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STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-002725

RECEIVED

AUG 20 2015

SC Court of Appeals

Clark D. Thomas, ... Appellant,

V.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually, ... Respondent.

RECORD ON APPEAL

(VOLUME I OF II)

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CLARK D. THOMAS
Appellant

BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

Pro se Appellant

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

Clark D. Thomas,) Civil Action No. 2013-CP-10-05444

Plaintiff,)

v.)

Evening Post Publishing Co., d/b/a The
Post and Courier, Glenn Smith,
Officially and Individually,

Defendants.)

ORDER GRANTING
SUMMARY JUDGMENT

FILED
2014 NOV -4 AM 10:18
JULIE L. ARMSTRONG
CLERK OF COURT

This matter came before the court on defendants' motion for summary judgment filed July 2, 2014. A hearing on the motion was held in open court in Charleston on October 29, 2014. Plaintiff was present and defendants appeared through counsel. Plaintiff's Amended Complaint alleges that a news report prepared by defendant Glenn Smith and published by defendant Evening Post Publishing Co. in its newspaper *The Post and Courier* defamed him and intentionally inflicted emotional distress by publishing false statements of fact of and concerning him. The news report provided an account of plaintiff's activities representing himself in an action in Family Court seeking a divorce from his wife.

Defendants supported their motion with the pleadings, answers to interrogatories, admissions, the transcript of record in the Family Court proceeding Clark D. Thomas v. Rachel M. Crowley, and the affidavit of defendant Smith. Plaintiff filed no affidavits or other material in opposition to defendants' supported motion save a memorandum of law, and had not responded to defendants' requests for admissions. It has long been the law in South Carolina that a plaintiff may not rest on his pleading alone in response to a supported motion for summary judgment as the Supreme Court of South Carolina has held:

Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law. *Garrett v. Reese*, 269 S.C. 327, 329, 204 S.E.2d 432, 433 (1974).

Humana Hospital—Bayside v. Lightle, 305 S.C. 214, 407 S.E.2d 637, 638 (1991).

The news report complained of by plaintiff related to the operation of the Family Court system in a divorce action where plaintiff was appearing *pro se*. It seems beyond doubt that the functioning of the court system is a matter of public interest. See, *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 452 S.E.2d 640, certiorari den., 516 U.S. 1172, 116 S.Ct. 1263, 134 L.Ed.2d 211 (1994). And, where the publication concerns a matter of public interest, a libel plaintiff bears the burden of proving the falsity of the publication at issue. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986). Plaintiff offered no proof by way of affidavit that the publication was false.

Defendants demonstrated that the contents of the news report tracked either a police report relating to plaintiff's arrest for kidnapping and other charges, or the transcript of the divorce proceeding. Even if the police report or the trial testimony contained false statements of fact, fair and substantially accurate reports of the contents of official records and judicial proceedings may be published without the publisher incurring liability. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982); *West v. Morehead*, 396 S.C. 1, 720 S.E.2d 495 (Ct. App. 2011).

Nothing supplied by plaintiff supports a finding that a genuine issue of material fact exists with respect to falsity or privilege; therefore, as a matter of law, defendants are entitled to judgment in their favor on the libel claim.

Plaintiff's intentional infliction of emotional distress claim merely recites the allegations of the libel claim and asserts that the publication constituted an intentional infliction of emotional distress. As the South Carolina Court of Appeals explained in *Todd v. S. C. Farm Bureau*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), *rev'd on other ground*, 287 S.C. 190, 336 S.E.2d 472 (1985), the tort of outrage excludes from its scope "those wrongs that could be brought under other actions, such as defamation." F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* (2d ed. 1997) p. 419. Plaintiff has failed to establish that any facts exist which would provide a basis for recovery on this claim independent of his libel claim.

Based on the matters of record and the discussion above, IT IS HEREBY ORDERED that defendants' motion for summary judgment be, and hereby is, granted.

IT IS FURTHER ORDERED that defendants shall have judgment in their favor as a matter of law.

AND IT IS SO ORDERED.

Charleston, South Carolina

October 31st, 2014


R. MARKLEY DENNIS, JR.
Chief Judge for Administrative Purposes
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2013-CP-10-5444

Clark D. Thomas

PLAINTIFF,

Evening Post Publishing Co.,
et al.

DEFENDANT.

ORDER

BY

2014 DEC -1 PM 1:27
JULIE ARMSTRONG
CLERK OF COURT

FILED

This matter comes before me upon Motion to Alter or Amend Judgment to Include Specific Findings of Fact and Conclusions of Law, filed November 17, 2014 by Pro Se Plaintiff, **Clark D. Thomas**. After fully considering said Motion, this Court finds no need for oral argument in this matter and, therefore, the Motion is DENIED. The Order Granting the Defendant's Motion for Summary Judgment, filed on November 4, 2014, stands.

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Charleston, South Carolina

November 24, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL DISTRICT

Case No. _____

Clark D. Thomas,

Plaintiff,

V.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually,

Defendants.

COMPLAINT

JURY TRIAL REQUESTED

FILED
2013 SEP 17 AM 9:54
JULIE J. ARISTARONG
CLERK OF COURT

The Plaintiff, Clark D. Thomas, complaining of the Defendants herein, alleges as follows:

1. Plaintiff (hereinafter referred to as Thomas) is currently in the custody of the South Carolina Department of Corrections (SCDC) at the Broad River Correctional Institution (BRCI), Richland County, South Carolina. Prior to Thomas' incarceration he was a citizen and resident of Charleston County, South Carolina and intends to resume his residence there upon his release.

2. Thomas hereby demands a trial by jury in this libel action as guaranteed by Article I, §§ 16 and 23 of the South Carolina Constitution.

3. The Defendant Evening Post Publishing Company, d/b/a/ The Post and Courier (hereinafter referred to as the Post), is a company in Charleston County, South Carolina, that publishes a daily newspaper known as *The Post and Courier*.

4. The Defendant Glenn Smith (hereinafter referred to as Smith) is a resident of the state of South Carolina and all times mentioned herein, was an agent or employee of the Post, and was acting in the course of and the scope of his employment with the Post.

5. On June 7, 2006, Thomas was charged with the crimes of kidnapping, criminal domestic violence of a high and aggravated nature (CDVHAN) and sexual battery on spouse which was later upgraded to criminal sexual conduct-1st (CSC-1st) (hereinafter referred to as the underlying criminal matter).

6. On June 9, 2006, the Post published an article written by Smith wherein he gave a detailed account of the allegations fabricated by Thomas' wife, Rachel M. Crowley (hereinafter referred to as Crowley), that resulted in the underlying criminal charges delineated in paragraph 5. (R.p. 16) (See p. 8—Exhibit 8).

7. On March 1, 2007, the Post published an article written by Smith wherein he reported Thomas' prospective release from jail to await trial in the underlying criminal matter and, among other things, reiterated Crowley's fabricated allegations referred to in paragraph 6. (R.p. 17-18) (See pp. 9-10—Exhibit 43-A).

8. On March 1, 2007, after having read Smith's article delineated in paragraph 7, Douglas and Shirley Warner faxed a letter to Judge Markley Dennis. Therein, among other things, the Warners expressed their belief that Thomas is a very bad person whom will likely murder Crowley if he is released from jail. (R.p. 19) (See p. 11—Exhibit 43-B).

9. On or about March 3, 2007, Thomas contacted Smith and informed him that the articles delineated in paragraphs 6 and 7 are rife with lies.

10. On July 12, 2008, the Post circulated an article on their website *Charleston.net* written by Smith wherein he made it known that Thomas had been found guilty of kidnapping and CDVHAN and not guilty of CSC-1st in the underlying criminal matter. Smith also reiterated Crowley's fabricated allegations referred to in paragraph 6. (R.p. 20-21) (See pp. 12-13—Exhibit 73).

11. On July 12, 2008, some of those who read the article delineated in paragraph 10 made the following comments about Thomas on a blog the Post maintains at their website *Charleston.net*, (R. pp. 22-26) ~~(See pp 14-18 Exhibit 73-F)~~:

- (a) Thomas is a *damn idiot*;
- (b) Thomas should have received a longer sentence than 20 years;
- (c) Thomas is *a coward of a man to terrorize a woman like that*;
- (d) *Thomas is a man full of much anger and violence. Prison will not reform him in any way, but locking him up is the only answer*;
- (e) *Good riddance*;
- (f) *What a freak*;
- (g) *It's about time this scumbag was finally found guilty and sentenced This poor woman had to live in fear the past 2 years while this loser was out on bailing awaiting trial I hope he gets whats coming due to him in prison from his girlfriend named bubba (sic)*;
- (h) *Some people are just demented*; and,
- (i) *Ever heard of Ted Bundy*

12. On September 20, 2012, Smith attended the marital dissolution trial in the case of *Clark D. Thomas v Rachael M. Crowley*. Crowley is the alleged victim in the underlying criminal matter.

13. Thomas is a private figure, not a public figure or public official, and the proceedings delineated in paragraph 12 were not of public concern.

14. During the course of his divorce trial delineated in paragraph 12, while under oath, Thomas entered the following evidence into the record of those proceedings:

- (a) That Smith was in the courtroom;

- (b) That Smith printed a lot of lies about Thomas;
- (c) That Smith would seek to destroy Thomas' credibility in his next article for the Post; and,
- (d) That Smith lacked integrity, was not interested in the facts, and his only concern was selling papers for the Post.

15. Thomas' mother, Carol Ann Cook (herein after referred to as Cook), approached Smith during the trial delineated in paragraph 12 and informed him that many lies had been told about Thomas in the underlying criminal matter and, that he should hear the truth before writing another article.

16. On September 21, 2012, Cook sent an email notifying Smith that Thomas wanted to provide him with documents to prove what actually happened in the underlying criminal matter.
(R.P. 27)
(See p. 19—Exhibit 162).

17. The Post wickedly, maliciously, and with the intent and design to injure, disgrace, and defame, and to bring him into public discredit and obloquy, published on September 23, 2012, a fault, malicious, misleading and defamatory article concerning Thomas that was written by Smith.
(R. pp. 28-31)
(See pp. 20-23—Exhibit 163).

18. The article delineated in paragraph 17 was written by Smith and published by the Post to avenge Thomas for the statements he made on public record regarding Smith's scandalous tack that are outlined in paragraph 14.

19. The fault, misleading and defamatory statements and innuendos, which include unprivileged publication to third parties, are so pervasive in the article delineated in paragraph 17 as to require Thomas to attach the document wherein these causes of action are particularized.
(R. pp. 36-58)
(See pp. 27-50—Exhibit 164).

20. When Smith wrote and the Post published the article delineated in paragraph 17, these

Defendants demonstrated a reckless disregard for the truth for his falsity by declining to verify the details and truth of the matters therein and, by manipulating the fact for the purpose of misleading the public to further their agenda to malign Thomas.

21. The article delineated in paragraph 17 was published with actual and implied malice.

22. The article delineated in paragraph 17 was deliberately and intentionally worded, phrased, set up and published in as distasteful a manner as possible to malign Thomas without regard to Thomas' right.

23. The article delineated in paragraph 17 is false, untrue, misleading and, in its absence of *substantial truth*, is intended to injure Thomas' feelings and reputation, and the Post and Smith knew and should have known it to be false, untrue and misleading.

24. The acts of the Post and Smith were intentional and reckless and inflicted severe emotional stress on Thomas and these Defendants were certain or substantially certain that such distress would result from their conduct.

25. The conduct of the Post and Smith was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

26. The actions of the Post and Smith were the direct and proximate cause of Thomas' emotional stress and the emotional distress suffered by Thomas were so severe that no reasonable person could be expected to endure it.

27. The Post failed and refused to retract, recall, or apologize for publishing the defamatory and malicious article delineated in paragraph 17 after having been requested to do so.

(R. pp. 32-81)
(See pp. 24-73—Exhibit 164).

28. Smith wrote and the Post published the faults, defamatory and libelous statements

in the article delineating paragraph 17 after having refused to verify the details and the truth of the matters therein, and proceeded to publish the same without making an investigation of the facts and in reckless disregard of the rights and reputation of Thomas.

29. By virtue of the false statements particularized in the documents delineated in paragraph 19, Thomas has suffered great anguish of mind and body, exposed to public hatred, contempt, ridicule, has been deprived of the benefits of public confidence and social acceptance in the community, has been put to great embarrassment and such embarrassment continues and will continue in the future to cause Thomas great anguish of mind and body.

30. Thomas has also suffered damages in one or more of the following particulars.

- (a) Severe depression;
- (b) Anxiety and nervousness;
- (c) Grief and sorrow;
- (d) Mental shock and suffering;
- (e) Loss of sleep and nightmares;
- (f) Loss of familial support; and,
- (g) Loss of allies, friends, colleagues, and associates.

WHEREFORE, having fully set forth the complaint herein, the Plaintiff prays for judgment against the Defendants in the amount of \$10,000,000 for actual damages; an appropriate award of punitive damages, pre-judgment and post-judgment interest; and for such other relief as the Court deems just and proper.

Respectfully submitted,

_____, 2013
Columbia, SC

Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

Friday, June 9, 2006

Man charged with kidnap, torture

BY GLENN SMITH
The Post and Courier

North Charleston police say a 43-year-old man tortured his estranged wife with a Taser stun gun as he kept her bound and chained with leg irons inside a hotel room for up to 45 hours this week.

Clark David Thomas reportedly lured his wife to his room at the InTown Suites on Mazyck Road on Monday and then incapacitated her with a Taser, police said.

For nearly three days, Thomas kept her bound with plastic zip ties, handcuffs, tape and shackles as he repeatedly jolted her body with electric charges from the stun gun, police said. He set up a video surveillance system so he could see anyone approaching the room from the outside, police said.

His wife, 21-year-old Rachel Marie Crowley, finally escaped after Thomas took her for a drive in his minivan on Wednesday, police said. Several residents called police after seeing her jump from

the minivan and run under the World War II Memorial Bridge, also known as the North bridge, along Cosgrove Avenue with Thomas in pursuit, police said.

When officers arrived, Thomas was carrying his crying wife back to the vehicle. Shaking uncontrollably, she told officers: "I am just so scared of him, he said next time he will kill me," according to arrest affidavits.

Police arrested Thomas and charged him with kidnapping and criminal domestic violence of a high and aggravated nature. Magistrate Linda Lombard set bail at \$200,000.

Crowley was transported to an area hospital for treatment. She had red marks

Please see CHARGED, Page 6B



Clark Thomas

Man charged with kidnap and torture

CHARGED From Page 1B

on her wrists from her restraints and as many as 40 marks on her stomach, chest and back that appeared to have been caused by prongs from the Taser gun, police said.

She could not be reached for comment Thursday.

Inside Thomas' hotel room, officers found zip ties, handcuffs, leg shackles, the video surveillance system and a Taser gun, police said. They noted that Thomas had been using heroin and found several broken and new syringes inside the room as well, according to a police report.

Spencer Pryor, a police spokesman, said people staying at the hotel apparently were unaware anything out of the ordinary was occurring in the room. Investigators found no one who reported hearing noise coming from the

room or noticing any strange activity, he said.

"We certainly had no idea what was happening in that particular room," said Mike Weinstein, associate counsel for the Atlanta-based hotel chain. "It's definitely disturbing. We try to provide a clean, safe environment for all of our guests and we are thankful that the police showed up and took care of the matter."

Crowley told police she and Thomas have been married for two years. They had separated recently, in part because of an episode of domestic violence in January 2005, police said. Investigators noted that Thomas was convicted of criminal domestic violence one month later. Pryor said he had no details to provide about that episode.

Crowley told officers that her husband was a heavy heroin user and that she had been avoiding

him by staying with her mother for some time.

On Monday, however, Thomas showed up at her mother's home in Adams Run about 3 p.m. and said he wanted to take Crowley to his hotel room so she could retrieve some of her belongings. When they walked into the room, Thomas reportedly pulled out a Taser, jammed the stun gun into her back and pushed her to the floor, according to a police report.

Crowley told police that Thomas spit in her face, accused her of cheating on him and bound her to a chair. She remained there until about noon Wednesday, when Thomas allegedly grabbed her by the hair and escorted her to his minivan, saying nothing about their destination, police said.

As they drove toward the bridge, Crowley made her move and caused Thomas to swerve the vehicle, forcing him to slow down, police

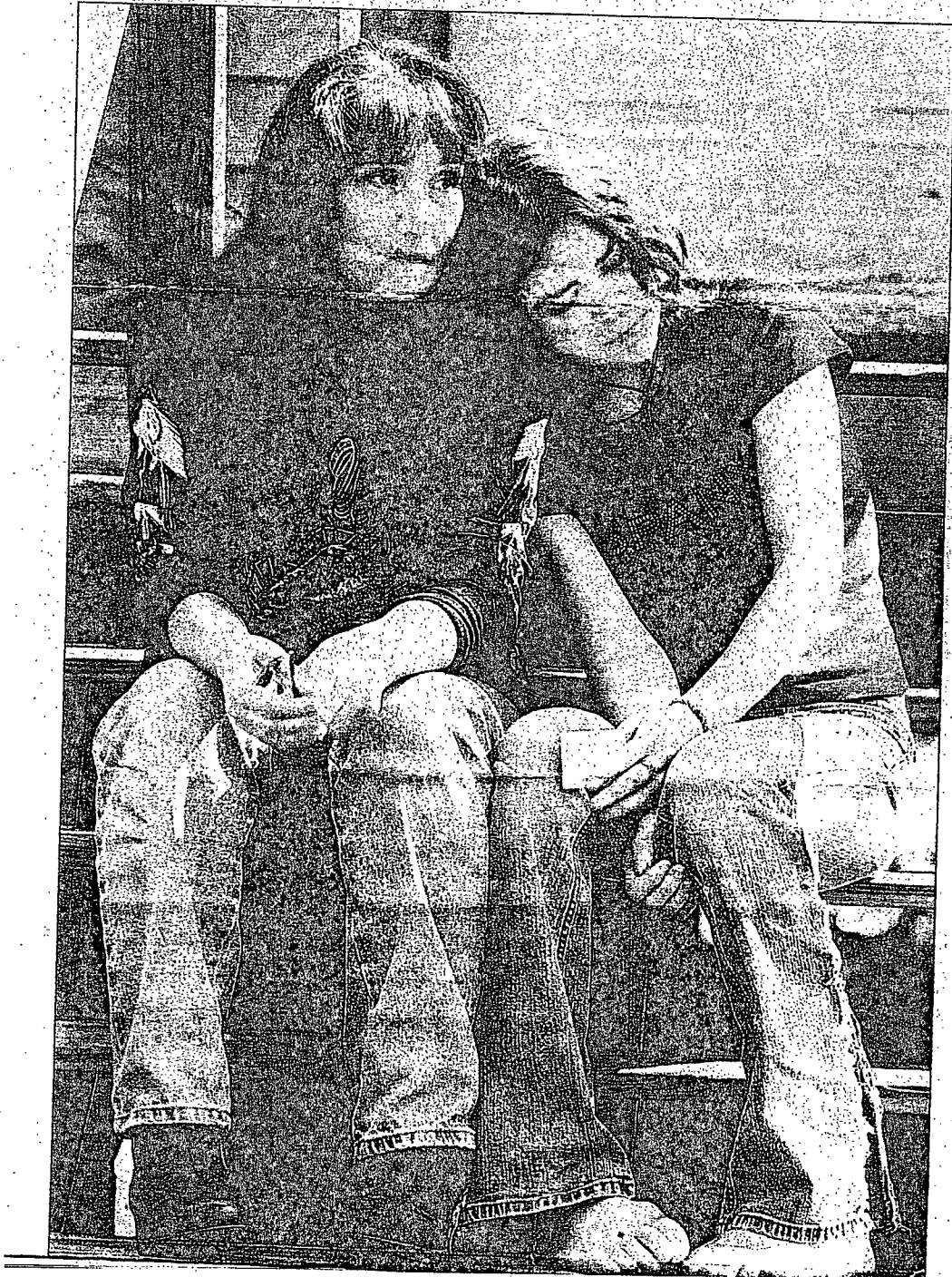
said. When he did, she jumped out and ran, catching the eye of several residents, police said.

A booking photo from the Charleston County jail shows Thomas with a swollen left eye and cuts on his cheek, chin and ear. Pryor said the injuries occurred before his arrest.

Reach Glenn Smith at 937-5556 or gsmith@postandcourier.com

March 1, 2007 • Charleston • North Charleston, S.C.

Justice for all is hard for family to swallow



Man accused of torture might be released on bail

BY GLENN SMITH
The Post and Courier

ADAMS RUN — Rachel Crowley used to take long walks in the thick stands of trees that fill her mother's 10-acre plot in this rural outpost. She'd soak up the sunshine, pause to read a book, listen to the rustle of leaves.

Now, Crowley rarely ventures

outside alone. Every shadow in the woods seems to hold the promise of danger. Eight months ago, her estranged husband, Clark David Thomas, was accused of torturing her with a stun gun as she was kept bound and chained with leg irons inside a North Charleston hotel room over three days.

Nothing has been the same since. Crowley, 22, starts at the slightest

noise. Nightmares rattle her sleep, and she's afraid to even step outside after dark.

This week, the news got even worse: The man who haunts her dreams is about to be released from jail.

A judge recently ruled that Thomas has languished long enough in the Charleston County Detention Center

Please see TORTURE, Page 11A

Man accused of torture might get out on bail

TORTURE From Page 1A

while awaiting his day in court. The ruling sets the stage for Thomas to leave jail as early as Friday and await his trial as a free man.

That thought terrifies Crowley and her family, who are convinced Thomas will try to come after her, no matter what conditions the court sets upon his release. Thomas, 43, has a 21-page rap sheet and twice has been convicted of assaulting Crowley.

"This man is bad news," her mother, Cathy Meree, said. "He has no business walking around on the streets. The judicial system wonders why people have no faith in them. Well, this is why."

Thomas' lawyer, Tommy Bolus, said his client is entitled to the presumption of innocence and shouldn't have to stew in jail for a year or more waiting for the prosecution to ready its case against him. Thomas still insists he did nothing wrong in that hotel room, he said. "My client's position is that it was a consensual husband/wife relationship," he said.

Thomas and Crowley met several years ago through mutual friends and were married in March 2004. She was a girl from the country, just 19. He was 41, an electrician by trade and a repeat offender with a criminal record dating to 1980. He has been convicted of numerous check fraud counts, trespassing, damaging property, driving under the influence, forgery, receiving stolen goods and injuring a person in a hit-and-run crash. He also has two domestic violence convictions stemming from attacks on Crowley, state records show. Court records indicate he has a drug problem, and Crowley told authorities he had become a

What is bail?

State law guarantees all suspects a chance at bail because they are presumed innocent until they stand trial; bail is not to be used as punishment. State and federal laws require judges to consider only two things when someone seeks bail after being charged with a crime: risk of flight and danger to the community. In other words, bail is supposed to be set only to discourage people from fleeing.

heavy heroin user.

In March 2003, Thomas reportedly assaulted Crowley and threatened to kill her and her family during an argument in Ravenel. Then, in January 2005, Thomas reportedly punched, kicked and tried to choke Crowley in West Ashley after she discussed ending their marriage, according to a police report.

The couple separated after the incident, and Crowley went to stay with her mother in Adams Run. On June 5, however, Thomas showed up at her mother's home and said he wanted to take Crowley to his North Charleston hotel room so she could retrieve some of her belongings, police said. When they walked into the hotel room, Thomas pulled out a stun gun, jammed it into her back and pushed her to the floor, according to a police report.

Crowley told police that Thomas spit in her face, accused her of cheating on him and bound her to a chair. He kept her restrained with plastic zip ties, handcuffs, tape and shackles as he repeatedly jolted her body with electric charges from the stun gun, police

prosecution or harming others while awaiting judgment on the charges against them.

With surety bonds, someone puts up money or property equal to the bail amount. If the defendant flees or violates bail, those assets can be seized.

Personal recognizance bonds are simple IOUs to pay money if bail is violated. Cash does not have to be posted up front to win release from jail.

He also set up a video surveillance system so he could see anyone approaching the room from the outside, police said.

Investigators said Thomas held Crowley for about 45 hours before she was able to escape after he took her for a drive in his minivan.

Thomas was arrested the same day and has sat in jail ever since, unable to post \$270,000 bail set on charges of kidnapping, aggravated criminal domestic violence and sexual battery. Thomas twice asked judges to reduce his bail and twice was refused. Bolus then asked the court to uphold Thomas' right to a speedy trial so his client wouldn't have to languish in jail waiting to confront his accusers.

Last month, Circuit Judge Markley Dennis ordered prosecutors to bring the case to trial by this week or he will release Thomas on a personal recognizance bond, according to attorneys involved in the case.

Assistant Solicitor Nathan Williams said prosecutors aren't ready to proceed because they are awaiting the results of lab tests on crucial evidence. Such delays are not unusual given the complexity

of investigations and the backlog at crime labs. But going forward without critical evidence "would not be responsible," he said.

Thomas will likely leave jail at week's end. He will be required to stay away from Crowley and wear a satellite monitoring device to track his movements.

"If he's caught doing anything," Bolus said, "it's back to jail."

The restrictions provide little comfort to Crowley and her family. Meree said Thomas has little regard for the judicial system and will likely break the rules as soon as he gets a chance. She and her daughter feel vulnerable on their property, which is so remote that no one even noticed when their house burned to the ground last year while they were away, she said.

If something happens to her daughter, Meree said, she will hold the judge responsible.

When contacted this week, Dennis would not comment on his ruling, saying judicial rules prevent him from discussing any aspect of the case.

Crowley said she is furious with the ruling. The burn marks on her skin have healed, but the emotional toll remains. She jumped the other day when a friend turned on a stove, making a clicking noise that sounded like a stun gun. Her father recently bought her a mobile home that sits on her mother's land, but she is scared to be in it alone.

She took a drag off a cigarette Wednesday morning as she gazed around the tree-lined landscape, her slight body trembling from the effects of fever and flu.

"This was my sanctuary. Now, every noise I hear..." she said, her voice trailing off. "I'm just so disappointed in our system."

Douglas and Shirley Warner
47 Wolk Drive
Charleston, SC 29401
(843) 556-2363

March 1, 2007

BY FAX: 843-719-4599

The Honorable Dennis R. Markley, Jr.
P.O. Box 1800
Moncks Corner, SC 29461

Re: Rachel Crowley
Clark David Thomas

Dear Judge Markley:

After reading the article in today's Post and Courier, I am writing this to request that Clark David Thomas be kept in the Charleston County Detention Center and not allowed to be free awaiting his trial. I do not know him or Rachel, but I understand her fear, and know that she should be very afraid of him getting out.

My stepdaughter, Liza, was murdered by her husband. Her situation was so similar to Rachel's that it has me unable to just let this article go. Liza's husband was released from a psychiatric center because they could not force him to stay in and within 24 hours he killed her, even though everyone tried to protect her.

According to the article, Clark David Thomas is a very bad person and he should not be allowed to be free. Victims should have more rights than their attackers, but in domestic violence cases they rarely do. Please don't allow Rachel Crowley to be murdered.

Sincerely,

Shirley Warner
Shirley Warner

Cc: Michael T. Bolus, Esquire
(hy fax: 747-1325)

- [Letters to the Editor](#)
- [Commentary](#)

THE EASIEST PLACE IN THE COUNTRY TO BUY A VEHICLE

7 MODELS THAT OFFER AN EPA EST. HIGHWAY OR BETTER

30 MPG

Based on EPA Specifications

March

CHRYSLER

Man guilty of attack with a stun gun

By [Glenn Smith \(Contact\)](#)
The Post and Courier
Saturday, July 12, 2008



Clark David Thomas

A judge has sentenced a 46-year-old man to 20 years in state prison for kidnapping and torturing his estranged wife with a stun gun at a North Charleston motel in 2006.

After a two-day trial, a Charleston County jury on Thursday found Clark David Thomas guilty of kidnapping and criminal domestic violence of a high and aggravated nature.

He also had been accused of sexually assaulting his wife, but the jury acquitted him of that charge, Assistant Solicitor Nathan Williams said.

The victim, 23-year-old Rachel Crowley, said she was elated by the verdict. She had lived in terror for two years that Thomas would come after her again.

"I feel great now," Crowley said Friday. "I slept better last night than I have at any time in these past two years."

Crowley and Thomas married in March 2004, but they separated after a January 2005 incident in which Thomas assaulted her, authorities said. Crowley moved in with her mother in Adams Run.

Thomas showed up there June 5, 2006, and said he wanted to take Crowley to his North Charleston motel room so she could retrieve some of her belongings. When they walked into the room, Thomas pulled out a stun gun, jammed it into her back and pushed her to the floor, police said.

Thomas restrained Crowley with plastic zip ties, handcuffs, tape and shackles as he repeatedly jolted her body with electric charges from the stun gun, police said.

Investigators said Thomas held Crowley for about 45 hours before she was able to escape after he took her for a drive in his minivan.

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Crowley said she was left shaken by the attack, struggling with nightmares and afraid to step outside after dark.

She said it was extremely difficult for her to take the witness stand, face Thomas and recount her story this week.

"It was the hardest thing I've ever done in my life. But I was scared that he was going to do this to somebody else if I didn't get up there. And I couldn't live with myself if that happened."

Crowley praised Williams, North Charleston Patrolman Chris Talbot and others who worked on the case and supported her during the trial.

Circuit Judge Deadra Jefferson sentenced Thomas to 20 years in prison on the kidnapping charge and 10 years on the domestic violence count.

The sentences will run concurrently. He will have to serve 85 percent of that time before he is eligible for release, authorities said. Thomas' lawyer, Tommy Bolus, declined to comment Friday on the verdict.

Reach Glenn Smith at gsmith@postandcourier.com or 937-5556.

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Posted by [Thomas1776](#) on July 12, 2008 at 1:22 a.m. (Suggest removal)

That's all he got for a sentence? Sheesh! Should have been 30 years.

Why wasn't he charged with the federal kidnapping statute?

Posted by [10216340](#) on July 12, 2008 at 7:12 a.m. (Suggest removal)

...was thinking the same thing...should have been a longer sentence.

Posted by [JH09915](#) on July 12, 2008 at 7:12 a.m. (Suggest removal)

Look at this damn idiot!

Will bet he gets his ass "jolted" in prison..

Posted by [EvilGenius](#) on July 12, 2008 at 7:24 a.m. (Suggest removal)

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Posted by EvilGenius on July 12, 2008 at 7:24 a.m. ([Suggest removal](#))

he looks "stunned" by the sentence. His cell mate will "shock" him into reality.

Posted by moonpie on July 12, 2008 at 7:41 a.m. ([Suggest removal](#))

I bet this is the "thomas 1776" person that blogs on here!

Just kidding thomas...! Keep your panties on.

WOW WHAT A SQUIRRLY LOOKING DUDE.

Posted by ColdBeer on July 12, 2008 at 8:17 a.m. ([Suggest removal](#))

While I agree that this guy should have gotten a longer sentence, at least it wasn't a gun. Sean Shevlino only got ten years for two ARMED robberies.

Our entire sentencing system needs to be revamped.

Posted by lucy_fan on July 12, 2008 at 8:32 a.m. ([Suggest removal](#))

True, at least it wasn't a gun. But shoulda been longer. What a coward of a man to terrorize a woman like that.

Posted by lostinterestfast on July 12, 2008 at 9 a.m. ([Suggest removal](#))

Beware of the wandering eye!

Posted by RTC on July 12, 2008 at 9:10 a.m. ([Suggest removal](#))

This is a man full of much anger and violence. Prison will not reform him in anyway, but locking him up is the only answer. He should have gotten a longer sentence. If this woman had not escaped, there is no telling what his intentions might have been.

Posted by Tulane75 on July 12, 2008 at 9:20 a.m. ([Suggest removal](#))

Posted by Thomas1776

"Why wasn't he charged with the federal kidnapping statute?"

Could it be that state prosecutors charged him appropriately? And that federal charges are only brought in federal court? The facts of the case?

Then again, Thomas 1776 never let the facts interfere with his constant criticism of anything done in pretty much any context.

I want him on my side if we ever get a discussion going on the designated hitter rule.

Posted by common sense on July 12, 2008 at 9:32 a.m. ([Suggest removal](#))

Duuude, where's my Doritos?

I'm just sayin...

Posted by Fiscal Conservative on July 12, 2008 at 10:04 a.m. ([Suggest removal](#))

Good riddance.

Posted by farfallasneaks on July 12, 2008 at 10:16 a.m. ([Suggest removal](#))

Threatening with a gun vs TORTURING with a stun gun are two different things y'all. He could have tortured with scissors, and it would still have given him the same punishment. TORTURE is more serious.

what a freak. i kind of want to know more details to this story. how did she escape? what was he saying to her? what was he thinking he would accomplish. and WHY did it take him over a year before deciding to do something like this?

Posted by skeeter on July 12, 2008 at 10:28 a.m. ([Suggest removal](#))

Hey Tulane I hope you think the "designated hitter" rule sucks. I do! That's why I like the National League!

Oh by the way this dude looks crazed and I for one will sleep better knowing he's with "Bubba"

Posted by Fiscal Conservative on July 12, 2008 at 10:37 a.m. ([Suggest removal](#))

Yea skeeter DH sucks. Next thing you know the NBA is going to have a designated free thrower.

Posted by Tulane13 on July 12, 2008 at 10:52 a.m. ([Suggest removal](#))

Skeeter,

I decided at 15 that I would marry a girl from a National League city. In college, my Cleveland "friend" was great, but I just couldn't deal with the Indians!

Go Cubs!

I hate the DH!

Posted by ysillyme on July 12, 2008 at 10:56 a.m. ([Suggest removal](#))

I think coldbeer should get 10 years for not knowing the sentencing guidelines. His posts would be dissalowed in my hometown paper in N.C., he needs a designated thinker.

Posted by Thomas1776 on July 12, 2008 at 10:57 a.m. ([Suggest removal](#))

Tulane75,

State prosecutors have no authority in federal federal matters. Kidnapping is also a federal offense and prosecuting him in federal court would not be barred by the 5th Amendment.

Posted by Thomas1776 on July 12, 2008 at 10:59 a.m. ([Suggest removal](#))

Moonpie,

I saw you at the grocery store the other day. You didn't know it was me. But you were on sale ... 2 for a dollar.

Posted by drp7773 on July 12, 2008 at 10:59 a.m. ([Suggest removal](#))

20 years and he will be out on good behavior when? If I was her I would get the hell out of town and start a new life, anyone that can do this then spends time in the pen, seems to me he will be even more pissed off when he gets out and who will he be looking for.

Posted by Thomas1776 on July 12, 2008 at 11:06 a.m. ([Suggest removal](#))

I wonder what that woman did to incite and provoke him so? People just don't do this kind of sadist stuff for the hell of it. Many of the family court cases would raise eyebrows in disbelief if people knew how litigants pick and taunt each other back and forth. Verbal punches, is what they are called.

Nobody likes to get screwed over. Hence, you end up in battles. Winner take all; even some will lie at the blink of an eye just to try an win.

Posted by Thomas1776 on July 12, 2008 at 11:12 a.m. ([Suggest removal](#))

You people might not know it, but Judge Dedra Jefferson (black) has a thing for white men. Just ask around Broad Street. She's another odd ball Judge who was Judge Danny Martin's (black, and now retired) replacement.

Posted by ysillyme on July 12, 2008 at 11:18 a.m. ([Suggest removal](#))

Thomas1776—I can top your moonpie story. I saw c.b. on sale the other day and it came w/ a roll of toilet paper. Now fancy that.

Posted by Iknow on July 12, 2008 at 11:21 a.m. ([Suggest removal](#))

thomas, don't let your ignorance of the law prevent you from posting. See federal kidnapping statute below.

§ 1201. Kidnapping

- (a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—
- (1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary if the person was alive when the transportation began;
 - (2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;
 - (3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;
 - (4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116 (b) of this title; or
 - (5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties,
- shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

Posted by Tulane75 on July 12, 2008 at 11:31 a.m. ([Suggest removal](#))

Thomas' ignorance never stops him from posting!

Posted by harder240 on July 12, 2008 at 11:37 a.m. ([Suggest removal](#))

Its about time this scumbag was finally found guilty and sentenced. Something has to be done to speed up this criminal justice system. This poor woman had to live in fear for the past 2 years while this loser was out on bail awaiting trial. Thank god he didn't kill her while he was out. I hope he gets whats coming due to him in prison from his girlfriend named bubba. As for the victim i praise your courage as you testified against him at trial i'm sure it wasn't easy but it had to be done. You probably saved your life and someone elses.

Posted by bartley8184 on July 12, 2008 at 2:02 p.m. ([Suggest removal](#))

I really don't think prison is the answer necessarily. I think a good public flogging with a cat o nine tails and a good stiff fine - say, forfeiture of all future Social Security benefits to the victim in the form of a lump sum payment - would probably deter him. Of course, I think that should be an option for the victim to recommend.

See the problem is, our dysfunctional and maladapted society is breeding these people and we will never be able to build prisons fast enough to contain them.

Posted by preachlove on July 12, 2008 at 2:04 p.m. ([Suggest removal](#))

thomas1776 - Judge Jefferson is black - SO WHAT! If she likes white men - SO WHAT! And lastly she IS NOT AN ODDBALL JUDGE. SHE IS A GOOD JUDGE, PERIOD!

And here's something for you thomas - I bet you're white and a redneck racist jerk. How's that!

Posted by wpc3ion on July 12, 2008 at 3:15 p.m. ([Suggest removal](#))

I imagine "Big Bubba" has a stun gun for him...have fun the next 20 years Mr. Thomas...

Posted by RW on July 12, 2008 at 3:43 p.m. ([Suggest removal](#))

What a creepy looking little spud!! Get ready for some jail house taser! Where's the ACLU...? Oh yeah...he's a white heterosexual! They couldn't help him! Qick boy you better tell them that you are a woman trapped in a mans body and you are being persecuted because you support the Taliban!

Posted by gr8ful on July 12, 2008 at 5 p.m. ([Suggest removal](#))

Kudos to Rachel for having the courage to do what she did.

What a torturous nightmare her life has been since the torturous nightmare he put her through. He should get more time, but what he's got will be well spent with all the Bubbas. Good for him.

People like this don't need provocation. I know. I dated one for 4 years. He put a gun to my head and told me he'd kill me, I knew would if I didn't leave and detach carefully. It's still a miracle to me that he didn't. No, I did NOTHING to provoke that, except believe my love could change the crazy bastard and finally give him the normalcy he must have longed for. HA! Once it sunk in THAT would never happen, I left and never regretted it, though lived in fear for years til he left town.

Some people are just demented. Whether they got that way on their own or someone made them, I believe once they get to a certain point, there is no going back unless by some miracle of God. These people don't want the miracle of God because they'd have to give up their own power tripping.

Let's hope he stays for the full 20 years so this girl can have some peace - and the rest of us.

Posted by walleyedwoman1215 on July 12, 2008 at 5:07 p.m. ([Suggest removal](#))

Thomas1776 wrote: I wonder what that woman did to incite and provoke him so? People just don't do this kind of sadist stuff for the hell of it.

Umm, yes, people do. Ever heard of Ted Bundy? He never gave a good reason for raping, torturing and killing 31 women. One was 12; he snatched her from a schoolyard. Doubt if she provoked him. Some people are simply sadistic.

Posted by justafan on July 12, 2008 at 5:20 p.m. ([Suggest removal](#))

Coldbeer...I have a couple questions. I know it will be tough but no copying off your neighbor.

How do you compare a couple 16 year olds using a plastic gun and making off with \$30/kid with a 46 year old kidnapping and torturing a woman for 2 days?

Were you the guy cowering in the corner in the grocery store frozen in fear unable to help the woman being held up with a plastic gun?

Trial Thursday Thomas vs. Crowley

Carol Cook <cacook1030@gmail.com>

Fri, Sep 21, 2012 at 9:42
AM

To: Glenn Smith <gsmith@postandcourier.com>

Mr. Smith,

I'm Carol Cook, David Thomas mom. We spoke yesterday and David has since spoken to me. He wants you to have his story so you will know the other side. He says you will find it fascinating. I have his written binded information and documents. We can arrange for him to talk to you directly. You will have to let me know a time you would be calling.

You may call me at cell: 803-422-0693. My email is
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Thank you,
Carol Cook

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Inmate with limited law knowledge finally gets his comeuppance

Glenn Smith

Posted: Sunday, September 23, 2012 12:17 a.m.

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Thomas

Rachel Crowley hoped she had seen the last of her husband when a judge sent him to prison for 20 years for kidnapping and torturing her with a stun gun at a North Charleston motel in 2006.

The attack left her scarred and rattled, alone and broke. Crowley didn't have the money to hire an attorney, and she was scared to provoke her husband by filing for divorce. She hoped that if she just let him be, he would serve his sentence and leave her alone.

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Rachel Crowley, right, says she was kidnapped by her husband Clark David Thomas in 2007 and tortured with a stun gun. At

But Clark David Thomas wasn't about to let that happen.

The 50-year-old inmate got himself a do-it-yourself legal guide, taught himself some law and filed his own divorce complaint, accusing Crowley of mental and physical cruelty, adultery and habitual drunkenness.

What's more, Thomas asked the court to award him alimony and force his victim to support him and pay his legal expenses. He also sought the return of his property, including a stash of Maxim men's magazines.

Thomas filed his initial complaint in November 2010, and the case dragged out for nearly two years before coming to a head in a Charleston County courtroom last week.

Thomas buried his bride, now 27, in a blizzard of paperwork and legal motions, many aimed at revisiting the allegations at the heart of his 2008 criminal trial.

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left is her mother, Cathy Merce.

Because Thomas was entitled to represent himself, the state had to foot the bill for his trips to Charleston from Broad River Correctional Institute in Columbia, where he is serving his sentence.

Two prison guards had to accompany him on each trip, corrections officials said.

The cost to taxpayers? Close to \$5,000, according to the state Department of Corrections.

Family Court judges offered to grant him a divorce about a half-dozen times over the past two years, but each time Thomas turned them down. He wanted a trial where he could face his wife in court and refute her accounts of abuse at his hands, which he has long insisted were fabricated.

He said he also worried that not contesting her claims of abuse would be seen as a tacit admission of his guilt.

"I never got a chance to tell my side of the story," he told a judge Thursday. "I sought to prove I'm not the animal I have been depicted as being."

So for eight long hours, with 34 witnesses in tow and one hand shackled to his side, Thomas attempted to do just that as his loyal family, his trembling wife and his horrified mother-in-law looked on.

"I just want this to be over," Crowley said. "It's like I am having to relive everything all over again."

A rocky union

Thomas and Crowley met through mutual friends and were married in March 2004. She was a girl from the country, just 19. He was 41, an electrician by trade and a repeat offender with a criminal record ranging from check fraud and forgery to domestic violence.

By all accounts, the pair had a tumultuous relationship filled with fights, substance abuse and hard times as they bounced from one motel to another without a stable home.

Crowley said Thomas got her hooked on heroin, crack cocaine and booze to control her. Thomas denies that was the case, though he acknowledged struggling with a drug problem.

Crowley had gone back to live with her mother in Adams Run when Thomas showed up at their house on June 5, 2006, and invited her to go with him to his North Charleston motel room to retrieve her belongings.

When they walked into the room, Thomas pulled out a stun gun, jammed it into her back and pushed her to the floor, police said. He restrained Crowley with plastic zip ties, handcuffs, tape and shackles as he repeatedly abused her and jolted her body with electric charges from the stun gun, police said.

Investigators said Thomas held Crowley for about 45 hours before she was able to escape after he took her for a drive in his minivan.

Police arrested Thomas the same day, though he insisted that what happened in the motel room had been consensual. Investigators didn't buy his story, and neither did the jury that found him guilty in July 2008 of kidnapping and criminal domestic violence of a high and aggravated nature.

He will not be eligible for release until December 2024.

Long road to trial

Thomas initially filed for an uncontested divorce in November 2010, seeking only an official split and to have his court fees paid by Crowley.

He later came back with demands for alimony, and he asked the court to find her at fault for cruelty and misbehavior during their marriage. He accused her in court filings of concocting the kidnapping story to get back at him for asking her for a divorce in June 2006.

North Charleston attorney Laree Hensley agreed to represent Crowley, assuming it would be a relatively simple divorce case. She then helped Crowley, who is unemployed and of limited means, file a counterclaim for divorce.



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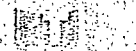


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Thomas delayed a trial with a flurry of motions — enough to take up about a foot of space on a courthouse shelf. He also filed grievances against two Family Court Judges and Crowley's attorney.

He sought yet another delay Thursday so he could have more time to prepare, but Family Court Judge Lisa A. Kinon told him it was go-time.

At Hensley's request, Kinon also limited testimony to events that occurred after June 7, 2006, the day Thomas was arrested. That's because Thomas had insisted that he and Crowley were willingly together as a couple at the motel and that he was simply making love to his wife that day.

That placed the day of their official separation at June 7, making the crime itself and prior marital problems off-limits for the hearing.

Thomas, a wiry, bespectacled man with short, graying hair, repeatedly complained about that move during the proceeding, calling Hensley "a tricky one" and accusing her of "bushwhacking" him and railroading his case.

Again and again, he tried to bring up the crime for which he was convicted, only to be met with objections from Hensley. Dozens of times, the judge reminded him that they were there to discuss his divorce, not re-try his criminal case.

"I think you are trying to defend yourself against things I don't even know about," Kinon said. "This is a divorce case."

Clearly frustrated, Thomas seemed at a loss as to how to proceed. He called witnesses, then didn't know what to ask them, lapsing into rants against the system. He tried to introduce several documents that had no bearing on the divorce.

He kept losing track of his paperwork, delaying the proceeding several times as he pawed through the mountain of documents before him with the one free hand not shackled to his waist.

"Quite frankly, my case has been pretty much wrecked," he said. "Every corner I turn, I'm getting my head whacked off. I don't know what to do."

Looking for answers

Nearly three dozen witnesses — several police officers, a doctor, a lawyer and more — packed the courtroom to await their turn to testify.

Thomas kept one doctor waiting for two hours before he called her to the stand to ask her about treating Crowley for mental health issues. When the doctor explained that she had seen Crowley only for a wellness visit and a pap smear, Thomas ran out of questions for her.

He called one of his friends to the stand and asked the man if he had anything useful to say to help him out. "Get divorced," his friend replied.

At another point, the judge asked Thomas what he hoped to gain through one line of questioning. He shrugged and chuckled. "That was a Hail Mary."

Later, Thomas had an attorney who had once represented him pulled from plea hearings on another floor so he could testify in the divorce. Thomas called the attorney arrogant and insinuated that the man had an affair with Crowley, without offering any evidence to back up that assertion. The attorney, fuming, denied any relationship.

When Thomas finally got Crowley on the stand, he peppered her with questions about how long she had lived with her mother and what dates she had been arrested for disorderly conduct.

She stared straight at him and, in an even voice, said she couldn't recall with specificity.

But she had no problem answering his question about where she had gone after leaving him at the motel in 2006. "To the hospital," she replied.

The judge rules

Judge Kinon remained patient with Thomas throughout the day while nudging him along through the process.

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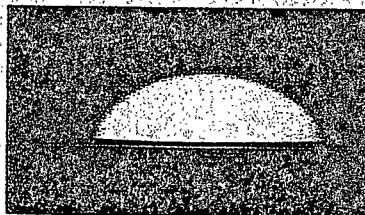
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In the end, she ruled that Thomas had failed to establish any of the claims in his complaint. She turned down his request for alimony and attorney fees, and said there didn't appear to be any of his property left to give back, including the Maxim magazines.

She then granted Crowley a divorce from him, along with matching restraining orders for the ex-couple. Kinon also lauded Hensley for her work on the case.

Because Thomas had made the case so onerous for Hensley, the judge ordered him to pay her attorney's fees — a \$9,000 bill. He must pay her within 30 days of his release.

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He might just be able to do that too, as financial documents show Thomas has a \$25,000 trust fund awaiting him when he completes his sentence.

After Kinon announced her ruling, Thomas shot a look at his family, started to laugh and tossed his head back. "Wow!" he shouted, before correctional officers led him away.

Crowley left the courtroom, hugging her mother and Hensley. "Oh my God. Oh my God," she kept saying, her eyes brimming with tears. "Thank you so much. I can't believe it finally happened."

She and her mother planned a modest celebration to mark the end of her marriage. But they couldn't help but think about the petition Thomas said he is preparing to ask the courts for post-conviction relief, a strategy aimed at winning a new trial or a reduced sentence.

Before they know it, they could be back in the same courthouse with him all over again.

Reach Glenn Smith at 937-5556 or [Twitter.com/glennsmith5](https://twitter.com/glennsmith5).

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Clark David Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

September 12, 2013

Mitch Pugh, Executive Editor
Charleston Post and Courier
134 Columbus Street
Charleston, South Carolina 29403

**Re: Mitigation of Damages
Resulting from Article on
Clark D. Thomas
Dated September 23, 2012**

Dear Mr. Pugh:

Clark D. Thomas hereby seeks to satisfactorily mitigate the impact of the damages suffered by Glenn Smith's libelous statements in the referenced article. To assist in this objective, Thomas has provided herewith the irrefutably reliable facts that are supported by incontrovertible documentary evidence in order that the *Post and Courier* be given a meaningful opportunity to comply with Thomas' demand that the truth be published. With that in mind, please observe the forthcoming suggestions for the following reasons:

Initial Coverage

The first article Smith wrote about Thomas was on June 9, 2006. Therein, Smith printed a photo taken 18 months prior when Thomas was arrested for leaving the scene of a head-on collision and DUI. Thomas' injuries included a gash on his right cheek that had been stitched-up an hour or so before his picture was taken. Moreover, Thomas' hair was shoulder-length and matted with blood and, his face appeared to be drooping because of either swelling or the numbing agent used during suturing.

However, even though Smith knew otherwise, his posit on Thomas' laceration was to imply that he was likely beaten by police because of the purported nature of his conduct or otherwise injured while resisting arrest. Accordingly, this specious insinuation blended with an anachronous, grisly photograph and the lurid allegations fabricated by Thomas' wife—because he wanted a divorce—was quite compelling. So much so, in fact, that even Thomas was shocked. After all, he was first alerted to Rachel Crowley's lies when reading the foregoing article.

Ensuing Developments

With the inclusion of Thomas' criminal record and Crowley's alleged *Nightmares that roil her sleep*, Smith's story dated March 1, 2007, was even more disturbing. By the same token, the massive front-page photograph of Crowley and her mother, Cathy Meree, feigning a countenance of absolute despair was also utterly overwhelming. (R. pp. 17-18) (R. pp. 711-712). Unfortunately, the facts as they are were not a matter of public record at the time.

Although, Thomas did call Smith upon his release from jail several days after print and a couple of times after having been wrongfully convicted to impart that Smith's stories are rife with lies. They have also had the occasion to talk about Thomas' struggle with the disease of addiction and a television reporter that had lost his job as a result of his drug problem. During that discourse, Thomas asked Smith why this reporter's troubles with addiction were ameliorated and his were so inaccurately dichotomized with antipathetic commentary in all of Smith's stories. Thomas even suggested the likelihood of biased reporting and/or ulterior motives.

During the course of their last conversation, Smith agreed to review proof that Crowley was a liar with the understanding that Thomas' objective was to persuade him to print a credible

news story revealing the truth. But soon thereafter, Smith wrote an expose' on the socialite who had formerly owned a Mercedes dealership prior to forgery charges being brought against her; and it was clear that she had also reached out to Smith seeking vindication. For her trouble, Smith filled an entire page with likely erroneous rhetoric focused solely on delivering the *coup de grace* and Thomas was not about to allow Smith to do the same to him.

Divorce Trial Attendance

Because of the foregoing facts, observations, and Smith's panoramic casting of aspersions: Thomas' reaction to Smith's presence at his divorce trial was to enter into public record that (1) Smith was in attendance; (2) Smith lacked integrity; (3) Smith embraced the proclivity to print lies; and (4) that his ambition was to compel Smith to confirm the facts before drafting another article. ^(R.p. 348, lines 24-25 — p. 350, lines 1-5) ~~(Record on Appeal, page (R. p.) 460, lines 24-25 — p. 461 — p. 462, lines 4-5).~~ By way of explanation, because Smith's story dated July 12, 2008, reaffirmed Crowley's false allegations despite their having been proven to be lies at Thomas' criminal trial: Thomas was making known Smith's failure to confirm the verity of his articles despite the existence of public records to do so. In other words, Smith's presence meant that another article was imminent. Therefore, Thomas was seeking to foil Smith's no doubt desire to deliver a *death blow* like he did to the aforementioned socialite.

Malicious Intent

(R. pp. 17-18)

However, for the reasons listed below, Smith's story dated September 23, 2012, ~~(R. pp. 202-203)~~, clearly reveals that—in addition to Smith's indubital ambition to annihilate Thomas—he also used the *Post and Courier* as a vehicle to avenge Thomas for exposing his scandalous tack in open court:

1. The majority of Crowley's false allegations had been controverted by her own

sworn testimony and other irrefutably reliable documentary evidence filed with the courts;

2. Thomas' mother, Carol Ann Cook, told Smith at the divorce trial on September 20, 2012, that they could prove Crowley is a liar. Moreover, there were a number of Thomas' friends, family and associates also in attendance that would have revealed their personal observations of Crowley's outrageous conduct and lack of candor. Yet Smith did not seek to confirm his erroneous facts even when credible sources to do so were seated in the same courtroom with him; and,

3. Cook also sent Smith an email on September 21, 2012, stating that Thomas wanted to explain what actually happened and that he had documents in support thereof. However, Smith disregarded Cook's request for a phone number where he could be reached and otherwise eluded their attempts to contact him; then printed his libelous article two days later on September 23, 2012.

MATTERS OF PUBLIC RECORD

Focus of Review

Likewise to all of Smith's preceding articles on Thomas, the story in question is inundated with conjecture impliedly made by Crowley and her mother; and what appears to be Smith's injection of histrionics set forth as corroborated truths. With that in mind, the focus from this moment on will be on statements contrary to substantiated facts that are a matter of public record. Although, it should be duly noted that all of the above *most probably* gives legal form to (1) unprivileged publication to a third party; (2) actual and constitutional malice; and (3) a reckless disregard as to truth or falsity.

In fact, the headline Smith used on the *Post and Courier*'s website to circulate the story in question reads *Inmate with limited law knowledge finally gets his comeuppance*. In other words, that headline in and of itself confirms malice. After all, Smith has by virtue of this caption clearly expressed his opinion that Thomas got what he deserved. Moreover, Thomas is not a public figure or official; his divorce is not a matter of public concern; and Smith's *inquiring minds want to know* style of reporting indirectly confirms fault on the part of the *Post and Courier*.

To that end, an interesting observation can be made in Smith's article published on August 8, 2013, concerning the Latham calamity. Therein, Smith quoted an attorney having said *It is irresponsible to maliciously and gratuitously malign others in the name of advocacy*. By way of explanation—in addition the irony in Smith's foregoing replication of arbitrary conduct and the hypocritical undertones—it appears that because of Smith having been awarded time and again for his journalistic prowess: he *most probably* only irresponsibly practices libelous and

sensationalized, rag-style reporting to malign those whom he targets as being incapable of taking action against him.

Negligent Legal Counsel

Thomas was wrongfully convicted for allegedly kidnapping and torturing Crowley with a stun gun (hereinafter referred to as the underlying criminal matter) because his lawyer, Michael “Tommy” Bolus, did not present a defense against these charges. In other words, by merely revealing Crowley to be a habitual liar and allowing Thomas’ witnesses to testify, he would not have been convicted of anything. In fact, had Bolus done his job, there would not have even been a trial. (~~See pp. 202-221 of Appendix~~). These are the very reasons Smith was able to write that *Investigators didn’t buy his story, and neither did the jury that found him guilty in July 2008.*

Therefore, Thomas filed a malpractice lawsuit that was dismissed on erroneous technicalities Bolus opted to pursue as opposed to seeking vindication. Consequently, as a matter of law, the facts in Thomas’ *Complaint* are deemed true. By way of explanation, a dismissal grounded on legal sufficiency was the only viable course of action. To that end, this matter is currently in the Supreme Court and, Thomas has set forth the proper character of reasons necessary to seek relief in the United States Supreme Court. (*See Petition for Writ of Certiorari; Respondents’ Return to Petition for Writ of Certiorari; Petitioner’s Reply to Respondents’ Return to Petition for Writ of Certiorari and Appendix*).

Crowley’s Credibility

During the course of developing the record of the underlying criminal matter, Thomas brought to light over 46 inconsistent statements made by Crowley before he stopped noting them. (~~R. pp. 10-833~~ **(R. pp. 231-238)**). These conflicting claims significantly impact the veracity of every allegation Crowley made against Thomas. In fact, nothing that Crowley was documented to

have said happened is consistent in the *Incident Report*; Crowley's *Witness Statements*; her *Affidavit*; and her trial testimony in the underlying criminal matter.

Moreover: at the divorce trial, Smith personally heard the evidence given by Krystal Martin and Larry Ballard—who is the CEO for the company overseeing Thomas' satellite monitoring while he was awaiting trial in the underlying criminal matter. During their testimony, Martin revealed that Crowley was stalking Thomas with text messages and voice mail and, that she had sought to embrace him in a restaurant, ~~(R. p. 470, lines 17-25 — p. 471, lines 1-13)~~ ^(R. p. 358, lines 17-25 — p. 359, lines 1-13); and Ballard corroborated Martin's recount and, confirmed that Thomas never violated the conditions of his bond during the 15 months he was free on bail. ~~(R. p. 481; p. 484, lines 1-4)~~ ^(R. p. 379; p. 382, lines 1-4).

These facts conclusively establish that Crowley was not carrying the device programmed with Thomas' ankle monitor necessary to alert Ballard to his being within a ten mile radius of her. Therefore, Crowley was not in fear for her life. Smith also personally observed Crowley time and again elude Thomas' questions during her testimony with the claim that she could not remember anything to include where she lived at the time of her separation from Thomas. ~~(R. p. 527, line 25 — pp. 528-530, lines 1-17)~~ ^(R. p. 415, line 25 — p. 418, lines 1-17). What's more, Thomas sought to introduce testimony from the underlying criminal trial where Crowley utilized this same ploy to elude answering this same question among many others. ~~(R. p. 530, lines 18-22; pp. 819-822)~~ ^(R. p. 418, lines 18-22).

Crowley's motive in that instance was to convince the jury that she was living with her mother when she falsely alleges Thomas attacked her. Otherwise, if it were proven that they were living together, Crowley could not have pursued a conviction for CSC-1st. ~~(See pp. 57-59)~~ ^(R. pp. 65-67). Fortunately, Thomas was found not guilty of rape because this was the only charge Bolus defended him against. In other words, the jury did not believe Crowley's testimony about her residence because she resorted to the *I don't remember* tactic when Bolus caught her lying about

where she was living at the time in question. (~~R. pp. 934-938~~). In light of this fact, Crowley *most probably* invoked the *I don't remember* strategy during the divorce trial to escape self-incrimination of perjury during the underlying criminal trial.

With that in mind: it has been established that Crowley does not fear physical harm by Thomas and, Thomas has made it clear that he is seeking to expose Crowley's countless acts of perjury. (~~R. pp. 797-798; pp. 839-840~~). Therefore, contrary to Smith's version implying Crowley still feared bodily harm by Thomas when writing *his trembling wife*: if Crowley really was in that condition during the divorce trial, it was likely due to concern over the possibility of going to jail for lying under oath.

Moreover, it should be duly noted that Thomas' recounting of the facts has remained consistent and, he has filed with the courts plausible reasons grounded on substantiated facts to explain why Crowley fabricated the underlying criminal allegations about him—which include Thomas asking for a divorce and the allegations that he had been consorting with a prostitute. And to demonstrate Crowley's dismissive contempt for authority which explains her temerity to make those false statements about him: Thomas revealed, among other things, that Crowley had been arrested for (1) malicious injury to real property; (2) resisting arrest; (3) assaulting a child; and (4) assaulting a houseguest and her step-father. (~~R. pp. 829-830~~).

Because Smith acknowledged having read the documents wherein Thomas revealed more than 46 inconsistent statements made by Crowley, (~~R. pp. 810-833~~): Smith's resolve (1) to take the proceeding out of context by writing that Thomas *peppered her with questions about how long she lived with her mother* was obviously designed to debase Thomas' objective of impeaching Crowley's testimony; and (2) to knowingly and willingly harp upon the most

reprehensible of those conflicting accusations Crowley made against Thomas is a cogent example of irresponsible, malicious and gratuitous reporting focused on maligning Thomas.

Another example of Smith's proclivity to manipulate the divorce trial proceedings in order to further impugn Thomas' character occurred when he wrote that Thomas and Crowley *bounced from one motel to another without a stable home*. By way of explanation: what Smith did was observe only Mere's testimony that Thomas and Crowley lived in motels and, that they were constantly moving from one to the next. (R.p. 478, lines 17-18; p. 482, line 25) (~~R. p. 580, lines 17-18; p. 584, line 25~~).

In other words, Smith disregarded the testimony—to which he also personally witnessed—explaining that Thomas had only been in that one motel where he and Crowley were residing when they separated on June 7, 2006, because she had gotten them evicted from their home on Folly Beach. (R.p. 483, lines 6-9) (~~R. p. 585, lines 6-9~~). This fact was also confirmed during the underlying criminal trial and, was delineated in the divorce filings Smith claims to have read. (~~R. p. 810~~).

As for Smith's comment that Crowley *was a girl from the country*: this is untrue as well because Crowley grew-up in West Ashley with her mother and father, Mere and Ralph Crowley. After their home on Sanders Road mysteriously burned to the ground, Mere filed for a divorce. She then purchased land in Adams Run with the fire insurance money and built a custom home; this all transpired in or about 1998 when Crowley was 14 years old.

When Thomas met Crowley in December of 2001, she was living with her father on Sanders Road. They later moved in together with Mere towards the end of 2004 because Thomas was having financial problems. At that time, Mere was working for a finance company earning only commissions on the loans she brokered and was struggling to pay her bills as well.

Thomas soon fell into contempt for failing to pay his child support; but he managed to borrow \$700.00 to pay the arrears. As a result, the fact that Thomas was able to procure those

funds and was not paying Mereë appears to have angered her because she immediately threw Thomas out of her house on January 9, 2005. ~~(R. p. 471, lines 10-25 — p. 472, lines 1-7)~~ ~~(R. p. 573, lines 10-25 — p. 574, lines 1-7)~~. Proof that Crowley then moved back in with her father is revealed by the address she gave in the *Incident Report* of her arrest on October 15, 2005, for malicious injury to real property. (See pp. 60-62).

And on the following New Years Day of 2006, Mereë's custom home mysteriously burst into flames. In fact, Smith made mention of that fire in his article dated March 1, 2007. With that in mind: the last time Thomas was on Mereë's land in Adams Run on June 6, 2006, she was clearing the debris in preparation of building another custom home with the fire insurance money.

Be that as it may, Thomas had rented a house on Folly Beach soon after having been evicted from Mereë's and was awaiting the passage of one year of continuous separation to secure a divorce; but he and Crowley ended up reuniting in January of 2006. Soon thereafter, they were evicted and moved to the In Towne Suites. It was not long after that when Thomas could no longer endure Crowley's mood swings, among other things, and he informed her that there would be a divorce. Within seconds of having delivered this final decision, Crowley leaped from Thomas' van and so begins the underlying criminal matter. ~~(R. pp. 809-810)~~.

However, notwithstanding Smith's personal knowledge of and, his access to the documents that otherwise confirm the foregoing facts—which Smith claims to have reviewed: he made an informed decision to perpetuate Crowley's lies when writing that she had *gone back to live with her mother in Adams Run when Thomas showed up at their house on June 5, 2006, and invited her to go with him to his North Charleston motel room to retrieve her belongings*. As for

Crowley's version of events that occurred upon entering their room at the In Towne Suites, she provided several scenarios to choose from. (~~R. pp. 815-816~~).

From those multiple-choice selections, Smith wrote that when Thomas and Crowley *walked into the room, Thomas pulled out a stun gun, jammed it into her back and pushed her to the floor, police said. He restrained Crowley with plastic zip ties, handcuffs, tape and shackles as he repeatedly abused her and jolted her body with electric charges from the stun gun, police said.*

On the focus of Smith's recount that *Investigators said Thomas held Crowley for about 45 hours*, Merece testified during the underlying criminal trial that Crowley left her home with Thomas around 12:00 PM and, that she received a call from police the next morning informing her of Crowley's allegations. (~~R. p. 954, lines 18-25 pp. 955-956~~). However, Crowley's statements and testimony centered on that time frame bounced back and forth from 12 to 48 hours. (~~R. pp. 818-819~~). In other words, Thomas and Crowley had been together less than 24 hours and, Smith's disclaimer *police said* and *investigators said* is meaningless.

And with regard to Smith writing that Crowley *was able to escape after he took her for a drive in his minivan*, it should come as no surprise that Crowley articulated inconsistent details to that claim as well. In fact, the prosecutor had free-reign to lead Crowley to the script he liked best during her testimony thereon because Crowley had forgotten what to say for him. For example, Crowley could not remember if she said that Thomas recaptured her and was carrying her back to his van when police arrived, or if he was dragging her and, whether or not she was trying to get away. (~~R. p. 819~~). By way of explanation, the prosecutor testified for Crowley and Bolus did nothing to stop him from doing so. Even more disturbing is that Bolus stood behind

the prosecutor's testimony that Crowley was not once inconsistent with her allegations and was telling the truth. (~~R. pp. 822-823~~).

In light of the foregoing facts under the subtitle *Crowley's Credibility*, Smith's decision to ignore this unambiguous evidence of Crowley's dishonesty supports a finding of actual malice and a reckless disregard as to the truth or its falsity. Furthermore, the foregoing also serves to controvert each and every statement suggested to have been made by Crowley to include all points connected with the underlying criminal matter.

Meree's Credibility

In the same documents Smith claims to have read are four *affidavits* wherein Cathy Meree alleged that Thomas made over 50 harassing phone calls to her residence over a four day period. However, Thomas' cellular phone bill demonstrates that he and Crowley merely exchanged ten calls. (~~R. pp. 805-807~~). Moreover, Meree testified at the divorce trial that Thomas intentionally got Crowley addicted to heroin so she would not leave him. (~~R. p. 580, lines 5-7~~) ^(R. p. 478, lines 5-7). Meree did not make this false allegation at the underlying criminal trial when testifying that Crowley was using drugs before she met Thomas; during the course of their relationship; and continued to do so thereafter. (~~R. p. 201, lines 9-23~~). In support of Meree's testimony, decedent Eraine Biering stated in her deposition that Crowley continued to use heroin after she and Thomas had separated. (~~R. p. 784; p. 889~~).

Furthermore, Smith watched Meree claim during the divorce trial to have given Thomas' computer to police the same day she stole it and, that Thomas proved this to be a lie with the *chain of custody* report establishing Meree held it for eight months. (~~R. p. 561, lines 2-14~~) ^(R. p. 459, lines 2-14). Meree did elude *judicial notice* of perjury by claiming that because the incident with Thomas' computer had transpired six years prior, her failure to testify truthfully was an innocent lapse of

(R.p. 464, Lines 5-14)
memory. (~~R. p. 566, lines 5-14~~). This ruling, among many others, is currently on appeal because Mereë invoked the *I don't remember* ploy or was otherwise deftly evasive every time a question was asked to which an honest answer would have supported Thomas' case. However, Mereë responded with clarity when expressing her specious version of the facts alleged to have occurred up to nine years prior. (~~R. pp. 562-586~~).
(R. pp. 460-484)

Therefore, Smith's decision to likewise ignore the unambiguous evidence of Mereë's dishonesty supports a finding of actual malice and a reckless disregard as to truth or its falsity. Furthermore, it should be duly noted that the foregoing facts under the subtitle *Mereë's Credibility* hereby serve to controvert each and every statement suggested to have been made by Mereë to include all points connected with the underlying criminal matter.

Extortion, Bribery and Obstruction

Biering's deposition also embraced testimony that Mereë hated Thomas so much that she threatened to evict Crowley if she failed to testify against him; which is extortion, bribery and obstruction of justice. In turn, Crowley extorted Thomas' mother, Carol Ann Cook, by implying that she would give perjured testimony against Thomas if Cook failed to give her money. Cook promptly enlightened Bolus to Crowley's phone calls and extortion tactics, but he chose not to act upon it. (~~R. pp. 824-826~~). In light of these criminal acts of moral turpitude and, when conjoined with the disclosures made under the subtitles illuminating both Crowley's and Mereë's lack of credibility: it appears they believe that the laws do not apply to them and, they may disregard the obligation of an oath with impunity—which thus far has rung true.

With that in mind, however, it is possible that when Smith made the observation of Thomas' *trembling wife and his horrified mother-in-law*, they were both actually in fear of being criminally charged. After all, Thomas has for the last five years been seeking to achieve that

exact result. (~~R. pp. 882-883~~). In other words, the evidence is that Crowley and Meree are the outlaws—not Thomas. Smith also wrote that *Crowley left the courtroom, hugging her mother and Hensley. "Oh my God, Oh my God," she kept saying, her eyes brimming with tears. "Thank you so much. I can't believe it finally happened."* And, that *She and her mother planned a modest celebration to mark the end of her marriage.* Notwithstanding Smith's obvious histrionic embellishments and sensationalizing semantics, Crowley and Meree were *most probably* with the false belief of having *finally* escaped the likelihood of justice being done.

Protraction of Divorce

Nearly as conclusory as a confession is the abundance of the foregoing documentary and circumstantial evidence, among other things, supporting Thomas' position that Crowley fabricated the underlying criminal allegations because he wanted a divorce. Be that as it may, Thomas was released on bail after Crowley refused to testify and she began stalking him seeking to reunite, (~~R. pp. 810-811~~); which persisted for the next 15 months until Thomas was arrested with an alleged prostitute. Immediately thereafter, Crowley was eager to see Thomas in prison and the underlying criminal trial was convened a little over a month later. (~~R. p. 812~~). As for Thomas' desire for a divorce, it was only by the advice of counsel that his resolve to do so was attenuated, (~~R. p. 795~~); and upon having been erroneously convicted, Thomas and his family believed that seeking a divorce then would dash any hope of Crowley recanting.

However, because of their marital status, Thomas later feared that Crowley would likely attempt to benefit from the impending settlement in his legal malpractice lawsuit. Moreover, Thomas has since determined that he will be vindicated with or without Crowley's help. Therefore, Thomas was compelled to go forward with the filing for divorce five months after the action against Bolus was filed. Subsequently and contrary to Smith's version of the facts, the

Family Court twice denied Thomas' *Motions* seeking to retract his request for the relief that was contested and, asking that a marital dissolution be granted without his having to be transported to a hearing thereon. (~~R. p. 72-81, pp. 792-793~~).

Thomas also made a *Motion for Change of Venue* grounded on, among other things, the inordinate expenses related to transporting him to hearings time and again to face Crowley despite her having filed a *Waiver of Attendance*. (~~R. pp. 93-94; p. 877; p. 994~~). In other words: for reasons unknown and despite Smith's implicit conjecture that Thomas is to blame, the Family Court made the decision to protract the matter of Thomas' divorce that resulted in what Smith wrote was a *cost to taxpayers close to \$5,000* for transporting him.

