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(PUNISHMENT)

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STATE'S

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DEFENDANT'S

NO.	DESCRIPTION	OFFERED	ADMITTED	VOL.
NONE				

P R O C E E D I N G S

(Open court, defendant present, no jury)

THE COURT: Okay. This is Cause No. 32004, the State of Texas v. Richard Gross. Mr. Gross was found guilty by a jury and adjudicated guilty, and I ordered a PSI and set it for sentencing, and the State can proceed whenever you're set up and ready.

MS. MITCHELL: Your Honor, I have to read the enhancement paragraphs.

THE COURT: Sure. Surely. I'm sorry. I didn't realize there was enhancement paragraphs.

Mr. Gross, if you'd go ahead and stand, please.

(Sotto voce discussion between Mr. Cargill and Mr. Gross)

MS. MITCHELL: And it is further presented in and to said Court that prior to the commission of the aforesaid offense, hereafter styled the primary offense, on the 1st day of July 1988 in Cause No. 18560 in the 3rd District Court of Anderson County, Texas the defendant was convicted of the felony offense of injury to a child.

THE DEFENDANT: True.

THE COURT: True? Okay.

MS. MITCHELL: And it is further

1 represented in and to said Court that prior to the
2 commission of the aforesaid offense, herein styled the
3 primary offense, on the 25th day of January 1998 in
4 Cause No. 19672 in the 3rd District Court of Anderson
5 County, Texas the defendant was convicted of the felony
6 offense of forgery of a financial instrument.

7 THE DEFENDANT: True.

8 MS. MITCHELL: And it is further presented
9 in and to said Court that prior to the commission of
10 aforesaid offense, hereinafter -- hereafter styled the
11 primary offense, on the 30th day August 1990 in
12 Cause No. 20214 in the 3rd District Court of Anderson
13 County, Texas the defendant was convicted of the felony
14 offense of attempted murder.

15 THE DEFENDANT: True.

16 THE COURT: What's the sentencing range on
17 this?

18 MS. MITCHELL: 25 to life, Your Honor.

19 THE COURT: Oh, okay. All right. You can
20 be seated, Mr. Gross.

21 You may call your first witness.

22 MS. MITCHELL: Your Honor, the State had
23 previously tendered and Mr. Gross has pled true to these
24 three felony convictions. I have it marked as
25 State's 1. State's 1 is -- it's P1 since we had the

1 jury trial -- is 19672 and 18560. It's the pen packet
2 from TDCJ.

3 THE COURT: Any objection?

4 MR. CARGILL: I need to look and make sure
5 it's the --

6 THE COURT: Let him see -- yeah.

7 (Sotto voce discussion between Ms. Mitchell
8 and Mr. Cargill)

9 MR. CARGILL: Okay. These are the actual
10 pen packets.

11 MS. MITCHELL: And then State's 2 would be
12 Cause No. 56 -- no -- 20214.

13 MR. CARGILL: And we've seen both of those,
14 Your Honor.

15 THE COURT: Any objection?

16 MR. CARGILL: No objection.

17 THE COURT: State's 1 and 2 are admitted
18 into evidence.

19 MS. MITCHELL: Thank you, Your Honor.

20 Your Honor, the State calls Don Myers.

21 THE COURT: Okay.

22 MS. MITCHELL: And, Your Honor, before
23 Mr. Myers takes the stand, the State would ask the Court
24 to take judicial notice of the jury's verdict and the
25 facts that were presented during the trial to you.

1 THE COURT: I'll take judicial notice of
2 the same.

3 Deputy, if you'd raise your right hand.
4 (Witness sworn)

5 THE COURT: Okay. You can come up and have
6 a seat in the witness chair.

7 And you can proceed whenever you're ready,
8 Ms. Mitchell.

9 MS. MITCHELL: Thank you, Your Honor.

10 DON MYERS,
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MITCHELL:

14 Q. Hi, Deputy Myers. How are you?

15 A. I'm fine. How are you?

16 Q. Good. We are here today because of the
17 sentencing for Richard Gross. He was convicted of
18 assaulting you.

19 A. Yes.

20 Q. And if -- I'm sure the Court remembers -- you
21 were actually bitten through your pant's leg by
22 Mr. Gross?

23 A. I was.

24 Q. And at the time you testified in the
25 case-in-chief that you felt pain?

1 A. Yes, I did.

2 Q. All right. How long did that pain last?

3 A. Several weeks.

4 Q. And what type of treatment did you have to
5 receive?

6 A. Antibiotics. I also had to be put on what we
7 refer to as "the cocktail," which is within so many
8 hours of being bit or possibly made contact with
9 somebody that may be HIV we have to get on antiviral
10 medication.

11 Q. And there's been no indication that he is?

12 A. That is correct.

13 Q. And you've been -- you test negative? You
14 still have another year or two to go, right?

15 A. From what I understand, they had to draw up a
16 particular search warrant for that particular test of
17 blood, and they found it was HIV negative. However,
18 during that process --

19 MR. CARGILL: Objection, Your Honor.

20 MS. MITCHELL: I'll move on, Your Honor.

21 THE COURT: Sustained.

22 Q. (BY MS. MITCHELL) The bite itself, did it
23 leave a scar?

24 A. Yes, it did.

25 Q. I'm not going to ask you to show it to us, but

1 is it visible?

2 A. Yes, it is.

3 Q. And you testified at trial that as part of the
4 struggle with Mr. Gross that you injured your fingers?

5 A. Yes.

6 Q. Tell the Court what type of treatment you
7 sought for your fingers.

8 A. After X-rays they discovered that my -- on my
9 right hand that my pinky and ring fingers were both
10 broke in several places.

11 Q. Did you have to wear a cast?

12 A. Yes, I did.

13 Q. And did you have to go to a specialized doctor?

14 A. I went to the Azalea Clinic in Tyler.

15 Q. Is that an orthopedic clinic?

16 A. Yes, it is.

17 Q. And did you see an orthopedist?

18 A. I did.

19 Q. Did the orthopedist prescribe any specific type
20 of therapy or surgery for your fingers?

21 A. He wanted to do surgery on my little finger --
22 on my little pinky finger.

23 Q. And did you do the surgery?

24 A. Due to time constraints of us being short here
25 in the county, it just wasn't a possibility at that

1 time, so they kept the finger splinted for a certain
2 amount of time, and then from there I was referred to
3 physical therapy.

