

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Orangeburg County

Honorable Robin B. Stilwell, Circuit Court Judge
—————

RECEIVED

SEP 16 2019

S.C. SUPREME COURT

ANTONIO DESMOND FAIREY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000138

—————
APPENDIX
—————

TAYLOR D GILLIAM
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2016-GS-38-0517; 1073; 1074

State of South Carolina,

Plaintiff,

v.

Antonio Desmond Fairey,

Defendant.

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) Transcript of Record
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December 13, 2016
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Sarah Ford, Esquire
Attorney for the State

Jim Adams, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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I N D E X

Defense motion to relieve counsel.

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EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

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1 THE COURT: What else we got?

2 MS. FORD: We have a defense motion, Your Honor.

3 THE COURT: Okay. Let me hear it.

4 (Off record bench conference with
5 Counsel and the Court.)

6 THE COURT: Is that this gentleman over here?

7 MR. ADAMS: Yes, sir.

8 MS. FORD: Your Honor, if I could just place some
9 facts on the record. This is Antonio Fairey. He is charged
10 with domestic violence second, kidnapping and attempted
11 murder. I can go into the facts if Your Honor would like,
12 but the State has made an offer to Mr. Fairey. That would
13 be a twenty year sentence suspended to a range of ten to
14 fifteen years, with the understanding that the Defense was
15 obviously going to be asking for ten years of that range.
16 And the State would be obviously advocating for, you know,
17 something in that range, Your Honor.

18 THE COURT: Okay. What's his last name?

19 MS. FORD: Fairey, F-A-I-R-E-Y.

20 THE COURT: Okay. All right. And Mr. Adams, you
21 represent Mr. Fairey?

22 MR. ADAMS: Yes, sir.

23 THE COURT: Okay. And Mr. Fairey has filed a
24 motion for you to be relieved as counsel?

25 MR. ADAMS: Yes, sir.

1 THE COURT: Okay.

2 MS. FORD: Yeah. Also, Your Honor, it's being
3 placed on the trial docket if he does not plead during this
4 term.

5 THE COURT: Okay. Does not plead during this
6 term?

7 MS. FORD: Yes, sir.

8 THE COURT: Okay. And Mr. Adams, I'm assuming you
9 have passed this offer onto Mr. Fairey?

10 MR. ADAMS: Yes, sir.

11 THE COURT: Okay. All right.

12 Mr. Fairey, before we get to your motion I just want to
13 make sure that I understand where we are as far as the State
14 making an offer to you, okay?

15 DEFENDANT FAIREY: Yes, sir.

16 THE COURT: You are charged with domestic violence
17 second?

18 DEFENDANT FAIREY: Yes, sir.

19 THE COURT: What does that carry?

20 MS. FORD: Three years, Your Honor.

21 MR. ADAMS: Three.

22 THE COURT: It's up to three. The kidnapping is
23 thirty?

24 MS. FORD: Yes, sir.

25 THE COURT: And the attempted murder is twenty or

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1 thirty?

2 MS. FORD: Thirty, Your Honor.

3 THE COURT: Thirty, okay.

4 MS. FORD: He's looking at a total of sixty-three
5 years, Your Honor.

6 THE COURT: Okay.

7 So, Mr. Fairey, you understand -- now, if you went to
8 trial on this, you're going to trial on the attempted
9 murder, the kidnapping and domestic violence?

10 MS. FORD: Your Honor, the first trial would be on
11 the kidnapping and attempted murder. So you're looking at
12 sixty years there.

13 THE COURT: Oh, there are two separate events?

14 MS. FORD: Two separate events. That's right,
15 Your Honor.

16 THE COURT: Oh, I'm sorry. Okay. All right. But
17 the plea offer is to wrap everything up?

18 MS. FORD: Yes, sir. Absolutely.

19 THE COURT: Okay. Mr. Fairey, you understand that
20 -- as I understand it you have a kidnapping charge, an
21 attempted murder charge arising out of one event; is that
22 correct?

23 DEFENDANT FAIREY: Yes, sir.

24 THE COURT: And then you have a domestic violence
25 second arising out of another event?

1 DEFENDANT FAIREY: Yes, sir.

2 THE COURT: Okay. And you're facing a long time,
3 sixty-three years --

4 DEFENDANT FAIREY: But, see, I came yesterday to
5 plead to it.

6 THE COURT: Okay.

7 DEFENDANT FAIREY: But they came with something
8 totally different.

9 THE COURT: Okay. What did you think your plea
10 was going to be?

11 DEFENDANT FAIREY: What he told me it was supposed
12 to be ten.

13 THE COURT: Ten?

14 DEFENDANT FAIREY: Yes, sir.

15 THE COURT: Okay. Okay. Now, what the State is
16 telling me, and I'll ask Mr. Adams about this -- but what
17 they're telling me is they have offered a sentence of twenty
18 years suspended to an active sentence of between ten to
19 fifteen years. And then they will get to argue to give you
20 fifteen years and he'll get to argue for me or another Judge
21 to give you ten years? Do you understand that?

22 DEFENDANT FAIREY: Yes, sir.

23 THE COURT: Okay. That's what they're telling me,
24 okay?

25 DEFENDANT FAIREY: I mean, I came yesterday to

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plead.

THE COURT: Okay. And I understand what you're telling me is if it was a ten-year sentence you'd plead to it right now?

DEFENDANT FAIREY: But I told him that. I told him that myself.

THE COURT: Okay. All right. But as long as there is the range, you don't want to plead to the range?

DEFENDANT FAIREY: I mean, from my understanding from --

THE COURT: Okay.

DEFENDANT FAIREY: -- and what I was told it was supposed to have been a suspended sentence.

THE COURT: Okay. Okay. Well, you understand that's not what I'm being told right now?

DEFENDANT FAIREY: That's what I mean. That's what I been told and I told my family that. Yes, sir, I mean, since last week or week before last I told them that.

THE COURT: Okay. All right. But that's where we are right now.

DEFENDANT FAIREY: That's it. If it's on the original point I'd take it.

THE COURT: Okay. But you understand that's not what they're telling me.

DEFENDANT FAIREY: I understand. That's right,

1 but coming from him he told me --

2 THE COURT: Okay. And Mr. Adams, why would he
3 think that?

4 MR. ADAMS: Well, he would think that because I
5 told him that.

6 THE COURT: Okay.

7 MR. ADAMS: And the reason I told him that is
8 because that's what I understood it to be.

9 THE COURT: Okay.

10 MR. ADAMS: And then as it came down to it, this
11 range occurred and the ten to fifteen, whereas I thought it
12 was fifteen suspended to ten and that's what he would plead
13 to. And that's what he agreed to plead to and that's what I
14 was talking about with Ms. Ford.

15 THE COURT: Okay.

16 MR. ADAMS: And so that's where we are.

17 DEFENDANT FAIREY: I would -- I mean, that's what
18 I was going to sign off and I told my family and everybody
19 that.

20 THE COURT: Okay. And I'm sorry you told your
21 family and all of that, okay? And I'm sorry that whatever
22 misunderstanding there was between Ms. Ford and Mr. Adams
23 about the sentence, but that's where we are. We've got a
24 range of between ten to fifteen. And it's going to be up to
25 him to argue for the ten and up to Ms. Ford to argue for the

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1 fifteen; okay?

2 DEFENDANT FAIREY: Yes, sir.

3 THE COURT: Now, I don't have any control over
4 that, okay? And neither does Mr. Adams, actually, because
5 the Solicitor's office is the one that decides -- I mean,
6 they make a plea offer. They look at the facts and they say
7 this is what we're willing to do, okay? And then it's up to
8 you, knowing what your situation is, to make an intelligent
9 decision about, you know, what you want to do, okay?

10 DEFENDANT FAIREY: Yes, sir.

11 THE COURT: Now, it's my understanding that if you
12 don't want to plead to that range then she -- Ms. Ford's
13 going to bring this case to trial shortly, okay?

14 DEFENDANT FAIREY: I understand.

15 THE COURT: And then you just have to see what the
16 jury decides, okay?

17 DEFENDANT FAIREY: (Nods in the affirmative.)

18 THE COURT: Now, did you make a motion to have Mr.
19 Adams relieved?

20 DEFENDANT FAIREY: Yes, sir.

21 THE COURT: Okay. And the reason is because --

22 DEFENDANT FAIREY: With that, they was trying to
23 get me -- there was another charge and I was trying to
24 telling him that it wasn't my charge. I got a CDV high and
25 aggravated nature charge that I know I didn't do.

1 THE COURT: Okay.

2 DEFENDANT FAIREY: And they trying to get me to
3 sign off on that, too.

4 MR. ADAMS: He's correct. There was a domestic
5 violence high and aggravated nature charge sentencing sheet
6 that was given to me that was an active -- a complete
7 mistake.

8 THE COURT: Okay.

9 MR. ADAMS: And unintentionally given to me. And
10 turns out that that was a different person with a very, very
11 similar name.

12 THE COURT: Okay.

13 MR. ADAMS: And --

14 MS. FORD: It was the exact same name, Your Honor.

15 MR. ADAMS: Yeah, yeah.

16 DEFENDANT FAIREY: I mean, because --

17 MS. FORD: But obviously when Mr. Adams and I
18 spoke yesterday about moving forward yesterday, looking at
19 everything it was not the same. It was purely a mistake,
20 Your Honor.

21 THE COURT: Okay.

22 MS. FORD: So he's only charged with CDV -- or
23 domestic violence second, kidnapping and attempted murder.

24 THE COURT: Okay.

25 MS. FORD: And I can shed a little bit of light.

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1 You know, Mr. Adams has told me, you know -- this has been a
2 long negotiated road.

3 THE COURT: Oh, yeah. Yeah.

4 MS. FORD: You know, his client wanted to do six
5 years, seven years, and -- and I certainly told, you know,
6 Mr. Adams from the get-go, you know, I was looking at a
7 range of fifteen to twenty, initially when this all started.
8 Then at some point Mr. Adams came to me and asked if I would
9 look at doing even less than that. He indicated that maybe,
10 you know, ten years he thought that his client would be
11 acceptable, accept something of ten years. I told him I
12 didn't feel comfortable certainly with the facts of this
13 case --

14 THE COURT: Uh-huh. (Affirmative response.)

15 MS. FORD: -- recommending something of ten years.
16 But I certainly -- I understand Mr. Adams' position and
17 would like to give him the opportunity to argue for that if
18 that's what his client wants him to do. But I also felt
19 that the State should have the opportunity to argue what we
20 felt was a more appropriate sentence, which is why I
21 discussed with Mr. Adams the range of ten to fifteen years.
22 So Mr. Fairey could certainly walk out of here with a
23 sentence of ten years. But the State is not making a
24 recommendation of a ten-year sentence in an attempted
25 murder, kidnapping scenario.

1 THE COURT: Right. Right.

2 MS. FORD: No, sir.

3 THE COURT: Okay. And Mr. Fairey, you understand
4 what's been going on today?

5 DEFENDANT FAIREY: Yes, sir.

6 THE COURT: I realize it's been confusing and like
7 that, but you understand where we are now?

8 DEFENDANT FAIREY: Yes, sir.

9 THE COURT: Okay. Now, let me address -- first of
10 all, let me address the -- your motion to not have Mr. Adams
11 represent you, okay? When you are charged with a violation
12 of criminal law and you cannot afford an attorney, an
13 attorney will be appointed represent you, okay?

14 DEFENDANT FAIREY: Yes, sir.

15 THE COURT: And so in this case you could not
16 afford an attorney and Mr. Adams is appointed to represent
17 you?

18 DEFENDANT FAIREY: Yes, sir.

19 THE COURT: Okay. Mr. Adams has been appearing in
20 front of me for a while, not as long as some people like Ms.
21 Hines, you know, but has been appearing in front of me for a
22 long time. Our public defender's office does an excellent
23 job here in Orangeburg, okay? And if you do not want him to
24 represent you, your choice is to hire a private attorney.
25 That's what's up to you to do. But once he gets to be

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1 appointed, he is your attorney unless you hire a private
2 attorney, okay?

3 Now, I'm sure that if you -- because I've seen the
4 public defenders do this before. But if you want somebody
5 to come in with a conversation and talk with you about this
6 situation, you know, like Ms. Hines or Mr. Stevens or Mr.
7 Mallard or something like that, I'm sure they'll be glad to
8 come in and join in the conversation, okay? But it appears
9 to me that there was some mis-communication. And the only
10 thing I want to try and clear up now is to let you know
11 where you are in your plea negotiation situation, okay? And
12 so that you can make an intelligent decision about what you
13 want to do. But I'm not going to relieve Mr. Adams, okay?
14 Okay? Because I don't think he was doing anything deceitful
15 or anything like that. I think there was just a mis-
16 communication between him and the Solicitor's office. And
17 when you have as many cases -- I mean, you've been sitting
18 out here this afternoon, haven't you?

19 DEFENDANT FAIREY: No --

20 THE COURT: Yeah. You've been sitting right over
21 there. You've heard all the case that have been going on?

22 DEFENDANT FAIREY: No, I just came out here.

23 THE COURT: Oh, you just came out?

24 DEFENDANT FAIREY: Yes, sir.

25 THE COURT: Okay. Well, just to let you know,

1 we've been going through cases one right after another all
2 day. And so when you have this many cases, occasionally
3 there's going to be some mis-communication. But where we
4 are now as far as your case is concerned, the state is
5 recommending a twenty-year sentence, suspended to an active
6 sentence of either -- from between ten and fifteen years,
7 okay?

8 DEFENDANT FAIREY: Yes, sir.

9 THE COURT: And then there would be some probation
10 after that, okay?

11 DEFENDANT FAIREY: (Nods in the affirmative.)

12 THE COURT: And Mr. Adams or you could both speak
13 on your own behalf about wanting to get a ten-year sentence,
14 okay? And Ms. Ford and the victim can speak on their behalf
15 about why you should a fifteen year sentence, okay?

16 DEFENDANT FAIREY: (Nods in the affirmative.)

17 THE COURT: And then it's going to be up to me or
18 some other judge to decide whether you're going to get ten,
19 eleven, twelve, thirteen, or fourteen, or fifteen years
20 based on your plea hearing whenever you plead. Now, if you
21 don't want to do that, okay, then Ms. Ford's going to
22 schedule this for trial.

23 DEFENDANT FAIREY: Okay.

24 THE COURT: Okay?

25 DEFENDANT FAIREY: Yes, sir.

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1 THE COURT: Now, I know you need some time to
2 think about it.

3 DEFENDANT FAIREY: I mean --

4 THE COURT: And I don't want you to say anything
5 right here.

6 DEFENDANT FAIREY: No, I'm not.

7 THE COURT: But I want you to think about it,
8 okay?

9 DEFENDANT FAIREY: It's that, I know the time today
10 -- I mean --

11 THE COURT: You don't have to do it today, okay?

12 MS. FORD: We can bring him back in the morning,
13 Your Honor.

14 DEFENDANT FAIREY: I mean, I could come in the
15 morning --

16 THE COURT: That would be fine. You think on it
17 tonight.

18 DEFENDANT FAIREY: And I discuss stuff, you know,
19 with my family.

20 THE COURT: Well, I want you to do that. Talk it
21 over with your family.

22 DEFENDANT FAIREY: I can come tomorrow, sir.

23 THE COURT: Okay.

24 DEFENDANT FAIREY: I just wanted to see --

25 THE COURT: Okay. Talk it over with your family.

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1 If you want to talk with Mr. Adams, you can talk to him some
2 more. Mr. Adams, if you want to bring somebody else in
3 there.

