now if you could tell me about your
3 relationship with Mr. Bolus during the trial. Were you
4 able to participate in the trial?

5 THE WITNESS: Can I get some water? My mouth is...

6 MR. SHAFFER: Your Honor, may he?

7 THE WITNESS: May I get some water, Your Honor?

8 THE COURT: Bailiff, will you give him some water.

9 THE WITNESS: Thank you.

10 Q. [Mr. Shaffer] Tell me about your relationship with
11 Mr. Bolus. Did you have -- were you able to participate
12 in your trial or any planning for your trial?

13 A. No, he wouldn't let me interject or ask any
14 questions. He frequently told me to shut up. My mother
15 even heard him saying that.

16 Q. Okay. Specifically prior to trial were you able to
17 -- what did he tell you whenever you suggested witnesses?

18 A. He wasn't interested in any witnesses. It was clear
19 to me that he was trying to shut my trial down as quickly
20 as possible.

21 In fact during pretrial motions his only motion was
22 that his protective day be observed and he went on and
23 asked the Judge -- he almost was looking for a guarantee
24 that my trial was not going to interfere with his trip to
25 Costa Rica.

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1 Q. Okay. And you have raised the issue regarding
2 statements that were made during opening and closing
3 arguments correct?

4 A. Yes, I have.

5 Q. Okay.

6 A. But there are other ---

7 Q. --- and regarding ---

8 A. --- there are other conflicting statements too.

9 Q. I'll let you get to those in a moment okay.

10 A. Okay.

11 Q. I will ask you about those at the end. But
12 regarding the statements made by your attorney during
13 opening and closing arguments he -- how did he
14 characterize you? Did he characterize you in a negative
15 light?

16 A. He made me out to look like a monster.

17 Q. Okay. And did you agree with that trial strategy?

18 A. No, I did not. He even told the jury to find me
19 guilty.

20 Q. Okay. And he in fact told them to find you guilty
21 of one of the charges correct?

22 A. Well he -- what his words were I don't think there
23 is anything but reasonable doubt on the CSC statute. I
24 think that statute tells you as 12 jurors you've got to
25 find him not guilty of that. But you've got a lot of

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1 discretion here. You've got the domestic abuse high and
2 aggravated; that's a heavy felony. And you've got the
3 kidnapping and that's a heavy felony.

4 And he went on to say drug addiction is a heck of a
5 thing. I'm not sure Clark David Thomas is ever going to
6 beat the situation. He's in his 40's; it may be too late
7 for him. I hope it's not too late for Crawley.

8 And just prior to that I don't know two people who
9 want to be duct taped or tied up and made love to in bed.
10 We don't like Thomas' morals. A lot of people say the
11 husband is the head of the house. Crawley is 20, 25
12 years old and a young woman. Thomas led her into a life
13 of drugs. I know this is an ugly case; it just smells
14 the whole thing.

15 The thing is Crawley's mother had been on the stand
16 and testified that she had been on drugs before, during,
17 and after our relationship.

18 Q. And let's get back to the statements that he made.
19 Did you consent to those statements?

20 A. Absolutely not.

21 Q. Did he consult with you prior to making those
22 statements?

23 A. No, sir.

24 Q. Okay. Did he ever tell you anything about a
25 compromised verdict or possibly finding you not guilty of

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1 one charge and guilty of another one? Did he ever tell
2 you ---

3 A. --- no, no.

4 Q. Okay..

5 A. What I likened what he did was to the plea bargain I
6 rejected. He asked me if I would plead to kidnapping and
7 CDV and I said no and he went and basically did it for
8 me. And I'm sure -- as a matter of fact the jury
9 deliberated -- my defense, my entire defense lasted ---

10 MS. WILSON: --- Your Honor, this testimony is not
11 in response to any question.

12 MR. SHAFFER: I apologize, Your Honor. I'm about
13 to ask one.

14 Q. [Mr. Shaffer] You had raised the issue about
15 objecting because he had not raised the lesser included
16 charge of CDV. What facts make you think that you would
17 be entitled to just a CDV charge?

18 A. [No response]

19 Q. Was it the fact that there was a -- that you had
20 testified that the tasing was consensual and the officer
21 testified he saw you grab her was that your basis for
22 requesting a CDV charge?

23 A. I understand -- as I understand it you can get a CDV
24 charge without even laying a hand on someone and the CDV
25 non aggravated they are seeking ---

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- 1 Q. --- but you testified ---
2 A. --- I didn't think I was guilty of CDV high and
3 aggravated for those reasons, yes.
4 Q. But you testified -- so yes is the answer to that
5 question?
6 A. Right, I mean it was consensual.
7 Q. Okay. So all this stuff that happened in the hotel
8 room was consensual?
9 A. Absolutely.
10 Q. Okay. But clearly picking her up in front of the
11 officer was that not consensual or could the jury have
12 believed that was not consensual?
13 A. Based on her -- if I would have been able to get the
14 evidence in to show her frame of mind and the rages that
15 she would fly into there is no doubt in my mind that they
16 would believe that she was -- that she was not averse to
17 me picking her up and carrying her.
18 Mr. Williams suggested why didn't I just leave her
19 on the side of the road and I explained she's my wife and
20 she was in her pajamas. Why would I leave my wife
21 sitting on the side of the road in her pajamas? And she
22 was very fragile and I feared she may hurt herself.
23 Q. Okay. If -- you had done a lot of research on 16-
24 25-90 correct?
25 A. Yes, sir.

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1 Q. Had Mr. Bolus ever told you about that statute?

2 A. He never told me anything. He never did anything
3 for me; nothing. So any question you have about
4 strategy, technique, method nothing; witnesses, he didn't
5 discuss anything.

6 I had to beg the man to put in a speedy trial motion
7 because she was lying and I knew she wouldn't come. I
8 knew she wouldn't come to trial but apparently they
9 managed to persuade her to come and she told all those
10 lies.

11 Q. 16-25-90 you were not aware of that statute at the
12 time ---

13 A. --- no ---

14 Q. --- of your trial correct?

15 A. No, I was not.

16 Q. Had you been aware of that strategy at the time you
17 would have wanted evidence presented showing that?

18 A. Absolutely because I feel it would have gone toward
19 state of mind.

20 Q. And there was some evidence presented at your
21 sentencing hearing involving her assaulting you right?

22 A. I specifically pointed out the incident where Mr.
23 Terry witnessed her punching me in the head ---

24 Q. --- would you have requested more information had
25 you known about that statute at the time ---

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- 1 A. --- of course, absolutely. I was severely
2 prejudiced by that because it was a...
- 3 Q. Now you had also requested Mr. Bolus calling
4 witnesses that would testify about the fact that in the
5 past Ms. Crawley would enjoy getting tased correct or
6 shocked?
- 7 A. Yes, she liked it.
- 8 Q. Okay. And did you tell that to Mr. Bolus?
- 9 A. Yes, I did. And I told him and the court about how
10 she liked -- she wanted to be choked and that
11 asphyxiation auto-erotic but I wouldn't participate in
12 that.
- 13 Q. Did other -- what did Mr. Bolus tell you in regards
14 to that those witnesses?
- 15 A. As far as?
- 16 Q. Was he willing to call those witnesses?
- 17 A. Well there were no witnesses to our bedroom conduct
18 other than my daughter hearing it through the walls of
19 the room.
- 20 Q. But regarding Mr. Longenecker for example he had
21 seen it before.
- 22 A. I wasn't even aware of that. I was told that later.
- 23 Q. Okay.
- 24 A. He was more of ---
- 25 Q. --- so you never told that -- you never told that

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1 information to Mr. Bolus?

2 A. What that she liked it?

3 Q. Yes.

4 A. Oh absolutely I told him yes ---

5 Q. --- but you never told him about Mr. Longenecker.

6 A. Yes. I told him there were several witnesses to the
7 incident with the stun gun where she told the police she
8 liked it. And Longenecker was one of them. And
9 decedent John Kegel [phonetic] was there as well.

10 Q. Now did Mr. Bolus ever argue against your
11 classification as a sex offender based off the kidnapping
12 charge?

13 A. No.

14 Q. Would you have wanted him to do that?

15 A. Absolutely.

16 Q. Okay. Why do you think you should not have been
17 classified as a sex offender based on that?

18 A. Pursuant to the statute there was no sexual element
19 to the crime.

20 Q. You're saying based off of the jury's finding
21 correct?

22 A. Right, exactly. There were plenty of allegations
23 but the jury found me not guilty of that so therefore I
24 would perceive that to mean that I am not required to
25 register as a sex offender.

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1 Q. Now there were also statements that you have
2 mentioned and you have alleged that Mr. Williams should
3 not have brought up during the opening and closing
4 statements?

5 A. Well he was as I understand it clearly I read all
6 the inconsistent statements that Crawley made. And
7 Nathan Williams told the jury that everything she said
8 was the truth and you have to believe it because she came
9 here and told you the truth.

10 And then he made a comment he goes Bolus didn't even
11 object because it's the truth; that's why he didn't
12 object. But he didn't object because he was trying to
13 catch a plane.

14 Q. Did you think that that was inappropriate for Mr.
15 Williams to make those comments?

16 A. Absolutely. She lied -- she -- I don't understand
17 how it got to the level it did with all her inconsistent
18 statements but I was the whole time during the hearing I
19 was trying to figure out how and why it was going like it
20 was.

21 And at one point I asked the Judge if I could assist
22 in my defense and he told me that was a question for my
23 lawyer. And of course Mr. Bolus his advice was to shut
24 up even when it came time for me to testify he wouldn't
25 even discuss it with me. He had a book on Ben Franklin

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1 with him and he was boning up on his Ben Franklin I
2 guess.

3 Q. Now you had mentioned that you had other
4 inconsistencies and I'll let you go ahead and do those.
5 What other inconsistencies did you find?

6 A. There was during the rape allegations she made like
7 I pointed out there were none in the incident report.
8 But in the first witness statement...

9 Q. So she made a sexual assault allegation ---

10 A. --- she waited until her second witness statement to
11 make the allegation to accuse me of rape and she told the
12 jury during direct examination that the second statement
13 was given the day after she gave the first one when in
14 fact it was given two weeks later.

15 Q. Now I know there was some talk during the medical
16 portion but do you think that your attorney adequately
17 brought that up at trial; that inconsistency?

18 A. He didn't catch it at all.

19 Q. Okay.

20 A. In all candor he was -- the only charge he sought to
21 defend me on was the criminal domestic violence. He put
22 up no defense whatsoever of any kind to ---

23 Q. --- do you mean ---

24 A. --- pardon?

25 Q. Did you mean the criminal sexual conduct?

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- 1 A. What did I say?
- 2 Q. Criminal domestic violence.
- 3 A. My bad -- yes, the CSC. He put up a defense to the
4 CSC and that was it; that was all he was concerned with.
5 My defense lasted 85 minutes and the jury was back with a
6 verdict in less than 45.
- 7 Q. Now if you could tell me are there any other
8 inconsistencies that you would want brought up?
- 9 A. With regard to Crawley's statements?
- 10 Q. Yes.
- 11 A. There are probably some in here that I overlooked.
12 I was trying to expedite it -- let me make sure.
- 13 [Whereupon, the witness reviews documents]
- 14 Q. No further questions ---
- 15 A. --- that appears to be pretty much all of it. I'm
16 sure I could pull a few more up if I looked. There are
17 some other issues that I'd like to raise; other facts
18 that I would like to get on the record ---
- 19 Q. --- are they ---
- 20 A. --- as they pertain to my testimony.
- 21 Q. Well what I'm wondering is are there any other facts
22 that pertain specifically to the allegations that we're
23 raising today?
- 24 A. Of course.
- 25 Q. Which ones pertain specifically to the allegations

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1 that we are raising?

2 A. I had no history of CDV. I don't know if that is
3 significant at this point ---

4 MS. WILSON: --- Your Honor I'm going to object ---

5 A. --- I don't know; I was asking.

6 MS. WILSON: Your Honor, I'm going to object ---

7 A. --- I withdraw ---

8 MS. WILSON: --- it appears he is trying ---

9 THE COURT: --- I'm sorry; what?

10 MS. WILSON: I'm going to object on the basis that
11 it appears he is trying to go into allegations that were
12 not raised in his application and the State would just
13 object on that basis.

14 THE COURT: Just stick to the allegations you made
15 please sir.

16 MR. SHAFFER: Thank you, Your Honor.

17 Q. [Mr. Shaffer] Does the fact that you have no history
18 of CDV do you think that that is relevant to your
19 allegation involving early sentencing or early parole
20 under 16-25-90?

21 A. I would think so. I was 46 at the time of the
22 trial. I had a first wife and numerous girlfriends.
23 I've never had a CDV.

24 Q. Do you think that that would be helpful for you for
25 your character defense?

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1 A. I would think so yes, sir.

2 Q. I have no further questions.

3 THE COURT: Cross-examination.

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1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Mr. Thomas today you just gave some testimony to say
4 that you didn't have a history of criminal domestic
5 violence is that correct?

6 A. That's correct.

7 Q. And could you tell me what your birth date is?

8 A. .

9 Q. Now do you recall pleading guilty to a conviction
10 for criminal domestic violence of a high and aggravated
11 nature on August 22, 2003?

12 A. I was with Rachel Crawley when that happened. Prior
13 to meeting her I had no CDV ---

14 Q. --- take it one step at a time okay. I'll let you
15 explain. Do you recall pleading guilty ---

16 A. --- yes, I entered an Alford plea to that charge.

17 THE COURT: Let her ask the question and you answer
18 it please.

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Do you remember pleading to
21 that charge? The question do you remember pleading ---

22 THE WITNESS: --- yes ---

23 THE COURT: --- on August 22, 2003?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. Go ahead.

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1 Q. [Ms. Wilson] And that charge that you pled guilty to
2 criminal domestic violence of a high and aggravated
3 nature that involved Ms. Crawley as a victim is that
4 correct?

5 A. Yes, ma'am.

6 MS. WILSON: Your Honor, the State would like to
7 enter I believe it's State's exhibit 1 the sentencing
8 sheet, the indictment, and the affidavit attached to the
9 arrest warrant in that prior criminal domestic violence.

10 THE COURT: Okay. Any objection?

11 MR. SHAFFER: I have no objection, Your Honor.

12 THE COURT: That's the sentencing sheet?

13 MS. WILSON: Yes, Your Honor. It's the sentencing
14 sheet, the indictment, and the affidavit that is attached
15 to the arrest warrant. And that will be applicant's
16 exhibit 2 I believe -- I mean State's exhibit 2, Your
17 Honor.

18 THE COURT: Okay.

19 [Whereupon, State's exhibit number 2 is marked by
20 the court reporter]

21 [Whereupon, State's exhibit number 2 is entered into
22 evidence by the court]

23 MS. WILSON: And Your Honor also I would just like
24 to note that -- and Your Honor, this is State's exhibit
25 1. And also Your Honor I would just like to note that

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1 I'll provide a clean copy of the affidavit that was
2 attached to this arrest warrant because the back of it
3 has some lines that aren't relevant but I will provide a
4 clean copy for the court.

5 Q. Thank you Mr. Thomas.

6 THE COURT: Any redirect on that issue?

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: I think she brought up one issue.

9 MR. SHAFFER: Yes, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MR. SHAFFER:

3 Q. Your original testimony was you didn't have a
4 history of CDV prior to Ms. Crawley is that right?

5 A. That is correct.

6 Q. Okay. Are you contesting that you had a history of
7 CDV with Ms. Crawley?

8 A. No, I am not. And I'd also like the opportunity to
9 elaborate on the circumstances of that CDV if I may.

10 Q. I don't believe we can right now.

11 A. Okay.

12 Q. No further questions.

13 THE COURT: You may step down unless you have any
14 recross?

15 MS. WILSON: Nothing from the State, Your Honor.

16 THE COURT: You may step down. Thank you.

17 THE WITNESS: Your Honor, may I -- if it please ---

18 THE COURT: --- you may step down please sir.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 MR. SHAFFER: Your Honor, the applicant rests.

22 THE COURT: Pardon?

23 MR. SHAFFER: The applicant rests.

24 THE COURT: All right. No further witnesses?

25 MR. SHAFFER: No, Your Honor, not from us. I

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1 believe the State probably has one.

2 MR. BOLUS: Your Honor, could I -- I think I am
3 going to be up awhile would you mind...

4 MS. WILSON: A short break.

5 THE COURT: You want to take a short break?

6 MR. BOLUS: Yes, sir.

7 THE COURT: Are you the first witness from the
8 State?

9 MR. BOLUS: I think I'm the only ---

10 MS. WILSON: --- Your Honor, the first and only.

11 THE COURT: Okay. We'll take about a 10 or 15
12 minute break. Thank you.

13 MS. WILSON: Thank you.

14 [Whereupon, court is in recess from 4:05 p.m. until
15 4:18 p.m.]

16 THE COURT: Is the State ready to proceed?

17 MS. WILSON: The State is ready, Your Honor.

18 THE COURT: Is the applicant ready to proceed?

19 MR. SHAFFER: Yes, Your Honor.

20 THE COURT: Okay. If you will call your first
21 witness please.

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1 MS. WILSON: Your Honor, the State will call Mr.
2 Michael Tommy Bolus.

3 THE COURT: Okay.

4 [Whereupon, Mr. Bolus 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: Michael Tommy Bolus, B-O-L-U-S.

11 MS. WILSON: May it please the court?

12 - - - - -

13 TOMMY BOLUS,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. WILSON:

18 Q. Mr. Bolus, how long have you been practicing law?

19 A. Thirty-eight years.

20 Q. How much of that time has been spent doing criminal
21 work?

22 A. I was a city prosecutor for two years, a city Judge
23 for three years and a defender for 35 years; not a public
24 defender but criminal defense.

25 Q. Okay. And do you recall when you were first

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1 retained to represent Mr. Thomas?

2 A. I was retained earlier on a case that was kind of a
3 minor thing. He keeps referring to it as a hit and run
4 but we got him off of that with probation. But that
5 would have been -- this happened around July 6th or
6 something; maybe somewhere around there.

7 It was probably within a week -- I think it was
8 three days later because he called me and said hey beau,
9 what you doing? You know that's me in the paper. I had
10 forgotten all about it and I looked at the paper and that
11 was him; he was in the jail.

12 Q. Do you recall how many times you met with him prior
13 to going to his trial?

14 A. At the jail probably six times.

15 Q. And did y'all have any written correspondence? Did
16 he talk to you on the phone or anything like that?

17 A. He talked to me on the phone and also sent me -- he
18 makes it -- he sent me a couple of letters with a witness
19 list on there or something like that; that type of thing.

20 Q. Did you file Brady and Rule 5 motions on Mr. Thomas'
21 behalf?

22 A. Yes.

23 Q. And the materials that you received did you review
24 them with him?

25 A. I had to have done something with them. I swear I

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1 must have sent him something because I just don't let
2 people sit in the jail and not send them something. But
3 we had meetings and this was the I think the old jail --
4 I can't remember if you had a face to face where you
5 could actually sit. But you could always get it to the
6 person. It used to be you could sit face to face and go
7 over it with them without any wall between you or
8 something.

9 Q. And do you recall what type of evidence you received
10 from the State in this discovery materials and what kind
11 of evidence they were prepared to present?

12 A. I received everything I wanted. But in terms of the
13 medical records I think Nathan is wrong and it's not
14 deliberate. He just -- I didn't ask for medical records
15 because I didn't think they were necessary.

16 So Nathan may have thought he sent them to me but
17 they really you know we had a doctor testifying and we
18 had her statement. And the thing about a busted tooth
19 wasn't really my concern.

20 When you're looking at everything he was concerned
21 about a busted tooth was small potatoes. It wasn't a
22 busted tooth it was like a chipped tooth; a little
23 chipped tooth.

24 Q. Did you talk to Mr. Thomas about his version of the
25 facts?

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1 A. Yes. And his version is not quite I mean the
2 version he wants to portray. And with that Your Honor
3 could I ask the court a question.

4 And I presume -- I've done the research on when a
5 person alleges that your lawyer is ineffective there is a
6 case that I can express certain what would have been
7 confidential conversations in terms of if I get asked a
8 question I don't want to be accused of breaching a
9 confidence.

10 But I think the case protects me. He's accused me
11 of everything in the book basically ineffective counsel.
12 And I got what I call pretty bad situations that might
13 come out. So my position is and I hope I'm right is that
14 I can express what he told me.

15 THE COURT: What's your position Mr. Shaffer on
16 that issue? In other words he's saying that since we are
17 here on a P-C-R he's entitled to the attorney client
18 privilege has been waived. I assume that's what you're
19 saying?

20 THE WITNESS: Yes, sir. There is a case on that.

21 MR. SHAFFER: That's my understanding of the law,
22 Your Honor.

23 THE COURT: I think that is the law.

24 MR. SHAFFER: Yes, Your Honor.

25 THE WITNESS: Thank you. I appreciate that.

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1 THE COURT: Okay. Go ahead. I just wanted to see
2 if you had any comment Mr. Shaffer. Please proceed.

3 Q. [Ms. Wilson] So your testimony is today that Mr.
4 Thomas told you his version of the facts is that correct?

5 A. I'm not sure it was over the telephone but there is
6 written correspondence letters from him that I think I
7 sent to his prior attorney -- what was her name?

8 Q. Kristy Goldberg.

9 A. Yes, Ms. Goldberg and to you. And I know -- I don't
10 think I've ever sent them to Tristan but I think maybe
11 your office would have. I hope you did -- anyway I
12 didn't -- he never asked for the file from me.

13 Q. Okay. So he also received written correspondence.
14 Based on his version of the facts did he ever indicate to
15 you that this assault that he did on the victim was the
16 result of any domestic violence from the victim?

17 A. There was absolutely no talk about a domestic
18 violence payback for her being quote a monster to him or
19 something like that. That was never discussed.

20 Q. Now did you prior to trial get an opportunity to
21 review Mr. Thomas' criminal background, his record?

22 A. Yes, that's quite an interesting little story.

23 Q. Was it lengthy or what do you recall about it?

24 A. Well since he didn't tell me who he really was I
25 didn't think it was that bad. I go to a Magistrate for a

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1 bond hearing the Magistrate to get -- he had to give it
2 to another Magistrate. He said I can't hear it. I said
3 why not? He said because I'm the victim; one of the
4 victims. I said what do you mean? George Nichols. I
5 said George Nichols? My client is David Clark -- Clark
6 David Thomas. He said no Tommy, he's George Nichols.

7 So we're talking about maybe three weeks later and I
8 didn't even know about an alias and didn't even know what
9 I you know I had a little bit of a record of CDV but
10 there's 46-50 bad checks, bad -- breach of trust and it's
11 George Nichols.

12 And I asked him are you George Nichols? Yes. You
13 didn't think it was important to tell me that? Well,
14 okay. That's the good character I think that he is
15 trying to say he has and that I didn't bring it up. And
16 that's exactly why I didn't bring that kind of stuff up.

17 Q. So you didn't bring up any character testimony
18 because of his extensive criminal record ---

19 A. --- it would have been the dumbest move a lawyer
20 could have made in a situation as nasty as this to bring
21 up a character issue. And I'm kind of on it because I
22 heard talk about me and I'm -- my bloodline I can get
23 kind of mad when I want to. I'm going to try to calm
24 down. It's just that he knew we weren't going to bring
25 up character witnesses because there is no character to

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1 talk about in terms of honesty and that type of thing.
2 That whole -- Nathan is a smart lawyer. I consider him
3 one of the best prosecutors in the State right now. He
4 would have jumped all over everything I -- none of that
5 came in because we didn't have a character situation to
6 talk about.

7 As a matter of fact the CDV I mean that was enough
8 right there -- this is the first I've heard about
9 character witnesses talking about his non-violence and
10 Ms. Crawley being violent.

11 Well, I might have used some of that if I had been
12 aware of that but I probably wouldn't have because it
13 would have brought up exactly what you did bringing up
14 the record against -- what he did to Ms. Crawley. It
15 would have played right in to the prosecution's hands
16 because he claimed it was consensual anyway.

17 Q. And do you recall discussing any possible defenses
18 with Mr. Thomas?

19 A. Yes.

20 Q. Did you after your talks and after hearing his
21 version of the facts and the State's evidence did you
22 come up with any defenses you could present?

23 A. Yes -- like he said it was consensual. The woman
24 liked being tied up, liked being tased, they've done it;
25 she gets a kick out of it. Of course I don't know about

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1 the Longfellow [sic] and the other people that say that
2 she liked it. That's the first I've ever seen of that
3 and heard about that.

4 But I did use his daughter on that issue because if
5 she liked it she liked it and that was relevant and we
6 brought it up and she brought it up. And He brought it
7 up too and he didn't deny tasing her. He's never denied
8 tasing the woman.

9 Q. Okay. So it's your testimony basically that the
10 defense that you decided to portray to the jury is that
11 the incident with the victim was consensual sex. I guess
12 based on that was it part of your trial strategy to
13 portray Mr. Thomas and the victim in any particular way?

14 A. The facts of it was so bad in terms of their
15 constant use of, and he admitted all this, the constant
16 use of very hard drugs. He called it they liked kinky
17 sex. He said she was promiscuous on him all the time.

18 And just the whole panorama of what was going on. I
19 sure as heck wasn't going to present this guy as a Sunday
20 School fellow that had a quote good honest character and
21 get a jury to believe that his wife was going to agree to
22 all this.

23 I had to portray it a certain way that this is the
24 way they were because of their drug addiction. And when
25 I call it immoral behavior and what was going on I still

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1 think its immoral behavior but I'm not the judge of that.
2 But the jury had to hear something about why these people
3 would even get to the point where the people being tied
4 up, people being tased and this and that they had to
5 believe something that hey, if he's says it was
6 consensual maybe it was. But that's the only way to get
7 them to come around and that was my theory.

8 And these comments in this yes, if you take them out
9 of context it makes me look like I'm trying to convict my
10 client. I'm not trying to convict him. I'm trying to
11 get the jury to sympathize with both sides; these two
12 people needed help. And he knew that was going to be the
13 strategy. He knew in spite of what he said today he knew
14 that was going to be the strategy.

15 Q. Do you recall what type of investigation you had to
16 do on this case?

17 A. Well I talked to him and I've got all the reports
18 and everything. We had a preliminary hearing and then he
19 wrote me letters and a couple of witnesses called me.

20 And after I spoke with them some of his famous
21 witnesses would have put him I mean I told them I don't
22 need to talk -- I don't need you around the courthouse
23 and I don't need you anywhere around this case. And two
24 of them are on his little list he gave me to call about
25 the true facts of the case that happened that night. It

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1 would have been a disaster to put them up what they saw.
2 Q. So it's your testimony that the witnesses given by
3 Mr. Thomas for you to investigate you would not have
4 wanted to call them at trial the ones you were able to
5 contact?

6 A. Well, I do see that one of them was Teddy Martin and
7 he testified earlier. Of course he never told me what
8 Mr. Martin wanted. I never saw Mr. Martin to the point
9 of a trial is when they showed up.

10 I was wondering why everybody was here and the only
11 thing I heard was we want to be his character witnesses.
12 I didn't know what kind of character he was talking
13 about.

14 It caught me by surprise that after I got the
15 amended P-C-R that they are going to be talking about his
16 quote non-violent character, which was never an issue at
17 the trial. I thought they were talking about his
18 predisposition for honesty and that truthfulness and all
19 that which is not there.

20 So Teddy Martin was on there but then he had John
21 Kegel [phonetic], somebody Cole Thomas, Ben Dubois
22 [phonetic], Teddy Martin, Tommy Smith, Lorraine Biering
23 [phonetic], and Crystal Smith. That's one, two, three,
24 four, five, six, seven and Ms. Biering [phonetic] ended
25 up being somebody that was trying to kind of broker a

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1 deal I guess or just feeding information to him and to
2 everybody that Rachel didn't want to prosecute and that
3 she was too strung out and didn't want to get involved.

4 And that's why Mr. Thomas kept pressing me about
5 hurry this trial up, hurry this trial up before they
6 straighten her up, hurry it up, let's get a fast trial,
7 blah, blah, blah. So you know I did what he wanted to; I
8 filed a motion for a speedy trial and it was granted.

9 I had two or three bond hearings and he ended up
10 getting out I think it was on a P-R but he had to have a
11 G-P-S monitoring devise on him. But that didn't satisfy
12 him and wanted me to keep pushing so we kept pushing and
13 lo and behold Nathan Williams straightened Rachel up.

14 They sent her to a -- I don't know what happened but
15 within 30 days she went from what I heard not being able
16 to come in and testify to being a very potent witness.
17 He wasn't counting on it.

18 I got a letter from him that said she is not going
19 to testify, get it dismissed; she's not going to testify.
20 I said don't count on that partner but he wouldn't listen
21 to me. I said let it lie, let it lie; just let it lie.
22 If she doesn't want to prosecute let it lie.

23 But he wanted to get off that G-P-S thing and that
24 was his undoing. He got Nathan Williams' interest and
25 when you get Nathan Williams' interest you've got a

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1 problem.

2 Q. Okay. Thank you. We talked about in this case how
3 character witnesses would have not been helpful to Mr.
4 Clark. You didn't think it would be helpful to bring out
5 the good character because the State would be able to
6 kind of use that is that correct?

7 A. Yes, I can't be more emphatic that it would have
8 been a complete and utter disaster to try to show that he
9 had a good character.

10 He admitted in his testimony he got her the best
11 dope and he was kind of proud of it like that was his
12 mission in life to keep her with good dope. I mean it
13 wasn't going to happen; it just wasn't going to happen.

14 Q. Did you feel like you were able to adequately cross-
15 examine the State's witnesses at trial?

16 A. Heck yeah. I mean I got the cop to admit I believe
17 and everybody is agreeable that she didn't make -- her
18 first statement made no mention of a rape. It was just
19 that she was held against her will and tased.

20 It was like a day or two later I think Talbott or
21 somebody I know somebody from the police department they
22 admitted it was like two days later that she came back
23 with another statement that he had had forcible sex with
24 her.

25 Q. Do you recall eliciting that same testimony from the

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1 victim about the fact that her first statement didn't
2 mention rape?

3 A. I can't remember. Maybe I did, maybe I didn't. But
4 I know the whole jest of it was that she was so
5 traumatized that -- and I think somebody testified that
6 sometimes people when they start giving statements they
7 forget something.

8 But I do believe I questioned the -- if somebody
9 claims they were raped in a hotel room against their will
10 that would have been an important fact to explore. I
11 think the jury I don't know why they found him not guilty
12 on the law but I think maybe you know I don't know what
13 their reasoning is.

14 Q. Do you recall eliciting any testimony at trial about
15 the fact that the victim enjoyed being tased from Mr.
16 Thomas point of view?

17 A. Well yes, his daughter. That was the big witness.
18 He kept you got to get C.C., that's her name, C.C.
19 Thomas.

20 I thought she did a pretty good job actually saying
21 that she could always hear sounds from the bedroom, that
22 they would fuss and fight and they would maybe get happy
23 and go back and have this noisy sex and she would hear a
24 taser going off. And then they would both come out
25 happy. She testified to that. I didn't know I had to

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1 call everybody on Folly Beach to find out if they knew
2 about tasers and everything. At least these other people
3 they talk about they are news to me because they are not
4 on the list.

5 Q. Do you recall during the Solicitor's closing
6 argument finding any of his closing argument to be
7 objectionable? Is it your general practice to object
8 to...

9 A. I couldn't answer that specific -- I think it was --
10 I got a pretty good hearing. You know there is an old
11 saying you don't interrupt people in their closing unless
12 something really bad is going -- I don't remember
13 anything that was like would bring down the house that
14 would make the Judge stop him from a certain line. I
15 thought he was pretty much on it. He had a case to try
16 and he did a good job.

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

18 [Whereupon, Ms. Wilson reviews documents]

19 Q. [Ms. Wilson] Now can you kind of shine some light on
20 this testimony that's been elicited by Mr. Shaffer on
21 from numerous witnesses about you rushing through trial
22 to get to vacation?

23 A. Everybody that knows me for 50 years knows I've been
24 a surfer and they know I go surfing twice a year. Not
25 anymore; my knees are shot. But it was a situation I had

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1 four months in advance I was catching a plane on Saturday
2 and the whole point is they have taken it out of context.
3 Judge Jefferson had us come in I think it was Monday to
4 pick a jury.

5 And the only thing I asked her I said Judge because
6 they were going to do something else we weren't going to
7 start until Wednesday. But they called me for trial for
8 Monday. I just reminded the court that I have an order
9 of protection from Saturday to like Monday, eight or nine
10 days.

11 And then I always read a book. I'm a big reader
12 when I come to court. He talked about Abraham Lincoln
13 and I think it was a Lincoln -- it wasn't Lincoln it was
14 Benjamin Franklin. I'm reading a book when nothing is
15 happening. You're waiting on the judge and no offense
16 Your Honor but sometimes judges are late and sometimes
17 lawyers are late. But I'm not going to sit in a
18 courtroom and just stare at a client I'm reading.

19 I'm reading right now Patton before the judge got
20 here. But they made that into a thing where I wasn't
21 paying attention to this case. There was no problem
22 because the case ended up I think Thursday night or
23 Friday morning. There was no problem.

24 Q. Did you feel like you had ample time to prepare for
25 trial?

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1 A. I think we had about 18 months or two years didn't
2 we? Was it that long? I can't remember. I know we had
3 ample time ---

4 Q. --- that's about right.

5 A. Yes, it happened in June/July of '06. It was two
6 years wasn't it?

7 Q. It was two years; that's correct.

8 MS. WILSON: Beg the court's indulgence, Your
9 Honor.

10 THE COURT: Yes, ma'am.

11 [Whereupon, Ms. Wilson reviews documents]

12 Q. [Ms. Wilson] Lastly Mr. Bolus, is it your testimony
13 today that Mr. Thomas never told you that he was the
14 victim of domestic violence at the hands of Ms. Crawley
15 and that was what caused him to assault her?

