

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Daniel McLeod Coble, Circuit Court Judge

WILLIAM CRAIG CAUGHMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000060

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

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

DONALD J. ZELENKA
Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601

ATTORNEY FOR PETITIONER

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street, Suite 309
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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1 jury charge and I guess you're also saying that after the
2 charge was given, you would have objected to it and I still
3 didn't give it to them, and that's -- I would be surprised
4 if that's accurate, and so that's why without the benefit
5 of the transcript then I have -- I have no way of having a
6 basis to agree or disagree with you other than what -- the
7 way I typically do it and that's something that the jury
8 is almost always instructed, if they have a reasonable
9 doubt as to whether he's guilty of failure to stop.

10 And the verdict form is in here where the jury --
11 that they have the option as to the charge of hit and run
12 accident resulting in death, either he's guilty of the
13 offense of hit and run accident resulting in death or
14 guilty of hit and run accident resulting in great bodily
15 injury, or not guilty, so the jury was given all those
16 options and -- and so I would really need to know how you
17 disagreed -- if you disagreed with what I told the jury as
18 to what they should consider in order for me to at this
19 point make an informed decision on this particular point.

20 Now I understand there was basically a fundamental
21 difference of opinion between the State and the defense
22 concerning whether or not the -- how does it go -- the
23 Cayce police should be conducting a search warrant in
24 West Columbia. Is that the way it went?

25 **MR. FLOYD:** Yes, sir.

1 **THE COURT:** And that's a -- that's a good issue, you
2 know, particularly in light of the Burgess case that came
3 out as far as the court being focussed on these agreements
4 between agencies where the agreements are not properly
5 approved and all that, then the State comes and says well,
6 that doesn't matter in this case because those cases
7 involve someone being arrested outside of the jurisdiction
8 of the law enforcement officer and I think Burgess did and
9 the Boswell case did, but in this case we're not dealing
10 with that, we're dealing with a search warrant that says
11 any law enforcement officer within the county can execute
12 this warrant. So you're saying, well, that doesn't -- so
13 you're arguing that even if there's a problem with this
14 agreement, then it still doesn't apply in this case because
15 you have the search warrant here and SLED was present
16 during the execution of the search warrant.

17 Now, again, I don't -- I know we had -- I recall the
18 whole issue and recall really, you know, because it -- you
19 know, you made some very pointed questions concerning it
20 and objections and all that of whether the -- the presence
21 of SLED at that time was the tipping point that just said
22 okay, well, hey, maybe they shouldn't have been there
23 carrying out this search warrant without West Columbia
24 being notified and being present, but they had SLED there,
25 so that covers it. That's the -- I'm sure that's what the

1 State would want to argue; that SLED made it all good
2 because they have statewide jurisdiction and the search
3 warrant is -- you've attached the search warrant to your
4 motion and I was looking at that to see what the magistrate
5 directed. Here, the reasonable grounds to property seized
6 -- certain property subject to seizure under the provision
7 of 17-13-140 located on the following premises in West
8 Columbia, [REDACTED] Gunter Circle, and, therefore, you're
9 authorized to search the subject premises and seize the
10 property and they authorized -- let's see. Judge
11 Collins -- let's see. The search warrant says to any
12 bonded law enforcement officer of this state or county or
13 of the municipality of Cayce, so the question is does that
14 cover the people that were out there?

15 **MR. FLOYD:** Your Honor, it would be our position that
16 it would authorize maybe any officer, but only if they
17 exercised the -- executed the warrant within their
18 territorial jurisdiction.

19 **THE COURT:** Well, that's why they said in State v.
20 Hammond that it doesn't have to be.

21 **MR. HAMMOND:** Well, in State v. Hammond --

22 **THE COURT:** And then in the Burgess case they had the
23 -- I guess, the -- well, then in Burgess didn't they have
24 someone who was -- some other person present that made the
25 -- because Burgess was despite their -- well, the court's

1 disagreement with the -- them not following that proper
2 protocol, they still justified the search because -- who
3 was there? A county officer? Somebody was present that
4 made it --

5 **MR. FLOYD:** Right. Of course, in Burgess also they
6 did mention that the Batesburg-Leesville town council had
7 authorized the -- Gilliam.

8 **THE COURT:** So Lexington County is a hotbed of all
9 this confusion regarding multicounty agreements and who
10 should be where when they're searching various things.

11 **MR. FLOYD:** And in Hammond, Your Honor -- of course,
12 remember in Hammond there was a --

13 **THE COURT:** Which is Greenville County.

14 **MR. FLOYD:** Yeah, but in that case the sheriff deputy
15 did accompany the man that participated in the search and I
16 think that's what Hammond kind of relied upon.

17 Your Honor, one other matter, and I've already argued
18 this point to you, but I just would refer you to -- it's
19 the case of State v. Burton.

20 **THE COURT:** Burton?

21 **MR. FLOYD:** Burton, B-U-R-T-O-N.

22 **THE COURT:** All right. Tell me about that one.

23 **MR. FLOYD:** In that case -- this goes back to the
24 cause of death issue. In that case, the defense was --
25 was trying to put their expert on to counter the State's

1 expert on the cause of death and they attempted to -- they
2 were trying to do it by way of a hypothetical question
3 and when they framed their hypothetical -- when he first
4 questioned the expert, he said I don't have enough
5 information, so then they added some hypotheticals, some
6 facts and hypotheticals, that were off the autopsy report
7 and notes and so forth from the pathologist. The autopsy
8 report though had not been placed in evidence and the
9 State -- and so they weren't allowed to ask and use those
10 facts. That was affirmed by the Supreme Court who ruled
11 that he could not -- he could only testify as to facts
12 that were in evidence and I think that may go back to our
13 argument about the notes that the pathologist was referring
14 to when she based her opinion on those notes.

15 **THE COURT:** Did she give a clear reference to some
16 notes or was that some vague recollection of looking at
17 something else?

18 **MR. FLOYD:** She talked about her notes -- her hospital
19 records that she had looked at.

20 **THE COURT:** And you never saw the hospital records?

21 **MR. FLOYD:** That's correct. She didn't have them.

22 **THE COURT:** And the State didn't have them?

23 **MR. FLOYD:** The State didn't have them either. The
24 Burton cite, Your Honor, is 302 SC 494, 397 SE 2d 90. It's
25 a 1990 Supreme Court case.

1 **THE COURT:** Let's take a quick look at that one.

2 **MR. FLOYD:** I have a copy if you want.

3 **THE COURT:** Okay.

4 **MR. FLOYD:** That's my only copy of the --

5 **THE COURT:** State v. Ronnie Burton. Sexual
6 intercourse with his four-year-old daughter --
7 stepdaughter. Afterwards her face was observed with a
8 purple hue, her lips were dark purple, her stomach swollen
9 and she exhibited diminished responsiveness. An ambulance
10 took her to Devine Saviour Hospital and Piedmont Medical
11 Center. She experienced difficulty regaining consciousness
12 after the operation and was transferred to Charlotte where
13 her condition deteriorated within thirty-six hours. She
14 remained hospitalized until she died forty-five days later
15 and the autopsy revealed her lungs were nonviable, she
16 suffered brain death due to lack of oxygen. The coroner
17 performed an autopsy and stated he believed the cause of
18 death was asphyxiation caused by a hand being placed over
19 the victim's mouth. And Burton, the defendant, was
20 convicted of murder and criminal sexual conduct and given
21 life plus thirty years. At trial, the appellant claims
22 the doctors' negligence was an intervening cause of her
23 death and contends the judge's charge was inadequate in
24 that it failed to fully and accurately state the law
25 regarding intervening cause. It says the judge erred in

1 failing to charge the jury on the distinction between
2 simple negligence and gross negligence and incorrectly
3 charged mediate cause and omitted foreseeability from the
4 instruction, and then they go through what the judge told
5 the jury and whether the appellate claim would have been
6 appropriate and the appellate court says the charge is
7 sufficient if, when considered as a whole, it covers the
8 law applicable to the case. The trial judge charged if,
9 however, the death was caused not by the wound or the
10 injury that the deceased had, but was merely by the gross,
11 erroneous treatment, that is, where a treatment was so
12 gross, where a treatment was so deliberate, so willful,
13 that it caused death, then the defendant would not be
14 liable. The court said even though the charge didn't
15 contain the exact language of the State v. Matthews case
16 they believed that the charge sufficiently and adequately
17 covered the substance. And appellant also challenges the
18 specific language of the charge which states that one is
19 deemed guilty of a homicide if the injury inflicted
20 contributes immediately to the death of the deceased.
21 Further stuff they're complaining about and then the
22 appellant argues that the trial court's exclusion of
23 Dr. Hudson's opinion as to cause of death was error and
24 deprived appellant of an opportunity to present a defense.
25 The appellant argues that the trial court's exclusion of

1 Dr. Hudson's opinion as to the cause of death was error
2 and deprived the appellant of an opportunity to present a
3 defense in violation of his constitutional right. The
4 court disagreed. In the trial, the appellant asked
5 Dr. Hudson his opinion as to cause of death based upon the
6 same hypothetical question used by the State. Dr. Hudson
7 replied he did not have an opinion and needed additional
8 information. Appellant's counsel then posed a hypothetical
9 question which included information from the medical
10 reports of the deceased, the testimony of the State's
11 expert and the autopsy report. The trial court disallowed
12 this testimony based upon the fact that the medical and
13 autopsy reports were not admitted into evidence. An expert
14 may give his opinion based upon personal observance or an
15 answer to a properly framed hypothetical. An opinion by
16 an expert without firsthand knowledge of the fact must
17 be based on a hypothetical question. The hypothetical
18 question, however, should be based upon facts supported by
19 the record. According to the record, Dr. Hudson was not
20 precluded from rendering an opinion. He was prohibited
21 from basing his opinion on records not received into
22 evidence and we believe the trial judge's ruling was in
23 compliance with the law and, therefore, the sentence and
24 conviction were affirmed.

25 Now how do you tie that scenario into this scenario?

1 **MR. FLOYD:** The same issue, Your Honor, about the fact
2 that the pathologist based her opinion on documents that
3 were not in evidence in the case.