Inducement for Divorce Trial

During the course of the underlying criminal trial, Bolus deliberately neglected to preserve anything for the Court of Appeals to review. Consequently, Thomas' appellate lawyer filed a no-merits *Anders Brief* and sought to be relieved as counsel and, Thomas was notified that he could file a *Pro Se Brief* to point out issues that may have been overlooked. In this circumstance, some appellant's have dismissed their *Appeal* in order that they may promptly file an action for Post-Conviction Relief (PCR). However, it is the consensus that by doing likewise, Thomas may have appeared to be looking for a loophole in an otherwise valid finding of guilt as opposed to seeking to prove his *actual innocence*. So Thomas filed a *Pro Se Brief* and waited over four years only to be discouraged by the dismissal of his *Appeal*.

With that in mind, it was only during the fourth hearing in Thomas' divorce case on September 2, 2011, that he was enlightened to Crowley's failure to appear at any of the previous hearings pursuant to her undisclosed *Waiver of Attendance* filed five months prior. (~~R. p. 794~~). Therein, Crowley raised the issue of the underlying criminal matter and lied about the existence

of a restraining order. (~~R. p. 994~~). It should be duly noted that Crowley told prison officials that Thomas violated this imaginary restraining order and, that he lost the majority of his phone privileges as a direct result. (~~R. pp. 792-793~~). Moreover, the foregoing hearing was the first occasion where Thomas was offered a non-contested divorce; however, it was rescinded because he asked the court to confirm there were no restraining orders in effect. (~~R. pp. 213-223~~).

Thereafter, Thomas realized that because Crowley had also raised the underlying criminal matter in her *Answer* to his divorce *Complaint*, (~~R. p. 54, ¶ 2~~), his failure to refute her pleadings could be inferred as an admission of guilt. "Averments in a pleading to which a responsive pleading is required ... are admitted when not denied in a responsive pleading." Rule 8(d), South Carolina Rules of Civil Procedure (SCRCPP). Consequently, because Thomas had already been futilely languishing in a maximum-security prison for three years awaiting the outcome of his *Appeal*—in which his arguments were hinged upon *actual innocence*: his primary objective became focused on revealing that Crowley is a liar even if a trial was required to do so. Therefore, Thomas rejected the three offers made by the court to grant a non-contested divorce. (~~R. p. 227, lines 13-16; p. 243, lines 8-9; pp. 337-338, lines 1-10~~). In other words, Smith inaccurately reported that this offer was made *about a half-dozen times over the past two years*.

Dubious Proceedings

Thomas' endeavor to discredit Crowley's trustworthiness began with the filing of *Motions* seeking, among other things, that her *Waiver of Attendance* be stricken from the record and that fraud charges be made against her. (~~R. p. 834~~). However, Crowley again failed to appear and the court refused to hear Thomas's *Motions*. Moreover, the court denied his *oral motion for judgment by default* and scheduled another hearing. (~~R. p. 843~~). Thomas then filed *Motions* formally requesting a *judgment by default* and *judicial notice* acknowledging that

Crowley's prior bad acts of perjury in the underlying criminal matter—that have yet to result in a conviction—support the finding of perjury for filing false statements in her *Waiver of Attendance*. (~~R. pp. 88-90; pp. 839-840~~).

When the next hearing was convened, James W. Smiley, IV—who was formerly Thomas' attorney—appeared on Crowley's behalf and made an *oral motion* to excuse her from being required to personally appear. Notwithstanding Thomas' objection to Smiley's presence grounded on a conflict of interest and, after admitting that he arranged for Laree Hensley to represent Crowley: Smiley was allowed to proceed by saying he was only there to facilitate pretrial scheduling because Hensley was sick. (~~R. pp. 847-849~~). In other words, Smiley subverted Thomas' entitlement to a *judgment by default* by impermissibly appearing. (~~R. p. 252, lines 15-22~~).

Within six days of that foregoing hearing, Thomas wrote Hensley on January 30, 2012, presenting the caveat that this divorce action was a complex case; and that there was a distinct likelihood of appeals all the way to the United States Supreme Court. (~~R. p. 780~~). However, Hensley was undeterred by Thomas' forewarning because she filed Crowley's *Counterclaim* three months later on May 3, 2012. (~~R. pp. 62-67~~). Therefore, Smith printed yet another perversion of truth when writing that *North Charleston attorney Laree Hensley agreed to represent Crowley, assuming it would be a relatively simple divorce case. She then helped Crowley ... file a counterclaim for divorce.*

Moreover, the chain of events depicted by virtue of this document reveal that not only was Smith's metaphorical aspersion that *Thomas buried his bride ... in a blizzard of paperwork and legal motions* amiss: he also distorted the truth when writing that *Thomas delayed a trial*

with a flurry of motions. By way of explanation, the blame for the magnitude of paperwork and tally of motions filed and, even the demand for a trial, also lies exclusively on the Family Court.

Formal Complaints

In light of Hensley's connection with Smiley, Thomas filed a *Formal Complaint* against both of them with the Office of Disciplinary Counsel (ODC) alleging, among other things, a conflict of interest and inappropriate relationships. (~~R. pp. 127-128~~). Soon thereafter, (1) because Judge Judy L. McMahon entered the *ex parte* communication of Crowley's *Waiver of Attendance* into the record, (~~R. p. 794~~), and allowed Smiley to proceed despite his conflict of interest, (~~R. pp. 848-852~~); and (2) because Judge Jocelyn B. Cate's course of conduct was adversarial and, for her failure to grant a *judgment by default* grounded on Crowley's *Waiver of Attendance*, (~~R. pp. 835-845~~): Thomas filed a *Formal Complaint* against both of these judges with the Commission of Judicial Conduct. (~~R. pp. 204-206~~).

It should be duly noted that pursuant to the Rules of Professional Conduct, Thomas' *Formal Complaint* against Smiley alleges that he is in violation of (1) *Rule 1.7, Conflict of Interest: Current Clients* because of their prior attorney/client relationship, (~~R. pp. 850-851~~); and (2) *Rule 1.8(m), Conflict of Interest: Current Clients; Specific Rules* because of his appearing to be in a sexual relationship with Crowley. (~~R. pp. 856-857~~). Moreover, these allegations were supported by a *Memorandum*, (~~R. p. 128~~), wherein Thomas set forth facts justifying his belief that Smiley and Crowley were involved in an inappropriate relationship. (~~R. p. 847; pp. 857-858~~). As for the conflict of interest, Thomas' *Motion* to disqualify Smiley was granted on that ground. (~~R. p. 24, ¶¶ 9-10~~).

Furthermore, Smiley was served with Thomas' *Motion to Compel* ten days before his divorce trial. Therein, Thomas made clear that a *Formal Complaint* had been filed with the ODC

alleging that Smiley may have engaged in an adulterous relationship with Crowley. (~~R. p. 123, p. 133~~). However, Smith personally watched Smiley testify there were no allegations in Thomas' *Formal Complaint* that he had been in a relationship with Crowley. (~~R. p. 615, lines 16-22~~). Therefore, Thomas filed a supplemental *Complaint* with the ODC focused on Smiley's perjury with the inclusion of contempt allegations. (~~See pp. 63-64~~) ^(R. pp. 71-72). In other words, in addition to *The attorney, fuming, denied any relationship* with Crowley: Smith's article should have also revealed that Smiley blatantly lied under oath.

Amended Pleadings

Notwithstanding the Family Court's incomprehensible resolve to preserve Crowley's credibility and the impropriety in doing so: Thomas did succeed in the filing of an *Amended Complaint*. Thomas alleged therein, among other things, that Crowley fabricated the underlying criminal allegations; participated in adulterous relationships; and physically abused him, his minor child, and houseguests during drunken rages that included destroying the contents of their home. (~~R. p. 57, ¶¶ 6 and 10-11, p. 58, ¶¶ 13-14~~). Crowley responded with an *Answer* demanding *strict proof* of Thomas' allegations, (~~R. p. 63, ¶ 6~~), and filed a *Counterclaim* alleging that (1) she was subjected to repeated and horrific abuse at Thomas' hands; (2) she is unemployed due in part to this alleged abuse that has also contributed to the breakup of their marriage; and (4) she lives in fear for her life as a result thereof. (~~R. p. 64, ¶¶ 16 and 18-19; p. 65, ¶ 23~~).

Discovery

During the course of discovery, Crowley disclosed that the arresting officer and investigator in the underlying criminal matter would be testifying for her at the divorce trial. (~~R. pp. 113-114, ¶ 1~~). Crowley also claimed in her responses that her physical and emotional

condition is fragile due to the alleged abuse she suffered at Thomas' hands and that she is being treated for panic attacks related to the underlying criminal allegations. (~~R. p. 117, ¶ 16(b); p. 120, ¶ 21~~). In other words, the impending trial was going to be centered on the underlying criminal allegations and Crowley's mental and physical health. However, Crowley's discovery responses lacked the specificity necessary to develop a viable trial strategy which includes a proper line of questioning and the call for professional witnesses. Therefore, Thomas asked Crowley to reveal the type of practice of each physician she had been seen by but to of no avail. (~~R. pp. 111-112~~).

During the pendency of the foregoing request, Thomas recalled having personal knowledge of several occasions where Crowley had received treatment that she did not disclose. Thomas' reaction was to file a *Motion to Compel* Crowley to fully comply with discovery wherein he brought to light a multitude of violations and the grounds supporting his request. (~~R. pp. 102-108~~). Thereafter, Thomas served the South Carolina Department of Social Services (SCDSS) with a *subpoena* commanding that they produce documents related to allegations of child abuse and neglect made against Crowley's mother and father, Cathy Meree and Ralph Crowley. SCDSS also failed to comply and Thomas filed a *Motion to Compel* them as well.

In support thereof, Thomas divulged that Crowley had told him of having been raped by her father; and that during the aforementioned house fire on Sanders Road, Crowley said Meree was going to leave her sleeping father to die had she not persuaded Meree to awaken him. Thomas also described a conversation with Meree in which she acknowledged having reported Crowley's father to SCDSS. Meree's explanation for doing so was that she had intercepted delivery of magazines addressed to Crowley's father that depicted men having sex with their daughters. (~~R. p. 160-164~~). By way of explanation, Thomas required the profession of

Crowley's physicians to determine those who could offer testimony apposite to her claim to be currently undergoing treatment for disorders related to the underlying criminal matter. And Thomas' purpose in seeking child abuse and neglect records from SCDSS was to reveal the facts supporting his argument that Crowley's afflictions are the result of a tragic childhood and had nothing to do with him.

Thomas also served *subpoenas* commanding James W. Smiley, IV, and Solicitor Scarlett Wilson to produce documents to which neither complied. Accordingly, Thomas filed *Motions to Compel* them both. Because of Smiley's irrational conduct and the circumstantially persuasive evidence of an adulterous relationship with Crowley: Thomas was asking the court to order Smiley to relinquish a copy of all records pertaining to Crowley and a copy of his attorney/client file—which Thomas is entitled to by order of the Supreme Court. (~~R. pp. 122-125~~).

As for Wilson, Thomas was seeking all documents compiled while prosecuting the underlying criminal matter. The reasons for this request, among other things, was to determine if the arresting agency's decision not to prosecute Crowley for assaulting Thomas' then minor child had been influenced by Wilson's office, (~~R. pp. 807-808~~); and to otherwise enable Thomas to engage in meaningful cross examination of the arresting officer and investigator in the underlying criminal matter after they testify for Crowley. (~~R. pp. 134-140~~). To that end: Thomas' *Motions to Compel* Crowley, SCDSS and Wilson were denied and, his *Motion to Compel* Smiley was disregarded. (~~R. pp. 192-193~~).

Consequently, as far as Thomas' right to a fair hearing on the issues was concerned, the divorce trial was otherwise relegated to a guessing game that was decided by what facts were concealed. Therefore, this flagrant violation of Thomas' right to discovery is why Smith was able to report that Thomas *called witnesses, then didn't know what to ask them, lapsing into*

rants against the system. Smith also wrote *Looking for answers*. Nearly three dozen witnesses—several police officers, a doctor, a lawyer and more—packed the courtroom to await their turn to testify. In truth, Thomas had 17 witnesses in the courtroom and seven of those were family members, friends and associates. In other words Thomas did not have 34 witnesses in tow as Smith has led the public to believe.

Be that as it may, the absolute deprivation of disclosure enabled Smith to further observe that Thomas kept one doctor waiting for two hours before he called her to the stand to ask her about treating Crowley for mental health issues. When the doctor explained that she had seen Crowley only for a wellness visit and a pap smear, Thomas ran out of questions for her. However, as is the case with Smith's article in its entirety, he made an informed decision to manipulate these facts in order to further his agenda of assassinating Thomas' character.

Pretrial Motions

In Crowley's discovery response to current medications, she disclosed that Dr. William Maguire was prescribing her Xanax for anxiety and panic attacks alleged to be related to the underlying criminal matter. Based on that relevant evidence and eight weeks prior to the divorce trial, Thomas served a subpoena commanding that he testify. However, Dr. Maguire's attorney, Joseph K. Qualey, filed a *Motion to Quash* Thomas' subpoena two days before trial; Dr. Maguire failed to appear because he was purportedly vacationing in Italy. (~~R. pp. 186-187~~). As further grounds for support, among other things, Qualey set forth that Dr. Maguire had only seen Crowley twice in the proximity of 2007 and 2008. (~~R. p. 356, lines 19-25—p. 357, lines 1-21~~); which conflicts with Crowley's claim to be taking Xanax he prescribed in 2012. (~~R. p. 120, ¶¶ 21-22~~).

In response, Thomas argued that Dr. Maguire's request was untimely and should not be entertained because the South Carolina Rules of Court (SCRC) stipulate that motions and written notice thereof shall be filed and served not later than ten days before the hearing. (~~R.p. 358, lines 4-24~~ **(R.p. 246, lines 4-24)**). It should be duly noted that the trial court instructed Thomas that he was required to comply with the SCRC. (~~R.p. 355, lines 5-9~~ **(R.p. 243, lines 5-9)**). However, it appears that Thomas was the only one compelled to do so because the trial court disregarded his foregoing argument pursuant to those Rules: then allowed Crowley's counsel, Laree Hensley, to argue in support of Dr. Maguire's position.

By Hensley's withdrawal of their demand for *strict proof* that Crowley fabricated the underlying criminal allegations and by retracting Crowley's pleading in her *Counterclaim* requesting a divorce on grounds of physical cruelty: the trial court was persuaded to grant Dr. Maguire's *Motion to Quash*. (~~R.p. 368, lines 23-25 — p. 369, lines 1-2~~ **(R.p. 256, lines 23-25 — p. 257, lines 1-2)**). By way of explanation, Hensley first insisted that Crowley made no allegations of physical cruelty or request for divorce on those grounds. However, upon the trial court's observation to the contrary, Hensley was able to maneuver around her dissimulation by simply pointing out that they only prayed for the relief of a divorce on the grounds of one year continuous separation. (~~R.p. 362, lines 2-25~~ **(R.p. 250, lines 2-25)**).

This deceitful tactic was the first of many more reasons yet to come that Smith was able to write that *Thomas ... repeatedly complained about that move during the preceding calling Hensley "a tricky one" and accusing her of "bushwhacking" him and railroading his case*. It should be duly noted that Hensley also stated that the recision of their physical cruelty allegations had been made clear at the hearing ten days prior. (~~R.p. 363, lines 1-2~~ **(R.p. 251, lines 1-2)**).

With that in mind, the only thing made clear during the course of those proceedings ten days prior was that Thomas' rights were violated time and again. In fact, Thomas is absolutely justified in assuming judicial bias and disregarding the court's findings in their entirety during that hearing because of, among other things, (1) the probability of *ex parte* arguments being heard before it was convened; (2) the erroneous *res judicata* ruling; and (3) the denial of any meaningful discovery. (~~R. pp. 303-349~~). In other words, it was clear that the court was deliberately attempting to subvert Thomas' lawful objectives notwithstanding his constitutional right to the pursuit thereof. (~~R. pp. 191-193~~).

Be that as it may, when the divorce trial court later heard Crowley's *Motion* to dismiss all causes of action before June 6, 2006, grounded on *condonation*: Thomas relied upon Rule 8(c), SCRCF, which stipulates that *condonation* must be set forth in the responsive pleadings. As case law reveals, the purpose of this Rule is to prevent a party from being ambushed. However, Thomas' confidence in the Rules of Court was misplaced once again when the trial court granted the relief Crowley requested. (~~R. p. 395, lines 7-11; p. 404, lines 15-19~~)
(~~R. p. 283, lines 7-11; p. 292, lines 15-19~~)

By way of explanation, Hensley could have made this *Motion* on Crowley's behalf up to five months prior. By doing so, Thomas would have had ample time to determine an alternate trial strategy. Because the ten days of advance notice he did get was clearly not enough to do so, Thomas was resigned to place trust in the Rules of Court. In other words, this was the second time that Hensley succeeded in *bushwhacking* Thomas and *railroading his case* by being a *tricky* one; and the unambiguous reason that Smith was able to observe Thomas saying *Quite frankly, my case has been pretty much wrecked. Every corner I turn, I'm getting my head whacked off. I don't know what to do.*

Furthermore, Thomas cited case law supporting his position that Crowley had waived her right to assert the defense of *condonation*. However, the trial court's interpretation was contrary ~~(R. p. 287, line 25 — p. 292, lines 1-14)~~ to reason and is being appealed. ~~(R. p. 399, line 25 — pp. 400-404, lines 1-14)~~. In fact, Crowley also waived her right to even participate in these divorce proceedings; and time and again failed to appear despite having been notified of contested issues. ~~(R. p. 794; pp. 838-839)~~. However, the case was erroneously continued each time Crowley failed to appear until she was provided with a free lawyer and persuaded to become involved. ~~(R. p. 843; p. 873)~~.

Ulterior Motives

With that in mind and in light of Crowley's likely fear of being charged with perjury: her decision to be an active party may have been influenced by the guaranty that that would not happen. The body of facts on which this belief is based on are that the sole objective of Hensley and each of the five judges involved with Thomas' divorce appears to have been to prevent him from proving that Crowley is a habitual liar. After all, the failure to do so would have been analogous to admitting that Thomas was wrongfully convicted in the underlying criminal matter. ~~(R. p. 869)~~.

In support of this observation: during the divorce trial, Crowley clearly *opened the door* to the introduction of her testimony during the underlying criminal trial for impeachment purposes, but the trial court impermissibly denied Thomas his right to do so. This incident was one of those moments Smith was referring to when writing that Thomas *tried to introduce several documents that had no bearing on the divorce*. However, the truth is that they were relevant and admissible. ~~(R. pp. 800-804)~~.

Contempt of Court

Unfortunately, that portion of the divorce trial cannot be cited because it has mysteriously been excluded from the record of those proceedings. Even more mystifying is that the court reporter ignored Thomas' timely challenge to the accuracy of the transcript in question and erased the backup tapes. In other words, this egregious act of contempt by the court reporter just happens to have interfered with Thomas' ambition to prove Crowley a liar and, is a flagrant violation of his constitutional rights as well.

To that end, Thomas filed a *Motion* to transfer the *Appeal* of the rulings in his divorce action to the Supreme Court and, he requested that contempt sanctions be imposed upon the court reported that erased the trial backup tapes in question. (R. pp. 73-80) (See pp. 65-72). The reason Thomas was compelled to seek the original jurisdiction of the Supreme Court was because the Court of Appeals ordered that he file his *Initial Brief* even though there is testimony missing from the record of this case—in addition to a number of phonetic errors in the transcript.

By way of explanation: as it has been Thomas' objective, among other things, to publicly reveal Crowley to be the liar that she is, this missing testimony severely compromises the foundation of his argument to do so. With that in mind, the Supreme Court has denied Thomas' *Motion* seeking their intervention. (R. p. 81) (See p. 73). Consequently, Thomas will *most probably* be unable to elicit *judicial notice* of Crowley's perjurious conduct because the state's highest court has otherwise ruled.

Miscellaneous Inaccuracies

Smith also erroneously wrote that *Because Thomas had made the case so onerous for Hensley, the judge ordered him to pay her attorney's fees—a \$9,000 bill*. However, the Supreme Court has held that a *pro se* litigant as a prevailing party is not entitled to attorney's fees even if

they are a lawyer. Therefore, as a matter of equal protection, the Supreme Court also applied that standard to the *pro se* litigants adversary. In other words, the trial court abused its discretion when ordering Thomas to pay Hensley's fees. And as for Smith writing that Thomas has the resources to pay Hensley's fees because *financial documents show [he] has a \$25,000 trust fund awaiting him when he completes his sentence* is not true. To be clear, there are no trust funds.

SUGGESTIONS

Code of Ethics

In his capacity as a journalist, Smith has a duty to observe the following Code of Ethics set forth by the *National Writers Association*:

1. The Writer shall recognize that the constitutional guarantees of expression and freedom of the press imply a responsibility not to abuse these freedoms.
2. The Writer shall check carefully for accuracy and verification of all facts used when writing both fiction and non-fiction.
3. The Writer shall not knowingly include in factual material any false or misleading statements without pointing out valid reasons for doing so.
4. The Writer shall not use ideas or materials belonging to others to except in observance of the 'fair use' doctrine, or if the material is in public domain, or unless permission from the rightful owners has been obtained and proper credit is given.
5. The Writer shall not use the writing profession for the purpose of defaming, libeling, or maligning others.
6. The Writer shall avoid using the writing profession to undermine or overthrow the ideals of justice, freedom, democracy, and humanity.

By way of this document, Thomas has revealed that Smith is in clear violation of paragraphs 1,2,3,5, and 6 of the foregoing Code of Ethics. In order to be absolved for his abuses, the truth must be revealed. And in doing so, the *Post and Courier* is hereby urged to observe the following suggestions:

Front Page Headlines

The *Post and Courier* has more than once determined Smith's stories of fiction about Thomas merit front page coverage. Consequently, it stands to reason that Thomas is entitled to that same measure of delivery of the truth. In fact, the following points not only stand the test of veracity, they are at least as compelling as Smith's twisted version of events:

1. The evidence on record reveals that Crowley has a history of outrageous conduct and has been arrested numerous times for acts of aggression, (~~R. pp. 807-810~~);
2. The evidence on record indicates that Crowley's likely reason for fabricating the underlying criminal allegations was Thomas' demand for a divorce. And Crowley's perjured testimony during the trial thereon to ensure Thomas be sent to prison was *most probably* her reaction to his refusal to reunite and, his having been arrested for being in the company of an alleged prostitute. (~~R. pp. 810-823~~). After all, the time-honored aphorism is that hell hath no fury like a woman scorned;
3. The evidence on record indicates that both Crowley and Meree, in addition to sharing a flagrant disregard for truth even while under oath, will participate in bribery and extortion schemes to obstruct justice in order that they may achieve their goals, (~~R. pp. 805-806, pp. 824-827~~);
4. The evidence on record confirms that Thomas was exonerated from the rape

charge arising from Crowley's false claims because Bolus performed his duty. And Thomas was convicted on Crowley's fabricated allegations of having been kidnapped and tortured by him as a consequence to Bolus' decision not to present a defense thereto, (~~See pp. 202-221 of Appendix~~);

5. The evidence on record suggests that Hensley, Smiley, the court reporters, the Solicitor's Office, the Family Court, the Court of Appeals and Supreme Court are all seeking to thwart Thomas' objective of revealing that Crowley is a habitual liar, (~~R. pp. 789-804; pp. 827-882~~) (~~See p. 73~~);
(R.p. 81)

6. The evidence on record confirms that during the divorce trial, Smiley blatantly lied when testifying that Thomas did not file a *Formal Complaint* against him alleging, among other things, that he had engaged in an inappropriate relationship with Crowley. And this irrefutable fact conjoined with the circumstantial evidence of an affair lends credence to this belief, ~~supra at pp. 19-20~~; and,

7. The evidence on record indicates that Thomas may have a better understanding of the practice of law than Smith let on when writing that Thomas had *limited legal knowledge*. After all, he has been litigating criminal, civil and domestic matters during the last five years in the Court of Common Pleas, the Family Court, the Court of Appeals and Supreme Court seeking to establish his innocence. (~~R. p. 830~~). Moreover, the divorce trial court remarked that Thomas' *pleadings are up there with lawyers' pleadings* and, that she had *no problem* with his pleadings because they are *in perfect form*—she even complimented Thomas on his *professionalism*. (~~R. p. 451, lines 24-25—p. 452, line 1; p. 453, lines 16-17~~)
(R.p. 339, lines 24-25—p. 340, line 1; p. 341, lines 16-17)

Mysterious House Fires

Thomas has set forth facts and irrefutable evidence to demonstrate Merece's willingness to break the law when it serves her purpose. With that in mind and by all accounts—which could

be verified through public records by a competent investigative journalist: the house fire at the Sanders Road residence of Crowley's occurred at the proximate time of Meree's separation and ultimate divorce from Ralph Crowley. And according to what Crowley told Thomas regarding having been raped by her father, Meree had good cause to seek a marital dissolution from him. In fact, when also considering the incestuous porn Meree claims to have intercepted that was addressed to Ralph Crowley, Meree likely felt that he deserved to die in that fire that financially enabled her to part company, purchase land and build a custom home in Adams Run. ~~*Supra at pp. 10-11. (R. p. 161).*~~

While the foregoing lurid details and the conveniently lucrative resolution of those disturbing circumstances by fire is uncanny, to suspect arson remains to be speculative. However, it should be duly noted that house fires are generally considered anomalies; there are not that many people who personally know others that have lost their homes to fires. Be that as it may, Meree's custom home in Adams Run just happens to have also burst into moneymaking flames at a time when she was in financial peril. ~~*Supra at p. 11.*~~

In fact, it is Thomas' understanding that this fire of convenience was caused by an unattended clothes dryer. Be that as it may Meree repeatedly warned Thomas while living in her home never to leave the clothes dryer running without someone in the house to watch over it. Meree's reasoning was that a clogged dryer vent would start a fire. According to reports, Meree and her boyfriend, Cecil Terry, left her home on New Year's Eve and returned the following morning only to find it a smoldering pile of debris.

In addition to the availability of records confirming Meree's insolvency at the time in question, there is also proof of her desperation within reach. Immediately after having thrown Thomas out of her house on January 9, 2005, Meree stole a check from Thomas' Post Office Box

for damages he had sustained in an auto accident; she then persuaded the insurer to issue a check that she could cash.

Because Merece has thus far eluded culpability for stealing Thomas' check and avoided suspicion of being an opportunistic arsonist, she *most probably* believes that she has also escaped being held accountable for perjury, extortion, bribery and obstruction of justice. ~~*Supra at pp. 13-15.*~~ (R. pp. 824-826). In fact, Merece appears to be confident that she can break the law with impunity. With that in mind, Crowley's and Merece's veritable criminality juxtaposed with the clear evidence of Thomas' innocence would seem to be an incisive story of profound irony; as opposed to the false and misleading articles of fiction Smith has penned to date.

Denigrating Remarks

All of Smith's stories about Thomas have embraced a myriad of malicious comments of supposition and conjecture focused on defaming Thomas. And to further denigrate Thomas' character and integrity, Smith cast his battle with addiction in the light of infamy. Therefore, Thomas urges the *Post and Courier* to desist in this course of action if another article is printed and suggests that objective observations be made. After all, the *Post and Courier* has time and time again published Smith's perspective. For example, Smith's headline that Thomas has *limited law knowledge* was innately derisive.

Perhaps it could be revealed that soon after his parents divorced, Thomas succumbed to peer pressure to indulge in drugs and consequently dropped out of high school after his sophomore year. Thereafter and only because he sought employment as an electrician's helper when he quit school, Thomas managed to become a licensed contractor and opened his own electrical business. Thomas is also a self-taught guitarist that has played in several rock bands

over the last 40 years. In other words, Thomas is an autodidact. Therefore, Thomas' shortcomings should not continue to be targeted for ridicule.

And as for Thomas' current pursuits—in addition to practicing law—he is taking a course on music theory and is a musician in the Broad River Concert Band with hopes of becoming a cellist. To that end, disclosing the foregoing facts should also be considered a viable means of imparting that Thomas is not the criminally deranged psychopath that Smith has deceptively depicted Thomas to be and mitigate the damages as well.

Thomas' Photograph

The photograph Smith procured from the South Carolina Department of Corrections (SCDC) for his spurious story dated September 23, 2012, is the most recent image of Thomas available to the public. However, it was taken three days after having been sentenced to 20 years in prison and Thomas was still in shock and, his head was cleanly shaven as is the procedure upon entering SCDC. Therefore, should the *Post and Courier* decide to print a newsworthy story based on facts that are a matter of public record: a contemporaneous photograph has been provided in order to reveal Thomas' appearance under somewhat normal conditions as opposed to his guise influenced by the impact of extraordinary circumstances.

Respectfully submitted,

Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

_____, 2013
Columbia, SC

cc: Pamela J. Browning, Publisher
Glenn Smith, Investigative Journalist

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

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

11 THE COURT: I am almost
12 inclined to agree with Mr.
13 Bolus. I'm going to tell you
14 why, Mr. Williams. You can't
15 have it both ways. Either
16 they were living together or
17 they weren't, and for me to do
18 what you've asked me negates
19 this entire defense, which is
20 that they were not living
21 together. So you all had an
22 opportunity, you could chosen
23 to, you could have proceeded
24 under the spousal portion or
25 you could have proceeded under

1 C. S. C. You made a strategic
2 decision and proceeded with
3 C. S. C.

4 MR. WILLIAMS: Your
5 Honor --

6 THE COURT: So to do
7 what you're doing, asking me
8 to do would be burden-shifting
9 and would require the
10 defendant to have to negate --
11 you would negate his entire
12 defense which has been their
13 theory of this entire case
14 from opening.

15 MR. WILLIAMS: I think
16 he said in the opening the
17 proper charge in this case is
18 spousal sexual battery. I
19 don't think he ever said that.
20 I mean I think what he said
21 was --

22 THE COURT: But you
23 didn't, it would really
24 blind-side their entire
25 defense. It would gut it, and

1 I don't -- they tried their
2 entire case on the theory that
3 they were not living together
4 therefore he's not guilty of
5 this C. S. C. period.

6 MR. WILLIAMS: That
7 they were living together.

8 THE COURT: And that
9 was it was consensual.

10 MR. WILLIAMS: Well,
11 that's what I -- I mean, your
12 Honor, I think their -- I
13 don't think it guts their
14 entire defense. I mean their
15 defense really is consent and
16 then also the second defense
17 --

18 THE COURT: I'm going
19 to do some research. There's
20 no case law on it. I don't
21 know that it's going to meet
22 the elements test, and I'll
23 have to see, but I, at this
24 moment I am, I am thinking
25 that I will not because it

INCIDENT REPORT

CHARLESTON COUNTY SHERIFF'S OFFICE
300 FORT SUMNER DRIVE - SOUTH CHARLESTON, S.C. 29405-7700 - (843) 554-4700

J. M. GORDON, JR.
SHERIFF

SC0100000		2005-028899-B		N/A		PAGE 1 OF 3 PAGES		CASE NO.		PBU	
1. MALICIOUS DAMAGE TO REAL PROPERTY <\$1,000.00				BUSINESS							
2. TRAFFIC STOP / ARREST X 2				PARKING LOT							
3. TOWED VEHICLE				PARKING LOT							
6303 SAVANNAH HWY, RAVENEL, SC				29470		N/A					
10/15/05		0230		10/15/05		0300		10/15/05		0232	
10/15/05		0230		10/15/05		0300		10/15/05		0232	
GREEN, DWAYNE				UNK		UNK		JOU		B M	
600 200 BLK BEN				NONE		UNK		UNK		UNK	
6303 SAVANNAH HWY RAVENEL SC				29470		402-9399		899-6171			
CLERK KANGAROO EXPRESS				NONE		N/A					
PEPSI COLA CO. E.H. 462				JOU							
1951 ALGONQUIN RD N. CHAS SC				29405		720-8571		SAME			
MURPHY, JESSE JAMES				N/A		FRIEND		JOU		B M	
601 187 BLK BEN				BLUE JEANS, GREY SHIRT, TAN HAT		008817266 SC					
3868 NEW HOPE RD CHARLESTON SC				29414		UNK		UNK		UNK	
UNEMPLOYED				NONE		NOEN		N/A			
MALICIOUS INJURY TO REAL PROPERTY <\$1,000.00				OPEN BEER IN A VEHICLE							
DUS 3RD				N/A							
(RAVENEL) ON ABOVE DATE AND TIME R/D WAS DISPATCHED TO THE ABOVE LOCATION IN REFERENCE TO THE COMPLAINANT WITNESSING SUBJECT'S #1 AND #2 ATTEMPTING TO BREAK INTO A PEPSI COLA VENDING MACHINE IN FRONT OF THE FOOD LION AT 6323 SAVANNAH HWY. UPON ARRIVAL AT THE KANGAROO EXPRESS R/D OBSERVED THE SUSPECT'S VEHICLE (LISTED PAGE 3) DRIVEN BY SUSPECT #1 ATTEMPTING TO LEAVE THE AREA. R/D QUICKLY ACTIVATED BLUE LIGHTS AS THE SUSPECT VEHICLE STOPPED. THE SUSPECTS WERE ORDERED TO PLACE THEIR HANDS OUT OF THE WINDOW OF THE VEHICLE AND WERE THEN TAKEN INTO CUSTODY. APPROXIMATELY \$27.00 WAS LOCATED INSIDE THE VEHICLE UNDER THE BENCH SEAT WHICH WAS ALL IN SINGLE ONE DOLLAR BILLS. THE VENDING MACHINE THAT WAS DISCOVERED DAMAGED DID NOT HAVE ITS CASH BOX REMOVED WHICH LEADS R/D TO BELIEVE THAT THE BILLS MAY HAVE BEEN TAKE FROM A DIFFERENT VENDING MACHINE UNREPORTED AT THIS TIME.											
VENDING MACH.		CASH		TOTAL VENDING		TOTAL CASH		TOTAL BILLS		TOTAL COINS	
500		500		500		500		500		500	
27		27		27		27		27		27	
CURRENT EMPLOYED				SUBJECT LOCATED				SUBJECT ADVISED			
YES				YES				YES			
NO				NO				NO			
NO PROSECUTION				NO PROSECUTION				NO PROSECUTION			
YES				YES				YES			
NO				NO				NO			
W.D. BAER				10-15-05				8856			
10-15-05				10-15-05				10-15-05			

J. Al Cannon, Jr.
Staff

050-55 11100

CHARLESTON COUNTY SHERIFF'S OFFICE
 3505 PINEHAVEN DRIVE, CHARLESTON, S.C. 29405-7789 (843) 554-4700

☒ **ARREST AND** ☐ **SUPPLEMENTAL BOOKING REPORT**

J. Al Carson, Jr.
 Sheriff

SC0100000	TRF# 2305	CURRENT DATE 10/15/05	DISPATCHED 2005-023899-B	ORIGINAL CHARGE	TRUST # 502-C
DEFENDANT NAME (LAST, FIRST, MIDDLE) 0000657695	CRIM# 105	BOOK# 105	ARREST# 105	DATE OF BIRTH 11/29/84	
AGE 20	SEX N	RACE W	HEIGHT 5'10"	WEIGHT 150	
ADDRESS (NUMBER AND STREET) 3041 Sanchez Rd	CITY Charleston	STATE SC	ZIP CODE 29414	PERMIT # 225-1008	
ALIASES None	PLACE OF BIRTH Charleston SC	DRIVERS LICENSE (NUMBER AND STATE) 11597009 SC	ADDITIONAL CITY AND STATE Same as above	POSSIBLE INMATES Same	
EMPLOYER OR OCCUPATION Unemployed	NAME OF SON Ralph Crocker	ADDITIONAL CITY AND STATE Same as above	POSSIBLE INMATES Same		
TRANSPORTING OFFICER'S NAME D. Baez	NUMBER 9856	ADDITIONAL CITY AND STATE D. Baez	NUMBER 9856	ARREST# CC50	
ADDRESS (NUMBER AND STREET)	☐ YES ☒ NO WEAPON TYPE	☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO
ADDITIONAL DISPOSITION	☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO
CHARGE ID.	A	B	C		
ADDITIONAL CASE NO.'S					
CHARGE	Malicious Injury to Real Prop <\$1000.00				
STATUTE	16-11-520				
BOND AMOUNT	785				
WARRANT/ARREST #	7658725				
BOOKING DATE	10/15/05 1000 Duty				
DATE & TIME OF RELEASE	10/25/05 1000 Rain				
Subject located and arrested w/o incident					
THE UNDERSIGNED HEREBY CERTIFIES TO YOUR OFFICE THE ABOVE INFORMATION AND OTHER INFORMATION CONTAINED IN THIS SUPPLEMENTAL ARREST & BOOKING REPORT IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE. DATE: 10/15/05 TIME: 1000 SIGNATURE: [Signature] ID: [ID] PHOTO: [] DATE OF PHOTO: [] NAME: [] TIME: [] SEARCHING OFFICER: [] SUPERVISOR REVIEW AND SIGN: [] CONDITION AT TIME OF ARRESTION: [] HOW LONG IN CHRG.: [] RELIGION: [] EDUCATION: [] EXPLAIN: [] LOCAL PROGRAM AGENT: [] ☐ YES ☐ NO ATTORNEY: [] PERSON TO CALL IN EMERGENCY: [] ADDRESS: [] PHONE NUMBER: [] SENTENCE TO DAYS: [] ANNUAL: [] FINE AMOUNT: [] COURT: [] EXPIRATION OF SENTENCE: [] A. [] B. [] C. [] NOW GRATE RELEASED: [] SURETY BOND / COMPANY: [] EXPIRATION REMINDER: [] DATE: [] TIME: [] ☐ BOND ☐ YES ☐ NO RECEIPT NO. [] BY CLERK OF COURT: [] RELAY COURT: [] TRANSFERRED OR RELEASED TO: [] OFFICE: [] DATE: [] TIME: []					

Clark David Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

February 21, 2013

Sabrina Todd, Esquire
South Carolina Supreme Court
Office of Disciplinary Counsel
Post Office Box 12159
1015 Sumter Street
Columbia, SC 29211

RECEIVED

FEB 21 2013

OFFICE OF
DISCIPLINARY COUNSEL

Re: **James Watson Smiley, IV, Esquire**
Matter No.: 12-DE-0447
Cumulative Violations of RPC

Dear Ms. Todd:

During the course of prosecuting my divorce, a subpoena was personally served upon James Watson Smiley, IV, Esquire, commanding (1) that he testify at trial; and (2), that he produce a copy of my client file and his *Answer* to the *Formal Complaint* I filed with your office on April 19, 2012. (See pp. 3-5—Subpoena & Affidavit of Service). Because my *ODC Complaint* embraced allegations that Smiley appeared to be in an adulterous relationship with my wife and I am suing her for a divorce on the grounds of, *inter alia*, adultery: his *Answer* is clearly relevant thereto. However, Smiley failed to comply with the court order to produce the foregoing documents, (See p. 6—Affidavit), and he declined the opportunity to object to the request thereof. Therefore: Smiley is in contempt of court.

In response, I filed a *Motion* to compel Smiley to produce. (See pp. 7-11—*Motion to Compel*). When I raised this *Motion* before the trial Court ten days later, it was erroneously determined to have previously been denied. (See pp. 20-24—Trial Transcript). The *Order* on which the trial Court grounded this ruling only addresses my *Motion* to compel my wife to produce, (See pp. 17-19); this matter, *inter alia*, is now in the Court of Appeals. (See p. 20—Notice of Appeal). Be that as it may: Smiley remains in contempt. It should also be duly noted that (1) the aforementioned subpoena constitutes the *fourth* formal attempt I have made to procure my client file; and (2), Smiley confirmed that he retains a copy thereof in storage. (See p. 321—Revised Exhibits in Support).

Another matter of concern developed when Smiley perjured himself at trial on September 20, 2012, before the Honorable Lisa A. Kinon with testimony that my *ODC Complaint* filed April 19, 2012, focused only on his failure to provide my file. (See p. 29, lines 16-22). Because the trial Court appears to have relied upon Smiley to tell the truth as an *officer of the court*: my divorce was decided on facts that Smiley lied to conceal. In light of these circumstances, Smiley's conduct suggests that he may be in violation of the following Rules of Professional Conduct.

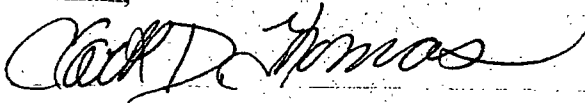
8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) commit a criminal act involving moral turpitude;
- (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (e) engage in conduct that is prejudicial to the administration of justice; and,
- (f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

It is my ambition (1) to see these cumulative violations amended to my *ODC Complaint* filed against Smiley on April 19, 2012, or that this notice thereof be observed as a separate and distinct *Formal Complaint*; (2) that Smiley be sanctioned for contempt and perjury; and (3), that Smiley be disbarred or suspended from practicing law for a definite period of time.

With kind regards
I remain,



Clark D. Thomas

cc: file
James Watson Smiley, IV, Esquire

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Charleston County

Lisa A. Kinon, Family Court Judge
Trial Case No. 2010-DR-10-04251

Appellate Case No. 2012-213714

RECEIVED
JUN 13 2013
S.C. Supreme Court

Clark D. Thomas, ... Appellant,

V.

Rachel M. Crowley, ... Respondent.

**MOTION FOR CERTIFICATION BY SUPREME COURT
AND
MOTION FOR CONTEMPT SANCTIONS**

Pursuant to Rules 204(b), 240, and 607(i)(j), SCACR, Clark D. Thomas, *pro se*, Appellant in the above-captioned *Appeal*, respectfully requests that this Court (1) certify the above-captioned *Appeal* for review and transfer jurisdiction over the case from the Court of Appeals to the Supreme Court for all purposes; and (2), impose sanctions against Anne B. Meyer, Court Reporter for the Ninth Judicial Circuit, for contempt of court. These *Motions* are based on one or more of the following grounds:

RECEIVED
JUN 13 2013
SC Court of Appeals

INTRODUCTION

This matter comes before this Court in the interest of an *Appeal* filed by Thomas in the Court of Appeals on January 17, 2013. Therein, Thomas is seeking relief from the *Final Order & Decree of Divorce* and eight interlocutory *Orders* handed down by the Charleston County Family Court in an action for a marital dissolution. Thomas also contemporaneously filed a *Motion for Time Extension for Filing Initial Brief* in order that he may cure inaccuracies in the record of a motion hearing and the trial. Thomas has since exhausted all known remedial measures to ensure the accuracy of the record from the foregoing proceedings to of no avail and, the Court of Appeals has ordered Thomas to file his *Initial Brief* and *Designation of Matter* by June 13, 2013, with the stipulation that no further extensions of time will be granted.

I.

Pro Se Litigant

The United States Supreme Court has consistently held that they “do not impose on persons unlearned in the law the same high standards of the legal art that they might place on the members of the legal profession.” Pollard v. United States, 352 U.S. 354, 363 (1957). *Pro se* litigants are held “to less stringent standards than formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 523 (1972). “As a *pro se* litigant, the Plaintiff’s pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers.” (Emphasis added). Erickson v. Pardus, 551 U.S. 89, 94 (2007); Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). “When the United States Supreme Court enunciates a rule based upon the Fourteenth Amendment, that rule is binding upon state courts through the

Supremacy Clause.” (Emphasis added). Keeler v. Mauney, 500 S.E.2d 123, 125 (S.C.App. 1998) (citing Henry v. City of Rock Hill, 376 U.S. 776 (1964)).

II.

Challenge to Record

On November 19, 2012, Thomas received the transcript of the trial held on September 20, 2012. During a cursory review of this record, Thomas discovered a number of adversative apography errors, (See p. 11—Errors); and, that testimony *opening the door* to otherwise inadmissible impeachment evidence and the trial court’s erroneous ruling thereon is missing. (See pp. 16-23—Affidavits). In response: Thomas’ mother and *Power of Attorney*, Carol Ann Cook, emailed the court reporter, Anne B. Meyer, on December 14, 2012; which was 25-days after receiving the transcript in question. The purpose thereof was (1) to formally set forth a challenge to that transcript pursuant to Rule 607(i), SCACR, before the 30-days to do so had lapsed; (2) to notify Meyer that a comprehensive list of errors and missing testimony would be forthcoming; and (3), to ensure that Meyer preserved the backup tapes in order to resolve this challenge. (See p. 9, ¶ 1—Exhibit 1; p. 13—Email).

Meyer responded 13-days later on December 27, 2012, that pursuant to Rule 607(i), SCACR, the backup tapes were no longer available because a challenge was not made to the accuracy of the transcript in question before the 30-days to do so had expired on December 19, 2012. (See p. 14—Email). It should be duly noted that on January 2, 2013, Meyer confirmed that she erased the backup tapes five days after Thomas had timely set forth a challenge. (See p. 13—Email).

III.

Contempt of Court

The irrefutably reliable evidence herein verifies that Meyer neglected her statutory duty to observe the 30-day grace period to which Thomas was entitled to challenge the accuracy of the transcript in question; and, that Meyer erased the backup tapes from which that transcript was constructed after Thomas had timely challenged its accuracy. As a result: Meyer's conduct (1) has interfered with judicial proceedings in the Court of Appeals focused on the review of issues raised in that transcript; (2) exhibits disrespect for this Court by virtue of violating the *Rules of Court* promulgated by this Court; and (3), has hampered Thomas' ability to perfect his *Appeal* by subjecting him to inordinate delays and expenses. Therefore: pursuant to Rule 607(j), SCACR, this Court has jurisdiction to enforce an order of contempt of court against Meyer and impose sanctions. "A person may be found guilty of direct contempt if the conduct interferes with judicial proceedings, exhibits disrespect for the court, or hampers the parties or witnesses." Brandt v. Gooding 630 S.E.2d 259, 264 (S.C. 2006).

Formal Complaint

On March 14, 2013, Thomas filed a *Formal Complaint* against Meyer with the South Carolina Court Administration (SCCA). Therein, Thomas asked that if Meyer failed to amend the transcripts in question with the missing testimony and correct the subversively contrary errors: Meyer should be found in contempt of court and, ordered to reimburse Thomas the \$929.50 he paid for that transcript. (See pp. 10-25—Exhibit 2). Thomas also filed a *Motion to Hold Appeal in Abeyance; In the Alternative, Motion for 90-Day Extension* on March 25, 2013, in order that the SCCA have time to resolve his *Complaint* against Meyer. However: Thomas' mother, Carol Ann Cook, made numerous attempts to contact the Court Reporter Manager,

Desiree R. Allen, and other administrators with the SCCA seeking the status of Thomas' *Complaint*; to that end, Cook was left with no other alternative than to leave voice mail messages of inquiry that were never responded to. (See p. 9, ¶ 2—Exhibit 1).

IV.

Extraordinary Circumstances

Thomas is currently in the custody of the South Carolina Department of Corrections (SCDC) at the Broad River Correctional Institution (BRCI) in Columbia, SC. In light of Thomas' status of incarceration and unlearned, *pro se* litigant, this Court should find that Thomas has exercised due diligence in his struggle to procure an accurate record for review in the Court of Appeals. "The appellant has the burden of providing a sufficient record to the appellate court." Helms Realty, Inc. v. Gibson-Wall Co., 611 S.E.2d 485,486 (S.C. 2005).

Issue of Significance

In the case *sub judice*, the Court of Appeals has ordered Thomas to file his *Initial Brief* and *Designation of Matter* by June 13, 2013, and stipulated that no further extensions of time would be granted. Moreover, the SCCA has demonstrated a deliberate indifference to the resolution of Thomas' *Formal Complaint* against Meyer. Consequently, this Court should also find that the general denial of a means to challenge the accuracy of the record of matters on appeal is an issue of (1) significant public interest; and (2), a legal principle of major importance.

Constitutional Infringement

Furthermore, it should be duly noted that because Rule 607(i), SCACR, sets forth procedures for challenging the accuracy of transcripts: Meyer's failure to comply with those mandates, in her capacity as a court reporter for the State of South Carolina, is in violation of

Thomas' right to due process and equal protection of the laws as guaranteed by Article I, §§ 3 and 23 of the South Carolina Constitution and Fourteenth Amendment to the United States Constitution.

V.

Prayer for Relief

In light of the foregoing facts and binding authority, this Court should find that the following conclusions have been established by a fair preponderance of the clear and convincing evidence presented herein:

1. Ann B. Meyer is in direct contempt and her incomprehensible decision to erase the backup tape in question before the lapse of 30-days (1) was in violation of her statutory duty; and (2), supports Thomas' position that the transcript in question is missing essential testimony and, is otherwise constructed with a number of materially obverse errors;
2. The South Carolina Court Administration's failure to acknowledge the *Formal Complaint* filed against Meyer and/or conduct a meaningful investigation is in violation of their statutory duty to ensure the balance of equities;
3. Drafting a brief on the issues preserved at trial on September 20, 2012, for review in the instant *Appeal* would be an exercise of futility without guidance from the Supreme Court because of the ambiguity engendered by the aforesaid flaws in the record;
4. Compelling Thomas to file his *Initial Brief* and *Designation of Matter* by June 13, 2013, notwithstanding the points raised herein is to foster a universally shocking miscarriage of justice;
5. Thomas has timely exercised due diligence in seeking to resolve the inaccuracies in

the transcript in question and, the Supreme Court is the final forum of justice for equitable measures of legal redress in the State of South Carolina; and,

6. The issues presented by virtue of this *Motion* are of significant public interest and involve legal principles of major importance.

Therefore, Thomas respectfully requests that this Honorable Court grant the following relief:

1. Hold Meyer in contempt of court with sanctions to include reimbursing Thomas for costs incurred during the course of (1) drafting the *Formal Complaint* against her with the South Carolina Court Administration; (2) filing two *Motions* in the Court of Appeals for time extensions; and (3), filing this *Motion*;

2. Should Meyer persist in her failure to resolve Thomas' timely challenge to the accuracy of the transcript in question, order that Thomas be reimbursed the costs delineated in paragraph 1 above with the inclusion of the \$929.50 Meyer charged for that transcript;

3. Transfer jurisdiction over the instant *Appeal* from the Court of Appeals to the Supreme Court for all purposes; and,

4. Remand the instant case to the lower court for reconstruction of the record of the trial held on September 20, 2012, or otherwise an equitable course of action to resolve the structural errors and omissions in the transcript in question; and upon a decision thereon, grant Thomas a 90-day extension in order that he may timely file his *Initial Brief* and *Designation of Matter*.

WHEREFORE, Appellant prays that this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,

Clark D. Thomas

Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

June 13, 2013
Columbia, SC

The Supreme Court of South Carolina

Clark D. Thomas, Appellant,

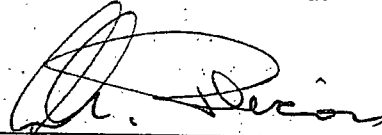
v.

Rachel M. Crowley, Respondent.

Appellate Case No. 2013-001304

ORDER

Appellant moves this Court to certify this appeal from the Court of Appeals pursuant to Rule 204(b), SCACR. He also moves this Court to hold court reporters Anne B. Meyer and Rose B. Walker in contempt, impose sanctions, and take action to correct alleged errors in the transcript. The motions are denied.



FOR THE COURT

J.

Columbia, South Carolina

August 22, 2013

cc:

Clark D. Thomas, 00187845

Laree Anne Hensley

The Honorable Jenny Kitchings

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER OF DEFENDANTS
	)	
	)	
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
Defendants.	)	

Defendants, Evening Post Publishing Co. (newspaper) and Glenn Smith (Smith), responding to the allegations of the complaint, allege:

AS AND FOR A FIRST DEFENSE

1. As to the allegations of paragraph 1, defendants are informed and believe that plaintiff is in the custody of the South Carolina Department of Corrections, but lack information sufficient to form a belief as to the truth or falsity of the remaining allegations thereof, and deny the same.

2. As to the allegations of paragraph 2, no response is required.

3. As to the allegations of paragraph 3, defendants admit the same.

4. As to the allegations of paragraph 4, defendants admit the same.

5. As to the allegations of paragraph 5, defendants admit the same.

6. As to the allegations of paragraph 6, defendants admit that on June 9, 2006 a news report was published describing the criminal charges made against defendant, and deny the remaining allegations thereof.

7. As to the allegations of paragraph 7, defendants admit that on March 1, 2007 a news report was published regarding plaintiff's prospective release from jail, but deny the remaining allegations thereof.

8. As to the allegations of paragraph 8, defendants lack information sufficient to form a belief as to the truth or falsity thereof, and deny the same.

9. As to the allegations of paragraph 9, defendants admit the same.

10. As to the allegations of paragraph 10, defendants admit that on July 12, 2008, a news report was published regarding plaintiff's conviction on criminal charges, but deny the remaining allegations thereof.

11. As to the allegations of paragraph 11, defendants admit that persons commented on plaintiff's criminal conviction, but deny that they have any liability therefor by virtue of Section 230 of Title 47 of the United States Code of Laws.

12. As to the allegations of paragraph 12, defendants admit that Smith attended a family court trial relating to plaintiff's divorce, but deny the remaining allegations thereof.

13. As to the allegations of paragraph 13, defendants deny the same and allege in connection therewith that by virtue of his conviction of heinous crimes and his initiation and maintenance of grievances, appeals and civil actions, plaintiff is a public figure with respect to the matters described in the complaint, or, in the alternative, the matters complained of are matters of general or public interest.

14. As to the allegations of paragraph 14, defendants admit that plaintiff made the statements recited in paragraph 14, but deny the substance of all allegations other than that defendant Smith was in the courtroom.

15. As to the allegations of paragraph 15, defendants admit the same.

16. As to the allegations of paragraph 16, defendants admit the same.
17. As to the allegations of paragraph 17, defendants admit that on September 23, 2012 a news report prepared by defendant Smith was published concerning plaintiff's divorce, but deny the remaining allegations thereof.
18. As to the allegations of paragraph 18, defendants admit that a news report prepared by defendant Smith was published on September 23, 2012 regarding the trial in plaintiff's divorce action, but deny the remaining allegations thereof.
19. As to the allegations of paragraph 19, defendants admit so much thereof as alleges plaintiff has attached a document to the complaint, but deny that "fault, misleading and defamatory statements and innuendos," were published regarding plaintiff at any time.
20. As to the allegations of paragraph 20, defendants admit that defendant Smith prepared and newspaper published a news report regarding the trial in plaintiff's divorce action, but deny the publication of any false information or that they demonstrated a reckless disregard for the truth or manipulated facts or mislead the public for any purpose.
21. As to the allegations of paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, defendants deny the same.
22. All allegations not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE

23. The publications of June 9, 2006, March 1, 2007, and July 12, 2008 were more than two years in advance of the commencement of the within-captioned action, and are therefore barred by the statute of limitations for libel actions.

AS AND FOR A THIRD DEFENSE

24. The publications complained of by plaintiff were fair and accurate reports of official proceedings and records, and are privileged at common law.

AS AND FOR A FOURTH DEFENSE

25. The publications complained of by plaintiff are privileged under the First and Fourteenth Amendments of the United States Constitution.

AS AND FOR A FIFTH DEFENSE

26. Since plaintiff's claim for libel is for injury to reputation, and since by his own admission, plaintiff is incarcerated having been convicted of kidnapping and criminal domestic violence of a high and aggravated nature, the publication of additional information regarding plaintiff by these defendants, even if false, which is denied, would have only a *de minimus* effect on plaintiff's reputation for which no recovery should be allowed.

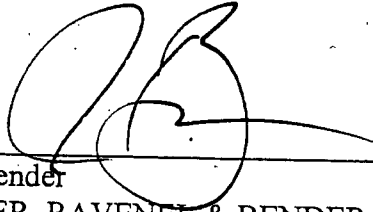
AS AND FOR A SIXTH DEFENSE

27. Defendants are informed and believe that a person convicted of kidnapping and criminal domestic violence of a high and aggravated nature in the circumstances under which plaintiff was convicted has no reputation capable of being injured even by the publication of false statements of fact, the publication of which is denied by these defendants.

AS AND FOR A SEVENTH DEFENSE

28. The allegations of the complaint fail to state a cause of action for libel against either defendant.

WHEREFORE, having fully responded to the allegations of the complaint, defendants pray that the same be dismissed with costs assessed against plaintiff together with such other relief as may be appropriate.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
P.O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendants

October 11, 2013

#5

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Clark D. Thomas,

Plaintiff,

V.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually,

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

AMENDED COMPLAINT

JURY TRIAL DEMANDED

FILED
2013 NOV 22 AM 9:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, Clark D. Thomas, complaining of the Defendants herein, alleges as follows:

1. Plaintiff is currently in the custody of the South Carolina Department of Corrections (SCDC) at the Broad River Correctional Institution (BRCI), Richland County, South Carolina.
2. Plaintiff hereby invokes his right to a trial by jury in this libel action as guaranteed by Article I, §§ 16 and 23 of the South Carolina Constitution.
3. The Defendant Evening Post Publishing Company, d/b/a The Post and Courier (Post), is a company in Charleston County, South Carolina, that publishes a daily newspaper known as *The Post and Courier*.
4. The Defendant Glenn Smith (Smith) is a resident of the state of South Carolina and at all times mentioned herein, was an agent or employee of the Post, and was acting in the course of and the scope of his employment with the Post.

5. On or about March 3, 2007, Plaintiff made contact with Smith to inform him that his articles written about Plaintiff and published by the Post on June 9, 2006, March 1, 2007, and July 12, 2008, are rife with lies.

6. The articles published by the Post on June 9, 2006, March 1, 2007, and July 12, 2008, are not to be considered as alleged causes of action. To be clear, this action was not filed for the purpose of seeking damages resulting from these articles because the statute of limitations has precluded Plaintiff's right to do so.

7. The article Smith wrote about Plaintiff and the Post published on September 23, 2012, is the exclusive cause of action that compelled Plaintiff to timely file this lawsuit.

FOR A FIRST CAUSE OF ACTION

LIBEL

8. Each and every allegation in paragraph 1-7 above is to be considered as if restated verbatim herein.

9. On September 20, 2012, Smith attended the divorce trial in the case of *Clark D. Thomas v. Rachel M. Crowley*.

10. Plaintiff is a private figure and the proceedings delineated in paragraph 9 are not of public concern.

11. During the course of his divorce trial delineated in paragraph 9, while under oath, Plaintiff entered the following evidence into the record of those proceedings:

- (a) That Smith was in the courtroom;
- (b) That Smith printed a lot of lies about Plaintiff;
- (c) That Smith would seek to destroy Plaintiff's credibility in his next article for the Post; and,

(d) That Smith lacked integrity, was not interested in the facts, and was only concerned with selling papers for the Post.

12. Plaintiff's mother, Carol Ann Cook (Cook), approached Smith during the trial delineated in paragraph 9 and informed him that he should hear the truth before writing another article.

13. On September 21, 2012, Cook sent an email notifying Smith that Plaintiff wanted to provide him with documents proving the articles he had written about him and the Post published on June 9, 2006, March 1, 2007, and July 12, 2008, are based on events that did not actually happen. (R. p. 97) (See p. 11—Exhibit 162).

14. The Post wickedly, maliciously, and with the intent and design to injure, disgrace, and defame, and to bring Plaintiff into public discredit and obloquy, published on September 23, 2012, a false, malicious, misleading and defamatory article concerning Plaintiff that was written by Smith. (R. pp. 98-101) (See pp. 12-15—Exhibit 163).

15. The article delineated in paragraph 14 was written by Smith and published by the Post to avenge Plaintiff for the statements he made on public record regarding Smith's scandalous tack that are outlined in paragraph 11.

16. The article delineated in paragraph 14, when read as a whole, focusing on that part which described Rachel M. Crowley (Crowley) and her mother, Cathy Mere (Mere), as Plaintiff's "trembling wife and his horrified mother-in-law," respectively, was false to the extent that directly and by the innuendo intended to mean and did mean that being in the presence of Plaintiff caused them to fear for their lives.

17. The article delineated in paragraph 14, when read as a whole, focusing on that part

which says “[s]he was a girl from the country, just 19. He was 41” is false in part and directly and by innuendo intended to mean and did mean that Plaintiff was an aging predator who took advantage of Crowley’s youth and naivete.

18. The article delineated in paragraph 14, when read as a whole, focusing on that part which says “they bounced from one motel to another without a stable home” is false and directly and by innuendo intended to mean and did mean that Plaintiff was incompetent and irresponsible to the measure that he was not even capable of providing a stable home for his wife.

19. The article delineated in paragraph 14, when read as a whole, focusing on that part which says “Crowley had gone back to live with her mother in Adams Run when [Plaintiff] showed up at their house June 5, 2006, and invited her to go with him to his North Charleston motel room to retrieve her belongings” is false and directly and by innuendo intended to mean and did mean that the aging Plaintiff took advantage of Crowley’s youth and naivete to lure her into his transient home.

20. The article delineated in paragraph 14, when read as a whole, focusing on that part which says “[w]hen they walked into the room, [Plaintiff] pulled out a stun gun, jammed it into [Crowley’s] back and pushed her to the floor” is false and directly and by innuendo intended to mean and did mean that the aging Plaintiff took advantage of Crowley’s youth and naivete to lure her into his transient home where she could be ambushed with the infliction of horrific abuse.

21. The article delineated in paragraph 14, when read as a whole, focusing on that part which says that Plaintiff “restrained Crowley with plastic zip ties, handcuffs, tape and shackles as he repeatedly abused her and jolted her body with electric charges from the stun gun” is false and directly and by innuendo intended to mean and did mean that the aging Plaintiff took

advantage of Crowley's youth and naivete to lure her into his transient home where she could be ambushed, restrained and tortured with the infliction of horrific physical abuse.

22. The article delineated in paragraph 14, when read as a whole, focusing on that part which says that Plaintiff "held Crowley for about 45 hours before she was able to escape after he took her for a ride in his minivan" is false and directly and by innuendo intended to mean and did mean that the aging Plaintiff took advantage of Crowley's youth and naivete to lure her into his transient home where she could be ambushed, restrained and tortured for days with the infliction of horrific physical abuse until she was able to escape.

23. The article delineated in paragraph 14, when read as a whole, focusing on that part which says that Plaintiff "buried his bride in a blizzard of paperwork and legal motions" directly and by innuendo intended to mean and did mean that Plaintiff had continued in force and effect to torment and harass Crowley.

24. The article delineated in paragraph 14, when read as a whole, focusing on that part which says that because Plaintiff "was entitled to represent himself, the state had to foot the bill for his trips to Charleston.... The cost to taxpayers? Close to \$5,000" directly and by innuendo intended to mean and did mean that taxpayers paid the cost of the scheme Plaintiff devised merely to torment and harass Crowley.

25. The article delineated in paragraph 14, when read as a whole, focusing on that part which says "Family Court judges offered to grant [Plaintiff] a divorce about a half-dozen times, but each time [he] turned them down" is false in part and directly and by innuendo intended to mean and did mean that Plaintiff acknowledged time and again that he was indifferent to the taxpayers having to pay for his conniving ploy designed to torment and harass Crowley.

26. The article delineated in paragraph 14, when read as a whole, focusing on that part

which says that Plaintiff “delayed a trial with a flurry of motions” is false and directly and by innuendo intended to mean and did mean that Plaintiff was seeking to prolong the torment and harassment he was subjecting Crowley to and was indifferent to the cost imposed upon taxpayers in doing so.

27. The article delineated in paragraph 14, when read as a whole, focusing on that part which says that Plaintiff “called witnesses, then didn’t know what to ask them, lapsing into rants against the system. He tried to introduce several documents that had no bearing on the divorce” directly and by innuendo intended to mean and did mean that Plaintiff’s ignorance also revealed that his ulterior motive was to harass and torment Crowley.

28. The article delineated in paragraph 14, when read as a whole, focusing on that part which quotes Plaintiff saying “[q]uite frankly my case has been pretty much wrecked. Every corner I turn, I’m getting my head whacked off. I don’t know what to do” directly and by innuendo intended to mean and did mean that Plaintiff was discouraged by the reality that he was not going to be allowed to continue to harassing and tormenting Crowley.

29. The article delineated in paragraph 14, when read as a whole, focusing on that part which says that “[n]early three dozen witnesses ... packed the court room to await their turn to testify. [Plaintiff] kept one doctor waiting for two hours before he called her to the stand to ask her about treating Crowley for mental health issues. When the doctor explained that she had seen Crowley only for a wellness visit and a pap smear, [Plaintiff] ran out of questions for her” is false in part and directly and by innuendo intended to mean and did mean that Plaintiff’s ignorance and his objective to harass and torment Crowley needlessly interfered with the lives and incomes of dozens of taxpayers.

30. The article delineated in paragraph 14, when read as a whole, focusing on that part

which says "The judge asked [Plaintiff] what he hoped to gain through one line of questioning. He shrugged and chuckled. "That was a hail Mary"" directly and by innuendo intended to mean and did mean that blinded by ignorance and desperation, Plaintiff had resorted to asking ridiculous questions that he hoped would enable him to resume tormenting and harassing Crowley.

31. The article delineated in paragraph 14, when read as a whole, focusing on that part which says that Plaintiff "had an attorney who once represented him pulled from plea hearings on another floor so that he could testify in the divorce. [Plaintiff] called the attorney arrogant and insinuated that the man had an affair with Crowley, without offering any evidence to back up that assertion. The attorney, fuming, denied any relationship" directly and by innuendo intended to mean and did mean that the attorney was indignant at having been interrupted during another legal matter only to testify in response to Plaintiff's baseless accusations and that Plaintiff was out-of-control.

32. The article delineated in paragraph 14, when read as a whole, focusing on that part which says "[w]hen [Plaintiff] finally got Crowley on the stand, he peppered her with questions about how long she had lived with her mother.... She stared straight at him and, in an even voice, said she couldn't recall with specificity. But she had no problem answering his questions about where she had gone after leaving him at the motel in 2006. 'To the hospital,' she replied" is false and directly and by innuendo intended to mean and did mean that Plaintiff's last-ditch effort to abuse Crowley was foiled when she bravely faced her tormentor and said their separation began when he put her in the hospital.

33. The article delineated in paragraph 14, when read as a whole, focusing on that part

Smith expressed his opinion, which confirms *actual malice*, when saying “[i]nmate with limited law knowledge finally gets his comeuppance” directly and by innuendo intended to mean and did mean that because of the allegations delineated in paragraph 16-22 and Plaintiff’s endeavor to represent himself, he deserved the adverse rulings of the divorce trial court.

34. Plaintiff has always enjoyed a good reputation for being a non-violent, compassionate man and a loving and caring father. He is also respected for his knowledge in the electrical trade and his business practices and has always enjoyed the company of many friends. And until having met Crowley, he had never been associated with violence or accused of a violent act.

35. When Smith wrote and the Post published the article delineated in paragraph 14, these Defendants demonstrated a reckless disregard for the truth or its falsity by declining to verify the details and truth of the matters therein and, by manipulating the facts for the purpose of misleading the public to further their agenda to malign Plaintiff.

36. The article delineated in paragraph 14 was published with *actual* and *implied malice*.

37. The excerpts delineated in paragraphs 16-33 are unauthorized third-party publications.

38. The article delineated in paragraph 14 was deliberately and intentionally worded, phrased, set up and published in as distasteful a manner as possible to malign Plaintiff without regard to Plaintiff’s rights.

FOR A SECOND CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

39. Each and every allegation in paragraphs 1-38 above is to be considered as if restated verbatim herein.

40. The article delineated in paragraph 14 is false, untrue, misleading and, in its absence

of *substantial truth*, is intended to injure Plaintiff's feelings and reputation, and the Post and Smith knew and should have known it to be false, untrue and misleading.

41. The acts of the Post and Smith were intentional and reckless and inflicted severe emotional stress on Plaintiff and these Defendants were certain or substantially certain that such distress would result from their conduct.

42. The conduct of the Post and Smith was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

43. The actions of the Post and Smith were the direct and proximate cause of Plaintiff's emotional stress and the emotional distress suffered by Plaintiff were so severe that no reasonable person could be expected to endure it.

44. The Post failed and refused to retract, recall, or apologize for publishing the defamatory and malicious article delineated in paragraph 14 after having been requested to do so.

45. Smith wrote and the Post published the false, defamatory and libelous statements in the article delineating paragraph 14 after having refused to verify the details and the truth of the matters therein, and proceeded to publish the same without making an investigation of the facts and in reckless disregard of the rights and reputation of Plaintiff.

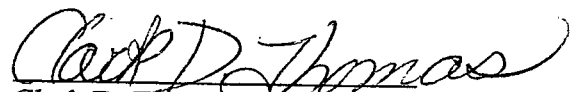
46. By virtue of the false statements delineated in paragraphs 16-33, Plaintiff has suffered great anguish of mind and body, exposed to public hatred, contempt, ridicule, has been deprived of the benefits of public confidence and social acceptance in the community, has been put to great embarrassment and such embarrassment continues and will continue in the future to cause Plaintiff great anguish of mind and body.

47. Plaintiff has also suffered damages in one or more of the following particulars:

- (a) Severe depression;
- (b) Anxiety and nervousness;
- (c) Grief and sorrow;
- (d) Mental shock and suffering;
- (e) Loss of sleep and nightmares;
- (f) Loss of familial support; and,
- (g) Loss of allies, friends, colleagues and associates.

WHEREFORE, having fully set forth the complaint herein, the Plaintiff prays for judgment against the Defendants in the amount of \$250,000 for actual damages; an appropriate award of punitive damages and, pre-judgment and post-judgment interest; and, for such other relief as the Court deems just and proper.

Respectfully submitted,



Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

November 22, 2013
Columbia, SC

Exhibit 162: (page 1 of 1)

Trial Thursday Thomas vs. Crowley

Carol Cook <cacook1030@gmail.com>

Fri, Sep 21, 2012 at 9:42
AM

To: Glenn Smith <gsmith@postandcourier.com>

Mr. Smith,

I'm Carol Cook, David Thomas mom. We spoke yesterday and David has since spoken to me. He wants you to have his story so you will know the other side. He says you will find it fascinating. I have his written binded information and documents. We can arrange for him to talk to you directly. You will have to let me know a time you would be calling.

You may call me at cell: 803-422-0693. My email is
cacook1030@gmail.com

Thank you,
Carol Cook

Exhibit 163: (page 1 of 4)

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Inmate with limited law knowledge finally gets his comeuppance

Glenn Smith

Posted: Sunday, September 23, 2012 12:17 a.m.

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Thomas

Rachel Crowley hoped she had seen the last of her husband when a judge sent him to prison for 20 years for kidnapping and torturing her with a stun gun at a North Charleston motel in 2006.

The attack left her scarred and rattled, alone and broke. Crowley didn't have the money to hire an attorney, and she was scared to provoke her husband by filing for divorce. She hoped that if she just let him be, he would serve his sentence and leave her alone.

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Rachel Crowley, right, says she was kidnapped by her husband Clark David Thomas in 2007 and tortured with a stun gun. At

But Clark David Thomas wasn't about to let that happen.

The 50-year-old inmate got himself a do-it-yourself legal guide, taught himself some law and filed his own divorce complaint, accusing Crowley of mental and physical cruelty, adultery and habitual drunkenness.

What's more, Thomas asked the court to award him alimony and force his victim to support him and pay his legal expenses. He also sought the return of his property, including a stash of Maxim men's magazines.

Thomas filed his initial complaint in November 2010, and the case dragged out for nearly two years before coming to a head in a Charleston County courtroom last week.

Thomas buried his bride, now 27, in a blizzard of paperwork and legal motions, many aimed at revisiting the allegations at the heart of his 2008 criminal trial.

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Exhibit 163: (page 2 of 4)

left is her mother: Catly Mariee.

Because Thomas was entitled to represent himself, the state had to foot the bill for his trips to Charleston from Broad River Correctional Institute in Columbia, where he is serving his sentence.

Two prison guards had to accompany him on each trip, corrections officials said.

The cost to taxpayers? Close to \$5,000, according to the state Department of Corrections.