16 A. The only thing I got from the hearing was that he's
17 got a little note here he's trying to tell me in a note
18 that July 7th of '06 and there is no mention of any kind
19 of abuse towards him. He talks about the abuse toward
20 his daughter.

21 And then he did write that she likes suffocation,
22 hot sex, strangulation, threesomes, bi-racial sex as well
23 as electric shock. Tommy, this woman is an absolute
24 monster and then he signs it Peace. Right; peace, and
25 then he signs his name. That's the only thing I knew and

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1 for him to say that I disparaged him somehow in front of
2 a jury. I mean that's what they were into. The jury had
3 to know about it. I didn't know anything about any quote
4 abuse of a little girl toward him. But I imagine when
5 you're doing that much drugs it's probably a lot of
6 slapping and shouting and struggling but that wasn't
7 really the big issue. The CDV was such a small charge
8 compared to a high and aggravated -- such a small charge
9 compared -- I was looking at a 30 year CSC charge and a
10 20 or 30 year kidnapping. And that's small potatoes; I
11 wasn't worried about a CDV.

12 But I would have loved that if that had been the --
13 that's my goal to get him out of the kidnapping and CSC
14 and get him convicted if it's going to be anything -- not
15 get him convicted but if the jury doesn't like what they
16 hear get him on the high and aggravated CDV. I think
17 it's a year minimum up to 10 years and that's not too
18 bad.

19 Q. And the record would reflect that you were pretty
20 successful in your representation with regard to the CSC
21 is that correct because he was acquitted.

22 A. Yeah.

23 Q. Thank you Mr. Bolus.

24 THE COURT: Cross-examination.

25 MR. SHAFFER: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. SHAFFER:

3 Q. Mr. Bolus was there a plea offer in this case?

4 A. There was a plea offer that if he pled straight up
5 he was going to get 30 years and that was about it.

6 Q. Okay.

7 A. No, that was not -- I don't call that plea offer.
8 Nathan Williams was after him and the most he said he
9 would do would be a kidnapping. The most but he was
10 looking at 30 years and that's on the record because
11 Judge Jefferson was trying to negotiate this thing to 10
12 or 20 because Nathan said that the victim might settle
13 for 10 to 20.

14 But when she started in on me and Nathan about we
15 have a deal or not and then that's when Nathan said Your
16 Honor whether he pleads or is found guilty I want 30
17 years. That's not much of a plea bargain. So I guess
18 the answer to it is really there was no plea bargain.

19 Q. Okay. If it would have been 10 to 20 years did you
20 ever talk to them about ---

21 A. --- he wouldn't have taken it.

22 Q. He wouldn't have taken it?

23 A. He thought he was not guilty.

24 Q. Okay. So basically he wouldn't have taken anything
25 correct?

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- 1 A. He didn't think he did anything wrong.
- 2 Q. Okay. And you talked to him about the trial
3 strategy; that was your testimony?
- 4 A. Oh, yes.
- 5 Q. Okay. And your trial strategy basically made him
6 look guilty of the kidnapping and ---
- 7 A. --- no, it made him look like what I thought the
8 drug addicted basically both of them drug addicts and
9 sexual deviants. And I had to get somebody to believe
10 that they were like that. There is no rape and there is
11 no kidnapping. That's the goal here.
- 12 Q. Did you ever suggest any alternative trial
13 strategies other than having him testify that it was
14 consensual?
- 15 A. I don't know what you're talking about. There is no
16 other -- if you're not consensual then what he didn't do
17 it, he wasn't there?
- 18 Q. Yes.
- 19 A. He admitted being there.
- 20 Q. Did you ever suggest anything else to him other than
21 having him testify about the drugs and the sex?
- 22 A. Well, I don't know what he would have testified to.
23 Maybe what she ---
- 24 Q. --- and honestly I'm just asking the question.
- 25 A. They didn't watch T.V. in the hotel room. There was

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1 nothing to talk about except that he said that they were
2 still living together, that she came voluntarily to the
3 hotel room, which I think all that came out, that she had
4 I think even testified when he left to get drugs and she
5 didn't leave and that she could have left; it was never
6 kidnapping that was the thing.

7 And that of the sex even though she might have been
8 bound or something was consensual. That was the only
9 game in town.

10 Q. You said that the -- you didn't think the medical
11 records were necessary. Did you review the medical
12 records ahead of time?

13 A. No.

14 Q. Okay. So you think Mr. Williams had not actually
15 turned those over ---

16 A. --- it's not his fault. I didn't ask for them.
17 He's a good guy; he gave me everything I needed. Now I
18 did have some problems with some things at the trial.
19 You know how you get hit with photographs at the last
20 second but it wouldn't have changed my strategy.

21 There were just photographs of things like, okay you
22 knew about them but you never saw them until you got in
23 trial but it wouldn't have changed anything in my mind
24 about it. And I wasn't worrying about a chipped tooth.

25 Q. Okay. You do not -- do you think that that would

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1 have been helpful to bring up at least; the chipped
2 tooth?

3 A. I don't know. I really don't know. You know 30
4 taser marks on a person's body and all that and the
5 testimony from the doctor and her and the officers that's
6 almost laughable when you're talking about a chipped
7 tooth.

8 Q. You had mentioned something about going to the
9 preliminary hearing and not being able to represent him
10 because you represented the victim or?

11 A. Oh, the magistrate. What's the magistrate over -- a
12 good buddy of mine...

13 Q. Gosnell?

14 A. Yeah.

15 Q. Okay.

16 A. A heck of a guy. He looks at me like I'm crazy. He
17 said what you coming in here for. I said what do you
18 mean? He said that's George Nichols. I said no that's
19 the first -- that's the kind of rapport we have.

20 If he didn't think I was honest with him or whatever
21 well, that's when I find out about him you know. There's
22 one other little thing I'd like to bring up if you care
23 to hear about it.

24 Q. Yes, go ahead.

25 A. He also played me a little bit. He acted like he

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1 knew me. He didn't know me when he hired me. He knew my
2 brother and he never told me. He never told me about my
3 brother being the prosecutor about eight years ago on all
4 those charges.

5 And I didn't know about that; he never expressed
6 that to me. He just said I heard about your reputation
7 blah, blah, blah. And then finally when he sued us in
8 mal practice that's when my brother finds out that George
9 Nichols is that man there [indicates]. And he never told
10 me about that.

11 I have a feeling in my own gut is that he searched
12 me out for a particular reason because he always talked
13 about how he knew Keith and Keith being a good guy and
14 all that. And I'm feeling like a fool after it's all
15 over. But that's what he -- he knew what he was doing.

16 And Judge Gosnell to answer your question gave it
17 over to Judge Gerrard [phonetic]. We had to have it like
18 two weeks later because he had a conflict He claimed
19 that this was -- he was the victim of one of his scams.

20 Q. And you said that you had not talked to -- you never
21 talked to the one witnesses -- the witnesses -- and I
22 apologize ---

23 A. --- Teddy Martin.

24 Q. Teddy Martin, yes.

25 A. I didn't know who that guy -- there was no phone

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1 number; just a list of names. But I did talk to one that
2 he wanted me to talk to which was very interesting.

3 Q. What witnesses did you talk to?

4 A. I talked to Ben Dubois [phonetic].

5 Q. And what did Ben have to say?

6 A. You really want to hear it?

7 Q. Perhaps not. How many times did you communicate
8 with Clark prior to trial do you remember?

9 A. Probably six times at the jail and probably 15 times
10 over the phone. Then I get notes -- I got a stack of
11 little notes he sent me. And I even got a couple of
12 Christmas cards from him talking about how great of a job
13 I did if you're interested in looking at them and wishing
14 me peace and that type of thing.

15 Q. And Clark's mother you had spoken to her throughout
16 the process is that right?

17 A. Oh yes.

18 Q. She had suggested several witnesses -- or did she
19 ever suggest any witnesses to you do you recall?

20 A. I can't remember who brought up Ms. Biering
21 [phonetic] if it was her but she was more interested in
22 this thing about paying Rachel Crawley some money to get
23 her not to testify. And I was concerned that that was
24 obstruction of justice and I told her don't be a part of
25 that. I said let's leave this thing alone but you can't

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1 be calling her back. That's his mother and you paid me
2 the fee and paying a State's witness who is the victim,
3 money and she said well she might not testify if she gets
4 some money. I said that don't sound good to me.

5 I never knew and I still don't know about that tape
6 that was going to come in that you didn't bring in. I
7 don't know if it was actually -- she actually said quote
8 I will not testify or not. But I got the feeling from
9 talking to David and his mother that if they got her some
10 money but she was still hooked on drugs she might just
11 get lost and never show up.

12 Q. Did you ever raise the issue or did you ever
13 consider raising the issue involving the prior incidents
14 -- well, the incident at Folly Beach, the one that his
15 daughter testified to you obtained the police report for
16 that correct?

17 A. Yes.

18 Q. Okay. Did you ever think of talking to Joel
19 Longenecker, the other person listed in that incident
20 report?

21 A. No.

22 Q. Okay.

23 MR. SHAFFER: Court's indulgence.

24 [Whereupon, Mr. Shaffer confers with his client]

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

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1 THE COURT: No further questions?

2 MS. WILSON: Nothing further from the State.

3 THE COURT: Mr. Bolus, let me just ask you one
4 question.

5 THE WITNESS: Yes, sir.

6 THE COURT: Part of his allegations are that the
7 State didn't disclose prior police reports concerning the
8 victim. Do you know anything about that? Were there any
9 police reports ---

10 THE WITNESS: --- I don't know -- I have the one
11 Judge the police report where she was accused of
12 assaulting his daughter at Folly.

13 THE COURT: Okay.

14 THE WITNESS: But I don't know of any other police
15 reports that concern Rachel Crawley.

16 THE COURT: Okay.

17 THE WITNESS: I did get the police reports
18 concerning this case but that's the only thing I knew
19 that Rachel was in trouble for.

20 THE COURT: Okay. Thank you so very much. You
21 may step down.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 MS. WILSON: No further witnesses from the State.

25 THE COURT: Okay. Are you going to have any

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Tommy Bolus-Cross-Examination by Mr. Shaffer
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1 rebuttal testimony?

2 MR. SHAFFER: No, Your Honor.

3 THE COURT: Okay. Thank you so very much. Mr.

4 Shaffer I'll be glad to hear you and Ms. Wilson very

5 briefly in a very brief summation. And when I say brief

6 I mean brief.

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Clark D. Thomas v State of S.C.
Closing Arguments-Remarks by Mr. Shaffer
December 8, 2014

1 MR. SHAFFER: Your Honor, I'm actually -- because
2 of the fact that there are so many allegations I believe
3 that it is more proper not to actually do a summation
4 because I'm going to miss things.

5 I would like to put on the record briefly that
6 throughout this process my client has -- this is
7 something he wanted me to put in the record is that he
8 wanted issues I did not bring up. He wanted witnesses
9 that I did not call. I didn't call probably more than
10 half the witnesses that he had requested. He wanted me
11 to put that on the record so that the court knows he's
12 given up some authority on this case by having me as his
13 attorney.

14 That being said I think that there are several
15 grounds that you could grant relief on. One, there are
16 many inconsistencies, Your Honor. The medical records
17 either didn't get -- either weren't used or didn't get
18 turned over. I think that they go to inconsistencies
19 used -- of inconsistencies that were made.

20 Your Honor, I have to say that there has to be some
21 sort of better strategy than merely saying that they are
22 horrible people. I don't think that that's the best
23 trial strategy to use or even a reasonable trial strategy
24 is to say basically talk bad about your client for a
25 significant portion of your opening and closing. And I

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1 think that that could be a ground for relief as well. We
2 did make at the end of this -- I would just like to say
3 that there is like with all of the errors that we had
4 raised ---

5 THE COURT: --- could you hold on just a second.

6 MR. SHAFFER: Sorry, Your Honor.

7 [Whereupon, the court reviews documents]

8 THE COURT: All right go ahead.

9 MR. SHAFFER: Thank you, Your Honor. With all the
10 errors that were raised I just think that there is
11 grounds for granting this post conviction relief.

12 THE COURT: All right. Now tell me about this
13 tape. Are y'all going to admit that or not admit it;
14 have y'all listened to it?

15 MR. SHAFFER: Your Honor, I have ---

16 THE COURT: --- I addressed it before lunch but we
17 haven't addressed since lunch.

18 MR. SHAFFER: Your Honor, I would ---

19 THE COURT: --- I believe my instruction was for
20 you to listen to it.

21 MR. SHAFFER: Yes, Your Honor. After getting it at
22 lunch I had heard it months ago -- this tape months ago.
23 I misplaced the C.D. They provided me with another copy
24 of it today. Whenever I heard it I decided that I was
25 not going to introduce it, Your Honor.

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1 THE COURT: Well does it address the issue? I
2 believe Ms. Hood [sic] testified that she had it on tape
3 that the victim said she would not testify if she was
4 paid money. Is that what she testified to?

5 MR. SHAFFER: Your Honor, the ---

6 THE COURT: --- is that on the tape?

7 MR. SHAFFER: Your Honor, I don't think that that
8 particular conversation is on the tape that I received.

9 THE COURT: Is that what your witness testified to
10 that she had on tape ---

11 MR. SHAFFER: --- I'm not sure if that -- I think
12 she might have testified to that ---

13 MS. WILSON: --- Your Honor, that's exactly what
14 she testified to.

15 THE COURT: Okay.

16 MR. SHAFFER: And she might have. I can't say word
17 for word that she did.

18 THE COURT: Is that on the tape or is it not on the
19 tape?

20 MR. SHAFFER: No, Your Honor. There is statements
21 from what she says was Ms. Crawley saying to call me, I
22 need to talk to you. Call me I need to talk to you but
23 there were no actual statement regarding paying her ---

24 THE COURT: --- okay. And you're not going to
25 offer it?

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1 MR. SHAFFER: Your Honor, I was not planning on
2 offering that into evidence ---

3 THE COURT: --- all right. Thank you so very much.
4 Ms. Wilson, I'll be glad to hear you.

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Clark D. Thomas v State of S.C.
Closing Arguments-Remarks by Ms. Wilson
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1 MS. WILSON: Your Honor, the State would just ask
2 that you deny this motion -- this application for post
3 conviction relief. Mr. Thomas has not proven
4 deficiencies with regard to his multiple claims of
5 ineffective assistance of counsel. He also has failed to
6 prove that any of these alleged deficiencies would have
7 affected the outcome of his trial and we just ask that
8 you deny his application for post conviction relief.
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1 THE COURT: Okay. Thank y'all very much.

2 MR. SHAFFER: Thank you, Your Honor.

3 THE COURT: Give me a chance to look at the
4 transcript and review some of the issues in the
5 transcript. Do either one of you want to address the
6 Hawes case in reference to a 25 percent or you want me to
7 address that when I finish reading -- looking at the
8 transcript?

9 MR. SHAFFER: Yes, Your Honor. I think it's up to
10 you to determine whether or not we've presented credible
11 evidence that he was also the victim of the criminal
12 domestic violence.

13 THE COURT: Ms. Wilson, anything you want to
14 comment on that?

15 MS. WILSON: Yes, Your Honor. Just with regard to
16 Hawes I'd just like to note the portion of the case that
17 talks about the legislative purpose of the case I
18 mentioned in my motion earlier. Also I'd like to note
19 the -- bring to the court's attention the footnote in the
20 case where the court said that one incident doesn't mean
21 a history of criminal domestic violence. And that would
22 be all, Your Honor.

23 MR. SHAFFER: And Your Honor, we have -- there is
24 multiple acts that were testified to today.

25 THE COURT: Well, I don't want to misquote the

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1 testimony but I believe I heard one witness say he had
2 seen Ms. Crawley slap him one time. But also most of the
3 testimony was basically around a mutual violent
4 relationship between the parties is that correct or
5 incorrect?

6 MR. SHAFFER: Your Honor, I wouldn't say that most
7 of it. I would say that certain people said that. Also
8 the person who actually used the term violence I believe
9 that he actually said that clarified himself and said
10 that Mr. Thomas was not physically violent toward her
11 that she was physically violent toward him but verbally
12 in other statements. We also have the car running off
13 the road which I think is pretty substantial.

14 THE COURT: I don't think they said it ran off the
15 road. They said it almost hit a wall.

16 MR. SHAFFER: Yes, Your Honor. And I apologize ---

17 THE COURT: --- I don't know if that's off the road
18 or on the road.

19 MR. SHAFFER: Yes, Your Honor. I mean the jerking
20 of the wheel.

21 THE COURT: Oh, okay.

22 MR. SHAFFER: Also, several witnesses testified
23 that she would throw things at him throughout their
24 relationship whenever they got mad. There are multiple
25 instances that were testified to.

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1 THE COURT: Okay. Ms. Wilson?

2 MS. WILSON: Just briefly, Your Honor. I'd just
3 like to note that Mr. Thomas has the burden of proving
4 this by a preponderance of the evidence. I'd just like
5 to note that for the record.

6 THE COURT: Okay. Thank y'all so very much.

7 MS. WILSON: Thank you, Your Honor.

8 [Whereupon, court adjourns at 5:00 p.m.]

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Clark D. Thomas v State of S.C.
Certificate of the Court Reporter
December 8, 2014

C E R T I F I C A T E

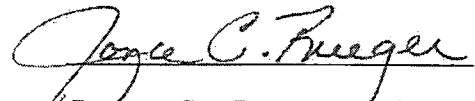
I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 8th day of December, 2014.

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

February 15, 2015



COPY


Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF

*Charleston**Clark D. Thomas*

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUITCASE NO.: *2012-CP-10-8354*MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Bar No. _____ Address: <i>BRCI Moultrie A-2086</i> <i>4460 Broad River Rd</i> <i>Columbia, SC 29210</i> Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____																
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information Nature of Motion: <i>Motion to Relieve</i> Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO																	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <i>Clark D. Thomas</i> Signature of Attorney for ☐ Plaintiff / ☐ Defendant <i>5-18-15</i> Date submitted																	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) <table style="width: 100%; margin-top: 5px;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☒ Post-Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ Domestic Abuse or Abuse and Neglect	☐ Indigent Status	☐ State Agency v. Indigent Party	☐ Sexually Violent Predator Act	☒ Post-Conviction Relief	☐ Motion for Stay in Bankruptcy	☐ Motion for Execution (Rule 69, SCRCP)	☐ Proposed order submitted at request of the court; or,		reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		☐ Other: _____	
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 Clark D. Thomas,)
)
 Applicant,)
)
 Vs.)
)
)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 Case No. 2012-CP-10-8354

**NOTICE OF MOTION AND
 MOTION TO RELIEVE TRISTAN M.
 SHAFFER, ESQUIRE, AS COUNSEL
 FOR APPLICANT, AND MOTION FOR
 SUBSEQUENT EVIDENTIARY HEARING**

FILED
 MAY 18 AM 11:41
 JULIE J. ARMSTRONG
 CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Clark D. Thomas, *pro se*, Applicant in the above-captioned case, respectfully moves this Court, the Honorable J.C. Nicholson, to relieve Tristan M. Shaffer, Esquire, as his counsel; and to order that a subsequent evidentiary hearing be convened pursuant to Rule 59(a), SCRCP. Applicant's motions are supported by his (1) *Memorandum of Law in Support of Post-Conviction Relief* filed on August 29, 2014; (2) *Agenda for Post Conviction Relief Hearing Convened on December 8, 2014*; and (3) *Exhibits in Support of Post-Trial Motions*; and based on one or more of the following grounds:

INTRODUCTION

This Court presided over the evidentiary hearing on December 8, 2014, in the matter of Applicant's action for post-conviction relief (PCR) on the charges of kidnapping and criminal domestic violence of a high and aggravating nature (CDVHAN) resulting in concurrent sentences of 20 years and 10 years, respectively. Tristan M. Shaffer, Esquire, was Applicant's PCR Counsel, and Applicant is seeking relief grounded on the ineffective assistance of his trial counsel, Michael T. Bolus, Esquire.

STANDARD OF REVIEW

Ineffective Representation

“[W]hen a State Court requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in a collateral proceeding, a prisoner may establish cause for a default of an ineffective-assistance claim ... where ... counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective...” (Citation omitted). Marinez v. Ryan, 132 S.Ct. 1309, 1318 (2012). “To overcome the default, prisoner must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit. (Citation omitted). *Id.*

Extrinsic Fraud

“Extrinsic fraud is fraud that induces a person not to present a case or deprives the person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action.” (Internal quotation marks omitted). (Citation omitted). Chewning v. Ford Motor Co., 579 S.E.2d 605, 610 (S.C. 2003).

Self-Representation

“Although not stated in the Amendment in so many words, the right to self-representation—to make one’s own defense personally—is thus necessarily implied by the structure of the Amendment.” Faretta v. California, 422 U.S. 806, 819 (1975). “The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.” *Id.* at 819-820.

I.

Assault & Battery Deception

Cecil Terry testified that the alleged victim, Rachel M. Crowley, had never been arrested for assaulting him. (PCR Tr., p. 78, lines 24-25—p. 79, lines 1-2). However, Shaffer had in his possession the *Incident Report* of that arrest and the disposition of that charge wherein Crowley pled guilty. (*Exhibits in Support*, p. 3, ¶ 1; pp. 12-15). (*Trial Agenda*, p. 28, ¶ 17). And that *Incident Report* was authenticated by the arresting officer when it was entered into evidence during Thomas and Crowley's divorce trial proceedings. (*Exhibits in Support*, p. 234, lines 14-25—p. 237, lines 1-17).

Terry also lied when testifying that Crowley merely slapped Thomas. (PCR Tr., p. 79, lines 14-15). By way of explanation, Thomas' testimony to that incident at trial was that Crowley "swings and knocks the ... starch out of [him]"; which is to say that she hit him in the side of his head with a closed fist. (Trial Tr., p. 627, lines 12-13). And that is exactly what the *Incident Report* states that Crowley attempted to do to Terry. (*Exhibits in Support*, p. 12; p. 235, lines 23-25).

Therefore, because Terry claims that Crowley slapped Thomas: he has implicitly corroborated that the blow was to the side of Thomas' head. In other words, Crowley did punch Thomas in the side of his head. And if Shaffer had properly questioned Teddy Martin, it would have been revealed that Crowley used her fists in the attack upon Thomas that he witnessed as well—which Randy Harbison did confirm was the method of Crowley's attacks on Thomas that he witnessed. (PCR Tr., p. 45, lines 16-25; p. 72, lines 16-19; p. 73, line 16).

II.

Brady Material Duplicity

Michael Bolus testified that he had received all the discovery materials he wanted; and that he never asked the prosecution to produce Crowley's medical records because they were not necessary. (PCR Tr., p. 158, lines 9-15). However, Shaffer had in his possession Bolus' five discovery motions and three letters he wrote to the prosecution specifically requesting, among other things, (1) Crowley's medical records; (2) photographs of Crowley's allegedly non-consensual injuries; and (3) photographs of the inside of Thomas and Crowley's hotel room. (*Exhibits in Support*, pp. 133-147). (*Trial Agenda*, p. 28, ¶ 22). With that in mind, Shaffer is recorded as having confirmed that Bolus' letters regarding medical and dental records are materially crucial documents, and that he would enter them into evidence for the purpose of impeaching Bolus—which never happened. (*Exhibits in Support*, p. 37, lines 18-25—p. 38, lines 1-19; p. 91, lines 14-25—p. 92, lines 1-18).

Be that as it may, even though Bolus testified that those photographs would not have had an impact on his strategy, he did testify to having been surprised by their existence at trial. (PCR Tr., p. 175, lines 19-20). And it should be noted that Thomas has never denied having consensually used a stun gun on Crowley, (PCR Tr., p. 163, lines 7-8); and that he has denied ever striking her with an open hand or his fists. Therefore, using Crowley's medical and dental records and the foregoing photographs to prove that Crowley lied about Thomas punching her in the mouth and cracking her teeth would *most probably* have led to her impeachment. (Trial Tr., p. 159, lines 20-24).

In fact, Shaffer is recorded as having said that if the prosecution has suppressed direct contradictory evidence, it would be like a *Riddle v. Ozmint* issue and tantamount to fraud upon

the court; and that withholding evidence of that nature in and of itself would require a new trial. (*Exhibits in Support*, p. 40, lines 13-25—p. 41, lines 1-9). However, Shaffer did not cite *Riddle*, or even make that argument when it was proven that the prosecution did suppress that contradictory evidence. (PCR Tr., p. 116, lines 24-25—p. 117, lines 1-6; p. 175, lines 14-16).

Furthermore, Shaffer failed to subpoena Crowley's dental records from her only dentist, Dr. Mark LaRue, despite having been instructed to do so time and time again. And those records would have proven that Crowley lied about having teeth repaired during the time in question. (*Exhibits in Support*, p. 214, ¶ 20; pp. 245-247; p. 249). It should also be noted that this concocted tooth claim is Crowley's only injury allegation indicating there may have been some non-consensual violence that actually would have required some treatment. Consequently, proving Crowley lied about it would have further supported Thomas' version of events. All of which reveal just how ineffective Bolus was because he testified that a busted tooth was not his concern; and that the issue was almost laughable, (PCR Tr., p. 158, lines 18-19; p. 176, lines 6-7); and at that moment, Shaffer should have launched his *Riddle* argument.

What's more, Shaffer failed to argue the issue of Bolus' disinclination to seek to enter into evidence at trial a photograph of Crowley nude and voluntarily tied to the bed she shared with Thomas. (*Exhibits in Support*, p. 254). (*Memorandum*, p. 26). In other words: contrary to Crowley's claim to having been forcibly bound and raped by Thomas, this picture would have supported Thomas' testimony that Crowley enjoyed being tied-up, among other things, during sex. (Trial Tr., p. 606, lines 19-25—p. 608, lines 1-14).

In fact, proving Crowley lied about being separated from Thomas during the time in question is the only reason he was acquitted of CSC-1st. (Trial Tr., pp. 222-231; pp. 676-679; pp. 701-702). However, Bolus told this Court that he did not know why the jury found Thomas

not guilty of this rape charge. (PCR Tr., p. 168, lines 8-13). Consequently, the jury would *most probably* have acquitted Thomas on all charges had Bolus also bothered to reveal that Crowley's lies had infected virtually everything she said. (*Memorandum*, pp. 34-41).

False Claims & Hearsay

Bolus testified that Thomas bragged about being able to provide Crowley with the best dope. (PCR Tr., p. 167, lines 10-12). However, because Crowley was a rapacious addict, Thomas actually testified that he was able to provide her with plenty of drugs. (Trial Tr., p. 624, lines 14-24). Bolus also testified that Thomas had sought his representation because his brother, Keith Bolus, had been the prosecutor of charges against him eight years prior; and implied that Thomas had nefarious reasons for seeking his counsel. (PCR Tr., p. 177, lines 1-15). And that Magistrate James B. Gossnell, Jr., had recused himself from presiding over Thomas' preliminary hearing because Thomas had victimized him in a scam. (PCR Tr., p. 177, lines 16-19).

To that end, Keith Bolus was provided with an *affidavit* clarifying that Thomas had hired him for representation on forgery charges in 1992; and that he has never been a prosecutor of charges against Thomas. And an *affidavit* was sent to Judge Gossnell so he could acknowledge that he has never fallen victim to any alleged crimes or scams perpetrated by Thomas. (*Exhibits in Support*, p. 255-258). Consequently, it appears that Bolus testifying to their complicity in violations of the *Rules of Professional Conduct (RPC)*, among other things, is not worthy of their concern because they never responded.

It should also be noted that notwithstanding Bolus' suggestive emphasis of Thomas' alias of George K. Nichols: Thomas has not voluntarily gone by that name since being released from prison in December of 1992; however, his rap sheet erroneously dates that fact as having been since 1995. (*Exhibits in Support*, pp. 113-120). By way of explanation, SCDC has forced

Thomas to use that name because when Keith Bolus advised him not to let the court know about it when sentenced to his first term in prison. In other words, SCDC is unwilling to revise their records with Thomas' real name.

Specious Character Allegations

Bolus testified that he did not bring up character evidence because Thomas had 46-50 convictions for bad checks and a breach of trust; and for that reason, it would have been the dumbest move a lawyer could have made. (PCR Tr., p. 161, lines 7-25—p. 162, lines 1-6). With that in mind, Bolus elicited testimony from Thomas at trial that he had convictions for receiving stolen property, forgeries, and financial false pretenses; and that he had basically stolen money and had served time for it. (Trial Tr., p. 628, lines 4-25—p. 629, lines 1-13).

However, Thomas' rap sheet reveals that ten years prior to trial on July 8, 2008, he had not been sentenced to prison. And because his prior CDV & CDVHAN convictions involve Crowley, the jury was limited to hearing only of his convictions for obtaining money under false pretenses (1-Ct), unlawful use of telephone (4-Cts), a DUI, and a hit & run with minor injuries (1-Ct). (*Exhibits in Support*, pp. 116-120). And it should be noted that Thomas can prove both CDV's and the telephone charges are also the result of Crowley's lies. What's more, Thomas' criminal history at that time involved only non-violent misdemeanors: yet Bolus condoned the prosecution telling a bond court and the trial court that Thomas had nine felony convictions. (Trial Tr., p. 62, lines 3-5; p. 851, lines 7-8).

In other words, Bolus obviously failed to conduct a meaningful review of Thomas' criminal history for mitigation purposes. Therefore, Bolus' decision to exclude character evidence and compel Thomas to reveal more than the past ten years of his criminal history is not an objectively reasonable strategy; even more so when considering the likely benefit of character

testimony to Thomas' non-violent predisposition. In fact, Bolus accentuated the absurdity of his decision-making-skills when choosing to puerilely taunt Thomas while testifying.

By way of explanation: Bolus derisively grinned at Thomas while fluttering his fingers under his chin. Consequently, Bolus should be held accountable for, among other things, his lack of decorum and flippancy before this Court. That said, it should also be noted that contrary to Bolus' testimony: (1) he did not advise Thomas that there would be no character testimony; (2) he never discussed any possible defenses with Thomas; and (3) Thomas did not know that Bolus' strategy would be to denigrate his character. (PCR Tr., p. 161, lines 24-25; p. 162, lines 17-19; p. 164, lines 8-14).

Evidence of CDV

Bolus testified that he knew nothing about Crowley abusing Thomas. (PCR Tr., p. 162, lines 8-10; p. 171, lines 12-20; p. 172, lines 3-4). However, the truth is that he did know about it because Thomas testified at trial that Crowley had punched him in the head in the presence of her step-father, Cecil Terry. (Trial Tr., p. 627, lines 12-13). Thomas also testified about the incident where Crowley tried to force a crash into a concrete wall at 70 mph with him and his then-minor child in the car. (Trial Tr., p. 625, lines 6-24). Furthermore, the CD that Bolus declined to use in Thomas' defense clearly exposes Crowley's proclivity to violence. (*Exhibits in Support*, pp. 259-271).

Speedy Trial Testimony

Bolus testified that Eraine Biering had told Thomas that Crowley did not want to testify because she was too strung out. And that based on Biering's claims, Thomas pressured him to file a speedy trial motion—which resulted in Thomas' release from jail on GPS monitoring. Then Bolus claims that because Thomas wanted him to keep pushing for a speedy trial, the

prosecution straightened Crowley up into a very potent witness within 30 days. Bolus also said that Thomas' desire to get off GPS monitoring was his undoing. (PCR Tr., p. 165, lines 24-25—p. 166, lines 1-24).

To that end, Thomas' speedy trial motion hearing was convened on February 9, 2007. During which, Bolus argued that conversations with the prosecution and intermediaries had determined that Crowley was avoiding the prosecutor and did not want to testify, (Trial Tr., p. 839, lines 16-23; p. 840, lines 7-11); and Thomas was released on March 2, 2007. Within a matter of weeks, Crowley began seeking to reunite with Thomas. (*Exhibits in Support*, p. 219, lines 8-15). And as time progressed, her attempts to be with him increased in frequency until she finally cornered him in a restaurant sometime in January 2008. (PCR Tr., p. 48, lines 1-21; p. 57, lines 8-23).

GPS Bond Modification

Thomas was struggling to pay \$400 each month for GPS monitoring. So after Crowley approached him, Thomas immediately contacted his GPS tracker, Larry B. Ballard, to report the incident. (*Exhibits in Support*, p. 217, lines 17-25—p. 218, lines 1-8). Consequently, it was only then that Ballard was alerted to Crowley's close proximity to Thomas; and he explained that she obviously did not have in her possession the device linked to his monitor that triggers the alarm—which is a clear indication that she was not in fear for her life from him. Be that as it may, Shaffer refused to subpoena Ballard. (*Trial Agenda*, p. 6, ¶1). However, Thomas did manage to elicit some of these essential facts from Ballard during his divorce trial. (*Exhibits in Support*, p. 222, lines 24-25—p. 223, lines 1-6; p. 226, lines 1-4).

By the time that incident in the restaurant had occurred, Thomas had needlessly spent \$4,000 on GPS monitoring he could not afford. (Trial Tr., pp. 844-845). So Thomas asked

Bolus to file a motion to do away with that condition of his bond; and to *subpoena* Ballard and the Martins to testify in support. And on the evening of March 20, 2008: Bolus informed Thomas that a hearing had been scheduled for the following morning at 9:00. However, due to that short notice, Thomas arrived 20 minutes late only to find that Bolus had proceeded without him. Moreover, Bolus had not *subpoenaed* Thomas' witnesses; nor did he even reveal the restaurant incident. In fact, he literally persuaded the court to deny the motion. (Trial Tr., pp. 846-853).

Prostitution Allegations

Around three months later on June 5, 2008: Thomas was arrested on allegations of aiding and abetting prostitution—which was dismissed and expunged, (*Exhibits in Support*, p. 272); and 30 days after that, Crowley was inflamed enough to testify against Thomas at trial on July 8, 2008. By way of explanation, this entire case is the result of Thomas' ambition to divorce Crowley whereas after he informed her of this decision, she leaped from their moving vehicle, (Trial Tr., p. 624, lines 9-23), and retaliated with allegations that Thomas had kidnapped and tortured her. And two weeks after that, Crowley began claiming that Thomas had also raped her. (*Exhibits in Support*, pp. 280-281).