4 DEFENDANT FAIREY: No, let's let him.

5 THE COURT: Okay. That'll be fine. Okay. We'll
6 see you tomorrow morning or even Thursday morning. I'll
7 still be here, okay?

8 DEFENDANT FAIREY: Yes, sir.

9 THE COURT: Okay.

10 MR. ADAMS: Thank you, Your Honor.

11 THE COURT: All right.

12 MS. FORD: Thank you, Your Honor.

13 THE COURT: Thank you. All right.

14 (This proceeding was concluded.)

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I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST 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 PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 13 DAY OF DECEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

May 17, 2017

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C-E-R-T-I-F-I-C-A-T-E

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Hilda M. Jordan, CVR-M

May 17, 2017

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EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

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1 MS. FORD: Antonio Fairey.

2 THE COURT: Okay. This is the last one.

3 MS. FORD: We've got several more, Your Honor.

4 But whatever.

5 THE COURT: Well, guess what? We've got this

6 afternoon.

7 MS. FORD: Yes, sir.

8 THE COURT: Okay. Good morning.

9 MR. FAIREY: Good morning, sir.

10 THE COURT: And I'm sorry. I know I met with you
11 yesterday. And what's the name again?

12 MS. FORD: Antonio Fairey, Your Honor.

13 THE COURT: Okay. Hold on one second, Mr. Fairey.

14 All right. Okay, Ms. Ford.

15 MS. FORD: Your Honor, this is Antonio Fairey.

16 He's here pleading guilty to three counts, the first being
17 domestic violence second on waived indictment 2016-GS-38-
18 0517; kidnapping, 2016-GS-38-1073; and, attempted murder
19 2016-GS-38-1074. The State's making a recommendation of a
20 twenty-year sentence suspended to a range of ten to fifteen
21 years and probation.

22 THE COURT: Okay.

23 (WHEREUPON, Antonio Fairey was
24 sworn to tell the truth.)

25 THE COURT: All right. And Mr. Adams, you're

1 still representing Mr. Fairey?

2 MR. ADAMS: Yes, sir.

3 THE COURT: And I know when you came before me
4 yesterday, we had our discussion about this recommended
5 sentence?

6 MR. ADAMS: That's correct, Your Honor.

7 THE COURT: And he wanted -- because of some mis-
8 communications that had been told to him, he wanted to spend
9 the night, think about it, and talk to his family; is that
10 correct?

11 MR. ADAMS: Yes, sir. That's correct, Your Honor.

12 THE COURT: All right. And as far as you know, he
13 has done that?

14 MR. ADAMS: Yes, sir.

15 THE COURT: Okay. And so he's ready to go forward
16 with the plea?

17 MR. ADAMS: Yes, sir.

18 THE COURT: He understands that the sentence he's
19 taking today could be anywhere from ten to fifteen years?

20 MR. ADAMS: That's correct, Your Honor.

21 THE COURT: Okay. Okay. All right. Now, let me
22 go through the regular questions. I know you represent him.
23 You have explained to him or reviewed with him the evidence
24 the State has against him?

25 MR. ADAMS: Yes, sir. I have.

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1 THE COURT: You have gone over with him the fact
2 that he's facing up to thirty years on kidnapping and
3 attempted murder charge and up to three years on the
4 domestic violence second charge?

5 MR. ADAMS: Yes, sir, I have. And also with the
6 kidnapping and the attempted murder, I've gone over the fact
7 that they're both violent and a most serious strike, Your
8 Honor.

9 THE COURT: Okay. And he understands if he's ever
10 convicted for another most serious offense, he's facing a
11 life without the possibility of parole?

12 MR. ADAMS: Yes, sir.

13 THE COURT: Or a serious offense?

14 MR. ADAMS: That's correct, Your Honor.

15 THE COURT: Okay. And you've explained to him his
16 constitutional rights?

17 MR. ADAMS: Yes, sir.

18 THE COURT: And he has told you he wants to go
19 forward with the plea?

20 MR. ADAMS: Yes, sir.

21 THE COURT: And you believe it's in his best
22 interest to do so?

23 MR. ADAMS: I do, Your Honor.

24 THE COURT: Okay. All right.

25 And, Mr. Fairey good to see you again today, okay?

1 DEFENDANT FAIREY: Yes, sir.

2 THE COURT: Mr. Fairey, when we left yesterday
3 after we discussed the back and forth about the plea
4 negotiations, you needed -- you talked with your family
5 before you went forward with your plea; is that correct?

6 DEFENDANT FAIREY: Yes, sir.

7 THE COURT: Okay. Did you have an opportunity to
8 talk with your family?

9 DEFENDANT FAIREY: We been talking about it and we
10 said last, we said let's go ahead and just get it over with,
11 so.

12 THE COURT: Okay. Well, I understand getting it
13 over with. But I want to make sure you have talked with
14 them?

15 DEFENDANT FAIREY: Yes, sir.

16 THE COURT: And you understand that the
17 recommended sentence is twenty years, suspended to an active
18 sentence of between ten to fifteen years.

19 DEFENDANT FAIREY: Yes, sir.

20 THE COURT: You understand that?

21 DEFENDANT FAIREY: Yes, sir.

22 THE COURT: Okay. And you understand that the
23 person that's going to decide whether it's ten, eleven,
24 twelve, thirteen, fourteen, or fifteen years is me?

25 DEFENDANT FAIREY: Yes, sir.

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1 THE COURT: Okay. All right. Now, has anybody
2 forced you to take this plea?

3 DEFENDANT FAIREY: No, sir.

4 THE COURT: Has anybody threatened you in any way
5 to get you to take this plea?

6 DEFENDANT FAIREY: No, sir.

7 THE COURT: So you are doing this freely and
8 voluntarily?

9 DEFENDANT FAIREY: Yes, sir.

10 THE COURT: You understand what you're doing here?

11 DEFENDANT FAIREY: Yes, sir.

12 THE COURT: You understand why you're here?

13 DEFENDANT FAIREY: Yes, sir.

14 THE COURT: And you believe it's in your best
15 interest to go forward with the plea?

16 DEFENDANT FAIREY: Yes, sir.

17 THE COURT: Okay. Now, I've got to go back and
18 ask some follow-up questions just to make sure I've go
19 everything on the record, okay?

20 DEFENDANT FAIREY: Okay.

21 THE COURT: Now, Mr. Fairey, before you were
22 arrested were you working somewhere?

23 DEFENDANT FAIREY: Yes, sir.

24 THE COURT: Where?

25 DEFENDANT FAIREY: Prime Material Recovery.

1 THE COURT: And how long did you work there?

2 DEFENDANT FAIREY: A year.

3 THE COURT: And what were you doing?

4 DEFENDANT FAIREY: I was driving a forklift. It
5 was a recycling place.

6 THE COURT: Okay. Where did you work before then?

7 DEFENDANT FAIREY: Husqvarna.

8 THE COURT: Okay. And Husqvarna, you were working

9 --

10 DEFENDANT FAIREY: Like the line and on paint
11 chain and all like that.

12 THE COURT: Okay. All right. How far did you go
13 in school?

14 DEFENDANT FAIREY: I got a GED.

15 THE COURT: You've got your GED?

16 DEFENDANT FAIREY: Yes, sir.

17 THE COURT: What's the last grade that you took?

18 DEFENDANT FAIREY: Eleventh.

19 THE COURT: And where were you going then?

20 DEFENDANT FAIREY: Orangeburg Wilkerson.

21 THE COURT: And why did you stop going there?

22 DEFENDANT FAIREY: Just got with the wrong crowd,
23 I'll say.

24 THE COURT: Just messing with the wrong crowd?

25 DEFENDANT FAIREY: Yes, sir.

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9

- 1 THE COURT: Your mama told you that as well?
- 2 DEFENDANT FAIREY: Yes, sir.
- 3 THE COURT: You need to listen to her.
- 4 DEFENDANT FAIREY: Huh-uh. (Negative response.)
- 5 THE COURT: Okay. All right. Have you ever been
6 treated -- you'd listen to her now wouldn't you?
- 7 DEFENDANT FAIREY: Yes, sir, for sure.
- 8 THE COURT: Have you ever been treated for any
9 mental health issues?
- 10 DEFENDANT FAIREY: No, sir.
- 11 THE COURT: Have you ever been treated for any
12 drug or alcohol abuse and offense?
- 13 DEFENDANT FAIREY: No, sir.
- 14 THE COURT: Are you taking any prescription
15 medication now?
- 16 DEFENDANT FAIREY: No, sir.
- 17 THE COURT: Are you under the influence of any
18 alcohol or illegal drugs?
- 19 DEFENDANT FAIREY: No, sir.
- 20 THE COURT: And so you are thinking clearly today?
- 21 DEFENDANT FAIREY: Yes, sir.
- 22 THE COURT: You know what you're doing here?
- 23 DEFENDANT FAIREY: Yes, sir.
- 24 THE COURT: Okay. You know why you're here?
- 25 DEFENDANT FAIREY: Yes, sir.

1 THE COURT: And Mr. Adams has reviewed with you
2 all the evidence the State has against you on all three of
3 these charges?

4 DEFENDANT FAIREY: Yes, sir.

5 THE COURT: And he's explained to you how the law
6 applies to each one of these charges?

7 DEFENDANT FAIREY: Yes, sir.

8 THE COURT: He has explained your constitutional
9 rights to you?

10 DEFENDANT FAIREY: Yes, sir.

11 THE COURT: And you've understood everything he's
12 told you?

13 DEFENDANT FAIREY: Yes, sir.

14 THE COURT: Has he answered all your questions?

15 DEFENDANT FAIREY: Yes, sir.

16 THE COURT: Are you satisfied with his services as
17 your attorney?

18 DEFENDANT FAIREY: Yes, sir.

19 THE COURT: Do you need any more time to talk with
20 him?

21 DEFENDANT FAIREY: No, sir.

22 THE COURT: Okay. Do you want a jury trial on any
23 of these charges?

24 DEFENDANT FAIREY: No, sir.

25 THE COURT: Okay. You want to go forward with

State v Fairey

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1 your plea today?

2 DEFENDANT FAIREY: Yes, sir.

3 THE COURT: You understand if you plead guilty to
4 these charges, there are going to be three convictions on
5 your record?

6 DEFENDANT FAIREY: Yes, sir.

7 THE COURT: You understand two of them are violent
8 and most serious offenses?

9 DEFENDANT FAIREY: Yes, sir.

10 THE COURT: You understand how strikes effect you
11 and can effect you in the future?

12 DEFENDANT FAIREY: Yes, sir.

13 THE COURT: You understand if you plead guilty,
14 you give up your right to remain silent?

15 DEFENDANT FAIREY: Yes, sir.

16 THE COURT: You give up your right to present any
17 defenses you may have. You give up your right to cross-
18 examine any witnesses the State may have.

19 DEFENDANT FAIREY: Yes, sir.

20 THE COURT: And you give up the requirement the
21 State must prove you are guilty beyond a reasonable doubt in
22 a trial?

23 DEFENDANT FAIREY: Yes, sir.

24 THE COURT: And you wish to give up those rights?

25 DEFENDANT FAIREY: Yes, sir.

1 THE COURT: Okay. And you're ready to go with the
2 plea?

3 DEFENDANT FAIREY: Yes, sir.

4 THE COURT: Ms. Ford?

5 MS. FORD: Thank you, Your Honor. The first
6 incident occurred on March the 6th, 2016 at [REDACTED]
7 [REDACTED] here in the City of Orangeburg. On that date this
8 Defendant did get into a physical altercation with the
9 victim, Ms. Shanika Moorer (sp) by striking her with a
10 closed fist in her face causing her lip to split. Your
11 Honor, this did occur in the presence of two minor children,
12 ages ten and twelve. And the Defendant and the victim lived
13 together for several months, Your Honor.

14 The second incident occurred also with the victim, Ms.
15 Shanika Moorer. And it occurred on June 9th, 2017 at [REDACTED]
16 [REDACTED] here in Orangeburg, Your Honor. On that date
17 Officers with the Orangeburg County Sheriff's Office were
18 dispatched to the Regional Medical Center to meet with Ms.
19 Moorer. She had been brutally beaten by this Defendant,
20 Your Honor, Antonio Fairey, basically over an eight-hour
21 period. The victim stated that she'd been outside talking
22 to a neighbor. When she came inside the home, this
23 Defendant asked for her phone, saw a text message and
24 accused her of cheating. At that point, he forced her into
25 the bedroom. There he tired her arms and legs with shoe

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1 laces and an apron, Your Honor, and began beating her with
2 his hands all about her body, her face. Your Honor, I have
3 some pictures that have been provided to the Defense, if I
4 might present those.

5 THE COURT: Okay.

6 MS. FORD: Ultimately, Your Honor, this beating
7 lasted for hours. He kicked the victim, beat her with his
8 fists. He actually had a knife and cut the victim, actually
9 severed tendons in her hand, Your Honor. Obviously
10 throughout the night threatening her that he was going to
11 kill her. Ultimately, the next morning, the Defendant's
12 brother did come to the house to take him to work. The
13 victim, at that point was able to escape and go to her
14 mother's house just down the road. And she was obviously
15 brought to the Regional Medical Center. She did suffer a
16 number of injuries, Your Honor. As I said she had tendons
17 cut in her hand, a broken nose, numerous lacerations,
18 bruising and the like, Your Honor. Ultimately, law
19 enforcement met with this Defendant. He indicated he didn't
20 wish to speak with them, but ultimately was charged with
21 attempted murder and kidnapping, Your Honor.

22 I have met with the victim and I had contact with her.
23 She is obviously greatly fearful of this Defendant, did not
24 wish to be here but obviously is very interested in the
25 case. Certainly wanted to be here but didn't think she'd be

1 strong enough to be here, Your Honor, for this proceeding.

2 And that would be the factual basis.

3 THE COURT: She is requesting no contact?

4 MS. FORD: Absolutely, Your Honor.

5 THE COURT: Okay. All right. Mr. Fairey, you've
6 heard what the Solicitor told me about the evidence that the
7 State would intend to present at trial concerning these
8 three incidents.

9 DEFENDANT FAIREY: Yes, sir.

10 THE COURT: And you've heard that in addition
11 they're requesting that there be a no contact provision in
12 this order between you and Ms. Moorner; do you understand
13 that?

14 DEFENDANT FAIREY: Yes, sir.

15 THE COURT: And you understand no contact means
16 you can't -- when you get out of jail, you can't contact
17 her, text her or call her or anything like that?

18 DEFENDANT FAIREY: Yes, sir.

19 THE COURT: Do you have a problem with that?

20 DEFENDANT FAIREY: I don't have any problem with
21 that.

22 THE COURT: Okay. I just want to make sure.

23 DEFENDANT FAIREY: okay.

24 MS. FORD: Your Honor, if I may, he has sent
25 letters to the victim. I would ask that while he's

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1 incarcerated there be zero contact, not just after he's
2 released.

3 THE COURT: Well, I didn't mean to imply that you
4 could write letters.

5 DEFENDANT FAIREY: I knew I can't.

6 THE COURT: Huh?

7 DEFENDANT FAIREY: I mean, that was when I first
8 got --

9 THE COURT: Okay. But I want to make sure.

10 DEFENDANT FAIREY: Okay.

11 THE COURT: While you're incarcerated you can't do
12 that, okay?

13 DEFENDANT FAIREY: Okay.

14 THE COURT: In other words, from today forward, no
15 contact.

16 DEFENDANT FAIREY: All right.

17 THE COURT: All right. Now, Mr. Fairey, you
18 understand that the domestic violence second degree concerns
19 the physical injury that you did to Ms. Moorer back on March
20 6, 2016?