Family Court judges offered to grant him a divorce about a half-dozen times over the past two years, but each time Thomas turned them down. He wanted a trial where he could face his wife in court and refute her accounts of abuse at his hands, which he has long insisted were fabricated.

He said he also worried that not contesting her claims of abuse would be seen as a tacit admission of his guilt.

"I never got a chance to tell my side of the story," he told a judge Thursday. "I sought to prove I'm not the animal I have been depicted as being."

So for eight long hours, with 34 witnesses in tow and one hand shackled to his side, Thomas attempted to do just that as his loyal family, his trembling wife and his horrified mother-in-law looked on.

"I just want this to be over," Crowley said. "It's like I am having to relive everything all over again."

A rocky union

Thomas and Crowley met through mutual friends and were married in March 2004. She was a girl from the country, just 19. He was 41, an electrician by trade and a repeat offender with a criminal record ranging from check fraud and forgery to domestic violence.

By all accounts, the pair had a tumultuous relationship filled with fights, substance abuse and hard times as they bounced from one motel to another without a stable home.

Crowley said Thomas got her hooked on heroin, crack cocaine and booze to control her. Thomas denies that was the case, though he acknowledged struggling with a drug problem.

Crowley had gone back to live with her mother in Adams Run when Thomas showed up at their house on June 5, 2006, and invited her to go with him to his North Charleston motel room to retrieve her belongings.

When they walked into the room, Thomas pulled out a stun gun, jammed it into her back and pushed her to the floor, police said. He restrained Crowley with plastic zip ties, handcuffs, tape and shackles as he repeatedly abused her and jolted her body with electric charges from the stun gun, police said.

Investigators said Thomas held Crowley for about 45 hours before she was able to escape after he took her for a drive in his minivan.

Police arrested Thomas the same day, though he insisted that what happened in the motel room had been consensual. Investigators didn't buy his story, and neither did the jury that found him guilty in July 2008 of kidnapping and criminal domestic violence of a high and aggravated nature.

He will not be eligible for release until December 2024.

Long road to trial

Thomas initially filed for an uncontested divorce in November 2010, seeking only an official split and to have his court fees paid by Crowley.

He later came back with demands for alimony, and he asked the court to find her at fault for cruelty and misbehavior during their marriage. He accused her in court filings of concocting the kidnapping story to get back at him for asking her for a divorce in June 2006.

North Charleston attorney Laree Hensley agreed to represent Crowley, assuming it would be a relatively simple divorce case. She then helped Crowley, who is unemployed and of limited means, file a counterclaim for divorce.



Citadel Knobs Train

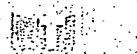


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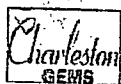


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5. Daniel Island restaurant owner shocked, amused by mayhem over Boyd, Clowney menu items

Exhibit 163: (page 3 of 4)

Thomas delayed a trial with a flurry of motions — enough to take up about a foot of space on a courthouse shelf. He also filed grievances against two Family Court judges and Crowley's attorney.

He sought yet another delay Thursday so he could have more time to prepare, but Family Court Judge Lisa A. Kinon told him it was go-time.

At Hensley's request, Kinon also limited testimony to events that occurred after June 7, 2006, the day Thomas was arrested. That's because Thomas had insisted that he and Crowley were willingly together as a couple at the motel and that he was simply making love to his wife that day.

That placed the day of their official separation at June 7, making the crime itself and prior marital problems off-limits for the hearing.

Thomas, a wiry, bespectacled man with short, graying hair, repeatedly complained about that move during the proceeding, calling Hensley "a tricky one" and accusing her of "bushwhacking" him and railroading his case.

Again and again, he tried to bring up the crime for which he was convicted, only to be met with objections from Hensley. Dozens of times, the judge reminded him that they were there to discuss his divorce, not re-try his criminal case.

"I think you are trying to defend yourself against things I don't even know about," Kinon said. "This is a divorce case."

Clearly frustrated, Thomas seemed at a loss as to how to proceed. He called witnesses, then didn't know what to ask them, lapsing into rants against the system. He tried to introduce several documents that had no bearing on the divorce.

He kept losing track of his paperwork, delaying the proceeding several times as he pawed through the mountain of documents before him with the one free hand not shackled to his waist.

"Quite frankly, my case has been pretty much wrecked," he said. "Every corner I turn, I'm getting my head whacked off. I don't know what to do."

Looking for answers

Nearly three dozen witnesses — several police officers, a doctor, a lawyer and more — packed the courtroom to await their turn to testify.

Thomas kept one doctor waiting for two hours before he called her to the stand to ask her about treating Crowley for mental health issues. When the doctor explained that she had seen Crowley only for a wellness visit and a pap smear, Thomas ran out of questions for her.

He called one of his friends to the stand and asked the man if he had anything useful to say to help him out. "Get divorced," his friend replied.

At another point, the judge asked Thomas what he hoped to gain through one line of questioning. He shrugged and chuckled. "That was a Hail Mary."

Later, Thomas had an attorney who had once represented him pulled from plea hearings on another floor so he could testify in the divorce. Thomas called the attorney arrogant and insinuated that the man had an affair with Crowley, without offering any evidence to back up that assertion. The attorney, fuming, denied any relationship.

When Thomas finally got Crowley on the stand, he peppered her with questions about how long she had lived with her mother and what dates she had been arrested for disorderly conduct.

She stared straight at him and, in an even voice, said she couldn't recall with specificity.

But she had no problem answering his question about where she had gone after leaving him at the motel in 2006. "To the hospital," she replied.

The judge rules

Judge Kinon remained patient with Thomas throughout the day while nudging him along through the process.

6. Air Force colonel in charge of sexual assault prevention office charged with assault, battery

7. Charleston School of Law co-founder Edward Westbrook says school should be converted to a nonprofit, not sold to an out-of-state corporation

8. Alzheimer's research shifting from treatment to prevention

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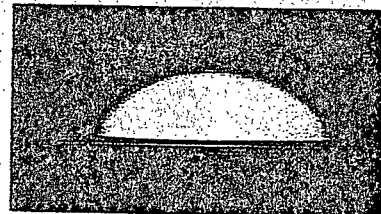
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Exhibit 163: (page 4 of 4)

In the end, she ruled that Thomas had failed to establish any of the claims in his complaint. She turned down his request for alimony and attorney fees, and said there didn't appear to be any of his property left to give back, including the Maxim magazines.

She then granted Crowley a divorce from him, along with matching restraining orders for the ex-couple. Kinon also lauded Hensley for her work on the case.

Because Thomas had made the case so onerous for Hensley, the judge ordered him to pay her attorney's fees — a \$9,000 bill. He must pay her within 30 days of his release.

He might just be able to do that too, as financial documents show Thomas has a \$25,000 trust fund awaiting him when he completes his sentence.

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After Kinon announced her ruling, Thomas shot a look at his family, started to laugh and tossed his head back. "Wow!" he shouted, before correctional officers led him away.

Crowley left the courtroom, hugging her mother and Hensley. "Oh my God. Oh my God," she kept saying, her eyes brimming with tears. "Thank you so much. I can't believe it finally happened."

She and her mother planned a modest celebration to mark the end of her marriage. But they couldn't help but think about the petition Thomas said he is preparing to ask the courts for post-conviction relief, a strategy aimed at winning a new trial or a reduced sentence.

Before they know it, they could be back in the same courthouse with him all over again.

Reach Glenn Smith at 937-5556 or [Twitter.com/glennsmith5](https://twitter.com/glennsmith5).

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
CLARK D. THOMAS,	)	CASE NO. 2013-CP-10-5444
	)	
PLAINTIFF	)	
	)	
VS.	)	ANSWER TO AMENDED COMPLAINT
	)	
EVENING POST PUBLISHING	)	
CO., INC. AND GLENN SMITH,	)	
	)	
DEFENDANTS	)	

Defendants Evening Post Publishing Co., Inc., now known as Evening Post Industries, Inc., and Glenn Smith (Smith), responding to the allegations of the Amended Complaint, allege:

1. As to the allegations of paragraphs 1 and 2, defendants admit the same.
2. As to the allegations of paragraph 3, defendants admit so much thereof as alleges that the corporate defendant publishes the *Post and Courier* newspaper (newspaper), but allege that the name of Evening Post Publishing Co., Inc. has been changed to Evening Post Industries, Inc.
3. As to the allegations of paragraph 4, defendants admit so much thereof as alleges that Smith is a resident of South Carolina and at the times relevant to this action was acting the course and scope of his employment with the newspaper.
4. As to the allegations of paragraphs 5, defendants admit that plaintiff disputed news reports of his arrest and felony convictions, but deny that these publications are relevant to the present action.
5. As to the allegations of paragraphs 6 and 7, defendants admit the same.

AS AND FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION

6. As to the allegations of paragraph 8, defendants reassert and restate the facts and matters contained in paragraphs 1 through 5 above as fully and completely as if restated herein verbatim.

7. As to the allegations of paragraph 9, defendants admit the same.

8. As to the allegations of paragraph 10 defendants deny the same, and allege in connection therewith that by his criminal actions, and as a consequence of his antics in his divorce litigation plaintiff has become a limited purpose public figure, or, in the alternative, plaintiff's criminal actions and his conduct in connection with his divorce litigation are matters of public interest and concern.

9. As to the allegations of paragraph 11, defendants admit so much thereof as allege that during his divorce litigation plaintiff, who was proceeding *pro se*, made numerous statements regarding defendant Smith, but the only statement which was accurate was that defendant Smith was in attendance at the trial.

10. As to the allegations of paragraph 12 and 13 defendants admit the same and allege in connection therewith that the news reports of June 9, 2006, March 1, 2007 and July 12, 2008 were truthful reports of plaintiff's arrest and felony convictions and matters related thereto.

11. As to the allegations of paragraph 14, defendants deny the same, and allege in connection therewith that the news report of September 23, 2012 was a fair and accurate account of plaintiff's divorce litigation.

12. As to the allegations of paragraph 15, defendants admit so much thereof as alleges that defendant Smith wrote and defendant newspaper published the news report of September 23, 2012, but deny the remaining allegations thereof.

13. As to the allegations of paragraphs 16 through 33 defendants deny plaintiff's interpretations of the contents of the news report, and allege in connection therewith that the new report was a fair and accurate account of plaintiff's divorce litigation and criminal activities.

14. As to the allegations of paragraph 34, defendants lack information sufficient to form a belief as to the truth or falsity thereof, deny the same, and in connection therewith allege that plaintiff was arrested, convicted and sentenced to a term of twenty (20) years in prison for kidnapping and criminal domestic violence of a high and aggravated nature.

15. As to the allegations paragraphs 35, 36, 37 and 38, defendants deny the same and allege in connection therewith that the news report of plaintiff's divorce litigation was a fair and accurate account of plaintiff's criminal activities and divorce litigation.

16. All allegations in paragraphs 1 through 38 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE
FIRST CAUSE OF ACTION

17. The publication complained of by plaintiff was a fair and accurate report of official proceedings and records and is privileged at common law.

AS AND FOR A THIRD DEFENSE TO THE
FIRST CAUSE OF ACTION

18. The publication complained of by plaintiff is privileged under the First and Fourteenth Amendments to the United States Constitution.

AS AND FOR A FOURTH DEFENSE TO THE

FIRST CAUSE OF ACTION

19. Since plaintiff's claim is for injury to reputation, and since by his own admission plaintiff is incarcerated having been convicted and sentenced for kidnapping and criminal domestic violence of a high and aggravated nature, the publication of additional information regarding plaintiff by these defendants, even if false, which is denied, would have only a *de minimis* effect on plaintiff's reputation for which no recovery should be allowed.

AS AND FOR A FIFTH DEFENSE TO THE

FIRST CAUSE OF ACTION

20. Defendants are informed and believe that a person convicted of kidnapping and criminal domestic violence of a high and aggravated nature in the circumstances under which plaintiff was convicted of those crimes has no reputation capable of being injured even by the publication of false statements of fact, the publication of which is denied by defendants.

AS AND FOR A SIXTH DEFENSE TO THE

FIRST CAUSE OF ACTION

21. The allegations of paragraphs 1 through 38 of the Amended Complaint fail to state a cause of action as to either defendant.

AS AND FOR A FIRST DEFENSE TO THE

SECOND CAUSE OF ACTION

22. As to the allegations of paragraph 39, defendants reassert and restate the facts and matters contained in paragraph 1 through 16 above as fully and completely as if restated herein verbatim.

23. As to the allegations of paragraph 40, defendants deny the same, and allege in connection therewith that the news report of September 23, 2012 was a fair and accurate report of plaintiff's divorce litigation and criminal activity.

24. As to the allegations of paragraphs 41, 42 and 43, defendants deny the same.

25. As to the allegations of paragraph 44, defendants admit the same and allege in connection therewith that no retraction, recall or apology was warranted for the publication of a news report that was a fair and accurate summary of plaintiff's divorce litigation and criminal activity.

26. As to the allegations of paragraphs 45, 46 and 47, defendants deny the same and allege in connection therewith that the news report of September 23, 2012 was a fair and accurate report of plaintiff's divorce litigation and criminal activity, and that the emotional injuries claimed by plaintiff, if they exist, are a direct and proximate consequence of having been convicted of kidnapping and criminal domestic violence of a high and aggravated nature and sentenced to twenty (20) years in prison.

27. All allegations in paragraphs 39 through 47 not hereinabove admitted, qualified or explained, are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE

SECOND CAUSE OF ACTION

28. The allegations of paragraphs 39 through 47 fail to state a cause of action in that they rely exclusively on the facts asserted as the basis for plaintiff's libel claim and seek redress for injury to reputation and matters related thereto.

AS AND FOR A THRID DEFENSE TO THE

SECOND CAUSE OF ACTION

29. The allegations of paragraphs 39 through 47 fail to state a cause of action for intentional infliction of emotional distress in that they fail to allege that plaintiff has sought and received medical, psychological or psychiatric treatment for emotional injury occasioned solely by the publication of the September 23, 2012 news report.

AS AND FOR A FOURTH DEFENSE TO THE

SECOND CAUSE OF ACTION

30. The allegations of paragraphs 39 through 47 fail to state a cause of action for intentional infliction of emotional distress in that they fail to allege that defendants published false statements of fact of and concerning plaintiff knowing the statements were false or having a reckless disregard for potential falsity.

AS AND FOR AN ADDITIONAL DEFENSE TO THE

CLAIM FOR PUNITIVE DAMAGES

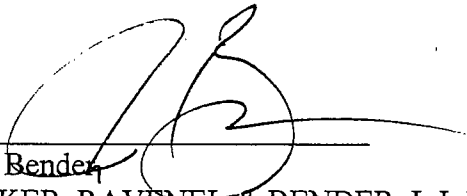
31. The allegations of the Amended Complaint fail to allege that the publication of September 23, 2012 contained false statements of fact of and concerning plaintiff when defendants knew the statements were false or had reckless disregard for potential falsity.

WHEREFORE, having fully answered the allegations of the Amended Complaint, defendants pray that the same be dismissed with costs assessed against the plaintiff together with such other relief as is just and proper.

SIGNATURE ON FOLLOWING PAGE

Columbia, South Carolina

November 25, 2013



Jay Bender

BAKER, RAVENEL & BENDER, L.L.P.

3710 Landmark Dr., Suite 400

Post Office Box 8057

Columbia, SC 29202

803.799.9091 (telephone)

803.779.3423 (facsimile)

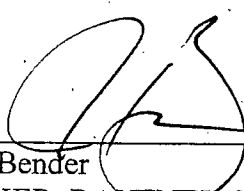
ATTORNEYS FOR DEFENDANTS

#7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	NOTICE AND MOTION FOR
	)	JUDGMENT ON THE PLEADINGS
	)	
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
<u>Defendants.</u>	)	

TO: CLARK D. THOMAS, *PRO SE*:

PLEASE TAKE NOTICE that ten days hereafter or as soon thereafter as counsel may be heard, defendants will move through the undersigned pursuant to Rule 12(c), SCRPC, for judgment on the pleadings as to plaintiff's claims of libel arising out of publications on June 9, 2006, March 1, 2007, and July 12, 2008. The within-captioned action was filed on September 17, 2013, and served subsequent thereto. Accordingly, plaintiff has failed to initiate timely his action for recovery as to these publications, and his action is barred by the two-year statute of limitations for libel claims under Section 15-3-550(1) of the South Carolina Code of Laws.


 Jay Bender
 BAKER, RAVENEL & BENDER, L.L.P.
 3710 Landmark Drive, Suite 400
 P.O. Box 8057
 Columbia, South Carolina 29202
 (803) 799-9091
 Attorneys for Defendants

October /6 , 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

9th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-5444

Clark D. Thomas)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Evening Post Publishing Co., et. al)

Defendant.)

Plaintiff's Attorney:

Pro Se, Bar No. N/A

Address:

4460 Broad River Road, Columbia, SC 29210

Phone: NAFax NA

E-mail: NAOther: NA

Defendant's Attorney:

Jay Bender, Bar No. 651

Address:

P.O. Box 8057, Columbia, SC 29202

Phone: 803-799-9091 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: _____

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.

*Clark D. Thomas*Signature of Attorney for ☒ Plaintiff/☐ Defendant*November 22, 2013*

Date submitted

SECTION III: Motion Fee☒ PAID - AMOUNT: \$ 25.00☐ 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
NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

Clark D. Thomas,)
Plaintiff,)
V.)
Evening Post Publishing Co.,)
d/b/a The Post and Courier,)
Glenn Smith, Officially)
and Individually,)
Defendants.)

NOTICE OF MOTION AND
MOTION FOR JUDICIAL NOTICE

FILED
2013 NOV 22 AM 9:26
JULIE ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, *pro se*, now respectfully seeks pursuant to Rule 201(d)(f), SCRE, that this Court take *judicial notice* of the following:

1. The Defendants' filed on October 18, 2013, their *Motion for Judgment on the Pleadings* seeking dismissal of claims of libel propounded to have been set forth by Plaintiff. These alleged pleadings are ascribed to the Defendants' articles published June 9, 2006, March 1, 2007, and July 12, 2008. To that end, Thomas made clear in paragraphs 17-23 and 27-29 of his *Complaint* and paragraphs 6 and 7 of his *Amended Complaint* that the exclusive cause of action for this lawsuit is their article published on September 23, 2012; (R.p. 114)
2. The Defendants' have declared that they served Plaintiff with their *Answer* to his original *Complaint* on October 11, 2013. However, the postmark on that service is dated October 15, 2013, and was finally received by Plaintiff on October 17, 2013. (See p. 4 — Exhibit A); and,

3. On November 12, 2013, Thomas' *Amended Complaint* and a *Motion* was received by the Clerk of Court. (~~See p. 5—Exhibit B~~). Therefore, Thomas had timely filed the *Amended Complaint* within 30 days from when the Defendant purportedly served him with their *Answer* to his original *Complaint*. However, the clerk of court refused to file any of these documents because a personal check was provided for the filing of the *Motion*. (See p. 6—Exhibit C). With that in mind, Thomas has for years presented personal checks for the filing of motions and lawsuits with the Charleston County Clerk of Court. In fact, the fee for filing this very lawsuit was paid with a personal check. (~~See p. 7—Exhibit D~~).

Therefore, because the foregoing facts are matters of public record filed with the clerk of court and Plaintiff has otherwise supplied the necessary information, (See p. 10—Exhibit G), Plaintiff respectfully requests that this Court take *judicial notice* that (1) the Defendants' *Motion for Judgment on the Pleadings* is moot and Plaintiff should not be transported at the taxpayers' expense to a hearing thereon; (2) the Defendants' service upon Plaintiff of their *Answer* to his *Complaint* was actually carried into effect on October 15, 2013; and (3) Thomas' *Amended Complaint* was timely filed within 30 days after the Defendants served their *Answer* to his original *Complaint* pursuant to Rule 15(a), SCRPC.

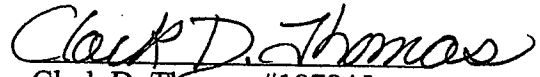
"A court *shall* take a judicial notice if requested by a party and supplied with the necessary information." (Emphasis added). Bowers v. Bowers, 561 S.E.2d 610-614 (S.C.App. 2002). "Use of word 'shall' ... indicates the provision is mandatory." (Internal quotations in original). Calhoun v. Calhoun, 529 S.E.2d 14, 18 (S.C. 2000). "A fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general

public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.” *Bowers, at 615.*

Prayer for Relief

WHEREFORE, Plaintiff prays that this Honorable Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,



Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

November 22, 2013
Columbia, SC

**AFFIDAVIT
OF
CLARK D. THOMAS**

NOW COMES Clark D. Thomas, Plaintiff in the above-captioned case, and states, under oath, the following:

1. The facts I have stated by virtue of this *Motion for Judicial Notice* are true and correct to the best of my knowledge and belief; and,
2. The envelope marked as *Exhibit A* on p. 4 of this *Motion* is the actual envelope in which I was served with the Defendants' *Answer* to my *Complaint*.

Further affiant sayeth naught.

SUBSCRIBED AND SWORN TO before me
This 21 day of November, 2013

Ella S. Dixy Bess (L.S.)
Notary Public for South Carolina
My Commission Expires: 9/28/2019

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)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

Clark D. Thomas,

Plaintiff,

V.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually,

Defendants.

ORDER OF JUDICIAL NOTICE

THIS MATTER came before me in a *Motion for Judicial Notice* filed by Clark D. Thomas, *pro se*, Plaintiff in the above-captioned case, pursuant to Rule 201(d)(f), SCRE.

The Court having reviewed Plaintiff's motion and exhibits in support now takes **Judicial Notice** of the following facts:

1. The Defendants' *Motion for Judgment on the Pleadings* as to Plaintiff's alleged claims of libel arising out of publications on June 9, 2006, March 1, 2007, and July 12, 2008, is moot. Therefore, a hearing of arguments on these grounds should not be convened.
2. The service of the Defendants' *Answer* to Plaintiff's original *Complaint* was carried into effect on October 15, 2013.
3. Plaintiff's *Amended Complaint* was timely filed within 30 days after the Defendants served their *Answer* to his original *Complaint* pursuant to Rule 15(a), SCRCRCP.

IT IS SO ORDERED, ADJUDGED AND DECREED!!

_____, 2013
Charleston, S.C.

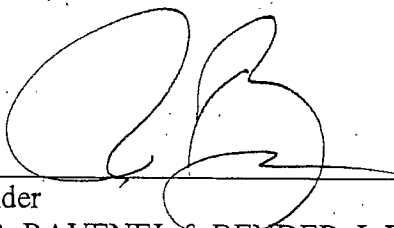
PRESIDING JUDGE IN THE
COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	NOTICE AND MOTION FOR
	)	SUMMARY JUDGMENT
	)	
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
Defendants.	)	

TO: CLARK D. THOMAS, PLAINTIFF:

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, defendants will move through the undersigned pursuant to Rule 56, SCRCP for judgment in their favor on grounds that the pleadings, answers to interrogatories, admissions, the transcript of record in the Family Court proceeding Clark D. Thomas v. Rachel M. Crowley, and the affidavit of Glenn Smith filed contemporaneously herewith show that there is no genuine issue as to any material fact and that defendants are entitled to a judgment as a matter of law on the following grounds:

1. The news report complained of by plaintiff is privileged as a fair and accurate account of judicial records and proceedings;
2. the news report complained of by plaintiff is true or substantially true, and,
3. plaintiff's reputation, based on his criminal history, could not be diminished further by the publication of the news report complained of by plaintiff thereby rendering plaintiff libel-proof.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendants

Columbia, South Carolina

June 26, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

Clark D. Thomas,)
Plaintiff,)
V.)
Evening Post Publishing Co.,)
d/b/a The Post and Courier,)
Glenn Smith, Officially)
and Individually,)
Defendants.)

**NOTICE OF MOTION AND
MOTION FOR CONTINUANCE;
OR IN THE ALTERNATIVE,
MOTION FOR DISMISSAL WITHOUT
PREJUDICE AND TOLLING OF THE
STATUTE OF LIMITATIONS.**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT -6 PM 2:56

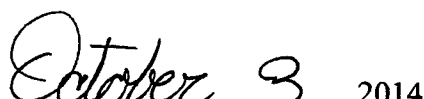
FILED

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, *pro se*, will move before the presiding Judge in the Court of Common Pleas for an *Order* of continuance in the above-captioned case until the final judgment is reached in the case of *Thomas v. State of South Carolina*, Case No. 2012-CP-10-8354; or in the alternative, and *Order* of dismissal without prejudice and tolling of the statute of limitations with a 90 day grace period following the final judgment in the case of *Thomas v. State of South Carolina*. These *Motions* are brought pursuant to Rule 40(i), SCRCP, and upon such other law and argument as is appropriate. Plaintiff's *Motions* are based on the pleadings and one or more of the grounds set forth in Plaintiff's *Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment*.

Respectfully submitted,



Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210


Columbia, SC

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

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**) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT**

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Frances W. M. G. 10/30/09

(Affiant) Date

Jenna Carriday 10/30/09

(Witness) Date

**) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT**

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IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

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Steve Brooks

(Name)

Gilbert,

SC

29054

(Address)

City)

(State)

(Zip Code)

Clark D. Thomas was first introduced to me as an electrical contractor over 20-years ago and became my sole provider for any electrical services needed in my business. Since that time we have become close friends, as he is with nearly every member of my extended family. I have never seen him commit an act of violence and have always considered him to be a compassionate and kind man in addition to being very smart. I am willing to testify to these and other facts should I be required to do so.

5th day of November

Date _____

(L.S.)

(Witness)

Date _____

02/12/14

**) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT**

-versus-

**AFFIDAVIT OF
Joyce Carty**

Charge: Kidnapping, CDVHAN
Date of Arrest: 06/07/06
Warrant No.s: K-120149,
K120150
Arresting Officers:
Talbott, Brazelton, & Rowan
Arresting Agency:
North Charleston Police
Indictment No.s
2006-GS-10-12295 and
2006-GS-10-12296

Comes now, being duly sworn and deposed, Joyce Carty,
(Name)
1335 Mohegan Terrace SE, Palm Bay, FL, 32909, under penalty
(Address) (City) (State) (Zip Code)
of perjury that the following statements are true and correct to the best of my knowledge
and belief.

Clark D. Thomas is my nephew. He is extremely bright, and a very considerate man whom I've loved since the day he was born. I've never known of or witnessed any violent behavior by him. I also know him to be a loving and supportive father. I will gladly testify to his good nature should I be asked to do so.

Subscribed and sworn to before me this
6 day of Nov. 2009

B. J. J. J. J. (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/16/2018

Joseph Cartier 6 Nov 09
(Affiant) Date
Barclay E. Co. 11/6/09
(Witness) Date

**) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT**

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IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

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Deidi Bennett

(Name)

751 Mallet Hill Road, Apt 9108

(Address)

(City)

(State)

(Zip Code)

, under penalty

of perjury that the following statements are true and correct to the best of my knowledge and belief.

Clark D. Thomas is my cousin. He is smart, compassionate, and a good father. He is welcome in my home and I know him to be a non-violent man. I will testify in court on his behalf should I be asked to do so.

Subscribed and sworn to before me this

9 day of November, 2009

(L.S.)

(Witness)

My Commission Expires 8-5-2013

(Affiant)

Daté

(Witness)

Date _____

Daté

Date _____

**) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT**

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(Name)

(Address)

(City)

(State)

(Zip Code)

(Affiant)

Date

(L.S.)

(Witness)

Date

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

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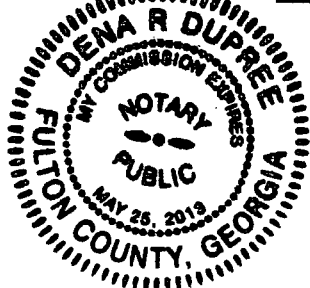
d.

Some 10-years ago, I contacted Clark D. Thomas, via the yellow pages, with regard to electrical repairs needed at a restaurant I owned in Charleston that had caught fire. He and I became good friends as a result and I have always made a point to get together with him whenever I was in town. He is a charismatic and intelligent man whom I've never witnessed to be violent. My business obligations are in Atlanta, however, I am willing to testify on his behalf should the opportunity present itself.

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IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

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IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

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(Affiant)

Date _____

(Witness)

Date _____

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICAL CIRCUIT

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to

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(Name)

(Address)

Lexington
(City)

SC
State

29072
Zip Code

, under penalty

belief.

Clark David Thomas is my uncle. He has always been a fun person to be around and a wonderful uncle to me. He is welcome in my home. I know him to be a non-violent person. If I can help him in court, I will do so.

23 day of March 2010

(L.S.)

10-2-2017

(Affiant)

Date _____

(Witness)

Date _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

Clark D. Thomas,)
)
Plaintiff,)
)
V.)
)
Evening Post Publishing Co.,)
d/b/a The Post and Courier,)
Glenn Smith, Officially)
and Individually,)
)
Defendants.)

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
A JUDGMENT TO INCLUDE
SPECIFIC FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

FILED
2014 NOV 17 PM 12:40
JULIE J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Clark D. Thomas, *per se*, now respectfully moves the Honorable R. Markley Dennis, Jr. 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. Plaintiff's *Motion* is based on the pleadings and one or more of the following grounds:

INTRODUCTION

This is an action for libel and intentional infliction of emotional distress filed by Plaintiff, Clark D. Thomas, arising from the article written about him by Defendant Glenn Smith, and published by Defendant Evening Post Publishing Company, d/b/a The Post and Courier (Post), on September 23, 2012. (See *infra* Exhibit A, pp. 17-20). Thomas is seeking \$250,000 in actual damages, punitive damages in an amount to be determined by a jury and, for pre-judgment and post-judgment interest.

I.

Thomas did file affidavits opposing the Defendants' motion for summary judgment and gave testimony under oath that established a genuine issue of material fact; and the *Amended Complaint* answers the purpose of Rule 56(e) SCRPC, as well.

Black's Law Dictionary 1698 (9th Edition 2009) defines *verify* as "[t]o prove to be true; to confirm or establish the truth or truthfulness of; to authenticate." "A verified complaint is an acceptable substitute for an affidavit in a summary judgment motion as long [as] the pleading satisfies the requirements of the summary judgment rule regarding affidavits." Dawkins v. Fields, 580 S.E.2d 433 (S.C. 2003). "When ruling on motion for summary judgment, trial judge must consider all of the documents and evidence within the record...." Higgins v. Medical University of South Carolina, 486 S.E.2d 296 (S.C.App. 1997). "[T]he false statement made with reckless disregard of the truth do[es] not enjoy constitutional protections." (Citation omitted). Anderson v. The Augusta Chronical, 585 S.E.2d 506, 513 (S.C.App. 2003).

Opposing Affidavits

The action at hand was filed in response to the Defendants' article dated September 23, 2012, because it was written to defame Thomas. And the defendants have argued that Thomas is *libel-proof*. Therefore, pursuant to Rule 56(e), SCRPC, Thomas filed on October 6, 2014, 14 *affidavits* in opposition to the Defendants' line of reasoning that his reputation was not capable of being damaged.

Sworn Testimony

Also in the record of this case is the transcript of Thomas' divorce trial proceedings. During which, Thomas was under oath when testifying that the Defendants had (1) printed a lot of lies about him, and that Defendant Glenn Smith lacked integrity and was only interested in selling newspapers; (2) the Defendants had a duty to disclose the truth but would likely attempt

to further destroy his credibility in their next article; and (3) they were not interested in the facts.
(~~R. p. 314, lines 11-24; p. 348, lines 24-25 — p. 850, lines 1-15~~)
(~~Tr. p. 75, lines 11-25; p. 109, line 24-25 — p. 111, lines 1-15~~).

Verified Pleadings

The Defendants have confirmed the verity of the following averments in the *Amended Complaint*:

1. Smith was notified on or about March 3, 2007, that his articles are rife with lies, (~~Amend. Comp. p. 2, ¶ 5; Answer to Amend. Comp. p. 1, ¶ 4~~)
(~~R. p. 88, ¶ 5; p. 102, ¶ 4~~);

2. Thomas' mother, Carol Ann Cook, told Smith during Thomas' divorce trial that he should hear the truth before writing another story about Thomas, and that Cook emailed Smith the next day to convey Thomas' eagerness to provide him with documents proving his previous articles were based on events that did not actually happen. (~~Amend. Comp. p. 3, ¶ 12-13; Answer to Amend. Comp. p. 2, ¶ 10~~)
(~~R. p. 89, ¶¶ 12-13; p. 103, ¶ 10~~); and,

3. The Defendants refused to retract the article in dispute. (~~Amend. Comp. p. 9, ¶ 44; Answer to Amend. Comp. p. 5, ¶ 25~~)
(~~R. p. 95, ¶ 44; p. 106, ¶ 25~~).

Results Ascertained

By way of affidavits, sworn testimony, and verified pleadings Thomas has submitted much more than the mere scintilla of evidence required to withstand the Defendants' motion for summary judgment. To wit:

1. Thomas had a good reputation before the Defendants published the article in dispute, (~~See 14 Affidavits~~)
(~~R. pp. 119-132~~);

2. The Defendants were alerted time and again that their articles published before the one in dispute were based on false allegations, (~~See Memorandum Argument IV, pp. 7-9~~)
(~~R. pp. 217-219~~); and,

3. The Defendants refused to accept proof that their previous articles were based on false

allegations, and then they published the article in dispute that was also based on those
(R. pp. 219-221)
same false allegations. (~~See Memorandum Argument V, pp. 9-11~~).

In other words, the evidence proffered supports Thomas' contention that the Defendants abused the privileges they invoked under the First and Fourteenth Amendments to the United States Constitution when publishing the article in dispute with malice and a reckless disregard for the truth. (R. pp. 221-223)
(~~See Memorandum Argument VI, pp. 11-13~~). Therefore, Thomas did file *affidavits* opposing the Defendant's motion for summary judgment and gave testimony under oath that establish a genuine issue of material fact; and the *Amended Complaint* answers the purpose of Rule 56(e), SCRPC, as well.

II.

Defendant Glenn Smith's *affidavit* sets forth numerous allegations that have either been controverted, or require conclusion that in addition to malice, must be made by a jury; and a jury should also decide whether Thomas is *libel-proof*.

"If triable issues exist, those issues must go to jury rather than be decided on summary judgment." Worsley Companies v. Town of Mount Pleasant, 528 S.E.2d 657 (S.C. 2000). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Singleton v. Sherer, 659 S.E.2d 196 (S.C.App. 2008). "Unless the trial court find ... that the Plaintiff can prove actual malice, ... it should grant summary judgment for the defendant." George v. Fabri, 548 S.E.2d 868 (S.C. 2000). "For a summary judgment to be granted, it must be perfectly clear that no issue of fact is involved." Davenport v. Island Ford, Lincoln, Mercury, Inc., 465 S.E.2d 737 (S.C.App. 1995). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions...." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). "A

novel issue such as here presented is best decided in light of the testimony to be adduced at trial." Tyler v. Macks Stores of South Carolina, 272 S.E.2d 633, 634 (S.C. 1980).

Facts, Malice & Admissions

Every allegation made in Smith's *affidavit* concerning Thomas' divorce is self-serving to the extent of belying the malice that compelled him to defame Thomas. (Memo pp. 9-11). Be that as it may, each of Smith's claims were qualified in Thomas' request for the retraction of the article in dispute. (R. pp. 34-58) (~~Complaint pp. 28-50~~). As for Smith's claims concerning Thomas' erroneous convictions for kidnapping and CDVHAN, the clear and convincing evidence that Thomas' accuser is a habitual liar has been outlined for this Court in *Exhibit B* attached to Thomas' Memorandum. (R. pp. 231-238) (~~Memo pp. 21-29~~). And the reason Thomas declined to respond to the Defendants' request for admission is that they were merely seeking to confirm matters that were already on public record. In other words, with the exception of having also been known as Thomas Wayne Poore, all of the Defendants' inquiries in their request for admissions are hereby confirmed as being true. However, Thomas has mitigated the impact of that misleading information in his Memorandum. (R. pp. 224-226) (~~Memo pp. 14-16~~). Therefore, the malicious allegations in Smith's *affidavit* and the novel issue of whether Thomas is *libel-proof* both require conclusions that can only be drawn by a jury.

III.

Thomas' right to due process and equal protection has guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law requires that the Defendants' motion for summary judgment be denied.

"If a [plaintiff] wishes to claim that an evidentiary ruling at a state court trial denied him due process of law as guaranteed by the Fourteenth Amendment, he must say so, not only in

federal court; but in state court.” Duncan v. Henry, 518 U.S. 364, 366 (1995). “Constitutional arguments ... not raised to the trial court are deemed waived on appeal. State v. Powers, 501 S.E.2d 116 (S.C. 1998). “Even if the court only issues a form order in response to a[n] ... [issue], and a party does not make 59(e) motion, if the arguments in support of the [issue] are included in the record on appeal, they are preserved.” (Citation omitted). Jean Hoefer Toal, Shahim Yafai, Robert A. Muckenfuss, Appellate Practice in South Carolina 60 (2nd Edition 2002).

Due Process & Equal Protection

Thomas filed a 16 page *Memorandum of Law* with exhibits attached thereto. And this Court acknowledged having received Thomas’ *Memo*, and confirmed that it would be included in the record on appeal for review by the appellate court. With that in mind, Thomas’ *Memo* argued that, *inter alia*, he had a due process and equal protection right to the denial of the Defendants’ motion for summary judgment. ^(R. pp. 226) ~~(Memo p. 16)~~. Furthermore, the arguments supported by binding authorities herein have also established that there are genuine issues of material fact that require the services of a jury. Therefore, Thomas’ right to due process and equal protection has guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina Law requires that the Defendant’s motion for summary judgment be denied.

IV.

Prayer for Relief

In light of the foregoing facts and binding authorities, Thomas respectfully requests that this Court rescind the *Order* granting summary judgment for the Defendants, and that this case be heard by a jury.

WHEREFORE, plaintiff prays this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,

Clark D. Thomas

Clark D. Thomas
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

November 13, 2014
Columbia, SC

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Clark D. Thomas,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 13-CP-10-5444
	)	
Evening Post Publishing Co., <i>et. al.</i>	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 10th, 2014, before The Honorable R. Markley Dennis, Jr. in Courtroom 3A of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Clark D. Thomas
Appearing *Pro Se*

Jerry Bender, Esq.
(Information not provided)
Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: Are there any Motions
2 still outstanding for Clark versus Evening
3 Post Publishing?

4 MR. BENDER: Your Honor, ---

5 THE COURT: Good morning, Mr.
6 Bender. How are you?

7 MR. BENDER: Good morning, Your
8 Honor. How are you, sir?

9 THE COURT: I am well. Thank you,
10 sir.

11 MR. BENDER: I had withdrawn the
12 Motion for judgment on the pleadings. I had
13 consented to the plaintiff's Amended
14 Complaint and have answered that.

15 THE COURT: Okay.

16 MR. BENDER: The Motion that was
17 docketed under that is his Motion for
18 judicial notice and I'm not sure exactly what
19 that is.

20 THE COURT: I am not sure either.

21 FEMALE: He's here.

22 THE COURT: He's here. Let's find
23 out what it is. Maybe we -- and I am always
24 learning something, Mr. Bender.

25 MR. BENDER: I look forward to it.

1 THE COURT: I am too. You're
2 next, so you can go ahead and take your seat
3 at the table. It's good to see you, as well.

4 MR. BENDER: Thank you.

5 (MR. CLARK ENTERS COURTROOM)

6 THE COURT: Mr. Clark?

7 MR. CLARK: Good morning, sir.

8 THE COURT: Good morning. How are
9 you?

10 MR. CLARK: Good. Thank you.

11 THE COURT: Let me get your file
12 -- 5444, (reviewing).

13 All right. Mr. Bender has indicated
14 that several of the Motions have been
15 resolved. The only one left is your Motion
16 for judicial notice. I'm not -- what is
17 that?

18 MR. CLARK: That's moot as well.
19 That was the whole purpose of the filing of
20 the Motion, was to eliminate the need or the
21 call for me to be transported today.

22 THE COURT: I see. Well, thank
23 you. Probably the easiest thing to do is to
24 send a letter to the clerk and tell her, 'my
25 motions are withdrawn' if that ever comes up

1 again.

2 MR. CLARK: Okay.

3 THE COURT: But, uh, the Motion is
4 moot. Mr. Bender, is that okay with you,
5 sir?

6 MR. BENDER: Yes, sir.

7 MR. CLARK: Well, if I may, ---

8 THE COURT: Yes, sir?

9 MR. CLARK: If it pleases the
10 court, I came prepared to address some issues
11 and go ahead and ---

12 THE COURT: I appreciate that, Mr.
13 Clark, and -- you know what? I -- I've been
14 doing this, either as a lawyer or as a judge,
15 for almost forty -- forty-one years.
16 Sometimes I think, 'you know what, that would
17 probably be the best thing to do when we have
18 everybody together, let's see what can we
19 resolve and maybe we can move the case
20 along.'

21 But that's not the way that it
22 works. As I told somebody who was upset with
23 my ruling yesterday, because she had to pay
24 to file a pleading, uh, I told her I was
25 sorry but that's how you get something here.

1 You have to file something. You have to file
2 a Motion so that both sides know what is
3 going on.

4 So, thank you very much. I am sure
5 that we will be hearing from you and we will
6 schedule them and deal with them as quickly
7 as we can. Thank you, sir.

8 MR. CLARK: If I might ask, how
9 long will you be on the bench?

10 THE COURT: I'll be on the bench
11 -- I mean, you want me to ---

12 MR. CLARK: This session, Your
13 Honor.

14 THE COURT: Oh, -- this session.
15 Hopefully this session will be over -- this
16 is a full room. I was hoping we'd be
17 finished by 12:00. I am shooting for that
18 right now.

19 MR. CLARK: No, no. I mean in the
20 Charleston area. You'll be here through
21 March, is what I am getting at?

22 THE COURT: Oh, I'm going to be in
23 and out of Charleston until at least 2015,
24 for sure. Thank you very much. Maybe after.
25 We'll see. That depends on the Legislature.

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MR. CLARK: Thank you, sir.

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THE COURT: Thank you.

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(HEARING CONCLUDED)

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State of South Carolina) In the Circuit Court
County of Charleston) Ninth Judicial Circuit

Clark D. Thomas,) Transcript of Record
Plaintiff,) 2013-CP-10-5444

V.)

Evening Post Publishing)

Company, et al.,)

Defendant.)

October 29, 2014

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, Jr., Presiding
Judge

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

Clark D. Thomas, Pro Se Plaintiff

Jay Bender, Esquire

Attorney for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

Summary Judgment Motion.....	3
Certificate of Reporter.....	15

NO EXHIBITS WERE MARKED

1 Wednesday, October 29, 2014

2 THE COURT: Good afternoon, Mr. Thomas.

3 MR. THOMAS: Good afternoon, sir.

4 THE COURT: I think your mother has brought this
5 and delivered it here for you. I have now been provided
6 a copy as well, and she's also filed it in the Court, so
7 it's a part of the file.

8 MR. THOMAS: All right. Thank you.

9 THE COURT: You're very welcome. Thank you, sir.
10 You may take your seat.

11 All right. This is your motion, Mr. Bender?

12 MR. BENDER: Yes, Your Honor. Thank you very much.

13 I'm Jay Bender here for Defendants Evening Post
14 Publishing Company and Glenn Smith. In support of the
15 motion I have filed the affidavit of Glenn Smith,
16 responses to interrogatories, requests for admission,
17 which were not responded to by the plaintiff.

18 This is a cause of action brought pro se for liable
19 and for intentional infliction of emotional distress
20 arising out of the publishing of one news report
21 regarding the plaintiff's efforts to represent himself
22 pro se in family court in a divorce action --

23 THE COURT: Okay.

24 MR. BENDER: -- following his conviction for
25 domestic abuse and kidnapping.

1 The affidavit of Glenn Smith goes through the
2 allegations of the complaint and ties each of the
3 allegations to the transcript of the family court
4 proceeding, and I've also filed the transcript of the
5 family court proceeding in connection with this.

6 The grounds for the motion are that the publication
7 is true, or substantially true, or if not it would be a
8 full and accurate report of public record, principally an
9 incident report that detailed the arrest of the plaintiff
10 in connection with the charges for which he was
11 convicted.

12 THE COURT: Okay.

13 MR. BENDER: That given even if this material were
14 false that were published in the news report, that given
15 the plaintiff's extensive criminal history there is no
16 reputation capable of being diminished by a news report
17 relating to his effort to be his own lawyer.

18 THE COURT: Okay.

19 MR. BENDER: For these reasons -- and since the
20 intentional infliction of emotional distress claim
21 relates only to the allegations of the publication of a
22 false news report that's a basis for the liable claim
23 both claims would fall, number one, if you don't -- if
24 you have a traditional tort such as defamation there is
25 no intentional infliction claim.

1 So I think both claims rise and fall on this
2 defamation issue and there is no genuine issue of
3 material fact. There has been no affidavit addressing
4 the plaintiff's burden of proving the falsity of what has
5 been published under Philadelphia Newspapers V. Hess.

6 Thank you, Your Honor.

7 THE COURT: Thank you, sir.

8 All right. I'll be happy to hear from you in
9 response, Mr. Thomas.

10 MR. THOMAS: If it pleases, Your Honor. If I could
11 get at least -- get my hands free. I can't --

12 THE COURT: That's --

13 MR. THOMAS: Or at least one of them.

14 THE COURT: Can you release one? One hand for him,
15 please.

16 MR. THOMAS: Thank you.

17 THE COURT: Thank you. Yes, sir.

18 (PAUSE.)

19 THE COURT: Thank you, sir. I appreciate that.

20 All right, sir.

21 MR. THOMAS: Okay. If it pleases the Court. Can I
22 ask to be sworn in or would my testimony be given --

23 THE COURT: Sir, you are not giving testimony. We
24 are not testifying. This is a summary judgment. It's
25 one of those -- it's really a pretrial disposition of the

1 case and it's based on affidavit or other submissions
2 that are testimony under oath, which is what the
3 affidavits -- the affidavits in response to the summary
4 judgment motion have to be done, and that's the basis
5 upon which I can render it. It can't be testimony today.
6 So you don't have to be sworn. You are your lawyer. You
7 are now arguing your case.

8 MR. THOMAS: That would mean that I couldn't submit
9 my testimony --

10 THE COURT: No, sir. That's not provided for under
11 our rules.

12 MR. THOMAS: All right.

13 THE COURT: And I've looked through your file. I
14 don't find any affidavits that have been filed in
15 response to the motion for summary judgment.

16 MR. THOMAS: So does that preclude any further?

17 THE COURT: You have to -- the rule requires if you
18 have some position you have to state it. You have to
19 file what I call counter affidavits that create the
20 material issue of fact, at least a scintilla of genuine
21 issue of material fact, and that's how it's established,
22 through the filing of an affidavit or sometimes we do
23 deposition testimony.

24 I've also heard, and it's been submitted there were
25 requests to admit served upon you which were not answered

1 and under the rules if you do not answer them they are
2 deemed admitted.

3 So the basis for the summary judgment is on the
4 affidavits filed by the defendant and the request that I
5 now deem the request to admit admitted which forms --
6 further forms a basis for the summary judgment. So under
7 the rules unless you have filed something there is
8 nothing that I can do as a matter of law other than grant
9 the summary judgment.

10 MR. THOMAS: Well, I did put a motion in for a
11 continuance and the reason for that, Your Honor, is that
12 when I litigated my divorce which every -- at every turn
13 I was accused or it was presumed that I was trying to
14 seek post-conviction relief during the course of those
15 proceedings whereas it was merely my intent to refute the
16 pleadings.

17 THE COURT: I appreciate that but really more
18 particular as far as continuance is concerned -- what is
19 the date that you filed your summary judgment motion?

20 MR. BENDER: It was clocked in July 2nd of this
21 year, Your Honor.

22 THE COURT: And so that's when you had to file your
23 -- I mean, you've had since July 2nd of 2014. It's now
24 October the 29th. So your motion to continue this matter
25 is denied.

1 MR. THOMAS: Well, I didn't file it today, Your
2 Honor. It was filed several weeks ago.

3 THE COURT: Well, I'm denying your motion because,
4 first of all, you've had notice of this hearing how long?

5 MR. THOMAS: I got notice of it and we got a
6 continuance, and then when I got the new notice I filed
7 another motion for a continuance. I called and got a
8 continuance.

9 THE COURT: So this isn't the first time it was
10 continued?

11 MR. THOMAS: Well, I got a -- Mr. Bender agreed to
12 a delay because I had -- my PCR hearing was scheduled.

13 THE COURT: I understand. So you knew there was a
14 hearing pending but you didn't file any affidavits?

15 MR. THOMAS: Well, I wasn't aware of the affidavit
16 rule.

17 THE COURT: Thank you, sir. I appreciate that but
18 that doesn't -- what about the request to admit?

19 MR. THOMAS: They didn't answer any of mine and --
20 well, they answered but they didn't give me any
21 information. They totally -- they gave me incomplete and
22 vague answers on every question I asked.

23 THE COURT: They answered them though?

24 MR. THOMAS: But they did respond.

25 THE COURT: But you didn't respond?

1 MR. THOMAS: Well, I responded to their
2 interrogatories but the requests for admissions are
3 addressed in this memorandum that I filed.

4 As far as in the alternative on my motion I also
5 ask that the complaint be dismissed without prejudice and
6 the tolling of the statute of limitations. Your Honor --

7 THE COURT: Well, first of all, there's no basis
8 for that. I can't toll the statute of limitations.
9 There would be no reason to.

10 MR. THOMAS: Well, where I could re-file it because
11 -- see, this is what it's all about. When I went through
12 my divorce hearing and I saw Glenn Smith in the
13 courtroom --

14 THE COURT: Mr. Thomas, I appreciate it but I
15 really and truly am not trying to cut you off. There
16 would be a day for a trial but that's what summary
17 judgments do. They eliminate the necessity for that.
18 It's a way to save the time and expense on the part of
19 everybody to prepare for a trial and present the case,
20 and that's why we have them.

21 I will grant you that there is no question the law
22 says they should be rarely used but there has to be a
23 genuine issue of material fact which has to be
24 established by some -- as I've gone through, some
25 affidavit, some sworn testimony or, as the case we have

1 here, when we have requests to admit that are deemed
2 admitted under our rules. And I appreciate the fact that
3 you may not know that but it's one of the problems
4 associated with representing one's self, and when you're
5 not a lawyer.

6 And I understand you have somewhat of a problem in
7 that respect that the fact that you incarcerated but that
8 doesn't prevent you from hiring a lawyer, that doesn't
9 prevent you from consulting a lawyer. And the problem
10 that we have -- and I'm glad the Chief Justice has done a
11 lot to try to encourage people and educate people about
12 representing themselves, but the bottom line, all of us
13 who practice law, and I did for 21 years and I was
14 involved in two lawsuits not related to my law practice
15 but business deals which I was involved, and I was lawyer
16 and I hired a lawyer every single time. And the reason I
17 did is you can't be objective about your own case.

18 And quite frankly, what I've heard here today is
19 further indication in support and confirmation of that
20 because you have -- as any human being, your focus, you
21 have tunnel vision and your tunnel vision is I want to
22 get you to where I -- what went on, and as a lawyer you
23 know you can't do that. You've got to look at the whole
24 picture. And so, sir, I appreciate it. You don't have
25 any affidavits, and I've denied your motion to continue,

1 which you've requested and again requested and filed
2 previously. Based on that we've now protected the record
3 for purposes of review.

4 You have your memorandum and I certainly will
5 incorporate that memorandum for purposes of review. You
6 are entitled to rely on that submission and everything
7 contained therein, and based on the arguments of counsel
8 and the submissions by counsel I grant his motion.

9 Mr. Bender, I would ask that you prepare the
10 appropriate order.

11 MR. BENDER: I will, Your Honor.

12 THE COURT: And once you get that order you will
13 have an opportunity to appeal. So thank you, sir.

14 MS. COOK: Could I say something, Your Honor?

15 THE COURT: Yes, ma'am. I'll allow you to speak.
16 But if you'll give me your full name for the record,
17 please.

18 MS. COOK: I'm Carol Ann Cook. I'm his mother.

19 THE COURT: Yes, ma'am.

20 MS. COOK: And at the divorce trial I don't know
21 where that came up, that he had a 25,000 dollar trust
22 fund that he would get when he was released. There is no
23 such trust fund. Glenn Smith put that in the newspaper.

24 THE COURT: Ma'am, I appreciate all of what you are
25 talking about.

1 MS. COOK: So that was a lie.

2 THE COURT: Well, ma'am. I appreciate what you are
3 saying but the bottom line is I just ruled on a matter of
4 law. I haven't tried this case. I've tried it in the
5 sense that there's no legal issue of fact based on what I
6 have before me, and so for that reason I'm granting the
7 summary judgment. So thank you, ma'am. I appreciate
8 that.

9 MR. THOMAS: Your Honor?

10 THE COURT: Yes, sir, Mr. Thomas.

11 MR. THOMAS: So that's the end of it?

12 THE COURT: That's the end of it until the Supreme
13 Court or Court of Appeals reverses it. Yes, sir. Thank
14 you.

15 MR. THOMAS: But in the affidavit and the
16 admissions is what -- do you mind -- would you -- I know
17 this is -- it's a big thing to ask. This memorandum is
18 15 pages --

19 THE COURT: Sir, it's incorporated.

20 MR. THOMAS: Well, I understand but if you would
21 read that --

22 THE COURT: I have read it.

23 MR. THOMAS: Oh, you did?

24 THE COURT: Yeah. I've read it but it doesn't
25 change my mind, sir.

1 MR. THOMAS: What he did to me was heinous. I
2 mean, it's just --

3 THE COURT: Sir, I appreciate that. What I do is a
4 matter of law.

5 MR. THOMAS: I understand. I'm sorry.

6 THE COURT: I understand that. Thank you, sir.

7 MR. THOMAS: Thank you very much.

8 THE COURT: You bet. I understand that's your
9 feeling.

10 MR. THOMAS: Pardon me?

11 THE COURT: I understand that's your feeling.

12 MR. THOMAS: Yes, sir.

13 THE COURT: Thank you, sir.

14 MR. THOMAS: Thank you.

15 MR. BENDER: Thank you, Your Honor. Good to be
16 with you.

17 THE COURT: You too, Mr. Bender.

18 MR. THOMAS: It was an honor to be with you.

19 THE COURT: Well, Thank you, sir. It was a
20 pleasure working with you. Privilege to have you in the
21 courtroom, sir.

22 MR. THOMAS: I read a lot about Mr. Bender and I
23 knew I was going to get beat today but I didn't think it
24 was going to be so bad.

25 THE COURT: Well, unfortunately one of things --

1 and I admire this and I try to honor this. There are
2 many times that I don't really relish what I have to do
3 but I took an oath to enforce the law fairly and
4 impartially and the lady of justice is blindfolded, and I
5 think that's important to always remember. Thank you.

6 MR. THOMAS: Thank you.

7 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

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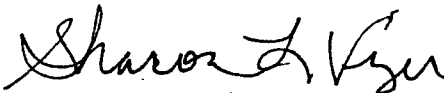
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I, Sharon L. Vizer, Official Court Reporter for the
Ninth Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had
and the evidence introduced in the hearing of the
captioned case in Circuit Court on the 29th day of
October 2014.

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

February 5, 2015



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' INTERROGATORIES
	)	TO PLAINTIFF
	)	
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
Defendants.	)	

TO: CLARK D. THOMAS, *PRO SE*:

Pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure, the undersigned attorneys for defendants, hereby request that you serve upon said counsel within thirty (30) days, answers to the following Interrogatories:

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of this case, and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches, statements, or other prepared documents in possession of the party that relate to the claim or defenses in this case.
3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.
4. List the names and addresses of all expert witnesses whom the party proposes to use as a witness at the trial of this case, and provide a summary of the opinions which the expert is expected to give and a statement of the facts relied upon by the expert in reaching each

opinion.

5. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendants

Columbia, South Carolina

December 5, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

Clark D. Thomas,

Plaintiff,

V.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually,

Defendants.

**PLAINTIFF'S RESPONSES
TO DEFENDANTS' 1ST SET OF
INTERROGATORIES**

BY _____

JULIE J. ARISTONIS
CLERK OF COURT

2014 MAR -7 PM 2:27

FILED

To: Jay Bender, Esquire, Counsel for Defendants.

Plaintiff, responding to the *Interrogatories* propounded by Defendants, answers and says as follows:

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of this case, and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Answer:

No written or recorded statements other than those filed with this Court and/or produced by the Defendants in the course of this litigation; or those filed with the Court of Appeals in the case of Thomas v. Crowley, Appellate Case No. 2012-213714, and the Supreme Court in the case of Thomas v. Bolus & Bolus, et. al., Appellate Case No. 2013-000740.

Carol Ann Cook
202 Shadowfield Drive
West Columbia, SC 29169

Christen Boyer
7927 St. Ives Road, #611
North Charleston, SC 29406

Ms. Boyer is expected to testify to her efforts to make known the falsity of the Defendants' article dated September 23, 2012, by revealing the truth on their website and that the Defendants immediately deleted her attempt to do so.

2. Set forth a list of photographs, plats, sketches, statements, or other prepared documents in possession of the party that relate to the claim or defenses in this case.

Answer:

- (a) *Petition for Writ of Certiorari, Thomas v. Bolus & Bolus, et. al.*;
- (b) *Respondents' Return to Petition for Writ of Certiorari, Thomas v. Bolus & Bolus, et. al.*;
- (c) *Petitioner's Reply to Respondents' Return to Petition for Writ of Certiorari, Thomas v. Bolus & Bolus, et. al.*;
- (d) *Appendix, Thomas v. Bolus & Bolus, et. al.*;
- (e) *Final Brief of Appellant, Thomas v. Crowley*; and,
- (f) *Record on Appeal, Volumes I & II, Thomas v. Crowley*.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by party.

Answer:

None at this time.

4. List the names and addresses of all expert witnesses whom the party proposes to use as a witness at the trial of this case, and provide a summary of the opinions which the expert is expected to give and a statement of the facts relied upon by the expert in reaching each opinion.

Answer:

None at this time

5. For each person known to the party or counsel to be a witness concerning the facts of the

case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer:

See response to Interrogatory #1.

March 5, 2014
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)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

Clark D. Thomas,

Plaintiff,

v.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually,

Defendants.

**PLAINTIFF'S
INTERROGATORIES
DIRECTED TO
DEFENDANTS**

BY

JULIE J. ARISTON
CLERK OF COURT

2014 MAR -7 PM 2:27

FILED

To: Jay Bender, Esquire, Counsel for the Defendants.

Pursuant to Rule 33(b), SCRCPP, Plaintiff hereby requests that you serve upon him within 30 days, answers to the following interrogatories, which shall be deemed continuing in nature from the time of service until the time of trial of this matter, so that information sought which may come to the knowledge of said parties, or their representative or attorney, after the answers to these interrogatories have been submitted, shall be transmitted to the undersigned.

1. State the name(s), address(es), and phone number(s) of person(s) known to the Defendants and/or their counsel to be witnesses concerning the facts of this matter and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession, custody or control of such statements.
2. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession, custody or control of the Defendants which relates to the claim or defense in this case.

3. List the names and addresses of any expert witnesses whom the Defendants expect to use as a witness at the trial of this matter.
4. For each person known to the Defendants and/or their counsel to be a witness to the facts of this case, please set forth a summary sufficient to inform the Plaintiff of important facts known to or observed by such witness, and/or provide a copy of any written or recorded statement taken from such witnesses.
5. List each and every item (document, photograph, plat, sketch, etc.) which is a possible exhibit or evidence at the trial of this case, if a trial is held.
6. Identify each and every civil and/or criminal proceeding to which Defendant Glenn Smith (Smith) has been a party, excluding the case at bar, or in which he has been involved as a witness, defendant or otherwise, during the ten years preceding the date of these *Interrogatories* and specifically provide the date(s) of the proceeding and disposition of the case.
7. List the name, address and telephone number of the socialite who operated a Mercedes Benz dealership prior to having been charged with forgery, among other things, upon whom Smith wrote an article that was published in 2010.
8. List the name(s), address(es) and phone number(s) of the person(s) who alerted Smith and/or sought that he attend the divorce trial in the case of Thomas v. Crowley held on September 20, 2012.
9. Provide the total circulation of the Post and Courier during the month of September 2012.
10. Provide the name(s) of the person(s) who deleted from the Post and Courier's website the comment made by Christen Boyer on or about September 24, 2012, concerning the article

written by Smith and published on September 23, 2012, that brought about this lawsuit and/or who was authorized to do so at that time.

March 5, 2014
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)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-5444

Clark D. Thomas,

Plaintiff,

v.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually,

Defendants.

**PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT**

FILED
2014 MAR -7 PM 2:29
JULIE J. ARISTIDES
CLERK OF COURTS

TO: Jay Bender, Esquire, Counsel for the Defendants.

The Plaintiff, pursuant to Rule 34, SCRCP, hereby requests that the Defendants produce the documents identified below within 30 days.

DEFINITIONS

1. "DOCUMENT" is to include any form of writing, communication or other means by which information may be transferred or recorded, whether it be by paper, file, audio, video, photograph, slides, microfilm, microfiche, computer printout, compact disc, magnetic tape, computer disc, computer code or other form, including but not limited to, notes, letters, reports, records, minutes, memoranda, correspondence, telegrams, schedules, bulletins, data sheets, work sheets, orders, drafts, printouts, binders, notes, articles, cassette tapes, laser or computer discs, manuals, agreements, contracts, test results, analysis, carbon copies, lists, indices, bibliographies, newspapers, circulars, notebooks, periodicals, journals, diaries, calendars, appointment books, charts, tables, papers, agreements, contracts, books, invoices, budgets, payrolls, check stubs, cancelled checks, analyses, projections, transcriptions, minutes of meetings of any kind,

instructions, announcements, bills of lading, shipping orders, freight bills, advertisements, brochures, pamphlets, binders, institutions, piece lists, instructions, announcements, and mechanical or electrical sound recordings or transcripts thereof, electronic mail and any other forms of information preservation. DOCUMENT also means all copies which are not identical to the originals, such as those bearing marginal comments, alterations, notes or other notations not present on the original document as originally written, typed, or otherwise prepared.

2. "COMMUNICATIONS" shall mean any statement made by one person to another, or in the absence of another or any DOCUMENT delivered or sent from one person to another.
3. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The use of the words "include(s)" and "including" shall be construed to mean "without limitation".
4. Use of the term "control" when referring to documents or other tangible or intangible things shall mean that you have the right to secure the things or documents or a copy thereof. If any objection raised by you is based in whole or in part on the fact that documents are not in your possession or custody, then you shall identify the person(s) and/or entities in possession or custody of the documents, and shall further identify the location of the documents with sufficient particularity to allow the Plaintiff to issue a subpoena to obtain or inspect the documents or things.
5. If any document or other tangible thing is responsive to any request stated herein, but is not in your custody or possession, identify the person or entity with possession or custody with sufficient particularity to allow the Plaintiff to issue a subpoena to obtain or inspect the documents or things.
6. If any document was, but is no longer in your possession or subject to your control, state

what disposition was made of it, including, but not limited to whether or not it was destroyed or disposed of, by whom, and the date or dates or approximate date or dates on which such disposition was made and why.

INSTRUCTIONS

1. All documents covered in this request shall be produced in an orderly manner (and with appropriate markings or other identification) so that Plaintiff will be able to identify the source of the document and the number of the request to which it responds.
2. If you refuse to produce any requested materials in whole or in part, describe the basis for your refusal to produce including any claim to privilege or work product, in sufficient detail so as to permit the Court to adjudicate the validity of your refusal, and identify each document for which a privilege is claimed.
3. This request shall be continuing in nature so that any documents requested herein must be produced prior to the trial of this case, even if a document is not in existence at the time of your initial response.

DOCUMENTS TO BE PRODUCED

1. Any diaries, journals, calendars, or similar records kept or maintained by you at your direction concerning this matter for the period beginning with the story published on June 9, 2006, reporting Plaintiff's wrongful arrest for kidnapping and criminal domestic violence of a high and aggravated nature (CDVHAN) to include all ensuing articles and/or any other issues regarding Plaintiff.
2. Any and all documents upon which you rely or intend to rely in preparing this response

and/or which you seek to introduce into evidence at the trial of this case or upon which you rely or intend to rely at the trial.

3. Any and all private investigator's report(s) or other surveillance logs concerning Plaintiff.

March 5, 2014
Columbia, SC

Clark D. Thomas
Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' REQUEST FOR
	)	ADMISSIONS TO PLAINTIFF
	)	
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
Defendants.	)	

TO: CLARK D. THOMAS, *PRO SE*:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, defendants hereby request that the plaintiff admit or deny the truth of the following matters within thirty days of service hereof.

1. Admit that the document attached hereto as Exhibit A is a genuine copy of an incident report prepared by the North Charleston Police Department in connection with the June 7, 2006 incident leading to your arrest on that date.

2. Admit that the document attached hereto as Exhibit B is a genuine copy of a report in the Court of General Sessions indicating your sentence for having been convicted of kidnapping.

3. Admit that the document attached hereto as Exhibit C is a genuine copy of a record of the court of General Sessions reflecting your sentence upon the conviction of criminal domestic violence of a high and aggravated nature.

4. Admit that the document attached hereto as Exhibit D is a genuine copy of an Affidavit submitted to a Charleston County Magistrate describing the facts in support of the

kidnapping charge made against you.

5. Admit that the document attached hereto as Exhibit E is a genuine copy of a record of your indictment by the Charleston County Grand Jury for kidnapping.

6. Admit that the document attached hereto as Exhibit F is a genuine copy of an Affidavit submitted by the North Charleston Police Department to a Magistrate describing facts in support of a charge of criminal domestic violence of a high and aggravated nature.

7. Admit that the document attached hereto as Exhibit G is a genuine copy of a record of the Charleston County Grand Jury indicating you for criminal domestic violence of a high and aggravated nature.

8. Admit that the document attached hereto as Exhibit H is a genuine copy of an order from the preliminary hearing court of the Ninth Judicial Circuit denying a motion to reconsider/modify your bond for charges of kidnapping, criminal domestic violence of a high and aggravated nature, and sexual battery of a spouse and probation violation.

9. Admit that the document attached hereto as Exhibit I is a genuine copy of a record of the Charleston County Court of General Sessions reflecting your sentence upon a charge of criminal domestic violence of a high and aggravated nature in 2003.

10. Admit that the document attached hereto as Exhibit J is a genuine copy of an affidavit submitted to a Magistrate in support of a charge of criminal domestic violence of a high and aggravated nature in 2003.

11. Admit that the document attached hereto as Exhibit K is a genuine copy of an indictment by the Charleston County Grand Jury for criminal domestic violence of a high and aggravated nature in 2003.

12. Admit that on August 20, 1981, you were convicted for driving under the

influence.

13. Admit that on October 15, 1981, you were convicted of operating an uninsured vehicle, and having an improper vehicle license.
14. Admit that on July 29, 1983, you were convicted of trespassing.
15. Admit that on December 20, 1984, you were convicted of malicious injury to real property.
16. Admit that on January 15, 1986, you were convicted of financial transaction card fraud.
17. Admit that on May 1, 1985, you were convicted of fraudulent check charges.
18. Admit that on June 23, 1987, you were convicted of driving under the influence, driving under suspension, and failure to stop on police command.
19. Admit that you are also known as George Keith Nichols.
20. Admit that you have been arrested as George Keith Nichols on fraudulent check charges.
21. Admit that as George Keith Nichols, you were convicted of forgery on August 10, 1992.
22. Admit that as George Keith Nichols you were convicted on May 20, 1996 of issuing fraudulent checks.
23. Admit that as Clark David Thomas you were convicted on June 12, 1996 of receiving stolen goods.
24. Admit that as Clark David Thomas you were convicted on June 12, 1996 of obtaining goods by false pretense and receiving stolen goods.
25. Admit that on June 17, 1996 you were convicted of forgery.

26. Admit that as Clark David Thomas you were convicted on October 16, 2002 of obtaining goods by false pretense.

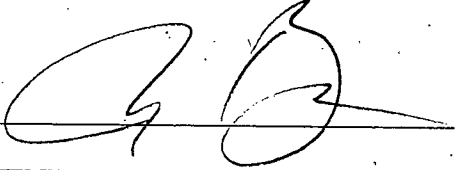
27. Admit that as Clark David Thomas you were convicted on April 11, 2003 of unlawful use of the telephone.

28. Admit that on October 13, 2005, you were convicted of hit and run with minor personal injury.

29. Admit that as Clark David Thomas you were convicted on February 4, 2005 of criminal domestic violence.

30. Admit that you are also known as Thomas Wyatt Poore.

31. Admit that you are also known as Thomas Wyatt Poore II.



Jay Bender
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Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendants

Columbia, South Carolina

May 19, 2014

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 06/05/2006 15:00	OCA #: 2006021048

BACK TO THE CAR. THE FEMALE WAS CRYING AND APPEARED FRUSTRATED. THE TWO PARTIES WERE SEPARATED AND INTERVIEWED.

THE FEMALE STATED THAT THE MALE SUBJECT WAS HER HUSBAND AND THEY HAD BEEN MARRIED FOR TWO YEARS. THE TWO HAD BEEN SEPARATED RECENTLY, PARTIALLY DUE TO ANOTHER INCIDENT IN JANUARY OF 2005 IN WHICH THE SUSPECT WAS ARRESTED FOR CRIMINAL DOMESTIC VIOLENCE. THE VICTIM ALSO ADVISED THAT THE SUSPECT WAS A HEAVY HEROINE USER. THE VICTIM HAD BEEN STAYING WITH HER MOTHER FOR SOME TIME TO GET AWAY FROM THE SUSPECT. ON 06-05-2006 AROUND 1500 HRS THE SUSPECT SHOWED UP AT HER MOTHER'S RESIDENCE AND STATED THAT HE WOULD TAKE HER TO HIS HOTEL ROOM (7371 MAZYCK RD. RM 145) SO SHE COULD RETRIEVE SOME OF HER BELONGINGS FROM HIS ROOM. THE SUSPECT AND THE VICTIM ARRIVED AT THE HOTEL ROOM TOGETHER IN THE SUSPECT'S VAN. AS THE VICTIM WALKED INTO THE ROOM THE SUSPECT PULLED OUT A "STUN GUN" (THE TWO PRONGED OVER THE COUNTER TYPE OF STUN GUN) AND SUBDUED THE VICTIM BY PUSHING THE STUN GUN INTO HER BACK AND PUSHING HER ONTO THE FLOOR. THE SUSPECT THEN BEGAN TO SPIT REPEATEDLY IN THE VICTIM'S FACE AND TIED HER HANDS UP WITH ZIP TIES. THE SUSPECT ACCUSED THE VICTIM OF CHEATING ON HER WITH ANOTHER MAN. HE SPECIFICALLY STATED THAT SHE WAS CHEATING ON HER WITH A BLACK MAN AND THAT MADE HIM EVEN MORE MAD. THE VICTIM OBSERVED THAT SHE COULD SEE OUTSIDE THE FRONT DOOR INTO THE PARKING LOT BY LOOKING AT THE TV. IT APPEARED THAT THE SUSPECT HAD SET A CAMERA UP IN THE WINDOW SO HE COULD OBSERVED ANYONE APPROACHING THE HOTEL ROOM. THIS MADE THE VICTIM VERY SCARED FOR HER SAFETY. OVER THE NEXT 36-40 HRS THE SUSPECT KEPT THE VICTIM SHACKLED TO A HOTEL ROOM CHAIR AND HER HANDS BOUND WITH ZIP TIES. THE SUSPECT ALSO TAPED THE VICTIM'S MOUTH SHUT WITH INDUSTRIAL DUCT TAPE. ON 06-07-2006 AROUND 1210 HRS THE SUSPECT TOLD THE VICTIM THAT THEY WERE GOING TO GO SOMEWHERE. THE VICTIM DID NOT KNOW WHERE THEY WERE GOING AND THE SUSPECT WOULD NOT TELL HER. THE SUSPECT ESCORTED HER TO THE CAR BY HOLDING THE HAIR ON THE BACK OF HER HEAD. WHILE THEY WERE IN THE VEHICLE, THE SUSPECT WAS MAKING THE VICTIM STAY ON THE FLOOR BOARD. THEY EVENTUALLY ENDED UP COMING ACROSS THE NORTH BRIDGE WHERE THE VICTIM CAUSED THE SUSPECT TO SWERVE ON THE ROAD, SLOW DOWN, AND THE VICTIM MANAGED TO JUMP OUT OF THE VEHICLE AND RUN UNDERNEATH THE BRIDGE. SEVERAL CONCERNED CITIZENS OBSERVED THIS AND CALLED THE POLICE. THE SUSPECT CAUGHT UP WITH THE VICTIM UNDERNEATH THE BRIDGE AND PICKED HER UP AND BEGAN TO CARRY HER BACK TO THE VEHICLE PARKED ON THE SIDE OF THE ROAD WHEN OFFICERS ARRIVED ON SCENE.

