

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

JASON LEAPHART,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-000981

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina
County of Lexington

Court of General Sessions

State)
)
) Transcript of Record
 v.) 17-GS-32-0141
) 17-GS-32-2718
 Jason Carey Leaphart)
)
 Defendant.)

July 25, 2017
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

La'Jessica M. Stringfellow, Assist. Solicitor
Attorney for the State

Hallie M. Willm, Assist. Public Defender
Attorney for the Defendant

Stacy L. Sheppard, RPR
Official Court Reporter

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I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

E X H I B I T S

NO. DESCRIPTION ID. EVD.

(There were no exhibits.)

1 (The following proceedings were held on July
2 25, 2017.)

3 **THE CLERK:** 2017-GS-32-2713 {sic}, State versus
4 Jason Carey Leaphart, indicted for domestic violence
5 third degree. He is pleading as charged. He is
6 waiving presentment to the grand jury, represented
7 by Ms. Willm.

8 JASON CAREY LEAPHART,
9 having been duly sworn, testified as follows:

10 **THE COURT:** You're Jason Carey Leaphart, sir?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** This indictment charges that in
13 Lexington County, on or about May 13, 2017, you
14 unlawfully caused physical harm or injury to a
15 member of your household or offered to do so with
16 apparent present ability under circumstances
17 reasonably creating a fear of imminent peril. This
18 is alleged to have occurred against Lakin,
19 L-a-k-i-n, McMurray -- I'm sorry -- McCurry,
20 M-c-capital C-u-r-r-y. That's an indictment for
21 domestic violence third degree.

22 Upon your arraignment, it appears that you wish
23 to enter a plea of guilty; is that right?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Ms. Willm, have you fully explained

1 to your client the nature and elements of the
2 offense, the possible punishment and his
3 constitutional rights, including trial by jury?

4 **MS. WILLIM:** Yes, Your Honor.

5 **THE COURT:** Are you satisfied there's a factual
6 basis for the plea?

7 **MS. WILLIM:** Yes, Your Honor.

8 **THE COURT:** Do you agree with his decision?

9 **MS. WILLIM:** Yes, sir.

10 **THE COURT:** Mr. Leaphart, today are you under
11 the influence of any medicine, drug, alcohol,
12 anything affecting your thinking?

13 **DEFENDANT:** No, sir.

14 **THE COURT:** Do you have any physical or mental
15 problems that affect your thinking?

16 **DEFENDANT:** No, sir.

17 **THE COURT:** You're clearheaded? You know what
18 you're doing?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** When you plead guilty, you give up
21 important rights, including your right to remain
22 silent and your right to a jury trial. Do you know
23 that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** If you want a jury trial, you're

1 presumed to be innocent. The State has to prove you
2 guilty beyond a reasonable doubt to convict you.
3 You get to see, hear and have your lawyer
4 cross-examine every witness against you. Do you
5 understand that?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** By pleading guilty, you give up all
8 of those rights. You give up defenses. You give up
9 challenges to evidence. You admit the charge is
10 true. Do you know that?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you want a jury trial?

13 **DEFENDANT:** No, sir.

14 **THE COURT:** This carries up to 90 days in jail
15 and a fine of \$2,500. Do you understand that?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** I can require that you not be
18 allowed to have any type of firearm or ammunition
19 under state law. You understand that?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** And under federal law, it's
22 unlawful for somebody convicted of domestic violence
23 to ship, transport, possess or receive any firearm
24 or ammunition. Do you understand that?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Domestic violence is graduated. If
2 you violate these laws again, you face higher
3 punishment. Do you know that?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** I need you to listen to the State,
6 please.

7 **THE CLERK:** Judge, he has another charge, too.
8 I found it in the file.

9 **THE COURT:** All right. They've handed me
10 another indictment, Mr. Leaphart, that alleges that
11 in Lexington County, on or about May 13, 2017, you
12 had charge or custody of a child, a minor child, and
13 that you unlawfully or maliciously caused bodily
14 harm to the child so that the life or health of the
15 child was in danger or likely to be in danger.
16 That's an indictment for unlawful neglect of a
17 child.

18 Upon your arraignment, it appears you wish to
19 waive presentment to the grand jury and plead
20 guilty; is that right?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Ms. Willm, have you fully explained
23 to your client the nature and elements of the
24 offense, the possible punishment and his
25 constitutional rights, including trial by jury?

1 **MS. WILLM:** Yes, Your Honor.

2 **THE COURT:** You're satisfied there's a factual
3 basis for his plea?

4 **MS. WILLM:** Yes, Your Honor.

5 **THE COURT:** Do you agree with his decision to
6 enter this plea?

7 **MS. WILLM:** Yes.

8 **THE COURT:** Mr. Leaphart, you need me to go
9 back through anything I covered with you already?

10 **DEFENDANT:** No, sir.

11 **THE COURT:** All of those things I discussed
12 with you apply to this charge as well. Do you
13 understand?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** This is a felony. It carries up to
16 ten years in prison. You understand that?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** I need you to listen to the State.

19 **MS. STRINGFELLOW:** Thank you, Your Honor. I
20 also have with me here today the probation officer
21 who would like to address the Court for his
22 probation violation as well.

23 **THE COURT:** Yes, ma'am.

24 **MS. STRINGFELLOW:** Your Honor, on May 13th,
25 officers responded to [REDACTED] [REDACTED] [REDACTED] Road in the

1 Leesville area of Lexington. There they spoke with
2 Lakin McCurry who lives with the defendant and they
3 have a child together. She told officers that she
4 was attempting to leave the incident location and
5 that the defendant became angry and punched her in
6 her eye. Her brother came in and tried to intervene
7 to restrain the defendant, that the defendant broke
8 away from the victim's brother and that she -- that
9 he pushed the victim.

10 At that time, the victim was holding their
11 six-month-old child. And when she fell, the baby
12 hit his head and caused him to have a swollen eye
13 and a bruise on his head. The victim was able to
14 run out for help and they did receive medical
15 attention.

16 We did attempt to contact the victim. She did
17 not return any of our calls or get back in contact
18 with us when we sent her letters.

19 I do have the defendant's record when you like
20 to hear it.

21 **THE COURT:** Go ahead.

22 **MS. STRINGFELLOW:** He has a 2008 simple
23 possession of marijuana, 2011 criminal sexual
24 conduct with a minor second degree; he received ten
25 years suspended on three years with two years

1 probation. He has a contempt of circuit court. He
2 has a 2012 burglary third degree, which he received
3 two years. He has a 2013 burglary second degree; he
4 received three years. He has a 2015 assault and
5 battery second degree where he received 174 days
6 time served, has a 2016 receiving stolen goods more
7 than \$2,000 less than \$10,000. And a 2017
8 intimidating a court official, juror, a witness, in
9 which he received ten years time served and two
10 years probation.

11 **THE COURT:** Okay. Mr. Leaphart, you admit
12 you're guilty of these two charges?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Has anybody forced you, threatened
15 you, coerced you in any way to get you to plead
16 against your will?

17 **DEFENDANT:** No, sir.

18 **THE COURT:** Any plea bargains the State's made
19 with you, they have to tell me about on the record
20 in open court or you lose what they haven't told me.
21 You understand?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Ms. Willm, any plea agreements
24 here?

25 **MS. WILLM:** Nothing outside of what's been

1 placed on the record, Your Honor.

2 **THE COURT:** Other than what's on the record,
3 Mr. Leaphart, has anybody promised you anything or
4 offered you any hope of reward to get you to plead?

5 **DEFENDANT:** No, sir.

6 **THE COURT:** Are you fully satisfied with your
7 attorney?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** Is there anything you want your
10 lawyer to do on the cases that has not been done?

11 **DEFENDANT:** No, sir.

12 **THE COURT:** Do you have complaints against your
13 attorney, law enforcement officials or anybody who's
14 dealt with your cases?

15 **DEFENDANT:** No, sir.

16 **THE COURT:** The unlawful neglect of a child
17 charge has not been to the grand jury. If you want
18 that done -- well, neither one of them have. I'm
19 sorry. Neither charge has been to the grand jury.

20 If you want the grand jury to review them, at
21 least 12 of the 18 grand jurors have to agree you're
22 probably guilty or the case stops there. You
23 understand?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** The papers indicate you're giving

1 up that right. Is that your own decision, made of
2 your own free will?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** Mr. Leaphart's made a free,
5 knowing, voluntary and intelligent decision to waive
6 his rights, including presentment to the grand jury,
7 and plead guilty. He's done so upon the advice of
8 counsel with whom he's fully satisfied. There's a
9 factual basis for his pleas.

10 They've handed me some papers, Mr. Leaphart,
11 related to your probation cases. You understand
12 that by pleading guilty to this, you'll basically be
13 admitting that you violated probation?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** All right. But as far as the
16 specifics, they've handed me some documents that
17 indicate that you were sentenced by Judge G. Thomas
18 Cooper, Jr. -- well, I don't know if that's G.
19 Thomas or if that's Thomas W. Anyway, Judge Cooper
20 sentenced you for intimidation of a court official
21 on February 22nd, 2017, and gave you a sentence of
22 ten years suspended on time served with two years
23 probation. Probation started when you were released
24 from the department of corrections. GPS monitoring
25 was ordered and a permanent restraining order

1 issued.

2 They also handed me papers indicating that you
3 were sentenced in Saluda County on a charge of --
4 oh, this is a community supervision case -- criminal
5 sexual conduct with a minor, two counts, both being
6 in the second degree. And they give a history of
7 your community supervision. You apparently have
8 been released three prior times. This is the fourth
9 release on community supervision. You were revoked,
10 according to this, the first time April the 6th,
11 2012. You were revoked the second time October the
12 7th, 2013, and the third time on February -- on May
13 the 20th, 2016.

14 They're alleging that there's a preponderance
15 of the evidence to believe that you violated state
16 law related to the charges to which you've now
17 pleaded guilty. They also say that you haven't paid
18 your money as directed, have not followed the advice
19 and instruction of the agent, and they recommend a
20 full revocation.

21 This is honestly the longest report I've ever
22 seen on a probation case. It indicates that between
23 -- in 2008 and 2009, you committed a series of theft
24 crimes. And then from September of 2008 to December
25 of 2008, you had sexual intercourse while 19 years

1 of age with a female victim who was 13 years of age.
2 March of 2009, the police arrested you for theft
3 related offenses, criminal conspiracy, grand
4 larceny, burglary in the second degree and the sex
5 crime offenses.

6 March the 3rd, 2011, you pleaded guilty and
7 were sentenced to burglary -- on burglary third
8 degree and two counts of criminal sexual conduct
9 with a minor, received a sentence of ten years
10 suspended with three years of service and 715 days
11 credit time served, two years probation thereafter.
12 The burglary charge, you got a sentence of five
13 years suspended on time served with two years
14 probation.

15 November of 2011, you had your first discharge
16 on community supervision. You also began your
17 probation. They allege then that you had an
18 unsuitable residence, had no employment, used
19 opiates and other illegal prescription medication,
20 failed to register -- failed to attend sex offender
21 counseling and violated your GPS monitoring
22 requirements. They issued two arrest warrants from
23 probation for the case violations and also two for
24 the community supervision violations. You got a
25 full revocation April the 6th, 2012.

1 Then on February the 1st, 2013, you were
2 released again. In April of 2013, you were arrested
3 for burglary in the first degree and shoplifting.
4 In August of 2013, you were arrested on burglary
5 second nonviolent, got a three-year sentence on
6 that. They issued a citation against you with
7 community supervision; you got a full revocation.

8 In October of 2014, you were released the third
9 time from prison on community supervision. You were
10 arrested in February of 2015 in Aiken County for
11 attempted murder, possession of a weapon during a
12 violent crime. You pleaded guilty to assault and
13 battery in the second degree and was sentenced to
14 time served, which was 174 days. The weapons charge
15 was dismissed. And a citation was issued on that.
16 The community supervision was continued by the
17 court.

18 After that, you are alleged to have absconded
19 from supervision, had an unsuitable residence, used
20 amphetamine, methamphetamine, marijuana and had a
21 violation of pseudoephedrine purchases, failed to
22 attend substance abuse counseling, failed to
23 register as a sex offender -- I'm sorry -- failed to
24 attend sex offender counseling, violation of the sex
25 offender conditions by having contact with minors,

1 and failed to notify the agent you'd been arrested
2 for receiving stolen goods. They issued --
3 probation issued two arrest warrants against you for
4 the community supervision violations.

5 Then you were arrested by police on January the
6 2nd, 2016, in Lexington County for receiving stolen
7 goods, failure to register as a sex offender. You
8 were later convicted in November of 2016. A bench
9 warrant was issued and a bond revocation. And you
10 got a full revocation at that point on your
11 community supervision May the 20th, 2016.

