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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

ORIGINAL

WAYNE BELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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State of South Carolina)	
County of Aiken)	Court of General Sessions
		2010-GS-02-0177

The State of South Carolina)	
Plaintiff)	
vs.)	Transcript of Record
Wayne Bell)	
Defendant)	

March 16, 2010
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

Susanna Ringler, Assistant Solicitor
Attorney for the Plaintiff

Wallis A. Alves, Esq.
Attorney for the Defendant

Lisa H. Davenport
Official Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(none offered)

1 (Whereupon, on March 16, 2010 the following
2 proceedings were held:)

3 THE COURT: As to the motion to sever I respectfully
4 deny the same. It is within the discretion of the court.
5 I have considered the arguments and the law and I find
6 that the nature of the offenses are closely related in
7 kind, place, and character and I order that the
8 indictments be tried together. I've also had an
9 opportunity to weigh the prejudicial effect versus
10 probative value and I find that prejudicial value does not
11 outweigh the need to try them together; therefore, I
12 respectfully deny the motion to sever.

13 Anything for the record by the State before we
14 proceed?

15 MR. MILLER: Nothing, Your Honor.

16 THE COURT: By the Defendant?

17 MISS ALVES: No, Your Honor. Judge, can I have a
18 minute to talk to the Solicitor, please?

19 THE COURT: No, ma'am. Bring them in. Well, go
20 ahead and talk while they're coming in. Hold on one
21 second.

22 (Whereupon, a short break was taken.)

23 MS. RINGLER: Your Honor, if I may have a moment to
24 consult with the victim in this case?

25 THE COURT: We've had all night. Move along. Go

1 ahead.

2 (Whereupon, a short break was taken.)

3 MISS ALVES: Judge, can the Defendant speak with his
4 mother for just one minute? I think we're pretty close.

5 THE COURT: Ma'am, just sit right there.
6 Paul, y'all watch.

7 Just step back to that chair. Is that enough
8 privacy?

9 MISS ALVES: Yes, sir.

10 THE COURT: Go tell them I'll be with them in just a
11 few minutes. I hadn't forgotten about them.

12 (Whereupon, a short break was taken.)

13 (Whereupon, a bench conference was held.)

14 WAYNE BELL, after being duly sworn, testified as
15 follows:

16 MS. RINGLER: Thank you, Your Honor. We have State
17 versus Wayne Bell. It is indictment 2010-GS-02-180 for
18 assault with intent to kill, 2010-GS-02-178 for resisting
19 arrest B, 2010-GS-02-177 for kidnapping, and
20 2010-GS-02-179 for criminal domestic violence of a high
21 and aggravated nature. Your Honor, it is my understanding
22 that the Defendant intends to enter a plea under North
23 Carolina versus Alford. It's for a negotiated 10 years,
24 Your Honor.

25 THE COURT: All right. Miss Alves, obviously, you've

1 spoken with your client on many occasions concerning all
2 four of these charges, but specifically the kidnapping
3 which carries up to 30 years, the assault on the police
4 officer carries up to 10 -- 1 to 10 and a thousand dollars
5 or a \$10,000 fine and criminal domestic violence of a high
6 and aggravated nature which carries 1 to 10 and assault
7 with intent to kill carries up to 10.

8 MISS ALVES: I have talked with him, Your Honor.

9 THE COURT: And I assume that you've explained to him
10 the charges contained in each of these indictments, the
11 possible punishment, obviously his right to trial by jury
12 because we have the jury sitting there waiting to go and
13 that kidnapping is classified as a most serious offense;
14 is that correct?

15 MISS ALVES: Yes, sir.

16 THE COURT: Have you advised him that most serious
17 constitutes at least a strike and that he if becomes
18 involved in criminal activity classified as most serious
19 again he subjects himself to life in prison without
20 parole?

21 MISS ALVES: Yes, sir.

22 THE COURT: Or two more serious offenses which would
23 be three strikes in the same effect. Further, that
24 kidnapping is a no-parole 85 percent sentence?

25 MISS ALVES: Yes, sir.

1 THE COURT: And that his release from incarceration
2 will be to a community supervision program?

3 MISS ALVES: Yes, sir.

4 THE COURT: In your opinion does he understand all of
5 those various matters?

6 MISS ALVES: Yes, sir.

7 THE COURT: And I understand he wishes to enter a
8 plea under North Carolina versus Alford?

9 MISS ALVES: Yes, sir.

10 THE COURT: Have you advised him that the court
11 accepts that as a guilty plea, it's on his record as a
12 guilty plea, and the Department of Corrections accepts it
13 as a guilty plea?

14 MISS ALVES: Yes, sir.

15 THE COURT: Are you of the opinion, ma'am, that if
16 this case went to trial that the state could prove his
17 guilt beyond a reasonable doubt as to all charges and,
18 obviously, they offered him a bargain, so to speak, i.e.,
19 a 10-year negotiated sentence to run concurrent and he
20 wishes to take that benefit?

21 MISS ALVES: Yes, sir.

22 THE COURT: And you agree with that decision?

23 MISS ALVES: I do.

24 THE COURT: Have you also advised him that by
25 entering this type of plea it will violate the terms of

1 his probation?

2 MISS ALVES: Yes, sir.

3 THE COURT: And he is currently on probation for
4 what?

5 MS. RINGLER: It is a hit and run and a DUI second
6 offense.

7 THE COURT: And the sentence was?

8 THE PROBATION OFFICER: It was a one year suspended
9 to 90 days and three years probation.

10 THE COURT: All right. Mr. Bell, good morning. How
11 are you?

12 THE DEFENDANT: Fine, sir.

13 THE COURT: You've heard the four different
14 indictments that we're dealing with. Kidnapping carries
15 up to 30 years.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Classified as most serious.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Resisting arrest carries 1 to 10.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Criminal domestic violence of a high and
22 aggravated nature --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- carries 1 to 10 and assault with
25 intent to kill carries up to 10.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand all of those charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand the possible punishment?

5 THE DEFENDANT: Yes, sir, I do.

6 THE COURT: And the kidnapping is classified as most
7 serious. You heard me explain that or ask your lawyer
8 about it. Do you understand that that is what we call a
9 no-parole sentence? You'll do 85 percent of the sentence.

10 THE DEFENDANT: Yes, sir. I understand.

11 THE COURT: You'll be released into a community
12 supervision program.

13 THE DEFENDANT: Okay.

14 THE COURT: And that it constitutes a strike under
15 our enhancement laws which means that if you become
16 involved in criminal activity in the future classified as
17 most serious one more time or two serious charges in the
18 future you would be subjecting yourself to life in prison
19 without the possibility of parole.

20 THE DEFENDANT: Okay.

21 THE COURT: Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That the kidnapping and -- the kidnapping
24 and criminal domestic violence of a high and aggravated
25 nature are classified as violent and that may have some

1 effect on where you're housed in the Department of
2 Corrections and it may have some other effects with the
3 Department of Corrections. Do you understand that?

4 THE DEFENDANT: Okay.

5 MISS ALVES: Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: And your lawyer tells me that you wish to
8 enter a plea under what we call North Carolina versus
9 Alford which means that you've reviewed the evidence and
10 you feel like that the state could prove these -- the
11 elements of these indictments to the jury beyond a
12 reasonable doubt and you don't want to take that chance
13 and you want the benefit of the bargain, i.e., the
14 negotiated sentence of 10 years; is that correct?

15 THE DEFENDANT: Yes, sir. It is correct.

16 THE COURT: Do you understand that I have to treat
17 that as a guilty plea, it goes on your record as a guilty
18 plea, and the Department of Corrections treats it as a
19 guilty plea?

20 THE DEFENDANT: All right, sir.

21 THE COURT: Now, understanding all of that that I
22 just went over do you wish to enter a plea under North
23 Carolina versus Alford which I treat as a guilty plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: When you do that, Mr. Bell, you will give

1 up your right to remain silent. You'll have to discuss
2 the matter with me and you'll further give up your right
3 to a trial by jury -- obviously, we've got the jury
4 picked, ready, willing, and able to go this morning -- at
5 which time during the trial of this case you would have
6 the right to confront everybody who testifies against you,
7 the victim, police officers, everybody.

8 THE DEFENDANT: Okay.

9 THE COURT: You have the right to present your own
10 defense by calling your own witnesses, introducing
11 relevant exhibits, and testifying in your own defense if
12 you chose to do so.

13 THE DEFENDANT: Okay.

14 THE COURT: If you exercised your constitutional
15 right to remain silent I will tell that jury they cannot
16 hold your failure to testify against you in any manner
17 whatsoever, and, in fact, I would instruct them that they
18 can't even consider the fact that you did not testify when
19 they deliberate your guilt or innocence. Under the
20 Constitution you're presumed to be innocent unless the
21 state is able to prove your guilt to the jury beyond a
22 reasonable doubt. In order to convict you all 12 of those
23 jurors would have to unanimously agree that you were, in
24 fact, guilty and even if you were convicted you would
25 still have the right to an appeal.

1 Now, do you understand your rights to trial by jury?

2 THE DEFENDANT: Yes, sir, I do.

3 THE COURT: Understanding those rights, do you still
4 wish to enter this plea under North Carolina versus Alford
5 which I treat as a guilty plea?

6 THE DEFENDANT: Okay.

7 THE COURT: Sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Other than the negotiations which you've
10 heard me talk with your lawyer about or with your lawyer
11 which is a 10-year sentence, has anyone promised you
12 anything, held out any hope of reward, or threatened you
13 in any manner in order to make you plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Or North Carolina versus Alford?

16 THE DEFENDANT: No, sir, they haven't.

17 THE COURT: You're represented by Miss Wallis Alves.
18 Are you satisfied with her legal representation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: In your opinion has she had enough time
21 to spend with you, your family, investigate the facts, and
22 research the law so she can properly defend you here
23 today?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything else you want her to do

1 for you today before we move forward other than speak up
2 on your behalf?