THE VICTIM HAD VISIBLE SIGNS OF AN ASSAULT INCLUDING APPROXIMATELY 25-40 MARKS ON HER STOMACH, CHEST AND BACK THAT APPEARED TO BE CAUSED BY THE STUN GUN PRONGS. SHE ALSO HAD RED MARKS ON BOTH OF HER WRISTS THAT APPEARED TO BE FROM BEING TIED UP WITH SOMETHING. SHE MADE THE STATEMENT SEVERAL TIMES, "I AM JUST SO SCARED OF HIM, HE SAID HE WOULD KILL ME NEXT TIME." THE VICTIM ALSO HAD ABRASIONS TO BOTH OF HER HANDS AND FINGERS FROM JUMPING OUT OF THE VEHICLE. THE VICTIM WAS SHAKING UNCONTROLLABLY AND WAS CLEARLY IN FEAR FOR HER LIFE. THE VICTIM ADVISED OFFICER TALBOTT OF WHAT HAD HAPPENED (SEE ABOVE) AND THE SUSPECT WAS PLACED UNDER ARREST FOR KIDNAPPING AND CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED. THE VEHICLE WAS INVENTORIED BY OFFICER D. WATSON AND TOWED BY HERBIE'S TOWING. THE VICTIM WAS TRANSPORTED ROPER ST. FRANCIS BY EMS. THE SUSPECT WAS TRANSPORTED TO THE CHARLESTON COUNTY DETENTION CENTER BY OFFICER JENKINS WHERE HE WAS LODGED.

OFFICERS NEWMAN AND RANCK RESPONDED TO THE INTOWN SUITES ON MAZYCK ROAD TO SECURE THE CRIME SCENE. BOTH THE VICTIM AND THE SUSPECT SIGNED A CONSENT TO SEARCH THE PREMISES (RM 145). AN INITIAL SEARCH WAS CONDUCTED BY OFFICERS RANCK AND NEWMAN. SGT DELGER WAS ADVISED AND REQUESTED CRIME SCENE RESPOND. CPL COKER RESPONDED AND PROCESSED THE SCENE AT INTOWN SUITES. HE ALSO RESPONDED TO ROPER ST. FRANCIS TO PHOTOGRAPH THE VICTIM'S INJURIES. OFFICER TALBOTT RESPONDED TO ROPER AS WELL AND PROVIDED THE VICTIM WITH INFORMATION ON THE BOND HEARING, A NOTIFICATION OF PROTECTIVE MEASURES SHE WAS ADVISED OF THE CASE NUMBER. VICTIM'S ADVOCATES ALSO RESPONDED.

DETECTIVE ROWAN ALSO RESPONDED TO ROPER ST. FRANCIS TO TAKE A STATEMENT FROM THE VICTIM AND THE CASE WILL BE FORWARDED TO THE DETECTIVE DIVISION FOR FURTHER INVESTIGATION. END OF REPORT.

AGENCY: NORTH CHARLESTON POLICE
 ORI #: SC0100800
 Report Date / Time: 06/05/2008 15:00
 Incident #: 2006021048

ADDITIONAL PROPERTY

STATUS: NONE		RELATED TO: VICTIM 1 CROWLEY, RACHEL MARIE		CLASS:	
DESCRIPTION: NONE				LOCATION:	
BRAND: NONE		MODEL:		SERIAL NO.:	
UCR CODE: 100		QUANTITY: 1		VALUE: \$0.00	
DATE RECOVERED:		JURISDICTION STOLEN:		JURISDICTION RECOVERED:	

STATUS:		RELATED TO:		CLASS:	
DESCRIPTION:				LOCATION:	
BRAND:		MODEL:		SERIAL NO.:	
UCR CODE:		QUANTITY:		VALUE:	
DATE RECOVERED:		JURISDICTION STOLEN:		JURISDICTION RECOVERED:	

STATUS:		RELATED TO:		CLASS:	
DESCRIPTION:				LOCATION:	
BRAND:		MODEL:		SERIAL NO.:	
UCR CODE:		QUANTITY:		VALUE:	
DATE RECOVERED:		JURISDICTION STOLEN:		JURISDICTION RECOVERED:	

STATUS:		RELATED TO:		CLASS:	
DESCRIPTION:				LOCATION:	
BRAND:		MODEL:		SERIAL NO.:	
UCR CODE:		QUANTITY:		VALUE:	
DATE RECOVERED:		JURISDICTION STOLEN:		JURISDICTION RECOVERED:	

STATUS:		RELATED TO:		CLASS:	
DESCRIPTION:				LOCATION:	
BRAND:		MODEL:		SERIAL NO.:	
UCR CODE:		QUANTITY:		VALUE:	
DATE RECOVERED:		JURISDICTION STOLEN:		JURISDICTION RECOVERED:	

STATUS:		RELATED TO:		CLASS:	
DESCRIPTION:				LOCATION:	
BRAND:		MODEL:		SERIAL NO.:	
UCR CODE:		QUANTITY:		VALUE:	
DATE RECOVERED:		JURISDICTION STOLEN:		JURISDICTION RECOVERED:	

AGENCY: NORTH CHARLESTON POLICE
 ORI #: SC0100800
 Report Date / Time: 06/05/2006 15:00
 Incident #: 2006021048

ADDITIONAL PROPERTY ESTIMATE SHEET

PROPERTY EST.	TYPE (GROUP)					
	STOLEN					
	DAMAGED					
	BURNED					
	RECOVERED					
	SEIZED					
PROPERTY EST.	TYPE (GROUP)					
	STOLEN					
	DAMAGED					
	BURNED					
	RECOVERED					
	SEIZED					
PROPERTY EST.	TYPE (GROUP)					
	STOLEN					
	DAMAGED					
	BURNED					
	RECOVERED					
	SEIZED					
PROPERTY EST.	TYPE (GROUP)					
	STOLEN					
	DAMAGED					
	BURNED					
	RECOVERED					
	SEIZED					
PROPERTY						
STATUS: NONE		RELATED TO: VICTIM 1 CROWLEY, RACHEL MARIE			CLASS:	
DESCRIPTION			NONE		LOCATION	
BRAND NONE		MODEL		SERIAL NO.		
UCR CODE 100		QUANTITY 1		VALUE \$0.00		
DATE RECOVERED		JURISDICTION STOLEN		JURISDICTION RECOVERED		

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 06/05/2006 15:00	OCA #: 2006021048

INTOWN SUITES J, RANCK #316

ON THE ABOVE DATE AND TIME PFC. D. NEWMAN AND I RESPONDED TO THE INTOWN SUITES AT 7371 MAZYCK ROAD IN REFERENCE TO SEARCHING THE HOTEL ROOM SHARED BY THE SUSPECT AND VICTIM INVOLVED IN AN UNKNOWN SITUATION IN WHICH OFFICER TALBOT WAS INVESTIGATING. I WAS ADVISED BY OFFICER TALBOT THAT THE VICTIM STATED THAT SHE HAD BEEN BOUND AND HELD IN ROOM 145 AGAINST HER WILL, BEATEN AND ASSAULTED WITH A STUN GUN. UPON ARRIVAL OFFICERS MET WITH HOTEL STAFF WHO ADVISED TWO INDIVIDUALS HAD BEEN STAYING IN ROOM 145 TOGETHER FOR QUITE SOME TIME. OFFICER TALBOT THEN ADVISED THAT BOTH THE SUSPECT AND THE VICTIM SIGNED A CONSENT TO SEARCH FORM GIVING OFFICERS CONSENT TO SEARCH ROOM 145. OFFICER TALBOT ADVISED THAT THE VICTIM STATED SHE WAS BOUND BY ZIP TIES AND HELD AGAINST HER WILL. UPON ENTRY INTO THE ROOM OFFICERS DISCOVERED SEVERAL ZIP TIES WHICH APPEARED TO HAVE BEEN USED TO BIND SOMEONE AS WELL AS HANDCUFFS AND LEG IRONS, THE LEG IRONS WERE LOCKED ON ONE END TO A CHAIR. OFFICERS ALSO DISCOVERED AN SK ELECTRONICS STUN GUN IN THE TOP DRAWER OF THE LEFT SIDE NIGHT STAND. OFFICERS ALSO NOTED THAT THE INDIVIDUAL STAYING IN THAT ROOM HAD SET UP A VIDEO SURVEILLANCE OF THE APPROACH TO THE ROOM. DURING A CONTINUED SEARCH OFFICERS ALSO OBSERVED SEVERAL SYRINGES BOTH BROKEN AND NEW. AT THAT TIME OFFICERS REQUESTED CRIME SCENE WHO ARRIVED SHORTLY THEREAFTER. CPL. A. COKER OF THE NCPD FORENSICS TEAM ARRIVED AND PROCESSED THE CRIME SCENE SEIZING SEVERAL ITEMS AS WELL AS ALL DRUG PARAPHERNALIA FOR EVIDENCE.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
CLARK THOMAS

AKA: _____
 Race: W Sex: M Age: 46
 DOB: 06-15-1962 SS#: 247-08-9141
 Address: P.O. BOX 32315
CHARLESTON, SC 294070000
 DL#: 003073658 SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS1012295A/W#: K120149Date of Offense: 6/5/2006S.C. Code § : 16-03-0910CDR Code #: 0095

SENTENCE SHEET

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

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

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

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

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

ATTEST:

Nathan Williams
 Williams, Nathan

Defendant

Michael J. Polus
 Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 06-GS-10-12296

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ 128.75

Callah
 Clerk of Court/ Deputy Clerk

Court Reporter: Gayle Burns

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Attu if available.

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

PRESIDING JUDGE A.L. JafferJudge Code: 211Sentence Date: 7/10/08

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston

STATE

VS.

CLARK THOMAS

AKA:

Race: W Sex: M Age: 46DOB: 06-15-1962 SS#: 247-08-9141Address: P.O. BOX 32315CHARLESTON, SC 294070000DL#: 003073658

SID#: _____

INDICTMENT/CASE#: 2006GS1012296A/W#: K120150Date of Offense: 6/5/2006S.C. Code § : 16-25-0065CDR Code #: 2988

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: CDVHAN/Criminal Domestic Violence-High and Aggravated Naturein violation of § 16-25-0065 of the S.C. Code of Laws, bearing CDR Code # 2988☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Nathan Williams
Williams, Nathan

Defendant

Michael J. Bolus 760
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 06- GS-10-12295☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea. \$ _____

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ 128.75Callahan
Clerk of Court/ Deputy ClerkCourt Reporter: Gayle BurrPRESIDING JUDGE A.L. JeffersmJudge Code: 211 218Sentence Date: 7/10/08

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2006021048

Personally appeared before me, a magistrate of this County, one APC Brazell
who first being duly sworn, deposes and says that (name of the defendant)

CLARK DAVID THOMAS

did within this County and State in between the 5th and 7th day of **JUNE**
2006, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

KIDNAPPING

VIOLATION OF SECTION 16-3-910

The affiant states 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 in between June 5, 2006 at approximately 1500 hours and June 7, 2006 at approximately 1230 hrs, while at 7371 Mazyck Rd. Rm 145 and in the area of the North Bridge (hwy 7), which is located in the City of North Charleston, County of Charleston, and State of South Carolina, the defendant, **CLARK DAVID THOMAS**, did commit the offense of **KIDNAPPING**, in violation of section 16-3-910 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully, unlawfully, and feloniously seize, confine and kidnap the victim one, Rachel marie Crowley.

Facts to establish the aforesaid are that on 06-05-2006 at approximately 1500 hrs the victim went willingly with the defendant to his hotel room at InTown Suites (7371 Mazyck Rd.) under the impression that she was going to retrieve some items that belonged to her. Upon entry to the room, the defendant took the victim to the ground using a handheld stun gun and began to spit in her face. Over the next 36-45 hours the victim was held against her will by the defendant with various restraints including black zip ties, handcuffs, and leg shackles. The victim was repeatedly tased with the stun gun on her back, chest and stomach. On 06-07-2006 at approximately 1230 hrs Officer Talbott responded to the area of the North Bridge when several concerned citizens called in advising that a white female had jumped out of a vehicle and was running underneath the bridge. The defendant and victim were located as the defendant was carrying the victim back to his vehicle. Both parties were separated and the victim made the statement to Officer Talbott, "I am just so scared of him, he said next time he will kill me." The victim also stated that she had been held at a hotel room off of Ahsley Phosphate against her will. The hotel was later identified as the Intown Suites at 7371 Mazyck Rd Room 145. The victim had marks on her wrist that were consistent with being bound by zip ties and injuries to her stomach and chest from the taser. Ptl. Talbott and Rachel Marie Crowley are witnesses to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this _____ day of JUN 08 2006.
2006.

Signature of Judge

Brazell
(AFFIANT)

Address: 4900 La Cross Rd.
N. Chas., SC 29405
Phone: 843-554-5700

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on December 11, 2006 the Grand Jurors of Charleston County present upon their oath:

That Clark David Thomas did in Charleston County on or about June 5, 2006, seize, abduct, confine or carry away Rachel Crowley, without the authority of law and against Rachel Crowley's will and consent.

This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT

OCA# 2006021048

Personally appeared before me, a magistrate of this County, one PEC Bazelton
who first being duly sworn, deposes and says that (name of the defendant)

CLARK DAVID THOMAS

did within this County and State in between the 5th day of JUNE and the 7th day of JUNE, 2006, violate
the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE
VIOLATION OF SECTION
16-25-65

The affiant states 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 in between June 5, 2006 at approximately 1500 hours and June 7, 2006 at approximately 1230 hrs, while at 7371 Mazyck Rd. Rm 145 and in the area of the North Bridge (hwy 7), which is located in the City of North Charleston, County of Charleston, and State of South Carolina, the defendant, **CLARK DAVID THOMAS**, did commit the offense of **CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE**, in violation of section 16-25-65 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully cause or intend to cause physical harm with apparent present ability under circumstances creating fear of imminent peril to the victim, one Rachel Marie Crowley. Facts to establish the aforesaid are that on 06-05-2006 at approximately 1500 hrs the victim went willingly with the defendant to his hotel room at InTown Suites (7371 Mazyck Rd.) under the impression that she was going to retrieve some items that belonged to her. Upon entry to the room, the defendant took the victim to the ground using a handheld stun gun and began to spit in her face. Over the next 36-45 hours the victim was held against her will by the defendant with various restraints and was repeatedly tased with the stun gun on her back, chest and stomach. On 06-07-2006 at approximately 1230 hrs Officer Talbott responded to the area of the North Bridge when several concerned citizens called in advising that a white female had jumped out of a vehicle and was running underneath the bridge. The defendant and victim were located and the defendant was carrying the victim back to his vehicle. Both parties were separated and the victim made the statement to Officer Talbott, "I am just so scared of him, he said next time he will kill me." Officer Talbott observed the victim shaking uncontrollably and she did appear to be in fear for her life. Officer Talbott also observed 25-40 marks on her stomach that appeared to be injuries from a two-pronged taser. The victim also had marks on her wrist that were consistent with being bound by zip ties. The victim and the suspect have been married for two years and the defendant has a previous conviction for Criminal Domestic Violence on 02-04-2005. Ptl. Talbott and Rachel Marie Crowley are witnesses to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this _____ day of JUN 08 2006
2006.

Signature of Judge

Brunette
(AFFIANT)

Address: 4900 Lacross Rd.
N. Charleston, SC 29406
Phone: (843) 554-5700

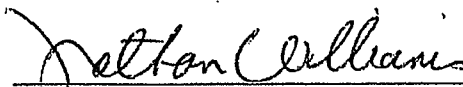
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE

At a Court of General Sessions, convened on December 11, 2006 the Grand Jurors of Charleston County present upon their oath:

That Clark David Thomas did in Charleston County on or about June 5, 2006, unlawfully cause physical harm to a household member, Rachel Crowley, and was accompanied by circumstances of aggravation, including, but not limited to the infliction of bodily injury, a disparity between the ages and physical conditions of the parties, and a difference in the sexes. This is in violation of §16-25-65 of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

06-3254
PRELIMINARY HEARING COURT
NINTH JUDICIAL CIRCUIT

State of South Carolina

vs

Thomas, Clark David

Defendant

Warrant Number/Charge

K120149 Kidnapping

K120150 CDVHAN

I099401 Sexual Battery of Spouse

W1006527 Probation Violation

☐ See Attached Sheet for Additional Charges

FILED

2006 JUL 12 AM 9:05

JULIE J. ARMSTRONG
CLERK OF COURT

BY

Current Bond

\$100,000.00 Lombard Surety

\$100,000.00 Lombard Surety

\$50,000.00 Lombard Surety

\$20,000.00 Baldwin Surety

This matter is before the court on a motion to reconsider or modify a bond set or denied by a summary court judge. Pursuant to the administrative order of the Chief Justice, these proceedings have been centralized before the Preliminary Hearing Court for a recommendation and/or order. Notice of this proceeding has been provided as required by law or court rules.

The undersigned has considered the following factors:

- ☒ Nature of offense: violent Danger to any person/community: Yes
☒ Family Ties: Family lives in South Carolina Time in Community: 20 years
☒ Employment: Dayray Services Prior Flight/Failure to Appear: No
☒ Drug/Alcohol/Mental History: Drug
☒ Criminal History: CDV x2/Fraud Checks/Hit & Run/Receiving Stolen property/Obtaining good by false pretenses/Unlawful use of telephone/CDVHAN/FTC Fraud/Failure to stop for blue light
☒ Current Probation/Parole: Probation
☐ Change of Circumstances:
☒ Other matters considered: ☐ State Consents ☒ State Objects to any Changes

Having fully considered this matter, the preliminary hearing judge orders the following:

- ☒ That the motion to reconsider/modify bond is hereby denied
☐ That the motion to reconsider/modify bond is granted as follows:
☐ Consolidated Bond
☐ Separate Bonds
☐ Other Conditions: _____

IT IS SO ORDERED

Date: July 11, 2006

Solicitor: Larry Todd, Esq.

Attorney: Michael Bolus, Esquire

Officer: Talbott/Rowan/Hill

Preliminary Hearing Court Judge

James B. Gosnell, Jr.

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 4th Day of March, 2003.

Patricia B. Dixon (L.S.)
Signature of Judge

[Signature]
Signature of Affiant
3505 Pinehaven Dr.
Charleston, S. C. 29405

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' RESPONSE TO
	)	PLAINTIFF'S INTERROGATORIES
	)	
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
Defendants.	)	

1. State the name(s), address(es), and phone number(s) of person(s) known to the Defendants and/or their counsel to be witnesses concerning the facts of this matter and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession, custody or control of such documents.

Glenn Smith
The Post and Courier
 134 Columbus St.
 Charleston, SC 29403.

Defendants object to all requests for telephone numbers as being outside the scope of standard interrogatories

No statement has been taken

Laree Anne Hensley
 1495 Remount Rd.
 N. Charleston, SC 29406
 No statement has been taken

Clark D. Thomas
 Inmate number 187845
 South Carolina Department of Corrections
 Broad River Correctional Institution
 Moultrie A-2087
 4460 Broad River Rd.
 Columbia, SC 29210
 No statement taken

2. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession, custody or control of the Defendants which relates to the claim or defense in this case.

News report of September 23, 2012 published in *The Post and Courier*

Transcript of Record from Family Court proceeding on September 20, 2012 in the case of Clark D. Thomas v. Rachel M. Crowley

Charleston Police Department incident report dated June 7, 2006

General Sessions Sentence Sheet in case 2006GS1012295

General Sessions Sentence Sheet in case 2006GS1012296

Affidavit dated June 8, 2006 re. kidnapping

Indictment for kidnapping

Affidavit dated June 8, 2006 re. Criminal domestic violence of a high and aggravated nature

Indictment for Criminal domestic violence of a high and aggravated nature

Preliminary hearing order dated July 11, 2006 by Judge James B. Gosnell, Jr.

General Sessions Sentence Sheet in case 2006GS104044(w)

Affidavit dated March 14, 2003 re. Criminal domestic violence high and aggravated nature

Indictment for Criminal domestic violence of a high and aggravated nature

3. List the names and addresses of any expert witnesses whom the Defendants expect to use as a witness at the trial of this matter

None identified at this date

4. For each person known to the Defendants and/or their counsel to be a witnesses to the facts of this case, please set forth a summary sufficient to inform the Plaintiff of important facts known to or observed by such witness, and/or provide a copy of any written or recorded statement taken from such witnesses.

Glenn Smith is expected to testify regarding his attendance at the trial in the divorce action initiated by plaintiff against Rachel M. Crowley and his preparation of a news report regarding the trial. Mr. Smith may also testify regarding other news reports prepared by him regarding plaintiff's extensive criminal background.

Laree Anne Hensley represented Rachel M. Crowley in the divorce action initiated by plaintiff against Rachel M. Crowley and is expected to testify regarding the trial and the news report of the trial prepared by Mr. Smith.

Clark D. Thomas is expected to testify consistent with the allegations of his complaint.

5. List each and every item (document, photograph, plat, sketch, etc.) which is a possible exhibit or evidence at the trial of this case, if a trial is held.

Defendants object to this interrogatory as being outside the scope of standard interrogatories permitted by Rule 33(b), SCRPC, but reserving their objection, defendants state that the items

listed in response to interrogatory 2 above include items which may be offered as exhibits at trial.

6 Identify each and every civil and/or criminal proceeding to which Defendant Glenn Smith (Smith) has been a party, excluding the case at bar, or in which he has been involved as a witness, defendant or otherwise, during the ten years preceding the date of these *Interrogatories* and specifically provide the date(s) of the proceeding and disposition of the case.

Defendants object to this interrogatory as being outside the scope of standard interrogatories permitted by Rule 33(b), SCRCP, and even if it were within the scope of allowable interrogatories it is nevertheless objectionable on grounds that it is not calculated to lead to the identification of evidence relevant to plaintiff's claim..

7. List the name, address and telephone number of the socialite who operated a Mercedes Benz dealership prior to having been charged with forgery, among other things, upon whom Smith wrote an article that was published in 2010.

Defendants object to this interrogatory as being outside the scope of standard interrogatories permitted by Rule 33(b), SCRCP, and even if it were within the scope of allowable interrogatories it is nevertheless objectionable on grounds that it is not calculated to lead to the identification of evidence relevant to plaintiff's claim.

8. List the name(s), address(es) and phone number(s) of the person(s) who alerted Smith and/or sought that he attend the divorce trial in the case of Thomas v. Crowley held on September 20, 2012.

Defendants object to this interrogatory as being outside the scope of standard interrogatories permitted by Rule 33(b), SCRCP, and even if it were within the scope of allowable interrogatories it is nevertheless objectionable on grounds that it is not calculated to lead to the identification of evidence relevant to plaintiff's claim.

9. Provide the total circulation of the Post and Courier during the month of September 2012.

Defendants object to this interrogatory as being outside the scope of standard interrogatories permitted by Rule 33(b), SCRCP.

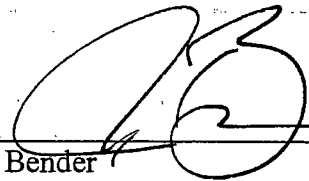
10. Provide the name(s) of the person(s) who deleted from the Post and Courier's website the comment made by Christen Boyer on or about September 24, 2012, concerning the article written by Smith and published on September 23, 2012, that brought about this lawsuit and/o who was authorized to do so at that time.

Defendants object to this interrogatory as being outside the scope of standard interrogatories permitted by Rule 33(b), SCRCP, and even if it were within the scope of allowable interrogatories it is nevertheless objectionable on grounds that it is not calculated to lead to the identification of evidence relevant to plaintiff's claim because as a matter of federal law neither defendant may be considered the publisher of third party comments posted on an interactive

website or have liability for the deletion of any material or the continuation of the posting of any material.

Columbia, South Carolina

June 12, 2014



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Dr., Suite 400
Post Office Box 8057
Columbia, SC 29202
803.799.9091 (telephone)
803.779.3423 (facsimile)
ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' RESPONSE TO
	)	PLAINTIFF'S REQUEST
	)	FOR PRODUCTION
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
Defendants:	)	

1. Any diaries, journals, calendars, or similar records kept or maintained by you at your direction concerning this matter for the period beginning with the story published on June 9, 2006, reporting Plaintiff's wrongful arrest for kidnapping and criminal domestic violence of a high and aggravated nature (CDVHAN) to include all ensuing articles and/or any other issues regarding Plaintiff.

Defendants have no records responsive to this request.

2. Any and all documents upon which you rely or intend to rely in preparing this response and/or which you seek to introduce into evidence at the trial of this case or upon which you rely or intend to rely at the trial.

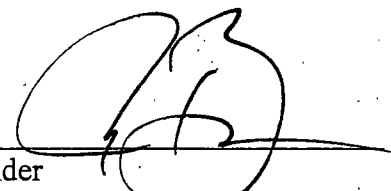
Defendants have previously provided plaintiff with documents responsive to this request as exhibits to their Request for Admissions served May 19, 2014.

3. Any and all private investigator's report(s) or other surveillance logs concerning Plaintiff.

Defendants have no documents responsive to this request.

Columbia, South Carolina

June 11, 2014


 Jay Bender
 BAKER, RAVENEL & BENDER, L.L.P.
 3710 Landmark Dr., Suite 400
 Columbia, SC 29202
 803.799.9091 (telephone)
 803.779.3423 (facsimile)
 ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Clark D. Thomas,	)	Civil Action No. 2013-CP-10-0544
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF GLENN SMITH
	)	
	)	
Evening Post Publishing Co., d/b/a The	)	
Post and Courier, Glenn Smith,	)	
Officially and Individually,	)	
Defendants.	)	

I, Glenn Smith, being first duly sworn state:

1. The matters stated herein by me are known to be true unless stated upon information and belief, and, as to those matters, I believe them to be true.
2. I am a reporter for *The Post and Courier* newspaper.
3. In my position as a reporter I investigated and prepared a number of news reports relating to the criminal prosecution of plaintiff and his divorce action.
4. In preparing the news report of plaintiff's divorce action which was published on September 23, 2012, I reviewed public records and attended the trial held in Family Court on September 20, 2012.
5. In his Amended Complaint at paragraph 16 plaintiff alleges that my description of Rachel M. Crowley, the defendant in plaintiff's divorce action, and her mother, Cathy Merece, were "trembling" and "horrificed" was false, but my description was based on my observation of the two women as they were exposed to the plaintiff's attempts to represent himself in a divorce action.

6. I believe my description of Rachel M. Crowley (Crowlery) and Cathy Meree in my news report of September 23, 2012 accurately reflected my observation.

7. In his Amended Complaint at paragraph 17 plaintiff alleges that at the time he married Crowley she was a 19-year-old girl from the country and he was 41 years old and this recitation of fact was meant to convey that he "was an aging predator who took advantage of Crowley's youth and naïvete [sic]."

8. The statement regarding the ages of Crowley and plaintiff was taken from the testimony of Cathy Meree (~~Trial Transcript p. 217 line 25 to p. 218 line 7~~ **(R.p. 476, line 25 — p. 477, lines 1-7)**) who testified that at the time of the marriage Crowley was 19 and plaintiff was 41, and if this were not accurate, it is an accurate account of trial testimony..

9. As for Crowley being from the country, this description was accurate as she was from Adams Run which is in a rural area of Charleston County.

10. In his Amended Complaint at paragraph 19 plaintiff alleges that the description of how Crowley came to be in plaintiff's company on June 5, 2006 was false, but this information is contained in the Incident Report prepared by the North Charleston Police Department from June 7, 2006 in connection with plaintiff's arrest for the crimes for which he was convicted (a copy of the Incident Report is attached hereto as Exhibit A and incorporated herein by reference). **(R.p. 178-182)** Even if the information in the Incident Report were inaccurate, my description of the events fairly and accurately restated the contents of that public record.

11. In his Amended Complaint at paragraph 20 plaintiff alleges that the description in the news report of his assaulting Crowley with a stun gun was false, but this information is contained in the Incident Report that is Exhibit A to this Affidavit. Even if the information in the Incident

were inaccurate, my description of the events fairly and accurately restated the contents of that public record.

12. In his Amended Complaint at paragraph 21 plaintiff alleges that the description in the news report that he “restrained Crowley with plastic zip ties, [etc.]” and that he had assaulted Crowley with a stun gun were false, but this information is contained in the Incident Report that is Exhibit

(R. pp. 178-182)

A to this Affidavit. Even if the information in the Incident Report were inaccurate, my description of the events fairly and accurately restated the contents of that public record.

13. In his Amended Complaint at paragraph 22 plaintiff alleges that the description in the news report that he held Crowley for about 45 hours before she was able to escape was false, but this

(R. pp. 178-182)

information is contained in the Incident Report that is Exhibit A to this Affidavit. Even if the information in the Incident Report were inaccurate, my description of the events fairly and accurately restated the contents of that public record.

14. In his Amended Complaint at paragraph 23 plaintiff alleges that the description in the news report that he “buried his bride in a blizzard of paperwork and legal motions” was false, but in ruling on Crowley’s motion for attorney fees at the conclusion of the divorce action the court noted “[T]he plaintiff has made this case...much more difficult and much more extensive than

necessary,” “[T]he court file is approximately one foot thick,” and blamed “[T]he litigious

(R. p. 544, lines 3-19)

approach to the divorce taken by the plaintiff.” (~~Tr. Trans. P. 284, lines 3-19~~)

15. It is my belief that my characterization of plaintiff’s activities with respect to the divorce case accurately restated the conclusion of the court.

16. In his Amended Complaint at paragraph 24 plaintiff alleges that the statement that the cost to the state for his *pro se* representation in the divorce case was false, but the figure used in the

news report was provided to me by a spokesperson for the South Carolina Department of Corrections, and I had no reason to doubt the accuracy of the calculation.

17. In his Amended Complaint at paragraph 25 plaintiff alleges that the portion of the news report reciting that plaintiff had been offered a divorce "about a half-dozen times," but had rejected the offer each time was false notwithstanding his mother, Crowley's mother and plaintiff acknowledged in testimony and argument that plaintiff had rejected at least four, and as many as six offers of divorce. (R.p. 482, lines 6-13; p. 489, lines 16-25 — p. 491, lines 1-2; p. 537, lines 22-25 — p. 538, lines 1-3) ~~(Tr. Trans. p. 223 lines 6-13, p. 230 line 16, p. 232 line 12, p. 277 line 22-25 — p. 278 line 3)~~

18. In his Amended Complaint at paragraph 26 plaintiff alleges the assessment that plaintiff "delayed a trial with a flurry of motions" is false, but the accuracy of the assessment is contained in the trial record which reflects hearings before Judge Guyton on April 30, 2012, Judge Woods on September 11, 2012 and "a multitude of documents also contained in the file [and a] multitude of orders of transport" (R.p. 258, lines 7-19) ~~(Tr. Trans. p. 19 lines 7-19)~~, and the trial judge's approval of the attorney fee request by Crowley's lawyer "due to the extensive filings" and plaintiff's "litigious approach to the divorce." (R.p. 544, lines 14-19) ~~(Tr. Trans. p. 284 lines 14-19)~~

19. In his Amended Complaint at paragraph 27 plaintiff alleges that the description in the news report regarding plaintiff's calling witnesses without knowing what to ask them, attempting to introduce irrelevant documents and lapsing into rants against the system were false, but the accuracy of the description is borne out in repeated instances in the trial record, including *inter alia*:

(R.p. 308, lines 7-23)
Incident report offered—objection to relevancy sustained (Tr. Trans. p. 69 lines 7-23)

Inability to question witness and attempt to offer affidavit into evidence

(R.p. 357, lines 13-25 — p. 364, lines 1-23)

Inability to question witness (Tr. Trans. p. 161 line 5 to p. 163 line 3)

(R.p. 410, lines 5-25 — p. 412, lines 1-3) ←

Rant against system (R.p. 326, lines 4-9; p. 326, lines 1-14; p. 327, lines 9-25 — p. 328, lines 1-5; p. 338, lines 16-25; p. 339, lines 1-16; p. 341, lines 20-25 — p. 342, lines 1-19).

20. In his Amended Complaint at paragraph 28 plaintiff alleges that statements in the news report regarding his case being wrecked, his head getting whacked off and his not knowing what to do were false, but in each instance the news report is consistent with plaintiff's trial statements. (R.p. 321, lines 24-25; p. 323, line 6; p. 339, line 15) (~~Tr. Trans. p. 82 lines 24-25, p. 84 line 6, p. 100 line 15~~)

21. In his Amended Complaint at paragraph 29 plaintiff alleges that descriptions in the news report of his having nearly three dozen witnesses and keeping one physician waiting to testify only to abandon his examination when it was clear that the physician had not examined Crowley for mental health issues was false, but plaintiff stated he had 30 witnesses (R.p. 450, lines 9-12) (~~Tr. Trans. p. 191 lines 9-12~~) and his examination of Dr. Andrea Sarah Mendelsohn was terminated when she testified that she had examined Crowley on a "well woman visit." (R.p. 346, lines 9-25 — p. 347, lines 1-18) (~~Tr. Trans. p. 107 line 9 to p. 108 line 18~~)

22. In his Amended Complaint at paragraph 30 plaintiff alleges that a reference to a "Hail Mary" comment by plaintiff in the news report was intended to mean plaintiff "blinded by ignorance and desperation...had resorted to asking ridiculous questions," but plaintiff did not and cannot allege that the reference was false since it is a direct quote from the following exchange (~~Tr. Trans. p. 121 line 16 to p. 122 line 1~~) (R.p. 360, lines 16-25 — p. 361, line 1):

MR. THOMAS: Your Honor, I would move that that would qualify as condonation. If she was seeking to reunite, wouldn't that fall under the doctrine of condonation?

THE COURT: Well, Mr. Thomas, condonation eliminates grounds for divorce. Are you saying that she—

MR. THOMAS: Oh, I see what you are saying. I'm just trying to say—I'm trying to move the date of where I can bring my testimony to, that, I don't know, it was just a Hail Mary. Thank you.

23. In his Amended Complaint at paragraph 31 plaintiff alleges that the description in the news report of a former lawyer of plaintiff's being called "arrogant" and accused of having an adulterous relationship with Crowley was to be read that the attorney was "indignant at having been interrupted during another legal matter only to testify in response to Plaintiff's baseless accusations and that Plaintiff was out-of-control," but plaintiff cannot allege that the exchange was false as he did accuse the lawyer of adultery with Crowley and called him arrogant as the following trial excerpts establish:

MR. THOMAS: Well I believe that Mr. Smiley has a relationship—has had an inter-marital relationship with my wife. (~~Tr. Trans. p. 248 lines 19-21~~) (R.p. 508, lines 19-21)

MR. THOMAS: It has nothing to do with my case, it's about adultery.

THE COURT: Just ask him questions, sir.

MR. THOMAS: Well I'm going to the page that falls into the category. You're an arrogant man.

THE WITNESS: Your Honor, I—

THE COURT: Now, Mr. Thomas, I have told you time and time again to stop these editorial comments for the record. (Tr. Trans. p. 251 lines 16-25) (R.p. 511, lines 16-25)

24. In his Amended Complaint at paragraph 32 plaintiff alleges that the news report was to be read to state falsely that "Plaintiff's last-ditch effort to abuse Crowley was foiled when she bravely faced her tormentor and said their separation began when he put her in the hospital," but the accuracy of the news report is borne out by the trial testimony from Crowley:

MR. THOMAS: Since the incident on June 6th, or actually my arrest on June 7th, where have you resided primarily?

A At my home.

Q Your home being? The address, please.

A 8108 Loretta Marie Lane

Q Wasn't that address created sometime thereafter?
It was more like an 8075, or something, you were residing
where—

A The property was, the property was—

THE COURT: Hold on. Let him finish his question, and then he is going
to let you finish your answer.

Please ask your question again for me, please.

Q (By Mr. Thomas) I believe you were living with your mother
initially, or did you—I understand your father bought you a mobile home
and it was placed on the property shortly thereafter. But when you
originally left—

MS. HENSLEY: Objection, Your Honor.

THE COURT: What is your objection?

MS. HENSLEY: That he is not asking any questions, and that if he is,
he's asking leading questions.

THE COURT: Would you please ask one question at a time for me, sir.

Q (By Mr. Thomas) Were you not living at 8095—wait a minute,
I will find the correct address—5608 Highway 174?

A That is the same address. It was just the property was annexed,
I don't know the correct word. That was the address previous to that.
Same place.

Q So you live in the same house with your mother? 8108 is the
same address as your mother?

A No. 8108 is 5608. Is that the question he is asking me?

THE COURT: Mr. Thomas, would you ask her the question again so she
is clear on the question before she answers it, please.

Q (By Mr. Thomas) Were you living in the same house with your
mother at the same address that she receives her mail at when you left the
hotel we were living in in June 7th of 2006?

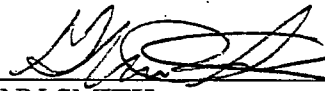
A You said when I left the hotel? When I left the hotel I went to
the hospital. (~~Tr. Trans. p. 166 line 25 to p. 168 line 18~~)

(R. p. 415, Line 25—p. 417, Lines 1-18)

25. In his Amended Complaint at paragraph 33 plaintiff alleges that the headline, "Inmate with
limited law knowledge finally gets his comeuppance" was an expression of opinion by me, but I
did not write the headline.

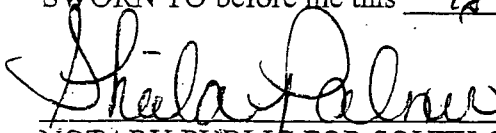
26. It is my belief that everything in the news report complained of by plaintiff was true or substantially true, or was based on a fair and accurate report of public proceedings and the contents of public records.

27. There is nothing in the news report complained of by plaintiff that I knew to be false or with respect to which I had doubt as to its accuracy.



GLENN SMITH 6/18/14

SWORN TO before me this 18 day of June 2014



(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 11-21-2016



BAKER RAVENEL BENDER

ATTORNEYS AT LAW

D. CRAVENS RAVENEL

JAY BENDER

S. MARKEY STUBBS

CATHARINE GARBEE GRIFFIN

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ALINA DUDALI

CHARLES E. BAKER
(1935-2010)

¹OF COUNSEL

²ALSO ADMITTED IN GEORGIA

³ALSO ADMITTED IN VIRGINIA

January 7, 2014

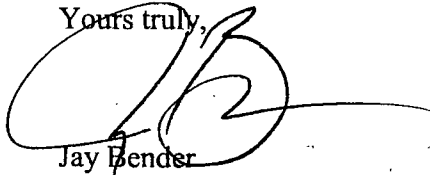
Clark D. Thomas #187845
BRCI/Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

Re: Clark D. Thomas v. Evening Post Publishing Co., d/b/a The Post and
Courier, Glenn Smith, Officially and Individually
C. A. No. 2013-CP-10-0544
Our File No.10819.2

Dear Mr. Thomas:

I have advised the Charleston County Clerk of Court that defendants' motion for judgment on the pleadings in the above-referenced action is withdrawn. Defendants' Answer to your Amended Complaint makes this motion moot.

Yours truly,



Jay Bender

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Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

April 1, 2014

The Honorable R. Markley Dennis
Berkeley County Courthouse
300-B California Avenue
Post Office Box 1800
Moncks Corner, SC 29461

Re: Thomas v. Evening Post Publishing Co., et. al.
Case No. 2013-CP-10-5444

Dear Judge Dennis:

On January 10, 2014, I was transported to a hearing in your court on my motion for judicial notice and a motion for judgment on the pleadings made by opposing counsel, Jay Bender. For reasons unknown, Mr. Bender was seeking the dismissal of a cause of action that was not alleged in my *Complaint* because, among other things, the statute of limitations had expired. After having received no response to the message left with Mr. Bender's paralegal expressing my willingness to sign a consent to dismiss that cause of action, I filed a *Form Motion* requesting judicial notice of the fact notice that his motion was moot and that a hearing on its merits should not be convened. (See enclosures). By way of explanation, I was with the understanding that the administrative judge could resolve this matter in the interest of judicial economy.

With that in mind, the purpose of this letter is to apologize for having wasted your time and taxpayer money to transport me to that hearing. And per your instruction, I will contact the clerk of court to withdraw any motions I file that become irrelevant. I am, however, perplexed by my learned adversary's failure to timely initiate that remedy

despite having had several months notice to do so. In fact, because I could not otherwise determine a logical reason for Mr. Bender's disinclination to act, three of my material witnesses drove from Columbia to give testimony and bring the documentary evidence required to prosecute my case.

And finally: because I am a *pro se* litigant, I believe it necessary to reveal what had actually transpired as opposed to it possibly being inferred that my pleadings are inept, frivolous and an encumbrance. In other words, I have the utmost respect for this Court and, given the opportunity, I can prove my case has merit.

Respectfully,

A handwritten signature in cursive script that reads "Clark D. Thomas". The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

Clark D. Thomas

cc: Jay Bender w/enclosures



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

R. Markley Dennis, Jr.
Judge

Post Office Box 1800
300 B California Avenue
Moncks Corner, SC 29461-1800
Phone: (843) 719-4435
Fax: (843) 719-4599
mdennisj@sccourts.org

April 15, 2014

Mr. Clark D. Thomas #187845
BRCI/Moultrie A-2087
4460 Broad River Road
Columbia, South Carolina 29210

In Re: Thomas vs. Evening Post Publishing Co., et al.
Case No. 2013-CP-10-5444

Dear Mr. Clark:

In reviewing the file in Charleston, it appears that you have not sent Notice of your desire to have the captioned matter dismissed. I assume you are in the process of completing that. Nevertheless I will be filing you letter, with attachments, with the Clerk of Court in Charleston so that it may be retained with all pleadings in the file.

With kind regards, I am

Very truly yours,


R. MARKLEY DENNIS, JR.

RMD,JR/ljd

cc: Jay Bender, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2013-CP-10-5444

BY _____

JULIE J. ARISTOTONG
CLERK OF COURT

2014 OCT 28 PM 3:17

FILED

Clark D. Thomas, ... Plaintiff,

V.

Evening Post Publishing Co.
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually, ... Defendants.

**MEMORANDUM OF LAW
IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

This is an action for libel and intentional infliction of emotional distress filed by Plaintiff, Clark D. Thomas, arising from the article written about him by Defendant Glenn Smith, and published by Defendant Evening Post Publishing Company, d/b/a The Post and Courier (Post), on September 23, 2012. ^(R. pp. 227-230) ~~(See *infra* Exhibit A, pp. 17-20)~~. Thomas is seeking \$250,000 in actual damages, punitive damages in an amount to be determined by a jury and, for pre-judgment and post-judgment interest.

Precursory Publications

Smith's first article about Thomas dated June 9, 2006, was a published account of a police report built on false allegations made by Thomas' then-wife, Rachel M. Crowley, that resulted in his arrest on charges of kidnapping and criminal domestic violence of a high and aggravated nature (underlying criminal matter). Smith's second article setting forth those same false allegations and published on March 1, 2007, was centered on Thomas' release from jail on bond. However, it was supplemented with more false statements made by Crowley and her mother, Cathy Merece, during the interview conducted by Smith while preparing that article for print.

In response, Thomas alerted Smith on or about March 3, 2007, to the fact that both of the foregoing articles were devoid of truth. And during the course of Thomas' trial in the underlying criminal matter, the evidence went on record confirming that Smith's articles were based on lies. However, Smith's third article printed after Thomas' trial on July 12, 2008, again reiterated the same false allegations despite having been controverted.

Divorce Trial Proceedings

When Thomas and Crowley's divorce trial was convened on September 20, 2012, Thomas entered into the record of those proceedings that Smith was in attendance; and that Smith should confirm his facts before writing for publication another story about him. With that in mind, Thomas had a number of friends, family members and associates who were also in attendance that would have supplied Smith with the information necessary to write a veritable story. Be that as it may, Smith did not seek to interview any of these credible witnesses.

To that end: Thomas' mother, Carol Ann Cook, asked Smith during Thomas' divorce trial not to publish another story before hearing the truth. And the next day on September 21, 2012, Cook emailed Smith to inform him that Thomas wished to provide him with documents proving that the articles he had written were based on events that did not happen. (~~Amended~~ (R.p. 97) Complaint, p. 11). Thomas also spoke with Smith on September 21, 2012, and emphasized the irrefutable and diametrically opposing nature of the evidence he had in support of his position. However, Smith wrote and the Post published on September 23, 2012, the article in dispute.

PLAINTIFF'S PENDING MOTION

Continuance & Equitable Tolling

When Thomas filed for a divorce, Crowley set forth in her *Answer* that Thomas was incarcerated for kidnapping her, and for CDVHAN against her. And in an *affidavit* that was entered into the record, Crowley again raised those issues of Thomas' wrongful convictions. However, the family court erroneously observed Thomas' efforts to refute Crowley's pleadings as an attempt to seek post-conviction relief in the underlying criminal matter. Consequently, Thomas was prejudiced by that observation to the extent that he was denied an equitable

dissolution of his marriage, and ordered to pay Crowley's lawyer \$9,000 within 30 days of his release from prison even though he is a *pro se* litigant. "A *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney." (Emphasis in original). Calhoun v. Calhoun, 529 S.E.2d 14, 17 (S.C. 2000).

With that in mind, Thomas' meritorious causes of action in the instant matter are also hinged upon, among other things, the underlying criminal matter. To that end, Thomas' PCR hearing will be held during the December 2014 term. Therefore, should this Court determine that an equitable ruling in this case may not be possible until the contested facts in the underlying criminal matter are resolved: Thomas would respectfully seek that this Court grant his *Motion* to continue this case until the final judgment is filed in his PCR action; or in the alternative, grant a dismissal without prejudice and toll the statute of limitations and, allow a 90-day grace period after the filing of the final judgment in his PCR case to refile this case. "[T]he court having jurisdiction of the matter may grant any necessary or reasonable continuance." State v. Barnes, 753 S.E.2d 545, 564 (S.C. 2014). And the court in Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 687 S.E.2d 29, 32 (S.C. 2009), explained:

""The equitable power of a court is not bound by cast-iron rules but exists to fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.""

STANDARD OF REVIEW
OF
MOTION FOR SUMMARY JUDGMENT

“In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party.” (Citation omitted). Murray v. Holnam, 542 S.E.2d 743, 747 (S.C.App. 2001). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” (Citation omitted). *Id.* “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.” (Citation omitted). *Id.*

“Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” (Citation omitted). *Id.* “In general, if the pleadings and the evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented.” (Citation omitted). *Murray*, 542 S.E.2d at 747. “In order to withstand a motion for summary judgment ..., the non-moving party is only required to submit a mere scintilla of evidence.” (Citation omitted). Fountain v. First Reliance Bank, 730 S.E.2d 305, 309 (S.C. 2012).

I.

Amendments to Conform

The Defendants have argued that the pleadings failed to state a cause of action for infliction of emotional distress because Thomas (1) is relying exclusively on the facts asserted as the basis of his libel claim seeking redress for injury to his reputation; (2) he did not allege to

having sought and received medical, psychological or psychiatric treatments stemming from the article in dispute; and (3) that Thomas failed to allege that the Defendants published false statements of fact concerning him knowing the statements were false or having a reckless disregard for potential falsity. ~~(Answer to Amended Complaint, pp. 5-6, ¶¶ 28-30)~~ ^(R. pp. 106-107, ¶¶ 28-30). To that end: Thomas is a layman, *pro se* litigant. Moreover, the facts in this case reveal intentional misconduct to the extent of being outrageous and atrocious and, clearly fall within the doctrine of *res ipsa loquitor*.

“As a *pro se* litigant, the Plaintiff’s pleadings are accorded liberal construction, and held to a less stringent standard and formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007). “[I]nartfully drawn but meritorious pleadings are upheld against demurrer challenging their legal sufficiency.” Moore v. City of Columbia, 326 S.E.2d 157, 160 (S.C.App. 1985). “Where such atrocious intentional misconduct is involved, the plaintiff need not prove physical manifestations or offer expert testimony.” F.P. Hubbard & R.L. Felix, The South Carolina Law of Torts 575 (3rd Edition 2004).

With that in mind, Thomas will seek during the hearing on October 29, 2014, in the case at bar to amend the complaint to conform to the evidence pursuant to Rule 15(b), SCRCp, that his cause of action for the intentional infliction of emotional distress is also grounded on the same false statements that his libel action is grounded on; and that the Defendants published those false statements with a reckless disregard for their potential falsity. Thomas will also move pursuant to Rule 15(b) for the inclusion of invasion of privacy as an additional cause of action, and to amend the pleadings to include that the Defendants published in the article in dispute the false statement that “financial documents show Thomas has a \$25,000 trust fund awaiting him when he completes his sentence.” “[A]mendments to conform to proof should be liberally

allowed when no prejudice to opposing party will result therefrom.” Soil & Mat. Eng., Inc. v. Folly Assoc., 361 S.E.2d 779, 781 (S.C.App. 1987).

II.

Defamatory Statements

The article in dispute is defamatory to the extent that it was written and published by the Defendants to ridicule and humiliate Thomas. By way of explanation, the headlined opinion that *Inmate with limited law knowledge finally gets his comeuppance* and statements in that article openly and directly set forth in a positive manner their belief that Thomas deserved the adverse rulings in a divorce action he half-wittedly filed and exploited to torment Crowley. (See *infra* Exhibit A, pp. 17-20).

“Both the headline and the article following it must be considered as one document in determining whether it is defamatory.” (Citation omitted). Boone v. Sunbelt Newspapers, Inc., 556 S.E.2d 732, 739 (S.C.App. 2001). “[A] statement is defamatory if the words used convey to the minds of those to whom they are addressed the impression that the Plaintiff has done wrong....” (Internal quotation marks omitted). (Citation omitted). Anderson v. The Augusta Chronical, 585 S.E.2d 506, 514 (S.C.App. 2003). “To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain.” (Citation omitted). *Fountain*, 730 S.E.2d at 309.

III.

Privacy Component

Thomas is a private figure who was unwillingly thrust into the public spotlight when Crowley made the false allegations that resulted in his wrongful convictions. And it was only until trial in that underlying criminal matter that the evidence necessary to conclusively establish that Crowley is a habitual liar was entered into the record of those proceedings. However, the falsity of Crowley's accusations was not brought to light.

The reason for that outcome is Thomas' defense counsel deliberately failed to make known the evidence of Crowley's lack of candor, among other things, that had developed during her testimony out of concern that Thomas' trial would take longer to litigate and would interfere with his plans to vacation in Costa Rica; and the Defendants refused to observe and/or publicize this proof of Thomas' innocence—yet they purport him to be a public figure deserving of notoriety. “[A] private person has less likelihood of securing access of channels of communication sufficient to rebut falsehoods concerning him than do public officials and public figures, and has not voluntarily placed himself in the public spotlight.” Gertz v. Robert Welch, Inc., 418 U.S. 323, 338-339 (1974).

IV.

Impartiality & Reliability

The Defendants maintain that the article in dispute is privileged as a fair and accurate account of judicial records in the underlying criminal trial and Thomas' divorce trial proceedings. However—with exception to the jury's guilty verdict—Smith's narrative of the underlying criminal matter is based entirely on police investigation reports. As for Thomas'

divorce, those proceedings should not be considered a valid matter of public interest. "[O]n the question of reporting police investigations[,] ... these are not privileged as are reports of judicial proceedings." Dauterman v. State-Record Company, 154 S.E.2d 919, 921 (S.C. 1967). "[D]ivorce of prominent citizen not a matter of legitimate public concern." (Citation omitted). *Gertz*, 418 U.S. at 378 n.10.

Both Thomas and his mother, Carol Ann Cook, informed Smith that his facts in the case *sub judice* as they relate to the underlying criminal matter are flawed; and they attempted to provide Smith with the documentation to prove it. (R.p. 97) (~~Amended Complaint, p. 11~~). However, Smith refused to accept this evidence comprised of, among other things, Crowley and the investigators' statements and their testimony during the underlying criminal trial. Had he done so, Smith would have observed that not one of Crowley's detailed accounts recorded in the three police reports, her *affidavit*, and her trial testimony is consistent. (R.p. 231-238) (~~See infra Exhibit B, pp. 21-28~~).

Turning to the proceedings in Thomas' divorce trial, the context of the article in dispute clearly establishes its biased nature. In fact, the headline *Inmate with limited legal knowledge finally gets his comeuppance* in and of itself undeniably articulates Smith's disinclination to impartiality. (R.p. 98) (~~Amended Complaint, p. 12~~). With that in mind, the court in Britt v. Knight Publishing Co., 291 F. Supp. 781, 784 (D.S.C. 1968), made the following determination:

"The report of an official or public proceeding, to be privileged, must present fully and fairly an impartial account of the proceeding. It must be accurate, at least with regard to all material matters.... It must not give undo prominence to inculpatory facts, and depress or minify such facts as will explain or qualify the former, and must not omit material points in favor of the complaining party or introduce extraneous matter of a nature injurious to him. In

short, the report must be characterized by fair-mindedness, honesty, and accuracy.”” Cf. Vaughan v. News Leader Co., 102 F.2d 360 (4th Cir. 1939).

To that end, the article in dispute in the instant matter (1) gave undo prominence to the false but nonetheless inculpatory facts in the underlying criminal matter, (~~Amended Complaint, pp. 4-5, ¶¶ 19-22~~) (R. pp. 90-91, ¶¶ 19-22); (2) depressed and minified the facts that would explain or qualify those inculpatory facts by simply stating that Thomas *has long insisted [that Crowley’s allegations] were fabricated*; (3) omitted the material points in favor of Thomas that, among other things, Crowley and her mother both gave inconsistent testimony during the divorce trial; and (4) introduced extraneous matter of a nature injurious to Thomas. (~~Amended Complaint, p. 3, ¶ 16; p. 4, ¶ 18; p. 5, ¶ 24~~) (R. p. 89, ¶ 16; p. 90, ¶ 18; p. 91, ¶ 24).

V.

Malice & Reckless Disregard

Smith was warned on or about March 3, 2007, that his first two articles published on June 9, 2006, and March 1, 2007 were based on spurious allegations. However, Smith did not seek to interview Thomas. Nor did he attend the underlying criminal trial to confirm his facts before once again publishing those same false claims on July 12, 2008. With that in mind: upon observing Smith’s attendance at his divorce trial, Thomas also entered into the record of those proceedings his opinion that Smith lacked integrity because he knowingly prints lies; and that Smith was only concerned with selling newspapers for the Post. Therefore, because the erroneous facts in Smith’s first three articles were no longer *hot news* and, in light of Thomas and Cook’s warnings concerning falsity, the Defendants were obligated to verify the disputed article prior to publishing it.

In other words, the evidence reasonably concludes that Smith maliciously and recklessly disregarded the truth to get even with Thomas for disparaging him in open court. “[R]eckless disregard where the defamatory matter was not ‘hot news’ and the newspaper failed to verify it despite warnings concerning its falsity.” (Citation omitted). (Internal quotation marks in original). *Anderson*, 585 S.E.2d at 520. “Although the Defendant’s state of mind is a subjective fact, it can be shown by indirect or circumstantial evidence.” *Id.* at 515. “Because a plaintiff will rarely be successful in proving awareness of a falsehood from the mouth of the defendant himself, any direct or indirect evidence relevant to the defendant’s state of mind is admissible to demonstrate actual malice.” (Internal quotation marks omitted). (Citation omitted). *Id.*

Furthermore, even if Thomas is ruled a public figure in the case at bar and his divorce a matter of public concern: The Defendants’ malicious opinions, insinuations and false statements made with reckless disregard for the truth—which are all defamatory—are just as actionable. “[W]here a statement of ‘opinion’ on a matter of public concern reasonably implies false and defamatory facts regarding public figures or officials, those individuals [can recover if they] show that such statements were made with ... reckless disregard of their truth.” (Internal quotation marks and brackets in original). (Citation omitted). *Anderson*, 585 S.E.2d at 520 n.11.

Even more disturbing in the case *sub judice* is that Thomas’ daughter, Christen Boyer, posted on the Defendants’ website her personal observations to expose the falsity of the article in dispute. However, the Defendants’ immediately deleted Boyer’s response in what should be observed as an intentional avoidance of the truth. (R.p. 230) (See ~~infra~~ Exhibit A, p. 20). What’s more, Thomas provided the Defendants with the facts necessary to justify his request for a retraction of the article in dispute, but they refused to do so. (R.p. 106) (Answer to Amended Complaint, p. 5, ¶ 25).

“It is likely that the newspapers inaction was a product of a deliberate decision not to acquire knowledge of facts that might confirm the probable falsity.... Although failure to investigate will not support a finding of actual malice ... the purposeful avoidance of the truth is in a different category....” (Citation and internal brackets omitted). *Id. at 519*. “Evidence of an intent to avoid the truth ... was sufficient to convince the plurality.” (Internal brackets omitted). *Id.* “Refusal to retract an exposed error tends to support a finding of actual malice.” (Citation omitted). *Anderson, 585 S.E.2d at 520*.

VI.

Questions for Jury

The Defendants’ have abused their privilege to report the details of public records and judicial proceedings because of their both direct and insinuatively defamatory comments and, for failing to publish fair, impartial and accurate accounts of the judicial proceedings involving Thomas—all of which are questions for the jury. “[T]he question whether the privilege has been abused is one for the jury.” *Murray, 542 S.E.2d at 749*. “[P]ublic records privilege exceeded by going beyond contents of public record to create defamatory insinuation.” *Law of Torts, at 522 n.264*. “[N]o privilege for inaccurate reports.” *Id.* “A common law privilege attaches to reports of judicial proceedings; and so long as the report is fair, accurate, and impartial, the publisher will not be liable for defamatory matter contained in the record of judicial proceedings. *Id. at 522*. “[W]hether the published account of a judicial proceeding is fair, impartial and accurate is a question for the jury.” Hubbard v. Associated Press, 123 F.2d 864, 867 (4th Cir. 1941).

Substantial Truth

The Defendants have implied that they are immune from liability on grounds that the article in question is *substantially true*. To that end, the Defendants were alerted to its falsity and chose not to undertake a reasonable investigation to confirm the veracity of their facts. Moreover, the Defendants rejected clear and convincing proof that the article in question is based on lies. In other words, authenticating their facts would have required little effort. Therefore, the Defendants acted with malice; and they were obviously not interested in printing a veritable story. With that in mind, the Defendants should not be permitted to enjoy the *substantial truth* privilege when they deliberately ignored the existence of readily available evidence establishing that their facts were not true. “[F]ailure to undertake a reasonable investigation into the matter creates a jury question as to whether it published the [article] with malice.” (Citation omitted).

Anderson, 585 S.E.2d at 518.

What’s more, the Defendants’ statement to their belief that the facts are *substantially true* should not be observed as an exception considering the vindictive and biased nature of Smith’s article. Consequently, a jury will *most probably* find that the Defendants did publish with reckless disregard and actual common law malice the false statements in the article in dispute to defame Thomas. “That the appellant believed the charges to be true did not justify it in publishing them in an improper an unjustified manner or with improper or unjustified motives.” (Citation omitted). *Murray*, 542 S.E.2d at 750. “[C]ommon law actual malice is ordinarily for the jury to decide.” (Internal quotation marks omitted). (Citations omitted). Castine v. Castine, 743 S.E.2d 93, 98 (S.C.App. 2013). “Whether ... statements were false is a matter for the jury.” *Id.* at 97. “When the truth of the defamatory communication is in dispute, the issue is a jury

question.” (Citation omitted). Weir v. Citicorp Nat. Services, Inc., 435 S.E.2d 864, 867 (S.C. 1993).

Abuse of Privilege

The Defendants seem to also be implying that the both direct and insinuatively defamatory statements in the article in dispute were made in good faith; and that they should be protected under the principle of *neutral reportage*. Be that as it may, these defamatory statements spawned by malice are clearly unreasonable; should not be determined to fall within the purview of moral necessity; and they are in reckless disregard of Thomas’ right to a private and equitable dissolution of his marriage and recovery of his assets. What’s more, Smith made no secret of his alliance with Crowley, and his support of the false allegations she made against Thomas in the underlying criminal matter. “[I]n an invasion of privacy claim, whether a news statement was ‘substantially true’ is of no consequence.” (Internal quotation marks in original). (Citation omitted). Upchurch v. New York Times Co., 431 S.E.2d 558, 561 (S.C. 1993).

And because of Thomas’ revelation in open court that Smith lacked integrity, among other things, he deliberately distorted the facts to avenge Thomas for having made those statements. Therefore, the Defendants have abused all constitutional privileges entitling them to immunity. “An abuse of privilege occurs in one of two situations: (1) a statement made in good faith that goes beyond the scope of what is reasonable under the duties and interests involved or (2) a statement made in reckless disregard of the victim’s rights.” (Citation omitted). *Fountain*, 730 S.E.2d at 310. “[I]n order to be protected by the principle of neutral reportage, a publisher must not espouse or concur in the charges made by others and must not deliberately distort these statements to launch a personal attack of his own....” (Citation omitted). Sunshine Sportswear & Electronics v. WSOC Tele, 738 F. Supp. 1499, 1510 (D.S.C. 1989).

VII.

Diminished Reputation

In what seems to be a last-ditch attempt to elude their accountability: the Defendants are relying upon Thomas' erroneously determined guilt in the underlying criminal matter and his prior convictions for non-violent misdemeanors to render him *libel-proof*. To that end, this appears to be a novel issue in South Carolina. In a defamation case analogous to the instant matter, the Supreme Court held that "[a] novel issue such as here presented is best decided in light of the testimony to be adduced at trial." Tyler v. Macks Stores of South Carolina, 272 S.E.2d 633, 634 (S.C. 1980). "[N]ovel issues should be decided with a full and complete record." Chastain v. Hiltabidle, 673 S.E.2d 826, 829 (S.C.App. 2009).

However, state and federal courts "have held that a person was *libel-proof* when his reputation was so poor due to multiple prior convictions for felonies that he was unlikely, as a matter of law, to recover more than nominal damages for allegedly defamatory publication." Eliot J. Katz, J.D., Annotation, Defamation: Who is "Libel-Proof", 50 A.L.R. 4th 1257, §4. For example, a serial killer whose convictions included crimes referred to as the *hitch-hike murders* was found to be *libel-proof*. Jackson v. Longscope, 476 N.E.2d 617 (Mass. 1985). And Martin Luther King, Jr.'s assassin was likewise found to be *libel-proof*. Ray v. United States Dept. of Justice, 658 F.2d 608 (8th Cir. 1981). In the case at bar, Thomas' reputation is not anywhere close to that where he should be considered *libel-proof*.

"“An attorney who had received substantial adverse publicity for two federal indictments, fines for contempt of court and assault and battery upon a police officer, and maintaining ties to a motorcycle gang reputed to be involved in criminal activity was held to have a sullied reputation, but one which was yet capable of sustaining further harm from an allegedly libelous publication imputing involvement in an illicit drug transaction to

him.”” *Eliot J. Katz, J.D., Annotation, 50 A.L.R. 4th at 1261 n.10.*

With that in mind, the Defendants have asked in their *Request for Admissions* in the case at hand that Thomas acknowledge his guilt to charges going back 33 years when he was a teenager. However, the majority of those accusations were either dismissed or *nol prossed*. And with few exceptions, Thomas was ill-advised to accept guilty pleas despite his innocence because of the misleading impact of his criminal history. With that in mind, Thomas recently acquired familiarity with expungement rights and procedures; and 32 of those deceptive reports have been removed with more to come. As for the felonies in the underlying criminal matter, those convictions will *most probably* be vacated because of, among other things, the irrefutably reliable proof that his accuser, Rachel M. Crowley, is a habitual liar.

In fact, Crowley lied when accusing Thomas of then-misdemeanor criminal domestic violence of a high and aggravated nature (CDVHAN) on March 6, 2003, and criminal domestic violence (CDV) on February 4, 2005. In other words, those two convictions are perfect examples where Thomas' rap sheet was used to coerce a guilty plea; and it should be noted that he had no priors for CDV before meeting Crowley. Be that as it may, it was only upon Thomas' arrest in the underlying criminal matter that the first-time-ever revelation of his misleading criminal record was made to the public. And even then, Thomas continued to enjoy the benefit of family, friends and colleagues as evidenced by the 14 *affidavits* of good character filed in this action. However, because of the Defendant's malice and reckless disregard for the truth in their articles time and again: it is likely that the foregoing *affiants* would be unwilling to offer their support to Thomas again.

““Although we accept the principle that a convicted criminal may have such a poor reputation that no further

damage to it was possible at the time of an otherwise libelous publication, it must be clear, as a matter of law, that the reputation of a plaintiff, even a convicted felon, could not have suffered from the publication of the false and libelous statements.”” *Jackson*, 476 N.E.2d at 620.

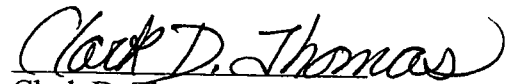
VIII.

Prayer for Relief

In light of the foregoing facts and binding authority, Thomas respectfully seeks to enjoy his due process and equal protection rights to the denial of the Defendants’ *Motion* for summary judgment, and a jury trial in this action as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law.

WHEREFORE, plaintiff prays this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,



Clark D. Thomas
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

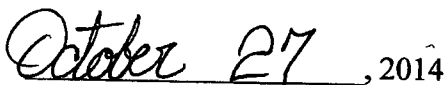

Columbia, SC

EXHIBIT A

Inmate with limited law knowledge finally gets his comeuppance

Glenn Smith ▾ | Posted: Sunday, September 23, 2012 12:17 a.m.

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Extra Photos



Rachel Crowley, right, says she was kidnapped by her husband Clark David Thomas in 2007 and tortured with a

stun gun. At left is her mother, Cathy Meree.

Because Thomas was entitled to represent himself, the state had to foot the bill for his trips to Charleston from Broad River Correctional Institute in Columbia, where he is serving his sentence.

Two prison guards had to accompany him on each trip, corrections officials said.

The cost to taxpayers? Close to \$5,000, according to the state Department of Corrections.

Family Court judges offered to grant him a divorce about a half-dozen times over the past two years, but each time Thomas turned them down. He wanted a trial where he could face his wife in court and refute her accounts of abuse at his hands, which he has long insisted were fabricated.

He said he also worried that not contesting her claims of abuse would be seen as a tacit admission of his guilt.

"I never got a chance to tell my side of the story," he told a judge Thursday. "I sought to prove I'm not the animal I have been depicted as being."

So for eight long hours, with 34 witnesses in tow and one hand shackled to his side, Thomas attempted to do just that as his loyal family, his trembling wife and his horrified mother-in-law looked on.

"I just want this to be over," Crowley said. "It's like I am having to relive everything all over again."

A Rocky Union

Thomas and Crowley met through mutual friends and were married in March 2004. She was a girl from the country, just 19. He was 41, an electrician by trade and a repeat offender with a criminal record ranging from check fraud and forgery to domestic violence.

By all accounts, the pair had a tumultuous relationship filled with fights, substance abuse and hard times as they bounced from one motel to another without a stable home.

Crowley said Thomas got her hooked on heroin, crack cocaine and booze to control her. Thomas denies that was the case, though he acknowledged struggling with a drug problem.

Crowley had gone back to live with her mother in Adams Run when Thomas showed up at their house on June 5, 2006, and invited her to go with him to his North Charleston motel room to retrieve her belongings.

When they walked into the room, Thomas pulled out a stun gun, jammed it into her back and pushed her to the floor, police said. He restrained Crowley with plastic zip ties, handcuffs, tape and shackles as he repeatedly abused her and jolted her body with electric charges from the stun gun, police said.

Investigators said Thomas held Crowley for about 45 hours before she was able to escape after he took her for a drive in his minivan.

Police arrested Thomas the same day, though he insisted that what happened in the motel room had been consensual. Investigators didn't buy his story, and neither did the jury that found him guilty in July 2008 of kidnapping and criminal domestic violence of a high and aggravated nature.

He will not be eligible for release until December 2024.

Long Road To Trial

Thomas initially filed for an uncontested divorce in November 2010, seeking only an official split and to have his court fees paid by Crowley.

He later came back with demands for alimony, and he asked the court to find her at fault for cruelty and misbehavior during their marriage. He accused her in court filings of concocting the kidnapping story to get back at him for asking her for a divorce in June 2006.

North Charleston attorney Laree Hensley agreed to represent Crowley, assuming it would be a relatively simple divorce case. She then helped Crowley, who is unemployed and of limited means, file a counterclaim for divorce.

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Thomas delayed a trial with a flurry of motions — enough to take up about a foot of space on a courthouse shelf. He also filed grievances against two Family Court judges and Crowley's attorney.

He sought yet another delay Thursday so he could have more time to prepare, but Family Court Judge Lisa A. Kinon told him it was go-time.

At Hensley's request, Kinon also limited testimony to events that occurred after June 7, 2006, the day Thomas was arrested. That's because Thomas had insisted that he and Crowley were willingly together as a couple at the motel and that he was simply making love to his wife that day.

That placed the day of their official separation at June 7, making the crime itself and prior marital problems off-limits for the hearing.

Thomas, a wiry, bespectacled man with short, graying hair, repeatedly complained about that move during the proceeding, calling Hensley "a tricky one" and accusing her of "bushwhacking" him and railroading his case.

Again and again, he tried to bring up the crime for which he was convicted, only to be met with objections from Hensley. Dozens of times, the judge reminded him that they were there to discuss his divorce, not re-try his criminal case.

"I think you are trying to defend yourself against things I don't even know about," Kinon said. "This is a divorce case."

Clearly frustrated, Thomas seemed at a loss as to how to proceed. He called witnesses, then didn't know what to ask them, lapsing into rants against the system. He tried to introduce several documents that had no bearing on the divorce.

He kept losing track of his paperwork, delaying the proceeding several times as he pawed through the mountain of documents before him with the one free hand not shackled to his waist.

"Quite frankly, my case has been pretty much wrecked," he said. "Every corner I turn, I'm getting my head whacked off. I don't know what to do."

Looking For Answers

Nearly three dozen witnesses — several police officers, a doctor, a lawyer and more — packed the courtroom to await their turn to testify.

Thomas kept one doctor waiting for two hours before he called her to the stand to ask her about treating Crowley for mental health issues. When the doctor explained that she had seen Crowley only for a wellness visit and a pap smear, Thomas ran out of questions for her.