4 **THE COURT:** But she didn't base it on anything
5 hypothetical. She said she based it on her review of the
6 records. In this case, it looks as if the -- they said
7 okay, I mean, you can give an opinion, Dr. Hudson, but if
8 it's based on a hypothetical, the hypothetical has to be
9 based on things in the record, it can't be based on
10 something that's not a factor in the case that's not in
11 the record. I mean, I understand. I can see I would have
12 done the same thing in that instance if you're -- but we're
13 not dealing with any hypothetical questions here. We're
14 dealing with -- you're complaining that you didn't see all
15 the records and the records the State didn't see either and
16 -- and the doctor obviously had her opinion. She had the
17 autopsy and she's the doctor and she had an opinion as to
18 the cause of death being this pulmonary embolism.

19 **MR. FLOYD:** That's correct.

20 **THE COURT:** And she believed that's the cause of death
21 and that was caused by the wreck. Now the fact that she
22 did, what you might say, a thorough job, and that is that
23 she then went and looked at all the decedent's hospital
24 records and -- and she didn't have all those records with
25 her in court that she looked at so that you could look at

1 them, we don't have a situation where you have competing
2 experts. You didn't have an expert, did you?

3 **MR. FLOYD:** No, Your Honor.

4 **THE COURT:** So we don't have it where one expert
5 wasn't able to see what the expert saw so they can
6 criticize what the other one's conclusion was, which was
7 the case in this Burton case, then, you know, I would have
8 to really go back to the record itself to -- for my basis
9 for a conclusion that she could give her opinion even
10 though she didn't have the hospital records that she also
11 might have made reference to at the time that she was
12 testifying, whether that would prevent her from giving an
13 opinion and whether or not what was in the hospital records
14 was the basis of her opinion as opposed to the autopsy and
15 things that she did see. I don't know. It's a -- it's a
16 quandary for me and may be a quandary for someone else, but
17 I understand your point. I just don't see how Burton ties
18 into what we were dealing with in this case.

19 **MR. FLOYD:** Thank you, Your Honor. Lastly, Your
20 Honor, we also would ask Your Honor to reconsider the
21 sentence given to Mr. Caughman. Mr. Caughman was given a
22 twenty-year sentence. He was forty-eight at the time of
23 the trial.

24 **THE COURT:** Was that the maximum sentence?

25 **MR. FLOYD:** Twenty-five would be the maximum.

1 **THE COURT:** Twenty-five was the maximum?

2 **MR. FLOYD:** He was given twenty years. He was
3 forty-eight years old at the time of the trial. His only
4 record was over twenty years earlier he had gotten a DUI.
5 He had been a lifelong member of the community, raised a
6 family, worked all his life. He's now -- according to
7 this sentence, he'll be over sixty-five before he'll be
8 eligible to be released. We're asking Your Honor to take
9 all of those factors into mind. It was a terrible
10 situation and Mr. Morriss was a fine man. We heard all
11 about him and we were very impressed with him at the trial.
12 It's a tragedy what happened here.

13 Now I think Mr. Caughman would like the opportunity to
14 address you on that point very briefly.

15 **THE COURT:** All right. Absolutely. May I hear from
16 the State first or Mr. Caughman first?

17 **MR. FLOYD:** Do you want us to just go ahead and talk
18 first, Suzanne?

19 **MS. MAYES:** Yes.

20 **MR. FLOYD:** Okay.

21 **THE COURT:** Yes, sir, Mr. Caughman.

22 **THE DEFENDANT:** Yes, sir. I'm so sorry that this
23 accident ever happened and I'm so sorry Toby Morriss lost
24 his life. I'm so sorry Mr. and Mrs. Morriss lost their
25 son. I'm not a bad person. I know right from wrong, I

1 was wrong, and I have to live with that. I don't ever want
2 to see anyone get hurt. I have a daughter of my own. I
3 can't imagine what it would be like if anything ever
4 happened to her. I ask Mr. and Ms. Morriss, their family,
5 their many friends and this Court to please forgive me for
6 this tragic accident. Thank you, Your Honor.

7 **THE COURT:** All right. Thank you.

8 **MR. FLOYD:** Your Honor, that concludes our
9 presentation.

10 **THE COURT:** I would just say this now. Of course,
11 we'll hear from the State, but, you know, you have -- you
12 have crimes and then you have the coverup from the crimes
13 and in some instances even though the crimes are bad, the
14 -- it's often exacerbated by the attempt to cover up the
15 crime and so whereas standing alone -- I mean, of course,
16 you have accidents and in many instances -- accidents are
17 unavoidable in some instances. People tragically die in
18 accidents all the time and no one's held accountable
19 criminally because it's an accident and in this case it's
20 referred to as an accident. I don't -- I don't even know
21 if we were here even dealing with -- I forgot really the
22 -- trying to -- well, just being the driver of a vehicle
23 involved in an accident, it didn't allege felony DUI, it
24 didn't allege drunk driving and racing down the road doing
25 a hundred miles an hour in a thirty-five mile an hour zone,

1 it says hit and run involving an accident and the -- and
2 the crime in failing to stop and remain at the scene and
3 doing the things the law requires, so. And -- but sitting
4 through the trial and hearing the extent of the coverup
5 that was presented at the time, and none of it -- well, to
6 the extent that that reflects on -- none of it reflects on
7 whether or not Mr. Caughman is a good person or not. You
8 know, it's a sad and unfortunate situation. It's certainly
9 unfortunate that he made the choices that he made that may
10 have exacerbated the situation, which made it much worse
11 than -- or worse than it otherwise would have been. Go
12 ahead, Mr. -- or Ms. Mays.

13 **MS. MAYES:** Yes, sir, Your Honor. May it please the
14 Court? As the Court has noted, the State's position is
15 it's very much in reliance on the case of State versus
16 Hammond, the Supreme Court case which is directly on
17 point. And then, in addition, the South Carolina Code
18 which governs the issuance, execution and return of search
19 warrants, South Carolina Code Section 17-13-140.

20 Your Honor, the State's position is that the statute
21 on search warrants supercedes any preexisting limitations
22 on municipal jurisdiction. It does give lawful authority
23 to any peace officer within the county. That application
24 of the statute was used by the Supreme Court in State
25 versus Hammond where it was a municipal officer in the

1 county of Greenville who obtained a search warrant for an
2 area outside of his municipality and in that case the
3 Supreme Court determined that it was, in fact, a valid
4 search warrant even though it goes outside his territorial
5 jurisdiction. And in this case we're talking about a
6 statute that gives authority to obtain -- to obtain a
7 search warrant outside your jurisdiction, but then the
8 argument of defense counsel is but you can't execute it.
9 The State's position is that the intent of the statute is
10 to include all matters concerning issue, execution and
11 return of these search warrants. If it had been the intent
12 of the statute to restrict the execution once that officer
13 obtains a valid search warrant, the State's position is
14 that it would have expressly addressed that in the statute.

15 The statute has very specific positions on certain
16 matters. For example, if the search warrant is issued by
17 a certain type of judge, being a judge on the record, then
18 it directs in that circumstance that the return must be
19 issued to a judge where the property is located. So it's
20 very specific on that matter about returning it where the
21 property is located, but it's completely silent about the
22 fact that it must be executed by an officer where the
23 property is located. And from that, the -- the logical
24 application of the statute is that it is intended to be
25 broad and once the valid search warrant is issued to a

1 municipal officer anywhere in the county, it can then be
2 lawfully executed. And from a practical standpoint, it
3 makes perfect sense that that would be the intent of the
4 Legislature. It would be such a duplication of resources
5 and manpower if we were having to involve a separate agency
6 every time a search warrant is executed within the county,
7 but simply outside the jurisdiction of that municipal
8 officer. So that is the State's position, Your Honor, on
9 the broad scope of that statute.

10 **THE COURT:** So you're saying that the -- even though
11 the case is in -- the case is in Cayce, they can still just
12 -- if they get a warrant, they can go anyplace in the
13 county?

14 **MS. MAYES:** Your Honor, I believe that the broad scope
15 of that statute, that is the intent. That once the search
16 warrant is issued by a judge with countywide jurisdiction,
17 being a magistrate, which is what happened in this case and
18 in Hammond, that once that countywide magistrate issues the
19 search warrant, it is then valid and can appropriately be
20 executed by that same agency, that same municipal agency.

21 **THE COURT:** Well, just thinking, I mean, if you have
22 a Cayce police officer and say they -- it deals with a town
23 of Lexington case or a Pelion or, say, we'll go far out
24 to Gilbert or something, that the Cayce police can get a
25 search warrant and go to a house in Gilbert and execute the

1 search warrant?

2 **MS. MAYES:** Your Honor, I do believe the statute
3 allows for that. I believe that the scope of the statute
4 is intended to be that broad, as long as it's within the
5 county. Now in State versus Hammond, the Supreme Court
6 did address the fact that an officer with -- at least
7 one officer with original jurisdiction was present, and
8 although arguably not required by the statute, it was
9 another factor for the Supreme Court to consider in
10 upholding that conviction in Hammond. And the State's
11 position, as the Court has already noted, is that like
12 in Hammond there was an officer with authority, lawful
13 authority, statewide authority to be there, being agent
14 Mike Robinson.

15 **THE COURT:** Was he there because he was working on the
16 case?