In other words, after having been rejected by Thomas time and again and then being told of his alleged involvement with prostitutes: Crowley became so enraged that she told more than 47 lies at trial to avenge him for having been scorned. (*Memorandum*, pp. 16-18; pp. 34-41). In fact, Bolus tacitly confirmed that Crowley's jealousy is the reason she appeared at trial when stating that the prosecution straightened her up in 30 days. (PCR Trial Tr., p. 166, lines 15-16).

Consequently, Thomas' demand for a speedy trial and request to drop GPS monitoring may very well have driven the prosecution to desperation. However, the logical conclusion is

that the prosecution told Crowley about the prostitution allegations. And Bolus did betray Thomas at that bond modification hearing on March 21, 2008; and contrary to his testimony, Bolus did not seek to enforce Thomas' right to a speedy trial because more than two years had passed when his trial was finally convened. (PCR Tr., p. 166, lines 4-24).

Perjury Summation

The magnitude of Terry and Bolus' untruthfulness did not end with the foregoing statements. And had Shaffer been effective during cross-examination of Bolus and, had he bothered to properly cross-examine Terry: they would both *most probably* have been impeached. What's more, and in-line with this Court's observation, Shaffer was supposed to seek to have Terry declared a *hostile witness* when he took the stand. (PCR Tr., p. 81, lines 22-25—p. 82, line 1). (*Trial Agenda*, p. 25, ¶ 28).

With that in mind, Applicant's *Memorandum* brings to light, among many other things, the fact that virtually every material witness for the State at Applicant's trial lied as well. (*Memorandum*, pp. 18-21). For example: the arresting officer, Chris Talbott, 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. (*Exhibits in Support*, p. 274). And during trial, Talbott testified that Crowley was kicking, screaming, was very frustrated, and had a busted lip. (Trial Tr., p. 304, lines 3-7; p. 310, lines 4-5).

What's more, the investigating then-detective, James W. Rowan, II, executed an *affidavit* stating that Thomas and Crowley were living together, (*Exhibits in Support*, p. 4); and he testified at trial that they were estranged. (Trial Tr., p. 408, lines 1-4). And Shaffer is recorded as having agreed to raise this issue of Rowan's perjury. (*Exhibits in Support*, p. 72, lines 9-25—p. 73, lines 1-15). Furthermore, Rowan was supposed to have been *subpoenaed* so that, among

other things, he could authenticate the *Witness Statements* he took from Crowley that prove some of her lies. (*Agenda*, p. 24, ¶ 26).

And finally, the City of Charleston's digital forensics expert, William G. Roberts, lied when testifying that the North Charleston Police Department (NCPD) procured Thomas' computer from the alleged crime scene and delivered it directly to him. (Trial Tr., p. 485, lines 9-16). By way of explanation: Crowley's mother, Cathy Meree, had stolen that computer and kept it for eight months before NCPD gained possession. (*Exhibits in Support*, p. 22; p. 227, lines 2-14). However, Shaffer failed to expose to this Court any of the foregoing perjury despite having agreed to do so.

III.

Inconsistent Statements

On August 29, 2014, Shaffer filed Thomas' *Memorandum of Law in Support of Post-Conviction Relief*. Therein, Thomas documented more than 47 inconsistent statements made by Crowley because he wanted a divorce and his alleged involvement with a prostitute, (*Memorandum*, pp. 34-41); which he partially summarized for this Court. (PCR Tr., p.129, lines 5-25—p. 137, lines 1-16; p. 147, lines 6-14). To that end, with exception to Crowley's medical records, Shaffer had in his possession all of the evidence required to prove those 47 lies had been told. (*Trial Agenda*, p. 27, ¶¶ 2, 3, 5, 10).

However, when Ashleigh Wilson objected to Shaffer's only attempt to enter some of this proof, he was disinclined to argue that it was impeachment evidence. (PCR Tr., p. 40—p. 41, lines 1-3). In other words, Shaffer appears to have deliberately failed to enter into evidence the (1) *Incident Report* dated June 7, 2006; (2) *1st Witness Statement* dated June 7, 2006; (3) *2nd*

Witness Statement dated June 16, 2006; and (4) Crowley's *Affidavit* executed July 10, 2006. (*Exhibits in Support*, pp. 273-282). In fact, Shaffer only tried to enter one of the 60 documents Thomas provided in support of his issues. (*Exhibits in Support*, p. 3, ¶ 1). (*Agenda*, pp. 27-33).

With that in mind, Thomas drafted a comprehensive *Trial Agenda* pursuant to the course of action Shaffer agreed upon. Therefore, Shaffer was well advised of Thomas' issues, and the exhibits and witnesses that would be required to support those issues. What's more, Shaffer is recorded as to having said that Bolus' failure to cross-examine and impeach Crowley was the best evidentiary supported issue he had ever had. (*Exhibits in Support*, p. 43, lines 9-20). But when Bolus testified that he had adequately cross-examined the State's witnesses, Shaffer again failed to enter that first-rate evidence and make that record-breaking argument. (PCR Tr., p. 167, lines 14-16).

IV.

Credibility Issues

Shaffer has also been recorded saying that this is a case of *he said / she said* hinged upon credibility because there is no scientific evidence of guilt. And that in light of the consistency of Thomas' statements and testimony, (PCR Tr., p. 163, lines 7-8), and the myriad of inconsistent statements and testimony given by Crowley, (*Memorandum*, pp. 34-41), the courts will be compelled to give more credibility to Thomas' version of events. (*Exhibits in Support*, p. 81, lines 5-25—p. 82, lines 1-24). However, it seems that Shaffer also intentionally failed to set forth the facts proving that Thomas is more credible than Crowley.

V.

Fabricated Evidence

On May 21, 2012; this Court presided over Thomas' trial for declaratory relief against the North Charleston Police Department (NCPD), Case No. 2009-CP-10-06247. In that lawsuit, Thomas was seeking discovery of *Brady* materials. (*Exhibits in Support*, pp. 163-195). And the day after this Court's intervention, NCPD finally provided Thomas with the *chain of custody* of tattered clothing marked as State's Exhibits 1 & 2 and his computer; from which, State's Exhibits 41-45 were extracted. What's more, it was only then revealed that Merece had been in possession of Thomas' computer and this mysterious clothing he is alleged to have mutilated for eight months before giving it to NCPD. (*Exhibits in Support*, p. 16; p. 22).

And when this *chain of custody* was entered into evidence during Thomas and Crowley's divorce trial: Merece gave the perjured testimony that she had provided NCPD with Thomas' computer the same day she stole it. (*Exhibits in Support*, p. 227, lines 6-25—p. 233, lines 1-14). It should also be noted that Merece gave perjured testimony at trial in the case at bar: she first claimed that Thomas had Crowley with him for two days, but she slipped-up and later testified that it was over-night. (Trial Tr., p. 262, lines 7-20; p. 270, lines 4-25—p. 272).

In other words, Thomas has persistently argued that State's 1-2 & 41-45 were fabricated. And when Shaffer was hired, his recorded statement is that he would definitely argue this issue. (*Exhibits in Support*, p. 61, lines 3-21). Therefore, Shaffer lied when claiming that this *Brady* issue does not rise to the level of a PCR obligation. (PCR Tr., p. 20, lines 8-14). Especially in light of (1) the extreme measures taken to conceal the *chain of custody*; (2) Merece, Crowley, and Terry's willingness to lie under oath; and (3) that they were all living together during the time in

question. (*Exhibits in Support*, p. 12). And deliberate or not, Shaffer has once again subverted a meritorious claim.

VI.

Dispositional Evidence

Bolus testified that Eraine Biering told him Crowley did not want to prosecute Thomas. (PCR Tr., p. 165, lines 22-25—p. 166, lines 1-3). And during Thomas' speedy trial hearing, Biering was one of the parties to which Bolus was referring when he told the court that intermediaries had given him that information. Biering had also apprised him of the fact that Crowley was avoiding the prosecutor—who confirmed that he did not know where she was. (Trial Tr., p. 839, lines 16-23; p. 840, lines 7-11).

What's more, Biering had also witnessed Crowley striking Thomas in the head with a book while he was driving—in addition to other exculpatory facts; and Bolus was informed that she would testify. However, Bolus failed to subpoena her. So when Biering was diagnosed with lung cancer, she was deposed to preserve her testimony before she died. (*Exhibits in Support*, pp. 121-132). But Shaffer refused to enter Biering's deposition into evidence when Thomas asked him to do so. (*Trial Agenda*, p. 5; p. 29, ¶¶ 28-29).

VII.

Compact Disc Exhibits

Shaffer also refused to enter into evidence the recordings of phone conversations between Thomas and Crowley and the transcript thereof. (*Trial Agenda*, pp. 6-7, ¶ 1(d); p. 30, ¶¶ 33-34). During those calls, Crowley was in a jealous rage screaming obscenities and accusing Thomas of

having a paramour. (*Exhibits in Support*, pp. 259-271). And this is the evidence Christen Boyer was referring to when testifying that Bolus said it would not be helpful. (PCR Tr., p. 87, lines 19-22). What's more, Shaffer told Thomas that evidence of Crowley's irrational fits of rage and mental instability would likely have resulted in an acquittal of all charges—now it appears that Shaffer also wants to suppress it.

And with regard to the recording of Crowley's voice mails: Cook was misapprehended as having testified that she recorded Crowley stating that she was not going to testify against Thomas; and that she wanted money. (PCR Tr., p. 108, lines 9-17). Consequently, Cook tried to clarify that after having spoken to Crowley, she decided to make a recording of Crowley's demand that she return her calls: but this Court was disinclined to allow her to do so. (PCR Tr., p. 112, lines 13-17). (*Exhibits in Support*, p. 3, ¶ 2). It should also be noted that Shaffer was recorded verifying that Bolus' suppression of this incident constituted the crime of misprision of a felony, (*Exhibits in Support*, p. 44, lines 9-17); however, Shaffer failed to make that argument when Bolus admitted his guilt and falsely claimed that Cook was seeking to obstruct justice. (PCR Tr., p. 178, lines 21-25—p. 179, lines 1-4).

VIII.

Crowley's Plea Bargain

Shaffer raised but failed to argue the issue of the prosecution suppressing plea arrangements to compel Crowley to testify. (PCR Tr., p. 11, lines 7-9). To that end, this Court was led to believe that police reports relevant to this matter have not been disclosed. (PCR Tr., p. 180, lines 3-16). And even then, Shaffer was not in the mood to clarify the facts and argue this issue. By way of explanation, the prosecution shaped a course for Crowley to elude a

conviction for having assaulted Thomas' Daughter, Christen Boyer, in their Folly Beach home when she was 15-years-old. (*Exhibits in Support*, pp. 7-11).

In other words, the prosecution was concerned that a conviction of that nature would compromise their case against Thomas. But that course of action is not documented in the Solicitor's file. And with that in mind, Shaffer had informed Thomas that it was obvious to him that the Solicitor's file had been *sanitized*. What's more, even the prosecutor, Nathan Williams, testified that he was unsure of its completeness. (PCR Tr., p. 119, lines 2-3). And Shaffer is recorded telling Thomas that he could probably get that file entered into evidence by stipulation, (*Exhibits in Support*, p. 91, lines 3-14); however, he did not even try to prove that it had been tampered with.

Furthermore, of the three police officers involved in the Folly Beach incident, Thomas has Shaffer recorded saying that he would *subpoena* the officer who drafted the *Incident Report*, Brian Kale; and Shaffer agreed not to speak with him before testifying. (*Exhibits in Support*, p. 93, lines 4-25—p. 94, lines 1-13). But Shaffer claims that he called Kale anyway, and that Kale said he did not use a Taser on Crowley during her arrest; and that alleged conversation is the reason Shaffer said he refused to call any of those officers to testify. Be that as it may, one of those three officers did use a Taser on Crowley. And Shaffer was instructed to *subpoena* all of them to determine, among other things, which one it was. (*Agenda*, pp. 8-9, ¶ 5; pp. 14-15, ¶ 9; pp. 18-19, ¶ 17).

That said, Kale is also the officer who the prosecution persuaded not to seek a conviction against Crowley for assaulting Boyer. In fact, the prosecution even arranged to have the bench warrant issued for Crowley's arrest in that incident rescinded. In other words, even though Shaffer is recorded having said that Scarlett Wilson likes to "hide the ball," (*Exhibits in Support*,

p. 32, lines 12-18), he appears to have purposefully masked the prosecution having suppressed the plea bargain designed for Crowley

IX.

Contractual Obligations

When Shaffer was retained as Thomas' PCR counsel on March 23, 2014: his agreement to preserve all of Thomas' issues and draft *subpoenas* for the witnesses required to support those issues to testify was recorded. (*Exhibits in Support*, p. 34, lines 23-24; p. 45, lines 21-25—p. 46, lines 1-6; p. 49, lines 7-9). As was Shaffer's comment that Thomas was following everything to the letter of the law in terms of ensuring that his issues were properly presented. (*Exhibits in Support*, p. 90, lines 19-25—p. 91, lines 1-2).

And as an enticement focused on persuading Thomas to retain Shaffer's counsel is his recorded willingness to perfect any subsequent appeals. However, he stipulated that Thomas must remain indigent so that SCID will prepare the *appendix* at their expense before he will take the case back. (*Exhibits in Support*, p. 29, lines 17-25—p. 30, lines 1-21). Shaffer was also recorded agreeing to expose the prosecutorial misconduct in this case while on Scarlett Wilson's watch; and to provide the President of the South Carolina Association of Criminal Defense Lawyers, Bobby Frederick, with Thomas' proof of it. (*Exhibits in Support*, p. 32, lines 1-11; p. 84, lines 24-25—p. 85, lines 1-3).

What's more, Shaffer was recorded saying that there was also a meritorious argument he was adding grounded on *passion & prejudice* that arose during closing arguments. (*Exhibits in Support*, p. 63, lines 11-25—p. 64, lines 1-3). Shaffer was also recorded confirming that

Thomas' CDVHAN indictment was flawed because he had been charged and convicted under the wrong statute. (*Exhibits in Support*, p. 64, lines 4-25—p. 65, lines 1-4).

Be that as it may, Shaffer secured a full day, and more time if needed, to present Thomas' issues before the Honorable Markley M. Dennis, Jr., on April 17, 2014. (*Exhibits in Support*, pp. 238-240). However, that hearing was continued; and then Shaffer's enthusiasm began to wane after he was *paid in full* on May 15, 2014. And after the law firm *Axelrod & Associates* hired Shaffer and assumed responsibility for his pending cases, Shaffer appeared to have virtually no concern for abiding by the terms of his agreement with Thomas.

X.

Witness Subpoenas

Shaffer was recorded saying that Thomas would be responsible for serving his witnesses with *subpoenas*. (*Exhibits in Support*, p. 32, lines 24-25—p. 33, lines 1-11). However, after being notified of the hearing scheduled for December 8, 2014: Shaffer would not provide Thomas with the *subpoenas* to serve. (*Exhibits in Support*, p. 248). Therefore, Thomas procured the *subpoenas* he needed to ensure all his issues were fully supported. And when Shaffer found out about it, he tried to abandon Thomas but this Court would not allow him to do so.

In other words, it appears that Shaffer reneged on his agreement to supply Thomas with *subpoenas* because he did not want to forewarn him to the fact that he did not intend to present all of his issues. And Shaffer's attempt to withdraw from Thomas' case gives the impression of being an opportunistic ploy to remain *paid in full* on the pretext that Thomas' *subpoenas* were a deal-breaker. And the failure of that contrivance seems to have compelled him to subvert the majority of Thomas' issues that he did argue; which is a maneuver likely calculated to, among

other things, disencumber him from that dubious agreement to perfect any subsequent appeals at no extra cost. (*Exhibits in Support*, p. 29, lines 17-25—p. 30, lines 1-21).

XI.

Post-Trial Developments

Thomas emailed Shaffer on January 14, 2015, to thank him for at least putting on record that he had violated his due process right to a *bite at the apple*. (PCR Tr., p. 182, lines 5-13). And Shaffer responded with the implication that this Court would not have been able to follow all of Thomas' issues; and stated that he was incapable of arguing them persuasively. (*Exhibits in Support*, p. 250). What's more, Shaffer told Thomas' father and step-mother, David & Linda Thomas, on January 23, 2015, that this Court would not have allowed him to argue all of Thomas' issues; and that a reliable source had told him that this Court did not intend to grant Thomas any relief. (*Exhibits in Support*, p. 5, ¶ 1; p. 6, ¶ 1).

However, before Shaffer was *paid in full*, he was recorded telling Thomas that the courts would not prevent him from presenting all of his issues because of the time wasted to reconvene and cross-appeals. (*Exhibits in Support*, p. 45, lines 21-25—p. 47, lines 1-9). In fact, Shaffer told Thomas that this Court should be avoided in terms of willingness to grant relief, and he was recorded telling Thomas that Ashleigh Wilson would not be prepared. (*Exhibits in Support*, p. 249; p. 78, line 13; p. 99, lines 24-25—p. 100, line 1) Consequently, if this Court had decided to deny relief in this case prior to this filing, it would obviously be Shaffer's fault; and it is patently clear that Shaffer is the one who was not prepared.

Be that as it may, Thomas emailed Shaffer on January 27, 2015, expressing his willingness to, among other things, accept an *Alford Plea* to ABHAN. Thomas also asked

Shaffer to confirm having heard that this Court will deny him relief on all issues, and to discuss his plans to file a 59(e). (*Exhibits in Support*, p. 251). Consequently, just as it had been for several months, Shaffer declined to respond. Therefore, on March 11, 2015, Thomas reiterated his request for confirmation that he will be denied relief and to discuss a 59(e); and that his failure to respond would be observed as abandonment—there was no reply. (*Exhibit in Support*, p. 252). And on March 13, 2015, Thomas emailed Stuart Axelrod asking that he assign another attorney to handle this case. However, Axelrod also failed to reply. (*Exhibits in Support*, p. 253).

XII.

Prayer for Relief

Thomas tried to raise his issues during the hearing on December 8, 2014. (PCR Tr., p. 154, line 17). And Shaffer confirmed that he deliberately subverted many of Thomas' issues and refused to call more than half of his witnesses. (PCR Tr., p. 17, lines 18-20; p. 20, lines 1-15; p. 182, lines 5-13). Furthermore, Shaffer's recorded *oral agreement* with Thomas revealed that his contractual statement to present all of Thomas' issues and call the witnesses in support was merely a ruse to gain Thomas' confidence and get a check; and exposes that he had no intention of fulfilling his obligation. (*Exhibits in Support*, pp. 23-104).

In other words, Shaffer deliberately failed to do what he was paid to do, so he is guilty of *breach of contract* and *extrinsic & constructive fraud*. And as a direct result, Thomas has been denied his right to a *bite at the apple* because of Shaffer's ineffectiveness in violation of Thomas' right to the effective assistance of counsel and due process as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina Law.

Therefore, Thomas respectfully requests that this Court order that (1) Tristan M. Shaffer, Esquire, be relieved as his counsel; and (2) that a subsequent evidentiary hearing be convened to allow him the opportunity to enter the relevant exhibits where Shaffer failed, (*Trial Agenda*, pp. 27-33); and to call the witnesses and argue the following issues that Shaffer either failed to direct meaningful attention to or, entirely refused to set forth:

1. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 18-19; pp. 34-41).

2. Defense counsel was ineffective when he failed to object to prosecution's failure to disclose *Brady* materials consisting of the chain of custody 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 4-9).

3. 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. (*Memorandum*, p. 25).

4. Defense counsel was ineffective when he failed to properly object during the State's cross-examination when the prosecutor was 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 27-28).

5. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 16-18).

6. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 28-29).

7. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 27-28).

8. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 13-15).

9. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 18-19).

10. 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 due process of law and effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 11-13).

11. Defense counsel was ineffective when he failed to object to the introduction of 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 Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 11-13).

12. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 4-6).

13. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 19-20).

14. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, p. 20).

15. 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 Sixth and Fourteenth Amendments to the United States Constitution South Carolina law. (*Memorandum*, p. 20).

16. 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. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 9-11).

17. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, pp. 26-27).

18. 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 Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law. (*Memorandum*, p. 30).

Respectfully submitted,

Clark D. Thomas

Clark D. Thomas #187845

BRCI / Moultrie A-2087

4460 Broad River Road

Columbia, SC 29210

May 18, 2015
Columbia, SC

CC
SDC
GS
AT
AG

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-8354

Clark Thomas aka George Keith Nichols,
#187845,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED
2015 JUN -2 AM 11:50
J. C. NICHOLSON
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable J.C. Nicholson
Tristan Shaffer, Esquire
Ashleigh R. Wilson, Esquire
Michael Tommy Bolus, Esquire
December 8, 2014
Joy C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 21, 2012 and amended on December 3, 2014. The Respondent made its return on November 1, 2013. An evidentiary hearing on the matter was convened on December 8, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Tristan Shaffer, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying were Michael Tommy Bolus, Esquire, and several other witnesses called by the Applicant. The Court had before it the trial transcript, the Charleston County Clerk of Court records, and the Applicant's records from the South Carolina Department

of Corrections, the Applicant's application, the Respondent's return, the appellate records, and exhibits submitted by the parties.¹

PROCEDURAL HISTORY

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), criminal domestic violence of a high and aggravated nature (CDVHAN) (2006-GS-10-12296), and criminal sexual conduct- first degree (2007-GS-10-12295). The Applicant was represented by Michael T. Bolus, Esquire.

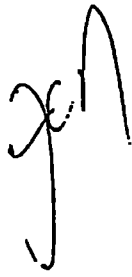
On July 10, 2008, the Applicant proceeded to trial and was convicted of kidnapping and CDVHAN. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of twenty (20) years for kidnapping and ten (10) years for CDVHAN. The sentences are to be served concurrently. The 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).

ALLEGATIONS

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

1. Ineffective assistance of counsel.

¹ Applicant's Exhibit 1: victim's medical records from Roper Hospital (admitted), Applicant's Exhibit 2: incident report (not admitted); Applicant's Exhibit 3: notes from the solicitor's file regarding the victim's medical records (admitted); State's Exhibit 1: notes used by witness Kristen Boyer during her hearing testimony (admitted); State's Exhibit 2: the indictment, arrest warrant affidavit, and sentencing sheet from the Applicant's prior 2003 criminal domestic violence of a high and aggravated nature conviction (admitted).

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- 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.

Shortly before his evidentiary hearing, counsel for the Applicant amended his application for post-conviction relief to allege the following:

- 1. Ineffective assistance of counsel.
 - a. Counsel denied his 6th and 14th amendment rights to effective assistance of counsel based on defense counsel's abbreviation of the trial to make sure trial counsel was able to leave for vacation.
 - b. Trial counsel was ineffective for failing to bring up contradictions in the victim's testimony and previous statements.

- 
- c. Trial counsel was ineffective for failing to call witnesses demonstrating that the victim previously made statements that she like being tased.
 - d. Trial counsel was ineffective for failing to impeach the victim with her medical records.
 - e. Trial counsel failed to impeach the victim with evidence of her plea offer with the State.
 - f. Trial counsel failed to request a lesser included charge of CDV.
 - g. Trial counsel failed to present evidence that the Applicant was entitled to a sentence pursuant to S.C. Code 16-25-90.
 - h. Trial counsel failed to object to the kidnapping instruction.
 - i. Trial counsel made negative statements about the Applicant throughout his opening and closing statements.
 - j. Trial counsel failed to call witnesses to corroborate the Applicant's claim that the victim enjoyed S&M.
 - k. Trial counsel failed to call character witnesses for the Applicant.
 - l. Trial counsel failed to argue that the kidnapping should not have subjected the Applicant to the sex offender registry.
 - m. Trial counsel failed to communicate and prepare the Applicant for trial.
 - n. Trial counsel failed to object to the prosecution vouching for the credibility of the witnesses in its closing.
 - o. Trial counsel failed to object to the State's seek the truth language in closing.
 - p. Trial counsel failed to object to the State's Exhibits 41-45.
 - q. Trial counsel failed to properly cross-examine the detective with his contradicting affidavit.
 - r. Trial counsel failed to object to the jury charge for kidnapping that was given to the jury.
 - s. Trial counsel failed to object to the circumstances of aggravation charged to the jury in the instruction on CDVHAN.
2. Brady violation.
- a. The State failed to disclose medical records of the victim.
 - b. The State failed to disclose information concerning a plea offer with the victim.
 - c. The State failed to disclose prior police reports concerning the victim.

This Court finds the Applicant failed to present evidence, argument, or testimony on several of the Applicant's numerous claims raised in his original and amended applications. Therefore, this Court finds any allegations not addressed in this order are deemed abandoned by the Applicant. This Court finds at the evidentiary hearing, the Applicant pursued relief solely on the following claims:

1. Ineffective assistance of counsel.

- 
- a. The Applicant alleges counsel was ineffective for failing to present evidence that Thomas was entitled to a sentence pursuant to S.C. Code §16-25-90. (State moved to dismiss this claim, but denied.)
 - b. The Applicant alleges counsel was ineffective for abbreviating the Applicant's trial to ensure he was able to leave for vacation.
 - c. The Applicant alleges counsel was ineffective for failing to communicate and prepare the Applicant for trial.
 - d. The Applicant alleges counsel was ineffective for failing to call witnesses to demonstrate that the victim previously made statements that she like being tased.
 - e. The Applicant alleges counsel was ineffective for failing to call witnesses that could corroborate the Applicant's claim that the victim enjoyed S&M.
 - f. The Applicant alleges counsel was ineffective for failing to bring up contradictions in the victim's testimony and previous statements.
 - g. The Applicant alleges counsel was ineffective for failing to impeach the victim with her medical records.
 - h. The Applicant alleges counsel was ineffective for failing to argue that the kidnapping should not have subjected the Applicant to the sex offender registry.
 - i. The Applicant alleges counsel was ineffective for making negative statements about the Applicant throughout opening and closing statements.
 - j. The Applicant alleges counsel was ineffective for failing to call character witnesses for the Applicant.
2. Brady violation.
- a. The Applicant claims the State failed to disclose the victim's medical records.
 - b. The Applicant claims the State failed to disclose prior police reports concerning the victim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of the Testimony

Lasonya Epps was the first witness called by the Applicant. She testified she worked at Roper Hospital as a medical records specialist. She testified she received a subpoena for records

and that she brought the records with her to the hearing. Applicant's exhibit 1- the victim's medical records- were admitted into evidence.

fn The Applicant called Chris Talbott as a witness. Talbott testified that he has worked at the North Charleston Police Department for 11 years. He testified he responded to the scene and encountered the victim and the Applicant after receiving a call about a female jumping from a car on the highway. Officer Talbott testified he pulled up to the bridge and observed a van partially in the roadway. He testified he observed a male carrying a female to the van. He testified he arrested the Applicant. Officer Talbott testified when he arrived at the scene, the victim was clearly upset and feared for her life. He testified he did not recall injuries to the victim's face. Officer Talbott testified he testified at the Applicant's trial and did not recall his testimony about the victim's teeth. He testified his incident report (Applicant's Exhibit 2) did not mention the victim having a busted or cracked tooth. He testified further that the testimony he gave at the trial was accurate.

The Applicant called Teddy Martin as a witness. He testified the Applicant was his roommate and he helped him get his license to start a business. He the Applicant is his close friend and he is familiar with the victim. Mr. Martin testified he was around when the victim and the Applicant originally started dated. He testified he saw the victim and the Applicant around each other frequently.

Mr. Martin testified he has seen the victim physically abuse and assault the Applicant. He testified they had a violent relationship that was fueled by the victim and drug use. He testified he has seen the victim hit the Applicant when the Applicant did nothing to instigate the assault. Mr. Martin testified he witnessed an incident in the grocery store where the victim came out of nowhere and attacked the Applicant.

Mr. Martin testified he spoke to trial counsel and offered to testify on the Applicant's behalf. He testified the Applicant is not violent. He testified the victim was the violent one in the relationship. Mr. Martin testified the victim was not scared of the Applicant, but wanted to be with him. Lastly, Mr. Martin testified the victim and the Applicant's relationship involved a "weird violence". He testified one minute they would be fighting and the next minute they would be making love.

 The Applicant also called Crystal Martin as a witness. Mrs. Martin is married to witness Teddy Martin. Mrs. Martin testified she has known the Applicant for a few years and has been around the victim and the Applicant regularly, but interacted with the victim very few times. Mrs. Martin testified she was once at a pizza place with her husband and the Applicant. She testified the victim walked over to them and the Applicant became afraid. Mrs. Martin testified she does not recall ever seeing the victim and the Applicant arguing in the three or four times that she has seen them together. She testified she has never seen the victim physically abuse the Applicant or vice versa. Mrs. Martin testified she met with trial counsel and offered to testify for the Applicant. She later changed her testimony and stated that she did not actually speak to trial counsel directly, but saw him in the hallway prior to trial.

The Applicant called Joel Longnecker as a witness. Mr. Longnecker testified he suffered from a severe head injury a while ago and has a hard time remembering things. He testified he knew the Applicant. He testified he tried to stay away from the victim because the Applicant was violent when the victim was around. He testified the victim and Applicant yelled at each other. He testified he knew the victim shocked herself to get sexually aroused. He testified he did not recall the victim attacking the Applicant. He testified he did not recall what happened last week. Finally, Mr. Longnecker testified he did not recall anything going on.

The Applicant called Thomas Randy Harbeson as a witness.² Mr. Harbeson testified he has known the Applicant for the last fifteen to twenty years. He testified the Applicant was a good friend and he has never known him to be violent. Mr. Harbeson testified he also knows the victim from seeing her around the Applicant. Mr. Harbeson testified he has seen the victim assault the Applicant. He testified he has seen the victim punching the Applicant and going crazy. He testified he has never seen the Applicant hit the victim. He testified he saw the victim hit the Applicant during a verbal argument. He testified the victim and Applicant argued like lovers. Mr. Harbeson testified he never knew that the Applicant had previously been convicted of criminal domestic violence against the victim.

The Applicant called Cecil Terry as a witness. Mr. Terry testified the victim is his stepdaughter. He testified the Applicant and the victim used to live with him. Mr. Terry testified he has seen the victim hit the Applicant, but only after getting the "crap beat out of her" by the Applicant. He testified he has seen the victim with marks on her, but has never seen any marks on the Applicant. He testified he has witnessed physical injuries to the victim as a result of the Applicant's abuse. Mr. Terry testified the Applicant beat the victim. He testified the victim was a minor when she first met the Applicant and he was responsible for introducing the victim to drugs. Mr. Terry testified the violence in the victim and the Applicant's relationship was not one-side.

The Applicant called Kristen Boyer (formerly Kristen Thomas) as a witness.³ Ms. Boyer testified she is the Applicant's daughter. She stated that she testified for the Applicant during his trial. She testified her father started to "fade away" after he started dating the victim. She testified

² This Court notes Mr. Harbeson was removed from the courtroom during the Applicant's testimony for answering questions asked of the Applicant from the courtroom galley. He was returned to the courtroom for his testimony.

³ This Court notes that during Ms. Boyer's testimony the State moved to strike her testimony on the basis that she was improperly referring to notes during her testimony. This Court denied the State's motion to strike and allowed the State to cross-examine the witness on the origin of her "testimony notes".

she spoke with trial counsel about a recording she had of the victim. She testified trial counsel told her that the tapes would not help the Applicant. Ms. Boyer testified she saw the victim tased by police at Folly Beach. She testified that when tased the victim laughed and said "do it again." She testified she also witnessed the victim grab the steering wheel of the car while her father was driving.

During cross-examination by the State, Ms. Boyer testified she was referring to notes during her hearing testimony. She testified the notes she was referencing to during her testimony were prepared by someone else. Ms. Boyer eventually admitted that the notes she was using during her testimony were prepared by her father (the Applicant) and given to her to testify based on. She testified she did not discuss her testimony with the Applicant, but got the notes from him. Ms. Boyer then admitted she had discussed her hearing testimony with the Applicant.

The Applicant called Carol Cook as a witness. Ms. Cook testified she was the Applicant's mother and hired trial counsel to represent the Applicant. She testified the Applicant had a lot of knowledge about everything and knew a lot of people who would come to his defense. Ms. Cook testified she suggested several character witnesses to trial counsel. She testified she did not know their names, but trial counsel told her he would not call the witnesses because they were all drug addicts. She testified the victim was jealous and would take the phone when she called the Applicant. Ms. Cooke testified she has a recording of the victim saying that she would not testify against the Applicant at trial if they gave her money.⁴

The Applicant also called Nathan Williams (former solicitor on the Applicant's case) as a witness. He testified he requested the victim's medical records by subpoena. He testified he

⁴ This Court notes it agreed to listen to the recording of the victim Ms. Cook claimed to have during her testimony. However, the Court was never presented a copy of this recording by the Applicant. Counsel for the Applicant later told the Court that the contents of the recording were not as Ms. Cook recounted and he did not wish to present the recording to the Court.

believes he received the records and turned them over to trial counsel. He testified he would have given any medical records he had over to trial counsel. He testified the victim's mouth injury was reflected in a photo taken by police. Lastly, Williams testified the victim's medical records were not exculpatory.

The Applicant Clark Thomas, took the stand to testify. The Applicant testified he was represented by the trial counsel. The Applicant testified trial counsel told him about a plea offer, but he rejected the offer because he was innocent. The Applicant testified he never received his discovery materials.

The Applicant testified he gave trial counsel witnesses to investigate. He testified he told trial counsel to call the police involved in the Folly Beach arrest of the victim, the man who controlled the electronic monitoring bracelet, his daughter, and Teddy and Crystal Martin. The Applicant testified trial counsel told him his potential witness would not be good because they were drug addicts.