He called one of his friends to the stand and asked the man if he had anything useful to say to help him out. "Get divorced," his friend replied.

At another point, the judge asked Thomas what he hoped to gain through one line of questioning. He shrugged and chuckled. "That was a Hail Mary."

Later, Thomas had an attorney who had once represented him pulled from plea hearings on another floor so he could testify in the divorce. Thomas called the attorney arrogant and insinuated that the man had an affair with Crowley, without offering any evidence to back up that assertion. The attorney, fuming, denied any relationship.

When Thomas finally got Crowley on the stand, he peppered her with questions about how long she had lived with her mother and what dates she had been arrested for disorderly conduct.

She stared straight at him and, in an even voice, said she couldn't recall with specificity.

But she had no problem answering his question about where she had gone after leaving him at the motel in 2006. "To the hospital," she replied.

The Judge Rules

Judge Kinon remained patient with Thomas throughout the day while nudging him along through the process.

In the end, she ruled that Thomas had failed to establish any of the claims in his complaint. She turned down his request for alimony and attorney fees, and said there didn't appear to be any of his property left to give back, including the Maxim magazines.

She then granted Crowley a divorce from him, along with matching restraining orders for the ex-couple. Kinon also lauded Hensley for her work on the case.

Because Thomas had made the case so onerous for Hensley, the judge ordered him to pay her attorney's fees — a \$9,000 bill. He must pay her within 30 days of his release.

He might just be able to do that too, as financial documents show Thomas has a \$25,000 trust fund awaiting him when he completes his sentence.

After Kinon announced her ruling, Thomas shot a look at his family, started to laugh and tossed his head back. "Wow!" he shouted, before correctional officers led him away.

Crowley left the courtroom, hugging her mother and Hensley. "Oh my God. Oh my God," she kept saying, her eyes brimming with tears. "Thank you so much. I can't believe it finally happened."

She and her mother planned a modest celebration to mark the end of her marriage. But they couldn't help but think about the petition Thomas said he is preparing to ask the courts for post-conviction relief, a strategy aimed at winning a new trial or a reduced sentence.

Before they know it, they could be back in the same courthouse with him all over again.

Reach Glenn Smith at 937-5556 or [Twitter.com/glennsmith5](https://twitter.com/glennsmith5).

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Christen Boyer

09/24/12 at 12:32 PM

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If anyone is curious to know what really happened, I would be more than happy to email you with the information. ChristenCB@hotmail.com

Christen Boyer

09/24/12 at 12:15 PM

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I didn't realize that comments would be deleted if they were not liked? Pretty dumb..

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EXHIBIT B

Injury Allegations

Crowley did not allege that Thomas had assaulted her with his hands or fists in the *Incident Report*. However, Crowley said that Thomas punched her in the side now and then in her *1st Witness Statement*, (See *1st Wit State*, p. 2); and in her *2nd Witness Statement*, Crowley alleges that Thomas punched her in the ribs, and slapped her face several times. (See *2nd Wit State*, p. 2). And in the *affidavit* Crowley executed for the Department of Probation, Parole and Pardon Services (DPPPS), she claimed that Thomas violently beat her in the face throughout the night.

At trial, Crowley testified that her lip was lacerated when Thomas allegedly punched her in the face. (~~R. p. 184, lines 20-24~~). However, photographs marked as State's Exhibits 17-18 & 23-26 do not depict the busted lip or bruising to support Crowley's claim to having been brutally beaten for 36 to 40 hours. And when these pictures were entered into evidence, Crowley's explanation for the lesions that were on her body also failed to support her allegations. (~~R. pp. 195-200, lines 1-12~~).

Abduction & Torture Scenarios

It was first alleged in the *Incident Report* that Thomas unexpectedly arrived at Cathy Meree's house, and that he offered to take Crowley to their residence to retrieve some things. (See *Incident Rpt*, p. 2). Crowley later claims in her *1st Witness Statement* that Thomas called three or four times asking her to come watch movies at their residence; and that she told him to come pick her up. (See *1st Wit State*, p. 1). To that end, Crowley would not have testified to this alleged deception involving movies if the prosecutor had not led her to do so. (~~R. p. 145, lines 5-6~~). And in Crowley's *affidavit* for DPPPS, she states that Thomas called her repeatedly wanting

to pick her up; and that when he showed-up at her house that afternoon, she decided to go with him.

According to the *Incident Report*, Crowley said that when they entered their residence at the Intown Suites: Thomas pushed a stun gun into her back and shoved her onto the floor; and that she was shackled to a chair for the next 36-40 hours. (See Incident Rpt, p. 2). However, Crowley alleges in her *affidavit* for DPPPS that after crossing the threshold of their residence, she turned around to hug Thomas when he shocked her with a stun gun—which implicitly alleges that Thomas first used a stun gun on her abdomen. Thereafter, Crowley goes on to claim that Thomas used duct tape and zip-ties to restrain her on their bed.

Another version set forth by Crowley in her *1st Witness Statement* is that a couple of hours after arriving at their residence, Thomas picked her up from the floor and ripped her clothes off; then tied her to their bed. (See *1st Wit State*, p. 2). And when articles of clothing alleged to be those in question were entered into evidence, Crowley first explained that their tattered condition was the result of Thomas having ripped them from her body; then she changed her testimony to the allegation that Thomas had cut them into pieces with scissors. (~~R. p. 155, lines 4-10, p. 157, lines 15-24~~).

Crowley also alleged in her *2nd Witness Statement* to have remained tied to their bed overnight, and that she left the Intown Suites with Thomas the following morning. (See *2nd Wit State*, pp. 2-3). However, Crowley testified at trial that after her attempt to hug Thomas and he used a stun gun on her, that he tied her up on the floor. (~~R. p. 146, lines 22-25 — pp. 147-150~~). To that end, it was also commonplace for Crowley to insist that she be tied to their bed during sex.

Presence of Stun Gun

To imply that she had never been subjected to the effects of a stun gun or Taser before, Crowley testified that Thomas' allegedly non-consensual use of a stun gun on her was the most terrifying thing she had ever been through; that it was like being *on fire* and *punched*. (~~R. p. 148, lines 20-22, p. 149, lines 19-21~~). Contrary to this suggestion, Christen Boyer testified to having seen the stun gun Thomas and Crowley kept in their bedroom when she was living with them on Folly Beach; and that she had heard them using it on each other through her bedroom wall. (~~R. p. 570, lines 10-24, p. 571, lines 19-25 p. 572, lines 1-5~~). Boyer further testified that when Crowley was arrested for assaulting her: the police used a Taser on Crowley when taking her into custody; and that Crowley told them that she liked it and asked to be tased again. (~~R. p. 577, lines 1-17~~).

Alleged Motive

In the regard of a motive, the prosecutor asked Crowley if Thomas was saying anything during this alleged assault with a stun gun and she replied: *[Thomas] thought I was leaving him for someone else, I guess*. However, the prosecutor pressed Crowley to respond with certainty by inferentially countering, *Did [Thomas] tell you at that point that he thought you were leaving him for somebody else?* In other words, that suggestion posed as a question was obviously Crowley's signal to contradict her speculative reply made only seconds earlier because she then answered with a conclusive *Yes*. (~~R. p. 152, lines 7-14~~).

Confuted Rape Claims

There were no allegations of a sexual assault made in the *Incident Report* or Crowley's *1st Witness Statement*. However, when giving her *2nd Witness Statement* Crowley alleged that Thomas forced his penis into her mouth once; and that he penetrated her vaginally three times.

(See 2nd Wit State, pp. 2-3). Yet shortly after making that statement, Crowley executed her *affidavit* for DPPPS wherein she abandoned her claim to having been raped. But Crowley did put into evidence at trial that Thomas had penetrated her vaginally once, and that she could not remember how many times orally. And soon thereafter, Crowley testified that Thomas had penetrated her both vaginally and orally a total of three times. (~~R. p. 176, lines 14-25~~ p. 177, ~~lines 1-5; p. 240, lines 7-15~~).

The Duct Tape Allegations

Crowley claims that Thomas kept duct tape on her mouth for virtually the entire 36-40 hours she alleges to have been held captive by him. With that in mind, Thomas and Crowley were living between the thin walls of an extended-stay motel. And if Crowley had not asserted a logical reason why she was unable to call for help, she would have otherwise had to explain how Thomas allegedly managed to torture her with brutal beatings and a stun gun for 36-40 hours without alerting the other tenants.

However, Crowley claims in her 2nd *Witness Statement* that Thomas forced her to take pills; and that when awakened by Thomas to be raped, Crowley indicated that she was freely able to beg him to stop immediately upon opening her eyes. (See 2nd Wit State, pp. 1-2). And during trial, Crowley testified that Thomas forced her to perform oral sex so many times that she lost count. (~~R. p. 177, lines 1-5~~). Crowley even testified that during the course of allegedly being pummeled—within seconds of testifying that Thomas had duct taped her mouth shut so she could not scream—that she kept telling Thomas that he was her husband and did not have to do it like that. (~~R. p. 176, lines 1-13~~). In other words, Crowley's statements and testimony are replete with exposure to the extent that, *inter alia*, she frequently engaged in oral activities

during the alleged incident that would not have been possible if her mouth had actually been duct taped shut.

Shackled to a Chair

The *Incident Report* reveals that Crowley claimed to have remained shackled to a chair for 36-40 hours. (See Incident Rpt, p. 2). However, Crowley only alleges to have been tied-up on the floor, and restrained to or tied-up on their bed in both of her *Witness Statements* and her DPPPS affidavit. In fact, the chair was only brought to light again during trial when the prosecutor asked Crowley, *When you say [Thomas] shackled you, where was that and what did he shackle you to?* Crowley responded, *A chair, he shackled me and put me in a chair; yeah, he shackled me to a chair.* (~~R. p. 162, lines 10-16~~). In other words, it is unlikely that this allegation would have surfaced again if Crowley had not been led to do so.

Drug Use Allegations

The *Incident Report* quotes Crowley saying that after having been tortured for 36-40 hours, Thomas forced her to leave their residence with him and would not say where they were going. (See Incident Rpt, p. 2). However, Crowley alleges in her 2nd *Witness Statement* that Thomas told her that they were going to get more drugs. (See 2nd Wit State, p. 3). Crowley also alleged that Thomas forced her to take drugs in her 2nd *Witness Statement*. In fact, she claimed in that document to have swallowed four pills with the understanding that she would die from an overdose. (See 2nd Wit State, pp. 1-2). Yet Crowley told the emergency room doctor that Thomas had only attempted to stick her with needles and give her drugs without success. (~~R. p. 456, lines 7-8~~).

Be that as it may, Crowley also testified that she persuaded Thomas to allow her to chase the alleged pills down with a canned drink. And that by doing so, she managed to only swallow

one or two because she was able to secretly spit an unspecified number of pills into that can. (~~R. p. 180, lines 17-25~~ ~~p. 181, lines 1-2~~). With that in mind, there was no mention of a *can* in Crowley's 2nd *Witness Statement* because she claimed to have swallowed all of the alleged pills. (See 2nd Wit State, p. 2). Crowley also claims that Thomas said he was going to kill her and commit suicide; then leave town. (~~R. p. 182, lines 1-4~~).

Passage of Time

The *Incident Report* reflects Crowley saying that Thomas tortured her for 36-40 hours, (See Incident Rpt, p. 2); and *overnight* in her 2nd *Witness Statement*. (See 2nd Wit State, p. 3). Crowley then said in her DPPPS *affidavit* that Thomas' alleged attack lasted through the night; which is also consistent with her trial testimony to having watched a video monitor all night long. (~~R. p. 164, lines 1-4~~). However, Crowley soon reverts to her 36-40 hour scenario when testifying that it was dark when she first arrived at their residence; and that daylight again fell into night prior to the morning she began making the allegations against Thomas. (~~R. p. 179, lines 4-7~~). And Crowley said during sentencing that other than the two days in question: the trial had been the longest two days of her life. (~~R. p. 813, lines 19-24~~).

Arrival of Arresting Officer

The arresting officer, Chris Talbott, documented in his *Incident Report* that when he first came upon Crowley, Thomas was carrying her in his arms. (~~R. p. 303, line 25~~ ~~p. 304, lines 1-4~~). However, Crowley said in her 2nd *Witness Statement* that Thomas was dragging her back to his van when Talbott arrived. (See 2nd Wit State, p. 3). To that end, the prosecutor led Crowley to give the testimony he wanted the jury to hear by asking if Thomas had picked her up; and was she kicking or scratching him in an effort to get away. Crowley obligingly replied: *Yes, yes, I was kicking and trying to get away.* (~~R. p. 139, lines 14-25~~ ~~p. 140~~ ~~p. 121, lines 1-2~~).

Knowledge of Missive

There was not a single moment during Crowley's direct-examination when she was unable to answer with specificity; or otherwise willingly follow the prosecutor's lead to the testimony he was seeking. However, Crowley expressed great difficulty in answering defense counsel's questions and she frequently recanted. For example, when defense counsel began cross-examination he asked Crowley if the *Note* entered as *State's Exhibit 29* pertained to her and she replied, *I have no idea*. After this *Exhibit* referring to someone being pimped out for crack was read aloud for the second time defense counsel asked, *You and [Thomas] had conversations about your father pimping you out for crack; isn't that the truth?* Crowley recanted and said, *That was my ex's assumption, yes*. (~~R. p. 215, lines 8-25~~ ~~pp. 216-218, lines 1-13~~).

Issue of Residence

When defense counsel asked Crowley how long she had been staying with Thomas when she made the allegations in question against him, she was evasive and claimed that she did not remember; that she was trying hard to block this out of her memory and was struggling to remember things. However, after being confronted with the *Incident Report* establishing that two people were living at the Intown Suites together, (See Incident Rpt, p. 3), Crowley testified that she was in the process of leaving Thomas; and that she had separated from him about a month before. (~~R. p. 222, lines 7-25~~ ~~pp. 223-230~~).

With that in mind, Crowley had testified during direct-examination that she had been living with her mother, Cathy Meree, just a day or two; and Meree also testified that Crowley had come back to live with her two days prior to the alleged incident. (~~R. p. 142, lines 13-20, p. 265, lines 4-8~~). And during Thomas and Crowley's divorce trial: Crowley both testified and

stipulated to having separated from Thomas the day he was arrested on June 7, 2006. To that end, Crowley even denied having a key to their residence at the Intown Suites. However, Crowley finally admitted to having a key when defense counsel asked how she gained entry to their home when Thomas was at work. (~~R. p. 254, lines 19-25~~ ~~p. 255, lines 1-8~~).

Protracted Rape Allegations

Defense counsel also asked Crowley why instead of her *1st Witness Statement* she waited until giving her *2nd Witness Statement* nine days later to accuse Thomas of rape. Crowley answered that she was embarrassed. (~~R. p. 236, lines 10-17; p. 239, lines 9-10~~). However, Crowley had told the jury during direct-examination that her *2nd Witness Statement* was given the day after she gave the first one. (~~R. p. 191, lines 8-25~~ ~~p. 192, lines 1-13~~).

FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
2010-DR-10-004251

TRANSCRIPT OF RECORD

B E F O R E:

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

Ms. Laree Anne Hensley, Esquire
Representing the Defendant

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1 MR. THOMAS: Excuse me, Your Honor.

2 THE COURT: Just a moment, please, sir. Let me
3 get the defendant and put the caption on the record and
4 then I will be glad to hear anything you want to tell
5 me, sir.

6 MS. HENSLEY: Good morning, Your Honor.

7 MR. QUALEY: Good morning, Your Honor.

8 THE COURT: Good morning, sir.

9 All right. This is Clark Thomas versus Rachel
10 Crowley, 2010-DR-10-4251. Present in the courtroom at
11 the call of the case is the plaintiff appearing pro se.
12 The defendant is not present, Ms. Hensley, is that
13 correct?

14 MS. HENSLEY: She is in the hall, Your Honor.

15 THE COURT: All right, ma'am.

16 I'm sorry, your name, sir? I apologize.

17 MR. QUALEY: Judge, I'm Joe Qualey. I'm
18 representing the non-party witness who was subpoenaed
19 here. I filed a motion to quash that subpoena.

20 THE COURT: Would you mind spelling your name.

21 MR. QUALEY: Joe Qualey, Q-U-A-L-E-Y.

22 THE COURT: All right. One moment for me, Mr.
23 Qualey, please.

24 Mr. Thomas, you are appearing today as your own
25 attorney; is that correct?

1 MR. THOMAS: Yes, Your Honor.

2 THE COURT: And you understand that you are free
3 to do that, sir?

4 MR. THOMAS: Yes, ma'am.

5 THE COURT: You understand, though, that I must
6 hold you to the rules of court and require you to
7 comply with the rules of evidence and the South
8 Carolina Rules of Civil Procedure, as well as the South
9 Carolina Rules of Family Court?

10 MR. THOMAS: I do, Your Honor.

11 THE COURT: And do you have any questions about
12 the fact that neither of these attorneys present
13 represent you or your interest in any way?

14 MR. THOMAS: No, ma'am, I just have one request.

15 THE COURT: Hang on one second.

16 MR. THOMAS: I'm sorry.

17 THE COURT: Then I will hear what you have to
18 tell me.

19 You understand, sir, that I cannot act as your
20 lawyer, I cannot give you legal advice and I cannot
21 answer legal questions for you?

22 MR. THOMAS: Yes, ma'am.

23 THE COURT: You understand I have to be totally
24 neutral and treat everyone the same?

25 MR. THOMAS: Thank you. Yes, ma'am.

1 THE COURT: All right, sir. Now you have a
2 request. I'd be glad to hear you.

3 MR. THOMAS: If I could get -- in the past two
4 hearings or so, they have released at least my right
5 hand so that I can.

6 THE COURT: Are you right-handed, sir?

7 MR. THOMAS: Yes, ma'am.

8 THE COURT: You may release his right hand,
9 officer. Thank you.

10 MR. THOMAS: Thank you, Your Honor.

11 (Whereupon, Mr. Thomas' right hand is released
12 by the officer.)

13 THE COURT: Mr. Thomas, have you had enough time
14 to organize your documents?

15 MR. THOMAS: Yes, ma'am.

16 THE COURT: Mr. Qualey, you have a motion
17 pending on the subpoena issue. I'd be glad to hear you
18 at this time, sir.

19 MR. QUALEY: Thank you, Your Honor. Joe Qualey
20 on behalf of Dr. William McGuire.

21 Judge, he is a non-party and he is a physician.
22 He was served with a subpoena. I filed a motion to
23 quash.

24 It appears that the plaintiff has arbitrarily
25 sent out, or caused to be sent out by the Clerk of

1 Court, in the excess of 30 to 31 to 32 non-party
2 subpoenas. Many have come before other judges on
3 motions to quash, I believe all of them have been
4 granted.

5 Judge, Dr. McGuire's presence is unnecessary.
6 His testimony is not relevant to the facts, to the
7 matter before the Court which is a divorce. I believe
8 that Dr. McGuire saw the defendant in his office two
9 times in the proximity of 2007 to 2008.

10 THE COURT: Can you tell me on what date the
11 subpoena was served, Mr. Qualey?

12 MR. QUALEY: I don't know that, Your Honor. I
13 received it from Dr. McGuire on the same date I filed
14 my motion to quash which was two days ago.

15 I also, Your Honor, tried to get an emergency
16 hearing in front of the emergency judge in family court
17 yesterday, but was unsuccessful in getting one.

18 The fact of the matter is, Your Honor, that Dr.
19 McGuire left this morning for Italy on a longstanding
20 vacation. He is simply not available, nor do I think
21 that his presence should be commanded by the Court.

22 Your Honor, I have got a proposed order if you
23 would --

24 THE COURT: Let me hear from Mr. Thomas.

25 Mr. Thomas, Mr. Qualey is asking on behalf of

1 Dr. McGuire to have his subpoena quashed. I'd be glad
2 to hear your response to that, sir.

3 MR. THOMAS: Thank you, Your Honor.

4 Dr. McGuire was served on the 9th day of August.
5 So we have got about 40 days there.

6 The purpose of my serving him with the subpoena
7 was in response to my interrogatories defendant alleged
8 that she was treated for panic attacks and anxiety
9 related to the allegations that I brutally beat her,
10 raped her, kidnapped her, a number of other things.

11 So it made it a crucial element in the defense
12 they had. I'm also suing on the grounds of physical
13 cruelty, habitual drunkenness.

14 His testimony goes towards state of mind. And
15 pursuant to Dedes versus Strickland, that's 414 S.E.2d
16 132, the pinpoint is 133, decided in the Supreme Court
17 in 1992, that a notice of a hearing shall not be, or
18 motion, a written motion shall not be served not later
19 than 10 days. And that's in accordance with Rule 6(D)
20 of the South Carolina Rules of Civil Procedure.

21 He has had 40 days to accommodate to make this
22 motion to quash the subpoena. I also have grounds on
23 the other ones that were quashed, they were in
24 violation of rule 6(D) as well. Of course we will
25 address that in another moment if we may, if it pleases

1 the Court.

2 Furthermore, it is my understanding that Dr.
3 McGuire made contact with my mother, she is here to
4 testify, stating that he was a medical professional and
5 he shouldn't be required.

6 I sought medical records in the evasive and
7 incomplete answers that I was provided by the defendant
8 with regard to the prior medical treatment, she more or
9 less just told me to subpoena the records and get them
10 yourself. There should be a copy of the
11 interrogatories up there.

12 But at any rate --

13 THE COURT: She told you? Who is she, Mr.
14 Thomas?

15 MR. THOMAS: I'm sorry, refresh my memory?

16 THE COURT: You said, she told me to subpoena
17 the records.

18 MR. THOMAS: Defense counsel, Ms. Hensley
19 enlightened me to -- told me to subpoena the records
20 themselves. I don't have the -- I can pull the
21 pleadings. Of course you have a copy of them yourself.

22 THE COURT: Did you subpoena the records or did
23 you just subpoena the doctor?

24 MR. THOMAS: I just subpoenaed the doctor for
25 his testimony. And like I said, he's had 30 or 40

1 days. His first excuse to my mother was that he was a
2 medical professional and he should not be required to
3 testify. Well I didn't bring him into the case, you
4 know of course defense counsel did.

5 And he is -- and also I have concerns that there
6 was contact between Hensley and Dr. McGuire. She gave
7 him -- Defense Counsel Hensley gave Dr. McGuire my
8 mother's phone number and he contacted her with these
9 allegations or these statements that he is a
10 professional and he shouldn't have to come.

11 It is my belief that if he had a vacation
12 scheduled for Italy, it wouldn't have been done on the
13 last moment, and most certainly he would have had
14 plenty of time to put together a proper and timely
15 motion to quash the indictment -- or excuse me, the
16 subpoena.

17 In light of the circumstances as they stand,
18 that he is allegedly in Italy, I would request that
19 this Court allow testimony to proceed through the
20 witnesses that are in appearance, and that we would
21 recess the proceedings until such time as Dr. McGuire
22 can be brought forth.

23 While of course the law does allow me the
24 opportunity to seek that he is found in contempt of
25 Court, I would seek that we just get his testimony, or

1 in addition to these statements, I believe I haven't
2 even received a copy of the motion yet, so I haven't
3 even been served of it. So it's impossible for me --

4 THE COURT: Do you have a copy you can give to
5 Mr. Thomas?

6 I don't mean to interrupt you, sir.

7 MR. QUALEY: Yes, ma'am. We will give him one.

8 MR. THOMAS: If I may continue?

9 THE COURT: I thought you wanted a copy?

10 MR. THOMAS: Oh, I do, but there was a comment I
11 made on it.

12 THE COURT: Sure.

13 MR. THOMAS: From my understanding he eluded to
14 the fact that I shouldn't -- I could have obtained a
15 statement, or something to that effect. But I mean I
16 never received any offer of concession to what I was
17 trying to get out of Dr. McGuire.

18 So based on those facts, and the untimeliness of
19 the motion, I would request that this Court deny the
20 motion to quash, and recess the proceeding following
21 the testimony of the witnesses present until such time
22 as he can be compelled to attend, or otherwise provide
23 me with the information that I seek.

24 MS. HENSLEY: And, your Honor, if I could just
25 be heard briefly?

1 THE COURT: Yes, ma'am.

2 MS. HENSLEY: We made no allegations of physical
3 cruelty. We have only asked for divorce on the grounds
4 of one year continuous separation. So I don't think
5 that Dr. McGuire's testimony is relevant based on any
6 relief we have requested, Your Honor.

7 THE COURT: Your amended answer and amended
8 counterclaim.

9 MS. HENSLEY: Seeks only a divorce on the ground
10 of one year continuous separation, Your Honor.

11 MR. THOMAS: However they made --

12 THE COURT: Hang on one second.

13 MR. THOMAS: I'm sorry, Your Honor.

14 THE COURT: Let me take a look at it.

15 She requested a divorce on the grounds of
16 physical cruelty in her answer to amended complaint and
17 counterclaim, paragraph 16.

18 MS. HENSLEY: But in my prayer, Your Honor, we
19 only prayed for relief for a divorce on the grounds of
20 one year continuous separation.

21 THE COURT: So you are not seeking the relief in
22 paragraph 16?

23 MS. HENSLEY: We are not.

24 THE COURT: You are only seeking a divorce on a
25 one year continuous separation.

1 MS. HENSLEY: And that was made clear at the
2 September 11th hearing in front of Judge Woods.

3 THE COURT: And obviously I wasn't present.

4 MS. HENSLEY: Obviously.

5 THE COURT: Just so the record is clear, you are
6 not requesting a divorce on the grounds of physical
7 cruelty that was pled in the body of the answer, but
8 not in the prayer for relief?

9 MS. HENSLEY: Correct, Your Honor.

10 THE COURT: Thank you very much.

11 She is not requesting a divorce on the grounds
12 of physical cruelty, Mr. Thomas, I want the record to
13 be clear on that issue.

14 MR. THOMAS: Your Honor, if I may.

15 THE COURT: Yes, sir.

16 MR. THOMAS: In the case of Charleston County
17 School District versus Layla (phonetic) Transit
18 Incorporated, decided in South Carolina Court of
19 Appeals in 2001, certiorari denied.

20 Parties are judicially bound by their pleadings
21 unless withdrawn, altered or stricken by amendment or
22 otherwise. I have gone to a considerable amount of
23 expense to bring Dr. McGuire before the Court. And it
24 goes towards the presentation of my case.

25 We have got an issue of credibility here. All

1 right. And I feel like that to deny me the opportunity
2 to compel the testimony of Dr. McGuire would be in
3 violation of my right to due process and equal
4 protection of the law, as well as meaningful access to
5 the Courts as guaranteed by Sections 3 and 22 of the
6 State of South Carolina constitution, and the 14th
7 Amendment to the United States constitution.

8 Additionally, the United States Supreme Court
9 held in Texas versus Washington, State of Washington --
10 pardon me, Your Honor.

11 THE COURT: That's all right, sir. Let me ask
12 you this, Mr. Thomas, while you look for that. How is
13 Dr. McGuire's testimony then relevant if the defendant
14 is not seeking relief in the form of a divorce on the
15 grounds of physical cruelty?

16 How is his testimony then relevant?

17 Is it a him or a her?

18 MR. QUALEY: It's a him, Your Honor.

19 THE COURT: Him, okay.

20 MR. THOMAS: Well I'm going to rely on my
21 information as I received it from the marital
22 litigation that I believe is collectively referred to
23 as the bible of marital litigation, at least that's
24 what they told me at the continuing legal education
25 department purchased thereof.

1 That -- it's a little ambiguous in the statement
2 that the fact a divorce was caused by the -- that a
3 client may have an interest in making record of the
4 fact that the divorce was caused by the spouse rather
5 than by consideration of any legal consequences.

6 The way I'm interpreting that is it's giving me
7 a right to show that I am not at fault for this
8 divorce. She has made the allegations, and I have gone
9 through considerable expense and hours and hours of
10 preparation to prepare my defense only to have her
11 dismiss it at the last moment because --

12 THE COURT: And that's a separate issue, Mr.
13 Thomas.

14 MR. THOMAS: Right.

15 THE COURT: My question right now is just on Mr.
16 Qualey's motion to quash the subpoena for Dr. McGuire.

17 And my question to you is, how is Dr. McGuire's
18 testimony relevant, understanding now that there is no
19 request for a divorce by the defendant from you on the
20 grounds of physical cruelty?

21 That's the sole issue that we are talking about
22 right this minute.

23 MR. THOMAS: It goes to credibility.

24 THE COURT: Whose credibility, Mr. Thomas?

25 MR. THOMAS: Her credibility, okay.

1 THE COURT: The defendant's credibility?

2 MR. THOMAS: She has an inveterate propensity to
3 inconsistent statements. I don't want it going on the
4 record, these are pleadings that can be misinterpreted
5 or inferred that I did in fact beat her.

6 I feel like I have a constitutional right to
7 rebut that. She opened the door to these allegations.
8 And if I might, bear with me one moment, please.

9 THE COURT: Yes, sir.

10 MR. QUALEY: Judge, if I might be heard while he
11 is --

12 THE COURT: Sure. Go ahead, sir.

13 MR. QUALEY: Well, you know, he is talking about
14 the great expense that he has incurred. In fact, I
15 think that his subpoena is patently defective because
16 he didn't serve it with a witness fee, which is
17 required by the rules.

18 THE COURT: Did you attach the witness fee as
19 required by the rules to the subpoena, Mr. Thomas?

20 MR. THOMAS: I was hoping that that would be
21 allowed at the time when I would understand what that
22 amount would be. I understood it to mean anybody
23 outside of the 50 mile radius would be required to be
24 paid. Everybody is really local. I mean, I just, I
25 don't have a lot of information on that.

1 But where I am heading with regard to this.

2 THE COURT: First is the answer to the question
3 no, you did not attach a check?

4 MR. THOMAS: No, ma'am.

5 THE COURT: Okay. I just want the record to be
6 clear.

7 MR. THOMAS: Yes, ma'am.

8 THE COURT: Go ahead.

9 MR. THOMAS: But at any rate, South Carolina
10 precedent has firmly established that otherwise
11 inadmissible evidence may be properly admitted when
12 opposing counsel opens the door to that evidence.

13 That was a decision made in the Court of Appeals
14 in 2007 in the case of State versus Rice, 652 S.E.2d
15 409, pinpoint 422. Furthermore, a defendant cannot
16 complain of prejudice resulting from evidence to which
17 she opened the door, also citing State versus Foster,
18 South Carolina Supreme Court 2003.

19 In the present matter, as I have closed in this
20 particular paragraph, quote, defendant has clearly
21 opened the door. And I'm invoking my due process right
22 to introduce evidence that goes to her credibility.

23 Moreover, a litigant has no right to set forth
24 to the Court all of the facts which tend in his favor
25 without laying himself open to cross-examination upon

1 those facts. That was a decision by Carpenter versus
2 United States, 264 Fed.2d 565, pinpoint 569 in the
3 Fourth Circuit, quoting Fitzpatrick versus United
4 States. And that was in 1900, 178 U.S. 304.

5 Any matter is a proper subject of
6 cross-examination which is responsive to testimony
7 given which tends to elucidate, modify, explain,
8 contradict or rebut testimony given in chief by the
9 defendant. That was a decision in the Supreme Court of
10 South Carolina, State versus Allen, 224 S.E.2d 889,
11 pinpoint is 887.

12 In general, a defendant may be cross-examined as
13 to any matter which she has voluntarily set upon. This
14 is going beyond the bounds of where we are at. But I'm
15 really having a real issue with not being able to
16 present, compel the attendance of testimony.

17 And I would rely on the fact that the motion is
18 untimely. He had plenty of time to serve it.

19 THE COURT: Anything else you want to add, sir?

20 MR. QUALEY: No, Your Honor. Thank you.

21 THE COURT: Thank you.

22 Well pleadings are not evidence, Mr. Thomas.
23 Therefore, I do find that because physical cruelty was
24 not prayed for as grounds for divorce, only pled in the
25 body of the answer and counterclaim, that his testimony

1 is not relevant and therefore I will grant the request
2 to quash the subpoena.

3 Independently, the \$25 witness check was not
4 attached to the subpoena so it is defective. And there
5 is a prima facia showing of defectiveness and the
6 subpoena is independently quashed on that ground also.

7 You have an order, sir?

8 MR. QUALEY: May I approach?

9 THE COURT: Yes, sir.

10 MR. QUALEY: Judge, I'll take it downstairs and
11 file it.

12 THE COURT: Okay. Thank you, sir.

13 MR. QUALEY: Have a nice day. Nice to see you.

14 THE COURT: Thank you, sir.

15 MR. THOMAS: Your Honor, if it pleases the
16 Court.

17 THE COURT: Yes, sir.

18 MR. THOMAS: I am prepared to make reparation to
19 pay each witness \$25 today. I would really hate to see
20 all of my witnesses be turned away because of an
21 inadvertent error.

22 THE COURT: Mr. Thomas, as far as I am aware
23 there are no other motions to quash subpoenas that have
24 been filed. So let us plan to address each one as it
25 occurs. Can we do that?

1 MR. THOMAS: Yes, Your Honor. In the event that
2 -- in other words --

3 THE COURT: I will hear you if anyone makes that
4 objection.

5 MR. THOMAS: Yes, ma'am.

6 THE COURT: Yes, sir.

7 All right. I have prior to today reviewed the
8 pleadings and the orders in this matter. When I say
9 orders, I mean only those orders by Judge Guyton from
10 the April 30th, 2012 hearing, and the order from Judge
11 Woods from the September 11th, 2012 hearing.

12 There are a multitude of documents also
13 contained in the file, multitude of orders of
14 transport. I didn't review any of those, simply the
15 pleadings and the orders.

16 And from my review of the pleadings and the
17 orders, it appears that there is still outstanding,
18 under Judge Woods order from the 11th of September, a
19 motion for continuance that was to be heard today.

20 I believe that was your motion, Mr. Thomas?

21 MR. THOMAS: Yes, Your Honor.

22 THE COURT: Do you wish to be heard on that
23 motion, or do you wish to withdraw that motion?

24 MR. THOMAS: Your Honor, I'd like to be heard.

25 THE COURT: Be glad to hear you, sir.

1 MR. THOMAS: Okay.

2 okay, sorry.

3 THE COURT: That's all right, sir.

4 MR. THOMAS: All right. Okay, these motions --

5 THE COURT: You said motions. There is more
6 than one motion?

7 MR. THOMAS: Yes, ma'am. There was a motion to
8 compel James Smiley to produce.

9 THE COURT: What is the date of the filing of
10 that motion, please?

11 MR. THOMAS: September 10th.

12 THE COURT: I don't believe that is in the file,
13 sir. Do you happen to have a copy of it for me?

14 MR. THOMAS: I have.

15 THE COURT: That was not addressed by Judge
16 Woods on September 11th?

17 MR. THOMAS: No, ma'am.

18 THE COURT: Ms. Hensley, what --

19 MR. THOMAS: There was also one to compel --

20 THE COURT: Hold on, let me take one at a time,
21 Mr. Thomas.

22 MR. THOMAS: Okay.

23 THE COURT: Motion to compel Mr. Smiley's
24 attendance. Ms. Hensley, was that addressed by Judge
25 Woods?

1 MS. HENSLEY: Your Honor, at the hearing it was
2 not raised by the plaintiff and we assumed it was
3 abandoned by the plaintiff, Your Honor. That hearing
4 was on all of his motions that were filed on September
5 10th.

6 THE COURT: And the only motion that was
7 reserved as I read Judge Woods' order was the
8 continuance by Mr. Thomas.

9 MS. HENSLEY: And that was my understanding,
10 Your Honor.

11 THE COURT: It appears, sir, that all of your
12 motions were to be disposed of by Judge Woods on
13 September 11th.

14 Did you argue this motion on Mr. Smiley's
15 attendance?

16 MR. THOMAS: Mr. Smiley wasn't there, Your
17 Honor. That was -- nor was Mr. Ballard.

18 THE COURT: Let's talk about Mr. Smiley first.
19 This was filed on September the 10th, and all I know to
20 do now is to go through the packet of motions that were
21 set before Judge Woods to see if it's contained in that
22 packet.

23 Give me just a second to take a look at the
24 stack and find what was heard.

25 MS. HENSLEY: Just, Your Honor, for just

1 enlightenment, those motions were filed on September
2 10th and heard on September 11th. The reason --

3 THE COURT: And that's the stack I'm going
4 through right now. There is just a lot of them and I'm
5 going through all of them.

6 As I said, I didn't earlier go through anything
7 other than pleadings and orders, which is my standard
8 practice, so that I just have the bare bones before we
9 start a trial.

10 Let me just finish going through the stack.
11 Here it is right here. It was in fact contained in the
12 stack that was heard before Judge Woods. You may
13 return this copy. Thank you.

14 It was heard before Judge Woods. The order
15 setting them heard all the pretrial motions and he
16 denied the motions to compel. This is a motion to
17 compel.

18 I find that Judge Woods denied the motion to
19 compel the attendance of James W. Smiley IV, filed
20 September 10th, 2012, and heard September 11th, 2012.

21 That is Judge Woods' order, Mr. Thomas, and I am
22 bound by a prior order of another family court judge.

23 MR. THOMAS: You are saying he quashed the
24 subpoena, that he doesn't even have to testify?

25 THE COURT: No, sir.

1 MR. THOMAS: Oh.

2 THE COURT: I'm saying you filed a notice of
3 motion and motion for order to compel --

4 MR. THOMAS: Okay.

5 THE COURT: -- and Judge Woods denied that
6 motion to compel.

7 MR. THOMAS: So Rule 6(D) really doesn't mean
8 anything basically.

9 THE COURT: I don't understand your question.

10 MR. THOMAS: I mean, I'm thinking 10 days before
11 the hearing I filed and prepared to be heard on
12 September 20th today, and I prepared a motion for
13 continuance.

14 And he never raised the issue. It was never
15 brought before. He never said, I'm denying Jim
16 Smiley's motion. I was never given an opportunity to
17 argue it.

18 THE COURT: Mr. Thomas, it wasn't Mr. Smiley's
19 motion, it was your motion.

20 MR. THOMAS: Right. But I mean he never gave me
21 an opportunity to argue it.

22 THE COURT: He meaning Judge Woods?

23 MR. THOMAS: Judge Woods never asked for an
24 argument on that. All he did was I presented my
25 arguments on the motions to quash wolfgang Kelly's

1 motion to produce, and to quash the defendant's motion
2 to compel to produce.

3 THE COURT: And unfortunately, Mr. Thomas, I was
4 not present. All I am aware of is what Judge Woods'
5 order says. His order addressed all pretrial motions
6 except the motion to continue, which he ordered to be
7 heard by me. I'm bound by this order. My hands are
8 tied on that, sir.

9 MR. THOMAS: Okay. I would like to preserve
10 this matter for appellate review.

11 THE COURT: Of course.

12 MR. THOMAS: Objecting on the grounds that it's
13 a violation of my right to due process, equal
14 protection under the law, and meaningful access to the
15 court as guaranteed by Sections 3 and 22 of the State
16 of South Carolina constitution, and the 14th Amendment
17 to the United States constitution.

18 I would further like to, in the interest of
19 expediency, whenever I make an objection, could it be
20 prohibited from hereon observed as being on the same
21 grounds?

22 THE COURT: Absolutely, Mr. Thomas.

23 MR. THOMAS: Okay. I don't need to repeat that?

24 THE COURT: No, absolutely. In fact we will
25 stipulate to that on the record.

1 MR. THOMAS: Thank you.

2 THE COURT: You're welcome, sir.

3 Now do you want to be heard on the motion to
4 continue?

5 MR. THOMAS: Oh, absolutely.

6 THE COURT: That's where we got started. Tell
7 me about that, sir.

8 MR. THOMAS: Absolutely. Thank you.

9 THE COURT: That is one motion that Judge Woods'
10 order reserved to me.

11 MR. THOMAS: I'm surprised. Okay.

12 I would like to make one comment. In light of
13 this case law regarding judicially bound by their
14 pleadings unless withdrawn, this has been an extremely
15 emotional and turbulent event in my life.

16 And up until I drafted this second revision of
17 memorandums in support of trial motions that you were
18 recently served, there was quite a bit of anger.

19 THE COURT: I have not been served with
20 anything, Mr. Thomas.

21 MR. THOMAS: Well it was filed. I mean the only
22 reason that I made sure I filed this, and the purpose
23 of this is I would like to move to quash all previous
24 memorandums and to let this stand as the only
25 memorandum that will be presented to the Court of

1 Appeals.

2 I have even spoken with other lawyers that are
3 in prison that have revealed to me the difficulty that
4 they experienced in eliminating any emotional influence
5 on their pleadings. And I'm not proud of a lot of the
6 things that I said just because of the fact that I was
7 just reacting, so.

8 THE COURT: Let me stop you right there, and I
9 don't mean to interrupt you. As I said before, I have
10 not read any memorandums at this point.

11 My procedure when I try a contested trial is to
12 merely review the pleadings, and any other prior court
13 orders. I don't review any discovery, don't read any
14 affidavits. Those are the only documents that I
15 reviewed so I am coming in with a clean slate for the
16 trial of a case.

17 So if you are telling me you don't want me to
18 read any other memorandums that you may have filed
19 previously, I'm telling you I haven't read them anyway.

20 And is that what you want to be the case?

21 MR. THOMAS: Well actually I have no problem
22 with you stipulating that in the record. My actual
23 ambition is to seek to it that the previous ones are
24 quashed.

25 THE COURT: What is it you want to do when you

1 say quashed?

2 MR. THOMAS: Well, let me see if I can use the
3 correct legal term.

4 THE COURT: Do you want them removed from the
5 court file? Do you want them sealed?

6 MR. THOMAS: Stricken. I would like all
7 memorandums previous to this, all memorandums filed
8 previous to this stricken from the record because
9 I'm --

10 THE COURT: Hold on.

11 MS. HENSLEY: We consent.

12 THE COURT: She is consenting to your request.
13 So all prior memorandums that you have submitted are
14 now stricken from the record.

15 Does that answer your objection?

16 MR. THOMAS: Yes, ma'am. I just want to have a
17 clean slate. I also would like --

18 THE COURT: Let me make a note. Hold on one
19 second.

20 Can we get back to the motion for a continuance,
21 Mr. Thomas?

22 MR. THOMAS: Yes, ma'am.

23 THE COURT: Thank you.

24 MR. THOMAS: Okay. I'm going to put forth what
25 I drafted in regard to that in support of the motion to

1 continuance.

2 All right. Following defendant's refusal to
3 comply with discovery, and the failure of James Smiley,
4 Wolfgang Kelly, Larry Ballard and Scarlet Wilson to
5 produce by command of subpoena --

6 THE COURT: Can we take them one at a time so
7 the record is clear, Mr. Thomas.

8 You are saying the defendant's failure to comply
9 with discovery. I'd like to take them independently,
10 if you don't mind.

11 MR. THOMAS: Okay.

12 THE COURT: Tell me about her failure to comply
13 with discovery, sir.

14 And I asked that question as a result of my
15 review of Judge Guyton's order from April 30th, 2012
16 which provides that she has in fact complied with
17 discovery.

18 MR. THOMAS: I believe that was Judge Woods that
19 made that determination even though her answers were --

20 THE COURT: I'm sorry, you are correct. That is
21 Judge Woods' order.

22 MR. THOMAS: Yes, ma'am.

23 THE COURT: And let me find the paragraph.
24 Paragraph 9, defendant's response to plaintiff's
25 discovery request was timely. Defendant has fully

1 responded to plaintiff's interrogatories and requests
2 for production, and that is number 10.

3 And paragraph number 11, plaintiff is not
4 entitled to additional information from the defendant.
5 Paragraph 12, plaintiff has received sufficient
6 information from the defendant to enable him to prepare
7 for the trial of this case.

8 So those issues with respect to any failure or
9 incompleteness of discovery responses from the
10 defendant have been ruled upon by Judge Woods.

11 I am again bound by Judge Woods prior order,
12 sir.

13 MR. THOMAS: Yes, ma'am.

14 THE COURT: Go ahead.

15 MR. THOMAS: I'm sorry. I would like to get on
16 record that on September 11th of 2012 at 9:30 a.m., the
17 date of the hearing before Judge Woods, Counsel
18 Hensley, Attorney Wolfgang Kelly, and counsel for
19 Wilson were summoned into the courtroom.

20 When I was taken to the courtroom, the bailiff
21 immediately called to those waiting in the adjacent
22 hallway to enter. My mother, Carol Ann Cook, later
23 informed me this announcement was made more than 10
24 minutes after the lawyers were summoned. Meaning that
25 something was going on in that hearing outside of my

1 presence.

2 Anyway, during the course --

3 THE COURT: And, Mr. Thomas, again I wasn't
4 present that day. But let the record reflect that
5 today I believe you were brought in first before the
6 lawyers were brought in.

7 MR. THOMAS: Right. I had family out there
8 prepared to intervene if that was attempted again.

9 THE COURT: But you agree with me, sir, that you
10 were brought in this morning and no one was in here
11 this morning.

12 MR. THOMAS: So far I'm pleased with as much as
13 being included in the proceedings. There has been
14 quite a bit of ex-parte communication.

15 THE COURT: Well I appreciate that, sir.

16 MR. THOMAS: Thank you very much. Yes, ma'am.

17 THE COURT: All right. We have discussed the
18 failure to completely, or in any respect respond to
19 discovery by the defendant. That was addressed by
20 Judge Woods.

21 So tell me what your next argument was for a
22 continuance.

23 MR. THOMAS: Well, I'd like to get on the
24 record, because as I understand it I can't get
25 appellate review on anything that the lower court

1 hasn't had an opportunity to take a look at. Now I
2 understand you can't overrule another judge's decision,
3 and, you know, of course I'm going try to preserve that
4 in a 59(E). There is no doubt in my mind this is going
5 to the Court of Appeals.

6 But at any rate, Judge, Judge Woods made
7 reference to law of the case with regard to the issues
8 that they raised in their pleadings about me abusing my
9 wife. Now we know that once I was convicted at trial,
10 had that decision not been appealed and it became a
11 final order it would have been the law of the trial.
12 And of course when the Court of Appeals made their
13 decision, it became law of the case.

14 My appeal had just been decided a few weeks
15 prior to this hearing, and I have not raised the issue
16 of my appeal. However, he knew about it. And that's
17 -- so in light of that information coming forth in that
18 proceeding, and I didn't raise it, it's clear to me
19 that it was raised before Judge Woods outside of my
20 presence.

21 THE COURT: And, Mr. Thomas, again I wasn't
22 present at that hearing. That is outside by purview at
23 this time. If we can just do what is before me today.

24 I will be glad to rule on anything you present
25 that hasn't been ruled on by a prior judge. And we

1 will go forward from there.

2 So talk to me again about the continuance.

3 Judge Woods already ruled on your discovery issues in
4 the order from the 11th. You then mentioned some
5 attorneys' names.

6 MR. THOMAS: Well with regard to the
7 continuance, the continuance was hinged upon an order
8 to compel to give me an opportunity to assimilate the
9 facts and summon witnesses accordingly.

10 When he blind-sided me by dismissing my motions
11 without even giving me an opportunity to argue the
12 case, I don't see where I have an argument for a
13 continuance.

14 THE COURT: Are you withdrawing your request for
15 a continuance?

16 MR. THOMAS: Reluctantly, I don't see where I
17 have any course of action other than to do so.
18 However, I will add this.

19 Because these continuances were hinged upon, as
20 I said, the orders to compel, any witnesses that are
21 not appearing, and that do not appear here, I would ask
22 that these motions for continuances be redirected in
23 the focus of preserving me an opportunity holding this
24 -- these proceedings in abeyance, if you will, until
25 such time as I can get them to testify.

1 THE COURT: Are there witnesses who did not
2 appear today, sir, or do you know?

3 MR. THOMAS: Well judging from Counsel Hensley's
4 contact with Judge McGuire, and coaching him, and their
5 little thing they had going on.

6 THE COURT: You mean Dr. McGuire.

7 MR. THOMAS: Pardon me, Dr. McGuire. I suspect
8 that a number of my witnesses have been tampered with,
9 if you will, and I --

10 THE COURT: I cannot deal with what you do or do
11 not suspect.

12 MR. THOMAS: I understand, it's speculation.
13 But I suspect that I will have some problems with
14 subpoenas.

15 THE COURT: Well let's address that at this
16 time, Mr. Thomas. If you would give to the deputy the
17 list of witnesses that Judge Guyton ordered you to
18 compile 30 days prior to trial in his order from May
19 8th, the deputy will step into the hallway and call and
20 report back to us as to which witnesses have or have
21 not appeared.

22 MR. THOMAS: Okay. I can cross off the ones
23 that aren't going to come from that list right here.

24 THE COURT: And when you say, cross off the ones
25 that aren't going to come, are you excusing their

1 attendance by that?

2 MR. THOMAS: I'm sorry, these are the ones that
3 judge ruled would not be required.

4 THE COURT: Okay. We are clear on that then.

5 MR. THOMAS: Yes, ma'am.

6 MS. HENSLEY: Your Honor, if I could just
7 compare the list that he is passing to the deputy to
8 the list that I have.

9 THE COURT: Sure.

10 MS. HENSLEY: I didn't actually get a list, but
11 I did compile one.

12 MR. THOMAS: Your Honor, there is another oral
13 motion I'd like to make.

14 THE COURT: What is that?

15 MR. THOMAS: I'd like to address.

16 THE COURT: Yes, sir, Mr. Thomas.

17 I will hear what the motion is, and then I'm
18 going to have to ask Ms. Hensley what her position on
19 the hearing of it is, all right?

20 What is your motion?

21 MR. THOMAS: Well, when I received the vague and
22 incomplete answers on interrogatories, and I contend
23 that that's what they were, notwithstanding Judge
24 Woods' ruling --

25 THE COURT: And again, Mr. Thomas, I am bound by

1 Judge Woods' order; whether you like it or I like it or
2 anybody likes it, I'm bound by this order, sir.

3 MR. THOMAS: I understand. The point I'm
4 driving at is that I wrote Ms. Hensley and asked her to
5 be a little more specific in her answers.

6 THE COURT: This was after Judge Woods' order?

7 MR. THOMAS: This was during the course of the
8 hearing before he made his decision.

9 THE COURT: Okay.

10 MR. THOMAS: And Attorney Hensley told Judge
11 Woods that she had been forwarding all of my mail
12 unopened to a lawyer, Daniel Prenner, that I had
13 retained primarily for depositions.

14 I have documents to show that Daniel Prenner was
15 released, that I sent him a letter releasing him on
16 June 9th. He wrote a letter confirming he was no
17 longer representing my interests on June 11th. On July
18 19th I wrote Ms. Hensley and asked her for the
19 questions that I sought to have her compel to respond.

20 She told Judge Woods that she had been sending
21 all my mail that she never received, that I filed that
22 letter with the clerk, I have a certificate of service,
23 and I'm also going to seek that Daniel Prenner
24 enlightened us with the fact that he did tell Ms.
25 Hensley that I was proceeding pro se.

1 So basically she gave false testimony that she
2 hadn't received it. She disregarded the letter and she
3 told the judge that. So I find that to be perjury
4 according to what I see.

5 THE COURT: What is your motion?

6 MR. THOMAS: So I'm moving that she be
7 sanctioned for perjury.

8 THE COURT: Mr. Thomas, this is not the
9 appropriate forum to address that particular issue.

10 MR. THOMAS: So how do you -- I mean --

11 THE COURT: There are other forums in which you
12 can address that issue if you deem that to be
13 appropriate. But this is not the appropriate forum.

14 I'm not Judge Woods. I don't know what happened
15 in that proceeding again. So that motion is simply not
16 appropriate before me. I'm not ruling on it, I'm not
17 prejudicing you in any way, it's just not something I
18 can rule on.

19 MR. THOMAS: So well I will be -- I sought the
20 transcripts. I asked for an overnight. We sent a
21 check for \$150 to get them immediately so I could prove
22 it. I have two witnesses that were in the courtroom
23 that day, as well as Prenner. And I know that the
24 rules of professional conduct require candor in the
25 courtroom, and I'm just --

1 THE COURT: Yes, sir, that's correct. Again,
2 this is not the appropriate forum to address that.
3 There may be others, this is not the one.

4 MR. THOMAS: Your Honor, my concern is that I
5 just get a fair trial. And I mean if she is going to
6 be allowed to misrepresent facts and make false
7 statements, then I don't know how I can get a fair
8 trial. And I'm trying to see -- I'm asking the Court
9 to somehow help me ensure that I get that fair trial.

10 THE COURT: Mr. Thomas, I will assure you that
11 you will receive a fair trial in front of me. And if
12 anyone commits perjury in my courtroom, in my presence,
13 I will assure you that I will address it harshly.

14 That has not occurred up to this moment.
15 Whatever did or did not happen in front of Judge Woods
16 is not within my purview. All right?

17 MR. THOMAS: That's basically what I was looking
18 for. Thank you, Your Honor.

19 THE COURT: There you are, sir. Yes, sir

20 THE DEPUTY: Your Honor, I believe I'm missing
21 page one of his subpoena list.

22 MR. THOMAS: Page one is the motions to compel.
23 That's the page, the witnesses actually begin on the
24 next page.

25 THE COURT: So, Mr. Thomas, the list that the

1 deputy holds on his clipboard are the names of the
2 individuals that you subpoenaed and expect to be
3 present in the courtroom in compliance with those
4 subpoenas; is that correct?

5 MR. THOMAS: Well I can do you one better. I
6 can give you an even cleaner list.

7 THE DEPUTY: Your Honor, not to interrupt.
8 There is actually a person right out there that does
9 not -- is not on the list, the first person I went up
10 to that I know is out there. So I know the list is
11 incomplete based upon that.

12 MR. THOMAS: Is that --

13 THE COURT: Wait a minute, Mr. Thomas, hang on a
14 minute.

15 Is that person present pursuant to a subpoena or
16 just appeared?

17 THE DEPUTY: Here for a subpoena. It's Deputy
18 Smith from Charleston County.

19 THE COURT: Be careful with the cup of water,
20 Mr. Thomas, we will have a disaster on our hands.

21 MR. THOMAS: I will be careful.

22 MS. HENSLEY: And I do have Deputy Smith on my
23 list, Your Honor, so I don't know. I didn't check
24 every single name because I didn't have them in any
25 particular order. I just checked basically to make

1 sure there weren't any surprises. So I do have him on
2 my list.

3 MR. THOMAS: And I have an affidavit here, too.

4 THE COURT: He just needs the list.

5 THE DEPUTY: Is it all right that I mark?

6 MR. THOMAS: Oh, absolutely.

7 THE COURT: Thank you so much.

8 All right, Mr. Thomas, are you proceeding with
9 your motion to continue or are you withdrawing it?
10 That's what I need to know now. That's the motion that
11 Judge Woods reserved to me.

12 MR. THOMAS: Well, Your Honor, I know you are
13 not here to give me legal advice but unless -- I don't
14 see where I have grounds for a continuance if they were
15 based on the motions to compel.

16 However, I will preserve under the standing
17 objection that I was denied my right to a continuance.

18 THE COURT: No, sir, I haven't ruled on the
19 continuance. My question to you is, are you proceeding
20 on your motion to continue or are you withdrawing it?
21 And you have to choose one or the other, sir.

22 MR. THOMAS: Pursuant to the preservation of the
23 motion to eliminate the likelihood of a problem with
24 it, I will leave it stand and leave the ruling to you.
25 I would like a continuance to further prepare.

1 THE COURT: So you are requesting a continuance?

2 MR. THOMAS: Yes, ma'am.

3 THE COURT: And what are your grounds for your
4 request for a continuance?

5 MR. THOMAS: Well in light of Judge -- excuse
6 me. In light of -- well I guess it would be
7 appropriate to cite Judge Woods' opinion or decision.
8 I would like a continuance to give me the opportunity
9 to seek the facts that I am trying to bring forth
10 through other avenues.

11 THE COURT: What does that mean, Mr. Thomas?

12 MR. THOMAS: It means that I'm searching for the
13 reason to preserve the motion so it does not affect my
14 likelihood or my opportunity to get a favorable ruling
15 in the Court of Appeals.

16 THE COURT: What motion?

17 MR. THOMAS: I'm not prepared. Because like I
18 say, I was blind-sided with this dismissal of Jim
19 Smiley's motion to compel and Larry Ballard's.

20 THE COURT: Did you appeal Judge Woods' order?

21 MR. THOMAS: Well it would have been an
22 interlocutory appeal as far as I am understanding it.
23 That I have to wait until a final order unless there
24 are special circumstances that allow for me to make an
25 interlocutory appeal. Am I mistaken?

1 THE COURT: That is a legal question that I'm
2 sorry, sir, I cannot answer it.

3 MR. THOMAS: As I understand it, I couldn't
4 appeal until a final order, which I have a full
5 intention of doing. So it will be revealed in my 59(E)
6 motion to alter or amend.

7 THE COURT: Tell me the grounds for your
8 continuance motion, sir.

9 MR. THOMAS: Defendant was seen by the Morris
10 Village Treatment Center, as well as a mental hospital,
11 used to be off of Azalea, it was the Baker Hospital,
12 it's now defunct, I believe St. Francis is carrying the
13 records there.

14 I would like an opportunity, a continuance after
15 the testimony of those that are present today is heard
16 to seek those doctors, because of my allegations of
17 physical cruelty, to substantiate the fact that she has
18 a propensity to violence, perhaps bipolar, I don't
19 know, I'm not a doctor.

20 I can't give you an accurate medical diagnosis
21 for what drives a woman to attack people. I can tell
22 you she attacked my daughter. I'm going to be able to
23 prove that to you before we complete the day. When she
24 was 15, she reached for a knife. She clearly --

25 MS. HENSLEY: Your Honor, I object to the

1 testimony.

2 THE COURT: Hold off, Mr. Thomas, this is
3 getting into the realm of testimony.

4 MR. THOMAS: Yes, ma'am.

5 THE COURT: You pled all of this in your amended
6 complaint which was filed on November 7th, 2011. This
7 is September 19th, 2012. Tell me why we aren't ready
8 to go forward today?

9 MR. THOMAS: Well I wrote the letter to her. I
10 put my motion interrogatories in on November 7th. And
11 I will bring to light --

12 THE COURT: And again, Mr. Thomas, Judge Woods
13 has already said discovery is completed.

14 MR. THOMAS: Right. Well I mean what I am
15 saying is --

16 THE COURT: That is his order.

17 MR. THOMAS: Just 10 days ago he refused to do
18 my order to compel. I was trying to practice courtroom
19 etiquette and contact her personally instead of getting
20 the court involved to seek the information that I
21 wanted. She denied even getting the letter.

22 I got the notice 10 days ago. So I have had 10
23 days to try to put together the facts that they are
24 trying to conceal. Something is up with Dr. McGuire
25 because they don't want him testifying. She has been

1 in personal contact with him.

2 So I mean, if I might recite -- oh boy, where is
3 that -- discovery is, you know, the gist and gravamen
4 of a trial. And to keep it from becoming a guessing
5 game and an ambush by the parties, that's where I am
6 going.

7 THE COURT: Mr. Thomas, I don't mean to
8 interrupt you, but we have been around and around on
9 this several times now. Judge Woods said discovery is
10 complete. I'm bound by that order. So based on that,
11 you don't have grounds for a continuance.

12 But I will be glad to hear you if you have any
13 other grounds for a continuance that you want to raise
14 before me that Judge Woods did not have raised before
15 him, or had the opportunity to rule on.

16 MR. THOMAS: Okay. In the interest of
17 preservation, I will renew my objection to Judge Woods'
18 order, and I have presented all the grounds I have on
19 the continuance.

20 THE COURT: Thank you, sir.

21 MR. THOMAS: Thank you.

22 THE COURT: Anything else we need to take up in
23 the form of motions prior to beginning the testimony?

24 I believe you have a motion, is that right,
25 pending?

1 MS. HENSLEY: Thank you, Your Honor, may it
2 please the Court.

3 THE COURT: Did Judge Woods address all your
4 motions also?

5 MS. HENSLEY: He did not, Your Honor.

6 THE COURT: All right.

7 MS. HENSLEY: My motion was filed on the 10th
8 and set for today before the trial, Your Honor. And my
9 motion is just to dismiss all causes of action which
10 occurred prior to June 6th, 2006 on the defense of
11 condonation.

12 And that motion is based on the facts revealed
13 during discovery. My concern is, that the plaintiff
14 intends to retry his criminal case here and that by
15 calling all of the witnesses from that case, and
16 introducing evidence presented in that case.

17 At the criminal trial, and I have a copy of the
18 transcript that I'm happy to provide the Court, the
19 experts from the transcript, the plaintiff, who was the
20 defendant in that case, testified that on June 6th,
21 2006 he and his wife, my client, were living together
22 at the InTown Suites; had been residing there in excess
23 of three months; were residents there as opposed to
24 pay-per-night guests; and that they were engaging in
25 sexual relations on a regular basis; that he loved his

1 wife more than anything in the world, and would do
2 anything to please her.

3 Your Honor, I can pass up those just several
4 pages from that transcript. It's pages 594 and 595,
5 602 and 603.

6 THE COURT: Hold on one second, 594 and 595.

7 MS. HENSLEY: Yes, ma'am, I'm sorry.

8 THE COURT: 6-0 --

9 MS. HENSLEY: 2 through 605. And I have a copy
10 of those for the Court, and also for the plaintiff.

11 THE COURT: Please hand the copy to the
12 plaintiff. Give him just a second to take a look at
13 them, Ms. Hensley, before you hand them up to me,
14 please.

15 Have you had an opportunity to look at them, Mr.
16 Thomas?

17 MR. THOMAS: I have read them.

18 THE COURT: All right. Do you have any
19 objection that those pages are an accurate transcript
20 of the record from that proceeding?

21 MR. THOMAS: No, ma'am, I'm satisfied. I read
22 the pages.

23 THE COURT: Thank you. May I see them, Ms.
24 Hensley, please?

25 MS. HENSLEY: Thank you, Your Honor. May I

1 approach?

2 THE COURT: Yes, ma'am.

3 Thank you, ma'am. Give me just a second to take
4 a look at them, please.

5 Yes, ma'am, I have read them.

6 MS. HENSLEY: Thank you, Your Honor. And the
7 defendant's position is that based on the plaintiff's
8 testimony in the criminal case, if taken as true, would
9 eliminate any allegations of pre-separation adultery or
10 physical cruelty or habitual drunkenness, anything
11 prior to 6/6/2006.

12 I think it narrows the issues for trial, Your
13 Honor, just based on the doctrine of condonation in the
14 law which, of course, means forgiveness, express or
15 implied by one spouse, for a breach of marital duty by
16 the other.

17 And in this case, the defendant asserts that any
18 physical violence, habitual drunkenness or adultery
19 prior to June 6, 2006 was expressly forgiven by the
20 plaintiff with the continuance of the marital
21 relationship. And that clearly, by the plaintiff's own
22 testimony, they were living together and engaged in
23 what he alleges were consensual sexual relations.

24 And just for clarity, Your Honor, based on my
25 review of the discovery, it does seem to me as if the

1 plaintiff, and I'm not trying to tell the plaintiff how
2 to try his case, or the Court how to try this case, but
3 that the plaintiff could prove post-separation adultery
4 through the witnesses Jeremy Leadford.

5 We amended our discovery responses to admit to
6 post-separation adultery. And that would at least
7 narrow that issue, Your Honor.

8 THE COURT: All right. Let me hear you on that,
9 Mr. Thomas.

10 She has requested that any evidence of any
11 fault-based divorce which occurred -- let me ask it
12 this way. Do you agree that your date of separation
13 was June 6th, 2006?

14 MR. THOMAS: I do, Your Honor. But I never
15 received an amended interrogatory about admission of
16 post-separation adultery. That never came my way.

17 THE COURT: Okay.

18 MR. THOMAS: Another one of those ex-parte
19 things I was telling you about.

20 MS. HENSLEY: Well I didn't file it with the
21 Court, Your Honor, I mailed it to the plaintiff.

22 MR. THOMAS: It happens quite frequently.

23 THE COURT: I don't know, Mr. Thomas.

24 MR. THOMAS: Yes, ma'am, I understand.

25 THE COURT: As I said, I never touched this case

1 before, since yesterday.

2 MR. THOMAS: I'm just making sure it's on the
3 record that I rarely hear what's going on. I wrote her
4 a letter when we first started --

5 THE COURT: Can we please get back to my
6 question, Mr. Thomas?

7 MR. THOMAS: Yes, ma'am.

8 THE COURT: And I don't mean to interrupt you,
9 I'm just trying to make sure the record is clear as to
10 what we are doing here today, sir.

11 She has asked that any evidence as to a
12 fault-based divorce which occurred prior to your date
13 of separation, which you agree was June 6, 2006, be
14 excluded on the grounds of condonation. I would be
15 glad to hear you on that particular issue.

16 MR. THOMAS: Okay, Your Honor. I would
17 reiterate that the parties are judicially bound by
18 their pleadings unless withdrawn, altered or stricken
19 by amendment or otherwise

20 THE COURT: Mr. Thomas, that's not relevant to
21 the inquiry, though.

22 MR. THOMAS: This part is, Your Honor. I'm
23 sorry, I should have --

24 THE COURT: That's okay.

25 MR. THOMAS: Generally a failure to plead an

1 affirmative defense is deemed a waiver of the right to
2 assert it, Plyler versus Burns, 647 S.E.2d 188 South
3 Carolina Supreme Court, 2007.

4 When pleading to a preceding pleading, a party
5 must set forth the affirmative defense of condonation.
6 Thompson versus Thompson, 661 S.E.2d 130, pinpoint 135,
7 South Carolina Court of Appeals, 2008. Citing rule
8 8(C), as in cat, South Carolina rules of civil
9 procedure.

10 Defendant has sought to unilaterally rescind
11 pleading to condonation only after depositions taken
12 and evidence otherwise confirmed that I can prove
13 physical cruelty. It is my belief that her motion for
14 condonation of the adultery and physical, all of that,
15 is hinged upon the fact that she has seen that I have
16 the proof, that I can prove my case.

17 THE COURT: Let me interrupt you, Mr. Thomas,
18 because the very case that you cite, Thompson versus
19 Thompson, 661 S.E.2d 130, provides, ordinarily
20 condonation is an affirmative defense that must be
21 pled.

22 However, the issue of condonation in a divorce
23 proceeding may be raised for the first time on appeal.
24 So your own case law that you cite is in direct
25 contradiction to your position, sir.

1 MR. THOMAS: Well, not necessarily. As I was
2 seeing it, I have that case here, first time on appeal.
3 Okay. Then it goes on to say, but see Doe versus Doe,
4 suggesting McLaughlin may have been superceded by the
5 subsequent adoption of Family Court Rule 11 which
6 expressly provides that recrimination and condonation
7 shall be pleaded as affirmative defenses.

8 THE COURT: That's correct, sir. It goes on to
9 say that the husband raised the affirmative defense of
10 condonation for the first time on appeal. Which is
11 different in this case, it's being raised for the first
12 time to the trial court. That's a big distinction
13 between this case and Thompson versus Thompson.

14 He, the husband in Thompson versus Thompson,
15 alleges the Family Court's order does not address
16 condonation. Yet he asks this Court to examine the
17 record and find condonation. We, meaning the Court of
18 Appeals, decline to do so because this issue was never
19 pled nor raised to the Family Court Judge.

20 Clearly it's being raised to the Family Court
21 Judge in this case. So Thompson is not determinative
22 of this matter before this Court.

23 So address for me, please, sir, the issue of
24 condonation.

25 MR. THOMAS: Well, I would rely on Plyler versus

1 Burns because that's a Supreme Court decision in 2007
2 and stipulates that a failure to plead an affirmative
3 defense is deemed a waiver of the right to assert it.
4 which it's my understanding the Supreme Court makes the
5 laws. Do you have that cite, 647?

6 THE COURT: Please give it to me, just one
7 second and let me get back to the search page.

8 Yes, sir, what is the cite.

9 MR. THOMAS: 647 S.E.2d 188. I didn't have the
10 pinpoint, I was --

11 THE COURT: That's all right, I will find it.

12 MR. THOMAS: And I would add --

13 THE COURT: Give me one second to take a look at
14 it, sir.

15 MR. THOMAS: Sure.

16 THE COURT: It's an old computer. It's a little
17 slow.

18 All right. Go ahead, sir, I have read it.

19 MR. THOMAS: Okay. I am distinguishing my
20 personal observation of the ruling in Thompson versus
21 Thompson is with regard to the Court of Appeals stating
22 that it was not -- cannot be raised the first time on
23 appeal. And the language was, was not raised for the
24 first time in the court.

25 Well I am thinking that there, the intent of

1 that decision was that they can't review anything that
2 was not raised in the lower court. And I would argue
3 that the pleading, that the failure to plead an
4 affirmative defense, as the Supreme Court has
5 expressed, forbids that pleading from being granted in
6 the lower Court.

7 I would think it would be an abuse -- and no
8 disrespect.

9 THE COURT: I understand. It's a term of art,
10 abuse of discretion, it's a term of art.

11 Mr. THOMAS: Thank you. I would argue that it's
12 an abuse of discretion to override the Supreme Court's
13 decision. They have overlooked their opportunity to
14 make that affirmative defense.

15 And the fact that Thompson referred to it not
16 being raised in the lower court is merely because the
17 Court of Appeals is precluded from reviewing issues
18 that were not raised in the lower court and decided
19 upon by that court, you know, as of course as we know
20 to give them, the lower court, the opportunity to make
21 a ruling on that.

22 So that's my argument there. I don't think she
23 has a right to raise condonation outside of the
24 pleadings.

25 THE COURT: I appreciate that, sir. I'm looking

1 at Doe versus Doe, 334 S.E.2d 829, which is a 1985
2 case. The Supreme Court has held that while
3 condonation is ordinarily an affirmative defense which
4 must be pled, if the evidence shows condonation, it is
5 the duty of the Court to so find without pleading.

6 Our Supreme Court has also held, the defense of
7 condonation may even be raised for the first time on
8 appeal. Family Court Rule 11, which expressly provides
9 that recrimination and condonation shall be pled as
10 affirmative defenses, it is unnecessary for the Court
11 to determine whether these holdings have been
12 superseded, because a careful reading of the pleading
13 here revealed that the defense of condonation was in
14 fact pled.

15 Both of you have stipulated that the date of
16 separation was June 6th, 2006. The Court will exclude
17 any testimony as to fault-based divorce grounds prior
18 to the date of separation under the defense of
19 condonation.

20 All right. Any other motions before we begin
21 the testimony?

22 MS. HENSLEY: The only other motion I would
23 have, Your Honor, is just to --

24 MR. THOMAS: May I preserve that for review?

25 THE COURT: Of course. Of course, Mr. Thomas.

1 MR. THOMAS: Okay. All right, thank you.

2 MS. HENSLEY: A motion to sequester the
3 witnesses, Your Honor.

4 THE COURT: She wants to sequester the
5 witnesses, Mr. Thomas. What is your position on that?

6 MR. THOMAS: I object.

7 THE COURT: He objects. It's a public
8 courtroom, that motion is denied. I will welcome any
9 member of the public into the courtroom as long as
10 certain rules of decorum are complied with in this
11 courtroom.

12 We have been going at it a little over an hour
13 now. We will take a 5 minute recess. Everyone can
14 have a comfort break during the 5 minute recess.

15 We will reconvene when I take the bench. Mr.
16 Thomas will be brought in first, then Ms. Hensley will
17 be brought in, and then we will bring the witnesses in.
18 Unless you're unconformable with that procedure, Mr.
19 Thomas.

