

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County
Honorable Jocelyn Newman, Circuit Court Judge

APPELLATE CASE NO. 2017-001242

APPENDIX

JAMES R. SNELL, JR.

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ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Ryan F. Trojan, #360663,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

2015-CP-28-639

ORDER OF DISMISSAL

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

2017 JAN 30 AM 11:37

FILED FOR RECORD

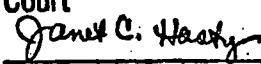
This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 1, 2015. Respondent made its return on December 21, 2015. An evidentiary hearing into the matter was convened on September 1, 2016 at the Richland County Courthouse. Applicant was present at the hearing and represented by James R. Snell, Jr., Esquire. Valerie Garcia Giovanoli, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were Daniel Grigg and Applicant's trial counsel, Ronald W. Moak, Esquire. The Court had before it the trial transcript, the records of the Kershaw County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Kershaw County Clerk of Court. Applicant was indicted at the October 2013 term of the Kershaw County Grand Jury for attempted murder (2013-GS-28-0941). He was represented by Ronald W. Moak, Esquire.

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**ATTEST True, Correct & Certified
Copy of Original on File in this
Court**

Clerk of Court Kershaw County

On July 9, 2014, Applicant pled guilty to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). The Honorable DeAndrea G. Benjamin sentenced Applicant to eleven (11) years of imprisonment. Applicant did not appeal his plea, conviction, or sentence.

ALLEGATIONS

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

1. Ineffective Assistance Counsel
 - a. "Counsel failed to adequately advise [Applicant] of [Applicant's] rights
 - b. "[Counsel] failed to request and/or review discovery materials"
 - c. "[Counsel] did no interview any witnesses"
 - d. "[Counsel] failed to adequately pursue available legal defenses"
2. Involuntary Guilty Plea
 - a. "Guilty plea was note entered freely, knowingly & voluntarily"

On August 26, 2016, one week before his evidentiary hearing, Applicant filed a document captioned, "Statement of Grounds" in which he further alleged:

1. "Lawyer... does not have a file and never receive (sic) or request any medical records in this case."
2. "His lawyer did not have a written engagement agreement with the Plaintiff."
3. "His lawyer failed to spend adequate time with him to explain his case, his options, or do anything else to prepare this case to be challenged in anyway or to do anything else that would be considered effective representation."
4. "The lawyer failed to request, obtain, or review the MMA fighting application from the Department [of Labor, Licensing, and Regulation], or to otherwise inquire as to its contents."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

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opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the

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charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Daniel E. Grigg, Deputy Director of the South Carolina Department of Labor, Licensing, and Regulation testified that the victim, Dillon Robertson, filed an application for a license to participate in Mixed Martial Arts fighting on March 21, 2014. Mr. Grigg testified that in order to receive a license to fight, applicants must submit to a physical examination by a licensed medical doctor. Mr. Grigg testified that per regulation, an application would be denied if the physical examination revealed any history of "cerebral hemorrhaging." Mr. Grigg testified that the victim's application was granted.

Applicant testified he came to retain plea counsel, Ronald Moak, through a mutual friend. Applicant testified that he first met plea counsel at the Kershaw County Courthouse after his bond reduction hearing. Applicant testified that he met with plea counsel two more times at Applicant's residence after the bond reduction hearing to discuss his case. Applicant testified that his communication with plea counsel was mainly through a mutual friend. Applicant testified that he never received from or reviewed with plea counsel any paperwork or discovery. Applicant testified that in their meetings plea counsel advised Applicant to plead guilty; however, plea counsel did not advise Applicant about his right to a jury trial, his right to confront

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witnesses against him, the State's burden of proof, his right to remain silent, trial options, or potential defenses. Applicant testified he pled guilty because plea counsel advised him to do so and that had he known of his right to trial, he would have proceeded to trial. Applicant also testified he wanted to proceed to trial and that Applicant relayed that to plea counsel during a break in the plea colloquy, but that plea counsel told him to stop arguing and answer the Judge's questions.

Plea counsel, Ronald W. Moak, testified that he has been practicing criminal law for all sixteen (16) years he has been in practice. Plea counsel testified that he was a solicitor from 1999-2012 when he joined the Camden Law Firm. Plea counsel testified that he now has his own practice. Plea counsel testified that a mutual friend called him to request that he help defend Applicant in his criminal charge. Plea counsel testified that he first laid out a trial strategy during his first meeting with Applicant around the same time as Applicant's preliminary hearing. Plea counsel testified Applicant executed a written engagement agreement. Plea counsel testified he was involved in plea negotiations with the Solicitor on behalf of Applicant. Plea counsel testified to the tumultuous history the Applicant and victim had and how the night of the incident unfolded. Plea counsel testified that because of this violent past, he and Applicant had considered a defense of self-defense, but that it was not a perfect defense because the Applicant was the initial aggressor on the night of the incident. Plea counsel testified that he attempted to get the Solicitor to reduce the charge of attempted murder to assault and battery in the first or second degree, but that he was only able to get the charge reduced to ABHAN. Plea counsel testified that he advised Applicant of the sentencing range for ABHAN.

Plea counsel testified that he informally requested discovery and received the Solicitor's file on April 22, 2014. Plea counsel testified that he reviewed discovery with Applicant at

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Applicant's then-residence. Plea counsel testified that he and Applicant discussed Applicant's version of the facts. Plea counsel testified that neither he nor the Solicitor had any of the victim's medical records. Plea counsel testified that he did not request any medical records because Applicant had always maintained that he wanted to plead guilty and not go to trial. Plea counsel testified he was aware that victim continued to fight MMA after the incident involving Applicant, but did not investigate that fact any further because he did not believe it was relevant and he was focusing on getting a plea deal from the Solicitor. Plea counsel testified he kept a case file in hard copy and that the file was also scanned into the Camden Law Firm records. Plea counsel testified that he typically never takes or keeps notes because he has a very good memory and that he did not keep notes in this case. He demonstrated his memory by referring to certain witnesses by first and last names, addresses of important locations, and his memory of the specific facts of the case – all without referring to any notes. Plea counsel testified that he interviewed various witnesses and that none of them were willing to testify in court.

Plea counsel testified that there was a brief break during the plea colloquy between Applicant and the Judge because Applicant's responses to the Judge's questions were not responsive. Plea counsel testified that Applicant was aware of his option to plead guilty or go to trial. Plea counsel testified that Applicant never expressed to him a desire to go to trial. Plea counsel testified that he and Applicant were expecting a sentence of 6 to 8 years and that the plea was entered straight up, with no negotiated or recommended sentence from the Solicitor. Plea counsel testified that the Solicitor wanted a higher sentence and that Plea counsel fought hard to get less than what the Solicitor proposed. Plea counsel testified that, at all times, Applicant knew what was going on and that it was Applicant's decision to plead guilty.

Plea counsel testified that he advised Applicant of his right to appeal the conviction and

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sentence and he advised Applicant about post-conviction relief. Plea counsel testified he advised Applicant of his right to a jury trial, his right to confront witnesses against him, the State's burden of proof, the potential range of sentencing, his right to remain silent, trial options, and potential defenses.

This Court finds the Applicant failed to meet his burden of proving that plea counsel failed to adequately advise Applicant of his rights. Applicant testified that plea counsel never advised him of his constitutional rights, but this Court finds that testimony not credible and refuted by the record. Not only did plea counsel testify that he advised Applicant of all of his constitutional rights, but the record also reveals that Applicant was aware of the consequences of pleading guilty, rather than proceeding to trial, and voluntarily and intelligently relinquished his constitutional rights to a jury trial and all other attendant trial rights during the plea proceeding. Hyman v. State, 397 S.C. 35, 732 S.E.2d 375 (2012).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not request or review discovery or did not investigate evidence and witnesses. Plea counsel testified that he maintained a hard case file for this case and that it had been scanned into the records of his previous law firm, Camden Law Firm. Plea counsel testified that he received the Solicitor's entire file without formally moving for discovery because of his connections with his previous employer, the Solicitor's office. Plea counsel testified that he did not request medical records and the Solicitor did not have medical records either, but the uncontroverted evidence was that the victim was treated at the hospital due to the injuries inflicted upon by Applicant. Plea counsel also testified about interviewing specific witnesses and the detailed facts of the history leading up to the incident as well as the incident. Plea counsel testified that no witnesses were willing to testify in court. This Court finds Plea counsel's testimony is more credible on this

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point. Regardless, this Court finds the information revealed by the testimony at the PCR hearing would likely not have changed the decision of the Applicant to plead guilty. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to pursue available legal defenses. Plea counsel testified that he considered and discussed with Applicant a defense of self-defense, but that such a defense would be unsuccessful given the uncontroverted evidence that Applicant was the aggressor. See McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995). Plea counsel also testified that he spoke with various witnesses, all of whom gave the same story and refused to testify in court. Plea counsel testified that a defense strategy was not pursued further because of Applicant's expressed desire to plead guilty and avoid trial. This Court finds plea counsel adequately pursued available legal defenses to the extent necessary. Id. This Court also finds it was not improper for plea counsel to discontinue investigating legal defenses upon Applicant's consistent assertion of his desire to plead guilty.

This Court finds that Applicant failed to meet his burden of proving that Plea counsel failed to execute a written engagement agreement or that Plea counsel failed to fully prepare and explain Applicant's case. Applicant presented no evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E. 2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Plea counsel testified that he met with Applicant at least three times to discuss the case, including the facts, the discovery, trial strategies, defense theories, plea negotiations, and Applicant's rights. Plea counsel also testified that he did have a written and executed engagement agreement with the Applicant. This Court finds that plea counsel sufficiently met with Applicant and thoroughly discussed all aspects of Applicant's case with

him.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Involuntary Guilty Plea

This Court finds that Applicant failed to meet his burden of proving that his guilty plea was entered involuntarily. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Plea counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Plea counsel conferred with the Applicant in which plea counsel discussed the pending charges, what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 450 F.2d 327 (4th Cir. 1985). Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. Id. This Court finds that Applicant understood the terms of an open plea with no negotiated sentence.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

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matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 27th day of January, 2018.¹⁷

Columbia, South Carolina.


Honorable Jocelyn Newman
Presiding Judge
Fifth Judicial Circuit

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF KERSHAW) COURT OF COMMON PLEAS
No. 2015 CP 28 0639

3
4 RYAN FREELAND TROJAN)
5 Petitioner)
6 versus) TRANSCRIPT OF RECORD

7)
8 STATE OF SOUTH CAROLINA)
9)
10 Columbia, South Carolina
11 September 1, 2006

12 B E F O R E :
13 HONORABLE JOCELYN NEWMAN, Judge Presiding

14 A P P E A R A N C E S :
15 For the Petitioner: JAMES R. SNELL, JR., Esq.
16 For the State: VALERIE GIOVANOLI, Esq.
17 Assistant Attorney General

18 Reporter Present: CRYSTAL HOLMES
19

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22 HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
23 Summerville, S.C. 29485

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Direct-Redirect Cross-Recross

DANIEL GRIGG

By Mr. Snell

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By Ms. Giovanoli

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Motion

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RYAN TROJAN

By Mr. Snell

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By Ms. Giovanoli

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RONALD MOAK

By Ms. Giovanoli

34-48

By Mr. Snell

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Motion

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EXHIBITS

For ID. In EV.

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Applicant's Exhibit 1 - Application and attachment

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1 (The within matter came before the Court for hearing
2 on September 1, 2016)

3 MS. GIOVANOLI: Ryan Trojan. Ryan Trojan versus the
4 State of South Carolina, Case Number 2015 CP 28 639.

5 We are here before the Court on an application for
6 post-conviction relief that was filed on July first of
7 2015. The Applicant is presently confined in the South
8 Carolina Department of Corrections pursuant to an Order
9 on file with the Clerk of Court for Kershaw County.

10 The Applicant was indicted in October of 2013 in the
11 Court of General Sessions for Kershaw County for attempted
12 murder. The Applicant was represented by Mr. Ronald Moak.

13 On July 9 of 2014 the Applicant pled guilty to a les-
14 ser included offense of assault and battery of a high and
15 aggravated nature. The Honorable Judge sentenced the Ap-
16 plicant to an eleven year sentence. The Applicant did not
17 appeal his imposed sentence.

18 The State is present and ready to proceed. Mr.
19 Trojan is present and represented by Mr. James Snell.

20 THE COURT: Thank you. Mr. Snell?

21 MR. SNELL: May it please the Court, Your Honor.

22 I have had a few pre-trial motions before today and
23 it is the first time I have raised these motions with this
24 particular psychological component and the additional
25 grounds.

D. GRIGG ON DIRECT

1 purview and so the staff of the Athletic Commission would
2 answer to me also.

3 Q. So does the Athletic Commission have responsibilities
4 involving the application for licensing for fighters?

5 A. That's correct. They license promoters, fighters for
6 boxing, wrestling in the NMA. We also have off street box-
7 ing in South Carolina and the officials, the referees --
8 they are highly regulated as far as licensing in our State.

9 Q. Tell the jury briefly what NMA stands for and what
10 it is?

11 A. Yes, sir. It's martial arts. It's basically a --
12 it's a mixture of different types of martial arts and it
13 may have a boxing background, wrestling background, a ju-
14 jitsu background, and it gives an opportunity for some
15 people who enjoy it to meet people of different backgrounds
16 and test their skills and develop them. It's exactly what
17 it says, a variety of arts.