4 Q. How long did you do physical therapy for?

5 A. It was several weeks. I'm not sure. It was
6 twice a week for -- anywhere from six to eight weeks.

7 Q. And once you completed physical therapy, do you
8 still have any problems?

9 A. Yes.

10 Q. What types of problems do you have?

11 A. I have a permanent disfigurement on my left
12 finger, which is a raised knot located on the first
13 digit.

14 Q. And you have a bandage on your wrist today.
15 Now, that has nothing to do with Mr. Gross, does it?

16 A. That has nothing to do with this incident.

17 Q. Can you bend your fingers the right way, or do
18 they hang funny?

19 THE COURT: Was it your right hand or your
20 left?

21 THE WITNESS: It was my right hand.

22 THE COURT: Okay. I thought you said the
23 left.

24 Q. (BY MS. MITCHELL) I'm flipped. I'm looking at
25 your left.

1 THE COURT: Yeah. Yeah. Because he kept
2 doing his right hand, I wasn't quite getting it. So it
3 was your right hand that was injured in this incident?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Okay.

6 Q. (BY MS. MITCHELL) So show the Court exactly
7 what you mean when you say your hand is still not quite
8 the same.

9 A. The little finger has got a permanent knot on
10 it, which the doctor said there would probably be some
11 premature arthritis settle in these two fingers.

12 MR. CARGILL: Objection; hearsay in regards
13 to what the doctor said that might happen.

14 THE COURT: Sustained as far as what the
15 doctor said.

16 A. The knot will be -- just will be permanently on
17 my finger.

18 Q. (BY MS. MITCHELL) Has it ever gone down since
19 the --

20 A. No, it's not gone down, and it's -- if it gets
21 hit, it's still tender.

22 Q. Now, the bite itself, going back to that, did
23 you have to take any time off of work because of the
24 bite?

25 A. Take time off? Yes.

1 Q. How long, if you remember?

2 A. Probably a couple of days; two or three days.
3 Until it began to basically close itself before I could
4 wear any kind of clothing for just light or limited
5 duty.

6 Q. And while it was still open, did you still feel
7 pain?

8 A. Yes.

9 Q. Describe to the Judge what type -- what the
10 pain felt like.

11 A. It was like somebody had just taken a bite out
12 of my leg; just like biting an apple. And that's about
13 -- that's about what it looked like as well.

14 Q. Did your leg feel like the apple?

15 A. Probably worse. The -- in the midst of that,
16 the first thing you have to watch for -- this is least
17 my own personal knowledge -- is -- for the bite mark,
18 you have to watch for infection, and I did get an
19 infection.

20 Q. You did?

21 A. Yes.

22 Q. What type of infection did you get?

23 A. I'm not sure other than just being advised that
24 the bite mark --

25 MR. CARGILL: Objection; hearsay.

1 THE COURT: Overruled.

2 MR. CARGILL: And nonresponsive.

3 THE COURT: Overruled.

4 MS. MITCHELL: May I proceed, Your Honor?

5 THE COURT: Yes, you may.

6 Q. (BY MS. MITCHELL) And, Deputy Myers, have you
7 been trained in how to care for your bite wound? Did
8 the hospital give you destructions (sic) --

9 A. Yes.

10 Q. -- instructions on how to care for your --

11 A. Yes, the wound had to be debrided probably
12 twice a day with hot saltwater.

13 Q. Did you do that yourself, or did someone have
14 to do it for you?

15 A. Either I did it or my wife did it.

16 Q. And when were you finally released from the
17 doctor, or have you been released?

18 A. From this incident, I've been released.

19 Q. And do you know Mr. Gross' reputation in the
20 community?

21 A. Yes.

22 Q. Is it good or bad?

23 A. It's probably not the best.

24 Q. Okay.

25 MS. MITCHELL: I pass the witness, Your

1 Honor.

2 THE COURT: Mr. Cargill?

3 MR. CARGILL: No questions of this witness,
4 Your Honor.

5 THE COURT: Okay. He may step down, and I
6 left my PSI sitting on my desk. I've got to go get it.
7 You can step down. I'm going to run go get it, and I'll
8 be right back.

9 (Break taken)

10 (Open court, defendant present, no jury)

11 THE COURT: Okay. I've got it. You can
12 call your next witness.

13 MS. MITCHELL: State calls Amy Wiginton.

14 THE COURT: Okay. Ms. Wiginton. Okay. If
15 you'll raise your right hand.

16 (Witness sworn)

17 THE COURT: Okay. You can have a seat in
18 the witness chair.

19 And you can proceed whenever you're ready.

20 AMY WIGINTON,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. MITCHELL:

24 Q. Ms. Wiginton, were you asked at the conclusion
25 of a jury trial to conduct a presentence investigation

1 on Richard Gross?

2 A. Yes, ma'am.

3 Q. Have you done presentence investigations
4 before?

5 A. Yes, ma'am.

6 Q. And I just jumped right into the question
7 without asking you where you work.

8 A. Yes, ma'am.

9 Q. Where do you work?

10 A. I work for Anderson County Adult Probation.

11 Q. How long have you been a probation officer?

12 A. I have been with Anderson County 14 and a half
13 years.

14 Q. Whereabout before then?

15 A. Smith County with juvenile.

16 Q. So you've been a probation officer for a nice,
17 long time?

18 A. Yes, ma'am.

19 Q. And the PSI that was ordered by the Court, was
20 it the long form or the short form?

21 A. It was the long form.

22 Q. And what's the difference between short and
23 long?

24 A. The short one is just the one we do on our
25 computer. It just asks basic questions. It doesn't go

1 into details. The long one, it wants us to go into more
2 of his criminal history, his social history, more about
3 any kind of illnesses. It's longer. It's just more in
4 depth.

5 Q. And do you see Richard Gross here in the
6 courtroom?

7 A. Yes, ma'am, I do.

8 Q. Could you please state where he's seated and
9 what he's wearing?

10 A. He's in a gray and white -- I'm not sure if
11 they're called jumpsuit, and he's seated next to Mark
12 Cargill.

13 MS. MITCHELL: Your Honor, may the record
14 reflect the witness has identified Richard Gross?

15 MR. CARGILL: No objection.

16 THE COURT: The record will so reflect.

17 MS. MITCHELL: Thank you, Your Honor.

18 Q. (BY MS. MITCHELL) Ms. Wiginton, did you go to
19 the jail to speak to Mr. Gross?

20 A. Yes, ma'am.

21 Q. And did you ask him to give a version of what
22 he believed happened?

23 A. Yes, ma'am.

24 Q. And did you relay that in your PSI verbatim to
25 the Judge?

1 A. Yes, ma'am. He was asked to put it in writing,
2 and this is what he wrote, and I typed it verbatim as he
3 wrote it. I didn't change anything, didn't change
4 grammar, punctuation, or spelling.