3 THE DEFENDANT: No, sir.

4 THE COURT: And I ask you again are you totally and
5 completely satisfied with her as your lawyer?

6 THE DEFENDANT: Yes, sir, I am.

7 THE COURT: Are you today, sir, under the influence
8 of any alcoholic beverages, drugs, or prescription
9 medication?

10 THE DEFENDANT: None at all.

11 THE COURT: Are you today, sir, aware of any mental,
12 nervous, or emotional conditions which would preclude or
13 keep you from understanding these proceedings?

14 THE DEFENDANT: No.

15 THE COURT: Are you entering this plea under North
16 Carolina versus Alford of your own free will and accord?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: It is alleged in these indictments that
19 in Aiken County on October 14, 2009 that you restrained or
20 kidnapped or abducted Yolanda Seawright. It is further
21 alleged in these indictments that on that same day or
22 early the next morning hours that you attempted to assault
23 -- Strike that. You resisted the lawful arrest of Officer
24 McElmurray when he attempted to legally arrest you. It is
25 also alleged that on that same date October 15, 2009 that

1 you committed the crime of criminal domestic violence by
2 causing serious bodily injury to one Yolanda Seawright who
3 was a household member and it is further alleged that on
4 that same morning October 15, 2009 that you committed the
5 crime of assault with intent to kill in that you
6 discharged a firearm while that same officer was
7 attempting to subdue you.

8 Those are the allegations in the indictment. Do you
9 believe, sir, that if this case were tried that the state
10 could prove those allegations to the jury beyond a
11 reasonable doubt; that you do not wish to take that
12 chance; that you wish to take the benefit of the bargain,
13 i.e., the negotiated sentence under North Carolina versus
14 Alford?

15 THE DEFENDANT: Yes, sir, I understand.

16 THE COURT: Sir?

17 THE DEFENDANT: I understand. Yes, sir.

18 THE COURT: And do you believe that the state could
19 prove your guilt?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Beyond a reasonable doubt?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do further understand that by entering
24 this type of plea you're going to violate the terms of
25 your probation and you're looking at another year less 90

1 days there?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. I find his decision to enter
4 the plea under North Carolina versus Alford which I have
5 explained to him to be treated as a guilty plea to be
6 freely, voluntarily, and intelligently made. He's had the
7 representation of a competent -- very competent lawyer
8 Miss Wallis Alves with whom he says he's satisfied and I
9 will accept the plea.

10 If you disagree with these proceedings or my sentence
11 you have 10 days from today's date to file a notice of
12 intent to appeal. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Madam Solicitor?

15 Do you need to serve him?

16 THE PROBATION OFFICER: Yes, sir.

17 THE COURT: Let's let probation serve him. Then
18 we'll go from there.

19 (Whereupon, the Probation Officer served the
20 Defendant.)

21 THE PROBATION OFFICER: Thank you, Your Honor.

22 MS. RINGLER: Thank you, Your Honor. On October 14,
23 2009 and into the early morning hours of October 15, 2009
24 these events occurred. It started off, Your Honor, the
25 Defendant was in his house with the victim. They had

1 lived together for about 20 years in Wagener, South
2 Carolina. The victim was on the phone with her sister
3 Linda Jones. The Defendant then took the phone from the
4 victim, hid it in the house. He then began to unplug the
5 lamp which was the main source of light in the living
6 room. He unplugged the stove and also the television.

7 He then goes outside the house, Your Honor, and there
8 was a latch on the front door -- that was how they locked
9 the house -- and placed a deadbolt on the latch, but did
10 not actually close the deadbolt -- just placed it there so
11 that the victim was unable to open the door and get out of
12 the house. He then goes around to the side of the house,
13 Your Honor, and crawls in through a side window.

14 It is at that point he comes up to -- there is no
15 light in the house at this point. He comes up to the
16 victim and begins choking her and when officers responded
17 they were able to see marks on her neck from that. The
18 victim actually passes out and she says when she comes to
19 the Defendant is there fanning her with a paper plate.
20 The assault then continues. He drags her into the bedroom
21 and holds her down on the bed, and the victim reports
22 having a panic attack and she's unable to breathe and asks
23 for water. It is at that point that the Defendant gets up
24 and does go get water and lets her up from the bed and the
25 two ended up sitting in the living together.

1 The victim's sister had been concerned and so
2 contacted the victim's daughter Brittney Seawright who
3 came to the house. She removed the deadbolt from the
4 latch on the door and came in, realized that her mother
5 was -- she was concerned about her mother so she then left
6 and called 9-1-1 from her cellphone.

7 Officer McElmurray and also a short time later Deputy
8 Gainey arrived at the residence and based on speaking to
9 the Defendant and also the victim they placed -- went to
10 place the Defendant under arrest. When they did so the
11 Defendant began to struggle. He actually said, I'm not
12 going to jail. They continued to struggle and end up
13 having to pepper spray the Defendant and yet he continues
14 to struggle. They eventually get him in handcuffs and
15 outside of the house and this goes on for about 20 minutes
16 trying to get him in the back of the patrol car.

17 The Defendant ends up face down on the road beside
18 the patrol car with Officer McElmurray draped over the top
19 of him in an effort to restrain him and Deputy Gainey goes
20 to go get additional restraints from his patrol car. When
21 this happens Officer McElmurray starts to feel the -- his
22 holster start to lift up and the Defendant actually tears
23 the top strap of the holster as he is ripping the firearm
24 out of its holder. The Defendant fires one round and the
25 bullet goes past Officer McElmurray and hits his patrol

1 car. Officer McElmurray is able to place his thumb behind
2 the trigger and also eject the magazine which keeps the
3 Defendant from being able to shoot the weapon again and
4 eventually once Deputy Gainey gets back on the scene and
5 actually helps in restraining the Defendant the Defendant
6 lets go of the firearm and they were eventually able to
7 get him in the back of the patrol car.

8 Your Honor, that's the basis for the charges he's
9 pleading to. His record is a 2003 failure to stop for a
10 blue light, also driving under suspension and open
11 container. He has a 2005 resisting arrest, a 2007 simple
12 assault, and a 2008 hit and run with minor personal injury
13 and also driving under the influence second. He also has
14 a CDV from 2004.

15 And, Your Honor, the victim is here, Your Honor, but
16 does not want to address the court. I have spoken to her
17 about the state's negotiated 10 years and she is in favor
18 of that plea offer. I have also -- Officer McElmurray is
19 here as well, Your Honor, and he also has declined to
20 speak with the court, but I have, again, spoken to him
21 about the plea offer and he's good with the 10 years, Your
22 Honor.

23 THE COURT: Miss Alves?

24 MISS ALVES: Your Honor, may it please the court.

25 Your Honor, the Solicitor and I have also -- there are, I

1 believe -- We've also agreed that there are two other
2 charges that the Solicitor is not prosing: Malicious
3 injury to property for the damage to the police car and a
4 possession of a firearm by a person convicted of a violent
5 crime is what he was charged with that the Solicitor is
6 not prosing. Also, the Solicitor has agreed that this
7 charge did not involve a sex offense and so the Defendant
8 would not have to register because kidnapping is an
9 offense that you would have to register automatically
10 unless it's determined that it's not a sex offense.

11 Your Honor, Mr. Bell is 40 years old. Excuse me.
12 He's 41 years old now. He was a welder and he worked for
13 Avondale for eight years. He was unemployed at the time.
14 Excuse me. He is currently unemployed, but he was working
15 at the time that he was arrested.

16 He and Ms. Seawright have been together for 21 years
17 living in that same home and Mr. Bell has denied most of
18 what happened that evening. If we went to trial Mr. Bell
19 has a different -- he has a different version of the facts
20 of what happened that night. However, in discussing this
21 with Mr. Bell and going over the evidence with him he
22 realizes that the facts as told by Ms. Seawright, her
23 daughter, and her sister are the more credible facts of
24 this story.

25 Mr. Bell, in addition -- and, Your Honor, it was hard

1 for me to believe that Mr. Bell was a person who -- that
2 everybody was saying all of this about because as
3 soft-spoken as Mr. Bell has been here in court today he
4 has been that way with me ever since I have started
5 working with him on this case back in early December of
6 last year. He -- my investigator talked to his -- to the
7 police chief in Wagener and he says he's known Mr. Bell
8 well and Mr. Bell is a good guy and he's normally a nice
9 guy and calm, but they think he might have -- something
10 might have gone wrong with Mr. Bell that night. Even
11 Ms. Seawright says that she thinks he was on something
12 when I talked to her. Mr. Bell denies that, but there is
13 no -- I can't reconcile the person they're saying did all
14 of this with Mr. Bell that I've gotten to know over the
15 past few months, but the evidence -- it is what it is.

16 As to -- as to the dispute with the police officers
17 there is no question that the tape that the state would
18 present does clearly -- You can clearly hear Mr. Bell
19 saying he's not going to jail. You can hear the signs of
20 a scuffle. You can't see anything in the house. You can
21 see a little bit of a scuffle outside of the house and you
22 can hear Mr. Bell saying that his arms were hurting.

23 The biggest piece of evidence I would have
24 established at trial would have been that Mr. Bell's hands
25 were handcuffed behind his back and it would have been

1 difficult for him to get to the gun, but, Your Honor, from
2 what the officers testified he was laying on top of him
3 that he was out of control and descriptiveness that
4 Mr. Bell was lifting up and that the officer had to lay
5 sideways does give him the opportunity to have been able
6 to reach the gun. So, Mr. Bell adamantly denies that he
7 was the person who shot the gun, but I think that it's
8 very clear in my opinion and in looking at all of the
9 evidence that the jury would have found Mr. Bell guilty
10 beyond a reasonable doubt based on the testimony and the
11 tape and that's why Mr. Bell has decided to plead in this
12 fashion.

13 He tells me that he loves Ms. Seawright. He didn't
14 want to cause her any harm. They did have a minor
15 skirmish between them from what he tells me very different
16 from her version of the facts and it would have been up to
17 the jury to decide which one of them was telling the truth
18 and he realizes that with all of the evidence coming in
19 that that the jury most probably would have ruled against
20 him on -- and found that the state had proven their case
21 beyond a reasonable doubt.