18 Q. I hand you a document and if I can keep it together --
19 is that an application for a license?

20 A. Yes, sir.

21 Q. Tell the Court about that document? Do you recognize
22 what that is?

23 A. Yes, sir. It appears to be a standard application
24 that an applicant would request or call and ask us to send
25 it to them. With most people they download it on the web

D. GRIGG ON DIRECT

1 site and fill it out and return it to us, nowadays.

2 It appears to be complete from what I know about it,
3 and it has a medical record attached. Someone could down-
4 load the form from our web site.

5 The difference between the two forms is the applicant
6 obviously can fill out information and he would have to
7 submit the medical records to his physician to fill out
8 and we would get those directly from the physician's of-
9 fice. We don't accept medical records from applicants or
10 promoters.

11 Q. That application is a document produced to my office
12 in response to a subpoena, correct?

13 A. Yes, sir.

14 Q. And was the application submitted by Daniel Robertson?

15 A. If I can read his name, it's Bill Robertson or some-
16 thing like that.

17 Q. Bill Robertson?

18 A. That's correct.

19 Q. And the date on the application was . . .

20 MS. GIOVANOLI: I would object, Your Honor, at this
21 point. I'm not sure what it has to do with the case.

22 THE COURT: Mr. Snell.

23 MR. SNELL: We would ask the Court to indulge us for
24 a moment as it is certainly relevant to the plea and the
25 sentencing on the assault and battery of a high and

D. GRIGG ON DIRECT

1 aggravated nature charge. It is a very relevant issue to
2 that charge and the injuries sustained by Mr. Robertson.
3 The information from the doctor . .

4 THE COURT: I overrule the objection.

5 BY MR. SNELL:

6 A. What was your question?

7 Q. What was the date of the application?

8 A. It appears to have been signed by Mr. Robertson on
9 March 21st of 2014.

10 Q. And was the application actually granted?

11 A. It was to my understanding. Yes, sir.

12 MR. SNELL: Your Honor, I would move to admit this as
13 an Exhibit.

14 THE COURT: Any objection?

15 MS. GIOVANOLI: I do not believe he's laid a founda-
16 tion yet.

17 THE COURT: I may decide to allow it later but you can
18 mark it.

19 MR. SNELL: We will mark it.

20 (Application and doctor information marked Applicant's
21 Exhibit 1 for identification purposes)

22 BY MR. SNELL:

23 Q. Mr. Grigg, are you generally knowledgeable about how
24 applications are evaluated?

25 A. Yes, sir.

D. GRIGG ON DIRECT

1 Q. What are the requirements for approval?

2 A. The standard procedure required of the staff under
3 the regulations that govern the Athletic Commission are
4 that for a license for fighting in the State of South
5 Carolina you would actually have to submit the application
6 and, as we were discussing, that you have to an annual phy-
7 sical.

8 When you are granted a license that license only runs
9 to the end of that year and would expire on December 31 of
10 whatever year you apply. So this was 2014.

11 Part of the application, as I stated before, is that
12 you have to present your Petition with the medical form
13 from our web site and the physician would have to conduct
14 a physical and answer questions on a form he would turn
15 in to our office.

16 We would then put it with the application and a de-
17 termination at that point would be made by the Commission
18 as to, in addition to other things, match-making, but in
19 addition to other things they have to make a determination
20 as to whether the individual has been fighting before and
21 if he was a second physical would occur.

22 So he would have been seen by a physician twice be-
23 fore the decision is made, and he is also seen by a physi-
24 cian and checked on as to how you're doing afterward, so
25 you would be seen by a physician three times, three licensed

D. GRIGG ON DIRECT

1 physicians.

2 Q. Is there any regulation as to granting a license to
3 an individual who has had a brain injury?

4 A. Mr. Snell, I know about it and understand it, but if
5 you read the statute it does -- if you read the statute I
6 believe it's 40-81-280, as best I can remember off the
7 top of my head -- and if you read the underlying regulations
8 -- I forget the number off the top of my head on that, but
9 the statute seems to allow for brain injuries to have oc-
10 curred.

11 I believe the way the statute says it is if at the
12 time of your examination you had no signs of a brain injury
13 -- I believe that's the correct terminology -- you may be
14 required to go for further testing or produce additional
15 information to the Commission.

16 Also, I know we statutorily require to have two doc-
17 tors on that condition, so that would be what they are
18 there for. I can read to you information that was presented
19 to the Commission so that lay persons such as myself who
20 may be on the Commission -- there is certain terminology
21 that goes to whether they make a determination of whether
22 they want to see EKGs or other information before deciding
23 whether or not to license the individual.

24 There is pretty much strict language in the regulations
25 as far as specifically cerebral hemorrhaging, if I remember
10

D. GRIGG ON DIRECT

1 correctly. You are referencing specific language in the
2 regulation that specifically says cerebral hemorrhage -- I
3 don't know the difference between an injury and a hemorrhage
4 -- I don't know the difference in that but I do believe
5 that the regulation is more restrictive as far as the hem-
6 orrhage in determinations made or hemorrhages that existed
7 in the brain.

8 My understanding is -- please understand that I don't
9 make those final decisions. The Commission decides how they
10 interpret the statute, but my understanding of that is if
11 there is a hemorrhage you would not be licensed.

12 Q. Is one section blacked out or redacted on this?

13 A. Yes, sir.

14 Q. Was that done by your agency?

15 A. I believe that would have been done by our chief in-
16 formation officer. This appears to be in follow-up to
17 what she was presented from the file by my staff, and in
18 turn then got (inaudible).

19 Q. Do other documents contain redactions where findings
20 of doctors were blacked out or redacted such as this?

21 A. Yes, sir, but let me be clear that I did not review
22 any of this at the time it was submitted. So what was said
23 I cannot tell you as I was not there.

24 But, yes, sir, it is our process that if a physical
25 said he was clear and able to he would be given a license

D. GRIGG ON DIRECT

1 basically.

2 Q. Thank you very much. I have no further questions.

3 THE COURT: All right.

4 CROSS EXAMINATION

5 BY MS. GIOVANOLI

6 Q. Good morning, Mr. Grigg.

7 A. Good morning.

8 Q. You mentioned in your testimony that there was the ap-
9 plication dated March 23rd of 2014 was later granted. Do
10 you know when the application was granted?

11 A. I am not sure when it was received. We don't typic-
12 ally stamp the application or anything on our system when
13 it was granted. So, no, I don't think there are any such
14 marks on this document and I certainly don't know off the
15 top of my head, but to answer as best I can I know that he
16 did fight later that summer.

17 So since he did fight that summer it would actually
18 have been sometime that summer.

19 Q. Thank you, and you also testified that after the ap-
20 plication was filed the applicant had to receive a physi-
21 cal examination by a licensed physician. Is that correct?

22 A. Yes. You say after it was submitted but it could have
23 been simultaneous, but before he could be licensed we had
24 to have that medical examination from the physician.

25 Q. Did he submit a medical physical evaluation with his

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D. GRIGG ON CROSS

1 application?

2 A. Again, how it came in I can't answer to you or guess.

3 It was before the determination was made.

4 Q. Okay, and you don't know when the examination was?

5 A. I do not know. I don't personally know but if you
6 look at the document it looks like the report from the doc-
7 tor is dated March 21st of 2014, and there is another part
8 of the physical examination which looks like March 24th.

9 So according to the dates it would have been close to
10 simultaneous.

11 Q. Okay, and do you know the doctor actually conducted a
12 physical examination or do you take their word for it?

13 A. Maam, you go to your licensed physician or a licensed
14 physician but we do not directly go to that physician. We
15 have nothing to do with that part of it.

16 Q. Okay, and you said that an examination is required by
17 two doctors?

18 A. It is required that there be two doctors on each ap-
19 plication.

20 Q. And they don't go to the doctors to confirm . .

21 A. They don't go to the doctors. They just review the
22 records.

23 Q. Would the Commission know how a physical examination
24 was conducted?

25 A. Not unless it was indicated in the report sent to us.

1 Q. Nothing further. Thank you.

2 THE COURT: Any Redirect?

3 MR. SNELL: Nothing further. I would ask that the
4 witness be excused.

5 I have made a motion earlier to compel on the redacted
6 portion on the application, including all medical findings,
7 and we would renew that motion. We believe it is relevant
8 to have all of the records.

9 MS. GIOVANOLI: The State would have no objection to
10 that.

11 THE COURT: I do not have the authority to overrule
12 another Circuit Court Judge. That decision has been made
13 and I am not going to change it.

14 You may step down.

15 WITNESS: May I be excused?

16 THE COURT: Do you object to his being excused?

17 MS. GIOVANOLI: No objection, Your Honor.

18 THE COURT: You can be excused without objection.

19 MR. SNELL: We would have no objection.

20 THE COURT: Thank you for coming.

21 (Witness excused)

22 THE COURT: You may call your next witness.

23 MR. SNELL: Your Honor, we would call Ryan Trojan.

24 RYAN TROJAN, being duly sworn,
25 testified as follows:

D. GRIGG ON CROSS

1 CLERK: Please be seated in the witness box and state
2 your name, spelling your last name.

3 WITNESS: Ryan Trojan, T R O J A N.

4 DIRECT EXAMINATION

5 BY MR. SNELL

6 Q. Mr. Trojan, you are currently serving a sentence in
7 the Department of Corrections for assault and battery of a
8 high and aggravated nature?

9 A. Yes, sir.

10 Q. And your max out date is still over seven years off,
11 is that right?

12 A. Yes, sir.

13 Q. You were sentenced to twelve years?

14 A. Yes, sir.

15 Q. During your case did you have a lawyer?

16 A. Yes, sir.

17 Q. Who was it?

18 A. Ron Moak.

19 Q. Was Mr. Moak appointed to represent you?

20 A. No, sir.

21 Q. How did you come to retain Mr. Moak?

22 A. Um, he had a relationship with the people I was liv-
23 ing with. She got in contact with him and he later on got
24 in contact with me.

25 Q. Did he contact you first or did you contact him first?

15

R. TROJAN ON DIRECT

1 A. She contacted him first and then there was communica-
2 tion between the two of us.

3 Q. Did you agree with her contacting him?

4 A. There was a time where he came and that was after I
5 was in Richland County and he -- we had discussed payment
6 and there was a form I had to sign. I don't know what it
7 was at this time.

8 Q. Did you actually pay him?

9 A. Once again, my contact with him was facilitated through
10 another individual so I can't say truthfully whether or not
11 he actually got paid.

12 Q. All right, did you ultimately plead guilty to this
13 in July of 2014?

14 A. Yes, sir.

15 Q. Approximately when did you first meet Mr. Moak about
16 your case?

17 A. Um, the first time we actually discussed the case was
18 in the Kershaw County Courthouse after a bond reduction
19 hearing.

20 Q. Did he represent you at the hearing?

21 A. Yes, sir.

22 Q. Were you able to get out of jail?

23 A. Yes. Yes, sir.

24 Q. And how long were you out of jail before you went to
25 Court and pled?

A. 16

R. TROJAN ON DIRECT

1 A. It was almost eleven months.

2 Q. During those eleven months, did you meet with Mr.
3 Moak in person?

4 A. Twice.

5 Q. Where did you meet?

6 A. Both times at my residence.

7 Q. During these times you met with him was anybody else
8 present?

9 A. No; there were -- like I said, once again, she had
10 a relationship with an individual and the first meeting was
11 more or less just a matter of convenience of him showing up
12 and I happened to be home.

13 And the second time there was -- my girlfriend at the
14 time and the lawyer were there.

15 Q. Were either of those conversations private between you
16 and Mr. Moak?

17 A. No, there was never a time except at the Kershaw
18 County Courthouse. Then it was just me and him isolated.

19 Q. Did he ever write you any letters?

20 A. No.

21 Q. Did you know or did he ever show you any police re-
22 ports about your case?

23 A. I never was shown any paperwork of any kind.

24 Q. Specifically were you ever shown any police reports?

25 A. No.

17

R. TROJAN ON DIRECT

1 Q. Were you shown any kind of written statements?

2 A. No, sir.

3 Q. Photographs?

4 A. No, sir.

5 Q. Any type of medical records or bills?

6 A. Uh, of that I'm quite sure. He didn't even give me
7 his business card. I had seen no paper work from him at
8 all.

9 Q. Did you have full conversations with him about the case?

10 A. During that time it was difficult to get in contact
11 with Mr. Moak. Usually it was through voice mail that I
12 had contact with him. He would reach out to me through the
13 woman that he had a relationship with.

14 She would relate messages to me and I would have to go
15 back and use voice mail through the woman to document it.

16 Q. Could you get him through an employee of his office?

17 A. No.

18 Q. So he would contact you through his girlfriend?

19 A. He would send me messages through her, yes.

20 Q. Did you ever have any private meetings with him be-
21 fore you pled guilty?

22 A. . .

23 Q. Before you pled guilty did you ever have any conversa-
24 tions with him about your right to have a trial?

25 A. Um, once I had found out that I had -- that he had

18

R. TROJAN ON DIRECT

1 arranged a plea hearing. That was the second time I had
2 met him. He discussed the options of what we could do and
3 I had never been involved in a situation but I had read
4 that people usually go through a jury trial, and so I asked
5 him about that and he told me -- and I'm just paraphrasing
6 it -- that we should go ahead with this plea hearing and
7 see how things go with that.