The Applicant testified trial counsel was not properly prepared for trial. He testified he did not discuss anything about his case with trial counsel. He testified he wanted trial counsel to bring out the inconsistencies in the victim's statements. The Applicant testified the victim never alleged he hit her with his hands or feet. He testified further the victim did not report sexual assault in her first statement to police. The Applicant testified he was not able to participate or allowed to ask any questions during his trial. He testified trial counsel was not interested in calling his witnesses, but was trying to shut the trial down as soon as possible.

The Applicant testified trial counsel made him look like a monster. He testified he did not agree with trial counsel's strategy. He testified he did not consent to trial counsel's statements in opening statement.

The Applicant testified the victim was not afraid of him, but he was afraid of the victim. He testified he never struck the victim, but the victim struck him numerous times. He testified trial counsel did not discuss S.C. Code §16-25-90 with him. He testified he wanted trial counsel to pursue a claim under 16-25-90. The Applicant testified he told trial counsel about the time the victim punched him in the head. He testified the victim liked being tased and he told trial counsel and the Court that the victim also liked to be choked. The Applicant testified he does not have a history of criminal domestic violence. He testified he did however, plead guilty to criminal domestic violence of a high and aggravated nature for an incident involving the same victim on May 22, 2003.

M The Applicant testified trial counsel also did not argue against sex offender classification. He testified there was no sexual evidence of crime because the jury found him not guilty. He testified further trial counsel did not object to the solicitor's closing because he needed to catch a plane. Lastly, he testified trial counsel did not discuss with him his testimony at trial.

The State called Michael Tommy Bolus, Esquire, as a witness. Counsel testified he has been practicing law for thirty-eight years. He testified he has extensive experience in criminal defense. Counsel testified he was retained three days after the incident. He testified he met with the Applicant six times in the jail. He testified he also spoke with the Applicant regularly by phone and corresponded with him via mail. Counsel testified he also spoke with the Applicant's mother (Carol Cook). He testified the Applicant's mother was interested in paying the victim not to testify at trial. He testified he told the Applicant's mother not to speak to the victim.

Counsel testified he reviewed the discovery materials with the Applicant during their meetings. He testified he received everything he wanted from the State. He testified he did not make a special request for the victim's medical records because they were not necessary. He

testified the victim's broken tooth was not his concern since both the victim and doctor who treated her injuries testified about the extent of her injuries at the Applicant's trial. Counsel testified he did not know if bringing up the victim's broken tooth would have been helpful at trial since the State had the doctor's testimony, the victim's injuries, and the police officer's testimony.

Counsel testified the Applicant was offered a straight up guilty plea. He testified that was no real plea bargain and the Applicant would not take the plea because he thought he was not guilty. He testified the Applicant thought he did nothing wrong.

 Counsel testified prior to trial he reviewed the Applicant's criminal record. He testified the Applicant did not tell him who he really was and he later learned the Applicant used an alias. He testified the record included forty to fifty bad check convictions. Counsel testified he did not bring up the Applicant's character because of his extensive record. He testified this was a nasty case to bring up the Applicant's character and the Applicant knew prior to trial they would not call character witnesses at trial. He testified further he did not present character evidence because the Applicant did not have good character. Counsel testified bringing up the Applicant's character would also have opened the door for the State to present evidence about the Applicant's prior criminal domestic violence of a high and aggravated nature conviction. He testified bringing up the Applicant's character would have been a bad idea.

Counsel testified he discussed with the Applicant his version of the facts. He testified the Applicant's version of facts did not indicate the Applicant's assault on the victim was the result of any domestic violence he suffered at the hands of the victim. Counsel testified he discussed possible defenses with the Applicant. He testified he ultimately decided to argue to the jury that the sex with the victim was consensual and that the victim liked unusual sexual acts. Counsel

testified the Applicant was aware of the trial strategy and their need for the jury to sympathize with him.

Counsel testified he elicited testimony about the victim enjoying being tased at trial during the Applicant's daughter's testimony. He testified further that he had received the police reports about the victim assaulting the Applicant's daughter in the prior Folly Beach incident.

Counsel testified the facts of the case were so bad because of the constant use of hard drugs that he did not want to present the Applicant as a good honest character. He testified based on the victim and Applicant's heavy drug use he had to portray them in a less than positive way. Counsel testified he had to present to the jury some explanation for the victim and Applicant's enjoyment of tasers and freaky sex in the bedroom.

M Counsel testified he had ample time to prepare for trial. He testified he had planned a vacation and obtained an order of protection for the following week after the Applicant's trial. He testified the Applicant trial ended Thursday or Friday morning.

Counsel testified he was able to adequately cross-examine the State's witnesses at trial. He testified he questioned the victim about the fact that she did not initially disclose the sexual assault to police. Counsel testified he would not have interrupted the solicitor's closing argument to object unless he made a comment that was very bad.

Counsel testified the Applicant never mentioned being abused by the victim. He testified the Applicant only told him the victim liked kinky sex. He testified he never knew of any abuse by the victim towards the Applicant.

Credibility of Witnesses

This Court having had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility makes the following findings of fact and

conclusions of law. As an initial matter, this Court finds credible the testimony of Officer Chris Talbott, Cecil Terry, former assistant solicitor Nathan Williams and defense counsel Michael Tommy Bolus. This Court does not find credible the testimony of the following witnesses provided by the Applicant: Teddy Martin, Crystal Martin, Joel Longnecker, Thomas Randy Harbeson, Kristen Boyer (formerly Kristen Thomas), Carol Cooke, and Clark Thomas (the Applicant). Specifically, this Court does not find credible the testimony of both Teddy Martin and Crystal Martin because the married couple provided conflicting testimony regarding witnessing violence in the Applicant's relationship with the victim. Mr. Martin testified he frequently saw violence in the relationship initiated by the victim. Mrs. Martin testified she had never seen violence in the victim and Applicant's relationship. This Court does not find credible the testimony of Joel Longnecker because he began and concluded his testimony at the evidentiary hearing with the statement that he had suffered a serious head injury and did not recall many things including what happened the week previous to his testimony. This Court does not find credible the testimony of Thomas Randy Harbeson because he was removed from the courtroom prior to his testimony during the evidentiary hearing for whispering answers to questions asked of the Applicant while the Applicant was on the stand testifying. This Court does not find the testimony of Kristen Boyer (formerly Kristen Thomas) credible since she admitted to using notes during her testimony prepared by the Applicant (her father). She also admitted to using the notes prepared by the Applicant as the basis for her hearing testimony. This Court does not find credible the testimony of the Applicant mainly because he testified during the evidentiary hearing that he did not have a history of criminal domestic violence, but then admitted to pleading guilty to a criminal domestic violence charge involving the same victim in 2003.

Ineffective assistance of counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for failing to present evidence that Thomas

was entitled to a sentence pursuant to S.C. Code §16-25-90.⁵ This Court finds the Applicant has failed to carry his burden of proving he is eligible for early parole pursuant to S.C. Code Section 16-25-90 and that counsel's performance was ineffective in this regard. This Court finds the Applicant has failed to establish by the preponderance of the evidence that he has a history of criminal domestic violence suffered at the hand of the victim in this case. This Court finds the Applicant is not entitled to early parole eligibility.

Pursuant to S.C. Code §16-25-90, a person who is convicted of or pleads guilty to an offense against a household member is eligible for parole after serving one-fourth of his or her prison term if the person presents credible evidence of a history of criminal domestic violence suffered at the hands of the household member. State v. Blackwell-Selim, 392 SC 1, 707 S.E.2d 426 (2011). Such history must be proven by a preponderance of the evidence. Id. A mere production of evidence does not automatically result in earlier parole eligibility. Id. The defendant must persuade the judge by presenting proof which leads the trier of fact to find that the existence of the contested fact is more probable than its nonexistence. Id. The defendant has the burden of persuading the judge that his evidence is reliable. Id.

This Court finds the Applicant has failed to present any credible evidence that he suffered from a history of domestic violence at the hands of the victim in this case. This Court finds the witnesses presented by the Applicant in support of this claim were not credible. As mentioned above by the Court in its credibility findings, the Applicant's witnesses provided testimony that was both conflicting and difficult to believe. This Court finds the evidence presented by the Applicant was not plausible or trustworthy.

⁵ At the start of the evidentiary hearing, the State moved to summarily dismiss this claim on several basis. This Court denied the State's motion to allow the Applicant's to present evidence in support of this claim.

This Court finds the evidence presented by the State at the evidentiary hearing reflects the victim actually suffered from a history of domestic violence at the hands of the Applicant. (See State's Exhibit 3). The Applicant denied having a history of criminal domestic violence, but admitted pleading guilty to criminal domestic violence of a high and aggravated nature for an incident involving the same victim in 2003. This Court also finds persuasive trial counsel's testimony that during the course of his representation of the Applicant, the Applicant never mentioned suffering from a history of domestic violence at the hands of the victim. This Court finds the testimony presented about the victim allegedly jerking the wheel of the car while the Applicant was driving the car appears to be more a reflection of the victim and Applicant's heavy drug use than an act of criminal domestic violence by the victim against the Applicant.

gm This Court using its discretion and considering all the evidence and testimony presented at the evidentiary hearing finds this claim is wholly without merit. This Court finds counsel's performance was not ineffective. This Court finds further the Applicant is not entitled to early parole pursuant to S.C. Code Section 16-5-90.

The Applicant alleges counsel was ineffective for abbreviating the Applicant's trial to ensure he was able to leave for a vacation. This Court finds this allegation is wholly without merit. This Court finds the Applicant has failed to present any evidence other than the Applicant's incredible testimony that trial counsel rushed or attempted to abbreviate the Applicant's trial in any way. This Court finds the trial record is also void of any showing of such activity by counsel. This Court finds the Applicant's trial proceeding progressed at a normal pace and the Applicant was given a full opportunity to challenge the State's case and present a defense and witnesses. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective in this regard.

The Applicant alleges counsel was ineffective for failing to communicate and prepare the Applicant for trial. This Court finds this allegation is wholly without merit. The Applicant has failed to show that counsel failed to communicate and prepare him for trial. The record reflects from the Applicant's lengthy testimony at trial, that the Applicant was aware of the charges he was facing and that his testimony was aligned with counsel's defense strategy. This Court finds the Applicant has also failed to show what additional communication and preparation of the Applicant by counsel would have yielded at trial. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective in this regard.

 The Applicant alleges counsel was ineffective for failing to call witnesses to demonstrate that the victim previously made statements that she like being tased. This Court finds this allegation is wholly without merit. The record reflects counsel presented testimony from both the Applicant and his daughter Kristen Thomas that the victim liked being tased. Kristen Thomas testified at trial that when she lived with the Applicant she would hear a clicking noise coming from their bedroom followed by the victim screaming out in pleasure. (Trial Tran. 571-572). She testified further about an incident on Folly Beach where the victim was tased by police and appeared to enjoy it. (Trial Tran. 574-577).

The Applicant also testified at trial that the victim liked the taser. (Trial Tran. 615). It is clear from the record that trial counsel presented testimony to the jury about the victim liking tasing. This Court finds and the record reflects counsel's performance was not deficient in this regard. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to call witnesses to demonstrate that the victim previously made statements that she like being tased.

The Applicant alleges counsel was ineffective for failing to call witnesses that would corroborate the Applicant's claim that the victim enjoyed S&M. This Court finds this allegation is wholly without merit. Because the defense's theory at trial was that the victim enjoyed being tied up and tased, the record reflects numerous references to the victim's alleged enjoyment of unusual sexual practices by defense witnesses. Trial counsel elicited testimony from Kristen Thomas about the victim and Applicant's use of a taser and rough sex in the bedroom. Thomas also testified the Applicant and the victim would often have bite marks and scratches on them after having sex. (Trial Tran. 571-572). Trial counsel also elicited testimony from the Applicant about his unusual sexual relations with the victim. The Applicant testified at trial about the following: the victim's desire to be tied up, the victim's desire to be choked during orgasm, the victim's desire to bite, scratch, and slap during sex, and the victim's enjoyment of tasing during sex. (Trial Tran. 605-608, 615-618). This Court finds counsel effectively presented testimony about the victim's unusual sexual habits for the jury to consider and did not provide deficient performance. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to call witnesses that would corroborate the Applicant's claim that the victim enjoyed S&M.

The Applicant alleges counsel was ineffective for failing to bring up contradictions in the victim's testimony and previous statements. This Court finds this allegation is wholly without merit. The record reflects trial counsel effectively cross-examined the victim's testimony. The purpose of cross-examination at trial is "to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness." State v. Gillian, 360 S.C. 433, 451, 602 S.E.2d 62, 71 (Ct. App. 2004) aff'd as modified, 373 S.C. 601, 646 S.E.2d 872 (2007) (citing

Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

This Court finds counsel effectively cross-examined the victim and highlighted any contradictions and inconsistencies in her statements. The record reflects counsel cross-examined the victim about a note threatening to put the Applicant in prison (Trial Tran. 215-219), about whether or not she was living in the hotel room with the Applicant at the time of the incident (Trial Tran. 222-224), and about her first statement to police not mentioning any rape by the Applicant (Trial Tran. 238-239). This Court finds counsel's cross-examination of the victim did not result in deficient performance.

fn
This Court finds further the Applicant has also failed to show how any additional cross-examination of the victim would have affected the outcome of the trial. Due to the nature of the offense and the facts elicited at trial, this Court notes it is highly likely that a more aggressive cross-examination of the victim by trial counsel may have reflected poorly on the Applicant in the eyes of the jury. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to highlight contradictions in the victim's testimony and previous statements on cross-examination.

The Applicant alleges counsel was ineffective for failing to impeach the victim with her medical records. This Court finds this allegations is wholly without merit. This Court finds the victim's medical records as presented by the Applicant (Applicant's Exhibit 1) do not contradict the victim's testimony and it is unlikely counsel could have used the record as effective impeachment material. At trial the victim testified the Applicant tased and hit her all over her body over the course of the incident. (Trial Tran. 147-161). The victim also testified that the Applicant chipped her tooth. (Trial Tran. 159). The medical records presented by the Applicant essentially corroborated the victim's version of her injuries.

This Court finds further the Applicant has failed to show how impeaching the victim with these records would have affected the outcome of his trial. This Court finds it is unlikely impeaching the victim on these records would have resulted in a different outcome at trial since Officer Talbott who first encountered the victim and the Applicant on the side of the road and Dr. Theodore Paraschos who treated the victim in the emergency room both testified about the victim's extensive injuries. (Trial Tran. 307-309, 438-455). This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to impeach the victim with her medical records.

f M
The Applicant alleges counsel was ineffective for failing to argue his kidnapping conviction should not have subjected the Applicant to the sex offender registry since he was acquitted of the sex offense. This Court finds counsel was not ineffective in this regard. S.C. Code Section 23-3-430(15), requires a person convicted of kidnapping to register for the sex offender registry unless the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense. This Court finds a conviction for a sexual offense is not a prerequisite for sex offender registry by a person convicted of kidnapping. This Court finds the sex offender registry is a statutory requirement associated with a conviction for the offense of kidnapping. This Court finds counsel was not ineffective in this regard. This Court finds this allegation is wholly without merit.

The Applicant alleges counsel was ineffective for making negative statements about the Applicant throughout opening and closing statements. This Court finds this allegation is wholly without merit. This Court finds trial counsel articulated a valid strategic basis for the statements he made during opening and closing about the Applicant. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules

for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

This Court finds valid trial counsel's testimony that he chose to portray the victim and Applicant in a somewhat negative light and as drug addicts in his statements as a way to explain to the jury the victim and Applicant's unusual sexual activities. This Court finds since counsel articulated a valid strategic basis for his statements about the Applicant at trial, this Court will not second guess counsel's trial tactic. This Court finds counsel's performance was not deficient in this regard. This Court finds the Applicant has failed to carry his burden of proving trial counsel provided ineffective assistance of counsel by making certain statements about the Applicant during opening and closing arguments.

The Applicant alleges counsel was ineffective for failing to call character witnesses for the Applicant. This Court finds this allegation is without merit. This Court finds counsel was not deficient and provided a valid strategic basis for failing to present character witnesses for the

Applicant at trial. Counsel testified he did not want to bring up the Applicant's character because of his extensive record and because the Applicant did not have good character. Counsel also testified he did not want to present evidence of the Applicant's character and possibly open up the door for the State to bring up the Applicant's prior criminal domestic violence convictions. This Court finds counsel's strategy was legitimate. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (finding trial counsel adequately put forth a defense by calling the only witness whom he believed to be credible and supportive of the defense strategy). This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to call character witnesses on the Applicant's behalf during trial

fn
 Lastly, this Court finds overwhelming evidence of the Applicant's guilt precludes the success of any claims of ineffective assistance of counsel. The presence of overwhelming evidence of guilt negates any claim that counsel's performance could have reasonably affected the result of the defendant's trial. Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002); see also (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt). This Court finds the State presented ample evidence of the Applicant's guilt at trial which makes it highly unlikely but for counsel's alleged deficiency the outcome of the Applicant's trial would have been different.

Brady violation

The Applicant alleges the State failed to disclose the victim's medical records and prior police reports concerning the victim. This Court finds this claim is wholly without merit. Brady

requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady⁶ claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

fn This Court finds the Applicant has failed to show that the victim's medical records and the incident report from the Folly Beach incident involving the victim were suppressed by the prosecution. This Court finds and the record reflects the victim's medical records were not exculpatory and the Applicant has failed to show that the solicitor failed to hand over the records to trial counsel or suppressed the evidence in any way. This Court finds further the Applicant has failed to show that the Folly Beach incident report involving the victim was suppressed by the solicitor. Trial counsel testified at the evidentiary hearing that he was in possession of the incident report prior to trial. It is also obvious from the record that trial counsel was aware of the incident prior to trial because he cross-examined the victim about the incident during he testimony. (Trial Tran. 227-228). This Court finds the Applicant has failed to carry his burden of proving the existence of any Brady violations. This Court finds the Applicant has failed to show that the solicitor suppressed any material evidence.

All Other Allegations

⁶ Brady v. Maryland, 373 U.S. 83 (1963).

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence, testimony, or argument regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

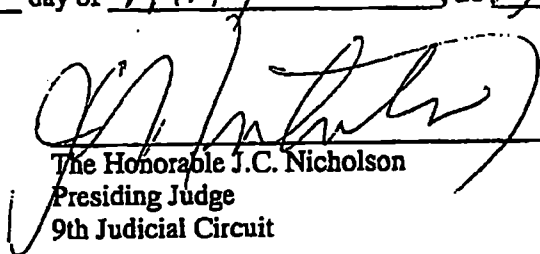
Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of MAY, 2015


The Honorable J.C. Nicholson
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

June 8, 2015

FILED
2015 JUN 18 AM 10:00
JULIE J. ARMSTRONG
CLERK OF COURT

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad St. Ste 106
Charleston, SC 29401-2210

Re: Clark D. Thomas aka George K. Nichols #187845 v. State of South Carolina
2012-CP-10-8354

Dear Ms. Armstrong:

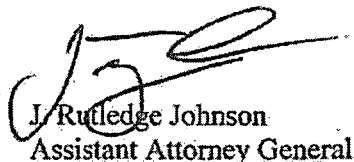
I received a copy of the *pro se* documents entitled "Notice of Motion and Motion to Proceed in Forma Pauperis" and several other miscellaneous documents in the aforementioned post-conviction relief matter directly from the Applicant filed in your office on **May 18, 2015**.

Please be advised that Rule 11, SCRCP, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRCP. *See, e.g., Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

While Respondent is fully aware of our Court's recent ruling that "Rule 11 of the South Carolina Rules of Civil Procedure does not apply to PCR proceedings", Respondent interprets the *Hiott* decision to be narrowly tailored to the issues presented in *Hiott* and not to negate any and all applicability of Rule 11(a) for post-conviction relief proceedings. *Hiott v. State*, 381 S.C. 622, 674 S.E.2d 491 (2009). Respondent, respectfully, does not interpret *Hiott* to implicitly abrogate *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517, (2002), see also *Foster v. State*, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989).

Therefore, the State does not consider this *pro se* document a part of this action. According to our records, Inmate Clark D. Thomas aka George K. Nichols is represented by Tristan M. Shaffer, Esquire, in this matter. By copy of this letter, I am notifying opposing counsel of the State's position.

Sincerely,


J. Rutledge Johnson
Assistant Attorney General

JRJ/em.

cc: Tristan M. Shaffer, Esq.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2012-CP-10-8354

CLARK THOMAS,)**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA,)

Defendant.)

Plaintiff's Attorney:

Tristan M. Shaffer, Bar No. 77565

Address:

4701 Oleander Drive, Myrtle Beach, SC 29577

Phone: 848-6708 Fax 848-6709

E-mail: Tristan@Gotaxelrod.com Other: _____

Defendant's Attorney:

Asleigh R. Wilson, Bar No. _____

Address:SC Office of Attorney General, P.O. Box 11549,
Columbia, SC 29211

Phone: 803-734-3970 Fax _____

E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

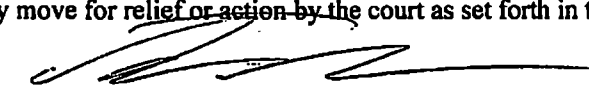
SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider and Motion to Alter or Amend Order of Dismissal

Estimated Time Needed: 1 hour

Court Reporter Needed: ☐ YES / ☒ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for ☒ Plaintiff / ☐ Defendant

June 10, 2015

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Clark Thomas,)
)
 Applicant)
 v.)
)
 State of South Carolina,)
)
 Respondent)
 _____)

Case No. 2012-CP-10-8354

MOTION TO RECONSIDER AND
 MOTION TO ALTER OR AMEND
 ORDER OF DISMISSAL

FILED
 2015 JUN 12 PM 4:33
 CLERK OF COURT

Pursuant to Rule 59(e), SCACR, Applicant respectfully requests that this Court reconsider its Order of Dismissal in the above reference Post-Conviction Relief (PCR) action. To support this motion Applicant will show the following:

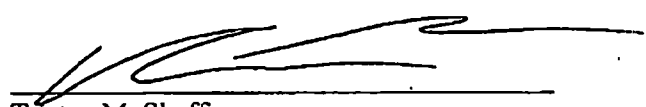
1. Applicant's Counsel received a clocked copy of the Order of Dismissal on June 8, 2015.
2. Subsequent to the PCR hearing, but prior to the filing of the Order of Dismissal, Applicant has moved to relieve counsel.
3. Counsel has also requested to be relieved based on Applicant's request.
4. In Applicant's *pro se* Notice of Motion and Motion to Relieve Tristan M. Shaffer, Esquire, as counsel for Applicant, and Motion for Subsequent Evidentiary Hearing as well as his other *pro se* filings, Applicant has alleged that various issues were not addressed by the PCR Court.¹
5. Applicant respectfully submits that the Order of Dismissal contains errors of law and factual findings that are in error or otherwise not properly supported by the record.

¹ This should not be viewed as Counsel's acceptance of the factual allegations made in Applicant's *pro se* motions. Counsel references the *pro se* documents merely for the description of Applicant's claims of ineffective assistance of trial counsel contained within the documents.

6. Applicant respectfully requests a hearing on this motion so that the errors of fact and law can be more fully addressed.

Pursuant to this motion, Applicant requests that the Court reconsider its Order of Dismissal and otherwise alter or amend the Order of Dismissal to include the allegation that were not previously ruled upon by the Court.

Respectfully Submitted,



Tristan M. Shaffer
4701 Oleander Drive
Myrtle Beach, SC
(843) 916- 9300

Attorney for Applicant

June 9, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Clark Thomas,)

Applicant,)

v.)

State of South Carolina,)

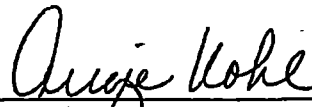
Respondent)IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-8354CERTIFICATE OF SERVICEBY
JULIE J. ARMSTRONG
CLERK OF COURT

2015 JUN 12 PM 4:32

FILED

I, Angie Kohl, paralegal for Axelrod & Associates, P.A., do hereby certify that I have this day properly served the foregoing **Motion to Reconsider and Motion to Alter or Amend Order of Dismissal** upon the State via U.S. Mail with sufficient postage affixed thereto and addressed as follows:

Ashleigh R. Wilson, Esquire
South Carolina Office of Attorney General
P.O. Box 11549
Columbia, South Carolina 29211



Angie Kohl, Paralegal
AXELROD & ASSOCIATES, P.A.
4701 Oleander Drive
Myrtle Beach, S.C. 29577
Office: (843) 848-6706
Fax: (843) 848-6707
Email: angie@gotaxelrod.com

Myrtle Beach, South Carolina
June 10, 2015

00020177 - 1

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2012-CP-10-8354

Clark D. Thomas, #187845 Applicant,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

State of South Carolina Respondent.)

Plaintiff's Attorney:

Pro se, Bar No. _____

Address:

4460 Broad River Road, Columbia, SC 29210

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Ashleigh Wilson, AAG, Bar No. _____

Address:

SC Attorney General's Office

Phone: _____ Fax: _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: Motion to Alter or Amend

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ **YES** / ☐ **NO****SECTION II: Motion/Order Type**☐ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee☐ **PAID - AMOUNT: \$** _____☒ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____☐ **CONTESTED - AMOUNT DUE: \$** _____

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, #187845,
Applicant,

Vs.

State of South Carolina,
Respondent.

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
A JUDGMENT TO INCLUDE
SPECIFIC FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

FILED
2015 JUN 15 AM 11:36
JULIE J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Applicant, Clark D. Thomas, *pro se*, now respectfully moves this Court, the Honorable J. C. Nicholson, to alter or amend the judgment to include specific findings of fact and conclusions of law. This *Motion* is brought pursuant to Rules 52(a), 52(b), and 59(e), SCRPC, and upon such other law and argument as is appropriate. Applicant's *Motion* is supported by the arguments in his (1) *Motion to Relieve Tristan M. Shaffer, Esquire, as Counsel for Applicant, and Motion for Subsequent Evidentiary Hearing* filed on May 18, 2015, that has not been ruled on; (2) *Motion to Compel Discovery* filed on May 18, 2015, that has not been ruled on; (3) *Motion to Compel Accurate Transcription of Record* filed on May 18, 2015, that has not been ruled on; (4) *Memorandum of Law in Support of Post-Conviction Relief* filed on August 29, 2014; (5) *Agenda for Post Conviction Relief Hearing Convened on December 8, 2014*, filed on May 18, 2015; and (6) *Exhibits in Support of Post-Trial Motions* filed on May 18, 2015, and based on one or more of the following grounds:

INTRODUCTION

This Court presided over the evidentiary hearing on December 8, 2014, in the matter of Applicant's action for post-conviction relief (PCR) on the charges of kidnapping and criminal domestic violence of a high and aggravating nature (CDVHAN) resulting in concurrent sentences of 20 years and 10 years, respectively. Tristan M. Shaffer, Esquire, was Applicant's PCR Counsel, and Applicant is seeking relief grounded on the ineffective assistance of his trial counsel, Michael T. Bolus, Esquire.

STANDARD OF REVIEW

59(e) Motions

"A PCR court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." (Citations Omitted). (Internal quotation marks omitted). Marlar v. State, 644 S.E.2d 769, 771 (S.C.App. 2007). "Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order...." (Citation omitted). Marlar v. State, 653 S.E.2d 266, 267 (S.C. 2007).

STATEMENT OF FACTS

On January 27, 2015, Thomas sent the first of three emails to Shaffer and his partner in the practice of law, Stuart M. Axelrod, Esquire, to discuss the filing of this *59(e) Motion*. (*Exhibits in Support*, pp. 251-253). However, both Shaffer and Axelrod failed to respond. Therefore, Thomas filed the aforementioned motions and documents in support on May 18, 2015. To that end, Thomas' objective was to proceed *pro se* to ensure that he would be timely

notified of this Court's findings in order to have an opportunity to draft an all-inclusive 59(e) motion. Consequently, Thomas only discovered on June 5, 2015, via *sccharlestoncounty.org* that a decision had been made and that an order of dismissal was filed on June 2, 2015. In other words, Shaffer failed to inform Thomas of having received a proposed order of dismissal; and he failed to call to the attention of this Court any of the following errors and omissions:

I.

Chris Talbott's Testimony

The order of dismissal states that Officer Chris Talbott's testimony is credible. However, the record does not properly support that conclusion whereas Talbott stated in his *Incident Report* that when he first encountered Thomas and the alleged victim, Rachel M. Crowley: she was crying and appeared to be frustrated with no mention of facial injuries. (*Exhibits in Support*, p. 274). And during trial, Talbott testified that Crowley was kicking, screaming, was very frustrated, and had a busted lip. (Trial Tr., p. 304, lines 3-7; p. 310, lines 4-5). With that in mind, Talbott's *Incident Report* was drafted within a few hours of having arrested Thomas, and his trial testimony was given two years later. Therefore, Talbott should have been impeached when contradicting his *Incident Report* by claiming that his trial testimony was accurate. (PCR Tr., p. 37 lines 12-15; p. 39, lines 4-19).

The Martin's Testimony

The order of dismissal states that Teddy and Krystal Martin's testimony is not credible since they are married, and because Krystal has never witnessed Crowley's violent conduct. However, the record does not properly support that conclusion whereas Teddy testified that Thomas had been his friend for a long time, and that they had been roommates. (PCR Tr., p. 43,

lines 23-25). And Krystal testified that she had met Thomas through Teddy a few years prior to his arrest in this case, and that she was not around Crowley on a regular basis. (PCR Tr., p. 56, lines 22-25—p. 57, line 1). In other words, Teddy witnessed Crowley's attacks upon Thomas around the time frame in which they were roommates; and he met Krystal after having moved out. Therefore, it is unreasonable to find the Martins testimony is not credible because Teddy did not know Krystal when he witnessed Crowley's attacks on Thomas.

Thomas Randall Harbeson's Testimony

The order of dismissal states that Thomas Randall Harbeson's testimony is not credible because of being removed from the courtroom for whispering answers to the questions Thomas was asked while testifying. However, the record does not properly support that conclusion whereas Teddy Martin was testifying when Harbeson was forced to exit the courtroom, and he did not give any answers to Teddy. (See *infra* p. 19). By way of explanation, Harbeson inadvertently muttered the word *initiated* to himself loud enough for nearly everyone in the courtroom to hear because that is the word Teddy was searching for. (PCR Tr., p. 50, lines 22-25).

What's more, Harbeson was seated in the back row of the gallery. In other words, if he had been whispering, Teddy *most probably* would not have heard him. Furthermore, if Ashleigh Wilson did not hear what Harbeson had said as she claims: she would not have made the accusation that he was giving answers to Teddy. (PCR Tr., p. 51, lines 1-6). Therefore, it is unreasonable to find Harbeson's testimony is not credible merely because he was unwittingly talking to himself too loudly in the gallery.

Cecil Terry's Testimony

The order of dismissal states that Cecil Terry's testimony is credible, and that he testified that Thomas started Crowley on drugs when she was a minor. But Terry actually testified that Thomas influenced Crowley to use needles and heroin when she was a minor. (PCR Tr., p. 81, lines 11-14). However, Crowley's mother, Cathy Mere, testified at trial that Crowley was on drugs before and after she met Thomas. (Trial Tr., p. 279, lines 13-23). In other words, Thomas did not start Crowley on heroin either. With that in mind, Terry should have been impeached when he first took the stand and denied that Crowley had been arrested for assaulting him. (PCR Tr., p. 78, lines 24-25—p. 79, lines 1-2). (*Exhibits in Support*, pp. 12-15; p. 234, lines 14-25—p. 237, lines 1-17). Therefore, the record does not properly support the conclusion that Terry's testimony is credible.

Christen Boyer's Testimony

The order of dismissal states that Christen Boyer's testimony is not credible because she had a copy of the pages from Thomas' *Trial Agenda* filed on May 18, 2015, clarifying the questions Shaffer was supposed to ask her. However, the record does not properly support that conclusion whereas those *Agenda* pages were provided Boyer so that she could refresh her memory with the facts she has personal knowledge of. Furthermore, Ashleigh Wilson did not object when Thomas was using that same *Agenda* to refresh his memory while testifying. (PCR Tr., p. 129, lines 10-12). And Shaffer did not object when Ashleigh Wilson provided Officer Talbott with the transcript pages of his trial testimony to refresh his memory. (PCR Tr., p. 38, lines 9-25—p. 39, lines 1-20). Therefore, Boyer should not be discredited for also seeking to be efficient while testifying.

Applicant's Testimony

The order of dismissal states that Thomas' testimony is not credible because he denied ever having been convicted of CDV. However, the record does not properly support that conclusion. By way of explanation, Thomas testified that he never had a CDV during the course of relationships with his first wife and numerous girlfriends; and that he believed that this fact would have been relevant in terms of early parole pursuant to S.C. Code of Law §15-25-90. (PCR Tr., p. 149, lines 17-23). What's more, Thomas made it clear that he had never been convicted of CDV prior to meeting Crowley, (PCR Tr., p. 151, lines 9-13; p. 154, lines 3-8), for the purpose of proving that he does not have a propensity to abuse women to support his testimony that Crowley's allegations in this matter are false. (*Exhibits in Support*, pp. 105-116).

The order of dismissal also states that Thomas testified to having asked Bolus to seek early parole pursuant to §15-25-90. However, the record does not properly support that conclusion whereas Thomas did not even know about that statute at trial. (PCR Tr., p. 142, lines 23-25—p. 143, lines 1-15). And finally, the order of dismissal states that Thomas testified that Crowley had never alleged that he hit her with his hands or feet (*sic*). Be that as it may, Thomas actually testified that Crowley "did not allege that [he] hit her with any hands or fists in the incident report." (PCR Tr., p. 129, lines 18-19).