12 After the court hearing on the 20th of May
13 2016, it's alleged that you threatened to kill the
14 agent while you were in the courthouse in Lexington
15 and the agent believed that you had attempted to
16 employ two people to carry out the killing. An
17 arrest warrant was issued. You were charged with
18 intimidation of a court official, that was served on
19 August the 16th of 2016. You pleaded guilty on
20 February 22nd, 2017. You were given a sentence of
21 ten years suspended on 190 days served, two years
22 probation, probation to begin when you were released
23 from the department of corrections.

24 And now on this specific violation, this is
25 your fourth community supervision discharge, you

1 have domestic violence and unlawful neglect of a
2 child. And the agent is recommending that there be
3 a -- the recommendation is blank, but on the
4 previous page, it states that the agent believes
5 you're unfit for departmental supervision.

6 What else do y'all have on his probation --
7 community supervision? I'm sorry.

8 **AGENT LAKE:** Nothing further on the community
9 supervision, Judge. The basis of the violation in
10 that case and the probation case are Mr. Leaphart's
11 guilty pleas today.

12 Your Honor, at the appropriate time, Agent Lisa
13 Baker would like to address the Court. She's the
14 victim of the probation case.

15 For the record, we attempted to contact the
16 victim of the criminal sexual conduct cases and
17 received no response on those matters.

18 **THE COURT:** Ms. Baker, what do you want to say?

19 **AGENT BAKER:** Yes, Your Honor. I think
20 Mr. Lake covered it really well. I would agree with
21 his recommendation of the full revocation of his
22 probation case. He wasn't out but for a couple of
23 months before he violated it.

24 He's read his record. He's obviously not a
25 good candidate out on the street and he has a long

1 distinguished record. I do believe he is a danger
2 to the community and, obviously, a danger to me.
3 And I agree with his recommendation. Thank you,
4 Your Honor.

5 **THE COURT:** Thank you.

6 Anything else from the State?

7 **MS. STRINGFELLOW:** No, Your Honor.

8 **THE COURT:** Okay. Ms. Willm.

9 **MS. WILLM:** May it please the Court, Your
10 Honor.

11 **THE COURT:** Sure.

12 **MS. WILLM:** Jason has been continuously
13 incarcerated since May 13th of this year. I don't
14 have the exact calculation, but the past two or
15 something months. He is 28 years old. He does have
16 two children. One is five years old and the other
17 is approximately eight months old. He's from the
18 Batesburg-Leesville area.

19 He did get through the tenth grade. He was, at
20 the time, was in a boys home and did sign himself
21 out to go home to his mother. While he was in
22 school, he was placed in special education classes
23 for reading comprehension, writing comprehension,
24 just being a little slower with those things, but I
25 don't in any way feel that he hasn't understood any

1 of our conversations or anything, but did want to
2 note that for the Court just to give context.

3 He had been working prior to being arrested on
4 this current case. He'd been working at Billy
5 Hallman's chicken houses and was cleaning chicken
6 houses, doing that kind of work, you know, basically
7 cleaning up after chickens and disposing of them as,
8 you know, basically just taking care of the chicken
9 houses, trying to -- trying to make somebody make an
10 honest living. He had been working there since
11 March the 31st of 2017.

12 Basically, Your Honor, he has indicated to me
13 that his issues all basically arise from his
14 long-term drug addiction to methamphetamines. He
15 has been battling this, obviously, for quite some
16 time and is still struggling with it.

17 Basically, Your Honor, we -- he and I have
18 discussed the likelihood of prison time and a prison
19 sentence, but, basically, Jason would like for Your
20 Honor to consider allowing him to continue on
21 probation and get drug treatment. He has indicated
22 that he and Agent Lake, he has a lot of respect for
23 him and gets along with him, he believes, better
24 than -- than he has with any other agent and hasn't
25 -- I don't believe there's been an allegation of him

1 making any threats to anyone else, and I just want
2 to put that on the record, Your Honor.

3 He would -- basically, he expressed to me that
4 his biggest fear of going to prison is that,
5 basically, he can get better drugs and more drugs
6 there than he could on the street and he doesn't
7 want to keep cycling in and out the way that he has
8 been. He wants to make the change of going to
9 prison as how he has allowed him to continue,
10 basically, to get access to some of these drugs.
11 And he wanted me to relay that to Your Honor.

12 I, obviously, am unaware of what drugs they can
13 or cannot get in prison, but he tells me that it's,
14 you know, pretty much anything you could possibly
15 want is available to you. And the ATU list is
16 thousands of people long.

17 Your Honor, if Your Honor's not inclined to
18 continue him on probation, we would respectfully
19 request, you know, a short prison term if Your Honor
20 thinks that would be more appropriate and also that
21 any of his charges -- anything that he does get some
22 time, if they could run concurrent so that he, you
23 know, can get out and try to, basically, go back and
24 start again with drug counseling, drug treatment.

25 Your Honor, we'd also like to -- we're very

1 appreciative of the professionalism and courtesy
2 shown to us by the solicitor's office and Agent Lake
3 in getting this case resolved in a timely, efficient
4 manner before Your Honor today. And I believe that
5 is all from us.

6 **THE COURT:** Do you want to say anything,
7 Mr. Leaphart?

8 **DEFENDANT:** I just want to say I'm sorry for
9 all that I've done. I'd like to change my life.

10 (Pause.)

11 **THE COURT:** Does he have any time left on
12 community supervision?

13 **AGENT LAKE:** Please the Court, Judge, it's 599
14 days according to our calculations.

15 **THE COURT:** That's what's left?

16 **AGENT LAKE:** Correct.

17 **MS. WILLM:** Your Honor, just briefly, according
18 to my math, he has done 74 days in the Lexington
19 County Detention Center. I just wanted to give you
20 a number on that.

21 (Pause.)

22 **THE COURT:** If there's nothing further, the
23 Court accepts the plea on each case. The sentence
24 on the domestic violence case is that you be
25 committed to the county jail for 73 days time

1 served, plus costs and assessments. Pay your court
2 costs within one year of being released from prison.

3 The sentence of the Court related to the -- I'm
4 going to say the probation matter first -- the
5 probation matter, I find that you willfully violated
6 the terms and conditions of probation by violating
7 federal, state or local laws having been adjudicated
8 guilty today, there being previously probable cause
9 to believe that you committed the offenses of
10 domestic violence and unlawful neglect of a child.
11 I'm going to revoke your probation in full.
12 Terminate him from supervision on that case
13 thereafter.

14 With regard to indictment 2017-GS-32-02718,
15 that sentence is for the unlawful neglect of a
16 child, your sentence is ten years plus costs and
17 assessments consecutive. Pay your court costs
18 within one year of being released from prison.

19 I find that you have violated the terms of the
20 community supervision, that the violation is willful
21 and that it should be revoked in full. The terms of
22 the community supervision are fair and reasonable.
23 You have not complied with those terms. And I find
24 beyond a reasonable doubt that you should not be
25 continued on community supervision at this stage,

1 but rather that it should be a full revocation.
2 You've got 599 days. You may come back out on
3 community supervision.

4 So he's got the time that's left on his
5 intimidation of a witness plus ten years
6 consecutive.

7 **AGENT RENTZ:** Consecutive?

8 **THE COURT:** Consecutive. And then he's got the
9 probation -- excuse me -- his community supervision
10 is running concurrent with the probation violation
11 if I can state that.

12 Do you understand?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Mr. Leaphart, I'm sorry it's come
15 to this, I really am, but it's just not safe to have
16 you on the street anymore. I hope you do well.

17 **MS. WILLM:** Thank you, Your Honor.

18 **MS. STRINGFELLOW:** Thank you, Your Honor.

19

20

END OF PROCEEDINGS

21

22

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24

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 25th of July, 2017.

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

September 22, 2017

s/Stacy L. SheppardStacy L. Sheppard, RPR
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

IN THE COURT OF COMMON PLEAS

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

JASON LEAPHART # 345183

v.

State of South Carolina

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

2017CP3203216

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 SCDC
2. Name and location of Court which imposed sentence Lexington County Judicial Center, Lisa M. Comer, Clerk of Court, 205 East Main St., Ste. 128, Lexington SC 29072
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 17-GS-32-00141
 - (b) 17-GS-32-02718
 - (c) NA

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

- (a) 7-25-2017 CONSECUTIVE TO SENTENCE UNDER INDICTMENT 17-GS-32-02718, 10 YEARS
- (b) NA AND 17-GS-32-00141, 10 YEARS

A TRUE COPY

Revised 3/2003

(c) NA

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty NA
- (c) after a plea of nolo contendere NA

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. NA
- ii. NA
- iii. NA

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

- i. NA
- ii. NA
- iii. NA

(c) the date of each such result:

- i. NA
- ii. NA
- iii. NA


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

- i. NA
- ii. NA
- iii. NA

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) COUNSEL STATED BECAUSE I PLEAD TO THE CHARGES I COULD NOT APPEAL.
- (b) NA
- (c) NA

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



A TRUE COPY

Chad Carter

 Lex. Cl. C.C.G.R., G.S. & F.C.

- (a) NA
- (b) NA
- (c) NA

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

A. CASE #17-009266 (INDICTMENT #17-GS-32-02718) IS SUPPORTED BY ANOTHER SET OF FACTS CONTAINED IN REPORT #17-009255 THAT WAS NEVER PRESENTED AS A MITIGATING FACTOR FOR A LESSER OFFENSE/SENTENCE BY COUNSEL FROM LAKIN MCLURE THAT CONTAINS OTHER FACTS DIRECTLY FROM HER (SEE ATTACHED NARRATIVE Pg 8 of 45)

B. DOCUMENTATION; 17-GS-32-02718 - SENTENCE SHEET INDICATES THAT THE PLEA WAS DONE WITHOUT NEGOTIATIONS OR RECOMMENDATIONS, ADDITIONALLY HOW FAST THE CASE WAS COMPLETED WITHOUT NEGOTIATIONS IS CLEAR INEFFECTIVE REPRESENTATION.

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

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

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

- (a) the specific nature thereof:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA
- (b) the name and location of the Court in which each was filed:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA
- (c) the disposition thereof:
 - i. NA
 - ii. NA
 - iii. NA

A TRUE COPY

[Signature]

Lex. Co. C.C.G.P., G.S. & F.G.

- iv. NA
- (d) the date of each such disposition:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA

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. NA
 - ii. NA
 - iii. NA
- (b) the proceedings in which each ground was raised:
 - i. NA
 - ii. NA
 - iii. NA

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) NA
- (b) NA
- (c) NA

17. Were you represented by an attorney at any time during the course of:

A TRUE COPY
 Lex. Co. C.C.C.P., G.S. & F.C.

- (a) your arraignment and plea?
- (b) your trial, if any? NA
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

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. H. WILLIAMS, SC BAR # 102588
 - ii. 407 WEST MAIN STREET, LEXINGTON, SOUTH CAROLINA 29072
 - iii. NA
- (b) the proceedings at which each such attorney represented you:
 - i. PLEA & SENTENCE
 - ii. NA
 - iii. NA

19. State clearly the relief you seek in filing this application: ON INDICTMENT #17-GS-32-02718
BECAUSE COUNSEL WITHOUT NEGOTIATIONS OR RECOMMENDATIONS FAILED TO REPRESENT ME TO THE FULLEST ABILITY AND EXTENT OF THIS ABILITY. THAT THE 10 YEAR SENTENCE

20. Are you now under sentence from any other court that you have not challenged?
NO

19.) BE REDUCED BY HALF (5 YEARS) AND RAN CONCURRENT TO #17-GS-32-00141.

THANK YOU



STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

JASON Leapnaff

I, *JASON Leapnaff*, 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.

Jason Leapnaff

SWORN to and subscribed before me this 23
day of August, 2017.

[Signature] (L.S.)
Notary Public

My Commission Expires:

DEVERLE ALBERT
Notary Public, State of South Carolina
My Commission Expires May 3, 2023

A TRUE COPY
[Signature]
Lex. Cod. C.C.C.P., G.S. & F.C.

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

I, Jason Leapheart, 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.

Jason Leapheart
Applicant

SWORN or affirmed to and subscribed before me this
23 day of August, 2017.

[Signature]
Notary Public

My Commission Expires:

DEVERLE ALBERT
Notary Public, State of South Carolina
My Commission Expires May 3, 2023



COUNTY OF Lexington

JASON LEAPHART # 345183

ORIGINAL

2017 CP 3203216
CIVIL ACTION COVERSHEET

Plaintiff(s)

-CP-

vs.

State of South Carolina

Defendant(s)

Submitted By: JASON LEAPHART # 345183

Address: Kirkland Corr. INST. (R+E) CZ-13A

4344 BROAD RIVER RD

COLUMBIA SC, 29210

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

FILED
2017 SEP - PM 12:2
LISA M. POMER
CLERK OF COURT
LEXINGTON SC

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 -NI- <input type="checkbox"/> Notice/ Fije Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Label (380) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | | |

Submitting Party Signature: Jason Leaphart

Date: 8-23-2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.
SCCA / 234 (03/2016)

Second case#

REPORTING OFFICER NARRATIVE

Lexington County Sheriff's Department

Victim
MCCURRY, LAKIN CHRISTIE

Offense
ASSAULT / DV

OCA 17-009266
Date / Time Reported Sat 05/13/2017 19:40

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

I responded to this location in reference to a domestic assault.