5 Q. And, of course, the 12 Anderson County jurors
6 found him guilty of assaulting a public servant?

7 A. Yes, ma'am.

8 Q. And in his statement of what happened, did he
9 claim that he was -- "I will beat up the following
10 officers to the point of no return"? Was he claiming he
11 was the one that was --

12 A. Yes --

13 Q. Okay.

14 A. -- that he was beat up.

15 Q. And did he claim in his statement that he was
16 tasered by Officer Donald Myers to the point of death?

17 A. Yes, ma'am.

18 Q. Did he claim that he was not under any kind of
19 influence as well?

20 A. Yes, ma'am.

21 Q. And then you go into his criminal history.

22 A. Yes, ma'am.

23 Q. And you were present when Mr. Gross pled true
24 to the enhancement paragraphs, correct?

25 A. Yes, ma'am.

1 Q. So we know that he's been to TDCJ before at
2 least twice?

3 A. Yes, ma'am.

4 Q. So his first offense that you were able to find
5 that he had was in 1988, and what was the charge for
6 that?

7 A. Injury to a child.

8 Q. And he was convicted for five years?

9 A. Yes, ma'am.

10 Q. And then 1988, the same date, forgery?

11 A. Yes, ma'am.

12 Q. He was convicted for how many? Eight years?

13 A. Eight years.

14 Q. And that's the charges that he's pled true
15 to --

16 A. Yes, ma'am.

17 Q. -- of those? And then 1990, attempted murder?

18 A. Yes, ma'am.

19 Q. How many years did he receive on that one?

20 A. Fifteen.

21 Q. And he's pled true to that one as well,
22 correct?

23 A. Yes, ma'am.

24 Q. And then he gets into some misdemeanor cases.

25 What about this aggravated assault with a deadly weapon?

1 It shows probation.

2 A. That was a case he said he received out of
3 Dallas County, and he did probation.

4 Q. We have no record of that. Are you aware of
5 that?

6 A. Yes, ma'am.

7 Q. Okay. This is going off of what he told you?

8 A. He told me that in the Dallas County website
9 had something, but it said it was not to be used
10 officially, but since he had already told me, I went
11 ahead and used it.

12 Q. You went ahead and put it in the PSI?

13 A. Yes, ma'am.

14 Q. But as far as we know it didn't result in any
15 form of final conviction?

16 A. Not to my knowledge.

17 Q. And then we rock on, and in '06 he failed to
18 give identifying information?

19 A. Yes, ma'am.

20 Q. He got -- that's a misdemeanor, but he got
21 convicted on that. And then in 2012, assault a family
22 member? Convicted of that?

23 A. Yes, ma'am.

24 Q. And then was arrested in 2013 but -- for
25 felonies, but we don't know the disposition of those at

1 the moment; do we?

2 A. No, ma'am.

3 Q. Then he has the pending case of credit card or
4 debit card abuse --

5 A. Yes, ma'am.

6 Q. -- which is a felony? And then, of course, the
7 incident offense that occurred on November 19th, 2014?

8 A. Yes, ma'am.

9 Q. And when the offense of November 19th, 2014,
10 was committed, was he on bond conditions for the credit
11 card case that's pending?

12 A. Yes, ma'am, he was.

13 Q. Part of your PSI long form, do you delve into
14 the socio-history, economic history of the person that
15 you're interviewing?

16 A. Yes, ma'am.

17 Q. And as far as a substance abuse history, I know
18 that you talked to Mr. Gross, but did he indicate on his
19 SASSI score that he had a dependency problem?

20 A. It indicated low, but whenever I talk about the
21 DEF, his DEF was incredibly high.

22 Q. What does DEF mean?

23 A. His defensiveness was incredibly high, so it
24 means -- it could indicate that he is someone who
25 doesn't accept responsibility, and he was incredibly

1 defensive when he took the SASSI.

2 Q. Okay. And as far as his social history, did he
3 tell you that he had been diagnosed with a psychological
4 illness?

5 A. Yes, ma'am.

6 Q. What did he tell you?

7 A. He said he was diagnosed with a personality
8 disorder in either '95 or '96, loss of part of his fear,
9 and having a bad back.

10 Q. Now, were you able to confirm any type of
11 diagnosis of personality disorder?

12 A. No, ma'am.

13 Q. And you asked Mr. Gross what type of medication
14 he was on, correct?

15 A. Yes, ma'am.

16 Q. Did he indicate any medication that would be
17 indicative of any type of mental illness?

18 A. No.

19 MR. CARGILL: Objection, Your Honor. This
20 client -- this witness doesn't have the expertise to
21 indicate what would be used for --

22 MS. MITCHELL: I'll rephrase the question,
23 Your Honor.

24 Q. (BY MS. MITCHELL) Did he say he was on any
25 medication?

1 A. No, ma'am, he's not on any medications.

2 Q. He's not on any medication?

3 A. No, ma'am.

4 Q. And as far as his attitude when you're
5 interviewing, he was cordial; is that fair to say?

6 A. Yes, ma'am.

7 Q. Did he accept responsibility for what the jury
8 said that he was guilty of?

9 A. No, ma'am.

10 Q. In fact, what did he say?

11 A. He pretty much denied what the jury convicted
12 him of and pretty much put blame on the officers stating
13 that he was never advised who they were and he didn't
14 know what was going on, he just found himself on the
15 ground. He said they beat him up pretty good.

16 Q. Okay.

17 MS. MITCHELL: I pass the witness, Your
18 Honor. Oh, wait. Yeah, I pass the witness, Your Honor.

19 THE COURT: Okay. Mr. Cargill?

20 CROSS-EXAMINATION

21 BY MR. CARGILL:

22 Q. A high score on DEF, you said that it could
23 mean that he was defensive?

24 A. Yes, sir.

25 Q. Okay. What else could it mean?

1 A. It could mean that he was trying to manipulate
2 the test and answer the questions like he thought maybe
3 we wanted them answered instead of just answering how he
4 felt.

5 Q. Could it also mean anything else?

6 A. That he doesn't accept blame. There's a lot of
7 things it could indicate. It makes the SASSI pretty
8 much invalid when their DEF is that high.

9 Q. Would it indicate also that maybe he didn't
10 have comprehension of the test? Could it mean that?

11 A. Usually when they don't have that, there's a
12 box that fits the RAP, and if they don't understand what
13 they're doing, he will score out on that as well, and he
14 didn't.

15 Q. What did he score?

16 A. He scored a zero on that one.

17 Q. Okay. And it's a two-or-more, right?

18 A. Two-or-more, yes.

19 Q. Okay. And if you score two or more, then it
20 would be -- the results would be meaningful; is that
21 correct?

22 A. Yes, sir.

23 Q. Okay. Absent that, you're supposed to follow
24 the results of the SASSI?

25 A. Yes, sir.

1 Q. And the results of the SASSI would indicate my
2 client doesn't have a dependence or has a low
3 probability of having a dependence?

4 A. But since his DEF is higher than eight, it's
5 pretty much invalid. Usually, he's either not
6 admitting, or he's just highly defensive.