Michael Bolus' Testimony

The order of dismissal states that Michael Bolus' testimony was credible. However, the record does not properly support that conclusion whereas Bolus lied when testifying that he had received all the discovery materials he wanted, and that he never asked the prosecution for Crowley's medical records because they were not necessary. (PCR Tr., p. 158, lines 9-15). By way of explanation, Bolus served the prosecution with five discovery motions and wrote three

letters specifically requesting, among other things, Crowley's medical records. (*Exhibits in Support*, pp. 133-147). Bolus was also less than truthful when testifying that Thomas bragged about being able to provide Crowley with the best dope. (PCR Tr., p. 167, lines 10-12). Consequently, because Crowley was a rapacious addict, Thomas had actually testified that he was able to provide her with plenty of drugs. (Trial Tr., p. 624, lines 14-24).

Bolus also lied when testifying that his *protected day* fell on a Saturday, (PCR Tr., p. 170, lines 1-10), when it was actually scheduled for Friday, July 11, 2008. (Trial Tr., p. 51, lines 1-8). And Bolus prevaricated about whether he reviewed all discovery with Thomas because he never discussed anything of that nature with Thomas. (PCR Tr., p. 157, lines 20-25). Therefore, the record does not properly support the statement in the order of dismissal that Bolus reviewed everything he wanted in terms of discovery with Thomas whereas *Brady* materials had been suppressed by the prosecution.

II.

Disregarded Issues

The order of dismissal does not include findings of fact and conclusions of law on the following issues raised in (1) the *Amended Application* (2) Thomas' *Memorandum in Support of Post-Conviction Relief*; and (3) raised during the evidentiary hearing convened on December 8, 2014:

1. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel was ineffective for failing to request a lesser included offense of CDV. (PCR Tr., p. 11, lines 9-13; p. 141, lines 14-25—p. 142, lines 1-6).

2. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel was ineffective for failing to object to the kidnapping instruction. (PCR Tr., p. 11, lines 19-25—p. 12, lines 1-15). (*Memorandum*, pp. 29-30).

3. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel was ineffective for failing to object to the prosecution vouching for the credibility of witness in its closing. (*Amended Application*, p. 2, ¶ 17). (PCR Tr., p. 146, lines 5-20; p.). (*Memorandum*, pp. 28-29; pp. 34-41).

It should be noted that the issues Thomas was forced to abandon, (PCR Tr., p. 17, lines 18-20; p. 20, lines 1-15 p. 148, lines 16-18), and those issues having been construed by this Court as abandoned are the result of Shaffer's ineffectiveness. With that in mind, Thomas filed motions on May 18, 2015, that have not been ruled on seeking, among other things, to fire Shaffer and a subsequent evidentiary hearing. And unless another hearing is convened, Thomas has effectively been denied his procedural due process right to a *bite of the apple* as guaranteed by the Fourteenth Amendment to the United States Constitution.

Constitutional Omissions

The order of dismissal failed to state several of the following issues in the *Amended Complaint*, and failed to state the constitutional violations complained of in the *Amended Complaint* respective to the following issues:

1. Ineffective assistance of counsel.
 - a. Pursuant to *chronic*, Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process based on defense counsel's abbreviation of the trial to make sure trial counsel was able to leave for vacation.
 - b. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel was ineffective for failing to bring up contradictions in the alleged victim's testimony and previous statements.
 - c. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel was ineffective for failing to call

witnesses demonstrating that the alleged victim previously made statements that she like being tased.

- d. Applicant was denied his 14th Amendment right to due process when the State failed to disclose medical records of the alleged victim.
- e. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel was ineffective for failing to impeach the alleged victim with her medical records.
- f. Applicant was denied his 14th Amendment right to due process when the State failed to disclose information concerning a plea offer with the alleged victim.
- g. Trial counsel failed to impeach the alleged victim with evidence of her plea offer with the State.
- h. Applicant was denied his 14th Amendment right to due process when the State failed to provide police reports concerning the alleged victim.
- i. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to request a lesser included charge of CDV.
- j. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to present evidence that the Applicant was entitled to a sentence pursuant to S.C. Code 15-25-90.
- k. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to object to the kidnapping instruction.
- l. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel made negative statements about the Applicant throughout his opening and closing statements.
- m. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to call witnesses to corroborate the Applicant's claim that the alleged victim enjoyed S&M.
- n. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to call character witnesses for the Applicant.
- o. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to argue that the kidnapping should not have subjected the Applicant to the sex offender registry.
- p. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to communicate and prepare the Applicant for trial.
- q. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to object to the prosecution vouching for the credibility of the witness in its closing.
- r. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to object to the State's seek the truth language in closing.
- s. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to object to the State's Exhibits 41-45.

- t. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to properly cross-examine the detective with his contradicting affidavit.
- u. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to object to the jury charge for kidnapping that was given to the jury.
- v. Applicant was denied his 6th and 14th Amendment rights to effective assistance of counsel and due process when trial counsel failed to object to the circumstances of aggravation charged to the jury in the instruction of CDVHAN.

2. Brady violation.

- a. Applicant was denied his 14th Amendment right to due process when the State failed to disclose medical records of the victim.
- b. Applicant was denied his 14th Amendment right to due process when the State failed to disclose information concerning a plea offer with the victim.
- c. Applicant was denied his 14th Amendment right to due process when the State failed to disclose prior police reports concerning the victim.

III.

Abbreviated Trial

The order of dismissal states that Thomas failed to proffer evidence that Bolus abbreviated his trial to ensure a timely departure for Costa Rica to go surfing; and that Bolus' *protected day* for that Costa Rican departure was scheduled the week after Thomas' trial had concluded. However, the record does not properly support that conclusion whereas trial began on Monday, July 7, 2008. And during pretrial motions, Bolus apprised the court of his *protected day* on Friday, and the court stated that the proceedings would resume on Wednesday, July 9, 2008, in order to bring an end to trial by Thursday, July 10, 2008. (Trial Tr., p. 51, lines 1-5). (PCR Tr., p. 138, lines 21-25). It should be noted that Bolus also lied to this Court when testifying that his *protected day* fell on Saturday, July 12, 2008. (PCR Tr., p. 170, lines 1-10).

What's more, Bolus refused the court's offer to charge the jury with the lesser-included-offense of CDV. (Trial Tr., p. 675, lines 14-18). In other words, Bolus did not want to impede

the swift arrival of a verdict with matters requiring additional deliberations. And that is essentially what Thomas was testifying to when saying that to make sure his trial did not interfere with Bolus' surfing vacation, Bolus presented a paltry 85 minute defense focused only on the charge of CSC-1ST. (PCR Tr., p. 147, lines 20-25—p. 148, lines 1-6).

As for the kidnapping and CDVHAN, Thomas testified that during closing arguments Bolus made sure the jury would spend no time deliberating on those charges by advising them to find him guilty. (PCR Tr., p. 139, lines 18-25—p. 140, lines 1-3; p. 141, lines 5-8). "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).

IV.

Suppression of Brady Materials

The order of dismissal states that Crowley's medical records (1) were not proven to have been suppressed by the prosecution; (2) do not contradict her testimony to having sustained a busted lip and broken teeth from Thomas punching her in the mouth, and essentially confirm that she had broken teeth; and (3) that Thomas failed to show how those records would have changed the outcome of the trial. However, those conclusions are not properly supported by the record. By way of explanation, Bolus testified that he never asked for the production of medical records. (PCR Tr., p. 158, lines 9-15). And the five discovery motions and three letters he wrote to the

prosecution requesting those records, among other things, prove that is not true. (*Exhibits in Support*, pp. 133-147).

With that in mind, Bolus essentially testified that the prosecution failed to produce Crowley's medical records despite his eight attempts to procure them. (PCR Tr., p. 175, lines 11-18). Therefore, it has been irrefutably proven that the prosecution did in fact suppress Crowley's medical records. Moreover, Crowley's medical records do contradict her testimony to having been punched in the mouth whereas the chart depicting her anatomy specifically stipulates that there was no evidence of head trauma. (See *Applicant's Exhibit I*). Furthermore, there is no mention of facial injuries when the photographs of Crowley were entered into evidence at trial. (Trial Tr., pp. 195-199). And it should be noted that notwithstanding over seven years of diligent attempts, (*Exhibits in Support*, pp. 133-215), Thomas has not yet received, among other things, copies of those photographs.

What's more, Thomas was only provided with a copy of the exhibits entered during the evidentiary hearing when his *Power of Attorney* filed his post-trial motions on May 18, 2015. Consequently, Marie Assa'ad-Faltas, MD, MPH has provided her expert opinion on Crowley's medical records in an affidavit revealing, among other things, the *after-discovered evidence* that Crowley's allegedly, non-consensual injuries were merely superficial and did not require any meaningful treatment and, that there were no bruises on her body or any other evidence to support her claim to having been brutally beaten by Thomas with his hands or fists for 36 to 40 hours. (See *infra* p. 12).

In other words, the prosecution suppressed Crowley's medical records because they confirmed that Crowley lied about having been both battered and punched in the mouth by Thomas. And Crowley's medical records corroborate Thomas' testimony that he did not strike

her with his hands or fists. Furthermore, the order of dismissal implicitly states the finding of the fact that it was proven that Crowley did enjoy the use of a stun gun during rough sex. Therefore, had Crowley's medical records not been suppressed by the prosecution, the outcome of the trial would have been different.

"[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). "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). "Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation." (Citations omitted). State v. Kennerly, 503 S.E.2d 214, 220 (S.C.App. 1998).

V.

Inconsistent Statements

The order of dismissal states that Bolus effectively cross-examined Crowley and highlighted any contradictions and inconsistencies in her statements. However, the record does not properly support that conclusion whereas Thomas partially summarized for this Court what was determined to be more than 47 inconsistent statements made by Crowley. (PCR Tr., p. 129, lines 5-25—p. 137, lines 1-16; p. 147, lines 6-14). And Thomas provided this Court with a delineation of each of those inconsistent statements. (*Memorandum*, pp. 34-41). However, this

Court's findings are that a more aggressive cross-examination of Crowley may have reflected poorly on Thomas in the eyes of the jury.

With that in mind, Crowley's medical records have confirmed that the prosecution suppressed them because Crowley had lied about her injuries. And in light of the significant number of lies that Thomas has exposed, the only logical conclusion is that the prosecution knew about those fallacies as well. Therefore, the prosecution knowingly used perjured testimony. And it is unlikely that presenting Crowley as the compulsive liar that she is would have disparaged Thomas in the eyes of the jury. Therefore, Bolus was ineffective for failing to highlight all of the contradictions and inconsistencies in Crowley's testimony and previous statements on cross-examination.

““[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). State v. Stanley, 615 S.E.2d 455, 460 (S.C.App. 2005).

“[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. “[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).

VI.

Sex Offender Registry

The order of dismissal states that a conviction for a sexual offense is not a prerequisite for sex offender registry by a person convicted of kidnapping. However, the record does not properly support that conclusion whereas this is an erroneous conclusion of law and an abuse of discretion. By way of explanation, the Supreme Court has determined 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). "An abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle...." (Citation Omitted). Ex Parte U-Drive-It, Inc., 630 S.E.2d 464, 467 (S.C. 2006). Therefore in the case at bar, Thomas is not required to register as a sex offender upon his release from prison.

VII.

Denigrating Statements

The order of dismissal states that Bolus articulated a valid strategic basis for his statements about Thomas at trial; and that Bolus merely portrayed Thomas in a somewhat negative light. However, the record does not properly support that conclusion whereas among many other degrading statements, (*Memorandum*, pp. 42-43), Bolus told the jury that Thomas led Crowley into a life of drugs when her mother, Cathy Merece, had already testified that Crowley was using drugs before she met Thomas. (Trial Tr., p. 279, lines 13-23; p. 708, lines 16-22). Then Bolus advises the jury to find Thomas guilty of kidnapping and CDVHAN. (Trial Tr., p. 713, lines 3-19).

What's more, Bolus concluded his diatribe with the *coup de grace* statement that Thomas was unlikely to beat his addiction to drugs, and that he hoped that it was not too late for Crowley to recover from her's. (Trial Tr., p. 716, lines 13-21). In other words, Bolus lied about Thomas starting Crowley on drugs and maligned him in order to imply that (1) he was responsible for likely destroying Crowley's life; (2) Thomas would *most probably* never become a productive citizen; and (3) that by finding Thomas guilty, he is less likely to destroy anyone else's life. Therefore, Bolus' denigrating statements and innuendos cannot reasonably be construed as having been *somewhat negative*.

VIII.

Overwhelming Evidence

The order of dismissal states that the overwhelming evidence of Thomas' guilt precludes the success of any claims of ineffective assistance of counsel. However, the record does not properly support that conclusion whereas this is a case of *he said / she said* hinged upon credibility because there is no scientific evidence of guilt. By way of explanation, Crowley's medical records, statements and testimony irrefutably prove that she told more than 47 lies. (Memorandum, pp. 34-41).

In fact, the prosecution suppressed Crowley's medical records to conceal some of her lies. Furthermore, whereas there is virtually nothing that Crowley can testify to without contradicting herself, the prosecution vouched for her credibility during closing arguments. And because Bolus wanted to go surfing in Costa Rica, he did not object to that vouching because the jury would not likely have reached a verdict in 54 minutes on the eve of his *protected day* on

Thursday, July 10, 2008, at 4:58 p.m. (Trial Tr., p. 51, lines 1-5; p. 790, lines 10-12; p. 797, lines 10-12).

As for Thomas' credibility, he has been truthful from the beginning. And the finding that Thomas lied about not having any CDV convictions is not properly supported by the record whereas he was referring to his life prior to meeting Crowley in December of 2000. (*Exhibits in Support*, pp. 105-117). In other words, the evidence of what *he said* is far more credible because virtually everything that *she said* is a lie. Therefore, the evidence against Thomas is not overwhelming because Crowley did in fact fabricate the allegations against him.

IX.

Miscellaneous Inaccuracies

The order of dismissal contains the following errors and omissions that should be amended:

1. The indictment for CSC-1st was true-billed during the February 2007 term of the Charleston County Grand Jury; not the December 2006 term. And the reason for not presenting the CSC1st indictment with the CDVHAN and kidnapping indictments appears to have been because of the conflicting elements. By way of explanation, it would *most probably* have been noticed that the prosecution testified that Thomas was a *household member* in the CDVHAN indictment, and that he was not a *household member* when legally married to Crowley in order to procure the CSC1st indictment.

2. There is no *Taser* involved in this case. The device consensually used by Thomas and Crowley during sex is an over-the-counter stun gun of nominal voltage. And a *Taser* is a non-lethal weapon used by law enforcement to propel electrodes into a victim.

3. The record properly supports the finding that Bolus lied time and again while testifying at the evidentiary hearing convened on December 8, 2014. With that in mind, Carol Cook did not tell Bolus that she wanted to pay Crowley not to testify against Thomas, nor did she attempt to do so. (*Exhibits in Support*, p. 3, ¶ 2).

WHEREFORE, Applicant prays this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

June 15, 2015
Columbia, SC

Respectfully submitted,

Clark D. Thomas

Clark D. Thomas
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

**AFFIDAVIT
OF
CLARK D. THOMAS**

FILED
2015 JUN 15 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOW COMES Clark D. Thomas, *pro se*, Applicant in the above-captioned case, and states, under oath, the following:

1. The facts I have revealed by virtue of this motion are true and correct to the best of my knowledge and belief.

Further affiant sayeth naught.

SUBSCRIBED AND SWORN TO before me

This 14 day of JUNE, 2015

Melanie Z. Lucino (L.S.)

Notary Public for South Carolina

My Commission Expires: FEB 18, 2024

Clark D. Thomas

Clark D. Thomas #187845

BRCI / Moultrie A-2087

4460 Broad River Road

Columbia, SC 29210

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the document listed below has been sent
by U.S. Mail to:

The Honorable J. C. Nicholson
Active/Retired Circuit Court Judge
100 Broad Street, Ste. 106
Charleston, SC 29401;

Ashleigh R. Wilson, Esquire
P. O. Box 11549
Columbia, SC 29211; and,

Tristan M. Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577.

BY _____

2015 JUN 15 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

1. *Notice of Motion and Motion to Alter or Amend a Judgment to Include Specific Findings of Fact and Conclusions of Law.*

June 15, 2015
Columbia, SC

Clark D. Thomas
Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Clark D. Thomas,)
))
Applicant,)
v.)
))
State of South Carolina,)
))
Respondent.)

CA No. 2012-CP-10-8354

MEMORANDUM OF LAW ON
RULE 59(e) MOTION

This matter is a request for a review and modification of a PCR Order of Dismissal by this Court filed on June 2, 2015, which order the Appellant's counsel received a copy of said Order of Dismissal on June 8, 2015, and filed a Rule 59(e) Motion for Amendment on June 15, 2015.

Counsel for Appellant cites more than forty-five errors of Defense Counsel's failure to adequately represent the Applicant; numerous examples of misconduct by the prosecutor, and several wrong rulings by the PCR court judge.

1. Ms. Crowley, the complaining witness, falsely testified without opposition from defense counsel to having had teeth fixed that were allegedly 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 available to defendant which would support any of these claims.

Appellant did not hit her in the mouth or the face, and the only force directed toward Ms. Crowley during the incident at the Thomas resident on June 6, 2006, and in

the car on June 7, 2006, were part of the consensual sex, when she jerked the steering wheel, and when he was trying to restrain her as she physically attacked him.

This is not just about a cracked tooth as defense counsel argued; the issue is that the medical records would have allowed the Appellant to present solid evidence on his claim that he did not use any non-consensual force on her; which claim by Ms. Crowley which resulted in the criminal charges discussed herein.

Appellant was unable to refute the false testimony about injuries because the prosecutor intentionally withheld Crowley's medical records. This action by the prosecutors was taken even though Defense Counsel filed five Rule 5 motions, and wrote three letters requesting other photo information.

Counsel presents just one example of the claims of the prosecutor that proves the need for the defendant to have Ms. Crowley's medical records:

Physical evidence in this case is really all you need to convict this defendant. When I say physical evidence, I'm talking about Rachel Crowley. Not what she said, but her condition. The injuries she has is physical evidence. The marks on her wrists, the tape on her chin, the burn marks all over her body are physical evidence. That has nothing to do her background. It has everything to do with what a doctor saw. TT 718 -719.

The obvious question is how could a defendant rebut allegations of physical injuries without having a copy of the "alleged victim's" medical records?

The violation of Rule 5 and the letter requests for all relevant evidence to be used in the trial is a serious breach of the Criminal Rules. Counsel argues that this one serious violation of the rules makes the conviction a mockery of justice. The conviction should be reversed and sent back for a new trial or other disposition.

The prosecution's 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 false claims of non-consensual physical force against her in her direct testimony to the jury. (TT 136 -213; Testimony of Thomas Harbeson). Also the testimony on pages 190 and 191 about her being taken to the hospital and seeing a doctor could not be refuted without her medical records.

The arresting officer, Chris Talbott, 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. And during the trial, Talbott testified tht she was kicking, screaming, was very frustrated, and had a busted lip. TT 304.

Therefore Defense Counsel was ineffective in failing to impeach Talbott on this important factual issue.

An example of the harmful testimony about defendant that he was unable to provide documented rebuttal testimony is on pages TT 159, lines 20 - 25 about the "hit in the mouth" allegation and also the number of assault charges in Ms. Crowley's direct testimony, including on page 184:

Q: Did -- you said he hit you. Where did he hit you?

A: In my face. He cracked a couple of my teeth; I've fixed [them].

Q: So when you all got to the hotel or, I'm sorry, when you got to the car what happened ?

A: He pushed my face into the floor board and told me to stay down. He hit me a few more times.

Q What -- go ahead.

A: In the face and busted my lip.

This and other examples of alleged forceful actions by the defendant were impossible to defend without Ms. Crowley's medical records. The prosecutor made a big deal about the physical evidence, but he withheld the medical records from the defendant, and prevented him from his opportunity to rebut any false statements by Ms. Crowley. The failure of the prosecution to provide these medical records denied Mr. Thomas a fair trial, and this conduct by the prosecutor warrants a new trial for the defendant.

2. The prosecutor repeatedly vouched for Crowley's truthfulness in her direct testimony and in his closing argument. This conduct is clear reversible error under *State v. Shuler*, 545 S.E.2d 805 (SC 2001). This case makes it clear that it is impermissible for a Solicitor's questions to act to bolster or vouch for the credibility of the witness. The Supreme Court explained this rule:

A prosecutor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness. *Elmer v. Maryland*, 353 Md. 1, 724 A.2d 625 (1999). Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity by indication information not presented to the jury supports the [witness'] testimony. See *State v. Kelly*, 540 S.E.2d 851 (SC 2001).

Counsel gives three examples of the prosecutor showing a person belief in the truth of the testimony of Ms. Crowley in his closing argument:

I do want to talk about Rachel Crowley for a second. And I think what she said, what she testified to, is believable for two reasons. One, the physical evidence that I'll talk about in a moment. But, second of all, because she came in her and told you all what happened. . . . And I don't think there's any one of us who sat here and watched what she said and not see that she was telling the truth. TT 726.

As much as what Rachel said is believable because of her consistency, because of her accuracy in attention to detail. TT 730.

You can believe her because she came in here and told you all the truth. TT 733.

This bolstering of the testimony of a witness is a clear violation of a fundamental rule and even murder cases have been reversed because of this kind of unethical conduct by the prosecutor. Based on the statement of the law in *State v. Shuler*, 545 S.E.2d 805 (SC 2001), Thomas' conviction should be reversed on this gross misconduct by the prosecutor by his personal endorsement of the credibility of Ms. Crowley.

State v. Plath and Arnold, 284 S.E.2d 221 (SC 1981), also supports the reversal of major decisions of the jury and trial court when there is clear evidence that the prosecutor showed personal prejudice against the defendant. Counsel decides it is best to attach this ruling on impermissible comments by the prosecutor to this memo as Exhibit "A."

In the direct examination of Rachael Crowley, the Solicitor asked Ms. Crowley dozens of leading questions without objection by Mr. Bolus. By contrast, Mr. Williams made four objections in the first four pages of the cross examination by Mr. Bolus; and he also used the "asked and answered" objection in the same part of his cross examination.

Those leading questions in the direct examination of Ms. Crowley are on pages 139, 140, 142 (2 and 1 none harmful one), 149, 150, 152, lines 10 -14, 153, 154, 156, 157, 163, 165, 167, (on p. 169 there is a long question which is not leading), 175, 176, 182, 189, 192, 195, 196, 197, 198, 199, 200, 201, 202, 204, 206, 207 (actually prosecutor testifying), 208, (on 212 of the trial transcript, Mr. Bolus did object to the length of the testimony about her "rehabilitation program") and several in Mr. Williams closing statement (two examples are on pages 731 and 732). These are more than thirty leading

questions Defense counsel failed to object to. There are other leading questions with other state witnesses; one example is on TT 488.

During the redirect, Mr. Williams again used a number of leading questions; they are on pages 249, 250, and 253 (Mr. Bolus made one leading question objection p 251). The definition of a leading question is simple. They suggest the answer, and they almost always solicit a "yes" or "no" answer.

I will give the court just two examples of obvious leading questions derogatory of the Defendant. They are on page 142 of the trial transcript, lines 2 -7, and on page 142 lines 21 to line 1 on page 143 preceded by the discussion of why Ms. Crowley was living with her mother part-time :

Q: Did you sleep overnight there [mother's house].

A: Yes, Sir.

Q: And that was in an effort to get away from the defendant?

A: Yes, sir.

Q: And that was to live with your mother?

A: Yes, sir.

Q: To get away from the In Towne Suites?

A: Uh-huh.

In Ms. Crowley's testimony, she used the term "taser" and the Solicitor used the term "stun gun;" both are incorrect descriptions of the device the couple used as part of their sexual activity. Non-refuted testimony shows that the device was a cheap, low-voltage imitation of a taser.

In addition to the leading questions, Mr. Williams often repeated Ms. Crowley's previous answer as part of the next question to make sure the jury heard it the first time

and to have a cumulative negative effect on the defendant. There was no objection to this tactic by defense counsel.

Referring again to *State v. Plath and Arnold*, counsel would argue that the numerous serious errors made by the solicitors in the instant case more than justify a reversal of the convictions or a serious reduction in the amount of time to be served.

3. The prosecutor repeated similar, accusing questions (ten pages in transcript) about how Appellant got Ms. Crowley back in the car the day of the alleged crimes in this case. These kind of repetitive questions violate the "asked and answered" evidence rule. Defense counsel failed to object. (TT 630 - 640). Examples of these asked and answered questions also appear in the direct examination of Ms. Crowley and are on the following pages of the trial transcript: 158. On page 164, Mr. Williams asked the same question three times. Other questions where he repeated the prior answer are on pages: 178, 181, 206, and other places in Ms. Crowley's direct examination.

4. When you speak of physical evidence, how about the fact that Ms. Merece stole Mr. Thomas's computer and kept it for eight months before turning it over to the police. I wish someone would have told the jury how they knew Ms. Merece and Ms. Crowley did not remove or add things to the computer during that eight months of theft and control of the computer?

Prosecutor Williams argued that the computer was an important part of the physical evidence that "proved" the defendant guilty:

The final piece of physical evidence I want to talk about are these letters, journal entries. These were essentially physical evidence taken off of a computer, and I'll talk a little bit more about these later, but these journals show nothing short of a

man on the edge, a man about to boil over. These are full of anger, jealousy. Nothing more than pure venom towards the victim in this case, that was eventually displayed. You want to know what he was going to do? Nothing more than jealousy, paranoia, anger towards the victim in this case. Physical evidence. TT 721 - 722.

One has to wonder whether Mr. Williams also has a degree in psychology since he is making such technical medical decisions? Yet he violated the rules by withholding Ms. Crowley's medical records; thus preventing the defendant from getting a fair trial on the issues of alleged non-consensual "injuries" and other physical evidence from the computer.

5. *State v. Plath and Arnold*, is also relevant on the issue of the fruit of the poisonous tree. Counsel argues that the police use of the stolen computer to find incriminating evidence against the defendant is prohibited under the fruit of the poisonous tree. One of four defendants in a murder case which has some similar facts as the instant case where four defendants physically and sexually abused a hitch-hiker, resulting in her death.

One of the defendants, Miss Sheets showed the police where the body was and gave them the names of the other defendants; she was given immunity from prosecution.

In *State v. Plath and Arnold*, the court gave this explanation of the doctrine of the fruit of the poisonous tree:

When Miss Sheets implicated Arnold as a principal, the [Arnold] grant of immunity was withdrawn. Arnold argues had it not been for his confession, Miss Sheets would have never been apprehended. If she had not been apprehended, he would never have been established as a principal. Therefore, he argues, the fruit of the poisonous tree doctrine applied by analogy.

The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be

excluded. See *Wong Sun v. United States*, 83 S.Ct. 407 (1963). Even if the arrest was illegal, the fruit of the poisonous tree doctrine will not apply to a confession if it is freely and voluntarily given. *State v. Funchess*, 179 S.E.2d 25 (SC 1971); cert. denied, 92 S.Ct.236 (1971).

While the arrest has been the tree and the confession the fruit in prior cases, Arnold argues the confession is the tree and the incriminating testimony of Miss Sheets is the fruit.

We find no poisonous tree.

In the instant case, but for the crime of theft by Ms. Meree and the immunity given to Ms. Crowley by the prosecution, the police would not have much of the evidence used to convict Mr. Thomas. Thus, this is a classic case of the police profiting from illegal conduct, and it is therefore fruit of the poisonous tree case.

The court, nor the jury do not know how much tampering went on with the computer during the eight months Ms. Crowley had it before turning it over to the police and giving them "evidence" they would never have had but for the illegality of the entire transaction.

6. Defense Counsel should have filed the motion for denial of speedy Trial after the charges had been for at least 14 months. Thomas's present counsel filed one on a CSC1st case in Lexington County after being on the docket for 14 months, and the court granted it.

7. Counsel has an obligation to call to the court's attention portions of the negative comments Mr Bolus made about his client in his opening and closing arguments. They are attached to this memo as Exhibits "B" and "C." These kind of comments about a client are unprofessional. In fact, counsel believes it is unnecessary to express when counsel disagrees with the testimony of his client.

8. In Mr. Bolus's closing argument he made this very harmful statement about Mr. Thomas and a positive expression about Ms. Crowley:

I'm glad that Rachel Crowley has come back to reality, to the world. I hope she stays that way. Drug addition is a heck of a thing. I not sure David Clark Thomas is ever going to beat the situation, you know. He's in his forties. And I don't know. It may be too late for him. I hope it's not too late for Rachel. TT 716.

These kind of remarks are unprofessional, unwarranted, and harmful to the defense of his client. Furthermore, my client believes that the ineffectiveness and personal denigration of him by his trial counsel is so extreme as to suggest the possibility of collusion with the prosecution to deprive Mr. Thomas of his rights to a fair trial.

9. On behalf of Mr. Thomas, counsel argues that it is suspicious that Ms. Crowley did not agree to testify until several serious criminal charges were dismissed. Mr. Thomas believes that the prosecution arranged for the dismissal of these charges which would have exposed Ms. Crowley's propensity to violence, and that this suppressions were done so as to conceal evidence that would have been used in an effective defense. Such evidence would have been used to impeach Ms. Crowley or maybe qualify Mr. Thomas for a shorter sentence.

Neither the prosecution, defense counsel, nor the court expressed any concern about Ms. Merece stealing the defendant's computer and keeping it for eight months before she turned it over to the North Charleston Police Department. TT 485 - 486. In addition, the prosecution claimed that Ms. Crowley and Mr. Thomas were not married, but the fact is they were just separated at the time of the house and hotel incidents.

10. Although there were a number of inconsistent statements between the incident reports and the testimony of the police officers, Defense Counsel refused to

pursue this line of defense.

11. Ms. Crowley alleged that she lived in fear for her life because of Thomas. However, Thomas maintains that Ms. Crowley made the allegations against him for him wanting a divorce, and that after he was released from jail on satellite monitoring, Ms. 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 the Defendant.

The Applicant had direct testimony from Mr. Martin about the attempt by Ms. Crowley at the restaurant at a time close to the trial to persuade him to reconcile with her. But Defense Counsel would not allow Mr. Martin to testify about this important attempt by Ms. Crowley to reconcile with Mr. Thomas. Of course, this action was totally inconsistent with all of her testimony Mr. Williams praised. See affidavits of Mr. and Mrs. Martin attached as Exhibits "D" and "E."

12. At the specific request of Applicant, I attach and reference the affidavit filed by Marie Assa'ad Faltas, MD, MPH on her review of the eleven pages medical records of Ms. Rachel Crowley. Dr. Faltas, concludes that this medical evidence is inconsistent with the prosecution's exaggeration of "grossly forceful assaults" on Ms. Crowley by Mr. Thomas. (Attached as Exhibit "F.") Counsel understands that the purpose of the Rule 59(e) motion is to question the insufficiency of counsel and not to review the validity of the trial evidence. Ms. Crowley's testimony was grossly exaggerated.

On a related matter, the CD which recorded Ms. Crowley, cursing, shouting her disappointment at not having sex with Thomas and other things about kinky sex should

have been submitted as evidence. Mr. Bolus refused to use it; this was an example of gross ineffective counsel.

Applicant believes that this after-discovered evidence is additional evidence that Mr. Bolus failed to work diligently to obtain the medical records which could have refuted much of the damaging alleged evidence about "intentional" harm to Ms. Crowley.

In fact, Mr. Bolus admitted to Shaffer that he never requested the medical records.

See pages TT 175, lines 10 -- 25, and 176, lines 1 --7.

Q: You said that the -- you didn't think the medical records were necessary. Did you review the medical records ahead of time?

A: No.

Q: Okay. So you think Mr. Williams had not actually turned those over --

A: -- it's not his fault. I didn't ask for them. He's a good guy; he gave me everything I needed. Now I did have some problems with some things at the trial. You know how you get hit with photographs at the last second, but it wouldn't have changed my strategy.

There were just photographs of things like, okay you knew about them but you never saw them until you got in trial but it wouldn't have changed anything in my mind about it. And I wasn't worrying about a chipped tooth.

[This confession is grossly ineffective counsel; if Ms. Crowley lied about the tooth; she probably lied about many other allegations in her testimony. This is obvious evidence of ineffective counsel by Mr. Bolus.]

Q: Okay. You do not -- do you think that that would have been helpful to bring up at least, the chipped tooth?

A: I don't know. I really don't know. You know 30 taser marks on a person's body and all that and the testimony from the doctor and her and the officers that's almost laughable when you're talking about a chipped tooth.

[Whether there was medical evidence of a chipped tooth may have been funny to Mr. Bolus, but it was very harmful to Mr. Thomas to not have early access to Ms. Crowley's medical records. This is more evidence of ineffective counsel.]

13. There is a full and accurate discussion of the insufficiency of final indictment in the presentation of Clark David Thomas entitled "PCR ISSUES" which would be appropriate for the Court to read. Counsel has attached pages 35 - 36 of this document for the benefit of the Court as Exhibit "G."

14. The real weak point is how the judge explained "a circumstance of aggravation on the CDVHAN charge.

On page 771-772, the judge described the normal deadly weapons and then gave this statement: "And ordinary objects may become deadly weapons when the facts show that they have been used to inflict serious bodily harm or death." There was no real evidence that the toy taser did any harm to Ms. Crowley. In fact, the couple did this kind of kinkysex for all of their three years of marriage and the two years they lived together. The real issue is why, after all that kinky sex, why was this one time labeled as criminal?

As for the remaining elements of aggravation in the instant matter, the citation of Sect 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." *U. S. v. Daniels*, 973 F.2d 274 (4th Cir. 1992).

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. TT 838.

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. TT 675.

15. The definition of kidnapping is in Section 16-3-910 thru 16-3-940. the key words are "unlawfully" and "without authority of law." Your lawyer should have insisted on a charge that if the two people are married, the circumstance of you carrying her to the car was lawful.

