

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Robert J. Bonds, Circuit Court Judge

TAMMY G. HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001096

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-GS-18-0617

STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 TAMMY G. HARRIS)
)
)
)

ORIGINAL

Monday, February 13, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Diane Schafer Goodstein, Judge

APPEARANCES:

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1 (The proceeding began at 3:01 p.m.)

2 AST. SOL. GIESE: The State calls Tammy Harris. Can I
3 just give you a little brief rundown and kind of where we're
4 at?

5 THE COURT: Yes, please.

6 AST. SOL. GIESE: I know we discussed a lot of matters
7 in chambers. Your Honor, Tammy Harris, as you know, she's
8 charged, indictment 2015-GS-18-617. That charged her with
9 felony DUI with death, death as a result for a collision
10 that occurred in April of 2015 involving the victim Cindy
11 Wolf and Ms. Harris. As you know, the State was prepared to
12 go forward with a trial this week. And as you know, there
13 were some issues with the videotape of the field sobriety
14 test, the Miranda warnings, the arrest, videotape of the
15 arrest, which, again, as you know, the DUI law is very
16 strict in that regard. But Mr. Aylor and I were prepared to
17 go forward today on that motion. And kind of as a result of
18 that motion, you know, if you were to grant it for me, we
19 were gonna go forward with the trial. If not, you know, it
20 would've been a dismissal or something along those lines.

21 Today, on my way here from Orangeburg -- and it had
22 been my understanding that there was a glitch with the
23 videotape were 19 seconds are missing. That included the
24 first three Miranda warnings. It basically -- it literally
25 skips from -- I don't have the exact time with me -- but the

1 last two digits were 45 seconds to the last two digits being
2 zero-four seconds. So 19 seconds of the video not to be
3 found. And I had met with all of the Highway Patrol that
4 were involved in this case in trying to find it. And they
5 were looking for it as well. I mean -- and we kind of
6 assumed that the copy that we had was the only copy that
7 there was. Today, on my way here from Orangeburg,
8 Mr. Templeton called me about 12:30 and said the Sergeant
9 Pearson (ph) had arrived with the evidence one of them being
10 a disc of the traffic stop and that he watched it and that
11 the -- it was all there.

12 THE COURT: And Pearson is with -- Sergeant Pearson is
13 with the Highway Patrol?

14 AST. SOL. GIESE: Correct, Your Honor.

15 THE COURT: Okay. All right. So you said the Highway
16 Patrol had tried to locate it?

17 AST. SOL. GIESE: Correct, Your Honor.

18 THE COURT: Okay.

19 AST. SOL. GIESE: And to their credit, they thought it
20 was gone as well. But I had informed Sergeant Pearson to go
21 up to evidence to get -- because there's other evidence in
22 this case. There's a blood test. There's a -- the MAIT
23 team takes possession of the black box, for lack of a better
24 term, from the vehicles. But he was gonna bring all that
25 stuff up here. And I believe that is where he found the

1 disc that we were looking for. Right when Mr. Aylor came --
2 Mr. Aylor came about 1:30 -- I told him. And we turned over
3 a copy to him as well of what Sergeant Pearson brought us.
4 And at which point, you know, Mr. Aylor informed me and the
5 Court that he would ask for a continuance. And I don't know
6 if you want to go to him now or what. Or would you like my
7 position on the matter first?

8 THE COURT: No, I got it.

9 AST. SOL. GIESE: Okay.

10 THE COURT: Okay. Yes, sir, Mr. Aylor.

11 MR. AYLOR: Thank you, Your Honor. All that is
12 accurate. I do have a copy of the CD Mr. Templeton has gave
13 me. Obviously, I have not watched it yet.

14 THE COURT: When did you get that?

15 MR. AYLOR: About six minutes ago.

16 THE COURT: Okay. And it's now 3 o'clock.

17 MR. AYLOR: Right.

18 THE COURT: So you got it right before 3 o'clock?

19 MR. AYLOR: I got it just before 3 o'clock.

20 THE COURT: Why did you think you were coming here
21 today?

22 MR. AYLOR: I thought we were going to be hearing the
23 motion and going forth with the trial. This has been a date
24 certain for at least two and half, if not more, months that
25 all parties were aware of. And the Solicitor's office and

1 myself have been in consistent contact about the evidentiary
2 issues, particularly this video. You know, Mr. Giese and I
3 probably talked over e-mail, over the phone, seven or eight
4 times. So then, ironically, today the troopers find the CD
5 that we already knew wasn't -- you know, had issues with it.
6 So this obviously puts us in a different position. We
7 definitely need a continuance.

8 THE COURT: So just so I'm clear, you had the same tape
9 that Mr. Giese had with the 19 seconds missing. Is that
10 right?

11 MR. AYLOR: That's correct, Your Honor.

12 THE COURT: In other words, you're not in a position of
13 seeing a tape for the first time. You actually went out to
14 get through discovery, that tape?

15 MR. AYLOR: Correct. And once I had the original one
16 with the skipping in it, I let Mr. Giese know. He went back
17 and watched his own tape and then also went back per what he
18 told me and spoke with the Highway Patrol. They told him
19 there was no other tape. He then relayed that message to
20 me. I then, obviously, let him know that we'd be putting in
21 a motion to dismiss due to the issue. And then today, as of
22 a few minutes ago, the tape arrives. And this is a case --
23 I believe he might have mentioned at the beginning -- from
24 April of 2015. So how the tape that is clear and works
25 wasn't discovered or was a lost for almost, you know, two

1 years, I don't know. But either way, it showed up today and
2 this puts us at a disadvantage to even consider going
3 forward today.

4 THE COURT: Okay. And as I understand it, it's still a
5 little bit of a mystery both to you Mr. Giese as well as to
6 you about what happened.

7 MR. AYLOR: Correct. It's a mystery as to what
8 happened and then how it got resolved today particularly

9 considering this isn't a case that was on a docket. It was
10 a date certain for today that all parties known of. And the
11 fact that Mr. Giese found out an hour before I found out is
12 unique to put it lightly.

13 THE COURT: Okay. And was your defense that you had
14 planned, what, if anything, did it have to do about the 19
15 seconds that was missing?

16 MR. AYLOR: Well, as Mr. Giese pointed out, and I
17 actually provided this motion to Mr. Giese as well as Your
18 Honor early, prior, today, the part that's missing is very
19 crucial in that three or four Miranda rights are not on the
20 tape. That's what's missing. So it's literally the
21 Miranda. Probably one could argue the most important part
22 that should be on the video is what's missing from the
23 copies that both Mr. Giese and I've had up until today.

24 THE COURT: Okay.

25 (Brief pause in the courtroom.)

1 THE COURT: Okay. Have you had a chance to see the
2 tape at this point?

3 MR. AYLOR: No. I just got it. Mr. Templeton just
4 gave it to me about five, ten minutes ago.

5 THE COURT: Okay. All right. Have you seen it?

6 AST. SOL. GIESE: Your Honor, right when you asked him
7 that, I just thought to myself I haven't even had the
8 opportunity to look at it. But, I mean, I trusted what
9 Mr. Templeton said and what Highway Patrol said.

10 THE COURT: -- trustworthy.

11 AST. SOL. GIESE: Yes, ma'am.

12 MR. AYLOR: He seems like a good guy.

13 AST. SOL. GIESE: No, I haven't got -- haven't had the
14 opportunity to watch it.

15 THE COURT: Okay. Okay. All right.

16 AST. SOL. GIESE: And just for a little bit more to
17 put --

18 THE COURT: Okay.

19 AST. SOL. GIESE: -- kind of clarify. I had told --
20 because as I had mentioned, I was in Orangeburg this
21 morning -- I told Mr. Templeton that when the troopers
22 arrived for him, Trooper Seastrunk, and Sergeant Pearson to
23 watch the video.

24 THE COURT: Why?

25 AST. SOL. GIESE: Just because we're gonna -- in

1 regards to the motion we were doing today, I wanted them to
2 be familiar with what, you know, what was gonna transpire.
3 Just so that they have it fresh in their mind, that sort of
4 thing. And that's when they found that.

5 THE COURT: Okay. Because you're getting ready to
6 defend what you knew was coming from --

7 AST. SOL. GIESE: Yes, ma'am. Oh, yes, ma'am. And I
8 was known that was Mr. Aylor's argument. I mean, I knew it
9 was gonna be like that.

10 THE COURT: And had you been prepared for this case
11 with that in mind?

12 AST. SOL. GIESE: Oh, yes, ma'am.

13 THE COURT: Okay. And that -- it was your belief that
14 Mr. Aylor was going to bring a motion to dismiss this action
15 in its entirety on the basis that the Miranda -- that the
16 recording was nonexistent?

17 AST. SOL. GIESE: Yes, ma'am.

18 THE COURT: The recording that is required by statute.

19 AST. SOL. GIESE: Yes, ma'am.

20 THE COURT: The statute that makes pretty big issue out
21 of the fact that Miranda has got to be recorded.

22 AST. SOL. GIESE: Yes, ma'am.

23 THE COURT: As well as any tests that are given, et
24 cetera.

25 AST. SOL. GIESE: Yes, ma'am. And just for the record,

1 I had another -- there's a Dorchester County deputy that was
2 on scene that was -- you see him in the video kind of -- you
3 see him walk by when Ms. Harris walked to the front of the
4 vehicle when Miranda is supposed to be given. You see him
5 walk by. And I'm assuming he stays there. I didn't get the
6 opportunity to talk to him today. But I just noticed that
7 last night when I was looking at it that he may have been
8 there. Because after the video cuts back on, Ms. Harris
9 gets put in back of the vehicle, he comes walking by again
10 right from where he came. So there would've been two
11 witnesses. Sergeant Hunt from the sheriff's office who was
12 just kind of there as backup if you will.

13 THE COURT: But that presumes that you get beyond not
14 having the tape?

15 AST. SOL. GIESE: Yes, ma'am.

16 THE COURT: Yeah. That just establishes that Miranda
17 was given.

18 AST. SOL. GIESE: Yes, ma'am. Correct.

19 THE COURT: That doesn't solve your problem with
20 regards to the tape, right?

21 AST. SOL. GIESE: Correct. Yes, ma'am.

22 THE COURT: Okay. Got it. So you had to get beyond
23 the problem with the tape as I understand it because you'd
24 have to have one of the troopers testify there something
25 wrong with the recording machine, yes?

1 AST. SOL. GIESE: Yes, ma'am.

2 THE COURT: And they didn't know?

3 AST. SOL. GIESE: Correct.

4 THE COURT: Because there actually is, as you now know,
5 there wasn't anything wrong.

6 AST. SOL. GIESE: Right. And that's why -- I think
7 they were kind of befuddled too because I don't -- to his
8 knowledge there is no problem with the recording machine
9 either.

10 THE COURT: Okay.

11 AST. SOL. GIESE: It just -- maybe in the transfer is
12 what could've happened. But, yes, ma'am.

13 THE COURT: Okay.

14 AST. SOL. GIESE: But Sergeant Holt (ph) was gonna be
15 called to attempt to remedy and for him to testify that
16 Miranda was given.

17 THE COURT: That's your second problem. The first
18 problem, though, is the recording, right?

19 AST. SOL. GIESE: Yes, ma'am.

20 THE COURT: I mean, even -- that doesn't solve your
21 first problem.

22 AST. SOL. GIESE: Yes, ma'am.

23 THE COURT: Okay. Given the statute.

24 AST. SOL. GIESE: Yes, ma'am.

25 THE COURT: Okay. Okay. All right. Well, Mr. Aylor,

1 obviously there's a mystery in regards to the tape.

2 MR. AYLOR: Absolutely.

3 THE COURT: And one of the things that I thought as we
4 were discussing it in chambers, as I understand it, some of
5 the troopers are here, not all of the troopers are here.
6 For example, the MAIT team troopers are not present.

7 AST. SOL. GIESE: Correct.

8 THE COURT: But as I understand it, the arresting --

9 AST. SOL. GIESE: The arresting officer -- yes, ma'am.
10 Trooper Seastrunk and then Sergeant Pearson is also present.
11 And that's who provided us the disc today.

12 THE COURT: Okay.

13 AST. SOL. GIESE: And I've been in talks with Sergeant
14 Pearson also in regards to tracking down a disc as well.

15 THE COURT: I understand. And one of the things that
16 we discussed was whether or not a record needed to be made
17 at these events. And one of the things we talked about was
18 that if you needed to take testimony, either one of you,
19 actually, I thought that maybe something that would be
20 appropriate and we do it today. Because it is a substantial
21 issue. And as I understand, part of your argument as we
22 discussed -- I think you probably hadn't raised it because I
23 think I pretty much told you no -- back in chambers is that
24 you informed the Court you would be willing to go forward
25 today with the tape with the 19 seconds missing because

1 that's what you had been provided in discovery.

2 MR. AYLOR: That's correct, Your Honor. We would be
3 willing to go forward with what we were provided and what we
4 prepared to come for today.

5 THE COURT: Okay. And I think I shared would you that
6 if that's not the reality, that's not the reality.

7 MR. AYLOR: Correct.

8 THE COURT: And understanding that that completely --
9 that puts you in a very different place. Puts the State in
10 a very different place as well, quite frankly.

11 AST. SOL. GIESE: Yes, ma'am.

12 THE COURT: All right. So do either of you need to ask
13 the troopers anything while they are here?

14 MR. AYLOR: I think it would be prudent for both of us,
15 actually, to hear exactly sort of what happened and how we
16 got in this position, not only for the State and myself, but
17 of course the victim's family as well as my client.

18 THE COURT: Okay. Any objection?

19 AST. SOL. GIESE: No, ma'am.

20 THE COURT: All right. I'm going to let you.

21 AST. SOL. GIESE: You want me to --

22 THE COURT: Yeah, I will.

23 AST. SOL. GIESE: State calls Trooper Seastrunk.

24 (Whereupon, the witness, DAVID SEASTRUNK, was duly
25 sworn.)

1 THE COURT: All right.

2 AST. SOL. GIESE: May it please the Court, Your Honor?

3 THE COURT: Yes.

4 - - - - -

5 DIRECT EXAMINATION

6 BY AST. SOL. GIESE:

7 Q. Trooper Seastrunk, where do you work?

8 A. I work in Dorchester and Colleton County or the South
9 Carolina Highway Patrol.

10 Q. And what are your duties with the Highway Patrol?

11 A. My duties are to investigate collisions as well as
12 enforce traffic law.

13 Q. Okay. Did you have the occasion to be involved in a
14 traffic offense involving Tammy Harris?

15 A. Yes.

16 Q. What offense was that?

17 A. It was a collision involving death which eventually
18 turned into a felony DUI involving death.

19 Q. Okay. And what was your role?

20 A. I was the lead investigator.

21 Q. Okay. Kind of take us through what happened that
22 night, just briefly, in regards to you interacting with
23 Mr. Harris, that sort of thing. Your involvement.

24 A. My involvement, I originally arrived on-scene. I was
25 able to identify Ms. Harris as one of the drivers involved

1 in the collision. In speaking with Ms. Harris, I noticed
2 the odor of alcohol coming off of her persons. Due to
3 standard policies, I asked Ms. Harris if she would perform
4 standard field sobriety test, which she did. At that point
5 I believe that she was under the influence of alcohol and/or
6 drugs. Ms. Harris was placed under arrest, taken to the
7 Dorchester County Detention Center where she was offered a
8 breathalyzer test with results coming back as .14. She was
9 then taken to Summerville Med due to injuries she sustained
10 from the collision. And at that point, I requested blood
11 and urine from her as well, which she stated she wouldn't
12 provide. And we took the blood and urine through our split
13 kit. At that point, Ms. Harris, once she was medically
14 cleared from the jail, or medically cleared from the
15 hospital, she was transported to the St. George jail.

16 Q. Okay. And I'm going to just focus your attention on
17 the actual traffic stop part or incident scene part. What is
18 your policy in regards to videotaping the traffic stop, for
19 any case?

20 A. For any case, our policy states that we have to have --
21 the camera has to be on as well our body mics that we have
22 to record any audio, you know, traffic stop or a collision.

23 Q. Was it on in this case?

24 A. Yes, it was.

25 Q. And what do you do once the stop is completed?

1 A. Once the stop is completed, we shut off the camera
2 system which terminates the audio and video if it's being
3 recorded.

4 Q. When was the stop completed in this case?

5 A. The stop originally was completed or it was actually
6 broken up into sections. The first section actually starts
7 with my arrival on-scene. It ends after I arrive at the
8 jail with Ms. Harris.

9 Q Okay.

10 A It picks up again after -- or when we begin to leave
11 the jail to then travel to Summerville Med. It again stops
12 as we go into the hospital. And it picks up again from the
13 hospital to the St. George jail.

14 Q Okay. And to your knowledge, was everything that you
15 dealt with Ms. Harris on that night in your vehicle, was
16 that recorded?

17 A. Yes.

18 Q. And what steps did you take at that point to save the
19 video?

20 A. In this case with it being pending, we always keep the
21 copy of the video. Other copies are made especially in
22 situations like this such where our MAIT team actually works
23 the collision, our investigation as well. They get made a
24 copy as well as higher up the chain supervisor-wise.

25 Q. Okay. To your knowledge, was that done in this case?

1 A. Yes.

2 Q. You heard what Mr. Aylor and I were discussing with
3 Judge Goodstein. Does that sound accurate leading up to
4 this point?

5 A. Yes.

6 Q. So you were aware of the possible glitch in the video?

7 A. Yes.

8 Q. Who made you aware of that?

9 A. I believe it was you, sir.

10 Q Okay.

11 A Made me aware that there was a little bit of time
12 missing from it during Miranda.

13 Q. Okay. To your knowledge, all of that was captured on
14 videotape?

15 A. Yes, to my knowledge. I believe that it was captured
16 on videotape.

17 Q. Okay. And did you have the opportunity to review a
18 disc today?

19 A. Yes, I did.

20 AST. SOL. GIESE: Just one moment, Your Honor.

21 THE COURT: Okay.

22 AST. SOL. GIESE: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 AST. SOL. GIESE: Can we just make this a Court's

1 exhibit, I guess.

2 THE COURT: Yes.

3 (Whereupon, Court's Exhibit No. 1, CD of Video, was
4 marked for identification.)

5 Q. Trooper Seastrunk, I'm showing you what's been marked
6 for identification purposes as Court's Exhibit 1. Do you
7 recognize that?

8 A. Yes, I do.

9 Q. What is that?

10 A. That is a copy of that the video and audio from the
11 collision involving Ms. Harris.

12 Q. Did you watch that today?

13 A. Yes, I did.

14 Q. Was it a fair and accurate representation of what was
15 done that night?

16 A. Yes.

17 Q. And to your knowledge, is it complete?

18 A. Yes, it is.

19 Q. Did you mark anything saying that you watched this
20 tape?

21 A. Yes. I added my initials as well as today's date.

22 Q Okay.

23 AST. SOL. GIESE: State would just submit this as
24 Court's 1.

25 THE COURT: To this hearing?

1 AST. SOL. GIESE: Yes, ma'am.

2 THE COURT: Any objection?

3 MR. AYLOR: No objection, Your Honor.

4 AST. SOL. GIESE: Just one more, Your Honor. May I
5 approach the witness again, Your Honor?

6 THE COURT: You may.

7 Q. Trooper Seastrunk, do you know whose handwriting, not
8 including the signature you did, whose handwriting that is?

9 A. That is my handwriting.

10 Q. Okay.

11 AST. SOL. GIESE: Thank you, Your Honor. No further
12 questions.

13 THE COURT: Okay. Cross?

14 MR. AYLOR: May it please the Court?

15 THE COURT: Yes.

16 - - - - -

17 CROSS-EXAMINATION

18 BY MR. AYLOR:

19 Q. Trooper Seastrunk, you stated that obviously you got
20 the dash cam and you had a body mic. Do you wear body cam
21 as well or do you not?

22 A. No, I don't.

23 Q. Okay. So you wouldn't have had one of those that
24 night, correct?

25 A. Correct.

1 Q. And you said you watched this version of the video
2 today, correct?

3 A. Correct.

4 Q. And that's the one that there is no skipping in it?

5 A. Correct.

6 Q. Okay. Prior to today, how many times have you watched
7 the original video that had the 19 seconds missing Miranda?

8 A. Once or twice.

9 Q. When was that?

10 A. More than six months ago.

11 Q. Both times where more than six months ago?

12 A. Yes.

13 Q. Okay. And you watched the one, the clear copy, just
14 today for the first time?

15 A. Yes.

16 Q. Okay. So before today, you've never seen a clear copy
17 of the video yourself?

18 A. Not to my recollection, no.

19 Q. Okay. And when did you find out that the video had an
20 issue?

21 A. More than a week ago when I actually met with the
22 Solicitor, he was going over canceling the case. At that
23 point, he pointed out to me that there were missing audio
24 from the actual tape itself. He asked me if I knew what may
25 have happened.

1 Q. Audio or video?

2 A. The audio from the video was missing.

3 Q. Okay. And so that was the first time -- so when you
4 watched it the two times before that, you didn't notice
5 that?

6 A. I did not notice it.

7 Q. Is that why you didn't create an affidavit at that time
8 stating that, you know, when you noticed there was a flaw as
9 usual?

10 A. That's correct. I didn't realize there was anything
11 wrong.

12 Q. Were you going to bring an affidavit today?

13 A. I was not made aware that I needed to bring one.

14 Q. So you did not -- did you plan on participating or had
15 you been made aware from the Solicitor's office that you
16 would be participating in a pretrial motion?

17 A. Yes.

18 Q. You were not bringing any affidavit. You were just
19 gonna testify?

20 A. That's correct.

21 Q. Do you know where the video was found, the clean copy?

22 A. I do not. Sergeant Pearson was actually the one who
23 brought it here today.

24 Q Whose responsibility would things like the video or
25 other pieces of evidence be after your arrest, the person's

1 arrest? Like in this situation.

2 A. In this situation, the original video would fall to me.
3 When it comes to evidence such as a SLED kit, that actually
4 goes up the chain, the chain of custody. First through us
5 through our supervisors up to our central evidence. We then
6 pass it along to SLED. And that's where the evidence comes
7 back to is central evidence. That's where it remains until
8 the day of court.

9 Q. But the video would be your responsibility as the
10 arresting officer?

11 A. That is correct.

12 Q. And you have no idea where this clean video just came
13 from?

14 A. Based on the handwriting that's on the DVD itself, it
15 was a copy made. Again, like I said, either from MAIT or
16 for supervisory review.

17 Q. So you don't know?

18 A. I do not.

19 Q. You just know that somehow there's a clean video. You
20 know there used to be a dirty -- or a video that had a 19
21 second -- not a dirty video -- 19 seconds missing, and
22 you're not sure where, what happened in between there.
23 Where there was any kind of transition, why we had one copy
24 of one and then now this other one?

25 A. I'm unaware where the clean copy came from. Again,

1 there were multiple copies made for multiple people to
2 actually review the collision.

3 Q. Did you go back when you first found out that there was
4 a copy that the 19 seconds were missing? Did you go back
5 and see if your camera and your recording system was working
6 correctly?

7 A. I did not. It was in a 2000 Crown Victoria that I was
8 driving at the time. I've since been issued a 2016 Dodge
9 Charger. So I don't have access to the video system.

10 Q. Okay. Were you concerned at all that something you
11 were responsible for had an issue that you couldn't resolve
12 and didn't know how it happened in the first place coming to
13 court today?

14 A. Yes, I was concerned that the 19 seconds of Miranda
15 wasn't recorded.

16 Q. How did you plan on remedying that?

17 A. Just provide testimony that I did read her her Miranda
18 rights. There was a pad that we also received from Criminal
19 Justice Academy that actually lists the Miranda warnings.
20 It's clearly seen in the video as I'm reading it to --

21 Q. You are also aware that there is a court ruling that
22 says you cannot supplement testimony to correct a video?

23 A I am.

24 Q But you were gonna try to do that anyway?

25 A. (No response.)

1 MR. AYLOR: No further questions.

2 THE COURT: Any redirect?

3 AST. SOL. GIESE: Can we have one moment, Your Honor.

4 THE COURT: Sure.

5 AST. SOL. GIESE: No, Your Honor. Thank you.

6 THE COURT: Well, I do.

7 AST. SOL. GIESE: Yes, ma'am.

8 - - - - -

9 EXAMINATION

10 BY THE COURT:

11 Q. I want to know what the process -- tell me what the
12 process is. You said you made multiple copies. What's the
13 original? What's the copies? I mean, what exactly happens?

14 A. Yes. Your Honor, the original was actually a VHS tape
15 because it was an older car. At that point when there is a
16 fatality and believe that alcohol is involved that's when
17 our MAIT team comes out to investigate. Per their
18 investigation, so they can fully understand what happened,
19 they require a copy of my video so they can see what
20 happened as I arrived on-scene, the evidence that I gather
21 on-scene. Also, with our agency, the supervisors that are
22 above me, such lieutenants and the captain who are concerned
23 especially with an incident of this proportion, they also
24 want to see a copy of the video to review. But everything
25 was done correctly and by our policy and guidelines. So at

1 that point at copy is actually made from the VHS to a DVD.

2 Q. How do you do that?

3 A. The video recording machine actually had one side. I'm
4 not a hundred percent sure what it's called. It has one
5 side that can take in a DVD. It has one side that has a DVD
6 player/burner. And you can initiate that machine to
7 actually take the video from the VHS and transfer it to a
8 DVD. At that point that DVD can be copied that way. You
9 don't have to recopy it from VHS because it takes real time.

10 Q. And when did you do -- did you do that?

11 A. Yes.

12 Q. When did you do that?

13 A I don't have an exact date, Your Honor. But it
14 would've been a few days at most after this collision that
15 occurred.

16 Q. And did you look at the VH -- oh, it's a VH1. That's
17 the station -- VHS tape, or did you wait and look at the CD?

18 A. DVD, Your Honor.

19 Q You looked at the DVD?

20 A. Yes. I don't have a VHS system at my house.

21 Q You're too young. Your parents do, you don't.

22 A I watched it on VHS as I was copying it to the DVD.

23 But that's the only real time I watched it on a VHS system.

24 Because, again, I don't have access unless I'm at my troop's
25 office or my post office to actually view ---

1 Q. So you saw the VHS tape, though, as it was copying?

2 A. Yes, Your Honor.

3 Q. Okay. And then did you look at the disc?

4 A. Yes, I did.

5 Q. The first one that was done?

6 A. Yes, Your Honor.

7 Q. And so when you -- and I think the term is burn. Is
8 that the term?

9 A. Yes, Your Honor.

10 Q. So when you made -- I should ask you this: How many
11 did you make? Several?

12 A. Several. Yes, Your Honor.

13 Q. Okay. And you didn't go back to the -- you just made a
14 new disc?

15 A. That's correct.

16 Q. And, basically, you might not know specifically in
17 regards to this particular one, but typically who would that
18 go to?

19 A. The DVD, Your Honor?

20 Q. Yes.

21 A. Typically that would go to MAIT team investigators as
22 well, again, my supervisor such as the lieutenant or captain
23 so they can actually review the tapes.

24 Q. And did you give the DVD to Mr. Giese or was that
25 someone else?

1 A. That was someone else.

2 Q. That was someone else.

3 A. That's correct.

4 Q. Okay. And so when you received the communication from
5 the Solicitor's office that there was a hiccup with the
6 disc, did you know whose disc it was?

7 A. That I do not, Your Honor. I didn't know if other
8 copies had been burned.

9 Q. And I guess what I mean by that is I understand that
10 the MAIT team incorporates your information into its
11 information is what was explained to me.

12 A. That's correct. They take the information that I
13 gather at the scene and put it towards their investigation.
14 That's correct.

15 Q. And so all you knew is there was some problem with the
16 disc?

17 A. Yes.

18 Q. Okay. Okay. And once you learned that, what, if
19 anything did you do?

20 A. Once I learned that, Your Honor, there wasn't really
21 anything I did. I was just prepared to come today.

22 Q. When did your -- call that your VHS go away?

23 A. That would've been the end of May of last year.

24 Q. Okay. And did you know -- well, let me ask this
25 question: Once you have created the disc, what happens to

1 the VHS tape?

2 A. The VHS tape is normally stored in pending cases.

3 Q It's what now?

4 A It's stored. In any pending cases we typically store
5 the tapes.

6 Q. And where is it stored?

7 A. It usually resides with the trooper or the
8 investigating officer.

9 Q. That's you?

10 A. Yes.

11 Q. Did you get the VHS tape?

12 A. No, Your Honor.

13 Q. Okay. Do you know why?

14 A. Unfortunately, the VHS, the original was destroyed.

15 Q. Okay. Do you know why?

16 A. That was a mistake on my part. This collision actually
17 occurred very early in my career. And, basically, the way
18 it was explained to me when we turn in videos for
19 destruction, you go through the tickets that you still have
20 pending cases on. I made an error because I didn't realize
21 that this wasn't a ticket, it was a warrant. And I actually
22 submitted that video for destruction.

23 Q. Okay. Okay. All right. And so once the DVD was made,
24 then subsequent to that VHS was destroyed?

25 A. Yes, Your Honor.

1 Q. Okay. Is there any question in your mind, though, that
2 you're the one with the VHS tape that created the DVD?

3 A. I am 100 percent I was the one who created the DVD.
4 Yes, Your Honor.

5 Q. Okay. Okay. Very well. And do you remember
6 approximately when did that happen? When was the VHS tape
7 destroyed?

8 A. I do not know, Your Honor.

9 Q. When did you turn it over?

10 A. Again, I do not know, Your Honor. It was more than
11 likely a month after I believe that all the pending cases on
12 the VHS had been taking care of.

13 Q. And you did that because it was your understanding when
14 you did the DVD you had -- it was preserved?

15 A. I didn't realize that the VHS -- the reason it was set
16 up to be destroyed I didn't realize that there was still a
17 pending case on it because I didn't have -- I was going
18 through my copy of my tapes and it didn't occur to me to go
19 back through the warrants to save that particular tape.

20 Q. Okay.

21 THE COURT: I think I know more than I've ever known
22 about that issue. Did that prompt any questions from the
23 State?

24 AST. SOL. GIESE: May I ask one more question?

25 THE COURT: Ask all you want because, you know, y'all

1 need to do that because I was just interested in the
2 underlying process.

3 AST. SOL. GIESE: Yes, ma'am.

4 - - - - -

5 REDIRECT EXAMINATION

6 BY AST. SOL. GIESE:

7 Q. And you kind of struck a cord with me, too. So when
8 you are transferring the VHS to the DVD.

9 A. Yes.

10 Q. You pull the DVD out when it's done?

11 A. That's correct.

12 Q. And you're watching the TV the whole time to see that
13 it's transferring.

14 A. That is correct.

15 Q. When do you mark it up like you did here?

16 A. The markings on the DVD itself?

17 Q The DVD itself where it says Trooper Seastrunk, Highway
18 Patrol.

19 A As soon as that DVD is made, it was then marked so we
20 know what event it actually has on it.

21 Q Okay.

22 A Then it's placed on the sleeve, the DVD sleeve, to
23 protect it from scratches and everything else.

24 Q. And they're all marked the same? Because you said you
25 made multiple copies ---

1 A. They're all marked the same with the same information.
2 However the position of the information ---

3 Q I understand.

4 A --- listed on the DVD could -- varies from
5 person-to-person.

6 Q. And then it's farmed out to whoever you got to give it
7 to?

8 A. Correct.

9 Q Okay.

10 AST. SOL. GIESE: That's all, Your Honor. Thank you.

11 MR. AYLLOR: Nothing further, Your Honor.

12 THE COURT: Okay.

13 AST. SOL. GIESE: State calls Sergeant Pearson.

14 (Whereupon, the witness, CHADWICK A. PEARSON, was duly
15 sworn.)