20 MR. THOMAS: No, I'm fine with that. Thank you.

21 MS. HENSLEY: And, Your Honor, if I could give
22 to the plaintiff our supplemental responses to
23 interrogatories, I guess he hasn't received through the
24 mail yet, at least that might narrow that issue on the
25 adultery.

1 THE COURT: Sure, you may give it to him.

2 All right, let's take 5 minutes, please. Thank
3 you.

4 (Whereupon, a recess was taken.)

5 THE COURT: You may bring Ms. Hensley in at this
6 time. Mr. Thomas has returned.

7 You may bring in the witnesses or any other
8 member of the public who wishes to the come into the
9 courtroom at this time.

10 Let the record reflect that Ms. Hensley and Ms.
11 Crowley have entered the courtroom.

12 MS. HENSLEY: Your Honor, I had attached to my
13 motion the list of witnesses who I thought were made
14 irrelevant by your rule regarding condonation. But of
15 course I didn't have the authority to release any
16 witnesses, so.

17 THE COURT: Let everybody get settled.

18 Is that everybody that wishes to enter the
19 courtroom?

20 THE OFFICER: Yes, Your Honor.

21 THE COURT: All right. I'm sorry, Ms. Hensley,
22 you were saying something? I wanted to let everyone
23 get settled in first.

24 MS. HENSLEY: Thank you, Your Honor, may it
25 please the Court.

1 My motion that I filed on September 10th
2 regarding the defense of condonation that you granted,
3 I had listed the following plaintiff's proposed
4 witnesses that I think would be eliminated by your
5 ruling. And those were Cecil Terry, who I understand
6 planned to testify regarding physical cruelty that
7 occurred prior to June 6th, 2006.

8 THE COURT: Let's, and I'm sorry to interrupt
9 you. You are referring to A through K of your motion?

10 MS. HENSLEY: Yes. And I understand that Mr.
11 Kelly has been withdrawn, and he was withdrawn on that
12 September 11th hearing.

13 THE COURT: All right.

14 MS. HENSLEY: Just A through J.

15 THE COURT: A through J. Mr. Thomas, do you
16 have that motion? Could you look at that list with us?

17 MR. THOMAS: I'm trying to locate it, Your
18 Honor.

19 MS. HENSLEY: I'm happy to give you mine, Your
20 Honor.

21 MR. THOMAS: Thank you.

22 THE COURT: Let's look at A is Cecil Terry,
23 T-E-R-R-Y. Mr. Terry. Is Mr. Terry present, Mr.
24 Thomas?

25 If Mr. Terry is present, would you raise your

1 hand, please?

2 Mr. Terry is not present. Did you have Mr.
3 Terry under subpoena, sir?

4 MR. THOMAS: I did, Your Honor.

5 THE COURT: Will he testify to anything that
6 occurred subsequent to June 6th, 2006?

7 MR. THOMAS: Yes, ma'am. He was subpoenaed to
8 testify with regard to an incident where --

9 THE COURT: What is the date of the incident?

10 MR. THOMAS: -- the defendant was arrested. Oh
11 boy, I probably should have stayed in here and
12 reorganized everything.

13 The defendant was arrested for a simple assault.
14 She tried to take --

15 THE COURT: Tell me the date, please, Mr.
16 Thomas.

17 MR. THOMAS: May 12, 2007, I believe. I'm not
18 absolutely positive on that.

19 THE COURT: All right. We will skip Mr. Terry
20 at the moment.

21 Is it Biering? B-I-E-R-I-N-G, Biering?

22 If the witness Biering is present, please raise
23 your hand.

24 MR. THOMAS: She was served --

25 THE COURT: I just want to know if she is

1 present.

2 MR. THOMAS: No, ma'am. She's terminally ill
3 with Stage 4 cancer.

4 THE COURT: So you are not planning to call her?

5 MR. THOMAS: I have a deposition from her.

6 THE COURT: Do you have a de bene esse
7 deposition?

8 MR. THOMAS: Pardon me?

9 THE COURT: Do you have a de bene esse
10 deposition?

11 MR. THOMAS: I'm not familiar with that term,
12 Your Honor.

13 THE COURT: Ms. Hensley.

14 MS. HENSLEY: It was not noticed a de bene esse,
15 Your Honor. And my understanding is that the witness
16 is alive and available, and we would just object to any
17 presentation of her testimony by, that was taken by
18 deposition that was not taken for the purposes of
19 trial.

20 THE COURT: Well right now we are just talking
21 about the condonation issue. We will address that at a
22 separate time then.

23 And there is an Officer Ronald Brush, B-R-U-S-H.
24 And there is some letter that the administrative
25 assistant for Judge Martin just handed me. I have not

1 read it, but it looks like she has a copy here.

2 Could you hand one each to Mr. Thomas and Ms.
3 Hensley, they can take a look at it. Once they had an
4 opportunity to look at it, then I will talk to them
5 about it. He is, coincidentally, the next one on the
6 list.

7 By Officer Ronald Brush's name it says: Arrest
8 of defendant of 3/2/06. Is there anything that would
9 be addressed from this witness's testimony other than
10 the March 2nd, 2006 incident?

11 MR. THOMAS: Okay. To be firm on the
12 condonation order, that means anything, all three
13 grounds of my divorce, the physical cruelty, the
14 habitual drunkenness and adultery are all precluded
15 from testimony prior to 6/6/06; is that correct?

16 THE COURT: That's correct. Not after 6/6/06,
17 but before.

18 MR. THOMAS: Yes, ma'am.

19 THE COURT: Yes, sir.

20 MR. THOMAS: Then, no, there would be no
21 testimony from Ronald Brush relevant. He would be
22 excluded.

23 THE COURT: Officer Brush is excluded and
24 released. So I am assuming the letter says he can't
25 come anyway. And since he is not here, we don't even

1 need to address that. Unless you've read it and you
2 see something that needs to be addressed, Mr. Thomas.

3 MR. THOMAS: Actually, Your Honor, let me
4 retract that. I have been trying to determine the
5 deposition -- excuse me, the disposition on the charge
6 that occurred before 6/6/06, however that case was
7 dismissed in 2010, allegedly due to the release or the
8 resignation of the arresting officer in an incident
9 that occurred at my residence, or the parties'
10 residence, on March 2nd of '06.

11 I am quite interested in knowing why that
12 proceeding didn't go forward, why the defendant was
13 released from any punishment for that crime. She
14 destroyed the home. I know I can't get into any
15 testimony.

16 THE COURT: Don't go into testimony at this
17 point.

18 MR. THOMAS: Right, I understand. I'm sorry.

19 THE COURT: You can at a later point, but. Mr.
20 Thomas, whether you are interested or not is simply not
21 the inquiry of this Court as this time. You said it
22 occurred on March 2nd, 2006, that's before June 6th,
23 2006. So that is not relevant for this proceeding with
24 respect to Officer Brush.

25 Tell me about Officer Michael Cooper. Is there

1 anything for -- first of all, is Officer Cooper
2 present?

3 Is there anything with respect to Officer Cooper
4 other than 6/1/03 and 3/2/06?

5 MR. THOMAS: Well, Your Honor, that goes along
6 with Officer Brush. The relevance is credibility of
7 the defendant. It goes towards her credibility. I do
8 intend to impeach credibility of the witness.

9 THE COURT: Well if she testifies, and if her
10 credibility comes into question, we can revisit that
11 issue.

12 MR. THOMAS: Well I have subpoenaed her to
13 testify. So I intend to call her and impeach her, if
14 it pleases the Court of course.

15 THE COURT: Certainly, sir. At this time, then,
16 Officer Cooper will not be testifying other than if the
17 issue of credibility comes into play.

18 Nicole Denane, D-E-N-A-N-E?

19 A VOICE: Present, Your Honor.

20 THE COURT: She is present?

21 A VOICE: Yes, ma'am.

22 THE COURT: Arrested the defendant 6/1/03 and
23 3/2/06. Anything other than those two dates, sir?

24 MR. THOMAS: Relevant to credibility as was
25 Brush and Cooper, for impeachment purposes.

1 THE COURT: Joel Longenecker,
2 L-O-N-G-E-N-E-C-K-E-R. Says physical cruelty by
3 defendant prior to 6/6/06. Anything that he can
4 testify to subsequent to 6/6/06?

5 MR. THOMAS: It goes to credibility and
6 impeachment.

7 THE COURT: Is there anything he can testify to
8 that happened after 6/6/06?

9 MR. THOMAS: There is a gray area there, if I
10 may elaborate. The defendant claims that I tortured
11 her with a stun-gun and it's the first time that she
12 had ever been subjected to such abuse. And Mr.
13 Longenecker --

14 MS. HENSLEY: That's the 6/6/06 incident, Your
15 Honor.

16 THE COURT: Hold on.

17 MR. THOMAS: -- witnessed, Mr. Longenecker
18 witnessed her being tasered by the police to subdue
19 her, and her telling them she liked it and do it again.

20 So it goes to credibility, inconsistent
21 statements during trial.

22 THE COURT: Is the answer to my question about
23 6/6/06 yes or no?

24 MR. THOMAS: Did it happen --

25 THE COURT: Can he testify to anything that

1 occurred after 6/6/06?

2 MR. THOMAS: No, ma'am.

3 THE COURT: Okay. Credibility is a separate
4 issue, I'm just talking about dates right now.

5 MR. THOMAS: Okay. Yes, ma'am.

6 THE COURT: Okay. Officer Brian Kale.

7 A VOICE: Right here.

8 THE COURT: Excuse me, I skipped. I'm sorry I
9 skipped Christen Boyer, B-O-Y-E-R. Present.

10 Anything after 6/6/06? Credibility is a
11 separate issue. 6/6/06.

12 MR. THOMAS: I would have to -- she is my
13 daughter.

14 THE COURT: Okay.

15 MR. THOMAS: And she has been intricately
16 involved.

17 THE COURT: That's a separate category, I'm
18 skipping her.

19 MR. THOMAS: Okay.

20 THE COURT: Randy Harbeson, H-A-R-B-E-S-O-N. He
21 is present. Anything he can testify to after 6/6/06?

22 MR. THOMAS: You know, he goes along with my
23 daughter. He's a friend. He has been intimately
24 involved with me throughout the duration of the
25 marriage up until my incarceration in July.

1 So I would say that there is a likelihood that I
2 will need his testimony in one form or another, yes,
3 ma'am.

4 THE COURT: Officer Brian Kale, K-A-L-E, he is
5 present. Anything he can testify to other than the
6 noted arrest on March 2nd, 2006?

7 MR. THOMAS: Other than credibility and
8 impeachment purposes, no, ma'am.

9 THE COURT: David Lombardi, L-O-M-B-A-R-D-I,
10 arrested the defendant 3/2/06. Anything he can testify
11 to other than that arrest?

12 MR. THOMAS: I hope he did not appear because he
13 was supposed to have been notified that his testimony
14 would not be needed.

15 THE COURT: All right. So we don't need Mr.
16 Lombardi, and I believe that Ms. Hensley said Mr. Kelly
17 has already been excused; is that correct?

18 That's right?

19 MR. THOMAS: Yes, ma'am. I'm sorry.

20 MS. HENSLEY: Your Honor, there are several
21 witnesses from, that were involved in the arrest of the
22 plaintiff on June 7th, 2006, Detective Rowen, Detective
23 Talbot. And I believe they are also irrelevant to any
24 post-separation adultery or physical cruelty or
25 habitual drunkenness.

1 THE COURT: What about those detectives, Mr.
2 Thomas?

3 MR. THOMAS: They go towards impeachment,
4 credibility and it was after 6/6/06.

5 THE COURT: Well I'm a little confused, Mr.
6 Thomas. Because it appears to me that the only issue
7 before this Court now is a divorce on the grounds of a
8 one year's continuous separation, either granted to you
9 or granted to the defendant or granted to both.

10 MR. THOMAS: Well Jim Smiley, I suspect there
11 was an affair there as well. I mean I see this legal
12 maneuver of admission to an affair --

13 THE COURT: Back up.

14 MR. THOMAS: I'm sorry, go head.

15 THE COURT: Back up, Mr. Thomas, you want to
16 testify and I know you do, sir. You are going to get
17 the opportunity to do that.

18 But the issues before this Court now based upon
19 -- and I'm going to have to ask everybody to please be
20 quiet. A lot of folks in here. I know this is an
21 emotionally charged case. But I have got to be able to
22 hear Mr. Thomas, got to be able to hear Ms. Hensley,
23 and they have got to be able to hear me.

24 The issues before this Court, Mr. Thomas, now
25 are a divorce on the grounds of a one year's continuous

1 separation, either granted to you or granted to the
2 defendant or granted to both.

3 She has stipulated that there was
4 post-separation adultery. Under the law that will
5 obviously have to be corroborated. But those are the
6 only issues before this Court. Divorce on one year's
7 separation pled by both. Adultery pled by you,
8 stipulated by the defendant to post-separation
9 adultery.

10 MR. THOMAS: So what I'm getting from that is
11 that I will be able to at least plead, or make a case
12 of adultery. I can present my --

13 THE COURT: Absolutely.

14 MR. THOMAS: Absolutely, okay.

15 THE COURT: Post-separation.

16 MR. THOMAS: There are a number of paramours
17 that I have witness of.

18 THE COURT: But back to the original question.
19 The detectives that Ms. Hensley referenced for the
20 6/7/'6 arrest, are they relevant to one year's
21 continuous separation, or post separation adultery?

22 MR. THOMAS: Credibility.

23 THE COURT: Credibility as to?

24 MR. THOMAS: Impeachment for the defendant. The
25 defendant told like 47, 48 -- made 47, 48 inconsistent

1 statements.

2 THE COURT: Mr. Thomas, again.

3 MR. THOMAS: Right.

4 THE COURT: The only issues before this Court
5 are post-separation adultery, to which she has
6 stipulated. I'm not sure how her credibility on that
7 issue could be questioned. Unless you are saying she
8 is lying about committing adultery after you separated.

9 And the other issues are a one year divorce, and
10 I'm not sure how her credibility would come into play,
11 or yours, or any other witnesses on that because you
12 have been in the Department of Corrections since what
13 date, Mr. Thomas?

14 MR. THOMAS: June -- Department of Corrections?
15 June, July of 2008, approximately.

16 THE COURT: Okay. So tell me how her
17 credibility with respect to all of these witnesses
18 comes into play with stipulated to post-separation
19 adultery or a one year divorce granted to either or
20 both?

21 MR. THOMAS: Your Honor, when I filed this
22 divorce it was a non-contested divorce. I simply
23 wanted to end the marriage. That's what started this
24 whole mess.

25 She responded in her answer that I was serving

1 time for kidnapping and criminal domestic violence of a
2 high and aggravated nature against her. I overlooked
3 that.

4 I contacted her to resolve one contested matter
5 involving my request for court fees. She responded by
6 contacting the Department of Corrections and informing
7 them that I had violated a restraining order, that --

8 MS. HENSLEY: We just object to the testimony,
9 Your Honor.

10 THE COURT: Hang on, Mr. Thomas, again you are
11 testifying.

12 The issues before this Court, again, are a one
13 year divorce, divorce on the grounds of adultery. That
14 is all that is before me.

15 I realize there is a lot of other issues you
16 want to talk about. But this Court is bound by the
17 issues before it. And those are the issues before it.

18 Is there any property for this Court to divide
19 that is marital?

20 MR. THOMAS: There is not marital assets, but --

21 THE COURT: That was not my question, Mr.
22 Thomas. Is there any marital property?

23 MR. THOMAS: There is a dispute there. They're
24 claiming there is, I'm saying it's not marital.

25 THE COURT: Okay. Okay. Is there any debt that

1 is marital for this Court?

2 MR. THOMAS: None.

3 THE COURT: Okay. And then there is some
4 question that you pled with respect to costs of
5 litigation?

6 MR. THOMAS: Yes, ma'am.

7 THE COURT: Okay. So again my question is, how
8 are these two detectives that arrested you on June the
9 7th, '06, are they necessary to be heard?

10 MR. THOMAS: Your Honor, she -- the pleadings
11 that she put in writing that she filed with the courts
12 alleging all these heinous acts that I'm alleged to
13 have committed against her, these people go towards
14 proof. She opened the door to this testimony.

15 THE COURT: No, Mr. Thomas, that's not what
16 opening the door means. Pleadings are not evidence.
17 They are not testimony. They are not findings of fact
18 by the Court.

19 She is not proceeding on any of those grounds,
20 and this Court is not going to hear any evidence or
21 testimony on any of those grounds of fault alleged
22 against you. The only fault this Court is going to
23 hear today is post-separation adultery by Ms. Crowley
24 which she has stipulated to.

25 So I do allow both detectives from the 6/7/'6

1 arrest to be excused.

2 MR. THOMAS: Well, Your Honor.

3 THE COURT: Sir.

4 MR. THOMAS: If I may tell you what their intent
5 was.

6 THE COURT: Sure.

7 MR. THOMAS: All I wanted them to do was to
8 confirm the incident report was theirs, and enter it
9 into evidence that it was their incident report and
10 that's what they were told.

11 That's all I wanted from Detective Rowen. I
12 wanted him to put into evidence that the statements he
13 took were those of Ms. Crowley's.

14 THE COURT: Hang on. Hang on. Ms. Hensley.

15 MS. HENSLEY: I would just object as to
16 relevance, Your Honor. There is no relevance to those
17 reports to this proceeding.

18 THE COURT: Okay.

19 MR. THOMAS: Well the relevance being is that it
20 shows inconsistent statements. There is not one single
21 statement of testimony she gave that's consistent.

22 THE COURT: That's not relevant to this
23 proceeding. An incident report is not testimony.
24 Those detectives are excused, Ms. Hensley, if you want
25 to tell them they're excused.

1 All right, anything else we need to take up
2 prior to beginning the testimony, from Mr. Thomas?
3 Anything before we begin the testimony in the trial?

4 Mr. Thomas?

5 MR. THOMAS: Could I have a moment?

6 THE COURT: Sure.

7 MS. HENSLEY: I think, Your Honor, the other
8 prior to 6/6/06 witnesses, just wanted to make sure
9 that they were allowed to be excused. And I think that
10 was Officer Brush, Cooper, Denane.

11 THE COURT: I will allow them to be excused. If
12 you would please leave a contact number. Is there a
13 deputy outside? Would you find a deputy outside, leave
14 your contact number with that deputy prior to leaving.
15 That contact number will be given to no one other than
16 the Court.

17 A VOICE: Yes, ma'am.

18 THE COURT: Thank you. If we need them they
19 will be on standby, Mr. Thomas.

20 (Whereupon, the witnesses exit the courtroom.)

21 MR. THOMAS: You know, I have spent the last
22 four years going over this.

23 THE COURT: Is there anything we need to take up
24 before the testimony?

25 MR. THOMAS: Yes, ma'am. I'm hoping I can get

1 this in there. We are going to take testimony on
2 non-marital assets and the marital assets. We are
3 going to be taking her word. She is going to get up
4 and testify that she doesn't have these things, and I
5 have proof that she -- that her word cannot be taken as
6 truth.

7 And my witnesses are being systematically
8 excluded from the hearing. And I --

9 THE COURT: No, sir, they're not be excluded.
10 They are on call. Should you need them, they are
11 leaving a contact number with the deputy and they will
12 be contacted and return to this Court should we need
13 them.

14 Absolutely they're on call and ready to come
15 back. If they don't, I will have law enforcement
16 arrest them and bring them back, sir.

17 All right. Anything else before we start the
18 testimony? We need to start on the testimony, Mr.
19 Thomas.

20 MR. THOMAS: Well James Smiley didn't bother to
21 show up. He's --

22 THE COURT: And again we have addressed that
23 previously. That was addressed in Judge Woods' hearing
24 from the 11th as it was a motion pending at that time,
25 sir.

1 MR. THOMAS: That was to compel. He was
2 subpoenaed to testify.

3 THE COURT: You have issued a subpoena for him
4 after the 11th of September? When was the subpoena
5 issued?

6 MR. THOMAS: He didn't --

7 THE COURT: When was it issued?

8 MR. THOMAS: He didn't motion -- all I motioned
9 for Jim Smiley was to produce, it had nothing to do
10 with his testimony.

11 THE COURT: I just want to know when the
12 subpoena was issued, Mr. Thomas. That's all I'm asking
13 for, sir.

14 MR. THOMAS: 1st day of August, 2012.

15 THE COURT: Do you have proof of service for
16 that subpoena, sir?

17 MR. THOMAS: Yes, ma'am

18 THE COURT: Could you hand it to the deputy,
19 please.

20 MR. THOMAS: I have a clock-stamped affidavit of
21 service. And I have a subpoena copy if you'd like it.

22 THE COURT: That would be great, thank you.

23 MS. HENSLEY: And I understand that Mr. Smiley
24 is in Courtroom 4-D. But he is in the building, Your
25 Honor.

1 THE COURT: Okay. He is in the building, sir.
2 I cannot prevent him from being in the courtroom in
3 another case. But certainly once you are ready to call
4 him to the stand, we can get him.

5 And, Deputy, if you would radio to Courtroom 4-D
6 and tell them that Mr. Smiley needs to be on standby
7 and to please check with this Court before he leaves
8 pursuant to this subpoena. Thank you.

9 All right. That issue is apparently not an
10 issue, Mr. Thomas, he is in the building.

11 MR. THOMAS: Thank you, Your Honor.

12 THE COURT: Anything else before we proceed?

13 MR. THOMAS: Looking for my list of witnesses
14 again. There were a number of other ones. Dr. Mark
15 LaRue. And that one occurred -- I'm trying to
16 determine whether that was a situation that occurred
17 before 6/6.

18 THE COURT: I tell you what let's do, Mr.
19 Thomas. Why don't we begin the testimony, and as you
20 deem appropriate to call these witnesses, we'll address
21 them as you call them.

22 Would that be acceptable to you, sir?

23 MR. THOMAS: That will be fine, thank you.

24 THE COURT: All right. Any problem with that
25 procedure, Ms. Hensley?

1 MS. HENSLEY: No, Your Honor.

2 I think the only other issue before the Court is
3 that each of the parties pled for a restraining order.
4 So I think that we consented each to the restraining
5 order.

6 THE COURT: Is that correct, Mr. Thomas?

7 MR. THOMAS: Yes, ma'am. I initiated the
8 requested and they seconded it.

9 THE COURT: Mutual restraining orders are
10 thereby granted by consent.

11 Ma'am, would you stand for me, please, Ms.
12 Crowley, thank you.

13 Would you raise your right hand.

14 Sir, would you raise your right hand.

15 Do you swear or affirm the testimony you will
16 give will be the truth, ma'am?

17 MS. CROWLEY: Yes, ma'am.

18 THE COURT: Sir?

19 MR. THOMAS: I do.

20 THE COURT: Put your hands down.

21 Tell me your full name.

22 MS. CROWLEY: Rachel Marie Crowley.

23 THE COURT: And, sir, your full name.

24 MR. THOMAS: Clark David Thomas.

25 THE COURT: Ms. Crowley, Mr. Thomas, this is an

1 action for a divorce. And in an action for a divorce,
2 the law requires that I ask of both of you if there is
3 any possibility that the two of you could reconcile and
4 resume your marriage.

5 MS. CROWLEY: No, ma'am.

6 THE COURT: Let me ask the question, please.

7 Is there any possibility you and your husband
8 could reconcile?

9 MS. CROWLEY: No, ma'am.

10 THE COURT: Sir, is there any possibility you
11 and your wife could reconcile?

12 MR. THOMAS: No, ma'am.

13 THE COURT: Based upon those responses to my
14 inquiries, I find there is no possibility of a
15 reconciliation of this marriage.

16 You may be seated, ma'am.

17 Mr. Thomas, do you wish to testify first or do
18 you wish to call witnesses first?

19 MR. THOMAS: I'm going to ask Carol Ann Cook, my
20 mother.

21 THE COURT: Ms. Cook, come right up here, ma'am,
22 to the where you see the Bible on the railing.

23 MR. THOMAS: Your Honor, if I might add. There
24 are a number of original exhibits and copies that I had
25 made available to pass around to yourself that pertain

1 to various aspects of my case, and she has those with
2 them. She -- I would like to make it available for
3 her, or make it to where she can pass them to the
4 bailiff to me and so forth. Is that something we can?
5 I couldn't bring them. I don't have access to the
6 facilities in the prison.

7 THE COURT: What is it that she has?

8 MR. THOMAS: Well she is going to be -- like for
9 instance the DVDs of the deposition of Eraine Biering,
10 she has those. The copies --

11 THE COURT: Well we will address those as we
12 come to them. But at this time I'm not allowing her to
13 pass anything because of the Department of Corrections
14 and their policies and procedures for safety.

15 We will address that at the appropriate time. I
16 thought you wanted to call her to testify right now.

17 MR. THOMAS: Well I do. And she has an
18 affidavit that I want to enter into evidence. That's
19 the purpose --

20 THE COURT: An affidavit from whom?

21 MR. THOMAS: Her. Her affidavit.

22 MS. HENSLEY: I would just object to it, Your
23 Honor. She is here and available to testify. She
24 should testify.

25 THE COURT: She has got an affidavit that is

1 something other than that to which she is going to
2 testify?

3 MR. THOMAS: It's an affidavit that embraces a
4 number of different issues. I just want it on record
5 that it's her affidavit. Whether or not it's used in
6 the litigation of this divorce, there are certain
7 elements that do pertain to the divorce.

8 But because of the rulings today, some of them
9 do not. I would just ask that the affidavit be
10 confirmed that it is her affidavit.

11 THE COURT: I'm going to let him confirm that
12 it's her affidavit, Ms. Hensley. But clearly you can
13 cross-examine her to the issues that are relevant
14 before the Court.

15 And I want to be very clear to Mr. Thomas and to
16 Ms. Hensley, the issues before the Court are a divorce
17 on the grounds of a one year separation to either or
18 both parties; a divorce on post-separation adultery;
19 restraining order has been agreed to by both mutually.

20 Mr. Thomas has requested certain fees. There is
21 some issue as to property and the characterization of
22 that property. And he has also requested support. We
23 did neglect to mention that earlier. He did plead
24 support.

25 All right. Ma'am, you can come take the witness

1 stand.

2 THE WITNESS: Clark, do you want me to --

3 THE COURT: Ma'am, you cannot speak with him.

4 MR. THOMAS: Ma'am.

5 THE COURT: Hold on, hold on, let me lay the
6 ground rules for how this trial is going to proceed.
7 Please stop whispering in the back, or you will be
8 asked to leave the courtroom.

9 This court reporter over here must take down
10 verbatim every word that is said in this courtroom.
11 Therefore, unless you are Mr. Thomas, Ms. Hensley, the
12 Court, or the witness testifying, you will not speak.

13 There will be no raising of hands to speak,
14 there will be no speaking out loud. Only will you
15 speak from the witness stand under oath. If you cannot
16 abide by that rule in this courtroom, you will be asked
17 to leave this courtroom. You are welcome to be here
18 and stay throughout the entire course of this trial as
19 long as you comply with the rules of decorum.

20 When the witness is answering a question, if
21 there is an objection either from Mr. Thomas or Ms.
22 Hensley, the witness will immediately stop speaking,
23 allow me to hear either Ms. Hensley or Mr. Thomas,
24 allow me to hear the response from the other, allow me
25 to rule, and then the witness will be instructed to

1 finish his or her answer if appropriate.

2 Do not interrupt, do not talk over one another.
3 As long as we can get everyone on the record,
4 everything will be fine.

5 Ma'am, if you will please leave that paper there
6 and come take the witness stand.

7 THE WITNESS: I had understood you to say --

8 THE COURT: Ma'am, please come the take the
9 witness stand.

10 MR. THOMAS: That's her --

11 THE COURT: We'll address it in a second, Mr.
12 Thomas, I promise you we will. Just you are trying to
13 jump the gun on me a little bit.

14 Right over here to the Bible for me, ma'am.

15 Left hand on that Bible, ma'am, raise your
16 right.

17 Do you swear or affirm the testimony you will
18 give will be the truth?

19 THE WITNESS: Yes, I do.

20 THE COURT: Have a seat right there in the
21 witness chair for me, ma'am. Tell me your full name.

22 THE WITNESS: Carol Ann Cook.

23 THE COURT: All right, Mr. Thomas, you may
24 question her.

25 MR. THOMAS: Your Honor, it was my intention

1 that we would -- she took a deposition as well.

2 THE COURT: She took a deposition?

3 MR. THOMAS: Excuse me, she gave deposition
4 testimony.

5 THE COURT: Okay.

6 MR. THOMAS: And she was able to appear. And I
7 was the plan -- my questioning was directly related to
8 the deposition. I wanted to make sure that she had a
9 copy and we could go through it and confirm different
10 testimony, if it wasn't objected to by counsel, to
11 clarify some issues. And for the purposes of --

12 THE COURT: You want to impeach your own witness
13 with her deposition?

14 MR. THOMAS: No, no, to clarify. There was some
15 gray areas. Of course not.

16 THE COURT: Well, Mr. Thomas, there has been no
17 testimony so I don't know how there is anything to
18 clarify. Go forward with her testimony. If there is a
19 problem, we will address it as it arises.

20 MR. THOMAS: Okay.

21 THE COURT: Okay?

22 MR. THOMAS: All right.

23 THE COURT: Thank you, sir.

24 CAROL ANN COOK,
25 after having first been duly sworn to tell the truth,

1 the whole truth and nothing but the truth, testified on
2 her oath as follows:

3 DIRECT EXAMINATION

4 BY MR. THOMAS:

5 Q All right. There has been a lot of reference to
6 the name George Keith Nichols. I want to get --

7 MS. HENSLEY: Objection, Your Honor.

8 THE COURT: What is your objection?

9 MS. HENSLEY: There hasn't been any reference to
10 the name George Keith Nichols, Your Honor.

11 THE COURT: Mr. Cook -- I'm sorry. Mr. Thomas,
12 I don't even know who that is so question her, put the
13 testimony in the record. Just ask her questions. Go
14 head.

15 MR. THOMAS: Every letter that she writes me she
16 says --

17 THE COURT: Just ask her questions, Mr. Thomas.
18 This is the time for testimony now.

19 MR. THOMAS: Okay.

20 I have a CD of phone conversations. And I have
21 case law that says it's admissible, but now I'm
22 questioning whether or not I'm even going to be able to
23 present them.

24 Quite frankly my entire case has been pretty
25 much wrecked. I'd like admit a CD my mother took care

1 of getting.

2 THE COURT: Do you have the CD?

3 MR. THOMAS: She does have a copy of it. It's a
4 conversation --

5 THE COURT: Try to lay your foundation and see
6 if it can be admitted, sir. I don't know about a CD.

7 MR. THOMAS: During the course of the
8 marriage --

9 THE COURT: Question her and try and lay the
10 foundation.

11 MR. THOMAS: Okay.

12 Q (By Mr. Thomas) During the course of the
13 marriage, I would relate certain problems that I was
14 having with my relationship with the defendant.

15 MS. HENSLEY: Just object, Your Honor, to --

16 MR. THOMAS: I would ask --

17 THE COURT: Hold on now, wait, wait, wait.
18 Let's go over it again. Once there is an objection,
19 Mr. Thomas, I need to hear her. And then you know I'm
20 going to let you respond.

21 MR. THOMAS: Yes, ma'am.

22 THE COURT: But let me hear her objection, then
23 I'm glad to hear your response.

24 Objection is what, ma'am?

25 MS. HENSLEY: Leading and testifying.

1 THE COURT: I sustain it as to leading.

2 Again, Mr. Thomas, you are going to have an
3 opportunity to testify. Just ask Ms. Cook questions
4 right now.

5 MR. THOMAS: Okay. I know it's not a laughing
6 matter, but boy, I don't know what other way to do
7 that. Absolute confusion.

8 Q (By Mr. Thomas) All right. Are you aware of my
9 marriage?

10 A Yes.

11 Q Do you know the defendant?

12 A I do.

13 Q Can you identify her in the courtroom?

14 A Sitting there with Ms. Hensley.

15 MR. THOMAS: Let the record reflect she's
16 identified Rachel Crowley as my wife.

17 Q (By Mr. Thomas) Have I ever, do you know of any
18 circumstances where I may have been unhappy with things
19 in my life as they are? And if you do, do you know of
20 any circumstances related to the defendant where that
21 may have caused this unhappiness?

22 That's an ambiguous question, isn't it?

23 A I guess I can talk other than saying yes and no.
24 I know there was extreme happiness, I know you were
25 very much in love with her. And I know there was --

1 she was insanely jealous and --

2 MS. HENSLEY: And, Your Honor, I just object to
3 any testimony regarding anything that occurred before
4 June 6th, 2006 consistent with your ruling on
5 condonation.

6 THE COURT: Could you be more specific with your
7 questions with respect to the date for me, Mr. Thomas?

8 MR. THOMAS: Okay.

9 Q (By Mr. Thomas) I have a number of recorded
10 phone calls. Do you have any knowledge of these phone
11 calls?

12 A Yes.

13 Q Can you tell the court exactly what they are and
14 how they came about?

15 A The ones between you and Rachel? Or the ones
16 between --

17 Q Yes, ma'am.

18 A Okay, yes. They were phone conversations where
19 she literally was berserk.

20 MS. HENSLEY: And, Your Honor, I believe this
21 testimony surrounds prior to June 6th, 2006,
22 conversations between the parties. And I would just
23 object based on your ruling and ask that he contain his
24 questions to incidents that occurred after June 6th,
25 2006 that relate to either post-separation adultery,

1 one year continuous separation, the other issues before
2 the Court.

3 THE COURT: Could you get the date in the
4 question, Mr. Thomas, please?

5 MR. THOMAS: Well these are presence, presence
6 of mind.

7 THE COURT: I was just asking for a date at this
8 point, Mr. Thomas, please.

9 MR. THOMAS: It was during the course of the
10 marriage. I cannot give you a specific date. The
11 tapes were not dated. But I can conclusively tell you
12 that they were taken during the course of the marriage.
13 And there was reference to wedding bands, and me
14 leaving my ring, and things like that.

15 MS. HENSLEY: Your Honor, it would just --

16 THE COURT: Hang on just a second.

17 How is that relevant to my issues, Mr. Thomas?

18 MR. THOMAS: It's frame of mind.

19 THE COURT: whose frame of mind, sir?

20 MR. THOMAS: The defendant's.

21 THE COURT: And how is that relevant to
22 post-separation stipulated adultery, divorce, on the
23 grounds of a one year's continuous separation, whether
24 property is or is not marital, support and costs? How
25 is her state of mind relevant to that inquiry?

1 MR. THOMAS: Okay. This is where it gets
2 confusing for me. Up until 10 days ago the defendant
3 has rigorously asserted physical cruelty. I prepared a
4 defense on that. I find out today that I'm not going
5 to be able to present my case. My case was totally
6 railroaded today.

7 And I have asked for continuances to prepare. I
8 didn't cite this as a reasoning because I didn't
9 realize just how much detrimental harm had occurred. I
10 mean, she made the pleadings. I asserted my right to,
11 a right to confront those pleadings. I sought the
12 protection of the doctrine of completeness, opening the
13 door, she raised the issues. And I don't have a case
14 now.

15 So I am asking to enter the CD. I'm asking to
16 enter all these evidences of hearsay. And in the
17 interest of judicial economy, all of these witnesses
18 are going to be called again for a PCR, every single
19 one of them. Right now --

20 THE COURT: And, Mr. Thomas, that's another
21 court.

22 MR. THOMAS: I understand.

23 THE COURT: And those issues may frankly be
24 relevant in that court. But in this court, those
25 issues that I just delineated are all that are before

1 me.

2 MR. THOMAS: But they were relevant until she
3 withdrew her pleadings today.

4 THE COURT: And I understand, Mr. Thomas, that
5 you are upset that you have expended all this time and
6 considerable effort in preparing a defense. But there
7 is now nothing to defend. She has withdrawn those
8 causes of action.

9 MR. THOMAS: You know, it's arbitrary
10 punishment. I mean this could have been done months
11 ago. I pleaded with her to correspond with me, to
12 let's litigate these matters. I raised motions, they
13 wouldn't hear the motions. They drug it out to the
14 last minute. What was it? To try to make a mockery of
15 me and the Court? I mean to make a fool of me? That's
16 what's happened here.

17 I am trying to pursue my rights under the
18 constitution to confront these allegations. They have
19 been published. And all of the sudden now, well, you
20 know, everybody here, all these witnesses that have
21 come are sitting back thinking about how I have wasted
22 their time because this attorney used a -- used these
23 underhanded efforts to derail my case and make me look
24 like a fool in front of the Court.

25 And it's very upsetting. I would ask for a

1 continuance based on that in order that I can prepare a
2 proper case.

3 THE COURT: Mr. Thomas, I can assure you I do
4 not view you as a fool.

5 MR. THOMAS: Well I certainly feel like one.

6 THE COURT: Do you want to question Ms. Cook?

7 MR. THOMAS: I don't know how to proceed. I
8 mean everything that I spent four years planning is
9 shot. I don't know, every question I ask she shoots me
10 down. She can lie in court, and she can --

11 THE COURT: Mr. Thomas, I'm going to have to ask
12 you to calm down.

13 She can object. Whether or not Mr. Cook is
14 allowed to answer is my decision to make. So if you
15 want to ask Ms. Cook questions, go ahead ask them. If
16 Ms. Hensley has an objection I will hear her and then I
17 will rule. Ms. Cook may or may not be able to answer
18 them.

19 We will take it one question at a time, sir.

20 Q (By Mr. Thomas) Okay. I have a CD, you confirm
21 its contents?

22 A Yes.

23 MR. THOMAS: I'm asserting that it's a frame of
24 mind that shows, a term that eludes me, presence sense
25 of mind, state of mind, and I would like to enter it

1 into evidence. Shows the -- to demonstrate what kind
2 of circumstance this is, and what it all evolves
3 around. I don't know how to set the foundation for it
4 now.

5 THE COURT: He is asking that the CD of certain
6 phone calls be admitted, Ms. Hensley.

7 MS. HENSLEY: And I'd object on lack of
8 foundation and lack of relevance, Your Honor. And I
9 think that it's all -- my understanding of the phone
10 conversations is that they all occurred prior to June
11 6, 2006, and therefore aren't relevant based on your
12 ruling with regard to the defense of condonation.

13 THE WITNESS: May I say something?

14 THE COURT: Ma'am, this is again what we talked
15 about earlier. They're making legal arguments, so Mr.
16 Thomas is fully capable of making that argument. Once
17 I hear his argument, I will instruct as to whether or
18 not you can answer. I'm not trying to cut off, there
19 are just certain procedures that must be followed.

20 What is your response, sir, to Ms. Hensley's
21 objection?

22 MR. THOMAS: Well it's a speculation on the date
23 of the conversation. It has been admitted that we had
24 conversations after I was arrested. So she can't prove
25 conclusively that it was before 2006, nor can I prove

1 it was afterwards.

2 THE COURT: Well I will sustain the objection
3 with prior conversations of 6/6/06. If you can show
4 any conversations after 6/6/06, we will address those
5 separately, sir.

6 MR. THOMAS: Okay.

7 Q (By Mr. Thomas) After my arrest on June 7th of
8 2006, I had a preliminary hearing. Did you attend that
9 hearing?

10 A Yes.

11 Q Did anything unusual take place during the
12 course of that hearing?

13 MS. HENSLEY: And, Your Honor, I just object as
14 to relevance.

15 THE COURT: How is it relevant to the issues
16 before me?

17 Again, Mr. Thomas, I realize it might be
18 relevant in another court. I'm questioning how it's
19 relevant in this Court, sir.

20 MR. THOMAS: Well now I'm thinking that it might
21 be leading. But the purpose of the question is --

22 THE COURT: Well that's for her to object to,
23 not you.

24 MR. THOMAS: Okay. Well the defendant's mother,
25 Kathy Maree, persuaded me to sign an authorization for

1 her to go to our shared residence at the InTown Suites
2 to retrieve the defendant's clothing and personal
3 effects.

4 THE COURT: So are you telling me that you did
5 not separate on June 6th, 2006?

6 MR. THOMAS: No, I'm saying we did. I'm saying
7 that when I was arrested and we had the preliminary
8 hearing she, on the pretext of getting Rachel's
9 clothes, Ms. Crowley's clothes, she stole everything I
10 owned.

11 MS. HENSLEY: If it's regarding property, Your
12 Honor, then I think it's relevant and I withdraw my
13 objection.

14 MR. THOMAS: Thank you.

15 THE COURT: She's withdrawn. You may answer the
16 question, ma'am.

17 Q (By Mr. Thomas) So did anything unusual take
18 place during the course of my preliminary hearing that
19 day?

20 A After the hearing Rachel's mother, Kathy Maree,
21 did approach me.

22 Q Can you point Ms. Maree out in the courtroom,
23 please?

24 A Yes, back row.

25 MR. THOMAS: Let the record reflect that Ms.

1 Maree has been identified.

2 Q (By Mr. Thomas) What did Ms. Maree tell you?

3 MS. HENSLEY: And I object as to hearsay, Your
4 Honor. She is not a party.

5 THE COURT: That one is sustained. You cannot
6 tell me anything she told you, you may testify as to
7 what you did as a result of the conversation, ma'am.

8 MR. THOMAS: I would submit it's an admission,
9 they were discussing personal effects.

10 MS. HENSLEY: Objection, Your Honor.

11 MR. THOMAS: An exclusion to the hearsay rule
12 under the admission. It's not offered for the truth,
13 it's just the fact that she approached her and said
14 that she had taken the computer. We are confirming
15 that she approached her at the hearing.

16 THE COURT: She's already testified that she
17 approached her, sir. That's in the record.

18 MR. THOMAS: Okay. All right.

19 Q (By Mr. Thomas) After that encounter with Ms.
20 Maree, were you compelled to take any specific action?
21 Did you take any action as a result of that encounter
22 with Ms. Maree?

23 A I talked to your attorney, Tommy Bolus, I talked
24 to him about it.

25 Q And what did you tell him took place?

1 A That she had asked me --

2 MS. HENSLEY: Objection, Your Honor, hearsay.

3 THE COURT: Your response, Mr. Thomas?

4 MR. THOMAS: It's an admission. It's what she
5 told her. She's reporting to my attorney what took
6 place.

7 So basically I have got testimony during the
8 deposition that they are saying the computer was a
9 marital asset, and that they are admitting --

10 THE COURT: Hang on one second for me.

11 Are you claiming a computer is a marital asset?

12 MS. HENSLEY: Am I?

13 THE COURT: Yes.

14 MS. HENSLEY: Oh, no, Your Honor.

15 THE COURT: They're not claiming that a computer
16 is a marital asset, sir.

17 MR. THOMAS: They did in the deposition.

18 THE COURT: Well they're not here today. This
19 is what counts, what they claim before me so that's not
20 at issue. They say the computer is not marital.

21 MR. THOMAS: I can only say I wish I would have
22 been prepared for finagling, not from you. But, boy,
23 she's a tricky one

24 THE COURT: And I appreciate the fact, Mr.
25 Thomas, but I can only rule on what is before me.

1 MR. THOMAS: Yes, she is --

2 THE COURT: I can only rule on the testimony.

3 MR. THOMAS: -- caprice. I don't know where to
4 go because every time I try to challenge something they
5 say, she retracts it. And then here I am trying to
6 assert a defense against something now she doesn't
7 assert as being an issue.

8 THE COURT: I understand --

9 MR. THOMAS: So how do I proceed if that's the
10 way she is going to continue to conduct this trial?

11 THE COURT: Mr. Thomas, I understand. As I told
12 you before I read very little, I know very little, I'm
13 a clean slate.

14 You're, I think, trying to defend against things
15 that I don't even know about. So let's just proceed on
16 the issues before me that I have delineated for you
17 several times, okay?

18 You can question her if you wish, sir.

19 MR. THOMAS: Okay. Let me run through these.
20 And then I'm going to ask, because I think my best step
21 is probably to testify myself.

22 THE COURT: You are free to do that. Do you
23 want to conclude Ms. Cook's testimony?

24 MR. THOMAS: I want to run through, and then I'd
25 like to ask for the opportunity to recall her as a

1 witness.

2 THE COURT: You may do that.

3 MR. THOMAS: Okay. Let me go ahead and run
4 through what I have here now, and then I will go ahead
5 and lay the facts out on the table.

6 Q (By Mr. Thomas) There is an Exhibit 58 that is
7 your affidavit. You brought a copy, you brought the
8 original with you today?

9 A Yes.

10 MR. THOMAS: I'd like to enter that into
11 evidence.

12 Q (By Mr. Thomas) Is it true and accurate to the
13 best of your knowledge and belief?

14 A Yes.

15 MR. THOMAS: Your Honor, may I enter Exhibit 58,
16 her affidavit, into evidence?

17 THE COURT: There are no exhibits at this time
18 so I'm not quite sure what Exhibit 58 means.

19 MR. THOMAS: I apologize. I have got 170
20 exhibits in this case.

21 THE COURT: Okay. There is an affidavit from
22 Ms. Cook --

23 MR. THOMAS: Yes, ma'am.

24 THE COURT: -- are you aware of that affidavit,
25 Ms. Hensley?

1 MS. HENSLEY: I actually have several and so I'm
2 not sure exactly. If he could tell me the date of the
3 affidavit so I can ensure that I'm on the right one.

4 MR. THOMAS: I can give you the page number for
5 the revision of exhibits if that would help.

6 MS. HENSLEY: If he could tell me the date it
7 was signed.

8 MR. THOMAS: January 7th, 2011. Falls on pages
9 23 through 26 of the revised exhibits in support. Then
10 she executed another affidavit on April 4th, 2012 that
11 I have labeled Exhibit 161. It falls on pages 323
12 through 324 of the revised exhibits in support.

13 THE COURT: Ma'am?

14 MS. HENSLEY: Your Honor, with regard to the
15 January 7th, 2011 affidavit I would argue that the
16 affidavit contains in Paragraph 3, hearsay about Mr.
17 Bolus; in Paragraph 4, hearsay by Kathy Maree; in
18 Paragraph 6, hearsay by Mr. Bolus; in Paragraph -- and
19 that paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,
20 17, 18, 19, and 20 are all irrelevant to this
21 proceeding and concern Mr. Thomas's trial in general
22 sessions court in 2008.

23 So I don't have any objection to paragraphs 1 or
24 2 -- well 1.

25 THE COURT: Mr. Thomas, she is here and

1 available to testify. Do you not want to simply ask
2 her the questions to elicit the testimony you desire?

3 MR. THOMAS: She will just back out of whatever
4 it is I'm doing. I don't stand a chance. I'd really
5 like to enter it into an exhibit.

6 THE COURT: And how is this affidavit admissible
7 when the witness is here to testify, other than for
8 purposes of impeachment, sir?

9 MR. THOMAS: Your Honor, I don't know where I
10 am. I am lost. I had a case. She snatched it right
11 out from underneath me. I've asked for a continuance.
12 I have been railroaded.

13 I will do this. I will cite, because I didn't
14 think it would be necessary to do so, but I don't see
15 where I have any option but to cite my right.

16 Okay, I'd like to put on the record that the
17 United States Supreme Court has consistently held that
18 they do not impose on persons unlearned in the law the
19 same high standards of the legal art that they might
20 place on the members of the legal profession. That
21 would Pollard versus United States, 352 U.S. 354, pin
22 cite 365, 1957.

23 Pro se litigants are held to less stringent
24 standards than formal pleadings drafted by lawyers,
25 Haines versus Kerner, 404 U.S. 519, pinpoint 523, 1972.

1 As a pro se litigant, the plaintiff's pleadings are
2 accorded liberal construction and are held to less
3 stringent standard than formal pleadings drafted by
4 lawyers. Erikson versus Partis (phonetic), 331 U.S.
5 89, pinpoint 94, 2007. Gordon versus Leeke, 574 F.2d
6 1147, pinpoint 1151, Fourth Circuit.

7 When the United States Supreme Court
8 annunciated, announces a rule based upon the 14th
9 Amendment, that rule is binding upon state courts
10 through the supremacy clause. Keeler versus Mauney,
11 that's 500 S.E.2d 123, pinpoint 125, South Carolina
12 Court of Appeal, 1998. Citing Henry versus City of
13 Rock Hill 376 U.S. 776, 1964, United States Supreme
14 Court.

15 THE COURT: Okay.

16 MR. THOMAS: Having said that, based on the fact
17 that I am a pro se litigant, and that my case has been
18 derailed, and I don't know where to go, I don't know
19 where to turn, it's unfair, I'm not getting a fair
20 trial.

21 I would think that Rule 6(D), giving not later
22 than 10 days notice to a person was promulgated for the
23 exclusive purpose of allowing a litigant the
24 opportunity to prepare a proper defense. I haven't
25 bend afforded that.

1 My due process right, equal protection, and my
2 right to meaningful access to the courts, as I have
3 stipulated previously under Sections 322 of the State
4 Constitution, and the United States Constitution under
5 the 14th Amendment, I feel are clearly being violated
6 here.

7 On those grounds, I would move for a continuance
8 to give me the opportunity to prepare a proper defense.
9 And that the Court ask that the defendant's attorney
10 set forth a conclusive course of action where I can be
11 prepared for it and I can respond accordingly.

12 And that is where I stand. And I will continue
13 to try to hash out questions that won't be snatched out
14 from underneath me again if you wish. But, every
15 corner I turn I'm getting my head whacked off. And
16 it's just, I don't know what to do.

17 THE COURT: Mr. Thomas, I don't really
18 appreciate the head whacked off comment. I'm trying my
19 best to let you articulate your case.

20 MR. THOMAS: You are, thank you.

21 THE COURT: With respect to your pleadings, sir,
22 and the cases that you cited and the liberal
23 construction and the leniency given to pro se
24 litigants, your pleadings are up there with lawyers'
25 pleadings. They are fine. I have no problem with your

1 pleadings. There are in perfect form, sir.

2 Apparently you feel you have been deprived the
3 opportunity to present a defense, but the defense would
4 be to causes of action which are not being tried by
5 this Court.

6 MR. THOMAS: Well, Your Honor, if I may?

7 THE COURT: Yes, sir.

8 MR. THOMAS: I do carry a copy of the Rules of
9 Professional Conduct, and there is no doubt in my mind
10 that I can pinpoint specific rule violations that are
11 being perpetrated against me. Because I --

12 THE COURT: Hang one on second. Hang on one
13 second. By this Court or by an attorney?

14 MR. THOMAS: No, no, by the attorney.
15 Absolutely. You have been very fair and I'm grateful
16 for that. I want to commend you on your magnanimity.
17 I'm very, very appreciative of that.

18 THE COURT: I appreciate that, Mr. Thomas.

19 MR. THOMAS: Absolutely. I'm glad you brought
20 that forth. I want to make that clear.

21 THE COURT: I appreciate that. Having said
22 that, if you have any violations that you believe to
23 have occurred, or you allege to have occurred, I know
24 you don't want to hear me say that, but this is not the
25 forum for those issues to be addressed. There is

1 another forum for those issues to be addressed.

2 Please understand what I'm doing here today,
3 just those issues which we have enumerated. And I will
4 be glad to let you defend those issues. She is
5 objecting to you defending issues that are not before
6 this Court, and that is a proper objection, Mr. Thomas.

7 MR. THOMAS: With --

8 THE COURT: But you may question Ms. Cook. You
9 may ask her whatever questions you deem necessary. I,
10 of course, am required to hear objections.

11 But as far as giving you leniency, I think you
12 will agree I have bent over backwards to try to hear
13 everything you have wanted me to hear.

14 MR. THOMAS: You have, Your Honor. And I
15 appreciate that.

16 THE COURT: You're welcome, sir. And I
17 appreciate your professionalism.

18 Ask Ms. Cook another question. Let's see where
19 we go.

20 MR. THOMAS: Well, in conclusion to what we were
21 just discussing, I am convinced that there is not a
22 soul in this courtroom that would believe for one
23 minute that if I had been a practicing lawyer that she
24 would have bushwhacked me like she has done. This is a
25 bushwhacking. She is hiding in the bushes over there.

1 THE COURT: I don't know, Mr. Thomas.

2 MR. THOMAS: I do.

3 THE COURT: That's not an appropriate comment
4 for this Court.

5 MR. THOMAS: I understand.

6 THE COURT: She is following the rules. I am
7 trying to give you as much leniency as I can and stay
8 within the rules, sir. We are all trying to do the
9 best we can here today.

10 Do you want to question Ms. Cook anymore, or do
11 you want to testify?

12 MR. THOMAS: Yes, I do. I just can't imagine
13 the disarray a court would be in if they would allow
14 them to bushwhack each other like that, would be
15 pandemonium.

16 All right, having said that I would renew my
17 motion for a continuance based on the argument that I
18 presented, and I would like that preserved for
19 appellate review.

20 THE COURT: It is preserved, Mr. Thomas.

21 MR. THOMAS: Thank you.

22 Q (By Mr. Thomas) Okay. We had a hearing, is
23 this leading, we had a hearing on the 10th of
24 September. Were you present at that hearing?

25 A Yes.

1 Q Okay. What time did you arrive at that hearing?

2 MS. HENSLEY: I would object as to relevance,
3 Your Honor.

4 THE COURT: Again, Mr. Thomas, the issues before
5 me, divorce on the grounds we've talked about; whether
6 there is or isn't marital property; fees and costs in
7 support.

8 Is that relevant to those issues? It may be
9 relevant in another forum. Again, this is not your
10 forum to hear everything. This is your forum on the
11 divorce, and those issues attached to the divorce.

12 MR. THOMAS: Okay, why don't we do this. Let's
13 recall my mother, or Ms. Cook, for testimony, if I can
14 do it, and I'd like to go ahead and take the stand.

15 THE COURT: Certainly. Ma'am, you may step down
16 for the moment. Hang on one second.

17 MS. HENSLEY: Did you want me to reserve my
18 cross-exam until?

19 THE COURT: Absolutely. She is just stepping
20 down. We're just breaking direct is all we are doing.
21 He hasn't completed his direct examination of Ms. Cook.

22 MR. THOMAS: Actually, let me run through the
23 order of testimony because.

24 THE COURT: You want her to go back on the
25 stand?

1 MR. THOMAS: No, no. McGuire, he managed to
2 pull it out. Dr. Andrea Mendelsohn, is she here?

3 A VOICE: Yes.

4 THE COURT: Dr. Mendelsohn is here. You want to
5 call her at this time?

6 MR. THOMAS: Okay. Well before I do, the
7 interrogatories indicated that the defendant sought
8 treatment at --

9 MS. HENSLEY: Your Honor.

10 THE COURT: Hang on a second.

11 MS. HENSLEY: That's an issue that has been
12 ruled on by Judge Woods, Your Honor.

13 THE COURT: What issue? What is the issue? Let
14 me hear what the issue is, Mr. Thomas. What's the
15 issue?

16 MR. THOMAS: Well, I asked what the dates were
17 that she was a patient at the Franklin Center, but she
18 never responded. And I don't know if it was before or
19 after the 6th, and it goes to state of mind and
20 possibly creditability.

21 But she is called here. I hate wasting the
22 doctor's time. It was my intention to get all the
23 doctors in and out of here as quickly as possible. So
24 let's do that.

25 THE COURT: Do you have an objection to the

1 doctor being called?

2 MS. HENSLEY: Oh, I don't have an objection to
3 that, Your Honor. Just that I thought he was raising
4 again the issue that discovery wasn't responded to
5 completely, and that issue had been resolved.

6 THE COURT: He is just calling the doctor at
7 this time. Correct?

8 MR. THOMAS: Yes, ma'am

9 THE COURT: Okay. Doctor, if you come over here
10 and take the witness stand for me, please.

11 Left hand on the Bible for me, raise your right.

12 Do you swear or affirm that the testimony you
13 will give will be the truth?

14 THE WITNESS: I do.

15 THE COURT: Have a seat in the witness chair,
16 ma'am.

17 I would ask that you state your full name for
18 me, please.

19 THE WITNESS: Andrea Sarah Mendelsohn.

20 THE COURT: Spell you last name for my Court
21 Reporter.

22 THE WITNESS: M-E-N-D-E-L-S-O-H-N.

23 THE COURT: Thank you, ma'am.

24 You may question her, sir.

25 MR. THOMAS: Okay. I'd like to please note to

1 the Court there has been no prior contact, prepared
2 testimony.

3 ANDREA SARAH MENDELSON,
4 after having first been duly sworn to tell the truth,
5 the whole truth and nothing but the truth testified on
6 her oath as follows:

7 DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q Dr. Mendelsohn, have you had any contact with
10 the defense counsel?

11 A I saw her once at the Franklin Center Clinic on
12 Johns Island.

13 Q Can you reveal what date that was?

14 A December 6th, 2011.

15 Q Can you reveal the context of that conversation?

16 A I did a pap smear.

17 Q I'm referring to the defense counsel, I
18 apologize, I wasn't --

19 A Right. It was a well woman visit, I did a pap
20 smear.

21 Q No, I'm referring to the defense counsel, her
22 lawyer. Has she contacted you?

23 A No. I phoned her once when I received the
24 subpoena just to find out whether or not my testimony
25 was necessary. And she -- and that was it.

1 Q Okay. So your examination had nothing to do
2 with any physiological exams, emotional disorders or
3 anything of that nature?

4 A No.

5 Q Okay. And you are saying that other than
6 confirming the need for your testimony, that was all
7 that was discussed between Ms. Hensley and yourself?

8 A Correct.

9 Q Okay. I apologize for bringing you down here.

10 MR. THOMAS: Let the record reflect that I
11 sought records and dates to elude the inconvenience of
12 subpoenaing witnesses for testimony that wouldn't be
13 necessary, however she was evasive and refused to.

14 MS. HENSLEY: Just object to the plaintiff's
15 testimony, Your Honor.

16 THE COURT: Well how --

17 MR. THOMAS: Thank you very much for coming and
18 I apologize for your inconvenience.

19 THE COURT: Any questions of the doctor?

20 MS. HENSLEY: Just very briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. HENSLEY:

23 Q Dr. Mendelsohn, you did speak to me about the
24 subpoena, correct?

25 A Uh-hum.

1 Q And I told you that you were required to appear
2 to testify in this case?

3 A Correct.

4 MS. HENSLEY: That's all the questions I had,
5 Your Honor.

6 THE COURT: Any further questions?

7 MR. THOMAS: No, Your Honor, thank you.
8 Thank you for coming.

9 THE COURT: Thank you, Doctor. May she be
10 excused, Mr. Thomas, from the subpoena?

11 MR. THOMAS: Yes, ma'am, she may.

12 THE COURT: Any objection to her being excused?

13 MS. HENSLEY: None, Your Honor.

14 THE COURT: Thank you, Doctor. You're free to
15 go.

16 THE WITNESS: Thank you

17 THE COURT: All right, Mr. Thomas, who is next?

18 MR. THOMAS: Dr. Ruth DeHaven.

19 THE COURT: Is Dr. DeHaven present?

20 Do you have a subpoena and proof of service on
21 the doctor, sir?

22 MR. THOMAS: I do. Your Honor.

23 THE COURT: Sir.

24 MR. THOMAS: We have reporter Glenn Smith in the
25 courtroom. And I'm a little concerned about his

1 appearance here because he printed a lot of lies about
2 me in the paper. And I would like to make it known --
3 I'd like to put it on the record that his report this
4 time would reflect the truth as it is, and see if we
5 can eliminate any speculation.

6 I have got a lot of case law on reporters and
7 their duty to disclose the facts as they are.

8 THE COURT: And I'm sure you do, Mr. Thomas.
9 But again, how is that the purview of this Court?

10 MR. THOMAS: Well he is in here, and his purpose
11 is to try and destroy my credibility. It's going to be
12 quite a write-up, I'm certain, in the paper.

13 THE COURT: Destroy your credibility in this
14 Court?

15 MR. THOMAS: Well he is -- I observed him do a
16 story on a woman that was involved in a Mercedes
17 dealership. And the woman clearly had contacted him to
18 try to vindicate the acts that had been alleged against
19 her, however he just decimated the woman.

20 And I saw -- I initially contacted him with the
21 intention of enlightening him to the truth of the
22 matter. But after I read that full page where he
23 decimated that woman, I said all I would be doing is
24 setting myself up for more --

25 THE COURT: What is it you're --

1 MR. THOMAS: -- damaging. Well the problem is
2 he is here. And I don't like him being here because he
3 is not -- he does not -- he is not a man of integrity.
4 He is not interested in the facts, he is interested in
5 selling papers.

6 THE COURT: Well, Mr. Thomas, I don't know other
7 than this is a public courtroom and the public can
8 attend any and all proceedings in this court, with the
9 exception of an adoption.

10 So he is present, and he is a member of the
11 public, and he can stay in the courtroom.

12 MR. THOMAS: Okay. Well I just wanted to get it
13 on record.

14 THE COURT: It's on record, Mr. Thomas. Thank
15 you.

16 MR. THOMAS: Okay. This is the subpoena and the
17 affidavit of service for Dr. DeHaven.

18 THE COURT: Thank you.

19 This is Dr. Ruth DeHaven.

20 MR. THOMAS: Yes, ma'am.

21 THE COURT: D-E-H-A-V-E-N. I'm just spelling
22 that for the court reporter's benefit, Mr. Thomas.

23 Is 1249 Savannah Highway, Number A, Charleston,
24 South Carolina Dr. DeHaven's office or her residence,
25 sir?

1 MR. THOMAS: I'm sorry, did you say Savannah
2 Highway?

3 THE COURT: Yes, sir.

4 MR. THOMAS: That was the address that defense
5 counsel related to me in the response to my
6 interrogatories.

7 THE COURT: Well, do you want me to ask her
8 whether it's the residence or the office then?

9 MR. THOMAS: I'm presuming it was the office. I
10 have been there before with the defendant.

11 THE COURT: And was it on Savannah Highway?

12 MR. THOMAS: Yes, ma'am. It was in that little
13 strip.

14 THE COURT: I'm not from here so I don't know,
15 Mr. Thomas.

16 All right. Well it looks like according to this
17 affidavit that that was in fact the office. Do you
18 have any information, Ms. Hensley, that that is her
19 residence as opposed to her office?

20 MS. HENSLEY: It is certainly her office, Your
21 Honor. I have been there before.

22 THE COURT: It appears that there was
23 substituted service on a Randy Thompson. And
24 substituted service on an employee is not valid
25 substituted service. It's only valid substituted

1 service -- and I bet you know that, Mr. Thomas.

2 MR. THOMAS: Oh, absolutely. I was very
3 rigorous in my efforts to personally serve everyone.

4 THE COURT: It does not appear that Dr. DeHaven
5 has been properly served then with the subpoena.

6 You are nodding your head, so I assuming you
7 agree?

8 MR. THOMAS: Well I would move that the
9 proceedings, once the testimony has been given today
10 has concluded, that the proceedings be held in recess
11 until such time as she can be brought forth.

12 I realize I can't hold her in contempt, or seek
13 that she is held in contempt. I can compel her
14 attendance as it was properly served. That was a
15 deputy service there, am I correct?

16 THE COURT: No, I don't believe so, sir, because
17 I don't believe this is proper service. Substituted
18 service is, under the rules, a personal dwelling with
19 the person to be served over the age of discretion, not
20 an employee at the employment of the person to be
21 served.

22 MR. THOMAS: Yeah, that's what, 4(D)(1), SCRCP?
23 Yeah. Okay.

24 THE COURT: So I am afraid, Mr. Thomas, this is
25 not proper service of the subpoena. So the Court

1 cannot, based on this service, compel the attendance of
2 this doctor.

3 And I note for the record, this subpoena was
4 served on a Randy Thompson, parentheses employee, July
5 19, 2012 at the 11:05 a.m. That is not proper service.

6 MR. THOMAS: Okay, thank you.

7 THE COURT: Yes, sir. Who do you want to call
8 next?

9 MR. THOMAS: Dr. Mark LaRue.

10 THE COURT: Is Dr. LaRue present?

11 I see no response. Do you have a subpoena?

12 MR. THOMAS: I have a personal service and a
13 subpoena for Dr. LaRue.

14 THE COURT: Thank you, sir. May I see that?
15 And you may hand those back to Mr. Thomas. Thank you.

16 I have an affidavit of personal service on Dr.
17 Mark LaRue, L-A-R-U-E, on July 19th, 2012 at 2:00 p.m.

18 Would you sound in the hall for Dr. LaRue to see
19 if he is perhaps in the hallway? Thank you.

20 THE OFFICER: No response, Your Honor.

21 THE COURT: Only other question I would then
22 have of you, Mr. Thomas, is to make certain that this
23 subpoena was validly issued and validly served. It's
24 South Carolina Rules of Civil Procedure Rule 45(B)(1)
25 requires the tendering of one day's attendance fee of

1 \$25 and the mileage allowed by law. Was that attached?

2 MR. THOMAS: And I asked before if I could
3 compensate on the basis if that was necessary. But I
4 don't see that happening.

5 THE COURT: Did you ask this Court, or did you
6 ask --

7 MR. THOMAS: I asked you earlier and I made the
8 motion that I could compensate the witnesses
9 accordingly.

10 THE COURT: Are you asking me to issue a bench
11 warrant for the arrest of this doctor, sir?

12 MR. THOMAS: No, ma'am.

13 THE COURT: What are you asking me to do?

14 MR. THOMAS: I'm asking that the proceedings
15 upon completion of testimony today be held in recess
16 until such time as Dr. LaRue can be brought forth to
17 take his testimony

18 THE COURT: Let me ask Ms. Hensley. Have you
19 been contacted by Dr. LaRue at all?

20 MS. HENSLEY: I have not.

21 MR. THOMAS: Let me put it on the record. It's
22 not my intention to put anybody in jail. I wouldn't do
23 that to anybody.

24 THE COURT: I appreciate that, sir. But you
25 understand I cannot compel attendance unless a subpoena

1 has been complied with to the letter of the law.

2 Hold on one second, my deputy wants to show me
3 something.

4 (Whereupon, a discussion was held at the bench
5 off the record.)

6 THE COURT: Okay, let me address that then with
7 Mr. Thomas.

8 Mr. Thomas, my deputy tells me that you have two
9 witnesses, a Randy Harbeson.

10 MR. THOMAS: Yes, ma'am.

11 THE COURT: And a Crystal Martin. Both of which
12 are out in the hall. Both of which indicate to the
13 deputy they have young children that need to be picked
14 up from child care by 2 o'clock.

15 Are you going to need both of those or either of
16 those? And can we accommodate their child care
17 concerns?

18 If you tell me no, they're under a subpoena,
19 sir.

20 MR. THOMAS: Well I mean they're friends of
21 mine. I mean, how do I be cruel to someone like that.
22 I don't believe in creating unnecessary hardship. I
23 need their testimony.

24 If they want to leave, that will be fine. That
25 will be fine. I don't have a case here really anyway,

1 it has been wrecked. So I don't see any purpose in
2 making them suffer.

3 THE COURT: Are you releasing them from your
4 subpoena at this time, Mr. Thomas?

5 MR. THOMAS: Actually, I tell you what. I'd
6 like to go ahead and call Crystal Martin on in and let
7 her get her testimony over with.

8 THE COURT: That will be fine.

9 Call Ms. Martin in for me, please. Thank you

10 MR. THOMAS: I don't know why -- I apologize for
11 not -- it's becoming, what is it, hopeless feeling.
12 It's not a very comfortable feeling.

13 I used to want to be a lawyer. I don't think I
14 could do it. Not because of lack of intellect or
15 accomplishment, I just couldn't -- I'm not into that
16 blind-siding there

17 THE COURT: Are you Ms. Martin?

18 THE WITNESS: Yes.

19 THE COURT: Please come up here, ma'am.

20 Ma'am, if you will go over to the rail and
21 you'll see a Bible over there. If you'll place your
22 left hand on the Bible for me. Raise your right.

23 Do you swear or affirm the testimony you give
24 will be the truth?

25 THE WITNESS: Yes.

1 THE COURT: Have a seat in the witness chair for
2 me. Tell me your full name.

3 THE WITNESS: Crystal Martin.

4 THE COURT: Thank you, ma'am.
5 whenever you are ready, you may question her,
6 sir.

7 CRYSTAL MARTIN,
8 after having first been duly sworn to tell the truth,
9 the whole truth and nothing but the truth testified on
10 her oath as follows:

11 DIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q Hi, Crystal, thank you for coming.

14 MR. THOMAS: Okay, Your Honor, it just occurred
15 to me when I called her up, this goes along the lines
16 of condonation. Well I will begin questioning and I
17 will lead into that.

18 THE COURT: All right, sir.

19 Q (By Mr. Thomas) Crystal, you and I and your
20 husband have been friends for a number of years; is
21 that correct?

22 A Yes.

23 Q Okay.

24 MR. THOMAS: Crystal has an affidavit that's in
25 possession, my mother's possession. I'd like to have

1 the original brought forth and entered into evidence
2 after she confirms it is hers.

3 MS. HENSLEY: And I just object as to
4 bolstering, Your Honor. The witness is here, available
5 to testify, and I would object to any introduction of
6 an affidavit as improper bolstering of the witness.

7 THE COURT: You may ask her questions about
8 whatever you want to put in the record, sir. The
9 affidavit is not necessary and it is bolstering.

10 Go ahead and ask her questions.

11 MR. THOMAS: Can I use it to refresh her memory?

12 THE COURT: If she needs it refreshed.

13 MR. THOMAS: Okay. We will go along that line.
14 You probably recall the contents of it anyway. I am
15 going to pull it for my own refreshment, or to refresh
16 my own memory. Okay.

17 Q (By Mr. Thomas) During the month of January of
18 2008, there was an event that you were a party to. Can
19 you -- I believe you know to what I refer. Can you
20 tell the Court exactly what transpired on that day?

21 A We were having lunch, him and my husband, and
22 she came into the pizza restaurant and spoke to David
23 when he had an ankle monitoring on. And then she said
24 her mother was in the car and she left and was saying
25 to David that she wished she could talk to him and

1 misses him and then she left.

2 And then he called the ankle monitoring company
3 to tell them that she was near him.

4 Q Do you recall me revealing any other forms of
5 communication between Rachel -- excuse me -- Ms.
6 Crowley and I?

7 A She tried to hug you, but that was -- I don't
8 remember exact words, no.

9 Q And for the record, can you identify the
10 defendant in the courtroom please?

11 A Yes, right there.

12 MR. THOMAS: Okay. Let record the reflect Ms.
13 Martin has identified the defendant.

14 There was another issue that is listed in her
15 affidavit, and I don't know how to raise it without
16 being objected to as leading. So on that premise, I
17 would like to give her her affidavit and let her read
18 it to refresh her memory as to where I need to go next.

19 Unless Ms. Hensley is willing to waive the
20 objection to leading, then we can proceed. She knows
21 the content. The affidavit has been in court. It's in
22 the Court of Appeals.

23 THE WITNESS: I think I --

24 THE COURT: Hold on just a minute. They're
25 making legal objections now, let me hear them speak.

1 And then I will instruct you as to whether to answer.

2 THE WITNESS: Okay.

3 THE COURT: Why don't you ask the question and
4 see if there is an objection. Then we will go from
5 there, all right?

6 MR. THOMAS: Okay. I might get good at this
7 after all.

8 Q (By Mr. Thomas) Okay. I had a cell phone, as
9 ubiquitous, to say the least. At any rate, do you
10 recall me showing you anything on my cell phone that
11 had anything to do with the defendant?

12 A Yes. There was text messages and voice-mails
13 that you would tell me and Teddy that she was trying to
14 contact you, and missed you, and I don't remember
15 exactly what they said.

16 MR. THOMAS: Your Honor, I would move that that
17 would qualify as condonation. If she was seeking to
18 reunite, wouldn't that fall under the doctrine of
19 condonation?