The victim appeared <>, Lakin was crying, upset, was barefoot, had fled the scene with her infant son, no shoes or diaper bag for her son

I determined household member relationship as <>. Live together, child in common

5 factors for determining primary aggressor:

- 1) Prior complaints of domestic or family violence; no
- 2) The relative severity of the injuries inflicted on each person, taking into account injuries alleged which may not be easily visible at the time of the investigation; injuries to Lakin and her son
- 3) The likelihood of future injury to each person; high
- 4) Whether one of the persons acted in self-defense; no
- 5) Household member accounts regarding the history of domestic violence-none

On 5/13/2017, I responded to Hill View Truck Stop at 2656 Ben Franklin Rd, regarding a domestic dispute.

On scene, I met with Lakin Mccury, who was being treated by EMS inside the ambulance. Lakin was holding her 5 month old son, who was being examined by EMS as well. Lakin had fled her residence at 2637 A, Ben Franklin Rd, Leesville, SC due to being assaulted by Jason Leaphart, the father of her baby. Lakin was barefoot, without her diaper bag or formula for the child. Lakin was very emotional and could not stop crying.

*first time
she did this
before*

I need that statement
According to Lakin, shortly after deputies left the residence (case #17-009255) she got into a verbal argument with Jason. Lakin said that she went inside their bedroom with the baby and called her father to pick her up. Jason entered the room and told her that she was not leaving with their child. Lakin told me that Jason in a rage struck her in her left eye. Due to her screaming, her brother, Tyler Mccury came inside the room and attempted to hold back Jason. Lakin advised that Jason pushed through Tyler and pushed her, causing her to fall. Lakin told me that she was holding their son in her arms and that as she fell; his head hit the headboard of the bed. Lakin mentioned that as her brother was fighting with Jason, she managed to flee, ran towards the truck stop and asked the cashier for help.

bath room

I inspected Lakin and noticed slight swelling to her left eye. Lakin has high cheek bones and had been crying for some time; therefore it was difficult to determine the amount of injury. I inspected [redacted] and observed that he had a red bump to the left side of his head along with slight swelling to his left eye. I took pictures of Lakin and [redacted] and downloaded them into the photo kiosk in evidence. Lakin made a voluntary written statement. EMS unit 65 was on scene and transported mother and child to LMC for evaluation.

I relocated to the incident location in an attempt to interview Tyler. I was informed by Mary Mccury, his mother that he had gone to work at the Walmart in Batesburg. I called Tyler on the phone and he informed me that shortly after deputies left, Lakin went inside to the bedroom. Tyler said that he went inside the house accompanied by Jason. According to Tyler, he stayed in the living room and Jason went inside the bedroom where Lakin was located. Tyler told me that he was in the living room when he heard Lakin yell

*first time
no work shown*

*no mail for her
DSS has it but no
me 11 case# 17-009255*

0-174

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Jason Carey Leaphart

AKA:

Race: Sex: M Age: 27

DOB: SS#: [REDACTED]

Address:

City, State, Zip: Leesville, SC 29070

DL#: SID#: 01806301

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Children / Legal custodian, unlawful neglect of child or helpless person

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3202718

A/W#: 2017A3210200771

Date of Offense: 5/13/2017

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, Negotiated Sentence, Recommendation by the State.
The plea is: Without Negotiations or Recommendation, Defendant's initials: JCL

ATTEST: [Signature] Solicitor 102376 [Signature] SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 102588 [Signature] SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2017-GS-32-00141
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL \$1250
Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA217 (07/2016)
Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge [Signature]
Judge Code: 2050
Sentence Date: July 25, 2017

ARREST WARRANT

2017A3210200771

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

THE STATE

17009266

against

Jason Carey Leaphart

Address:

Leesville, SC 29070-

Phone: SSN: 2

Sex: M Race: W Height: 6 4 Weight: 210

DL State: SC DL #: 161051670

Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: Pablo A Carvajal - A01880

Offense: Children / Legal custodian, unlawful neglect of child or helpless person

Offense Code: 2481

Code/Ordinance Sec: 63-05-0070

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on Jason Leaphart 05/14/17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Mark H. Westbrook Judicial Center 205 East Main Street Lexington, SC 29072

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

Personally appeared before me the affiant Pablo A Carvajal / Magistrate who being duly sworn deposes and says that defendant Jason Carey Leaphart did within this county and state on or about 5/13/2017

State of South Carolina (or ordinance of County/ Municipality of Lexington violate the criminal laws of the in the following particulars:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 05/13/2017, the defendant, Jason Carey Leaphart, did commit the crime of Unlawful conduct toward a child while at 2637A, Ben Franklin Rd, Leesville area of Lexington County. The defendant caused unlawful and malicious bodily harm to Leaphart, his 5 month old son, when he pushed to the floor, his girlfriend and mother of the victim. The defendant caused to fall while holding the victim, resulting in the victim striking his head on the headboard of the bed. The defendant's actions endangered the life and health of the child which resulted in visible physical injury to the victim's head and eye. This incident is in a violation of South Carolina section code 63-5-70(a)(2) Case # 17-009266.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

Affiant's Address 521 Gibson Road Lexington, SC 29072-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/13/2017 defendant Jason Carey Leaphart

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Lexington as set forth below.

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 5/14/2017

Signature of Issuing Judge

Arthur L Myers

Judge Code: 7252

(L.S.)

Judge's Address 139 East Main St

Lexington, SC 29072-

Judge's Telephone

Issuing Court: County Magistrate Municipal Circuit

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 Jason Leaphart, #345183,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-32-03216

RETURN

Respondent, in making its return to the application for post-conviction relief (PCR) filed September 1, 2017, would respectfully show the Court:

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lexington County Clerk of Court. On July 25, 2017, applicant waived presentment on the charges of third-degree domestic violence and unlawful neglect of a child. (Attachment 1, p.3; p.6; Indictment Nos. 2017-GS-32-2713; -2718). He appeared before the Honorable William P. Keesley to plead guilty and was represented by Hallie M. Willm. (Attachment 1, p.1).

Guilty Plea Hearing

Applicant admitted he injured Lakin McCurry (McCurry) and their six-month-old son on May 13, 2017. (Attachment 1, pp.7-8). McCurry told investigators she tried to leave their home when applicant got mad and punched her as she held their child. (Attachment 1, p.8). McCurry's brother tried to intervene, but applicant pushed McCurry, and she fell to the floor. (Attachment 1, p.8). When McCurry fell, the baby hit his head, which injured his eye and bruised his head. (Attachment 1, p.8). McCurry ran out of the house and got help. (Attachment 1, p.8).

During the plea hearing, applicant acknowledged he understood the possible sentences he faced, consequences of the plea, and the rights he gave up by pleading guilty, including the rights to raise any defense to the charges or challenge the evidence. (Attachment 1, pp.4-7). Applicant told Judge Keesley he was, in fact, guilty of the charges. (Attachment 1, p.9). Applicant also stated he was fully satisfied with plea counsel and there was nothing he wanted her to do that was not done. (Attachment 1, p.10).

Judge Keesley found the plea was freely, knowingly, and intelligently entered. (Attachment 1, p.11). Prior to sentencing, the judge detailed applicant's criminal history, and lengthy history of probation violations and revocations of community supervision. (Attachment 1, pp.11-16). Applicant apologized and said he would like to change his life. (Attachment 1, p.20).

Because applicant pled guilty, Judge Keesley also found applicant violated his probation on a previously indicted charge of intimidation of a court official.¹ (Attachment 1, p.11; Indictment No. 2017-GS-32-00141). The judge sentenced applicant to seventy-three days, time served, for domestic violence and ten years for unlawful neglect toward a child, and revoked applicant's probation on the intimidation charge and sentenced him a consecutive ten years' imprisonment.² (Attachment 1, pp.20-22).

Applicant did not appeal his plea or sentence.

¹ In that case, applicant threatened to kill his former probation agent as he was being taken into custody following a probation revocation hearing in May 2016. (Attachment 2; Affidavit attached to Indictment No. 2017-GS-32-00141).

² Judge Keesley further noted applicant had five hundred and ninety-nine days remaining of community supervision related to a 2011 guilty plea to two counts of second-degree criminal sexual conduct with a minor, and revoked his community supervision for a year. (Attachment 1, pp.12-13; pp.20-22). There is a pending PCR action related to that case. (See PCR Application filed in Common Pleas Case No. 2017-CP-32-00155).

Attachments

Attached and incorporated by reference are the following documents:

1. Guilty Plea Transcript (July 25, 2017)
2. Lexington County Clerk of Court Records – including indictments, sentencing sheets
3. SCDC Records – including inmate classification report dated October 3, 2017, probation revocation order, sentencing sheet
4. PCR Application

Respondent reserves the right to amend the return upon receipt of any relevant records.

PCR Action

Ashley McMahan has been appointed to represent applicant in the present action.

Applicant filed a *pro se* PCR application on September 1, 2017 with the Lexington County Clerk of Court alleging the following claims of error:

Ineffective assistance of plea counsel:

1. Counsel failed to contest the victim's statement in the deputy's narrative that contains facts other than those presented at the plea hearing and could support a lesser offense/sentence
2. Sentencing sheet indicates the "plea was done without negotiations or recommendations, additionally how fast the case was completed without negotiations is clean ineffective representation"

Applicant includes an excerpt from the reporting deputy's narrative in support of his first claim. The narrative includes the deputy's reasons for determining applicant was the primary aggressor in the domestic assault incident, Lakin McCurry's initial statement, and details from the deputy's interview with McCurry's brother. Applicant has handwritten notes on the paper, including "I need that statement" and words that are illegible on the scanned version received by respondent. It also appears applicant disputes that the violent incident occurred in the bedroom and instead indicates it occurred in the bathroom.

Respondent denies applicant is entitled to relief on either of the claims. Further, any claims not enumerated in the application or subsequent amendments will be opposed by

respondent at the evidentiary hearing.

Standard for Relief

To establish a claim of ineffective assistance of plea counsel, a PCR applicant must prove (1) counsel's performance was deficient, and (2) the deficiency prejudiced the applicant's case. *Stalk v. State*, 383 S.C. 559, 560-61, 681 S.E.2d 592, 593 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)) (holding the two-part test in *Strickland v. Washington*, 466 U.S. 668 (1984) applies to guilty plea challenges based on ineffective assistance of counsel). An applicant who pled guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty but would have insisted on going to trial. *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (citing *Hill*, 474 U.S. at 56-57).

At all times during the PCR action, the applicant maintains the burden of establishing he is entitled to relief. Rule 71.1(e), SCRCP; *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Moreover, there is "a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006); see also *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.").

Claims of Ineffective Assistance of Counsel are Without Merit

Respondent submits applicant's allegations of ineffective assistance of plea counsel are without merit, and applicant cannot satisfy either prong of *Strickland*. First, by pleading guilty,

applicant specifically waived his right on the record to contest the victim's statement and any other evidence the State may have presented against him at trial. (Attachment 1, p.5); *see also McMann v. Richardson*, 397 U.S. 759, 766 (1970) (holding the plea is also a waiver of trial and a waiver of the right to contest the admissibility of any evidence the State might have offered against the defendant). Second, applicant's bare assertion that counsel did not contest the victim's statement is insufficient to warrant relief as applicant fails to provide any proof of the allegation. *See Strickland*, 466 U.S. at 689 (holding courts must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance); *see also Moorehead*, 329 S.C. at 334, 496 S.E.2d at 417 (finding no prejudice where claims of failure to investigate are supported only by mere speculation as to the result). The reporting deputy's narrative was just the initial step in the investigation and it is reasonable it would contain facts that differ from those which were presented at the plea hearing after subsequent interviews with the victim or other eyewitnesses.

As to the second allegation of ineffective assistance, applicant acknowledged throughout the plea hearing he understood the sentencing range for all charges he faced, including that unlawful neglect toward a child was a felony that carried up to ten years' imprisonment. (Attachment 1, pp.4-7). The plea judge had the discretion to sentence applicant within the statutory limits, regardless of any negotiations between plea counsel and the State and any sentencing recommendations by the solicitor. *See Brooks v. State*, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997) ("A [circuit court] is allowed broad discretion in sentencing within statutory limits."); *see also State v. Rosier*, 312 S.C. 145, 148, 439 S.E.2d 307, 309-10 (Ct. App. 1993) (finding a court is not required to accept a plea agreement reached by the State and the defendant). While the plea carried no negotiations or recommendations as to sentence, counsel

spoke on behalf of applicant prior to sentencing and asked the judge to consider either a term of years at the low end of the sentencing range or probation and drug treatment given applicant's history of "special education classes," past drug use, and employment experience. (Attachment 1, pp.17-20). However, the judge declined to do so, likely given applicant's extensive criminal history and repeated willful probation and community supervision violations. The sentence applicant received was within the judge's discretion, within the statutory limits, and applicant was fully aware of the sentencing possibilities when he voluntarily chose to plead guilty. Counsel cannot be ineffective for applicant's unrealistic expectations.