17 **MS. MAYES:** Yes, sir, Your Honor. The record had
18 already established through some of the other witnesses
19 before we even got to the execution of the search warrant
20 that he had been involved in developing probable cause
21 for that search warrant. He was assisting Cayce in this
22 ongoing investigation and it was ongoing for several months
23 prior to them actually locating that vehicle. SLED had
24 become involved two ways. One was that an anonymous tip
25 had come in to Crimestoppers, which is filtered through

1 the State Law Enforcement Division, and that anonymous
2 tip named Mr. Caughman, or at least his address. It gave
3 certain information that led to him and also it gave
4 information about his truck being used. In follow-up,
5 Agent Robinson was one of the officers who went and did a
6 plain view examination of the property. They were in an
7 area where they weren't on the property, but they could
8 visualize his backyard and from there they could see
9 what appeared to be a vehicle under tarp which met the
10 description and matched the anonymous tip that had come
11 in through Crimestoppers. As a result of that information,
12 Agent Robinson and Cayce law enforcement consulted together
13 in obtaining the probable cause for the search warrant.
14 It was a Cayce officer, Detective Carrera, who actually
15 physically obtained the search warrant or wrote the search
16 warrant, but Agent Robinson was involved throughout that
17 process and then once it was obtained, he was present
18 with them for the execution of the search warrant at the
19 address. He was there when the truck was located in the
20 backyard, it was under tarp, and the testimony was that he
21 was there as they were removing the tarp. The State's
22 position is at that point that item and that property is
23 seized. It is then in the possession of law enforcement
24 who are lawfully there. They're securing it. It's not
25 gonna go anywhere until it's physically removed and taken

1 back to Cayce headquarters. After Agent Robinson left, I
2 believe there was some additional search that led to an
3 electric saw. The saw is the only other item that comes to
4 mind as being of any consequence during the course of the
5 trial. That saw was also the subject of a statement made
6 by the Defendant. It was a voluntary statement that he
7 made to law enforcement following a waiver of Miranda and
8 he admitted to using an electric truck saw to cut the doors
9 off the truck.

10 So to that extent, the fact that the saw was
11 physically recovered or may have physically been recovered
12 after Agent Robinson left the scene, the State's position
13 is that would be harmless error, if anything, because
14 his own admission about using the saw was far more
15 incriminating than the fact that the saw existed. And
16 in this case, Agent Robinson and Detective Carrera were
17 at the scene and then the reason that he left the scene
18 was in furtherance of the investigation in order to
19 interview the suspect and even while they were interviewing
20 the suspect and at headquarters, they were still in
21 communication with the officers back at the scene. A tow
22 truck, which would be a private citizen or a business,
23 actually removed the truck from the premises of the
24 Defendant and then took it back to Cayce and once it was
25 back within the jurisdiction of Cayce headquarters, it

1 was processed for evidence, including removal of the
2 paint samples that were ultimately used as evidence in
3 this case.

4 **THE COURT:** Removed by SLED or someone else?

5 **MS. MAYES:** Yes, sir, Your Honor. The State Law
6 Enforcement Division.

7 **THE COURT:** So with regard to this agency agreement,
8 is the State -- that I guess was admitted, is the State
9 placing any credence into the validity of that or your
10 entire justification for the search is the State v. Hammond
11 and Mike Robinson being present?

12 **MS. MAYES:** Yes, sir, Your Honor. Although I do
13 want to add that there was a good faith reliance by the
14 officers on that multi-jurisdictional agreement. That
15 case -- the most recent, State versus Burgess, decision
16 that came out this past summer in 2014, which found the
17 agreement invalid, we didn't have the benefit of that
18 ruling at the time; however, in retrospect, although we
19 cannot establish compliance with each and every term of
20 that multi-jurisdictional agreement that is required under
21 Burgess, such as approval by each town council or city
22 counsel and the compliance with time limitations and
23 reports and things of that nature, although we can't
24 now in retrospect show compliance with each and every
25 provision, there would have been a good faith reliance by

1 the officers. They were aware of the agreement. That was
2 the testimony during trial. They were aware that was a
3 multi-jurisdictional agreement and they knew that their
4 chief had entered the agreement and that the West Columbia
5 Police Department chief had entered the agreement, and
6 even if it is now technically invalid or we cannot
7 establish validity, it would have still been good faith
8 reliance on that in addition, of course, to good faith
9 reliance on the execution of the search warrant in the
10 presence of an officer with statewide jurisdiction.

11 Your Honor, I also would like to add on this matter
12 that if any violation whatsoever would have occurred
13 concerning the actual execution of that search warrant,
14 and we know pursuant to the statute and pursuant to State
15 versus Hammond it was lawfully obtained and it was a valid
16 search warrant based on probable cause, so the only issue
17 would be a technical violation in the process of execution.
18 And, Your Honor, the State's position on that is that if
19 it's a technical violation in this circumstance, it would
20 be ministerial in nature, very similar to how that same
21 statute addresses the ten-day rule in the requirement for
22 the filing of returns with the search warrant, it would be
23 very similar in nature if there was a technical violation
24 of the execution of that search warrant. It would not
25 involve a due process violation or a constitutional Fourth

1 Amendment-type violation that we see in cases such as
2 Burgess where there is an arrest without a warrant. And
3 that's a completely different scenario because arrest and
4 jurisdiction for arrests is -- are governed by separate
5 statutes.

6 And, Your Honor, on that matter I do have a case of
7 State -- or U.S. versus Green that I will past up. And
8 this is a case from Kansas, but it also deals with the
9 execution of a search warrant outside the territorial
10 jurisdiction of the municipal agency that obtained the
11 search warrant. In this case, it was determined that it
12 did not amount to a constitutional or Fourth Amendment
13 violation and, therefore, the exclusionary rule did not
14 apply, and ultimately that's the State's position, is that
15 if any violation occurred the exclusionary rule would not
16 be the remedy.

17 **THE COURT:** All right. How about some other points
18 Mr. Floyd hit you with?

19 **MS. MAYES:** Yes, Your Honor. As to the pathologist,
20 and in looking at the autopsy report, just -- just a little
21 history because I realize it's been two years since we all
22 heard the facts of the case on the record, but Mr. Morriss
23 was admitted to Lexington Medical Center in critical
24 condition following the accident. He had been hit while on
25 his motorcycle. He was a professor at USC. He was coming

1 from the direction of Columbia into the city of Lexington
2 on Knox Abbott Drive when he was struck.

3 **THE COURT:** The county of Lexington? Did you say city
4 of Lexington?

5 **MS. MAYES:** Cayce. Into the city of Cayce when he
6 was struck by Mr. Caughman. He was taken to Lexington
7 Medical Center and treated there for several days. He
8 died still at Lexington County Medical Center and so the
9 pathologist, who is a staff member at Lexington Medical
10 Center, performed the autopsy there at the same facility.
11 In my understanding of how it works within the hospital
12 and their staff, is that any physician on staff can access
13 the electronic database with the medical records. In
14 this case, although he is at that point deceased, she is
15 still issuing a diagnosis, so she's performing -- as the
16 pathologist she's performing the autopsy to determine cause
17 and manner of death. So she then uses that electronic
18 database to gain access to several days before and look at
19 his records there. She addressed it in her autopsy report,
20 so it was no secret to either the State or the defense what
21 portions of the medical records she had considered in her
22 medical diagnosis and treatment or medical diagnosis and
23 cause of death in this case. And ultimately when she
24 performed the autopsy, she visualized the same injuries
25 that had been mentioned in the medical records, so for that

1 reason the State's position is if there were any error at
2 all it would be harmless. The State's position, of course,
3 is that it was not error because it would be a separate
4 exception to hearsay, specifically Rule 803. She is
5 relying on those records and that information is for
6 purposes of medical diagnosis. She was specific in her
7 testimony, Your Honor, and it's actually noted on the final
8 page of the autopsy report that she was able to visualize
9 during her examination the pulmonary embolism as well as
10 injuries consistent with trauma being identified to the
11 rib -- which were rib fractures, pulmonary contusions or
12 bruising of the lungs and a hematoma of the right adrenal
13 gland, and then she went on to define other injuries or
14 trauma that she noted as well. So she is, in effect, able
15 to visualize the same type of injuries that she referred to
16 as being identified in his medical treatment several days
17 beforehand. So the State's position is that her testimony
18 was properly admitted. Your Honor, we did not have the
19 records, Mr. Floyd did not have the records, and we were
20 both on notice that that would be included as part of her
21 findings it because it was specifically noted in her
22 autopsy report.

23 Your Honor, as to the charges that were given by the
24 Court, the State's position is that the charges were
25 carefully considered by the Court. We had lengthy

1 discussions on the record leading up to the charges which
2 were given by the court to the jury and all of those
3 charges were appropriate and in accordance with law.

4 And finally, Your Honor, on the matter of
5 reconsideration of sentence, he received a sentence of
6 twenty years which is not the maximum. The testimony
7 presented during trial was of someone who had virtually no
8 remorse. He committed this act and then spoke about it to
9 his friends and when he spoke about it to his friends it
10 was not in the context of feeling guilt or remorse, it was
11 in the context of not wanting to get caught. One of his
12 acquaintances testified that he told him they'll never find
13 the doors. His intent was to get away with it. And that
14 same friend said the reason he ultimately provided a tip
15 to Crimestoppers was because of -- he was aware that
16 Mr. Caughman was continuing to use alcohol and, in fact,
17 part of what was addressed at sentencing is that we had
18 obtained some records from his debit card and right up
19 virtually until the point of his arrest in this case he
20 was continuing to purchase large amounts of alcohol on a
21 weekly basis. So all of those factors were considered by
22 the Court, as well as the victim impact testimony in this
23 cause, Your Honor.

24 Mr. Morriss has family which are out of state. He
25 had parents here, many, many friends. There were many

1 letters from his students at the university and people who
2 had been affected by his life over the course of many years
3 and all of those factors were considered by the Court and,
4 Your Honor, we believe be that the twenty year sentence is
5 very fair. He -- he could have easily gotten the maximum
6 considering the facts of this case and what we know about
7 the lengthy efforts that he -- that he went to to evade law
8 enforcement and conceal this crime.

9 **THE COURT:** What part of the autopsy you said
10 referenced the finding that she corroborated looking
11 through the electronic records?

12 **MS. MAYES:** Your Honor, on the very final page of the
13 autopsy, Page 5 of 5, where it says interpretation and case
14 summary, in the first paragraph she addresses information
15 that she would have been aware of having looked at the
16 patient record there in the data base, and that was that
17 Mr. Morriss had been admitted to LMC for treatment of his
18 injuries, which included surgical repair of a left rib
19 fracture. In the second paragraph, she notes that her
20 postmortem examination demonstrated a large pulmonary
21 embolism and injuries consistent with a history of trauma
22 were identified, including bilateral rib fractures, the
23 pulmonary contusions and hematoma of the right adrenal
24 gland, and then she goes into her other findings. So in
25 that she is, in effect, visualizing herself firsthand the

1 various types of injuries that had been set forth earlier
2 in the medical records.

3 **THE COURT:** Well, what part of it was subject to this
4 Rule 5 issue that Mr. Floyd is now raising?