20 THE COURT: Well, Mr. Thomas, condonation
21 eliminates grounds for divorce. Are you saying that
22 she --

23 MR. THOMAS: Oh, I see what you are saying. I'm
24 just trying to say -- I'm trying to move the date of
25 where I can bring my testimony to, that, I don't know,

1 it was just a Hail Mary. Thank you.

2 THE COURT: Yes, sir.

3 MR. THOMAS: I'm going to get the hang of it, I
4 hope.

5 THE COURT: Go ahead, sir.

6 MR. THOMAS: Okay. We'll get back to the
7 regular questions.

8 Q (By Mr. Thomas) why didn't you testify to this
9 attempt at her to reunite when my trial took place?

10 MS. HENSLEY: Objection, Your Honor, relevance.

11 THE COURT: How is that relevant to my
12 proceedings, Mr. Thomas?

13 It might be relevant to post-conviction relief,
14 but it's --

15 MR. THOMAS: It certainly is..

16 THE COURT: -- it's not relevant here, is it,
17 Mr. Thomas?

18 MR. THOMAS: Okay.

19 THE COURT: All right. I sustain --

20 MR. THOMAS: Well the pleadings allege, and she
21 didn't retract it, the defendant lives in fear of her
22 life. I don't recall her saying that.

23 Of course she will retract it now because she
24 sees I have a defense for it. But she alleged that the
25 defendant lives in fear of her life. I'm trying to

1 prove that she does not.

2 THE COURT: Well there was an agreement as to
3 mutual restraining orders, so that is no longer an
4 issue to be litigated, correct? You agreed to a
5 restraining order, she has agreed to a restraining
6 order.

7 MR. THOMAS: Right, but I mean the point being
8 that she is in fear of her life. That's why she takes
9 Xanax, she is emotionally disturbed because of what
10 happened to me.

11 MS. HENSLEY: I just object to the plaintiff's
12 testimony, Your Honor.

13 THE COURT: I will let you testify.

14 MR. THOMAS: Okay. All right.

15 THE COURT: I don't think it's relevant.
16 They've agreed there's mutual restraining orders. It's
17 no longer an issue.

18 MR. THOMAS: Okay.

19 THE COURT: Go ahead, Mr. Thomas.

20 Q (By Mr. Thomas) Have you ever seen me in an
21 adulterous relationship?

22 MS. HENSLEY: Objection, Your Honor, relevance.

23 THE COURT: She is not seeking a divorce --

24 Q (By Mr. Thomas) Okay. Have you ever seen me
25 strike anyone?

1 MS. HENSLEY: Objection, Your Honor, relevance.

2 THE COURT: Again, Mr. Thomas, the issues before
3 me are divorce only on her fault-based post-separation
4 adultery, and both of you are asking for the one year
5 divorce.

6 Physical cruelty is not an issue before this
7 Court.

8 MR. THOMAS: I might be able to help save some
9 time, if it pleases the Court. If I ask another
10 question that requires that response, then you can just
11 -- I will accept that, no, you can't ask that. And if
12 I ask you why then you -- that might help.

13 Because I'm probably going to ask a lot of
14 questions. So in the interest of judicial economy, we
15 will go ahead and go along those lines.

16 THE COURT: So you will accept a response of,
17 you cannot ask that.

18 MR. THOMAS: That will work for me.

19 THE COURT: And you will not consider that rude
20 on my part?

21 MR. THOMAS: No, ma'am. And if I need further
22 clarification, I will seek it.

23 THE COURT: We have an agreement, Mr. Thomas.

24 MR. THOMAS: Thank you very much.

25 THE COURT: Yes, sir.

1 MR. THOMAS: Okay. Now I've lost my place on
2 the affidavit. She objected to it being admitted; you
3 said ask her the questions.

4 I'm reasserting my request to enter it into
5 evidence as just that it's her statement. I don't see
6 where the harm would be. There are no grounds. It
7 doesn't hurt.

8 The only thing it does is it saves me from
9 having to bring this woman away from her small children
10 again during the course of the PCR, okay. If we can
11 get it admitted, she won't have to attend the PCR
12 hearing.

13 THE COURT: He is asking to have the affidavit
14 admitted again, Ms. Hensley.

15 MS. HENSLEY: And I object, Your Honor.

16 THE COURT: I sustain your objection.

17 And while I appreciate you want to save her
18 having to come to testify in another court proceeding,
19 that's just not the purpose of this Court, Mr. Thomas.
20 Thank you, though.

21 Do you have anymore questions?

22 MR. THOMAS: No, that's all, Crystal. Thank
23 you.

24 THE COURT: Any cross-examination, Ms. Hensley?

25 MS. HENSLEY: Just very briefly, Your Honor.

CROSS-EXAMINATION

BY MS. HENSLEY:

Q So, Crystal, you're a friend of Clark's; is that right?

A My husband was a friend, so that's how I met him, yes.

Q So you were aware of his separation from Ms. Crowley since June of 2006; is that right?

A Yes.

Q To your knowledge they have lived continuously separate and apart since June of 2006?

A I would assume -- yes.

MS. HENSLEY: That's all the questions I have, Your Honor.

THE COURT: Do you have any other questions of her, sir?

MR. THOMAS: No, Your Honor.

THE COURT: May she be excused at this time?

MR. THOMAS: Yes.

THE COURT: Any objection to her being excused?

MS. HENSLEY: None, Your Honor.

THE COURT: Thank you, ma'am. You are free to go and get your children.

THE WITNESS: Thank you.

THE COURT: Yes, ma'am.

1 who would you like to call next, Mr. Thomas?

2 MR. THOMAS: Okay.

3 Thank you, Crystal.

4 Larry Ballard.

5 THE COURT: Call for Mr. Ballard, please.

6 You go right over there, sir, to the Bible.

7 Left hand on the Bible for me, raise your right.

8 Do you swear or affirm the testimony you will
9 give will be the truth?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Have a seat in the witness chair for
12 me, sir. Full name for the record, please.

13 THE WITNESS: Larry Garner Ballard,
14 B-A-L-L-A-R-D.

15 THE COURT: Thank you, sir.

16 You may have question him, Mr. Thomas.

17 LARRY BARNER BALLARD,
18 after having first been duly sworn to tell the truth,
19 the whole truth and nothing but the truth testified on
20 his oath as follows:

21 DIRECT EXAMINATION

22 BY MR. THOMAS:

23 Q Thank you for coming, Mr. Ballard. I'd like to
24 ask, the objective GPS monitoring when it's ordered by
25 the Court.

1 A You would like to -- ask that again?

2 MS. HENSLEY: Objection, Your Honor, as to
3 relevance.

4 THE COURT: She is objecting to relevance, Mr.
5 Thomas. How is this relevant?

6 MR. THOMAS: Well it goes towards being -- it
7 relates to -- it supports Crystal Martin's testimony
8 that Ms. Crowley approached me in the restaurant.

9 And that the whole purpose of my bond was that
10 we didn't get in contact with each other. She went
11 around expressing that she was in fear of her life, yet
12 she wasn't carrying the device to warn of my close
13 proximity to her.

14 So I'm just trying to establish that firmly that
15 she has never been in fear of her life.

16 THE COURT: How is that relevant to my issues?

17 MR. THOMAS: I think that no is probably where
18 we are coming in here.

19 THE COURT: All right.

20 MR. THOMAS: Okay.

21 THE COURT: I sustain the objection. Move on,
22 Mr. Thomas.

23 MR. THOMAS: All right. Well I'm going to make
24 the observation that it's to keep us separated.

25 Because she alleged she --

1 MS. HENSLEY: Your Honor, I just object to the
2 testimony.

3 THE COURT: Just ask him questions, Mr. Thomas.

4 MR. THOMAS: Okay.

5 Q (By Mr. Thomas) Can you confirm the date in
6 which we met and I was placed on the satellite
7 monitoring?

8 MS. HENSLEY: I object as to relevance, Your
9 Honor.

10 THE COURT: Can you make an argument that this
11 is relevant, Mr. Thomas?

12 MR. THOMAS: well, you know, I know for a fact I
13 could if I had just a little time, a few days to
14 research and pull some law keys, and read some case law
15 and get into the rules of professional conduct, try to
16 figure out a way to keep her from changing her pleas so
17 randomly. So I guess, let me think for a moment.

18 THE COURT: Yes, sir.

19 MR. THOMAS: I mean, I'm an electrical
20 contractor by trade. I have been practicing law for
21 four years pretty diligently, and I'm going into a lot
22 of areas of it. And I wasn't prepared for this. I
23 just didn't see this kind of conduct coming.

24 Q (By Mr. Thomas) Did I ever violate the terms of
25 my monitoring?

1 A No.

2 Q Do you recall writing a letter confirming a
3 phone call to your office with regard to the testimony
4 Ms. Martin gave previously?

5 A Yes, I confirm that you did make a telephone
6 call to my office.

7 MR. THOMAS: May I enter that letter into
8 evidence? I have the original here. It's marked as an
9 exhibit.

10 MS. HENSLEY: I just object as to improper
11 bolstering, Your Honor.

12 MR. THOMAS: No?

13 THE COURT: Just ask him the questions, see if
14 he will testify to it, Mr. Thomas. Overruled -- excuse
15 me, sustained.

16 Ask him the questions. He may be able to
17 testify to it.

18 MR. THOMAS: We are getting a little tiny thing
19 in, aren't we.

20 Q (By Mr. Thomas) Okay. So you did write a
21 letter, and you confirmed that I made a complaint that
22 I had spent 4- or \$5,000 to ensure that I remained
23 outside of the 10-mile proximity of Ms. Crowley. And
24 you confirm that you did write that letter, receipt of
25 that phone call.

1 I have read the papers recently, and I know you
2 are familiar with the article that I read, and I want
3 to clarify that the problems with the satellite
4 monitoring system right now is not --

5 MS. HENSLEY: Objection, Your Honor.

6 THE COURT: Let him finish his question, then I
7 will hear your objection.

8 Q (By Mr. Thomas) -- is not that you are not able
9 to track movements, but rather the supervision of those
10 movements has not been observed as it should have been.
11 Is that a correct statement?

12 THE COURT: Just one moment.

13 MS. HENSLEY: Now I object on the grounds of
14 relevance.

15 THE COURT: Again, Mr. Thomas, this is simply
16 not relevant. Your objection is sustained.

17 MR. THOMAS: Okay.

18 THE COURT: Does he have any testimony to offer
19 to the issues before this Court? I know you may have
20 some issues before another court, but this Court, Mr.
21 Thomas...

22 You can't use the Family Court as a discovery
23 tool for post-conviction relief or appeals. You just
24 can't do that.

25 MR. THOMAS: well it was my understanding when

1 she was pleading that I had to -- see, her pleadings --

2 THE COURT: I know. I know.

3 MR. THOMAS: I demand strict proof. I brought
4 strict proof and now she's saying she doesn't want it
5 anymore and my case goes out the window.

6 Did you read that in the amended complaint, the
7 answer to it? I demand strict proof that she
8 fabricated the allegations. I came here with strict
9 proof and she says, oh, we don't want it anymore.

10 THE COURT: I understand that's your position.

11 MR. THOMAS: Okay. I just want everybody that's
12 here to know.

13 THE COURT: I understand your position. But my
14 question is, does Mr. Ballard have any relevant
15 testimony for the issues before this Court? Not the
16 PCR court, this Court?

17 MR. THOMAS: Okay.

18 Can he confirm how much I spent on my satellite
19 monitoring? Is that something that we can do?

20 MS. HENSLEY: And I would just argue that it's
21 not relevant to any issue in this Court, Your Honor, as
22 it had to do with the general sessions case.

23 THE COURT: This Court, Mr. Thomas.

24 MR. THOMAS: Okay.

25 THE COURT: I sustain the objection.

1 Q (By Mr. Thomas) Okay. So we are conclusive
2 that I never violated the terms, and you received a
3 phone call about my encounter with Ms. Crowley?

4 A That's correct.

5 MR. THOMAS: Okay. I apologize for wasting your
6 time. There was a case here, as I'm sure you've
7 observed. But at any rate, thank you very much.

8 THE COURT: Cross-examination, Ms. Hensley?

9 MS. HENSLEY: No questions for Mr. Ballard, Your
10 Honor. Thank you.

11 THE COURT: Thank you, sir.

12 May he be excused, Mr. Thomas?

13 MR. THOMAS: Absolutely. Thank you again, sir.

14 THE COURT: Ms. Hensley?

15 MS. HENSLEY: Yes.

16 THE COURT: Mr. Ballard, you are free to go.
17 Thank you so much. Have a nice day.

18 THE WITNESS: Thank you.

19 THE COURT: Who is next, Mr. Thomas?

20 MR. THOMAS: Randy Harbeson.

21 THE COURT: Left hand on the Bible, raise your
22 right.

23 Do you swear or affirm that the testimony you
24 will give will be the truth?

25 THE WITNESS: Yes, I do.

1 THE COURT: Have a seat in the witness chair.
2 Tell me your full name, sir.

3 THE WITNESS: Thomas Randall Harbeson.

4 THE COURT: Spell you last name for my court
5 reporter.

6 THE WITNESS: H-A-R-B, as in Bob, E-S-O-N.

7 THE COURT: Thank you.

8 Whenever you're ready, sir.

9 MR. THOMAS: Thank you.

10 THOMAS RANDALL HARBERSON,
11 after having first been duly sworn to tell the truth,
12 the whole truth and nothing but the truth testified on
13 his oath as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q Hey, Randy, thanks for coming.

17 A Not a problem.

18 Q As I'm sure you've observed, there was quite a
19 case prepared. But at any rate, I don't know where to
20 begin with you, so I'm going to try something here new.

21 You've heard how restricted my testimony is.
22 You know the facts. You know what is going on here.
23 You know the truth. I'm not going to be permitted to
24 reveal it today. It was my intention to avoid doing
25 this a second time. It was really in the interest of

1 judicial economy.

2 Having said that, is there anything that you can
3 think of that you can reveal to this Court that can
4 help me with regard to the action at hand?

5 I mean character evidence is not allowed.

6 A I honestly believe, David, your next case is
7 going to be incredible and you should call me for that.
8 I think that that's where I would be most helpful for
9 you.

10 But in the case of your divorce here, your
11 question to me, get a divorce. Go to the next case.
12 You will be phenomenal.

13 Q I thank you for that. Like I say, it wasn't my
14 intention to waste your time.

15 A I could give character references, and things
16 that I have seen on behalf of you all's relationship.
17 But in the end, I think that's going -- you're going to
18 get a divorce. Get one.

19 Q Yeah. Well it was, like I said, a
20 straightforward --

21 A I know. Do your next case is what you've got
22 sitting on your desk.

23 Q Well I thank you for coming. And I apologize
24 for wasting your time.

25 A I love you, brother. I do.

1 Q Thank you.

2 A And call me anytime.

3 Q Thank you very much.

4 THE COURT: Any questions, Ms. Hensley?

5 MS. HENSLEY: Just briefly, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. HENSLEY:

8 Q So, Mr. Harbeson, you're familiar with the
9 marriage between Clark Thomas and Rachel Crowley; is
10 that right?

11 A Yes.

12 Q And you are also familiar with the fact that
13 they have been separated since at least June of 2006?

14 A Yes.

15 Q You have a close enough knowledge of Mr. Thomas
16 that you would know if they had been reconciled at any
17 time since June 6, 2006?

18 A No.

19 Q You don't have a close enough relationship with
20 him?

21 A No, I do have a close enough relationship with
22 him. I took myself out of the equation as things got
23 to a degree that it was unbearable to be around the two
24 of them.

25 MS. HENSLEY: That's all the questions I have,

1 Your Honor. Thank you.

2 THE COURT: Any other questions?

3 MR. THOMAS: No, Your Honor, thank you.

4 THE COURT: Thank you, Mr. Harbeson, you may
5 step down.

6 THE WITNESS: Thank you very much.

7 THE COURT: Is he released or?

8 MR. THOMAS: Yes, ma'am.

9 THE COURT: Any objection?

10 MS. HENSLEY: None at all.

11 THE COURT: You are free to go, but you are also
12 free to stay.

13 THE WITNESS: Thank you.

14 MR. THOMAS: The PCR is going to be awesome.

15 THE WITNESS: Take care.

16 MR. THOMAS: Thank you.

17 Dr. Steven Lopez.

18 THE COURT: Is Dr. Lopez present?

19 Would you sound the hall for Dr. Lopez for me?
20 Thank you.

21 You know my next questions, Mr. Thomas. Do you
22 have the subpoena and proof of service?

23 MR. THOMAS: Actually, he was just served the
24 other day and we hadn't received --

25 THE COURT: The other day meaning?

1 MR. THOMAS: Like within the last few days. We
2 have been trying to serve him for several weeks,
3 actually over a month. Some of these people we had to
4 serve three or four times. I tried personal service.
5 It has been quite an ordeal, to say the least. It's a
6 learning experience.

7 okay, well I don't have proof that I served him.
8 Can I ask that someone in my party go down to the
9 clerk's, down to the sheriff's office where they do the
10 subpoenas at?

11 THE COURT: They are free to come and go as they
12 wish to.

13 THE MOTHER: Is it Lopez? Which one, Lopez?

14 MR. THOMAS: Yeah. Did you get the subpoena
15 from the sheriff on that one yet?

16 THE OFFICER: No response, Your Honor.

17 MR. THOMAS: I mean he was served.

18 THE COURT: You can send someone to check if you
19 want, Mr. Thomas, that's fine. Just pick someone.

20 MR. THOMAS: Okay. Until such time --

21 THE COURT: Hang on one second. My deputy has a
22 question about a witness in the hall again.

23 (Whereupon, a discussion was held at the bench
24 off the record.)

25 THE COURT: Okay.

1 You served a subpoena on Ms. Abigail Meyers?

2 MR. THOMAS: She was to be excluded.

3 THE COURT: Okay. Then the answer to that
4 question is excused. Thank you so much.

5 THE OFFICER: Thank you.

6 THE COURT: Thank you, Mr. Thomas:

7 You do or do not have proof on Dr. Lopez?

8 MR. THOMAS: Well they're --

9 THE COURT: They're looking? Call someone else
10 while we do that.

11 MR. THOMAS: Yeah, okay.

12 Okay. You used a term with regard to my
13 deposition that I wasn't familiar with. Now I retained
14 Daniel Prenner to conduct these depositions and the
15 adversarial testing was performed by Ms. Hensley.

16 I have the sealed DVDs. Ms. Biering, I have the
17 document from the county sheriff that they attempted
18 five times. I believe the rules of court stipulate
19 that if they suffer from illness, and a good attempt
20 was made in serving them --

21 THE COURT: Of whom are we speaking, Mr. Thomas?
22 Are we still on Dr. Lopez?

23 MR. THOMAS: No, no, I'm sorry. Eraine Biering,
24 I failed to mention the name.

25 At any rate, they attempted to serve her five

1 times. We attempted by certified, restricted delivery.
2 And from what I read on the depositions, if I've made a
3 rigorous attempt to serve a subpoena and she's ill, and
4 I have proof that she has cancer here in my revised
5 exhibits in support of from her doctor, stage 4 I
6 believe.

7 THE COURT: Could you spell her last name for
8 me, sir?

9 MR. THOMAS: B-I-E-R-I-N-G.

10 THE COURT: Thank you, sir. And her first name
11 again is what?

12 MR. THOMAS: Eraine. And that's E-R-A-I-N-E.

13 THE COURT: Thank you, sir. Go ahead.

14 MR. THOMAS: At any rate.

15 THE COURT: So you are asking me, I assume, sir,
16 to use her deposition in lieu of her testimony?

17 MR. THOMAS: Yes, ma'am.

18 THE COURT: All right. So that brings into --
19 that's Rule 32. South Carolina Rules of Civil
20 Procedure subsection (A)(3), deposition of a witness.
21 Is that correct? Is that the rule of which you speak,
22 sir?

23 MR. THOMAS: Yes, ma'am, it is. Thank you.

24 THE COURT: And (A) does not apply, she is not
25 deceased, correct?

1 MR. THOMAS: Correct.

2 THE COURT: Is she greater than 100 miles or out
3 of state?

4 MR. THOMAS: No, ma'am.

5 THE COURT: Unable to attend because of age,
6 illness, infirmity or imprisonment. I am assuming is
7 the subsection (C) of which you speak?

8 MR. THOMAS: Yes, ma'am.

9 THE COURT: And what is it you have as far as
10 proof of the illness or infirmity, which I am assuming
11 were the ones you addressed.

12 MR. THOMAS: Okay. You have a copy of my
13 revised exhibits in support up there, it's a gray
14 binding. On page --

15 THE COURT: Wait a minute, now. I thought you
16 were withdrawing and striking all memorandum. Is there
17 something that you are not withdrawing?

18 MR. THOMAS: No, this is not a memorandum. This
19 is exhibits in support.

20 THE COURT: Exhibits in support.

21 MR. THOMAS: It's a gray binding.

22 THE COURT: Hold on, let me find it.

23 I have something filed April 20th, 2012 entitled
24 Revised Exhibits in Support.

25 MR. THOMAS: That is it.

1 THE COURT: Okay. And what is it you are
2 directing my attention to in this document?

3 MR. THOMAS: Page 279, confirmation of lung
4 cancer by Dr. Laurel B. Purple (phonetic).

5 THE COURT: 279?

6 MR. THOMAS: Yes, ma'am, 279

7 THE COURT: Hold on.

8 He is directing the Court to page 279, Ms.
9 Hensley. Are you on the page with us?

10 MS. HENSLEY: Yes, Your Honor.

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

12 MR. THOMAS: Okay. I thought I read where if I
13 made numerous attempts to serve and was unable to serve
14 the subpoena. Also, I mean in addition to being ill,
15 she is sick. She's -- when you see the DVD, if I'm
16 allowed to produce it, you'll see she is on oxygen, she
17 is struggling to get through. Her hair is gone.

18 THE COURT: Hold on for me one second, Mr.
19 Thomas.

20 He is asking to admit Ms. Biering's deposition
21 under Rule 32(A)(3)(c) due to illness. And do you have
22 an objection to that?

23 MS. HENSLEY: Well I do, Your Honor. My
24 objection is twofold. First, the deposition that was
25 taken was not noticed as a de bene esse deposition and

1 I'm happy to pass up to the Court a notice, a copy of
2 the notice of deposition.

3 Also, the letter from Dr. Purple that is
4 unsigned is dated May 28th, 2009. And we actually took
5 the deposition on May 15th, 2012. We don't have
6 anything confirming that Ms. Biering is unable to
7 attend other than the fact that the plaintiff was
8 unable to serve her.

9 She has been the plaintiff's witness. She has
10 been on the plaintiff's witness list. She has been
11 served to appear. And we would just object -- and in
12 addition to all of that, I do not believe that her
13 deposition testimony offers any evidence with regard to
14 post-separation adultery, or the other issues before
15 the Court, Your Honor.

16 MR. THOMAS: Your Honor.

17 THE COURT: Let me just read this doctor's
18 letter. Give me one second.

19 Mr. Thomas, this letter appears to be addressed
20 to some immigration issue. It talks about she is too
21 ill to travel at this time. I am requesting, on the
22 basis of her current life-threatening medical issues
23 and her need for support from her immediately family
24 that she has lived with all her life, that she be
25 allowed to stay in the United States for the duration

1 of her life.

2 It doesn't address this proceeding or ability to
3 testify in Charleston County, which is where she
4 resides.

5 Do you have anything more recent than this, sir?

6 MR. THOMAS: No. I thought there was a second
7 page to that. But also if you'll read (3)(D), that the
8 party offering the deposition has been unable to
9 procure the attendance of the witness by subpoena. And
10 I have --

11 THE COURT: So we are leaving the medical excuse
12 at this time?

13 MR. THOMAS: Well I mean I'd like to -- are you
14 saying I can only choose one or the other?

15 THE COURT: No. I'm just wanting to know
16 whether we are finished with the medical issue.

17 MR. THOMAS: Oh, well let me confirm there is
18 not another page.

19 THE COURT: That's what I'm asking for, sir.

20 MR. THOMAS: I thought there was another page,
21 but apparently not.

22 THE COURT: Check and see.

23 MR. THOMAS: But at any rate, I have proof that
24 the sheriff tried five times to serve her and was
25 unable to do so.

1 THE COURT: So you have no additional medical
2 evidence with respect to --

3 MR. THOMAS: No, that's it on that.

4 THE COURT: Okay. Tell me about not being able
5 to serve her then.

6 MR. THOMAS: Okay. Here is a copy of the
7 subpoena. And here is an affidavit.

8 THE COURT: You have some affidavits of
9 non-service?

10 MR. THOMAS: Yes.

11 THE COURT: Hand that to that deputy.

12 MR. THOMAS: It stipulates five attempts.

13 THE COURT: Thank you, sir.

14 I have an affidavit here from Deputy William, I
15 believe it's Agosta, A-G-O-S-T-A, indicating he
16 received the subpoena July 19, 2012, attempted service
17 on the 16th of August 2012 at 10:20 a.m. Then he has
18 another note 08/2012, no response to five attempts
19 made, avoiding service.

20 What is your position on this grounds?

21 MS. HENSLEY: On that grounds, Your Honor, I
22 believe that the defendant would be entitled to admit
23 the sealed testimony and the DVD, and that the Court
24 could review it at its leisure.

25 There is no need for us to watch the tape of the

1 deposition.

2 THE COURT: Well, no, we are going to watch it.
3 If it comes in, we are all going to watch it at the
4 same time because it was not de bene esse.

5 So she has no objection to the admission. Do
6 you have the DVD as well as the transcript, please?

7 MR. THOMAS: I do, sealed.

8 THE COURT: Thank you. I need it sealed.

9 MS. HENSLEY: And, Your Honor, when we took the
10 deposition, it was before the condonation issue. So
11 there is a great deal of testimony about prior
12 separation physical cruelty that I believe is not
13 relevant given your ruling.

14 MR. THOMAS: So how would we? I mean I guess I
15 will find out when we put it on.

16 THE COURT: Is there testimony in the deposition
17 with respect to the grounds for divorce previously pled
18 by the defendant and now withdrawn?

19 MR. THOMAS: There is some in there. But there
20 is a lot in there about post-separation adultery.

21 THE COURT: She stipulates to that, sir.

22 MR. THOMAS: I'm sorry. I'm sorry, I don't mean
23 -- that was over \$500, and it's no good, huh?

24 THE COURT: Is there anything in there that is
25 relevant to a divorce, or if you wish to pull the parts

1 out with respect to post-separation adultery and have
2 me review that portion of the transcript, I'm glad to
3 do that.

4 MR. THOMAS: Well how do you proceed on that?

5 THE COURT: You may pull those parts out, sir,
6 and mark through the rest if you wish.

7 MR. THOMAS: To my paper copy?

8 MS. HENSLEY: I don't have any objection to
9 redacting the transcript, Your Honor.

10 THE COURT: Okay. You can redact yours and hand
11 it to her and she will tell you whether or not she
12 wants any additional parts redacted. I will let you
13 all do that over the lunch break.

14 Do you have someone else you can call real quick
15 before we take a lunch break, sir?

16 And to make the record clear, do we need to mark
17 Dr. Purple's letter? You admitted the deposition based
18 on the non-availability for service, so that the
19 medical letter is really not an issue anymore; is that
20 correct?

21 MS. HENSLEY: That's the defendant's position,
22 Your Honor.

23 THE COURT: But you don't want the letter in
24 evidence, do you?

25 MS. HENSLEY: No, Your Honor.

1 THE COURT: Do you want the letter from the
2 doctor in evidence, sir?

3 MR. THOMAS: Yes, ma'am.

4 THE COURT: You want the doctor's letter in
5 evidence, even though the deposition is coming in
6 anyway?

7 MR. THOMAS: I want all the evidence that I can
8 get in there.

9 THE COURT: Then, Mr. Thomas, do you have
10 another copy, or am I to pull the one from the book?

11 MR. THOMAS: You can tear it from the book.

12 THE COURT: You want me to tear it --

13 MR. THOMAS: Let me confirm. No, I'll tear it
14 from my book.

15 THE COURT: Okay. You tell me how you want to
16 do it.

17 MR. THOMAS: I'll tear it from mine.

18 THE COURT: Tear it from your book. All right.

19 MS. HENSLEY: And just so the record is clear,
20 Your Honor, under subsection 2, the medical issue, we
21 did object to the deposition coming in on that ground.

22 THE COURT: You objected to it coming in on that
23 ground. You did not object to it on the
24 unavailability, and it's coming in on that ground.

25 MS. HENSLEY: Yes, Your Honor.

1 THE COURT: Okay, thank you.

2 MR. THOMAS: This is -- the back side is Mr.
3 Harbeson's affidavit.

4 THE COURT: Would you please X through that.

5 MR. THOMAS: Okay.

6 THE COURT: Thank you. I have been handed by
7 the deputy, Mr. Thomas, an affidavit with respect to
8 service on Dr. Lopez. He was apparently served
9 personally at 7:15 a.m. on the 10th of September. 7:15
10 a.m., September 10th Dr. Lopez was served with the
11 subpoena, he has just handed me the affidavit.

12 Again, did you attach the \$25 check?

13 MR. THOMAS: No, ma'am.

14 THE COURT: All right. And are you asking me to
15 issue a bench warrant for his failure to appear?

16 MR. THOMAS: No, ma'am. I would seek a
17 continuance upon all the testimony today.

18 THE COURT: Could we also do this before I rule
19 on that, Mr. Thomas. Could you have someone, and I
20 know you have a lot of folks here on your behalf,
21 contact Dr. Lopez's office to see if he plans to attend
22 this afternoon's session?

23 I'm sure someone will be do that. There is a
24 young lady raising her hand. I'm sure she'll do that.
25 We will address that this afternoon then, Mr. Thomas,

1 if that's all right with you.

2 MR. THOMAS: All right.

3 THE COURT: I am going to place in the record
4 the, To Whom It May Concern, letter by dating it and
5 initialing it, sir. All right?

6 MR. THOMAS: Thank you very much.

7 THE COURT: You're welcome.

8 Now do you have a short witness before we take
9 our real quick lunch break?

10 MR. THOMAS: Did we determine that I couldn't
11 raise any habitual drunkenness after 6/06? I can prove
12 of habitual drunkenness can be admitted if it was after
13 6/06.

14 THE COURT: After 6/06, yes, sir.

15 MR. THOMAS: Okay.

16 THE COURT: 6/6/'6.

17 MR. THOMAS: Okay. I have a number of those
18 then. Okay. I'd like to call Cecil Terry.

19 THE COURT: Is Cecil Terry present?

20 THE OFFICER: Your Honor, no response. The
21 hallway is vacant.

22 THE COURT: No response for Mr. Terry.

23 MR. THOMAS: And here is his personal service
24 affidavit and a copy of his subpoena.

25 THE COURT: I must ask you again, of course, for

1 each subpoena, did you attach the \$25 check?

2 MR. THOMAS: No, ma'am.

3 THE COURT: And are you asking that I issue a
4 bench warrant?

5 MR. THOMAS: No, ma'am. I'm hoping that my not
6 seeking these people go to jail the Court may look
7 favorably upon my request to continue the proceedings
8 in the interest of judicial economy.

9 THE COURT: How are we going to have them appear
10 at a continue date if they haven't appeared for this
11 date, Mr. Thomas, if you are not seeking a bench
12 warrant?

13 And I'm asking for procedurally, how would you
14 like the Court to handle that, sir?

15 MR. THOMAS: Well, you know, if I am pushed into
16 a corner like that, I would have no alternative because
17 I have to get the testimony in there. I was thinking
18 the Court might would be able to issue an order
19 compelling them to attend. I know if I was --

20 THE COURT: That's what a subpoena is.

21 MR. THOMAS: That's the issue there. So well
22 that's my only resort is to put them in jail.

23 THE COURT: I'm not saying that. I'm just
24 saying a subpoena is a command by the Court to attend.

25 MR. THOMAS: Well then let's leave it like this.

1 If my alternative is to let Mr. Terry go, I would say
2 put him in jail.

3 THE COURT: And did you attach the \$25 check to
4 his subpoena?

5 MR. THOMAS: No.

6 THE COURT: Okay.

7 MR. THOMAS: Because I think they can get him up
8 here. That's the only reason I say that. I really
9 don't want to put him in jail. But I think they can
10 get him to attend.

11 THE COURT: And they is?

12 MR. THOMAS: His wife over there. They don't
13 want -- he doesn't want to testify because he doesn't
14 want to have to get up there and admit facts. They
15 have done an excellent job of hiding the facts today.
16 It has been miraculous. I'm impressed.

17 THE COURT: Do you have anyone you want to call
18 before we break for lunch, sir, that is present?

19 MR. THOMAS: Okay, how about Megan Smith?

20 MS. HENSLEY: Your Honor, if I could just beg
21 the Court's indulgence. I'm not sure that she was on
22 the witness list that was supposed to be provided to me
23 30 days before the trial, Your Honor.

24 Oh, Deputy Smith? I've got it.

25 THE COURT: Left hand on the Bible, please raise

1 your right.

2 Do you swear or affirm the testimony you will
3 give will be truth?

4 THE WITNESS: Yes.

5 THE COURT: Have a seat in the witness chair for
6 me.

7 Full name, please, ma'am.

8 THE WITNESS: Megan Courtney, maiden name Smith,
9 married name Heid.

10 THE COURT: Your name now is H-Y-D-E?

11 THE WITNESS: H-E-I-D.

12 THE COURT: Whenever you're ready, sir.

13 MEGAN COURTNEY HEID,
14 after having first been duly sworn to tell the truth,
15 the whole truth and nothing but the truth testified on
16 her oath as follows:

17 DIRECT EXAMINATION

18 BY MR. THOMAS:

19 Q Okay. Do you have a copy of the incident report
20 with you?

21 A Yes, sir.

22 Q Okay, thank you for coming today. I apologize
23 for the inconvenience.

24 Okay, this was the incident that occurred at the
25 intersection of Dogwood and Highway 61. I believe

1 there is a convenience store there. Is that pretty
2 much the location of where this transpired?

3 A You said Dogwood?

4 Q Yeah, that's what the incident report said.

5 A Correct, Dogwood and 61.

6 Q Okay. And the date of that, according to this,
7 there was a little conflict with the date on the
8 incident report. I have got one December 7th of '07,
9 and then on the incident report it's 12/08.

10 So am I to presume that just indicates you
11 arrested her close to midnight, and the report was
12 concluded the following day? Is that where the
13 discrepancy lies?

14 A I arrested her at 2251. And I left the jail at
15 0017. So the incident ended on December 8th.

16 Q Okay. Can you reveal, or do you recognize the
17 defendant in the courtroom?

18 A I didn't until she was pointed out to me
19 outside.

20 Q Okay. My little represent yourself in court
21 book told me to do that. I should have read it a
22 little closer it appears.

23 Okay, can you describe her conduct? And I
24 believe you made mention of profane language. Can you
25 elaborate exactly to the extent of her conduct?

1 A The only thing I can provide you with at this point,
2 seeing as how it was December 7 of '07, is what is in
3 my report. Which states that she had an odor of
4 alcohol, and that she was loud and boisterous.

5 Q So in your professional opinion, and during the
6 course of your duties you have made a number of arrests
7 of intoxicated people, and in your opinion would you
8 say she was drunk?

9 A It doesn't say that in my report, it just says
10 that she had an odor of alcohol.

11 Q Okay. All right. Okay, so but this is your
12 incident report?

13 A Correct.

14 Q To the best of your knowledge and belief those
15 are the facts as they are?

16 A Correct.

17 Q All right. Thank you very much for your time
18 and I apologize for the inconvenience.

19 THE COURT: Cross?

20 MS. HENSLEY: I don't have any questions for
21 Deputy Smith.

22 THE COURT: Deputy, you may step down.
23 Any reason she can't be excused?

24 MR. THOMAS: No, no, please.

25 MS. HENSLEY: No.

1 THE COURT: Thank you, Deputy, you are free to
2 go.

3 All right, it's 5 after 1:00. We will reconvene
4 at 1:30. If you all need a pack of crackers, get a
5 pack of crackers. But we are going to finish this
6 trial today.

7 MR. THOMAS: I have no doubt.

8 THE COURT: Okay. Everybody leaves the
9 courtroom during the lunch recess.

10 (Whereupon, a recess was taken.)

11 THE COURT: You may bring in Ms. Hensley at this
12 time.

13 MR. THOMAS: Your Honor, in my rush --

14 THE COURT: Not until she comes in the
15 courtroom, please, Mr. Thomas.

16 MR. THOMAS: Okay.

17 THE COURT: We are back on the record in Thomas
18 versus Crowley, 2010-DR-10-4251. Mr. Thomas has
19 returned along with Ms. Hensley and Ms. Crowley.

20 All right. Whenever you're ready, Mr. Thomas.

21 MR. THOMAS: Thank you, Your Honor. I'd like to
22 go over something to do with my pleadings. In this
23 divorce I have sought, originally I think it was around
24 \$5,600 in fees associated with the expenses of this
25 action. And then there was the approximate value of

1 somewhere around 5-, or \$6,000 for non-marital assets.

2 THE COURT: You pled those amounts, Mr. Thomas?

3 MR. THOMAS: Yes, ma'am.

4 THE COURT: I'm looking at your pleadings, they
5 do not contain amounts.

6 MR. THOMAS: Actually it's the final decree, in
7 the prayer for relief in the final --

8 THE COURT: I just want to be looking at the
9 same document you were looking at, sir.

10 MR. THOMAS: When I amend the complaint, I'm
11 required to include anything on the prior complaint I
12 wanted to ride along with the amended complaint.

13 Am I correct in presuming so?

14 THE COURT: What is it that you're asking, Mr.
15 Thomas?

16 MR. THOMAS: Basically what I'm saying is I
17 think we can resolve this rather quickly. In my second
18 amended final decree of divorce.

19 THE COURT: Second amended final decree of
20 divorce?

21 MR. THOMAS: Well, I mean I have a final decree.

22 THE COURT: Not a signed decree, right.

23 MR. THOMAS: No, no, no. It's a proposed order.

24 THE COURT: I haven't read any proposed orders,
25 Mr. Thomas. If you want to pass one up for me to look

1 at, I will be glad to take a look at it.

2 MR. THOMAS: Okay, sure.

3 THE COURT: Just tell me what it is you want to
4 address.

5 MR. THOMAS: Well the fees are approximately
6 \$12,000. If they want to give me the \$12,000, then I
7 won't need to impeach her testimony and we can resolve
8 this now.

9 I want my money for what I spent here. I mean I
10 think that's reasonable because she is the only one
11 that can testify about the non-marital assets, the
12 facts that pertain to it and her mother. And I have
13 got a mountain of impeachment evidence that I intend to
14 launch into.

15 THE COURT: So you are --

16 MR. THOMAS: I'm proposing \$12,000, and I'll
17 settle for grounds of adultery and we will end it now.
18 Or I can impeach her testimony, if she will win the
19 judgment anyway

20 THE COURT: Well, Mr. Thomas, it wouldn't be
21 appropriate for the Court to get in the middle of
22 settlement negotiations.

23 If Ms. Hensley wants to discuss that with you, I
24 will allow her to do so.

25 Do you want to discuss it with him, Ms. Hensley,

1 or do you want to proceed? It's up to you.

2 MS. HENSLEY: I think we should just proceed,
3 Your Honor

4 THE COURT: All right. You may call your next
5 witness, Mr. Thomas.

6 MR. THOMAS: All right. My objective in
7 remaining organized is falling apart.

8 THE COURT: Do you have a witness you want to
9 call?

10 MR. THOMAS: I do. I can't find my list of
11 witnesses, or questions rather. Please bear with me.

12 This is the proposed order.

13 THE COURT: A proposed order?

14 MR. THOMAS: A proposed final order of decree
15 just for you to have.

16 THE COURT: For me to have? I haven't ruled
17 yet, Mr. Thomas.

18 MR. THOMAS: Well I mean you said you would look
19 at it. I'm just giving it to you. It has the amounts
20 that I was talking about. She says she is not amenable
21 to them.

22 THE COURT: All right. Well I will let you
23 testify to that. It wouldn't be appropriate for me to
24 review a proposed decree in the middle of a trial.
25 Maybe at the end, but not in the middle, sir.

1 MR. THOMAS: Right on. My questions have
2 disappeared.

3 THE COURT: They have disappeared?

4 MR. THOMAS: Wait a minute, here we go. I laid
5 them -- now that was scary. That was truly scary.
6 Okay. We are back on track, I apologize. Okay.

7 So we are not going to have a Cecil Terry. I'm
8 trying to keep the guys that didn't show up separated.

9 All right. Christen Boyer.

10 THE COURT: Come right up here, ma'am, to the
11 right. Left hand on the Bible for me, please, ma'am.
12 Raise your right.

13 Do you swear or affirm that the testimony you
14 will give will be the truth?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you, ma'am. Have a seat in
17 the witness chair.

18 Tell me your full name.

19 THE WITNESS: Christen Collier Boyer.

20 THE COURT: Please spell you last name.

21 THE WITNESS: B-O-Y-E-R.

22 THE COURT: Thank you, ma'am.

23 Whenever you are ready, sir.

24 CHRISTEN COLLIER BOYER,
25 after having first been duly sworn to tell the truth,

1 the whole truth and nothing but the truth testified on
2 her oath as follows:

3 DIRECT EXAMINATION

4 BY MR. THOMAS:

5 Q Christen is my daughter. And thank you for
6 coming. You look very nice today.

7 A Thank you.

8 Q As you know we are very, very constrained on the
9 testimony we can give. So I'm trying to weed out what
10 we can get.

11 Is there anything that you can think of, while
12 I'm trying to locate something, that has anything to do
13 with afterwards, anything at all that you can think of
14 that happened after the 6th of 2006, June 6th, 2006,
15 that you'd like to share?

16 I know it's a difficult task. I'm wrestling
17 with it.

18 A I'm not actually sure of the date the incident
19 occurred in Folly Beach. I'm not sure what year that
20 was.

21 Q You mean when she attacked you?

22 A Yes.

23 MS. HENSLEY: Objection, Your Honor.

24 Q That was --

25 A Before --

1 THE COURT: Hold on just a second. wait a
2 minute, ma'am.

3 what is your objection?

4 MS. HENSLEY: His testimony. Leading.

5 THE COURT: Ask her a question, please, Mr.
6 Thomas. Don't give her answers, just ask her
7 questions.

8 MR. THOMAS: Oh, I apologize.

9 THE COURT: That's all right.

10 Q (By Mr. Thomas) That's excluded. I condoned
11 that is what the law says. Okay.

12 Doesn't leave much. I am so sorry. Have you
13 ever seen me in an adulterous affair? I don't know the
14 relevance of --

15 MS. HENSLEY: Objection, Your Honor.

16 MR. THOMAS: No, that's not relevant either.

17 Q (By Mr. Thomas) I was hoping you could think of
18 something, I can't either. Thank you for coming
19 though.

20 A Everything I know is previous to the June 6th.

21 THE COURT: Do you have any other questions
22 then?

23 MR. THOMAS: You know, it's --

24 THE COURT: Hang on one second.

25 MR. THOMAS: -- my case is dead basically, so.

1 THE COURT: Ms. Hensley, do you have any cross?

2 MR. THOMAS: It's a fascinating story. I wish I
3 could tell it.

4 CROSS-EXAMINATION

5 BY MS. HENSLEY:

6 Q So, Christen, you are Mr. Thomas's daughter; is
7 that right?

8 A Yes.

9 Q So you are aware of the circumstances of his
10 marriage to Rachel Crowley, correct?

11 A Yes, ma'am.

12 Q And also of their separation, correct?

13 A Yes.

14 Q And to your knowledge have they lived
15 continuously separate and apart for at least one year?

16 A Yes, ma'am.

17 Q And at the time that your father was arrested in
18 June of 2006, did you go to the hotel room and retrieve
19 his belongings?

20 A No, ma'am.

21 Q You didn't retrieve his van?

22 A No. His van was taken in, it was -- what is it
23 called? I had to pay to get it out, but I didn't
24 actually go to the residence.

25 Q And isn't it true that you testified at his

1 trial in July of 2008 that your father asked you to get
2 his car and to get everything out of there, get his
3 tools and keep them in a safe place; isn't that
4 correct?

5 A Out of the van, yes, ma'am.

6 Q And didn't you also testify that you have done
7 that, you got his tools and his belongings and kept
8 them in a safe place?

9 A Yes, ma'am.

10 MS. HENSLEY: That's all the questions I have,
11 Your Honor

12 THE COURT: Any redirect?

13 MR. THOMAS: Yes, ma'am.

14 THE COURT: Sure.

15 REDIRECT EXAMINATION

16 BY MR. THOMAS:

17 Q Let's be specific about the van. The van was
18 not in my name?

19 A No.

20 Q If you recall, whose name was the van in?

21 A I believe it was John Keegle (phonetic).

22 Q And he is deceased?

23 A He is deceased as of '09.

24 Q Okay. And the belongings in the van, did I
25 actually get them back?

1 A No.

2 Q What happened to those belongings?

3 A John Keegle and his mother sold them.

4 Q I see. Did you get anything out of the hotel
5 room at all?

6 A I have never been to the hotel room, not one
7 time.

8 Q Never went there and got the computer, clothing?

9 A I wish I would have, but I didn't.

10 Q Yeah, okay. So in reality I never got the van
11 back either, did I?

12 A No, you didn't. He took that.

13 Q It was a total loss, wasn't it?

14 A Yes, it was.

15 MR. THOMAS: Thank you very much.

16 THE WITNESS: You're welcome.

17 THE COURT: Anything else, Ms. Hensley?

18 MS. HENSLEY: No further questions, Your Honor.

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

20 Thank you, Ms. Boyer, watch your step.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Who's next, Mr. Thomas?

23 MR. THOMAS: Okay, I'm ready to put Rachel
24 Crowley on the stand.

25 However -- actually we can start, we can go

1 ahead because I'm going to be needing some copies of
2 exhibits that she's going to -- I'm going to ask her to
3 confirm.

4 THE COURT: You are calling Ms. Crowley at this
5 time?

6 MR. THOMAS: Yes, ma'am.

7 THE COURT: Come right on up and have a seat in
8 the witness chair, ma'am. You are already under oath.

9 THE WITNESS: You said have a seat?

10 THE COURT: Yes, ma'am. You are under oath
11 already from this morning.

12 Your full name again for the record.

13 THE WITNESS: Rachel Marie Crowley.

14 THE COURT: Whenever you're ready, Mr. Thomas,
15 you may begin your questioning of her. When we come to
16 a point where you need an exhibit, we will address it
17 at that time.

18 MR. THOMAS: Okay.

19 RACHEL MARIE CROWLEY,
20 after having previously been duly sworn to tell the
21 truth, the whole truth and nothing but the truth
22 testified on her oath as follows:

23 DIRECT EXAMINATION

24 BY MR. THOMAS:

25 Q Since the incident on June 6th, or actually my

1 arrest on June 7th, where have you resided primarily?

2 A At my home.

3 Q Your home being? The address, please.

4 A 8108 Loretta Marie Lane.

5 Q Wasn't that address created sometime thereafter?

6 It was more like an 8075, or something, you were
7 residing where --

8 A The property was, the property was --

9 THE COURT: Hold on. Let him finish his
10 question, and then he is going to let you finish your
11 answer.

12 Please ask your question again for me, please.

13 Q (By Mr. Thomas) I believe you were living with
14 your mother initially, or did you -- I understand your
15 father bought you a mobile home and it was placed on
16 the property shortly thereafter. But when you
17 originally left --

18 MS. HENSLEY: Objection, Your Honor.

19 THE COURT: What is your objection?

20 MS. HENSLEY: That he is not asking any
21 questions, and that if he is, he's asking leading
22 questions.

23 THE COURT: Would you please ask one question at
24 a this time for me, sir.

25 Q (By Mr. Thomas) Were you not living at 8095 --

1 wait a minute, I will find the correct address -- 5608
2 Highway 174?

3 A That is the same address. It was just the
4 property was annexed, I don't know the correct word.
5 That was the address previous to that. Same place.

6 Q So you live in the same house with your mother?
7 8108 is the same address as your mother?

8 A No. 8108 is 5608.

9 Is that the question he is asking me?

10 THE COURT: Mr. Thomas, would you ask her the
11 question again so she is clear on the question before
12 she answers it, please.

13 Q (By Mr. Thomas) Were you living in the same
14 house with your mother at the same address that she
15 receives her mail at when you left the hotel we were
16 living in in June 7th of 2006?

17 A You said when I left the hotel? When I left the
18 hotel I went to the hospital.

19 Q You spent a few hours at the hospital, I'm
20 talking about thereafter. Did you stay at your
21 mother's house --

22 MR. THOMAS: It's a simple question, Your Honor,
23 I wish she could just answer it. Yes or no, was she
24 living with her mother. I'm having a problem.

25 THE COURT: Were you living with your mother?

1 A Maybe for a little while. I do not recall.

2 (Whereupon, laughter is heard.)

3 THE COURT: Who did that? You may step in the
4 hall. I told you earlier if you can't control
5 yourself, you will not be allowed to remain in this
6 courtroom.

7 You may think this is a laughing matter. I
8 assure you the Court does not.

9 I'm sorry for the interruption, Mr. Thomas. Go
10 ahead, sir.

11 Q (By Mr. Thomas) Okay, so you don't know how
12 long you were there, but you were living there with
13 her?

14 A I said I do not recall, I do not remember. I
15 was in a lot of shock at that time. I may have stayed
16 there for a few days. I do not remember. Once again,
17 I do not remember.

18 MR. THOMAS: You know, I noticed -- and this
19 goes pursuant to impeachment of the witness, Rule 607
20 under the rules of evidence -- during trial she made
21 the same claim that she was having trouble remembering
22 things.

23 MS. HENSLEY: Objection, Your Honor.

24 THE COURT: What is it you're trying to say, Mr.
25 Thomas?

1 MR. THOMAS: Well I mean I'm trying to get
2 straight answers and she is being evasive. And I'm
3 showing prior inconsistent statements.

4 THE COURT: Do you have them for me to look at,
5 sir?

6 MR. THOMAS: The inconsistent statements?

7 THE COURT: Yes, sir.

8 MR. THOMAS: Absolutely. You have a copy of
9 them up there

10 THE COURT: You need to reference what they are
11 and where they are located for me, please, sir.

12 MR. THOMAS: Okay.

13 MS. HENSLEY: Your Honor, just for the record I
14 believe that Mr. Thomas is referencing statements that
15 occurred in a different court and not this court. So I
16 would object to any introduction.

17 THE COURT: Are they under oath? Are the
18 statements under oath?

19 MS. HENSLEY: I believe so. I don't know what,
20 exactly what statements he is referring to.

21 THE COURT: Well let me take a look at what they
22 are and then we will proceed from there.

23 MR. THOMAS: Yes, Your Honor, they are under
24 oath. They occurred during the trial. They were prior
25 inconsistent statements in another hearing.

1 THE COURT: Then cross-examine her with respect
2 to those.

3 MR. THOMAS: That's exactly where I'm seeking to
4 go.

5 If you will reference a document that was filed
6 on the 10th that is entitled Second Revision of
7 Memorandums filed November --

8 THE COURT: I thought you withdraw your
9 memorandums, Mr. Thomas?

10 MR. THOMAS: All of them up until the last one.

11 THE COURT: Up until the second one.

12 MR. THOMAS: Yeah. This is the last one.

13 THE COURT: When was it filed, sir?

14 MR. THOMAS: September 10th.

15 THE COURT: of 2012?

16 MR. THOMAS: 12. Yes, ma'am.

17 THE COURT: And what color would the cover be of
18 that one, sir?

19 MR. THOMAS: It wasn't binded. It probably has
20 a document clamp on it.

21 THE COURT: These are motions. Second revision
22 of memorandums filed, is that what it says, November
23 7th, 2011 through April 20th, 2012 in support of trial
24 motions?

25 MR. THOMAS: That's it.

1 THE COURT: All right.

2 MR. THOMAS: I can tell you, it's all in
3 consecutive order of occurrence. I guess if I'm going
4 to begin on impeaching her testimony, I might as well
5 start with the first time she made allegations. These
6 both -- this involved both her and her mother. I'm
7 going to need --

8 THE COURT: And I hate to interrupt you, Mr.
9 Thomas. Is there supposed to be a transcript included
10 in this?

11 MR. THOMAS: The transcripts are incorporated
12 into the exhibits in supports. The other thick book
13 that went in and you found the documents pertaining to
14 the lung cancer. That's the companion exhibit book.

15 MS. HENSLEY: And I would just object to that
16 exhibit as being incomplete, Your Honor. That does not
17 contain the entire trial transcript, it just contains
18 pieces and pages that Mr. Thomas particularly liked I
19 guess.

20 MR. THOMAS: Well I have got the entire
21 transcript here if you'd like to hold it and reference
22 it.

23 THE COURT: Do you want to put it into evidence?

24 MR. THOMAS: Sure, we can do that. Because it's
25 going to eliminate any question about the reliability

1 of the transcript.

2 THE COURT: Hold on one second.

3 MS. HENSLEY: And I would just object on the
4 grounds of relevance, Your Honor.

5 THE COURT: How is that transcript relevant to
6 what I'm doing?

7 MR. THOMAS: Well I'm impeaching her
8 credibility. She is going to be testifying to whom
9 belong the assets are. She is trying to --

10 THE COURT: Okay, hold on. You cannot impeach
11 her credibility until she testifies to something
12 inconsistent.

13 So ask her questions. If she testifies
14 inconsistently, then you can impeach her on each
15 question as we go along. I need you to go question by
16 question, sir.

17 MR. THOMAS: Okay. Well let's go back to the
18 question involving the incident with her mother. Would
19 you like to -- it's going to be difficult to
20 cross-reference the page number -- no, it won't. I
21 left them on the top pages of the exhibits.

22 That was certainly a good idea.

23 Q (By Mr. Thomas) Okay. We were talking about --
24 oh boy.

25 MR. THOMAS: I need you to bear with me for a

1 moment.

2 THE COURT: Yes, sir.

3 MR. THOMAS: Extra copy. Okay.

4 Okay, if you'll go to page 34.

5 MS. HENSLEY: And I just object to any reference
6 to any documents not in evidence in this case, Your
7 Honor.

8 THE COURT: Has she answered the question that
9 you want to impeach her on her answer, sir?

10 MR. THOMAS: I'm trying to get a clear answer on
11 how long she was with her mother.

12 THE COURT: Ask her that specific question.

13 MR. THOMAS: Okay. All right. I tell you what,
14 I will back up to her questions and we will go through
15 them one by one.

16 So in other words the rules of evidence, as it
17 pertains to inconsistent statements, they have to be
18 the same statement just proving that she has habitually
19 distorts the truth, doesn't --

20 THE COURT: Mr. Thomas, she has not testified to
21 anything in this Court yet. If she testifies in this
22 Court in response to the question what color was the
23 stoplight and she says red, and you have a transcript
24 that says in a prior proceeding she says green, you may
25 then impeach her on any inconsistent statement. Okay?

1 MR. THOMAS: That's what I was getting at.

2 THE COURT: Okay. Let's ask her a question,
3 please, sir.

4 MR. THOMAS: Now I misplaced her questions.

5 THE COURT: Would you like her to step down so
6 that you can call a witness you are prepared to
7 question, sir?

8 MR. THOMAS: If you can bear with me one minute
9 to move documents that I'm not currently reviewing and
10 I will be able to stay in order. It's a little
11 organization. I tried to ask you when we were breaking
12 for lunch if I could get a moment in here, but I didn't
13 do so quickly enough. You were already gone.

14 This is not -- okay.

15 Q (By Mr. Thomas) All right. If I may ask my
16 mother for Exhibit 144-A, it's the disposition of the
17 simple assault on May 12th of 2007 involving
18 drunkenness, past -- relevant to the proceedings.

19 I'd like to enter -- or, I'd like to give a copy
20 to the defendant to acknowledge that that is a fact and
21 then enter it into evidence if I can.

22 THE COURT: Ms. Hensley.

23 MS. HENSLEY: I think he can just ask the
24 question, Your Honor. I don't see why he needs to do
25 it.

1 THE COURT: Ask her the question. If she denies
2 it, you can certainly address it at that point.

3 MR. THOMAS: Okay. Can I get a copy of it
4 passed to me? I don't have -- these dispositions were
5 provided at the last minute. It was quite a task
6 getting the courts to release the information I was
7 trying to get. I subpoenaed them time and again. And
8 they just wouldn't work with me.

9 But I don't have a copy available. I'd like to
10 get a copy if I may, then I can ask her questions. I
11 know what is on it. If she gets it and acknowledges it
12 and then enters it, then I don't need to put my hand on
13 it.

14 THE COURT: If you know what's on it, sir, just
15 ask her. But you are in the custody of the Department
16 of Corrections and they have very strict rules about
17 getting things that are not done through their
18 procedures.

19 Ask her a question and see what her response is.
20 You may not need the document.

21 MR. THOMAS: Okay.

22 Q (By Mr. Thomas) On May 12th police were called
23 to your house. I believe Jack Frost responded at that
24 incident. And the incident report stated that you
25 were --

1 MS. HENSLEY: Objection, Your Honor.

2 THE COURT: What is your objection?

3 MS. HENSLEY: Hearsay.

4 MR. THOMAS: Okay. So I will need to give her
5 the incident report and ask her to confirm it. If not,
6 I will need to call Jack Frost up to confirm the
7 authenticity of the incident report.

8 MS. HENSLEY: Your Honor, I don't have any
9 question about the authenticity of the report. My
10 objection is just that he should ask the witness what
11 happened, ask the witness a question about the
12 incident.

13 THE COURT: Ask her what happened on May 12th,
14 sir.

15 MR. THOMAS: As soon as I do she says hearsay,
16 inadmissible. So I'm trying to --

17 THE COURT: Mr. Thomas, I don't know what she's
18 going to say until she says it.

19 MR. THOMAS: Oh, there's no telling. That's for
20 sure.

21 THE COURT: Next person who laughs in this
22 courtroom may go to jail, folks.

23 MR. THOMAS: Pardon me?

24 THE COURT: Not addressed to you, Mr. Thomas.
25 But I'm tired of the snickering and the giggling. This

1 is a serious matter.

2 Ask her the question, Mr. Thomas. See what it
3 is she responds and then we'll address it. I cannot
4 presume what her answer will be, nor can I presume that
5 there will be an objection, or if there is what it will
6 be.

7 Q (By Mr. Thomas) On May 12th, 2007, that's a
8 year, almost a year after the alleged incident
9 involving you and I, you were arrested for simple
10 assault at 5586 Highway 174, Adams Run. Is that your
11 mother's address?

12 A I'm sorry, what was the question?

13 Q Whose address is 5586 Highway 174?

14 A I don't think that's no longer the address. I'm
15 not sure. I do not know. 5586 is now -- I don't know.

16 Q That was almost a year after you left and that
17 is the address that you gave as your residence.

18 Now a minute ago you testified that you were
19 there just for a little while, a few days. I would
20 call that an inconsistent statement.

21 MR. THOMAS: Can I bring up an inconsistent
22 statement relevant to that that she made in trial along
23 that same line?

24 THE COURT: Only with respect to her address
25 being 5608 or 5586, sir.

1 MR. THOMAS: Well it doesn't specifically state
2 the address, but it does refer to her mother's address
3 or mother, living with her mother. And I know her
4 mother's address is 5586.

5 MS. HENSLEY: And, Your Honor, I just object --

6 THE COURT: Hold on. What is your objection?

7 MS. HENSLEY: Relevance.

8 THE COURT: How in the world is it relevant, Mr.
9 Thomas, what 5586 or 5608 of Highway 174 was in May of
10 2007 to the issues before me?

11 It may be relevant in some other proceeding, but
12 my issues how is it relevant?

13 MR. THOMAS: I'm trying to regain \$12,000; 6,000
14 or so in expenses for this action, and about 5- or
15 6,000 in personal assets. Whether or not I am awarded
16 those requests is hinged upon her testimony.

17 THE COURT: Then get some testimony from her,
18 sir.

19 MR. THOMAS: Well I cannot get her to answer
20 anything, but I will move along.

21 THE COURT: She's answered.

22 MR. THOMAS: I think I've made my point.

23 Okay. All right.

24 Q (By Mr. Thomas) When you were living somewhere
25 on May 12, 2007, were you arrested for simple assault

1 by the Charleston County Sheriff's Department?

2 MS. HENSLEY: And I'd just object on the grounds
3 of relevance, Your Honor.

4 THE COURT: How is it relevant, sir, unless you
5 were the victim of the assault?

6 MR. THOMAS: She was drunk, and this is a case
7 about drunkenness, habitual drunkenness. And it
8 occurred after June 6, of 2006.

9 THE COURT: Were you the victim of the assault?

10 MR. THOMAS: No. But it shows habitual
11 drunkenness, it supports my case. Now it looks like
12 I'm not going to get anything in is what, I mean.

13 THE COURT: Do you want me to rule, Mr. Thomas?

14 MR. THOMAS: No, go ahead, I'm sorry. I'm just
15 -- now I thought I was actually going to get my say, or
16 get an opportunity to present a case and it's starting
17 to look not.

18 THE COURT: And you certainly have that, sir,
19 but you need to ask questions in order to present your
20 case and elicit testimony.

21 You want to testify, sir, you can testify now.
22 Right now you are asking her questions. I'm going to
23 overrule that objection and allow her to answer that
24 question. Which is, was she arrested for simple
25 assault on May 12th, 2007.

1 That question answered, please, ma'am.

2 THE WITNESS: I'm sorry, what year was that?

3 THE COURT: 2007. May 12th, 2007.

4 THE WITNESS: Your Honor, honestly, I'm not
5 trying to be evasive here, but that was five years ago.
6 And, like I said, I was going through a trying time in
7 my life due to what has happened.

8 And I do not -- I cannot give you an exact date.
9 I mean that's five years ago. I mean, if there is a
10 paper there.

11 MR. THOMAS: So, Your Honor --

12 THE COURT: She's asked to see the paper, Mr.
13 Thomas.

14 MR. THOMAS: Okay.

15 THE COURT: Hand the paper to the deputy.

16 MR. THOMAS: I --

17 THE COURT: Just a second. Give me the paper.
18 Let me see the paper.

19 What is this?

20 MR. THOMAS: It's the disposition of the charge.

21 THE COURT: All right. Remove the paperclip and
22 the staples.

23 MR. THOMAS: Also if I could get the incident
24 report brought forth as well, that would be.

25 THE COURT: We are going to deal with one at a

1 time, Mr. Thomas.

2 MR. THOMAS: Okay, sorry. Go ahead.

3 MS. HENSLEY: Your Honor, we can stipulate to
4 the arrest for simple assault on 5/12/07.

5 THE COURT: They have stipulated. She said she
6 was arrested on May 12th, 2007 for simple assault.

7 You may hand that to him now at this time.

8 MR. THOMAS: Well actually the disposition is
9 what is.

10 THE COURT: You haven't asked her about the
11 disposition. You just asked her about the arrest.

12 MR. THOMAS: Okay.

13 Q (By Mr. Thomas) Did you plead guilty to this
14 charge?

15 A I've already said I do not -- this was 5 years
16 ago, I'm not -- I don't recall any details of this.

17 Q And you've testified that the reason is because
18 you are going through this trauma associated with what
19 I'm alleged to have done with you.

20 MR. THOMAS: So she's put forth pleadings in the
21 court that she has suffered at my hands. She's opened
22 the door for me to rebut that testimony as far as I can
23 see. That's the way I see it, I mean.

24 THE COURT: No one is stopping you from
25 questioning her, Mr. Thomas. You are arguing

1 objections that haven't been made, sir.

2 MR. THOMAS: I'm so used to getting shot down, I
3 apologize.

4 THE COURT: That's okay. Ask her some
5 questions.

6 MR. THOMAS: Okay. So anyway, now she's raised
7 the issue. She's put forth --

8 THE COURT: Question, Mr. Thomas, question her.
9 I have been so patient with you.

10 MR. THOMAS: Okay, all right. So you claim --

11 THE COURT: Mr. Thomas, hold on.

12 MR. THOMAS: Okay.

13 THE COURT: I have been really patient with you.

14 MR. THOMAS: Yes, you have.

15 THE COURT: No question I have been. It is now
16 20 minutes after 2:00. We are in the testimony portion
17 of this trial. That means ask her questions, allow it
18 to be answered, hear objections.

19 I don't want anymore editorializing. I don't
20 want anymore objection arguments unless they have been
21 made, all right? We have got to move this along, sir.
22 I have been real, real patient with you, but it's time
23 to go.

24 Now ask her some questions, give her the
25 opportunity to answer.

1 MR. THOMAS: Okay.

2 Q (By Mr. Thomas) All right. According to the
3 paperwork you pled guilty and paid a, looks like a \$515
4 fine. So you were guilty.

5 MR. THOMAS: The incident report, I want to
6 confirm the verity of the incident report. Do I --
7 will I need to call the officer who took the report
8 first? Or can she read and confirm it?

9 THE COURT: Are you objecting to the admission
10 of the incident report, which I believe he is
11 attempting to admit into evidence at this time?

12 MS. HENSLEY: No objection, Your Honor.

13 THE COURT: Without objection then we will admit
14 that into evidence as Plaintiff's 1. Would you please
15 hand it to my deputy.

16 MR. THOMAS: If it pleases the Court, my
17 exhibits, Exhibit Plaintiff's 1, is the incident report
18 for this thing. I have been numbering these things for
19 four years. It actually falls at one point. I would
20 beg the Court's indulgence and entitle it Exhibit 144.

21 THE COURT: No, sir. There is one exhibit in
22 this trial at this moment, and it is that.

23 MR. THOMAS: Okay, I see how it works.

24 THE COURT: I don't mean to be difficult, but I
25 have to protect the record. That is Plaintiff's

1 Exhibit 1 and it is the only exhibit at this time.

2 MR. THOMAS: I understand.

3 THE COURT: Thank you, sir.

4 MR. THOMAS: All right. She has -- this is the
5 deposition. She actually has the incident report.

6 THE COURT: Hang on, Mr. Thomas.

7 MR. THOMAS: Okay.

8 THE COURT: Ma'am, would you please hand the
9 incident report to the deputy.

10 MS. COOK: What number is it?

11 MR. THOMAS: 144. This is a copy, but it's
12 generated during the course of normal business.

13 THE COURT: She is not objecting, Mr. Thomas.

14 MR. THOMAS: Okay.

15 THE COURT: Don't argue stuff she is not
16 objecting to.

17 MS. COOK: 144. Isn't that what I just gave
18 you?

19 MR. THOMAS: You gave me 144-A. This is 144-A.

20 MS. HENSLEY: Your Honor, I have a copy and we
21 can just x out what's on the other side if you want to
22 do it like that.

23 THE COURT: Hand it to him and let him verify
24 that's the one he wants in. Thank you, ma'am.

25 Is that the one you want admitted, Mr. Thomas?

1 MR. THOMAS: Yes, ma'am, it is. Thank you.

2 THE COURT: Then that will be marked and
3 admitted as Plaintiff's 1 without objection.

4 Give the court reporter a moment to mark it,
5 sir.

6 (Whereupon, Plaintiff's Exhibit No. 1 is marked
7 and admitted into evidence.)

8 THE COURT: Whenever you are ready you made
9 proceed, Mr. Thomas.

10 MR. THOMAS: Okay.

11 Q (By Mr. Thomas) You made the statement that the
12 reason you are having such difficulty living --
13 remembering where you live or what's happened in your
14 life is because of the trauma that you experienced as a
15 result of my alleged attack?

16 A Right.

17 Q So hinged upon that pleading, I am going to
18 follow a course. You began, you began at page --

19 MR. THOMAS: Your Honor, if you would turn to
20 Page 28 of the second revision of memorandums.

21 THE COURT: What is the document, sir?

22 MR. THOMAS: Pardon me?

23 THE COURT: What is the document?

24 MR. THOMAS: That second memorandum, the second
25 revision of memorandums, the only one that we left

1 intact.

2 MS. HENSLEY: Your Honor, I just object on the
3 grounds of relevance.

4 THE COURT: What is page 28, Mr. Thomas? You
5 realize this document is not in evidence, it's simply
6 been filed with the Court.

7 MR. THOMAS: Right.

8 THE COURT: Okay.

9 MR. THOMAS: It's just details the
10 circumstances..

11 THE COURT: What is page 28?

12 MR. THOMAS: Page 28 is subtitled inveterate
13 perjury.

14 THE COURT: Hold on one second.

15 MR. THOMAS: And I'm --

16 THE COURT: Page 28.

17 MR. THOMAS: -- I'm responding to her opening
18 the door to the --

19 THE COURT: I don't see the words inveterate
20 perjury on page 28.

21 MR. THOMAS: Page 29.

22 THE COURT: Page 29, all right. Mr. Thomas, you
23 need to question her at this time. This is a legal
24 brief, apparently. It's not evidence.

25 MR. THOMAS: It's a memorandum. It just tells

1 you where I am going. In other words, as I ask her
2 questions --

3 THE COURT: I don't need to know where you are
4 going. You ask the questions and I will see where you
5 are going, sir.

6 MR. THOMAS: All right.

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

8 Q (By Mr. Thomas) Let's see.

9 MR. THOMAS: Okay, the deadline is the 6th, this
10 begins on the 7th.

11 Q (By Mr. Thomas) On the 7th, you leap from my
12 van, and you met with an Officer Talbot responded and
13 you gave an incident report.

14 MS. HENSLEY: Objection, Your Honor, relevance.

15 THE COURT: Issues before this Court are a one
16 year divorce.

17 MR. THOMAS: Your Honor, she opened the door to
18 the issue of --

19 THE COURT: To what?

20 MR. THOMAS: She says the reason she can't
21 remember anything is because I assaulted her and she is
22 living in shock, she lives in fear. That's a
23 contradiction of the pleadings that Ms. Hensley put
24 forth previously. It's on record now.

25 THE COURT: Mr. Thomas, again the issues before

1 this Court are very narrow. This is not a criminal
2 trial. This is not a PCR case.

3 Ask her about the issues before this Court. I
4 have enumerated them for you several times. Do you
5 need me to enumerated them again?

6 MR. THOMAS: No, no, we are clear on that. I'm
7 just trying to understand when the South Carolina
8 Supreme Court ruling on opening the door applies.
9 Because, I mean, she's putting on record that she can't
10 remember anything. Her memory is shot. How I --

11 THE COURT: It goes to the issue of credibility,
12 Mr. Thomas, and I certainly understand your position on
13 that. But let's please move on to the issues before
14 this Court, sir.

15 MR. THOMAS: Okay.

16 THE COURT: Thank you.

17 Q (By Mr. Thomas) You say that -- I stipulated
18 that we separated -- it's going to be hard to tie this
19 in. I think I can do it.

20 when did you say we separated? Do you remember
21 that?

22 A Nope.

23 MR. THOMAS: Can I refresh her memory?

24 THE COURT: Mr. Thomas, there has been a
25 stipulation that the date of separation was June 6th,

1 2006. The Court has already established the date of
2 separation.

3 MR. THOMAS: Well the thing is --

4 THE COURT: By stipulation between the parties.
5 Please move along.

6 MR. THOMAS: Well the thing is that she
7 testified that we separated days before that, and her
8 mother supported her on that. It has been this jump
9 from here to there. I have always contended it was the
10 7th.

11 THE COURT: And it is the 6th. The 6th of July.

12 MR. THOMAS: Well actually it was the 7th, I
13 don't know how the 6th got in there. 6th is when she
14 claims the allegations were made, when she had leaped
15 from my van.