21 DEFENDANT FAIREY: Yes, sir.

22 THE COURT: You understand that?

23 DEFENDANT FAIREY: Yes, sir.

24 THE COURT: You understand if you plead guilty to
25 domestic violence second, I'm also going to be signing an

1 order where you're going to be prohibited from owning
2 firearms or ammo. Do you understand that?

3 DEFENDANT FAIREY: Yes, sir.

4 THE COURT: All right. How do you plead to this
5 charge of domestic violence second degree?

6 DEFENDANT FAIREY: Guilty.

7 THE COURT: All right. Now, none of these
8 indictments have been presented to the grand jury, but you
9 waived presentment; is that correct?

10 DEFENDANT FAIREY: Yes, sir.

11 THE COURT: Okay. Mr. Fairey, the next indictment
12 I have is 2016-1073, this is the kidnapping charge. And it
13 arises from the events that occurred on June 9, 2016 with
14 Ms. Moorer. And it involves the fact that she was confined
15 or tied up by you. Do you understand that?

16 DEFENDANT FAIREY: I understand.

17 THE COURT: Okay. How do you plead to this charge
18 of kidnapping?

19 DEFENDANT FAIREY: Guilty.

20 THE COURT: All right. The indictment ending in
21 1074 involves the same date -- was it the same? Should be,
22 right?

23 MS. FORD: Yes, sir.

24 THE COURT: And it is the charge of attempted
25 murder of Ms. Moorer, beating her and cutting her and like

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1 that. Do you understand that?

2 DEFENDANT FAIREY: Yes, sir.

3 THE COURT: How do you plead to this charge of
4 attempted murder?

5 DEFENDANT FAIREY: Guilty.

6 THE COURT: Okay. Mr. Fairey, you understand if I
7 accept your guilty plea to these three charges there will
8 be, again, three convictions on your record?

9 DEFENDANT FAIREY: Yes, sir.

10 THE COURT: You understand two of them are violent
11 and most serious?

12 DEFENDANT FAIREY: Yes, sir.

13 THE COURT: You understand how that effects you?

14 DEFENDANT FAIREY: Yes, sir.

15 THE COURT: You understand what the recommended
16 sentence is. And you know you're facing an active sentence
17 of between ten to fifteen years?

18 DEFENDANT FAIREY: Yes, sir.

19 THE COURT: Okay. You know you've got ten days to
20 appeal my decision?

21 DEFENDANT FAIREY: Yes, sir.

22 THE COURT: Do you want me to accept your guilty
23 plea to these three charges?

24 DEFENDANT FAIREY: Yes, sir.

25 THE COURT: Mr. Fairey, I find your decision to

1 plead guilty to these three charges to be freely,
2 voluntarily, and intelligently made. I find you've had the
3 advice of counsel, a competent lawyer. I find you're
4 satisfied with the services of your lawyer. I find there's
5 a factual basis on which to base your guilty plea to all
6 three of these charges and I am going to accept the guilty
7 plea.

8 Yes, ma'am.

9 MS. FORD: Your Honor, If I could give you his
10 record?

11 THE COURT: Well, sure.

12 MS. FORD: I failed to do that, Your Honor.

13 He has a prior assault and battery of a high and
14 aggravated nature from 1997. He has a CDV from 2000. He
15 has a conviction for assault and battery second from 2000,
16 Your Honor. That appears to be the extent of his record.

17 THE COURT: So nothing since 2000?

18 MS. FORD: No convictions, Your Honor.

19 THE COURT: No convictions, since 2000. That's
20 good, Mr. Fairey.

21 DEFENDANT FAIREY: Yes, sir.

22 THE COURT: This wasn't good.

23 DEFENDANT FAIREY: I understand.

24 THE COURT: Okay.

25 MS. FORD: He has had arrests since then, Your

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19

1 Honor.

2 THE COURT: But no convictions?

3 DEFENDANT FAIREY: No convictions.

4 THE COURT: All right. Okay, Mr. Adams?

5 MR. ADAMS: Thank you, Your Honor. May it please
6 the Court.

7 Mr. Fairey stands before you today an extremely
8 remorseful human being, Your Honor. His grandmother Shirley
9 Fairey is here in full support of him today. Before I get
10 into the basics, Your Honor, I will say that this has tore
11 his family up to the nth degree. It's hurt Mr. Fairey to
12 the nth degree. He's very sorry for what has happened and
13 very remorseful again for what he has done to the victim in
14 this case, Your Honor.

15 He's thirty-six years old. He was born and raised in
16 Orangeburg, South Carolina. He's got three children a
17 seventeen-year-old, a twelve-year-old, and a ten-year-old.
18 He supports all of his children, Your Honor. He's earned
19 his GED. He was gainfully employed when he was arrested at
20 Prime Material Recovery where he'd been working for one year
21 prior to that.

22 Your Honor, I've spent a great deal of time speaking
23 with his family. His mother, Anna Meyers, very, very
24 lovely, nice lady. She has been very helpful talking with
25 me, trying to explain to me the situation that brought about

1 these charges, Your Honor. She wanted me -- she couldn't be
2 here today because she's working. But she wanted me to
3 explain to you that this is not her son. He made a mistake
4 but this is not him. She feels that, you know, that it's in
5 God's hands now and she wanted me to allow you to know that
6 she would just please have mercy on her son, Your Honor.
7 I've spoken with multiple cousins of his, Linda Keitt,
8 Travis Shuler, Angela Keitt, and they all say the same
9 thing, that this does not reflect his character, Your Honor.
10 And that he's a very good person and, you know, he's here
11 taking responsibility for his actions. He knows he messed
12 up. He knows that. He's willing to, you know, pay the
13 price. He is willing to pay the price.

14 I have spoke with the victim's sister, Your Honor.
15 She, on top of everybody explained to me how this was not
16 his character, which shocked me. But she told me from the
17 get-go. She was like this -- you know, I can see him
18 dealing with a lot of stuff and then snapping. But this is
19 not -- I've never seen him like this before since she's
20 known him, Your Honor.

21 And, Your Honor, obviously we respect the Solicitor's
22 offer or recommendation of -- or the range -- excuse me --
23 of ten to fifteen years, but we would be obviously asking
24 the Court to sentence Mr. Fairey to ten years in prison,
25 Your Honor.

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1 THE COURT: Okay.

2 MR. ADAMS: Oh, and Mr. Fairey has been
3 incarcerated for a hundred and eighty-two days, Your Honor.
4 Since June --

5 THE COURT: A hundred and eighty-two days?

6 MR. ADAMS: Yes, sir. Since June 14th, 2016.

7 Would you like to say anything?

8 DEFENDANT FAIREY: No.

9 MR. ADAMS: Are you sure?

10 DEFENDANT FAIREY: (Shakes head negatively.)

11 THE COURT: All right. Mr. Fairey, what I'm going
12 to do in the domestic violence second offense, the sentence
13 of this court is you be committed to the State Department of
14 Corrections for a period of three years. On the kidnapping
15 and attempted murder charges, the sentence of this Court is
16 you're committed to the State Department of Corrections for
17 a period of twenty years. That is suspended to an active
18 sentence of thirteen years and probation for five years.
19 The sentences are concurrent. And I'm going to give you
20 credit for a hundred and eighty two days you've served.

21 DEFENDANT FAIREY: Yes, sir.

22 THE COURT: Okay.

23 MR. ADAMS: Thank you, Your Honor.

24 MS. FORD: Thank you, Your Honor.

25 THE COURT: All right. Thank you. And we'll be

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back at 2:00.

(This proceeding was concluded.)

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST 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 PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 14 DAY OF DECEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

May 17, 2017

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C-E-R-T-I-F-I-C-A-T-E

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I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

May 17, 2017

(c) # unknown "CDV" (?)

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

(a) December 14, 2016; twenty (20) years suspended thirteen (13) years

(b) December 14, 2016; " " " " " "

(c) December 14, 2016;

6. *all sentences run concurrent; with five (5) years probation
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

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) First opportunity to raise ineffective assistance trial counsel, also nothing was objected to at plea

(b) hearing and not preserved for appellate review

ATTEST: TRUE COPY

Winnaja B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel - Involuntary
 - (b) Plea; Due Process Violation, Sixth and Fourteenth
 - (c) Amendments to the U.S. Const./Art. I, §§3 & 14 of the S.C. Const.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Counsel failed to investigate the facts and prepare for a trial; failed to investigate and present a "self-defense" defense; failed to investigate alleged victim and a very similar incident approximately a year prior to this incident; failure to investigate fact witnesses and potentially exculpatory witnesses.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

ATTEST: TRUE COPY

Winnyja B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

ATTEST: TRUE COPY

Winnaja B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

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: Collateral review through PCR represents
 (a) the first appropriate opportunity the Applicant has had
 (b) to raise these issues - Ineffective assistance of trial
 (c) counsel claims must be raised in collateral proceedings in

17. ^{South Carolina} Were you represented by an attorney at any time during the course of:
 (a) your arraignment and plea? No
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. _____
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. trial (plea) and sentencing
 ii. _____
 iii. _____

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Winnya B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA

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

Pleas and sentences vacated, new trial and any other relief that the Court deems proper

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

No

STATE OF SOUTH CAROLINA)
County of Dorchester)

VERIFICATION

I, Antonio Desmond Faircy # ²⁷⁶⁴⁸⁶~~276486~~, 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.

x Antonio Faircy

SWORN to and subscribed before me this 6th day of April, 2017.

Luclean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

2017 APR 13 11:01 AM
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA
ATTEST TRUE COPY
Winnaja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

Applicant specifically reserves the right to amend or supplement the ground/issues, and the facts in support thereof which he bases his allegations that he is being held unlawfully in violation of his Sixth and Fourteenth Amendment rights of the United States Constitution and Art. I, § 3 and 14 of the South Carolina Constitution.

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

I, Antonio Desmond Faivey #206486, 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.

X Antonio Faivey
Applicant

SWORN or affirmed to and subscribed before me this
6th day of April, 2017.

Ludhean Bryant
Notary Public

My Commission Expires: May 26, 2020

ATTEST: TRUE COPY

Winnaja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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STATE OF SOUTH CAROLINA

COUNTY OF ORANEBURG

Antonio Desmond Fairvey #276486
Plaintiff(s)

vs.

State of South Carolina
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP-38-00525

(Please Print)

Submitted By: Antonio Desmond Fairvey #276486
Address: Lieber Corr. Inst. Cooner B-59
P.O. Box 205 Ridgeville, SC 29472-0205

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Contracts | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Construction (180) | <input type="checkbox"/> Dental Malpractice (280) | <input type="checkbox"/> Assault, Slander, Libel (300) | <input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20__-CP-_____ | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |

- Inmate Petitions
- PCR (500)
- Mandamus (520)
- Habeas Corpus (530)
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- Reinst. Drv. License (800)
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- Relief (820)
- Permanent Injunction (830)
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- Forfeiture-Consent Order (850)
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- Worker's Comp (960)
- Zoning Board (970)
- Public Service Commission (980)
- Employment Security Commission
- Other (999)

Special Complex (Other)

- | | |
|--|---|
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (610) |
| <input type="checkbox"/> Automobile Arb (610) | <input type="checkbox"/> Unfair Trade Practices (610) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Foreign Subpoenas (650) |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (660) |
| <input type="checkbox"/> Sexual Predator (510) | |

ATTEST: TRUE COPY

Winnya B. Clark
CLERK OF COURT
ORANEBURG COUNTY, SOUTH CAROLINA

Submitting Party Signature: Antonio Fairvey

Date: 4/4/17

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

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	IN THE FIRST JUDICIAL CIRCUIT
)	
)	
Antonio Desmond Fairey, #276486,)	Case No.: 2017-CP-38-0525
Applicant,)	
)	
v.)	RETURN, PARTIAL MOTION TO
)	DISMISS, AND MOTION FOR A MORE
State of South Carolina,)	DEFINITE STATEMENT
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on April 13, 2017, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant waived presentment to the grand jury on domestic violence, second degree (2016-GS-38-0517), kidnapping (2016-GS-38-1073), and attempted murder (2016-GS-38-1074). Jim Adams, Esquire, represented Applicant. Assistant Solicitor Sarah Ford, Esquire, prosecuted the case. On December 13-14, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable Edgar W. Dickson. Pursuant to the State's recommendation, Judge Dickson sentenced Applicant to imprisonment for concurrent terms of three years for domestic violence, and twenty years each for kidnapping and attempted murder, provided that upon the service of thirteen years' incarceration, the balance was suspended to probation for five years. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the

right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to investigate the facts and prepare for a trial"
 - b. Counsel "failed to investigate a present a 'self-defense' defense"
 - c. Counsel "failed to investigate alleged victim and a very similar incident approximately a year prior to this incident"
 - d. Counsel's "failure to investigate fact witnesses and potentially exculpatory witnesses"
2. "Involuntary Guilty Plea"
3. "Due Process Violation"
 - a. "Sixth and Fourteenth Amendments to the U.S. Constitution; Art. I, §§ 3 & 14 of the S.C. Const."

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting

Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither 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, 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. INVOLUNTARY GUILTY PLEA

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (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, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective

assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the

information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. DUE PROCESS VIOLATION

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must “... specifically set forth the grounds upon which the application is based.” S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VI. AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the

State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII. MOTION FOR A MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement regarding Applicant's claim of involuntary guilty plea. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VIII. CONCLUSION

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 14, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
 ANTONIO D. FAIREY, #276486)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent,)
)
 _____)

IN THE COURT OF COMMON PLEAS


2017-CP-38-0525

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, Partial Motion to Dismiss, And Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 14th day of August, 2017.


 Deonna Rogers, Legal Assistant
 For Respondent

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked during proceeding.

1 TRANSCRIPT OF RECORD

2 (Whereupon, the proceeding was commenced at 10:26 a.m.)

3 THE COURT: All right. Mr. Saville, I'll be happy to
4 hear from you, sir.

5 MR. SAVILLE: Your Honor, this is the case of *Antonio*
6 *Fairey v. the State of South Carolina*, Docket No. 2017-CP-
7 38-0525. Applicant waived presentment to the grand jury of
8 Orangeburg County on domestic violence, second-degree;
9 kidnapping; and attempted murder. Jim Adams, Esq.,
10 represented applicant. Assistant Solicitor Sarah Ford
11 prosecuted the case.

12 On December 13 and then on December 14, 2016,
13 applicant pled guilty as indicted to all charges before the
14 Honorable Edgar W. Dickson. Pursuant to the state's
15 recommendation, Judge Dickson sentenced him to imprisonment
16 for concurrent terms of 3 years for domestic violence; and
17 20 years each for kidnapping and attempted murder.
18 Provided that upon the service of 13 years, the balance was
19 to be suspended to probation for 5 years. Applicant did
20 not appeal his conviction or sentence.

21 THE COURT: All right.

22 MR. SAVILLE: Applicant filed an application for
23 postconviction relief on April 13th, 2017. Applicant is
24 here today, represented by Mr. Jonathan D. Waller, Esq.
25 Thank you very much.

1 THE COURT: Okay. Mr. Waller?

2 MR. WALLER: Thank you, Your Honor. May it please the
3 Court. Your Honor, just procedurally, the state -- when
4 the state filed its return, they also file a partial motion
5 to dismiss and a motion for a more definite statement.

6 THE COURT: Uh-huh.

7 MR. WALLER: Your Honor, I -- quite honestly -- and
8 I've -- I've talked to Mr. Saville. I'm not exactly sure
9 why they -- they filed those partial motions to dismiss.
10 All of Mr. Fairey's claims are claims of ineffective
11 assistance of counsel. The involuntary guilty plea, I
12 believe, you know, stems from those pretty specific
13 allegations that he -- that he did specify.