8 Q. Did he -- to the best of your knowledge, did he ever
9 interview any witnesses or have any witnesses interviewed?

10 A. I don't know that he ever spoke about it.

11 Q. Did he ever advise you of your rights?

12 A. No.

13 Q. Get an investigator or anything like that?

14 A. We never spoke about it.

15 Q. Did he ever have any conversation or discuss with you
16 about that at a jury trial the State would have to prove
17 you guilty beyond a reasonable doubt?

18 A. No, sir.

19 Q. Did he ever explain to you that if you went to a trial
20 you would not have to prove your innocence; that the State
21 would have to prove you guilty?

22 A. No, we never discussed anything like that.

23 Q. Did he explain to you the difference between attempted
24 murder and assault and battery of a high and aggravated na-
25 ture? What those were?

R. TROJAN ON DIRECT

1 A. No, sir.

2 Q. Did he talk to you about self-defense?

3 A. No, sir.

4 Q. Did you know that you could allege self defense and
5 what the Judge would charge a jury as far as self defense
6 if you went to a trial?

7 A. We never discussed self defense.

8 Q. Did he ever talk to you about what's called the Castle
9 Doctrine, your right to stand your ground?

10 A. No, sir.

11 Q. So in July you went to Court and pled?

12 A. Yes, sir.

13 Q. Tell us what happened when you went to the Court-
14 house?

15 A. When I got to the Courthouse I called him -- he wasn't
16 there so I called him several times, and I was not able to
17 get in contact with him. So I sat in the Courtroom and I
18 waited on him, and once he got there I talked to him and
19 he said -- he gave me a piece of paper to sign which was
20 the plea sheet.

21 He told me to sign this and then we would go ahead
22 and get started, and then when we went into the Courtroom
23 I was the first person to see the Judge that day. So we
24 went up and started from there.

25 And we stopped in the middle then and he pulled me out

R. TROJAN ON DIRECT

1 and discussed a few things with me. He said for me to
2 stop talking so much and just say yes or no to questions,
3 and then we went back in and I followed his instructions,
4 and from there I was sentenced and taken back to County.

5 Q. To say yes or no to whose questions?

6 A. I'm sorry. The Judge.

7 Q. Was this the first time you ever had a lawyer for a
8 criminal case?

9 A. This is the first criminal case I've ever had to
10 have a lawyer. So, yes, sir.

11 Q. Since you left Court have you tried to get a copy of
12 what happened at Court?

13 A. Since I was sentenced?

14 Q. Yes, sir.

15 A. Through your involvement and also the Bar Association
16 I have made attempts to get in contact with Mr. Moak but I
17 was unable to get anything from him.

18 Q. Did he send you any file or any other material?

19 A. No, sir.

20 Q. Why did you plead guilty?

21 A. Um, it was more a combination of several things. One
22 being pressure from the prosecution and along with that
23 putting my faith in Ron and going with what he suggested I
24 do. I was simply assuming that, hey, you're my lawyer and
25 I don't know what I'm doing so I'll listen to you and go

R. TROJAN ON DIRECT

1 with what you say.

2 Q. At this point today are you aware of what Mr. Moak did
3 to prepare your case for Court?

4 A. Not until I had an opportunity to go through some ma-
5 terial. I was thinking he did everything he could but now
6 I have an understanding of what a lawyer is supposed to do.

7 Q. Okay.

8 A. I know the lawyer is supposed to review evidence that
9 is provided and discuss it with me but he did nothing to
10 prepare that I know of. He didn't prepare any kind of
11 strategy or defense or anything to be a proper lawyer for
12 me.

13 Q. Have you now had a chance to review the discovery
14 material?

15 A. Yes.

16 Q. You have reviewed them now, is that correct?

17 A. Yes.

18 Q. If you had seen that material before would you have
19 asked for a trial rather than pleading guilty?

20 A. Most certainly.

21 Q. You got a twelve year sentence?

22 A. Yes, sir.

23 Q. And you currently have seven now?

24 A. Yes, sir.

25 Q. If you had a trial do you know that your case could

22

1 be dismissed or you could be sentenced to more than you got
2 for attempted murder?

3 A. I understand that, yes.

4 Q. So you could get more time?

5 A. Yes, sir.

6 Q. And based on all of that, you are asking the Court to
7 set aside your plea and grant you PCR relief in your case?

8 A. Yes.

9 Q. Finally, were you advised by Mr. Moak or anyone about
10 filing your application for PCR?

11 A. I didn't know the rules or how to apply but there were
12 videos on line in social media as well as on U tube, and I
13 let my attorney, Mr. Ron, know that I was looking into it,
14 and would he help me file it, and he said okay but that was
15 as far as it went from that.

16 Q. So you did tell Mr. Moak that . . .

17 A. Yeah, I told him, and I told him that Mr. Robertson
18 had been involved in sanctioned fighting. Yes.

19 Q. And based on that after reviewing the discovery and
20 that material, would that have been a vital option in your
21 trial? A vital option as well for self defense?

22 A. I believe that there were several opportunities that
23 would be a legal basis for a defense, yes, and after review-
24 ing the discovery and talking about it, yes. Several routes.

25 Q. And you were able to review the material. Did you have
23

R. TROJAN ON DIRECT

1 a . . .

2 A. I believed there were several different routes I could
3 take, yes, after reviewing discovery and talking with a
4 lawyer.

5 Q. In looking at the record and a transcript of the plea
6 hearing, did you have any question about the record . .

7 THE COURT: I have a copy of the transcript and will
8 review that in making my decision.

9 MR. SNELL: May I have a moment?

10 THE COURT: Sure.

11 (Brief pause)

12 MR. SNELL: Thank you, Judge. I have no further ques-
13 tions.

14 THE COURT: Yes, sir. Cross examination.

15 CROSS EXAMINATION

16 BY MS. GIOVANOLI

17 Q. Good morning, Mr. Trojan.

18 A. Good morning.

19 Q. I just have a few questions about your discussions
20 with the defense counsel, Mr. Moak.

21 You testified that he never discussed with you any
22 defenses you might have?

23 A. No, maam.

24 Q. And you never saw the discovery?

25 A. No, maam.

24

R. TROJAN ON CROSS

1 Q. Did you ever request to see any of those physical doc-
2 uments?

3 A. Yes, maam. Once we had went to the preliminary hear-
4 ing he set I asked him did he have any of these state-
5 ments they -- statements were given to the Judge to deter-
6 mine whether the case should go forward.

7 I asked him can we get that stuff and he told me he
8 would get it for me.

9 Q. Was that at the plea hearing?

10 A. No, this was about ten months before the plea hearing.

11 Q. Okay, so did you ever make that request again?

12 A. Yes, I spoke with Mr. Moak about it later on. I did
13 ask for them again, yes.

14 Q. And so given that, how many conversations did you have
15 with Mr. Moak?

16 A. More or less, I had two or three actual phone conversa-
17 tions but most of them were by use of voice mails and him
18 responding to those voice mails.

19 Q. Okay, and how many times did you actually meet with
20 him?

21 A. In real life, once. He represented me during the bond
22 hearing and he represented me at the plea, and then two
23 more earlier when I met him at his girlfriend's residence.

24 Q. Okay, how many times in a professional setting did you
25 see him?

R. TROJAN ON CROSS

1 A. I didn't know Mr. Moak prior to being indicted or
2 arrested.

3 Q. How many times after that?

4 A. I knew people were represented by lawyers and I ran
5 into him at social functions and was aware of who he was.

6 Q. Did you know him prior to that time?

7 A. No.

8 Q. Okay.

9 A. It was in no sense a professional relationship between
10 us at these social functions.

11 Q. So at that time it was more a personal relationship?

12 A. Yes.

13 Q. Going back to your discussions with him, did he dis-
14 cuss with you the facts of the case and what had happened?

15 A. I think we did at the bond reduction hearing. That
16 is when he actually talked to me about what happened.

17 Q. Okay. Did you discuss the facts at any other meeting
18 with him?

19 A. No, maam.

20 Q. Did you discuss what evidence the State had against
21 you?

22 A. I questioned him about it but he never responded with
23 any actual evidence.

24 Q. So you had no clue what the State had against you?

25 A. No, maam.

26

R. TROJAN ON CROSS

1 Q. You knew that before you went to Court you needed to
2 have an attorney?

3 A. Yes, maam.

4 Q. So you told a friend?

5 A. Yes, maam.

6 Q. And that's the way -- did you ever express it was your
7 desire to go to trial?

8 A. Yes.

9 Q. What was his response to that?

10 A. Well, generally speaking he was more focused on a ple
11 and going ahead with the due process. He was adamant
12 about seeing what the Judge said and to listen to that,
13 along with him, and him and the Solicitor brought pressure
14 to me to take the plea.

15 Q. But that was not what you wanted to do?

16 A. No, it was not. No, maam.

17 Q. Okay, but you said the plea was interrupted as Mr.
18 Moak requested a recess?

19 A. Yes.

20 Q. And you received a plea offer from the Solicitor's Of-
21 fice?

22 A. The initial plea offer was ten to twenty, and when I'd
23 plead to the lesser included of assault and battery of a
24 high and aggravated nature.

25 Q. Was that related to you by Mr. Moak?

27

R. TROJAN ON CROSS

1 A. When I asked about that. The victim's mother posted
2 a status on Facebook, that she and her family were to meet
3 at the Courthouse. I happened to see it and then I called
4 my lawyer and asked him what it was about because he had
5 not told me that I was to be there.

6 They essentially were saying, hey, he's going to jail
7 on that day, and I didn't know anything about it so I had
8 to talk to him to find out what it was they were talking
9 about.

10 Q. And you discussed that then with Mr. Moak?

11 A. That's when he came over to my residence, and at that
12 point in time we discussed it.

13 Q. Tell us about that discussion.

14 A. It was a brief meeting, a thirty minute or so meeting
15 with him, the owner of the house and my girlfriend at the
16 time. Basically it was, hey, look, we've got this Judge
17 lined up and this is probably the only plea you're going to
18 get. Let's go in and see what happens, and I said, well,
19 what about having a trial, and he said let's go with this
20 first and let's see --> let's do this, try this first. So
21 I said okay.

22 Q. Did you understand what the plea offer was?

23 A. Yes, maam.

24 Q. And at the hearing you would plead guilty in order to
25 receive the offered sentence?

28

R. TROJAN ON CROSS

1 A. Yes, maam, I did.

2 Q. Do you recall what date you pled before the Judge?

3 A. Tuesday, July 15th of 2014.

4 Q. Do you remember what happened that day in the Court-
5 room?

6 A. That's the day that I have described earlier.

7 Q. That you took a break and talked to your attorney?

8 A. Yes, maam.

9 Q. How long was that break?

10 A. Three minutes, maximum.

11 Q. Do you recall giving testimony?

12 A. Essentially it was him telling me to stop talking and
13 when the Judge asked me questions to give a response to
14 it. He essentially said to stop answering those questions
15 with long sentences but just say yes or no so we can get
16 this thing over with.

17 Q. And this was after you had been asking for a trial?

18 A. I mean, I had already told him that morning and at
19 that point in time that I'm going to take your word for it
20 and that was what I did.

21 Q. Did you ever tell anyone else you wanted a trial?

22 A. No, maam.

23 MS. GIOVANOLI: Court's indulgence, please.

24 THE COURT: All right.

25 (Brief pause)

R. TROJAN ON CROSS

1 Q. Did the Judge ever ask you if you had any problem with
2 your defense attorney?

3 A. No, maam.

4 Q. Do you remember testifying that you were happy with
5 your representation by Mr. Moak?

6 A. Yes, maam. If I may, I thought I was at the time.

7 Q. How . . .

8 A. At the time I had no knowledge of the law or what the
9 lawyers were supposed to do, and I thought that what he
10 did was what he was supposed to do.

11 Q. Thank you. No further questions.

12 THE COURT: Any Redirect.

13 MR. SNELL: Nothing further.

14 THE COURT: Thank you. You may go and sit by your
15 lawyer.

16 (Witness excused from stand)

17 THE COURT: Anything further?

18 MR. SNELL: No further witnesses, Your Honor.

19 THE COURT: All right, Ms. Giovanoli.

20 MS. GIOVANILO: The State would call Ronald Moak.

21 RONALD MOAK, being duly sworn,
22 testified as follows:

23 CLERK: Please have a seat in the witness box and state
24 your name for the record and spell your last name.

25 WITNESS: Ronald Wade Moak, M O A K.

R. MOAK ON DIRECT

1 DIRECT EXAMINATION

2 BY MS. GIOVANOLI

3 Q. Good morning, Mr. Moak. How long have you been prac-
4 ticing law?

5 A. It's been barely sixteen years.

6 Q. Okay, and how long have you been practicing criminal
7 law?

8 A. Sixteen years.

9 Q. Are you in private practice?

10 A. I am now, yes.

11 Q. Where did you work prior to going into private prac-
12 tice?

13 A. Since 2012 I was with the Fifth Circuit Solicitor's
14 Office, December of 2012, primarily in Kershaw County, and
15 after that I was with the Canady Law Firm until October
16 of 2013, and after that I hung my humble shingle out and
17 worked for myself.