5 **MS. MAYES:** Your Honor, I -- the State's position is
6 that there would not be any type of Rule 5 violation here.
7 The State didn't have the records, Mr. Floyd did not have
8 the records. The witness had reviewed the records and had
9 noted that in her autopsy report that she had, in fact --
10 when she gives the history, I believe she also gives the
11 history on the first page as well. I'm sorry, that would
12 actually be Page 2 of 5 under clinical history. She is
13 noting that he was admitted to Lexington Medical Center
14 and then also mentions the injuries, so with that both the
15 State and the defense had access to what she had access to.
16 We may not be looking at the records, but she is putting
17 both the State and the defense on notice that she had
18 reviewed the records and this is what they said and that
19 she was incorporating that in her own evaluation of the
20 deceased patient. And so with that, Your Honor --

21 **THE COURT:** And this copy of the autopsy report was
22 made available to -- to all sides?

23 **MS. MAYES:** Yes, sir, Your Honor. Yes, sir.

24 **THE COURT:** And with regard to not charging the jury
25 on the lesser, giving the Defendant the benefit of the

1 doubt of the lesser offense and the -- Mr. Floyd's
2 interpretation of the statute about death being immediately
3 or stopping being immediately, I can't recite exactly the
4 way he cited it, but you can comment on the --

5 **MS. MAYES:** Yes, sir, Your Honor. The Court had a
6 charge which was very descriptive about proximate cause of
7 death, and I don't have the Court's charge in front of me
8 at the moment, but both Mr. Floyd and I were aware of the
9 Court's charge on the proximate cause and it was very
10 detailed in explaining to the jury all of the factors to
11 consider in determining whether the injuries were, in
12 fact -- and ultimately in this case a death potentially,
13 were caused by the preceding event, which would be the
14 motor vehicle accident. The Court also charged on the
15 great bodily injury and all of the factors and elements
16 of that charge for the jury's consideration, so they
17 certainly had extensive information on it with the Court's
18 charge and it was very clear with -- with how it was
19 presented to the jury. I don't recall the issue that
20 Mr. Floyd raised about -- exactly how it was termed to
21 them that they could find a lesser included offense, but
22 regardless the lesser included offense was submitted to
23 the jury for consideration and rejected after they heard a
24 charge on the law, specifically on proximate cause.

25 **THE COURT:** All right. Response, Mr. Floyd?

1 **MR. FLOYD:** Just briefly, Your Honor. First of all,
2 although the State's interpretation of the search warrant
3 statute may be efficient, I don't think efficiency is the
4 touchstone of what we have in the criminal system. I think
5 there's a constitution in there that sometimes perhaps
6 contrasts with efficiency and due process and equal
7 protection of the law would be two factors that would, in
8 our opinion, prohibit such an interpretation that anybody
9 -- any municipal officer in the county can serve a search
10 warrant anywhere in the county so long as it's issued by a
11 magistrate, and I just don't think that's the law nor the
12 intent of the law.

13 As to the other point, if, in fact, the State was
14 aware that the pathologist was going to use medical records
15 in their testimony, then it seems to me they'd be on notice
16 that they need to provide those to the Defendant as part of
17 the Rule 5 Brady process.

18 As to the reconsideration, we say nothing bad about
19 Mr. Morriss and his familiar. He was quite an accomplished
20 man. He had close family, he had close friends, he was
21 well-respected. We in no way tried to in any way diminish
22 from his accomplishments in life. We only ask that Your
23 Honor consider the fact that Mr. Caughman had a pretty
24 exemplary life as far as the criminal law is concerned
25 having only been convicted of a DUI some twenty years

1 earlier. He made a bad judgment in this situation. I
2 don't guess we told you specifically, you probably
3 remember, but basically the truck -- the truck made a left
4 turn at an intersection and the motorcycle ran into the
5 side of it as it made the left turn. We had the cameras at
6 the Hertz rental place. I think you remember that. That
7 was on the --

8 **THE COURT:** U-Haul? Was is it Hertz or U-Haul?

9 **MR. FLOYD:** He made a bad choices, he's aware of
10 that. He's had ample time to reflect upon it. He's been
11 over there over two years now. And, as he said, he's not
12 a bad person, he made a bad choice, he's paying for it, he
13 understands that, he appreciates that, he accepts that, he
14 just asks that Your Honor consider shortening the length of
15 the incarceration so that he'll have an opportunity to come
16 back and contribute to society and perhaps spend some
17 quality time with his family. Thank you.

18 **THE COURT:** Was it an eighty-five percent sentence or
19 no?

20 **MR. FLOYD:** Yes, sir, it's eighty-five percent.

21 **THE COURT:** Anything else from the State?

22 **MS. MAYES:** Yes, sir, Your Honor, briefly. I had
23 neglected moments ago to mention that also the testimony
24 at trial was that Mr. Caughman had actually been using
25 alcohol on the incident date. There were two friends

1 that testified they had all been together at -- I believe
2 they were doing some type of work on a deck or something
3 like that and they had all been consuming beer and that
4 Mr. Caughman then left that location and went to a local
5 establishment, a restaurant that serves alcohol here in
6 Lexington County, which is the Hard Knox Grill, and we had
7 a credit card receipt from the Hard Knox Grill, and that he
8 had also made purchases there and I believe the testimony
9 was that those purchases were made at the bar area. Now
10 that may have included food and alcohol. We don't know
11 exactly how much alcohol was consumed there, but ultimately
12 we believe that the motive to flee the scene was the fact
13 that he had consumed alcohol prior to the accident.

14 Your Honor, I'm also gonna pass up -- I know we had
15 submitted to the Court's law clerk yesterday a packet of
16 information concerning victim impact. We are also going to
17 -- I believe we had several additions come in this morning
18 from friends and family as well, so we're gonna submit a
19 copy to the Court, as well as to Mr. Floyd.

20 **THE COURT:** All right. Mr. Floyd, did you have anyone
21 else who wanted to say anything?

22 **MR. FLOYD:** Just a moment, Your Honor.

23 **MS. ROCHA:** Yes, Judge. I'm a first cousin to Craig
24 and so, of course, I've known him all my life. I also am
25 an adjunct professor at Broward College in Fort Lauderdale.

1 **THE COURT:** Tell me your full name, please.

2 **MS. ROCHA:** Jeannine, J-E-A-N-N-I-N-E. My last name
3 is Rocha, R-O-C-H-A. Throughout my life, whenever there's
4 been something that I've needed, Craig has always been
5 there for me. And he was there when my brother died, he
6 spent the day with me. He was there at my wedding. I
7 greatly love Craig. And for him to have to spend so much
8 time in jail for what initially was an accident -- I know
9 the coverup was very bad -- just seems to me that he --
10 that he's been taken away from his family, and we need him.
11 His parents are here. They're in their eighties. They
12 very much want him to be around them, so that I would like
13 for the Court to show him some compassion. Thank you.

14 **THE COURT:** All right. Thank you, ma'am. Anything
15 else? Anyone else?

16 **MR. FLOYD:** No thank you, Your Honor. If I might add
17 one thing, and I understand that you've got quite a factor
18 here of victim impact, and that's significant. There's no
19 doubt that Mr. Morriss was an accomplished man, but I'm not
20 sure the factors in the sentencing should necessarily rely
21 on that because the other side of that argument is that
22 well, if the victim had been homeless maybe he shouldn't
23 have got much jail time. And we're not punishing -- we're
24 punishing the act, not so much the consequences of the act,
25 although that -- that is a factor, but we just ask for

1 whatever mercy you can give him, Your Honor.

2 **MS. MAYES:** Your Honor, I will also pass up the NCIC
3 record, which does support the prior conviction of the DUI
4 in this case. I beg the Court's indulgence. And then, I
5 believe, in addition to that, there was a previous or a
6 separate violation for open container and driving under
7 suspension.

8 **THE COURT:** All right.

9 **MS. MAYES:** And, Your Honor, the victim's family are
10 residents of Oklahoma. His parents could not be here.
11 There is a friend who is here, Diane Mosley. He did have
12 a large group of friends here in the Columbia area after
13 relocating here and I do believe she wishes to briefly
14 address the Court. Diane Mosley.

15 **THE COURT:** All right. Yes, ma'am.

16 **MS. MOSLEY:** Hello, sir. I'm Diane Mosley. Toby
17 Morriss was a friend of mine. He was a better friend to my
18 husband. He was my son's professor in graduate school.
19 Toby had parked his camping trailer on some property of
20 ours for a while, so we knew him quite well. We saw him
21 often. When I heard the word "exemplary" used, I couldn't
22 help but think that that's the word for Toby and if
23 exemplary is how we describe Mr. Caughman, I cannot imagine
24 the comparison that we might choose to use for Toby. We
25 miss him very much. His parents would love to be able to

1 ask for him to come home. We can't. He didn't get a
2 twenty year sentence, he got a death sentence. I
3 understand the whole concept of compassion. I understand
4 mercy, I understand forgiveness, but I also understand that
5 part of true love involves tough love and that there are
6 consequences to behavior. I am sorry for everyone
7 affected. It is tragic all the way around, for
8 Mr. Caughman's family and for Mr. Morriss's family, but
9 there are consequences to behavior. You don't just say
10 I'm sorry and walk away. I am glad to hear Mr. Caughman
11 say he's sorry. I didn't believe it since I hadn't heard
12 it until today. I am glad that there is time to reflect
13 on personal behavior, but I do not think that reducing a
14 sentence which is just is a good idea in this case and I
15 hope Your Honor will let it stand.

16 **MS. MAYES:** And, finally, Your Honor, I believe in
17 some of the victim impact submissions they had spoken
18 about seventeen years. They are aware of the twenty year
19 sentence, but seventeen is what we estimated he would
20 serve because even with eighty-five percent it's not a
21 full sentence.

22 **THE COURT:** All right. Well, the State has submitted
23 a big stack of papers which include some perhaps that might
24 have been submitted previously --

25 **MS. MAYES:** Uh-huh.