14 THE COURT: Uh-huh.

15 MR. WALLER: I think there might've been a little bit
16 of confusion when he labeled due process violation, but he
17 ---

18 THE COURT: Okay.

19 MR. WALLER: --- but he raised it as Sixth and
20 Fourteenth Amendment violations, which all factually stem
21 from his ineffective-assistance-of-counsel allegations.

22 So I just wanted to put that on the ---

23 THE COURT: Okay.

24 MR. WALLER: --- record that -- that everything is
25 going to come from ineffective assistance of counsel. I'm

1 not sure if the state wants to proceed with its motion or
2 not. But I'm not exactly sure why it was filed.

3 THE COURT: That's okay.

4 Yes, sir?

5 MR. SAVILLE: Your Honor, I'm sure my predecessor had
6 a very good reason for doing what he did. But the state
7 will not proceed with that motion ---

8 THE COURT: Okay.

9 MR. SAVILLE: --- at this time. Thank you.

10 THE COURT: Well, we'll -- we should find out what it
11 -- what it's all about here in a few minutes.

12 Mr. Fairey, good morning, sir. How are you?

13 THE APPLICANT: I'm all right, sir.

14 THE COURT: Good. You want to proceed with your
15 postconviction-relief application, sir?

16 THE APPLICANT: Yes, sir.

17 THE COURT: And you know that if your postconviction
18 relief-application were to be granted and it -- and I sent
19 it back to the original trial court, that you'd be facing
20 all of your original charges and you'd be facing a
21 significant period of time in jail. You understand that?

22 THE APPLICANT: Yes, sir.

23 THE COURT: And have you talked to your attorney about
24 how much time you could possibly face?

25 THE APPLICANT: Yes, sir.

1 THE COURT: Okay. And you want to roll the dice? You
2 got 13 years. That's pretty good for ---

3 THE APPLICANT: I ---

4 THE COURT: --- these charges.

5 THE APPLICANT: I know. Yeah. I'm -- I'm go ahead
6 and go with it.

7 THE COURT: Okay. Good enough. Fair enough.

8 Okay, Mr. Waller. You may proceed, sir.

9 MR. WALLER: Thank you, Your Honor. I would call
10 Antonio Fairey.

11 THE COURT: Okay.

12 (Whereupon, the witness came forward.)

13 DEPUTY CLERK OF COURT: Judge, do you want me to swear
14 him in again?

15 THE COURT: Yes. If you will, please.

16 DEPUTY CLERK OF COURT: Raise your right hand.

17 THE WITNESS: (Complied.)

18 DEPUTY CLERK OF COURT: State your full name for the
19 record.

20 THE WITNESS: Antonio Demond Fairey.

21 ANTONIO FAIREY, having been first duly sworn,
22 testified as follows:

23 DEPUTY CLERK OF COURT: Thank you. And have a seat.

24 THE WITNESS: (Complied.)

25 DEPUTY CLERK OF COURT: Make sure you speak into the

1 microphone.

2 THE WITNESS: All right.

3 THE COURT: Yes, sir.

4 MR. WALLER: Thank you, Your Honor. May it please the
5 Court.

6 DIRECT EXAMINATION

7 BY MR. WALLER:

8 Q Good morning, Mr. Fairey. How are you today?

9 A I'm all right.

10 Q All right, Mr. Fairey. I want to talk to you a little
11 bit about the -- the charges you pled guilty to, okay?

12 A (No audible response.)

13 Q You had three separate charges; is that right?

14 A Yes, sir.

15 Q From two completely separate incidents?

16 A Yes, sir.

17 Q Okay. The alleged victim in that -- in those two
18 cases were the same person; is that right?

19 A Yes, sir.

20 Q All right. So the judge understands, what were the
21 charges that you were initially charged with?

22 A A -- A CDV, second-degree; kidnapping; and attempted
23 murder.

24 Q Okay. And the CDV was -- was by itself?

25 A Yes, sir.

1 Q And then, the kidnapping and the ---

2 A They came -- they came about three months later.

3 Q Okay. And then, they were, again, from separate
4 incidents?

5 A Yes, sir.

6 Q Okay. And I want to -- to ask you briefly -- and I --
7 and I'll touch on this now. Was there a CDVHAN that you
8 were -- that -- that somehow got involved in your case?

9 A Yes. They tried to -- they tried to make me sign off
10 on the warrant, which I -- you know, I'm trying to state to
11 my lawyer at that time that it wasn't my name. But he
12 tried to get me to plead to that too.

13 I -- so I asked him one time. I said, "Why is they
14 charging me with a CDV and an attempted murder at the same
15 time?"

16 Q Okay. And they ended up finding out that that was a
17 -- a person with the exact same name as yours; is ---

18 A No.

19 Q --- that right?

20 A Different name.

21 Q Different name?

22 A Yes, sir.

23 Q Okay. So -- but it was a mistake; is ---

24 A I ---

25 Q --- that right?

1 A I mean, that what they were saying. But they was
2 trying to get me to sign off it anyway.

3 Q Okay. Okay.. So it -- you should not have ever been
4 charged with a CDVHAN?

5 A I mean, not -- not -- I mean, I know I wasn't charged
6 with a CDVHAN.

7 Q Okay.

8 A Yeah.

9 Q You -- you weren't ever actually charged with it?

10 A No, not with the -HAN.

11 Q All right. When you -- so we're going to go back to
12 the three charges now ---

13 A Okay.

14 Q --- okay?

15 When you were first arrested on those charges, who was
16 your attorney?

17 A James Adams.

18 Q Okay. And how many times do you think you met with
19 him?

20 A I can tell you -- I met with him three time. I can
21 tell you the dates and everything.

22 Q All right. Well, let's start with the first time you
23 met with him.

24 A I met him in August. I think it was August -- between
25 August 15 and August 20 of -- of 2000 -- I think it was

DIRECT EXAMINATION BY MR. WALLER - ANTONIO FAIREY 11

1 like -- because I got my motion -- he filed my motion
2 August 9th.

3 Q Okay. At that time did you just have the CDV second-
4 degree, or did you ---

5 A I had ---

6 Q --- have all of the ---

7 A I had ---

8 Q --- charges?

9 A --- I had all of them then.

10 Q Okay. At that first meeting, do you recall what y'all
11 talked about?

12 A We would talk about the whole case. I tell ---

13 Q Okay.

14 A --- him where I have been, and we went from there.

15 And I give him a witness. I give him my -- my witnesses
16 and everything.

17 Q All right. And you say you gave him a witness. Who
18 did you give him?

19 A I give him Angela Kitt. I gave him Shelton Simpson.
20 I give him Cassandra Shuler. I gave him -- who it was? --
21 Kristie Green. And I give him -- I think I gave him
22 Adrienne name later on.

23 Q Okay.

24 A Yeah.

25 Q All right. So let's talk about Angela Kitt for a

1 second.

2 A Okay.

3 Q Was Angela Kitt a witness for all the charges?

4 A No. Just the CDV.

5 Q Okay. Just the CDV?

6 A Okay.

7 Q All right. So you -- you talked to your attorney

8 about ---

9 A I -- I let ---

10 Q --- Ms. Kitt?

11 A Uh-huh.

12 Q And what information did you provide him about Ms.

13 Kitt?

14 A I let him know that -- all of the -- him -- Angela
15 Kitt, Cassandra Shuler, and Kristie Green, they was present
16 when I so-called hit the victim. They was present.

17 Q Okay. So that -- they were eyewitnesses ---

18 A Yeah. They was eyewitnesses.

19 Q Okay.

20 A They was sitting right there.

21 Q Did you have any contact information or anything for

22 Ms. Kitt?

23 A Uh-huh. I give it to him. I give it to my lawyer.

24 Q Okay. Now, the CDV was not as serious of an offense
25 as -- as the other charges ---

1 A No, sir.

2 Q --- is that right? Okay.

3 A But I still got convicted of it.

4 Q Okay. All right. I want to switch now to -- you said
5 Adrienne; is ---

6 A Okay.

7 Q --- that right?

8 A Yes, sir.

9 Q Okay. Who is Adrienne?

10 A Adrienne -- she -- Adrienne is -- was my neighbor.

11 Q Okay. Do you know Adrienne's last name?

12 A Adrienne Felder.

13 Q Okay.

14 A Yeah.

15 Q All right. Did she used to go by Adrienne Jackson?

16 A Uh-huh.

17 Q Okay. And did you provide any information ---

18 A Yes, sir.

19 Q --- to your attorney about Ms. -- about Adrienne?

20 A Yes, sir.

21 Q Okay. Well, what did you tell your attorney ---

22 A I told him that she was a -- she was a witness to that
23 too. She was -- how she was there, crying to him when all
24 -- everything went -- went down.

25 Q Okay.

1 A She was there.

2 Q Okay. Did you have any contact information for her?

3 A I give him -- I gave her the contact. She was trying
4 to get in contact with me.

5 Q You said it was your neighbor.

6 A Uh-huh.

7 Q So you -- you knew her address?

8 A Yeah.

9 Q Okay. All right. What did -- so that was the first
10 meeting?

11 A Uh-huh.

12 Q Okay. How about the second meeting?

13 A I ---

14 Q What did ---

15 A --- didn't ---

16 Q --- you and Mr. Adams talk about?

17 A I had just gotten my motion of discovery. That's the
18 ---

19 Q Okay.

20 A --- only thing I got.

21 Q Okay. Did y'all have a chance to review that
22 together?

23 A I mean, he just showed me pictures and all that,
24 because I asked him question about it -- what they was
25 doing and all of that. He said they was -- it wasn't doing

1 -- they wasn't trying to come down on nothing. So, I mean

2 ---

3 Q Okay.

4 A --- I -- that's it.

5 Q Okay. And what -- what did you understand the
6 allegations were against you? What was the state saying
7 you did?

8 A The state say I tied the victim up and beat her from
9 ten o'clock that night till eight o'clock in the morning.

10 Q Okay. And ---

11 A That what ---

12 Q --- then -- and then you went to work?

13 A And I went to work.

14 Q Okay. Did you and Mr. Adams have a chance to talk
15 about ---

16 A I ---

17 Q --- what the state was saying?

18 A Yeah. I told him everything.

19 Q Okay.

20 A I mean, he -- he talked to me, and I told him what --
21 what really happened.

22 Q Okay. All right. How about the third meeting?

23 A The third meeting?

24 Q Yes, sir.

25 A That meeting came -- that was -- matter of fact, that

1 was during -- after Thanksgiving. Like, he came to the
2 jail. I said something. And he said that he was going to
3 try to get me ten years if I -- try to get me to plead to
4 ten years.

5 He ain't never said no ten to fifteen. Ten years. He
6 say if I don't take this, they going take me to trial.

7 Q Okay. And that -- that ten-year offer is how you
8 filed a motion to be relieved from Mr. -- or for Mr. Adams

9 ---

10 A Yeah.

11 Q --- to be ---

12 A Because ---

13 Q --- relieved ---

14 A --- I mean, he ---

15 Q --- from your ---

16 A --- he puts it -- I mean, because, I mean, he never --
17 and -- I mean, the witnesses he interview, he never -- he
18 ask them what kind of character I am. I was trying to get
19 my witnesses to tell him what really happened. He never
20 asked them that.

21 Q Okay. But about -- I was asking about the -- the ---

22 A Oh.

23 Q --- ten-year offer; that ---

24 A Oh.

25 Q --- it was some miscommunication, I guess, about the

1 -- what the offer actually ---

2 A Yeah.

3 Q --- was. Is that right?

4 A Yes, sir.

5 Q Okay. You and your attorney believed it was a ten-
6 year offer -- fifteen years suspended to ten years; is ---

7 A Yes, sir.

8 Q --- that right?

9 That's not what the state was actually offering?

10 A I was -- no, sir.

11 Q Okay. All right. Ultimately, you pled guilty to
12 these charges?

13 A Yes, sir.

14 Q Okay. What went through your decision to plead
15 guilty?

16 A Because I knew if I would've went to trial with him, I
17 would've -- I would've got the max.

18 Q Okay.

19 A I'm just going to be real -- serious -- I mean, I
20 would've -- I know I would've lost that trial if I would've
21 came there.

22 Q Okay. Was there a trial date set?

23 A No. It wasn't no trial date set.

24 Q Okay. At -- at the time you pled guilty, do you --
25 what do you know that he had done, as far as preparing your

1 case and -- and investigating potential defenses?

2 A I -- I mean, can you repeat the question again?

3 Q At the time you pled guilty, what did you understand
4 that Mr. Adams had done to follow up on the information
5 that you gave him or to prepare a defense for you?

6 A Nothing. Because he asked me same thing. Because I'd
7 ask him -- and I was trying to fire him. He said, "What's
8 our defense?" I -- so, I mean, basically, he wasn't -- he
9 ain't did nothing for me.

10 Q Okay. Do you know if he ever talked to Ms. Kitt and
11 Ms. -- Ms. Adrienne ---

12 A I know ---

13 Q --- or any ---

14 A --- I know ---

15 Q --- Jackson or Felder?

16 A --- I know he talked to Ms. Kitt.

17 Q Okay.

18 A But I know he didn't never talk to Adrienne. And I
19 was telling him that the whole time.

20 Q Okay. And Adrienne was a -- a witness to the
21 attempted murder and kidnapping ---

22 A Yeah.

23 Q --- charge?

24 A She was there prior to all that.

25 Q Okay.

1 A Yes, sir.

2 Q Okay. Mr. Fairey, what -- what did Mr. Adams not do
3 that you asked him to do?

4 A I asked him not -- I just told him to go ahead and
5 interview my witness because they was present. Even her
6 sister came on my behalf -- went down there and talk on my
7 behalf.

8 Q Okay.

9 A Because she was present for the CDV. And Adrienne was
10 there. I told him to talk to Adrienne, because Adrienne --
11 she said that the girl said I was there. She -- or I had
12 her tied up from ten to eight o'clock in the morning.

13 Yes. I know that wasn't right, because I was sleep
14 during that time. And I tell him to go to interview
15 Adrienne, because Adrienne was walking home. Because I
16 woke up and I talked to Adrienne.

17 Q Okay.

18 A And told Adrienne I had to go to sleep.

19 Q Okay.

20 A Because, I mean ---

21 Q What time did you talk to Adrienne?

22 A It -- I think between one/two.

23 Q In the morning?

24 A In the morning.

25 Q Okay. So it was during the time that supposedly you

1 were ---

2 A Yeah. I had her tied up since ten o'clock.

3 Q Okay. All right. So you -- you've testified that --
4 that Mr. Adams did not talk to the witnesses you asked him
5 to?

6 A No.

7 Q What -- and -- and there wasn't a trial date set.

8 A Wasn't no trial date set.

9 Q What do you know of any preparations he had made for
10 trial, even if they were the early stages?

11 A Unh-unh. He ain't made none.

12 Q Okay. Did you think you had any defenses?

13 A I mean, yeah. Because I had witnesses who had been
14 present.

15 Q Okay.

16 A I mean, he never -- he asked them what kind of -- what
17 kind of person I was. He never asked them what really
18 happened.