22 He doesn't deny having resisted arrest, but he denies
23 having assaulted the officer. His -- his testimony at
24 trial would have been that he was trying to get away from
25 the officers, not that he was assaulting, beating, or

1 wounding the officers. It is for that reason that he is
2 pleading the way he is.

3 He does recognize he has some fault in what happened
4 that night, but he maintains his innocence as to most of
5 it and the reason we're here at this late stage is because
6 he did want to tell his story in court and have his day in
7 court, but he realizes has the opportunity to take this
8 plea is a better opportunity for him.

9 As to -- as to the probation violation, Your Honor,
10 he is facing nine months on that. I would just ask you to
11 consider allowing that to run concurrent. I know that's
12 not typically what Your Honor does with a probation
13 violation on a new plea; however, Mr. Bell is facing eight
14 and a half years minimum for these charges. He has 153
15 days in jail towards this, and I would just ask you to
16 allow that sentence to run concurrent for those nine
17 months.

18 THE COURT: Anything you want to say, Mr. Bell?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. As to the kidnapping charge
21 the sentence of the court is that you be committed to the
22 State Department of Corrections for 10 years. The other
23 three charges are likewise 10-year sentences, all run
24 concurrent. I'll revoke your probation in full. I'll
25 terminate and convert to civil judgment. Run it

1 concurrent.

2 All right. Let's take a break. Let me see the
3 solicitor. I'm sorry. Hold on. I have noted on the
4 kidnapping that it does not require sexual offender
5 registry.

6 MISS ALVES: Thank you.

7 THE COURT: Bring the jury in.

8 (Whereupon, the jury came into open court at
9 approximately 10:36.)

10 THE COURT: Don't you love a judge that keeps you
11 waiting 40 minutes? I apologize. But with that apology I
12 am going to tell you that the case is resolved. Your
13 services will end in just a few minutes and you will not
14 come back at all this week. Can we get them paid today?

15 THE CLERK: No, sir. They mail it to them now. Not
16 unless they...

17 THE COURT: Not unless they what?

18 THE CLERK: I don't know if they can actually print
19 it or not.

20 THE COURT: We started at 9:30. I was here about
21 9 o'clock. We had another matter dealing with a murder
22 case that's called a post-conviction relief hearing that I
23 had to deal with it until right at 10 o'clock. Then I had
24 to rule on some motions in this case that we heard
25 yesterday after you left and once I made my ruling the

1 Defendant changed his plea from not guilty to what we call
2 plea under what's called North Carolina versus Alford
3 which simply means that he's looked at all of the evidence
4 and he's convinced that the state could have convicted him
5 beyond a reasonable doubt and he took what we normally do
6 in cases -- a plea bargain.

7 They offered him to let him plea to all of his
8 charges in exchange for a 10-year sentence. Kidnapping
9 carries 30 and he was also charged with criminal domestic
10 violence which carries up to 10 years. There were two
11 other charges: Resisting arrest, a 10-year charge, and
12 assault of a police officer which is -- there were
13 allegations that he struggled the police officer taking
14 his gun and firing it to the outside of the car.

15 Like happens in a lot of these cases when it's all --
16 when I get a jury ready, willing, and able to go they
17 change their mind at the last minute sometimes. Anyway,
18 that's what's happened in this case. I have sentenced him
19 to a 10-year sentence. That's why y'all had to wait.

20 That's under a statute kidnapping which is classified
21 as a most serious offense and that means that -- it means
22 a couple of things. Number one, it means that he has to
23 do 85 percent of that sentence which is eight and a half
24 years. A lot of these sentences I'll give somebody 10
25 years and they go to the Department of Corrections and

1 they'll be back home in two or three years. It is amazing
2 how quickly they turn them around, but he has to do
3 85 percent of this sentence. He also -- when he's
4 released he'll be released to what we call a community
5 supervision program and also that being classified as most
6 serious means that he now has one strike under our
7 three-strike law.

8 We have certain crimes that are classified as most
9 serious. If you get two of those you're subjecting
10 yourself to life in prison without the possibility of
11 parole or if you get a combination of most serious and
12 serious and you get three of those, that's also subjecting
13 to life in prison without parole. That's the enhancement
14 statute. So, that kidnapping was classified as that. So,
15 he now has a strike. If he comes back out and gets
16 involved he's looking at going to jail for the rest of his
17 life.

18 So all of that was taking place while you were
19 sitting in there eating your biscuits, and, obviously, it
20 would not have gotten to that point if you had not been
21 ready, willing, and able to serve. We have drawn a jury
22 for the next case which a chop shop crime where people
23 come in and alter vehicles, alter the VIN numbers, and
24 that sort of thing. That case is set for trial tomorrow
25 morning. The other two cases that we had ready for trial,

1 they plead guilty yesterday afternoon. So we do not have
2 anymore trials this week. We're winding up two weeks. I
3 think we got some murder cases we're going to try to
4 dispose of this week by way of pleas, but I do not need
5 you anymore so I am going to excuse you now for the
6 balance of the day and the rest of week.

7 You will receive a check in the mail shortly. They
8 mail them out quickly. So, unless any of you have any
9 questions, I'm going to excuse you now. When you go out,
10 please, Ms. Barbara or Mr. Bill will take your badges. If
11 any of you need a work excuse, I'll be more than happy --
12 How do they do that?

13 THE CLERK: Just go see the jury clerk LeeAnn.

14 THE COURT: Where?

15 THE CLERK: The clerk's Office.

16 THE COURT: Where?

17 THE CLERK: Second floor.

18 THE COURT: Ms. Barbara will help you with that.
19 They'll give you a work excuse. So, thank you very much
20 on behalf of the citizens of Aiken and everyone else.
21 You've done your job.

22 Sam, good to see you.

23 THE JUROR: Good to see you.

24 THE COURT: One of your jurors back there is a good
25 Gamecock fan, an old client of mine. Back when he was

1 young and I was young I was his lawyer.

2 THE DEFENDANT: That's right.

3 THE COURT: Are you still in Williston?

4 THE DEFENDANT: Still in Williston.

5 THE COURT: You still got Sam's Place?

6 THE JUROR: I own it, but I got it leased out.

7 Twenty-one years was enough.

8 THE COURT: I never stopped in Sam's Place. I guess

9 I should have along the way.

10 THE DEFENDANT: It would have been an experience.

11 THE COURT: Thank y'all all very much. I hope that
12 you have a wonderful day. Anybody got any questions?

13 Everybody else remain seated.

14 (Whereupon, the jury exited the courtroom at 10:42.)

15 THE COURT: All right. Thank you.

16 (End of Transcript of Record.)

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CERTIFICATE OF REPORTER

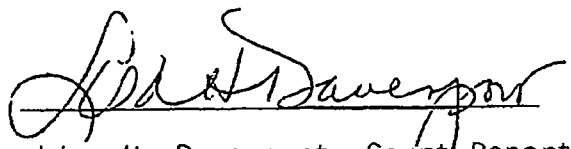
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State of South Carolina)
)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Aiken County, South Carolina, on the 16th day of March,
2010.

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

October 27, 2010


Lisa H. Davenport, Court Reporter

FORM 5

2010-20-01741
2010-GS-20-0177, 018
Filed July 28, 2010
Deputy Clerk: [Signature]
Trial Judge: D. [Signature]
Trial Atty: WALLS AYES
Court Reporter: Lisa [Signature]
Sec: PCR Petitioner
General Sessions Atty.
Appointed Atty.

STATE OF SOUTH CAROLINA)

County of AIKEN)

WAYNE BELL, #339896)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS AND GENERAL

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 TURBEVILLE CORR. INST.
POST OFFICE BOX 252 TA-127 turbeville, south carolina 29162
2. Name and location of Court which imposed sentence AIKEN COUNTY COURT OF
GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) M045142 2010-GS-20-0177(KIDNAPPING 16-3-910), M045144 2010-GS-20-0178(ASSAULT ON
 - (b) OFFICER WHILE RESISTING 15-9-320(3), M045143 2010-GS-20-0179(CRIMINAL

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 03 2010

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Anita Knoepple
Deputy Clerk

M045145

(c) DOMESTIC VIOLENCE, 2010-GS-20-0180(AWIK C/L)

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 16, 2010 (10) YEARS CONCURRENT
 - (b)
 - (c)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
 NO, I DID NOT APPEAL
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii.
 - iii.
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii.
 - iii.
 - (c) the date of each such result:
 - i. N/A
 - ii.
 - iii.
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii.
 - iii.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) MY ATTORNEY DID NOT INFORM ME THAT I COULD APPEAL
 - (b)

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) (1) INEFFECTIVE COUNSEL, (2) INVOLUNTARY GUILTY PLEA
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENTS:
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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?

N/A

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. WALLIS ALVES
AIKEN, SOUTH CAROLINA 29802
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. AT MY GUILTY PLEA HEARING
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

TO HAVE MY ORIGINAL PLEA ENFORCED

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
County of AIKEN)

VERIFICATION

I, WAYNE BELL, #339896, 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.

Wayne Bell

SWORN to and subscribed before me this 23rd day of July, 2010.

[Signature] (L.S.)
Notary Public

My Commission Expires: April 27, 2016

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

I, WAYNE BELL, #339896, 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.

Wayne Bell
Applicant

SWORN or affirmed to and subscribed before me this

23rd day of July, 2010.