1 **THE COURT:** -- and some that are -- some that were
2 not. I'll need to take time to review everything that
3 has been submitted, including -- and also to more fully
4 consider all that has been stated and submitted here today,
5 and I'd asked the parties to submit before today whatever
6 authority that y'all were basing your arguments on -- or
7 would be basing your arguments on. Certainly at the time
8 that I made rulings during the course of the trial, I think
9 I was fairly deliberate, considered all sides and tried to
10 make a fair decision with regard to everything that I had
11 to make rulings on and to leave the decision in the hands
12 of the jury as to whether Mr. Caughman is guilty or not
13 guilty and for what crime.

14 With regard to the issue of whether or not there was
15 some intervening negligence which caused the death versus
16 the injuries that he sustained on February 21st, whether
17 that was the cause of death, that's something that I
18 remember distinctly being attune to and to have the jury
19 closely examine that issue and make a decision on that
20 question. Mr. Floyd engaged in a rather rigorous
21 cross-examination of State's witnesses who offered opinions
22 that the death was caused by the wreck and not by any
23 medical malpractice or any other independent or intervening
24 injury.

25 I probably have a copy of my jury charge, it would

1 amaze me if I didn't have a copy of it, but I haven't been
2 able to locate it yet or review that charge. I usually
3 have the clerk return the charge to me that I give to the
4 jury and it may be in the Lexington clerk's office's file,
5 if not on my computer. So I'm going to take it all into
6 consideration and issue a decision after having fully
7 considered all that has been presented today.

8 **MR. FLOYD:** Thank you, Your Honor.

9 **THE COURT:** I thank all of you for coming. I
10 certainly thank all of the parties for your interest in
11 this matter. As it was just stated, it's certainly
12 tragic for everyone involved and tragic most of all for
13 Mr. Fredric T. Morriss. All right. Thank you all.

14 **MS. MAYES:** Thank you, Your Honor.

15 **MR. FLOYD:** Thank you, Judge.

16 (Proceedings were concluded at 1:24 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 21st day of May, 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

December 7, 2015

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON 05.01.29

) IN THE COURT OF GENERAL SESSIONS.
) ELEVENTH JUDICIAL CIRCUIT

2010-GS-32-2294

STATE OF SOUTH CAROLINA

**ORDER DENYING
DEFENDANT'S MOTION FOR
RECONSIDERATION AND FOR A
NEW TRIAL**

v.

WILLIAM CRAIG CAUGHMAN,
DEFENDANT.

THIS MATTER came before the Court pursuant to the Defendant's Motion for Reconsideration and for a New Trial filed on May 31, 2013. The Court held a hearing on this Motion on May 21, 2015 in Lexington County.

Based on the arguments of counsel and other presentations to the Court, I find that the Motion should be denied.

It is therefore ORDERED that the Motion for Reconsideration and for a New Trial is hereby DENIED.

AND IT IS SO ORDERED.

Clifton Newman
Presiding Judge

July 25, 2015
Columbia, South Carolina

A TRUE COPY

[Signature]

Lex. Co. C.C.P., G.S. & F.C.

1 State of South Carolina
2 County of Lexington Court of General Sessions

3
4 State of South Carolina,) Transcript of Record
5 vs.) 2010-GS-32-2294
6 William Craig Caughman,)
7 Defendant/Appellant.)

8
9 September 16, 2016
10 Lexington, South Carolina

11 B E F O R E:

12 The Honorable Clifton Newman, Judge

13
14 A P P E A R A N C E S:

15 John Benjamin Aplin, Esquire
16 On behalf of the Office of the Attorney General

17 John Harrison Strom, Esquire
18 On behalf of the Defendant/Appellant

19

20

21 Stacy S. Johnson, RPR
22 Circuit Court Reporter

23

24

25

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1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	Defendant's 1	Trial/Hearing Transcripts	4	4
4	Defendant's 2	Defense Attorney's Notes	4	4
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1 (Defendant's Exhibit Number 1, Trial/Hearing
2 Transcripts, and Defendant's Exhibit Number 2, Defense
3 Attorney's Trial Notes, were marked and admitted into
4 evidence.)

5 **BAILIFF:** All rise. Court's now in session. The
6 Honorable Judge Clifton Newman presiding. Please take your
7 seats.

8 **THE COURT:** Good morning. I've got -- there's a
9 letter that was forwarded to me by, I guess, the Attorney
10 General's Office enclosing an order sending this case back
11 -- or having me to say that I am to -- the Appellant is
12 ordered to contact counsel for Respondent and the circuit
13 court judge hearing as to the -- within ten days of this
14 order to schedule such hearing as the circuit court judge
15 deems appropriate, and that was filed August the 11th, and
16 something was sent stamped August 17th to me and subsequent
17 to that another e-mail -- or another letter was sent saying
18 that I had not made contact with counsel so, therefore, it
19 needed to be -- wasn't ready to be heard.

20 I received that. It was sent to Kingstree while I was
21 presiding in Columbia, it was forwarded to me, and I then
22 scheduled this hearing and then counsel e-mailed saying
23 they weren't ready to hold the hearing and I denied -- and
24 wanted it continued and I denied that request and we're
25 here this morning. And I don't know the parties who sent

1 the letters and I don't know who's who and what's what.

2 Yes, sir.

3 **MR. STROM:** Your Honor, John Strom, appearing on
4 behalf of John Caughman with appellate defense. I
5 apologize for the confusion on -- on mailing the letters
6 to the wrong location where you weren't presiding.

7 **THE COURT:** Well, people usually use e-mail these
8 days or at least have an e-mail address where if it's sent
9 to one location and if it's forwarded to me I can e-mail
10 the person who sent it.

11 **MR. STROM:** Yes, sir.

12 **THE COURT:** I notice none of that's on your
13 letterhead, I don't think, no e-mail addresses.

14 **MR. STROM:** No, sir.

15 **THE COURT:** All right. Nevertheless, we're here.

16 **MR. STROM:** Yes, Your Honor. Just to provide a
17 brief background, this trial was held back in May of 2013.
18 It was determined that portions of the transcript were
19 either listed as inaudible or that the tapes somehow
20 malfunctioned, so several sections of -- of unknown length
21 are -- are missing.

22 We have Mr. Floyd here who was Mr. Caughman's defense
23 attorney, as well as Suzanne Mayes from the solicitor's
24 office, we've got their notes -- or Mr. Floyd's notes and
25 we'd just like to put up some testimony about what they

1 remember regarding those missing portions.

2 **THE COURT:** Did you say what your name -- did you
3 state your name for the record?

4 **MR. STROM:** Yes, sir. John Strom.

5 **THE COURT:** John Strom.

6 All right. Yes, sir.

7 **MR. APLIN:** Judge Newman, I'm Ben Aplin --

8 **THE COURT:** Ben Aplin.

9 **MR. APLIN:** -- with the Attorney General's Office --

10 **THE COURT:** All right.

11 **MR. APLIN:** -- and Ms. Mayes, Suzanne Mayes with the
12 solicitor's office, is sitting here with me.

13 If I could approach Your Honor and just hand you a
14 couple of documents. I showed these to Mr. Strom. Really
15 I think these are things that are a part of the appellate
16 record, but they may be helpful for your purposes in
17 following along with what we're doing today.

18 **THE COURT:** Okay.

19 **MR. APLIN:** And I'll state for the record what the
20 items are in this packet I'm handing you. There's not a --
21 not lot of things there, but the first thing is actually
22 Mr. Strom's motion to hold the appeal in abeyance and to
23 remand for the reconstruction hearing that was filed with
24 the Court of Appeals.

25 **THE COURT:** Okay.

1 **MR. APLIN:** And I have some tabs in there which all
2 that does is direct your attention to the specific pages of
3 the transcript where it says a portion is inaudible. Just
4 to make it easier for you to find.

5 **THE COURT:** All right.

6 **MR. APLIN:** And you have, I think, a copy of the
7 entire transcript that Mr. Strom gave you --

8 **THE COURT:** I think that was brought in here today.

9 **MR. APLIN:** -- today.

10 **THE COURT:** Yes, sir.

11 **MR. APLIN:** And so those portions that are marked are
12 obviously from the larger trial transcript itself.

13 **THE COURT:** All right.

14 **MR. APLIN:** You also have a copy of the return that
15 the State did to the motion to reconstruct the record. I
16 included a copy of Section 56-5-1210 of the code, which is
17 one of the issues that I think allegedly wasn't transcribed
18 with arguments.

19 **THE COURT:** 56-5 --

20 **MR. APLIN:** I'm sorry. 56-5-1210 --

21 **THE COURT:** 1210. All right.

22 **MR. APLIN:** -- which is the duties of drivers involved
23 in an accident resulting in death or personal injury. And
24 then lastly in that packet is a copy of State versus
25 Ladson, which is a Court of Appeal's opinion from, I think,

1 2007 that sort of lays out where our appellate courts found
2 reconstruction hearings should go.

3 **THE COURT:** What does it generally say?

4 **MR. APLIN:** It basically says that there needs to be
5 an adequate record -- there needs to be a record that's
6 sufficient to allow adequate appellate review and that the
7 appellate court has the ability to send it back to the
8 trial court to attempt to reconstruct the record to make it
9 sufficient to do that. In the Ladson case, the Court of
10 Appeals found that it was not sufficiently reinstructed, so
11 it's -- it's fairly instructive because it gives an idea of
12 an example of when that couldn't be done.

13 **THE COURT:** Well, one thing I -- well, my eyes
14 immediately go to the portion that says we recognize that
15 the excellent trial judge did the best he could to
16 reconstruct the records under difficult circumstances.

17 **MR. APLIN:** Right. And they made a point to point
18 that out several times in that opinion.

19 **THE COURT:** Okay.

20 **MR. APLIN:** On Page -- if you flip to the third page
21 of that opinion you have there, that's where they -- over
22 in, I think, headnote two and just above there is where
23 they talk a little bit about what the standard is for
24 reconstructing the record.

25 **THE COURT:** Okay.

1 **MR. APLIN:** But I thought that might be useful for
2 you to have. Those are the four items. And I -- I
3 apologize as well for the request for the continuance. My
4 primary reason for doing that was I had not actually until
5 this morning seen the entire transcript yet. All I've seen
6 are the little -- the portions that are attached to that
7 motion and I felt like we'd better have it all to be
8 prepared, but we've got it all now and I do think we can --
9 given the limited nature of what's missing, we should be
10 able to go forward today.