19 Q Okay. Did you and Mr. Adams ever talk about a
20 potential self-defense, defense?

21 A No. No, sir.

22 Q Okay. Did you think you might've had a self-defense
23 ---

24 A I don't -- I don't -- I mean, I'm not -- I'm not too
25 keen on the law, sir. So, I mean, I ---

- 1 Q But y'all never talked about it?
- 2 A No. No, sir.
- 3 Q Okay. Did y'all ever talk about the -- the alleged
4 victim in this case and any of her ---
- 5 A I -- I ---
- 6 Q --- prior history ---
- 7 A --- I ---
- 8 Q --- or anything ---
- 9 A --- I told him everything. Because, I mean, like I
10 told him, she had -- she had somebody else lock up a year
11 prior to me for the same exact charge. And I guess he let
12 it slip out that he represented the same person.
- 13 Q Okay. So there was -- you were aware that the victim
14 had had -- made similar allegations ---
- 15 A Yes.
- 16 Q --- or same ---
- 17 A She had somebody else lock up a year prior.
- 18 Q Okay. If you and Mr. Adams had talked about those
19 things or if he had made preparations for trial, would you
20 have still pled guilty?
- 21 A No, I wouldn't have pled guilty.
- 22 Q Okay. What would you have done?
- 23 A I would've went to trial.
- 24 Q Okay. Knowing that you were facing ---
- 25 A I know ---

1 Q --- 60 years on the ---

2 A I mean, if he would've ---

3 Q --- attempted murder ---

4 A --- did it -- if he would've did his job, yes, sir. I
5 mean, I would've went to trial.

6 Q Okay.

7 A Because I got -- I mean, I got all these witnesses.
8 And, I mean, I had more witness.

9 Q Okay. When you -- Mr. Fairey, I think I've asked you
10 all the questions that I have. Is there anything you think
11 I've left out that Judge -- the judge needs to be aware of,
12 of Mr. Adams' representation of you?

13 A I mean, only thing I'm saying, he never -- he never
14 investigated the -- he never did no investigation on -- on
15 the so-called victim. He never did none of that. He never
16 did what I asked him to do, I mean, with my witnesses and
17 all. He never did none of that.

18 Q Okay.

19 A And, I mean, every time I get the call to go and see
20 him, he always pull the pictures out and show them to me.

21 Q Okay. The state had some -- some picture evidence ---

22 A Yes, sir.

23 Q --- of -- of her injuries?

24 A That's is. Yes, sir.

25 Q Okay. All right. Anything else that the judge needs

1 to be aware of?

2 A I mean, right now, I mean, that's -- that's basically
3 -- that's it.

4 Q Okay. Please answer any questions that Mr. Saville
5 has for you.

6 A Okay.

7 CROSS-EXAMINATION

8 BY MR. SAVILLE:

9 Q Good morning, Mr. Fairey. How you doing?

10 A Good morning. All right.

11 Q Good. Now, how many times did you meet with Mr. Adams
12 before your plea?

13 A Three times.

14 Q Three times?

15 A (No audible response.)

16 Q Okay. I believe you told me that.

17 Now, Mr. Fairey, the -- the judge, when you pled
18 guilty, asked you a series of questions.

19 A Yes, sir.

20 Q Do you recall telling the judge that were satisfied
21 with Mr. Adams' services?

22 A Yes, sir. After the fact. Because it had took me a
23 couple of days to get back to court. I told him that.
24 Because, I mean, why I'm go to trial with him when I know
25 I'm going to lose? If they -- because I -- the -- if the

1 judge would've assigned somebody else that he want to with
2 -- try to go back over my case. But they never did that.
3 They just sit there and I -- that's why I pled guilty.

4 Q Do you remember telling the judge that your counsel,
5 Mr. Adams, had answered all your questions?

6 A Yes, sir.

7 Q Okay. And do you remember telling the judge that you
8 understood everything that Mr. Adams told you?

9 A Yes, sir.

10 Q And that you did not need any more time with Mr.
11 Adams?

12 A Yes, sir.

13 Q And that your plea was free and voluntary?

14 A Yes, sir.

15 Q Now, do you recall telling the judge that you
16 understood what you were doing?

17 A Yes, sir.

18 Q And you -- you told Mr. Waller just a moment ago that
19 you wanted Mr. Adams to reach out to Adrienne Felder; is
20 that ---

21 A Uh-huh.

22 Q --- that correct?

23 A Yes, sir.

24 Q And that's because she was actually there prior to ---

25 A Prior ---

1 Q --- this incident?

2 A --- to it she -- she -- because they the one woke me
3 up.

4 Q Now, did you give Mr. Adams the contact information
5 for Adrienne Felder?

6 A No. She -- my people gave it to him.

7 Q It ---

8 A They was calling -- they was trying to get in contact
9 with him. But he never -- he never called them back.

10 Q Yes, sir. Do we have any record of that?

11 A I believe so. He should have a record. Because, I
12 mean -- I mean, I know -- I think Adrienne and them tried
13 to call him too. Because I know that for sure. Because I
14 give him the name.

15 Q Now, Mr. Adams -- if -- if you wanted Mr. Adams to
16 contact Ms. Felder, why did you tell the judge you didn't
17 need any more time?

18 A Because they would -- they would -- okay. They were
19 trying to take me to trial right then and there. And, I
20 mean, like I said, I -- I never knew -- I don't know
21 nothing about no law. Like I say, I -- like, they -- I --
22 I tried to get my preliminary hearing. I never went to
23 that.

24 He never explained nothing to me or nothing. I know I
25 waived my right to a presentment to the jury. I never knew

1 nothing about that neither.

2 He never explained nothing to me like -- about that,
3 until I -- okay. When he explained it to me, I got
4 sentenced about five minutes later, that I waived my
5 rights. I didn't even know if I got it indicted it or
6 nothing.

7 Q Yes, sir.

8 A Because I ---

9 Q I'm sorry. I'm going to shift gears ---

10 A Okay.

11 Q --- just a moment. Regarding Ms. Angela Kitt.---

12 A Okay.

13 Q --- now, did you testify that Mr. Adams didn't -- you
14 testified she -- he did reach out to Angela ---

15 A Uh-huh.

16 Q --- Kitt?

17 A Yes, sir.

18 Q Okay. So -- so what is it that you wanted Mr. Adams
19 to do regarding Angela Kitt?

20 A Ask her what really happened.

21 Q Okay.

22 A But she say she got to tell him what had -- she -- he
23 was trying to ask her what -- my -- what -- know what I'm
24 saying? -- what my -- what -- my character is, how I was.
25 He never asked -- because she said she had to bring it up.

REDIRECT EXAMINATION BY MR. WALLER - ANTONIO FAIREY 27

1 It's recorded.

2 Q Okay. But she ---

3 A So ---

4 Q --- brought it up?

5 A She brought it up. She had to let him know what
6 really happened. Even her sister went down there.

7 Q Now, do you remember waiving your right to present
8 defenses when you pled guilty?

9 A Five minutes before I got sentenced. Yes, sir.

10 Q So ---

11 A Because, I mean, the day before, he was trying to get
12 me to sign off on a -- on a -- a warrant that wasn't mine.
13 Exact words he said: "She ain't going do nothing but
14 change your name." And that was it.

15 Q Mr. Fairey, I think that's all I have for you. Thank
16 you.

17 A Okay.

18 THE COURT: Redirect, sir?

19 MR. WALLER: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. WALLER:

22 Q Mr. Fairey, you -- you testified that you didn't know
23 you'd been ---

24 A I ---

25 Q --- indicted ---

1 A --- I -- I never knew I was indicted:

2 Q All right. And -- and in this case, you had one set
3 of charges that had been true-billed indicted -- true-
4 billed ---

5 A Okay.

6 Q --- by the grand jury ---

7 A Because -- yeah. I ---

8 Q --- is that right?

9 A Yes, sir.

10 Q And one charge, the CDV charge, that you waived
11 presentment to the grand jury.

12 A Okay. I believe so.

13 Q Isn't that what you just testified to?

14 A Yes.

15 Q Okay.

16 A Say that again?

17 Q Is -- is that not what you just testified to: that
18 you waived ---

19 A I mean, yeah. I put -- I put a -- put a -- I think it
20 was the same thing you said -- yeah.

21 Q Okay. Did you ---

22 A I believe ---

23 Q --- understand ---

24 A --- so.

25 Q --- did you ---

REDIRECT EXAMINATION BY MR. WALLER - ANTONIO FAIREY 29

1 A I -- I ---

2 Q --- understand what that meant?

3 A I never understood what you saying. I know he told me
4 to sign it. He -- I was signing my -- waiving my
5 presentment to a grand jury or something like that.

6 Q Okay. So you initialed on the sentencing sheet ---

7 A I -- I initialed ---

8 Q --- you remember ---

9 A --- on it.

10 Q --- that?

11 Okay. But you didn't know what you ---

12 A I -- I ---

13 Q --- were initialing ---

14 A --- I never knew what I was doing.

15 Q Okay. All right.

16 A And like I said, ain't nobody never explained nothing
17 to me.

18 Q All right. Mr. Fairey, that's all I have. Thank you.

19 A Okay.

20 THE COURT: Sir ---

21 MR. SAVILLE: Just -- just ---

22 THE COURT: Go ahead.

23 MR. SAVILLE: --- one question, Your Honor, on
24 redirect [sic].

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RE-CROSS-EXAMINATION

BY MR. SAVILLE:

Q Mr. Fairey, do you remember swearing on the bible to tell the truth?

A The truth.

MR. WALLER: Your ---

A Yes, sir.

MR. WALLER: Your ---

Q Okay. That's all. Thank you.

THE COURT: Okay. All right.

MR. WALLER: All right.

THE COURT: Thank you, Mr. Fairey. You can step down, sir.

THE WITNESS: All right.

THE COURT: I appreciate it.

(Whereupon, the witness exited the witness stand.)

THE COURT: Mr. Waller, you have any additional witnesses ---

MR. WALLER: I do ---

THE COURT: --- to call, sir?

MR. WALLER: --- Your Honor. Your Honor, the applicant would call Angela Kitt.

THE COURT: Okay.

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: Please stand right there for

DIRECT EXAMINATION BY MR. WALLER - ANGELA KITT

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1 me. Raise your right hand.

2 THE WITNESS: (Complied.)

3 DEPUTY CLERK OF COURT: State your full name for the
4 record?

5 THE WITNESS: What?

6 DEPUTY CLERK OF COURT: Your full name, please.

7 THE WITNESS: Angela Michelle Kitt.

8 ANGELA KITT, having been first duly sworn,
9 testified as follows:

10 DEPUTY CLERK OF COURT: Thank you. You can have a
11 seat, please.

12 THE WITNESS: (Complied.)

13 DIRECT EXAMINATION

14 BY MR. WALLER:

15 Q Good morning, Miss Kitt. How are you today?

16 A Good morning. I'm good.

17 Q Thank you for coming all the way to -- to St. George
18 for us. Ms. Kitt, you -- Mr. Fairey has testified that you
19 were present when the incident took place that led to his
20 arrest for CDV.

21 A Yes, sir.

22 Q Okay. Did anybody from his attorney's office or -- or
23 anybody on his behalf ever contact you about that incident?

24 A No, sir. I contacted him. And I went down to the
25 courthouse in Orangeburg.

1 Q Okay. Did you have a chance to -- to talk to the
2 lawyer about what actually happened?

3 A Yes, sir.

4 Q Okay. What did you tell him?

5 A I just told him the incident that happened that night.
6 I mean, it was me, Cassandra Shuler, Kristie Green, Shanika
7 Moore. All us went out that night. We came back that
8 morning. Her and her sister was arguing in the car.

9 So when we got in the house, Tony was sleep. And I
10 guess about that argument between her and her sister was
11 arguing, he got up. He never did touch -- he never did say
12 nothing to her. About five/ten minute later, him -- her
13 and Cassandra Shuler took the argument outside to her
14 father house across the street to the other apartment.

15 So we stayed -- me and Kristie Green stayed there for
16 about an hour after. Then they was still outside, arguing,
17 and going on. But the father was in the middle of it.

18 So I had left and came home ---

19 Q Okay.

20 A --- after a hour.

21 Q So you were there, and she was arguing with her
22 sister?

23 A Yeah. She was with arguing with her sister when we
24 left the club in the car ---

25 Q Okay.

1 A --- to the apartment.

2 Q And y'all ---

3 A He ---

4 Q --- got back to Mr. Fairey's house?

5 A Yes.

6 Q Okay. And you said that you were there and he -- he
7 never ---

8 A He ---

9 Q --- laid ---

10 A --- never ---

11 Q --- a hand ---

12 A --- no. He ---

13 Q --- on her?

14 A --- never -- he never did. He was -- no. He -- he
15 was talking to me and Kristie.

16 Q And then she left?

17 A Her and her sister left outside. They walked across
18 the street to her father apartment. He ---

19 Q Okay.

20 A --- was staying ---

21 Q When ---

22 A --- across the street from us during the time.

23 Q Were they still arguing?

24 A Yes.

25 Q Okay. And you were there for another hour or so?

1 A Yes. And when I walk outside -- car, Cassandra Shuler
2 tell her, "I'm about to go," and they were still arguing
3 when I left. But they was on the outside across the
4 street. So ---

5 Q Okay. And you told Mr. Adams that?

6 A Yes, sir.

7 Q Okay. I don't have anything -- any further questions.
8 Thank you, Mr. -- Ms. Kitt, for being here.

9 A Okay.

10 CROSS-EXAMINATION

11 BY MR. SAVILLE:

12 Q Good morning, Ms. Kitt. And thank you for being here.

13 A Yeah. Uh-huh.

14 Q Just -- just real briefly, are you aware that the
15 state's version of the facts for the CDV charge was that
16 the victim's two minor children witnessed the event?

17 A It -- I mean, I aware. But they couldn't witness
18 nothing, because they were sleeping when we got back to the
19 house.

20 Q Okay.

21 A And it was in the a.m. hours. And it -- she -- her
22 and her sister was arguing. And they walk outside to they
23 father house. So when I was there, they were still in the
24 bed, sleep.

25 Q And you stayed there for ---

1 A A hour ---

2 Q --- about a ---

3 A --- a hour after we got there.

4 Q Okay. And then you left?

5 A Yeah. Then I left. I went home.

6 Q That's all I have. Thank you.

7 A Okay.

8 THE WITNESS: That's it?

9 MR. WALLER: Nothing further.

10 THE COURT: Okay.

11 MR. WALLER: Thank you, ma'am.

12 THE COURT: All right. Thank you for being here. I
13 appreciate it.

14 THE WITNESS: Uh-huh.

15 (Whereupon, the witness exited the witness stand.)

16 MR. WALLER: Your Honor, the applicant would call
17 Adrienne Felder. Your Honor, I -- I apologize. Her -- her
18 subpoena actually says Adrienne Jackson.

19 THE COURT: Okay.

20 (Whereupon, the witness came forward.)

21 DEPUTY CLERK OF COURT: Please stand right here for me

22 THE WITNESS: (Complied.)

23 DEPUTY CLERK OF COURT: Please raise your right hand.

24 State your full name for the record.

25 THE WITNESS: Adrienne Denise Felder.

1 ADRIENNE FELDER, having been first duly sworn,
2 testified as follows:

3 DEPUTY CLERK OF COURT: Thank you. Have a seat,
4 please.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION

7 BY MR. WALLER:

8 Q Good morning, Ms. Felder. How ---

9 A Good morning.

10 Q --- are you today?

11 A I'm good. And you?

12 Q I'm doing well. Thank you for asking. I apologize
13 for putting the incorrect last name on there ---

14 A That's okay.

15 Q --- on your subpoena.

16 Ms. -- Ms. Felder, where did you live in relation to
17 Mr. Fairey?

18 A I stay on King Road, [REDACTED] King Road, right across the
19 street from his.

20 Q All right. Okay. So you're right across the street?

21 A (No audible response.)

22 Q Okay. Do you know his address, by any chance?

23 A Not offhand. I can't ---

24 Q Okay.

25 A --- remember the apartment number.

DIRECT EXAMINATION BY MR. SAVILLE - ADRIENNE FELDER 37

1 Q But -- but it was right across the street?

2 A Right.

3 Q Okay. And you -- June 9th of 2016, I believe, was
4 when the incident ---

5 A Yes. That's ---

6 Q --- date ---

7 A --- the date.

8 Q --- was.

9 A Uh-huh.

10 Q Okay. And what information did you have about the
11 incident?

12 A Okay. I will never forget that day because that's the
13 day I was burying my father.

14 Q Okay.

15 A And I couldn't sleep. So I was outside between
16 11:30/twelve o'clock. I see the victim walking down the
17 road, cigarette, beer can in her hand. Me and her was
18 talking. And we were outside, just talking. She said,
19 "Well, let me go back in the house."