Respondent submits applicant cannot satisfy either prong of *Strickland*. However, the claims of ineffective assistance of plea counsel likely raise questions of fact the record cannot conclusively refute. *Sharper v. State*, 279 S.C. 264, 266, 305 S.E.2d 247, 249 (1983); *see also* S.C. Code Ann. § 17-27-80 (providing for an evidentiary hearing and the procedure that shall be followed to develop the record). Therefore, respondent requests an evidentiary hearing to fully resolve the issues.

Conclusion

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

WHEREFORE, having made its return, respondent requests the Court hold an evidentiary hearing on the two claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA

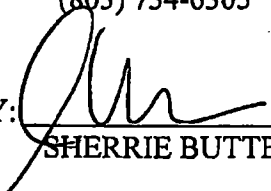
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
S.C. Bar No. 101477

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

BY:



SHERRIE BUTTERBAUGH

ATTORNEYS FOR RESPONDENT

November 8, 2017.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
)
 Jason Leaphart, #345183,)
)
 Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE ELEVENTH JUDICIAL CIRCUIT

2017-CP-32-03216

AFFIDAVIT OF SERVICE BY MAIL


1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return**, with attachments, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esq.
 Mac, Vance Attorneys, LLC
 989 Knox Abbott, Suite, #111
 Cayce, South Carolina 29033-3346

RETURN ATTACHMENT LIST:

1. Guilty Plea Transcript (July 25, 2017);
2. Lexington County Clerk of Court Records – including indictments, sentencing sheets;
3. SCDC Records – including inmate classification report dated October 3, 2017, probation revocation order, sentencing sheet; and
4. PCR Application

DATED this 8th day of November, 2017.


 Donna D'Alessio
 Legal Assistant to Sherrie Butterbaugh
 Assistant Attorney General

FILED

STATE OF SOUTH CAROLINA
2019 JAN 14 AM 10:15
COUNTY OF YORK

COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No.: 2017-CP-32-03216

Jason Leaphart, #345183,

Applicant,

v.

State of South Carolina.

LISA M. COOPER
CLERK OF COURT

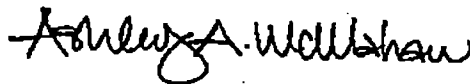
**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 1, 2017, to add the following allegation:

1. Ineffective Assistance of Counsel – Applicant only pleaded guilty based on the statement from Tyler McCurry, which he later recanted. Had counsel had an investigator interview Mr. McCurry, it would have shown that Mr. McCurry’s statement to the police was indeed false regarding whether the Applicant attacked his child’s mother.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501

West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

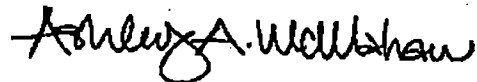
January 7, 2019

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Kelly Oppenheimer
Assistant Attorney General
koppenheimer@scag.gov

This 7th Day of January, 2019.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

State of South Carolina
County of Lexington

Court of Common Pleas

Jason Leaphart)	
)	
Applicant,)	Transcript of Record
v.)	2017-CP-32-03216
)	
State of South Carolina)	
)	
Respondent.))	

April 1, 2019
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Ashley McMahan, Esquire
Attorney for the Applicant

Megan Jameson, Esquire
Attorney for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

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E X H I B I T S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
<u>APPLICANT'S</u>			
EXH. NO. 1	McCurry Note	7	7
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P R O C E E D I N G S

* * *

1
2
3 MS. JAMESON: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. JAMESON: Megan Jameson on behalf of the
6 State. The first matter is Jason Leaphart vs. State
7 of South Carolina, Docket No. 2017-CP-32-03216.
8 During the January 2017 term, the Lexington County
9 Grand Jury indicted Mr. Leaphart for intimidation of
10 a court official.

11 On February 22nd, 2017, he appeared before the
12 Honorable Thomas W. Cooper, Jr., and plead guilty to
13 the lesser-included offense of attempted
14 intimidation of a court official. Judge Cooper
15 accepted the plea and sentenced him to a term of
16 imprisonment of ten years, suspended to time served,
17 with two years' probation to follow.

18 Thereafter, on July 25th, 2017, he appeared
19 before Judge Keesley and waived presentment to the
20 Grand Jury for one count of third degree domestic
21 violence and waived presentment for one count of
22 unlawful neglect towards a child. Assistant Public
23 Defender Hallie Willm of the Lexington County Public
24 Defenders Office represented him on these charges.

25 He pled guilty to both charges and Judge

1 Keesley sentenced him to a term of imprisonment of
2 73 days for the domestic violence charge and ten
3 years for the unlawful neglect toward a child
4 charge. Judge Keesley also revoked Applicant's
5 probation on the intimidation charge in full and all
6 the sentences were to be served consecutively. He
7 did not pursue a direct appeal.

8 On September 1st, 2017, he filed the instant
9 application for postconviction relief alleging
10 ineffective assistance of counsel for failing to
11 present mitigating factors for a lesser offense or a
12 lesser sentence and failing to enter negotiations on
13 Applicant's behalf. On November 8th, 2017, the
14 State made its return requesting an evidentiary
15 hearing.

16 On January 7th, 2019, Mr. Leaphart, through his
17 attorney, Ashley McMahan, filed an amended
18 application alleging ineffective assistance of
19 counsel for failure to interview Tyler McCurry. And
20 Mr. Leaphart is present and represented by counsel
21 McMahan.

22 THE COURT: All right.

23 MS. MCMAHAN: Yes, Your Honor. The first
24 witness we'd call is Tyler McCurry.

25 THE COURT: All right.

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TYLER MCCURRY

being first duly sworn, testified as follows:

THE WITNESS: Yes, ma'am.

DIRECT EXAMINATION

BY MS. MCMAHAN:

Q. Mr. McCurry, I'm going to show you something that was written on 12/12/2017. Do you recognize that?

A. Yes, ma'am.

Q. Did you write that?

A. Yes, ma'am.

Q. And, essentially, what does this note say?

A. It's stating that I never physically saw Jason harm his son.

Q. Okay. And who did you give this note to?

A. I believe it was his sister.

Q. Okay. And this is your handwriting?

A. Yes, ma'am.

Q. This is your note?

A. Yes, ma'am.

Q. Okay.

MS. MCMAHAN: Your Honor, at this time, we'd ask this be moved into evidence as Applicant's 1.

THE COURT: Okay.

MS. MCMAHAN: No objection.

1 THE COURT: Okay. So admitted.

2 (Applicant's Exhibit No. 1 marked for
3 identification and admitted into evidence.)

4 MS. MCMAHAN: I have no further questions, Your
5 Honor.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MS. JAMESON:

9 Q. Mr. McCurry, how do you know the defendant?

10 A. He used to date my sister.

11 Q. The sister that he has a child in common with?

12 A. Yes, ma'am.

13 Q. Okay. So you said you never saw him physically
14 harm his son. Did you see him physically touch your
15 sister?

16 A. Well, it's not only him; it was her, as well.

17 Q. Excuse me. Just did you see him physically
18 touch your sister?

19 A. Yes, ma'am.

20 Q. Was he holding -- was your sister holding the
21 child at the time?

22 A. Yes, ma'am.

23 MS. JAMESON: No further questions, Your Honor.

24 MS. MCMAHAN: I have no further questions, Your
25 Honor.

1 THE COURT: All right. You may step down, sir.

2 MS. MCMAHAN: May Mr. McCurry be excused?

3 THE COURT: Any issue with that, Madam --

4 MS. JAMESON: No, Your Honor.

5 THE COURT: All right. Witness is excused.

6 MS. MCMAHAN: The Applicant calls Mr. Leaphart
7 to the stand.

8 THE COURT: Have you had the opportunity to
9 explain to him the process of if he were to obtain
10 relief?

11 MS. MCMAHAN: Yes, Your Honor. We've had
12 multiple conversations.

13 THE COURT: Okay. He's going to take the
14 stand?

15 MS. MCMAHAN: Yes, Your Honor. I mean, would
16 you like to question him about it also, just in
17 case, or --

18 THE COURT: Well, just as long as --
19 Mr. Leaphart, you understand that if you were to be
20 successful and granted relief through postconviction
21 relief, you could be facing this time all over again
22 at a subsequent trial? Do you understand that?

23 THE APPLICANT: Yes, sir.

24 THE COURT: All right. That's all I wanted.
25 Thank you.

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JASON LEAPHART

being first duly sworn, testified as follows:

THE APPLICANT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. MCMAHAN:

Q. Mr. Leaphart, did you file this application for postconviction relief?

A. Yes, ma'am.

Q. And did you -- did we discuss the amendments to your application, as well?

A. Yes, ma'am.

Q. Okay. So let's talk about your issues. On your main application, you talk about the incident reports and some factual issues that were never brought up during mitigation. Will you tell the Court today what that is.

A. Are they on there?

Q. Yes. Do you need to see it?

A. Yes. Basically, it's just where Tyler said that -- at first, he said that he seen everything that happened. Now he's saying that he didn't.

Q. And how is that related to those incident reports, those two different incident reports? You attached part of them to your application. Were the cops out there earlier that night?

1 A. Yeah, yeah, yeah, yeah, yeah, yeah, yeah. They
2 was out there 30 minutes later before she called the
3 cops and told them that I done it.

4 Q. So the cops show up earlier --

5 A. Yeah.

6 Q. -- and then they come out again for another
7 call?

8 A. The first time she called, she said her brother
9 done it, even wrote a statement to the police, gave
10 it to the cops.

11 Q. And that's in the first incident report?

12 A. Yes. Yes, ma'am.

13 Q. And then the second incident report --

14 A. Thirty minutes later, she called them back and
15 told them that I done it.

16 Q. Okay. And then so the issue about Tyler and
17 the note, tell the Court about that.

18 A. Basically, I guess he lied because he told the
19 cops the second time that he seen everything. Now
20 he just told y'all he didn't.

21 Q. Okay. And so is that issue reflected in this
22 amended application?

23 A. Yeah.

24 Q. Okay. Is there anything else you want to tell
25 the Court today about this?

1 A. No, ma'am.

2 Q. Answer any questions Ms. Jameson has.

3 A. All right.

4 CROSS-EXAMINATION

5 BY MS. JAMESON:

6 Q. Good morning, Mr. Leaphart.

7 A. Good morning.

8 Q. Your attorney was Hallie Willm, correct?

9 A. Yes, ma'am.

10 Q. How many times did you meet with her before
11 your guilty plea?

12 A. Maybe one.

13 Q. Only one time?

14 A. One time. She come to the jail and seen me.

15 Q. Did you ever discuss your case with her by
16 telephone?

17 A. Maybe for about five minutes, like a week --
18 not even a week. Probably about three days before
19 court.

20 Q. So one telephone call a week before your plea?

21 A. Yep.

22 Q. Did you ever exchange letters with her?

23 A. One time.

24 Q. So one letter, one phone call, one visit?

25 A. Right.

1 Q. How long did she represent you before your
2 plea?

3 A. She wasn't on my case long, because I had a
4 woman before her. And there was some reason why
5 they switched.

6 Q. Did you switch because you informed the Public
7 Defender's Office that you --

8 A. Yeah. We had conflict of interest --

9 Q. No, no, no.

10 A. -- me and the other lady.

11 Q. You told the Public Defender's Office you
12 wanted to plead guilty, correct?

13 A. Yeah.

14 Q. And that's why Ms. Willm got your case,
15 correct?

16 A. I don't know.

17 Q. Did you review any --

18 A. No, because I had a woman before her.

19 Q. Uh-huh. Who was also with the Public
20 Defender's Office, correct?

21 A. Yeah, yeah, yeah. Yes.

22 Q. Yeah. So you just switched to another public
23 defender, correct?

24 A. Yeah.

25 Q. Did you review any discovery with her?

1 A. She gave me my motion to discovery the day I
2 come to court.

3 Q. But she never reviewed any of that --

4 A. No.

5 Q. -- with you?

6 Did you ever tell her you wanted her to
7 investigate Tyler?

8 A. Yep.

9 Q. What did she respond with?

10 A. She said that she was.

11 Q. When did you tell her you wanted her to
12 interview Tyler and investigate him?

13 A. When she come to the county and seen me.

14 Q. Do you recall discussing any defenses you might
15 have to the child endangerment with her?

16 A. (Nonverbal response).

17 Q. You never told her you didn't do this, you
18 didn't harm the child?

19 A. Yeah, I told her that. But...

20 Q. What, specifically, did you tell her?

21 A. I don't remember that.

22 Q. You don't remember what you told her?

23 A. I just told her what happened.

24 Q. Well, what happened?

25 A. I don't remember that far back.

1 Q. Well, you told Judge Keesley that you pushed
2 your child's mother while she was holding the child
3 and the child fell and hit its head, correct?

4 A. That's what my lawyer told her -- gave me.

5 Q. Well --

6 A. And because he told her to -- because she said
7 if I didn't tell her that, he wouldn't grant the
8 plea.

9 Q. Well -- but Judge Keesley asked you, after the
10 solicitor put the facts on the record, if that's
11 what happened, correct?