16 AST. SOL. GIESE: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 - - - - -

19 DIRECT EXAMINATION

20 BY AST. SOL. GIESE:

21 Q. Sergeant Pearson, where do you work?

22 A. I work at South Carolina Highway Patrol.

23 Q. And how long have you been there?

24 A. Almost 19 years.

25 Q. And what are your duties at the Highway Patrol?

1 A. I'm currently the post commander in Colleton,
2 Dorchester County.

3 Q. Were those your duties in April of 2015?

4 A. Yes, sir.

5 Q. You heard Trooper Seastrunk's testimony. Do you
6 remember that incident?

7 A. Yes, sir, I do. I was on scene.

8 Q. What do you remember from that incident?

9 A. I was called at the scene because it was a serious
10 collision, serious head-on collision. So I was called to
11 the scene. I arrived after Trooper Seastrunk had already
12 been there for what I would call a short time. I think that
13 he had been there, I don't know, maybe 20 or 30 minutes. I
14 don't remember exactly. He had been there a little while
15 before me. And I arrived and it was what it was called out
16 to be, a serious head-on collision.

17 Q. Were you there for the duration of Trooper Seastrunk
18 and Ms. Harris' involvement at the scene?

19 A. I arrived, like, right when they were finishing or near
20 the end of their finished involvement. And, in fact, I
21 didn't even go to them because there was a witness that was
22 actually leaving right when I got there. So I grabbed the
23 witnesses and started talking to the witness.

24 Q Okay.

25 A Which was I believe at about the same time that Trooper

1 Seastrunk was wrapping everything before he was leaving the
2 scene.

3 Q. Okay. Did you have anything to add other than what
4 Trooper Seastrunk testified about in regards to just the
5 scene?

6 A. No, sir.

7 Q. Okay. What is your role -- what was Trooper
8 Seastrunk's role that night?

9 A. Lead investigator.

10 Q. Okay. What is your role moving forward? Is he on your
11 team, I guess, or how would you describe that?

12 A. Well, he's one of the troopers on one of our corporal's
13 teams.

14 Q. Okay. So you're his supervisor or one of his
15 supervisors?

16 A. Yes, sir. I would be -- he has a first line supervisor
17 which would be a corporal and then the sergeants --

18 Q. You're over all those?

19 A. -- over all the corporals.

20 Q. And you still are?

21 A. Yes, sir.

22 Q. Okay. And you have a lot of dealings with our office.
23 Is that correct?

24 A. Yes, sir.

25 Q. Because you're kind of -- I don't want to testify for

1 you -- but you're kind of our liaison to your team?

2 A. Yes, sir.

3 Q. Did I meet with you prior to this trial, prior to you
4 being here today?

5 A. Yes, sir. I believe it was two or three weeks ago.

6 Q. And you're aware of the glitch in the video as Trooper
7 Seastrunk -- as we've been discussing?

8 A. Yes, sir.

9 Q. Did you make any efforts to track down the original?

10 A. Yes, sir. My first thought was that it -- that the
11 glitch was probably what happens on VHS tapes. I mean,
12 they're old system and they glitch some. So that was my
13 first thought is it probably just is what it is, a glitch.
14 But still in hopes of getting the original and maybe it not
15 glitching from the original, the first thing I did was check
16 the video cabinet for stored DVDs that we have, and it was
17 not in there. So then I went to -- I have a file for every
18 trooper of videos that they've disposed of. And I pulled
19 David's file, Trooper Seastrunk, I pulled his file. And in
20 that file was the chain of custody from the original VHS
21 tape in this collision and found that it had in fact been
22 destroyed.

23 Q. As Trooper Seastrunk just testified to --

24 A. Yes.

25 Q. -- in that regard. So at that point did you -- had you

1 run out of options or where did you go from there?

2 A. Well, I also pulled our general sessions file to see of
3 there was a copy of the tape in our general sessions file
4 and there was not a disc in there. So at that point, I
5 didn't believe there were any other options for copies of
6 the disc.

7 Q. And you notified me of that?

8 A. Yes, sir, I did.

9 Q. Yes, sir.

10 AST. SOL. GIESE: May I approach the witness, Your
11 Honor?

12 THE COURT: You may.

13 Q. I'm showing you Court's Exhibit 1. You recognize that?

14 A. I do, yes, sir.

15 Q. What is that?

16 A. It's a copy of Trooper Seastrunk's video dealing with
17 this collision that I brought to the office this morning.

18 Q. Where did you get it?

19 A. I got it from the MAIT team.

20 Q. Okay. And can you kind of describe that process how
21 you went about getting it?

22 A. Sure. Sure. After we talked about the issue with a
23 copy that you had and I couldn't locate the original because
24 it had been destroyed, I thought we were out of options.

25 But then I asked -- I called Sergeant Booker who runs the

1 coastal MAIT team and asked him if they still had a copy of
2 David's video. I'm sorry, of Trooper Seastrunk's video.
3 And he said he wasn't in his office at the time. He said
4 that he would check when they got back. And this was a week
5 and a half, two weeks ago I guess it was. So I didn't hear
6 back from him and it dawned on me, I think it was Thursday,
7 this past Thursday, just to follow up with him to see if in
8 fact he ever did locate the video. And he said that he
9 hadn't been able to even address yet. He had other stuff
10 going on. And so he called Trooper Jesse James, who is also
11 on the MAIT team, and Trooper James look to see if he could
12 locate a copy of the video in the MAIT files from 2015. And
13 then Trooper James did locate the copy and he gave it to
14 Trooper Ford who works directly under me. Trooper Ford gave
15 the video to me.

16 Q. And you brought it up here today?

17 A. I brought it up here today.

18 Q. Did you watch it with Trooper Seastrunk?

19 A. That was the first time I had seen it because the DVD
20 drive on my computer had stopped recognizing discs.

21 Q. Okay.

22 A. So I couldn't watch it until we watched it together.

23 Q. Was it a complete representation of the traffic stop to
24 your knowledge?

25 A. Yes, sir.

1 Q. Were there any glitches?

2 A. Certainly not during the time frame that we had
3 initially spoke about.

4 Q. Okay. Let me ask you briefly, what is the MAIT team?
5 Can you kind of describe who the MAIT team are?

6 A. MAIT stands for Multidisciplinary Accident
7 Investigation Team. And they are the specialists. They
8 don't patrol like we do. The only respond to major, serious
9 cases, high-profile cases.

10 Q. Such as this one?

11 A. Such as this one, yes, sir. It's their specialty.

12 Q. Are they employed by the Highway Patrol?

13 A. They were. Yes, sir.

14 Q. But they're kind of their own separate arm of the
15 Highway Patrol. Would you agree?

16 A. Yes, sir. They are.

17 Q. Okay. And, again, the disc I showed you is the one
18 that Trooper Ford, I believe you said, provided to you?

19 A. Yes, sir.

20 Q. Okay. And you brought it directly up here and gave it
21 to -- did you give it to Mr. Templeton?

22 A. Yes, sir. Whenever I walked in.

23 Q Okay.

24 A Mr. Templeton was assisting me and I handed it to him.

25 AST. SOL. GIESE: Nothing further. Thank you. Thank

1 you, Your Honor.

2 THE COURT: Cross-examination?

3 MR. AYLOR: Thank you. May it please the Court?

4 THE COURT: Uh-huh. Yes.

5 - - - - -

6 CROSS-EXAMINATION

7 BY MR. AYLOR:

8 Q. Good afternoon, Sergeant?

9 A. Good afternoon, sir.

10 Q. So the first time you ever saw the video at all, was
11 that today?

12 A. Any of the video that is related to this?

13 Q. Any of them. The one that doesn't skip or the one that
14 does skip.

15 A. In its entirety, yes, sir, that would be the first
16 time. I would've only seen brief moments.

17 Q. In the past, you had seen brief moments?

18 A. Yes, sir.

19 Q. Did that include the part that skipped?

20 A. I honestly couldn't tell you if I saw that part or not.

21 Q. And why would you have been in charge of finding this
22 video when it was Trooper Seastrunk's case? You're two
23 levels above him, right?

24 A. Yes, sir.

25 Q. And the responsibility, as he said in his own

1 testimony, of the tape is of the arresting officer, the lead
2 investigator, correct?

3 A Yes, sir.

4 Q So why did it end up getting all the way up to you?

5 A. I mean, we all work together. We all . . .

6 Q. Do you usually go looking for your trooper's lost tapes
7 or is this sort of a unique circumstance?

8 A. Being the Sergeant of the post, I mean I'm responsible
9 for everything under me. So it's certainly not the first
10 time.

11 Q. And what was your role to your understanding of both
12 the, I guess, pretrial motions and as far as today goes?

13 A. Come answer any questions in relation to the video that
14 I would be asked.

15 Q. Were you gonna provide an affidavit?

16 A. No, sir.

17 Q. Do you know as the Sergeant if, after this issue with
18 the tape came about, anyone checked the recording device or
19 was that the point the car was already gone?

20 A. That car was long gone. Yes, sir.

21 Q. Does it concern you that your trooper didn't know where
22 his own video was on a felony DUI death case as a sergeant?

23 A. As a sergeant, any glitch in the system bothers me.

24 Q. Not a system, the trooper? Does that concern you that
25 he didn't know where his own video was and said that he in

1 fact had the video basically tossed? At least the original
2 one, correct?

3 A. Yes, sir, correct.

4 Q. So does that concern you?

5 A. It does concern me. Yes, sir.

6 MR. AYLOR: Thank you. No further questions.

7 THE COURT: Redirect?

8 AST. SOL. GIESE: No, ma'am. Thank you.

9 THE COURT: Okay. Thank you, sir. Thank you for being
10 here.

11 THE WITNESS: Thank you. Yes, ma'am.

12 AST. SOL. GIESE: That would be the extent of the
13 Highway Patrol that's present, Your Honor.

14 THE COURT: Okay. All right. Okay. All right. Now,
15 as we sit here now at 20 minutes until four, Mr. Aylor you
16 still have not seen the video. Is that correct?

17 MR. AYLOR: That's correct, Your Honor.

18 THE COURT: Okay. And you actually haven't seen it?

19 AST. SOL. GIESE: No, ma'am.

20 THE COURT: Okay. All right. Very well. I have no
21 choice but to grant the defendant's motion for a
22 continuance. But I'd like to discuss why. The why part is
23 that a virtue of our DUI statutes, the tape has become
24 critical. The Supreme Court decisions are very clear that
25 there is a contemplation that the recording statutes that

1 they'd be adhered to. However, the most recent decisions
2 have tempered what was becoming a very construction of the
3 tapes. I think the nystagmus test and the recording and
4 then the nystagmus test probably was the point where the
5 Supreme Court began to temper -- temper the belief that
6 every single portion of the stop had to be recorded. That's
7 not correct with the Miranda warnings. And so my concern is
8 that, Mr. Aylor, I can understand -- I don't know that all
9 of your -- I'm confident that all of your preparation hadn't
10 been spent only on a video, but understandably a fair amount
11 of your preparation would've been spent on that. And now
12 that the -- as I understand it, I've seen neither, as I
13 understand it, the video situation has changed your
14 preparation, I think. However, before you all leave me
15 today, I want both of you to at least look, both of you, at
16 the tape up to, as I understand it, it was Miranda. And the
17 rest of it, I'll let you do at your leisure. Because as I
18 understand it, you both watched it and the place where you
19 saw the glitch was the Miranda, yes?

20 AST. SOL. GIESE: Yes, ma'am. That would be --

21 THE COURT: Yes?

22 MR. AYLOR: That's correct.

23 THE COURT: Okay. So I need you both to do that and be
24 sure that I am postponing this trial because of that and
25 that you haven't seen it. I know that Mr. Templeton has,

1 but I don't know that Mr. Templeton saw the glitch.

2 AST. SOL. TEMPLETON: I have seen the glitch as well.

3 THE COURT: Oh, you saw the glitch? Okay. All right.
4 Very well. So less concerned about you seeing it,
5 Mr. Giese, than I am Mr. Aylor seeing it. But I do need --
6 I don't want you to see the tape, come back and tell me,
7 Judge, this is the same tape. You understand what I'm
8 saying?

9 MR. AYLOR: Yes, ma'am.

10 THE COURT: So other than that, I would think you both
11 would be prepared. So this should absolutely not be any
12 extended continuance. Of course, my concern is, is that
13 this is my second week here and I'm the chief administrative
14 judge so I know I can just feel Mr. Sorenson like over here.
15 Because I have been push, push, push, push, push on a number
16 of cases for trial. So have y'all had a chance to chat,
17 talk?

18 AST. SOL. GIESE: I'll kind of let Mr. Aylor go on that
19 one.

20 MR. AYLOR: We did, Your Honor. There's two dates in
21 March. Unfortunately, neither of them is gonna work. The
22 13th Judge Murphy is presiding and there's a conflict
23 there. The 20th I've got a federal hearing and jury trials
24 that week. So whatever -- I don't know what the date is,
25 and I don't believe Mr. Giese did know. Whatever the next

1 following date is would be fine with us. But either of
2 those two dates in March did not work.

3 THE COURT: Hold on one second. Here comes the answer.
4 Because there were some things that were being scheduled,
5 too. I'm a little bit concerned.

6 (Brief pause.)

7 AST. SOL. GIESE: Your Honor, I understand where
8 Mr. Aylor is coming from. I will like it tried sooner -- as
9 soon as possible.

10 THE COURT: Well, when y'all looked, did anybody happen
11 to look -- I should know. I scheduled --

12 AST. SOL. GIESE: You are presiding and it appears --
13 because in April it appears Mr. Justis had a date certain
14 for the week of the 10th.

15 THE COURT: How about the 13th of March? Where am I?
16 Because that might be --

17 AST. SOL. GIESE: That's Judge --

18 THE COURT: I can switch with Judge Murphy, so.

19 MR. AYLOR: I mean the 13th, that date is fine with
20 us. It was just the . . .

21 THE COURT: Yeah. I just don't know where I am. What?

22 AST. SOL. TEMPLETON: I'm pulling it up, Your Honor.

23 THE COURT: If y'all will tell me . . .

24 AST. SOL. GIESE: Yeah. You're in general sessions in
25 Calhoun County that week.

1 THE COURT: Oh, she'll make that switch with me every
2 day. I would think. This will end the discussion. Are you
3 in Calhoun?

4 AST. SOL. SORENSON: Possibly.

5 THE COURT: Because if you know you're gonna be in
6 Calhoun on the 13th that means it could go longer than,
7 like, a half a day.

8 AST. SOL. SORENSON: I don't think that will be a
9 problem.

10 THE COURT: You're a spoiler alert for Calhoun General
11 Sessions if you're up there. That's a spoiler alert. Okay.
12 I will do this. Before the end of the day I will have a
13 conversation and let you all know in the morning. But the
14 chances I think that Judge Murphy will swap with me and go
15 to Calhoun is pretty good.

16 AST. SOL. GIESE: Yes, ma'am.

17 MR. AYLOR: That's fine with us, Your Honor.

18 THE COURT: Okay. Would you pencil that in, gentleman,
19 both of you, please, for the 13th of March.

20 MR. AYLOR: The 13th, yes, ma'am. Thank you, Your
21 Honor.

22 THE COURT: Yeah, that just make sense and make both
23 sides . . .

24 AST. SOL. GIESE: Would Your Honor -- well, I guess
25 you'll find out tomorrow. Could we do an order to that

1 effect?

2 THE COURT: Yeah. Yeah. You'll have to do it to the
3 Court Administration. You know, unfortunately, I have a
4 boss, too. But that would be no matter for me to clear
5 with Court Administration. That won't be an issue. So, all
6 right, everybody pencil in March 13th. We'll do an order
7 tomorrow to that effect and I'll clear it with -- by
8 tomorrow, I will clear it with Court Administration as well.
9 First of all, with Judge Murphy then Court Administration
10 for the 13th unless there's some hiccup.

11 All right. And, you know, and I don't know who I'm
12 looking at. I know that there are a number of family
13 members from the victim's family.

14 AST. SOL. GIESE: All in the front row.

15 THE COURT: And there very well may be from the
16 defendant's family. You know, it's heartbreaking. You get
17 yourself emotionally ready to go through this
18 extraordinarily difficult experience, and then all of a
19 sudden it doesn't happen. I want you all, both sides -- I'm
20 looking at both sides -- it's heartbreaking. I know it's
21 tough. I'm mindful of that. But here's the other piece of
22 it. I'm very mindful of -- I know that all -- certainly, I
23 as a Court, am mindful for both sides that it's best to just
24 try to do it once. And, you know, it's really interesting
25 as I listen to all of these different matters, I think it's

1 a terrible hiccup with no one that we can point a finger to.
2 But I sure am glad we're not walking around with -- and I
3 sure hope that we've gotten rid of all the VHS tapes in our
4 highway department, in our Highway Patrol vehicles. And I'm
5 sure y'all would just love for me to go on up to the Ways
6 and Means Subcommittee and tell Representative Pitts how
7 your car is going to be outfitted differently and you need
8 newer ones. But this is certainly one of those times when
9 it's -- I don't know. So we cope.

10 All right. So I will do what I need to do. But y'all
11 pencil that in.

12 MR. AYLOR: Yes, ma'am.

13 THE COURT: Very well. Now, Mr. Aylor, you put yours
14 in pen. Shove everybody else out of the way.

15 MR. AYLOR: I will do.

16 THE COURT: All right. Very well. Thank you all so
17 much.

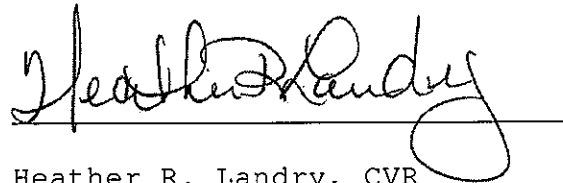
18 (The proceeding concluded at 3:55 p.m.)
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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF REPORTER
COUNTY OF CHARLESTON)

I, HEATHER R. LANDRY, who at the time of this proceeding, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of General Sessions for Dorchester County, South Carolina, on the 13th day(s) of February 2017.

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

March 12, 2019

A handwritten signature in cursive script, reading "Heather R. Landry", written over a horizontal line.

Heather R. Landry, CVR
Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-GS-18-0617

STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 TAMMY G. HARRIS)
)
 _____) **ORIGINAL**

Tuesday, March 14, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Diane Schafer Goodstein, Judge

APPEARANCES:

For the State of South Carolina:
 Assistant Solicitor Warren Phillip Giese, Esquire
 First Circuit Solicitor's Office
 Post Office Box 1525
 Orangeburg, South Carolina 29116

For the Defendant:
 David Fletcher Aylor, Esquire
 David Aylor Law Offices
 24 Broad Street
 Charleston, SC 29401

Heather R. Landry, CVR
 Court Reporter

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EXHIBITS

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NO EXHIBITS INTRODUCED

1 (The proceeding began at 10:12 a.m.)

2 AST. SOL. GIESE: May it please the Court, Your Honor?

3 THE COURT: Yes, sir.

4 AST. SOL. GIESE: This is Tammy Harris and her attorney
5 David Aylor. She's here to plead guilty, true billed
6 indictment 2015-GS-18-617, felony DUI with death. There is
7 no recommendation in this case.

8 THE COURT: Okay. All right. I know we're gonna need
9 somebody from the clerk's office, but I will certainly place
10 Ms. Harris under oath.

11 (Whereupon, the defendant, TAMMY GAIL HARRIS, was duly
12 sworn.)

13 THE COURT: Ms. Harris, do you have gum?

14 THE DEFENDANT: I do. I'm sorry.

15 THE COURT: There's some tissue right there. Thank you
16 very much. All right. Now, Ms. Harris, you're represented
17 by Mr. David Aylor?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: I have questions for Mr. Aylor and then I
20 have a number of questions for you. If you wonder why I ask
21 your attorney the question that I ask him, please don't
22 hesitate to ask that question and then I will certainly
23 explain that to you, okay?

24 THE DEFENDANT: Okay.

25 THE COURT: All right. Mr. Aylor, have you advised

1 your client regarding the nature of this offense, the
2 maximum possible penalty, and her constitutional rights
3 including her right to a jury trial?

4 MR. AYLOR: Yes, Your Honor, I have.

5 THE COURT: And in your opinion does she understand the
6 nature of this offense, the maximum possible penalty, and
7 her rights?

8 MR. AYLOR: She does, Your Honor.

9 THE COURT: And tell me how Ms. Harris wishes to plead.

10 MR. AYLOR: She wishes to plead guilty today, Your
11 Honor.

12 THE COURT: And do you concur with her decision?

13 MR. AYLOR: I do, Your Honor.

14 THE COURT: From your investigation of the facts and
15 circumstances of your client's case, do you believe that the
16 State could produce sufficient evidence to convict and
17 establish your client's guilt beyond a reasonable doubt, and
18 if she was to stand trial that her conviction would be
19 probable?

20 MR. AYLOR: I do, Your Honor.

21 THE COURT: All right. And do you have any concerns
22 regarding your client's competency?

23 MR. AYLOR: None at all, Your Honor.

24 THE COURT: All right. Now, Ms. Harris, I have many
25 questions to ask of you. If you do not understand my

1 question, please do not answer it, but let me know that you
2 don't understand my question. If you answer a question, I
3 am going to presume that you understood it. You understand?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. And if you need to stop at any
6 time and speak with Mr. Aylor, he's here. He still
7 represents you. These matters are important. They're going
8 to have a very dramatic effect on your life. So if you have
9 a question, please stop and please ask him, all right?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And if you need to take a break for any
12 other reason that's perfectly fine as well, okay?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Now, I'm gonna ask you to do two things for
15 me. I'm going to ask you to have sufficient volume so that
16 I can hear you because I really want to hear you. Thank
17 you, Mr. Aylor. And also our court reporter needs to take
18 down what you're saying. I'll be asking you questions, and
19 in normal conversation there's a tendency to nod or say
20 uh-huh or huh-uh. I'm going to ask you to answer, though,
21 with your voice and to articulate an answer because I don't
22 want our court reporter to be put in a position of having to
23 interpret what you mean. I would like your answers to be
24 clear, okay?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Thank you. If you forget, I'm right here.
2 I'll just remind you, okay?

3 THE DEFENDANT: Thank you.

4 THE COURT: Tell me how old are you.

5 THE DEFENDANT: I'm 46.

6 THE COURT: And tell me how far you went in school.

7 THE DEFENDANT: Almost finished my four-year degree.

8 THE COURT: Tell me where you work.

9 THE DEFENDANT: Right now I have -- I had a medical
10 practice from 2001 to 2013, but we closed down, but we're
11 still collecting personal injury cases. And I'm raising my
12 daughter who is a senior in high school.

13 THE COURT: Okay. Now, you had a medical practice?

14 THE DEFENDANT: Uh-huh. Yes, ma'am.

15 THE COURT: All right.

16 THE DEFENDANT: Yes, ma'am. I'm sorry.

17 THE COURT: Okay. All right. And you had a medical
18 practice from what period?

19 THE DEFENDANT: 2001 to 2013.

20 THE COURT: All right. And so, you said you almost
21 finished your four-year degree?

22 THE DEFENDANT: Right.

23 THE COURT: Well, if you almost finished -- you're not
24 a physician?

25 THE DEFENDANT: No. My ex-husband was.

1 THE COURT: Okay. Your ex-husband was a physician?

2 THE DEFENDANT: Yes.

3 THE COURT: And you worked in his practice?

4 THE DEFENDANT: Both of our practice, yes.

5 THE COURT: It was both your practice?

6 THE DEFENDANT: Yes.

7 THE COURT: And how was that your practice?

8 THE DEFENDANT: I did aesthetics, antiaging, Botox,
9 that kind of thing.

10 THE COURT: Gotcha. And that practice closed in?

11 THE DEFENDANT: 2013. But we are still collecting from
12 past insurance claims.

13 THE COURT: Okay. And are you currently employed?

14 THE DEFENDANT: No.

15 THE COURT: Okay. And your last employment was in
16 2013?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And you mentioned your ex-husband was a
21 physician. Are you currently married?

22 THE DEFENDANT: No, I'm not.

23 THE COURT: All right.

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Obviously, you mentioned a child. How many

1 children do you have?

2 THE DEFENDANT: Three.

3 THE COURT: And what are their ages?

4 THE DEFENDANT: Twenty-seven.

5 THE COURT: Twenty-seven?

6 THE DEFENDANT: Uh-huh.

7 THE COURT: And?

8 THE DEFENDANT: Twenty, 17.

9 THE COURT: Okay. Now, have you ever been treated for
10 alcohol abuse?

11 THE DEFENDANT: Yes.

12 THE COURT: And when was that?

13 THE DEFENDANT: It was June 2015.

14 THE COURT: June of 2015?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And where were you treated?

17 THE DEFENDANT: Jacksonville, Florida. Jacksonville,
18 Florida.

19 THE COURT: Okay. Tell me little bit about the
20 program.

21 THE DEFENDANT: It was a double -- what they do is they
22 work towards getting the medication you're supposed to be on
23 rather than the ones you sought after to feel better.

24 THE COURT: Okay.

25 THE DEFENDANT: So it was double diagnosis, yes.

1 THE COURT: Okay.

2 THE DEFENDANT: It was considered actually like a CPR,
3 ICU type facility. It was 28-day program. And then when I
4 got back home, I started the IOP program.

5 THE COURT: You started what now?

6 THE DEFENDANT: The intensive outpatient.

7 THE COURT: Gotcha. And did you complete that?

8 THE DEFENDANT: I did it for nine months.

9 THE COURT: Okay. And what, if any, aftercare are you
10 doing?

11 THE DEFENDANT: I do a lot of reading and some AA
12 meetings. But no drinking, no drugs, no nothing.

13 THE COURT: Okay. Now, have you ever been treated for
14 drug abuse?

15 THE DEFENDANT: Yes. That was then.

16 THE COURT: That was part of this program?

17 THE DEFENDANT: The same thing, uh-huh.

18 THE COURT: Okay. And anything independent of this
19 program for the drug abuse?

20 THE DEFENDANT: No.

21 THE COURT: Okay. Have ever been treated for mental
22 health challenges?

23 THE DEFENDANT: I see a therapist.

24 THE COURT: Okay.

25 THE DEFENDANT: And I have been seen for child abuse of

1 my own as a child and post-traumatic stress syndrome.

2 THE COURT: Okay. And you're currently receiving
3 mental health counseling, correct?

4 THE DEFENDANT: Yes.

5 THE COURT: And when did you first receive mental
6 health counseling?

7 THE DEFENDANT: In 1995.

8 THE COURT: Okay. And have you been in mental health
9 counseling, would you say, continually or off and on since
10 1995?

11 THE DEFENDANT: At first continually but then on and
12 off.

13 THE COURT: Okay. And, currently, you have a diagnosis
14 of PTSD?

15 THE DEFENDANT: Uh-huh.

16 THE COURT: Anything else?

17 THE DEFENDANT: General anxiety.

18 THE COURT: Okay.

19 THE DEFENDANT: And depression.

20 THE COURT: Okay. Are you taking any medicine for
21 that?

22 THE DEFENDANT: Yes, I am.

23 THE COURT: All right. And what do you take?

24 THE DEFENDANT: Effexor.

25 THE COURT: Effexor, okay.

1 THE DEFENDANT: 75 milligrams a day for depression.
2 Klonopin for anxiety and then Adderall for ADHD and then
3 vitamins and stuff like that.

4 THE COURT: Okay. Now, in the last 72 hours have you
5 had any alcohol?

6 THE DEFENDANT: No. No, ma'am.

7 THE COURT: Drugs?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Medication?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Medication has been the Effexor?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: The Klonopin?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Adderall?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Vitamins?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Any other medication?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Now, is there anything about
22 the underlying PTSD, anxiety, and depression, those
23 conditions as they are medicated today that might or could
24 interfere with your ability to know exactly what you are
25 doing here today?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: All right. This is going to be a very
3 general question, and I mean it to be very general. Are you
4 aware of any issues or challenges in your life, or problems
5 in your life -- and I'll give you some examples: a physical
6 problem, a mental problem, a nervous problem, drug or
7 alcohol problem. Are you aware of any problems in your life
8 that might or could interfere with your ability or keep you
9 from understanding what you are doing here today? That's a
10 very long question. I'll ask it again.

11 THE DEFENDANT: Okay.

12 THE COURT: All right. I'll give you the short
13 version. I'll give you the short version and then I'll give
14 you the -- the short version is: Is there anything in your
15 life that would keep you from understanding what you're
16 doing here today? That's the short one. The long one,
17 which is important, is are you aware of any issues or
18 challenges or problems in your life, for example but not
19 limited to, physical problem, mental problem, nervous
20 problem ---

21 THE DEFENDANT: No, ma'am.

22 THE COURT: --- drug or alcohol problem, are you aware
23 of any problems that might or that could keep you from
24 knowing what you're doing here today or interfere with your
25 ability to know what you're doing here today?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Okay. Are you on probation or parole
3 currently?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Okay. All right. Now, let's talk about
6 this offense. Ms. Harris, you are charged and indicted for
7 driving under the influence where death results. Do you
8 understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. This offense is punishable by
11 imprisonment for a minimum of one year and for a maximum of
12 25 years in prison. Do you understand?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you understand that there is a fine that
15 is associated also with this offense that is a minimum of
16 10,000 and a maximum of \$25,100?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. And do you also understand that
19 this offense has particular classifications that we are
20 going to talk about. But if you have questions about these
21 classifications, I want you to be sure and ask Mr. Aylor or
22 me, okay?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: It's very important that you understand
25 them. First of all, this particular offense is classified

1 as a violent offense. It has that classification by the
2 statutory provisions under South Carolina law. We need to
3 talk about them. And because this is a violent offense, it
4 has effects of both within the period of commitment to the
5 South Carolina Department of Corrections, but it also has an
6 effect on someone who has been convicted of a violent
7 offense. It has effects for that person when they come out
8 of the Department of Corrections. I want to go over those
9 with you. I will not go over all of them. But if you have
10 questions, again, I want you to feel free to ask Mr. Aylor,
11 okay?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Now, for example, a person who is serving a
14 sentence for a violent offense is housed in a facility with
15 the Department of Corrections, South Carolina Department of
16 Corrections, for violent offenders, so the classification of
17 a violent offense will dictate the type of facility where
18 you would be housed. A person who is convicted of a violent
19 offense and incarcerated has a prohibition against -- it may
20 have an effect on your ability to earn work credits and
21 educational credits. And the person convicted of a violent
22 crime is not eligible to participate in a supervised
23 furlough program. And a person convicted of a violent
24 crime, which is classified as a felony, and that would be
25 this one, may not possess a firearm or ammunition. And, of

1 course, that would come into effect at the time of your
2 release.

3 Also applicable to you upon your release, a person is
4 convicted of a violent crime may not receive a license to
5 operate a nursing home or community residential care
6 facility. A person convicted of a violent crime may not
7 work in any capacity with local school districts. And,
8 again, you may not own, possess things such as body armor
9 and ammunition as we have already discussed. And there are
10 other consequences to this being a violent crime that we
11 have not discussed in particular. Do you understand that
12 there are consequences which will apply to you both during
13 your incarceration and subsequent to your incarceration
14 because this particular offense is classified as a violent
15 offense?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. Now, also under 17-25-45 this
18 offense is also classified as a serious offense, and I want
19 to talk about that because that is also a very important
20 consequence. Now 17-25-45 is, if you will, an
21 anti-recidivism statute which has been passed by our
22 legislator, legislators. And what it is intended to do is
23 it is intended to enhance the consequences for certain
24 offenses. Is also called the two-strike, three-strike rule.
25 And what it does is if a person is convicted of two crimes

1 which are serious crimes and then they stand accused of a
2 third crime which is either classified as a serious or a
3 most serious offense, which is another classification under
4 17-25-45, and the State serves that person notice that in
5 the event that that person is convicted of that then third
6 offense, which is classified either as a serious or most
7 serious offense, and the State serves notice that in the
8 event that person is convicted that the State intends to
9 seek a penalty of life without the possibility of parole.
10 And that person is then convicted then the sentence is
11 imposed and that person spends the rest of their life in
12 prison without the possibility of parole. Meaning they die
13 in prison. There is no possibility that they will come out
14 of the Department of Corrections. Do you understand that
15 this offense is a serious offense?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And under 17-25-45 it is a strike. Do you
18 understand?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. Now, what I'm going to do at
21 this point, because I think it's important for the record to
22 reflect and for there to be an establishment of the number
23 of strike that this would be for you, I'm going to begin by
24 asking Mr. Giese.