Emeline Hahn
Notary Public

My Commission Expires: April 27, 2011

INEFFECTIVE ASSISTANCE OF COUNSEL:

THE APPLICANT SUBMITS THAT HIS COUNSEL WAS INEFFECTIVE FOR ADVISING HIM TO PLEA TO A DEAL THAT THE STATE RENEGED ON, WHICH VIOLATED THE APPLICANT'S RIGHTS BECAUSE AFTER THE STATE RENEGED ON THE PLEA OFFER, THE APPLICANT SHOULD HAVE BEEN ALLOWED TO WITHDRAW HIS GUILTY PLEA BECAUSE THE APPLICANT

HAD DETRIMENTALLY RELIED ON THE OFFER THE STATE ISSUED. The applicant's plea counsel was ineffective for failing to seek specific performance of the original plea agreement. Simply put, the applicant received a letter from Loretta Walker, paralegal to Wallis Alves informing the applicant that the state was offering the applicant a plea offer which consisted of; resisting ARREST and CDVHAN (2) counts and the state will dismiss the charge of (1) kidnapping, (2) malicious injury to personal property, and (3) unlawful possession of a firearm. The applicant submits the fact that his attorney did withdraw the applicant's plea prejudiced the applicant because being convicted of kidnapping will keep the applicant locked up longer because the (10) years he received for the kidnapping is a "No-parole" 85% offense, when all of the other offenses are "paroleable" and 65%. The applicant's attorney was ineffective and that ineffectiveness, prejudiced the applicant pursuant to the mandate of Strickland v. Washington, 104 S. CT. 2052 (1984)

FILED July 28 2010 @ 8:20

 L. J. H. H. H.

 Deputy Clerk

(1)

Involuntary Guilty Plea:

The applicant submits that his guilty plea was involuntary pursuant to the mandates that are set forth in Eustadio v. State, 644 S.E. 2d 316 (S.C. 2007), Reed v. Becker, 511 S.E. 2d 396 (S.C. App. 1999), and Stokely v. Sprouse, 585 S.E. 2d 278 (2003), because he guilty with the understanding that certain charges would be dropped. The applicant submits that he had detrimentally relied on the original plea offer that the state issued. An applicant may enforce an oral or, in the applicant's case or written plea agreement upon a showing of detrimental reliance on a prosecutorial promise in plea bargaining. Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a prosecutorial promise in plea bargaining may make a plea agreement binding. The local court adopted the rule that the state may withdraw a plea bargain offer before a defendant pleads guilty, provided the defendant "has not detrimentally relied on the offer." The appropriate remedy is the specific performance of the plea agreement. Stokely v. Sprouse, 585 S.E. 2d 278 (2003) specific performance of plea agreement is most efficient option because it eliminated need for new trial or plea hearings and granted parties nothing more and nothing less than the benefit for which they had bargained.

(2)

OFFICE OF THE SECOND JUDICIAL CIRCUIT PUBLIC DEFENDER

410 Barnwell Avenue N.W.
Post Office Box 2247
Aiken, South Carolina 29802

March 4, 2010

Aiken County Detention Center
Wayne Bell
435 Wire Road
Aiken, SC 29801

Ref.: plea offer

Dear Mr. Bell:

The State is offering you the following plea offer; plead to Resisting Arrest and Criminal Domestic Violence High and Aggravated Nature (2) counts and the State will dismiss the charge of Kidnapping, Malicious Injury to Personal Property and Unlawful Possession of a Firearm. There is no recommendation as to sentence.

Please contact Ms. Alves immediately to discuss.

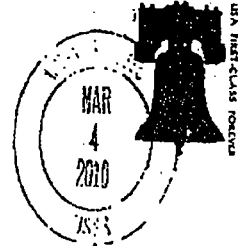
Sincerely,


Loretta Walker
Paralegal

/lw

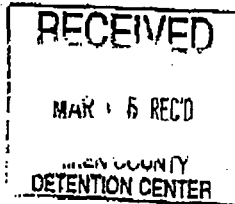
Second Judicial Circuit
Public Defender
P.O. Drawer 2247
Aiken, South Carolina 29802

E-234



Legal Mail
Confidential

Wayne Bell



2960138743 R007



STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	
)	
)	2010-CP-02-1741
Wayne Bell, #339896,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 28, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Kidnapping (2010-GS-02-0177), Resisting Arrest (2010-GS-02-0178), Criminal Domestic Violence of a High and Aggravated Nature ("CDVHAN") (2010-GS-02-0179), and Assault with Intent to Kill ("AWIK") (2010-GS-02-0180). He was represented by Wallis Alves, Esquire. On March 16, 2010, the Applicant entered an Alford plea before the Honorable Doyet A. Early, III. Pursuant to a negotiated sentence, he was sentenced to concurrent terms of ten (10) years on each charge.

A notice of appeal was filed. The appeal was dismissed by the South Carolina Court of Appeals on May 21, 2010, and the Remittitur was sent on June 8, 2010.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "...counsel was ineffective for advising him to plea to a deal that the state reneged on ... should have been allowed to withdraw his guilty plea because the applicant had detrimentally relied on the offer the state issue... offer which consisted of resisting arrest and CDVHAN (2) counts and the stat will dismiss the charge of (1) kidnapping, (2) malicious injury to personal property, and (3) unlawful possession of a firearm [with no recommendation as to sentence]..."
2. Involuntary guilty plea.
 - a. Applicant detrimentally relied on plea offer.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

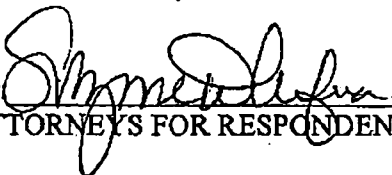
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 16, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

WAYNE BELL, 339896)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-02-01741

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Dorothy H. Hogg, Esquire
 Fulcher Hagler, LLP
 Post Office Box 1477
 Augusta, GA 30903**

DATED this 16th day of December, 2010.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Wayne Bell, #339896,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2010-CP-02-1741

AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

In addition to the grounds asserted in Wayne Bell's ("Applicant") Application for Post-Conviction Relief, Applicant asserts the following grounds:

1. Ineffective assistance of counsel because counsel compelled Applicant to enter a guilty plea that Applicant would not have accepted but for counsel's assertion.

Respectfully submitted this 28th day of January, 2011.

Dorothy H. Hogg
 Dorothy H. Hogg
 S.C. Bar No. 71710
 Attorney for Applicant

FULCHER HAGLER, LLP
 Post Office Box 1477
 Augusta, GA 30903
 (706) 724-0171

COPY
ORIGINAL FILED

JAN 31 2011

AIKEN COUNTY
 CLERK OF COURT

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this day served a copy of the foregoing upon the following:

Mary S. Williams
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

by depositing said copy in the United States Mail with adequate postage affixed thereto to ensure proper delivery.

This 20th day of January, 2011.

Dorothy H. Hog

**COPY
ORIGINAL FILED**

JAN 31 2011

**AIKEN COUNTY
CLERK OF COURT**

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT
2010-CP-02-01741

2 COUNTY OF AIKEN

3

4

5 WAYNE BELL,
Applicant,

6

-vs-

TRANSCRIPT OF RECORD

7

8 STATE OF SC,
Respondent.

9

10

Heard on Thursday, July 14, 2011
Aiken, South Carolina

11

12

BEFORE:

13

THE HONORABLE JAMES R. BARBER III

14

15

16 APPEARANCES:

17

Counsel on Behalf of the Applicant:
Dorothy Holley Hogg, Esq.

18

19

Counsel on Behalf of the Respondent State of SC:
Rob D. Corney, Esq.

20

21

22

23

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
Aiken, SC 29802-1154

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EXAMINATION INDEX

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WAYNE KELLY BELL

DIRECT BY MS. HOGG	5
CROSS BY MR. CORNEY	12
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RECROSS BY MR. CORNEY	19

WALLIS A. ALVES

DIRECT BY MR. CORNEY	20
CROSS BY MS. HOGG	27

EXHIBIT INDEX

Applicant's	MAR	/	ADM
1 Letter of March 4, 2010	6		7

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WAYNE K. BELL - DIRECT

1 ON THURSDAY, JULY 14, 2011 AT 9:41 A.M.:

2 MR. CORNEY: If it please the Court, Your Honor.

3 THE COURT: Mr. Corney?

4 MR. CORNEY: This is Wayne Bell, case number 2010-CP-
5 02-1741. Mr. Bell was true bill indicted during the
6 February 2000 (sic) term of the Aiken County Grand Jury
7 for kidnapping, resisting arrest, criminal domestic
8 violence of a high and aggravated nature and assault with
9 intent to kill.

10 He pled guilty March 16th, 2010, pursuant to an
11 Alford plea before Judge Early. He was sentenced to 10
12 years on each charge pursuant to a negotiated sentence.
13 They were all to run concurrent.

14 As part of the plea, there were several charges nolle
15 prossed including malicious injury to property and
16 possession of a firearm by a person convicted of a violent
17 crime.

18 Also just to note, the kidnapping was a non-sexual
19 offense so there was no sex offender registry as part of
20 that sentence.

21 And he is represented today by Ms. Dorothy Hogg.

22 THE COURT: All right. Ms. Hogg?

23 MS. HOGG: Thank you, Your Honor. May it please the
24 Court. I'd like to call Mr. Bell.

25 WAYNE KELLY BELL, having been duly sworn, was

WAYNE K. BELL - DIRECT

1 examined and testified as follows:

2 THE CLERK: Please have a seat on the witness box and
3 state your full name for the Court.

4 THE APPLICANT: Name's Wayne Bell. Wayne Kelly Bell.

5 DIRECT EXAMINATION

6 BY MS. HOGG:

7 Q. Mr. Bell, have you filed an application for post
8 conviction relief?

9 A. Yes, ma'am; I did.

10 Q. And you alleged ineffective assistance of counsel?

11 A. Yes, ma'am.

12 Q. Did you plead guilty at your hearing?

13 A. Yes, ma'am.

14 Q. And what charges did you plead guilty to; do you know?

15 A. Kidnapping -- kidnapping, intent to kill -- kidnapping
16 intent to kill. Uh.

17 Q. Assault?

18 A. Yeah. Assault. CDV and assault, arrest -- resisting
19 arrest.

20 Q. Okay. When you pled guilty, did you know that you
21 were pleading guilty to a kidnapping charge?

22 A. No, ma'am.

23 Q. Did you previously receive correspondence from your
24 counsel regarding a proposed plea deal from the State?

25 A. Yes, ma'am.

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1 MS. HOGG: May I approach, Your Honor?