12 A. Yeah.

13 Q. And you told Judge Keesley that that's correct;
14 you pushed your the child's mother and the child
15 fell and hit its head, correct?

16 A. That's what they said.

17 Q. Okay.

18 A. That's what the lawyer said.

19 Q. And so, today, what are you saying happened?

20 A. That's not what happened.

21 Q. Well, what happened?

22 A. Me and her was arguing. I don't know how the
23 child's head hit anything.

24 Q. But the child's head did hit something?

25 A. I guess. That's what they said. That's what

1 them -- I don't know if it did or not.

2 Q. Do you recall your plea before Judge Keesley?

3 A. What you mean by that?

4 Q. Do you recall being there? Do you remember it?

5 A. Yeah, yeah, yeah.

6 Q. Do you remember telling Judge Keesley that you
7 were fully satisfied with Ms. Willm?

8 A. Yeah.

9 Q. And there was nothing else you wanted her to
10 do; she had done everything for you?

11 A. (Nonverbal response).

12 Q. You need to say yes or no for the court
13 reporter.

14 A. Yeah.

15 Q. And that you had no complaints against her?

16 A. Yeah.

17 Q. You didn't tell the Judge you wanted her to
18 investigate Tyler, correct?

19 A. I didn't tell the Judge that, but I told her
20 that.

21 Q. And it wasn't just the statement of Tyler that
22 is in these police reports; it's also the statement
23 from your child's mother, correct?

24 A. Yeah. It's a statement they got from her.

25 Q. And she told law enforcement that you

1 physically pushed her while holding the child and
2 the child's head hit something, correct?

3 A. That's what she says, I think.

4 Q. And, in fact, that's all that's mentioned by
5 the solicitor during the plea. She doesn't even
6 mention Tyler's statement, correct?

7 A. I can't remember. I don't think so.

8 MS. JAMESON: A moment's indulgence, Your
9 Honor.

10 BY MS. JAMESON:

11 Q. You told Judge Keesley that no one had
12 threatened you to plead guilty, correct?

13 A. No, ma'am.

14 Q. You didn't tell him that?

15 A. No. Nobody threatened me to do nothing.

16 Q. And that no one had made you any promises or
17 offers, other than the solicitor reducing the
18 domestic violence charge?

19 A. Yeah.

20 Q. Okay. Did you want a trial?

21 A. Now, I would have.

22 Q. But, at the time, did you want a trial?

23 A. No.

24 Q. Why would you want a trial now?

25 A. Because this -- you can see these people's

1 lying.

2 Q. Who? Who is lying?

3 A. Tyler. Obviously, her, too, if you can get
4 ahold of her.

5 Q. You told Judge Keesley you understood that you
6 were giving up all of your constitutional rights to
7 a jury trial, correct?

8 A. Yes, ma'am.

9 Q. Including your right to present witnesses?

10 A. Yes, ma'am.

11 Q. And to present any evidence or defenses,
12 correct?

13 A. Yes, ma'am.

14 Q. And you told Judge Keesley you wanted to do
15 that and enter -- enter the plea, correct?

16 A. Yeah.

17 MS. JAMESON: No further questions, Your Honor.

18 MS. MCMAHAN: Just one followup.

19 REDIRECT EXAMINATION

20 BY MS. MCMAHAN:

21 Q. Mr. Leaphart, if you had had that information
22 and Tyler's note at the time you pled guilty, would
23 you have taken the guilty plea?

24 A. No.

25 MS. MCMAHAN: Nothing further, Your Honor.

1 THE COURT: Anything else?

2 MS. JAMESON: Nothing further.

3 THE COURT: All right. You may step down, sir.

4 MS. MCMAHAN: Your Honor, my next witness is
5 Brentin Sadreameli.

6 BRENTIN SADREAMELI

7 being first duly sworn, testified as follows:

8 THE WITNESS: I do.

9 THE COURT: Would you mind spelling your name
10 for the record, please.

11 THE WITNESS: Yes. It's Brentin
12 S-A-D-R-E-A-M-E-L-I.

13 DIRECT EXAMINATION

14 BY MS. MCMAHAN:

15 Q. I'm always a little hesitant to attempt your
16 last name.

17 What is your profession?

18 A. I'm licensed private investigator in South
19 Carolina.

20 Q. And were you hired in this case?

21 A. Yes.

22 Q. And as part of this case, did you go to the
23 Lexington Sheriff's Department?

24 A. Yes, I did.

25 Q. And what did you get there?

1 A. I got two incident reports from -- both of them
2 on -- were dated May 13th, 2017.

3 Q. And what are the numbers of those incident
4 reports?

5 A. I believe the first one is 009 -- no,
6 17-009255. And the second one is 17-009266.

7 Q. And how did you obtain those?

8 A. I went to the records desk in the -- the public
9 records desk.

10 Q. And are those true and accurate copies of what
11 you obtained from --

12 A. Just a second. Yeah. This is exactly what I
13 got.

14 Q. And what do these two incident reports pertain
15 to?

16 A. Both of them, to the incident on that same
17 date, 5/13/17, 2637 Ben Franklin Road in Leesville,
18 South Carolina.

19 Q. And that was to the incidents that Mr. Leaphart
20 was referencing earlier?

21 A. Yes, ma'am.

22 MS. MCMAHAN: Your Honor, at this time, the
23 State -- I mean, the Applicant moves to admit these
24 as Applicant's 2 and 3.

25 MS. JAMESON: Is the three-page one 2 and the

1 five-page one 3?

2 MS. MCMAHAN: I think -266 is four pages and
3 -255 is three pages.

4 MS. JAMESON: Okay. No objection.

5 THE COURT: So admitted.

6 MS. MCMAHAN: And, Your Honor, I do have a copy
7 of that also.

8 THE COURT: Thank you.

9 (Applicant's Exhibit Nos. 2 and 3 marked for
10 identification and admitted into evidence.)

11 MS. MAC MAHAN: And, sorry, we had just gotten
12 page 2 this morning, which is why I was making
13 copies just now.

14 I have no further questions.

15 MS. JAMESON: No questions of this witness.

16 MS. MCMAHAN: Your Honor, may Brentin be
17 excused?

18 MS. JAMESON: No objection.

19 THE COURT: All right. Witness is excused.

20 MS. MACMAHAN: We have -- the Applicant rests.

21 THE COURT: All right.

22 MS. JAMESON: The State would call Ms. Willm to
23 the stand.

24 HALLIE WILLM

25 being first duly sworn, testified as follows:

1 THE WITNESS: Yes.

2 DIRECT EXAMINATION

3 BY MS. JAMESON:

4 Q. Good morning. How are you?

5 A. Good morning. I'm all right. I hope you are.

6 Q. How long have you been practicing law?

7 A. I was licensed -- I've been licensed since May
8 23rd of 2016, so about two and a half, three years.

9 Q. Where are you presently employed?

10 A. At the Lexington County Public Defender's
11 Office.

12 Q. And were you employed there when you
13 represented Mr. Leaphart?

14 A. I was.

15 Q. What was your role at the time?

16 A. At that time, I was working as -- well, we have
17 the jail attorneys, kind of what they call it, in
18 the office. It's -- basically, it was a position
19 created to try to help reduce the -- we had too many
20 people in the jail. And some folks can't just make
21 bond and they don't want a jury trial; they want to
22 waive their rights to a jury trial and kind of move
23 a little bit more expediently through the system.

24 And so that was my job at that time was to try
25 to, after the attorneys identified those folks, to

1 go meet with them and try to get their case resolved
2 quicker for them.

3 Q. And that's how you came to represent
4 Mr. Leaphart?

5 A. Yes.

6 Q. Can you explain that? Had he told -- who was
7 his current PD and what had he told her to get
8 you --

9 A. Is it all right if --

10 Q. -- on the case?

11 A. -- I refer to my notes?

12 Q. Certainly.

13 A. His previous attorney was -- it appears that it
14 was Jael Gilreath. She wrote in the file that she
15 went and met with him and that he requested to plead
16 as soon as possible.

17 Q. And, at that time, you took that case?

18 A. Shortly thereafter, she transferred it to me.

19 Yes.

20 Q. Do you recall the date, approximately?

21 A. It looks like I received the file at the
22 beginning of June of 2017, about -- it looks like
23 June 6th.

24 Q. When did you first meet with Mr. Leaphart?

25 A. I did speak to him on the phone shortly around

1 July 4th. It looks like it was July 5th. I went
2 out to the jail several times to meet with him. And
3 for whatever reason -- I wrote "ran out of time."
4 Usually what that means is transport took so long
5 and I had been meeting so many people that I ran out
6 of time to see him. I did meet with him on the
7 20th -- July 20th.

8 Q. Is that the only time you met with him?

9 A. Yes.

10 Q. Okay.

11 A. And then we spoke again before the plea,
12 obviously.

13 Q. At that July 20th meeting, how long was that
14 meeting?

15 A. I don't remember specifically.

16 Q. Did you have any of the Brady or Rule 5
17 materials at that time?

18 A. Yes. And I gave him a copy at that time.

19 Q. Did you review it with him?

20 A. Yes.

21 Q. Can you summarize what was in the evidence
22 against him that the State had collected?

23 A. It was basically that there were -- there was
24 an incident report and a statement from the victim
25 and there were photos. Yeah. It looks like I

1 didn't get discovery until July 6th. And that may
2 be why it took a little while. And, basically, that
3 there were photos of the girlfriend, Laken, and then
4 there were photos of the child, and, basically, a
5 written statement from her and then an incident
6 report summarizing what had happened.

7 Q. Can you summarize for the Court what the photos
8 of his girlfriend, Laken, showed?

9 A. Just a moment. I'll have to look at them
10 again. They were photos of her face and then a
11 photo of her sitting in the back of what appears to
12 be an ambulance and just some -- what appear to be
13 some kind of abrasions on her face.

14 Q. And you said there were also photos of
15 Mr. Leaphart's son.

16 A. Yes.

17 Q. Can you describe those photos for the Court.

18 A. Yes. I believe the incident report said that
19 the child's face was -- there was a discoloration,
20 like a bruising type -- or maybe a red kind of --
21 and some swelling. And so they were just photos of
22 the child's face.

23 Q. And you said there was a statement from his
24 girlfriend, Laken.

25 A. Yes.

1 Q. Can you summarize that statement for the Court.

2 A. Just a moment. I mean, it essentially said
3 that there was -- that some kind of altercation had
4 started verbally, and then she tried to leave the
5 residence -- again, this is just what she says; that
6 she tried to leave the residence and then -- and
7 that Jason punched her in her left eye. So she
8 hollered at him to stop, and then that he pushed her
9 down while she was holding the child and that he hit
10 his head on the headboard. That's what she said.

11 Q. The child hit its head on the headboard?

12 A. Yes.

13 Q. Did you discuss that with Mr. Leaphart?

14 A. Yes. We -- yes.

15 Q. Did he agree with her statement?

16 A. No. No.

17 Q. What did he -- what did he take dispute with?

18 A. There was no headboard on the bed.

19 Q. Did he ever tell you he hadn't punched and
20 pushed Laken?

21 A. Not that I recall.

22 Q. Did he ever tell you that when he was physical
23 with her, she wasn't holding the child?

24 A. Not that I recall.

25 Q. Did he ever deny that the child was injured in

1 this altercation?

2 A. Not that I recall.

3 Q. So his only dispute was that there was no
4 headboard for the child to hit its head on?

5 A. Yes, from what I recall.

6 Q. Did he ever mention Tyler McCurry to you or ask
7 you to investigate Tyler McCurry?

8 A. I don't remember that specifically. No.

9 Q. Did he ever --

10 A. He might have. But I don't remember that.

11 Q. Okay. Did he ever ask you to do any
12 investigation?

13 A. Part of my speech that I give -- that I would
14 give when I have this particular position in my
15 office was that if they wanted further investigation
16 or things to be followed up on, that I wouldn't be
17 able to do that; it would be transferred back to
18 their original attorney.

19 I was kind of, you know, take where we are --
20 take-the-case-where-are type of situation and go
21 from there. But if there were -- he wasn't
22 committed to that route. He could, obviously,
23 always return -- I could always return it to the
24 original attorney and they could do a full workup,
25 because he has the constitutional right to those

1 investigations.

2 Q. And he never told you he wanted the case
3 investigated more and transferred back to his
4 original PD?

5 A. Right.

6 Q. Did you advise him of his trial rights?

7 A. Yes.

8 Q. Did you advise him that he'd be waiving those
9 by entering a guilty plea?

10 A. Yes.

11 Q. Did you enter into plea negotiations on his
12 behalf?

13 A. I attempted to. In Lexington County, they
14 don't make recommendations or negotiations for
15 sentencing. The best we can usually do is either
16 try to get a case dismissed or dropped in
17 exchange -- or reduced in some way.

18 I was able to get the DV second -- it was
19 originally charged as domestic violence second
20 degree. I was able to get that reduced to a
21 domestic violence third degree.