25 AST. SOL. GIESE: It would be a first strike.

1 THE COURT: All right. Do you concur, Mr. Aylor?

2 MR. AYLOR: I do, Your Honor.

3 THE COURT: All right. Most importantly, Ms. Harris,
4 is your understanding this would be your first strike?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Now, do you have -- I'm going
7 to pause for a moment and ask if you have any questions
8 about the fact that this offense is classified as a violent
9 offense and a serious offense?

10 THE DEFENDANT: Yes, ma'am. No questions.

11 THE COURT: No questions. You understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: All right.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Very well. Now, Ms. Harris, obviously this
16 offense has consequences with regards to your driving
17 privileges as well. You understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Now, here's what you've told me
20 up to this point: that you understand this offense; that you
21 understand the maximum possible penalty; that you understand
22 the minimum penalty; that you understand the consequences;
23 you understand that it is a violent offense; you understand
24 that it is a serious offense and those consequences.
25 Keeping these matters in the absolute forefront of your

1 mind, how do you plead to felony driving under the influence
2 where death results?

3 THE DEFENDANT: Guilty.

4 THE COURT: Do you understand that when you plead
5 guilty, you give up certain very important constitutional
6 rights?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. I'm going to talk about some of
9 them with you. I will not talk about them all. If you have
10 questions, I want you to ask Mr. Aylor or me. First of all,
11 I'll tell you that you give up your right to remain silent.
12 Because you're talking to me, you're not silent. That's
13 your Fifth Amendment right to remain silent. You are no
14 longer remaining silent. You're speaking. You're giving up
15 that Fifth Amendment right.

16 You give up your right against what is called
17 self-incrimination, which means no one can make you testify
18 against yourself. You're under oath. You just told me you
19 were guilty. You just testified against yourself. You just
20 gave up your Fifth Amendment right against
21 self-incrimination.

22 You give up your right to require the State to prove
23 you guilty beyond a reasonable doubt, if they can. You give
24 up your right to have your lawyer cross-examine those
25 witnesses who would testify against you. You give up your

1 right to have you lawyer subpoena witnesses to come testify
2 in your defense. You give up your right to present
3 defenses. You give up your right to challenge any
4 incriminating statements that you may have made to the
5 government which are typically admissions or the like,
6 statements made to law enforcement, incriminating
7 statements. You give up your right to have you lawyer
8 challenge those. You give up your right to have you lawyer
9 challenge any stops or searches or seizures. That is your
10 Fourth Amendment right. You give up those rights.

11 You give up your right to a jury trial. You give up
12 your right to a jury trial, meaning if you wanted to have a
13 jury trial, you would have a jury trial. And at the trial
14 it would be completely left up to you whether you wanted to
15 testify or not testify. And in the event that you had a
16 trial and you chose not to testify, you chose to exercise
17 your Fifth Amendment right, the judge trying your case would
18 tell the jury that the jury could not consider your decision
19 not to testify on the issue of whether you were guilty or
20 not guilty. In fact, the judge would tell the jury that
21 they could not even discuss your decision not to testify in
22 the jury room. Because it wouldn't be an issue for the jury
23 to discuss because the exercise of your Fifth Amendment
24 right is a sacred right and would not be evidence to be
25 considered on whether you were guilty or not guilty.

1 Because, you see, the burden is and remains on the State to
2 prove guilt beyond a reasonable doubt. A defendant is never
3 required to prove himself or herself not guilty.

4 So these rights and others, which I have not
5 specifically spoken of, are preserved for you at trial and
6 you waive them when you plead guilty. Do you understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And do you understand that when you plead
9 guilty, you give up your right to have a jury determine if
10 you are guilty or not guilty. Do you understand?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you understand if I accept your
13 plea, I will sentence you?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Now, I'm going to pause here
16 because I'm going to summarize where we are and what you
17 told me. You have told me that you understand this offense,
18 that you understand the maximum possible penalty and the
19 minimum penalty.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You have told me that you understand the
22 consequences of your plea, that this is a violent offense,
23 it's a serious offense. And you've also told me that you
24 understand your constitutional rights.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Keeping all of these matters in the
2 forefront of your mind, do you still wish to continue with
3 your plea of guilty?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. Ms. Harris, every plea in this
6 court must be supported by a factual basis. And in a moment
7 important, I'm going to call on Solicitor Giese to go over
8 the facts that the State stands prepared to present at trial
9 for the purpose of proving your guilt. And when he is
10 finished, I am simply going to ask you, "Is that what
11 happened?" And I need you to correct anything that I am
12 told that needs correcting so that I have an accurate
13 picture of what occurred. So please listen carefully. Yes,
14 sir.

15 AST. SOL. GIESE: May it please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 AST. SOL. GIESE: This occurred April 22, 2015, on
18 Miles Jamison Road. That's in the Summerville area of
19 Dorchester County. On that night, Trooper Seastrunk and
20 Sergeant Pearson, who are to the Court's left back here,
21 they responded out there in response to a two-vehicle
22 collision. When they arrived on-scene, one of the drivers
23 had already been transported to the hospital due to her
24 injuries. That driver was later identified as Cindy Wolf
25 who is the victim in this case. Ms. Harris was the driver

1 of the other vehicle and was on-scene when they arrived.
2 Trooper Seastrunk as well as Sergeant Pearson had suspected
3 maybe she had some alcohol that night so they performed
4 field sobriety tests on her -- or she performed field
5 sobriety tests for them.

6 Her performance on that resulted in them charging her
7 and arresting her for driving under the influence. She's
8 then transported with Trooper Seastrunk to the breathalyzer
9 center, which she submits to a breathalyzer test and the
10 results of that test were a .14, obviously above the .08
11 legal limit here in South Carolina. She then goes to the
12 hospital where she consents to a blood draw and blood draw
13 of those results were .146 blood-alcohol level. The MAIT
14 team, which is an investigative team with the highway
15 patrol, basically they reconstruct the accidents, they do an
16 investigation. One of the troopers talks to Ms. Harrison.
17 She admits to drinking that night. And as a result of their
18 investigation, they determined that Ms. Harris would be the
19 at-fault driver. She came way over into Ms. Wolf's lane. I
20 failed to mention that in the mist of all that, Ms. Wolf did
21 succumb to her injuries and passed away very soon after the
22 accident thus, you know, making this a felony DUI with
23 death.

24 That would be the factual basis, Your Honor. There is
25 -- I've approached the bench and told Your Honor that there

1 are a lot of victims here -- or a lot of victim's family
2 here. I do want to point them out. But they're gonna --
3 they would wish to speak ---

4 THE COURT: --- Thursday.

5 AST. SOL. GIESE: Okay. Yes, ma'am.

6 THE COURT: If you would do that.

7 AST. SOL. GIESE: Yes, ma'am. But that's the factual
8 basis, Your Honor.

9 THE COURT: Thank you. Thank you. Is that what
10 happened?

11 THE DEFENDANT: Yes. Yes, ma'am.

12 THE COURT: All right. Now, Ms. Harris, has anyone
13 promised you anything or held out any hope of a reward to
14 get you to plead guilty?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Has anyone tried to force you or threaten
17 you, pressure you or intimidate you to make you plead
18 guilty?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Have you had enough time to make up your
21 mind that this is what you want to do?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And are you pleading guilty today freely
24 and voluntarily?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And are you pleading guilty because you are
2 in fact guilty?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Now, I want to talk about the
5 representation that you've had from Mr. Aylor. Have you
6 spoken with Mr. Aylor for as many times and for as long a
7 period of time on each of those occasions as you believe
8 appropriate for him to properly represent you?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Can you tell me approximately how many
11 times you have met with Mr. Aylor?

12 THE DEFENDANT: Seven, besides being in court. Besides
13 being here, so nine.

14 THE COURT: Nine times?

15 THE DEFENDANT: Uh-huh.

16 THE COURT: Okay. And have you met with him for as
17 long a period on each of those occasions as you believe
18 appropriate for them to properly represent you?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Has Mr. Aylor investigated your case?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Has Mr. Aylor spoken with the people that
23 you wanted them to speak with?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And has Mr. Aylor explained to you the

1 elements of felony driving under the influence where death
2 results?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Has Mr. Aylor been over the evidence that
5 the State has available to present at trial for the purpose
6 of proving your guilt?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And had he -- I don't know that you wanted
9 a copy of that information. But if you wanted a copy of it,
10 did he give you a copy of it?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And has Mr. Aylor done everything for you
13 in your case that you believe he should have done or could
14 have done to properly represent you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Has Mr. Aylor done anything in his
17 representation of you that you believe he should not have
18 had to?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Are you completely satisfied with his
21 representation?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. Has anyone associated with your
24 case, your attorney, the solicitor, any of the police
25 officers involved in your arrest, or any of the individuals

1 at the detention facility if you were in fact detained, has
2 anyone associated with your case mistreated you in any way?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Have you understood my questions?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Is there anything that you would like to
7 ask me about what we have just been over?

8 THE DEFENDANT: Not right now, ma'am.

9 THE COURT: Okay. Do you understand that you have a
10 right to appeal your guilty plea and any sentence that I
11 impose; however, if you wish to appeal, you or an attorney
12 on your behalf must appeal within ten days? Do you
13 understand?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: With respect to each and every answer that
16 you have given me here today, have you been absolutely
17 candid and truthful with me?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Have your answers been your own?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Has anyone told you how to answer my
22 questions?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: I find that there a substantial factual
25 basis for this plea. I find that the decision of Ms. Harris

1 to plead guilty is freely, voluntarily, knowingly, and
2 intelligently made, that she has had the advice of counsel
3 in Mr. Aylor with whom she tells me she is satisfied, and
4 I'll accept the plea.

5 Now, Mr. Giese, does she have a record?

6 AST. SOL. GIESE: Your Honor, can I hold off on that
7 until Thursday? I have a record here, but I believe she may
8 have gotten -- it may be different. I just want to run an
9 updated one for -- so I'll withhold that until Thursday.

10 THE COURT: Very well. Now, it is my understanding
11 that, Mr. Aylor, you would like to put up mitigation on
12 Thursday?

13 MR. AYLOR: Yes, Your Honor, we would.

14 THE COURT: And that has met with the consent of the
15 State?

16 AST. SOL. GIESE: Yes, ma'am.

17 THE COURT: Very well. And what I do think is
18 important is if there are members of the victim's family who
19 cannot be here on Thursday who are here today, I think it is
20 important that they be given an opportunity to speak today.

21 AST. SOL. GIESE: Yes, ma'am. I've advised Mr. Wolf.
22 Mr. Wolf is Cindy Wolf's husband. He's seated second to the
23 Court's left. And then Ms. Wolf's daughter Jessica is right
24 next to him. I've advised them of that. We had already
25 kind of talked about who was gonna speak during sentencing,

1 that sort of thing. But we're just gonna hold off until
2 Thursday.

3 THE COURT: Okay. Very well. And I would like you at
4 this point just to be -- turn one more time, be sure if
5 anyone wishes to speak today. I don't want anyone who
6 cannot come on Thursday who wishes to speak, I want them to
7 be able to speak.

8 Okay. Very well.

9 AST. SOL. GIESE: Thank you, Your Honor.

10 THE COURT: What time on Thursday?

11 AST. SOL. GIESE: Ten o'clock. Mr. Aylor teaches a
12 class.

13 MR. AYLOR: Yeah. I teach at the college, so we get
14 out at about 8:45. If we can do it at ten, that would be
15 great.

16 THE COURT: Ten on Thursday morning?

17 MR. AYLOR: Yes, ma'am.

18 THE COURT: Sure.

19 MR. AYLOR: Thank you.

20 THE COURT: All right. And at this time, Ms. Harris
21 will be taken into custody. I'd like you to remove that
22 scarf before she leaves the courtroom.

23 (The proceeding concluded at 10:46 a.m.)

24

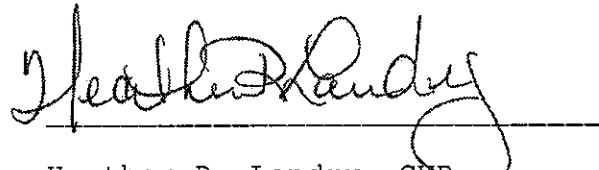
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) CERTIFICATE OF REPORTER
3

4 I, HEATHER R. LANDRY, Official Court Reporter for the
5 Judicial Department of the State of South Carolina, do
6 hereby certify that the foregoing is a true, accurate and
7 complete Transcript of Record of the proceedings had in the
8 hearing of the captioned case, in the Court of General
9 Sessions for Dorchester County, South Carolina, on the 14th
10 day(s) of March 2017.

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

13
14 February 26, 2020
15

16 
17 _____
18 Heather R. Landry, CVR
19 Official Court Reporter
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-GS-18-0617

STATE OF SOUTH CAROLINA,)
)
 v.) TRANSCRIPT OF RECORD
)
 TAMMY G. HARRIS)
)
 _____)

ORIGINAL

Thursday, March 16, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Diane Schafer Goodstein, Judge

APPEARANCES:

For the State of South Carolina:
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Heather R. Landry, CVR
 Court Reporter

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EXHIBITS

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NO EXHIBITS INTRODUCED

1 (The proceeding began at 11:02 a.m.)

2

3 AST. SOL. GIESE: The State calls Tammy Harris. (Brief
4 pause). May we approach, Your Honor.

5 THE COURT: Yeah.

6 (Brief pause.)

7 AST. SOL. GIESE: Nevermind, Your Honor. Thank you.

8 THE COURT: That was a nevermind?

9 MR. AYLOR: We figured it out without your assistance,
10 Your Honor.

11 THE COURT: Okay.

12 AST. SOL. GIESE: How would you like for us to proceed?
13 Obviously, Ms. Harris pled guilty on Tuesday to felony DUI
14 with death. We withheld sentencing until today. I have
15 some victim impact for Your Honor. And I passed up some
16 statements from some individuals that won't be speaking
17 today.

18 THE COURT: Okay.

19 AST. SOL. GIESE: I didn't pass them up. I gave them
20 to your law clerk, I believe, earlier.

21 THE COURT: That's right. And I have them. What I
22 would like to do if you all just give me just a couple of
23 minutes to go through these things.

24 AST. SOL. GIESE: Yes, ma'am.

25 THE COURT: Then anyone that wishes to speak, I'm happy

1 to -- I'm here.

2 AST. SOL. GIESE: Yes, ma'am.

3 MR. AYLOR: And, Your Honor, just the record, you did
4 get the mitigation packet from our office as well?

5 THE COURT: I did.

6 MR. AYLOR: Okay. Thank you.

7 (Brief pause.)

8 THE COURT: All right. Did Mr. Aylor see these?

9 AST. SOL. GIESE: Yes, ma'am.

10 MR. AYLOR: I did, Your Honor.

11 THE COURT: Okay. (Brief pause.) All right. I have now
12 read the materials submitted by both sides.

13 AST. SOL. GIESE: Thank you, Your Honor.

14 MR. AYLOR: Thank you, Your Honor.

15 THE COURT: And happy to hear from anyone. Begin with
16 you, Mr. Giese?

17 AST. SOL. GIESE: Yes, ma'am. Again, just to remind
18 the Court, the victim in this case was Cindy Wolf (ph). She
19 was 58 years old. She has -- as you can tell by what I
20 passed up, there's a lot of family support for her. But
21 there are three individuals that I believe would like to
22 address Your Honor. But I want to go over who's here first.

23 THE COURT: Sure.

24 AST. SOL. GIESE: Because this entire first row is here
25 for her.

1 THE COURT: Sure.

2 AST. SOL. GIESE: Trooper Seastrunk is here. He was
3 the arresting officer in the case. I just wanted to point
4 that out for the Court. But here today we have Jeff Wolf
5 who was her husband. He will be speaking. Jessica Kinon,
6 that's her daughter. She will be speaking. And Jane
7 Roraff, R-o-r-a-f-f, that is Ms. Wolf's mother and she will
8 be addressing the Court. But also present are two of Ms.
9 Wolf's brothers, David Schultz and Richard Schultz; one
10 sister-in-law, Carol Schultz. And I do want to point out
11 that Kelly Stafford from Mother's Against Drunk Driving is
12 here. She's their victim advocate. She's been quite
13 helpful through this process. But she's going to come
14 forward and just kind of stand with the family while they
15 speak as well.

16 THE COURT: Sure.

17 AST. SOL. GIESE: But if we could just go get started
18 right into it.

19 THE COURT: Absolutely. And this is what I'm going to
20 ask everyone: I just need you to identify yourself for our
21 record. Take your time, and I am listing. And I think --
22 thank you, Mr. Giese.

23 MR. WOLF: I'm Jeff Wolf. I thought I could get
24 through this. Cindy was 57 years old when she was killed.
25 She was a wife, a mother, a daughter, a sister and a

1 grandmother. We were married for 25 years. We were both in
2 it for the long run. She had a warm heart, a very generous
3 -- took family responsibilities very serious. And the
4 impact on me was loneliness, grief, sadness. Dating is hard
5 because I can't find anybody to replace her or even hold a
6 candle to her in my heart. I still don't like the weekends
7 because that was the time that me and her were together. It
8 took me a month to clean out her closet, her personal items.
9 Her bathrobe is still hanging on the closet door because
10 that's probably the last thing I saw her in. One bad night
11 I even thought about committing suicide because I'm still
12 alive. Her grandchildren will never know her life
13 experience, also will never experience their grandmother
14 because she can't share in graduations, weddings because all
15 of Ms. Harris deciding to drive drunk and murder my wife.

16 These next statements are not any reflection on you,
17 it's just general things about the system and the Court. I
18 feel the justice system has nothing -- has not only let me
19 down, but they failed my wife. A felony DUI does not --
20 viewed the same as murder. However, driving her car --
21 driving drunk a car has the same mistake as a gunman
22 shooting someone. This was not an accident. Ms. Harris
23 chose to drive while drunk and she killed my wife. As A
24 victim, I have learned that the system tends to fail the
25 victims. I was ready to get this over with, yet she -- for

1 multiple reschedules for various reasons which just dragged
2 it out to egg me even further and victimize us. I realize
3 that this time the Court will not address this issue.
4 However, I wanted the Court to realize how Ms. Harris
5 continued to revictimize me even after the crash. And just
6 so the Court knows, Ms. Harris never offered apologies to
7 me, Cindy's family. I also realize that I've been -- I also
8 realize there may have been a restraining order, but she
9 could have gone through her attorney or the courts. This
10 kind of shows the kind of person that she is. No regrets to
11 this situation. My car, I took to the shop one day, and the
12 wife of a firemen was there. And Ms. Harris stated at the
13 Summerville ER that night that if my wife was driving a
14 better car maybe she would have fared better. So she has no
15 regard for the law, for human life, for Cindy's life. So
16 let's just have some justice for Cindy and all the other
17 victims of drunk driving. I request, I don't know, maybe 15
18 to 20 years. I would like to thank the highway patrol, the
19 Solicitor's office, for clearing up this matter --

20 THE COURT: Absolutely. Thank you.

21 MR. WOLF: That's all I have to say.

22 THE COURT: I'm not going to keep it, but I do want to
23 see a picture of her. But I don't want to keep it because I
24 know it's precious.

25 (Brief pause.)

1 MR. WOLF: That was the best day, Your Honor.

2 THE COURT: She looks determined. I mean, her facial
3 expression. I don't know that I've ever quite seen a bride
4 look with this expression. She is determined.

5 MR. WOLF: Yes. I guess she wanted to marry me.

6 THE COURT: She was determined.

7 MR. WOLF: We had a great life.

8 THE COURT: I want to know a little bit more about her.
9 Tell me a little bit more. I want to know from you, and
10 I've read the things. But when you read one, I kind of had
11 trouble putting, you know, putting all the pieces together
12 and you're here. Tell me, you had children. How many
13 children?

14 MR. WOLF: Yes. This is my stepdaughter.

15 THE COURT: Okay. Okay.

16 MR. WOLF: But she also helped raise my son.

17 THE COURT: Okay.

18 MR. WOLF: From a prior commitment, I guess.

19 THE COURT: So you had a blended family?

20 MR. WOLF: Yeah.

21 THE COURT: I understand. And how old is your son?

22 MR. WOLF: He just turned 30 in September.

23 THE COURT: Okay. And you are?

24 MS. KINON: I'm Jessica. I'm 35.

25 THE COURT: I would have said 18, honestly.

1 MS. KINON: Oh, thank you.

2 THE COURT: I really would have.

3 MS. KINON: Thank you.

4 THE COURT: I must tell you, I just said 18.

5 MS. KINON: I'll take that. I'll take it.

6 THE COURT: And, obviously, she worked very hard in her
7 home. Did she work outside her home?

8 MR. WOLF: Yes.

9 THE COURT: Tell me what she did.

10 MR. WOLF: When I first met her she worked at an
11 insurance company where she was the executive secretary to
12 the CEO. And then they started kind of downsizing and she
13 went to retail.

14 THE COURT: Yes. Where?

15 MR. WOLF: Sparks.

16 THE COURT: Yeah.

17 OTHER: In Summerville. And the night that she got
18 killed, she worked at a gas station as a cashier. That was
19 her last job.

20 THE COURT: Okay. Which one?

21 MR. WOLF: It's a little store on Ladson Road and Miles
22 Jamison.

23 THE COURT: Sure.

24 MS. KINON: It's not there anymore.

25 MR. WOLF: It's not there anymore. They decided to

1 tear it down. With Sonoco and the Walmart across the
2 street, I don't think they could compete.

3 THE COURT: Yeah. Yeah. I know what you're talking
4 about. Sure.

5 MR. WOLF: But she's always had a job. She was a very
6 hard worker.

7 THE COURT: Absolutely. Absolutely. And you were
8 married for 25 years?

9 MR. WOLF: Uh-huh.

10 THE COURT: And her favorite thing to do was?

11 MR. WOLF: Huh?

12 THE COURT: What was her favorite thing to do?

13 MR. WOLF: Oh, we went camping, took a cruise.

14 UNIDENTIFIED SPEAKER: She liked watching the Young and
15 the Restless.

16 MR. WOLF: Soap operas, but anyway.

17 THE COURT: Everybody ---

18 MR. WOLF: Yeah, going to the movies.

19 THE COURT: The Bold and the Beautiful, so lighten up.

20 UNIDENTIFIED SPEAKER: She liked bowling too.

21 MR. WOLF: Yeah. Reading, crossword puzzles. She made
22 me an afghan. She was kind of a Suzy Homemaker, I guess.
23 We'd go out to the movies. I'm involved in a local theater
24 in Summerville and we'd go see plays.

25 THE COURT: Yeah. Yes.

1 MR. WOLF: But on the other hand, we were kind of on
2 opposite shifts too. So that's why I mentioned the weekend
3 thing because that -- I was in bed when she got home, and I
4 was gone before she got up.

5 THE COURT: Right. Right.

6 MR. WOLF: So that's why on the weekend -- she usually
7 had Friday off, so we could go through Friday through
8 Sunday. She cooked; liked to barbecue. Very good woman and
9 completely innocent in this.

10 THE COURT: Obviously, a good friend too.

11 MR. WOLF: Yeah. Thank you.

12 THE COURT: All right. Who is next? No, you do not
13 have to stand. You do not have to stand; sit.

14 MS. RORAFF: Well, I'd like to stand.

15 THE COURT: Okay. If you want to sit, you sit too,
16 okay. All I need is for you to identify yourself for the
17 record.

18 MS. RORAFF: I'm Jane Roraff. I am Cindy's mother.

19 THE COURT: Yes, ma'am.

20 MS. RORAFF: And, you know, there's no words or any
21 sentence that can bring back my daughter. We're not here
22 seeking vengeance. We're here just for justice. But I
23 would like her to see a picture of my daughter when she
24 graduated high school. And this was my daughter in, like,
25 the eight grade. She was -- usually had one child out --

1 she was more devoted to me than the others. She always made
2 sure I was okay. And if I said I wanted something, I like
3 this or that for Christmas or Mother's Day, she always made
4 sure she got that for me. My house is full of gifts that my
5 daughter gave me. So every time I look around, I see
6 something of Cindy in my home.

7 Like I said, there's no words that will bring her back.
8 There's no amount of vile sayings. There's nothing you can
9 do that will bring back my daughter. But I would say I do
10 sympathize with this woman standing here. She's had a
11 chance to have a wonderful life. And, instead, we're here
12 today in court. And I know her parents are just torn apart
13 with this. They want her not to go to jail, but they want
14 something to happen to her. And it's up to her what that
15 something is. She has got a chance now, even with today's
16 sentence, she can make the most of it. She can turn her
17 life around. She's a relatively young woman. And she has
18 children who need her. Even at this age, they do still need
19 her. So I'm hoping that something will happen to this woman
20 mentally, physically, emotionally that will change her life.
21 And that's all I got to say.

22 THE COURT: Thank you so much. Before I forget, I want
23 to return this ---

24 MS. RORAFF: And I had this other picture I would like
25 to show you.

1 THE COURT: I would -- yeah, may I? I will return
2 these. I know how precious these are. (Brief pause.) Yes,
3 ma'am.

4 MS. KINON: I'm Jessica Kinon. I'm her daughter. And
5 thank you for taking the time to listen to all this. Sure
6 it's not the funnest part of your job. I don't want it to
7 come across that I want bad things for her because that's
8 not how I was raised. My mom, as you can tell, was an
9 amazing woman. There was not a mean bone in her body. And
10 she taught me what it was to be a parent. I have a
11 nine-year-old. I also had a son that passed away who was --
12 she was amazing for me when I was there. She literally got
13 me through that. And I hope nothing like that ever happens
14 to her family. But it breaks my heart that she's not going
15 to be there for her family. And I can't call my mom. Like,
16 for example, he mentioned her cooking. She was a phenomenal
17 cook. And for some reason my favorite meal is corn beef and
18 cabbage. Probably the easiest thing in the world to make
19 other than boiling an egg. However, I've managed to botch
20 it about 90 times for whatever reason. But I call her every
21 time, and she tells me the same thing like she's never told
22 me before, "Oh, sweetheart, it's just this way. Thanks,
23 Mom. I'll get it right this time." But I went to call her
24 the other day for the same thing because it's getting to be
25 St. Patrick's Day. I don't have that luxury anymore to call

1 her.

2 And I try to think, 1 to 25 years, that's the sentence
3 that she's looking at. Why on earth 1 to 25 years for a
4 murder? It has to be there for a reason. And I'm nobody to
5 question that. But this is what I do know: I do know that
6 as a person, you know what's right and what's wrong. I know
7 as a mother, the first thing that you think of in the
8 morning is your children. Anything you do revolves around
9 your children. She had several occasions where she had been
10 in trouble with the law. And whether she pleaded down or
11 got out of it, it's a laundry list of things. She has said
12 sorry many times. Sorry means you won't do it again. Sorry
13 does not mean, sorry, I'm caught, okay. I have never, ever,
14 knock on wood, been in trouble because my little boy is
15 everything to me. I would hate for him to think, wow, my
16 mom did that to somebody. That's what broke my heart about
17 her children. Her children, 16 years old, her daughter in
18 high school, had to go to school with that. You think her
19 peers -- how do you think they treated her? I just lost my
20 mom and that's what I was thinking about. Because my mom
21 did such a good job raising me because she was a good
22 person. I don't want her to get hurt. I want her to learn
23 a lesson. I want you to be rehabilitated for your kids; to
24 be the best you can be for them. Because my dad, my dad,
25 he's literally on life support as we speak because he has

1 had a long life of getting in trouble and not -- just a slap
2 on the wrist. Drug charges, alcohol, DUIs, never officially
3 on paper because he got out of it because he had money or he
4 knew the right people. That did not help me at all. I've
5 had to care for him my entire life. I wake up in the middle
6 of the night crying not knowing where my dad is. That is my
7 child; that is not fair. That is what you have done to your
8 children. Don't do that to them.

9 Twenty-five years, if you told me that my dad was going
10 to be in jail for 25 years ten years ago, I would have been
11 like, thank you; I know he's safe at night; he's not going
12 to kill anybody. That was my reality. Your children's
13 reality was my reality for 20 years and it was brutal. The
14 best thing you can do is be away and become, like I said,
15 the best you can be. Teach you daughter, you know, respect
16 yourself; don't make stupid decisions like that. You got to
17 think about consequences -- actions and you got to be held
18 accountable for it. And I am sorry, 25 years is a lot of
19 time. And I'm so sorry that you're going to miss out on
20 life. My mom, who loved her grandkid, who loved -- every
21 day, we talked. She was going home to call her mother who
22 she talked to every day. She did not take us for granted.
23 She didn't. She loved us. She's never going to see my son.
24 I can't call and say, "Hey, Mom, Ayden made A-B Honor Roll."
25 Because I was worried. I was like I hope he doesn't take

1 after his dad. He didn't. Good news. He's smart. So, I
2 mean, I want to joke with her about stuff like that. And I
3 don't have her anymore. It's just sad. And I just -- it
4 just irks me when people make countless, countless,
5 countless mistakes and get away with it for whatever reason.
6 And now all of a sudden you want to be sorry and you want to
7 be there for your kids? You've had 20 years to be with your
8 kids. And now it's convenient for you to only want to do a
9 couple years because I really need to be there for my kids.
10 No, you don't. The last thing you need to do is be there
11 for your kids. You need to work on you first maybe because
12 you obviously missed the memo somewhere.

13 THE COURT: Got it. Yes.

14 MS. KINON: But my mom was amazing. That's all I have
15 to say.

16 THE COURT: Thank you. Thank you all. And record, I
17 do need to hear her record.

18 AST. SOL. GIESE: Yes, ma'am. Because I had mentioned
19 on whenever we were here, Tuesday, that I needed to run an
20 updated record.

21 THE COURT: Yes.

22 AST. SOL. GIESE: She has been arrested before, but
23 there's no convictions. It kind of echoes what Jessica was
24 saying that she's been in trouble before but they are not
25 convictions. And I just want to make the Court aware of

1 that.

2 MR. AYLOR: So then let's make it clear. Then the
3 record is no record; not whether she's been arrested for
4 something because you're innocent until proven guilty, I
5 believe the law works.

6 AST. SOL. GIESE: Correct.

7 MR. AYLOR: So that's no record.

8 AST. SOL. GIESE: Correct.

9 THE COURT: All right. Very well. Anything further
10 from the State?

11 AST. SOL. GIESE: No, ma'am. Thank you.

12 THE COURT: Thank you. Thank you all very much.
13 Mr. Aylor, now I want you to know I have taken the time.
14 Thank you for the package. I've had it since -- I read
15 every word of it. And I thank you for it, and I am
16 listening.

17 MR. AYLOR: Thank you, Your Honor. There's just,
18 briefly, a few people other than, of course, Ms. Harris who
19 would like to speak. At this time, I would like to have
20 Ms. Rueger come up. And she's a friend of the family, Your
21 Honor.

22 THE COURT: And I believe she gave me a statement too.
23 Are you Jessica Rueger?

24 MS. RUEGER: Yes, Your Honor.

25 THE COURT: Very well. And that's R-u-e-g-e-r?

1 MS. RUEGER: R-u-e-g-e-r.

2 THE COURT: R-u-e-g-e-r. Thank you. Yes, ma'am.

3 MS. RUEGER: I'm Jessica Rueger. And I just wanted to
4 say that I'm deeply saddened for your loss. Tammy and I met
5 when we were 12 years old in the sixth grade in Michigan,
6 and we've remained in touch all these years. We're 47 now.
7 As young girls, we connected immediately. And she was so
8 kind and accepting of me always. Sadly, I now understand as
9 an adult woman that she's never learned how to be able to
10 show this kindness and acceptance to herself, and this
11 breaks my heart. For it has become my mission as well as my
12 career and my purpose to teach people how to learn to accept
13 and love themselves. While I honor our justice system and
14 everyone in here, I have so much respect for your positions,
15 I believe that jail isn't an ideal place for people who need
16 to learn how to heal from severe childhood trauma. And I
17 pray for a day when enough people agree with me so that
18 others in Tammy's situation can receive the proper,
19 appropriate treatment in a loving and nurturing environment
20 that supports and encourages healing that transforms their
21 emotional, spiritual, and physical well-being so that they
22 can truly become able to accept who they are and not have to
23 reach for self medication and make poor choices that have
24 consequences. I just ask that God's grace and peace watch
25 over all of us and all of those that are concerned in this

1 situation. And I thank you for the opportunity to speak.