7 Q. Or it could be reflective of situational
8 factors; is that not correct?

9 A. It could be.

10 MR. CARGILL: May I approach the witness,
11 Your Honor?

12 THE COURT: Yes, you may.

13 Q. (BY MR. CARGILL) I'd ask you to refer to your
14 own test and tell me whether or not after examining your
15 own test would the answer "could be" or --

16 A. Yes.

17 Q. Okay. So it could be dependent on situational
18 factors. Where was my client taking the SASSI?

19 A. In the jail.

20 Q. Okay. And you said that he indicated he wasn't
21 on any medication; is that correct?

22 A. Yes.

23 Q. But you understand that my client is on Social
24 Security Disability because of a personality disorder?

25 A. I know he's on Social Security Disability, and

1 he told me it was for that, but I don't have
2 verification that that's what it actually is.

3 Q. Did you ever ask him what his usual medication
4 would be?

5 A. No, sir, I did not.

6 Q. You were -- it was indicated that my client did
7 have psychiatric treatment in the hospital on more than
8 one occasion?

9 A. I know he told me that he had -- I think they
10 had diagnosed him in Crockett.

11 Q. Okay. But it was actually -- I think that what
12 he told you is that he was actually treated in the
13 hospital at Crockett?

14 A. Yes.

15 Q. Okay. And you don't do any independent
16 checking of that, but you don't have any reason to
17 disbelieve that, do you?

18 A. No. We do this PSI by what they tell us and
19 what they say as far as their social history.

20 Q. Well, just in your personal observation of my
21 client, did you take apart from him that there's some
22 deficiencies in his capacity? Not that he's
23 incapacitated wholly, but is there deficiencies in his
24 capacity?

25 MS. MITCHELL: Judge, I object. She's not

1 qualified to answer that question.

2 Q. (BY MR. CARGILL) Let me ask it this way: When
3 you were asking questions, did he have some types of
4 problems remembering things when you asked him to recall
5 information?

6 A. No, sir.

7 Q. Okay. So whenever you asked him questions
8 about his past, he was able to recall all the
9 information to you is your understanding?

10 A. Yes, sir, except about his criminal history.

11 Q. Well, would that not be significant events in
12 his life?

13 MS. MITCHELL: Objection, Your Honor; calls
14 for speculation on behalf of the witness.

15 THE COURT: Overruled. She can answer if
16 she --

17 Q. (BY MR. CARGILL) Would that be not significant
18 events in his life?

19 A. Not if it wasn't important to him. A lot of
20 people forget their criminal histories.

21 Q. Well, let me ask you: When you go to that
22 point, he told you he was -- he had cases that you could
23 not even independently verify that -- whether he had
24 that case or not; isn't that true?

25 A. They showed up on the criminal history, but as

1 far as me being able to verify them as on his probation
2 back in --

3 Q. Are you saying that the alleged incident about
4 the aggravated assault from 1999 showed up on his
5 criminal history?

6 A. Right here. 11/17/1999 --

7 Q. Yes, ma'am.

8 A. -- here's that ag assault, yes.

9 Q. Okay. Does it say that he was convicted?

10 A. No, sir, I don't believe so.

11 Q. Certainly doesn't say he was on probation,
12 correct?

13 A. Correct.

14 Q. Let's look at his criminal history. Other than
15 the incident offense, his last felony conviction was in
16 1990; is that correct?

17 A. Yes, sir.

18 Q. Now granted he did have some misdemeanor
19 convictions between that where he spent 30 days at a
20 time or 18 days; is that correct?

21 A. Yes, sir.

22 Q. But the last felony conviction was 25 years
23 ago?

24 A. Yes, sir.

25 Q. Did you look into any of the circumstances of

1 those previous convictions, or is that not part of
2 the --

3 A. I looked on a website, the Dallas County
4 website, but it was also noted on there that it was not
5 to be used for anything like this. I just wanted to see
6 what actually happened. So, no, I never had a chance to
7 request anything that was certified from them.

8 Q. And as far as his mannerisms or his demeanor in
9 the interview, was he cooperative?

10 A. Yes, sir.

11 Q. Was he informative?

12 A. Yes, sir.

13 MR. CARGILL: I pass the witness.

14 THE COURT: Ms. Mitchell?

15 MS. MITCHELL: No further questions, Your
16 Honor.

17 THE COURT: Okay, ma'am. You may step
18 down.

19 You may call your next witness.

20 MS. MITCHELL: Your Honor, the State asks
21 that the Court take judicial notice of the PSI that was
22 submitted to the Court and conducted on the request of
23 this Court that Ms. Wiginton just testified to.

24 THE COURT: The Court will take judicial
25 notice of the same.

1 MR. CARGILL: Your Honor, we would ask for
2 the Court to review it but not for it to be taken as
3 judicial notice. My understanding, that means --

4 MS. MITCHELL: That's what I meant to say.

5 MR. CARGILL: -- part of the record --

6 THE COURT: Okay. I've reviewed it.

7 MS. MITCHELL: That's what I meant to say.

8 THE COURT: I've reviewed it. I reviewed
9 it prior to the hearing today so...

10 MS. MITCHELL: Yes, ma'am. Your Honor, at
11 this time the State rests.

12 THE COURT: Okay. Defense?

13 MR. CARGILL: Your Honor, we call Donny --
14 I'm sorry. I keep forgetting his last name. Donny
15 Brown.

16 THE COURT: Okay. Donny Brown. Mr. Brown,
17 if you'll come around here, I'll swear you in. Come
18 around here. Okay. And if you'll stop somewhere in
19 there and raise your right hand.

20 THE WITNESS: Here?

21 THE COURT: Yes, sir, that's fine. To me.
22 I swear --

23 THE WITNESS: Oh, to you?

24 THE COURT: Yes, sir.

25 (Witness sworn)

1 THE COURT: Okay. You can come up here and
2 have a seat in the witness chair. You sit down facing
3 me, and then you turn around and face the front. Okay.
4 Turn around. There you go.

5 And you can proceed whenever you're ready,
6 Mr. Cargill.

7 DONALD BROWN,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CARGILL:

11 Q. Mr. Brown, if would you state your name and
12 spell at least the first name for the record.

13 A. For the who?

14 Q. Your first name, spell it for the record.

15 A. Oh, Donald, D-o-n-a-l-d.

16 Q. And you go by Donny?

17 A. Yes.

18 Q. With a Y?

19 A. Yeah.

20 Q. Okay. D-o-n-n-y. In fact, I think that's
21 probably what I put on your subpoena; is that right?

22 A. Well, my name is Donald.

23 Q. Okay. Well, Mr. Brown, we didn't get to talk
24 much. This is the first date that we've met other than
25 I've seen you at Davis before -- Davis Furniture before;

1 is that correct?

2 A. Yes, sir.

3 Q. Okay. Where do you work?

4 A. Davis.

5 Q. Davis Furniture?

6 A. Uh-huh.

7 Q. Okay. And what do you do for them?

8 A. Deliver, drive, whatever.

9 Q. Okay. And do you know my client?

10 A. Yes, sir.

11 Q. How do you know Mr. Gross?

12 A. I used to do a lot of fishing with him.

13 Q. How long y'all been fishing buddies?

14 A. About five or six years I think.

15 Q. And your -- most your whole relationship just
16 is based on that fishing --

17 A. Yes.

18 Q. -- is that correct?

19 A. Yes, sir.

20 Q. Okay. And how often would you see my client?

21 A. Just about every Wednesday and Sunday.

22 Q. Okay. Now with your experience with my client
23 on the every Wednesday and Sunday and doing this
24 fishing, what did you do besides fish? I guess, talk?