2 THE COURT: You may. Is Ms. Alves -- was that your
3 lawyer, Ms. Alves?

4 THE APPLICANT: Yes, sir.

5 THE COURT: Is she going to be here?

6 MR. CORNEY: Your Honor, that's what I just talked to
7 Brian about. I apologize. I I'm over here saying that I
8 can't believe I called this case without her being here in
9 the courtroom.

10 Brian is calling over to the public defenders office
11 to make sure she is here immediately. I apologize, Your
12 Honor.

13 THE COURT: Well, we can go forward. I mean, do you
14 have a problem going forward with his testimony?

15 MR. CORNEY: I don't have any problem with that, Your
16 Honor. And I apologize. The minute after I called the
17 case I looked at Brian and said, I can't believe I did
18 that.

19 THE COURT: Is that all right, Ms. Hogg, to go
20 forward? Do you want to go forward with him then?

21 MR. CORNEY: I apologize, Your Honor.

22 (Thereupon, Applicant's Exhibit No. 1, letter of
23 March 4, 2010, was marked for identification.)

24 BY MS. HOGG:

25 Q. Mr. Bell, I'm going to show you a letter.

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1 A. Yes, ma'am.

2 Q. If you'd take a minute to look at that.

3 A. (Complying.)

4 Q. Can you identify that letter?

5 A. Yes, ma'am. It was sent to me March 4th. I
6 received it March the 5th at the Aiken County Detention
7 Center.

8 Q. And is it to you from -- who is it from?

9 A. It's from Ms. Alves. It's signed by Ms. Lorretta
10 Walker, paralegal.

11 MS. HOGG: Okay. And, Your Honor, I'd like to
12 introduce this as Plaintiff's One.

13 THE COURT: Any objection?

14 MR. CORNEY: No objection, Your Honor.

15 THE COURT: So admitted.

16 (Thereupon, Applicant's Exhibit No. 1, letter, was
17 received into evidence.)

18 BY MS. HOGG:

19 Q. Mr. Bell, can you tell me -- in the letter, did it
20 indicate that the State would dismiss the charge of
21 kidnapping?

22 A. Yes, ma'am.

23 Q. And malicious injury to personal property?

24 A. Yes, ma'am.

25 Q. And unlawful possession of a firearm?

WAYNE K. BELL - DIRECT

1 A. Yes, ma'am.

2 Q. Okay. Did you wish to accept this plea agreement?

3 A. Yes, ma'am.

4 Q. Did you attempt to contact your attorney to let her
5 know this?

6 A. Yes, ma'am. I attempt to contact her several times.
7 It was during general sessions. She was never in the
8 office.

9 Q. Were you able to convey a message to her paralegal,
10 Ms. Walker, who sent you a letter?

11 A. She said that I would have to talk to Ms. Alves.

12 Q. Okay.

13 A. Yes.

14 Q. So were you not able to let her know, to tell
15 Ms. Alves that you wished to accept the plea?

16 A. Right.

17 Q. When were you able to talk to your attorney?

18 A. I think it was March the 15th, something like that.
19 When I did contact her she told me, she said, oh, that's
20 no good. Just disregard that.

21 She asked me, how did I get it. And I said, it was
22 mailed to me from your office. And she said, oh, you
23 weren't supposed to receive this. Disregard that.

24 And she maybe stated two or three more words and then
25 she said, we're going to take this to trial. We're going

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1 to court.

2 Q. Did she give you any other indication about any other
3 plea deal that was available?

4 A. No, ma'am.

5 Q. On the morning of the hearing, did you -- did you talk
6 to Ms. Alves about taking a plea deal?

7 A. On the morning -- no, ma'am. She, she -- when I sat
8 down in the court she asked me, she said, I think you
9 ought to take the plea deal. And I'm thinking it's the
10 plea deal that was sent to me in the mail.

11 So she say, sign here. She had three papers up here.

12 She said, sign here, sign here, sign here. She never
13 explained it to me. She never said anything.

14 Okay. I signed those three and she asked Ms. Susan,
15 she said, do you have the paper for the kidnapping. And
16 I'm like, for the kidnapping. And Ms. Susan say, no, I
17 don't, I don't think I have that.

18 So, Ms. Susan looked in her briefcase. She found the
19 kidnapping and she said, yes, I do have one.

20 And I said, well, can I speak to my mom first. And
21 then she said, yes. I was -- spoke to my mom. And we
22 signed -- I was to come to find that I had to sign all the
23 pleas that I did not wanted to sign at that time.

24 Q. Were you aware that you were pleading guilty to
25 kidnapping?

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1 A. She was going to put it on that I was going to sign it
2 but she put it on me so fast that I didn't. No, ma'am.

3 Q. Was it that morning that she said, I think you should
4 take the plea agreement?

5 A. I think it was the plea that was sent to me in the
6 mail that, that my --

7 Q. She didn't indicate any differently that it was a
8 different plea now at this time?

9 A. No, ma'am.

10 Q. Okay. Do you feel that you had effective assistance
11 of counsel?

12 A. Yes, ma'am.

13 Q. You do feel that you had effective assistance of
14 counsel?

15 A. Insufficient.

16 Q. Insufficient?

17 A. Correct.

18 Q. Ineffective?

19 A. Ineffective.

20 Q. Ineffective assistance. Can you tell the Judge a
21 little bit more about, in addition to the issue with the
22 plea agreement, why you feel you did not have effective
23 assistance of counsel?

24 A. In the -- in the case it was, I had heard -- I asked
25 her, did she investigate. It was no terms that she had

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1 investigated for me. I had a lot of feedback saying the
2 police was fired off his job. It was a lot more that she
3 could have, should have done that I was asking her to do
4 and never been, never came across doing for me.

5 Q. Did you ask her to investigate any matters regarding
6 ballistic tests or fingerprint tests?

7 A. Yes, ma'am. I told her all of that. I never had
8 ballistic test. I've never been fingerprinted, any kind.
9 I was handcuffed behind my back with the police in my back
10 holding me down, all of that. I never, never had none of
11 that stuff.

12 Q. And did you ask her to investigate the charge of
13 kidnapping?

14 A. Yes, ma'am; I did. I asked her to investigate it. I
15 never got any feedback from her on did she investigate it
16 or not.

17 Q. Okay. Do you feel that you were prejudiced by having
18 Ms. Alves ineffectively represent you or not inform you of
19 the plea agreement that you were signing?

20 A. Yes. She didn't inform me on the plea agreement I was
21 signing. She didn't even explain it to me of what I was
22 signing. She just say sign here, sign here, sign here and
23 I signed it.

24 Q. Is there anything else that you wish to tell the Court
25 about your application for post conviction relief?

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1 A. No, ma'am.

2 MS. HOGG: No further questions.

3 THE COURT: All right. Mr. Corney? Did you get her,
4 Mr. Petrano; is she coming?

5 MR. PETRANO: Three minutes.

6 MR. CORNEY: I apologize again.

7 THE COURT: Three minutes from now or three minutes
8 from when you talked to her?

9 MR. PETRANO: Three minutes from when I stepped
10 outside.

11 THE COURT: So that would be one more minute?

12 MR. PETRANO: I wasn't watching the clock, but; yes,
13 sir.

14 CROSS-EXAMINATION

15 BY MR. CORNEY:

16 Q. Mr. Bell?

17 A. Yes, sir.

18 Q. When you went to enter this plea, Judge Early informed
19 you of the consequences of entering the plea, right, on
20 the record?

21 A. Yes, sir.

22 Q. And he said that he spoke with you about that you were
23 pleading to a negotiated sentence of 10 years based on
24 these charges; right?

25 A. He said, a so-called plea.

WAYNE K. BELL - CROSS

1 Q. And he read you the indictments as well, right, during
2 the plea hearing, what you were charged with?

3 A. Yes, sir.

4 Q. And you agreed with the Court that you were entering
5 this plea because you didn't want to take a chance going
6 to trial and being convicted on these charges?

7 A. I had entered that plea -- I picked my jury the day
8 before. I was going to trial, take it all to trial.

9 Q. Okay. You told the Court that you believed the State
10 was going to be able to prove your guilt beyond a
11 reasonable doubt and that was why you were entering this
12 plea; right?

13 A. No, sir.

14 Q. You didn't say that on the record to Judge Early? You
15 didn't agree with that?

16 A. No, sir.

17 Q. Okay. So you don't think you entered this plea to get
18 the benefit of the bargain, not going to trial and risking
19 all of that time?

20 A. No, sir.

21 Q. And in the solicitor's opening remarks at the plea
22 hearing, she stated that the charges -- she stated all the
23 charges that you were facing and you were going to enter
24 this Alford plea for a negotiated 10-year sentence; right?

25 You heard her opening remarks?

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1 A. Right.

2 Q. So you knew from the very outset of this plea hearing
3 exactly what you were pleading to and the sentence you
4 were going to receive?

5 A. No, sir.

6 Q. You didn't understand that?

7 A. No.

8 Q. They didn't go over the plea deal with you during the
9 plea hearing and discuss it to you?

10 A. She never explain it to me.

11 Q. In opening remarks they didn't go over exactly the
12 sentence you were going to get and what you were pleading
13 to?

14 A. No, sir.

15 Q. You also allege that the situation didn't occur
16 exactly as the solicitor stated at the plea hearing;
17 right?

18 A. No, sir. It didn't. It occurred -- all four
19 statements are different.

20 Q. Okay. But you did agree that you still thought the
21 State had enough evidence to prove your guilt if you went
22 to trial?

23 A. No, sir.

24 Q. You didn't say that at the plea hearing?

25 A. No, sir.

WAYNE K. BELL - CROSS

1 MR. CORNEY: Beg the Court's indulgence for one
2 minute, Your Honor. (Pause.)

3 BY MR. CORNEY:

4 Q. One of the things I think you said a minute ago was
5 you wanted Ms. Alves to investigate, do some more
6 investigation into your case?