2 THE COURT: Thank you so much.

3 MS. RUEGER: Thank you.

4 MR. AYLOR: Thank you, Your Honor. Next, we have
5 Christian Harris.

6 CHRISTIAN HARRIS: Hello. My name is Christian Harris.
7 I am the son of Tammy Harris. And, currently, I am 20 years
8 old and going to Trident Technical College. And I would
9 just like to sort of -- I would just like to deeply say my
10 apologies to Mr. Wolf and his family for the loss of, from
11 what I've heard, a really -- an excellent mother. And as
12 well as you may imagine, I've known my mother for most of my
13 life. She was the one who -- she was the one who raised me
14 and made sure I became the person I am today. And I have
15 seen her -- I've seen her struggle through many traumas.
16 And I've -- I apologize, Your Honor. I'm just . . .

17 THE COURT: It is not a problem.

18 CHRISTIAN HARRIS: It is very hard for me to say this
19 today and try to keep my composure. When I heard that my
20 mother had gotten into this wreck, I had felt a huge amount
21 dread fall into my body. I did not think that in all my
22 life that a wreck that she would be involved in would also
23 involve the death of someone else. And -- I need a moment,
24 Your Honor. I'm sorry.

25 THE COURT: Absolutely.

1 CHRISTIAN HARRIS: She is a very, very good person.
2 She's just -- I just feel that she is misunderstood. And I,
3 myself, personally do not believe -- I personally do not
4 believe that jail is a place where a person who is still
5 recovering from trauma throughout her life would be place
6 for her to learn from her mistakes. She's shown great
7 kindness to herself. But, like, most of the time I feel she
8 needs to be kind to herself as she does to others. Because
9 when she had told me about the crash and I talked to her
10 about it, most of the time she would go on all of this time
11 about how if she were to go back in time and right her
12 wrong, she wouldn't have driven that night. She wouldn't
13 have even went out to see her friends. And I just pray for
14 the day that she is able to -- that she is able to realize
15 that she's not a bad person. Thank you, Your Honor.

16 THE COURT: Thank you so much.

17 MR. AYLOR: Lilian Harris.

18 THE COURT: Good morning.

19 LILIAN HARRIS: I'm Lilian Harris. I am 17 years old.
20 I'm a senior at Ashley Ridge High School. I live at home --
21 Oh, I'm her daughter. I live at home with my mom, Tammy,
22 and my dad, Craig. Mr. Wolf, I am so sorry for your loss.
23 When I heard my mom had been in an accident, I couldn't
24 believe it. All my life my mom had stressed how much it
25 means to be safe and to make the right decision and choices.

1 When I heard about it, I was heartbroken. I didn't accept
2 it and even now it's hard to believe. Again, I'm so sorry,
3 and I wish there was something I could do to make it better.
4 Mr. Wolf, I would like to thank you so much for letting my
5 mom be able to spend a year, almost two years, with us.
6 Also for the bond hearing when you gave me a hug and you
7 told me that it would be okay, that you didn't think she was
8 a bad person. That literally made my day. And I still
9 think about it now because even at my worst and my world
10 came crashing down, you were there for me. I would like to
11 thank you for your sympathy and your support. You helped my
12 mom get some of the help that she needs. And there's still
13 a long road to recovery for her and she knows it, and she's
14 willing to take it.

15 I know there's no excuse for what happened. My mom has
16 felt nothing but remorse and sorrow, and she punishes
17 herself more and more every day. She's spent the last
18 almost two years making herself better. She's accepted
19 responsibility for her actions although it does not seem so
20 sometimes. I know that nothing I can do can make up --
21 nothing that she can do or that happens to her can make up
22 for the loss of your wonderful wife. My mom does feel
23 terrible. My mom hasn't had the easiest life growing up or
24 as an adult. The divorce with her and my father and the
25 failure of her practice left her confused, broken, and

1 scared. Even through all the downfall, she held it together
2 and took care of my brother and I. My mom made sure that we
3 had everything that we needed whether it be clothes or
4 stupid toys that cost way too much. She's one of the
5 strongest people I've ever met, but sometimes strongest
6 people have downfalls, and she was going through one. And
7 I'm so sorry that it happened to be that day. I'm so sorry
8 that the actions she did and the choices that she made, but
9 she's still one of the best people I've ever met. My mom is
10 not perfect. And I'm sorry that she won't be able to see me
11 graduate prom or -- I'm sorry -- go to prom or graduate or
12 not even graduate college.

13 Since the accident, she's been very depressed. She
14 tries not to show it, but it's obvious. She tries to invest
15 her time and energy helping children, other people. She
16 would give the clothes off of her back to somebody who
17 needed it. In closure, my mom is not a bad person. She
18 made a terrible mistake but altered the lives of two families
19 -- or two families in an inconsolable way. Mr. Wolf, and
20 Mr. Wolf's family and friends, I'm very sorry for the loss
21 of your wife, your mother, and your friend. And I really
22 hope that you can find it in your heart to forgive us.

23 THE COURT: Thank you.

24 CRAIG HARRIS: Your Honor, my name is Craig Harris.
25 I'm Tammy's ex-husband and the father of Lily, my daughter,

1 and Christian, my son. My mother also who lives with us.
2 I'm here just to say a few words. I want to say thank you
3 for giving us the opportunity to be here. I've known Tammy
4 since 1994 when we met. We married. We had two children.
5 Tammy had a child by a previous marriage. And I feel like
6 I'm in a good position to talk about her character. The
7 first thing and the most important thing that I want to say
8 is to the Wolf family, I want to say that I'm very sorry for
9 your loss. We knew your daughter. We knew your mom. She
10 worked at a nearby store where we stopped. It was a
11 quarter-mile from our house and we stopped -- near to our
12 house and we'd would stop and get things there from her.
13 The accident that Tammy was in happened on Ms. Wolf's way
14 home from work. And it happened on Tammy's way home and it
15 happened about half a mile from where Cindy worked, and
16 about a quarter-mile from where we lived. I can't imagine
17 how you must feel. My hope is some day that you can find
18 peace. And I want to also thank you, and I want to tell a
19 story.

20 After Tammy was arrested, she came to a bond hearing.
21 And I was there and my children where there. And Mr. Wolf
22 was there with his daughter. And we were devastated. I
23 can't imagine how you must have felt then and now. My
24 children were distraught. I was in a state of shock, and I
25 didn't know how to comfort them. At the bond hearing,

1 Mr. Wolf and his family were extremely upset, but they
2 didn't recommend a bond. And because they didn't recommend
3 a bond, they give us a gift. And I want to thank you for
4 that. Because Tammy, because of you, we could afford to get
5 her out of jail and come home. As soon as she came home,
6 she went to rehab. As soon as she got out of rehab, she
7 spent six months in outpatient therapy. Tammy is not a bad
8 person. She made a horrible choice and that's why she's
9 here. And for that, I am sorry because this is about Ms.
10 Cindy Wolf and not about anyone else. And I'm not going to
11 make any excuses because there's no excuse.

12 When Tammy was child, she was mistreated by her father
13 in the most vile way you can imagine. Her mother was a drug
14 addict and wasn't there for her. She was raised by her
15 grandmother. When she was 18, she got married and had a
16 child and soon separated. And when I met her, she was
17 working a full-time job, raising her son, and had no support
18 whatsoever from her son's father. I believe that the
19 injuries that she had from her childhood go a long way to
20 explain some of the bad choices she made. Although it's not
21 an excuse, but it's the truth. I think at times, she's
22 tried to ease her pain but never did. Tammy is not a bad
23 person. She's funny. She's clever. She's smart. She's
24 generous. Each year she would buy gifts and go to the
25 Pinelands Group Home, which is a home for disadvantaged

1 children, and give them away. She gave away her clothes to
2 kids, people she didn't know. She brought people to stay
3 with us who are having a tough time. When we met her
4 husband, who wasn't supporting her or her child, was having
5 a tough time, she brought him into our house to stay until
6 he could get back on his feet. Her family, when they had a
7 tough time, she brought them into our house until they could
8 get back on their feet. Since the accident, she's brought
9 people into our house with drug problems and alcohol
10 problems until they could get back on their feet. I had a
11 medical practice in Summerville. But in 2005, I had a
12 series of medical problems and we lost the practice and
13 everything that we had and went into great debt. I wasn't
14 there for the family; Tammy was. And she carried on and
15 moved forward. She was steadfast. We divorced as a result
16 of those problems. And I really consider her to be more of
17 a sister and a family member than an ex-wife. She's been a
18 great asset to me and our family. She's never lost sight of
19 the bigger picture. I think her actions demonstrate that.
20 She emerged from her own family dysfunction, and she's been
21 a major reason our kids have been able to be successful
22 despite what they've gone through.

23 I just want to close and than Your Honor, the Court,
24 Officer Seastrunk, Mr. Pascoe, but most of all Mr. Wolf and
25 your family. And it's my hope and the hope of my family

1 that you'll find peace. And I'll say, finally, that I am
2 very sorry for the loss of your daughter. Thank you.

3 THE COURT: Thank you so much.

4 MR. AYLOR: Your Honor, at this time Ms. Harris would
5 like to speak.

6 THE COURT: Indeed. Yes, ma'am.

7 THE DEFENDANT: My name is Tammy Harris. I'm the
8 mother of three children. Brandon who is 27, Christian who
9 is 20, and Lilian who is 17. And I am the ex-wife of Craig
10 Harris. I've lived in the area since 2004. I'm here today
11 to speak to the family and friends of Cindy Wolf. Cindy
12 Wolf died from injuries after my car swerved into her lane
13 and I hit her. I had been drinking before getting into the
14 car and her death was my fault. I'm here to say that I
15 accept full responsibility for this terrible event, for her
16 death. I do not have any excuses for my actions because
17 there are none.

18 First, I want to thank Mr. Wolf and his daughter for
19 the mercy at my bond hearing. Because of your kindness, I
20 was able to see my oldest son graduate from college, my
21 second get into school, and my daughter is graduating from
22 high school this year and going to college in the fall. You
23 allowed me to go to rehab and the outpatient. You gave me a
24 gift at the moment of your greatest suffering, and I want to
25 thank you very, very much. Most importantly, I wan to tell

1 Mr. Wolf and his daughter directly from the bottom of my
2 heart that I am so sorry for my actions and for the loss and
3 for my sins. Words can't describe my grief. To your whole
4 family and to your friends and neighbors, I am very sorry
5 for your loss. I did not intend to hurt your wife or your
6 mother. I pray for your family every night. The guilt I
7 feel has ripped my soul apart. My sadness is overwhelming.
8 There are no words to explain how sorry I am. I cannot
9 fathom the amount of pain and grief and suffering and
10 sadness I have caused you. I wish I could fix the anger you
11 must feel towards me. There's not a day or night that goes
12 by that I don't feel grief and sadness for your family, and
13 I am truly sorry. I pray that someday you will find peace.

14 And to my children, Lilian and Christian, I'm so sorry
15 for the pain and suffering I've caused you both, and I hope
16 someday you can forgive me. I hope that you understand I'm
17 not an evil person. Ever since accident, I've tried to make
18 sense of my life, my actions. I began using substances at a
19 very early age, too young, to numb my emotions. And it's a
20 tragedy that it took this for me to see that this is just
21 not the way. May God bring peace and comfort to you and to
22 all who love and miss your wife and mother, Cindy.

23 THE COURT: Thank you, Ms. Harris.

24 MR. AYLOR: And, Your Honor, just briefly, again,
25 Ms. Harris is a 46 years old, has three children, one of the

1 children is not present today; has a disability and couldn't
2 be present for that reason. As pointed out earlier in sort
3 of a unique way, she has no prior record. And I think
4 that's very important. While she has clearly struggled with
5 some personal issues in the past specifically related to
6 substance abuse, she's also lived a very productive life
7 raising three wonderful children and being a productive
8 member of society. What happened that night was clearly a
9 tragedy, but it was also an accident. It was a car
10 accident, a low-speed car accident, that occurred very close
11 to the workplace of Ms. Wolf and very close to the home of
12 Ms. Harris. But it was an accident. What wasn't an
13 accident is the fact that she got behind the wheel and drove
14 that vehicle after consuming alcohol, and that's why we're
15 here today. And she has taken full responsibility for that.
16 And, clearly, as Your Honor and the Court has seen, this is
17 a horrific tragedy for everyone involved on both sides.

18 But I do think it's important to point out that there's
19 a reason that the legislature put in place a law that said
20 that the sentence is between 1 and 25 years. Because while
21 this is a horrible tragedy and there's loss of a life, there
22 are circumstances that I think are specific to each and
23 every case. And this, of course, would be one of those
24 examples. And we wish Your Honor will take that into
25 consideration when looking at the sentencing. Thank you.

1 THE COURT: Thank you very much. Anything further from
2 anyone at this time?

3 MR. AYLOR: Nothing further, Your Honor.

4 AST. SOL. GIESE: No, Your Honor. Just that if we --
5 and both families appear to be very kind or cordial to one
6 another, but if we could let the defendant's family leave
7 after sentencing before our family leaves just so -- just
8 out of an abundance of caution.

9 THE COURT: Very well.

10 MR. AYLOR: I'll take them out, Your Honor.

11 THE COURT: All right. Ms. Harris, I have considered
12 all of these matters. I have considered the eloquence of
13 both families. And at this time, I commit you to the State
14 Department of Corrections for a period of 12 years, giving
15 you credit for the time that you have served. And order
16 that you be placed in the ATU unit while you are with the
17 South Carolina Department of Corrections. Good luck to you,
18 ma'am.

19 MR. AYLOR: Thank you, Your Honor.

20

21 (The proceeding concluded at 12:09 p.m.)

22

23

24

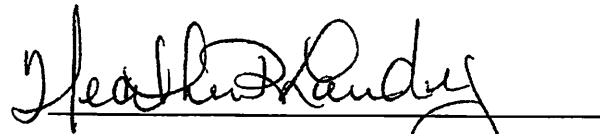
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF REPORTER
COUNTY OF CHARLESTON)

I, HEATHER R. LANDRY, at the time of this hearing,
Official Court Reporter for the Judicial Department of the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript of
Record of the proceedings had in the hearing of the
captioned case, in the Court of General Sessions for
Dorchester County, South Carolina, on the 16th day(s) of
March 2017.

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

April 30, 2018

A handwritten signature in cursive script, reading "Heather R. Landry", written over a horizontal line.

Heather R. Landry, OVR
Court Reporter

This is a certified original/copy of the Transcript of
Record requested by and provided to the following party:
Office of the SC Attorney General .

Original Transcript of Record - State v. Tammy Harris - March 16, 2017 Hearing

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

TAMMY G. HARRIS #371847

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

v.

State of South Carolina

RECORDED
2018 FEB 21 PM 2:52
IN THE COURT OF COMMON PLEAS

CLERK OF COURT
DORCHESTER COUNTY

2018-CP-18-337

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED COPY
2018 FEB 23 AM 9:59
CLERK OF COURT
DORCHESTER COUNTY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Graham Correctional Institution, 4450 Broad River Rd., Columbia, SC 29210
2. Name and location of Court which imposed sentence Dorchester County Court of General Sessions, 5200 E. Jim Bilton Blvd., St. George, SC 29477
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-18-0617 - Felony DUI - Death Result
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) March 16, 2017 - 12 years
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty x
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
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. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Involuntary Guilty Plea
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? 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. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
 - (b) your trial, if any? _____
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. David Aylor, Esq., 24 Broad Street, Charleston, SC 29401
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea and sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

2018-CP-18- 332

I, Tammy G. Harris, 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 Tammy G. Harris

SWORN to and subscribed before me this 15
day of February, 2018

[Signature] (L.S.)
Notary Public

My Commission Expires: 3/17/24

2018 FEB 21 PM 12:52
RECORDED
CLERK OF COURT
NORCHESTER COUNTY

2018 FEB 23 AM 9:59
CERTIFIED COPY
CLERK OF COURT
NORCHESTER COUNTY
[Signature]

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

2018-CP-18-337

I, Tammy G. Harris, 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.

Tammy G. Harris
Applicant

SWORN or affirmed to and subscribed before me this
15 day of February, 2018.

[Signature]
Notary Public

My Commission Expires: 3/17/24

RECORDED
2018 FEB 21 PM 12:52
CLERK OF COURT
DORCHESTER COUNTY
2018 FEB 23 AM 9:59
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNT OF DORCHESTER)

THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-18-00337

Tammy Harris #371847,)

Applicant,)

Vs.)

State of South Carolina,)

Respondent.)

AMENDMENT TO POST-
CONVICTION RELIEF APPLICATION

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2020 FEB 24 PM 2:54

FILED-RECORDED

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend her Post- Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as if fully repeated herein.

That the Applicant would amend her Application as follows:

1. Applicant and her family requested that Trial Counsel file a Direct Appeal.

Trial Counsel told the family that she was not eligible for a Direct Appeal and did not file an appeal on her behalf. The Applicant is informed and believes that she is entitled to a belated direct Appeal.

2. That Trial Counsel was ineffective for his failure to object to and/or authenticate a copy of the VHS recording containing the advisement at her Miranda rights. The Applicant is informed and believes that the original VHS was destroyed. The DVD copy was produced at the last minute.

That Applicant reserves the right to amend the Application as may become necessary.

Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

February 20, 2020

STATE OF SOUTH CAROLINA)
COUNT OF DORCHESTER)

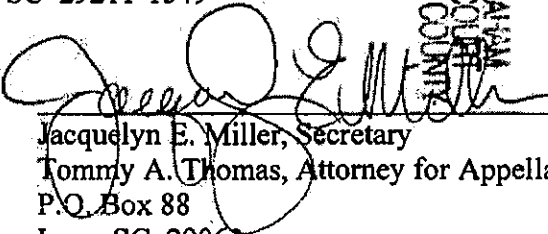
THE COURT OF COMMON PLEAS
CASE NO.: 2018-CP-18-00337

Tammy Harris #371847,)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of an Amendment to Post Conviction Relief Application, with postage prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General
Attention: Benjamin Limbaugh, Esq.
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller, Secretary
Tommy A. Thomas, Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
February 20, 2020

CHERYL GRAYMAN
CLERK OF COURT
DORCHESTER COUNTY

2020 FEB 24 PM 2:54

FILED-RECORDED

STATE OF SOUTH CAROLINA)
COUNT OF DORCHESTER)

THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-18-00337

Tammy Harris #371847,)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

SECOND
AMENDMENT TO POST-
CONVICTION RELIEF APPLICATION

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2021 AUG 27 PM 4:35

FILED-RECORDED

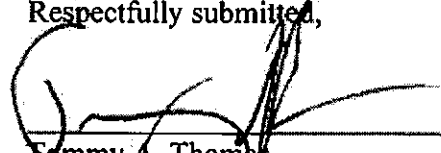
The Applicant above named in the aforementioned matter, through her Attorney, Tommy A. Thomas, respectfully moves to amend her Post- Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as if fully repeated herein.

That the Applicant would amend her Application as follows:

1. Trial Counsel was ineffective for his failure to adequately advise the Applicant regarding her plea, creating a plea that was not freely and voluntarily given.
2. Trial Counsel was ineffective for his failure to adequately advise the Applicant and pursue an accident reconstruction.
3. Trial Counsel was ineffective for his failure to adequately communicate with the Applicant during the course of representation.
4. Trial Counsel was ineffective for his failure to adequately investigate the facts of Applicant's case.

That Applicant reserves the right to amend the Application as may become necessary.

Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

May 18, 2021

STATE OF SOUTH CAROLINA)
COUNT OF DORCHESTER)

THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-18-00337

Tammy Harris #371847,)
Applicant,)

CERTIFICATE OF SERVICE

Vs.)

State of South Carolina,)
Respondent.)

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2021 AUG 27 PM 4:35

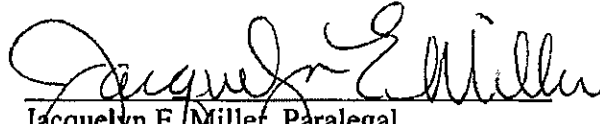
FILED-RECORDED

I, Jacquelyn E. Miller, paralegal to Tommy A. Thomas, Attorney for the

Applicant hereby certify that I emailed a copy of the Second Amendment to Post-

Conviction Relief Application to:

Office of the Attorney General
Attention: Samantha Weidauer, Esq.
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Irmo, South Carolina
May 18, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	IN THE FIRST JUDICIAL CIRCUIT
	)	
	)	
Tammy Harris, #371847,	)	Case No.: 2018-CP-18-00337
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on February 23, 2018, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Dorchester County Grand Jury indicted Applicant for felony DUI resulting in death (2015-GS-18-0617). David Aylor, Esquire, represented Applicant. Assistant Solicitor Warren Phillip Giese prosecuted the case. On March 16, 2017, Applicant pleaded guilty as indicted to without negotiations or recommendations before the Honorable Diane S. Goodstein. Judge Dennis sentenced Applicant to imprisonment for twelve years. Applicant did not appeal from her guilty plea or sentence.

Attached to this Return and incorporated by reference are the records of the Dorchester County Clerk of Court regarding the subject conviction, 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.

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

III.

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 her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, she 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.

Applicant also asserts her 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 her 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 her 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.

Applicant must specify any claims she 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), SCRCP. 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, SCRCP. 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), SCRCP.

VI.

Respondent also hereby moves for a more definite statement. 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.

VII.

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.

VIII.

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

[Signature block on following page]

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
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By: *Christian Saville*
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05/30, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	2018-CP-18-00337
	)	
TAMMY HARRIS, #371847	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

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

Tommy A. Thomas , Esquire
Law Office of Tommy A. Thomas
Post Office Box 88
Irmo, South Carolina 29063

DATED this the 30th day of May, 2018.



 Tamieka Russell-Brown, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	
COUNTY OF DORCHESTER	)	COMMON PLEAS
TAMMY G. HARRIS	)	NO. 2018-CP-18-00337
	)	
VS.	)	<u>TRANSCRIPT OF RECORD</u>
	)	
THE STATE OF SOUTH CAROLINA	)	PCR Hearing

B E F O R E:

The Honorable Robert J. Bonds, Judge
Orangeburg, South Carolina

DATE: Tuesday, May 17, 2022

2:39 p.m.

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

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Reported by: Cathy J. Provost, RMR

Official Court Reporter

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(No exhibits marked.)

1 -- P R O C E E D I N G S --

2 THE COURT: Attorney General, what's our next case?

3 ATTORNEY WEIDAUER: We have our witness on Zoom, as
4 requested. So we are ready to call the next case. Ms. Harris
5 will be the next case.

6 THE COURT: All right. Hey, sir.

7 ATTORNEY THOMAS: Good afternoon, Your Honor. Tommy Thomas.
8 I'm here on behalf of Ms. Harris.

9 THE COURT: All right, Mr. Thomas.

10 All right. Solicitor, are you ready call this case?

11 ATTORNEY WEIDAUER: Yes, Your Honor.

12 THE COURT: Okay. Or, Attorney General. Excuse me. I
13 apologize.

14 OPENING STATEMENT ON BEHALF OF THE STATE

15 ATTORNEY WEIDAUER: This is the matter of Tammy Harris v.
16 State, case no. 2018-CP-18-00337. Dorchester County Grand Jury
17 indicted applicant for felony DUI, resulting in death, in 2015.
18 David Aylor represented applicant. Solicitor Warren Giese
19 prosecuted the case.

20 On March 16th, 2017, applicant pleaded guilty, as indicted,
21 without negotiations or recommendations, before Honorable Diane
22 Goodstein. Judge Goodstein sentenced applicant to imprisonment
23 for 12 years. Applicant did not appeal from her guilty plea or
24 sentence.

25 We would just ask at this time that Mr. Thomas place on the

1 record the allegations that he intends to proceed with today.

2 THE COURT: And before we move any further, I understand
3 that your witness today is requesting to appear via Zoom.

4 ATTORNEY THOMAS: Yes, Your Honor.

5 THE COURT: The witness can be sworn in, and we will make
6 his testimony part of the transcript. And I think, Mr. Thomas,
7 they checked with you. And is that satisfactory with you and
8 your client?

9 ATTORNEY THOMAS: That is with me, Your Honor. I have
10 discussed that with Ms. Harris, and she is agreeable to go
11 forward.

12 THE COURT: All right. Okay.

13 ATTORNEY THOMAS: Yes, sir.

14 THE COURT: If you would, please, put your matters on the
15 record. That would be great, sir.

16 OPENING STATEMENT ON BEHALF OF THE APPLICANT

17 ATTORNEY THOMAS: Certainly, Your Honor. If it please the
18 Court. This is the matter of Tammy Harris. We do intend to go
19 forward on ineffective assistance of counsel and involuntary
20 guilty plea.

21 A little more specifically, we did amend the application to
22 include that she had requested that counsel file an appeal from
23 the plea. And even more specifically, there was an issue that
24 comes up at hearing prior to trial about -- this is a felony
25 DUI -- about a problem with videotapes from the scene.

1 THE COURT: I read the transcript this morning.

2 ATTORNEY THOMAS: Yes, sir. So we will tie that in. And
3 that would be one of the reasons that she would ask for a direct
4 appeal, to have them filed. I think it was probably
5 interlocutory at the time, and she had requested Mr. Aylor to
6 file the appeal.

7 The next one is that, in regards to his objection to the VHS
8 versus the CD that appeared, is whether or not any -- how he
9 explored that and whether or not the best evidence rule will
10 apply in that situation and whether or not he checked into that
11 possibility.

12 Other than that, most of the issues are going to be in
13 regards to whether or not the plea was entered into freely,
14 voluntarily, knowingly, and intelligently. We intend to offer
15 testimony that that was not case.

16 Also, in regards to the plea offer, as to whether or not she
17 understood what the plea offer was and what Mr. Aylor had advised
18 her in regarding to what she could expect.

19 Also, there's an issue in regards to the ineffective
20 assistance to counsel about accident reconstruction. She had
21 discussed this with counsel. He indicated to her that there
22 would be an accident reconstruction, and one was never done that
23 she is aware of. And, of course, none of those decisions were
24 available to her when she decided to enter into the plea.

25 Also, the relationship between Mrs. Harris and defense

1 counsel sometimes, at times, was somewhat rocky. She felt like
2 that he didn't put the time into her case that was required for a
3 case of this nature, and she felt like that, in regards to
4 entering into the plea, that she had no choice and that that
5 entered into whether or not it was knowingly, intelligently, and
6 freely and voluntarily entered into.

7 Your Honor, I believe that's it.

8 THE COURT: All right. Mr. Thomas, I was looking over this
9 just this morning. Was this a straight-up plea in front of Judge
10 Goodstein, or was there a negotiated range?

11 ATTORNEY THOMAS: No.

12 THE COURT: Solicitor, do you -- I mean, Attorney General,
13 do you know? I'm trying to recollect. I know -- I can't
14 remember.

15 ATTORNEY WEIDAUER: My notes reflect that there was no
16 recommendation, and that the sentencing range was 1 to 25.

17 ATTORNEY THOMAS: Yes. That's what my notes ---

18 THE COURT: I know it's 1 to 25, but I didn't know if there
19 was some type of range. So it's just a straight-up plea?

20 ATTORNEY THOMAS: Yes, sir.

21 THE COURT: Yes, sir. Okay. Are you ready to call your
22 first witness?

23 ATTORNEY THOMAS: I am, Your Honor.

24 THE COURT: That would be great.

25 ATTORNEY THOMAS: Your Honor, if it please the Court. I'd

1 call Tammy Harris to the stand.

2 THE COURT: Come on, ma'am. Right around here.

3 TAMMY G. HARRIS,

4 having first been duly sworn, was examined and testified as
5 follows:

6 THE COURT: Your witness, sir.

7 ATTORNEY THOMAS: Your Honor, if it please the Court.

8 DIRECT EXAMINATION

9 BY ATTORNEY THOMAS:

10 Q Ms. Harris, you are serving time in South Carolina
11 Department of Corrections?

12 A Yes I am.

13 Q And what are you serving time for?

14 A On a DUI.

15 Q Did you have a plea or trial?

16 A I had a plea.

17 Q And how much time did you receive?

18 A Twelve years.

19 Q And what is your max-out date?

20 A It's April 1st, 2027.

21 Q And, you filed a post conviction relief action?

22 A Yes, I did.

23 Q Okay. And in that action, you're requesting that the Court
24 grant you a new trial?

25 A Yes, I am.

1 Q New trial or plea?

2 A Yes, I am.

3 Q And to vacate your sentence?

4 A Yes.

5 Q 、 Do you understand, and we've discussed this, that there are
6 certain, I guess there are certain, exposures that you may have
7 if the Court grants that relief?

8 A Yes, I do.

9 Q And it's possible that you could be taken back to trial, and
10 it's possible that you could receive more time?

11 A Yes.

12 Q Do you understand that risk?

13 A Yes, I do.

14 Q And you wish to go forward today?

15 A Yes.

16 Q Okay. All right. Ms. Harris, when, roughly, did this
17 happen, this accident happen?

18 A April 21st, 2015.

19 ATTORNEY THOMAS: And, Your Honor, if it please the Court.
20 I'm going to move. I'm having a little bit of trouble hearing
21 her.

22 THE COURT: Yeah. If you could speak up and get a little
23 closer to that microphone, ma'am, we'll make sure we've got a
24 clean, a good, record, okay.

25 THE WITNESS: Okay.

1 THE COURT: April?

2 THE WITNESS: Twenty-first.

3 THE COURT: Yes, ma'am.

4 BY ATTORNEY THOMAS:

5 Q Two-Thousand when?

6 A Fifteen.

7 Q Now, were you appointed counsel, or did you retain an
8 attorney?

9 A I retained an attorney.

10 Q And who did you retain?

11 A David Aylor.

12 Q How soon after your arrest did you talk to Mr. Aylor?

13 A It was about a year and two months after.

14 Q So you had been incarcerated a while. Well, you were in the
15 detention center, or were you out on bond?

16 A No, I was out on bond.

17 Q All right. So you were out on bond for a while before you
18 retained counsel?

19 A Right. Beforehand I had an attorney named John Loy.

20 Q And he did not continue -- you didn't continue with that
21 representation?

22 A Correct.

23 Q Tell us about meeting Mr. Aylor. What did y'all talk about?

24 A We talked about going to trial. And that's what I hired him
25 for, is to go to trial.

1 Q Okay. And how did he start to put your case together?

2 A He never did put my case together. I told him what John Loy
3 specifically had told me about the Miranda rights, and he told me
4 that it looked like we were going to trial and what it would
5 cost. And that's pretty much what we talked about, you know, is
6 what I ---

7 Q Let's go back a little bit.

8 A Okay.

9 Q You said that you had a prior attorney, Mr. Aylor?

10 A Right.

11 Q So you knew about, or you had already spoken with counsel
12 about, a potential problem with the recording?

13 A Right. Yes. It was with John Loy.

14 Q And what were you aware about that problem?

15 A Just that the videotape had skipped. Like, a couple of
16 seconds off of the tape was missing.

17 Q In regards to ---

18 A My Miranda rights.

19 Q --- the Miranda rights?

20 A Correct.

21 Q So all of the Miranda rights were not included in the video?

22 A Right.

23 Q And you sat down with Mr. Aylor. He took all the
24 information from you about what happened, or?

25 A Right. He took down the information that John Loy had

1 already told me about. And I told him just basically what had
2 happened with the accident. And he ---

3 Q Okay. So he got more information other than just the
4 problem with the recording from you?

5 A \ Right.

6 Q Okay. All right. And then, so you were out on bond, so you
7 had the opportunity to meet with Mr. Aylor whenever it was
8 necessary?