25 A. Oh, yeah.

1 Q. Converse?

2 A. Oh, yeah, we talked.

3 Q. Have you known my client to be a violent
4 person?

5 A. No.

6 Q. Okay. Now, you heard the convictions that he
7 said that were actually true, that he had been convicted
8 of these convictions. Did you know he had these -- this
9 criminal history?

10 A. One or two but not --

11 Q. But you don't know anything about his past as
12 far as that, do you?

13 A. No, I didn't get into all that.

14 Q. But just as far as your interaction with him,
15 there hadn't been any anger or violent tendencies or
16 anything to that effect?

17 A. No, none at all.

18 MR. CARGILL: I pass the witness.

19 THE COURT: Ms. Mitchell?

20 CROSS-EXAMINATION

21 BY MS. MITCHELL:

22 Q. Mr. Brown, hi. I'm Allyson Mitchell. Your
23 relationship with Mr. Gross is just purely social; is
24 that fair to say?

25 A. Yes.

1 Q. Have you ever been around him when he's been
2 drinking or doing drugs?

3 A. No.

4 Q. Do you know of him to drink or do drugs?

5 A. Well, I drink every now and then, and I try to
6 -- but he don't drink. I don't know about the drugs,
7 and I sure don't do drugs.

8 Q. Okay.

9 A. We never had no counseling or nothing.

10 Q. And you heard what a jury convicted Mr. Gross
11 of; did you not?

12 A. Did I what?

13 Q. Did you hear what the jury convicted him of?
14 Assault of a public servant?

15 A. Yes, I read about it.

16 MR. CARGILL: Are you about to publish
17 them?

18 MS. MITCHELL: This right here --

19 MR. CARGILL: I think you have to say what
20 exhibit it was from the trial.

21 MS. MITCHELL: Okay.

22 MR. CARGILL: I'm just trying to clear the
23 record.

24 THE COURT: Yeah.

25 MS. MITCHELL: I'm usually really good

1 about taking down the record.

2 MR. CARGILL: Okay. Just making sure.

3 THE COURT: Those are from the exhibits
4 that were offered and admitted during the trial, the
5 information that she has in front of her. We had them
6 in a sealed envelope or a closed envelope in the file.

7 Q. (BY MS. MITCHELL) Mr. Brown, I'm going to show
8 you what was entered into evidence as State's Exhibit
9 No. 3 in the trial. That's been identified as the
10 police officer's -- the sheriff deputy's leg. Are you
11 surprised to know that Mr. Gross bit him through his
12 pant's leg causing that damage?

13 A. No, I didn't.

14 Q. You're surprised?

15 A. Yes.

16 Q. Okay. Let me show you State's Exhibit No. 4.
17 It's a little bit different angle. Are you surprised to
18 know your friend did that as well?

19 A. No, not like that. I heard he got bit.

20 Q. You didn't know he got bit that bad?

21 A. No.

22 Q. Okay.

23 A. Just what the paper said about it.

24 Q. And how long have you known Mr. Gross?

25 A. Well, I've been knowing him -- I don't know --

1 about six or seven years. He's my brother's daughter by
2 his sister.

3 Q. Your brother's what?

4 A. Got a daughter by his sister.

5 Q. Oh, okay. So your brother is his
6 brother-in-law basically?

7 A. Yes.

8 Q. Okay.

9 MS. MITCHELL: I pass the witness, Your
10 Honor.

11 MR. CARGILL: No further questions, Your
12 Honor. May he be excused?

13 THE COURT: He's excused.

14 Mr. Brown, you can step down. Turn towards
15 me to get out.

16 MR. CARGILL: Your Honor, may I have one
17 moment?

18 THE COURT: Sure.

19 You can stay in the courtroom, or you can
20 leave and go home or go to work. Whatever you want to
21 do.

22 MR. CARGILL: Your Honor, I call my client,
23 Richard Gross.

24 THE COURT: Okay, Mr. Gross. Mr. Gross, it
25 will be a little difficult, but kind of raise your right

1 hand.

2 (Witness sworn)

3 THE COURT: Okay. Go ahead and come up
4 here and be careful on the steps. And like Mr. Brown
5 did, seat yourself and then turn around and face the
6 front.

7 All right, Mr. Cargill. You can proceed.

8 RICHARD GROSS,
9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CARGILL:

12 Q. Mr. Gross, can you state and spell your name
13 for the record?

14 A. Yeah, Richard Gross. G-r-o-s-s.

15 Q. Okay. And, sir, you're on Social Security
16 Disability?

17 A. Yes, sir.

18 Q. Okay. How much do you get a month?

19 A. Seven-something.

20 Q. Seven-something?

21 A. About 758 or something like that.

22 Q. How long you been on Social Security
23 Disability?

24 A. About ten years.

25 Q. And in this incident offense, you've already

1 made it clear your position in regards to how -- from
2 your perspective how you felt; is that correct?

3 A. Yes, sir.

4 Q. Okay. Not to go in too much of the testimony
5 but -- of the trial, but you were tased; is that
6 correct?

7 A. What?

8 Q. You were tased?

9 A. Yes, sir.

10 Q. And how many times were you tased?

11 A. I was tased twice.

12 Q. Okay. And was that before this incident of the
13 biting?

14 A. (No verbal response).

15 Q. The tasing happened before --

16 A. Yes, sir.

17 Q. And would you agree with me that after your
18 tasing that --

19 MS. MITCHELL: Judge, I'm going to object
20 to "would you agree with me." That's clearly a leading
21 question.

22 MR. CARGILL: I can go back.

23 THE COURT: Sustained. Rephrase the
24 question, yeah.

25 Q. (BY MR. CARGILL) After you were tased, what

1 was your disposition? Were you thinking straight, or
2 were you confused, or how were you?

3 A. I was really dazed, you know, to tell truth
4 about it. I was -- I didn't know -- once I got stung
5 like that, I was delirious.

6 Q. Is that -- or what did you mean by that when
7 you were tased you were tased to almost to the point of
8 death?

9 A. Well, I was -- like I say, I was in handcuffs.
10 I was already on the ground and just kept hitting it,
11 you know, and to the point that I passed out, you know.
12 At one point there I didn't know nothing, you know.
13 That's what I was kind of curious about. At the time --

14 Q. Okay. Mr. Gross, I need you to just answer the
15 questions that I'm asking. Okay?

16 A. All right.

17 Q. When you -- after you were tased and you were
18 in that state, did you really know what you were doing?

19 A. No.

20 Q. Okay. Do you have any beef against Mr. Myers
21 or Officer Myers? Did you have anything against him?

22 A. Not that I know of.

23 Q. Did you ever know him before?

24 A. I seen him a couple times, you know, like at
25 Kim's and something. One time he had asked me did I --

1 did I mind speaking to an officer, you know. That's the
2 first time I met him. I met him on the street.