22 Q. And that was the only offer the State was
23 willing to make?

24 A. Yes.

25 Q. And did you convey that to Leaphart?

1 A. Yes. And that was the day of the plea.

2 Q. And he wanted to accept it?

3 A. Yes.

4 Q. And he had indicated to you previously, before
5 the dropping of the DV charge to a lesser-included
6 offense, that he still wanted to plead guilty
7 without any negotiation or recommendation?

8 A. Yes.

9 Q. Okay. Did he ever communicate with your
10 supervisors about your performance or how your
11 representation was going?

12 A. Yes. He did write my supervisor a letter. The
13 primary complaint was about the discovery. I hadn't
14 gotten discovery. I had gotten discovery maybe a
15 few days before -- before his letter was dated. And
16 then -- it was mostly about that. But I know that I
17 had gotten calls from him about wanting it to move
18 quicker than it was moving.

19 Q. So he wanted to plead faster than you were able
20 to get him in to plead guilty?

21 A. As I recall, yes.

22 Q. And you didn't represent him on the initial
23 charge that he pled before Judge Cooper for
24 intimidation of a witness, correct?

25 A. I did not.

1 Q. Okay. Did that charge or his probation for
2 that charge have any impact on how you proceeded to
3 his guilty plea?

4 A. Yes. We -- I did attempt to coordinate. So
5 because the person -- the victim in the previous
6 case was his probation agent from Lexington County,
7 he had been assigned a probation agent out of Saluda
8 to be supervising him during the interim.

9 So I did make sure that that particular agent
10 would be present for the guilty plea instead of
11 having someone from the Lexington County probation
12 office. Because it's their coworker and I thought
13 that that would, you know, kind of help in some way
14 to not have a -- talk about their co-worker and all
15 that and try to mitigate that to an extent.

16 Q. And to clarify for the record a little bit, can
17 you just summarize what the underlying -- why you
18 had that concern, what the underlying facts to that
19 charge were?

20 A. My understanding was that he had made some
21 comments in the courthouse to Lisa -- agent Baker
22 that -- and that were threatening. And so, because
23 of that -- I believe he threatened to kill her or
24 have someone kill her or something like that. I --
25 and I don't know much about, you know, that case.

1 But because of that, I thought it was better if
2 we tried to coordinate with the Saluda probation
3 office rather than the Lexington one.

4 Q. And you were able to do that and have his
5 Saluda agent present?

6 A. Yes. And we reviewed what the Saluda agent was
7 going to talk about.

8 Q. Did Judge Keesley make any comments about the
9 probation report on the record?

10 A. Yes, ma'am.

11 Q. What was that? Can you summarize that for the
12 Court.

13 A. I believe that he said that it was one of the
14 longer probation violation reports that he'd seen.

15 Q. Whose decision was it for Mr. Leaphart to plead
16 guilty?

17 A. His.

18 Q. Did he ever indicate to you that he wanted a
19 trial?

20 A. No. If he had, I would have returned it to
21 Jael.

22 Q. Did he ever tell you he didn't understand
23 anything or any part of the process?

24 A. Not that I recall. But we went -- I mean, we
25 went over it a few times.

1 Q. And, independent of Tyler's statement in the
2 police report, there's a statement from Laken,
3 correct, indicating what had happened?

4 A. Yes.

5 Q. Okay.

6 MS. JAMESON: No further questions, Your Honor.

7 THE COURT: Thank you.

8 Cross-examination?

9 CROSS-EXAMINATION

10 BY MS. MCMAHAN:

11 Q. The incident report you have in your file, what
12 is the number of it?

13 A. The -- from my original discovery file?

14 Q. Yes, ma'am.

15 A. One second. Sorry. The case number?

16 Q. Yeah. It should be, like, in the top right
17 corner.

18 A. 9266.

19 Q. Okay. Did you ever have 9255?

20 A. I do not believe that I did. I believe it was
21 referenced in the report, but I did not have it.

22 Q. Okay. And were there any pictures inside the
23 house?

24 A. No.

25 Q. And the jail attorney -- are you still the jail

1 attorney?

2 A. I'm not.

3 Q. And does that position still exist?

4 A. Yes.

5 Q. And I think Ms. Jameson sort of asked you a
6 little bit about this: But what, specifically, did
7 you discuss, I guess, in regards to the elements of
8 domestic violence and all that kind of stuff? Do
9 you recall?

10 A. Yes. So I would -- I've got a printout of the
11 statute. And I would have read the statute of both
12 charges. Yeah. Right here.

13 Q. Okay.

14 A. I would have read the statute of both charges.
15 And, actually, in this situation, based off of our
16 conversations, I believe at one point I looked up a
17 case about the unlawful conduct, it looks like,
18 because I wrote down notes on that --

19 Q. Okay.

20 A. -- that we reviewed.

21 Q. And so would you then compare it to what was
22 written in the incident report and the facts that
23 you had presented, comparing it to the statute?

24 A. Yes.

25 Q. Okay. And, I'm sorry, my allergies are really

1 bad, so my hearing is not that great right now.

2 The issue with the reduction -- you were
3 talking about earlier there was -- the guilty plea
4 negotiations with Lexington County. Could you kind
5 of go over that a little bit again?

6 A. Just how they do it, I guess?

7 Q. Yeah.

8 A. Typically, in this county, they don't make
9 recommendations or negotiations for sentencing.
10 Often, what I'm doing, if we're talking about a
11 plea, is trying to get either a charge reduced in
12 severity so their exposure is more limited, or
13 dismissed in exchange for something, because they
14 don't take a position on sentencing.

15 Q. Okay.

16 A. So almost all of the bulk of the pleas that
17 I've done in this county have been, you know,
18 without recommendation or negotiations.

19 Q. So they would just be straight-up pleas to
20 either, like, a reduced charge or a dismissal of
21 some charges and a plea straight-up to one other
22 charge or something of that --

23 A. Potentially. Sometimes they don't even reduce
24 or -- originally, she wasn't going to reduce or
25 dismiss either.

1 Q. Okay. So you had discussions with the
2 prosecutor about the case --

3 A. Yes.

4 Q. -- to see what you could get?

5 A. Yes.

6 Q. And so how did you end up at DV 3rd? Was that
7 just going back and forth with each other?

8 A. Yes.

9 Q. And so, specifically, the probation violations
10 here, would the arrest have violated the probation
11 or was it the guilty plea or both?

12 A. Both. They can actually -- I've seen it where
13 they've -- in some special situations, they kind of
14 hit them twice with that, but by doing it kind of
15 fast where you don't give them the opportunity to
16 hit them twice.

17 What I mean is, they can violate you for the
18 arrest itself and then they can have a hearing on
19 it, in theory. And, you know, you could get time
20 for that and then they can bring you back. And once
21 you -- if you enter a guilty plea or you're
22 convicted, they can bring you back and violate you
23 again --

24 Q. I got you.

25 A. -- even though it's the same.

1 Q. Okay. So in this situation, because the prior
2 victim was the Lexington probation agent, all the
3 citations and everything would have come through the
4 Saluda agent?

5 A. Yes.

6 Q. Okay.

7 A. And he sent a report.

8 Q. And that's the report that Judge Keesley was
9 referencing in the guilty plea, the longest one he'd
10 seen?

11 A. Well -- yes.

12 Q. Okay.

13 A. Like I said, he sent me a summary that was
14 separate that I don't believe he gave Judge Keesley.

15 Q. Oh, okay. And then Mr. McCurry, did he ever --
16 I used the word he. Did Mr. Leaphart ever talk to
17 you about Mr. McCurry or the fact that the cops had
18 been there 30 minutes before?

19 A. I don't recall.

20 Q. Okay.

21 MS. MCMAHAN: One second, Your Honor.

22 No further questions.

23 THE COURT: Redirect?

24 MS. JAMESON: Briefly, Your Honor.

25 Your Honor, may I approach?

1 THE COURT: Yes, ma'am.

2 REDIRECT EXAMINATION

3 BY MS. JAMESON:

4 Q. I'm going to hand you what's been admitted as
5 Applicant's 2. It's the investigative report that I
6 think you said you didn't have in your file, you
7 just had a reference to. If you'll take a look at
8 page 3 and read that to yourself, I have a few
9 questions about that.

10 A. Okay.

11 Q. That report has nothing to do with the incident
12 30 minutes later that gave rise to these charges,
13 does it?

14 A. Not that I can tell.

15 Q. It doesn't mention Mr. Leaphart punching or
16 pushing Laken, does it?

17 A. It does not.

18 Q. And it doesn't mention any injury to the child,
19 does it?

20 A. Not that I saw.

21 MS. JAMESON: No further questions.

22 MS. MCMAHAN: Nothing further, Your Honor.

23 THE COURT: All right. The witness may step
24 down.

25 MS. JAMESON: May this witness be excused?

1 MS. MCMAHAN: No objection.

2 THE COURT: Yes, ma'am.

3 MS. JAMESON: No additional witnesses for the
4 State, Your Honor.

5 MS. MCMAHAN: No reply, Your Honor.

6 THE COURT: All right. Anything else? I've
7 got it under advisement.

8 MS. JAMESON: Perfect, thank you.

9 MS. MACMAHAN: Thank you, Your Honor..

10 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 1st of April, 2019.

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

September 30, 2019

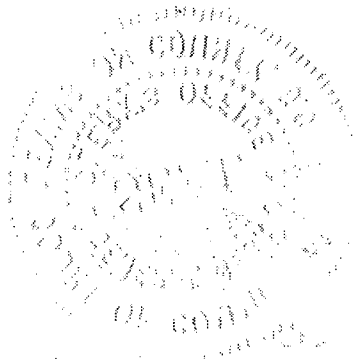
s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

EXHIBIT 34
Applicants #1

12/12/17

I James Tyler McCurry state
the following information is true to
the best of my knowledge I
will be a known witness for
Jason Leaphart and state that on
the day of the physical altercation
was said to have happened that none
of the statement was true. I
never saw Jason push my sister
Laurin McCurry or put Kellen in
any physical endangerment. However
there was a previous altercation
the day before between a family
friend and my sister but Kellen
wasn't around or involved in that
situation. This incident was blown
out of proportion and the original
statement is by all means not true
My sister wanted Jason out
of her life and thought that
that would be the only way

A TRUE COPY
Lexington, G.C.C.R., G.S. & T.O.
COUNTY



You may contact me if
needed at: 803-687-4982

[The following text is extremely faint and largely illegible, appearing to be a handwritten note or letter.]

INCIDENT/INVESTIGATION REPORT

Lexington County Sheriff's Department

Case # 17-009255

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown							
D R U G S	IBR	Status	Quantity	Type Measure	Suspected Type		

Assisting Officers
CANNON, W.C. (E74427), WATFORD, T.S. (E74882)

Suspect Hate / Bias Motivated:

INCIDENT/INVESTIGATION REPORT

Narr. (cont) OCA: 17-009255

Lexington County Sheriff's Department

NARRATIVE

A TRUE COPY
[Signature]
 Lex. Co. Sheriff's Dept. OCA: 17-009255

REPORTING OFFICER NARRATIVE

Lexington County Sheriff's Department

Victim	Offense	OCA 17-009255
	ASSAULT / SIMPLE ASSAULT	Date / Time Reported Sat 05/13/2017 18:32

THE INFORMATION BELOW IS CONFIDENTIAL FROM THE LEADS AND/OR PERSONNEL ONLY

On 05-13-2017 I was dispatched to 2637-A Ben Franklin Rd in the Leesville area of Lexington County in reference to an assault. I arrived on scene and spoke with Lakin McCurry who advised that her brother, Jerry Hall Jr, had assaulted her. Lakin explained that she got into a verbal argument with her boyfriend, Jason Leaphart, and wanted him to leave. Lakin explained that the argument was over their baby crying, and about who was the better parent. Lakin explained because Jason would not leave she was going to call the police to have him escorted out of the house. Lakin explained that Jerry heard this, and told her that she was not bringing law enforcement to this house.

Lakin explained that she got into a verbal argument with Jerry and then he jumped on her. I asked Lakin what she meant by jumped on her, and she explained that Jerry punched her and pulled her hair. I asked Lakin why he would do that, and she explained that Jerry did not want the police there because he was on probation and doesn't like cops. Lakin explained that she then left the residents and went next door to her grandmother's and called police. Lakin explained that Jerry then came over there with a BB gun and made the comment, "who wants it." Lakin explained that she knew it was only a BB gun and that he never shot at her. Lakin explained that while Jerry was speaking with their grandmother, Lakin went back over to her house and went into her room.

Lakin then explained that Jerry went into her room and got back onto of her, after knocking her baby's bottle on the ground, and started punching her for calling the cops. Lakin explained that her mother then told Jerry to get into the car so she could drive him away before the cops arrived. I asked Lakin if she knew where Jerry was going and she stated she did not. I asked if anyone else saw the assault and she advised that Jason did, and he did nothing to help her.