9 A Yes, I did.

10 Q And how often did you meet with Mr. Aylor?

11 A Two more times after that.

12 Q And how long did this period of representation go on?

13 A From August until March.

14 Q Of?

15 A I mean, August 2016 till March of 2017 ---

16 Q Okay.

17 A --- we met a total of three times.

18 Q And you had spoken with him that you wanted to go to trial
19 or that you wanted to enter into a plea?

20 A That I wanted to go to trial. Always a trial.

21 Q Why did you want to go to trial?

22 A Because I believed I was innocent.

23 Q Did he receive the discovery from the solicitor's office?

24 A Yes, he did.

25 Q You know what I mean by discovery?

1 A Yes, I do.

2 Q Okay. And basically, what the state had as evidence against
3 you?

4 A Right.

5 Q And did you have an opportunity to sit down and go through
6 that with Mr. Aylor?

7 A No, never.

8 Q Why not?

9 A He never went through it with me, the discovery, never. Not
10 once.

11 Q Did you and he talk about this problem with the video, with
12 the tape?

13 A Only when I sent him -- just like, something that I looked
14 up online about the Miranda, I sent it to him through an email.
15 And he said that he knew the Miranda right laws, that he knew
16 that. And then he said that he filed a motion to dismiss based
17 on the Miranda rights.

18 Q And the original tape was on VHS?

19 A Yes, it was.

20 Q And did you discuss the fact that the original tape was on
21 VHS, and I guess the copy that you had was on what?

22 A A disk.

23 Q A DVD?

24 A DVD, yes.

25 Q Okay. Did you talk to Mr. Aylor about that?

1 A No.

2 Q Okay. And did he talk with you about a theory of defense?
3 I mean, how was he going to defend you?

4 A No, never. We never talked about a defense.

5 Q ` So what did y'all do?

6 A Talked about money.

7 Q Okay.

8 A Pretty much what the meetings were about. The second
9 meeting was collecting money, and the third meeting was
10 collecting money.

11 Q How much money did you pay him?

12 A 25,000.

13 Q And, so how did you prepare for trial?

14 A We didn't ever prepare for trial. That was the problem. He
15 said that there was an accident reconstruction done, but I never
16 saw one. And he never -- they were -- the accident
17 reconstruction was supposed to be an additional \$10,000 that I
18 never paid for. That's why I know that mostly there was never
19 one done, because he would never get an accident reconstruction
20 without me paying for it.

21 Q So your agreement with Mr. Aylor was that he was going to
22 have an accident reconstruction performed, and you were going to
23 pay him for having that done?

24 A Right, 10,000.

25 Q And provide funds for whoever did it for him?

1 A Right.

2 Q Did that ever that happen?

3 A No.

4 Q Would you pay for the reconstruction report?

5 A Yes.

6 Q And why?

7 A Because it would show what exactly happened, the way the
8 cars were and what happened with the accident.

9 Q And help me a little bit. So you didn't think -- you
10 thought that the accident reconstruction would show, from the
11 location of the cars, that you were not guilty of this, or what?

12 A Yes, that I was not guilty.

13 Q And you thought that -- who did you think was guilty?

14 A Cindy Wolf, when she came into my lane.

15 Q Okay. All right. And did you discuss this with Mr. Aylor?

16 A Yes, I did. In the very beginning I discussed it with him.

17 Q And what, if anything, did you do with that information?

18 A Initially he said, I guess we're going to trial. That's why
19 it was \$25,000, because we were going to trial, and that's what
20 his fee was to go to trial. And so that's why I paid him that
21 amount of money.

22 Q And did you and Mr. Aylor ever visit the scene?

23 A No, we did not.

24 Q Did Mr. Aylor ever visit the scene?

25 A Not to my knowledge.

1 Q And so during the periods of time -- you said you met with
2 him three times?

3 A Yes.

4 Q And that includes the first time that you met with him?

5 A ` Correct.

6 Q How much time did you spend with him during those meetings?

7 A In the initial meeting, probably about 45 minutes. The
8 second meeting, probably about the same, probably about 45
9 minutes to an hour. And the third meeting, maybe, like, 20
10 minutes.

11 Q Okay. Now, during those meetings, did you have any idea or
12 understanding of anything about that was going on?

13 A Well, I knew that we were discussing, uhm -- the first
14 initial meeting I knew that we were discussing going to trial,
15 you know ---

16 Q Okay.

17 A --- and he was telling me exactly, you know, what the fees
18 were going to be and how much it was going to cost.

19 Q All right.

20 A And then the second meeting we were talking about what
21 exactly, you know, what we were going to do as far as getting
22 ready to prepare for trial, like, as far as hiring an accident
23 reconstruction person, and that's what that would cost, the
24 detail. And then the third one -- and he collected money on that
25 meeting. And then the third meeting, he collected money again,

1 too, and told me that he had an accident reconstruction done, but
2 there was never any paperwork that I saw, and he never collected
3 any money for the accident reconstruction itself.

4 Q Did you have phone conversations? Were there phone
5 conversations?

6 A Not many at all. I would, like, try to call him, or
7 text/message him, but he's never called me back.

8 Q And I'm trying to get a better understanding of what your
9 relationship was with Mr. Aylor. So, did you have conversations
10 with his staff or paralegal in regards to your case?

11 A Like towards the end when we were -- when he was -- when
12 we -- after we had the motion for the video, after that one, he
13 decided that we were going to plead guilty, his paralegal was the
14 one who told me that we were pleading guilty. It wasn't
15 Mr. Aylor. And I didn't even know what we were pleading guilty.
16 She said that you are going in for the plea on Monday. This was
17 the Tuesday, the week before, or the Tuesday before, and said
18 that we were going in for the plea on Monday.

19 And I had to call back, because I was shocked that we were
20 going to do a plea. And he didn't tell me himself, and so I
21 tried to set up a meeting with him, and he wasn't even seeing me.
22 It was going to be a phone conversation on the next Friday, of
23 the Friday coming up.

24 Q Prior to the plea on Monday?

25 A Yeah, prior to the plea. Correct.

1 Q Now, were you present at the motion to suppress, basically,
2 as a result of the video?

3 A Yes, I was.

4 Q And did you understand what that was all about?

5 A It was the motion to dismiss, you mean?

6 Q Uh-huh.

7 A I did, but I was confused, because we didn't look at the
8 video, and he didn't -- he didn't really say much at that
9 hearing.

10 Q Okay. Did you ever see the video?

11 A I saw it with John Loy but not with Mr. Aylor.

12 Q And what happened at the motion to dismiss hearing?

13 A The Court had somebody come in to say that they found a
14 video that actually had my Miranda on it, but nobody watched it
15 at the court. And when the officer got up on the stand, he said
16 that he had actually destroyed the original video.

17 Q The VHS?

18 A The VHS, yes, that he had destroyed it, and that it was a
19 copy that they had.

20 THE COURT: Mr. Thomas, let me ask you something.

21 ATTORNEY THOMAS: Yes, sir.

22 THE COURT: I want to make sure I'm following. When you're
23 referring to that motion, are you referring to a motion -- or, I
24 have a transcript of Monday, February 13th, 2017?

25 ATTORNEY THOMAS: I think so.

1 THE COURT: Is that what that is?

2 ATTORNEY THOMAS: Yes, Your Honor.

3 THE COURT: Okay.

4 ATTORNEY THOMAS: Yes.

5 THE COURT: Because I didn't really read it as a motion ---

6 ATTORNEY THOMAS: Your Honor ---

7 THE COURT: --- per se.

8 ATTORNEY THOMAS: --- I do have a copy of the motion to
9 dismiss that was filed. Well, mine is an unsigned copy, but I do
10 have one from Mr. Aylor dated February 10th of 2017.

11 THE COURT: All right. But what you're referring to, sir,
12 you're referring to a Monday, February 13th, hearing, 2017, in
13 front of Judge Goodstein; is that right?

14 ATTORNEY THOMAS: That's correct, Your Honor.

15 THE COURT: Just wanted to make sure. Thank you.

16 ATTORNEY THOMAS: Thank you, Your Honor. Would you like a
17 copy of the motion?

18 THE COURT: I've got everything. I just wanted to make
19 sure.

20 ATTORNEY THOMAS: Okay.

21 BY ATTORNEY THOMAS:

22 Q So, do you remember when they said that -- that full version
23 of the Miranda rights when it was discovered?

24 A At the motion, you're talking about?

25 Q Yes. Yes.

1 A Yeah, I do.

2 Q When was it discovered?

3 A It was discovered like five minutes before the motion.

4 Q Okay. And that was by the trooper?

5 A Right.

6 Q When Judge Goodstein denied the motion to dismiss ---

7 A She didn't ---

8 Q --- did she make a decision?

9 A No, she did not make a decision. I don't think there was a
10 decision made.

11 Q Okay. But you ended up going forward?

12 A Right, we went forward.

13 Q Did you have an opportunity at that point in time to sit
14 down with Mr. Aylor and look at that video?

15 A No. Never looked at the video.

16 Q Now, for timeline purposes, when was that in conjunction to
17 when you entered into this plea?

18 A That was about three weeks later. And between the time of
19 the motion and the time that I entered the plea, altogether it
20 was like about a month, and in that time I texted him several
21 times, tried to call, and never did I get in touch with him until
22 when she -- his paralegal finally told me that we were entering a
23 guilty plea.

24 Q Okay. Prior to that, had ever you discussed that with
25 Mr. Aylor?

1 A No.

2 Q Okay. What was your reaction to that phone call?

3 A I was shocked.

4 Q And ---

5 A He told me to stop playing lawyer when I was on the
6 telephone with him, the next time I spoke with him. When I was
7 trying to talk to him about going to trial, he told me that I
8 needed to stop trying to play lawyer.

9 Q Were you concerned about all this?

10 A Yes, I was very concerned about it.

11 Q Because you had a very good potential of going to jail, you
12 thought?

13 A Yeah, absolutely.

14 Q What was your relationship with Mr. Aylor?

15 A He, for some reason, that Friday when I spoke with him, he
16 just talked me terribly on the phone, just told me that I needed
17 to get my family, which all lived in Michigan and California, to
18 go to the sentencing, which was a plea the following week, like,
19 into town right away, like they had to just drop everything,
20 which they couldn't drop everything that they were doing as a
21 working family. They would have had to take time off of work.

22 And when I asked him if he could, you know, push it back,
23 even after I decided that I wanted to even do this, he told me
24 that it was plenty enough time. And everything was just going so
25 quickly, and he just, the way that he was talking to me, just

1 wasn't professional at all.

2 Q Okay. Now, in your testimony you're saying that you spoke
3 to Mr. Aylor. Did you talk to him after you were notified by his
4 staff that you had a plea?

5 A Yes. Yes.

6 Q Was that one of the three times, or was that an additional
7 time that you spoke to him?

8 A This was after I spoke with him. This was after, I think,
9 she told me in February that I had to enter the plea. That was
10 the weekend that I spoke with him, the weekend after.

11 Q And you spoke to him over the phone, or you went in to see
12 him?

13 A No. I never went in to see him after.

14 Q After the first time?

15 A After those three times ---

16 Q Okay. Okay.

17 A --- I never went in to see him again. I saw him in court
18 the next time, and on the telephone is when I spoke with him.

19 Q Let me ask you this. In regards to preparing for the plea,
20 did you talk to Mr. Aylor about what the Court was going to ask
21 you, what we call a plea colloquy?

22 A No.

23 Q Okay. What did you do? How did you prepare yourself for
24 this?

25 A I was totally unprepared, actually.

1 Q Did you have any idea as to what kind of sentence you were
2 going to receive?

3 A He told me that if I didn't take the plea, that I was
4 looking at an extra 10 years. And I said, Well, what was I
5 looking at now? And he told me single digits.

6 Q Single digits?

7 A Yes.

8 Q So something less than the 10 to 12. You got 12?

9 A Twelve, yes.

10 Q And there was an affidavit in regards to that you understood
11 what you were doing, that you understood that you were waiving
12 your right to a jury trial, and those kind of things. Do you
13 remember signing such a document?

14 A I did. He pushed it in front of me at the last minute, and
15 I didn't have my glasses, and I trusted him, and I signed it
16 without knowing what I was signing.

17 Q Now, you said that he pushed it in front you. When was
18 that?

19 A I'm not even sure when that was. I don't know if it was,
20 like, right -- there was so many -- like there was paperwork in
21 front of me, he just pushed it in front of me. I didn't even
22 read it.

23 Q Was that the day of the plea?

24 A Yes, it was. Yes.

25 Q So it was not in his office?

1 A No, it was not in his office. It was right there in the
2 courtroom.

3 Q Now, what day did you go to court that you were going to do
4 your plea?

5 A I went on a Monday, but he didn't show up. He didn't come.
6 He sent somebody else I didn't even know. And when I was looking
7 for this person, all I knew, that his name was Ryan, they told me
8 that his name's Ryan. And I decided that I wasn't going to plead
9 guilty with somebody that I didn't know.

10 Q Right. So who told you that this person's name was Ryan?

11 A Craig called the office and found out that the person's name
12 was Ryan.

13 Q That's your husband?

14 A Right, that's my husband.

15 Q Okay.

16 A And found out that his name was -- the man's name was Ryan,
17 and that he was supposedly taking Mr. Aylor's place that day.

18 Q Did you know that prior to Monday?

19 A No, I did not.

20 Q You found that out when you got to the courthouse?

21 A Right.

22 Q And, as a result of that, what did you do?

23 A Decided that we weren't going to do it that day, and that we
24 would do it the next day when Mr. Aylor would be back in the
25 courtroom.

1 Q So, your case was not called. In other words, they didn't
2 call your case to take you off a bond or anything like that? You
3 were just continued to the next day?

4 A To the next day. Yes.

5 Q All right. And then the next day would have been a Tuesday?

6 A Yes, sir.

7 Q And what happened on that Tuesday?

8 A They called my case to plea.

9 Q And you pled in front of Judge Goodstein?

10 A Yes, sir.

11 Q And was Mr. Aylor there?

12 A Yes, he was. Not speaking to me, though. I mean, he didn't
13 say -- not a word to me.

14 Q Was he mad at you?

15 A He acted like he was upset.

16 Q Okay. Do you know why?

17 A No, I don't. He didn't say why.

18 Q Okay. Now, the Court asked you certain questions, which we
19 call, again, plea colloquy. And, you know, you and I have talked
20 about that. And you answered those questions saying that you
21 were basically satisfied with Mr. Aylor's representation, you
22 were pleading freely and voluntarily. Why did you say those
23 things?

24 A Because I just -- I didn't -- I was afraid. I didn't know.
25 I thought if I had to do 10 extra years, that -- I mean, if I

1 could avoid doing 10 extra years, that that was the best possible
2 thing for me. I didn't know that I could -- this is the first
3 time I've been in trouble with the law, like having to actually
4 be in a courtroom and be in front of a judge and have to get up
5 and say that, you know, I would have to just ...

6 Q Mr. Aylor tell you what to say?

7 A He -- no. I mean, I just said it because I thought it was
8 the right thing to say at the time. I didn't know any better. I
9 didn't know what to do.

10 Q Were those things true?

11 A No, they were not true.

12 Q Did you want to plea?

13 A No, I did not.

14 Q Now, what about having folks there to speak on your behalf?
15 Did you any family there with you?

16 A No. They couldn't get to town.

17 Q How come?

18 A They didn't have enough time. I had to call friends. Well,
19 I had my children, and Craig was there, and I had a friend. But
20 as far as, like, extended family, they couldn't get to town in
21 time.

22 Q Did you discuss that with Mr. Aylor?

23 A Yes, I did. It's something that -- I asked if we could
24 have -- because the sentencing was a day apart, the plea, I asked
25 if we could push the sentencing like a week so I could get people

1 from out of town in town to give extra days to get plain tickets.

2 Q Why?

3 A And he said that I needed to get whoever gives a shit about
4 me in town, in the courtroom.

5 Q Let me ask you about that. You know, we call that a
6 bifurcation. In other words, you pled guilty on a Tuesday ---

7 A Uh-huh.

8 Q --- and then you were sentenced on a different day.

9 A Correct.

10 Q Do you know why it was done that way?

11 A I have no idea.

12 Q Was your bond basically kind of revoked or ended at that
13 point in time? Were you taken into custody?

14 A Yes, I was.

15 Q When you entered into the plea?

16 A Correct. I wasn't supposed to be. I was supposed to go
17 home and then come back, but for some reason they arrested me and
18 took me into custody.

19 Q Did Mr. Aylor discuss that with you ---

20 A No.

21 Q --- that that was going to happen?

22 A No.

23 Q Let me ask you this. Do you feel like you entered into that
24 plea freely and voluntarily?

25 A No, I don't.

1 Q Do you feel like you entered into it knowingly and
2 intelligently? Did you know what you were doing?

3 A No. I feel like -- I don't know, I feel like I entered it
4 because I was scared.

5 Q Did you have any confidence in Mr. Aylor?

6 A No, none.

7 Q Now, after this plea, and you received a 12-year sentence,
8 did you have any opportunity to talk to Mr. Aylor in regards to
9 appealing this decision?

10 A I didn't, but Craig did, Craig Harris did, he called and
11 asked him about an appeal. And he told Dr. Harris that he -- I
12 didn't -- I couldn't appeal. I didn't qualify for an appeal.

13 Q Okay. And did you talk to him at all about appealing the
14 Court's decision, Judge Goodstein's decision, and the motion to
15 dismiss?

16 A Did I?

17 Q Yes.

18 A No. I haven't spoken to Mr. Aylor since my -- or, since I
19 pled. He never got in touch with me at all. Nothing about an
20 appeal or anything.

21 Q Did he, after you were sentenced, come back and speak with
22 you before he left?

23 A No, not at all. Nothing.

24 Q Have you spoken with at all since then?

25 A No, I have not.

1 Q All right, Tammy. We talked about this, as well. You've
2 been waiting a long time for this hearing, especially with the
3 COVID-19 pandemic and all that. It's been a while. I don't
4 believe that I have forgotten to bring something up on your
5 behalf, but this is your opportunity to address the Court.

6 Is there anything else you feel like I may have forgotten,
7 left out, or is there anything else that you would like to tell
8 the Court?

9 A I don't feel that you left anything out. I just -- I hired
10 him to go to trial, and I feel like I was tricked into giving him
11 a lot of money to go to trial, and he didn't do what he was
12 supposed to do, and then he took the money and he basically ran.
13 He didn't do his end of the deal. And I feel like I did my part,
14 and he didn't do his part.

15 There is a lot of things in the discovery that I found later
16 on that, once I got to prison, if I would have had a good
17 attorney, he could have explained things to me; that if he would
18 have taken the time to go through it, because, actually, I think
19 we could have won the trial.

20 And it only takes, you know, one jury -- one juror to have
21 doubt to win, and I truly believe that we could have won.

22 ATTORNEY THOMAS: Your Honor, I have no further question.

23 THE COURT: All right. Attorney General, cross-examination.

24 ATTORNEY WEIDAUER: Yes, Your Honor.
25

CROSS-EXAMINATION

BY ATTORNEY WEIDAUER:

Q Good afternoon, Ms. Harris. So you're here today alleging your plea in 2017 was involuntary; correct?

A Correct.

Q You testified just a moment ago that you met with Mr. Aylor three times. And correct me if I'm wrong. Correct?

A Right.

Q Do you remember testifying at your plea that you met with him nine times?

A What?

Q At your guilty -- at your guilty plea hearing, you had met with him nine times.

A No.

Q And I'm going to hand you up a transcript, if that's acceptable to Mr. Thomas and to the Court.

ATTORNEY THOMAS: I have no objection.

THE COURT: I'm sorry?

ATTORNEY THOMAS: She was asking if I had any objection to her handing up a copy of the transcript and, of course, I don't.

THE COURT: Yes, sir.

ATTORNEY THOMAS: Yes, sir.

THE COURT: Is that Thursday, the 16th, or is this the ---

ATTORNEY WEIDAUER: The 14th.

THE COURT: Tuesday, the 14th, okay.

1 ATTORNEY WEIDAUER: Yes, Your Honor.

2 THE COURT: Yes, ma'am.

3 BY ATTORNEY WEIDAUER:

4 Q So we're on page 24. And I'm just going to have you read
5 for the Court lines 10 through 14.

6 A I don't have glasses.

7 THE COURT: If you can't read it -- do you have your
8 glasses, ma'am?

9 THE WITNESS: No.

10 THE COURT: Then, as an officer of the Court, I'll have you
11 read the question and the answer. Any objection?

12 ATTORNEY THOMAS: No, Your Honor.

13 THE COURT: So what page is this?

14 ATTORNEY WEIDAUER: This is page 24.

15 THE COURT: Page 24.

16 ATTORNEY WEIDAUER: The transcript dated March 14th, 2017.

17 THE COURT: All right. Hold on one second.

18 ATTORNEY WEIDAUER: Yes, sir.

19 THE COURT: And what line?

20 ATTORNEY WEIDAUER: Those are going to be lines 10 through
21 14.

22 THE COURT: Okay. Go ahead.

23 BY ATTORNEY WEIDAUER:

24 Q Line 10 begins: THE COURT: Can you tell me approximately
25 how many times you have met with Mr. Aylor? THE DEFENDANT,

1 yourself: Seven besides being in court, besides being here, so
2 nine. THE COURT: Nine times? THE DEFENDANT: Uh-huh.

3 And my next question, which, of course -- you cannot read,
4 would be -- do you remember the Court asking you if you met with
5 Mr. Aylor for an adequate amount of time.

6 So the Court goes to say: Okay, you have met with him for
7 as long a period on each of those occasions as you believe
8 appropriate for him to properly represent you? And you respond:
9 Yes, ma'am.

10 Do you remember testifying to that?

11 A No, I do not.

12 Q Is there a reason you would have lied on the date of your
13 guilty plea?

14 A There's no reason why I would have said that I met with him
15 seven times, because I didn't. I only met with him three times.

16 Q You actually testified that you met with him nine, including
17 the time you were before the Court.

18 A I'm sure the transcript will tell you I only met with him
19 three times.

20 Q Okay. And he'll be able to testify on his behalf. It also
21 goes on to say: Has Mr. Aylor investigated your case? And for
22 the court reporter, that's going to be Page 24, Line, 20. And
23 you said: Yes, ma'am. Do you remember testifying to that ---

24 A No, I do not.

25 Q --- that he had investigated your case?

1 A No. The ---

2 Q And your testimony is --

3 THE COURT: Hold on. What were you going to say, ma'am?

4 THE WITNESS: The only reason I would say that is just

5 because he told me that I needed to -- I needed to plead guilty
6 and get -- to save myself 10 extra years, I probably would have
7 done that.

8 BY ATTORNEY WEIDAUER:

9 Q I don't want to misrepresent your earlier testimony. My
10 understanding of your earlier testimony was that you did not have
11 discussions with him on what the Court would be asking you ---

12 A Right.

13 Q --- at that guilty plea hearing?

14 A No.

15 Q So can you ---

16 A He did tell me that I would be saving myself 10 extra years
17 if I pled guilty. He did say that.

18 Q Okay. You testified that you remember signing an
19 affidavit ---

20 A Right.

21 Q --- prior to your guilty plea. Okay. I would like to --
22 and that's dated March 13th, 2017. I know you don't have your
23 glasses on, but can you tell me if that's your signature there?

24 A Yes, it is.

25 ATTORNEY WEIDAUER: Okay. I'd like to enter this in as

1 State's Exhibit No. 1. It's been premarked.

2 ATTORNEY THOMAS: I have no objection, Your Honor.

3 THE COURT: Entered, without objection.

4 (WHEREUPON, State's Exhibit 1 was admitted into the record.)

5 THE WITNESS: And, again, I didn't have my glasses that day,
6 either.

7 BY ATTORNEY WEIDAUER:

8 Q This document is dated March the 13th, 2017. Your testimony
9 is that he slid that over on the date of your guilty plea,
10 correct, and just had you sign it?

11 A Yes.

12 Q And so March 13th ---

13 A You can see that it's marked off, the date on there, too.

14 Q Yes. The first initial date is February, and he marked it
15 off to indicate March 13th, 2017. And I believe that, actually,
16 the notary or yourself did that?

17 A I didn't do that.

18 Q You did that do that, okay. And you testified before that
19 David was not there on Monday; right?

20 A Right.

21 Q So March 13th, would that come as a surprise that March 13th
22 was the day before your guilty plea hearing? You pled guilty on
23 March 14th, so, really, you signed this the day before your
24 guilty plea hearing?

25 A No. Actually, I didn't. I signed it on the same day of my

1 guilty plea.

2 Q Okay. So this is incorrectly dated?

3 A Right. Yes, it is.

4 Q And that's your assertion?

5 A Yeah, because he slid it in front of me. Slid it right in
6 front of me.

7 Q Do you recall discussing any possible defenses with
8 Mr. Aylor to your case?

9 A The very first day when we were talking about it when I went
10 to his office, yeah, we talked about going to trial.

11 Q Okay.

12 A Yes.

13 Q And your belief, that would be, in part, because of the
14 accident reconstruction that he was going to do on your behalf?

15 A Correct. That we were going to do an accident
16 reconstruction. Yes.

17 Q And, to your knowledge, that did not happen?

18 A Right.

19 Q And there were no further conversations between and you
20 Mr. Aylor regarding that accident reconstruction?

21 A Yes. There was a conversation on the third meeting. He
22 said that he had an accident reconstruction done, but that -- I
23 never saw one.

24 Q Okay. Do you recall, at your guilty plea, the solicitor
25 presenting the facts surrounding your allegations?

1 A I don't understand.

2 Q Did the solicitor, at the guilty plea hearing, state the
3 facts of the case and the basis for what you're pleading to? Do
4 you remember that?

5 A Actually, the case. Yes.

6 Q You remember that. Do you remember agreeing to the facts of
7 the case on the record?

8 A No.

9 THE COURT: Ma'am ---

10 THE WITNESS: I'm not sure what you're talking about.

11 THE COURT: Ma'am, speak up a little louder.

12 THE WITNESS: I'm not sure what you're talking about. No.

13 BY ATTORNEY WEIDAUER:

14 Q So the solicitor --

15 ATTORNEY WEIDAUER: And this is going to be, for the record,
16 page 21 of the guilty plea transcript.

17 ATTORNEY THOMAS: From which date?

18 ATTORNEY WEIDAUER: The 14th of March.

19 ATTORNEY THOMAS: Okay.

20 THE COURT: Twenty -- I'm sorry?

21 ATTORNEY WEIDAUER: Twenty-one.

22 THE COURT: Thank you.

23 ATTORNEY WEIDAUER: Begins on line 17.

24 BY ATTORNEY WEIDAUER:

25 Q So the solicitor goes through what the facts are, when it

1 occurred, the road it occurred on, that it occurred in the
2 Summerville area.

3 A Uh-huh.

4 Q You agree with all that?

5 A Uh-huh.

6 THE COURT: Yes. Ma'am, hold on.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You're doing great. You just need to speak out
9 loud, okay.

10 THE WITNESS: Okay.

11 BY ATTORNEY WEIDAUER:

12 Q And you remember the solicitor discussing the officers that
13 were on the scene and how they responded?

14 A Do I remember him saying that?

15 Q Yes, the solicitor.

16 A Okay. Yes.

17 Q Yes, you do?

18 A Yes.

19 Q Okay. Do you remember the Court asking you, Is that what
20 happened?

21 A No, I don't.

22 Q Okay. So it would come as a surprise that you answered in
23 the affirmative, Yes. Yes, ma'am?

24 A Okay. No. I mean, it's a blur to me, that day. I was
25 pleading guilty, so everything's a blur to me. I was going -- I

1 was trying to get the best sentence that I could possibly get
2 that day, so --

3 Q And at that time you knew that you were there to plead
4 guilty, and that's what you were wanting to do, get the best
5 sentence as possible?

6 A Yes.

7 Q Okay. Do you recall testifying to the truthfulness of your
8 answers at the guilty plea hearing?

9 A Yes, I do.

10 Q Okay. And testifying that the answers were your own?

11 A Yes.

12 Q Do you recall testifying that no one had threatened you or
13 coerced you into pleading guilty?

14 A Somebody scared me into pleading guilty.

15 Q And can you expound on that a little bit?

16 A Telling me that I was looking at 10 extra years, it's pretty
17 scary, rather than going trial. That is what my attorney told
18 me, the person that I trusted and thought was looking out for my
19 best interests. I was wanting to go to trial.

20 Q And you understood that should you have proceeded to trial
21 and been found guilty, you could have received 25 years?

22 A Right. But he said -- I went to go -- I went to him, and we
23 went -- and we were going to go to trial. And that was what we
24 were going to do. And that's what I was going on, was a trial,
25 and that's what I wanted to do, was go to trial.

1 Q So can you explain to the Court, because I'm a little
2 confused. You go through the guilty plea. The Court said it's
3 your decision and your decision alone to make. Why did you agree
4 with the Court then? Why did you not stand up and say, No, I
5 want to go to trial, my attorney promised me?

6 A He told me that I could fire him right at that moment, and
7 that it wouldn't make a difference; that -- I mean, he basically
8 told me that if I didn't plea, that I was looking at 10 extra
9 years. So I agreed. I did what he asked me. He told me what I
10 should do.

11 Q Okay.

12 A After looking -- because we didn't go through discovery
13 together like we should have. And after looking at discovery on
14 my own, I see now where he didn't do his job. I was innocent.

15 ATTORNEY WEIDAUER: Beg the Court's indulgence for one
16 moment.

17 THE COURT: Yes, ma'am.

18 BY ATTORNEY WEIDAUER:

19 Q In that vein, do you remember testifying at the sentencing
20 hearing?

21 ATTORNEY WEIDAUER: And that would be on March 16th, Your
22 Honor.

23 THE COURT: All right.

24 ATTORNEY WEIDAUER: Okay. And you're going to be looking at
25 page 26, lines 13 through 17.

1 THE COURT: Go ahead. I'm looking.

2 BY ATTORNEY WEIDAUER:

3 Q So, you have, in your PCR claim, and you have asserted,
4 through your testimony, that you were innocent. Do you remember
5 testifying at the sentencing hearing transcript that, quote, I
6 had been drinking before getting into the car, and her death was
7 my fault. I'm here to say that I accept full responsibility for
8 this terrible event for her death. I do not have any excuses for
9 my actions because there are none.

10 A Yes.

11 Q You do remember testifying to that?

12 A Yes, I do.

13 Q Two days after your guilty plea?

14 A Yes.

15 Q And if you were so scared on the day of your guilty plea,
16 what made you make that statement on the record two days later?

17 A It was at sentencing.

18 Q And what did you believe -- what was your benefit, you
19 believed, you would get by making that statement?

20 A A lighter sentence.

21 Q So were you lying to the Court? What benefit did you
22 believe you would get?

23 A Looking for a lighter sentence.

24 THE REPORTER: I'm sorry?

25 THE WITNESS: Looking for a lighter sentence.

1 BY ATTORNEY WEIDAUER:

2 Q Okay. And there would have been no reason for you to lie to
3 the Court at that time during sentencing?

4 A Right.

5 Q Okay. I'd like to go back for a moment to your testimony
6 regarding the accident reconstruction. You testified that your
7 belief was that the accident reconstruction would dissolve you of
8 all guilt, and essentially no jury could have found you guilty
9 because it would prove that you were not at fault. Correct?

10 A Correct.

11 Q Okay. When you pled guilty, why did you plead guilty and
12 not demand that accident reconstruction and proceed to trial?

13 A I don't have an answer to that right now. I wish I would
14 have.

15 Q Okay. And can you refresh my memory. Did you say that
16 Mr. Aylor had done one?

17 A He said that he had done one, but I never saw one and never
18 paid for one.

19 Q So if he said he had done one, you didn't request a report,
20 there was no further conversation about it, even though, as you
21 testified ---

22 A I trusted my attorney at that time. It didn't come until
23 after I was in prison that I realized that I did not have a good
24 attorney, so it wasn't like I went into the courtroom thinking
25 that my attorney was a bad one. It was after I was in prison

1 that I realized that my attorney wasn't such a good attorney.

2 Q And forgive my ignorance. I'm just trying to understand and
3 parcel together your testimony here today. So Mr. Aylor said an
4 accident reconstruction report was done on your behalf?

5 A Correct.

6 Q And you did not ask for that accident reconstruction report
7 before pleading guilty?

8 A No. He said that he wasn't putting it in there because he
9 didn't want the other side to see that I was guilty in the
10 accident reconstruction.

11 Q So he had, per your own testimony, some reasoning for not
12 submitting or not getting an accident reconstruction report?

13 A Right. But I never paid for one, so there was never one
14 done.

15 Q Okay. And you're saying that Mr. Aylor said he didn't want
16 to get an accident reconstruction report because it did not help
17 your case?