20 MR. SAVILLE: Objection. It's hearsay, Your Honor.

21 THE COURT: All right. Overruled.

22 THE WITNESS: Excuse you?

23 THE COURT: Go ahead.

24 Q You -- you can continue.

25 A Okay. We was outside, talking. And she was, like,

1 "Let me go back in the house before he think I'm outside
2 talking to a dude."

3 I said, "No. Let me go over there and let him know."

4 So when I went over there and let him know that he was
5 -- she was out here, talking to me, so me and her stayed at
6 the door till about 2/2:30 in the morning. And ---

7 Q Okay.

8 A --- she was, like, "I'm going to kill me," you know,
9 going in there to fight -- "I'm going to kill me so-and-
10 so."

11 MR. SAVILLE: Objection, Your Honor. That's hearsay.

12 THE COURT: All right. That's overruled. You may
13 continue.

14 A And I told her, before anything happened, her and the
15 girls come to my house. So I went in my house. I got up.
16 I'm getting ready to go to my dad funeral. And I found out
17 all of this after I bury my father.

18 Q Okay. So you -- you were with the victim from
19 approximately 11:30 to 12 until about two o'clock in the
20 morning?

21 A Yes.

22 Q Okay. Did she have any type of injuries at that time?

23 A No.

24 Q Okay. And at -- or at approximately two, you were --
25 you went home; and then, that was the last you saw of her?

CROSS-EXAMINATION BY MR. SAVILLE - ADRIENNE FELDER 39

1 A Right.

2 Q Okay. Did Mr. Adams or -- or anybody on his behalf
3 ever ---

4 A Nobody ---

5 Q --- contact you?

6 A No, sir.

7 Q Okay. Did you ever try to contact them?

8 A Yes. But no one never returned my call.

9 Q Okay. So you did call?

10 A Right.

11 Q And do you remember approximately how many times you
12 called?

13 A About three time.

14 Q Okay. And nobody ever called you back?

15 A No.

16 Q Okay. Ms. Felder, I don't have any -- any further
17 questions. Thank you for being here.

18 (Whereupon, Mr. Saville and Mr. Adams conferred.)

19 CROSS-EXAMINATION

20 BY MR. SAVILLE:

21 Q Good morning, Ms. Felder.

22 A Good morning.

23 Q Do you have any records to prove that you contacted
24 Mr. Adams?

25 A It's in my old phone.

1 Q Okay. Is -- is that here today?

2 A No, it's not. I can't get in it.

3 Q Okay. Now, you testified you live across the street
4 from Mr. -- Mr. Fairey. Were you aware that he was charged
5 for abusing his -- this victim?

6 A Sir, when I -- when I was in grieving, that's the
7 further thing from my mind. Because I was burying my
8 father.

9 Q Okay. But he pled guilty, you know, months after this
10 event. Did you ever catch wind of, you know, him being
11 charged as a result of this incident?

12 A Yes.

13 Q Okay. Why didn't you contact law enforcement?

14 A I contact the lawyer that he give me.

15 Q You just contacted Mr. Adams?

16 A Right.

17 Q And we don't have any evidence of that?

18 A No.

19 Q Okay. That's all I have. Thank you.

20 THE COURT: Any ---

21 MR. WALLER: Nothing further ---

22 THE COURT: --- questions ---

23 MR. WALLER: --- Ms.. -- nothing ---

24 THE COURT: Okay.

25 MR. WALLER: --- further. Thank you, Ms. Felder.

CROSS-EXAMINATION BY MR. SAVILLE - ADRIENNE FELDER 41

1 THE WITNESS: You're ---

2 THE COURT: Thank you ---

3 THE WITNESS: --- welcome.

4 THE COURT: --- ma'am. Appreciate ---

5 THE WITNESS: Thank you.

6 THE COURT: --- you being here. You can step down.

7 THE WITNESS: Have a good day.

8 (Whereupon, the witness exited the witness stand.)

9 MR. WALLER: Your Honor, the applicant rests at this
10 time.

11 THE COURT: Okay. Anything from the state?

12 MR. WALLER: Thank you, Ms. Felder.

13 MR. SAVILLE: Your Honor, the state would call James
14 Adams.

15 THE COURT: Okay.

16 (Whereupon, the witness came forward.)

17 DEPUTY CLERK OF COURT: Please raise your right hand.
18 State your full name for the record.

19 THE WITNESS: James Robert Adams, III.

20 JAMES ADAMS, having been first duly sworn, testified
21 as follows:

22 DEPUTY CLERK OF COURT: Thank you. Have a seat,
23 please.

24 THE WITNESS: (Complied.) Thank you.

25 THE BAILIFF: You're welcome.

1 DIRECT EXAMINATION

2 BY MR. SAVILLE:

3 Q Good morning, Mr. Adams. How you doing?

4 A Well. How are you, sir?

5 Q Doing well. Thank you for being here.

6 A Uh-huh.

7 Q Mr. Adams, how long have you been practicing law?

8 A Let's see. January -- I started January 25th, 2016,
9 at the public defender's office in Orangeburg.

10 Q So -- so you were appointed in this case?

11 A Correct.

12 Q Okay. Do you recall how many times you met with Mr.
13 Fairey prior to his guilty plea?

14 A Yes, I do. Let's see. One, two, three, four, five,
15 six times.

16 Q Now, what were the state's version of the facts in
17 this case?

18 A The state's version would be that Mr. Fairey was upset
19 over a text message that was in the alleged victim's phone
20 and he got upset, beat her, tied her up with an apron
21 string and shoestrings to a chair, and continuously beat
22 her and cut her -- one -- I think -- I believe her middle
23 finger, which severed a tendon.

24 Q Okay. Now, how would you characterize the evidence in
25 this case?

DIRECT EXAMINATION BY MR. SAVILLE - JAMES ADAMS 43

1 A The evidence in this case was -- it -- it didn't look
2 very good for -- for my client. I would say pretty strong.

3 Q Okay. Were the victim's injuries consistent with the
4 allegations?

5 A They were.

6 Q Now, who did the victim identify as the attacker?

7 A In -- Mr. Fairey.

8 Q Okay. And did the victim request no contact in this
9 ---

10 A I believe she did.

11 Q Now, when you met with Mr. Fairey, did you discuss any
12 prior record he may have?

13 A Yes, sir.

14 Q What was the extent of that prior record?

15 A I'd have to reflect back on the discovery, if you
16 don't mind. From 1997, I believe, a conviction for assault
17 and battery of a high and aggravated nature; from -- let's
18 see -- and from the year 2000 -- let's see -- possession of
19 alcohol by a minor or -- excuse me -- assault and battery,
20 second-degree, conviction.

21 Q Okay. Now, did you discuss any possible defenses with
22 Mr. Fairey?

23 A I did. We discussed a self-defense.

24 Q Now, how -- how do you feel that a self-defense,
25 defense would've played out in -- at a trial?

1 A It could -- I mean, what I was getting from the people
2 I spoke with was essentially that the victim was a bad
3 drunk and that he -- she had slapped Mr. Fairey once at an
4 Easter party, if I remember correctly. I don't believe it
5 would've been successful.

6 Q Okay. Now, do you recall Mr. Fairey asking you to
7 look into Ms. Angela Kitt?

8 A I do.

9 Q Okay. And how did your contact with Ms. Angela Kitt
10 come about?

11 A I believe Ms. Kitt -- I -- when I called -- first off,
12 I did call Ms. Kitt. And if I remember -- remember
13 correctly, the phone number was not active. And I believe
14 Ms. Kitt came to my office.

15 Q Okay. And did she discuss with you the -- the date in
16 which he picked up the CDV charge or the day in which he
17 picked up the kidnapping and attempted murder?

18 A The CDV charge.

19 Q Okay.

20 A Domestic violence, second-degree, I believe. Yep.

21 Q And she testified earlier that -- strike that
22 question, Mr. Adams.

23 A Uh-huh.

24 Q I apologize.

25 Did you discuss an alibi defense with Mr. Fairey?

1 A I did.

2 Q Now, do you feel like he had a complete alibi defense,
3 had you proceeded to trial?

4 A No.

5 Q Why not?

6 A Because any of the witnesses that he gave me, the ones
7 that I could get in touch with -- because most of them, I
8 could not get in touch with.

9 Q Okay.

10 A But the ones that I could get in touch with,
11 basically, all they had to tell me was that she was a bad
12 drunk. Nobody was telling me that they were with Mr.
13 Fairey on the time -- in between the time periods of --
14 that the state was alleging the crime occurred. He -- they
15 couldn't put him in a different place. So an alibi defense
16 wasn't panning out.

17 Q Okay. Now, did Mr. Fairey ever mention an Adrienne
18 Jackson or an Adrienne Felder to you?

19 A Yes. Mr. Fairey did mention an Adrienne Jackson. He
20 did not give me any telephone number. He did not give me
21 an address. He did not tell me that that was his neighbor.

22 Q Did you attempt to contact or find this Adrienne
23 Felder or Jackson?

24 A I attempted by way of speaking to the witnesses that I
25 could speak with. But I never could -- if I -- I don't

1 have a phone number or an address, I can't -- you know, I
2 can't speak to a witness I can't find.

3 Q Right. Is it your practice to contact potential alibi
4 witnesses if you have their contact information?

5 A Absolutely.

6 Q Now, did Mr. Fairey want a trial on these charges?

7 A No, sir.

8 Q Okay. When he brought up Adrienne Jackson or Adrienne
9 Felder to you, had he decided not to go to trial at this
10 point?

11 A From the very beginning of this, he told me he did not
12 want a trial. That was in my first meeting with him.

13 Q And so going over to Mr. Fairey's guilty plea, I
14 understand there is a misunderstanding regarding the terms
15 of the plea deal ---

16 A That's correct.

17 Q --- at first. Could you kind of walk us through how
18 that came about?

19 A Yes. From my recollection, Assistant Solicitor Ford
20 told me on -- I believe it was November 29th, 2016, that
21 she was making an offer of 15 years, suspended to 10 years,
22 and probation to follow.

23 Q Okay.

24 A I relayed that offer to Mr. Fairey. That became --
25 that was actually a miscommunication. What she told me

1 later was that she was offering -- it was 10 to 15 years.
2 So immediately, I went to Mr. Fairey and told him the
3 correct offer.

4 Q Okay. Now, did Mr. Fairey seem to understand what you
5 were conveying to him about the correct offer?

6 A Yes, he did. And he -- and he went -- he wanted to
7 relieve me as counsel following that.

8 Q Okay. Do you recall why he wanted to remove you as
9 counsel?

10 A Let's see. I believe he thought I was lying to him.
11 I -- I remember him alleging that I was working with the
12 state, trying to get him convicted of this crime, which is
13 absolutely untrue. And we'd had a hearing in front of
14 Judge Dickson on December 13th, 2016.

15 Q Okay. Now, do you recall that this situation was
16 rectified once the solicitor noted that they are not
17 bringing the "criminal domestic violence of a high and
18 aggravated nature" charge?

19 A Yes.

20 Q Okay. Because that was a mistake, right?

21 A I -- this -- she wanted to up the charge to a domestic
22 violence of a high and aggravated nature. That was ---

23 Q Okay.

24 A --- back in the beginning. She did not do that. But
25 -- and I told him that she was thinking about doing that

1 with the grand jury. But she never did that. That was the
2 extent of that.

3 Q Okay. Did you speak with Mr. Fairey about waiving
4 presentment?

5 A (No audible response.)

6 Q Is that ---

7 A I did.

8 Q Okay. Did he seem to understand those conversations?

9 A Yes, sir. I went over what the grand jury is. I went
10 over exactly how a -- what -- how a true-billed indictment
11 can occur, how a no-billed indictment can -- can be -- can
12 occur. I explained to him everything about the grand jury
13 and what -- what can happen. And in order to for the Court
14 to have jurisdiction to go forward with a guilty plea, that
15 he -- or a trial, it either needs to be indicted or he
16 needs to waive presentment of his indictment to the grand
17 jury, since that is one of his rights.

18 Q Okay. And whose decision was it to plead guilty?

19 A Mr. Fairey's.

20 Q Is there anything else you'd like to tell this Court
21 regarding your representation of Mr. Fairey, Mr. Adams?

22 A I always try to do the best I can for my clients. And
23 that surely is the case here.

24 Q Thank you very much.

25 A Yes, sir.

CROSS-EXAMINATION BY MR. WALLER - JAMES ADAMS

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1 Q Please answer any questions from Mr. Waller.

2 A Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. WALLER:

5 Q Good morning, Mr. Adams. How are you today?

6 A I'm well. How are you?

7 Q Doing well. Thank you.

8 You testified that you met with Mr. Fairey six times;
9 is that right?

10 A That's correct.

11 Q How many of those were for court ---

12 A For court.

13 Q --- proceedings?

14 A Let's see. Two.

15 Q Two?

16 A (No audible response.)

17 Q So you'd met with him four times outside of ---

18 A Out ---

19 Q --- court?

20 A That's correct.

21 Q Okay. You testified that you discussed with him self-
22 defense ---

23 A I did.

24 Q --- is that right?

25 What -- if you can elaborate, what all did y'all

1 discuss? How did it come up?

2 A Essentially, that would be August 11th. We reviewed
3 the discovery in the case, all the way from what the state
4 was alleging. I was showing him also the pictures. I
5 listened to his side of the story.

6 And he made mention that the victim -- alleged victim
7 at this time had a temper and had slapped him in the past.
8 And I asked him if this was a situation to where he was
9 defending himself. And he did not say yes, but he kind of
10 -- kind of -- I -- maybe -- kind -- you know, he never
11 really -- I don't think he really knew what to say.

12 We did talk more about self-defense. And -- and that
13 was about it.

14 Q Okay. Did y'all talk about the past history of the
15 victim?

16 A Yes. Yes.

17 Q And that a jury can be made aware of that?

18 A Excuse me?

19 Q That a jury could've be -- could've been made aware of
20 the past propensity for violence?

21 A Yes.

22 Q Okay. You have mentioned a few times that some of the
23 witnesses you did talk to mentioned that the -- the victim
24 was a -- for lack of a better term, bad drunk.

25 A That's -- that's what I got.

1 Q Did y'all ---

2 A Yes, sir.

3 Q --- did -- did you and Mr. Fairey discuss that the
4 jury could possibly receive that information?

5 A Yes.

6 Q Okay. And when y'all were discussing self-defense,
7 how -- how did Adrienne Felder or Adrienne Jackson come
8 into play?

9 A If you don't mind, I'll refer to my notes.

10 Q Sure.

11 A Thank you. What he told me about Adrienne Jackson was
12 that she had come over the night of the alleged attempted
13 murder. He did not give me a time. He did not give me
14 anything other than that one sentence.

15 Q Okay. But was that in the course of your -- this
16 self-defense conversation or -- or when did that ---

17 A That was in the course of I was getting witnesses'
18 names and phone numbers and addresses, anything I could
19 possibly get from him. Because in the -- we always send a
20 letter out, stating the -- the same thing: If you have any
21 witnesses' addresses/phone numbers, please make a list and
22 be ready with them. He was not ready with them, so I was
23 going over all that with him and trying to get whatever I
24 could out of him.