3 Q. When he's engaged with you before, spoke with
4 you before, did you give him any slack or any problems?

5 A. Give him no problem at all.

6 Q. Have you given any other officer any problem?

7 A. No.

8 Q. Do you respect police officers?

9 A. Yes, I do.

10 Q. Do you have -- did you mean any ill will
11 towards Mr. -- Officer Myers?

12 A. No.

13 Q. Do you mean any ill will towards him now?

14 A. No, not -- I just want to know why that he
15 would come up and I bit him, you know. I have no
16 knowledge of that. You know, and I would like for the
17 teeth impression to be made.

18 Q. And --

19 A. Because I feel that --

20 Q. Okay. Let me restrict you to some of the
21 questions I have. In regards to your convictions of
22 felonies, you haven't been convicted of any felony since
23 1990, 25 years ago?

24 A. Yes, sir.

25 Q. How old are you?

1 A. 55.

2 Q. So you were 30 back then?

3 A. Yeah.

4 Q. And how long have you lived in Anderson County?

5 A. (Unintelligible) about 27. I was -- you know,
6 after I got incarcerated, I left here for 25 years.

7 Q. Are you requesting that the Court sentence you
8 at the low range of this scale?

9 A. Yes, sir.

10 MR. CARGILL: I pass the witness.

11 THE COURT: Ms. Mitchell?

12 MS. MITCHELL: Briefly, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. MITCHELL:

15 Q. Mr. Gross, do you remember when the police came
16 out to the trailer house and you holding that chair,
17 wielding it around?

18 A. Well, ma'am, after I'd been stung --

19 Q. I'm talking about when they first got there.
20 Do you remember holding that chair around and waving it
21 around?

22 A. No.

23 Q. Do you remember the officers repeatedly telling
24 you to put the chair down?

25 A. No.

1 Q. Do you remember the officers telling you to put
2 your hands behind your back, get to the ground?

3 A. No.

4 Q. Do you remember Deputy Mitchell trying to get
5 you to go to the ground?

6 A. No.

7 Q. Do you remember Deputy Myers telling you that
8 he would tase you if you didn't do what they were
9 telling you to do? Do you remember that?

10 A. I remember that because I was already tased.

11 Q. No, this is before you were tased. Do you
12 remember him telling you, "I'm going to tase you if you
13 don't comply"?

14 A. Well, like I say, you know, I was tased from
15 the get-go.

16 Q. So are you saying that the officers got out of
17 their cop car and tased you right from their doors?

18 A. Well, the way it happened was someone come to
19 the door in the house and asked all of us what was going
20 on in there, and John and Jesse did not get up to go see
21 what was going on, so I got up off the couch and went to
22 the door. From there, I was tased, and that's all I
23 remember, you know, and then --

24 Q. The video showed something different, though;
25 didn't it?

1 A. The what?

2 Q. The video showed something different; didn't
3 it? Do you remember?

4 A. Yeah, I remember the video --

5 Q. So after -- let me ask more questions. Okay?

6 A. Yeah.

7 Q. After you got tased, the officers tried to put
8 you in the patrol car; didn't they?

9 A. Not that I remember.

10 Q. You don't remember them helping you to the
11 patrol car and put you in the backseat?

12 A. I don't remember none of that.

13 Q. Do you remember struggling with the officers
14 while they were trying to put you into the vehicle?

15 A. None of that.

16 Q. Do you remember the officers having to
17 physically pick you up by your feet and by your front
18 part to get you to get into the vehicle?

19 A. I don't remember none of that.

20 Q. Do you remember reaching down when Deputy Myers
21 had his groin area, basically, you know, thigh area, by
22 your head and reaching over and taking a bite out of
23 him?

24 A. I don't remember none of that.

25 Q. Do you remember the polyester pants that Deputy

1 Myers had on that you bit through?

2 A. I don't remember none of that.

3 Q. Do you remember going to the jail?

4 A. I remember going to jail, yeah.

5 Q. Do you remember the paramedics checking you out
6 at the scene?

7 A. No. I kind of wondered about that because they
8 say that they removed some prongs from me, but I don't
9 remember none of that; not the ambulance, none of that.

10 Q. And when you were being put in the back of the
11 police car, you knew you were out on bond conditions;
12 didn't you?

13 A. Yeah.

14 Q. So did you think that maybe if you got arrested
15 that might violate your bonds?

16 A. Yeah.

17 Q. So that was something you were kind of worried
18 about?

19 A. Worried about it for what? Because I hadn't
20 done nothing, you know.

21 Q. Well, if you got arrested, wouldn't that bring
22 in to question your bond that you were out on?

23 A. Well, yeah.

24 Q. And this isn't -- you'd agree with me, right,
25 that this isn't the first, kind of like, fighting or

1 violent crime you've been accused of, is it?

2 A. (No verbal response).

3 Q. You've got an '88 assault/injury to a child,
4 the '90 attempted murder, and then '99 you were arrested
5 for aggravated assault, and then in 2014 -- nope -- 2012
6 you were convicted of assault on a bodily -- assault
7 causing bodily injury, family member?

8 A. Okay.

9 Q. Do you remember those?

10 A. I can related to some of that but --

11 Q. Okay. And then this incident why we're here
12 today; when you bit Deputy Myers?

13 A. No, I can't relate to that.

14 Q. Okay. But that's why we're here, right?

15 A. Yeah.

16 Q. All right.

17 A. Now, some of that --

18 Q. So -- I got to ask you some questions. Okay?
19 So you'd agree with me that you tend to have a little
20 bit of a fighting side?

21 A. Well, if somebody assaults you first, come to
22 you with that -- that you got to protect yourself, I
23 guess. You know, what else was I to do? Like, some of
24 that I was assaulted first. I'm not quick to act first,
25 you know, on -- just do something just to be doing it in

1 other words. A lot of that, I was either assaulted
2 first. Some that, you know, I just said -- don't do
3 nothing like that. It's not in my nature to act upon
4 something, you know.