11 **THE COURT:** Okay.

12 **MR. APLIN:** Thank you, Your Honor.

13 **THE COURT:** What do you say, Mr. Strom?

14 **MR. STROM:** If Your Honor's ready, I call Wayne Floyd.

15 **THE COURT:** Okay.

16 **THE CLERK:** I'm looking for the Bible. Where's my
17 Bible? I didn't realize it had disappeared.

18 **THE COURT:** You can swear him without a Bible, can't
19 you?

20 **THE CLERK:** Yes, sir. Raise your hand.

21 (Whereupon, Wayne Floyd was duly sworn by the Clerk of
22 Court.)

23 **THE CLERK:** State your name on the record, please.

24 **THE WITNESS:** Wayne Floyd.

25 **THE COURT:** Once they find the Bible, we'll re-swear

1 him. Oh, there it is. Since we're reconstructing the
2 record, we better be sure.

3 (Whereupon, Wayne Floyd was re-sworn by the Clerk of
4 Court.)

5 WAYNE FLOYD,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STROM:

9 Q. Good morning, Mr. Floyd.

10 A. Good morning.

11 Q. Do you recall representing Mr. Caughman?

12 A. Yes.

13 Q. How -- how did you come about -- how did you come
14 about to represent him?

15 A. He was originally represented by Richard Briebart
16 and after Mr. Briebart got suspended, I stepped in to help
17 him.

18 Q. Do you recall exactly when that was?

19 A. I -- I don't recall the exact date. The case had
20 some age on it by that time, but Suzanne gave me enough
21 time to get ready before she called it for trial.

22 Q. Okay. And have you had a chance to review the
23 transcript from the trial that we provided you?

24 A. Some.

25 Q. Okay. Do you recall Dr. Moffatt's testimony during

1 trial?

2 A. Yes.

3 Q. And was Dr. Moffatt his treating physician -- the
4 victim's treating physician?

5 A. No, she was the person who did the autopsy.

6 Q. Okay. Do you recall any objections you may have made
7 to her testimony?

8 A. Yes. There was several, if I recall correctly. I
9 objected that -- she based her opinion on some records that
10 had not been provided to us, which we felt were required
11 to be produced if she was gonna base her opinion on them
12 pursuant to Rule 5. I also objected to her testifying to
13 hearsay. She was not a treating physician, she just did
14 the autopsy, and she testified as to findings and so forth
15 from the treating physicians, which we didn't have an
16 opportunity to cross-examine.

17 Q. Well, a portion of that -- of your argument on that
18 objection is inaudible. Do you think perhaps looking
19 through it you could see just how much of it is missing?

20 A. Yeah, it might -- it might help me.

21 **MR. STROM:** Your Honor, may I approach?

22 **THE COURT:** Yes, sir.

23 BY MR. STROM:

24 Q. So on Page 196 --

25 **MR. STROM:** And, Your Honor, this is Defense

1 Exhibit 1. It's the trial transcript.

2 **THE COURT:** All right.

3 **MR. STROM:** I don't think there's any objections to
4 it being in.

5 **MR. APLIN:** No, Your Honor.

6 BY MR. STROM:

7 Q. Beginning really on Line 10 of Page 196, you have the
8 beginning of your objection, Mr. Floyd.

9 A. Right.

10 Q. And then on Line 23 it says portion inaudible. If you
11 could review beginning at Line 10 to try to get a -- some
12 idea of how much of your argument is missing.

13 A. Wow, it's hard to say. I don't know that I could tell
14 you with any exactitude. I know that it was an important
15 part of the trial and her testimony was really germane to
16 the issue of causation and so I would assume I probably
17 said a lot more than just a couple of lines, like it just
18 says portion inaudible, but I couldn't tell you with any
19 certainty.

20 Q. All right. Would looking at your notes from the trial
21 perhaps help your memory?

22 A. I could try.

23 **MR. STROM:** Your Honor, may I approach?

24 **THE COURT:** All right.

25 **MR. STROM:** This is Defense Exhibit 2. It's

1 Mr. Floyd's notes from the trial. I believe it's also
2 without objection.

3 **MR. APLIN:** That's correct.

4 **THE WITNESS:** Which -- which witness?

5 **MR. STROM:** She is wit -- she's W-17.

6 **THE WITNESS:** 17.

7 **THE COURT:** And what's he looking at now?

8 **MR. STROM:** Your Honor, he's looking at his trial
9 notes.

10 **THE COURT:** His trial notes. And what -- what's
11 that?

12 **MR. STROM:** The notes that Mr. Floyd took
13 contemporaneous to -- as the trial was ongoing. So it's
14 his --

15 **THE COURT:** Is that --

16 BY MR. STROM:

17 Q. I'm sorry. Is it an accurate reflection of your
18 notes, Mr. Floyd?

19 A. Yes; although I wouldn't say my notes are always
20 complete --

21 Q. Okay.

22 A. -- of everything that was going on, but, yeah, this
23 is -- this accurately represents what I wrote down. It
24 appears I made a motion in limine based on hearsay and
25 a Rule 5 violation. I don't really see that in here though

1 unless that was before this.

2 Q. Okay. Moving on to Page 210 of the trial
3 transcript --

4 **THE COURT:** You're moving to a different point now?

5 **MR. STROM:** Yes, Your Honor.

6 **THE COURT:** Well, just --

7 **MR. APLIN:** And just for point of suggestion, maybe
8 we would want to address each section like -- and do the
9 direct and cross with back and forth. Would that make more
10 sense? I'm just throwing that out there as a possibility.

11 **MR. STROM:** That's absolutely fine, Your Honor.

12 **THE COURT:** All right.

13 **MR. STROM:** I think it does make a lot of sense.

14 **THE COURT:** Well --

15 **THE WITNESS:** If I could continue to -- it appears
16 from the next page of my notes that -- that there was some
17 extensive notes I made on the testimony of Dr. Moffatt
18 concerning the treatment that she did testify to.

19 BY MR. STROM:

20 Q. So to the best of your recollection, she did no
21 treatment with regard to the decedent?

22 A. That's correct. She --

23 **THE COURT:** Well, it's stated in the question. He
24 made a hearsay objection, the State responded to the
25 hearsay objection, so are you now trying to reconstruct

1 something beyond the objection or the basis for the
2 objection, the theory behind the objection? He made an
3 objection --

4 **MR. STROM:** Uh-huh.

5 **THE COURT:** -- and -- and the solicitor responded and
6 the Court ruled. So what else could there possibly be on
7 -- from this Line 23 that would make any difference one
8 way or the other based on the fact that it's a hearsay
9 objection?

10 **MR. STROM:** Your Honor, I'm just attempting to sort
11 of flesh out the full portion of -- of whatever is missing.

12 **THE COURT:** Well, I can understand if you're trying
13 to flesh out some evidence that -- that's not recorded in
14 the record. I mean, this is not, you know, any discussion
15 about evidence, this is discussion about an objection. He
16 -- he's made an objection because the person who testified
17 -- who's testifying, Dr. Moffatt, wasn't a treating
18 physician, was the person who, I guess, did the autopsy;
19 is that right?

20 **MR. STROM:** Yes, Your Honor.

21 **THE COURT:** Well, and he's saying well, that's a
22 hearsay objection because she didn't -- she didn't treat
23 him. She's basically talking about what's in the record.
24 This is not an inaudible as to her response, this is --
25 so it's not inaudible as to any evidence, it's inaudible

1 as to if he said anything else in making an objection,
2 what else did he say, and does it matter whatever else
3 he -- it doesn't matter what else he said if he said
4 anything else because he objected based on hearsay, the
5 State responded and the Court ruled. So I'm not sure what
6 else going back to his trial notes, his theory as to the
7 defense and all those things, I don't see how that as
8 relates to this particular question matters one way or
9 the other.

10 **MR. STROM:** Yes, Your Honor. I'll -- I'll move on
11 and touch on these remaining points.

12 **THE COURT:** As to this particular objection.

13 **MR. STROM:** As to the other inaudible portions, I --
14 I under -- I appreciate Your Honor --

15 **THE COURT:** All right. I thought we were gonna --
16 I thought we were gonna do them one at a time and the
17 State --

18 **MR. STROM:** Oh, I'm sorry.

19 **THE COURT:** -- and the State hasn't had their
20 opportunity.

21 **MR. STROM:** That's correct, Your Honor.

22 **THE COURT:** All right.

23 **MR. APLIN:** Thank you, Your Honor. I'll just try to
24 be brief because I think I was gonna hit along some of the
25 same points you just made.

1 CROSS-EXAMINATION

2 BY MR. APLIN:

3 Q. Mr. Floyd, your two objections to Ms. Moffatt's
4 testimony seem to be a Rule 5 objection and then a hearsay
5 objection, correct?

6 A. That's correct. And whether I had anything else, I
7 don't know of it. Those -- those two are right here, yes.

8 Q. And you're looking at Page 196 of the transcript,
9 right?

10 A. That's correct.

11 Q. Now if you turn over to Page 201 of the transcript
12 and do you see the middle of the page, Line 13, where the
13 solicitor is making an argument on the record? Can you
14 just read that portion of her argument, please.

15 A. Yes, sir, Your Honor. The State's position, Your
16 Honor, in this regard is consistent with her -- her
17 testimony is consistent in regard to her autopsy report,
18 her medical findings as supported by Rule 703 which allows
19 for an expert to make reference to any information that she
20 had reasonably relied upon as other input and in reaching
21 an informed opinion.

22 Q. Okay. And then if you'd just entertain me and turn
23 two more pages over to 203 at the very top of the page.
24 And this is continuing over from the bottom of 202, I
25 guess, where the Court is making a statement. Do you see

1 where the judge says an expert can rely on hearsay in
2 forming an expert opinion?

3 A. Right.

4 Q. So it appears that the judge ruled on your objection?

5 A. Certainly ruled on -- yeah, that's the hearsay part,
6 uh-huh.

7 **MR. APLIN:** Okay. That's all I have. Thank you.

8 **MR. STROM:** Your Honor, we'll move on to Page 208 and
9 209.

10 **THE COURT:** All right.