18 Q. Okay, what was your position with the Fifth Circuit
19 Solicitor's Office?

20 A. Well, for a while I was the Deputy Solicitor and at
21 one point I was the only one at the office and then the
22 Assistant Solicitor was the official title.

23 Q. And do you recall how you came to represent Mr. Trojan
24 in this case?

25 A. Yes, maam.

R. MOAK ON DIRECT

1 Q. Had he been arrested at that time?

2 A. Yes, maam.

3 Q. And how did you become involved in the case?

4 A. I got a call and I believe it was Ms. Gaskins who
5 initially called. She told me that a friend of theirs,
6 Ryan Trojan -- that the Sheriff's Department were looking
7 for him or had arrested him.

8 I made some phone calls and I think I spoke with Mr.
9 Trojan on the phone to find out how serious it was. I
10 was advised who was the lead investigator and that basic-
11 ally they were looking for him and at four thirty they were
12 going to start shaking houses down.

13 You know, they were looking for him and I kind of
14 backed off at that point. I learned that Mr. Trojan was
15 heading toward Tracy's house and I drove him from there to
16 where the honorable Sheriff's Department men were who took
17 him to the jail. I took him to where the Sheriff's Depart-
18 ment wanted me to take him to at that time and he turned
19 himself in.

20 But we had followed him a long time. First we went to
21 his mother's house on the way to the turn-in. We talked
22 the whole time and during that I learned what he related to
23 me, and, you know, this was in an area of Kershaw County
24 where there is a lot of eighteen to twenty what I call kids
25 who get together on the weekends to have parties.

32

1 And there are some of what I call bad acts out there.
2 I learned that night that he went to school with some of
3 them and would hang out with them from time to time. Some
4 of them had been friends in school.

5 So he knew them and went over there and got kind of
6 boxed in. What I learned happened that night . .

7 Q. Don't tell us what he told you happened that night but
8 how familiar are you with that?

9 A. I am very familiar with that.

10 Q. How many times do you remember meeting with the Ap-
11 plicant?

12 A. Okay, I met with him when I took him, like I said, to
13 the jail. I met with him before the bond hearing and got
14 his bond reduced. He made the bond and we talked about the
15 evidence the State had.

16 I met with him at the Gaskins house after that and I
17 told him then that this is what it looks like. I don't know
18 why he is saying that we had no trial strategy or a poorly-
19 defined trial strategy from what was laid down at the pre-
20 liminary hearing. He was present for that.

21 And then we had the actual day in July when he had to
22 end up taking the plea offer or set a date certain for the
23 trial, and he chose to plead guilty so we didn't go into
24 where's the medical records and all that stuff because that
25 was going to be the case.

R. MOAK ON DIRECT

1 Q. Did you talk with the Solicitor's Office concerning
2 plea negotiations?

3 A. Yes.

4 Q. How did you get them to accept a plea to a lesser
5 included offense?

6 A. Do you want me to go through all the strategy? Going
7 back to the facts, okay, despite his having lying a few
8 minutes ago, he had all the piles of text messages where
9 he -- one of the guys who was living in the house in (inaud-
10 ible) Place tried to get him to show up and he finally did
11 show up, and what happened was there was a incident where
12 Ryan was beaten like a dog by the victim and the victim's
13 brother, and I wish Ryan had went to the hospital so we'd
14 have a hospital record of that but he didn't do it.

15 I contacted a detective in the Camden Police Depart-
16 ment because some of it was in the City of Camden. There
17 was no police report on the thing and when the cop showed
18 up nobody wanted to talk to him. There was no documenta-
19 tion of that happening.

20 But as a result of that when Ryan saw the victim that
21 was the reaction he had. I mean, that was our trial strat-
22 egy that we're looking at. These are the guys that had
23 done that before and he wanted to make sure they didn't do
24 it again. It kind of like that but that was the trial
25 strategy we had.

34

R. MOAK ON DIRECT

1 Q. So you had developed trial strategy and you had plans
2 as to . . .

3 A. Yeah. The trial strategy was like he was going to hit
4 first this time, though I didn't think it was going to be
5 a complete defense.

6 I was trying to get it down. I was going for at least
7 assault and battery first or second, but when they made a
8 plea offer of ABHAN on a charge of attempted murder -- it
9 was skipped down to ABHAN and then assault and battery first
10 and then assault and battery second and third, and it was
11 stepped down, and it was at that point that, hey, it was
12 almost where we were going to go to a trial, you know, and
13 we still could go for it.

14 Mr. Snell is correct that we did not have the medical
15 records. There was a victim . . .

16 Q. Let me clarify this. What did you not have?

17 A. The review of the medical exam and the Solicitor's
18 Office didn't have it.

19 Q. The Solicitor's Office didn't have it?

20 A. That's right. They never had the victim sign to get
21 a release of it and they never asked for them but the as-
22 sault was said to have caused brain injury to the victim.
23 That's why he was charged as heavy-handed as he was.

24 Now, the problem we had was the week before we had
25 a pre-trial hearing or the week before, and I believe there

35

R. MOAK ON DIRECT

1 was a video of that, but there was a victim who was brain
2 damaged. I believe I mentioned in the plea that, Your
3 Honor, they're trying to make it something that it's not.
4 I mean, they said brain damage.

5 We had a client sitting in jail and a bond reduction
6 hearing and every time we had anything the victim's mother
7 was there and she would pretty much stir everything up.
8 A lot of the people who live in the area belong to crim-
9 inal gangs and there are gang members who make stuff up.
10 Some of what they said was made up.

11 Q. When you were discussing trial strategy with your client
12 -- first, did you discuss trial strategy with your client?

13 A. Yes, I was talking about it with him the first day on
14 the way to the jail. You know, he told me about the earl-
15 ier fight and that was the obvious way to go.

16 Q. Did he express a desire to go to trial?

17 A. He never really said he wanted a trial. At the bond
18 hearing he was scared and when he was in the holding cell
19 behind the Courtroom as they were getting ready to bring
20 him in for the bond hearing, you know, he was saying let's
21 just go in and say I did it and take my time or whatever,
22 and it was like that.

23 So I said, well, let's see if we can get you out first
24 and the Judge did reduce the bond, I think.

25 Q. Okay, did you ever talk with him about a self-defense

36

1 strategy at the trial?

2 A. That was what I called a pseudo self-defense because
3 of the facts. People showed up who were there and they were
4 lying, and he immediately goes -- I mean, he did hit the
5 guy about four times and knocked him down and he was hurt
6 in his back and shoulder area.

7 So it wasn't like he just stood there with the guy
8 and kept beating him and beating him, you know. He just
9 basically eliminated the threat so that was part of the
10 reason if we had went to trial we could have a problem.

11 Q. So you ruled out self-defense?

12 A. I saw where it could be a problem for us because the
13 guy he hit first before hitting him.

14 Q. Did you explain that to your client, why proving self-
15 defense would be a problem?

16 A. Well, again, I mean, self-defense was a part of a
17 midway faction of it but not a complete self-defense. I'd
18 have tried to get a jury to understand that.

19 Q. Did you file a request for discovery in the case?

20 A. Yeah. Initially I did. I mean, the guy in the Soli-
21 citor's Office who does discovery is the guy who actually had
22 a copy and that's when the Solicitor said, hey, we might
23 go to trial pretty soon.

24 So I got the discovery and I got an Email then and I
25 couldn't complain about not having it.

1 I couldn't complain if some of it was missing or that
2 I didn't officially have it.

3 Q. So did you discuss that with your client?

4 A. Yes.

5 Q. Do you get a file in this case?

6 A. Well, everything was scanned and they had -- I don't
7 remember the name of the kid that did the office management
8 program. They switched that in early 2015 I think and act-
9 ually I still had access to log-in where you look at the
10 Facebook. There is a post primarily from them saying they
11 were a gang and all that stuff.

12 I mean, the connection was Dustin Brown who was the
13 guy that was on the lease. His brother and he knew each
14 other and that's how these Camden people had come over there
15 and T. J. Brown, a brother of the people who lived there,
16 and T.J. was the one that tried to harm Ryan earlier with
17 his brother.

18 Q. So you had names of all of these people?

19 A. Yes.

20 Q. Did you receive files containing statements of some of
21 these people?

22 A. Not until it was time for trial when I started going
23 through what I had and started looking at what I didn't
24 get.

25 I mean, I had run the office there for some time by myself

R. MOAK ON DIRECT

1 and tried to do all of that but I never had a problem get-
2 ting out that stuff.

3 Q. Did you have an opportunity to investigate or review
4 the witnesses?

5 A. I went to try to talk to some of them and they essen-
6 tially told me that they were subpoenaed to come to Court
7 and they were not going to tell me anything. The brother
8 and the father and basically the Brabhams, Ray and Russell.

9 They were all in the same family that he knew from
10 high school.

11 Q. Okay, did you learn of any other witnesses?

12 A. A guy I believe was Larry McIntosh and he pretty much
13 said the same thing they did. They didn't want anything to
14 do with me. These were also people I think who talked to
15 the police.

16 Q. Do you think there were possibly other witnesses you
17 were not aware of?

18 A. I believe Ryan and his girlfriend and he might have
19 had one or two other friends. He had people on his side.
20 The victim had his brother and Andrew Carroway and another
21 guy. Basically it was like a swearing contest between four
22 or five on one side and four or five on the other, and the
23 uncontroverted thing was that Ryan hit the guy with a base-
24 ball bat aside the head.

25 That is where the problem was. If Ryan had not hit

1 him in the head or had hit him once, you know, it wouldn't
2 have been the four times and the guy went down, got hit in
3 the head.

4 I had already been asking for the medical records be-
5 cause just the sheer volume of Facebook posts were -- it
6 was almost insane. I was getting crazy calls from that
7 area and it was kind of a bad situation, I mean.

8 Q. In the plea hearing, do you recall a break in the plea
9 proceeding?

10 A. Just what he said. I mean, I think what happened was
11 that Ryan wasn't being responsive to what the Judge was ask-
12 ing him and, you know, when he'd get off track what I'd do
13 is I'd go through information I had like the date, the
14 month, his social security number, the Indictment number,
15 phone number -- whatever -- and then he would get clear.

16 And this was a different sentencing code. I mean,
17 ABHAN is different from attempted murder, so the boxes
18 would have been -- he would have been indicted on something
19 else so there would have been a waiver.

20 So, I mean, I explained that to him. This is what this
21 is and that is what that is, and I also had to go through
22 what he was hearing from the Judge in the plea. The Judge
23 was going to ask him how long he'd gone to school, what his
24 educational background was, and usually questions like what
25 do you do for a living.

R. MOAK ON DIRECT

1 Those things were for the Judge to make a finding that
2 you have ability to understand what's going on. The drug
3 question like are you under the influence of alcohol or
4 drugs at this time and . . .

5 Q. Do you recall during that colloquy where they take up
6 the (inaudible)?

7 A. Huh?

8 Q. Where they picked up -- after you took a break do you
9 recall when that happened?

10 A. I don't really recall.

11 Q. I just wondered if you recalled that?

12 A. No, I was just summarizing what happened.

13 Q. On that day did your client ever express a desire on
14 that day to have a trial to you?

15 A. Not until we had the evidence. You know, they set a
16 day and if they don't have it you set another day and say
17 if they don't have it by then we'll go to trial that day.
18 You know, they have to prove the guy has got brain damage
19 and all that other stuff and then the assault and battery
20 first degree definition is -- it had gotten that far and
21 then it went all the way down to assault and battery third.

22 Q. So you were telling him options, and then did he ex-
23 press a desire to go to trial?

24 A. We talked about it but he did eventually have a desire
25 to plead guilty. I told him then what he was looking at and

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1 he said, okay, I'll plead guilty but then we got in there
2 and the Judge gave him eleven.

3 Q. Was there a recommended sentence in this case?

4 A. I think it was a straight up plea.

5 Q. Okay. Do you recall why there was an eleven year sen-
6 tence?

7 A. I think the Solicitor wouldn't agree to eight to ten
8 years and I wanted to talk about, well, we'll just go to
9 trial and then, you know, . .

10 Q. Did you give that offer of a plea to your client?

11 A. Yes.

12 Q. Okay.

13 A. I want to say ten to twenty was mentioned in there
14 somewhere. I recall the bottom as being something that
15 came out because of so much being on Facebook and the meet-
16 ing with the victim. It was kind of crazy.

17 Q. Did you ever think that your client was unwilling to
18 plead guilty to the lesser included offense?

19 A. No, and he appeared to know what was going on. Like
20 I told him, hey, if you don't plead we are going to trial
21 and some other stuff had happened, like the medical records
22 were not there. That was the big thing.

23 Q. Was that decision ultimately reached?

24 A. Huh?

25 Q. Was that decision reached?

R. MOAK ON DIRECT

1 A. It was.

2 Q. And the plea was entered?

3 A. Yes.

4 Q. Had you advised him as to his right to testify in a
5 trial?

6 A. Yes.

7 Q. Did you advise him of his right to appeal?

8 A. I believe I did. I believe I'm the one who actually
9 told him what PCR was. After he got eleven years I told
10 him I would help him along. I mean, he's a good kid. It
11 was a kind of set-up and yet he made a poor decision when
12 he hit the guy. I still feel eleven years is excessive.

