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neighbor's apartment down the hall — Ian was with them — and when they returned, Richard went to the bedroom to go to sleep, while Brandy laid Ian down. And as Richard talked, the story he told of that night differed significantly from Brandy's.

Richard said Brandy came into the bedroom and wanted to be intimate. "I told her no." Then he felt a sharp pain in his shoulder, he said. Before he could see what happened, Richard said Brandy jumped on him, hit with him wild blows, then grabbed on to his arm and took a big bite.

"And were you doing anything while she was doing this?" Pang asked.

"I hit her, uhh, with my right hand," Richard said. "I'm not sure if I hit her square in the face. I don't know, but she wouldn't let go, so I was hitting her."

Brandy continued hitting him, he said, so he grabbed her by the side of the head and pushed her off the bed. He went to grab the rent money, but Brandy blocked the bedroom door. When she wouldn't move, he said, he pushed her. Brandy grabbed his leg and after jerking free, he left the apartment.

Richard said he bought some beer, drank one, then returned to the apartment — where he met Francisco at the door. Richard turned over his keys, then left, sat outside the apartment and had another beer.

"What'd you do after you cracked a beer open?" Pang asked.

"Started drinking it," said Richard, "and then the police arrested me."

"OK. And thank you. Your witness."

Richard's cross examination began. Although DPA Hershkowitz had been sensitive to Brandy, he peppered Richard with statements and questions.

"You get angry when you're drunk?" Hershkowitz asked.

Richard paused. "No."

"Sometimes get physical when you're drunk?"

Another pause. "No."

"You've hit Brandy when you're drinking?"

"Yes."

The testimony turned to the April assault.

"You shoved her down," Hershkowitz said.

"Yes," Richard answered.

"You assaulted her."

"I pushed her."

"You assaulted her," Hershkowitz repeated.

"Objection," Pang said. "Calls for a legal conclusion."

"Overruled," said Judge Yu.

Hershkowitz said once again, "You assaulted her, sir."

"Yes," said Richard.

The cross examination continued, Hershkowitz firing questions and Richard hitting back answers like well-matched tennis opponents. Hershkowitz referenced the photos of Brandy's injuries. Richard admitted to causing the swelling on her right cheek.

"You also strangled her as well, didn't you?" Hershkowitz asked.

"No," Richard said.

"Put significant pressure on her throat?"

"No."

"Made her have difficulty breathing?"

"No," Richard said.

As Hershkowitz served more questions, Richard returned answers, mostly "Yes" or "No." A police photo of Richard with a scratch on his forehead was shown in court. Hershkowitz asked Richard if the police caused it.

"I know Brandy was hitting me and biting me, and that's all I can say," Richard said. "I don't definitively know where I got a specific scratch."

"But you're pretty clear that she bit you," Hershkowitz said. "And you had to defend yourself, isn't that true?"

"Yes," Richard said.

"No further questions," Hershkowitz said.

Pang asked Richard whether Brandy had scratched him. Richard said she had. Pang said he had no further questions.

Judge Yu told Richard he could step down, then asked Pang and Warden if they were done.

"The defense rests," Pang said.

Richard's testimony lasted 55 minutes, barely one third as long as Brandy's.

When the court returned from lunch, Judge Yu read jury instructions, which informed jurors that if they couldn't agree that the defendant was guilty of a second-degree assault, they could find him guilty of a third-

or fourth-degree assault. Then the state made its closing remarks.

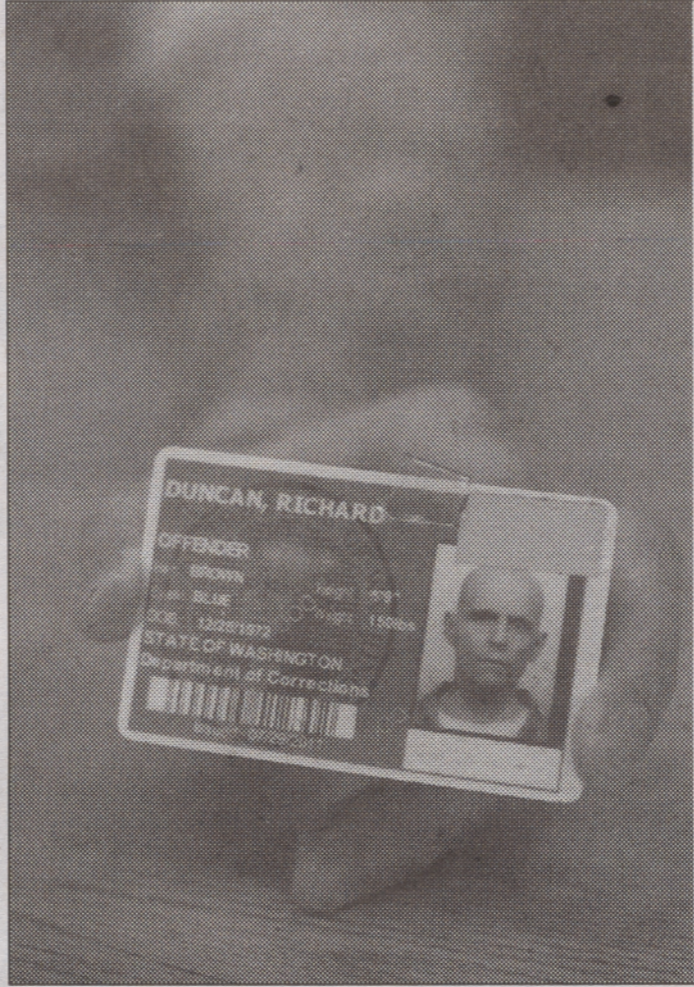
Hershkowitz reviewed the charges against Richard, Brandy's injuries, her loss of consciousness. He told the jury the defense would probably invoke self-defense for Richard, which was a distortion of the facts. "The defendant is trying to fit square pegs through round holes," Hershkowitz said.