18 A Right. But he didn't get one, so how would he know that?

19 Q I believe you testified he did get one done?

20 A He said he did, but if I didn't pay for that how would he
21 have gotten one done?

22 Q I'm going to move on.

23 ATTORNEY WEIDAUER: Beg the Court's intention for one
24 moment, Your Honor.

25 THE COURT: Yes, ma'am.

1 ATTORNEY WEIDAUER: I would just like to make sure that this
2 is on the record. Apologize, Your Honor, if this has already
3 been testified to.

4 THE COURT: Take your time.

5 BY ATTORNEY WEIDAUER:

6 Q So regarding the voluntariness of your plea, which you
7 testified that you're here alleging that your plea was
8 involuntary ---

9 A Correct.

10 Q --- okay, can you just summarize why you believe your plea
11 was not voluntary, why you don't believe you made that decision
12 for yourself knowing that you could receive a lighter sentence,
13 as you testified, that the accident reconstruction report would
14 not be helpful to you, as you've testified?

15 A Because the accident reconstruction would have been helpful
16 to me, and that, if we would have gone to trial, that I really
17 believe that I would have been found innocent, and that if he
18 wouldn't have scared me into pleading guilty, that I wouldn't be
19 in prison right now.

20 Q And do you have any further basis or belief that the
21 accident reconstruction report would have been helpful other than
22 your own belief?

23 A Because she came in my lane, and I know what I saw. That's
24 why. And it's what I said from the very beginning, from the time
25 that I walked into his office the very first time. That's what

1 I've been saying since the very beginning since I went into John
2 Loy's office.

3 ATTORNEY WEIDAUER: Nothing further, Your Honor.

4 THE COURT: Mr. Thomas, do you have any redirect, sir?

5 ATTORNEY THOMAS: Yes, sir.

6 THE COURT: Go right ahead. Yes, sir.

7 ATTORNEY THOMAS: Thank you.

8 **REDIRECT EXAMINATION**

9 BY ATTORNEY THOMAS:

10 Q Tammy, I'll kind of go backwards through my notes, and work
11 that way. You said that you felt like the accident report would
12 show that she had crossed the line ---

13 A Correct.

14 Q --- because of the location of the cars or whatever, how the
15 road was, or whatever?

16 A Correct.

17 Q Okay. And Mr. Aylor was already pretty concerned about you
18 paying him?

19 A Correct.

20 Q And you feel like that an accident report was never done
21 because you didn't pay him?

22 A Correct.

23 Q And if he had had one, he would have wanted you to pay for
24 it ---

25 A Right.

1 Q --- whether it was good or bad?

2 A Right. Correct.

3 Q So it's your belief that an accident report was never done?

4 A Yes. I know that one was never done.

5 Q Okay. And I understand about being scared. This was your
6 first time in front of the Court?

7 A Right.

8 Q And your first time with a significant crime?

9 A Correct.

10 Q And, so you were frightened?

11 A Right.

12 Q Do you believe that Aylor could have helped you more than he
13 did through this process?

14 A Yes, I do.

15 Q Do you think his behavior contributed to your fear?

16 A Yes. Yes, it did. He kept telling me that I was going to
17 receive the 10 extra years if I went to trial. Scared me
18 considerably.

19 Q And I notice that you seem to be focused on this 10 years.

20 A Uh-huh.

21 Q You were going to receive 10 more years. And that's because
22 of what Aylor told you?

23 A Yes. Yes, sir.

24 Q Did he ever go into any more depth about other than just 10
25 years?

1 A Well, 10 years, and then single digits. Single digits, to
2 me, was 9 years or under, you know, and my sentence for a felony
3 DUI was 1 to 25 years.

4 Q Right.

5 A So when you think of single digits, it could be one to nine.
6 And so when he said I was looking at single digits, that would
7 much less frighten me than 10 extra years. So if you're looking
8 at single digits, then you're thinking anything from 19 to, you
9 know -- 11 and up.

10 Q Yeah.

11 A I mean, that's definitely more frightening.

12 Q So did he ever take the time to sit down and kind of discuss
13 that with you about, you know, why his opinion was 10 years at
14 trial, or ---

15 A No, he didn't.

16 Q So you were left to make those decisions and determination
17 on your own?

18 A Yes, I was.

19 Q Okay. And based upon what Aylor told you, you felt like --
20 well, what did you feel like in regards to addressing the Court?

21 A Say that again. I'm sorry.

22 Q The attorney general asked you questions and read parts of
23 the transcript that said, you know, you were satisfied, and even
24 the part where you said, you know, I'm guilty of this, I had been
25 drinking. Had you been drinking?

1 A Yes.

2 Q And what was your BA level?

3 A .14.

4 Q And was there a BA level for the victim in this case?

5 ATTORNEY WEIDAUER: Objection. Relevance.

6 THE COURT: He's saying that ---

7 ATTORNEY THOMAS: Okay.

8 THE COURT: Well, what he -- go ahead.

9 ATTORNEY THOMAS: Well, it kind of -- and I apologize for
10 question, Your Honor, but it ties into what she was thinking in
11 regards to whether or not she felt like she wanted to go to
12 trial. It's another potential defense that she would have had in
13 her mind, which I think has some relationship to her making these
14 decisions, Your Honor.

15 THE COURT: Well, a felony DUI, just because somebody is at
16 fault, fault is not really an issue in a felony DUI; is it?

17 ATTORNEY THOMAS: Well ---

18 THE COURT: I mean, you can be convicted of a felony DUI and
19 the accident be your fault.

20 ATTORNEY THOMAS: Yes, sir.

21 THE COURT: So this whole thing is moot as it relates to
22 fault. I'm not -- unless I'm -- I practiced law a long time, and
23 I thought that basically it could be your fault, and if you're
24 driving drunk, you could still be charged with felony DUI and be
25 convicted of it. Am I misunderstanding the law?

1 ATTORNEY THOMAS: No, sir, I don't think so.

2 THE COURT: Okay. Well, I'm going to overrule your
3 objection.

4 ATTORNEY THOMAS: Okay. Thank you, Your Honor.

5 THE COURT: Or, I'm going to sustain the objection. We're
6 not going to get into that because it doesn't matter, all right.

7 ATTORNEY WEIDAUER: Thank you, Your Honor.

8 BY ATTORNEY THOMAS:

9 Q So let me get back to another question then. What could
10 have Mr. Aylor have done that would have helped you to be able to
11 make these decisions about entering into the plea?

12 A He could have went over the information with me better, and
13 he could have met with me more than just the three times that we
14 met. We could have had a better relationship and, especially
15 now, you know, looking back at it, had a better plan.

16 And, you know, him being a lawyer and me being the, you
17 know, defendant, I wish that he would have just done a better job
18 showing me what to do rather than now me looking back and seeing
19 that he could have done a better job, you know, because now I
20 have a lot of regret, and I can't go back and change anything.
21 It's too late.

22 Q Do you feel like you were just left on your own?

23 A Yes, right, very much so.

24 ATTORNEY THOMAS: I have no further question, Your Honor.

25 THE COURT: All right. Thank you.

1 ATTORNEY THOMAS: Yes, Your Honor.

2 THE COURT: Anything else?

3 ATTORNEY WEIDAUER: Can I just ask one question on recross?

4 THE COURT: One?

5 ATTORNEY WEIDAUER: One.

6 THE COURT: I'll give you two. Not literally take any --
7 madam court reporter, I'll let her take any amount she wants. Go
8 right ahead.

9 ATTORNEY WEIDAUER: Okay. I just need to beg the Court's
10 indulgence for just one moment to make sure I have it.

11 THE COURT: Yes, ma'am.

12 RECROSS-EXAMINATION

13 BY ATTORNEY WEIDAUER:

14 Q All right. At the guilty plea -- so you testified here
15 today that you took this plea because you didn't want the
16 exposure of 10 more years; correct?

17 A Correct.

18 Q At the plea, do you remember the Court asking, All right --

19 ATTORNEY WEIDAUER: And this is on page 13 of the guilty
20 plea transcript.

21 THE COURT: All right.

22 ATTORNEY WEIDAUER: We're going to be looking at lines 10
23 through 13.

24 THE COURT: Page 13, 10 through 13. Yes, ma'am.

25

1 BY ATTORNEY WEIDAUER:

2 Q The Court states: All right. This defense is punishable by
3 imprisonment for a minimum of one year and for a maximum of 25
4 years in prison. Do you understand? Do you remember testifying,
5 Yes, ma'am?

6 A Yes.

7 Q So your testimony today that you wanted to limit your
8 exposure by 10 years, at this guilty plea you know that your
9 exposure wasn't limited?

10 A I knew that was 1 to 25 years. Correct.

11 Q You knew that was 1 to 25 years, and you took the plea
12 regardless?

13 A Correct, because I knew that the plea -- if I didn't go --
14 if I went to trial, I was looking at 10 extra years, is what he
15 told me. Going to trial would be an extra 10 years.

16 ATTORNEY WEIDAUER: Nothing further, Your Honor.

17 THE COURT: Anything else, Mr. Thomas?

18 ATTORNEY THOMAS: No, Your Honor.

19 THE COURT: And, Mr. Thomas, do you have any other
20 witnesses?

21 ATTORNEY THOMAS: I do, Your Honor. Her husband, Craig
22 Harris, was to be here, but unfortunately he was, I guess,
23 noticed for 3:30. But it is after 3:30.

24 THE COURT: All right. Well, I'll tell you what I'm going
25 to do. We'll go ahead and we'll let the solicitor/attorney

1 general call her witnesses if she has any.

2 ATTORNEY THOMAS: Yes, Your Honor.

3 THE COURT: And in the meantime, then if he makes an
4 appearance here, I will go back and allow you to call him to
5 testify.

6 ATTORNEY THOMAS: Thank you.

7 THE COURT: Is that satisfactory, sir?

8 ATTORNEY THOMAS: Yes, Your Honor. Thank you so much.

9 THE COURT: So, Attorney General, is that satisfactory to
10 you?

11 ATTORNEY WEIDAUER: That's fine, Your Honor.

12 THE COURT: All right. I think that's fine. So we'll do
13 that. So with that having been said, as to the husband, the
14 ex-husband would be the only other witness?

15 ATTORNEY THOMAS: Yes, sir. He would be very short.

16 THE COURT: All right.

17 ATTORNEY THOMAS: And, really, what he's going to testify to
18 is his conversation with Mr. Aylor and about the appeal.

19 THE COURT: All right. So what we'll do is, we'll hopefully
20 have him here. And in the meantime, though, I will allow the
21 state to go ahead and call its first witness.

22 ATTORNEY WEIDAUER: We'd call David Aylor. And for the
23 record, we have him on Zoom. Is there a best way you think we
24 should set this up?

25 THE COURT: You tell me.

1 (WHEREUPON, the Zoom video was set up.)

2 ATTORNEY WEIDAUER: Your Honor, I did send up a copy of the
3 affidavit before. Would you like one?

4 THE COURT: That's all right. I've seen it.

5 ATTORNEY WEIDAUER: Okay.

6 (WHEREUPON, the Zoom video was set up.)

7 THE COURT: Mr. Aylor, this is Judge Bonds. Can you hear
8 me? Mr. Aylor, this is Judge Bonds. Can you hear me, sir?

9 MR. AYLOR: Yes, sir.

10 THE COURT: Then I need you to raise your right hand, sir.

11 DAVID F. AYLOR,

12 having first been duly sworn, was examined and testified as
13 follows:

14 MR. AYLOR: I do.

15 THE COURT: All right. Your witness.

16 **DIRECT EXAMINATION**

17 BY ATTORNEY WEIDAUER:

18 Q Good afternoon, Mr. Aylor.

19 A Good afternoon.

20 Q I want to start out with -- how long have you been
21 practicing law, Mr. Aylor?

22 A Sixteen -- 15, 16 years, somewhere around there.

23 Q Okay. And how much of that has been criminal?

24 A At no point has it not been criminal. I have a private
25 practice now. I have a private firm now. We employ about 22

1 people, with 7 attorneys, and I would say 40 percent of the firm
2 is involved in the criminal practice. I also was a former
3 assistant solicitor in the 9th Circuit when I first started back
4 in '07.

5 And then beyond that, I also have been the prosecutor for
6 the city of Hanahan for right at about 15 years now where we
7 handle all their municipal charges in regards to anything that
8 comes on that level within the city.

9 And just specifically to DUIs, I have either pled, tried,
10 reviewed, or any other -- argued motions on thousands of DUI
11 cases as a prosecutor; still currently today; in fact, tomorrow
12 morning; as well as from a defense standpoint, including, you
13 know, on my defense side of my practice, felony DUIs such as the
14 one Ms. Harris was faced with.

15 Q And do you have a good memory of Ms. Harris's case?

16 A I do.

17 Q Okay. Can you tell the Court, or give, the posture of the
18 case from your viewpoint leading up to her plea?

19 A Yeah. I couldn't hear all of the different things that
20 Ms. Harris was saying, but I would say somewhere in the range
21 of -- and I feel for Ms. Harris and I feel for their family, but,
22 I mean, to be realistic, somewhere in the range of 75 percent of
23 the information that she claimed was inaccurate or just
24 completely incorrect.

25 She hired me with, I believe at the time it was, her

1 ex-husband. He recently had lost his license as a doctor -- I
2 was not involved in anything to do with that -- regarding
3 something to do with prescription schemes or something, I'm not
4 sure what. So I think they were in a pretty stressful point in
5 their life.

6 She essentially said that either she didn't think she had
7 had that much to drink that night, or that afternoon, rather,
8 fairly early in the evening when the wreck occurred, as I recall;
9 and that, you know, obviously, unfortunately, there's a tragedy
10 that occurred and someone passed; and that, you know, essentially
11 she needed representation and asked if I had handled these cases
12 before, which I told her I had. I'm not sure how she was
13 referred to me, probably by word of mouth.

14 And then I signed her up. I don't recall what I charged her
15 or how much she paid, or any of that information, though.

16 Q Okay. And do you remember when she hired you on? What was
17 the representation that you gave to her? Was it that case that
18 you foresaw going to trial? Was this a case that you believed
19 would be a guilty plea? Did you have to fare out more
20 information?

21 Can you go ahead and explain to the Court what was kind of
22 the game plan for Ms. Harris's case.

23 A Sure. Well, any decent criminal lawyer's plan is to never
24 go to trial unless they have to, because if you're going to trial
25 you're putting your client at risk of so many different things,

1 particularly, of course, incarceration.

2 But when I take cases on, I always tell them that there is a
3 potential for trial, but there's a high percentage of cases that
4 end up becoming pleas, but obviously, in the early stages of
5 Ms. Harris's case, or anyone else's case, I wouldn't be able to
6 determine what direction we were going to go until after we had
7 reviewed the discovery and looked at our different legal options.

8 Q And after review of that discovery, what did you believe the
9 different legal options were?

10 A Oh, man, they had us. They had us on the, you know,
11 breath -- they also, one thing -- and I think Ms. Harris doesn't
12 recall this, I believe it was meth. There may have been another
13 illegal drug. There was also illegal drugs in her system, so
14 that alone would have probably, particularly in Dorchester
15 County, been enough to probably convict her of the felony DUI
16 death, much less the alcohol that she somewhat admitted on the
17 scene to drinking. And then, of course, with me she admitted she
18 had several, if I recall correctly now -- this was a while
19 back -- but several glasses of wine, which I'm not -- but it was
20 either meth, or it might have been some sort of, like, Xanax type
21 of pill or something. Something that she was not prescribed and
22 something that would be considered an illegal substance was also
23 in her bloodstream. And so we had an uphill battle once I got
24 all that information.

25 Q And did you review discovery with Ms. Harris at any point in

1 time?

2 A Yeah. I thought it was interesting. Some of the things she
3 had said earlier couldn't be more inaccurate. She contacted the
4 office a tremendous amount of time. At the time when my office
5 probably had a staff of about 13 people, her case was one that--
6 everyone was familiar with due to the amount of time her or her,
7 I don't know what he was at the time, husband or ex-husband -- it
8 was kind of an odd situation, at least for me. I didn't get into
9 the personal side of it -- but he also would constantly contact
10 me via text message with various legal things that I assume he
11 Googled, or I'm not sure where he got it from, different stuff
12 like that. But we met with them over and over again.

13 We had one thing, and that was the way that we were going to
14 fight the case, was the fact that the video did not have audio at
15 the time. If it did not have audio -- and when I say video, I
16 mean the dashcam video, I believe this was before they made tem
17 all starting wearing bodycam, if I remember correctly. Either
18 way, there was no audio on any of things we received, which would
19 have been enough reason to dismiss the case. That's why we went
20 forward with the motion to dismiss.

21 And then, as luck would have it, as unfortunately I've seen
22 in a few other cases that I've been involved in, they actually
23 did produce the video with the full audio, at which point that
24 motion was, of course, going to be denied because it was moot.

25 Q And Mr. Thomas has alleged that you shouldn't have argued

1 say, the best evidence rule. Did you believe that you had an
2 argument there with the VHS? Or, what was the argument that you
3 thought was best to present to the Court?

4 A I'm not sure. I'm not the type of lawyer to try to, you
5 know, perceive what some other attorney would do or what they
6 should have done. I don't play armchair quarterback. All I know
7 is, at the time VHS tapes were very commonfolk to use as far as
8 the cases, and a lot of police agencies were still using just the
9 VHS for, you know, before digital era, and even DVDs and things
10 like that.

11 We put up the argument, but our argument really had no basis
12 once they gave us the video that was a complete video, in its
13 entirety, with the audio. So no offense to Mr. Thomas, but that
14 argument makes no sense.

15 Q So after the -- and this is the February 13th hearing that
16 I'm talking about, and that was the hearing on the Miranda issue.
17 After that hearing, did you have the opportunity to have any more
18 meetings with Ms. Harris?

19 A Oh, yes. We met at the courthouse. We talked several times
20 after that. I couldn't hear everything she was saying, but I
21 think I heard her say we only met three times. That's ludicrous.
22 We met -- I can't even remember how many times we met, but
23 probably out of my top -- I had more than close to 20,000 --
24 clients, I probably met with her more than I had with any other
25 client, and it was because she was a person who was not coming

1 from a criminal background and was obviously facing an extremely
2 serious charge. She was a family person, and had a lot to lose,
3 and a lot of things really working against her within the case.

4 Q Ms. Harris has also testified and alleged that this
5 affidavit of Tammy Harris that was signed on March 13th, 2017,
6 that was just pushed in front of her; it was not reviewed with
7 her; she did not have her glasses; could not read it.

8 Can you explain the circumstances surrounding that affidavit
9 and how ---

10 A Are you referring to the -- are you referring to the
11 affidavit that's an affidavit from my office, an internal
12 affidavit?

13 Q A notary signs this. It was the day before the plea.

14 A But it's not a court record; correct?

15 Q No, it's not. It's not part of the court record.

16 A Okay. So what that is, is a plea acknowledgment form. I
17 actually created those years before I worked with Ms. Harris, and
18 then ultimately did a South Carolina Bar video and article on
19 plea acknowledgment and why those forms are so important and what
20 they're for and why you need them. And this is a perfect example
21 of one.

22 And every single client I have, before they plead to
23 anything, gets a copy of what you're seeing specific to their
24 name and their charges and what the potential penalties are. I
25 walk them through the entire thing, and then, at that point, they

1 determine whether or not they want sign it, which means if they
2 don't, they're definitely not going to be signing a plea form.

3 I won't move forward with the plea on behalf of my client
4 unless they are willing to sign that form to, you know, show that
5 they understand everything and have been explained everything.
6 And that 100 percent happened with Ms. Harris.

7 And beyond that, second, from my own personal records which
8 you're referring to, if you go through the colloquy of questions
9 in the transcript -- and, like I said, I could only hear parts of
10 her testimony, but -- Judge Goodstein probably covered and
11 triple-layered what I had put in that written document.

12 So, no, no one pushed her to sign it. No one threatened her
13 to sign it. There was no issues in relation to contacts or
14 glasses or anything else like that. That's all completely
15 inaccurate.

16 Q So you would have verbally explained what she was signing,
17 to her, is what you're testifying?

18 A Absolutely, every single time.

19 Q Let's go back to the numerous amount of meetings that you
20 say that you had with Ms. Harris. During those meetings would
21 you have had, or would you have, discussed elements of the charge
22 and what the state was required to prove?

23 A Absolutely. I mean, her not being someone that had had
24 much, if any -- I don't recall as to her record, but maybe she
25 had done PTI before, I may be wrong about that, so I don't want

1 to put that on the record if it wasn't confirmed but -- she
2 didn't have a whole lot of experience in criminal law, and I
3 wanted to make sure she understood what she was facing, why she
4 was facing it, and what we had to do in order to defend her, and
5 what our options were, and what was realistic and what wasn't.

6 And until that video showed up, you know, we had a good
7 argument to get it kicked based on the audio, because you have to
8 have Miranda clearly recorded on audio and they didn't have that.
9 But ultimately they did.

10 I don't believe that was a sneaky or trick move by the
11 solicitor's office. Just like anything else, when you have
12 thousands upon thousands of cases, they sometimes leave out a
13 video or a disk, or what have you, and that was what happened in
14 that situation.

15 Q Ms. Harris had also testified that she believes that the
16 accident reconstruction video that she requested you get for her
17 would have dissolved her of this and she would have possibly been
18 found not guilty should she have proceeded to trial.

19 Can you expound on the circumstances surrounding that
20 accident reconstruction video for the Court.

21 A First of all, that's not even a legal argument, so it
22 doesn't make any sense, but there was no video made. I don't
23 recall. I couldn't hear what she said, if she said she paid for
24 it or I paid for it. I know I got it done.

25 I have an expert that I've used who's done accident

1 reconstruction, both as a police officer for about 33 years and
2 then in private for about 10 years thereafter. On any case like
3 this, we bring them in because that would be the issue in regards
4 to whether or not she's DUI and trying to separate that from was
5 she at fault in the accident. And we did use Dr. Kimball
6 (phonetic sp) on this, and he came back and said after his
7 investigation was done it was completely shown and proven that it
8 was, in fact, her fault. She swerved into the other lane,
9 probably based upon the drugs and the alcohol in her system, and
10 her reactionary period being lower than it should have been, and
11 that we had no argument whatsoever.

12 So I did not get that formally in writing. There was never
13 a video like we were going to put together -- I don't know where
14 that even started -- simply because at that point when I start
15 producing items for trial and things like that, then I do have a
16 duty to turn it over, in regards to Brady, to the prosecution,
17 and I'm turning over a report that says my client was at fault in
18 the accident.

19 Q And so ---

20 A So that's just a really silly argument. But, look, if I was
21 in prison, I would probably have the same one.

22 Q So your reasoning for not getting a written report was
23 because it worked against you; it was bad for the defense
24 overall?

25 A Yes. The same reason you wouldn't hand over to the

1 prosecutor a polygraph you got of your client done that says that
2 they were lying.

3 Q Were there any other defenses that you investigated besides
4 the Miranda and besides the MAIT team investigative report?

5 A Oh, yeah. I mean, we walked through the whole case from
6 every step of it, just like we have. You know. Whether it's --
7 at the end of the day, a DUI, they're all the same. The
8 difference between someone getting A DUI and getting it pled down
9 to a lesser charge or just paying a fine and someone going to
10 prison, is unfortunately, the results of the DUI, and in this
11 situation obviously there were a tragedy with the death of the
12 individual in the vehicle.

13 But you analyze it from A to Z, when I'm prosecuting or
14 defending, every single step to make sure what was done right or
15 make sure that you know what all was done right or done wrong,
16 and then also what documents were provided and should have been
17 provided.

18 I mean, it's not that much of a calculated process. At the
19 end of the day, you're fighting the DUI; you're not fighting the
20 death part. The death part there is, and it's not going to
21 change. You're simply, you know, looking at trying to attack the
22 DUI.

23 Q Okay. Let's jump back to some of the discussions you had
24 with her. Did you believe that Ms. Harris ever was confused or
25 did not understand something you were saying during your

1 meetings?

2 A Never. And she had constant contact with me. Like I said,
3 they had my personal cellphone number that my, at the time,
4 seven-year-old son would use to reach me via text or call, so
5 that was never any question whatsoever.

6 She's also an educated woman. She knew exactly what was
7 going on, and was very worried, understandably, the entire time.
8 So it was the type of client that, you know, had not been,
9 quote-unquote, through the system as we've all seen before that
10 maybe take a little less, more laid-back approach. She was very
11 concerned, as she should have been.

12 Q So, in your opinion, you believe that she was competent and
13 knowingly entered the plea?

14 A I 100 percent never saw any kind of mental defect or any
15 issues, or never saw her under the influence of anything, nor do
16 I believe anyone in the court, specifically, of course, the judge
17 the day of the plea when it occurred. But everything was crystal
18 clear.

19 I provided her husband with copies of the file afterwards
20 for all these different remedies they tried to look at and do.
21 And again, to each his own, and I understand that process, but
22 the bottom line is, this case couldn't have been handled any
23 better than it was. And the unfortunate part is, when you've got
24 a dead body, somebody's going to end up having to answer for it.

25 Q Let's jump to plea negotiations. Can you explain if you

1 entered any plea negotiations on behalf of Ms. Harris?

2 A They refused to offer any plea negotiations. I think there
3 was some conversation off the record with the prosecutor that
4 they would offer, you know, something in the range of 17 to 20
5 years, but they knew how strong a case they had. They had drugs
6 and alcohol in the case.

7 And for whatever it's worth, for the record -- I don't know
8 if this has been read out, I actually got the prosecutor not to
9 mention the drugs that were in her system when they're reciting
10 the facts, so I was hoping that would help some in regards to our
11 case and what sentence she got. But they really weren't
12 interested. They just wanted to leave it.

13 You know, a lot of times, particularly in the political
14 scenario of things like DUIs, it's much easier for a solicitor's
15 office, or a assistant solicitor, to be able to put it on the
16 Judge and then say he or she decided the sentence, not me, so
17 that they don't have any flak coming towards them from the family
18 or the victim or the newspaper, or that sort of thing. This is
19 just another one of those common scenarios.

20 Q And you would have had discussions with her regarding any
21 plea negotiations that went on in those communications you had
22 with the solicitor?

23 A Or lack thereof. Exactly. I mean, they had a good case,
24 and when you've got a good case you're not going to push them
25 very hard. You've got a good case and you've got a widow, you're

1 not a good spot.

2 Q If applicant would have indicated that she wanted to proceed
3 to trial, do you believe you would have been ready?

4 A To lose in five minutes when the jury went back? Sure.

5 Q But you would have been ready to defend her to the fullest
6 should she have insisted on proceeding to trial?

7 A First of all, she never once discussed wanting to go to
8 trial. Second of all, yes, had we wanted to go to trial and gone
9 to trial, I would have been completely prepared and was prepared.

10 I had actually prosecuted or tried, on the defense side,
11 probably over 100 DUI cases. That's probably a low number. And
12 I only say that because I deal with them every single week as a
13 prosecutor, and deal with hundreds of them a year as a defense
14 attorney. So we would have been completely prepared.

15 But what we would have been prepared for was to lose the
16 trial, and I would have, 100 percent, as I did then, and as I
17 would now, have explained that, in my opinion, and given my
18 reasoning for it, that this was not the type of case you would
19 want to go to trial on, and we would be in a much-worse position
20 should we go to trial as opposed to taking responsibility for it
21 and moving forward with a plea.

22 Q But you would have left that decision up to Ms. Harris; is
23 that correct?

24 A As I tell every single one of clients, they are the boss of
25 me. Whatever they decide is what I'll do. They hire me for my

1 experience and my knowledge. They can choose to accept it or
2 reject it. And whatever they want me to do, whether it's go to
3 trial, fire me, or go with what I suggest, I'll do exactly what
4 they want.

5 Lawyers are no different than plumbers or landscapers. If
6 you don't like our services, you can cut us off and bring on
7 another.

8 Q And Ms. Harris testified to something similar earlier. Do
9 you remember having a discussion with her to that effect, that
10 she could fire you if she was not satisfied?

11 A I mean, it's within the retainer and it's a part of the
12 contract. And, yes. I mean, every -- you know, if you're a
13 defense attorney that's ever been around for a while, there's
14 going to be a time or two where you and the client don't get
15 along or disagree, and that sort of thing happens, not -- I
16 wouldn't say commonplace, but it's not completely unique, either.
17 And we definitely discussed that, but there was never really
18 argument.

19 All these different things that I kind of hear or pick up
20 from the phone that she was saying were all -- I mean, we didn't
21 have discussions or arguments about her wanting to go trial and
22 me not wanting to go to trial. I mean, this trial would have
23 been done in two-thirds of a trial. This hearing is probably
24 going to last longer than the trial would have, because the case
25 was pretty open and shut. So we never had any of those

1 discussions.

2 But, yes, she was aware of the fact that she could choose
3 any other attorney she wanted. There's plenty of other options
4 around the tri-county area.

5 Q Let's move on to her appellate rights. Did you discuss with
6 her that she could file an appeal should she wish to?

7 A I did, as well as the judge did.

8 Q Okay. And do you recall, as Ms. Harris testified, telling
9 her husband that she did not qualify for an appeal?

10 A Obviously that never -- that doesn't exist. It makes no
11 logical sense. There's no such thing such as qualifying, so, you
12 know, of course I never said that; of course I never told her
13 that.

14 This is the man that's been stripped of his professional
15 licenses due to his own behavior, so I think the Court should
16 take into consideration his credibility.

17 But, no, that's totally inaccurate. And even if I said
18 that, which I definitely did not say that, it would have gone
19 exactly against what the judge said on the record in court that
20 day.

21 Q And you do not recall Ms. Harris asking specifically for an
22 appeal?

23 A She never asked for an appeal. She asked for a copy of her
24 file via her husband, which we got permission from her. He
25 shopped around, trying to find a lawyer that would file an

1 appeal/PCR. I'm not sure what number this lawyer is on the list,
2 but ultimately/obviously that's how we got here today.

3 Q Okay. Please answer any questions that Mr. Thomas has for
4 you, Mr. Aylor.

5 THE COURT: Mr. Thomas.

6 ATTORNEY THOMAS: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY ATTORNEY THOMAS:

10 Q Good morning, or afternoon, David.

11 A Good afternoon, sir.

12 Q Yes, sir. Thank you for being here. I just wanted to ask
13 you a couple of questions. So you don't remember having any
14 conversation with her husband in regards to wanting to appeal the
15 sentence?

16 A Only conversations that I had with her husband was anything
17 that he asked for related to the case. Also, he was not my
18 client. They were actually divorced, I believe, at the time, so
19 I didn't really consider him to be in the same position that she
20 was in, but at no time did they ask for me to do any work on an
21 appeal.

22 I think the only thing that I did, from my memory, is
23 provide this file to probably a handful of different lawyers that
24 requested it when they were shopping around. I don't remember
25 how many or who it was, but that's all that occurred.

1 Q Okay.

2 A You know, appealing a plea -- appealing a plea, after the
3 amount of information that was covered by Judge Goodstein, would
4 have been frivolous, but I would have been happy to do whatever I
5 could. I would not have taken the case on myself. I don't
6 handle appeals, but I would have been happy to refer her husband
7 and/or her to someone else, but that never happened.

8 Q So she was pretty demanding, and this was pretty much of a
9 hands-on case for you?

10 A To put it lightly.

11 Q Okay. So you did spend a lot of time with her. And after
12 the sentence, did you have an opportunity to go back and speak
13 with her?

14 A What do you mean, after the sentence?

15 Q After the plea. A lot of times, as a defense lawyer, after
16 the plea we step back; we talk to our client; we may kind of help
17 him to understand what happened; help him to understand what the
18 sentence is.