13 Q. Nothing further, Your Honor.

14 THE COURT: Mr. Snell, cross examine.

15 MR. SNELL: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. SNELL:

18 Q. Mr. Moak, if you can't hear me ask me to speak up,
19 okay, and it's nothing personal. I think you and I spoke
20 for the first time about this case today or this morning.
21 Is that correct?

22 A. Yes. With you, yes.

23 Q. And previously I have left you messages and written
24 to you letters asking you to send us a copy of your file,
25 but you never sent us anything. Correct?

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1 A. Well, it was crazy. I got a call back in March --
2 I think it was March -- and it was something about informa--
3 tion to you, and I actually went back and located a copy
4 of what was scanned. I tried to call your office and asked
5 you to get back to me.

6 So I tried to send it and this was probably, you know,
7 the official-like discovery from the Solicitor's Office but
8 I didn't think it went.

9 Q. Do you recall signing for a certified letter from my
10 office . .

11 A. Yes.

12 Q. . . in August of 2015?

13 A. Yes. That was when I looked up the Email again and
14 of what was scanned. I put it higher on the list in August
15 of 2014 so it (inaudible).

16 Q. But you never actually sent it to my office?

17 A. I thought I had Emailed it earlier but apparently it
18 didn't get there.

19 Q. And at any point was there any correspondence where you
20 wrote Ms. Roberts?

21 A. No. I don't believe so.

22 Q. All right, and you don't have -- do you agree you
23 never actually printed off the discovery and gave him a
24 copy of it?

25 A. I remember having a hard copy over at Tracy's house

R. MOAK ON CROSS

1 when he was there but that was his recollection.

2 Q. Okay, but as far as you recall you never gave him a
3 hard copy of it?

4 A. I don't remember that, no. I don't remember him
5 asking for it.

6 Q. Do you have any recollection of talking with him about
7 it?

8 A. Yes, I remember having it in the living room at Tracy's
9 house and on the couch, and on the other side of the room
10 she's got a table there, and I remember going from one to
11 the other.

12 Q. Did you make any copies? Do you have a copy in your
13 file?

14 A. I'm pretty sure about that. I had to have it to take
15 it out there. I mean, I think that was the first copy I
16 had of it and I thought I had given him a hard copy of it
17 at some point but maybe we just went over it. I don't
18 really remember whether he had his own copy.

19 Q. Did you hire an investigator to assist . . .

20 A. No, I did not hire an investigator.

21 Q. And you said you tried to talk to individuals about
22 what happened but they would not speak to you?

23 A. They would not give a statement and basically how the
24 conversations went was, you know, they would like laugh and
25 say, yeah, they were there, and I would ask what they would

R. MOAK ON CROSS

1 testify to or would they testify to that, and they say we
2 are not speaking with you; we're not cooperating.

3 Matter of fact, I remember they called the police so
4 Ryan would be arrested, I think.

5 Q. Now, you had information or in the transcript I be-
6 lieve it was said you had information that some of them had
7 engaged in fighting . .

8 A. Yeah, I saw on Facebook where somebody posted that in
9 Branchville he had just won a haze match the week before.

10 Q. And at any point did you ever try to get the record or
11 the application or any materials about that fighting?

12 A. No. We were to go to trial the very next week and
13 he pled so I had no need to do that.

14 Q. All right.

15 A. If he had gone to trial that may have been something
16 I would have been thinking about.

17 Q. Okay, so in the plea hearing was the Judge -- I guess
18 the family told the Judge about how the victim had been so
19 terribly hurt?

20 A. Yes.

21 Q. And did Mr. Trojan believe that those injuries may
22 have been exaggerated or kind of built up bigger than it
23 was?

24 A. Oh, yeah. I think the whole family did that. I mean,
25 my position was that a lot of it was made up and there was

R. MOAK ON CROSS

1 a lot of lying and something about being a gang member and
2 there was all this crazy stuff.

3 Ryan -- the whole time Ryan had been staying at Tracy's
4 house and he had a job at that point working with (inaud-
5 ible). Ryan was doing all the right things.

6 Q. Now, do you have any documentation or any records that
7 could have refuted or challenged what they were telling the
8 Judge?

9 A. They told the Judge all those things.

10 Q. But did you have any records to dispute any of it?

11 A. No, sir. There was no opportunity to do that.

12 Q. You didn't independently obtain documents or records?

13 A. No, I didn't because at that point I was working with
14 the Solicitor's Office and what they had given me. If I
15 had thought it would have been needed I would have gone
16 to get them myself because at a trial you need those in de-
17 fending the case but we didn't go to trial.

18 Q. You testified that you at some point did talk to Mr.
19 Trojan about having a trial and I believe that was in the
20 car before he turned himself in?

21 A. Then and after the preliminary hearing we talked about
22 it. I remember statements given at Tracy's house but then
23 he pled.

24 Q. Did he come to your office?

25 A. I didn't have an office he could come to in October

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1 of 2014. At that point I was basically working out of my
2 home and then when I was called about him I did meet him
3 at Tracy's house, and I don't remember getting all the
4 Emails and voice mails from Ryan Trojan.

5 But, again, through Tracy I would get word and come
6 over there. A lot of the time I had with Ryan was through
7 Tracy. He would meet me over there.

8 Q. She was not an employee of your office?

9 A. No. She was the lady who actually was -- Tracy is a
10 very good person and I had known her for some time. (Por-
11 tion inaudible)

12 She helps people and does a lot of animal rescue stuff.
13 She works at trying to save people, help people. Ryan got
14 in trouble and Tracy wanted to help him. Tracy called me
15 and that's what happened.

16 She takes in stray dogs and gives people a place to
17 stay if they need it as she did when she found out Ryan was
18 in trouble. She called me and that's how it happened. I
19 mean... actually had to stay at Tracy's house.

20 Q. Did you have any information about fights that went on
21 and how someone would make application . . .

22 A. I had access to a lot of that at one point but once
23 they switched the system over things were different and it
24 wasn't given out.

25 Q. So if the State didn't have it you didn't have it?

1 A. That's right. I don't know what happened with that
2 or I didn't until much later.

3 MR. SNELL: May I have a moment, Your Honor.

4 THE COURT: Yes, sir.

5 (Brief pause)

6 BY MR. SNELL:

7 Q. Mr. Moak, those are all of my questions. Thank you
8 very much.

9 THE COURT: Any Redirect?

10 MS. GIOVANOLI: Briefly, Your Honor.

11 REDIRECT EXAMINATION.

12 BY MS. GIOVANOLI

13 Q. You received the discovery in Mr. Trojan's case?

14 A. Yes, it was Emailed to me by the Solicitor and some-
15 times I would copy it to the file.

16 Q. You generally print all discovery?

17 A. No, maam.

18 Q. Okay. Going back to the plea hearing, do you recall
19 when the victim's mother spoke to the Court whether she
20 was sworn in?

21 A. I don't remember if she was or not.

22 Q. Okay, and she made statements that you did not agree
23 with?

24 A. Oh, she made a lot of statements I didn't believe were
25 true.

1 Q. And did you make the Judge aware of things she said you
2 did not agree with?

3 A. I think a lot of what she said -- I take the position
4 a lot of it was made up. I don't know if I made that known
5 to the Judge.

6 Q. Do you think the extent of injuries was a reason for
7 the charge of assault and battery of a high and aggravated
8 nature? Going back to the victim's injuries,

9 A. I haven't read that statute recently but I believe it
10 possibly was and was a reason as well for the sentence.

11 Q. Have you ever requested medical records or some con-
12 firmation of the injuries of someone in a case?

13 A. I'm sure I have asked that.

14 Q. Did you do that in this case?

15 A. After he decided to enter a plea I didn't. If he had
16 had a trial I would have gotten this stuff.

17 Q. Is it difficult to get medical records without the
18 authorization of the patient?

19 A. I could have called upon the Solicitor's Office to do
20 it or asked that the Judge order it. It's hard to get it
21 without consent of the patient and it depends on how the
22 interaction with the patient goes.

23 If you can't get authorization at that point you have
24 to get it through other means. I imagine it would have not
25 been almost possible to get that from the victim in this

1 case voluntarily.

2 Q. Thank you. I have one last question. Did you tes-
3 tify that you tried to get a copy of the written agreement
4 between yourself and your client?

5 A. Yes.

6 Q. So there was an actual written agreement?

7 A. Yes, maam.

8 Q. Thank you. Nothing further, Your Honor.

9 THE COURT: Anything further for Mr. Moak?

10 MR. SNELL: No further questions.

11 THE COURT: Any further witnesses?

12 MS. GIOVANOLI: Nothing further, Your Honor.

13 THE COURT: Is there anything further?

14 MR. SNELL: If Your Honor please, I would like to
15 move to keep the record open in order to get an affidavit
16 or statement from them that they have searched the file
17 and do not have anything. Maybe they would be willing to
18 agree to a stipulation.

19 THE COURT: Have they communicated to you that they
20 have anything?

21 MR. SNELL: I have what they produced so far. I've
22 got a copy of what they gave before but no written state-
23 ments although I have requested them.

24 THE COURT: Mr. Moak, would you tell me . .

25 MR. MOAK: They haven't given any to me although they

1 had other information they spoke of but which they might
2 not be able to find. They've said they don't.

3 THE COURT: Right. So it's your understanding that
4 if it exists they may have it, but you are not certain if
5 they do have it. If it did exist they would have it.

6 MR. MOAK: That's correct.

7 THE COURT: Mr. Snell, I understand that Mr. Moak is
8 not saying it does exist but he's just saying he doesn't
9 have it; that if it exists, they may have it and they've
10 told him they don't. So I think that is it.

11 MR. SNELL: I think they did produce some letters and
12 things from the preliminary hearing but they say they don't
13 have any other records.

14 THE COURT: Right, and I don't think Mr. Moak contra-
15 dicted that. He's just saying they say they don't have it
16 and he doesn't have it.

17 MR. SNELL: I would like them to confirm that there
18 are no other records that they have.

19 MS. GIOVANOLI: Mr. Moak said he has gotten the dis-
20 covery and discussed it with his client.

21 THE COURT: I don't see there is any necessity for
22 leaving the record open.

23 Is there anything further you would like to present?

24 MR. SNELL: We would request the opportunity to try
25 to obtain medical information on the victim.

1 MS. GIOVANOLI: We would object to that.

2 THE COURT: I think at this point there is no reason
3 to go into the matter of the victim's injuries and whether
4 he continues to have the brain injuries.

5 I will take the case under advisement at this time.

6 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS
2013-GS-28-00941

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Ryan Freeland Trojan,)
Defendant.)

July 9, 2014
Camden, South Carolina

B E F O R E:
THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:
BRETT A. PERRY, DEPUTY SOLICITOR
Attorney for the Plaintiff
RONALD W. MOAK, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

1 I N D E X O F W I T N E S S E S

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4 (WHEREUPON, no witnesses were called
5 during these proceedings.)
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10 E X H I B I T S

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13 (WHEREUPON, no exhibits were introduced
14 during these proceedings.)
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JULY 9, 2014

MR. PERRY: The State calls Ryan Trojan.

THE COURT: Yes, sir?

MR. PERRY: Your Honor, standing before you is Ryan Trojan with his attorney, Ron Moak.

THE COURT: I'm sorry, I don't have the paperwork. I am getting ahead of myself.

THE CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

MR. PERRY: Your Honor, standing before you is Mr. Ryan Trojan, along with his attorney, Ron Moak.

He was previously charged with attempted murder from an incident that took place on July 14th, 2013. He is pleading guilty today, Your Honor, to the offense of assault and battery high and aggravated. The State is allowing him to plead to that straight up because we believe that under the facts that we have it would be very difficult for us to prove the mens rae or the mindset necessary to establish attempted murder. If we were to go forward with trial, we think there is an extreme likelihood that in fact he would only be

1 convicted of a lesser included offense of assault
2 and battery high and aggravated. He is pleading
3 straight up, zero to 20.

4 I've got Investigator Justin Dill here with us
5 to relay the facts from law enforcement's
6 perspective. And I have the victim's mother here
7 this morning that would relay more of the effects
8 of how all this affected her family and her son and
9 the injuries that were sustained.

10 THE COURT: All right. And, Mr. Moak, he is
11 pleading guilty to assault and battery of a high
12 and aggravated nature; is that correct?

13 MR. MOAK: Yes, Your Honor.

14 THE COURT: All right. Have you explained to
15 your client the charges contained in the
16 indictment, the possible punishment, and his
17 constitutional rights?

18 MR. MOAK: Yes, Your Honor.

19 THE COURT: And have you explained to him --
20 and how does he wish to plead?

21 MR. MOAK: He's pleading guilty.

22 THE COURT: And do you agree with his decision
23 to plead guilty?

24 MR. MOAK: Yes, Your Honor.

25 THE COURT: All right. And you are Ryan

1 Trojan?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Sir, you are pleading guilty to
4 assault and battery of a high and aggravated
5 nature; is that correct?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. And how old are you,
8 sir?

9 THE DEFENDANT: Twenty-one.

10 THE COURT: How old?

11 THE DEFENDANT: Twenty-one.

12 THE COURT: All right, you are going to have
13 to speak up, the court reporter has to take down
14 everything that you are saying, all right?