16. Counsel has an obligation to point out several legal errors made by the PCR judge.

a. Because the prosecution did not make Ms. Crowley's medical records available to the defense until the trial began, Mr. Thomas and his Defense counsel should have been given a short time to review these important documents.

b. The judge made a serious mistake when she stated that the testimony of the Martins could not be believed because Mr. Martin gave detailed descriptions of the kinky sex and assaults on Mr Thomas by Ms, Crowley. Yet Mrs. Martin did not give the same testimony. The explanation is simple, Mrs. Martin did not spend even a small portion of the amount of time with the couple as did Mr. Martin. In fact, Mr. Martin resided with Mr. Thomas for a period of time and had the opportunity to see much more than Mrs. Martin. However, they both reported the same facts about the actions of Ms. Crowley at the restaurant incident.

The Court noted:

Mr. Martin testified he has seen the victim physically abuse and assault the Applicant. He testified they had a violent relationship that was fueled by the victim and drug use. He testified he has seen the victim hit the Applicant when the Applicant did nothing to instigate the assault. Mr. Martin testified he witnessed an incident in the grocery store where the

victim came out of nowhere and attacked the Applicant.

This testimony was not refuted by an independent witness. On page 14 of the Order of Dismissal, the judge stated "...this Court does not find credible the testimony of [Mr. Martin] regarding witnessing violence in the Applicant's relationship with the victim." The court was wrong in her conclusion on this issue, and Defense Counsel was ineffective in not pointing out the difference in the opportunity of the two Martins to make these observations.

c. The Court stated: "Counsel testified he did not know if bringing up the victim's broken tooth would have been helpful at trial since the State had the doctor's testimony, the victim's [alleged injuries], and the police officer's testimony." Without the medical records, the Defendant had no possibility to refute any of this testimony. Here there was legal error by both the Court and Defense Counsel.

d. The Court's ruling on page 15 that Mr. Thomas did not prove his claim of ineffective counsel failed to properly consider the failure of Defense Counsel to object to the large number of leading questions and the bolstering of Ms. Crowley's testimony in her direct and in his closing argument. Defense Counsel was ineffective in not opposing these errors by the prosecution. These failures are not as the Court concluded "demonstrated the normal degree of skill, knowledge, professional judgment, and representation"

e. "The Applicant alleges counsel was ineffective for failing to impeach the victim with her medical records." . . . "The medical records

presented by Applicant essentially corroborated the victim's version of her injuries."

Counsel for Applicant is shocked at this position. The issue is not whether the medical records gave some support to Ms. Crowley's testimony; the legal error is that the Defendant did not have any opportunity to review these medical records before the trial. His trial counsel failed to obtain the records. This error was gross ineffective counsel.

16. There is one more issue that needs to be highlighted for the Court. When the prosecution talks about the consistent testimony of Ms. Crowley, he fails to appreciate the excellent and consistent presentation by Mr. Thomas in his "NOTICE OF MOTIONS AND MOTION TO RELIEVE TRISTAN M. SHAFFER, ESQUIRE, AND MOTION FOR SUBSEQUENT EVIDENTIARY HEARING, FILED *PRO SE*."

First, to show his consistency, I note his discussion of the physical activity between the parties on page 4:

Be that as it may, even though Bolus testified that those photographs would not have had an impact on his strategy, he testified to having been surprised by their existence at trial. (PCR Tr.175). And it should be noted that Thomas has never denied having consensually used a "stun gun" on Crowley; and that he has denied ever striking her with an open hand or his fists. Therefore, using Crowley's medical and dental records and the foregoing photographs to prove that Crowley lied about Thomas punching her in the mouth and cracking her teeth would have most probably led to her impeachment.

Applicant testified that she lied 47 times in her direct testimony: "In other words, after having been rejected by Thomas time and again and then being told of his alleged involvement with prostitutes, Crowley became so enraged that she told more than 47 lies

at trial to avenge him for her having been scorned." Mr. Thomas also noted the following: "Furthermore, the CD that Bolus declined to use in Thomas' defense clearly exposes Crowley's proclivity to violence."

The failure of Mr. Bolus was grossly ineffective in failing to obtain these medical records and his failure to introduce the CD into the record.

Counsel believes it is imperative to attached the summary of the allegations of ineffective counsel which is a part of the document cited above. See this attachment as Exhibit "H".

Finally, Mr. Thomas made one more argument on the ineffectiveness of Mr. Bolus:

Therefore, Bolus was ineffective for failing to highlight all of the contradictions and inconsistencies in Crowley's testimony and previous statements on cross-examination.

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. *State v. Stanley*, 615 S.E.2d 455, 460 (SCApp. 2005).

SUMMARY OF ARGUMENTS

1. The prosecution team repeatedly called the testimony of Ms. Crowley "consistent." My 48 years of practicing law has taught me that when a prosecution witness's testimony is that "consistent" it s proof of coaching my the prosecutor.
2. In the discussion of the testimony of Ms. Crowley, Mr. Williams asked her more than forty leading questions, with only one objection by Defense Counsel. This is gross misconduct by Mr. Williams and serious ineffective counsel by Mr. Bolus.

In addition, to all of these leading questions, the prosecution team refused to give Defendant the medical records which could have been used to refute many of the exaggerations and false statements by Ms. Crowley about the main complaints of "abuse" at their residence, the hotel and when they stopped on the highway after Ms. Crowley jerked the steering wheel.

Applicant was unable to refute the false testimony about injuries because the prosecutor intentionally withheld Crowley's medical records. This action by the prosecutors was taken even though Defense Counsel filed five Rule 5 motions, and wrote three letters requesting other photo information. Mr. Bolus admitted he did not request the medical records on Ms. Crowley; leaving Mr. Thomas without a defense to her false testimony.

Counsel presents just one example of the claims of the prosecutor that proves the need for the defendant to have Ms. Crowley's medical records:

Physical evidence in this case is really all you need to convict this defendant. When I say physical evidence, I'm talking about Rachel Crowley. Not what she said, but her condition. The injuries she has is physical evidence. The marks on her wrists, the tape on her chin, the burn marks all over her body are physical evidence, That has nothing to do her background. It has everything to do with what a doctor saw. TT 718 -719.

The obvious question is how could a defendant rebut allegations of physical injuries without having a copy of the "alleged victim's" medical records?

3. The prosecutor repeated similar, accusing questions (ten pages in transcript) about how Appellant got Ms. Crowley back in the car the day of the alleged crimes in this case. These kind of repetitive questions violate the "asked and answered" evidence rule. Defense counsel failed to object to all of these repetitive questions. (TT

630 - 640). This testimony fails to address the motivation of Ms. Crowley for agreeing to prosecute Mr. Thomas — (1) He would not reconcile with her; (2) she was told by the police that he had a relationship with a prostitute, and (3) he threatened to seek a divorce her.

4. When you speak of physical evidence, how about the fact that Ms. Meree stole Mr. Thomas's computer and kept it for eight months before turning it over to the police. I wish someone would have told the jury how they knew Ms. Crowley did not remove or add things to the computer during that eight months of theft and control of the computer?

5. In *State v. Plath and Arnold*, the State Supreme Court reversed two death sentences because of two bolstering statements by the prosecutor in his closing argument. In the instant case, the prosecutor made several serious pro-prosecution witness statements. Mr. Bolus failed to object to these harmful comments. *State v. Plath and Arnold*, is also relevant on the issue of the fruit of the poisonous tree. Counsel argues that the police's use of the stolen computer to find incriminating evidence against the defendant is prohibited under the fruit of the poisonous tree. One of four defendants in a murder case which has some similar facts as the instant case where four defendants physically and sexually abused a hitch-hiker, resulting in her death.

6. Mr. Bolus, in both his opening and closing arguments made derogatory comments against his client and favorable comments about the prosecuting witness, Ms. Crowley. See Exhibits "B" and "C".

7. Even if the Court does not conclude that one or two of these serious oversights by Defense Counsel reach the level of ineffective counsel, the law says that the

cumulative effect of a large number of mistakes by Defense Counsel justifies a ruling of ineffective counsel.

Respectfully submitted,



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July 12, 2015

State of South Carolina	)	In Common Pleas Court
County of Charleston	)	Ninth Judicial Circuit
Clark D. Thomas,	)	Transcript of Record
Applicant,	)	2012-CP-10-8354
Vs.	)	
State of South Carolina,	)	
<u>Respondent.</u>	)	

July 14, 2015

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson, Jr., Presiding Judge

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

Orin Briggs, Esquire

Attorney for the Applicant

Rutledge Johnson, Assistant Attorney General

Attorney for the Respondent

Tristan Shaffer, Esquire

SHARON L. VIZER

CIRCUIT COURT REPORTER

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E X H I B I T S

FOR THE APPLICANT:

1 - Applicant's Memorandum

Tuesday, July 14, 2015

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THE COURT: All right. We have, I believe, David Clark. Is it David Clark Thomas or Clark Thomas David?

MR. SHAFFER: Clark Thomas.

THE COURT: All right. Who is here on that?

MR. SHAFFER: I'm Tristan Shaffer, Your Honor.

THE COURT: You filed a motion to be relieved. Does he have another lawyer?

MR. SHAFFER: Yes, Your Honor, but apparently Mr. Briggs is not here.

THE COURT: Who?

MR. SHAFFER: Orin Briggs.

UNIDENTIFIED FEMALE SPEAKER: He's on his way. The traffic was backed up from Summerville to Ashley Phosphate --

THE COURT: Okay.

UNIDENTIFIED FEMALE SPEAKER: -- I know he's coming. I know he's coming.

THE COURT: All right. Who is here for the State?

MR. JOHNSON: Rutledge Johnson on behalf of the State, Your Honor.

THE COURT: I'm sorry, what?

MR. JOHNSON: Rutledge Johnson, the Attorney General's Office.

THE COURT: Russel Johnson?

1 MR. JOHNSON: Rutledge.

2 THE COURT: Rutledge.

3 All right. Who is the attorney representing him?

4 MR. SHAFFER: Your Honor, I was the attorney for
5 the PCR.

6 THE COURT: I understand but who's --

7 MR. SHAFFER: I'm Tristan Shaffer, and Orin Briggs
8 is the attorney.

9 THE COURT: Orin Briggs?

10 MR. SHAFFER: Yes, Your Honor.

11 THE COURT: Okay. All right. We'll wait until
12 Mr. Briggs gets here since he apparently -- who did he
13 notify he's late?

14 MR. SHAFFER: Your Honor, I believe this is
15 Mr. Thomas's mother.

16 THE COURT: Ma'am, did he notify you that he's on
17 the way?

18 UNIDENTIFIED FEMALE SPEAKER: Yes. I talked to
19 him --

20 THE COURT: When did he say he would be here?

21 UNIDENTIFIED FEMALE SPEAKER: He was expecting to
22 be here at nine o'clock.

23 THE COURT: How about go step out in the hallway
24 and call him and find out when he will be here and come
25 back and tell me.

1 (WHEREUPON, the hearing was in recess while
2 awaiting for Mr. Briggs.)

3 THE COURT: All right. This is a motion on behalf
4 of Mr. Clark D. Thomas on a Rule 59 for the Court to
5 reconsider their decision they made in a PCR order that
6 was issued on June 2nd, 2012.

7 And before we get to that motion the attorney,
8 Mr. Shaffer, has filed a motion to be relieved at the
9 request of Mr. Thomas; is that correct?

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

11 THE COURT: All right. And you are here also,
12 Mr. Shaffer; is that correct?

13 MR. SHAFFER: Yes, Your Honor.

14 THE COURT: And I understand also Mr. Thomas has
15 hired new counsel, Mr. Orin Briggs, and he is also
16 present.

17 MR. BRIGGS: And I move to be admitted for the
18 purpose of this hearing, Your Honor.

19 THE COURT: All right. Does the State have any
20 objection to relieving Mr. Shaffer?

21 MR. JOHNSON: No, Your Honor.

22 THE COURT: Mr. Briggs, do you have any objection
23 to relieving Mr. Shaffer?

24 MR. BRIGGS: I do not, Your Honor. He sent me an
25 e-mail and we had a conversation about this and I think

1 all three parties believe it's in the best interest for
2 the client and the Court, Your Honor.

3 THE COURT: Okay. All right. Mr. Shaffer, I'll
4 sign a short order relieving you of counsel in the case.

5 All right. Mr. Briggs, after we had a brief
6 conference at the bench and at the bench you had
7 submitted to the Court a memorandum of law which I
8 believe consists of approximately 26 pages.

9 I will take this case under advisement and read
10 your memorandum of law, give the State an opportunity to
11 reply. After you receive their reply if you need
12 additional time to reply to that affidavit I will give
13 you ample opportunity to do that.

14 How much time do you need to reply?

15 MR. JOHNSON: Your Honor, if I could have 45 days
16 just because I have a full term of court.

17 THE COURT: Forty-five days?

18 MR. JOHNSON: Yes, sir.

19 THE COURT: All right. Forty-five days.

20 MR. JOHNSON: Thank you, Your Honor.

21 THE COURT: Mr. Briggs, I'll give you an
22 additional, what, 15 days if you want to do a reply to
23 whatever he submits.

24 MR. BRIGGS: Okay. I think I've covered everything
25 here but, Your Honor, I appreciate that and I'll remember

1 15 days. I can remember that.

2 THE COURT: Now, I understand Mr. Thomas has made
3 some other motions, other than the Rule 59. This Court
4 if of the opinion the only motion that would be
5 appropriate would be a Rule 59 motion. All the other
6 motions in this Court's opinion are superfluous.

7 MR. BRIGGS: And I'm not prepared to argue those,
8 Your Honor. That's not what I was retained for. I was
9 retained to prepare for and argue the 59(e) motion.

10 THE COURT: Okay. All right. I will deal with
11 that and once I read the memorandums and receive the one
12 from the State and any replies from the Court, the Court
13 will issue an order as to the Rule 59, modify the
14 previous order, as the Court deems appropriate, if I find
15 the Court made an error. Okay?

16 Thank you all so very much.

17 MR. THOMAS: Your Honor, can I --

18 THE COURT: No, sir.

19 MR. THOMAS: I just want to make sure I get my bite
20 at the apple.

21 THE COURT: You want to do what?

22 MR. BRIGGS: Your Honor -- let me do that. I
23 apologize, Your Honor. I did promise him that I would
24 ask the Court, and I know it's unusual but I've had some
25 cases where it was done, he would like to speak for

1 himself for 10 minutes when I finish. I'll let the Judge
2 think about that or the Court can rule on it at this
3 time, whatever your disposition is or inclination is,
4 Your Honor.

5 THE COURT: All right. Mr. Briggs, I'll be glad to
6 hear anything you want to tell me orally on the Rule 59
7 motion.

8 MR. BRIGGS: Okay. For the clerk's -- court on
9 page 20 is my name and all of my numbers, etcetera,
10 including the bar number, madam clerk.

11 Your Honor, I have a replaced, right here -- and
12 this is, again, not an excuse. It's an explanation.

13 THE COURT: You may remain seated and make your
14 argument. Okay?

15 MR. BRIGGS: And, in fact, I fell twice this week
16 but it didn't hurt anything except muscles and I have to
17 -- I guess I'll attribute it to that I'm 77 now, Your
18 Honor, and I'm not as agile as I used to be. So I'll
19 leave it at that.

20 THE COURT: Okay. I'll be glad to hear you.

21 MR. BRIGGS: Your Honor, I am going to read -- let
22 me double check. I am going read my points number one
23 through eight, Your Honor.

24 THE COURT: Okay.

25 MR. BRIGGS: And I'm going to reference the rest of

1 them down to the summary. And, again, I spoke to the
2 clerk. If it can be typed into the record as though it
3 were read, fine, but when I get to that point I will make
4 my request. If not, the record will show that I made
5 reference to it and suggest those who would want to read
6 the record read the other 9 through 16 points in my
7 memorandum, Your Honor.

8 THE COURT: All right. I will consider all points
9 when I read it.

10 MR. BRIGGS: I understand, and you told me that.

11 And for the client's benefit, he has assured me
12 he'll read every word of what we presented. Okay? And,
13 of course, he's got 45 days to respond. Okay?

14 Your Honor, my name is Orin Briggs. I'm from
15 Columbia, and I apologize for being late, again. Not an
16 excuse but I hate to admit it but I missed Meeting
17 Street, and I've been down here a number of times and
18 knew where the courthouse was and knew how long it was
19 from the parking lot to the Court but that's my fault, so
20 I'll accept the responsibility for that.

21 I'm going to read from a memorandum of law on Rule
22 59(e) motion in the captioned case, and I do not do
23 this -- I don't think I've done it for years, in 47
24 years, but I'm going to read this, Your Honor, because I
25 want to make sure I make every word in here; and

1 unfortunately, there are some shes where they should have
2 been hes.

3 It's my understanding the trial attorney was a she,
4 and being only in this case for 10 days it has been a
5 rush job that I've had to consult with the client and his
6 mother on numerous occasions, and I have visited him in
7 the prison and, in fact, he re-read my proposed
8 memorandum late yesterday afternoon and we made some more
9 changes. So, again, I accept the responsibility for
10 that, Your Honor.

11 THE COURT: Okay.

12 MR. BRIGGS: I'm going to read. This matter is a
13 request for a review and modification of a PCR order of
14 dismissal by this Court filed June 2, 2015, which order
15 the -- it should be applicant, Your Honor. Counsel
16 received a copy of said order of dismissal on June 8,
17 2015 and filed the Rule 59(e) motion for amendment on
18 June 15, 2015. Okay.

19 Counsel for the -- it should be applicant, Your
20 Honor, cites more than 45 errors of defense counsel's
21 failure to adequately represent the applicant. Numerous
22 examples of misconduct by the prosecutor and several
23 rulings -- several wrong rulings by the PCR judge, the
24 court judge, Your Honor.

25 Number one, Ms. Crowley, the complaining witness,

1 falsely testified without opposition from the defense
2 counsel --

3 MR. THOMAS: Excuse me, Your Honor. I hate to
4 interrupt. He's got the one that didn't have the
5 amendments made to it. This is the copy --

6 MR. BRIGGS: No. I made all the amendments. Just
7 you sit there and be quiet unless somebody asks you a
8 question.

9 MR. THOMAS: Yes, sir.

10 MR. BRIGGS: Okay?

11 I'm going to start at one again. Ms. Crowley, the
12 complaining witness, falsely testified without opposition
13 from defense counsel to having had teeth fixed that were
14 allegedly cracked by Thomas when she claimed he punched
15 her in the mouth during the alleged incident and that she
16 was undergoing mental health counseling and therapy when
17 there were no medical records made available to defendant
18 or claimant, applicant, if you want, which would support
19 any of these claims.

20 Applicant did not hit her in the mouth or the face
21 and the only force directed toward Ms. Crowley during the
22 incident at --

23 MR. THOMAS: Your Honor, I have to interrupt.

24 THE COURT: Mr. Thomas, be quiet or I'm going to
25 put you in the holding cell. Do you understand?

1 MR. THOMAS: Your Honor, he's fixing to put --
2 THE COURT: Do you understand?
3 MR. THOMAS: It's inaccurate.
4 THE COURT: Please take him to the holding cell.
5 MR. THOMAS: I understand. I'm sorry. I'll be
6 quiet.
7 THE COURT: Okay. He's asked you to be quiet.
8 MR. THOMAS: Yes, sir.
9 THE COURT: I'm ordering you to be quiet. You
10 understand?
11 MR. THOMAS: Yes, sir.
12 THE COURT: Be quiet or I'm going to put you in the
13 holding cell. You understand?
14 MR. THOMAS: Yes, sir, I do.
15 MR. BRIGGS: Your Honor, may I accept --
16 THE COURT: If you say another word, Mr. Thomas,
17 you're going to the holding cell.
18 MR. THOMAS: Yes, sir.
19 THE COURT: I'm trying to listen to your attorney.
20 I want to give you the benefit of the doubt so keep your
21 mouth shut.
22 MR. THOMAS: Yes, sir.
23 THE COURT: And stay in that seat. Do you
24 understand?
25 MR. THOMAS: Yes, sir.

1 THE COURT: Please proceed.

2 MR. BRIGGS: Your Honor, I will accept some
3 responsibility. I got an e-mail at like six o'clock
4 yesterday evening after the client had a chance to read
5 my last draft. I thought I had made all those changes
6 but what -- I won't get into that except that I thought I
7 had but I can tell you that 97 percent of what he wants
8 is in what I'm reading, Your Honor.

9 THE COURT: Okay. That's fine. Go ahead.

10 MR. BRIGGS: Madam clerk, I didn't finish one, did
11 I? Did I get down to --

12 THE COURT: You were talking about he didn't hit her
13 in the mouth.

14 MR. BRIGGS: The incident --

15 THE COURT: Right. You're talking about I think he
16 didn't hit her in the mouth, the face --

17 MR. BRIGGS: And she was undergoing mental health
18 counseling.

19 THE COURT: Right.

20 MR. BRIGGS: And therapy when there were no medical
21 records made available to defendant which would support
22 any of these claims. And, Your Honor, I have to add in
23 here that lack of access to medical records is, I think,
24 one of the more important issues here.

25 THE COURT: I think you addressed that later, that

1 obviously you couldn't -- you never received a copy of
2 the victim's medical records because counsel did not
3 produce them or whatever.

4 MR. BRIGGS: Actually, Your Honor, when I finally
5 figured it all out his attorney never requested the
6 medical records.

7 THE COURT: All right.

8 MR. BRIGGS: There was some question about whether
9 he did and at one point it is in here where he admitted
10 that he did not ask his present counsel or the
11 solicitor's office for the medical records.

12 THE COURT: I mean, that's sort of an important
13 point under ineffective assistance of counsel, I would
14 assume.

15 MR. BRIGGS: It is, Your Honor. Applicant did not
16 hit her in the mouth or the face, and the only force
17 directed toward Ms. Crowley during the incident at the
18 Thomas residence on June 6, 2006, the car on June 7,
19 2006, and the hotel, Your Honor, should insert, were part
20 of the consent -- of the consensual sex when she jerked
21 the steering wheel and when he was trying to restrain her
22 as she physically attacked him.

23 This is not just about a cracked tooth as defense
24 counsel argued. The issue is that the medical records
25 would have allowed the applicant to present solid

1 evidence of his claim that he did not use any
2 nonconsensual force on her, which claim by Ms. Crowley
3 resulted in the criminal charges discussed herein.

4 Applicant was unable to refute the false testimony
5 about injuries because the prosecutor intentionally
6 withheld Crowley's medical records. This action by the
7 prosecutors was taken even though defense counsel filed
8 five Rule 5 motions and wrote three letters requesting
9 other photo information.

10 Counsel presents just one example of the claims of
11 the prosecutor that proves the need for the defendant to
12 have Ms. Crowley's medical records.

13 Quote, Physical evidence in this case is really all
14 you need to convict this defendant. When I say physical
15 evidence I'm talking about Rachel Crowley, not what she
16 said but her condition. The injury she has is physical
17 evidence. The marks on her wrists, the tape on her chin,
18 the burn marks all over her body are physical evidence.

19 That has nothing to do with her background. It has
20 everything to do with a -- what a doctor saw, and I've
21 cited to the transcript page there, Your Honor.

22 THE COURT: Yes, sir.

23 MR. BRIGGS: The obvious question is how could a
24 defendant rebut allegations of physical injuries without
25 having a copy of the alleged victim's medical records.

1 That's a question mark and I've got it in bold, Your
2 Honor, for the record.

3 The violation of Rule 5 and the letter request for
4 all relevant evidence to be used in the trial is a
5 serious breach of the criminal rules. Counsel argues
6 that this one serious violation of the rules makes the
7 conviction a mockery of justice. The conviction should
8 be reversed and sent back for a new trial or other
9 disposition.

10 The prosecution's decision to suppress Crowley's
11 medical records was a Brady violation to the extent that
12 this evidence was necessary to impeach Crowley for having
13 made false claims of nonconsensual physical force against
14 her in her direct testimony to the jury. Again, citing
15 the transcript record, Your Honor.

16 Also, the testimony on pages 190 and 191 of the
17 transcript about her being taken to the hospital and
18 seeing a doctor could not be refuted without her medical
19 records. The arresting Officer Chris Talbott stated --
20 this is a quote, Your Honor, in his incident report that
21 when he first encountered Thomas and Crowley she was
22 crying and appeared to be frustrated with no mention of
23 facial injuries, and during the trial Talbott testified
24 that she was kicking, screaming, was very frustrated and
25 had a busted lip. Again, a clear difference of the

1 record of the incident report versus the testimony, Your
2 Honor. Therefore, defense counsel was ineffective in
3 failing to impeach Talbott on this important factual
4 issue.

5 An example of the harmful testimony about the
6 applicant that he was unable to provide documented
7 rebuttal testimony is on page 159 of the transcript,
8 lines 20-25 about the quote, Hit in the mouth, end of
9 quote, allegation, and also the number of assault charges
10 in Ms. Crowley's direct testimony including on page 148,
11 which I quote. Question: Did you say he hit you? Where
12 did he hit you?

13 The answer: In my face. He cracked a couple of my
14 teeth. I fixed -- and I had them, so it's clear.

15 Question: So when you all got to the hotel -- or
16 I'm sorry. When you got to the car what happened?

17 He pushed my face into the floorboard and told me
18 to stay down. He hit me a few more times.

19 Question: What? Go ahead.

20 In the face and busted my lip.

21 This and other examples of alleged forceful actions
22 by the defendant were impossible to defend without
23 Ms. Crowley's medical records. And, Your Honor, I
24 apologize but I'm going to read that sentence again so
25 the record shows what we are taking about.

1 This and other examples of alleged forceful actions
2 by the defendant were impossible to defend without
3 Ms. Crowley's medical records.

4 The prosecutor made a big deal about the physical
5 evidence but he withheld the medical records from the
6 defendant and prevented him from his opportunity to rebut
7 any false statements by Ms. Crowley.

8 The failure of the prosecution to provide these
9 medical records denied Mr. Thomas a fair trial and this
10 conduct by the prosecutor warrants a new trial for the
11 defendant.

12 THE COURT: All right. Let me interrupt you,
13 Mr. Briggs.

14 MR. BRIGGS: Yes, sir, Your Honor.

15 THE COURT: I will read this and I will read the
16 transcript. And I think you marked the memorandum -- you
17 can mark it as applicant's or petitioner's number one so
18 it can be placed into evidence for the record, and I
19 think it will speak for itself. But let me just ask you
20 a couple questions because I can read it. I don't need
21 -- and I'm not criticizing. I can read it myself. Okay?

22 I do want to ask you a couple questions about your
23 position on number one. Number one question is, is there
24 anything in the record to show whether or not defense
25 counsel tried to subpoena those medical records for

1 trial?

2 MR. BRIGGS: Your Honor, later on I address that
3 issue. Mr. Christian (phonetic) asked Mr. Bolus, it is
4 in here, Did you ask the prosecutor for the medical
5 records, and Mr. Bolus said, No, I did not.

6 And then he explains that he didn't feel like it
7 helped his theory of the defense, Your Honor. But, no,
8 there was never a request by his trial defense attorney
9 for the medical records.

10 THE COURT: All right. Did the trial defense ever
11 send a subpoena to the medical provider where she was
12 treated to appear at trial with the records?

13 MR. BRIGGS: No, Your Honor.

14 THE COURT: Okay. All right.

15 MR. BRIGGS: They did not see the medical records
16 until the day of the trial.

17 THE COURT: Okay. All right. Now, my second
18 question to you, as you know under PCR the second prong
19 is whether or not that would have made any difference in
20 the outcome. Now, let's assume that those medical
21 records were put before the jury. Why do you think that
22 would have made a difference in the outcome? I'm just
23 talking about your first argument, not the other 17.

24 MR. BRIGGS: I understand. Later on I have an
25 affidavit from the medical doctor who also has a degree

1 in public health, Your Honor, and she cites the fact that
2 not having those records put the defendant at a very big
3 disadvantage, and in my humble opinion, this is my
4 opinion, her affidavit suggests that the testimony of
5 Ms. Crowley was grossly exaggerated about the injuries.

6 Let me answer it this way, Your Honor, and I'll be
7 brief. These folks were married for three years. They
8 lived together before that for two years, and they
9 participated in this kinky sex all five of those years.

10 Now, why was that conduct that went on for five
11 years all of a sudden a crime in 2006? My answer, Your
12 Honor, is -- and it's in here, but my answer is three
13 things. They dismissed several criminal charges against
14 her, the prosecutor did. She had been told by the police
15 that my client was having a relationship with several
16 prostitutes and he also threatened to divorce her.

17 Now, again, this Court knows it and I won't get
18 into the details, but the Martins told the story about
19 the restaurant, and the position of me and my client is
20 that during much of this time after these incidents she
21 still tried to get back to him, period. That's my answer
22 to your question, Your Honor.

23 THE COURT: All right. Mr. Briggs, I appreciate
24 your memorandum, I appreciate your arguments. I will
25 read it. I will probably review the transcript again and

1 take it under advisement, but I've got a jury waiting on
2 me. I started a trial yesterday. So I appreciate you
3 being here. I'm glad that he has effective assistance of
4 counsel in this PCR. So I'm going to terminate the
5 hearing at this time.

6 I would like to state to the State, if there's
7 anything you want to say very briefly to my questions,
8 please put it in writing in the memorandum.

9 Now, as to the issue of timing on the filing the
10 motion within, what, 10 days, 15 days? I think it was 15
11 days, wasn't it? Was it filed timely?

12 MR. JOHNSON: Yes, it was. Mr. Shaffer actually
13 contacted me and prior to the motion to be relieved --

14 THE COURT: Because there was some confusion about
15 when they got the order and when the time started
16 running.

17 MR. JOHNSON: Right. Correct.

18 THE COURT: And I took the position he was entitled
19 to this hearing.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: And I wasn't going to call the 15 days
22 so I'm just telling you don't raise that issue.

23 MR. JOHNSON: No, I'm not.

24 THE COURT: All right. Thank you all so very much.

25 MR. BRIGGS: Your Honor, could I have just five

1 more minutes?

2 THE COURT: No, sir. I've heard and I'm going to
3 read it, I'm going to take it under consideration. Okay?

4 MR. BRIGGS: Can I have one second then?

5 THE COURT: Yes, sir, one second.

6 MR. BRIGGS: I would particularly call the Court's
7 attention to pages five and six.

8 THE COURT: Page five and six?

9 MR. BRIGGS: Five and six of my memorandum. It
10 talks about, like, 47 times the prosecutor asked leading
11 questions and Mr. Bolus objected one time, Your Honor,
12 and this Court knows and I pride myself in being pretty
13 good on evidence. Leading questions is one of the
14 biggies that we worry about.

15 And the other thing is, Your Honor, I would just
16 call the Court's attention that at the very end there is
17 a summary of -- I want to make sure I get the number of
18 pages, number of points, Your Honor. There's a summary
19 of seven points, and then in addition all the attachments
20 including that affidavit from our doctor who saw these
21 medical records after the fact, Your Honor. Again, make
22 sure, his counsel and my client did not see the medical
23 records until the day of trial.

24 THE COURT: Okay.

25 MR. BRIGGS: That's my argument.

1 THE COURT: All right. Thank you so very much.

2 MR. JOHNSON: Your Honor, the only thing I take
3 issue with is I'm looking at this affidavit, first of
4 all, I have had no notice of this affidavit. I have had
5 no opportunity to cross-examine it.

6 THE COURT: I'll give you ample opportunity to
7 address it.

8 MR. BRIGGS: It was filed, Your Honor.

9 THE COURT: You can address it by affidavit. If
10 you deem appropriate to go take his deposition I will
11 even allow you to do that. Okay?

12 MR. JOHNSON: Thank you, Your Honor.

13 THE COURT: I mean, I'll allow you latitude on
14 that. If you think it's important to go take his
15 deposition let me know and we'll issue an order to that
16 effect.

17 MR. JOHNSON: Thank you, Your Honor.

18 THE COURT: I'm not trying to cut time on anybody.
19 We are going to thoroughly get through this process.
20 Okay?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: Thank you all very much. Have a good
23 day.

24 MR. THOMAS: Your Honor, can he give me --

25 THE COURT: Have a good day.

1 MR. BRIGGS: We are through.

2 THE COURT: You are through. It's over.

3 (WHEREUPON, the hearing was concluded.)

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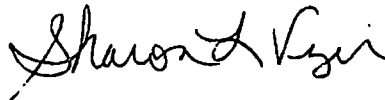
C E R T I F I C A T E

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I, Sharon L. Vizer, 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 record of all the proceedings had
and the evidence introduced in the hearing of the
captioned case in Circuit Court on the 14th day of July
2015.

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

October 3, 2015



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

Clark D. Thomas, #187845,)

2012-CP-10-8354)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**RETURN TO MOTION TO ALTER OR
AMEND THE ORDER OF DISMISSAL
PURSUANT TO RULE 59(e), SCRPC**

2015 AUG 11 PM 12:59
FILED
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRPC, in which the Applicant, through counsel, asks the Court to direct the entry of a new judgment and/or to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

This PCR matter came before the Court for an evidentiary hearing on December 8, 2014. Thereafter, this Court issued an Order of Dismissal with Prejudice dated May 13, 2015 and filed with the clerk on June 2, 2015. The Applicant was represented in this matter by Tristan Shaffer, Esquire. Applicant received a copy of the Order of Dismissal on June 8, 2015. On June 15, 2015, Applicant filed this motion. On July 14, 2015, a hearing was held at the Charleston County Courthouse. Mr. Shaffer was relieved as counsel and Orin Briggs, Esquire was substituted as counsel.

The Applicant submitted Memorandum of Law on Rule 59(e) Motion ("Motion") at the July 14, 2015 hearing.

II.

The State submits the Motion should be denied.