He dissected each of the five counts, showing how the state had met its burden of proving Richard's guilt. Hershkowitz stressed the definition of strangulation: putting your hands on someone's neck with intent to put pressure. "Is Brandy's version of the events more reasonable than the defendant's version of the events?" he asked. Yes, he added, they were.

In the defense's closing arguments, Warden said that cuts and bites on Richard showed signs of an attack. She said Richard had the legal right in Washington state to protect himself: "It was classic self-defense." She added, "If you think there's a reason to believe Mr. Duncan's recounting of events — and the defense thought there was — then you have a reasonable doubt."

Based upon that reasonable doubt, Warden asked the jury to consider lesser charges, since the jury had the discretion to find Richard guilty of third- or fourth-degree assaults. Warden, noting that no one deserves to be abused, said Brandy's credibility was problematic, and Francisco's testimony didn't fully corroborate Brandy's: more reasonable doubt. She mentioned the landline Brandy didn't use. And the state didn't prove Brandy's strangulation. "We are asking for a finding of not guilty as charged on counts one, two, three and four," Warden said.

Hershkowitz offered a brief rebuttal. Then the jury was excused into the jury room. Two minutes later, the court adjourned.



Day 6

Tuesday, June 14, 2011
The jury began deliberation, breaking for lunch around noon. Once the jury returned, more deliberation. Then, after less than five hours, the jury had reached a verdict.

The Verdict

The presiding juror handed the bailiff a red file filled with verdict forms. Judge Yu flipped through them, then presented them to the clerk to read in open court. Richard stood. "We, the jury, find the defendant, Richard Duncan, not guilty of the assault in the second degree" for intentional strangulation. "We, the jury," the clerk read, "find the defendant, Richard Duncan, guilty of the lesser included crime of assault in the fourth degree."

"We, the jury, find the defendant, Richard Duncan, not guilty of the assault in the second degree" for causing substantial bodily harm. "We, the jury," the clerk read, "find the defendant, Richard Duncan, guilty of the crime of assault in the third degree."

"We, the jury, find the defendant, Richard Duncan, not guilty of the crime of felony violation of a no-contact order," due to the not-guilty verdict on the strangulation charge. "We, the jury," the clerk read, "find the defendant, Richard Duncan, guilty of the crime of violation of a court order."

"We, the jury, find the defendant, Richard Duncan, not guilty of the felony harassment." ... "We, the jury," the clerk read, "find the defendant, Richard Duncan, guilty of the lesser included crime of harassment."

When it came to the aggravators in the case, the jury had been asked if the third-degree assault showed evidence of an ongoing pattern of psychological or physical abuse. The jury's verdict was "Yes."

It took Richard a moment to understand the full scope of the verdict, but then, smiling, he thanked the jurors.

Richard had just beaten a possible sentence of life in prison.

The enigma

Monroe Correctional Center, sits on a flat hilltop, just beyond a looming guard tower. Razor wire-topped fences delineate the prison's perimeter, caging in a series of beige-colored buildings. To the east, on a clear day, the snow-frosted caps of the Cascade Mountains mark a jagged boundary on the horizon.

On an afternoon in late January 2012, in a nondescript conference room inside an MSU building, Richard Duncan, 39, sits at a table, a prison ID clipped to his shirt. He exudes a magnetic, affable charm, offset by moments of intense shyness.

Even though the trial took place more than six months before, he says he still doesn't know why the jury only found him guilty of lesser charges, allowing him to evade life in prison. "Do I think people believed me?" he asks. "No. You can look at me and tell that I've done something wrong."

He laughs, but then becomes serious. "It's been really eating me up inside," he says. "The last thing I ever wanted to do was to hurt Brandy like that."