15 THE DEFENDANT: Yes, ma'am.

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

17 THE DEFENDANT: I graduated high school.

18 THE COURT: Do you work?

19 THE DEFENDANT: Yes.

20 THE COURT: Where do you work?

21 THE DEFENDANT: Jayco Metal Stamping.

22 THE COURT: What's that?

23 THE DEFENDANT: Jayco Metal Stamping.

24 THE COURT: Are you on probation or parole?

25 THE DEFENDANT: I'm currently on house arrest.

1 THE COURT: On what, now?

2 THE DEFENDANT: House arrest.

3 THE COURT: On your bond?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: He's out on bond?

6 MR. MOAK: He's out on probation.

7 THE COURT: All right. Are you married?

8 THE DEFENDANT: No.

9 THE COURT: Do you have children?

10 THE DEFENDANT: One on the way.

11 THE COURT: Within the last 24 hours have you
12 taken any medication, drugs, or alcohol?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: All right. Listen closely to the
15 State as they present the facts.

16 MR. PERRY: Your Honor, I defer to
17 Investigator Justin Dill, who was the lead
18 investigator on this case, to relay the facts.

19 INVESTIGATOR DILL: May it please the Court,
20 Your Honor?

21 Late night July 13th, 2013, early morning
22 hours of July 14th, 2013, the victim, Mr. Dillon
23 Robertson, who stands here today, along with some
24 friends of his, were invited to a, what I believe
25 to have been a 21st birthday party for someone at

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████████████████████, which is in Lugoff, Kershaw County.

They arrived to the party. They were there for a little bit meeting people. And apparently during the time that they were there, Mr. Robertson was being provoked to try and fight with Mr. Trojan. And apparently this had something to do with an altercation that had happened months prior.

Because of being provoked to fight that night, Mr. Robertson and friends got in their car and they left. They realized that a person's cell phone had been left behind. I believe one of the witnesses that were there called to make the homeowner or a person that resided at the residence at Spring Creek to make sure it was okay for them to come back and retrieve their items. They said they would.

They did return back to the home. It is my understanding through the investigation that another vehicle blocked them in when they got back in. Whether that is related or not, I'm not sure.

Mr. Robertson and I believe his girlfriend at the time approached the home to meet with residents to try to find the property they left behind.

1 And Mr. Trojan came from behind with a metal
2 baseball bat, as has been described to me. And
3 also witnesses described he struck Mr. Robertson
4 from behind with that bat in the back of the head
5 and about the body.

6 I believe the girl, Mr. Robertson's
7 girlfriend, kind of intervened, got him away from
8 him, and they drug him back to the vehicle.

9 Mr. Robertson had extensive injuries about his
10 head, the back of his head. I think he had -- his
11 teeth were broken, his nasal cavity was crushed,
12 which was all caused from a blow from behind, Your
13 Honor, so it had to have been a significant blow.

14 There were several witnesses that were there
15 that witnessed this incident. It was unprovoked at
16 the time that he came back. Like I said, he was
17 attacked from behind with the metal baseball bat.
18 He was transported to Richland for an extensive
19 stay because of the nature of his injuries.

20 There has been some speculation that, Well,
21 this all happened because of the altercation that
22 had happened prior. And it is my understanding it
23 was months prior. But, Your Honor, that would just
24 make it retaliation. The State doesn't feel that
25 that has anything to do with this particular

1 incident.

2 MR. PERRY: Your Honor, I'd like to state
3 that, as well as what Mr. -- Investigator Dill has
4 said, that the evidence that the State would put
5 forward at trial, Your Honor, was that at no time
6 during the night did the victim ever attempt or
7 offer to fight the Defendant. He never provoked
8 the Defendant. He never went after the Defendant.
9 In fact, on multiple occasions when the Defendant
10 tried to get him to fight him, he refused to fight
11 him.

12 And, Your Honor, the reason that he did that
13 is because Dillon had recently been accepted into
14 the military. He was recently accepted into the
15 marines. And he had promised his father that he
16 wouldn't get in any trouble -- that he would stay
17 out of trouble because he wanted to go into the
18 military. He expected to have a career in the
19 military. He wanted to make a life of that.

20 He chose to do the right thing, Your Honor.
21 He chose to walk away rather than engage in a fight
22 when provoked. He didn't want to have to come back
23 to this house after they left. The only reason
24 they came back was because items of personal
25 property had been left there.

1 Whenever he came back to the house, he was
2 ambushed from behind, beaten in the head with a
3 baseball bat, required him to be put in ICU over at
4 Richland County where he literally was hanging on
5 by a thread for a matter of several weeks.

6 MR. MOAK: Your Honor, is he giving the facts
7 or is he making an argument for sentencing?

8 MR. PERRY: Your Honor, he was in ICU for
9 several weeks. He was there for several weeks.
10 Ultimately got out. Because of the closed head
11 injury, he has continued to suffer problems with
12 that, with his vision, with sunlight causing
13 problems with his eyes.

14 Your Honor, at no time -- I want to be very
15 clear -- at no time did the Defendant ever initiate
16 any physical violence with the -- the victim never
17 initiated any physical violence with this --

18 MR. MOAK: Other than taking his shirt off and
19 offering to fight.

20 THE COURT: Hold on. Hold on a second.

21 MR. MOAK: Yes.

22 THE COURT: All right.

23 MR. PERRY: The evidence the State would put
24 forward, Your Honor -- witnesses were there -- is
25 that never happened.

1 THE COURT: All right. Let me get through the
2 plea. All right.

3 MR. PERRY: At the appropriate time I would
4 like for you to hear from Mr. Robertson.

5 THE COURT: Based on the facts that the
6 officer gave, do you agree with those facts, sir?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: What don't you agree with?

9 THE DEFENDANT: The nature of that he was --
10 he said that he was unprovoked and that it was also
11 from behind.

12 THE COURT: It was what, now?

13 THE DEFENDANT: They said that it was
14 unprovoked and that the attack was from behind.

15 THE COURT: All right, well you tell me what
16 you did.

17 THE DEFENDANT: Okay. That night I was called
18 multiple times over and over to come to the party.

19 Once I got there -- he was actually already
20 there. And then from then on, he was -- I -- we
21 started screaming at each other. I told him to
22 leave. And then everybody around the party all
23 circled around.

24 At this point there was a larger man with him,
25 I believe it to be his cousin or uncle, some type

1 of family member, that took off his shirt. He
2 began to empty his pockets. It wasn't in fact the
3 victim that took off his shirt, it was the man that
4 was with him.

5 They began screaming that, They are not going
6 to make us leave. This isn't right, they are not
7 going to make us leave.

8 At this point he became very aggressive,
9 started screaming back at me. The homeowner made
10 him -- forced him to leave.

11 Within those five minutes, I began to get in
12 my car and leave as well. He told me to leave.

13 As I was backing up, they pulled back in. So
14 I pulled back up and got back out the car.

15 He jumped out the car. I don't know why he
16 came back. They say that he left something. But
17 when he came back he wasn't looking for anything
18 other than me.

19 He was not asking people for his things. He
20 wasn't doing anything like this. He was looking
21 for me.

22 He stepped towards me. I had the baseball
23 bat. I swung it. The only reason it hit him in
24 the back is he flinched. He looked away from it.
25 That is why it hit him. I didn't sneak up behind

1 him like an ambush, or anything like that. I hit
2 him once in his head. He kept going. I hit him in
3 the leg.

4 At this point he stepped towards me again and
5 I hit him once again in the head. As soon as he
6 went down, I turned around and walked away. I was
7 not forced by anyone to stop, or anything like
8 that. There was no girl throwing anything at me
9 and pulling me off, or anything like this. I
10 stopped on my own accord and walked back to my car
11 and left immediately.

12 THE COURT: Let me see y'all one second.

13 MR. MOAK: He struck the man in the head with
14 a baseball bat.

15 THE COURT: Let me see you one second.

16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: I want to go back on the record.
20 I want to make sure we're clear on what you are
21 agreeing that you are pleading to.

22 My understanding is you are agreeing that you
23 took a bat and hit him in the back of the head.
24 And what else did you say?

25 THE DEFENDANT: I hit him in the leg.

1 THE COURT: All right. And you agree that his
2 injuries were a result of your hitting him in the
3 back of the head with the aluminum bat?

4 THE DEFENDANT: Yes, he did get hurt.

5 THE COURT: I'm sorry?

6 THE DEFENDANT: Yes, he got hurt because I hit
7 him.

8 THE COURT: All right. Anything else?

9 MR. MOAK: Your Honor, basically that is why I
10 asked Your Honor was he making an argument on the
11 facts, because that is part of the disagreement he
12 had was as to the additional facts the Solicitor
13 was trying to argue.

14 Essentially what he is pleading to, he is at
15 the party, whether he felt threatened or not, he
16 actually got out of his car with a bat, hit the guy
17 in the head. The guy got hurt. That is assault
18 and battery high and aggravated nature. That is
19 what he is pleading to.

20 THE COURT: He is not claiming self-defense?

21 MR. MOAK: This isn't self-defense.

22 THE COURT: Based on what he said to me, is
23 what I'm asking?

24 MR. MOAK: Basically this is -- we're telling
25 you why he did it, but we don't believe this to be

1 a self-defense case.

2 THE COURT: Is that correct, sir?

3 THE DEFENDANT: Your Honor, the only reason
4 I'm pleading is because I'm scared to go --

5 THE COURT REPORTER: I'm sorry?

6 THE DEFENDANT: The only reason that I'm
7 pleading is because I'm scared of what would happen
8 if we went to trial. Like I don't -- I have never
9 done anything before. This is my first time ever
10 doing anything like this or ever getting in
11 trouble --

12 THE COURT: Okay. All right. I am going to
13 let Mr. Moak go talk to him. All right. Thank
14 you. We'll stand down for a second.

15 (Break.)

16 THE COURT: All right. Are you ready?

17 MR. PERRY: We are, Your Honor.

18 THE COURT: All right. I'm going to ask --
19 because I think this is where we stopped -- I am
20 going to ask the officer to put the facts on the
21 record. And then I'll come back to Mr. Trojan at
22 that time and see if he agrees with the facts as
23 stated by the officer.

24 Yes, sir?

25 INVESTIGATOR DILL: May it please the Court,

1 Your Honor? The early morning hours of July 14th,
2 2013, Mr. Dillon Robertson, the victim, and some of
3 his friends were invited to a 21st birthday party
4 at a residence located at [REDACTED] in
5 Lugoff, Kershaw County.

6 They arrived at the party. There were
7 numerous people there. I don't know that they knew
8 very many people there. They spent a little time
9 there. They were meeting people.

10 And, as the State understands, while they were
11 there this first time, when they first arrived,
12 that there were numerous times that Mr. Robertson
13 was taunted to fight with Mr. Trojan because of,
14 from what I understand, of a previous altercation
15 that had happened months earlier between the two.

16 The confrontation got so bad that, you know,
17 they were taunting, trying to get them to fight,
18 trying to get them to fight. I believe
19 Mr. Trojan's friends that were there were trying to
20 pump him up to fight with Mr. Trojan -- I mean,
21 Mr. Robertson.

22 Mr. Robertson, along with his friends, left
23 the party. They realized they had left some of
24 their personal property at this residence and were
25 going to return to retrieve this personal property.

1 They made contact with someone named TJ
2 Branham, who resided at that residence, and made
3 sure it was okay for them to return to get their --
4 regardless, they had permission to return to
5 retrieve something.

6 When they came back, Mr. Robertson, I believe
7 with his girlfriend at the time, approached the
8 residence to go try to find the property. And
9 Mr. Robertson was hit in the back of the head with
10 a metal baseball bat by Mr. Trojan, according to
11 witnesses that were there. He was struck several
12 times, from what witnesses stated about the
13 incident, on the back of the head, the legs, and
14 about the body.

15 And they fled the scene, then called 9-1-1 for
16 an ambulance for Mr. Robertson.

17 The injuries that Mr. Robertson sustained are
18 consistent with facts that were provided by the
19 witnesses, that he was struck in the back of the
20 head by the bat. The force of the bat from behind
21 in the back of his head caused some teeth to break
22 off and crushed his nasal cavity. He had extensive
23 head injuries from behind.

24 Responding officers to the scene, once they
25 met with the ambulance and saw the extent of the

1 injuries to Mr. Robertson, they immediately went to
2 [REDACTED] where they tried to make
3 contact with Mr. Trojan, but everyone there just
4 about, even the homeowners, along with Mr. Trojan,
5 had already fled.

6 The State believes if this was a case of
7 mutual combat that escalated into somebody having a
8 weapon, then somebody would have stuck around to
9 tell the law what happened. That is not how this
10 happened. Everybody fled except for the victim and
11 his friends that were with him.

12 I was able to make contact through Mr. Moak,
13 his attorney, with Mr. Trojan, who came in, but at
14 that time they didn't wish to speak about the
15 incident. And he was actually charged with
16 attempted murder at that time.

17 THE COURT: All right. Sir, do you agree with
18 the facts as stated by the officer?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Is that what you are pleading
21 guilty to?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. You understand that
24 the assault and battery of a high and aggravated
25 nature carries up to 20 years in jail? Do you

1 understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Knowing that, you still wish to
4 plead guilty?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. You understand that it
7 is classified as violent and serious, meaning under
8 our three strikes law, sir, that you would have
9 to -- under our three strike law that this would be
10 Strike One. I don't know if he has any other
11 strikes, but this would be a strike against you
12 under the three strike law. Do you understand
13 that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: If you were to get two other
16 offenses -- if you were convicted of two other
17 offenses that classified as serious, the State
18 could move before the Court on the third one for
19 life without parole. Do you understand that, sir?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Knowing that, you still wish to
22 plead guilty?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. Also classified as
25 violent for purposes of the statute and also for

1 purposes of classification at the Department of
2 Corrections. Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Knowing that, you still wish to
5 plead guilty?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You understand when you plead
8 guilty you give up certain important constitutional
9 rights?