The Applicant is requesting this Court to alter or amend its decision concerning forty-five alleged errors of trial counsel, "numerous examples of misconduct by the prosecutor," and several allegedly erroneous rulings by this Court. The State submits this Court has properly and rightfully addressed the issues about which the Applicant complains:

1. First, Applicant alleges "[t]he failure of the prosecution to provide these medical records denied [Applicant] a fair trial, and this conduct by the prosecutor warrants a new trial for the defendant." In the Order of Dismissal, the Court squarely addressed this allegation on pages 23-24. Further, Applicant claims that Victim lied about her injuries, but provided no credible evidence of such a claim. In fact, this Court found Applicant to not be credible at the PCR hearing. (p.13-14) See Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999) (Great deference is given to the PCR court's findings on matters of credibility). Thus, this allegation should be dismissed.
2. As to Applicant's claims #2-6, this Court properly found "Applicant failed to present evidence, argument, or testimony" on these issues and "are deemed abandoned by the Applicant." (Order p. 4). Thus, this Court should not consider these as matters of first impression.
3. As to Applicant's claims #7-8, this Court found trial counsel articulated a valid strategy for making such statements during his opening statement and closing argument. Specifically, this Court found, "valid trial counsel's testimony that he chose to portray the victim and Applicant in a somewhat

negative light and as drug addicts in his statements as a way to explain to the jury the victim and Applicant's unusual sexual activities. This Court finds since counsel articulated a valid strategic basis for his statements about the Applicant at trial, this Court will not second guess counsel's trial tactic." (Order p. 22). Applicant has presented no reason why this finding should be overturned or reconsidered.

4. As to Applicant's claim #9, Respondent submits it is wholly irrelevant and no evidence was presented at the PCR hearing to substantiate this "claim."
5. As to Applicant's #10, this Court properly found "Applicant failed to present evidence, argument, or testimony" on these issues and "are deemed abandoned by the Applicant." (Order p. 4). Thus, this Court should not consider this as a matter of first impression.
6. As to Applicant's claim #11, this Court found Mr. and Mrs. Martin's testimony not credible. See #1.
7. As to Applicant's claim #12, this Court has not deemed Marie Assa'ad Faltas, MD, MPH an expert in this case and therefore, her testimony is irrelevant. Further, the affidavit she provided should be stricken from the record as Respondent never had a chance to cross-examine Ms. Faltas, nor is she a legal expert who is able to give opinion testimony as to this case or to Mr. Shaffer's performance as a PCR attorney. E.g. Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002).

8. As to Applicant's claim #13, this document is not self-authenticating and it was not presented at the PCR hearing. Thus, it is improper to bring this issue to the Court's attention for the first time in this motion.
9. As to Applicant's claims #14-15, see #2.
10. As to Applicant's claim #16, Applicant claims this Court made errors, however credibility findings are strictly in the purview of the reviewing court. See Foye, supra. Additionally, Applicant is attempting to make factual findings *sua sponte*. This is not appropriate, as these issues are for the ultimate fact finder; here, this Court. Lastly, Applicant claims he was not able to review Victim's medical records prior to trial; however, this Court properly found Victim's medical records did not contradict Victim's testimony and it is unlikely trial counsel could have used the records as impeachment material. (Order p. 20). Thus, Applicant cannot meet his burden of proving how these records would alter the outcome of his trial.
11. As to Applicant's claim #16 on page 16 (construed as #17), Applicant attempted to present and argue a document he filed while still represented by counsel. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRCP. South Carolina does not recognize any right to hybrid representation at trial or on appeal. See, e.g., Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

12. Lastly, and very importantly, this Court found overwhelming evidence of Applicant's guilt in this case on page 23 of its Order of Dismissal. As stated, "The presence of overwhelming evidence of guilt negates any claim that counsel's performance could have reasonably affected the result of the defendant's trial. Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002)."

III.

The State submits the Applicant is merely asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

IV.

The State therefore requests that the relief requested by the Applicant be denied and asserts a hearing on this matter would be unnecessary.

Respectfully submitted,

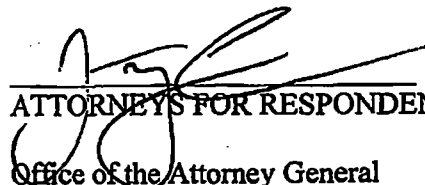
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

BY:


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

August 10, 20 15
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS, #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

2015 AUG 11 PM 12:59

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 to Motion to Alter or Amend the Order of Dismissal Pursuant to Rule 59(e)** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Orin G. Briggs, Esq.
Orin Briggs, PA
240 Heritage Trail
Lexington, SC 29072

DATED this 10th day of August, 2015.


Elizabeth McLehman, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Clark D. Thomas #187845,)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2012-CP-10-8354

**APPLICANT'S REPLY TO STATE'S
RETURN TO MOTION TO ALTER OR
AMEND THE ORDER OF DISMISSAL
PURSUANT TO RULE 59(e), SCRPC**

FILED
2015 AUG 31 PM 4:12
CLERK J. ARMSTRONG
CLERK OF COURT

Counsel for Applicant responds to the State's Memorandum and provides the most important reasons that proved the Applicant's Counsel failed to provide effective counsel during the trial. The purpose of this Reply is to supplement Applicant's Memorandum accompanying his Rule 59(e) Motion.

Although the State mailed their Return to the Motion to Alter or Amend on August 10, 2015, it was mailed to an old address although Counsel's new address was clearly set out on the signature space of the Memorandum in Support of the Rule 59(e) Motion:

"Respectfully submitted,

Orin G. Briggs SC Bar # 883
Attorney for Applicant
101 Bennock Mill Ct.
Lexington, SC 29072
803/957-4383
e-m: ogb-atty@sc.rr.com

July 12, 2015"

In addition, the new address has been recorded with the S. C. Bar for more than 45 days. Appellant's counsel did not receive written notice of the State's Return Memorandum until August 19, the day he requested he be sent a copy by e-mail. Counsel still has not received written notice of the State's Return from the State or the Court as of the mailing of this Reply. The first notice of the State's Return was sent by the Court in response to an e-mail request by the Applicant's mother; she received an e-mail copy on August 14, even though e-mail is still not service under the SC Civil Procedure Rules. Appellant's counsel did not receive written notice of the State's Return Memorandum until August 19, the day he requested from the State's attorney that it be sent by e-mail.

There are four very important proofs of ineffective counsel -- 1. the more than 30 leading questions asked of Ms. Crowley (the prosecution witness) by the solicitor that were not objected to by trial counsel; 2. the two derogatory remarks by the solicitor about the trial defendant in the solicitor's closing argument; 3. the solicitor's endorsement statements about Ms. Crowley, stating his personal belief in her credibility; and 4. the refusal of the prosecutor for nolle prosequing the simple assault by Ms. Crowley against Mr. Thomas's teenage daughter and the prosecution's failure to give the details of her conviction of her step-father on an assault and battery charge. In addition to the State's *nolle prosequere* of the charge against Ms. Crowley, the police told Ms. Crowley that Mr. Thomas was have relationships with several prostitutes; and Mr. Thomas telling Ms. Crowley he was going to seek a divorce from her while she was trying to reconcile with him.

Counsel firmly believes that this evidence which was uncontested by trial counsel is more than sufficient proof of ineffective counsel; the Applicant's present counsel will

respond to even the weak excuses for that failure presented in the State's *Return* in order to be thorough in this Reply.

Argument #1. In the State's numbered argument # 2, their counsel attempts to justify the trial counsel's failure to object to all the leading questions to the State's own witness, but this attempt focuses on the merits of the case -- not the issue of ineffective counsel. The merits of the prosecution's case has nothing to do with the sole issue in this PCR review. The sole issue in this review is whether the trial counsel did or did not provide effective counsel.

In the direct examination of Rachael Crowley, the Solicitor asked Ms. Crowley dozens of leading questions without objection by Mr. Bolus. By contrast, Mr. Williams made four objections in the first four pages of the direct examination of Mr. Thomas by Mr. Bolus; and the prosecutor also used the "asked and answered" objection in the same part of this defense testimony.

Those leading questions in the direct examination of Ms. Crowley are on pages 139, 140, 142 (2 and 1 none harmful one), 149, 150, 152, lines 10 -14, 153, 154, 156, 157, 163, 165, 167, (on p. 169 there is a long question which is not leading), 175, 176, 182, 189, 192, 195, 196, 197, 198, 199, 200, 201, 202, 204, 206, 207 (actually prosecutor testifying), 208, (on 212 of the trial transcript, Mr. Bolus did object to the length of the testimony about her "rehabilitation program") and several in Mr. Williams closing statement (two examples are on pages 731 and 732).

Argument #2. In the State's argument # 12, their counsel again tries to make the argument that the merits of the proof of the guilt of the Defendant/Applicant under the standard of proof beyond a reasonable doubt so the verdict should stand. The level of

proof has nothing to do with the ineffective counsel issue, and the issue in Argument #2 that the solicitor cheated. See *State v. Plath and Arnold*, 284 S.E.2d 221, (S.C. 2003).

In *State v. Plath*, the evidence to support the death penalty for the two defendants was overwhelming, but that fact is not part of the issue in the question of improper comments by the solicitor. The Supreme Court, in reversing the death penalty ruling stated on pages 230 -231:

"24. Plath also argues the solicitor's closing argument was designed to appeal to personal prejudice and hence was improper. One exception is to the solicitor's statement he would never ask for the death penalty in Beaufort again if the jury did not return with a recommendation that the death penalty be imposed."

"The same solicitor made an almost identical mistake over fifty years ago in *State v. Davis*, 122 S.E.2d 633 (SC 1961). There the solicitor said if the jury turned the defendant accused of rape loose, he would have to turn loose other also accused of rape. This Court held that argument to be reversible error. Here, it was also reversible error." (Emphasis added).

"25. Arnold contends the solicitor's comment during his closing argument that the trial judge could ignore the jury's recommendation should have resulted in the death penalty's being set aside."

"In three cases, this Court held the death penalty should be set aside when the prosecutor comment on the power of the court to suspend the death sentence and the right of the defendant to seek appellate review. *State v. Woomer*, 277 S.E.2d 696 (SC 1981); *State v. Gilbert*, 258 S.E.2d 890 (SC 1979); and *State v. Tyner*, 258 S.E.2d 559 (SC 1979). It should be noted that these cases had not been decided when the able trial judge refused to set aside the death penalty."

Argument #4. The three reasons which persuaded Ms. Crowley to prosecute the case against Mr. Thomas were orchestrated by the solicitor because Ms. Crowley wanted to hurt Mr. Thomas, and she accomplished this with the biased help of the Office of the Solicitor. The leading assistant solicitor frequently showed personal prejudice against the Applicant.

Argument #5. The affidavit filed by Marie Assa'ad-Faltas, MD, MPH, after her thorough review of the Crowley medical records, strongly refutes the claim that Ms. Crowley suggested even a significant physical injury, let alone a serious or life-threatening injury. Dr. Faltas' affidavit was filed in the original CPR hearing and is self-proving that she is an expert witness, with her credentials and her having testified as an expert in several key cases in South Carolina courts.

Applicant was unable to refute the false testimony about injuries because the prosecutor intentionally withheld Crowley's medical records. This action by the prosecutors was taken even though Defense Counsel filed five Rule 5 motions, and wrote three letters requesting other photo information. As evidence of ineffective counsel, Mr. Bolus admitted he did not request the medical records on Ms. Crowley; leaving Mr. Thomas without a defense to her false testimony.

Argument # 6 (related to State's # 3). The State has asserted in Argument 3 of their Return that Bolus' negative comments about Applicant that were raised in Arguments 7-8 oin present counsel's Memorandum were properly determined by the PCR court to have been part of a reasonable trial strategy. The issue in this case is not "a reasonable trial strategy," but whether trial counsel failed to provide effective trial counsel.

Argument #7 (related to the prejudicial plea bargain the Solicitor's Office gave to Ms. Crowley; their Argument #4).

The State has asserted in Argument 4 of their Return that the issue of the suppression of the plea bargain arranged for Crowley in exchange for her testimony that was raised in Argument 9 of the Rule 59(e) Memorandum is irrelevant and, that no

evidence in support this Applicant's argument was presented to the PCR court. To that end, the following was set forth in Applicant's motion to relieve Shaffer as his counsel, and for a subsequent evidentiary hearing whereas this issue is also ripe for the bite at the apple argument:

Shaffer raised but failed to argue the issue of the prosecution suppressing plea arrangements to compel Crowley to testify. (PCR Tr., p. 11, lines 7-9). To that end, this Court was led to believe that police reports relevant to this matter have not been disclosed. (PCR Tr., p. 180, lines 3-16). And even then, Shaffer was not in the mood to clarify the facts and argue this issue. By way of explanation, the prosecution shaped a course for Crowley to elude a conviction for having assaulted Thomas' Daughter, Christen Boyer, in their Folly Beach home when she was 15-years-old. (Exhibits in Support, pp. 7-11).

In other words, the prosecution was concerned that a conviction of that nature would compromise their case against Thomas. But that course of action is not documented in the Solicitor's file. And with that in mind, Shaffer had informed Thomas that it was obvious to him that the Solicitor's file had been sanitized. What's more, even the prosecutor, Nathan Williams, testified that he was unsure of its completeness. (PCR Tr., p. 119, lines 2-3). And Shaffer is recorded telling Thomas that he could probably get that file entered into evidence by stipulation, (Exhibits in Support, p. 91, lines 3-14); however, he did not even try to prove that it had been tampered with.

Furthermore, of the three police officers involved in the Folly Beach incident, Thomas has Shaffer recorded saying that he would subpoena the officer who drafted the Incident Report, Brian Kale; and Shaffer agreed not to speak with him before testifying. (Exhibits in Support, p. 93, lines 4-25—p. 94, lines 1-13). But Shaffer claims that he called Kale anyway, and that Kale said he did not use a Taser on Crowley during her arrest; and that alleged conversation is the reason Shaffer said he refused to call any of those officers to testify. Be that as it may, one of those three officers did use a Taser on Crowley. And Shaffer was instructed to subpoena all of them to determine, among other things, which one it was. (Agenda, pp. 8-9, ¶ 5; pp. 14-15, ¶ 9; pp. 18-19, ¶ 17).

CONCLUSION

Counsel, has determined that all the other arguments in the State's Return, were just rehashed arguments made it its presentation when Shaffer was still representing the

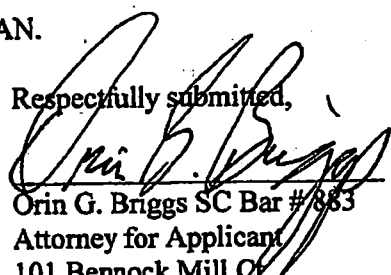
Applicant. They are not worthy of further rebuttal.

Applicant's overall argument is that he was denied his due process rights by the numerous acts of ineffective counsel by his trial attorney. In other words, the ineffective-assistance-of-counsel claim has everything to do with the evidence that was entered during the PCR hearing.

Based on the strong arguments made by present Counsel to the PCR court these arguments suggest strongly that this court might be compelled to grant relief on the four major arguments giving evidence of ineffective counsel. The PCR court may also determine that a subsequent evidentiary hearing is required (1) in order that Applicant may get his *one bite at the apple* several key issues; and (2) in the interest of *judicial economy* whereas the *after-discovered-evidence* of Crowley's medical records can be resolved, among other legitimate issues raised on the ineffective counsel issue.

Counsel argues that the ineffective counsel by the trial counsel justifies one of two remedies -- 1. a new trial because on the ineffective counsel issue or 2. a new PCR review hearing to allow Applicant to present evidence on the medical issues and the few issues that were alluded to by Shaffer, but not fully argued in his memorandum of law. Another option would be that Counsel would suggest the change of sentence to a ten year sentence with time-served on an *Alfred Plea* to ABHAN.

Respectfully submitted,


Orin G. Briggs SC Bar # 883
Attorney for Applicant
101 Bennock Mill Ct.
Lexington, SC 29072
803/957-4383

August 27, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Clark D. Thomas #187845,)

Applicant,)

Vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2012-CP-10-8354

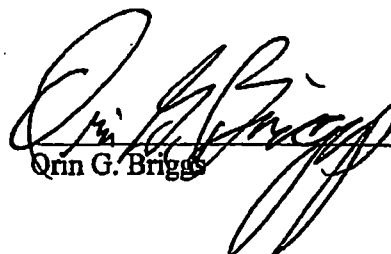
CERTIFICATE OF SERVICE

FILED
2015 AUG 31 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned certifies that the Attorney for the State, and the presiding Judge, J. C. Nicholson, were served a copy of the Applicant's Reply to the State's Return to Applicant's Rule 59(e) Motion for Reconsideration in this captioned case this day by first class mail at the below listed :

Honorable J. C. Nicholson
Circuit Court Judge
100 Broad Street
Charleston, SC 29401

J. Rutledge Johnson
Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211


Quinn G. Briggs

August 28, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Clark Thomas,)
)
 Applicant)
 v.)
)
 State of South Carolina,)
)
 Respondent)

Case No. 2012-CP-10-8354

MOTION AND ORDER TO
 RELIEVE COUNSEL

FILED
 2015 NOV 24 AM 11:59
 JULIE ARMSTRONG
 CLERK OF COURT

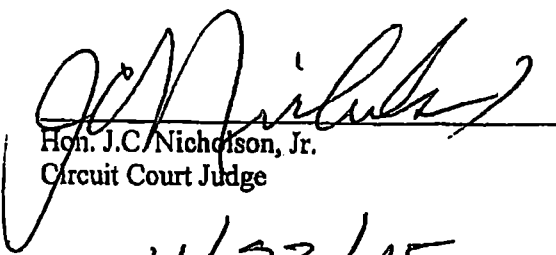
This matter comes before the Court on Motion of Counsel for Applicant. Counsel has requested to be relieved in the above captioned case. To support this motion Counsel will show the following:

1. Counsel was retained to represent Applicant for his post-conviction relief (PCR) action.
2. Counsel represented Applicant at for his PCR hearing before this Court.
3. The Court issued an order on May 13, 2015 dismissing Applicant's PCR action.
4. Counsel indicates that his office received the Order of Dismissal on May 21, 2015.
5. Based on the date of service, Counsel indicates that Applicant would have until June 1, 2015 to file a motion pursuant to Rule 59(e), SCRCP, and Applicant would have until June 22, 2015 to file a notice of appeal in the above captioned case.
6. Counsel has indicated that he has sent notification of these deadlines to Applicant.
7. Applicant has sent the Court a *pro se* motion to relieve Mr. Shaffer as counsel in this case.
8. Counsel has also requested to be relieved based on Applicant's desire to discharge him as counsel. See Rule 1.16(a)(3), of Rule 407, SCACR.

9. Based on Applicant's apparent desire to discharge Mr. Shaffer, this Court finds that it is appropriate to grant Mr. Shaffer's request.

IT IS THEREFORE ORDERED that Tristan Shaffer shall be relieved as counsel in the above referenced case and that Applicant shall be allowed to proceed *pro se* in the above captioned case.

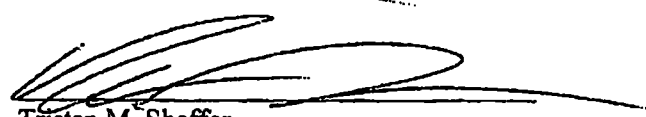
IT IS SO ORDERED.



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

Date: 11/23/15

I SO MOVE:



Tristan M. Shaffer

1230

cc
AG
AT

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-8354

2015 OCT 9 AM 11:40

Clark D. Thomas #187845
PLAINTIFF(S)JULIE J. ARMSTRONG
CLERK OF COURTState of South Carolina
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Applicant's Motion to Alter or Amend the Order of Dismissal. After review, this Court respectfully denies the Motion to Alter or Amend without rehearing.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against. (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

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

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

Circuit Court Judge

2117
Judge Code

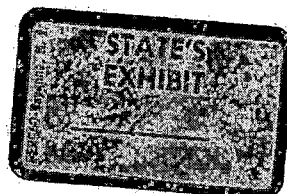
Date

2. Boyer, Christen—

, SC in Lexington

County, Boyer is my daughter and is required because she can testify to the following facts:

- (a) That Bolus did not prepare her for her first time testifying;
- (b) That Bolus claimed I rejected a negotiated guilty plea to 10 years. However, the prosecutor said he intended to seek 30 years whether convicted by trial or jury, (R. p. 61, line 25—p. 62, line 1-11);
- (c) That the prosecutor discredited her testimony by implying she had committed a crime when reading an *Incident Report* to refresh her memory. It should then be made known that Bolus did not seek curative instructions to the extent that it is appropriate to read notes and reports when taking the stand., (R. pp. 580-590);
- (d) That she and I both have been subjected to domestic violence at Crowley's hands to support my eligibility for parole pursuant to S.C. Code of Law §16-25-90 and, that Bolus ignored the recordings of me enduring Crowley's irrational jealousy and verbal abuse. The recordings of Crowley subjecting me to verbal abuse should then be played and that CD and the *transcript* thereof should be authenticated by my daughter and entered into evidence. (See Trial Exhibits File, §§33-34). "[A] convicted individual must present credible evidence to meet the preponderance of evidence standard. In this regard, a ... judge is largely unlimited as to either the kind or source of the information he may consider..." (Citations omitted). State v. Blackwell-Selim, 684 S.E.2d 208, 210 (S.C.App. 2009).
- (e) That when she was ten years old, Crowley tried to kill us all by grabbing the steering wheel in an attempt to slam our car into a concrete wall at 70 mph;
- (f) That she has seen Crowley inflict bodily harm upon herself;
- (g) That Crowley would fly into a rage when she heard certain songs playing, or even at the mention of the artists who composed those songs;
- (h) That she can reveal some of Crowley's numerous fits of rage and destruction, and she should be asked to elaborate; and,
- (i) That when arrested for assaulting her—which she should be asked to describe with specificity—to include that (1) Crowley was prevented from using a knife during the attack only because decedent John Kiegel was able to stop her from doing so; (2) because decedent John Kiegel interfered in Crowley's attempt to use a knife on her, Crowley jumped on his back and bit his ear; (3) she was only 15 years old at the time; (4) Joel Longenecker and Kiegel were also with watching as Crowley was being tased because of her maniacal conduct, and that Crowley asked to be tased again because



What did Joel say?

He didn't remember
anything

he didn't mention anything
about the police tasering
Machel?

NO.

she liked it; (5) Crowley spat all over the interior of Brush's patrol car and attempted to kick-out the passenger window; and (6) that she was determined to see Crowley prosecuted. This testimony is necessary to reveal that in addition to the arresting officers, Bolus also had—because of their non-familial relationship with me—other more credible witnesses to this tasing event that would have testified. Yet he chose only my daughter to do so; then allowed the prosecutor to dismantle the probative value of her evidence during cross-examination.

me
 Dad - break window.
 - throw up bucket
 Relationship - work go w/ him or phone.

my mom - music - ex's pictures.
 me.

guys outside - violence guitar - never did drugs around me.

- Basically slowly made everyone
 disappear out of his life until it
 was just them.

~~Mr Boris should have called us to stand~~

~~Post contact with family~~

~~No holidays~~

Tommy did want hear tapes -
 offered to him - refused

soad @.

taken away my life ^

She was 18
 not a minor

Rachel

I was a minor

It was that bad

Why was he
 allowed to live w/ them.

where you
 nervous
 on stairs



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:COUNTY OF Charleston
STATE VS.Clark David Thomas

AKA:

Race: W Sex: M Age: ✓ DOB: SS#: Address: DL#: SID#: 2003-GS-10-4044 (W)A/W#: 6740535Date of Offense: 3-6-03S.C. Code §: 16-25-65CDR Code #: 2131910☐ CASE RESTOREDSENTENCE No Contest☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: CDV HANin violation of § 16-25-65 of the S.C. Code of Laws, bearing CDR Code # 2131910☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 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 18 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$14-1-206 (Assessments 100%) \$14-1-211(A)(1) (Surcharge) 100.00\$14-1-211(A)(2) (Surcharge) \$56-5-2995 (DUI Assessment) 3% to County (if paid in installments) 3.00TOTAL 103.00[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP 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: (1) No Contact w/ Victim(2) Better CounselingPRESIDING JUDGE [Signature]Judge Code: 0101714Sentence Date: 5/22/03

SQG 2003-04-1434

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

MILLER, CCSO

03004945

ARREST WARRANT NUMBER

G740535

MARCH 21, 2003

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2003-GS-10- 40440

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

MAY TERM 2003

THE STATE

vs.

CLARK DAVID THOMAS

Indictment for

**CRIMINAL DOMESTIC VIOLENCE OF A HIGH
AND AGGRAVATED NATURE**

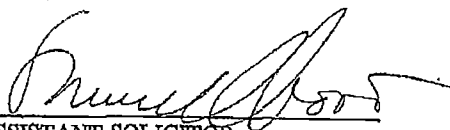
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT FOR
CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE

At a Court of General Sessions, convened on May 12, 2003 the Grand Jurors of Charleston County present upon their oath:

That Clark David Thomas did in Charleston County on or about March 6, 2003 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, 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.


ASSISTANT SOLICITOR

(EXHIBIT)

1042

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

CHARLESTON COUNTY SHERIFF'S OFFICE

CHARLESTON, SOUTH CAROLINA

J. AL CANNON, JR., ESQ.
SHERIFF, CHARLESTON COUNTY

OCA # 03-004945-B
WARRANT #

AFFIDAVIT *

Personally appeared, before me, a magistrate of this county, one Deputy A. Miller, who, first being duly sworn, deposes and says that **Clark David Thomas** did within this County and State on the 6th day of March, 2003, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED
16-25-65

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on 03/06/03 at approximately 1145 hrs at In the County and State aforesaid, one Clark David Thomas did commit the offense of violation section 16-25-65 of the Code of Laws of South Carolina of 1976, as amended, Criminal Domestic Violence High and Aggravated, in that he grabbed the victim (Rachel Crowley) around he neck choking her while parked on the side of Old Jacksonboro Rd. While the defendant was choking the victim he was stating I am going to kill you. The victim then managed to get away from the suspect and started running down the street while the defendant pursued her. This proceeded until a passerby stopped the incident Marvin Franklin Thomas (The Complainant). Clark David Thomas proved to be the primary aggressor of the physical altercation.

The above information was revealed through the investigation of Deputy A. Miller and, he along with the victim and the complainant, are witnesses to prove the same against the form the Statute in such case made and provided against the Peace and Dignity of the State of South Carolina.

Ms. Crowley, the victim and Mr. Thomas, the defendant both live together at the same residence as boyfriend and girlfriend.

Sworn to and Subscribed before me
This 10th Day of March, 2003.

Patricia B. Nixon (L.S.)
Signature of Judge

[Signature]
Signature of Affiant
3505 Pinehaven Dr.
Charleston, S. C. 29405



On the _____ day of _____, 20____, personally appeared before me undersigned Judge the surety named below who acknowledged himself indebted to the State of South Carolina in the sum of \$_____, such sum to be levied on his real and personal property for the use of the State. If the within named defendant shall fail in performing the conditions of this Order, the surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein over all his debts and liabilities, and exclusive of property exempt from execution.

Name of Surety (Printed, or Typed) _____
Address of Surety _____
City/State/Zip _____
Signature of Judge _____
Date _____
Signature of Surety _____

APPEARANCE, RECOGNIZANCE WITH SURETY

d. ☐ Other Conditions: The defendant will comply with the following other conditions of release: _____

c. ☐ Part-time Release: The defendant will be released from custody from _____ o'clock _____ M. to _____ o'clock _____ M. on _____ on condition that he return to the custody of _____ as designated.

b. ☒ Restrictions on Travel, Association or Residence: The defendant will comply with each of the following conditions: _____

Signature of Custodian (if Appointed) _____
Date _____

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court; (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court; and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

Address _____
City _____
State/Zip _____
Telephone _____
Name of person or organization _____

a. ☐ Placement in custody: The defendant is placed in the custody of _____

SPECIAL CONDITIONS OF RELEASE

(Page 2 of 2) - EXHIBIT 1041

Prpx2

PATIENT	MED. REC. # 000865959	ADMISSION DATE/TIME 06/07/06 1327	DISCHARGE DATE/TIME	SERVICE ERC	STATION ERC	ROOM NO.	PAT TYPE ERC	F.C. S	BLIACCT # 06158-00834			
	LOCATION(S) ERC			REL PVT	PAT. CLA	PUB/VAL / N	LNG E	SEX F	RACE W	MS S	DATE OF BIRTH	AGE Y
GUARANTOR	PATIENT NAME AND ADDRESS CROWLEY, RACHEL		SOC-SEC-NO	PATIENT EMPLOYER NOT EMPLOYED				TELEPHONE NO.				
	GUARANTOR NAME AND ADDRESS CROWLEY, RACHEL		SOC-SEC-NO	GUARANTOR EMPLOYER NOT EMPLOYED				TELEPHONE NO.				
INSURANCE	INSURANCE 1			INSURANCE 2								
	IN CASE OF EMERGENCY NOTIFY CROWLEY, RALPH FATHER WK:			SPOUSE HM: WK:								
MISC.	ADM DX/PRESENTING COMPLAINT ASSAULTED/BODY PAIN						ARRIVAL MODE AMBULANC		ADM TYPE/SOURCE 1 / 1			
	ADMITTING DOCTOR PARASCHOS-MD, THEOD		ATTENDING DOCTOR PARASCHOS-MD, THEOD		REFERRING DOCTOR PARASCHOS-MD, THEOD		PRIMARY CARE DOCTOR PCP, NONE					
	ALERTS NO NONE		PREVIOUS ADM DATE 06/26/05		OPT OUT	DIR No	FND N	MKT	PHN MSG	PRIMARY Yes	ALT.	BY IL
	FOR EMERGENCY DEPARTMENT USE ONLY											
ALLERGIES: LMP# TEMP# RESP# PULSE# B/P# TIME SIGNATURE												
PRINCIPAL DIAGNOSIS:												
OTHER DIAGNOSIS(ES):												
PRINCIPAL OPERATION/PROCEDURE:												
OTHER OPERATION(S)/PROCEDURE(S):												
DEFENDANT'S EXHIBIT												



- ☐ Roper Hospital
☐ Bon Secours St. Francis Hospital

MR#: 000865959 ERC -
 CROWLEY, RACHEL
 DOB: 11/29/84
 PHYS: PARASCHOS-MD, THEOD
 ACCT#: 06158-00834 06/07/06

To the Patient [or parent, guardian, or legal representative] (YOU)

Crowley, R.

Please print patient's name above if no label used.

Before Roper Hospital and/or Bon Secours St. Francis Hospital and any of its departments (the **HOSPITAL**) may provide you inpatient or outpatient services **YOU** must know what services **YOU** will receive, consent to them, agree to how to pay for them, and accept how the **HOSPITAL** will use your medical record. The **HOSPITAL** requests your consent to **TWO (2)** different parts of this form. Please carefully read Part I on treatment and other important matters **AND** Part II on the use of your patient information. **YOU** may request that this form be read to **YOU**. Be sure to ask any questions **YOU** may have about it. When **YOU** fully understand the form's content, please sign it in the place indicated on the back of the form. In advance, **THANK YOU** very much for your cooperation in meeting the **HOSPITAL'S** responsibility to **YOU** and to the community it serves.

PART I

CONSENT TO TREATMENT

YOU authorize your physician or a designated qualified assistant to provide **YOU** medical treatment. **YOU** consent to all **HOSPITAL** medical or diagnostic care ordered for **YOU** during this visit as an outpatient or stay in the **HOSPITAL**. This consent includes testing for infections such as hepatitis B and HIV and providing blood or body fluids for such tests in order to protect **YOU** and/or those who provide **YOU** services.

PAYMENT FOR SERVICES AND INSURANCE

YOU are directly responsible for paying for all provided services. The **HOSPITAL** will accept assignment of your payment responsibility to others. This includes health insurers, Medicare, Medicaid, workers' comp, and different types of liability, accident, and disability insurance policies. **YOU** agree that the assigned payment responsibility is covered by current, valid and in effect insurance arrangements and that **YOU** will promptly pay any required co-pay amounts and unpaid deductibles. If **YOU** are receiving Medicare benefits for the services provided, an assignment of benefits includes those for physician services that were part of the **HOSPITAL'S** services to **YOU**.

YOU (patient or agent accepting financial responsibility) *guarantee payment* to the **HOSPITAL** for **ALL NONCOVERED SERVICES** and any unpaid, billed amounts not covered by insurance if the applicable benefit plan allows collection of the unpaid balance. **YOU** understand and accept that your physician's orders may include services not paid by benefit plans but will be provided to you by the **HOSPITAL**. Also, **YOU** accept that benefit plans may deny payment for what **YOU** believed were covered services resulting in your responsibility for paying for these services. **YOU** may be billed for the professional component of any hospital services, such as the professional component for clinical laboratory tests. If it becomes necessary, the Hospital can assist you in applying for financial assistance through Federal, State and Local programs.

VALUABLES

YOU accept full responsibility for your valuables especially money or jewelry. The **HOSPITAL** does not accept any liability for your valuables. The **HOSPITAL** expects **YOU** will entrust any valuables to family or friends for safekeeping or deposit them in the **HOSPITAL** safe provided for that purpose. This is especially important when you are an inpatient, but this responsibility also extends to when **YOU** are an outpatient and must change into a **HOSPITAL** gown, remove jewelry or be sedated for a procedure.

(continued on back)



G90041

SPECIAL NOTE FOR MEDICARE OR CHAMPUS PATIENTS

YOU acknowledge and certify by your signature that all your information provided to the **HOSPITAL** for Medicare or Champus benefits is correct and **YOU** agree to allow the **HOSPITAL OR OTHERS** that have information on your Medicare or Champus benefits claim to provide the information to Medicare, Champus, or their agents in order for them to determine your eligibility for benefits. To carry out this activity, the **HOSPITAL** may use a copy rather than the original of this consent form. **YOU** also, acknowledge receipt of the "Important Message from Medicare" or "Important Message from Champus" forms, which does not waive any of your rights for a review or make **YOU** liable for any payment.