25 Q Okay. Did you ask him for any contact information for

1 Adrienne Jackson?

2 A I did. And he did not have anything to give me. He
3 did not tell me that that person was a neighbor of his
4 either.

5 Q Okay. Do y'all have an investigator in your office?

6 A We do.

7 Q Okay. Did your investigator attempt to locate any of
8 these people?

9 A He did not.

10 Q Okay. Is there a reason why?

11 A Well, because I was trying to.

12 Q Okay.

13 A And I believe he was very busy at the time on a -- on
14 a -- I'm not sure exactly what case. But I believe it was
15 taking priority over my case.

16 Q Okay. What conversations did you have with Mr. Fairey
17 and his witnesses about the CDV, or the domestic violence,
18 second-degree?

19 A Let's see. I -- let's see. With Ms. Kitt, I talked
20 to Ms. Kitt -- Angela Kitt about that. And she told me
21 that the victim had a drug problem and an alcohol problem;
22 that the victim had an attitude problem; and that the
23 victim hits people all the time; and she had seen her punch
24 a bartender before.

25 Q Okay. So she never told you anything about that

1 night?

2 A She told -- she did. She told what -- what she
3 testified to about getting mad in the street and yelling at
4 the sisters. I believe she told me about that.

5 Q Okay.

6 A Because Cassandra Shuler also was present at that ---

7 Q Okay. Did you talk to Mr. Fairey about what those
8 witnesses said?

9 A I did.

10 Q Okay. And I realize that -- that the plea was kind of
11 all-encompassing.

12 A Yes.

13 Q What did you and Mr. Fairey talk about regarding one
14 set of charges and -- and pleading to the whole thing
15 versus, you know, if he was trying to fight at least the
16 CDV or the others? How did that come about?

17 A He -- I told him that he had a right to a jury trial
18 for all of these offenses -- alleged offenses. We went
19 through exactly what -- after the confusion of the -- of
20 the wrongful plea offer that was made to me and, you know
21 -- we got that straightened out. I explained to him that
22 he did not have to take that and I was absolutely not
23 forcing him to do so and that I would fight as hard as I
24 could at trial for him on any of these offenses.

25 And that's when he chose that he wanted to go ahead

1 and get everything behind him, serve whatever he had -- he
2 had to serve, and be done with it.

3 Q Okay. At the hearing on the motion for you to be
4 relieved, Judge ---

5 A Uh-huh.

6 Q --- Dickson offered Mr. Fairey to have Ms. Hines or --
7 or someone else in the office look over everything or -- or
8 meet with, I guess, all three of y'all together. Did that
9 ever take place?

10 A To be quite honest with you, I -- I believe it did.
11 But I'm not 100 percent. I'm -- I have my notes here of
12 what happened at that. I'm sure the record would reflect
13 better than what I have here.

14 Q Okay. Did you -- did y'all ever have any discussions
15 about going to trial -- after that?

16 A After that?

17 Q Yes, sir.

18 A He told me he did not want to go to trial. No.

19 Q You mentioned on direct examination that he didn't
20 have a -- a perfect alibi defense; is that right?

21 A Let's see. He didn't -- he didn't -- right. That's
22 -- yes.

23 Q Okay. He -- the witnesses weren't there for all of
24 the time?

25 A Right.

1 Q Okay. The state alleged that the victim had been
2 bound and -- and -- and kidnaped, essentially, for -- from
3 eight o'clock -- or -- excuse me -- from 10 p.m. ---

4 A Right.

5 Q --- till at least eight o'clock the next morning, when
6 he left for work, and somehow got free.

7 A I believe that's correct. Yes.

8 Q Okay. He doesn't have a perfect alibi because there
9 was a time period where even if the witnesses here today
10 are to be believed, he was still alone with the victim or
11 could've been alone with the victim; is that right?

12 A Could you repeat the question, please?

13 Q He didn't have a perfect alibi because there were
14 times when he was alone with the victim, where there wasn't
15 another witness.

16 A That. And also, they -- the alibi witness was not --
17 I couldn't get in touch with this person.

18 Q Okay. Okay.

19 A It's pretty hard to have an alibi defense if you have
20 no alibi witness.

21 MR. WALLER: Beg the Court's indulgence, please.

22 THE COURT: Sure.

23 (Whereupon, Mr. Waller and the applicant conferred.)

24 Q You testified that you didn't have any contact
25 information of any kind for Ms. Jackson.

1 A That's correct.

2 Q Okay. Did Ms. Jackson ever try to contact your
3 office? Did you ever get any messages?

4 A I had no messages as to -- as to that. No, sir.

5 Q Okay. How do messages come in to y'all's office?

6 A They are -- if -- if they come in by telephone and/or
7 by foot, they speak with the secretaries on hand.
8 Secretaries take messages; secretaries then leave me a copy
9 of the message on my door, in my 'office, or give it to me
10 personally.

11 Q Okay. Nothing further. Thank you, Mr. Adams.

12 A Yes, sir. Thank you.

13 THE COURT: All right. And anything further from the
14 state?

15 MR. SAVILLE: Nothing further, Your Honor. Thank you.

16 THE COURT: Okay. All right. Thank you, sir. You
17 can step down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: I appreciate it.

20 (Whereupon, the witness exited the witness stand.)

21 THE COURT: Anything further from the state?

22 MR. SAVILLE: No, Your Honor.

23 THE COURT: Okay. And anything further from the
24 applicant?

25 MR. WALLER: No, Your Honor. Just, I guess, a brief

1 argument, if ---

2 THE COURT: Sure.

3 MR. WALLER: --- if you -- if ---

4 THE COURT: I'd ---

5 MR. WALLER: --- Your Honor

6 THE COURT: --- be happy ---

7 MR. WALLER: --- is inclined.

8 THE COURT: --- to hear from you.

9 MR. WALLER: Judge, Mr. Fairey brought this
10 application. And essentially, his -- his claims were that
11 his -- his counsel never spoke with his witnesses.

12 He has testified that he provided contact information
13 for multiple witnesses, two of which who have testified
14 today. One testified that she did speak with Mr. Adams.
15 One testified that she didn't, despite her attempts to get
16 in touch with him.

17 It -- it doesn't seem reasonable that a -- a witness's
18 name would come up who's a cross-the-street neighbor from
19 Mr. Fairey and Mr. Fairey wouldn't say, "She's my cross-
20 the-street neighbor," or have some more information.

21 Your Honor, certainly -- and -- and it's not one of
22 our allegations. But -- but Mr. Adams brought it up, that
23 he didn't have an alibi defense. That's not what Mr.
24 Fairey is claiming.

25 But the victim said from ten o'clock till eight

1 o'clock the next morning, she was bound. Ms. Felder has
2 testified that she was with the victim for a 3-1/2-hour
3 period or 2-1/2-hour period during that time. So it's not
4 an alibi witness. But it certainly pokes a significant
5 hole in the victim's statement; the same thing with Mr.
6 Kitt -- or -- excuse me -- Ms. Kitt testifying.

7 Your Honor, I think that -- I think that there were
8 valid defenses to this that Mr. Fairey did not have the
9 opportunity to evaluate himself, because they weren't
10 developed enough. Your Honor, I -- I believe that the
11 sentence and the -- and the recommendation tends to bear
12 that out, as the allegations were -- were -- were quite
13 severe. And I don't think, under normal circumstances, a
14 negotiated sentence of a range of 10 to 15 would be
15 something that would happen if there wasn't these potential
16 defenses that the -- that the state was aware of.

17 So I just think that, you know, common sense would
18 tell me that that -- they were aware of some issues. And I
19 just don't think those were developed.

20 THE COURT: Okay.

21 Yes, sir. Mr. Saville, anything you'd like to tell
22 me, sir?

23 MR. SAVILLE: Briefly, Your Honor.

24 THE COURT: Yes, sir.

25 MR. SAVILLE: I'm sure you're aware of the PCR case

1 from 1995. It's *Glover v. State*. That's -- the citation
2 would be 318 S.C. 496, where the Supreme Court held that
3 failure to interview an alleged alibi witness is only
4 prejudicial if -- if the witness is to be believed. It
5 establishes an alibi defense by making it physically
6 impossible for the applicant to have committed the crime.

7 Even if someone had visited Mr. Fairey for an hour or
8 two or a sporadic amount of time that night, the facts
9 alleged by the state were that the victim was bound and
10 beaten. He could have easily -- he could have left; he
11 could've come back. He could've -- for -- for any amount
12 of time.

13 Not to mention that I think Mr. Adams did the best he
14 could with the hand he was dealt. We have what -- what I
15 find credible testimony that he did not have a record of
16 being contacted by these witnesses. He reached out to
17 everyone he had the contact information for and did
18 everything he could. But he just simply did not get the
19 information from these witnesses that would've played out
20 well at trial.

21 THE COURT: Okay.

22 MR. SAVILLE: I think the record reveals that the plea
23 was voluntary, knowing, and that applicant voluntarily
24 waived any defenses. And for these reasons, we would
25 respectfully request that the application be dismissed.

1 Thank you.

2 THE COURT: Okay. All right. Thank you very much.

3 (Off the record briefly.)

4 THE COURT: All right. After having heard the
5 testimony in this matter, after having reviewed all of the
6 submissions, to include the transcript of record, I'll
7 respectfully deny your postconviction relief application,
8 Mr. Fairey, understanding in a postconviction relief
9 application is the obligation of the applicant to prove, by
10 a preponderance of the evidence, that counsel's performance
11 and representation was ineffective and/or deficient under
12 established norms.

13 In this instance, I find that, Mr. Fairey, you have
14 failed to meet that burden. And I'll tell you why: In
15 reading the transcript, it's clear to me that on the first
16 day you came in and you had an issue with the
17 recommendation.

18 And there appeared that perhaps there was a
19 miscommunication. Based on my reading of the transcript,
20 I'm not so certain that it was a miscommunication. I think
21 that was a charitable characterization by Judge Dickson at
22 the time.

23 I think more likely and more appropriately, you were
24 just being obtuse and you didn't want to hear what your
25 attorney and the -- and the Court was telling you at the

1 time. So the Court then gave you a -- a period of time to
2 consider your position. I recognize that initially, you
3 had made a motion to have your counsel recused and new
4 counsel be appointed because you weren't -- because you
5 didn't like what he was telling you.

6 But Judge gave you some time to think about it. And
7 the next day, you came into trial -- or you came into the
8 courtroom. That was not for the purpose of convening a
9 trial. It was for the express purpose of giving you the
10 opportunity to plead guilty if you wanted to.

11 And I note that you -- you discussed the -- the day
12 before and the issues that you had; that is, the
13 distinction between the 10 and 15 and how you wanted 10 and
14 the state was going to argue for 15. And you went over
15 that again with Judge Dickson.

16 And then Judge Dickson, instructively for this Court,
17 on page 10 of the transcript discussed with you your
18 counsel and asked you very direct questions about whether
19 you had had the opportunity to discuss it with your
20 counsel, whether he'd answered all your questions, and
21 whether you'd understood everything he told you. And you
22 stated unequivocally, without question, that you were
23 satisfied with his services.

24 And here's the transcript. Line 10 (As read): Are
25 you satisfied with his services as your attorney?"

1 In line 18, your response: "Yes, sir."

2 You can't have it both ways. You can't say, "I'm
3 satisfied with him there then," and you're not satisfied
4 with him now, particularly when the record is abundantly
5 clear that you were armed with all of the information that
6 you've presented today on the date and time that you
7 entered your plea. That is, you don't know any more today
8 than you knew on December 14th, 2016.

9 You just don't like your sentence. And I understand
10 that. And I don't expect defendants to like their
11 sentences necessarily, particularly when they get
12 substantial sentences like you do.

13 However, it was very clear from the record that you
14 knew that it was 20 years suspended to between 10 and 15.
15 And that was -- that was what was recommended to the Court,
16 which is exactly what was represented to you before you
17 went and you entered your plea.

18 Based on -- and -- and I understand that there may
19 have been witnesses outstanding that could have testified
20 on your -- on your behalf. Although I will tell you -- and
21 just listening to the substance of that testimony today,
22 I'm not so certain that would've made a substantial
23 difference in your case and changed the factual scenario
24 much at all.

25 But in any event, you knew that those witnesses were

1 out there. You, by your own admission, knew what those
2 witnesses would say. And you elected, notwithstanding that
3 knowledge, to enter a plea that day.

4 In looking at the record, that plea was entered freely
5 and voluntarily, of your own will and volition, with a full
6 and -- and deliberate disclosure of your rights. And on
7 all those bases, Mr. Fairey, I'll respectfully deny your
8 motion for postconviction relief.

9 I'll also tell you, Mr. Fairey, I don't think it
10 inures to your benefit to have a postconviction relief
11 application granted. In reading your transcript, you had
12 63 years -- 63 potential years -- before you on this case.
13 And I don't know whether you would've been convicted or
14 not. However, that's a big risk to take.

15 Based on the charges that were -- that were
16 outstanding, the potential -- the potential sentence that
17 you had, 13 years is not so bad, not so bad, particularly
18 when you're looking at 63.

19 So, Mr. Fairey, I'll wish you luck, sir. And I hope
20 you have a good day.

21 MR. WALLER: Thank you, Your Honor.

22 THE COURT: Mr. Saville, you ---

23 MR. SAVILLE: Thank you ---

24 THE COURT: --- can prepare ---

25 MR. SAVILLE: --- Your Honor.

1 MR. ADAMS: Thank you, Your Honor.

2 THE COURT: --- the order, sir.

3 MR. SAVILLE: Yes, Your Honor.

4 (Whereupon, the proceeding was concluded at 11:23 a.m.)

5 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE
9TH DAY OF JULY, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

APRIL 14, 2019

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

RECEIVED

Antonio Desmond Fairey, #276486,

2017-CP-38-0525

Applicant,

JAN 24 2019

PCR / PB

Referred to

Answered

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CLERK OF COURT
ORANGEBURG, SC

2019 JAN 18 AM 11:08

FILED FOR RECORD
TIMOTHY B. CLARK

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 13, 2017. An evidentiary hearing into the matter was convened on July 9, 2018, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court were the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's the State's return, and Applicant's PCR application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant waived presentment to the grand jury on charges of domestic violence, second degree (2016-GS-38-0517), kidnapping (2016-GS-38-1073), and attempted murder (2016-GS-38-1074). James R. Adams, III, Esquire ("Plea Counsel"), represented Applicant. Assistant Solicitor Sarah Ford, Esquire, prosecuted the case. On December 13-14, 2016, Applicant pled guilty as indicted to all

ATTEST, TRUE COPY
Winnapa S. [Signature]
CLERK OF COURT
ORANGEBURG COUNTY, SC

charges before the Honorable Edgar W. Dickson. Applicant first appeared before Judge Dickson on December 13, 2016, where it was discussed that the State was recommending a sentence of twenty years, suspended upon the service of a range of ten to fifteen years with probation for five years. It had been Applicant and Plea Counsel's understanding the state was recommending fifteen years suspended to ten. Therefore, court was reconvened on December 14, 2016, after Applicant had the opportunity to consider the State's recommendation and discuss it with his family. Pursuant to the State's recommendation, Judge Dickson sentenced Applicant to imprisonment for concurrent terms of three years for domestic violence, and twenty years each for kidnapping and attempted murder, provided that upon the service of thirteen years' incarceration, the balance was suspended to probation for five years. Applicant did not appeal from his guilty plea or sentence.