10 You have the right to a jury trial. At a jury
11 trial the State would have to prove you guilty
12 beyond a reasonable doubt. You would not have to
13 testify. The burden is upon the State. You and
14 your attorney would have the opportunity to
15 cross-examine any witnesses that they would
16 present. You would not have to testify. The
17 burden would be on the State. Sir, do you
18 understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Also, sir, if you wish to testify
21 you would be given an opportunity to testify. Sir,
22 if you had defenses that you would like to advance
23 through your attorney, you would have an
24 opportunity to advance those defenses before a
25 jury. However, ultimately, sir, the burden would

1 be upon the State. You would not have to call any
2 witnesses if you chose not to do so. You would not
3 have to testify if you chose not to do so.

4 But, by pleading guilty, sir, you give up your
5 right to a jury trial and you give up those other
6 important constitutional rights. Is that what you
7 wish to do?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. And you have been
10 represented by Mr. Moak. Are you satisfied with
11 his representation?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you need any more time to speak
14 with him?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: And have you spoken with him for
17 as often and as long as you felt is necessary?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And you and he have discussed all
20 of your options in this case and your defenses in
21 this case?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And are you satisfied
24 with his services?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you need any more time to speak
2 with him?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: All right. Is anyone forcing you
5 to plead guilty today?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Are you pleading guilty of your
8 own free will?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Has anyone offered you anything in
11 exchange for your guilty plea today?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Has anyone promised you anything
14 in exchange for your guilty plea today?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: All right. And you are pleading
17 guilty of your own free will?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Freely and voluntarily?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. And you are pleading
22 guilty because you are guilty to assault and
23 battery of a high and aggravated nature?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You are guilty as to what the

1 officer just stated you did?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. And have you
4 understood all of my questions?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Have you answered them truthfully?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You understand you have the right
9 to -- well, let me ask you, has anyone suggested to
10 you how to answer my questions?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: The answers you have given me have
13 been your answers?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You understand you have the right
16 to appeal the guilty plea and sentence of this
17 Court within ten days of today's date?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. I find that there is a
20 substantial factual basis for the plea. I also
21 find that the Defendant's decision to plead guilty
22 is freely, voluntarily, knowingly, and
23 intelligently made. That he is represented by
24 counsel to whom he has indicated to me he is
25 completely satisfied with. And his attorney has

1 advised him as to his rights, his defenses in this
2 case.

3 I will accept your plea.

4 I will be glad to hear from the State, and
5 then I'll be glad to hear from Mr. Moak.

6 MR. PERRY: Your Honor, again, the evidence
7 the State would present in this case would be that
8 on multiple occasions that night that Mr. Trojan
9 and others at the party tried to get Dillon and
10 Mr. Trojan to fight. Dillon refused to fight.

11 And he did the right thing for two reasons.
12 First of all, as I told you earlier, he had
13 recently been accepted into the marines and he knew
14 that he had to, you know, not get in any sort of
15 trouble, you know, to be able to go on and do that.
16 And, more importantly, his father had asked him to,
17 you know, to stop being involved in any sort of
18 fights, or anything like that. He had told his dad
19 that he wouldn't get in any sort of trouble and
20 that he would do whatever it took to not. And this
21 night he did just that. He chose to walk away even
22 whenever the Defendant and others there were trying
23 to get him to fight.

24 And they left that party. They came back to
25 that party because one of the members of their

1 group had left a cell phone and a purse or a wallet
2 there at the residence. They called to be sure it
3 was okay for them to come back and get it first.

4 Whenever they got there, you know, he never
5 struck this Defendant. He never offered to strike
6 this Defendant. He never did anything physical to
7 this Defendant. But the Defendant chose to take a
8 metal baseball bat out of his car and beat him in
9 the head and about the body with it.

10 As a result of that, he ended up in ICU over
11 at Richland County and was in very bad shape for a
12 couple of weeks.

13 The injuries that he sustained continue to
14 cause him problems, and probably the most important
15 thing, at least from my experience in talking with
16 Dillon, the thing that is the most disappointing
17 and the most life-changing for him about this was
18 that as a result of this happening and his closed
19 head injury, he is no longer able to go into the
20 military the way that he wanted to.

21 It has forever changed the plans that he had
22 for his life. Those weren't just dreams, those
23 were plans that had been put into place. He was
24 accepted into the military and he had a date to
25 leave for boot camp. But all of that was taken

1 away from him whenever the Defendant chose to take
2 a bat and strike him in the back of the head in
3 retaliation for them having gotten into a fight
4 months before and the victim having beat the
5 Defendant in that fight.

6 Your Honor, this is not a self-defense sort of
7 a case. This victim never offered to do harm to
8 the Defendant. He certainly never struck the
9 Defendant. Never laid hands on the Defendant. He
10 never had a chance to because the Defendant waylaid
11 him with a baseball bat.

12 You know, certainly the victim didn't have any
13 weapons -- have a knife, he didn't have a bat, or
14 anything of the sort. So even if he had offered to
15 fight the Defendant, the State would be of the
16 position that, you know, you don't bring a baseball
17 bat to a fistfight, not when it is one-on-one, not
18 whenever the size of the opponent is similar.
19 There is no reason to justify striking this victim
20 in the head with a baseball bat.

21 In addition to what Investigator Dill said,
22 what the State has just offered, I would ask you
23 please to listen to the words of his mother, who
24 has had to live with this that has happened to her
25 son, how it has changed their lives.

1 I have asked Dillon if he cared to say
2 anything, and he has chosen not to say anything,
3 but to allow his mother to speak for him.

4 THE COURT: I will be glad to hear from her.
5 Yes, ma'am, state your name for the record.

6 MS. BARRINEAU: My name is Lisa Barrineau.
7 I'm Dillon's mom. And I just kind of wanted to let
8 you know some of the things that we're still
9 dealing with today, which is almost a year ago,
10 because of what happened.

11 Dillon was struck, as he said, in the back of
12 the head with such force that it fractured the back
13 of his skull, which caused his brain to bleed,
14 which is why he had to go to the ICU. It also blew
15 out the front of his sinus cavity in three spots.
16 Blood spewed out of his face. Then he continued to
17 hit him on the body, and he had massive deep tissue
18 trauma.

19 Because of those things, he didn't -- he
20 couldn't recall his address. He couldn't recall
21 his name. He lost lots of things. His cognitive
22 thinking. His memory. He couldn't be around
23 lights. If you were to put him in a room like
24 this, he would go into having migraines, and he
25 would shake. And one of the worst ones that he had

1 was a five hour one where he sat on the edge of the
2 bed with the maximum dose of pain medication that
3 we could legally give him, and he shook like this,
4 and we could do nothing. And that didn't just
5 happen once or twice or three times, this was
6 months and months and months. They had to put him
7 on medication.

8 The financial burden on me -- I had \$30,000 in
9 my bank account when this happened. I have zero in
10 my bank account today. I have got this right here,
11 which is full of medical bills. Hundreds of
12 thousands of dollars of medical bills that I have
13 paid. He doesn't have to pay these, I do. I'm
14 stuck with this burden. This will probably take me
15 ten years to get this off.

16 It ruined his career. He can't go back
17 through those tests. He can't pass them because
18 his brain has a delay in his thinking. The thought
19 process up here to where it comes out, it doesn't.
20 It is a delay. Therefore, his whole entire career
21 is ruined. That is an automatic \$24,000 that my
22 son can't get back. He can't ever go in the
23 military. He is done.

24 He is over here struggling to find his way in
25 life. You know, this man still has a job. This

1 man still has his body parts. Everything is in
2 working order. My son for the rest of his
3 God-given life has brain damage. Does this affect
4 him? Yes. It falls on me. I support him.

5 You know, he tried to get a job. What
6 happened? The sunlight. The sunlight attacks him.
7 And what happens? He goes back to having
8 migraines.

9 You know, he doesn't like feeling like he is
10 dumb, he doesn't like feeling like he is incapable,
11 because he was -- he was it before this happened.
12 I mean, intelligent. All through school, I mean,
13 we were getting letters from the governor and
14 things because he scored so high on his tests. He
15 is brilliant. That is not the case now.

16 So even if you were to convict him, put him in
17 jail for say 15 years, when he gets out he is the
18 same. He is still him. He can move on. This is
19 forever until the day he dies.

20 And, I mean, I know there was some discrepancy
21 on whether this happened to him or whether this
22 didn't. This happened. I have everything right
23 here. I have got photos, if you'd like to see
24 them, of the abuse, you know, where my son had
25 suction cups sucking blood, big huge containers of

1 blood out of his sinus cavities from where his
2 brain was bleeding and it was pouring into his
3 nose.

4 He just -- he couldn't even read. My mother
5 gave him a card, a get-well card with simple little
6 words in it. He couldn't even read those words.

7 Do you know how that feels? As a mother, I
8 sat there and I watched this. I watched my son
9 struggle for his life.

10 When I went to the hospital that night, I had
11 no idea whether my son was alive or dead. When I
12 went to the hospital, they couldn't even tell me he
13 was back there. That was scary for me. That night
14 traumatized me.

15 I now am on nerve medication. Not now at this
16 point in time, but I have to take them because I
17 wake up in shakes. If somebody calls me in the
18 middle of the night, I'll start shaking because my
19 fear is somebody is calling to tell me that my
20 child won't be here anymore. I've got to live with
21 that. I didn't ask to be brought into this. I
22 didn't ask for this man to hit my child. And my
23 son didn't ask for it.

24 That night he did the most upstanding thing
25 that he possibly could have done, and this is the

1 thanks he got.

2 I ask that you give this man the maximum,
3 because no matter what time you give him, it is not
4 enough. He is still fully functional. My child is
5 not, and never will be.

6 And these -- these are going to be our burdens
7 while he is sitting in jail living the life of
8 Riley, getting three hots and a cot, while we're
9 paying out \$400 a month in hospital bills.

10 THE COURT: All right, thank you.

11 You said he did not want to say anything?

12 MS. BARRINEAU: He doesn't.

13 THE COURT: All right. Anything?

14 MR. PERRY: Your Honor, the only thing that he
15 has on his record is a 2011 charge for open
16 container of beer or wine.

17 There is a charge on here for simple
18 possession of marijuana, speeding, minor in
19 possession of alcohol, and a paraphernalia
20 violation, but I do not see how those were disposed
21 of.

22 THE COURT: All right. Anything else?

23 MR. PERRY: And, Your Honor, the State would
24 just simply ask, you know, this is being pled down
25 from attempted murder to assault and battery high

1 and aggravated. You know, I don't normally do
2 this, but in this particular case I think 20 years
3 is appropriate. And that is what the State is
4 asking you to give this young man.

5 THE COURT: All right. All right.

6 MR. MOAK: Okay, Your Honor. Some of what you
7 heard that has caused some problem earlier in the
8 plea is what would have come out during trial.

9 Basically what we are looking at if this case
10 had been tried, we've got witnesses on our side
11 that were at the party, they've got their witnesses
12 on their side that were at the party. Their
13 witnesses have the version that they presented.
14 Our witnesses have a slightly different way. So
15 you have like a swearing match as to the who said
16 what.

17 There was a verbal altercation the first time
18 before they left, and there were some threats made
19 both ways. But, again, when he came back, our
20 problem would have been at trial, and is why
21 self-defense I don't believe would have worked,
22 Ryan was in his car preparing to leave when they
23 came back, and he chose to get out of his car and
24 place himself in that situation.

25 I mean, I understand the Castle Doctrine. I

1 understand Stand Your Ground. But I don't know of
2 anything that allows him to essentially, like -- I
3 mean, if in your mind somebody is coming after you,
4 you go accept the challenge when you are already on
5 the way out the door. You know, I don't think it
6 allows you to stop and do that when you are already
7 leaving. So I don't believe that is a valid
8 defense for self-defense.

9 But all this other stuff, I mean, there is a
10 lot of stuff going on here. This is not something
11 that happened in a vacuum where he just walked up
12 to somebody at a party and hits him with a bat.

13 What happened was, somewhere last February of
14 last year there is actually -- I'm going back a
15 little bit more. You have two basic geographic
16 areas. Like you have got Tower Road. It is in
17 Lugoff. It is more like Elgin towards Richland
18 County is where this party was at. That is where
19 Ryan is from. That is where most people at the
20 party were from.

21 Dillon I think played at North Central -- I
22 used to watch him -- he played as safety, I think.
23 He is from the North Central area. A lot of his
24 people that came with him were like East Camden,
25 Cassatt, North Central. So you basically have two

1 groups. And there was a couple of people that knew
2 each other, but a lot of these people didn't know
3 each other.

4 Ryan is actually -- that night -- is at one
5 location and Dustin Branham, who is the renter,
6 blows his phone up like just begging him, just
7 won't leave him alone, Come over here, Come over,
8 Come over here. What he doesn't know is that
9 Dillon is there.