16 THE COURT: Do you stipulate it was the 7th
17 then?

18 MS. HENSLEY: The 7th. June 7th, 2006, Your
19 Honor.

20 THE COURT: We have now stipulated the date of
21 separation is June 7th, 2006. Let's move on to
22 something relevant, please, Mr. Thomas. We are wasting
23 time. You want to try your case, let's try it, please,
24 sir.

25 MR. THOMAS: Your Honor, you told me a moment

1 ago that if I ask a question and she gave a different
2 answer that I could bring up where she told it
3 differently. I'm trying to do that, and now I'm not
4 allowed to do that.

5 THE COURT: This is a stipulation, sir. I'm
6 bound by that. Please move along to something
7 relevant, Mr. Thomas, or you are not going to be able
8 to conclude your case.

9 MR. THOMAS: I never saw this being done in a
10 day anyway. That's why I tried to get it continued
11 because I had 30 witnesses. I'm not a lawyer and I
12 knew --

13 THE COURT: I didn't set this case for a day,
14 Mr. Thomas, but we are both bound by it. So please
15 let's move along, sir.

16 MR. THOMAS: Okay.

17 Q (By Mr. Thomas): Well let me ask you this, you
18 -- hum. In the interrogatories.

19 MR. THOMAS: Your Honor she claims that she is
20 suffering from abuse from me. I'm not allowed to --
21 you are telling me there is no way that I can rebut
22 that?

23 THE COURT: I'm telling you she has not
24 testified to that, sir. And that's not an issue for
25 this Court to consider. She is asking for a divorce on

1 the grounds of one year's continuous separation. And
2 that is all that she has asked for that has not been in
3 agreement.

4 MR. THOMAS: Well I'm sure that every
5 multimillionaire that has a wife, and they stand to
6 lose millions would love to be able to say, no, no, I
7 want a one year's continuous and break it off like
8 that. It doesn't seem like that's an equitable
9 decision.

10 THE COURT: The issues before this Court once
11 again, Mr. Thomas, are a divorce on the grounds of a
12 one year's continuous separation sought by both you and
13 she. A divorce on the grounds of adultery, that is
14 requested by you to which she stipulates
15 post-separation adultery. And you have also requested
16 a divorce on the grounds of habitual drunkenness.

17 You may question her as to those issues,
18 including the issue of support, litigation costs, those
19 issues are also before the Court. And whether there is
20 or is not marital property.

21 Please let's stick to that. And I'm going to
22 have to hold you to it at this point, Mr. Thomas. We
23 have been at this from 9:30 to 2:30 with a 20 minute
24 lunch break. We need to get along with the testimony
25 if we could, please, Mr. Thomas.

1 MR. THOMAS: Okay.. well for the record the
2 reason it's dragging on is because of the bushwhacking
3 I went at. I had a case prepared, and it would have
4 been --

5 THE COURT: Please no more editorial comments,
6 Mr. Thomas.

7 MR. THOMAS: All right. Okay. Just making the
8 point. I mean it's being put on me like it's my fault
9 and it's not.

10 THE COURT: Ask questions, please.

11 MR. THOMAS: I tell you what, why don't I do
12 this. I will ask every question and you can say no
13 because I am lost. Seems like you say I can and then
14 it doesn't seem to work out that way.

15 THE COURT: Just ask questions, Mr. Thomas. We
16 will deal with each one individually, sir..

17 Go ahead, sir..

18 MR. THOMAS: Okay.

19 Q (By Mr. Thomas) On March 3rd, 2008, you were
20 arrested for disorderly conduct, resisting arrest at
21 the Budget Inn in North Charleston. Do you remember
22 that?

23 A I cannot state an exact date.

24 Q Do you remember being --

25 MS. HENSLEY: We would stipulate to that arrest,

1 Your Honor, and the introduction of that report.

2 THE COURT: She has stipulated to that, sir.

3 MR. THOMAS: Okay.

4 Q (By Mr. Thomas) That case was dismissed. Why
5 was it dismissed?

6 A If I cannot recall an exact date, I cannot
7 recall. I mean I don't know where you are going with
8 this.

9 Q Well what I am getting at is that you resisted
10 arrest, and I was going up for trial, and you had these
11 charges mysteriously dismissed. I'm wondering if you
12 were -- if the charges were dismissed at the request of
13 the solicitor's office to compel you to testify against
14 me when you lied in court on me.

15 MS. HENSLEY: Outside the scope of the witness's
16 knowledge, Your Honor.

17 THE COURT: I sustain the objection. Move on
18 please, Mr. Thomas.

19 MR. THOMAS: Okay.

20 Q (By Mr. Thomas) Do you have any idea why the
21 arrest from 2006, or the March -- it was dismissed in,
22 let's see what date was that -- 2010, the Folly Beach
23 arrest. So that disposition, that court case was
24 non-prossed then. And the circumstances in that you
25 attacked a child, bit people.

1 MS. HENSLEY: Objection, Your Honor.

2 Q (By Mr. Thomas) I'm just trying to understand
3 how that got dismissed.

4 MS. HENSLEY: My objection is that he hasn't
5 asked -- laid any foundation for that question. He
6 hasn't asked that question. And I believe that
7 question concerns events that occurred prior to
8 6/7/2006, Your Honor.

9 THE COURT: I sustain the objection. This is
10 not relevant to this case. It may be relevant to
11 another one, Mr. Thomas, but please focus. We are
12 doing a divorce here today, not a PCR, and not a
13 criminal case. Divorce today.

14 MR. THOMAS: Well I can't beat both of you,
15 that's for sure.

16 THE COURT: I don't appreciate that comment.

17 MR. THOMAS: I apologize. I mean I just don't
18 know --

19 THE COURT: I have bent over backwards for you.

20 MR. THOMAS: Well I know. But now that she is
21 on the stand, she's making contradictory statements
22 that I try to pursue a line that you indicated I could,
23 now it appears that I misinterpreted what you said.

24 THE COURT: Move on for me, please, sir. Just
25 question her, Mr. Thomas.

1 MR. THOMAS: Okay, so.

2 Okay. Opinion and reputation of evidence of
3 character, 608. The credibility of a witness may be
4 attached or supported by evidence in the form of
5 opinion or reputation but subject to the limitations.
6 The evidence may refer only to character for
7 truthfulness or untruthfulness.

8 I'm trying to locate the stipulation that it has
9 to be directly relevant to the question posed, and I
10 don't see that. I think that's where I made my
11 mistake. If you could direct me to where it stipulates
12 that I can only show untruthfulness as it directly
13 relates to the question posed, it would probably make
14 my questioning a little easier.

15 THE COURT: I ruled on the objection. I
16 sustained it. It is not relevant. Please move on, Mr.
17 Thomas.

18 MR. THOMAS: Okay.

19 THE COURT: Just ask her about the divorce, sir.
20 Ask her about the property, ask her about the
21 litigation. Those are the issues I need to hear about,
22 sir. Ask her about that.

23 MR. THOMAS: Okay. If she can't remember where
24 she lives, how is she going to --

25 THE COURT: Ask her, Mr. Thomas. Don't argue

1 with me, ask her.

2 MR. THOMAS: I'm confused. I don't know where
3 we are going to be able to go with this. I'm looking
4 for that final decree with the list of the non-marital
5 assets. I'm going to go ahead and get that cleared up,
6 where they are at.

7 I should remember them off top of my head, but I
8 don't. Okay.

9 Q (By Mr. Thomas) So you don't acknowledge -- you
10 don't assert that the computer that was taken from my
11 -- our home was yours, that was my computer; is that
12 what you are saying?

13 A I haven't said anything yet.

14 MS. HENSLEY: We stipulated to that being
15 non-marital property, Your Honor.

16 THE COURT: And you stipulate that it is his
17 computer?

18 MS. HENSLEY: Correct.

19 THE COURT: She agrees it's your computer.

20 MR. THOMAS: Okay.

21 Q (By Mr. Thomas) How about the
22 printer/fax/scanner? Is that yours or mine?

23 A I don't even remember a printer.

24 Q Well I don't doubt that, you don't know where
25 you live.

1 MS. HENSLEY: Objection, Your Honor.

2 THE COURT: Don't editorialize, Mr. Thomas, just
3 ask her a question.

4 MR. THOMAS: Okay. So anyway there was a
5 printer/fax/scanner taken from my room. To lay the
6 foundation for these items, I'm going to have to put on
7 the record that her mother approached --

8 MS. HENSLEY: Objection, Your Honor.

9 THE COURT: Just ask her questions, Mr. Thomas.

10 MR. THOMAS: Then I guess I need to call her
11 back and get her mother on the stand to acknowledge
12 that she took the thing, and then put her back on the
13 stand and ask her where they are at.

14 That's the only course of action I can see at
15 this point. I've got a list of things. They have had
16 this list for months and months and now --

17 THE COURT: Do you want to question her further,
18 or do you wish to call someone else at this time?

19 MR. THOMAS: Well can I call her back and get
20 her mother on the stand?

21 THE COURT: You may step down, ma'am.

22 MS. HENSLEY: And, Your Honor.

23 THE COURT: You are reserved, Ms. Hensley.

24 MS. HENSLEY: Okay, thank you.

25 THE COURT: Thank you.

1 Where's mom? Come to the stand, ma'am.

2 Mr. Thomas, I'm going to have to start moving
3 you along now. I want questions, not arguments, not
4 editorializing, please, sir, for me.

5 Raise your right hand.

6 Do you swear of affirm the testimony you will
7 give will be the truth?

8 THE WITNESS: Yes, I do.

9 THE COURT: Have a seat in the witness chair for
10 me, please, ma'am.

11 Full name, please, ma'am.

12 THE WITNESS: Kathy Lynn Maree.

13 THE COURT: Can you scoot up just a little bit,
14 ma'am. Spell you last name for me, please, ma'am.

15 THE WITNESS: M-A-R-E-E.

16 THE COURT: Thank you, ma'am.

17 You may question her, sir.

18 KATHY LYNN MAREE,
19 after having first been sworn to tell the truth, the
20 whole truth and nothing but the truth testified on her
21 oath as follows:

22 DIRECT EXAMINATION

23 BY MR. THOMAS:

24 Q Did you approach my mother at the preliminaray
25 hearing, on the charges I'm currently incarcerated for,

1 and enlightened her to the possession of my belongings?

2 A I gave her belongings of yours that I took out
3 of the room, yes, and told her that the computer was
4 given to the North Charleston Police Department, as
5 well as your cell phone, yes.

6 Q When did you give the computer to the police?

7 A The same day I took it out of the room.

8 Q Oh, okay.

9 MR. THOMAS: Can I get exhibit -- a chain of
10 custody, please.

11 I filed a declaratory judgment with the City of
12 North Charleston Police Department. It took me 3
13 years, they finally released the chain of custody. She
14 gave it to them 8 months later.

15 THE COURT: Questions, Mr. Thomas. Questions,
16 please.

17 MR. THOMAS: Can I enter that?

18 THE COURT: You can testify later. Ask her
19 questions.

20 MR. THOMAS: Well.

21 THE COURT: Questions, Mr. Thomas, questions.
22 Please, sir.

23 MR. THOMAS: Okay.

24 Q (By Mr. Thomas) All right. What did you do
25 with the printer/fax and scanner?

1 A I didn't take that out of the room. I did not
2 take all of your items as far as I remember. No, I did
3 not.

4 Q Pardon me?

5 A I said as far as I remember I didn't take a
6 printer/scanner out of there. I did not take all of
7 your items out. I took my daughter's.

8 Q Okay. So you say you did not take the
9 printer/fax and scanner?

10 A No, to my knowledge I don't remember taking that
11 out, no.

12 Q Okay. How about the digital TV with the 6-inch
13 screen?

14 A The one that you were using as a monitor, I
15 don't remember taking that either. I went in there to
16 get my daughter's things. I was kind enough to get
17 some of your personal items to give to your mother.

18 Q Kind enough?

19 A Yes, kind enough.

20 Q I see you share that lack of memory.

21 Norelco electric razor. How about that? I
22 didn't get that back.

23 A Why would I take that?

24 Q I don't have a clue.

25 MR. THOMAS: Your Honor, can I enter this chain

1 of custody into evidence, or how do I go about that?

2 THE COURT: Show it to Ms. Hensley to see if she
3 has an objection.

4 MR. THOMAS: Point out right here.

5 THE COURT: Just show it to her, Mr. Thomas.

6 MR. THOMAS: Well I'm trying to find where she
7 signed for it, Your Honor.

8 THE COURT: Just show it to Ms. Hensley. If she
9 wants to argue about signing, that's her job. Don't do
10 her job for her, sir.

11 Do you have an objection to the document, Ms.
12 Hensley?

13 MS. HENSLEY: No objection, Your Honor. I
14 object to it being entered, but I don't have any
15 objection to -- I don't know exactly what foundation he
16 is trying to lay with it.

17 THE COURT: Are you trying to admit it into
18 evidence, sir?

19 MR. THOMAS: Yes, ma'am.

20 MS. HENSLEY: Then my objection would be lack of
21 foundation, Your Honor.

22 THE COURT: Now I will hear you, Mr. Thomas.

23 MR. THOMAS: She --

24 THE COURT: What is the foundation?

25 MR. THOMAS: The foundation is that she just

1 told the Court that she took my computer and took it
2 directly to the police department, and the police
3 signed a chain of custody that they got it 8 months
4 later. So she just perjured herself is what I'm
5 pointing out. And I'm hoping that I can rely upon
6 something to be done about it.

7 THE WITNESS: You know, that has been --

8 THE COURT: No, ma'am. No, ma'am.

9 THE WITNESS: Sorry.

10 THE COURT: These are legal arguments and they
11 are arguing the law.

12 Go head, Mr. Thomas.

13 MR. THOMAS: So I would seek sanctions for
14 perjury. She clearly perjured herself.

15 THE COURT: I sustained the objection. Proper
16 foundation has not been laid.

17 Move on for me, please, Mr. Thomas.

18 MR. THOMAS: We are not going to enter it?

19 THE COURT: I sustained her objection, sir. She
20 has made a proper objection.

21 MR. THOMAS: Okay. I would seek to lay the
22 foundation a little clearer.

23 THE COURT: That would be fine, sir. Go right
24 ahead.

25 MR. THOMAS: Okay. Let's see. My little

1 represent yourself in court handbook told me that I
2 could ask the Judge for suggestions on foundation.

3 Is my book accurate to that account?

4 THE COURT: If you have the proper witness here,
5 sir, you can certainly lay the appropriate foundation.
6 What you would need to establish, sir, is what
7 knowledge she would have of that document. As in did
8 she prepare it, participate in it, view it, have any
9 knowledge of it.

10 MR. THOMAS: Okay. Does the fact that -- can I
11 ask her to confirm her signature?

12 THE COURT: Ask her. Ask her.

13 Q (By Mr. Thomas) Would you be willing to
14 acknowledge your signature?

15 A Yes.

16 Q On this?

17 A Certainly.

18 Q Okay.

19 THE COURT: Hand her the document for
20 acknowledgment of her signature.

21 MR. THOMAS: Okay.

22 THE COURT: Whoever is in is in, and whoever is
23 out is out. But this going in and out of the courtroom
24 is stopping.

25 Sir, you are either in or out. Make your

1 choice. All right, stepping out. Thank you, sir.

2 Q (By Mr. Thomas) So you confirm that is your
3 signature?

4 A Yes, it is.

5 Q And that signature reflects that you gave the
6 computer to the City of North Charleston Police
7 Department's evidence unit on 2/20/07 which is
8 approximately 8 months after you said that did you.

9 So basically that was not the truth that you
10 told us a moment ago?

11 A As I stated, that was many years ago. I thought
12 that I gave it to them on the same day. But, you know,
13 we are talking about 6 years ago. I tried to put this
14 behind me and forget it.

15 Q We are also talking about key evidence that was
16 altered at trial.

17 MS. HENSLEY: Objection, Your Honor,

18 THE COURT: Questions, please, Mr. Thomas. This
19 is not post-convention relief, this is a divorce.

20 MR. THOMAS: I'd like to enter this as
21 Plaintiff's 2

22 THE COURT: He wants to enter it as Plaintiff's
23 2 at this time.

24 MS. HENSLEY: I just object on the grounds of
25 relevance, Your Honor.

1 Except for as to the location of the computer,
2 Your Honor, we would stipulate that the computer that
3 belonged to the plaintiff remains in the custody of
4 North Charleston Police Department, or this Court
5 pursuant to the criminal case, as outlined on this
6 chain of custody page 7 of 7 on that exhibit,
7 Plaintiff's 2.

8 THE COURT: I will admit it. He's laid the
9 foundation with her signature on it, for whatever
10 relevance it may have.

11 Please hand it to the court reporter for
12 marking.

13 (Whereupon, Plaintiff's Exhibit No. 2 is marked
14 and admitted into evidence.)

15 THE COURT: I don't mean to cut you off, Mr.
16 Thomas. It takes her a minute to mark it. And while
17 she's marking it she can't be working that machine.

18 You asked for her name, I believe they have
19 provided you with a card.

20 MR. THOMAS: Yes, ma'am.

21 THE COURT: All right. Let's move on, please.

22 MR. THOMAS: Okay.

23 Q (By Mr. Thomas) So you don't remember taking my
24 electric razor or my Braun trimmer?

25 A I gave your mother the stuff that I took out of

1 the room with the exception of the computer and the
2 cell phone.

3 Q So you do admit meeting with my mother at the
4 preliminary hearing and discussing taking these items;
5 is that correct?

6 A Not those items, no, but giving her the items
7 that I did take, yes. With the exception of the
8 computer and the cell phone.

9 Q So you are saying that you gave her all these
10 items listed here at the preliminary hearing except for
11 the computer --

12 A No, I gave her --

13 THE COURT: Wait, please. One at a time.
14 Ma'am, he's got to be able to finish his question
15 before you can answer it.

16 Please start your question for me again, Mr.
17 Thomas.

18 MR. THOMAS: Thank you, Your Honor.

19 Q (By Mr. Thomas) Exclusive of the computer and
20 the cell phone, your testimony is that you gave my
21 mother -- well you don't have any recollection of the
22 TV or -- you are saying that you returned some of my
23 belongings to my mother at the preliminary hearing? Is
24 that what I'm understanding?

25 A I don't know which hearing it was, but the items

1 that I took out of the room, with the exception of the
2 cell phone and the computer, I gave to your mother.

3 Q So you don't know when you gave it to her, but
4 you think it was --

5 A I know it was at one of your hearings, yes. I
6 don't know which one. I did not take all of your items
7 out of the room. I went there to get my daughter's
8 things.

9 Q Okay. So how about the acoustic guitar? You
10 know I kept guitars everywhere I went, I had two of
11 them. I have not seen either of those.

12 MS. HENSLEY: Objection, Your Honor.

13 THE COURT: Please just a question, Mr. Thomas,
14 please.

15 Q (By Mr. Thomas) My guitar?

16 A You would have to talk to the hotel about that.
17 I did not take all of your items out of there.

18 Q Okay. How about, let's see, I had a brand new
19 pair of Timberland boots. You don't recall those
20 either?

21 A As I stated, I did not take all of your items
22 out of the room.

23 MR. THOMAS: If I could ask my mother to give me
24 exhibit 43-A, it's a newspapers article with a picture
25 of Ms. Maree and Ms. Crowley on the front page.

1 Well there's my boots, you are wearing them on
2 the front page of the paper. I was stoned when I saw
3 that.

4 MS. HENSLEY: Objection, Your Honor.

5 MR. THOMAS: Anyway, I can identify them. They
6 were mine.

7 THE COURT: You may do that during your
8 testimony, sir.

9 MR. THOMAS: Okay. I'm going to save that to
10 enter them in. But anyway, those are the boots.

11 Q (By Mr. Thomas) Now there was a number of
12 things in your storage room over there. I don't know
13 where I put that.

14 MR. THOMAS: Your Honor, did I sufficiently
15 reveal that she perjured herself with regard to the
16 computer when she gave it?

17 THE COURT: Just keep asking questions, Mr.
18 Thomas. I will address credibility in my ruling if I
19 deem that's necessary.

20 MR. THOMAS: Is it proper to move for perjury
21 sanctions at this point? Or is that something I should
22 do at the end?

23 THE COURT: You may do that at the conclusion of
24 the trial.

25 MR. THOMAS: Okay.

1 The final decree, proposed final decree has a
2 list of the rest of the property that is missing. And
3 -- wait a minute, here we go. All right.

4 Prior to my marriage with the defendant, I had a
5 home, fully furnished home and valued the assets --

6 MS. HENSLEY: Objection, Your Honor. It's not a
7 question.

8 THE COURT: Would you ask her a question. Were
9 you finished?

10 MR. THOMAS: Well I was trying -- I wanted to
11 ask her where they were.

12 THE COURT: Ask her that. Let him finish his
13 question.

14 MR. THOMAS: Code one at a time of just list
15 them? Well one at a time. Couch. My couch.

16 THE COURT: What's the question, Mr. Thomas?

17 Q (By Mr. Thomas) Do you have my couch?

18 A The one that you left in the storage nine years
19 ago? That you were supposed to get?

20 Q Nine years ago.

21 A That you were supposed to get. That you were
22 supposed to be paying me \$45 a month for rent? And
23 that you gave me --

24 THE COURT: Yes or no, ma'am. Answer his
25 question, please.

1 A No.

2 Q (By Mr. Thomas) Do you have a contract for \$45
3 of rent that you can produce that we were in agreement
4 with that storage fee? I don't have any knowledge of
5 that.

6 A Nope.

7 THE COURT: Questions, Mr. Thomas. Questions.

8 Q (By Mr. Thomas) Do you have a copy of that
9 agreement?

10 A It was verbal.

11 Q Naturally. So that includes the love seat,
12 chair, coffee table, lamps, end tables, kitchen table
13 and chairs, dishes, cookware, utensils, queen size
14 bedframe, queen size mattress, chest of drawers,
15 dressers, another acoustic guitar, electronic keyboard,
16 Sony car stereo, box of rare Maxim magazines from the
17 first ones issued, numerous personal effects,
18 electrical materials, and then we fall into the
19 remaining items.

20 So everything is just gone?

21 A Excuse me. You did not leave all those items in
22 that storage shed. That was nine years ago. You had
23 access to that storage shed for like a year and a half.
24 What you took out of there, I don't know. But all that
25 stuff was not in there.

1 You had a particle board bedroom set that
2 finally fell apart because it stayed in there so long.
3 You were not given access to the storage unit for free.
4 You were being kicked out of your storage room and you
5 asked to put your stuff there and told me that you
6 would pay me, it was either \$45 or \$65 a month, of
7 which you never paid the first penny.

8 And when I gave you -- excuse me -- lent you
9 \$400 to get your engine rebuilt, you were supposed to
10 pay me back. You did not do that. When you got kicked
11 out of my home sometime around the end of 2004, you
12 told me to keep the items in lieu of payment because
13 you did not have the money.

14 But all those items were not in that shed.

15 Q I told you that, huh?

16 A But that has been nine years ago.

17 Q I told you that, huh?

18 A Yes.

19 Q Well the night you kicked me out was actually
20 January 9th of 2005 --

21 THE COURT: Questions, please, Mr. Thomas.
22 Please, questions.

23 MR. THOMAS: Well I mean I got to build on it.
24 I can't just blurt it out.

25 THE COURT: You may build on it by asking

1 questions, sir, and then you may testify to it at the
2 appropriate time.

3 Q (By Mr. Thomas) During that timeframe to which
4 you refer, I do recall money was very tight, I was
5 self-employed, I was staying at your residence. And
6 you kicked me out because I had to borrow \$700 to pay
7 child support and didn't give it to you. You threw me
8 out at 3:00 in the morning. I wish I knew what I knew
9 about that law now then.

10 MS. HENSLEY: Objection, Your Honor

11 THE COURT: Mr. Thomas.

12 MR. THOMAS: But the point I'm getting at is
13 that -- okay, let's get back to impeachment. So she is
14 making statements --

15 THE COURT: Ask her questions, Mr. Thomas,
16 questions.

17 MR. THOMAS: I asked her. She told me that
18 she's gotten rid of all my stuff, that I owed her money
19 and we had an agreement. That's not true, okay. I
20 have other impeachment --

21 THE COURT: Then you may testify to that or
22 present additional evidence to that effect. But at
23 this time ask her questions. If you have no more
24 questions for her, then we will move on.

25 MR. THOMAS: Well I'd like to introduce where

1 she has perjured herself in other affidavits about me
2 to lock me up.

3 Is that something that I can bring forth now, or
4 it goes to character and it was under oath?

5 THE COURT: If it impeaches her testimony that
6 she has presented today.

7 MR. THOMAS: Okay.

8 Q (By Mr. Thomas) Let me ask you, I asked your
9 daughter, she couldn't remember. When this alleged
10 incident took place and she left on 2007; you initially
11 testified that she left two days prior and then you
12 changed up and said it was a day prior.

13 But the point I'm getting at is Rachel came to
14 stay with you. Rachel doesn't remember, she says a day
15 or two. Of course the incident report reviews --

16 THE COURT: Mr. Thomas.

17 Q (By Mr. Thomas) Can you give me an exact
18 timeframe in which she lived with you?

19 THE COURT: That is a question. Thank you.

20 MR. THOMAS: Well I have to lead to it.

21 THE COURT: No, sir. Just ask the question.
22 You're trying to testify. Ask the question, and I'm
23 going to hear your testimony in a moment.

24 A As far as a timeframe, again we are talking
25 about six years ago. I don't remember exactly how long

1 she lived with me. You know, I don't remember that.
2 It has been a long time.

3 Q (By Mr. Thomas) Wow, that's sad.

4 A Do you remember -- excuse me, I can't ask that.

5 Q I'm glad my memory works. Okay.

6 So you don't know how long she lived there?
7 well, let's ask this. How long after the event did
8 your ex-husband, Ralph Crowley, purchase the mobile
9 home and put it on your property? Do you remember
10 that?

11 MS. HENSLEY: And I would just object to
12 relevance, Your Honor.

13 THE COURT: Mr. Thomas, this cannot be relevant
14 to the issues that I have to decide. I'm sorry if you
15 find that funny, Mr. Thomas.

16 MR. THOMAS: I don't find it funny, I just don't
17 know where to go. I can tell you --

18 THE COURT: Let me help you, Mr. Thomas. The
19 issues before me are divorce, alimony, cost of
20 litigation, and certain property. Please concentrate
21 on those issues for me.

22 MR. THOMAS: Okay. I'm going to renew a motion,
23 and I think this is my 10th hearing, my first trial,
24 obviously my first trial. And I'm going to renew the
25 motion that, and this is based on facts that I know, I

1 can assure you that when I come back, if I am given --
2 if you gave me two weeks I can come back and I would
3 have one grand argument for you, and I wouldn't fall
4 outside the parameters of your orders.

5 So I'm reiterating my motion for a continuance
6 based on my case being disrupted like it was, on being
7 a pro se litigant. I know how to research legal
8 materials. I know how to determine what's up. I have
9 a Blacks, I know how to use the law keys. I can come
10 at you with sound arguments and we won't waste the
11 Court's time.

12 But what I'm not willing to do is throw away
13 12-, \$13,000 because of the fact that she railroaded my
14 case. I think that there is relevant grounds that I
15 can present to the Court that protects me from what is
16 going on here.

17 THE COURT: Then talk to me about those assets,
18 sir.

19 MR. THOMAS: I can't. Oh, the assets, well I've
20 pointed them out, and she's denied.

21 THE COURT: Isn't that the \$12,000?

22 MR. THOMAS: Pardon me.

23 THE COURT: Isn't that the \$12,000?

24 MR. THOMAS: Well the assets --

25 THE COURT: And the costs?

1 MR. THOMAS: Well the assets are like 5-, 6,000
2 and the costs are over \$6,000. I didn't have time to
3 prepare an affidavit.

4 THE COURT: Then ask those questions of relevant
5 witnesses, sir.

6 MR. THOMAS: Well that's pretty much it. I went
7 through all the stuff that she doesn't remember
8 anything.

9 THE COURT: All right. Do you have anymore
10 questions of Ms. Maree? Did I say your name right?

11 THE WITNESS: Maree.

12 THE COURT: Maree. Ms. Maree.

13 MR. THOMAS: Well, you know this is --

14 THE COURT: Questions, Mr. Thomas, questions.

15 MR. THOMAS: No, Your Honor. No, Your Honor.
16 I'd like to recall her if I think of something. I'd
17 like to reserve that right if I may.

18 THE COURT: Cross.

19 MS. HENSLEY: Thank you, Your Honor, may it
20 please the Court.

21 CROSS-EXAMINATION

22 BY MS. HENSLEY:

23 Q So, Ms. Maree, your Rachel's mom, right?

24 A Yes.

25 Q You were aware of the circumstances of her

1 marriage to Clark?

2 A Yes, I am.

3 Q And when they got married she was 19; is that
4 right?

5 A I believe so, yes.

6 Q And he was 41?

7 A Yes, I believe so.

8 Q And their marriage essentially lasted from March
9 29th, 2004 until they separated on June 7th, 2006; is
10 that right?

11 A Yes.

12 Q So a little bit over two years; is that right?

13 A Yes.

14 Q During that two-year timeframe, to your
15 knowledge did Rachel work outside of the home very
16 much?

17 A No, she worked with David.

18 Q She only worked with Mr. Thomas?

19 A Yes.

20 Q And that was sporadically in the business that
21 he owned?

22 A Sporadically, yes.

23 Q And she has a high school diploma and that's
24 all?

25 A Yes.

1 Q And she was, during the time she was married to
2 Mr. Thomas, she was addicted to heroin; do you
3 understand that?

4 A Yes, I do.

5 Q And do you understand that Mr. Thomas told you
6 that he intentionally got her addicted to heroin so
7 that she wouldn't leave him; is that correct?

8 A Yes.

9 Q And during that --

10 MR. THOMAS: Objection, that's leading.

11 THE COURT: She is on cross-examination, Mr.
12 Thomas. She is allowed to lead.

13 MR. THOMAS: Well it's a lie, but go ahead.

14 Q (By Ms. Hensley) And during their marriage
15 their standard of living was rather poor, wasn't it?

16 A Very much so.

17 Q They lived in hotels?

18 A Yes.

19 Q They were evicted from different places where
20 they lived?

21 A Yes, for nonpayment of rent.

22 Q And the non-marital property that Mr. Thomas
23 refers to, the couch, love seat, do you have any
24 knowledge of him storing a couch on your property?

25 A I don't remember exactly the things that he did

1 leave there. He did not leave anything that he said he
2 did. However, that was nine years ago.

3 I don't know of any storage facility that you
4 can leave your items in for nine years and expect them
5 to still be there.

6 Q So let me see if I understand. He had these
7 items in a storage facility; was that correct?

8 A Yes.

9 Q And he was getting evicted from the storage
10 facility; is that correct?

11 A Yes, it is.

12 Q And he asked if he could store those items on
13 your property; is that correct?

14 A Yes.

15 Q And he agreed to pay you to store those items?

16 A Yes, he did.

17 Q And he never paid you to store those items?

18 A Not the first penny.

19 Q And he had access in and out of that storage
20 facility on your property?

21 A Yes.

22 Q Correct?

23 A Yes, he did.

24 Q And so any items that may have been removed, he
25 could have removed?

1 A Yes.

2 Q So you know that a particle board bedroom suite
3 did deteriorate in there?

4 A Yes, it did.

5 Q Do you know of anything else that deteriorated
6 in there?

7 A There was some papers that of course after all
8 those years got wet. The mice got into them. There
9 was a chair that the mice just tore up.

10 Q So is it fair to say that those items no longer
11 exist?

12 A Yes.

13 Q And do you think those items had a value of more
14 than \$200?

15 A No.

16 Q And Rachel doesn't work now, right?

17 A No, she doesn't.

18 Q And basically she relies on you and her dad for
19 support; is that right?

20 A Yes.

21 Q And as far as the property that was in the hotel
22 room?

23 A Yes.

24 Q In the hotel room you did take the computer,
25 correct?

1 A Yes, I did.

2 Q And that computer was eventually turned over to
3 the North Charleston Police Department?

4 A Yes. I thought I had done it the same day, but
5 apparently I didn't. But again, that was six years
6 ago.

7 Q So you were mistaken when you said you turned
8 over the first day?

9 A I was. I said I thought that I did. I didn't
10 realize how much time had passed. But again, it's been
11 six years. I don't remember everything.

12 Q Sure. So in February you gave it to the police?

13 A That's what it states on the there, yes.

14 Q And they never gave it back to you?

15 A No.

16 Q So you don't have that computer?

17 A No, I don't.

18 Q And you don't have the razor?

19 A No.

20 Q Or trimmer?

21 A No.

22 Q Or guitar?

23 A No.

24 Q Or printer or scanner?

25 A No.

1 Q Or the Timberland boots?

2 A No.

3 Q So if you had Timberland boots in a picture,
4 they could just be similar boots, is that?

5 A Exactly, yes.

6 Q Now have you been here to prior hearings before?

7 A Yes, I have.

8 Q And in those hearings has Mr. Thomas been
9 offered a divorce by the Court?

10 A Yes, he has.

11 Q And in those hearings has he refused the
12 divorce?

13 A Yes, he has.

14 MS. HENSLEY: That's all the questions I have,
15 Your Honor.

16 THE COURT: Do you have any redirect that you
17 wish to question her about, in response to her
18 cross-examination?

19 REDIRECT EXAMINATION

20 BY MR. THOMAS:

21 Q You said that we lived in motels because of
22 what? Because I was evicted because of non payment?

23 A No, I didn't say that's why you lived in hotels.

24 Q You said that's why --

25 A You moved from hotel to hotel --

1 THE COURT: Wait, please one at a time. Let him
2 finish his question.

3 A You'd constantly go to the --

4 THE COURT: Let him finish his question, ma'am.
5 Mr. Thomas, your question, please.

6 Q (By Mr. Thomas) The reason I was living in a
7 hotel was because your daughter tore the house up and I
8 got evicted. You raised that issue. And I have got
9 two people in here that will testify to that.

10 THE COURT: Ask her a question, Mr. Thomas,
11 don't tell me what someone else will testify to.

12 MR. THOMAS: That's not true. You know, how do
13 you ask that?

14 Okay, well I'd like to rehabilitate that. Is
15 that something that I can do?

16 THE COURT: Just ask her questions, sir, and see
17 if there is an objection.

18 MR. THOMAS: Okay.

19 Q (By Mr. Thomas) Don't you recall that we were
20 evicted because your daughter tore up the house and
21 busted out the windows in my beach house?

22 A I wasn't --

23 MS. HENSLEY: I just object on the grounds of
24 relevance, Your Honor.

25 THE COURT: How is it relevant? All she said

1 was you lived in motels, sir. How is that relevant?

2 MR. THOMAS: She said that I lived in motels
3 because I got evicted for non payment is what she said.

4 THE COURT: The eviction for non payment, sir,
5 was for a storage facility, not motels.

6 MR. THOMAS: All right. If you check the
7 transcript she said I was evicted because I didn't pay
8 my rent and we lived in motels. That's what she said.

9 THE COURT: Ask her the question. I will let
10 him ask it.

11 Q (By Mr. Thomas) Isn't that why we were evicted?

12 A I don't have firsthand knowledge of that. I
13 wasn't there.

14 MR. THOMAS: Okay, well I want to bring some
15 people up and remind you.

16 I have no further questions.

17 THE COURT: Anything else, Ms. Hensley?

18 MS. HENSLEY: Nothing further, Your Honor.

19 THE COURT: You may step down, ma'am. Thank
20 you. Watch your step, please.

21 Who is next, Mr. Thomas?

22 MR. THOMAS: I'd like to recall my mother, Carol
23 Cook.

24 THE COURT: Ms. Cook, you are still under oath.
25 Please come have a seat in the witness chair for me.

1 I will ask you, once you're seated, to state
2 your name again for the court reporter.

3 THE WITNESS: Carol Ann Cook.

4 THE COURT: Thank you, ma'am.

5 Okay, sir.

6 CAROL ANN COOK,
7 after having previously been duly sworn to tell the
8 truth, the whole truth and nothing but the truth
9 testified on her oath as follows:

10 DIRECT EXAMINATION

11 BY MR. THOMAS:

12 Q Okay. You heard Ms. Maree testify that she did
13 in fact approach you at the preliminary hearing and you
14 specified, or a hearing, and you confirmed it was a
15 preliminary hearing; is that correct?

16 A Yes.

17 Q Okay. And she also stated that she gave you all
18 of my things at a hearing, non specific. Do you recall
19 when she gave you my belongings?

20 A She had brought your clothes and gave me your
21 clothes. That was all she gave me.

22 Q At the hearing?

23 A Yeah.

24 Q Okay. Thank goodness your memory is still
25 intact.

1 MS. HENSLEY: Objection, Your Honor.

2 THE COURT: Please, Mr. Thomas. You know, it's
3 now 10 after 3:00. I am going to start holding you to
4 the procedure of question and answer, not commentary,
5 please, sir.

6 MR. THOMAS: Okay.

7 THE COURT: Come on.

8 MR. THOMAS: Okay.

9 THE COURT: We are wasting too much time now,
10 please. I'm going to let you testify, sir, when it's
11 the appropriate time. Go ahead.

12 Q (By Mr. Thomas) You have personal knowledge of
13 the reason I moved out of the house at Folly Beach.

14 Would you reveal to the Court what that?

15 A Yes. My granddaughter lived with you. And of
16 course I'm concerned about my grandchildren, and my son
17 as well. And my granddaughter was all upset and
18 informed me that --

19 MS. HENSLEY: And I just object to any hearsay,
20 Your Honor.

21 THE COURT: Sustained. Please don't tell me
22 anything anyone told you other than --

23 THE WITNESS: I filed a police report.

24 THE COURT: I'm not finished, ma'am. Don't tell
25 me anything that anyone told you other than Ms. Crowley

1 or Mr. Thomas. You may repeat what they said, but no
2 one else.

3 THE WITNESS: What about I did see the police
4 report.

5 THE COURT: No, ma'am. Just answer his
6 questions.

7 Q (By Mr. Thomas) Did I ever tell you what
8 happened at the beach house?

9 A Yes.

10 Q Did I tell you why we had to move?

11 A Yes.

12 Q Okay. So the reason we were living in motels
13 had nothing to do with me not paying my rent; is that
14 correct?

15 A Correct.

16 Q Okay. Now let me go back to your list of
17 questions, see if there is anything we can move on
18 with.

19 Now you heard Ms. Maree testify that she took my
20 computer?

21 A Yes.

22 Q And that she said she gave it to the police that
23 same day. But she has already admitted that you and
24 her discussed that computer?

25 A Yes.

1 Q Okay. What did she tell you she was doing with
2 the computer that day?

3 MS. HENSLEY: Objection, Your Honor.

4 THE COURT: Mr. Thomas, they have already
5 stipulated that that computer is not marital property.
6 It is not an issue for this Court. It may be an issue
7 for the PCR court, but not this Court.

8 MR. THOMAS: Well, I mean.

9 THE COURT: It's the computer is not relevant.

10 Q (By Mr. Thomas) Have you ever known me to just
11 abandon thousands of dollars in personal property, just
12 give it away?

13 A No.

14 Q Have I always been diligent about maintaining
15 access to my belongings?

16 A Yes.

17 Q And being meticulous in the storage thereof?

18 A Yes.

19 Q Do you think that it's possible that I would
20 have just abandoned all of this property at her house
21 and left it to her?

22 A I find it hard to believe.

23 Q Okay.

24 MR. THOMAS: All right. I have no further
25 questions at this moment. But I would like to reserve

1 the opportunity to recall her if the need arises if it
2 please the Court.

3 THE COURT: Cross-examination, Ms. Hensley?

4 MS. HENSLEY: Thank you, Your Honor, may it
5 please the Court.

6 CROSS-EXAMINATION

7 BY MS. HENSLEY:

8 Q Ms. Cook, you've financed your son's litigation;
9 is that correct?

10 A Yes.

11 Q And you all spent over \$6,000, correct?

12 A I haven't kept account of the figures.

13 Q But you've spent at least \$6,000 trying to
14 recover property worth about \$5,000; is that right?

15 A I did, yes.

16 Q And you have been here in hearings before,
17 correct?

18 A Yes.

19 Q And in this courtroom the judges have offered
20 your son a divorce, correct?

21 A Yes.

22 Q And each time he has refused their offer of
23 divorce, correct?

24 A Yes.

25 Q On at least six occasions, correct?

1 A I'm not sure how many occasions.

2 Q Let's see. And to your knowledge -- well were
3 you here on September 2nd, 2011 when Judge McMahon
4 offered him a divorce on the grounds of one year
5 continuous separation?

6 A I don't believe I was at that hearing.

7 MR. THOMAS: She wasn't, no.

8 Q (By Ms. Hensley) What about the November 18th,
9 2011 hearing in front of Judge Cate. You were at that
10 hearing, weren't you?

11 A Yes.

12 Q And Judge Cate offered him a divorce and he
13 declined, correct?

14 A Yes.

15 Q And then on the January 24th, 2012 pretrial, you
16 were here at that hearing, correct, in front of Judge
17 McMahon?

18 A I lose track of the dates. I guess I was here.
19 I try to be at all of them.

20 Q And Judge McMahon offered him a divorce then?

21 A Okay, yeah.

22 Q And then on April 30th, 2012 in front of Judge
23 Guyton, you were at that hearing, correct?

24 A I am confused with the hearings.

25 MR. THOMAS: She was not at the January 24th.

1 hearing.

2 THE COURT: Mr. Thomas, she needs to answer the
3 questions.

4 A I cannot swear being here because I need to look
5 at my calendar.

6 Q (By Ms. Hensley) But you are aware of the fact
7 that this Court has offered your son a divorce on at
8 least more than four occasions, correct?

9 A Well I cannot really say more than four, but I
10 know he has been offered the divorce.

11 Q And he insisted on this trial today?

12 A Yeah.

13 Q And you were aware of the fact that he has been
14 separated from his wife since June 7th, 2007, correct?

15 A Yes.

16 Q They have lived continuously separate and apart
17 since that time, correct?

18 A Yes.

19 Q And during the course of their marriage, your
20 husband {sic} provided the sole support for Rachel
21 Crowley, correct?

22 A Well I think she helped him. She went on his
23 jobs with him. I don't know how much she did. I don't
24 know if she did the paperwork or what, but I know she
25 worked with him.

1 Q But she wasn't working outside of his jobs to
2 contribute to their income, was she?

3 A To my knowledge I don't know of her ever working
4 at all.

5 Q You don't know of her ever working at all?

6 A Right.

7 MS. HENSLEY: That's all the questions I have,
8 Your Honor.

9 THE COURT: Do you have anything else you want
10 to ask her at this time?

11 MR. THOMAS: Yes, I do.

12 REDIRECT EXAMINATION

13 BY MR. THOMAS:

14 Q Do you recall the reason that I told you that I
15 wasn't willing to just grant a divorce with regard to
16 the pleadings?

17 In other words, the allegations, the fact that
18 she's just consistently argued that she was suffering
19 from all these injuries?

20 A Yeah. I know that she didn't go along with it
21 because she wouldn't come to the hearings.

22 Q I'm referring to the allegations that she was in
23 fear of her life, and that she was not going to enter
24 the courtroom. She --

25 A Oh yeah. Yeah.

1 Q And I was on direct appeal at that time; is that
2 correct?

3 A Yes.

4 Q And did I express concern that for me not to
5 argue those issues would be a tacit admission to the
6 veritabilty of her claims?

7 A Yes.

8 Q And that the opportunity to withdraw all
9 pleadings didn't come until this morning, but by then
10 -- well that's going to be testimony.

11 MR. THOMAS: All right. No further questions.
12 And I'd like, like I said, reserve her in case I come
13 up with something.

14 THE COURT: Any other questions, Ms. Hensley?

15 MS. HENSLEY: No, Your Honor.

16 THE COURT: Thank you, ma'am. You may step
17 down, Ms. Cook.

18 Mr. Thomas, who's next?

19 You have a witness you wish to call?

20 Do you wish to testify at this time, sir?

21 MR. THOMAS: Jeremy Leadford.

22 THE COURT: Left hand on the Bible, raise your
23 right.

24 Do you swear or affirm that the testimony you
25 will give will be the truth?

1 THE WITNESS: I do, Your Honor.

2 THE COURT: Have a seat in the witness chair for
3 me, sir.

4 Please tell me your full name.

5 THE WITNESS: Jeremy Michael Leadford.

6 THE COURT: Thank you, sir.

7 You may question him, Mr. Thomas.

8 JEREMY MICHAEL LEADFORD,

9 after having first been duly sworn to tell the truth,
10 the whole truth and nothing but the truth testified on
11 his oath as follows:

12 DIRECT EXAMINATION

13 BY MR. THOMAS:

14 A Hello, Mr. Leadford, I apologize for
15 inconveniencing you here today. I'm sure you've
16 noticed I'm not doing a very good job of presenting my
17 case and I apologize it's affected you some.

18 I was just wanting to reference this incident
19 where the defendant was arrested at the Budget Inn. I
20 believe you were sent a copy of the incident report to
21 refresh your memory.

22 It's a little vague as to whether or not she was
23 drunk or not. I'm just trying to establish a habitual
24 pattern of drunkenness. And if you can recall your
25 recollections along that line, I would be grateful to

1 you.

2 A Do you want me to recite --

3 Q Was she drunk?

4 A Okay. From the report, I mean again this was
5 several, several years ago. From the report itself
6 being able to just re-account steps that were taken
7 during the report, she was consuming alcohol at the
8 time. But whether or not she was inebriated or
9 intoxicated, it is not documented.

10 And with the amount of cases that we deal with
11 on a daily basis, I do not remember her until today's
12 date.

13 Q That's certainly understandable. Do you know
14 why the case wasn't prosecuted?

15 A I do. With this type of case, because the
16 actual disorderly conduct charge was a property-related
17 offense under the disorderly conduct criminal charge,
18 we needed a witnesses, Mr. Jones. Mr. Jones would have
19 been the representative for the Budget Inn, we needed
20 him to testify.

21 I believe in the paperwork from the court it
22 shows that the required witness failed to appear. With
23 me not having the required witness, I cannot go forward
24 with the case.

25 Q That would definitely explain the disorderly

1 conduct, but the resisting arrest was --

2 A The resisting arrest was non-prossed by me or
3 dismissed by me as the arresting officer for the fact
4 of if I don't have a disorderly conduct charge to
5 originally incarcerate someone, therefore I do not have
6 a resisting arrest if there was never an arrest.

7 Q I see, that makes perfect sense. Thank you for
8 your time. I do apologize for inconveniencing you.

9 THE COURT: Ms. Hensley.

10 MS. HENSLEY: I don't have any questions for
11 this witness, Your Honor.

12 THE COURT: You may step down, Mr. Ledford,
13 thank you.

14 May he be excused, Mr. Thomas?

15 MR. THOMAS: Yes, and again I apologize.

16 THE COURT: Ms. Hensley?

17 MS. HENSLEY: No objection, Your Honor.

18 THE COURT: You may be excused, sir. Thank you
19 your coming.

20 THE WITNESS: Thank you, ma'am.

21 THE COURT: How many more witnesses do you have,
22 Mr. Thomas?

23 MR. THOMAS: Gosh I've got plenty, but it really
24 doesn't -- James Smiley.

25 THE COURT: Is Mr. Smiley present in the

1 courtroom, courthouse?

2 THE OFFICER: He was in the courthouse. I can
3 contact him, Your Honor.

4 THE COURT: All right, they will call for him.
5 I believe the court reporter would like just a
6 little bit of a comfort recess.

7 Mr. Thomas, would you like a comfort recess at
8 this time?

9 MR. THOMAS: If it's possible, I didn't get an
10 opportunity -- I took the wrong deposition.

11 THE COURT: My question to you is, sir, do you
12 want to leave the courtroom or stay in the courtroom?

13 MR. THOMAS: Stay in the courtroom.

14 THE COURT: You may do that, sir. I just wasn't
15 going to remove you and allow everyone else to stay.

16 All right. Anyone who wishes to excuse
17 themselves may do so. We will be in recess for about
18 five minutes. Thank you.

19 MS. HENSLEY: Thank you, Your Honor.

20 (Whereupon, a recess was taken.)

21 THE COURT: Mr. Thomas, can you call another
22 witness? He was on the 4th floor, can you call another
23 witness so we don't have to wait?

24 MR. THOMAS: That's cool with me.

25 MS. HENSLEY: Your Honor, while -- during the

1 break we exchanged the deposition of Eraine Biering.

2 THE COURT: Yes, ma'am.

3 MS. HENSLEY: And the redactions. And my
4 understanding is that Mr. Thomas has agreed to the
5 redactions that I made on my copy of the deposition.

6 The deposition references an affidavit, that is
7 not attached, which of course I would have objected to.
8 But since it's not attached, I don't think that it is
9 an objection.

10 THE COURT: All right. So you are in agreement
11 with the redacted copy of the deposition?

12 MR. THOMAS: That's fine with me, Your Honor.

13 THE COURT: All right, thank you. If you'll
14 hand that up we will make that Plaintiff's Exhibit 3.

15 MS. HENSLEY: And, Your Honor, we took the
16 staple out of it I'm sorry.

17 THE COURT: That's all right.

18 MS. HENSLEY: The court reporter, I know she's
19 having stapler issues.

20 (Whereupon, Plaintiff's Exhibit No. 3 is marked
21 and admitted into evidence.)

22 THE COURT: Can you call another witness for me
23 while we wait for the witness to come down from the 4th
24 floor, please?

25 MR. THOMAS: Well, it would almost be like

1 sequestering Smiley. The only other witnesses that are
2 relevant to the case are my stepmother and father, and
3 it's with regard to Smiley. So if you want to go ahead
4 and call my stepmother, we can do that, but Smiley
5 might not appreciate it.

6 MS. HENSLEY: We don't have any objection to
7 taking witnesses out of turn, Your Honor, so.

8 THE COURT: It's up to you, Mr. Thomas. You
9 want to call your stepmother, that's fine, whenever you
10 want to do so.

11 Is it my understanding that you then only have
12 your stepmother, your father and yourself and Mr.
13 Smiley left as your witnesses at this time?

14 MR. THOMAS: Right.

15 THE COURT: Okay. Those are the only additional
16 witnesses.

17 MR. THOMAS: Can I ask -- well, no, actually
18 there is -- well, let me see.

19 I hate to waste the relevance, because I mean.
20 Yes, I'd like to call Deputy Frost. That's a
21 pretty significant event.

22 THE COURT: Left hand on the Bible, raise your
23 right.

24 Do you swear or affirm the testimony you will
25 give will be the truth?

1 THE WITNESS: Yes, I do.

2 THE COURT: Have a seat in the witness chair for
3 me. Please tell me your full name.

4 THE WITNESS: Jack Christian Frost.

5 THE COURT: Thank you, sir.

6 Whenever you are ready, Mr. Thomas, you may
7 question him.

8 JACK CHRISTIAN FROST,
9 after having first been duly sworn to tell the truth,
10 the whole truth and nothing but the truth testified on
11 his oath as follows:

12 DIRECT EXAMINATION

13 BY MR. THOMAS:

14 Q Thank you for coming, Mr. Frost. I apologize
15 for not getting you up sooner. It has been kind of a
16 -- okay, this is very brief.

17 Did you receive a copy of the incident report on
18 the arrest on May 12th, 2007 involving the defendant?

19 A Yes, I did.

20 Q Okay. I know that has been approximately like
21 five years ago. If you could --

22 THE COURT: I'm sorry, Mr. Thomas, can you give
23 me that date again?

24 MR. THOMAS: May 12th, 2007.

25 THE COURT: Thank you, sir. My computer was

1 gearing up and I couldn't hear you.

2 MR. THOMAS: Uh-oh.

3 Q (By Mr. Thomas) all right. This is your
4 incident report, and it's true and accurate to the best
5 of your belief and knowledge I presume?

6 A Yes, it is.

7 Q Can you -- let me see -- can you describe the
8 demeanor of the defendant with regard to, I believe you
9 indicated that she was very unsteady on her feet, and
10 slurring her words as she attempted to -- could you go
11 ahead and elaborate on what you observed that day, or
12 evening?

13 A My report states that I observed her to be
14 unsteady on her feet. She was slurring her words.

15 Q So you pretty much presumed her to be
16 intoxicated?

17 A She demonstrated the signs, yes.

18 Q Okay. If she had been driving a car, would you
19 have placed her under arrest for DUI in the condition
20 that she was in at that time?

21 A It's unknown.

22 Q Okay. Calls for speculation I suppose.

23 Okay, says here that she took a swing at Mr.
24 Terry, Cecil Terry?

25 A That's correct.

1 Q And that's when you placed her under arrest for
2 simple assault.

3 I am just curious. Being that it took place,
4 well it says here that her residence was 5586, and the
5 complainant was Kathy Maree, her mother.

6 So, I am understanding this to indicate that Ms.
7 Crowley was residing at her mother's house at that
8 time. So she was a resident with her mother on this
9 date? According to your incident report, that's the
10 way you recall it?

11 A The address I received for Ms. Crowley that
12 night was 5586 Highway 174.

13 Q Okay, that was her mother's address. Okay.

14 I'm quite familiar with the criminal domestic
15 violence statute for obvious reasons. I'm serving
16 prison time for it. And it stipulates that normally an
17 assault involving a family member is normally
18 prosecuted under a criminal domestic violence.

19 Is there any particular reason why you decided
20 not to pursue that type of a charge?

21 MS. HENSLEY: I would just object as to
22 relevance, Your Honor.

23 THE COURT: How is that relevant?

24 MR. THOMAS: I was just curious.

25 THE COURT: He is curious, Ms. Hensley. I'm

1 going to let him ask it.

2 Answer it for him, please, officer.

3 A At the time the charge of simple assault was a
4 better charge than the criminal domestic violence
5 because as I recall the facts of the case did not fit
6 the criminal domestic violence criteria.

7 MR. THOMAS: I see. Yeah, they didn't -- never
8 mind. That's a narrative, okay.

9 This is Exhibit 144. I would like to ask the
10 Court if I could enter it into evidence.

11 THE COURT: Show it to Ms. Hensley.

12 MR. THOMAS: Okay.

13 MS. HENSLEY: I have it, Your Honor. And I'm
14 happy -- without any objection from us, I'm happy to
15 provide a copy to the plaintiff. And no objection from
16 the defendant to the admission of Plaintiff's Exhibit
17 4.

18 THE COURT: Give it to the court reporter, allow
19 her to mark it. And before she does that, tell me what
20 it is, please, Mr. Thomas.

21 MR. THOMAS: It is the incident report for
22 simple assault.

23 THE COURT: To which this officer just
24 testified?

25 MR. THOMAS: Yes, ma'am.

1 THE COURT: Thank you, sir. That's without
2 objection Plaintiff's 4. Allow her to mark it.

3 MR. THOMAS: Can you please tell me what
4 Plaintiff's 3 was? I failed to write it down.

5 THE COURT: The deposition.

6 MR. THOMAS: Thank you.

7 (Whereupon, Plaintiff's Exhibit No. 4 is marked
8 and admitted into evidence.)

9 THE COURT: Thank you, you may begin.

10 MR. THOMAS: I have no further questions. Again
11 I apologize for the inconvenience. Thank you for
12 coming.

13 THE COURT: Cross, Ms. Hensley?

14 MS. HENSLEY: No questions for Deputy Frost.

15 THE COURT: You may step down, sir.

16 Any reason he can't be excused?

17 MR. THOMAS: No, Your Honor.

18 THE COURT: Any objection?

19 MS. HENSLEY: None, Your Honor.

20 THE COURT: You are excused, deputy. Thank you
21 so much.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Who is next, Mr. Thomas?

24 MR. THOMAS: Okay. Well it appears Mr. Smiley
25 is back so I'd like to call my father, David Thomas.

1 MR. SMILEY: If that's the case, Your Honor, I
2 have got four pleas upstairs. I will be in 4D if you
3 will allow me.

4 THE COURT: You know, Mr. Thomas, we just called
5 him out of circuit court. Can we not take him first?

6 MR. THOMAS: Sure we can. I just thought he'd
7 like to hear relevant testimony regarding him. But,
8 sure, let's go ahead and do Mr. Smiley. That's fine.

9 THE COURT: Come around, Mr. Smiley, and be
10 sworn, please, sir.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Left hand on the Bible, raise your
13 right.

14 Do you swear or affirm the testimony you will
15 give will be the truth?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Thank you, sir. Please have a seat
18 in the witness chair. Tell me your full name.

19 THE WITNESS: James Watson Smiley, IV.

20 THE COURT: Thank you, sir.

21 You may question him, sir.

22 JAMES WATSON SMILEY, IV,
23 after having first been duly sworn to tell the truth,
24 the whole truth and nothing but the truth testified on
25 his oath as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q Mr. Smiley, you and I entered into a fiduciary relationship that led to you meeting the defendant in 2003; is that correct?

A I represented you, yes.

Q Okay.

A I met Ms. Crowley, I don't know when it was, at the Mount Pleasant Municipal Court I think was the first time I met her.

Q Actually you met her when I took her to your office.

MS. HENSLEY: Objection, Your Honor --

A Well then you can testify better than me --

THE COURT: Hold on. Hold it. What's your objection?

MS. HENSLEY: That he is testifying and not asking questions.

THE COURT: I sustain it.

You ask him questions. If you want to testify to something different, Mr. Thomas, you are free to do that but not right this minute.

MR. THOMAS: You know, I think where my problem is, my little do-it-yourself book told me that I could do that. And I keep getting hung up on that. And I

1 apologize. I beg your indulgence.

2 THE COURT: I've tried to be as indulgent as
3 possible today, Mr. Thomas.

4 MR. THOMAS: I know. Hey, I'm just a layman.

5 Q (By Mr. Thomas) All right. You are familiar
6 with Tommy Bolus; is that correct?

7 A He is a lawyer, yeah.

8 Q He is a friend of yours?

9 A No.

10 Q He is not. Do you recall carrying on a
11 conversation with him while I was waiting for him to
12 have a legal visit with me while I was in jail on these
13 charges?

14 MS. HENSLEY: Objection, Your Honor, as to
15 relevance.

16 MR. THOMAS: Well --

17 THE COURT: The issues before this Court again,
18 Mr. Thomas, are --

19 MR. THOMAS: Well I believe that Mr. Smiley has
20 a relationship -- has had an inter-marital relationship
21 with my wife. And I'm leading up to his consistent
22 appearance. There is a number of times he was there,
23 okay.

24 And I'm saying that he was there talking with my
25 attorney. And I observed the demeanor that indicated

1 to me that there was some subversive conversation
2 taking place. And I'm just trying to determine exactly
3 what's going on.

4 Q (By Mr. Thomas) Now I have already obtained
5 documents that confirm that you and Mr. Bolus were in
6 the jail that day --

7 THE COURT: To me, Mr. Thomas. You are making
8 objection arguments to me, not the witness, to me.

9 MR. THOMAS: I'm sorry. I apologize.

10 THE COURT: Yes, sir.

11 MR. THOMAS: I have a document where I filed a
12 freedom of information with Major Brady at the county
13 jail and confirmed that Mr. Smiley and Mr. Bolus were
14 indeed at the jail at the same time as I was there.

15 THE COURT: I am assuming, Mr. Thomas, that
16 given the fact I just pulled Mr. Smiley out of general
17 sessions, he's a criminal lawyer.

18 MR. THOMAS: Well what I'm just saying, I saw
19 them talking together. And I just --

20 THE COURT: How is that relevant to your divorce
21 case?

22 MR. THOMAS: Well I'm tying --

23 THE COURT: That he is talking to a --

24 MR. THOMAS: I'm doing my best to get to the
25 relevance.

1 THE COURT: Would you just get to the relevance
2 for me, please, sir?

3 MR. THOMAS: All right.

4 THE COURT: Ask him another question. I sustain
5 that objection.

6 MR. THOMAS: All right.

7 Q (By Mr. Thomas) Did you attend my trial, Mr.
8 Smiley?

9 A I did.

10 MS. HENSLEY: Again, Your Honor, I would just
11 object on the grounds of relevance.

12 MR. THOMAS: Well he was seated beside her with
13 his arm around her, Your Honor. I think that's quite
14 relevant to an adulterous affair.

15 THE WITNESS: And, Your Honor, I'm getting ready
16 to --

17 THE COURT: Wait a minute, Mr. Smiley. Hold on
18 just a second. I know where you are going. Hold on
19 just a second for me, though.

20 Are you trying to prove post-separation adultery
21 between your wife and this gentleman?

22 MR. THOMAS: Exactly.

23 THE COURT: And do you understand the elements
24 required of adultery to be proven in a case for
25 divorce?

1 MR. THOMAS: well --

2 THE COURT: They are opportunity to commit
3 adultery, and inclination that adultery is committed.
4 Do you understand?

5 MR. THOMAS: And there's a number of occasion
6 where they were --

7 THE COURT: My question is do you understand?

8 MR. THOMAS: Yes, I do understand. Yes, ma'am.

9 THE COURT: All right. You may ask him
10 questions which relate to those two elements only, sir;
11 opportunity and inclination. You may ask him those
12 questions.

13 It's a very narrow focus of this case, sir.
14 Again we are not re-litigating your criminal case.
15 This is not your post-conviction relief case.

16 MR. THOMAS: It has nothing to do with my case,
17 it's about adultery.

18 THE COURT: Just ask him questions, sir.

19 MR. THOMAS: well I'm going to the page that
20 falls into the category.

21 You're an arrogant man.

22 THE WITNESS: Your Honor, I --

23 THE COURT: Now, Mr. Thomas, I have told you
24 time and time again to stop these editorial comments
25 for the record.

1 You may testify.

2 Mr. Smiley, we have been at this all day.
3 Please bear with us in this proceeding, sir. I realize
4 this is very uncomfortable for you, sir. He is
5 entitled to question you.

6 THE WITNESS: Yes, ma'am. I don't need to be --

7 THE COURT: I will only allow him to question
8 you as to what is relevant to the issues before this
9 Court.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Ms. Hensley, of course, will have
12 the opportunity to cross-examine you.

13 Questions, Mr. Thomas. No more editorial
14 comments or I will start sanctioning you.

15 MR. THOMAS: Okay. I'm referring to what you
16 said, this evidence which shows both inclination and
17 the opportunity to commit adultery.

18 THE COURT: Questions, Mr. Thomas. Don't argue
19 the law with me, just present the evidence. You can
20 argue the law later. Ask him questions.

21 Q (By Mr. Thomas) Did you appear at the January
22 24th hearing before Judge McMahon as Rachel's defense
23 attorney?

24 A I think you are aware that I did. Not as her
25 attorney. I came in the stead of Ms. Hensley, who was

1 sick, for scheduling purposes because you had been
2 brought down from SCDC, didn't want it to be a wasted
3 trip.

4 I made it clear on the record that I came, it
5 was for the Court's convenience, to set the schedule,
6 period.

7 Q Yet you made a motion grounded on our prior
8 representation to exclude her from having to appear
9 personally in the courtroom.

10 A Question?

11 Q And that would be a conflict of interest --

12 A Question?

13 Q -- wouldn't it?

14 A What is your question?

15 Q Well did I file a complaint with the ODC on you?

16 MS. HENSLEY: I just object as to relevance,
17 Your Honor.

18 THE COURT: This is clearly not relevant --

19 A Question?

20 THE COURT: -- to the divorce, Mr. Thomas.

21 MR. THOMAS: But the allegations in the ODC
22 suggested he had improper sexual relations with my
23 wife.

24 THE WITNESS: No --

25 THE COURT: If you have -- Mr. Smiley.

1 If you have evidence that you want to present to
2 this Court of any type of adulterous relationship, you
3 can attempt to do that. But that is the focus of this
4 inquiry.

5 I will give you one more opportunity to see if
6 you can ask an appropriate question to this Court's
7 inquiry, which is adultery.

8 MR. THOMAS: Okay. As you can see --

9 THE COURT: Question, please.

10 MR. THOMAS: It's kind of --

11 THE COURT: Question, Mr. Thomas.

12 MR. THOMAS: Can I talk to you?

13 THE COURT: No, sir. You can ask him a question
14 at this time.

15 MR. THOMAS: Okay.

16 Q (By Mr. Thomas) Did the ODC determine my
17 allegation that you had a relationship with my wife was
18 true?

19 A It was never put before the ODC. You might want
20 to read the complaint. The complaint was I did not
21 provide a file. I've answered that complaint and there
22 has been no decision, sir.

23 Q No, the complaint --

24 THE COURT: Don't argue with him, Mr. Thomas.

25 MR. THOMAS: All right.

1 THE COURT: You may question him, but don't
2 argue with him.

3 A And the complaint was filed by you, so you ought
4 to know what's in it.

5 Q (By Mr. Thomas) Well sure, that's why -- never
6 mind.

7 MR. THOMAS: All right. Well I'm not going to
8 win on this note. So I guess that's about it. I think
9 the point is clear.

10 THE COURT: Cross, Ms. Hensley.

11 MS. HENSLEY: Thank you, Your Honor, may it
12 please the Court.

13 CROSS-EXAMINATION

14 BY MS. HENSLEY:

15 Q Mr. Smiley, have you ever had any kind of
16 improper relationship with Rachel Crowley?

17 A No, I have not. I have not done anything with
18 Ms. Rachel Crowley.

19 Q So no kind of sexual relationship?

20 A No.

21 Q No kind of -- have you ever been anywhere in
22 private with Rachel Crowley?

23 A No, not to the best of my recollection. If it
24 did happen, it would have been in this courtroom or a
25 courthouse. I'm not a social acquaintance with Ms.

1 Crowley.

2 Q Are you attracted to Ms. Crowley?

3 A I think Ms. Crowley is, could be my child. I
4 certainly am not.

5 MS. HENSLEY: That's all the questions I have,
6 Mr. Smiley. Thank you.

7 THE COURT: Anything else, Mr. Thomas, that you
8 want to ask Mr. Smiley?

9 MR. THOMAS: Not hardly.

10 THE COURT: You are excused, Mr. Smiley. You
11 may return to circuit court. Thank you, sir.

12 THE WITNESS: Thank you. I appreciate it.

13 THE COURT: Please apologize to the judge whose
14 court I disrupted.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you, sir.

17 Who's next, Mr. Thomas?

18 MR. THOMAS: Well, Your Honor, I think I pretty
19 much been shot down on everything.

20 THE COURT: Do you have any more witnesses, Mr.
21 Thomas?

22 MR. THOMAS: I don't really see where I do. I
23 have proven -- I'd like to make -- well we have not
24 concluded the proceedings.

25 Will I be allowed to make a closing argument?

1 THE COURT: I will allow that, sir.

2 MR. THOMAS: Okay, thank you. I tell you what,
3 I would like to go ahead and call my father up just to
4 get one thing on the record.

5 THE COURT: Certainly. Come forward, sir.

6 MR. THOMAS: Okay. David Thomas.

7 THE COURT: Mr. Thomas.

8 She has indicated he is hard of hearing.

9 Mr. Thomas, can you hear me all right?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Would you go over here to the
12 railing, please. You see the Bible? Put your left
13 hand on the Bible and raise your right.

14 Do you swear or affirm the testimony you will
15 give will be the truth?

16 THE WITNESS: The truth, yes.

17 THE COURT: Have a seat in the witness chair for
18 me, sir.

19 Please tell me your full name.

20 THE WITNESS: David Alton Thomas

21 THE COURT: Please, pull the microphone to you,
22 sir.

23 Mr. Thomas, I assume you know he is hard of
24 hearing so talk up for him, okay?

25 sir, if you don't hear a question, please

1 indicate that so that so it can be repeated for you.

2 THE WITNESS: I'm hearing real well right now.
3 Just not so fast.

4 THE COURT: I'm sorry.

5 THE WITNESS: No, you're doing fine.

6 THE COURT: Okay.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Go ahead, sir, with your questions.

9 MR. THOMAS: Thank you, Your Honor.

10 DAVID ALTON THOMAS,
11 after having first been duly sworn to tell the truth,
12 the whole truth and nothing but the truth testified on
13 his oath as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q Okay. This is brief, it pertains to the
17 hearing.

18 A Ask me a question.

19 Q Excuse me,

20 THE COURT: Follow your father's advice, Mr.
21 Thomas. Please ask a question.

22 MR. THOMAS: Well you know I've got to listen to
23 dad.

24 Q (By Mr. Thomas) Did you observe Mr. Smiley and
25 the defendant in the hallway adjacent to the courtroom

1 prior to the proceedings before Judge McMahon on
2 January 24th of 2012?

3 A I noticed a man that I perceived to be Mr.
4 Smiley. I'm not 100 percent sure it was Mr. Smiley.

5 But there was a gentleman that had came into the
6 court that I believed to be Smiley, and they were
7 chatting together. And in the course, after a few
8 minutes, Rachel left, she went down the stairs and this
9 gentleman went over to the elevator and left before the
10 court proceedings started.

11 So I just assumed they kind of left together,
12 but that's an assumption on my part.

13 Q You never saw either of them again at the
14 conclusion of the proceedings at all?

15 A No, never did.

16 Q So is it reaching to speculate that they may
17 have went off to eat lunch perhaps or converse?

18 A All I saw was she went down the stairs and he
19 went to the elevator.

20 Q But you got the impression that there was kind
21 of like a rendezvous, for lack of a better term?

22 A I guess you could suppose whatever they wanted
23 to do. She may have been parked on a different side of
24 the building. I'm not trying to be adversary, but, you
25 know, that's what I observed. That's it.

1 I didn't see any glances or any romantic
2 inclinations between them other than they were very
3 friendly. And Rachel and her mother was conversing
4 with this gentleman.

5 Q Okay. I just wanted to get that on the record.

6 THE COURT: Cross, Ms. Hensley?

7 MS. HENSLEY: No, Your Honor.

8 THE COURT: Do you have any other questions, Mr.
9 Thomas?

10 MR. THOMAS: No, I'm good. Thank you, dad.

11 THE COURT: You may step down, sir, thank you.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Anything else, Mr. Thomas?

14 MR. THOMAS: Okay. I sure would like to talk to
15 Cecil Terry.

16 THE COURT: Would you call for Mr. Terry in the
17 hall one more time for me, please, officer.

18 THE OFFICER: Yes, ma'am.

19 (Whereupon, the officer exits the courtroom.)

20 THE OFFICER: No response, Your Honor.

21 THE COURT: Mr. Thomas, he has not responded to
22 the call in the hall. For the record again he was
23 personally served with the subpoena on July 21st, 2012
24 at 8:08 p.m.

25 However, I believe you did note earlier that the

1 check for \$25 plus mileage was not attached. Is that
2 correct?

3 MR. THOMAS: That is correct.

4 THE COURT: All right.

5 MS. HENSLEY: Your Honor, just for the record
6 with regard to Mr. Terry's testimony. In response to
7 interrogatories the plaintiff indicated that Mr. Terry
8 was going to testify about pre-separation physical
9 cruelty, which I think would have been barred by your
10 order with regard to condonation.

11 MR. THOMAS: That was well until today. But of
12 course he was the victim in the attack, or the swing
13 whatever, from the March 12th incident, or May 12th
14 incident, excuse me, the May 12th that Deputy Frost
15 testified to.

16 THE COURT: Yes, sir. And what are you asking
17 me to do with respect to Mr. Terry?

18 MR. THOMAS: You know, Your Honor, very clearly
19 Mr. Terry is an honorable man. I don't feel like he
20 would cloud the truth and hide behind a vague memory.
21 And that's what compels me to ask that you issue a
22 bench warrant.

23 I don't want a bench warrant. I like Mr. Terry.

24 THE COURT: He is asking for a bench warrant,
25 Ms. Hensley. What is your position on the bench