PART II**Consent to the Use and Disclosure of Protected Health Information**

YOU agree to honestly, completely, and correctly provide all requested information and permit the **HOSPITAL** to share your medical record as applicable under the law with your physician, your insurers, Medicare, Medicaid or their designated agents. They may review your record, copy it in full or in part in order to obtain billing and payment information and for insurers (private or government) to determine whether your services are covered by them. **YOU** agree to allow the **HOSPITAL** to use your record made during this visit at this time or later to meet its required reporting duties regarding your care and to collect payment for the services **YOU** received. **YOU** agree for your doctor to direct copies of your medical records to other physicians, hospitals, and other healthcare facilities, as they deem necessary for continuity of care. **YOU** also agree to have your name posted on scheduling boards and outside your hospital room.

Specific uses of your protected information

The **HOSPITAL** originates and maintains health records describing your health history, symptoms, examination and test results, diagnoses, treatment, and any plans for future care or treatment. This information serves as:

- A basis for planning care and treatment
- A means of communication among the many health professionals who contribute to your care (this includes posting your name on scheduling boards or outside your patient room)
- A source of information for applying diagnosis and surgical information to your bill
- A means by which a third-party payer (usually your insurance company or the government) can verify that services billed were actually provided
- And a tool for routine healthcare operations such as assessing quality and reviewing the competence of healthcare professionals

Your signature below acknowledges that **YOU** received the **Notice of Information Practices** that provides a description of information uses and disclosure practices. **YOU accept and understand that YOU:**

- Have the right to review the **NOTICE** prior to signing this consent.
- Accept that the **HOSPITAL** reserves the right to change the **NOTICE** and its information practices, for past, current, or future information. The new notice will contain the effective date on its first page and be made available on our Web site.
- Have the right to object to the use of your health information for the **HOSPITAL's** patient directory.
- Have the right to request restrictions on the use or disclosure of your health information to carry out treatment, payment, or healthcare operations and to correct error(s) in your record. The **HOSPITAL**, however, is not required to agree to the restrictions requested.

-
- May revoke this consent in writing that **YOU** provide to the **HOSPITAL**. The revocation does not apply to any uses of your information made by the **HOSPITAL** in reliance upon this consent form and on the belief that your consent was still effective.

I CERTIFY THAT I HAVE READ (OR HAD READ TO ME) PART 1 AND PART II AND FULLY UNDERSTAND AND AGREE TO THE CONTENT.

Patient/Agent

Rachel M. Crowley

Date

6/7/06

If agent, what is relationship to patient?

Parent, guardian, legal representative

Date

Witness (when form is accepted verbally, by telephone or by electronic means)

02

Care Alliance - Bon Secours St. Francis
EMERGENCY NURSING RECORD
Alleged Assault

N: 000865959 ERC
 CHOWLEY, RACHEL
 DOB: 11/29/84
 PHYS: PARASCHOS-MD, THEOD

1243



ACCT#: 06158-00834 06/07/06

TRIAGE TIME 1330 emergent urgent non-urgent

NAME: Crawley, RachelD.O.B. _____ AGE: yo M ☒ FHISTORIAN: ☒ patient ☒ paramedics familyARRIVAL MODE: car EMS policePMD: none Dr. DehavenTetanus Immunizations: current / not current / datePneumococcal Immunization: current / not current / dateInfluenza Immunization: current / not current / date

LAST TETANUS: _____

TREATMENT PTA see EMS report c-collar backboard

CHIEF COMPLAINT

occurred assaulted by spouse(last pm early am)

INJURIES

head neck R L
 face back shldr hip shldr hip
 nose chest arm thigh arm thigh
 mouth abdomen elbow knee elbow knee
 coccyx f-arm leg f-arm leg
 wrist ankle wrist ankle
 hand foot hand foot

PAIN LEVEL current: /10 hurts all overASSAULT fists kicked choked pushed human bitehit with object lost consciousness deniesknown assailant agency notifiedsexual assault chemical exposuretazered mult. timesVITALS time: 12/18 P 104 RR 18 temp 100.8 TM 0 R AxBP 126/80 Height 100 Weight 100 kgO₂ Sat% 100 (RA) O₂ GCS RTSALLERGIES NKDA/PCN/ASA/sulfa/latexTIME TO ROOM: 1330INITIAL ASSESSMENT TIME: 1330 ROOM: 10

GENERAL APPEARANCE

no acute distressalertc-collar / back board in placemild / moderate / severe distressanxious / decreased LOC

FUNCTIONAL / NUTRITIONAL ASSESSMENT

appears well nourishedindependent ADLobese / malnourishedassisted / total care

RESPIRATORY

no resp distressnl breath soundsmild / moderate / severe distresswheezing / crackles / stridordecreased breath sounds

CVS

regular ratepulses strongskin warm & drytachycardia / bradycardia / irr g rhythmpulse deficitcool / diaphoreticpale / cyanotic

NEURO

oriented x 3PERRLdisoriented to person / place / timeconfusedpupils unequalweakness / sensory loss

HEENT

no evidence of traumanl eye inspectionnl ENT inspectionscalp tenderness / lacerationeye injurynasal / dental injury

NECK / BACK

no evidence of traumanon-tenderlaceration / abrasion / swellingtenderness

ABDOMEN

nl inspectionnon-tenderbowel sounds presenttenderness / guarding / reboundblood at urethral meatus

EXTREMITIES

no evidence of traumanon-tendermoves all extremitieslaceration / abrasion / swellingtenderness / swellinglimited ROMdeformity

ADDITIONAL FINDINGS

1330. Pt stic w/ little emotion
reaction. no active bleeding. a
few old bruised noted on R leg
arm. denies any bone pain or
rib. w/ increasing pain in
deep breath; awaiting pain

Nurse Signature [Signature]

^ protocol available

1244

© 1996 - 2006 T-System, Inc. Circle or check affirmatives, slash (/) negatives.

20 Roper Saint Francis Healthcare Bon Secours
EMERGENCY PHYSICIAN RECORD
Alleged Assault (5)

TIME SEEN: 1400 ☐ on arrival ROOM: 10 EMS Arrival

HISTORIAN: patient spouse paramedics

HX / EXAM LIMITED BY:

HPI

chief complaint: injury to: chest / abdomen / back.

occurred:

just prior to arrival

today

yesterday

3 pm yesterday - 3 pm today

where:

home

neighbor's

work

school

park

street

context:

fists

kicked

choked

bitten

pushed / thrown down

pushed / thrown against wall

reported spousal abuse

struck with object(s):

he tried to strike me with

needles and gave me drugs

It states she was taped many times, hands

with duct tape, beaten & hands

location of pain / injuries:

head face mouth

neck chest abdomen

breast R / L

back upper mid lower

radiating to R / L thigh / leg

-right-

shldr hip

arm thigh

elbow knee

f-arm leg

wrist ankle

hand foot

-left-

shldr hip

arm thigh

elbow knee

f-arm leg

wrist ankle

hand foot

severity of pain:

mild

moderate

severe

associated symptoms:

lost consciousness / dazed

duration:

remembers:

impact coming to hospital

seizure

ROS

loss feeling / power arms / legs

neck pain

headache occip; 2nd hair pull

double vision / hearing loss

nausea / vomiting

abdominal pain

in abdominal wall pain 2nd muscle spasm / tear

trouble breathing / chest pain

loss of bladder function

skin laceration, scratch on lower back; 2 hand

recent fever / illness

pregnant, confirmed w/ home test

all systems neg except as marked

SOCIAL HX

smoker

recent ETOH

drug use / abuse

PAST HX negative diabetes Type 1 Type 2 diet / oral / insulin

Meds: none / see nurses note

Allergies: CNKDA / see nurses note

MR#: 000865959 ERC

ROWLEY, RACHEL

DOB: 11/29/84

PHYS: PARASCHOS-MD, THEOD



ACCT#: 06158-00834 06/07/06

126186 104 18 100 002

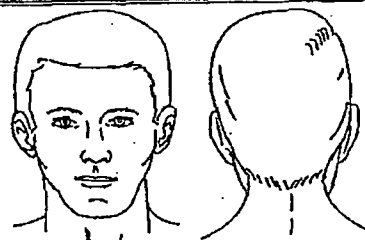
☐ Nursing Assessment Reviewed ☒ Vitals Reviewed ☐ Tetanus Immun. UTD ☒ PT**PHYSICAL EXAM**General Appearance ☐ c-collar (PTA / in ED) / backboard☒ no acute distress☒ alert☐ mild / moderate / severe distress☐ anxious / lethargic / unconscious**HEAD**☒ no evidence of

trauma

see diagram

☐ Raccoon eyes / Battle's sign**NECK**☒ non-tender☒ painless ROM☒ trachea midline

see diagram

☐ vertebral point-tenderness☐ muscle spasm / decreased ROM☐ pain on movement of neck☐ Nexus criteria neg☐ midline tenderness / distracting injury☐ altered mental status☐ recent ETOH**EYES**☒ PERLL☒ EOMI

unequal pupils R: mm L: mm

☐ EOM entrapment / palsy☐ subconjunctival hemorrhage**ENT**☒ nml external☒ inspection☒ no dental / oral injury☐ hemotympanum☐ TM obscured by wax☐ clotted nasal blood☐ dental injury / malocclusion**RESP / CVS**☒ chest non-tender☒ breath sounds nml☒ heart sounds nml☐ rib tenderness / palpable fracture☐ crepitus / subcutaneous emphysema☐ splinting / paradoxical movements☐ ecchymosis☐ decreased breath sounds☐ wheezes / rales / rhonchi☐ tachycardia / bradycardia**ABDOMEN**☐ non-tender☒ no organomegaly☒ no distention

see diagram (on reverse)

☐ tenderness / guarding / rebound☐ mass / organomegaly

FHT's

difficultly palpable

GENITAL / RECTAL☐ nml ext inspection☐ nml rectal tone☐ heme-negative stool☐ perineal hematoma☐ blood at urethral meatus☐ decreased rectal tone**NEURO / PSYCH**☒ oriented x3☒ mood / affect nml☒ CN's nml☒ as tested☒ sensation &

motor nml

☐ confused / disoriented☐ facial asymmetry☐ unsteady / ataxic gait☐ sensory / motor deficit☐ slurred speech

Reflexes

SKIN

☒ intact
warm, dry

☒ see diagram

crepitus / diaphoresis
laceration / abrasion

BACK

☒ no CVA
tenderness
☒ no vertebral
tenderness

☒ see diagram

vertebral point-tenderness
CVA tenderness
muscle spasm / limited ROM

EXTREMITIES

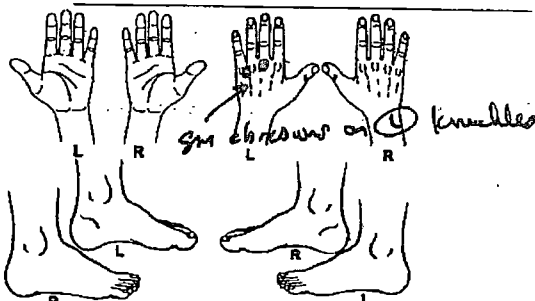
☒ atraumatic
☒ pelvis stable
☒ hips non-tender
☒ no pedal edema
nml ROM

☒ see diagram

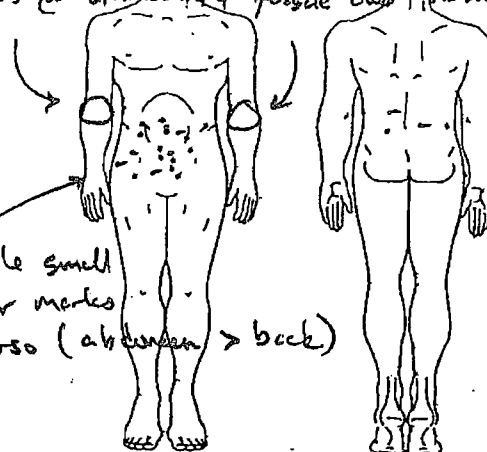
bony point-tenderness
painful / unable to bear weight
pulse deficit

Joint Exam:

limited ROM / ligaments laxity / joint effusion



several punctate wounds & greenish-blue
ecchymosis @ antecubital fossae over veins.



multiple small
circular marks
on torso (abdomen > back)

T=Tenderness PtT=Point Tenderness S=Swelling E=Ecchymosis Lac=Laceration
A=Abrasion B=Burn (B=without m=mild mod=moderate sv=severe)
Tsv = Tenderness on palpation (severe)

PROGRESS

Time _____ unchanged _____ improved _____ re-examined _____

138 / 104 / 10 / 93
3.9 / 26 / 0.7 / 9.5

CPK 325

10.5 / 40.3 / 376 N⁸⁰

PROCEDURES

Wound Description / Repair

length _____ cm location _____

superficial *subcut muscle linear stellate irregular
clean contaminated moderately / heavily

distal NVT: neuro & vascular status intact no tendon injury

anesthesia: local digital block _____ mL

lidoc 1% 2% ep / bicarb maracaine 0.25% 0.5% LET
prep

Shur-Cleans / Betadine

Irrigated / washed w/ saline

debrided

minimal / mod / *extensive

minimal / *mod / *extensive

wound explored

undermined

foreign material removed

minimal / mod / *extensive

partially completely

wound margins revised

minimal / mod / *extensive

multiple flaps aligned

no foreign body identified

repair: Wound closed with: wound adhesive / steri-strips

SKIN: # _____ 0 nylon / prolene / staples

*SUBCUT: # _____ 0 vicryl / chromic

*may indicate intermediate repair *may indicate complex repair

XRAYS

☐ Interp. by me ☐ Reviewed by me ☐ Discd w/ radiologist

C-Spine T-Spine LS-Spine

nml / NAD

reversal / straightening of cerv. lordosis

no fracture

DJD / spondylosis / spurring

nml alignment

fracture non-displaced displaced

soft tissues nml

☒ EXP

nml / NAD

rib fracture

no infiltrates

infiltrate / atelectasis

nml heart size

nml mediastinum

OTHER

☐ See separate report

☒ pt confirms safe environment for discharge mom's house

Discussed with Dr. _____ Additional history from: _____
will see patient in: ED / hospital / office family caretaker, paramedic
Counseled patient / family regarding: _____ prior records ordered
lab / rad results, diagnosis, need for follow-up Rx given
CRIT CARE TIME (excluding separately billable procedures)
30:74 min 75:104 min _____ min

CLINICAL IMPRESSION

Alleged Assault

contusion	arm	R/L	sprain / strain
fracture	elbow	R/L	neck thoracic lumbar
stabilized	forearm	R/L	sacral
restorative	wrist	R/L	
	hand	R/L	concussion
head	hip	R/L	with LOC w/o LOC
face	thigh	R/L	
chest	knee	R/L	laceration
abdomen	leg	R/L	
back	ankle	R/L	
shoulder	R/L foot	R/L	

multiple superficial electrocution burns

Abrasions @ hands / back

DISPOSITION: ☒ home ☐ admitted ☐ transferred
CONDITION: ☐ unchanged ☒ improved ☒ stable

NP / PA

MD / DO

☐ Dictated Addendum

pt states she can safely stay @ her mother's house.



ORDER TIMES 1) 2) 3) 4)

Laboratory

- ☐ HEME PANEL ☒ CBC
☒ ETOH ☐ CMP
☐ HEPATIC ☐ AMYLASE
☐ LIPASE ☐ BNP
☒ CBB ☐ MB ☐ TROP
☐ PT ☐ PT/PTT
☐ D-Dimer ☐ DIG LEVEL
☐ Rapid Strep
☐ ETOH ☐ UDS
☒ URINE DIP ☐ CATH
☐ U/A W/ MICRO
☐ URINE C & S
☐ BLOOD C & S #
☒ URINE β ☐ QUANT β
☐ WET PREP ☐ Rh
☐ GC/CHLAMYDIA
☐
☐
☐
☐
OLD ☐ CHART ☐ EKG

Imaging

- ☐ CXR ☐ 2 V ☐ PORT
☐ ABD SERIES
☐ C SPINE ☐ R ☐ L
☐ WRIST ☐ ☐
☐ FOOT ☐ ☐
☐ ANKLE ☐ ☐
☐ HIP ☐ ☐
☐
☐
☐
☐ CT SCAN CONTRAST
☐ HEAD ☐ NONE
☐ ABD PELVIS ☐ IV
☐ kidney stone ☐ ORAL
☐ appendix
☐
☐ ULTRASOUND
☐ PELVIS ☐ VENOUS
☐ ABD DOPPLER
☐ AORTA ☐ R ☐ L LE

Nursing

- ☐ EKG
☐ MONITOR
☐ PULSE OX
☒ INT
☐ ABG ☐ R/A
☐ O₂ L/MIN ☐ NRB
☐ N/C ☐ MASK
☐ HHN - ALBUTEROL
☐ 2.5 MG ☐ 5 MG
☐ REPEAT ☐ REPEAT
☐ CONTINUOUS 10 MG/HR
☐ HHN - ATROVENT
☐ BEDSIDE GLUCOSE
☐ ASA 325 mg P.O.
☐ ASA ☐ @ home ☐ EMS
☐ ASA CONTRAINDICATED
☐ dT 0.5 cc IM
☐ RECTAL TEMP
☐ FOLEY
☐ PELVIC SETUP
ABX ALLERGY:

Physician Calls

Name	Time	Response

- ☐ IVF: ☐ NS ☐ ☐ BOLUS CC
RATE: CC/HR ☐ DNR
☐ Tequin 400 mg IV Time
☐ Rocephin one gram IV Time
☐ Azithromycin 500 mg IV Time
☐ Metoprolol 5 mg IV q5min*3 Time
☐ β -blocker contraindicated

- 1 Valium 2 mg IV x 1 *hand* 9
2 Lorazepam 2 mg IV x 1 10
3 dT 0.5 cc IM x 1 — hold (PT arrived) 12
4 13
5 14
6 15
7 16
8

SIGNATURE:

1) *[Signature]* 2)

1247

BON SECOURS ST. FRANCIS HOSPITAL
DEPARTMENT OF LABORATORY MEDICINE
CHARLESTON, SOUTH CAROLINA

06/08/06
0023
PAGE 1

Name: CROWLEY, RACHEL
Admission Date: 06/07/06
Doctor: PARASCHOS, THEODORE

MR# (52544)000865959
Date of Birth:
Sex: F Race: W

Nurs Stn: EMERGENCY ROOM SFX
Room#
Bed:

CHEMISTRY

SPECIMEN DATE 06/07/06
COLLECTED TIME 1440
WEEKDAY WED

-----METABOLIC PANELS/CHEMISTRY-----

NA 138
K 3.9
CL 104
CO2 26
ANION GAP (CALC) 8
OSMO (CALC) 274 L
GLUCOSE 93
BUN 10
CREATININE 0.7 f
B/C RATIO 14.3
CALCIUM 9.5

UNITS REFERENCE

MEQ/L 137-145
MEQ/L 3.5-5.1
MEQ/L 98-107
MEQ/L 21-32
MEQ/L 2-17
MOS/KG 280-300
MG/DL 70-110
MG/DL 7-22
MG/DL 0.6-1.3
MG/DL 6.0-17.0
MG/DL 8.5-10.1

06/07/06 1440 CREATININE

ESTIMATED GFR =112 ml/min/1.73sq.m

AVG. GFR based on this patient's Age Group: 116 ml/min/1.73sq.m

Source: National Kidney Disease Education Program (NKDEP)

This value is for staging information only and not specifically for the
calculation of pharmaceutical dosage. As with the Cockcroft-Gault equation,
this is an estimated value.

FOOTNOTE ADDED ON 06/07/06 AT 1523 BY DISCERN

Footnotes

L = Low, f = Footnote

Rtg:

FINAL Report

Doctor: PARASCHOS, THEODORE
Report Date/Time 06/08/06 0023

Pt. Name CROWLEY, RACHEL
MR# (52544)000865959 Continued...
Page 1

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BON SECOURS ST. FRANCIS HOSPITAL
DEPARTMENT OF LABORATORY MEDICINE
CHARLESTON, SOUTH CAROLINA

06/08/06
0023
PAGE 2

Name: CROWLEY, RACHEL
Admission Date: 06/07/06
Doctor: PARASCHOS, THEODORE

MR# (52544)000865959
Date of Birth:
Sex: F Race: W

Nurs Stn: EMERGENCY ROOM SFX
Room#
Bed:

CARDIAC MARKERS

SPECIMEN DATE 06/07/06
COLLECTED TIME 1440
WEEKDAY WED

UNITS REFERENCE

---CARDIAC STUDIES---
CPK 325 H

IU/L 21-232

Footnotes

H = High

Rtg:

FINAL Report

Doctor: PARASCHOS, THEODORE
Report Date/Time 06/08/06 0023

Pt. Name CROWLEY, RACHEL
MR# (52544)000865959 Continued...
Page 2

BON SECOURS ST. FRANCIS HOSPITAL
DEPARTMENT OF LABORATORY MEDICINE
CHARLESTON, SOUTH CAROLINA

06/08/06
0023
PAGE 3

Name: CROWLEY, RACHEL
Admission Date: 06/07/06
Doctor: PARASCHOS, THEODORE

MR# (52544)000865959
Date of Birth:
Sex: F Race: W

Nurs Stn: EMERGENCY ROOM SFX
Room#
Bed:

HEMATOLOGY

SPECIMEN DATE 06/07/06
COLLECTED TIME 1440
WEEKDAY WED

UNITS REFERENCE

-----CBC (COMPLETE BLOOD COUNT)-----

WBC	10.5
RBC	4.48
HGB	13.7
HCT	40.3
MCV	90.1
MCH	30.6
MCHC	34.0
RDW	11.5
PLATELET	376
MPV	8.8
NEUTROPHIL %	79.8 H
LYMPHOCYTE %	14.6 L
MONONUCLEAR %	5.4
EOSINOPHIL %	0.1
BASOPHIL %	0.1
ABSOLUTE NEUT	8.4 H
ABSOLUTE LYMPH	1.5
ABSOLUTE MONO	0.6
EOS ABSOLUTE	0.0
BASO ABSOLUTE	0.0

K/CUMM	4.8-10.8
M/CUMM	4.20-5.40
G/DL	12.0-16.0
%	37.0-47.0
FL	81.0-99.0
PG	27.0-33.0
%	32.0-36.0
%	11.5-14.5
K/CUMM	140-440
FL	7.4-10.6
%	47.0-76.0
%	17.0-44.0
%	0.0-10.0
%	0.0-6.0
%	0.0-2.0
K/CUMM	2.3-8.2
K/CUMM	0.7-5.1
K/CUMM	0.0-1.1
K/CUMM	0.0-0.7
K/CUMM	0.0-0.2

Footnotes

L = Low, H = High

Rtg:

FINAL Report

Doctor: PARASCHOS, THEODORE
Report Date/Time 06/08/06 0023

Pt. Name CROWLEY, RACHEL
MR# (52544)000865959 End of Report
Page 3

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ACTIONS

TIME	INIT
C-collar	back board
ice pack / elevation	warming measures
bandage applied	wet to dry dressing
set up suture tray	
O ₂ _____ L via	
pulse oximeter	
cardiac monitor	
Accu-Chek	
TD / TT 0.5mL IM	lot #:
exp. date	manufacturer
bed low position	side rails up x1 x2
call light in reach	head of bed elevated
ready for Dr eval. / notified doctor	
restraints	see documentation

IV RECORD Pump used: Yes / No

Time	Solution	Site	Ga	Rate	Amt in	Do'd	INIT
1445	INT	#22	(10)	FA			OKW

IV / saline lock discontinued intact and pressure dressing applied

MEDICATIONS

TIME	Medication	Dose	Rte	Site	INIT
1450	Valium	2mg	IV		OKW
1520	Response:	no	ad	NO	
1530	lorazepam	1mg	IV		OKW
1530	Response:	no	ad	NO	
	Response:				
	Response:				

PROCEDURES

TIME	INIT
laceration repair by:	
single / multiple layer	face / limb / trunk
length after closure:	
foreign body removed by:	
simple / complex	
splint applied	arm leg short long
1445	labs drawn / sent
assessed post-procedure	
color / sensation / movement	
cleaned wound	applied abx ointment
applied dressing / Band-Aid / elastic wrap	
crutch training w/ proper return demonstration	
to Xray	w monitor / nurse / O ₂ / tech

VITAL SIGNS

TIME	BP	P	RR	T	O ₂ sat	Rhythm	INIT

PAIN REASSESSMENT

Time	Description	Level	INIT
		/10	
		/10	
		/10	

ADDITIONAL NOTE

orders
405 chao City officers along
w/ detective; orders carried
out; a riding's complaint
1500; a mother in the unit
room; officers remained for
interview; at 3:30
the mother released from questioning
done's needs;

INTAKE

INTAKE	OUTPUT
IV:	Urine:
PO:	Emesis:
Other:	Blood-Approx:
Total:	Total:

PROPERTY TO:

☐ patient	☐ family	☐ security	☐ safe	☐ see patient belongings list

DISPOSITION

☒ discharged	☐ home	☐ police	☐ nursing home	☐ ME	☐ funeral home
verbal / written instructions Rx given to: patient <u>mother</u>					
verbalized understanding					
learning barriers addressed					
accompanied by / driver: <u>mother</u>					
pain level at discharge ____ / 10					

admitted / transferred to	
report to	time
transfer documentation completed	
notified family / police / ME	
left AMA / LWOT	signed AMA sheet
physician notified of:	refused

CONDITION

☐ unchanged	☐ improved	☒ stable	☐ other
Depart Time	7p	Mode:	walk crutches W/C stretcher ambulance

Discharge Nurse Signature

SIGNATURE	INITIAL
<u>[Signature]</u>	OKW
<u>[Signature]</u>	

DR. :

BASICS. (EA)

PT : STMTS / COMPLAINT :

- STICK w/ NEEDLES...
- TAZED MANY TIMES; BOUND w/ TAPE; BEATEN w/ HANDS.

PAIN : ABD. WALL (MUSCLE SPASM RE : TAZER).

INJURIES : STOMACHE, BACK = MULTIPLE SMALL CIRCULAR MARKS.

(+ TRACKS)

"SUPERFICIAL ELECTRICAL BURNS"

NURSE RECORD :

ASSAULTED BY SPOUSE; TAZED MULTIPLE TIMES.

MULT. TAZER MARKS:

NECK / BACK.

ABDOMEN

EXTREMITIES.

DEFENDANT'S
EXHIBIT

3

The State of South Carolina



Solicitor, Ninth Judicial Circuit

CHARLESTON AND BERKELEY COUNTIES

101 MEETING STREET
CHARLESTON, S.C. 29401
TELEPHONE: 843-958-1900
FAX: 843-958-1905
www.scsolicitor9.org

SOLICITOR

RALPH E. HOISINGTON

December 15, 2006

Ms Rachel Merce Crowley

, SC

Re: Protected Health Information

Dear Ms Crowley:

By way of this letter, the Solicitor's Office is informing you in order to prosecute the case against Clark D. Thomas, where you were the victim of CDVHAN & Kidnapping

We need a copy of your medical records regarding this incident. All medical records are protected health information. This letter is to inform you if you object to the release of this information you may contact (medical provider).

If you wish to object, you have ten (10) days from the date of this letter to do so.

By way of this letter, the Solicitor's Office has met the assurance requirement under HIPHA regarding your protected health information.

If you have additional questions you may contact Assistant Solicitor ; Nathan Williams, at 843-958-1916.

Sincerely,

A handwritten signature in cursive script that reads "Nathan Williams".
Assistant Solicitor

The State of South Carolina

1253



Solicitor, Ninth Judicial Circuit

SOLICITOR

CHARLESTON AND BERKELEY COUNTIES
101 MEETING STREET
CHARLESTON, S.C. 29401
TELEPHONE: 843-958-1900
FAX: 843-958-1905
www.scsolicitor9.org

RALPH E. HOISINGTON

Date: _____
RE: Record Request

Dear Medical Records Custodian:

Please provide the requested medical records in the attached subpoena to be used in General Sessions Court.

- ☒ The records requested are victim records
- ☐ The records requested are defendant records

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Hoisington", written over the printed name and title.

Solicitor, Ninth Judicial Circuit

1254

SUBPOENA IN A CRIMINAL CASE

6-7-04
8163959

SOUTH CAROLINA GENERAL SESSION COURT		COUNTY:	CHARLESTON
THE STATE OF SOUTH CAROLINA		INDICTMENT #:	2006GS1012296-12296
-V-		WARRANT #:	K120149-K120450
Clark David Thomas		CHARGE:	Kidnapping
		CDVHAN	
		SUBPOENA FOR	
		☒ PERSON	
		☐ DOCUMENT(S) OR OBJECT(S)	
TO: St. Francis Hospital Records		OCA #: 2006021048	
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above entitled case.			
PLACE Charleston County Judicial Center 100 Broad Street Charleston, South Carolina 29401		COURTROOM GENERAL SESSIONS	
		DATE AND TIME: UPON RECEIPT , at a.m. Each Day This Term of Court or Until Case Disposition	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).			
LIST DOCUMENT(S) or OBJECT(S): See special instructions on reverse side. *Immediately upon receipt of this subpoena, please call Investigator Jim Nesmith at (843) 958-1979 or Assistant Solicitor Nathan Williams at (843) 958-1916 to advise us of where you can be reached during this term of Court. If connected to a voicemail, please leave your name, a viable day and evening phone number and the defendant's name referenced in the upper left corner of this subpoena. <i>Michael Crowley - D.D.B. S.S.</i>			
*PLEASE READ ADDITIONAL INSTRUCTIONS ON REVERSE SIDE			
This subpoena shall remain in effect until you are released by the court or by an officer acting on behalf of the court.			
CLERK OF COURT <i>Julie J. Armstrong</i>		DATE	
(BY) DEPUTY <i>Ronald J. Bryan</i>		December 15, 2006	
This subpoena is issued upon application of the		ATTORNEY'S NAME AND ADDRESS:	
☒ SOLICITOR ☐ DEFENDANT		NATHAN WILLIAMS Assistant Solicitor Ninth Judicial Circuit, Charleston County O.T. Wallace County Office Building 101 Meeting Street, Suite 400 Charleston, South Carolina, 29401	

1-4-07
Lund

PROOF OF SERVICE		
SERVED	DATE 1-2-2007	PLACE ST. FRANCIS Hosp. Records
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME) JIM DESMITH		TITLE INVESTIGATOR
DECLARATION OF SERVER		
I certify that the foregoing information contained in the Proof of Service is true and correct.		
Executed on 1-2-2007 DATE		SIGNATURE OF SERVER 
		ADDRESS OF SERVER 101 MBBING ST. CHAS. SC. 29405

ADDITIONAL INSTRUCTIONS:

Upon arrival at the Charleston County Judicial Center, please report to the courtroom assigned for general sessions trials, which will be displayed on a monitor by the courthouse elevators. Please wait outside the specified courtroom until notified by the investigator referenced in this subpoena or by an officer acting on behalf of the Court.

IF YOU PROMPTLY FURNISH THIS OFFICE with your contact information, it may not be necessary for you to attend court on each day of the entire term set forth in this subpoena. If you contact our Office and supply us with all of your pertinent information we may be able to give you a more specific date and time to appear in Court for the disposition of this case.

IF YOU DO NOT CONTACT THIS OFFICE upon receipt of this subpoena and provide the requested information, *you must appear in Court at the time and place set forth in this subpoena.*

IF THE "DOCUMENT(S) or OBJECT(S)" BOX IS CHECKED, and you promptly furnish this Office with the requested item(s) listed below, it may not be necessary for you to appear in court. *If the requested item(s) are not provided, you must appear in Court at the time and place set forth in this subpoena.*

Failure to appear in court pursuant to this subpoena constitutes contempt of court.

SPECIAL INSTRUCTIONS:

Please provide the medical records on Rachel N. Crowley, DOB

D.O.B.

Handwritten notes and stamps at the bottom left of the page.

PATIENT	MED. REC. # 000865959	ADMISSION DATE/TIME 06/07/06 1327	DISCHARGE DATE/TIME	SERVICE ERC	STATION ERC	ROOM NO.	PAT TYPE ERC	F.C. S	BL/ACCT # 06158-00834		
	LOCATION(S) ERC	REL PVT	PAT. CLA	PUB/VAL / N	LNG E	SEX F	RACE W	MS S	DATE OF BIRTH AGE Y		
GUARANTOR	PATIENT NAME AND ADDRESS CROWLEY, RACHEL		SOC-SEC-NO	PATIENT EMPLOYER NOT EMPLOYED				TELEPHONE NO.			
	SC		PRITELEPHONE NO. 0	SC							
INSURANCE	GUARANTOR NAME AND ADDRESS CROWLEY, RACHEL		SOC-SEC-NO.	GUARANTOR EMPLOYER NOT EMPLOYED				TELEPHONE NO.			
	SC		TELEPHONE NO. RELATION SELF	SC							
MISC.	INSURANCE 1		INSURANCE 2								
	IN CASE OF EMERGENCY NOTIFY CROWLEY, RALPH FATHER		SPOUSE								
MISC.	HM:		WK:		HM:		WK:				
	ADM DX/PRESENTING COMPLAINT ASSAULTED/BODY PAIN				ARRIVAL MODE AMBULANC		ADM TYPE/SOURCE 1 / 1				
	ADMITTING DOCTOR PARASCHOS-MD, THEOD		ATTENDING DOCTOR PARASCHOS-MD, THEOD		REFERRING DOCTOR PARASCHOS-MD, THEOD		PRIMARY CARE DOCTOR PCP, NONE				
	ALERTS NO NONE		PREVIOUS ADM DATE 08/26/05		OPT OUT	DIR No	FND N	MKT	PHN MSG	PRIMARY Yes	ALT.
FOR EMERGENCY DEPARTMENT USE ONLY											
ALLERGIES											
LMP# TEMP# RESP# PULSE# BP# TIME SIGNATURE											
PRINCIPAL DIAGNOSIS:											
										DRG	
OTHER DIAGNOSIS(ES):										CODE(S)	
										9460	
PRINCIPAL OPERATION/PROCEDURE:										9460	
										9140	
										9110	
										E9682	
										E9490	
OTHER OPERATION(S)/PROCEDURE(S):											