10 And then there was a February altercation
11 where in the Camden area there was a fight. Ryan
12 tried to break it up. He got -- I think it was two
13 or three of them got beaten pretty bad. Obviously
14 not as bad as this. Cops were called. He was
15 asked if he wanted to go to the hospital. He said
16 no. So he pretty much stayed in the bed for a
17 couple of weeks and recovered from it.

18 You know, if he had chose to go forward on
19 that, we'd be here today with Dillon sitting over
20 here and Ryan over there. You know. And that
21 actually would have been a better resolution
22 because that would be the end of.

23 Now, fast-forward to July. Dustin and TJ --
24 TJ Branham and Dustin are brothers. Dustin was the
25 renter. TJ was there. They are begging Ryan to

1 come over there, not telling him that Dillon is
2 there. And I don't believe Dillon knew Ryan was --
3 I don't believe either side knew that the other
4 side was going to be there. But Dustin and TJ, I
5 mean, I have talked to them, they knew there was
6 bad blood. And I have got some people that if we
7 went to trial, you know, we would point squarely at
8 Dustin and TJ because they are the ones that kind
9 of set this up.

10 When they are saying that the people at the
11 party were egging them on to fight, yes, that is
12 what is going on, they were egging both sides to
13 fight. And they pretty much contrived for them to
14 be there at the same time and tried to essentially
15 set a fight up. That is what we believe really
16 happened.

17 I don't think Dillon knew this was going to go
18 down or Ryan knew this was going to go down. And
19 it gets close to self-defense, but, you know, we
20 just wanted Your Honor to realize that if at trial
21 all this came out, the trial judge would understand
22 what was going on globally, the whole thing of the
23 back story of how this went down.

24 Yes, in his mind he is thinking that, If I'm
25 going to get beat like I was in February, you know,

1 I've got to do something. That was in his mind
2 like he had to protect himself, but he had an
3 opportunity to leave. He is actually in his car,
4 got it cranked up, getting ready to pull out, and
5 actually chooses to place himself in danger. I
6 don't think Castle Doctrine applies here, you know.

7 Dustin, the renter, had told him to leave too,
8 so I don't believe he was even legally where he
9 could legally be because he was told to leave as
10 well as Dillon.

11 TJ, Dustin's brother, is the one that was
12 telling him to come. So, again, that plays into
13 what I'm saying about there is some stuff going on
14 there.

15 And we actually have two or three other
16 instances of similar parties with fights set up by
17 these two individuals. You know, we tried to
18 present that at the preliminary hearing. We know
19 of other ones where people have been beat up, or
20 whatever. Sometimes they know about it and are
21 cool with it, sometimes they don't know about it.
22 Sometimes one side knows and the other -- I mean,
23 this is what these people do. And it is just -- it
24 is wrong and it doesn't really absolve him of any
25 liability because, you know, you can't really go

1 around hitting people with baseball bats in the
2 head, you know, unless you have got a really good
3 reason. And there is no really good reason to get
4 out of the car and do that.

5 That is why we have understood from the
6 beginning that there is going to be a punishment
7 for this. He is going to get sentenced. He is
8 going to get a sentence. But we don't believe this
9 to be a 20 year offense.

10 You know, I have been in this courtroom and
11 people have pled to voluntary manslaughter for
12 killing or shooting, stabbing, and they have gotten
13 like 18, 15 years. I mean, 20 years is greater
14 than some people get for killing people. I have
15 been in this courtroom -- I think they pled the guy
16 a month or two ago, got straight probation for
17 stabbing somebody with a broken beer bottle and the
18 victim had to be resuscitated three times on life
19 support. He got straight probation. Okay?

20 So, I mean, when you look at the other
21 cases -- and, again, I fully understand that night,
22 the medical -- I explained to Ryan initially, like
23 these medical bills are going to be crazy. You
24 know, you have a head injury, you know, and all the
25 stuff associated with that, I mean, that is going

1 to be crazy. I understand that. And I feel for
2 them. There is nothing I can do about that, but
3 like if he goes to prison, I mean, I don't think
4 this is a probation -- I don't think you can put
5 this on probation. There is nothing we can do in
6 this courtroom about the hospital bills. But I
7 understand that he had the bad injury up front.

8 And I understand the thing about missing his
9 slot with the marines, but this is an individual
10 that, I think it was in April he got sanctions like
11 in the May fight. You know, he is actually getting
12 medically clear to fight sanction in May of this.
13 And they are trying to claim that he is permanently
14 injured. You know, I mean, there is something that
15 is not really right here with that. I mean, you
16 know, if he is that brain injured, you would think
17 that, you know, he wouldn't subject himself to
18 getting hit in the head more. And that is what is
19 going on.

20 So we don't really feel like the permanent
21 injury is as much as what they say it is. He only
22 hit the guy -- I think witnesses -- I think
23 three -- I think somebody said he might have hit
24 him a couple of extra times, but it was not a
25 situation where once Dillon went down, Ryan is

1 hitting him and wailed on him while he was down.
2 As soon as he went down he backed off.

3 There is only one witness saying -- a
4 female -- saying that she jumped in, but nobody
5 else is saying that. To my knowledge, at least our
6 people is saying nobody pulled him off, that he
7 backs off. So we don't really feel that they could
8 have ever proven attempted murder, so this issue
9 about pleading it down, I mean, I think assault and
10 battery high and aggravated nature is actually a
11 reasonable expectation of what would have -- what a
12 jury would have come back at. That is why we're
13 here.

14 And, again, I mean, this isn't a self-defense
15 case. And, you know, I mean, there is a punishment
16 for this. But we wanted to make sure, and that is
17 why he kind of went overboard telling you what
18 happened of what went down.

19 And if we would have went to trial, the trial
20 judge would have heard all of it and I think would
21 have been in the same situation with assault and
22 battery high and aggravated nature.

23 Now, I think Your Honor -- I think he had a
24 high bond. We were before Your Honor and asked for
25 a bond reduction. I think you are the one that put

1 him on the ankle bracelet. He has been monitored
2 since at least like August or sometime. He got a
3 job. He's been working. He's got a girlfriend.
4 He's got a kid on the way. No violations with the
5 ankle bracelet, ankle monitor.

6 Initially, at the bond setting, they were
7 accusing him of being some member of some gang, and
8 I have yet to ever hear, like, any evidence of
9 that. And I have talked to several people. I
10 mean, like nobody other than the people that are
11 from the Tower Road area, nobody that lives there,
12 the people that probably could be classified in a
13 gang are saying he is not in that. So, I mean,
14 this thing was like really emotionally charged.
15 None of that stuff has panned out.

16 And, again, Your Honor, I would ask for
17 something -- if this was YOA eligible, I actually
18 honestly think that would be a reasonable
19 resolution to this, but it is not. I don't think
20 20 years is appropriate. I mean, I would say, you
21 know -- I would ask for somewhere around like 6 to
22 10. You know, I mean, I think that is a reasonable
23 resolution. It is 85 percent. It is violent. He
24 has been -- he is on an ankle monitor. There has
25 been numerous threats by their side against his

1 life over the past year. He hasn't been living a
2 fun life. And I actually would equate this with
3 the way the Branham brothers kind of set this up.
4 Almost similar to like a felony DUI situation where
5 you have got two lives that are ruined. I mean, he
6 is going to lose a chunk of his life. Obviously
7 Mr. Robertson is going to lose -- has lost a chunk
8 of his. You know, at least he is alive, thank God.
9 I mean, I am thankful that he is actually standing
10 up and able to be here, you know. It could have
11 been a lot worse, you know. So we're thankful
12 about that.

13 But there is a punishment for this. I don't
14 believe it is anywhere near 20 years. And I think
15 Ryan may have something to say. I think Tracy may
16 have something to say as well.

17 THE DEFENDANT: Your Honor, I don't have
18 anything to say to the Court, but I would like to
19 direct what I'm saying straight to --

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

21 THE DEFENDANT: I would like to direct
22 something directly to Dillon and his mother, if
23 that is okay.

24 MR. MOAK: I think he wants to apologize.

25 THE COURT: If you have no problem.

1 THE DEFENDANT: I am truly sorry for the
2 financial stress of this. I understand that this
3 has been hard. Nobody plans for anything like
4 this. You don't have like a bank account set up
5 just for this situation. And I'm sorry about this.

6 And, Dillon, I'm truly, truly sorry. I have
7 regretted it every day since. I never meant -- I
8 never meant for this to happen. I never wanted to
9 put you in the hospital. I didn't want to damage
10 you like this. I didn't want to ruin your plans
11 for the future. I'm sorry. I really am.

12 THE COURT: Anyone else?

13 MS. GASKINS: Hi. My name is Tracy Gaskins.
14 Ryan has been leaving with me for about three
15 years. And I just want to say that he really is a
16 good kid. I'm sure Dillon is a good kid. And he
17 has family that loves him, just like Dillon has
18 somebody that loves him. I think they are just two
19 kids at the wrong place at the wrong time with the
20 wrong situation going on. And his past brought him
21 to that, his past brought him, Ryan, to where he
22 was. Big mess. And he really is basically
23 suffering for everyone involved.

24 And just I want the Court to know that Ryan
25 does also have family that loves him and cares for

1 him.

2 That's all I want to say.

3 THE COURT: Anything else?

4 MR. MOAK: No, sir, Your Honor, other than
5 when I first met with Ryan about this case -- I
6 actually knew him before this happened. That is
7 how I got involved so early. I met with him the
8 morning after this. And we didn't know if Dillon
9 was alive or dead. And, you know, he has been
10 remorseful the whole time. It is just that he has
11 known the entire time that there was going to be a
12 day for punishment. Today is that day. And we are
13 just asking for you to sentence him based upon what
14 really happened.

15 THE COURT: Anything else?

16 MR. PERRY: Your Honor, I would only say this.
17 You know, there has been a whole lot said. But it
18 really boils down to this. There was no
19 justification, no reasonable reason for this
20 Defendant to strike this victim in the head with a
21 bat.

22 And, regardless, the extent of his recovery,
23 thanks to the Grace of God, the injuries are
24 uncontroverted. And there is hundreds of thousands
25 of dollars of medical bills to support the

1 injuries. There is weeks in ICU to support the
2 injuries. And it was completely unjustified. It
3 was unnecessary for him to be beaten in the head
4 with a baseball bat.

5 You know, if this Defendant had wanted to, you
6 know, initiate a fistfight with him and have a fair
7 fight, one guy against one guy, that is fine. But
8 there was nobody else involved. If there had been,
9 one of two things would have happened. If this was
10 multiple assailants coming after this Defendant,
11 either we would have had more people beat with a
12 bat or the multiple assailants would have jumped on
13 him whenever they attacked their friend with the
14 bat.

15 This was one-on-one, and this guy decided to
16 take a bat. And we just ask you to send a message
17 that that is unacceptable here in Kershaw County.

18 THE COURT: All right. On Indictment 2013-GS-
19 28-0941, sir, you will be sentenced to the State
20 Department of Corrections for 11 years.

21 I don't know if he has any time he has served
22 already, but he will be given credit for that.
23 They will have to calculate that at the jail.

24 All right, good luck to you, sir.

25 Good luck to you, sir. I hope and pray that

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your recovery continues.

Thank you all for being here.

(WHEREUPON, the proceedings were concluded.)

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
Ryan Freeland Trojan # 00360663)
Full name and prison number (if any) of Applicant.)
v.)
State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-28-639

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

- 1. Place of detention Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Kershaw County General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013-GS-28-941
(b)
(c)
5. The date upon which sentence was imposed and the terms of the sentence:
(a) 7/9/14, 11 years
(b)

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Clerk of Court Revised 1/2002 Kershaw County

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel

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 CLERK OF COURT
 KERSHAW COUNTY, S.C.

- (b) Guilty plea was not entered freely, knowingly & voluntarily
- (c) Counsel failed to adequately advise me of my rights, failed to request and/or review discovery materials with me, failed to adequately pursue available legal defenses including but not limited to self-defense, and failed to otherwise establish or assist with the preparation of any defense or challenge to my charge.

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

- (a) My lawyer did not review discovery materials with me, did not interview any witnesses, did not discuss possible legal or defense strategies with me, and did not do anything else that would have assisted me or prepared my case to be challenged in court or taken to trial.

(b) _____

(c) _____

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

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

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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 HANCOCK COUNTY, SC

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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 KERSHAW COUNTY, S.C.

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

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

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

- (a) N/A
- (b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? N/A
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Ronald Wade Moak, P.O. Box 2544, Camden, S.C. 29020
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea & Sentencing
 - ii. _____
 - iii. _____

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 KERSHAW COUNTY, S.C.

19. State clearly the relief you seek in filing this application:
An order granting this post-conviction relief petition vacating my prior conviction & sentence
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
County of Lancaster)

VERIFICATION

I, Ryan Trojan, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ryan Trojan

SWORN to and subscribed before me this 1st
day of June, 2015

Catherine A. Amara (L.S.)
Notary Public

My Commission Expires December 22, 2018
My Commission Expires: _____

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CLERK OF COURT
KERSHAW COUNTY, S.C.

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

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

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

Ryan Trojan
Applicant

SWORN or affirmed to and subscribed before me this
18th day of June, 2015.

Cathrine A. Amos
Notary Public

My Commission Expires December 22, 2018

My Commission Expires: _____

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NOTARY PUBLIC
CLERK OF COURT
KERSHAW COUNTY, S.C.