19 A That's irrelevant. That's irrelevant to the representation.
20 That has nothing to do with what we're here for today. But
21 regardless of that ---

22 THE COURT: Mr. Aylor.

23 THE WITNESS: --- at that point ---

24 THE COURT: Mr. Aylor.

25 THE WITNESS: --- we weren't able to speak anymore ---

1 THE COURT: Mr. Aylor.

2 THE WITNESS: --- and then I left ---

3 THE COURT: Mr. Aylor.

4 THE WITNESS: --- (simultaneous talking) with her and her
5 family ---

6 THE COURT: Somebody needs to stop the video.

7 THE WITNESS: --- (simultaneously speaking) conversation
8 with her family.

9 THE COURT: Mr. Aylor, I'm the one who decides what's
10 relevant, sir; not you. Okay.

11 THE WITNESS: That was just my opinion, Your Honor.

12 THE COURT: Sir, I don't need your opinion concerning that.
13 I decide; not you. And I'm not asking for your opinion.

14 THE WITNESS: I answered the question; correct?

15 THE COURT: Mr. Aylor, you didn't answer his question.

16 Now, I want you to rephrase your question. And I want you
17 to answer the question, assuming you know the answer to it, sir.

18 THE WITNESS: Yes, sir.

19 BY ATTORNEY THOMAS:

20 Q Mr. Aylor, since she was very hands-on, did you go back and
21 talk to her after the plea?

22 A After the plea, yes, absolutely, I did. And then she was
23 sentenced later.

24 Q Okay. But how about after the -- and I apologize -- after
25 the sentencing?

1 A After the sentencing, we spoke briefly there, and we
2 discussed how her -- for whatever reason, at that point in time
3 and prior to leading up to that, her husband was the one that was
4 communicating, between the two of them, to my office.

5 I don't recall ever receiving any letters or emails or phone
6 calls from any correctional facility.

7 And I would have -- I walked out with him, as well as their
8 other family members, as well as the victims' family members. In
9 fact, they all hugged in the parking lot, and we spoke at length
10 then and spoke several times thereafter.

11 As far as Ms. Harris, no, I did not go to Columbia and see
12 her. That is not something that's a part of my practice. I
13 don't keep in touch with my clients unless there's reason for
14 that. It's a professional relationship, not a personal
15 relationship.

16 Q I understand that. I understand that. And I've been
17 practicing law for a long time. It's not uncommon for a defense
18 attorney, after a plea in which someone is even put on probation,
19 or is sentenced to time, to step back and speak with that client.
20 Do you do -- is that part of your practice?

21 A I don't know the answer to that. I don't have a certain
22 color of tie I wear every time to a plea, either. I mean, I
23 don't know the answer to that. Every case is different.

24 Q All right. Well, let me ask you this. Let me move on from
25 that. Let's talk about the motion that you filed to dismiss.

1 And you filed that motion based upon the fact that the audio was
2 missing from the video in regards to the Miranda warnings; is
3 that correct?

4 A To my knowledge -- I don't have it in front of me, but that
5 sounds accurate. Yes.

6 Q All right. You filed that motion on the fact that this
7 information -- this information was missing; is that correct?

8 A We never received it. I don't know if missing is the
9 correct word, but we hadn't received it through discovery.

10 Q Well, you had to have received something because you filed a
11 motion. So in other words, you did ---

12 A We received a tremendous amount of discovery related to the
13 case. We had not received any discovery that had the audio on
14 it, and that's why I filed the motion to dismiss, and that's why
15 we went forward with that.

16 Q Okay. So in your motion to dismiss you didn't have a
17 complete recording of the giving of the Miranda rights, or
18 the ---

19 A We didn't have any. We had no audio.

20 Q So you did receive a CD? You received something?

21 A Something, yes.

22 Q Because you had to file a motion based on that CD.

23 A I had a tremendous amount of discovery. They just didn't
24 have one that had the audio on it.

25 Q Okay.

1 A And we would have, in my opinion, won that hearing but not
2 for the fact that they ended up producing one.

3 Q What I'm curious about ---

4 ATTORNEY THOMAS: if I can beg the Court's indulgence, Your
5 Honor.

6 THE COURT: Yes, sir.

7 BY ATTORNEY THOMAS:

8 Q What I'm curious about, Mr. Aylor, is that were you not
9 concerned that this video shows up, the complete video shows up,
10 at the motion hearing?

11 A I went to the back with the Judge. We reviewed it. Of
12 course I was very disappointed and frustrated, because I had been
13 in contact continuously with the solicitor's office that was
14 handling this case about that and how it was a black-or-white,
15 the issue, and that if they didn't have it, they didn't have it,
16 and that wasn't going to change; hence, why we went forward with
17 the motion after giving them several times.

18 And ultimately once we were provided and reviewed it
19 completely, as well as the Judge reviewing it completely, at that
20 point in time we had to go forward with it.

21 It's not the first case that I didn't get some of the
22 discovery I was supposed to get, nor will it be the last case
23 that I didn't get some discovery, and I think that is not based
24 upon any kind of, you know, mischievous behaviors. I think it's
25 just based on typical, human mistakes.

1 Q Okay. But wouldn't it be true to say it's not that you did
2 not get discovery; you got different discovery. And I don't know
3 if you have a copy of the transcript in front of you, but ---

4 ATTORNEY THOMAS: For the Court's information, it's page 5,
5 lines 11 through 19.

6 BY ATTORNEY THOMAS:

7 Q In the motion hearing, you said, I didn't watch the DVD at
8 the hearing. I got it six minutes ago. So you received a copy
9 of the DVD six minutes prior to you making that statement to the
10 Court at the hearing?

11 A Yeah. And if I recall correctly -- and maybe it's in there,
12 I don't remember -- I have not reviewed the transcript -- we then
13 went into the back and reviewed it right there. And then, also,
14 of course, I reviewed it again several times.

15 But, yeah. I mean, the way that you're describing the
16 events, that literally we're about to go forward with the motion.
17 Oh, guess what? Trooper XYZ found it, and they handed it to me.
18 That's exactly what happened.

19 Q That is exactly what happened. As a matter of fact, on page
20 8, lines 6 through 9, the assistant solicitor said he hadn't seen
21 the tape either but he trusted the highway patrol.

22 A I didn't trust -- I didn't trust the highway patrol, and I
23 wanted to watch the video. And that's exactly what we did when
24 we went back into chambers with the judge.

25 Q Well, and I guess what kind of jumps up at me that I had

1 some concern about is that the original recording of this was
2 back when they were still using VHS. Is that correct?

3 A I don't recall what -- there's so many different agencies
4 that used a blend of both at the time. It depends on how much
5 money they had in their budget.

6 Q Okay. And do you know whether or not a copy of that VHS
7 tape was kept or available, or it was destroyed?

8 A I only have knowledge of the one that was provided to us as
9 far as the discovery in the ninth hour prior to the motion, which
10 both myself and the solicitor said on record we had not reviewed
11 and it had just been provided.

12 Had the solicitor had it under his bed for 20 months and not
13 told me, I have no idea, or the trooper left it in his garage, I
14 don't know. I don't speculate on any of that. All I know is
15 that I had never seen it, I never heard it, I never looked at it.
16 I got it that day. We reviewed it immediately. And we went
17 forth with how the case proceeded.

18 Q Let me ask you this, and this is another of my concerns.
19 Why was there a DVD copy that was missing the sound when they
20 come up with a DVD copy that has the sound? Did you ever ---

21 A You would probably need to ask the police agencies that were
22 involved with the arrest as to why that was.

23 As a prosecutor, I know I've had a tremendous amount of
24 cases where partial audio will be captured and then other parts
25 of the audio won't be captured due to malfunctions and various

1 other issues.

2 Sometimes also when they transfer, what I have seen on a
3 regular basis -- and if I had to give an educated guess in this
4 scenario -- if a VHS tape is transferred onto a DVD, in the
5 process of burning it onto the DVD sometimes that doesn't work
6 correctly. Those would be my guesses.

7 But we were not told as to what the reasoning was that they
8 had some that had no audio and then one that did, but the audio
9 that was on there, the audio that was from the scene and what was
10 in the report, and it was exactly what they needed, which was
11 going to kill my motion in that the Miranda was completely
12 videoed and recorded.

13 Q Well, let me ask you this.

14 ATTORNEY THOMAS: And again, for the Court's information, on
15 page 21, lines 21 through 23.

16 BY ATTORNEY THOMAS:

17 Q The trooper said he didn't know where the, quote-unquote,
18 clean copy was found. Was that something that you felt like you
19 should have investigated?

20 A I was turned -- I never spoke with the trooper, so I was
21 turned over the evidence by the solicitor's office. And I don't
22 ask -- I've never, in my career, I've never once had the
23 solicitor's office send me, which I guess you would be referring
24 to like an evidentiary chain of where the CDs or recordings came
25 from. Obviously, I would just review them.

1 If we were talking about actual pieces of evidence as
2 opposed to audio or video recording, obviously it's different.
3 But I've never once, nor do I know of anyone that ever has, that
4 said, Where did this video come from, which DVD player it went
5 off or was recorded, or anything like that.

6 You know, if they went and hired Disney to somehow add the
7 exact audio that they were missing which we were putting in our
8 motion to get the case dismissed and they were able to create it,
9 then I guess you could call it a failure on my part, but I find
10 that inaccurate and probably unlikely.

11 Most likely is that somebody just went back and looked
12 through all of them -- at least it's what I've seen in several
13 different cases -- and something else popped up.

14 But, no, I don't try to question the solicitor's office
15 based off the ethics of being an attorney and give the respect
16 that I provide their office that they're working with clean
17 hands.

18 Q But my concern is more so that the unique -- which I guess
19 is one way to describe it -- way that this evidence appears --
20 and this was an important issue. What did you do to investigate
21 where this information, where this new DVD came? What objections
22 did you make regarding this found evidence that just appears at a
23 hearing?

24 A There was no objections to make. They can turn in
25 discovery, supplemental discovery, at anytime, as I'm sure you're

1 aware of, so there was no objection to his make. It wasn't --
2 there was no Perry Mason moment where they brought some witness
3 in that no one knew of. This is simply, Hey, we actually do have
4 it.

5 The timeliness of it, obviously, was extremely frustrating
6 and unfortunate, but there was no objection to be made about
7 supplemental discovery.

8 Q And this is a question that came to me in looking at this,
9 and maybe you know the answer to this better than I, because I
10 did try to do some research into this concept of best evidence.
11 I mean, the best evidence in this case would have been the VHS.

12 Is there, or was there, any possibility of an objection to
13 this DVD coming in under these circumstances, with it not being
14 able to be looked at in light of what was on the original on the
15 VHS?

16 A I don't recall that that's even what happened. I don't
17 recall that it wasn't on disk the whole time. I really just
18 don't remember. But I have never, in my life, heard of -- and as
19 a prosecutor who has provided discovery on hundreds of DUIs --
20 ever had anyone try to question, I guess you're talking about,
21 the authenticity of it. It may have all been disks and we may
22 just be playing up on a theme of VHS because it was a few years
23 ago, and since then we moved into the bodycam world and
24 everything else, but I don't even remember that even being
25 something that was involved.

1 I may have gotten nine disks, and this was on the tenth disk
2 that we didn't get till that day, and there was never a VHS.

3 I don't know what those agencies were using at that time,
4 and I don't recall what process they used, but at the end of the
5 day, as far as best evidence goes, once I could obviously connect
6 what I was seeing to what I've already seen, and then the audio
7 that was coming from it had been recorded but not confirmed
8 through the audio, I knew that they had reached that Miranda
9 requirement. It was really that simple.

10 So the VHS thing may be nothing but just a horse to ride on,
11 because I don't even know if there ever was VHS. It may have all
12 been DVDs.

13 Q I may be wrong, but from my understanding of the transcript,
14 it was originally on VHS and was destroyed.

15 A A lot of times we got multiple ones. Sometimes they change
16 them over. When you work with small police departments, these
17 are commonplace where they're trying to move different technology
18 and they stumble through it from time to time.

19 So again, the timing of it was very unfortunate and very
20 frustrating for all of us, particularly for Ms. Harris, but the
21 reality is it is what it is, and there's no point they're not
22 allowed to supplement their discovery, and they did.

23 And had she wanted to still go forward with the trial at
24 that point, I would have been more than happy to take it to trial
25 where they would have put her blood-alcohol level and the drugs

1 that were found in her system into the record, and we would have,
2 in my opinion, a 99.9 percent chance of losing that trial. And
3 after putting the family of the victim through the trial and
4 taking the Court's time, Ms. Harris would be in a much worse
5 position with the scope of up to 30 years that she was facing on
6 the charge.

7 Q Just one or two more questions, and I'll move on. I'm not
8 going to belabor this point. But, you testified that the defense
9 that you had in this case was the lack of audio in the Miranda
10 rights. Is that correct?

11 A That was part of it. I don't recall what all my defense
12 was. This is a case that's obviously several years old. I've
13 handled thousands of cases since. That was at least a part of
14 it.

15 Q Okay. So if that was -- and I think you said at one point
16 in time -- and I'm sorry if I'm wrong -- that was the defense.
17 If this was the defense, why didn't you make these motions at
18 this hearing to dismiss? Why didn't you challenge that
19 introduction of this found DVD that shows up six minutes into
20 this thing?

21 A I guess you must have not heard me earlier when I explained
22 that I was provided the documents, or the evidence, from the
23 solicitor's office, and they had not seen it; we had not seen it.
24 We went back into chambers. We all watched it together, and I
25 reviewed and it saw it. So there was no challenging it when it

1 just turned over to me in discovery. I'm not sure if we're
2 talking like -- if there's some evidentiary list that they have
3 to have. And if there is, then I've been doing it the wrong way
4 for a long time, because I never heard of that with any video.
5 You know, we're not talking about chain of evidence with a short
6 DNA or anything else. We're talking about a video. They
7 provided it without court proceedings going forward, prior to
8 court starting, and then court was stopped and we reviewed the
9 video, and then court moved forward.

10 So there was no motion or challenge to make beyond the fact
11 that the judge saw it and basically was already familiar with
12 what our motion was and what specifically it was pertaining to,
13 and that what was in front of her would make my argument moot,
14 which it did.

15 Q Well, she couldn't have seen it because the trooper didn't
16 show up with it until after the motion hearing had started. So
17 she couldn't have seen it prior to the motion hearing?

18 A Well, the motion went forward. I can't recall the exact
19 steps of it, but all I know is that there is no option of
20 challenging the discovery. I guess you would be bringing it
21 against the solicitor based off some sort of best evidence, or
22 evidentiary, chain issue that doesn't exist.

23 They can supplement whatever they want. If that may stop
24 the course of the case for the time being, it would wouldn't
25 change the utility result. The video would be in. It would be

1 accepted, corroborated by the trooper, as I believe it was, and
2 at that point our case would have been extremely difficult due to
3 the blood alcohol and drugs found in Ms. Harris's system.

4 Q Are you positive that there were drugs found?

5 A I'm 100 percent positive, because I did a really good job of
6 getting that prosecutor to leave that part out during the
7 sentencing. I think it was meth, and I got the prosecutor -- it
8 might have been pills, but I got the prosecutor to leave that out
9 so it hopefully would not damage or increase the potential
10 sentencing as, you know, another factor that the judge was
11 considering when sentencing her.

12 Q Okay. I ---

13 A And the reason why I know that, is because I went through
14 this case, probably spent over, you know, hours upon hours, and I
15 had all the blood results, and I had all the tests, and I had
16 every single piece of the evidence. And she also was aware of
17 every single thing, what she had done, what they had and know she
18 had done, what she done that day, what she blew. All of these
19 things that she said earlier were completely just fabricated.

20 And, again, I mean no disrespect to her, but that's just the
21 bottom-line truth of what actually happened.

22 Q I've just got a couple more questions. We talked about, or
23 you talked about, or testified about, the accident -- the person
24 that you hired for the accident reconstruction. And, who was
25 that?

1 A Richard Kimball.

2 Q Richard Kimball. What was the purpose of doing that?

3 A To find out if she was, in fact, guilty, or at fault, or,
4 rather, I should I say, of the car accident solely separate from
5 anything related to the driving under the influence. That was
6 the purpose.

7 Q Okay. And had that been favorable to her, how would you
8 have used that?

9 A Well, as I'm sure you know, if she was not at fault in the
10 wreck and was only at fault for a DUI, then the result and the
11 charges that she would be facing could be extremely different.
12 You'd go from 0 to 30 years to 0 to 30 days if she was not found
13 at fault in the wreck.

14 Q All right. I think I just have one further question. So
15 you did not talk to her about filing an appeal from this plea?

16 A She never contacted me about an appeal, only her husband
17 did, and I talked with him about it. And then the judge went
18 over, of course, the standard, which is in the transcript you
19 have in front of you. And that's the only thing I recall related
20 to the appeal.

21 Q Okay.

22 A And for the record, as her attorney that handled the case
23 from start to finish -- well, until now, I guess -- I didn't see
24 any appealable issues whatsoever.

25 Q Okay. And is it your opinion that there's really nothing in

1 that motion to dismiss hearing that would have been appealable?

2 A No, not once they produced the evidence that I was asking
3 for and that they didn't have.

4 Q Okay. All right.

5 ATTORNEY THOMAS: Can I beg the Court's indulgence just for
6 a second, Your Honor?

7 THE COURT: Yes, sir.

8 ATTORNEY THOMAS: Your Honor, if it please the Court. I
9 don't have any further questions.

10 THE COURT: All right. Any redirect?

11 ATTORNEY WEIDAUER: No.

12 THE COURT: All right. Mr. Aylor, thank you very much, sir.
13 All right. Attorney General, you can call your next witness.

14 ATTORNEY WEIDAUER: The state rests, Your Honor.

15 THE COURT: Any statements that you want to make, sir?

16 ATTORNEY THOMAS: Your Honor, may I have just a second and
17 call my office and see if Mr. Harris has called us?

18 THE COURT: You sure can.

19 ATTORNEY THOMAS: He was advised to be here at 3:30.

20 DEPUTY SHERIFF: For the record, Your Honor, there's nobody
21 present in the hallway.

22 THE COURT: Thank you.

23 MR. AYLOR: Your Honor, may I be excused?

24 THE COURT: Oh, yes, sir. Yes, sir. Thank you so much.

25 MR. AYLOR: I can be excused?

1 THE COURT: Yes, sir.

2 MR. AYLOR: Thank you.

3 THE COURT: Yes, sir.

4 ATTORNEY THOMAS: Your Honor, if it please the Court. We
5 have heard from Mr. Harris. Basically, he is not coming, Your
6 Honor.

7 THE COURT: Okay. All right.

8 ATTORNEY THOMAS: So that would be the applicant's case.

9 THE COURT: All right. Is there anything you want to say,
10 sir?

11 ATTORNEY THOMAS: Your Honor, just very briefly.

12 THE COURT: All right.

13 CLOSING ON BEHALF OF THE APPLICANT

14 ATTORNEY THOMAS: We really do feel like that Mrs. Harris's
15 plea was not freely, voluntarily, knowingly, and intelligently
16 given. We feel like that counsel was also ineffective for
17 handling of the motion to dismiss and having at least some
18 question in regards to how this DVD just pops up at the last
19 minute.

20 And also, Ms. Harris testified, and I think Mr. Aylor also
21 testified that he spoke with Mr. Harris, and said that there was
22 no reason to appeal the case, that there was no basis for it, so
23 he would have had to discussed it with him if he had told him
24 that.

25 THE COURT: All right.

1 ATTORNEY THOMAS: Thank you, Your Honor.

2 THE COURT: Attorney General, anything?

3 CLOSING ON BEHALF OF THE STATE

4 ATTORNEY WEIDAUER: Very short and little. As counsel and
5 applicant testified to, Ms. Harris understood the charges and the
6 possible consequences of the plea. The state would assert that
7 applicant has not shown that plea counsel's representations fell
8 below the required objective standards of reasonableness.

9 And even if this Court does find that plea counsel was
10 ineffective, the state would assert that applicant has not shown
11 that but for those errors she would not have pled guilty but
12 would have insisted on going to trial, especially because
13 Ms. Harris, herself, testified she pleaded guilty because of her
14 belief and that the Court would show leniency as a result of her
15 plea.

16 Additionally, as Mr. Aylor testified regarding the appeal in
17 a guilty plea -- or, following a guilty plea, rather -- plea
18 counsel is not required to discuss an appeal with applicant
19 barring extraordinary circumstances. And here, through his
20 testimony, he did not believe any extraordinary circumstances
21 existed, nor did Ms. Harris, herself, as he testified, ask
22 specifically that he appeal this matter.

23 Therefore, the state would assert that applicant has not
24 presented any valid reason why she should be allowed to depart
25 from the truth of her statements rendered at the guilty plea

1 hearing. Thank you, Your Honor.

2 THE COURT: All right. Ms. Harris, I certainly understand
3 the situation that you found yourself in at the plea, but,
4 ma'am -- and when you say that you were scared, I believe you.
5 And when you say that you -- I took some pretty detailed notes,
6 but one of the things you testified to was that basically he
7 explained to you that if you didn't plea you were very likely, at
8 trial, if you were convicted, get 10 more years. And so I
9 believe, based on the testimony I've heard today, that what you
10 ended up doing is you ended up calculating and deciding what was
11 going to be in your best interest. I think you knew exactly what
12 you were doing, and I think you would have said anything that day
13 and, quite frankly, I think you'll say anything today if it's
14 going to benefit you.

15 The things you said in the trial -- in the transcript when
16 you were addressing the Court, basically you're saying those were
17 all lies, or a vast majority of them are, and you had to do that
18 because you just wanted a better sentence. Things just don't
19 make sense.

20 You trusted him. You signed something without your glasses
21 right before the plea because you trusted your lawyer, but this
22 is the same man that you didn't trust at all because he was
23 forcing you to plea. You were shocked that he was going to
24 plea -- that you were going to plea; that he was saying you had
25 to plea, but you trusted him, and so you signed something. You

1 can't trust somebody and not trust somebody.

2 I find your testimony not believable. I disagree. I
3 believe that trial counsel was effective. And to that extent, as
4 it relates to the allegations contained in the complaint, trial
5 counsel was ineffective for his failure to adequately advise the
6 applicant regarding her plea, creating a plea that was not was
7 freely and voluntarily given, I find that certainly there's
8 almost no evidence that has been produced to indicate that
9 Mr. Aylor was ineffective. In fact, at one time she said she met
10 nine times with him, and other times three times. I think she
11 knew exactly what was going on, and I believe that he knew and
12 that he provided her effective counsel.

13 As it relates to the accident reconstructionist, I know an
14 issue has come up concerning it, and if he had hired this
15 gentleman, you certainly thought that he would have paid him and
16 would have demanded that you pay that money back. I think that
17 has a ring of truth but, at the same time, I also believe that
18 certainly experts are often consulted, perhaps even informally,
19 and information is relayed to them that they then digest and will
20 give you their opinion.

21 And whether this opinion was in some lengthy phone
22 conversation or whether it was some type of quick down-and-dirty
23 review, it certainly appears that the expert was of the opinion,
24 or would have been of the opinion, that you contributed to the
25 accident, and I think it's completely reasonable that he didn't

1 want to get that in writing.

2 As it relates to trial counsel was ineffective for his
3 failure to adequately communicate with the applicant during the
4 course of representation, I think that the evidence today shows
5 that I think that he did communicate with you and communicated
6 with you adequately. I don't think that you've proven your case
7 as it relates to this by a preponderance of the evidence.

8 Trial counsel was ineffective for his failure to adequately
9 investigate the facts of the applicant's case, I don't find that
10 to be credible. I think that he was effective. In fact, while
11 his recollection of the facts in this case certainly were not
12 perfect, I would agree with that, some of the things, Mr. Thomas,
13 that you were poking at as it relates to his recollection of the
14 facts, I do believe, from my observation of him, that there
15 wasn't a note that he looked at, and this being a case that is
16 four or five years old, or more, I thought he had a pretty good
17 command of the facts of this case given the nature of his
18 practice, or at least what he represents to be the nature of his
19 practice. So to that extent, I think he did adequately
20 investigate and look into the facts of this matter.

21 As it relates to the direct appeal, my recollection from
22 hearing the facts today basically was that Mr. Aylor says that
23 she did not testify that she did not tell him she wanted to
24 appeal. I know for a fact she said her husband, or ex-husband,
25 it's her understanding that he requested that there be an appeal.

1 Again, I think I look to the greater weight of the evidence here.
2 There was no additional testimony to corroborate that fact.
3 Mr. Aylor doesn't recall that being the case, and that neither
4 one requested that he do that, and that records were produced for
5 the sole purpose of allowing someone else to go and file an
6 appeal and/or a PCR.

7 Now, as it relates to the VHS, my recollection is that, in
8 fact, what I read is one of the places that Mr. Aylor may have
9 made a mistake, because, clearly, I think the record reflects,
10 Mr. Thomas, and you bring that up and properly so, the record
11 reflects that there was a VHS tape, the big tapes, that's the
12 kind my kids, when growing up -- believe me, I'm very familiar
13 with those things. You put it in there and pray to dear Lord
14 that they're just going to watch that thing while you prepare
15 dinner, or bathe one and let the other one watch Barney, or
16 whatever it is. Clearly there was a copy that was made. It
17 certainly appears to me that he did withdraw, because I don't see
18 where the judge -- I don't see where the judge made a ruling on
19 his motion, and he withdrew, to me it looks to me like he
20 withdrew, that motion.

21 You know, I think he basically indicated that he withdrew
22 that motion because, amongst other things, he didn't believe that
23 he was going to be successful in the merits of that motion when
24 the DVD was provided and two troopers testified at the hearing
25 that it was, in their opinions, for lack of better words, it was

1 accurate, it reflected what transpired, and there was a trooper
2 available to testify that, in fact, that's what happened.

3 I think under the circumstances, that with that information
4 having been provided, with the nature and circumstances
5 surrounding this case, I think Ms. Aylor exercised his
6 professional judgment. And I'm not saying I agree with his
7 professional judgment, but I think that his professional
8 judgment, as it relates to that, was reasonable, and that is to
9 withdraw this matter, because more than likely, or more likely
10 than not, I think that the motion would have been denied.

11 And what happens is, also, I think that there is strategy
12 that goes into this, what I would call, long game, because this
13 is more than likely going to be the judge of this case that she
14 pled in front of in just a matter of days. Turns out now, three
15 weeks. He did ask for it.

16 He did ask for it, as I read it, a continuance, and he was
17 given a continuance for three weeks which, again, I think was
18 part of his strategy because, again -- in fact, I think he asked
19 for the continuance because part of the trial preparation was all
20 built around -- and I'm reading this from the record, and I think
21 that his testimony today corroborates it -- part of his entire
22 strategy was attacking the issues and bringing up whether this
23 motion was approved, was accepted, or rejected by the judge. But
24 preparing, I think part of his preparation was for and dealing
25 with the missing video, or the missing audio, and so that's whey

1 he asked for a continuance. And I think he got a continuance for
2 three weeks. I think that was sufficient trial strategy.

3 I'm not aware of any other issues outstanding or other
4 grounds for the application that were listed. Are there any
5 other grounds for the application that were listed that I haven't
6 addressed?

7 ATTORNEY THOMAS: I think that covers everything, Your
8 Honor.

9 THE COURT: All right. The state, have I covered all the
10 grounds?

11 ATTORNEY WEIDAUER: Mr. Aylor had said something -- excuse
12 me. Mr. Thomas had said something about plea offers in the
13 beginning. And I'm not really sure ---

14 THE COURT: Well, I think that anything concerning plea
15 offers, basically, I think that kind of all falls into -- to me,
16 that's just going to all fall into adequately informing,
17 representing her, keeping her informed as to what's going on in
18 the case. And so to that extent, I dismiss that.

19 And, in fact, I think what he did is he said they weren't
20 going to offer a plea, and that's not unusual. It's not unusual
21 in a high-profile case, in a case that involves a felony DUI,
22 that, if they feel strongly about their case, that they're not
23 going to offer a plea. It sounds to me like, at best, there was
24 an off-the-cuff discussion concerning a recommendation of, I
25 think you said, 17 or 19 years. I just think that -- I think

1 that, particularly in this case, given the fact that the
2 applicant must show that a reasonable probability that but for
3 counsel's errors she would not have pled guilty and would have
4 insisted on a jury trial. I just don't believe that's the case.
5 I don't believe there's -- I don't believe that there's errors
6 here -- if that was even an error, I just don't believe that's
7 the case, and I don't believe she's shown that by a preponderance
8 of the evidence.

9 ORDER OF THE COURT

10 THE COURT: And so for all those reasons, ma'am, I'm going
11 to respectfully deny your application. If you'll provide me an
12 order.

13 ATTORNEY WEIDAUER: Yes, Your Honor.

14 THE COURT: And give him a copy to review.

15 ATTORNEY WEIDAUER: Uh-huh (yes).

16 THE COURT: And I'll look at it. I may change a few things
17 on it, but we'll try to get that back to y'all as soon as I get
18 that order. Okay.

19 ATTORNEY THOMAS: Thank you, Your Honor.

20 THE COURT: All right. That will be all.

21 ATTORNEY THOMAS: Thank you.

22 ATTORNEY WEIDAUER: Thank you, Your Honor.

23 THE COURT: Anything else today?

24 ATTORNEY WEIDAUER: Is there a timeline for the proposed
25 order?

1 THE COURT: Can you get it to me within 30 days?

2 ATTORNEY WEIDAUER: Absolutely.

3 THE COURT: I'll have a form order that I prepare, and will
4 send each of you all that. I'll get that to you all today or
5 tomorrow. Well, it will be tomorrow. Okay. All right. Thank
6 you.

7 (End of Transcript of Record)

8

9 CERTIFICATE OF REPORTER

10 I, Cathy J. Provost, Official Court Reporter for the
11 Fourteenth Judicial Circuit of the State of South Carolina, do
12 hereby certify that the foregoing is a true, accurate and
13 complete Transcript of Record of the proceedings had and evidence
14 introduced in the trial/proceedings of the captioned case in the
15 Court of Common Pleas for Dorchester County, South Carolina, on
16 the 17th day of May, 2022.

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

19

20 Date: September 1, 2022

21

22 /s/ Cathy J. Provost
23 Cathy J. Provost, RMR
24 Official Circuit Reporter
25

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

WARRANT NO.: 2015A1810300377

STATE OF SOUTH CAROLINA

vs.

TAMMY HARRIS

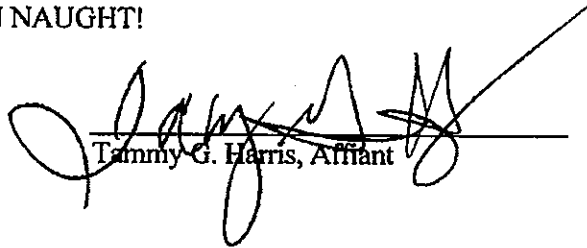
AFFIDAVIT OF
TAMMY HARRIS

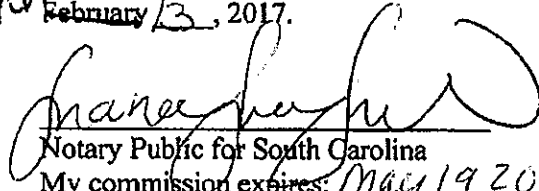
PERSONALLY APPEARED, before me, Tammy Harris, who after being duly sworn, deposes and says:

1. I am over 18 and competent to make this affidavit.
2. I am the Defendant in this criminal case.
3. I give this affidavit with the knowledge and understanding that it is given under oath and that it will be used in connection with the above-referenced matter, including that it may be filed with the Court and made part of the public record of this matter, if necessary.
4. I have personal knowledge of the facts and matters stated and described herein.
5. I understand and acknowledge that I have been charged in the County of Dorchester with Felony Driving Under the Influence with Death, which upon conviction, carries a punishment of imprisonment of no more than thirty (30) years.
6. I understand and acknowledge that if I proceed forward pursuant to my right to a public trial by jury, I have the right to the assistance of counsel throughout the proceedings, the right to call witnesses on my behalf and compel their attendance at trial by subpoena, the right to confront and cross-examine the government's witnesses, the right to testify on my own behalf, or to remain silent and have no adverse inferences drawn from my silence.
7. I understand and acknowledge that my attorneys have thoroughly explained to me all aspects of any and all defense strategies related to my case and have reviewed all evidence with me.
8. Furthermore, I understand and agree with said defense strategies and determine that my best interests are served.