I then spoke with Jason and he advised that Lakin had broken her own phone because he wanted to use it to call his mother to pick him up. Jason explained that the argument started over their baby crying, and Lakin not trusting that he knows what he's doing with their child. Jason explained that it appear that Lakin was going to hit him, so Jerry came from behind Lakin and got her into a "bear hug," to stop her. Jason explained that they wrestled around for a few minutes and that was it. Jason did not give much detailed into the incident between Jerry and Lakin.

I took pictures of Lakin and got a written statement from her about the incident. Since Jerry was not on scene, I was not able to speak with him about the incident. I provided Lakin with a case number and advised her to give us a call if he came back.

A TRUE COPY
 [Signature]
 LEXINGTON COUNTY SHERIFF'S OFFICE
 LEXINGTON COUNTY, SOUTH CAROLINA

INCIDENT/INVESTIGATION REPORT

Agency Name
Lexington County Sheriff's Department

ORI
SC0320000

Case#
17-009266

Date / Time Reported
05/13/2017 19:40 Sat

Last Known Secure
05/13/2017 19:30 Sat

At Found
05/13/2017 19:35 Sat

Location of Incident 2637 Ben Franklin Rd - A, Leesville SC 29070-	Premise Type Residence/home	Zone/Tract S3
#1 Crime Incident(s) (Com) Assault / Dv DV	Weapon / Tools Hands, personal Weapons	Activity N
#2 Crime Incident (Com) All Other Offenses 90Z	Weapon / Tools	Activity N
#3 Crime Incident ()	Weapon / Tools	Activity

INCIDENT DATA

MO

of Victims **2** Type: **INDIVIDUAL/ NOT LAW** Injury: **Apparent Minor Injury**

V1	Victim/Business Name (Last, First, Middle) MCCURRY, LAKIN CHRISTIE	Victim of Crime # 1	DOB	Race W	Sex F	Relationship To Offender IBG	Resident Status	Military Branch/Status
Home Address							Home Phone	
Employer Name/Address					Business Phone		Mobile Phone	
VYR	Make	Model	Style	Color	Lic/Lis	VIN		

VICTIM

CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: **INDIVIDUAL/ NOT LAW ENFORCEMENT** Injury: **Apparent Minor Injury**

V2	Name (Last, First, Middle) MCCURRY, MARY ELIZABETH	Victim of Crime #	DOB	Race	Sex W F	Relationship To Offender	Resident Status	Military Branch/Status
Home Address							Home Phone	
Employer Name/Address					Business Phone		Mobile Phone	
Type: INDIVIDUAL/ NOT LAW ENFORCEMENT					Injury:			
VIO	Name (Last, First, Middle) MCCURRY, MARY ELIZABETH	Victim of Crime #	DOB	Race	Sex W F	Relationship To Offender	Resident Status	Military Branch/Status
Home Address							Home Phone	
Employer Name/Address					Business Phone		Mobile Phone	

OTHERS INVOLVED

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)

VI #	Code	Status Frm/Tc	Value	OJ	QTY	Property Description	Make/Model	Serial Number

PROPERTY

A TRUE COPY

EXHIBIT

Applicant's #3

Officer/ID# **CARVAJAL, P. A. (MC, MAJC) (E74568)**

Invest ID# **CARVAJAL, P. A. (MC, MAJC) (E74568)**

Supervisor **CANNON, W. C. (NARC, NARC)**

Status Complainant Signature Case Status **Arrested** 05/14/2017 Case Disposition: **Not Exceptionally Cleared** 05/14/2017 Page 1

Incident Report Additional Name List

Lexington County Sheriff's Department

OCA: 17-009266

Additional Name List

Name Code/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age Race Sex
-------------	----------------------------	----------------------	-----	--------------

A TRUE COPY

[Signature]

Lex. Co. C.C.C.P., G.S. & EC.

INCIDENT/INVESTIGATION REPORT

Lexington County Sheriff's Department

Case # 17-009266

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

D R U G S	IBR	Status	Quantity	Type Measure	Suspected Type

Assisting Officers
CANNON, W.C. (E74427)

Suspect Hate / Bias Motivated:

INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 17-009266

Lexington County Sheriff's Department

NARRATIVE

A TRUE COPY

[Signature]

Lex. Co. C.C.C.R., G.S. & E.C.

LEXINGTON COUNTY SHERIFF'S DEPARTMENT

REPORTING OFFICER NARRATIVE

Lexington County Sheriff's Department

Victim MCCURRY, LAKIN CHRISTIE		Offense ASSAULT / DV	OCA 17-009266
			Date / Time Reported Sat 05/13/2017 19:40
THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY			

I responded to this location in reference to a domestic assault.

The victim appeared <>. Lakin was crying, upset, was barefoot, had fled the scene with her infant son, no shoes or diaper bag for her son

I determined household member relationship as <>. Live together, child in common

5 factors for determining primary aggressor:

- 1) Prior complaints of domestic or family violence; no
- 2) The relative severity of the injuries inflicted on each person, taking into account injuries alleged which may not be easily visible at the time of the investigation; injuries to Lakin and her son
- 3) The likelihood of future injury to each person; high
- 4) Whether one of the persons acted in self-defense; no
- 5) Household member accounts regarding the history of domestic violence-none

On 5/13/2017, I responded to Hill View Truck Stop at _____ regarding a domestic dispute.

On scene, I met with Lakin Mccury, who was being treated by EMS inside the ambulance. Lakin was holding her 5 month old son, who was being examined by EMS as well. Lakin had fled her residence at 2637 A, Ben Franklin Rd, Leesville, SC due to being assaulted by Jason Leaphart, the father of her baby. Lakin was barefoot, without her diaper bag or formula for the child. Lakin was very emotional and could not stop crying.

According to Lakin, shortly after deputies left the residence (case #17-009255) she got into a verbal argument with Jason. Lakin said that she went inside their bedroom with the baby and called her father to pick her up. Jason entered the room and told her that she was not leaving with their child. Lakin told me that Jason in a rage struck her in her left eye. Due to her screaming, her brother, Tyler Mccury came inside the room and attempted to hold back Jason. Lakin advised that Jason pushed through Tyler and pushed her, causing her to fall. Lakin told me that she was holding their son in her arms and that as she fell; his head hit the headboard of the bed. Lakin mentioned that as her brother was fighting with Jason, she managed to flee, ran towards the truck stop and asked the cashier for help.

I inspected Lakin and noticed slight swelling to her left eye. Lakin has high cheek bones and had been crying for some time; therefore it was difficult to determine the amount of injury. I inspected _____ and observed that he had a red bump to the left side of his head along with slight swelling to his left eye. I took pictures of Lakin and _____ and downloaded them into the photo kiosk in evidence. Lakin made a voluntary written statement. EMS unit 65 was on scene and transported mother and child to LMC for evaluation.

I relocated to the incident location in an attempt to interview Tyler. I was informed by Mary Mccury, his mother that he had gone to work at the Walmart in Batesburg. I called Tyler on the phone and he informed me that shortly after deputies left, Lakin went inside to the bedroom. Tyler said that he went inside the house accompanied by Jason. According to Tyler, he stayed in the living room and Jason went inside the bedroom where Lakin was located. Tyler told me that he was in the living room when he heard Lakin yell "don't put your hands on me". Tyler said that he rushed inside the room and held Jason back, telling both to stop the arguing. According to Tyler, Jason was claiming that Lakin had flushed his depression medication down the toilet. Tyler told me that Jason was in a rage and pushed him to the floor of the bedroom. While he was on the floor, he saw Jason lunge at Lakin but did not see him push her, due to his positioning. According to Tyler, he witnessed Lakin on the floor holding _____ and he became enraged. Tyler admitted to me that he began to fight Jason in defense of his sister and nephew and struck Jason a few times. Tyler informed me that Jason struck him as well and that in the melee, Lakin ran out of the house with the baby. Tyler told me that he attempted to locate his sister but the clerk at the truck stop would not tell him where she was.

REPORTING OFFICER NARRATIVE

Lexington County Sheriff's Department

OCA 17-009266
Date / Time Reported Sat 05/13/2017 19:40

Victim
MCCURRY, LAKIN CHRISTIE

Offense
ASSAULT / DV

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

While on scene, I received a call from Dan Lake, Jason's Probation Officer. Dan informed me that Jason was currently at Dan informed me that Jason's ankle monitor GPS showed him at this location.

I and Deputy Cannon relocated to Elk Rd and spoke to Jason. Jason informed me that he was sitting in the bedroom minding his own business when Lakin came in and began to hit him. According to Jason, Lakin screamed that she was being assaulted and Tyler rushed in. Jason said that without provocation, Tyler began to strike him about the face. Jason told me that Lakin is a liar, had dumped his medication and was making this up to get him in trouble. When informed of his son's injuries, Jason could not provide an explanation. Jason told me that the baby was never in the room and that he had no idea where the baby was at the time of the incident. I inspected Jason and observed a few bruises to the top of his forehead and a bump to the right side of his head. I offered Jason an opportunity to make a written statement regarding the events and his injuries but he replied "I don't want to get anybody in trouble".

Based on the fact that Jason admitted to me he was upset about his missing medication, the fact that he entered the bedroom where Lakin was already present, the fact that Lakin fled the scene, barefoot, with her child, in fear of imminent peril, I determined Jason to be the primary aggressor. Based on the fact that Lakin had slight bruising to her left eye and the fact that Tyler witnessed Lakin on the floor immediately after Jason rushed towards her, while holding the baby, I charged Jason with domestic Violence 2nd Degree, SC 16-25-20(C).

Based on the fact that Jason is the parent of based on the fact that had visible injuries to his head and eye, based on the fact that Jason caused unlawful bodily harm to thus endangering his life or health, I charged him with Unlawful Conduct Toward a Child, SC Section 63-05-70(a)(2).

I placed Jason in a set of double locked handcuffs, advised him of his Miranda rights and transported him to LCDC in the rear of my patrol vehicle. I placed a hold for a warrant to be obtained later in the morning.

While being booked by detention personnel, Jason blurted out "I'll beat that bitch once I get out" referring to Lakin.

I Inspected the rear of my patrol vehicle for contraband, before and after transporting Jason, with negative results.

Lakin was not provided an Advisement of Protection Pamphlet due to her being transported to LMC. I will meet Lakin and provide her one at a later time.

End of report.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Jason Leaphart, SCDC No.345183,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-32-03216

ORDER OF DISMISSAL

LEXINGTON COUNTY
COURT OF COMMON PLEAS
CLERK OF COURT
JAN. TORRES

2019 JUN -4 AM 9:41

FILED

This matter comes before this court by way of an application for post-conviction relief filed on September 1, 2017, by Jason Leaphart (Applicant), alleging he was entitled to post-conviction relief based on constitutionally ineffective counsel. The State of South Carolina (Respondent) served its return on November 8, 2017, requesting an evidentiary hearing be convened on the application. Thereafter, Applicant, through appointed counsel Ashley A. McMahan, amended his application.

An evidentiary hearing was held on April 1, 2019, before this court. Applicant was present and was represented by counsel McMahan. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. At the hearing, testimony was taken from plea counsel, James Tyler McCurry (Tyler McCurry), and Applicant.

Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County

Clerk of Court. During its January 2017 term, the Lexington County Grand Jury indicted Applicant for intimidation of a court official (2017-GS-32-00141). Jason B. Turnblad, Esquire, represented him on this charge. On February 22, 2017, Applicant appeared before Judge Thomas W. Cooper, Jr., circuit court judge, and pled guilty to the lesser-included offense of attempted intimidation of a court official. Judge Cooper accepted the plea and sentenced Applicant to a term of imprisonment of ten years, suspended to time served with two years' probation to follow.

Thereafter, on May 13, 2017, Applicant was arrested by the Lexington County Sheriff's Department following a domestic incident with the mother of his child, wherein Applicant pushed the mother of his child while she was holding their child, causing her to fall and injury to both her and the child. On July 25, 2017, Applicant appeared before Judge William P. Keesley, circuit court judge, and waived presentment to the Lexington County Grand Jury for one count of third-degree domestic violence (2017-GS-32-02713) and one count of unlawful neglect towards a child (2017-GS-32-02718). Assistant Public Defender Hallie Willm Biediger, of the Lexington County Public Defender's Office, represented Applicant on these charges. Assistant Solicitor La'Jessica M. Stringfellow, of the Eleventh Circuit Solicitor's Office, prosecuted the case. Applicant pled guilty to both charges, and Judge Keesley sentenced Applicant to a term of imprisonment of seventy-three days for the domestic violence charge and ten years for unlawful neglect towards a child. Judge Keesley also revoked Applicant's probation on the intimidation charge in full. The sentences were to run consecutively. Applicant did not appeal.

CURRENT PROCEEDING

On September 1, 2017, Applicant filed an application for post-conviction relief alleging:

1. Ineffective assistance of counsel for:
 - a. Failing to present mitigating factors for a lesser offense or for a lesser sentence;
and
 - b. Failing to enter plea negotiations on Applicant's behalf.