7 A. Yes.

8 Q. Okay. And would you briefly just go over -- I don't
9 know that I caught everything you said you wished she
10 investigated. Would you mind going over what you thought
11 she failed to investigate?

12 A. Yes. At the time there was -- I had 10 windows in my
13 house. They are 64 by 24 inches from the ground. The
14 victim had plenty enough time to have -- leave.

15 She was in the house by herself in a lot of the
16 rooms. When she said that I got up and went and get water
17 she was in the room, saying when I came back in the
18 house. Her daughter came home. She was sitting in the
19 living room. She had plenty enough time. The daughter
20 came in, left and left the door open. She had plenty
21 enough time to go.

22 We stay about two or three minutes from the police
23 station. It's right up the road. We have a rotary phone
24 and we have a regular phone that she could have used to
25 have called. My cell phone was also on the table, coffee

WAYNE K. BELL - CROSS

1 table. She could have had called if she wanted to.

2 On the police, like I said, I was handcuffed behind my
3 back. Two polices had me down on the ground. Pepper
4 spray. Never took any fingerprints off the gun. Never
5 took any ballistic tests.

6 Q. Okay. So you had all these complaints with what she
7 didn't investigate, but you still told Judge Early at the
8 plea hearing you were satisfied with her representation?

9 A. I say, those things was never investigated by
10 Ms. Alves as I had asked her.

11 Q. Okay. But at the plea hearing you still told Judge
12 Early you were satisfied with her representation. And you
13 just listed a laundry list of things you weren't satisfied
14 with. Why didn't you say anything to Judge Early?

15 A. I don't recall saying that, sir.

16 Q. And you have a prior criminal record as well,
17 Mr. Bell?

18 A. Sir?

19 Q. You have a prior criminal record?

20 A. Yes, sir.

21 Q. Okay. Some of those charges, I'm just going to read
22 off a couple. Let me know if these sound familiar.
23 Failure to stop for blue light --

24 A. Yes, sir.

25 Q. -- in 2003? Driving under suspension and open

WAYNE K. BELL - REDIRECT

1 container in 2003 as well?

2 A. Yes, sir.

3 Q. A criminal domestic violence in 2004; is that right?

4 A. Yes, sir.

5 Q. Resisting arrest, 2005?

6 A. Yes, sir.

7 Q. So this was your second resisting arrest charge as
8 well, stemming from these charges?

9 A. Yes, sir.

10 Q. Simple assault in 2007?

11 A. Simple assault. Yes, sir.

12 Q. And I believe a hit and run and DUI second in 2008?

13 A. Okay. Yes, sir.

14 Q. So you were familiar with the court system prior to
15 this?

16 A. Yes.

17 MR. CORNEY: Okay. I believe that's all I have, Your
18 Honor.

19 THE COURT: Anything, Ms. Hogg?

20 MS. HOGG: Yes, Your Honor. Briefly.

21 REDIRECT EXAMINATION

22 BY MS. HOGG:

23 Q. Mr. Bell, if you had known you were pleading guilty to
24 kidnapping, would you have gone to trial?

25 A. Yes, I would have went to trial; yes.

WAYNE K. BELL - REDIRECT

1 Q. So the reason why you accepted the plea deal is
2 because you thought it did not include kidnapping?

3 A. Yes.

4 Q. Okay. Did you indicate to the Court that, that you
5 thought that the State could prove your guilt on charges
6 that you thought you were pleading guilty to?

7 A. (No response.)

8 Q. When you pled guilty, you did not think the kidnapping
9 was part --

10 A. Involved, yes.

11 Q. -- of the charges. So did you think that the State
12 could prove what you were pleading -- the charges that you
13 were pleading guilty to, not the other charges that you
14 thought had been dismissed?

15 A. No, I just thought the State could not prove me guilty
16 on the kidnapping.

17 Q. Okay. And did you tell Mrs. Alves when you first met
18 or prior to the hearing the issues that you had with the
19 kidnapping charge, the ballistics test that wasn't done,
20 the fingerprint tests, things of that nature?

21 A. Yes, ma'am. I did tell her about those things.

22 Q. So she would have had time to investigate?

23 A. And look into it, but she never let me know about
24 anything.

25 She was basically pushing me, you're going to court,

WAYNE K. BELL - RECROSS

1 you're going to court, you're going to have to -- you're
2 going to be on the stand. You're going to have to fight
3 this thing yourself.

4 MS. HOGG: No further questions, Your Honor.

5 THE COURT: All right. Anything, Mr. Corney?

6 MR. CORNEY: Just very briefly, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. CORNEY:

9 Q. And just one more time. I don't know that I touched
10 exactly on this, but Judge Early did exactly say to you on
11 page nine of this transcript that you were pleading to a
12 negotiated sentence of 10 years. He asked you; is that
13 correct? You said, yes, sir, that is correct.

14 Do you recall saying that to Judge Early?

15 A. I don't recall at this time.

16 Q. Okay. So same thing, you knew good and well what you
17 were pleading to when you entered this plea?

18 A. No, sir; I did not.

19 Q. You didn't know you were going to get a 10-year
20 negotiated sentence like Judge Early told you and you
21 agreed with?

22 A. No, sir.

23 MR. CORNEY: That's all I have, Your Honor.

24 THE COURT: All right. You can step down.

25 THE APPLICANT: Thank you, sir.

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1 THE COURT: Anything further from the Applicant?

2 (Ms. Alves enters courtroom.)

3 MS. HOGG: Nothing further.

4 THE COURT: Mr. Corney?

5 MR. CORNEY: We'll call Ms. Alves.

6 WALLIS A. ALVES, having been duly sworn, was examined
7 and testified as follows:

8 THE CLERK: Please have a seat and state your full
9 name for the Court.

10 THE WITNESS: Wallis Alves.

11 MR. CORNEY: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. CORNEY:

15 Q. Ms. Alves, good morning. I'm sorry for having you run
16 in here at the last minute like that.

17 A. No problem.

18 Q. Do you recall Mr. Wayne Bell's case?

19 A. Yes.

20 Q. And your representation of him?

21 A. Yes.

22 Q. Have you had an opportunity to look over his file, you
23 recall it fairly well?

24 A. Yes.

25 Q. Now Mr. Bell's case, you started by making a motion to

WALLIS A. ALVES - DIRECT

1 try to sever some of these charges; right?

2 A. Yes, sir.

3 Q. In fact, Judge Early made a ruling on that, that that
4 wasn't going to happen; right?

5 A. That's right.

6 Q. Do you recall meeting with Mr. Bell to discuss these
7 charges?

8 A. Yes.

9 Q. All right. You had the chance to go over the
10 indictments and charges he was facing?

11 A. Yes.

12 Q. Did you discuss potential sentences with him as well?

13 A. Yes, I did.

14 Q. And his constitutional rights?

15 A. Yes.

16 Q. Okay. What was his expectations in your
17 representation in going forward on these charges?

18 A. He always wanted to go to trial. He thought he would
19 be found not guilty. And he felt that the police officers
20 had assaulted him, not the other way around. And he
21 denied, also denied assaulting the girlfriend.

22 Q. And you hired an investigator in this case; right?

23 A. No. We have investigators in our office.

24 Q. Or you had an investigator look into this case, I
25 should say.

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1 A. Yes.

2 Q. Do you recall what specific facts you had the
3 investigator look into and what the results were of those
4 investigations?

5 A. We had them talk -- I had my investigator talk to
6 the -- he talked to the girlfriend. He talked to the
7 girlfriend's daughter. And we talked to the police
8 officer. Actually we talked to the chief of police who --
9 Chief Key, who was at the scene, and he's the one who gave
10 us a lot of the details about what happened.

11 Q. Okay. Do you recall receiving the discovery file in
12 this case?

13 A. Yes.

14 Q. And you had the opportunity to review that with
15 Mr. Bell?

16 A. Yes.

17 Q. This case was set for trial and the jury either had
18 been or was about to be picked. Do you recall that?

19 A. I thought they were -- I can't remember if they were
20 picked or not, but a jury was coming out into the room
21 when Mr. Bell decided to plead.

22 Q. And you were prepared to go to trial with Mr. Bell at
23 that point?

24 A. Yes.

25 Q. Was there any doubt in your mind that Mr. Bell knew

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1 exactly what he was pleading to and the sentence he would
2 receive when he entered this plea?

3 A. He knew.

4 Q. Was there any discussion about another potential plea
5 that you had sent him a letter about?

6 A. There was a lot better plea offer that was made prior
7 to trial. The deadline on that plea passed. It was a few
8 days before the trial. And we were going to trial.

9 I mean, we were -- he was 100 percent committed to
10 going to trial. He was maintaining his innocence. And
11 then as the jury was coming out, and like I say, I don't
12 remember if it was before or after we had actually picked
13 the jurors, Mr. Bell leaned over to me and said he wanted
14 to take a plea offer and to see if I could get that plea
15 back.

16 If I remember correctly, the original plea offer was
17 not for an 85 no-parole charge. And when I -- I
18 distinctly remember as the jury was coming, the bailiff
19 had the door opened and I asked the Judge if I could have
20 a minute to talk to the solicitor and he said no.

21 And then I just leaned over and whispered to the
22 solicitor anyway that I wanted to do a plea, that he
23 wanted to do a plea offer. And then it was Solicitor
24 Ringler and then she started talking to the head
25 solicitor, Solicitor Thurmond, who was sitting next to

WALLIS A. ALVES - DIRECT

1 her. And then they went over and started talking to the
2 victims.

3 And the Judge agreed to give us a minute to work it
4 out. And the plea offer was substantially worse than the
5 original plea offer because this involved the kidnapping
6 charge for 85 percent no parole.

7 And Mr. Bell and I did discuss that. He even
8 discussed it with his mother who was sitting behind us.
9 She was behind the -- behind -- she was in the wooden
10 seats behind the chairs that are behind the defense table
11 and I discussed it with her as well. And he decided to
12 take the plea offer.