5 Q. So those other assault cases, they weren't in
6 your nature either and that attempted murder?

7 A. Not really, because, you know, it's like that
8 one here in 2012. I was assaulted; come in my home and
9 assaulted me and -- in the door. Come in the house and
10 slapped me, and that pisses a person off, you know.
11 What have I done to you? You know, do something to me
12 first and then --

13 THE COURT: Can you stop him because I
14 don't know what he's talking about. Do you?

15 MS. MITCHELL: I don't either, Judge.

16 THE COURT: Okay.

17 THE WITNESS: She asked me, you know --

18 THE COURT: You're talking about a prior
19 offense?

20 THE WITNESS: Yeah.

21 THE COURT: Okay.

22 Q. (BY MS. MITCHELL) Well, let's move on. Okay?

23 A. Okay.

24 Q. Okay. And, Mr. Gross, you know the minimum the
25 Judge can consider in the case is 25 years?

1 A. I understand that.

2 Q. And the maximum's life?

3 A. I understand that.

4 Q. Did you know what you had done to Deputy Myers
5 had left him with a permanent disfigurement?

6 A. Well, I understand what happened to him -- he
7 say happened to him, but I have no knowledge of me
8 biting that officer.

9 Q. Okay.

10 A. No knowledge at all.

11 Q. Okay. That's cool.

12 MS. MITCHELL: I pass the witness, Your
13 Honor.

14 THE COURT: Mr. Cargill?

15 REDIRECT EXAMINATION

16 BY MR. CARGILL:

17 Q. I forgot to ask you, Mr. Gross, have you had
18 any recent medical issue?

19 A. Yes, I've been suffering with my blood
20 pressure. It bothers me. Bothers me now, you know,
21 speaking like I'm speaking. And I've been suffering
22 with that ever since I was tased.

23 Q. Well, let me ask you: Did you go to the
24 hospital from the jail --

25 A. Yes.

1 Q. -- recently?

2 A. Yes, sir.

3 Q. And was it because of a stroke?

4 A. Yes, sir.

5 Q. Okay.

6 A. I was -- caused me to suffer the way I'm
7 suffering from being tased and staying on me so long
8 with the Taser caused me to suffer from that.

9 Q. Well, no doctor actually said that; did they?

10 A. No.

11 Q. That's what you believe?

12 A. Well, I made it aware to them what had happened
13 to me, and they said I need to do some more treatments.

14 Q. But you did have a stroke?

15 A. Yes, sir.

16 Q. Okay. And right after that I came to see you.
17 Was there some communication issues at that time?

18 A. Communication issues?

19 Q. Could you remember everything that I was
20 talking to you about then?

21 A. No.

22 MR. CARGILL: I pass the witness.

23 MS. MITCHELL: No further questions, Your
24 Honor.

25 THE COURT: How much time did you serve on

1 the attempted murder? You got 15 years. How much time
2 did you serve?

3 THE WITNESS: I served seven years.

4 THE COURT: Okay. So you went in in 1990;
5 was that right? 1990?

6 MR. CARGILL: Yes, ma'am.

7 THE COURT: Okay. And so you came out in
8 about 1997?

9 THE WITNESS: Yeah, somewhere around that.

10 THE COURT: Okay. All right. You can step
11 down.

12 MR. CARGILL: We rest, Your Honor.

13 MS. MITCHELL: State rests, Your Honor.

14 THE COURT: You may make brief closing
15 arguments.

16 MS. MITCHELL: Thank you, Your Honor.

17 THE COURT: But let's let him get situated
18 first.

19 MS. MITCHELL: Yes, ma'am.

20 THE COURT: Okay.

21 MS. MITCHELL: May it please the Court.

22 For the record, Your Honor, I have State's Exhibit No. 3
23 from the guilt/innocence phase up on the ELMO.

24 Mr. Gross kept saying the same word over and over again
25 when he was doing his testimony just a moment ago and

1 especially on cross-examination. He used the word
2 "suffering." Based off the evidence that you heard
3 those months ago in the jury trial in which Mr. Gross
4 was found guilty of assaulting Deputy Myers, Deputy
5 Myers is the one who suffered.

6 Look at State's Exhibit No. 3 just to
7 refresh your memory, Your Honor. Richard Gross bit
8 through Deputy Myers' issued pants. State's Exhibit
9 No. 4, the severity of the bite itself. Deputy Myers
10 told you that as a result of Mr. Gross' actions that
11 he's still having problems. A year later -- almost a
12 year later still having problems. He testified to you
13 that his fingers were broken and they didn't heal right.

14 MR. CARGILL: Objection, Your Honor; that's
15 improper argument. There was no testimony that his
16 finger was broken.

17 MS. MITCHELL: I disagree, Your Honor. I
18 do believe he testified they were broken.

19 THE COURT: Overruled. Not fingers;
20 finger. I mean, there was testimony in the underlying
21 case --

22 MS. MITCHELL: As to plural or to
23 singularity --

24 THE COURT: Okay.

25 MS. MITCHELL: -- okay. Finger was broken

1 and that he had received casts, and he demonstrated for
2 the Court from the witness stand that as a result of
3 Mr. Gross' actions that he now has a lump that causes
4 him problems. He further testified to you that the bite
5 itself -- and I'll spare to the Court leaving it up on
6 the overhead -- that he has a scar to remind this deputy
7 of what happened that day thanks to Mr. Gross.

8 Mr. Gross' history indicates to the Court,
9 in the State's opinion, that Mr. Gross is a violent
10 individual. He is not peaceful. You see in 1988,
11 started off with assault/injury to a child; and then in
12 1990, murder -- attempted murder; and then he was
13 arrested in '99 without a disposition for aggravated
14 assault with a deadly weapon; and then you see in just
15 as recent as 2012 he was convicted of assault causing
16 bodily injury to a family member; and now we have the
17 case here today.

18 When somebody makes Mr. Gross mad, he
19 clearly has no respect for others' life as far as
20 injuries go. It's all about him. We saw that from the
21 video. I'm sure that the Court will remember the video
22 that was played during trial when you saw how Mr. Gross
23 was acting; combative, argumentative, threatening.
24 Repeatedly threatening the officers that are there,
25 Deputy Mike Mitchell and Deputy Don Myers. If you'll

1 remember from the video as well, Your Honor, those
2 officers were exemplary in how they conducted
3 themselves. They showed the greatest of patience with
4 Mr. Gross. They showed Mr. Gross respect, warning him,
5 warning him what would happen. And, in fact, after he
6 was tased, Deputy Myers sat there and talked to him to
7 try to keep him calm, and they immediately called for an
8 ambulance, and Mr. Gross was cleared medically, but then
9 Mr. Gross took things into his own hands, and he turned
10 around and he bit Don Myers as he tried to put him in
11 the car along with Trooper Lynn Hubert.

12 Mr. Gross' actions were serious that day,
13 Your Honor, and for the seriousness of what he did, we
14 ask that you consider the full range of 25 to life, and
15 the State believes that the evidence from the trial and
16 the evidence here today and his lack of remorse for what
17 he did to this officer justifies a 75-year sentence.

18 THE COURT: Mr. Cargill?

19 MR. CARGILL: Your Honor, we're not going
20 to dispute any of the suffering of Deputy Myers nor any
21 of the results of injuries thereto. We would like to
22 point out a few things to the Court's attention.