On November 8, 2017, Respondent made its Return, requesting an evidentiary hearing be held. On January 7, 2019, Applicant, through his counsel, filed an amended application alleging ineffective assistance of counsel for failing to interview Tyler McCurry. At the evidentiary hearing, Applicant proceeded forward on the claims raised in his application and amended application.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant first presented testimony from Tyler McCurry, the brother of Applicant's child's mother. McCurry testified he never saw Applicant physically harm Applicant's son and he wrote a letter to Applicant on December 12, 2017, admitted as Applicant's Ex. #1 indicating he never saw Applicant physically push his sister or harm his son. He testified he previously told law enforcement he witnessed the physical encounter between Applicant and his sister while his sister was holding Applicant's son but now states that statement to law enforcement was untrue. However, on cross-examination, McCurry acknowledged that he did witness Applicant physical touch his sister her while she was holding their child and then saw his sister on the floor, which is consistent with the incident report, admitted as Applicant's Ex. #2 ("I relocated to the incident location in an attempt to interview Tyler. I was informed by Mary McCurry, his mother that he had gone to work at the Walmart in Batesburg. I called Tyler on the phone and he informed me that shortly after deputies left, Lakin went inside to the bedroom. Tyler said that he went inside the house accompanied by Jason. According to Tyler, he stayed in the living room and Jason went inside the bedroom where Lakin was located. Tyler told me that he was in the living room when he heard Lakin yell "don't put your hands on me". Tyler said that he rushed inside the room and held Jason back, telling both to stop the arguing. According to Tyler, Jason was claiming that Lakin had flushed his depression medication down the toilet. Tyler told me that Jason was in a rage and pushed him to the floor of the bedroom. While he was on the floor, he saw Jason lunge at Lakin but did not see him push her, due to his positioning. According to

Tyler, he witnessed Lakin on the floor holding [child] and he became enraged. Tyler admitted to me that he began to fight Jason in defense of his sister and nephew and struck Jason a few times. Tyler informed me that Jason struck him as well and that in the melee, Lakin ran out of the house with the baby. Tyler told me that he attempted to locate his sister but the clerk at the truck stop would not tell him where she was.”)

Next, Applicant testified on his own behalf. He testified that he only met with plea counsel once and spoke with her on the phone one time as well as exchanged one letter. He testified that counsel gave him his discovery materials. He testified that he told the public defender’s office that he did not want to proceed to trial and wanted to enter a guilty plea. He testified that he told counsel he wanted her to investigate McCurry because McCurry did not see everything that happened and wanted to refute his statements to law enforcement included in the police report. He testified that he wanted counsel to present certain factual issues during mitigation, including that there was no headboard in the room where the altercation occurred so his child could not have hit its head on the headboard. However, he did acknowledge the child could have hit its head on the floor. Applicant testified he recalled his plea proceeding and told the plea court he was fully satisfied with counsel’s services. He recalled agreeing with the State’s factual recitation that included information that when Applicant pushed his child’s mother, she was holding the child and the child was injured during the fall. Applicant testified that he was not forced, threatened, or otherwise coerced to plead guilty. Applicant testified that the plea court reviewed all of his constitutional rights with him, including his right to a jury trial, and that he knowingly and voluntarily waived those rights to enter guilty plea. Applicant testified that he told the plea court he did not want a trial but that he now wants a trial because McCurry and his child’s mother were lying to law enforcement.

Applicant then presented private investigator Brenton Sadreamali, who went to the Lexington County Sheriff's Office and retrieved the two incident reports pertaining to this case. These incident reports were admitted into evidence without objection as Applicant's Ex. #2 and #3. Applicant's Ex. #2 is the incident report from the actual altercation between Applicant and his child's mother and Applicant's Ex. #3 is an incident report from earlier in the day when law enforcement responded a call of an altercation between Applicant's child's mother and another brother (Jerry Hall, Jr.) at the same location.

Thereafter, Respondent presented plea counsel Hallie Willm, who was appointed to represent Applicant while she was an assistant public defender. She testified that at the time she represented Applicant, her role at the public defender's office was to represent clients who were in jail and wanted to plead guilty to their charges quickly. She testified Applicant advised the public defender's office in July 2017, that he wanted to plead guilty to his charges quickly and she was then assigned to his case at that time. She testified that she spoke with Applicant by telephone immediately thereafter and then went to the jail to meet with him several times. She testified she reviewed all discovery materials with him, including the incident report, statements made to law enforcement, and photographs of his child and his child's mother with injuries. She testified it took a little bit of time for her to discovery from the solicitor's office, which upset Applicant and led to him writing a letter to her supervisor complaining about the delay in his case, but that once the discovery was received, they review it together. She indicated that the photographs showed clearly visible injuries on the child. She testified Applicant's child's mother gave a statement to law enforcement that while she was holding their child, Applicant punched her then pushed her, causing her to fall with the child and causing injuries to the child. She testified Applicant did not ask for her to undertake any sort of investigation and she does not recall Applicant asking her to speak with McCurry. She testified the only factual issue that Applicant disputed was that his child

could not have hit his head on a headboard at the bed in that room did not have a headboard. She testified that Applicant otherwise agreed with the facts as set forth in the discovery materials. She testified that she did not receive a copy of the incident report from earlier the same day (Applicant's Ex. #3).

Counsel testified that Applicant's main concern was getting the best plea offer possible from the State and pleading guilty quickly. She testified that she reviewed the elements of the offenses with Applicant, as well as reviewed case law regarding unlawful conduct and compared it to Applicant's indicted conduct as alleged in the incident reports and statements. She testified that at Applicant's request, she entered plea negotiations with the prosecutor and the best offer she received was for a reduced charge on the domestic violence indictment but the State would not make a recommendation as to a particular sentence. She elaborated that in her professional experience, this is the standard practice of the Eleventh Circuit Solicitor's Office and most pleas are without any sort of negotiation or recommendation as to sentence. She testified that she presented this plea offer to Applicant and that he accepted it. She testified that Applicant was on probation at the time he was arrested for these new offenses and that either offense would have been a violation of his probation. She elaborated that the victim of the prior offense for which he was on probation was a Lexington County Probation Agent and as a result, Applicant was being supervised by an agent from Saluda County. Because of this, counsel testified she made sure the plea was scheduled at a time that Applicant's probation agent from Saluda County could be present rather than have another agent from Lexington County appear at the plea. She testified that she reviewed Applicant's constitutional rights with him, including his right to a jury trial, and Applicant indicated he wanted to waive those rights to plead guilty. She testified that Applicant always consistently stated he wanted to plead guilty and never indicated he wanted a trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has thoroughly reviewed the record in its entirety. Additionally, this court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant has alleged plea counsel, Hallie Willm Biediger, was constitutionally ineffective for failing to enter into plea negotiations on Applicant's behalf (including failing to argue mitigating factors for a reduced charge or sentence) and for failing to investigate Tyler McCurry. These allegations are addressed below.

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U.S. at 687 (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician,

an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U. S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an

inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. See Harrington, 562 U.S. at 86. With respect to guilty plea counsel, Applicant must establish there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." United States v. Timmreck, 441 U.S. 780, 784 (1979). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689-690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U.S. 685, 702 (2002); Lockhart v. Fretwell, 506 U.S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing

professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. at 86.

Based on this standard set forth above, this court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his allegations: failing to request a competency evaluation pursuant to Blair and failing to utilize his medical records to support his request for an evaluation.

Allegation that counsel failed to enter into plea negotiations on Applicant’s behalf

Applicant alleges plea counsel was ineffective for failing to enter plea negotiations with the solicitor’s office, including failing to argue mitigating factors for a reduced charge or sentence. This court finds Applicant has failed to establish deficiency of counsel or any resulting prejudice. Addressing deficiency first, this court finds counsel’s performance was effective. Counsel’s credible testimony reveals she communicated with Applicant shortly after she was appointed and Applicant consistently told her that he wanted to plead guilty as soon as possible, and in accordance with these instructions, she negotiated the best plea deal possible from the State. She testified the plea offer was in accordance with the offers prosecutors in the Eleventh Circuit Solicitor’s Office

typically extend, including no recommendation as to a particular sentence. She testified she presented this offer to Applicant and he accepted it after she fully advised him of his rights to trial and what a plea would entail. Additionally, counsel made sure to schedule the plea hearing at a time when his probation agent could appear so as to avoid any conflict or potential negative implications from having a probation agent from the Lexington County Probation Office appear. The record establishes that counsel presented mitigation on behalf of Applicant, including his educational and work history and prior issues with substance abuse (See Tr. P. 17-20). This court finds counsel has performed effectively.

Moreover, this court finds Applicant failed to establish any prejudice, as he has failed to present any evidence as to what additional mitigation counsel could have presented that would have impacted either his plea offer from the State or his sentence from the plea court. This court finds the testimony of McCurry to be lacking in credibility, as it directly contradicts the statements he provided to law enforcement immediately after the incident. Moreover, McCurry's testimony is not dispositive on the case, as Applicant's child's mother gave a statement to law enforcement indicating Applicant physically assaulted her while holding their child-in-common and the pictures of the child's injuries are consistent with this account. Accordingly, this court finds this allegation must be denied and dismissed with prejudice.

Allegation that counsel failed to investigate Tyler McCurry

Applicant also alleges counsel was ineffective for failing to investigate McCurry. As discussed in the previous allegation, this court finds McCurry's testimony is not credible and not dispositive on the case. Accordingly, Applicant cannot establish any deficiency of counsel for failing to investigate McCurry. Moreover, Applicant cannot establish any resulting prejudice, as the result of his proceeding would not have been impacted had counsel investigated McCurry prior to his plea. This allegation is denied and dismissed with prejudice.

CONCLUSION

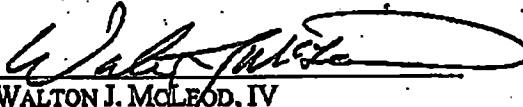
Based on all the foregoing, this court finds Applicant has not established any other constitutional violations or deprivations that would require this court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24 day of MAY, 2019.


 WALTON J. MCLEOD, IV
 Presiding Judge
 Eleventh Judicial Circuit

Lexington, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP3203216

Jason Leaphart 345183		South Carolina State of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date
		6/4/2019

For Clerk of Court Office Use Only

This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on 4th of June 2019, to attorneys of record or to parties (when appearing pro se) as follows:

Ashley A. McMahan
PO Box 5501 West Columbia, SC 29169

Taylor Zane Smith
PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Lexington County Sheriffs Department

Pablo A Carvajal

Law Enforcement Case #: 17009266

LJS

ARREST WARRANT NUMBER

2017A3210200770

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3202713

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2017

THE STATE

vs.

Jason Carey Leaphart

CDR #: 3813

Indictment for

Domestic Violence 3rd Degree

§ 16-25-0020(D)

S.R. Hubbard III, SOLICITOR

After being fully advised as to my legal rights, I hereby waive my rights to presentment to the Grand Jury.

Jason Leaphart
Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

H. Will
Witness

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

INDICTMENT FOR
Domestic Violence 3rd Degree

§ 16-25-0020(D)

At a Court of General Sessions, convened on July 2017, the Grand Jurors of Lexington County present upon their oath:

That **Jason Carey Leaphart** did in Lexington County, South Carolina on or about **May 13, 2017** unlawfully cause physical harm or injury to a household member; or offer or attempt to cause physical harm or injury to a household member with apparent present ability, under circumstances reasonably creating fear of imminent peril, namely **Lakin McCurry**, in violation of Section 16-25-20 of the South Carolina Code of Laws (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Pablo A. Carvajal

Law Enforcement Case #: 17009266

LJS

ARREST WARRANT NUMBER

2017A3210200771

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3202718

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2017

THE STATE

vs.

Jason Carey Leaphart

CDR #: 2481

Indictment for

Unlawful Neglect of Child

§ 63-05-0070

S.R. Hubbard III, SOLICITOR

After being fully advised as to my legal rights, I hereby waive my rights to presentment to the Grand Jury.

Jason Leaphart
Defendant

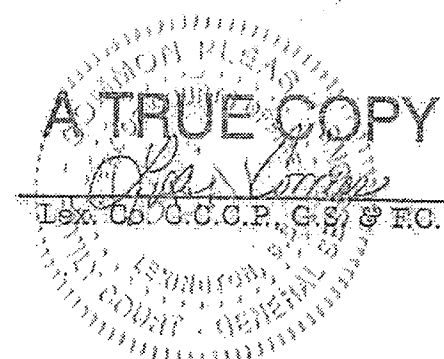
I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Hubbard

Witness

C.C.C. PLS. and G.S.



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

INDICTMENT FOR
Unlawful Neglect of Child

§ 63-05-0070

At a Court of General Sessions, convened on July 2017, the Grand Jurors of Lexington County present upon their oath:

That Jason Carey Leaphart in Lexington County, South Carolina, on or about May 13, 2017 while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, did or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered, defined in Section 63-07-20 and in violation of Section 63-05-70 South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

L. Jessica May
ASSISTANT SOLICITOR