13 Q. Okay. With regard to that earlier plea offer you
14 received and the deadline had run on, did you have the
15 opportunity to bring that to his attention and what was
16 the outcome of that? How was that decided not to be
17 taken?

18 A. He didn't want it. He said, no, he wasn't pleading to
19 anything. He said he didn't do anything wrong and that he
20 felt that the officer had assaulted him.

21 The way the officer described the assault was that
22 Mr. -- he had been on Mr. Bell's back and that Mr. Bell
23 had been able to get his gun from his holster while they
24 were leaning on Mr. Bell's back.

25 So, Mr. Bell felt that he hadn't done anything wrong

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1 and he didn't want to plead to anything.

2 I did tell him in person and I sent him a letter about
3 the plea offer.

4 Q. Okay. And there was a videotape of this scuffle
5 between him and the police when the police came to his
6 residence?

7 A. There was an audiotape. I'm thinking that -- there
8 was a videotape, but it was only of the car, of showing
9 the police car because it would have been from the police
10 car video and it would have only showed maybe the other
11 police car. If I remember correctly --

12 THE COURT: Mr. Petrano, is that Ms. Alves' file?

13 THE WITNESS: That's my fine, Judge.

14 MR. PETRANO: Do you want me to bring it up to you?

15 THE WITNESS: That's fine. I don't need it to answer
16 this question.

17 MR. CORNEY: May I approach the witness, Your Honor?

18 THE WITNESS: Thank you. The videotape would have
19 only shown the front of the police car.

20 There was conversation between the officers in the
21 house with Mr. Bell. And you can hear the conversation in
22 the house when they were telling him to put his hands
23 behind his back and he refused to do so.

24 And then you could hear the scuffle and then you
25 could hear a lot more scuffling. And you could hear a lot

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1 of what was being said but the only -- if -- there was
2 video. If I'm remembering correctly, the only thing you
3 could see was the police car. And you couldn't really see
4 anybody -- you couldn't see the fight on the ground.

5 BY MR. CORNEY:

6 Q. Based on the audiotape, do you believe that you, or
7 the jury would be able to recognize the voice on the
8 audiotape as the Defendant or Mr. Bell? I'm sorry. The
9 Applicant?

10 A. Could they recognize his voice? I can't say that they
11 could have necessarily recognized a voice because, I mean,
12 I don't remember if we were going to -- if he was going to
13 testify or not.

14 But, would there have been testimony that that was him
15 from the other people who were present? The officers
16 would have said it was him. Yeah, they would have said it
17 was him.

18 Also the girlfriend and her daughter were present and
19 they would have said it was him scuffling in the house.
20 They wouldn't have -- from what both of them said, they
21 didn't see what actually happened outside by the police
22 car. They just heard the shot.

23 Q. But you made sure to note during the plea deal that
24 the kidnapping charge was not -- didn't involve any sexual
25 misconduct. There wouldn't be any registry involved;

WALLIS A. ALVES - CROSS

1 right?

2 A. That's right.

3 MR. CORNEY: Okay. I believe that's all I have, Your
4 Honor.

5 THE COURT: Anything, Ms. Hogg?

6 MS. HOGG: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. HOGG:

9 Q. Ms. Alves, I'm Dorothy Hogg. I represent Mr. Bell.
10 Did you ever discuss the video or audio with Mr. Bell?

11 A. Yes.

12 Q. Were you able to show it to him or let him listen to
13 it or did you just tell him what you had heard or saw?

14 A. I'll have to look. I don't remember exactly, but I
15 can tell you that my standard practice is to make sure
16 that the defendant -- yes. Wait a minute.

17 My standard practice is to make sure that the
18 defendants all see their video or hear their audios. If I
19 can't personally show it to them, then I send my
20 investigator or my paralegal to the jail. And I have a
21 note here on the file that on 3-15-2010, the video of the
22 arrest was shown to client. That note was written by my
23 investigator, Bennie Williams.

24 Q. Were you able to discuss with Mr. Bell his concerns
25 with the kidnapping charge, the ballistics test,

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1 fingerprint tests that he had requested but were not done?

2 A. Fingerprint test?

3 Q. I think -- well, Mr. Bell said earlier that he
4 requested a fingerprint test done and it was never done.

5 And so he had some issues with that and with the
6 kidnapping charges.

7 A. Mr. Bell always had issues with the kidnapping
8 charge. He always had issues with all of the charges. I
9 mean, he maintained that he didn't do them and he didn't
10 kidnap anybody and that he didn't shoot the gun.

11 I don't remember any requests for, for fingerprint
12 tests. If I remember about ballistics, I think he was
13 trying -- I think he wanted to argue that the bullet hole
14 in the police car was old, if I remember correctly.

15 Q. But there were never any tests done?

16 A. Not as far as I recall.

17 Q. Okay. Did you have any discussion with his
18 girlfriend?

19 A. Like I said, I believe my investigator talked to the
20 girlfriend -- if I can find his notes -- and her
21 daughter. But let me find the notes about that.

22 (Reviewing documents.)

23 Here. I have notes where I specifically talked to
24 Yolanda. I thought my investigator had talked to her as
25 well but on March 2nd of 2010, these notes are on this

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1 purple paper that I talked with Yolanda and she gave
2 details.

3 I know for a fact that I did talk to Brittany. I
4 thought my investigator talked to her also but I did talk
5 to the daughter. Her daughter had come to the house
6 after, after the -- yeah. On 3-2, I talked to Brittany as
7 well. And I can tell you what they said, but I did talk
8 to them.

9 Q. Okay. And on the morning of the trial, did you
10 communicate to Mr. Bell that the plea offer that was now
11 available did in fact include the kidnapping charge?

12 A. Yes. He knew it. I mean, we weren't happy about the
13 kidnapping charge. I had talked to him. Originally we
14 had talked about the -- we had been talking about the
15 other plea offer.

16 Q. Right.

17 A. And that plea offer was gone. And that morning when
18 they came back with that kidnapping charge and the other
19 stuff that they wanted him to plead to, he and I talked
20 about it. And he knew that the kidnapping was 85
21 percent.

22 We talked about the case many times and he always knew
23 kidnapping was an 85 percent, no-parole charge. And he
24 knew that the kidnapping was going to be offered because
25 we even talked about it. I was concerned because he was

1 adamant that he hadn't kidnapped anybody.

2 And the State wouldn't budge on it. I mean, I had
3 limited -- I had limited time because the Judge was having
4 the jury come in and he wasn't happy that we had waited
5 until the last minute.

6 And, they offered the deal. They said, take it or
7 leave it. He had very little time to talk to his mom, but
8 he did talk to his mother who was behind us. And he and I
9 discussed it sitting right there at the table and he
10 agreed to take it.

11 We weren't happy about it. I wasn't happy about it
12 either, but, I mean, that was the offer that was made and
13 he said he wanted to do it.

14 MS. HOGG: Beg Court's indulgence for one minute.
15 (Pause.) No further questions.

16 MR. CORNEY: That's all from the State and that's all
17 we have for this case.

18 THE COURT: Thank you, Ms. Alves. All right. Thank
19 you. I'll let you know.

20 MS. HOGG: Nothing further, Your Honor.

21 THE COURT: Well, one of the things we have not been
22 doing is getting a little statement from the lawyers and I
23 probably should have.

24 But, anything you want to tell me?

25 MS. HOGG: No, Your Honor.

1 MR. CORNEY: No, Your Honor. I think the testimony
2 of Ms. Alves and the record both show that he knew exactly
3 what he was pleading to when he went in there and still
4 entered a knowing and voluntary plea.

5 THE COURT: All right. Thank you all.

6 END OF CASE: 10:15 A.M.

7 * * * *

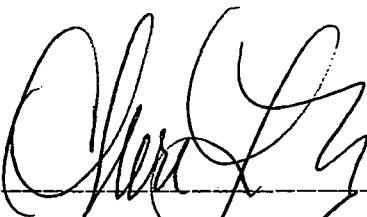
8 CERTIFICATE OF REPORTER

9 I, Cheri L. Young, Registered Professional Reporter,
10 and Official Court Reporter for the State of South
11 Carolina, do hereby certify that the foregoing transcript
12 of proceedings heard on Thursday, July 14, 2011, in Aiken,
13 South Carolina, was reported by me using machine shorthand
14 and realtime computer-aided translation and is a true,
15 accurate and complete transcript of the proceedings had
16 and evidence introduced in the hearing of the matter.

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

19 I have hereunto set my hand this Saturday, the 3rd day
20 of December, 2011.

21
22
23
24
25



Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS)
FOR THE SECOND JUDICIAL CIRCUIT)

2010-CP-02-1741

Wayne Bell, # 339896,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED 26 August
1:30 pm
Angela Williams
Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Elizabeth G. Givens, Clerk of Court of Common Pleas and District
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
26 day of August 2011
Elizabeth Givens
C.C.C.P. & G.A., Aiken County, S.C.
Deputy Clerk
Angela Williams
Deputy Clerk

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 28, 2010. The Respondent made its Return on December 16, 2010. An evidentiary hearing into the matter was convened on Thursday, July 14, 2011, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Dorothy Holley Hogg, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Wallis Alves, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Aiken County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Kidnapping (2010-GS-02-0177), Resisting Arrest (2010-GS-02-0178), Criminal Domestic Violence of a High and Aggravated

Nature ("CDVHAN") (2010-GS-02-0179), and Assault with Intent to Kill ("AWIK") (2010-GS-02-0180). He was represented by Wallis Alves, Esquire. On March 16, 2010, the Applicant entered an Alford plea before the Honorable Doyet A. Early, III. Pursuant to a negotiated sentence, he was sentenced to concurrent terms of ten (10) years on each charge.

A notice of appeal was filed. The appeal was dismissed by the South Carolina Court of Appeals on May 21, 2010, and the Remittitur was sent on June 8, 2010.