Factual Basis of Guilty Plea

Applicant's charge for domestic violence, second-degree resulted from a March 6, 2016, incident in which he struck the victim in her lip with his closed fist. This occurred in the presence of her two children. Applicant had been living with the victim for several months. GP Tr. p. 12.

Applicant's charges for kidnapping and attempted murder resulted from a June 9, 2017, incident involving the same victim. Applicant brutally beat the victim over an approximately eight hour period. That day, Applicant had noticed a text message on the victim's phone and accused her of cheating. He then proceeded to force her into the bedroom, tie her arms and legs with shoelaces and apron, and then beat her all about her body and face. This beating lasted for hours, and Applicant also cut the victim with a knife and severed tendons in her hand. Throughout the night, Applicant repeatedly told the victim he was going to kill her. The victim

was able to escape when Applicant's brother came to the home the next morning. GP Tr. pp. 12-13.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to investigate the facts and prepare for a trial"
 - b. "Counsel failed to investigate and present a 'self-defense' defense"
 - c. "Counsel failed to investigate alleged victim and a very similar incident approximately a year prior to this incident"
 - d. "Counsel failed to investigate fact witnesses and potentially exculpatory witnesses"
2. "Involuntary Guilty Plea"
3. "Due Process Violation"
 - a. "Sixth and Fourteenth Amendments to the U.S. Constitution; Art. I, §§ 3 & 14 of the S.C. Const."

III. SUMMARY OF TESTIMONY PRESENTED

Plea Counsel testified at the PCR hearing, and Applicant testified on his own behalf. Applicant also called Adrian Jackson, a purported alibi witness, to testify.

Applicant

Applicant testified he was told by Plea Counsel that his plea deal was for a sentence of ten years when the offer was actually twenty years suspended to a range of ten to fifteen. Applicant also testified he gave Plea Counsel information on potential witnesses to use in his defense, but Plea Counsel failed to investigate them. However, Applicant was unable to produce any evidence, aside from his own testimony, that he did in fact provide contact information of witnesses to Plea Counsel. Applicant testified he pled guilty because he felt Plea Counsel was unprepared and felt better about pleading guilty than taking his chances at trial with Plea Counsel.

Applicant acknowledged he told the plea judge he was satisfied with Plea Counsel's services and Plea Counsel had answered all of his questions. Moreover, Applicant acknowledged he told the plea judge he had understood everything Plea Counsel had told him and he also told the judge he had talked to his family about the State's recommended sentence of twenty years suspended to a range of ten to fifteen years and wanted to plead guilty.

Adrian Jackson

Adrian Jackson testified she visited Applicant's house the date of the incident which gave rise to Applicant's charges for attempted murder and kidnapping. Jackson testified she visited with Applicant and talked to him that day and would have been prepared to testify as a witness at trial. However, Jackson acknowledged the allegations were that Applicant tied up Victim and beat her over a *period of hours*. Furthermore, while Jackson testified she attempted to call Plea Counsel's office, she could not produce any evidence to corroborate this testimony.

Plea Counsel

Plea Counsel testified he did indeed first understand the plea offer to be for a recommended fifteen year sentence suspended to ten years, but this was cleared up at Applicant's guilty plea hearing. Moreover, Plea Counsel recalled Applicant was able to come back the next day and accept this plea offer after thinking it over and discussing it with his family. Plea Counsel testified Applicant seemed to understand what he was doing.

Plea Counsel testified he reviewed discovery with Applicant and did look into potential witnesses. However, Plea Counsel explained Applicant was unable to provide him with any contact information for potential alibi witnesses and he has no record of these purported witnesses contacting the office. Plea Counsel did not feel the witnesses he did speak with would have been helpful at trial, and they could not provide an alibi to show Applicant could not have

committed the crimes. Plea Counsel recalled perhaps the victim had slapped Applicant before but nothing that would help them at trial. Plea Counsel also explained Applicant did not want to proceed to trial.

IV. APPLICABLE LAW

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, (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 pleas, the Applicant must



show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

V. 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 witness 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).

First, this Court finds the testimony of Plea Counsel to be credible and persuasive. By contrast, this Court finds the testimony of Applicant to be self-serving and lack credibility.

INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. The record and testimony before this Court conclusively reveals Plea Counsel's performance was reasonable under professional norms. Applicant has failed to satisfy his burden of proving both deficiency on the part of Plea Counsel and any prejudice therefrom.

"Counsel failed to investigate the facts and prepare for trial"

Applicant alleges Plea Counsel was ineffective for failing to investigate the facts of the

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case and prepare for trial. This Court finds this allegation to be meritless. Plea Counsel credibly testified he spoke with potential witnesses and reviewed discovery with Applicant. This is corroborated by Applicant's own sworn statements at his guilty plea in which he told the plea judge Plea Counsel had reviewed the evidence with him, answered all his questions, and he was satisfied with Plea Counsel's services. GP Tr. p. 10. Furthermore, although Applicant alleges Plea Counsel failed to prepare for a trial, the record reveals Applicant did not want to proceed to trial. Plea Counsel credibly testified Applicant did not want a trial, and Applicant himself told the plea judge he did not want a jury trial. GP Tr. p. 10. Applicant has presented no valid reason why he should be allowed to depart from the truth of his statements at his guilty plea.

While Applicant now contends Plea Counsel should have spoken with purported alibi witness Adrian Jackson, this Court finds this contention to also be meritless. Plea Counsel credibly testified he had no record of Jackson contacting his office, and Applicant was never able to provide him with any contact information for Jackson. Applicant was unable to produce any corroborating evidence to show he actually provided Jackson's information to Plea Counsel. Moreover, Jackson was unable to provide any corroborating evidence she attempted to contact Plea Counsel. Again, Applicant told the plea judge he was satisfied with Plea Counsel's services and did not need more time with Plea Counsel. GP Tr. p. 10. Even if Plea Counsel had spoken with Jackson, she would have been unable to provide an alibi as the facts of the case alleged Applicant brutally beat the victim over a period of eight hours while she was tied up inside the home. GP Tr. p. 12.

This Court finds Plea Counsel was not deficient regarding this allegation as Plea Counsel adequately investigated the case, talked to available witnesses, and explained this information to Applicant. Furthermore, this Court finds Applicant has failed to prove prejudice regarding this

allegation because the record reveals Applicant did not want a trial, and Plea Counsel adequately investigated his case regardless. Accordingly, this allegation is denied and dismissed with prejudice.

"Counsel failed to investigate and present a 'self-defense' defense"

Applicant alleges Plea Counsel was ineffective for failing to investigate and present a defense of self-defense. This Court finds this allegation also to be meritless. As previously noted, Plea Counsel spoke to the available potential witnesses in this case, but Plea Counsel credibly testified he did not feel the witnesses he spoke to would have been helpful. Again, Plea Counsel credibly testified Applicant did not want a trial, and this is corroborated by Applicant's sworn statement at his guilty plea. GP Tr. p. 10.

Applicant has failed to prove both deficiency and prejudice as Applicant has provided no credible evidence to support a theory of self-defense based on the facts of this case. Self-defense requires a defendant to meet each of four separate elements to be justified in using deadly force:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
- (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

Applicant was charged with domestic violence, second-degree after punching the victim in the lip in the presence of her two children. Applicant was charged with attempted murder after tying the same victim to a bed and beating her and cutting her over a span of eight hours. Nothing in the record supports a viable self-defense theory. Therefore, Applicant has failed to prove Plea

Counsel was deficient regarding this allegation or that he was prejudiced from Plea Counsel's performance. Accordingly, this allegation is denied and dismissed with prejudice.

"Counsel failed to investigate alleged victim and a very similar incident approximately a year prior to this incident"

Applicant alleges Plea Counsel was ineffective for failing to investigate the "alleged victim" and a purported very similar incident approximately a year prior. This Court finds this allegation also to be meritless. Plea Counsel credibly testified that while the victim may have slapped Applicant before, there was no information available to actually help them at trial or give rise to a viable defense to Applicant's charges. Moreover, Applicant has failed to show how any further investigation into the victim's past would have provided a viable defense in light of the underlying facts of his guilty plea. In fact, Applicant told the plea judge he heard the State recite the facts to which he was pleading guilty and he still wished to plead guilty. GP Tr. pp. 14-16. Again, Applicant has provided no valid reason why he should be allowed to depart from the truth of his statements. For these reasons, this Court finds Applicant has failed to prove both deficiency and prejudice regarding this allegation. Accordingly, this allegation is denied and dismissed with prejudice.

"Counsel failed to investigate fact witnesses and potentially exculpatory witnesses"

Applicant alleges Plea Counsel was ineffective for failing to investigate fact witnesses and potentially exculpatory witnesses. This Court finds this allegation also to be meritless. First, Applicant has failed to prove Plea Counsel was deficient as to this allegation. Plea Counsel credibly testified he spoke with available witnesses and found they would not have been helpful at trial. While Applicant now alleges Plea Counsel should have interviewed Adrian Jackson, Plea Counsel credibly testified Applicant was never able to provide him information with which to

contact this witness. In fact, Applicant nor Jackson could provide any evidence to corroborate their claim that Jackson tried to contact Plea Counsel. Again, Applicant told the plea judge he was satisfied with Plea Counsel's services, and he did not need any more time with Plea Counsel. GP. Tr. p. 10. Plea Counsel also credibly testified Applicant did not want to go to trial, and this is corroborated by Applicant's representation to the plea judge that he did not want a jury trial. GP. Tr. p. 10. For these reasons, Applicant has failed to satisfy his burden of proving Plea Counsel was deficient as to this allegation.

Furthermore, Applicant has failed to satisfy his burden of proving that but for the alleged deficiencies, he would have chosen to proceed to trial. Regardless of whether Plea Counsel was able to contact Jackson, this Court finds Jackson's testimony would not have been exculpatory or provided an alibi defense. To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime. State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984). Jackson's testimony that she merely visited Applicant's home during the day of the kidnapping and attempted murder did nothing to show Applicant could not have committed the crime. The facts to which Applicant pled guilty indicate the abuse took place over approximately eight hours while the victim was tied to a bed inside the home. The fact that Jackson may have visited Applicant, and notably never entered the home or the bedroom, does nothing to show Applicant could not have abused the victim over this timeframe as alleged by the State. Therefore, notwithstanding the fact Applicant never provided the information necessary for Plea Counsel to speak with Jackson, her testimony would not have been enough to provide a viable defense. Therefore, Applicant has failed to satisfy his burden of proving that but

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for this alleged deficiency, he would have chosen to proceed to trial. Accordingly, this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant also alleges his guilty plea was not voluntarily entered. This Court finds this allegation to be meritless. The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record fully supports the knowing and voluntary nature of Applicant's



plea. Plea Counsel credibly testified he reviewed discovery with Applicant, explained his constitutional rights, and it was Applicant's decision to plead guilty rather than proceed to trial. Furthermore, Applicant told the plea judge he was not threatened or forced to plead guilty. GP Tr. p. 7. Furthermore, Applicant told the plea judge he understood what he was doing and believed pleading guilty was in his best interest. GP Tr. p. 7. Again, Applicant reaffirmed he was thinking clearly and understood what he was doing. GP Tr. p. 9. Applicant also told the plea judge Plea Counsel explained his Constitutional rights as well as the evidence and law of the case, and Applicant claimed to understand everything Plea Counsel told him. GP Tr. p. 10. After hearing the facts recited by the State, Applicant told the plea judge he still wished to plead guilty and understood his sentence. GP Tr. pp. 16-17.

Therefore, the record clearly reveals the voluntary and knowing nature of Applicant's guilty plea. This Court has heard nothing to allow Applicant to depart from the truth of his statements made at his guilty plea. Accordingly, this allegation is denied and dismissed with prejudice.

DUE PROCESS VIOLATION

In his PCR application, Applicant simply listed "Sixth and Fourteenth Amendments to the U.S. Constitution; Art. I, §§ 3 & 14 of the S.C. Const.," as a Due Process violation in his application alleging he received ineffective assistance of counsel and his guilty plea was involuntary. As noted above, this Court has found each of the raised allegations of ineffective assistance of counsel to be meritless as Applicant failed to satisfy his burden of proving both deficiency and prejudice as to each of them. Furthermore, this Court has found Applicant's allegation that he involuntarily pled guilty to be meritless. Accordingly, as Applicant has failed

to satisfy his burden of proving his allegations, this application is denied and dismissed with prejudice.

VI. CONCLUSION

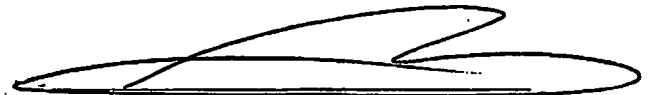
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 7 day of JAN, 2019.



ROBIN B. STILWELL
Presiding Judge
First Judicial Circuit

Coker v. State, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

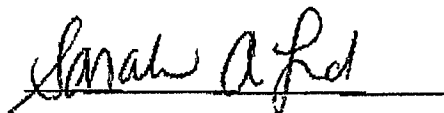
INDICTMENT
2016GS38-1073

At a Court of General Sessions, convened on August 17, 2016 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about June 9, 2016, the Defendant, Antonio Demond Fairey, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Shanicwa Moorer, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

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



Sarah A. Ford, Solicitor

WITNESSES

Everett A Culpepper

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2016A3810100036

Arrested: June 15, 2016

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: August 17, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS38-1073

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

August 22, 2016 TERM

THE STATE
vs.

Antonio Demond Fairey

Indictment for

KIDNAPPING

David B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

SC Code: 16-3-910

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

Antonio Demond Fairey
Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

INDICTMENT
 2016GS38-1074

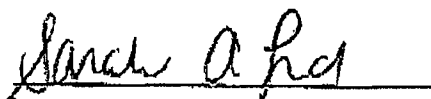
At a Court of General Sessions, convened on August 17, 2016 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Antonio Demond Fairey, did in Orangeburg County on or about June 9, 2016 did with the intent to kill, attempt to kill one Shanicwa Moorer with malice aforethought by (). This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

by beating, tying the victim up, & cutting her while telling her "bitch you gonna die."

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



Sarah A. Ford, Solicitor

WITNESSES

Everett A Culpepper

Orangeburg County Sheriff

2016004345

ARREST WARRANT NUMBER

2016A3810700388

Arrested: June 15, 2016

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: August 17, 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS38-1074

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

August 22, 2016 TERM

THE STATE

vs.

Antonio Demond Fairey

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-29

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

Antonio Demond Fairey
Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

Handwritten notes:
Jury of 6
C.C.C. or C.O.B.
August 22, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2016GS38-0517

At a Court of General Sessions, convened on May 18, 2016 the Grand Jurors of Orangeburg County present upon their oath:

DOMESTIC VIOLENCE--2ND DEGREE

That Antonio Demond Fairey did in Orangeburg on or about March 6, 2016 cause physical harm or injury or offer or attempt to cause physical harm or injury with the present ability to do so under circumstances reasonably creating fear of imminent peril to a household member, , and moderate bodily injury resulted, or the defendant committed Domestic Violence in the Third Degree while violating a Protection Order, or has one prior conviction for Domestic Violence within the previous 10 years, or the defendant committed a Domestic Violence in the Third Degree (), thereby violating Section 16-25-20(C), Code of Laws of South Carolina, 1976, as amended.

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



Sarah A. Ford, Solicitor

WITNESSES

Anthony Robinson

Orangeburg Police Department

ARREST WARRANT NUMBER
2016A3820800077

Arrested: March 7, 2016

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: May 18, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS38-0517

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 23, 2016 TERM

THE STATE
vs.

Antonio Demond Fairey

Indictment for
DOMESTIC VIOLENCE--2ND DEGREE

SC Code: 16-25-20(C)

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

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Antonio Demond Fairey
Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.