11 CONTINUED DIRECT EXAMINATION

12 BY MR. STROM:

13 Q. Mr. Floyd, this portion of Dr. -- the doctor's
14 testimony in front of the jury beginning at the top of
15 Page 208, it would appear that she's moving towards her
16 ultimate diagnosis as the cause of death. On Line 14, if
17 you'll read that question and then read your answer -- or
18 excuse me, read her answer and -- and what do you recall
19 if there's anything additional there?

20 A. Okay. Line 14, is that --

21 Q. Yeah, you can just -- just read it and if you'll --
22 her answer is in this area here he had rib fractures,
23 portion inaudible, bilaterally. Do you have any specific
24 recollection as to what that missing portion is?

25 A. Well, no, I -- I don't. I don't have any independent

1 recollection as to what the missing part of that testimony
2 is.

3 Q. Okay. And if you can turn to Page 209, Line 6, she's
4 asked the question about rib facts -- the rib fractures
5 and the surgery the decedent underwent on his left wrist,
6 what other injuries did she observe. Do you have any
7 independent recollection of her response?

8 A. No, I don't have any independent recollection of how
9 she responded to that question.

10 Q. Would looking at your notes about her direct testimony
11 refresh your memory at all?

12 A. I don't know whether there's -- it's somewhere else
13 in here or not. Is there some other place where we cover
14 the blood clots?

15 Q. It covers -- the blood clots are also on your --
16 part of your redirect examination -- or, excuse me,
17 cross-examination --

18 A. Okay.

19 Q. -- beginning on Page -- excuse me. Beginning on
20 Page 213.

21 A. Okay. Okay. I just don't know what would -- what's
22 missing from this --

23 Q. Okay.

24 A. -- portion on Page 214. I have no memory of that.

25 Q. Turning to Page 210, beginning at Line 6 -- excuse me,

1 really beginning at -- at 209, Line 22, Solicitor Mayes
2 asked the question of whether or not the decedent's
3 injuries are consistent with blunt force trauma as
4 sustained in a motor vehicle accident. The doctor responds
5 it would be consistent. There's an issue with His Honor
6 hearing the response and then she repeats her answer and
7 then on Line 6 she begins this is the area of the
8 contusion. The remainder of her response is inaudible. Do
9 you have any specific recollection of her response?

10 A. No, I have no independent recollection of how she
11 responded.

12 Q. Do you recall if any exhibits were used or any --
13 well, I retract that question, Your Honor.

14 Moving on to Line 12, she's asked where the adrenal
15 glands are located. That portion of the testimony is also
16 inaudible. Any recollection as to what her answer was and
17 how long it may have been?

18 A. No, I have no independent recollection of that either.

19 **THE COURT:** Well, she wouldn't have said where this
20 gland is located? You couldn't remember whether she said
21 -- the question is where are the adrenal glands located.
22 You can't recall whether she -- you know, if she -- is it
23 in the head, the foot, the neck, the -- I mean --

24 **THE WITNESS:** I have no memory --

25 **THE COURT:** -- you can't --

1 **THE WITNESS:** I have no memory of what she said.

2 **THE COURT:** Pardon?

3 **THE WITNESS:** I have no memory of what she said in
4 that --

5 **THE COURT:** You have no memory, no -- you have no clue
6 what would have gone there, what would be the substance of
7 that answer? I mean, did you cross-examine her if she --
8 where is the -- where are the adrenal glands? Can anyone
9 tell me? Can you tell me?

10 **THE WITNESS:** I think they're --

11 **MR. STROM:** I'd have to look that up, Your Honor.

12 **THE WITNESS:** I'm not sure, Judge.

13 **THE COURT:** Well, that was the question of the witness
14 and --

15 **THE WITNESS:** I think I would have known it at the
16 time.

17 **THE COURT:** -- if she said it was some place it wasn't
18 and it was not -- where are the adrenal glands? Located in
19 the top of both kidneys. So if she said they're in the
20 foot, I mean, you'd have -- there would have been some
21 cross-examination I would assume. Anyway, go ahead, sir.

22 **MR. STROM:** Thank you, Your Honor. That's covers my
23 questions about the doctor's testimony.

24 **THE COURT:** All right.

25 **MR. APLIN:** Thank you, Your Honor.

1 CONTINUED CROSS-EXAMINATION

2 BY MR. APLIN:

3 Q. Mr. Floyd, it appears in reviewing the doctor's
4 testimony through here, there are several examples where
5 she was either speaking quietly or low. People were having
6 trouble understanding her, it appears, right?

7 A. Well, yeah, there are several places where it says
8 portion inaudible, so.

9 Q. Or even places where either Ms. Mayes or the judge
10 said could you please speak up or I couldn't hear you?

11 A. Yes.

12 Q. And in those situations, she either repeated her
13 testimony or tried to speak up so she could be heard it
14 sounds like. Would you agree with that?

15 A. Well, when she was specifically asked about that, yes.

16 Q. Okay. During this direct testimony from Dr. Moffatt,
17 do you recall -- when she's giving this medical testimony,
18 did you object to any of it?

19 A. Well, I objected to all of it at -- at the beginning.

20 Q. But during this portion of the testimony when there's
21 parts inaudible, do you remember standing up or raising an
22 objection during her testimony about the medical evidence?

23 A. I don't recall one way or the other whether I did or
24 not.

25 Q. Okay.

1 A. I may have, but I don't recall that either.

2 Q. And as far as you know, the adrenal gland are located
3 in the same place in every person?

4 A. Well, as far as I know.

5 Q. Okay.

6 A. I'm not a doctor, but yeah.

7 **MR. APLIN:** I have nothing further right here, Your
8 Honor.

9 **THE COURT:** Well, just concerning this 209, there
10 were -- where we started here for this particular one, it
11 says now in addition to the rib fractures and the surgery
12 on the left wrist, what other injuries did you observe,
13 and whatever she said I couldn't hear and I said I can't
14 hear you, you need to talk up, and the answer is he had a
15 fracture on the base of his skull at the point of the
16 first vertebrae -- vertebra or the base of the skull that
17 impacts with that vertebra. So as to Line Number 8 that
18 appears to be inaudible, Mr. Floyd, wouldn't you think
19 that the -- what's inaudible was the response that she
20 gave when I told her I couldn't hear her which started
21 from Line Number 9?

22 **THE WITNESS:** Well, I think that's --

23 **THE COURT:** Or starting at Line Number 10 when she
24 answered the question, was she answering the question that
25 was asked in Line Number 6?

1 **THE WITNESS:** Well, that -- that would be a logical
2 approach to it; although I have no memory of what she
3 said.

4 **THE COURT:** Well, I mean, I think our -- if the role
5 here is to kind of reconstruct this -- what was said back
6 then, if someone asked the question, the solicitor or the
7 defense asked the question -- who was asking here? Was it
8 the solicitor or --

9 **MR. STROM:** It was the solicitor, Your Honor.

10 **THE COURT:** If Solicitor Mayes was asking the question
11 and she mumbled something and I said I can't hear you,
12 speak up and then she spoke up and answered the question,
13 then wouldn't it seem to you that there's no issue as
14 relates to this particular area of the transcript because
15 the answer -- her response, her audible response, was given
16 beginning at Line Number 10?

17 **THE WITNESS:** Well, I understand what you're saying,
18 Your Honor, but I still have no memory of what --

19 **THE COURT:** Well, none of us would have any memory of
20 anything. What year was this?

21 **THE WITNESS:** 2013.

22 **MR. STROM:** 2013, Your Honor.

23 **THE COURT:** Yeah, 2013. I don't think that I would
24 -- it would be amazing if all the business and cases and
25 people and testimony you've had since -- from that period

1 of time to have a particular member of -- of what anyone
2 said back then, but in reconstructing this transcript when
3 you look at that, isn't that pretty obvious what her --
4 what the inaudible response was is what's indicated in her
5 answer on Line Number 10?

6 **THE WITNESS:** Well, it's clear that's -- clearly
7 that's what she said when you asked her.

8 **THE COURT:** Well, that was her answer. She -- I said
9 speak up, we couldn't hear, she spoke up and answered. If
10 I say -- you know, if the question was at Line Number 6
11 what's your name and you said Wayne Floyd and I said I
12 can't hear you and you said Wayne Floyd, then that's a
13 clear answer, so that one -- that one's pretty easy as
14 well.

15 **MR. STROM:** Yes, Your Honor. Moving on.

16 **THE COURT:** As to where the adrenal glands were
17 located, I mean, well, is that of any consequence to
18 anything? Is that a medical fact or physiological or --
19 is that the right word? It's just a fact where they're --
20 where it's located. If it's located the same on every --
21 every person at the top of the kidney, then we know what
22 her answer was if she's a doctor, she -- she said where it
23 was, even if the court reporter couldn't hear her. By the
24 way, where's this court reporter now?

25 **MR. STROM:** I believe she is retired presently. We

1 had -- this is Harriet Bennett.

2 **THE COURT:** Harriet Bennett?

3 **MR. STROM:** Yes, sir.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. STROM:

6 Q. Moving on to Page 218, Mr. Floyd --

7 A. Yes.

8 Q. -- the State calls a witness who is an Amy Stephens.
9 If you'll look at -- beginning on Line 21, there's a
10 transcription note that Amy Stephens' direct examination
11 was not available. Do you recall what her position is or
12 what her position at SLED was?

13 If you'd like to, your -- a portion of your
14 cross-examination is available -- or, excuse me, was
15 transcribed on Page 19.

16 A. Okay. It appears she was a forensic technician with
17 SLED.

18 **MR. STROM:** And, Your Honor, I apologize. My version
19 of the transcript that I handed up doesn't have a red tab
20 on 218. I apologize.

21 **THE COURT:** Okay. No problem.

22 BY MR. STROM:

23 Q. Is that a forensic technician?

24 **MR. APLIN:** Your Honor --

25 **THE COURT:** There's nothing on yours which you handed

1 me.

2 **MR. APLIN:** -- I've never seen this actually, the
3 portion of the transcript, at all. Or it wasn't a part of
4 the motion as far as I recall, so. I apologize. It's the
5 first that I've seen this or realized this was part of the
6 issue with the reconstruction today.