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

1. Ineffective assistance of counsel.
 - a. "...counsel was ineffective for advising him to plea to a deal that the state reneged on ... should have been allowed to withdraw his guilty plea because the applicant had detrimentally relied on the offer the state issue... offer which consisted of resisting arrest and CDVHAN (2) counts and the stat will dismiss the charge of (1) kidnapping, (2) malicious injury to personal property, and (3) unlawful possession of a firearm [with no recommendation as to sentence]..."
2. Involuntary guilty plea.
 - a. Applicant detrimentally relied on plea offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that 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. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally

attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

Applicant alleges counsel provided ineffective assistance where Applicant entered a plea different than what the State had originally offered. At the PCR hearing Applicant testified he had received a letter from the Public Defender's office dated March 4, 2010, in which a paralegal from counsel's office informed Applicant that the state had offered a plea deal in his case where he could plea to Resisting Arrest and two (2) counts of Criminal Domestic Violence of a High and Aggravated Nature. In return, the state would dismiss the kidnapping, malicious injury to personal property and unlawful possession of a firearm charges but would not recommend any particular sentence. Applicant then said he spoke to counsel on March 15, 2010, but at no time did counsel address the plea offer and whether Applicant wanted to accept it. Applicant went on to say that on the morning he was scheduled to go to court, he asked about taking the plea deal and entered his plea on that day not knowing he was pleading to kidnapping.

Counsel testified that she recalled receiving the plea offer from the solicitor's office in early March, but Applicant firmly rejected that plea offer until after the deadline to take it had passed. Counsel stated Applicant had maintained throughout their meetings that he was innocent and wanted to proceed to trial. For that reason, she was entirely prepared to go to trial. After jury selection, Applicant asked counsel to request a plea offer. Counsel testified at the PCR that the new plea offer given by the state was much worse than the original one offered earlier, but after discussing it thoroughly with Applicant and Applicant's mother, Applicant decided to take it. Counsel testified that Applicant certainly knew the plea was for kidnapping. Counsel finished her testimony by stating that Applicant knew full well that he was pleading to kidnapping and knew the original early March plea offer was revoked, as counsel discussed all of that with Applicant before he entered the plea.

Based on the facts and evidence presented at the hearing, this court finds Applicant failed to prove by a preponderance of the evidence that his trial counsel was ineffective either at the trial or during the plea. Further, this court finds counsel's testimony to be credible and Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including his constitutional rights, the facts giving rise to the charges, the potential sentences he was facing. The reason Applicant did not receive the plea offer originally extended to him was that he waited until into the trial to plead guilty, at which time the solicitor's offer had expired. Counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea, and therefore his guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

Failure to Investigate

Applicant also alleges counsel was ineffective because she failed to properly investigate his case. At the PCR hearing, Applicant alleged counsel did not properly investigate the facts leading to the charges he was facing, including the fact that the police officer involved had later been fired, the ballistics of the gun fired and fingerprint evidence. Counsel testified she met with Applicant numerous times to discuss his case during which they went over Applicant's version of the facts, the charges he was facing, potential sentences, and the state's evidence against him, including audio/video tapes of the incident. Counsel stated she hired an investigator to look into the case who spoke with the victim in this case and her daughter, as well as with the chief of police who had been present during Applicant's arrest. Counsel did not recall requesting any fingerprint analysis be done on the case, however.

Based on the testimony and evidence given at the PCR hearing, I find counsel conducted a sufficient investigation into Applicant's case to provide competent and informed representation. Further, as no evidence has been produced to show what effect, if any, further investigation would have produced, Applicant has failed to prove prejudice from any alleged ineffectiveness. "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." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

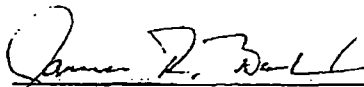
Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, 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 PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17 day of August, 2011.



James R. Barber, III
Presiding Judge
Second Judicial Circuit

Bluesia, South Carolina.

WITNESSES

Wagener Police Department

Daniel Mcelmurray

Law Enforcement Case #: 09-02475

SMR

ARREST WARRANT NUMBER

FILED February 4 2010
MD45143

Leif Richard
J.C.C.P. & G.S.
Sharon W. Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

Tom Bill

A. N. Pi
Foreperson of Grand Jury
Date: February 4, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0200179

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE
vs.

WAYNE K. BELL

CDR #: 2988

Indictment for

CRIMINAL DOMESTIC VIOLENCE OF A
HIGH AND AGGRAVATED NATURE

§ 16-25-0065

J. STROM THURMOND, SOLICITOR

RECEIVED JUL 2 8 2010
CLERK OF COURT
COURT HOUSE
COLUMBIA, SOUTH CAROLINA

JUL 2 8 2010

W. K. Bell
WAYNE K. BELL
DEFENDANT

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
CRIMINAL DOMESTIC VIOLENCE OF A HIGH
AND AGGRAVATED NATURE

§ 16-25-0065

At a Court of General Sessions, convened on February 8, 2010, the Grand Jurors of Aiken County present upon their oath:

That WAYNE K. BELL did in Aiken County, South Carolina on or about October 14, 2009, commit the crime of Criminal Domestic Violence of a High and Aggravated Nature against Yolanda Seawright, a household member, in that the defendant did commit an assault and battery which involved the use of a deadly weapon or resulted in serious bodily injury to the victim and/or Wayne K. Bell did commit an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death, to wit: Wayne K. Bell used his hands to strangle Yolanda Seawright causing visible injury to her neck. All in violation of §16-25-65 of the Code of Laws of South Carolina (1976), as amended.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
JUL 2 4 2010

JUL 2 4 2010

[Signature]

[Signature]

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

[Signature]
J. STROM THURMOND, SOLICITOR

WITNESSES

Wagener Police Department

Daniel McElmurray

Law Enforcement Case #: 09-02475

SMR

ARREST WARRANT NUMBER

MO45142 FILED February 4 2010

Liz Hodland
S.C.C.P. & G.S. (M.R.)
Sharon D. Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

True Bill

A. J. Jr.
Foreperson of Grand Jury
Date: February 4, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0200177

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE
vs.

WAYNE K. BELL

CDR #: 0085

Indictment for

KIDNAPPING

§ 16-03-0910

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
JUL 28 2010
CLERK OF COURT
JUL 28 2010
CLERK OF COURT

JUL 28 2010

Liz Hodland
S.C.C.P. & G.S. (M.R.)
Sharon D. Rosenkrantz
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on February 8, 2010, the Grand Jurors of Aiken County present upon their oath:

That WAYNE K. BELL did in Aiken County, South Carolina on or about October 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Yolanda Seawright without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, _____, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing is a true and correct copy of the original document which has been filed in my office this

JUL 28 2010

Clerk of Court of Common Pleas and General Sessions
Aiken County, South Carolina

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Wagener Police Department

Daniel McElmurray

Law Enforcement Case #: 09-02475

SMR

ARREST WARRANT NUMBER

M045144

FILED February 4 2010

L. Richard
S.C.C.P.&G.S.
Sharon D. Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

True Bill

L. H. R.
Foreperson of Grand Jury
Date: February 4, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0200110

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE
vs.

WAYNE K. BELL

CDR #: 0256

Indictment for

RESISTING ARREST

§ 16-09-0320(B)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
CLERK OF COURT
COURT OF GENERAL SESSIONS
COUNTY OF AIKEN
JUL 2 4 2010
JUL 2 4 2010
JUL 2 4 2010

JUL 2 4 2010

[Signature]
Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
RESISTING ARREST

§ 16-09-0320(B)

At a Court of General Sessions, convened on February 8, 2010, the Grand Jurors of Aiken County present upon their oath:

That **WAYNE K. BELL** did in Aiken County, South Carolina on or about October 15, 2009, knowingly and wilfully assault, beat or wound Officer McElmurray, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when said defendant knew or reasonably should have known that Officer McElmurray is a law enforcement officer. All in violation of §16-9-320(B) of the Code of Laws of South Carolina (1976), as amended.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, the Clerk of the Court of General Sessions and Grand Jurors of Aiken County, South Carolina do hereby certify to the Clerk of the Court of General Sessions a true and correct copy of the original indictment which has been filed in my office this

JUL 28 2010

[Signature]
Clerk of Court
[Signature]

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

[Signature]
J. STROM THURMOND, SOLICITOR

WITNESSES

Wagener Police Department

Daniel Mcelmurray

Law Enforcement Case #: 09-02475

SMR

ARREST WARRANT NUMBER

FILED February 4 2010

M045145

L. J. Holland
S.C.C.P.&G.S.
Shannon Dot Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

True Bill

Ally N. R.
Foreperson of Grand Jury
Date: February 4, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0200180

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE

vs.

WAYNE K. BELL

CDR #: 0768

Indictment for

ASSAULT WITH INTENT TO KILL

§ Common Law

J. STROM THURMOND, SOLICITOR

FILED IN THE CLERK'S OFFICE OF THE COURT OF GENERAL SESSIONS, COUNTY OF AIKEN, SOUTH CAROLINA
JUL 28 2010
[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

INDICTMENT FOR
ASSAULT WITH INTENT TO KILL
§ Common Law

At a Court of General Sessions, convened on February 8, 2010, the Grand Jurors of Aiken County present upon their oath:

That **WAYNE K. BELL** did in Aiken County, South Carolina on or about October 15, 2009, with malice aforethought, knowingly and willfully attempt to commit a violent injury to the person of another, Officer Daniel McElmurray, accompanied by the present ability to complete the act, in that the defendant, Wayne K. Bell did take Officer McElmurray's firearm and fire it while the said Officer McElmurray was attempting to subdue Wayne K. Bell, in violation of the Common Law of the State of South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
The Grand Jurors of the Court of General Sessions and Grand Jurors for Aiken County, South Carolina do hereby certify that this indictment contains a true and correct copy of the laws of the State of South Carolina which have been filed in my office this

JUL 28 2009

[Handwritten signature]
J.P. AG. Clerk of Court
[Handwritten signature]

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

[Handwritten signature]
J. STROM THURMOND, SOLICITOR