When it came time for his sentencing, Richard, after avoiding plea bargains throughout the court case, struck a deal: For the assault in the third degree charge, he was sentenced to 12 months; for the aggravator he received 17 months. Remarkably, the other convictions did not lead to sentences due to a post-trial agreement.

As a result, Richard, instead of serving life in prison, will serve 29 months, minus 196 days for time served in King County Jail. That amounts to roughly 22-and-a-half months. "It still hasn't sunk in," he says, chucking.

Enrolled in a mental health program at MSU, Richard says he doesn't know what he'll do after his release. He dreams of being a beekeeper or running a pumpkin farm but doubts parents would let their children near him. "They [would] think I'm the biggest piece of shit," he says.

His sentence mandates he complete 12 months of probation, undergo alcohol counseling and, he says, participate in domestic violence treatment. But he thinks Brandy should attend similar treatment, since she hit him. "She still has an advocate," Richard says. "Where's my advocate?"

He says he longs to see his son, Ian. The separation nearly brings him to tears. "I don't want to talk about it," he says. Though Richard wonders: Would Ian be better off if Richard stayed out of his life?

As for Brandy, the sentencing instituted a no-contact order that bars Richard from seeing her for five years. He confesses he still cares for her — after all, he says, he tried to care for her, protect her — but they shouldn't be together. Which raises a question: If he admits he abused Brandy, how can her abuser also be her protector? "It's an enigma," Richard says.

Even with a 29-month sentence, he says it still feels as if he's serving life, because if he slips into addiction after his release and commits the smallest offense, he'll return to prison. He knows in everyone's eyes, he's seen as violent. But Richard views himself differently:

"To look at me and to think that I'm anything other than a white supremacist, look at my record and think that I'm

anything other than a wife beater. If you look at me on paper, I'm not a nice guy. But would you say I'm bad person? I think I'm a nice guy."

The happiness

In early April 2012, as Brandy Sweeney, 29, sits in a friend's apartment somewhere in Washington, two-and-a-half year old Ian dances with a Rock 'n Roll Elmo across the room. As she watches her son, she says she feels hopeful about her future.

When she heard the verdict, she felt the opposite. "I was devastated," she says. "I was just like, 'Are you freaking kidding me? I went through all of that?' [Testifying] was one of the worst things I've had to do."

On the stand, she says her emotions tugged her this way and that: love for Richard, but also a fear of him. And even though she didn't necessarily want him to go away for life, she hoped to send him a message: "That I really don't want you in my life anymore."

She says the state prosecutor's office told her Richard's conviction and sentence, even at 29 months, represented a victory. To thank her for testifying, Brandy says the state prosecutor's office sent her a check. For \$10. She stuck it to her refrigerator with a magnet. It's still there.

Hearing the verdict initiated a tough period. Not long after the trial, she learned her mother, Joy, in Pocatello, Idaho, was gravely ill. Brandy arrived hours before she died. To honor her, she got a tattoo of "Joy" on her throat, not far from where the red mark was the night of the April 2010 assault. While in Idaho, Brandy says she reconnected with her 9-year-old daughter, Skye. Her mother and brother had joint custody of the child, and Brandy hopes Skye and her brother will move out to Washington some day, so the whole family can be together.

Brandy says when she's in the area, she attends church with her old friend Morgan Price and stays in touch with Karen Ciruli. She hasn't spoken to Francisco Mitchell since before the trial.

As for Ian, she says he's happy — and he looks it. Ian is a flurry of activity, and he resembles a little linebacker. In their apartment in an undisclosed part of the state, he's taken to diving down the stairs, which Brandy doesn't like so much.

But what she does like is where she finds herself now that she's sober and has pulled free from her relationship with Richard. "It's like when you're in the middle of a storm, you can't see anything beyond what's going on," she says. "But once it stops, then I can start to piece together my life and get things back together, and to know what I'm supposed to do and where I'm supposed to go."

And yes, she expresses some trepidation that Richard will be out of prison soon, that something bad could potentially happen. But she says she's come too far to let anything — or anyone — control her. Besides, there might not be any trouble from Richard at all. "I'd be living in fear for nothing," she says. "And why waste the happiness?"

The release

In January, he had said, upon his release, he would consider a paternity test to prove he's Ian's father, if that can help him have joint custody. He really wants to see his son.

But that may prove difficult. Anticipating Richard's release, Brandy contacted a domestic violence advocate to set up a safety plan. Part of the plan led her to file a protection order against Richard, which bars him from not only having contact with her until June 2013, but Ian as well. Brandy says she also plans to keep her and Ian's whereabouts a secret.

As far as Brandy Sweeney's concerned, that better life she dreamed of years ago is here, right now. And she intends to live it without Richard Duncan and abuse.

You can read all of The gravity of abuse on our website, www.streetroots.org. Republished from Real Change-News, Seattle, Wash.