23 First of all, my client has psychiatric
24 history that the Court can consider as a mitigating
25 circumstance. Secondly, as a mitigating circumstance,

1 my client has not been convicted of a felony for 25
2 years. A third mitigating circumstance would be my
3 client's disposition the evening of the incident in that
4 he -- as the video shows, he didn't seem to be in his
5 right mind. Also from his testimony today, he didn't
6 quite clearly remember what his actions had brought for
7 him because he wasn't in his right mind, and then,
8 again, he was tased prior to incident.

9 This wasn't an incident where the incident
10 happened and then he was tased. He was tased before
11 that. I think the video showed that clearly after he
12 was tased he was out of it as well. I think the video
13 gives a pretty clear indication of the way my client was
14 and the mannerisms he was acting and the disposition he
15 was in.

16 As far as the other issues on violence, the
17 -- I don't believe that you can consider the aggravated
18 assault with a deadly weapon as there is no indication
19 that he was even arrested for this. It just shows that
20 charge appeared up. It doesn't show any conviction. It
21 doesn't show any disposition or anything else. He does
22 have an assault causing bodily injury in which he served
23 30 days as some type of conviction. Other than that, he
24 had a possession of marijuana in 2014 that he was
25 convicted of 18 days.

1 I think in considering these things and
2 using the mitigating circumstances of my client's
3 disposition of that evening I believe that the Court
4 should consider the low end of the punishment at 25
5 years.

6 THE COURT: Mr. Gross, you can stand,
7 please. I did review the PSI, and I did sit on the
8 case, and so I'm aware of the facts of the case. You
9 really -- today you don't appear to be violent man, but
10 you are. I mean, that was clear from the tape that that
11 was a very violent incident. I actually didn't get the
12 case 'til right before trial, was aware that there had
13 been a bite, but I actually was rather shocked at the
14 extent of the bite injury. I didn't know that a human
15 could make that type of a bite and bite through clothes
16 and cause that type of an injury, and so the injury
17 actually was rather shocking to me that it would cause
18 that severe of an injury. I watched the videotape, and
19 so -- and I was aware of the evidence during the trial,
20 and so the injury -- the bite injury was a little
21 shocking to me because I wasn't aware that a human could
22 do that.

23 You don't show any remorse for what you
24 did. None. You just say you don't remember it, and I
25 don't know what was causing you to be the way you were

1 on the tape, but something clearly was. Whether it was
2 your mental or your -- some type of use of drugs or
3 something, I don't know. I agree it wasn't normal
4 actions, but you have an extensive history, and so your
5 sentencing range is 25 to 99.

6 The jury, having found you guilty, I
7 adjudicated you guilty, and I'm sentencing you to 60
8 years in TDC. That's the Court's ruling. He's to be
9 taken into the custody of the sheriff's office and
10 assessed 60 years in TDC, and I'll sign the judgment
11 when I receive the same. Okay?

12 MR. CARGILL: And, Your Honor, he hasn't
13 signed in regards to the defendant's right to appeal.

14 THE COURT: I need to get that for him
15 because he does have the complete right to appeal.

16 MR. CARGILL: And I've already discussed
17 that with my client.

18 THE COURT: Okay. And then --

19 MR. CARGILL: He desires to appeal.

20 THE COURT: Okay. You handle it until I
21 tell you -- meaning if -- I don't know if you're on the
22 appellate list or not, but get it filed within --

23 MR. CARGILL: I am, Your Honor.

24 THE COURT: -- 30 days of today.

25 MR. CARGILL: We've already discussed some

1 of the points of appealing.

2 THE COURT: Okay. Yeah, he's entitled to
3 the right to appeal.

4 MR. CARGILL: Your Honor, we also have
5 another question in regards to the credit card abuse
6 because my client would like to have that issue resolved
7 while we're --

8 MS. MITCHELL: I'll dismiss it if his
9 client waives his right to appeal.

10 MR. CARGILL: Well, we're not going to
11 waive the right --

12 THE COURT: Well, I can't really handle it
13 today. I can't just handle it without it being set --

14 MR. CARGILL: No, ma'am.

15 THE COURT: -- you know. I mean, clearly
16 the credit and debit card abuse -- I assume that's a
17 state jail felony. That's --

18 MS. MITCHELL: I think it's enhanced.

19 THE COURT: It's enhanced? I mean, I guess
20 we'll just have to set it, you know, and get that -- I
21 actually didn't know that was pending, so that obviously
22 didn't make a difference in my decision.

23 Oh, everybody give your PSI back to
24 Ms. Wiginton.

25 MR. CARGILL: Your Honor, we just need a

1 setting because it hasn't been set since the time
2 period.

3 THE COURT: Okay. And so would it be a
4 status? Would that be -- or would it be a trial
5 setting?

6 MR. CARGILL: I think we're at pretrial.

7 MS. MITCHELL: Pretrial.

8 THE COURT: Okay. How about that -- what
9 was it -- November the 12th date? You want it set that
10 quick?

11 MR. CARGILL: Well, that's the whole -- I
12 don't want him to go off to TDC and we have to bench him
13 back is why --

14 THE COURT: I know. That's why I said
15 November the 12th is my next day here. I mean, unless I
16 put it on somebody else, I mean.

17 MR. CARGILL: No, November 12th would be
18 good --

19 THE COURT: Yeah.

20 MR. CARGILL: -- because then -- oh, wait.
21 I apologize. You can't do it.

22 THE COURT: Or the 9th.

23 MR. CARGILL: I'm sorry. It's under the
24 new rule. It would be 369th.

25 THE COURT: Okay. Well, she -- you know,

1 actually, the weird thing was this actually was not my
2 case. This actually -- if y'all will recall, this case,
3 I didn't have anything to do with it until the actual
4 trial for some reason.

5 MR. CARGILL: Yeah, but it was under the
6 old rule because it's --

7 THE COURT: I know, but my point is I
8 didn't know anything about this, so that will be fine.
9 Whomever you can get the quickest setting with.

10 MR. CARGILL: 369th is who we have --

11 THE COURT: Okay.

12 MR. CARGILL: -- to set it under.

13 THE COURT: So what do I need to do as far
14 as --

15 MR. CARGILL: I'll just ask Tina.

16 THE COURT: Okay. I mean, I'll do it for
17 you if somebody will give me a date. I just don't know
18 what their dates are.

19 MR. CARGILL: Yes, ma'am. And for the
20 record, I'm giving Ms. Wiginton the PSI.

21 THE COURT: Okay. And, Ms. Wiginton, if
22 you'll come up here, I'll hand you mine.

23 (End of proceedings)

24

25

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)
3 COUNTY OF ANDERSON)

4 I, Ellen Earles, Official Court Reporter in and for
5 the 87th District Court of Anderson County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and -numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$295 and
18 was/will be paid by Anderson County, Texas.

19 WITNESS MY OFFICIAL HAND this the 10th day of
20 December, 2015.

21 /S/ELLEN EARLES

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