9. I am aware of the legal issues and motions my attorney is putting forward. If the motions do not result favorably for my case, I accept the plea offer outlined in this affidavit.
10. My attorney has notified me that the State of South Carolina has issued a plea offer, which is as follows: to plead guilty to Felony Driving under the Influence with death which upon conviction, carries a punishment of imprisonment of no more than thirty (30) years.
11. I understand and acknowledge that based on my review of the evidence in my case, I wish to enter a plea of guilty to the above referenced charge and therefore give up any right I have to a trial by jury.
12. I further understand and acknowledge that by entering a guilty plea to the above-referenced charges, the judge can impose a sentence consistent with the statutory punishment.
13. Based on the foregoing information and review of the evidence, I wish to accept the State's offer and move forward with a guilty plea to resolve my case.
14. I am confident and satisfied that all of my questions and concerns regarding this matter have been addressed, and I sign this affidavit free from duress and coercion, and no one has offered or promised me anything in exchange for signing this affidavit.
15. I thoroughly understand the terms of this document and sign this affidavit knowingly, willfully, and voluntarily.

FURTHER THE AFFIANT SAYETH NAUGHT!


 Tammy G. Harris, Affiant

Merh Charleston, South Carolina
 February 13, 2017.

 Notary Public for South Carolina
 My commission expires: May 19 2025

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Tammy G. Harris, SCDC #371847,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-18-00337

ORDER OF DISMISSAL

2022 AUG -1 PM 2:50
DORCHESTER COUNTY
CERTIFIED COPY

This matter comes before this Court by way of post-conviction relief (PCR) action commenced by Tammy G. Harris on February 21, 2018. The State requested an evidentiary hearing through its return filed on June 1, 2018. An evidentiary hearing into the matter convened before the undersigned on May 22, 2022, at the Orangeburg County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on her own behalf at the hearing. Plea counsel, David F. Aylor, Esquire, also testified virtually via Webex.

In addition to the pleadings in this action, this Court had before it a copy of the Dorchester County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcripts from Applicant's underlying general sessions matter including: a pre-trial motions hearing transcript, the plea transcript, and the sentencing transcript; and the records regarding this post-conviction relief action.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. The Dorchester County Grand Jury indicted Applicant for felony driving under the influence with death resulting (2015-GS-18-00617). On March 14, 2017, Applicant pleaded guilty as indicted before the Honorable Diane Schafer Goodstein without recommendation or negotiation. David F. Aylor, Esquire, represented Applicant. Warren Phillip Giese, Esquire, of the First Circuit Solicitor's Office prosecuted the case. Judge Goodstein sentenced Applicant to twelve years' imprisonment for the felony driving under the influence – death results charge. Applicant did not appeal her conviction or sentence.

On February 21, 2018, Applicant filed an application for post-conviction relief (2018-CP-18-00337). Through its return filed June 1, 2018, the State requested an evidentiary hearing. An evidentiary hearing into the matter convened on May 22, 2022. This order follows.

II. Facts Giving Rise to the Plea

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

This occurred April 22, 2015, on Miles Jamison Road. That's in the Summerville area of Dorchester County. On that night, Trooper Seastrunk and Sergeant Pearson, who are to the Court's left back here, they responded out there in response to a two-vehicle collision. When they arrived on-scene, one of the drivers had already been transported to the hospital due to her injuries. That driver was later identified as Cindy Wolf who is the victim in this case. Ms. Harris was the driver of the other vehicle and was on-scene when they arrived. Trooper Seastrunk as well as Sergeant Pearson had suspected maybe she had some alcohol that night so they performed field sobriety tests on her – or she performed field sobriety tests for them.

Her performance on that resulted in them charging her and arresting her for driving under the influence. She's then transported with Trooper Seastrunk to the breathalyzer center, which she submits to a breathalyzer test and the results of that test were a .14, obviously above the .08 legal limit here in South Carolina. She then goes to the hospital where she consents to a blood draw and blood draw of those results were .146 blood-alcohol level. The MAIT team, which is an investigative team with the highway patrol, basically they reconstruct the accidents, they do an

investigation. One of the troopers talks to Ms. Harrison. She admits to drinking that night. And as a result of their investigation, they determined that Ms. Harris would be the at-fault drive. She came way over into Ms. Wolf's lane. I failed to mention in the mist [*sic*] of all that, Ms. Wolf did succumb to her injuries and passed away very soon after the accident thus, you know, making this a felony DUI with death.

(Plea Tr. 21-22).

III. Issues Before This Court

In her original application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on:

1. Ineffective assistance of counsel and
2. Involuntary guilty plea.

Pursuant to Rule 71.1, SCRCP, on February 24, 2020, Applicant, through PCR counsel, filed an amendment to her application to include the following allegations:

1. "Applicant and her family requested that Trial Counsel file a Direct Appeal. Trial Counsel told the family that she was not eligible for a Direct Appeal and did not file an appeal on her behalf. The Applicant is informed and believes that she is entitled to a belated direct appeal" and
2. "That Trial Counsel was ineffective for his failure to object to and/or authenticate a copy of the VHS recording containing the advisement at her Miranda rights. The Applicant is informed and believes that the original VHS was destroyed. The DVD copy was produced at the last minute".

Pursuant to Rule 71.1, SCRCP, on August 27, 2021, Applicant, through PCR counsel, filed a second amendment to her application to include the following allegations:

1. "Trial Counsel was ineffective for his failure to adequately advise the Applicant regarding her plea, creating a plea that was not freely and voluntarily given";
2. "Trial Counsel was ineffective for his failure to adequately advise the Applicant and pursue an accident reconstruction";
3. "Trial Counsel was ineffective for his failure to adequately communicate with the Applicant during the course of representation"; and
4. "Trial Counsel was ineffective for his failure to adequately investigate the facts of Applicant's case".

To the extent the allegations set forth in Applicant's original application and amended applications can be construed as separate grounds for relief from the grounds stated at the PCR

hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. Testimony Presented at Evidentiary Hearing

Applicant's Testimony

At the evidentiary hearing, Applicant testified she pleaded guilty to felony driving under the influence in 2017 and was sentenced to twelve years' imprisonment as a result of her plea. Applicant testified that prior to retaining attorney David Aylor (Counsel) to represent her, she had another attorney; Applicant stated she hired Counsel while she was out on bond, approximately a year after her arrest.

Regarding her communications with Counsel during his representation of her, Applicant testified she discussed with Counsel and informed Counsel she wanted to proceed to trial; Applicant opined she did not believe Counsel adequately put her case together in preparation for trial and submitted she never wished to plead guilty. Applicant testified she met with Counsel three times between August 2016 and her plea in March 2017. Applicant stated her first meeting with Counsel lasted approximately 45 minutes; her second meeting with Counsel lasted approximately 45 minutes to an hour; and her third meeting with Counsel lasted 20 minutes. Applicant stated that during one of her meetings with Counsel they discussed taking her case to trial and during another meeting with Counsel they discussed having an accident reconstruction of the scene of the incident completed¹.

Applicant testified Counsel provided her with the discovery materials in her case but did not review discovery with her. Applicant also alleged Counsel did not discuss any possible

¹ Though Applicant testified Counsel and her discussed having an accident reconstruction done, she further asserted she had not been provided paperwork or reports to confirm Counsel had had the reconstruction completed.

defenses with her. Applicant testified most of her meetings with Counsel were to discuss money (payment for Counsel's representation) – adding, payments made to Counsel were made with the belief she would proceed to a jury trial. Applicant testified she also communicated with Counsel via telephone a few times. Specifically, Applicant testified that as her trial date approached, Counsel's paralegal called and informed her they were going to plead guilty. Following this phone call from Counsel's paralegal, Applicant alleged she attempted to set up a meeting with Counsel and testified she was shocked to learn they were going to plead.

Applicant testified that prior to pleading guilty, she spoke with Counsel who told her she would receive a single digit sentence. Regarding her motivation for pleading guilty, Applicant testified that during her plea she was afraid and wanted to avoid a ten year sentence. When asked whether Counsel told her what to say during her plea, Applicant testified Counsel did not tell her what to say; rather, Applicant submitted that the testimony she gave during her plea was what she believed was the right thing to say.

When questioned about an affidavit signed by her on March 13, 2017, Applicant testified she remembered signing the document². However, Applicant asserted Counsel did not review the Affidavit with her and she signed the Affidavit without understanding what she was signing. Applicant submitted to this Court she did not read the Affidavit prior to signing because she did not have her glasses with her when it was presented to her. When asked whether she reviewed the Affidavit or read it at anytime prior to her plea, Applicant testified she did not. Applicant further

² In summation, the "Affidavit of Tammy Harris" (Exhibit #1), signed by Applicant and notarized by a notary public for the State of South Carolina, includes the following: acknowledges Applicant understands she has a right to a jury trial, acknowledges Counsel thoroughly explained to Applicant any defense strategies related to her case, and acknowledges Counsel reviewed all evidence with Applicant. The Affidavit further states it is Applicant's wish to enter a guilty plea and acknowledges Applicant is aware the plea judge can impose a sentence consistent with the statutory punishment for felony driving under the influence with death. Moreover, the Affidavit states Applicant is confident and satisfied that all her questions and concerns have been addressed by Counsel. (Exhibit #1 – "Affidavit of Tammy Harris").

testified that on the day of her plea she did not speak to Counsel and Counsel had acted as though he was upset with her but did not tell Applicant why. Applicant opined she felt her plea was not entered voluntarily, that she was scared, and had no confidence in Counsel.

When questioned about her pre-trial motions hearing on February 13, 2017, occurring approximately one month prior to her plea, Applicant stated Counsel made a motion to suppress the video recording of her *Miranda*³ rights being read to her at the time of her arrest. Specifically, Applicant testified the video recording containing her *Miranda* warnings had skipped and the full reading of her *Miranda* warnings was not captured on video. Applicant testified she discussed this issue with Counsel prior to her plea and had sent an e-mail regarding the law on *Miranda* to Counsel. Applicant testified a complete video containing her *Miranda* warnings was discovered five minutes before the motions hearing. Applicant testified that though the original VHS containing her *Miranda* warnings had been destroyed, a DVD copy containing the full reading of her rights had been found and presented to the court.

Applicant testified she was present at the motions hearing, but was confused because she had not watched the video with Counsel prior to the hearing. Applicant testified she did not believe Counsel had made sufficient arguments at the motions hearing, testified the video was not viewed by the court during the motions hearing, and testified she did not believe Judge Goodstein had ruled on the motion. Applicant testified she pleaded guilty a month after the motions hearing. During the time between the motions hearing and the plea hearing, Applicant stated she text Counsel repeatedly. Applicant testified Counsel was mostly unresponsive and unprofessional in those conversations.

Regarding Applicant's allegation Counsel failed to retain an expert to complete an accident

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

reconstruction, Applicant testified Counsel never provided her with an accident reconstruction report. Applicant opined she felt Counsel did not have the accident reconstruction analysis done because she did not pay him for it. Applicant further testified she believed, if completed, the accident reconstruction report would have shown she was not the at fault party in this incident. Applicant testified she never visited the scene and did not believe Counsel had visited the scene.

Regarding Applicant's allegation Counsel failed to file an appeal from her guilty plea, Applicant testified her husband spoke to Counsel following the plea and Counsel told him she did not qualify for an appeal. Applicant testified she did not personally speak with Counsel following her plea and felt as though Counsel had tricked her.

On cross-examination, the State inquired whether Applicant recalled testifying at her guilty plea she had met with Counsel nine times during the course of his representation. Applicant stated that she did not recall testifying to that. Applicant further testified she did not recall telling the plea court Counsel had adequately represented her. Applicant testified she did remember the Solicitor asking her about the facts of the case and agreeing to the facts of the case at her plea hearing. Applicant stated that everything during her plea was a blur and again testified she was trying to get the best sentence possible. When asked whether she recalled testifying to the truthfulness of her answers at the plea hearing, Applicant stated she did. When asked whether statements made during Applicant's sentencing hearing were truthful⁴, Applicant stated she was trying to get a lighter sentence opining – she had not lied to the plea court. When asked whether anyone had threatened or coerced her into pleading, Applicant testified she felt as though she was scared into pleading guilty.

⁴ During Applicant's sentencing hearing, Applicant stated: "I had been drinking before getting into the car and [victim's] death was my fault. I'm here to say that I accept full responsibility for this terrible event, for her death. I do not have any excuses for my actions because there are none." (Sentencing Hearing Tr. p. 26).

When questioned by the State about the Affidavit she signed one day prior to her plea, Applicant testified she did not meet with Counsel on March 13, 2017, and had not signed the Affidavit until the date of her plea. Applicant further asserted she believed the Affidavit had been incorrectly dated.

Regarding Applicant's allegation Counsel was ineffective for failing to have an accident reconstruction completed, the State asked Applicant why she pled guilty if she believed the accident report would absolve her of this crime. Applicant did not provide a reason; rather, Applicant stated Counsel did not provide an accident reconstruction report to her and again testified she did not believe he had one conducted. Applicant testified that if Counsel had had the accident reconstruction completed, she would have been found not guilty at trial.

On re-direct examination, Applicant again opined she was scared during her plea because she was facing a serious charge. Applicant testified she believed Counsel's behavior was instrumental in her decision to plead guilty. Applicant testified she believes Counsel could have reviewed discovery better with her and met with her more than three times. Lastly, Applicant offered she felt Counsel and her could have had a better relationship.

Plea Counsel David F. Aylor Testimony

At the evidentiary hearing, Counsel testified he has his own defense practice and practices as a prosecutor part time in Hanahan, South Carolina. Counsel testified he has a good memory of Applicant's case and has been counsel of record for hundreds of DUI cases. Regarding Applicant's case, Counsel testified Applicant originally informed him she had not had that much to drink the night of the incident. However, Counsel recalled testing of Applicant's blood showed she not only had alcohol in her system at the time of her arrest, but other illegal drugs as well.

Regarding his communications with Applicant prior to her plea, Counsel testified he

received constant calls and texts from Applicant regarding her case. Counsel testified Applicant had his personal telephone number. When asked how many times Counsel met with Applicant, Counsel stated he met with her a number of times, noting – Applicant had a lot to lose and was facing a significant amount of time. Counsel testified he had reviewed discovery with Applicant and indicated he believed Applicant understood all of their conversations. Counsel further testified he walked through the case from top to bottom with Applicant. Counsel stated that while this case had the potential to proceed to trial, it also had a high potential to be a plea. Counsel stated Applicant was very worried about the exposure of this crime. On cross-examination, Counsel testified Applicant was a demanding client that he had spent a lot of time with.

Counsel testified he believed the strongest and only argument Applicant had to this charge pertained to the missing audio on the video containing Applicant's advisement of her *Miranda* rights. Counsel testified that upon review and in response to the audio issue in the video, he filed a motion to dismiss. During cross-examination by Applicant's counsel, Counsel again testified he filed the motion because a complete copy of the video was not received during discovery. Counsel testified that at the motions hearing, the State produced a copy of the video, with full audio, containing Applicant's *Miranda* warnings. Counsel testified that upon production of the full video he believed Applicant's motion to dismiss was moot and the argument he had prepared for the motions hearing no longer made sense. On cross-examination, Counsel testified he was disappointed when the video copy showed up at the motions hearing; however, after watching the video with Judge Goodstein, Counsel testified Applicant had proceed forward to trial or a plea. Counsel testified on cross-examination he did not believe the video had been altered. However, the unique way the evidence appeared did concern counsel.

When questioned on cross-examination as to whether Counsel believed he could have

made an objection to the video based on the best-evidence rule, Counsel testified that once he viewed the video, he realized the State had reached its *Miranda* requirement. Though the testimony at the motions hearing confirmed Applicant's *Miranda* warnings were originally captured on VHS video, Counsel testified he did not challenge the introduction of the DVD upon which the warnings had been copied and found on because it was provided to him by the Solicitor's office, because Counsel had reviewed the video, and because Counsel did not believe there was a motion to make. Counsel testified that because the State can turn over supplemental discovery at any time he did not make an objection.

Regarding the plea acknowledgement form Counsel had Applicant sign, Counsel stated he verbally explained to Applicant what she was signing and everything she was waiving by pleading guilty. Counsel testified he discussed the elements of the crimes with Applicant markedly because Applicant did not have a lot of experience in criminal law. Counsel testified he explained to Applicant the outcomes that were and were not realistic based on the evidence the State had against her. Again, Counsel opined he believed Applicant had a case prior to the production of the full video – stating, once the Solicitor's Office turned over the video, it was over. Other than the video, Counsel testified he believed the case to be open and shut.

In response to questioning regarding whether counsel had had an accident reconstruction completed, Counsel testified he had. Counsel stated the reconstruction he had completed showed Applicant had swerved into victim's lane while driving and that Applicant was the at fault party in the accident. Counsel testified he did not have a written report produced as he would have had to turn it over to the State and the findings were harmful to Applicant. On cross-examination, Counsel stated Richard Kimbell had performed the accident reconstruction. Counsel testified the purpose of having the accident reconstruction completed was to see if Applicant, as the State

posited, was the at fault party in the accident. Counsel testified that if they could prove Applicant was not at fault, he believed it would have limited her exposure.

Regarding plea negotiations, Counsel testified the State refused to offer any formal plea offers. To his recollection, Counsel testified that off the record, the State had offered a plea offer of seventeen to twenty years. Counsel stated Applicant did not discuss or indicate she wished to go to trial, but if Applicant had wished to proceed to trial, he would have been prepared to try this matter. Counsel further testified he did advise Applicant this was not a case that should go to trial. Counsel testified he believes if they would have proceeded to trial, Applicant would have been found guilty and received a greater sentence.

With respect to Applicant's allegation she requested an appeal, Counsel testified he did not tell Applicant's husband she did not qualify for an appeal. Though Counsel stated he recalled Applicant requesting a copy of her defense file at some point, Applicant had not asked him to appeal on her behalf. Counsel testified that when her file was requested from him, he forwarded her file to another attorney. On cross-examination, Counsel again testified Applicant did not contact him about an appeal. Additionally, when contacted by Applicant's husband, Counsel testified he told him he did not believe Applicant had any appealable issues.

V. Standard of Review

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction

or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof

of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an

applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. Findings of Fact & Conclusions of Law

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsels, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised at the evidentiary and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issue before this Court is whether Applicant received ineffective assistance of counsel, rendering her guilty plea involuntary and unintelligently entered. This Court disagrees, and finds the combined record from the plea hearing and the evidentiary hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

Allegation Counsel was Ineffective for Failing to Argue Best-Evidence Rule at Applicant's Motion to Dismiss Hearing

Applicant's allegation Counsel was ineffective for failing to argue the best-evidence rule at her pre-trial motion to dismiss hearing is without merit. Specifically, Applicant alleged Counsel was ineffective for failing to argue the best-evidence rule after learning the VHS in which Applicant's *Miranda* warnings were originally captured had been destroyed and the only remaining video was a copy made when the VHS footage had been burned onto a DVD.

At Applicant's evidentiary hearing, Applicant testified Counsel moved to have her case dismissed because the DVD provided in discovery did not contain the full recording of her *Miranda* warnings. Applicant testified a copy of the video containing a full reading of her *Miranda* warnings was discovered five minutes before the motions hearing. Though the original VHS containing Applicant's *Miranda* warnings had been destroyed, a DVD copy containing the full reading of Applicant's rights was produced to the court during the motions hearing.

At Applicant's evidentiary hearing, Counsel testified he believed Applicant's strongest argument in defense of her charge was that the video containing Applicant's advisement of her *Miranda* rights was incomplete. Counsel testified that at Applicant's motion to dismiss hearing, the State produced a video containing the full video and audio recording of Applicant being advised of her *Miranda* rights; Counsel stated the video was provided immediately prior to the motions hearing. Counsel testified the production of a complete recording of Applicant being advised of her rights pursuant to *Miranda* rendered his motion to dismiss moot. Counsel further testified he believed the argument he had regarding the motion did not make sense once a complete video was found and produced.

The question of whether to admit evidence under the best evidence rule is addressed to the discretion of the trial court. *State v. Halcomb*, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct. App. 2009). The preliminary question is whether "there has been sufficient evidence to prove loss, destruction or unavailability of an original document so as to justify the admission of secondary evidence" The question of the adequacy of this showing is also within the discretion of the trial court. *Id.* at 443, 676 S.E.2d at 154-55. Rule 1002 SCRE, otherwise known as the best evidence rule, reads as follows:

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

Rule 1002 SCRE. Rule 1003 SCRE provides a duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1003 SCRE.

In the instant case, the State proffered at the pre-trial motion hearing, a glitch existed in the video provided during discovery containing Applicant's *Miranda* warnings and 19 seconds of audio was missing. (Motions Hearing Tr. 3-4). The prosecutor at the motions hearing stated he met with Highway Patrol in an attempt to find a complete copy of the disc. (Motions Hearing Tr. 4). At the motions hearing, the State called Trooper Seastrunk, the lead investigator in this matter, to testify. (Motions Hearing Tr. 13-14). Trooper Seastrunk testified he was unaware where the copy of the video containing Applicant's *Miranda* warnings came from, but surmised it was one of multiple copies made for multiple people who reviewed the collision. (Motions Hearing Tr. 22-23).

At the motions hearing, Judge Goodstein further inquired about the process of how and why copies are made by Highway Patrol. (Motions Hearing Tr. 24). In response to the court's inquiry, Trooper Seastrunk testified the original copy was,

"actually a VHS tape because it was an older car. At that point when there is a fatality and believe that alcohol is involved that's when our MAIT team comes out to investigate. Per their investigation, so they can fully understand what happened, they require a copy of my video so they can see what happened as I arrived on-scene, the evidence that I gather on-scene. Also, with our agency, the supervisors that are above me, such lieutenants and the captain who are concerned especially with an incident of this proportion, they also want to see a copy of the video to review. But everything was done correctly and by our policy and guidelines. So at that point at copy is actually made from the VHS to a DVD."

(Motions Hearing Tr. 24-25). Trooper Seastrunk further testified the original VHS tape is normally stored in pending cases such as this; however, in this case, the original VHS was errantly destroyed. (Motions Hearing Tr. 28). Trooper Seastrunk testified he mistakenly submitted the VHS for destruction, explaining the collision occurred early in his career and he made an error. (Motions Hearing Tr. 28). However, Trooper Seastrunk testified he was 100 percent sure he was the individual who had created the DVD copies from the original VHS. (Motions Hearing Tr. 29).

Sergeant Pearson of the South Carolina Highway Patrol also testified at the motions hearing. Sergeant Pearson testified that as the liaison of his team, he had made efforts to track down the original video. (Motions Hearing Tr. 34). Specifically, Sergeant Pearson testified:

“My first thought was that it – that the glitch was probably what happens on VHS tapes. I mean, they’re old system and they glitch some. So that was my first thought is it probably just is what it is, a glitch. But still in hopes of getting the original and maybe it not glitching from the original, the first thing I did was check the video cabinet for stored DVDs that we have, and it was not in there. So then I went to – I have a file for every trooper of videos that they’ve disposed of. And I pulled David’s file, Trooper Seastrunk, I pulled his file. And in that file was the chain of custody from the original VHS tape in this collision and found that it had in fact been destroyed.”

(Motions Hearing Tr. 34). Sergeant Pearson further testified he looked in the Highway Patrol’s general sessions file and did not find a disc. (Motions Hearing Tr. 35). At that point Sergeant Pearson indicated he did not believe there were any other options to obtain copies. (Motions Hearing Tr. 35).

Sergeant Pearson testified that after speaking with the solicitor regarding not being able to locate the original recording, he called the coastal MAIT (Multidisciplinary Accident Investigation Team) team to inquire whether they had a copy of the video. (Motions Hearing Tr. 36-37). Sergeant Pearson indicated the MAIT team located a copy of the video from their files and turned the video over to Trooper Ford who turned the DVD over to him. (Motions Hearing Tr. 36). Sergeant

Pearson testified he then viewed the video with Trooper Seastrunk and provided the DVD to the solicitor. (Motions Hearing Tr. 37).

This Court finds Counsel was not deficient for failing to argue the best-evidence rule at Applicant's motions hearing because the copy of the video was admissible under Rule 1003, SCRE. This Court finds there was ample testimony presented at the motions hearing to support the DVD copy containing Applicant's *Miranda* warnings was a duplicate of the original VHS. Additionally, this Court finds Counsel credibly testified he filed the motion to dismiss because a complete copy of the video containing Applicant's *Miranda* warnings was not provided during discovery. This Court finds that once the State had produced a full and complete copy of the video containing Applicant's *Miranda* warnings and once Counsel had examined the DVD copy, examined the State's witnesses at the motions hearing, and realized the State had reached its *Miranda* requirement, it was reasonable for Counsel to withdraw Applicant's motion to dismiss.

Therefore, this Court finds Applicant has failed to meet her burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

***Allegation Counsel was Ineffective for Failing to Have an
Accident Reconstruction Report Produced and Failing to Properly Investigate***

Applicant's allegations Counsel was ineffective for failing to retain the assistance of an accident reconstruction expert, for failing to obtain an accident reconstruction report prior to Applicant's guilty plea, and for failing to properly investigate are without merit. At Applicant's evidentiary hearing, Applicant testified she spoke with Counsel and requested he have an accident reconstruction done. Applicant testified Counsel did not provide her with an accident reconstruction report and felt Counsel did not have the reconstruction done because she did not pay him to do so. At the evidentiary hearing, Counsel credibly testified Richard Kimbell had

performed an accident reconstruction. Counsel testified he did not have a written report produced as the findings were harmful to Applicant's case. Counsel stated the reconstruction showed Applicant had swerved into victim's lane while driving and that Applicant was the at fault party in the accident. Counsel further testified testing of Applicant's blood showed she was intoxicated with alcohol and illegal drugs at the time of the incident.

Counsel testified he reviewed all discovery with Applicant. After reviewing discovery, Counsel testified he formulated the strongest and only argument he believed Applicant had to the charge – there was missing audio on the recording containing Applicant's advisement of her *Miranda* rights. In response, Counsel filed a motion to dismiss; however, a copy of the recording was produced to Applicant and Counsel prior to the motions hearing. Counsel testified he walked Applicant through the case from top to bottom.

Moreover, through Applicant's own testimony at her plea hearing, Applicant indicated Counsel had investigated her case, had spoken with all persons Applicant wished him to speak with, had reviewed all evidence the State had available to present at trial, and provided any copies of information Applicant had wanted. (Plea Hearing Tr. 24-25).

As an initial matter, this Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 596. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. at 46, 661 S.E.2d at 360. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent

investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). Essentially, trial “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690–91; *see id.* (“In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

Regarding Applicant’s allegation that Counsel failed to hire expert witnesses, Applicant has failed to establish Counsel was ineffective for failing to hire an expert witness for accident reconstruction. Though Applicant claims the accident reconstruction, if completed, would have shown she was not the at fault party in the underlying incident, Counsel credibly testified he had an accident reconstruction completed that showed Applicant was the at fault party, rendering the informal report harmful to Applicant’s case. This Court notes experts are often consulted informally and finds Counsel’s strategy for not having a written report produced was reasonable

as he would have had to provide the State with a copy of the report.

Regarding Applicant's allegation Counsel failed to adequately investigate, this Court finds Counsel reviewed all evidence – noting, Counsel pursued a motion to dismiss based on the State's failure to provide a complete recording of Applicant's *Miranda* warnings. This Court further finds Counsel reviewed all discovery with Applicant, had an accident reconstruction of the incident conducted, and thoroughly discussed the incident with Applicant. Additionally, through Applicant's own testimony at her plea hearing, Applicant indicated Counsel had investigated her case and spoken with all persons Applicant wished Counsel to speak with.

Therefore, this Court finds Applicant has failed to meet her burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

Allegation Counsel was Ineffective for Failure to Communicate

Applicant's allegation Counsel was ineffective for failure to adequately communicate with her during the course of representation is without merit. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant's allegation Counsel did not sufficiently communicate with her prior to her plea is refuted by both Counsel's testimony at the evidentiary hearing and Applicant's testimony at the plea hearing. Specifically, Counsel testified he spoke with Applicant often, receiving constant calls and texts from Applicant regarding her case. Counsel testified Applicant had his personal telephone number. Counsel further testified he met with Applicant a number of times as she had a lot to lose and was facing a significant amount of time. Additionally, at Applicant's plea hearing, she testified she met with Counsel nine times. (Plea Hearing Tr. 24). Applicant additionally testified at her plea hearing she was completely satisfied with Counsel's representation and testified Counsel had done everything she believed he should have done to properly represent her. (Plea Hearing Tr. 25).

Therefore, this Court finds Applicant has failed to meet her burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

Allegation Counsel was Ineffective for Failure to File an Appeal

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist,

or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

At the evidentiary hearing, Counsel credibly testified Applicant had not requested he file an appeal. Counsel testified Applicant had requested a copy of her defense file. However, Counsel specifically testified Applicant did not contact him regarding an appeal. Additionally, even if Counsel did not inform Applicant of the right to appeal, Applicant has failed to show that there was an appealable basis in this case or that extraordinary circumstances warranting an appeal existed. Thus, this Court finds Applicant is not entitled to relief on this basis and this allegation is **DENIED**.

Involuntary Guilty Plea

Applicant alleges Counsel was ineffective for failing to adequately advise her rendering her plea involuntary. Additionally, at the evidentiary hearing, Applicant contended she felt scared into taking pleading guilty. At the evidentiary hearing, Applicant testified she never wished to plead guilty, she had not reviewed discovery materials with Counsel, Counsel told her she would receive a single digit sentence, she was scared, and had no confidence in Counsel. This Court disagrees, and finds Applicant knew the nature of the charges against her and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Moreover, this Court finds Applicant's testimony at the evidentiary hearing not credible and wholly self-serving.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several

constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The 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 court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts

surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, 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.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant,

his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In evaluating 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. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest

in the finality of guilty pleas.’ “). Reviewing “[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

The plea court entered into a thorough colloquy with Applicant. Specifically, Judge Goodstein explained to Applicant the constitutional rights she waived by pleading guilty, including the right to: remain silent, against self-incrimination, challenge the State’s evidence, present a defense, and the right to a jury trial. (Plea Tr. 18-20). Applicant informed the plea court she understood she waived those rights and others not enumerated when pleading guilty. (Plea Tr. 20). Applicant also informed the court she understood the charge she was pleading to and indicated she understood the minimum and maximum sentence associated with the charge (Plea Tr. 13).

Judge Goodstein further informed Applicant the offense she pleaded to is classified as violent and most serious. (Plea Tr. 13-18). Applicant again affirmed she wished to plead guilty. (Plea Tr. 18). Applicant advised the court she had not been threatened, pressured, intimidated, or promised anything in exchange for her guilty plea. (Plea Tr. 23). When questioned whether she had been truthful with the court in her answering of the Court’s question, Applicant affirmed she had. (Plea Tr. 26). Applicant further indicated all answers had been her own and no one directed her how to answer. (Plea Tr. 26).

This Court finds the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily.

Applicant has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Based on the foregoing, the record contradicts Applicant's assertion her plea was involuntary as a result of ineffective assistance of counsel. Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

VII. Conclusion

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements she made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

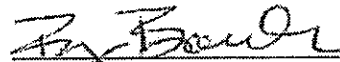
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP,

provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 21 day of July, 2022.



ROBERT J. BONDS
Presiding Circuit Court Judge
First Judicial Circuit

Walterboro, South Carolina

WITNESSES

D. A. Seastrunk

S C Highway Patrol

ARREST WARRANT NUMBER

2015A1810300377

Arrested: April 24, 2015

ACTION OF GRAND JURY

TRUE BILL

Damian I. Kelly
 Foreperson of Grand Jury
 Date: September 3, 2015

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2015GS18-0617

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 8, 2015 TERM

THE STATE

vs.

Tammy G Harris

Indictment for

Felony Driving Under the influence,
 Death Results

SC Code: 56-5-2945(A)

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

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.

RECORDED
 2015 SEP -3 PM 2:11
 CLERK OF COURT
 DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2015GS18-0617

As a Court of General Sessions, convened on September 3, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE, DEATH RESULTS

That in Dorchester County, South Carolina, on or about April 22, 2015, the Defendant, Tammy G Harris, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, did perform an act forbidden by law or did neglect a duty imposed by law while driving, which act or neglect proximately caused the death of Cindy Wolf. This offense being a violation of Section 56-5-2945, 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.



Phil Giese, Solicitor