7 **THE COURT:** Well, the areas that were problematic,
8 were those specified --

9 **MR. STROM:** Most --

10 **THE COURT:** -- in something to the Court or am I just
11 to go through the entire transcript regarding any and
12 everything that --

13 **MR. STROM:** I'm sorry, Your Honor. I didn't mean to
14 interrupt.

15 **THE COURT:** No. Are we limited to specific things
16 that you raised in the motion? Did you raise line and --
17 did you raise in your motion specific things that were
18 inaudible or just many things were inaudible without
19 specifying what they were?

20 **MR. STROM:** Well, many of the portions that are
21 inaudible were specified. The terms of the remand is that
22 it's entirely at your discretion, Your Honor, as to which
23 portions you feel are necessary for a meaningful appellate
24 review.

25 **THE COURT:** Okay.

1 **MR. STROM:** I -- I believe --

2 **THE COURT:** Maybe it's part of the transcript of the
3 record to the appellate court is the entire transcript.

4 **MR. STROM:** Yes, Your Honor.

5 **THE COURT:** Okay.

6 **MR. STROM:** And, again, to sort of compare what --
7 what the -- where the adrenal gland's located, the
8 determination as to relevancy to the appeal is entirely --
9 is in your discretion --

10 **THE COURT:** Okay.

11 **MR. STROM:** -- and that's a part of the reconstruction
12 process.

13 **THE COURT:** All right. Well, where are we now then?

14 **MR. STROM:** Sorry, Your Honor. 218, Line 21.

15 **THE COURT:** Okay.

16 **MR. STROM:** It's a transcription note from the court
17 reporter noting that her direct testimony -- Amy Stephens'
18 direct testimony is missing. Mr. Floyd, after reviewing
19 what portion of his cross-examination was transcribed on
20 219, has said that she was a SLED technician and then I
21 believe that was the extent of it.

22 BY MR. STROM:

23 Q. Do you have any recollection as to how long her
24 testimony was or what role her she played in the trial?

25 A. No, I don't have any independent recollection of what

1 she testified to or whether or not I objected to anything
2 she testified to.

3 Q. Given her placement in the proceedings, do you believe
4 there's a possibility -- and I'm sorry if this is poorly
5 phrased, that she's a chain of evidence witness?

6 A. Well, I think that's possible. She testified right
7 before Moskal -- Witness Moskal, who testified to some
8 paint chips that were discovered.

9 Q. Uh-huh. To your recollection, were there any issues
10 or objections made to the chain of evidence?

11 A. Yeah, that was a pretty significant issue on the paint
12 chips, if I recall correctly, and I imagine I made an
13 objection to any testimony about the paint chips. The --
14 when the incident occurred, the motorcycle on which the --
15 the victim was riding, driving, was picked up and carried
16 to a -- to Tillman's Garage, I think, Tillman's Towing,
17 then some friends of the victim, the motorbike was -- bicyc
18 -- motorbike was turned over to them, and then there were
19 some parts of the bike that were left just in a debris
20 pile --

21 Q. Uh-huh.

22 A. -- and I think, if my memory is correct, that Cayce --
23 Cayce later went to the debris pile and got the parts that
24 the paint was on from the motorbike.

25 Q. After the motorbike had been taken away by the

1 friends?

2 A. Yeah, the motorbike had already been taken away by
3 friends or released to friends of the victim, but there was
4 a debris pile, so there was a question there as to whether
5 or not that debris pile would contain items that would be
6 relevant to this case.

7 Q. And so you don't have a specific recollection as to an
8 objection -- whether you objected or didn't object to that
9 chain of evidence, but it was an issue at trial?

10 A. Oh, I made objection to the chain of evidence. Now
11 whether I repeated the objection to this witness, I assume
12 I did, but, you know, it's not -- it's not there.

13 Q. Okay. And if you could turn to Page 219, do you
14 recall the length of your cross-examination? I -- the
15 transcription note says the audio begins with the
16 cross-examination, but to the best of your recollection is
17 that your complete cross-examination of this witness?

18 A. I have no independent recollection of that. It is a
19 short cross-examination. Whether that was all or not, I --
20 I couldn't say.

21 **MR. STROM:** Okay. Thank you. That's all for this
22 portion of the record.

23 CONTINUED CROSS-EXAMINATION

24 BY MR. APLIN:

25 Q. Mr. Floyd, if I understood you correctly, you said

1 that there was an objection to chain of custody or chain
2 of evidence to the paint chips involved in the case?

3 Something to do with paint chips?

4 A. The items from which the paint chips were taken --

5 Q. Okay.

6 A. -- it's my memory came from the debris pile that was
7 left there -- that was -- came from Tillman's. Tillman's
8 towed the bike the night of the wreck. There were some --
9 there were some items that really came loose from the bike
10 in the roadway which were cleaned up by the wrecker, they
11 took it all to their lot, covered it with a tarp, and then
12 there was a debris pile from the debris. My recollection
13 is that they ended up releasing the bike to friends of the
14 victim. The debris pile was still there. Whether it was
15 the same debris pile or not, there was a debris pile still
16 there. Cayce came out and got the items from the debris
17 pile.

18 Q. Okay. And on Page 219, that brief section of
19 cross-examination, whether that's all of it or a portion
20 of it, Line 4 you reference -- the question you're asking
21 of Ms. Stephens you reference Numbers 15 and 16 as far as
22 exhibits. Do you see that?

23 A. Yeah, I see that.

24 Q. And, again, I apologize, Judge, because I'm piecing
25 this together a little bit. Looking at the start of the

1 transcript where they list the exhibits, the court reporter
2 on Page 4 talks about State's 15 and 16. Those appear to
3 be photo boards, correct?

4 A. It does.

5 Q. And there's nothing about physical evidence or paint
6 chips or any items that might have lost paint chips,
7 anything that you can tell from looking at that exhibit
8 list?

9 A. Well, they didn't introduce the paint chips
10 themselves.

11 Q. Okay. But you said items that the paint chips came
12 off of?

13 A. Okay. I don't remember all the photos that were
14 there. There were photos of the bike or photos of
15 Mr. Caughman's vehicle. I believe there are even photos of
16 the debris pile --

17 Q. Okay. But those --

18 A. -- so I don't know which photos these particular ones
19 were.

20 Q. But there wouldn't have been chain of custody or chain
21 of evidence objections to photos, would there?

22 A. Well, I think it had to do -- I don't -- see, I don't
23 know what she testified to, I don't have no memory of it,
24 but I would assume she would have testified to the paint
25 chips themselves, the chain, to get to -- to the next

1 witness, Mr. Moskal --

2 Q. Okay.

3 A. -- because he -- he didn't testify from photos, he
4 testified from the paint chips and the investigation he did
5 with the paint chips.

6 Q. Okay. But as far as looking at the little bit of your
7 cross we have, you said it was previously discussed Items
8 Number 15 and 16 -- those items previously discussed were
9 photo boards it looks like?

10 A. It looks that way. Now whether they were discussed
11 with her, I -- I guess if they were with her --

12 Q. Okay.

13 A. -- then -- then the testimony that's missing is fairly
14 long. I don't know.

15 Q. Okay.

16 **MR. APLIN:** That's all I have, Your Honor.

17 **MR. STROM:** Your Honor, moving on to Page 274 --

18 **THE COURT:** Okay. Before you move on --

19 **MR. STROM:** Yes, Your Honor.

20 **THE COURT:** -- let me just try to understand whatever
21 it is we're talking about for this lady, whoever she --
22 Stephens?

23 **MR. STROM:** Yes, sir.

24 **THE COURT:** What's your understanding as to what's
25 involved here?

1 **MR. STROM:** I believe, Your Honor, she is chain of
2 custody for a link between SLED and the Cayce-West Columbia
3 Task Force that investigated the wreck. I don't know
4 whether she performed any of the tests on the paint chips
5 to determine if they matched the same -- within a range the
6 same make and model of Mr. Caughman's car or if she was
7 just literally the transporter. I -- I don't -- you can't
8 tell that based on what's in the record.

9 **THE COURT:** You don't know if she -- who she was, Amy
10 Stephens?

11 **MR. STROM:** For what her role was as far as -- we know
12 she's a SLED evidence technician.

13 **THE COURT:** Okay.

14 **MR. STROM:** We don't know if she simply opened the
15 -- you know, took it from the evidence locker and put it
16 into the SLED lab or if she performed any of the tests on
17 there. Agent Moskal is the one who testifies extensively
18 about the match of the paint, but, again, there is this
19 issue as we're floating through the trial about the
20 motorcycle being removed and the parts from it being
21 collected or the alleged parts of it being collected later
22 that Mr. Floyd was -- was testifying to.

23 **THE COURT:** Okay. Okay.

24 **MR. APLIN:** And, Your Honor, I know this is a -- sort
25 of a loose proceeding as far as procedure goes, but the

1 solicitor, Ms. Mayes, remembers quite about this witness,
2 about Ms. Stephens, and could answer some of those
3 questions if you'd allow her or do you want to wait and
4 have her to testify later about that?

5 **THE COURT:** No, I think later. We'll have Mr. --

6 **MR. APLIN:** Okay. That's fine.

7 **THE COURT:** -- Mr. Strom go and then the State will
8 have a chance to go.

9 **MR. APLIN:** Thank you.

10 **THE COURT:** I'm just trying to make sure that I don't
11 -- my understanding is on parr. So right here we have the
12 entire direct examination of Ms. Stephens missing?

13 **MR. STROM:** Yes, Your Honor.

14 **THE COURT:** And Ms. Stephens is a SLED forensic
15 technician and it just seems as if Mr. Floyd on his cross
16 came in and said well, you're -- so you were employed as
17 this technician on March 15, 2010, when the evidence came
18 in and it was received by you that was previously
19 discussed, I believe numbers 15 and 16, so. And 15 and 16
20 were what?

21 **MR. STROM:** 15 and 16 as far as State's exhibits, Your
22 Honor, are two photo boards. They were not -- if you turn
23 to Page 4 where the exhibit index is --

24 **THE COURT:** Okay.

25 **MR. STROM:** -- they were never listed as entered into

1 evidence or -- or even identified.

2 **THE COURT:** Well --

3 **MR. STROM:** They appear out of order for her to have
4 been the one to necessarily identify them. It could also
5 be, Your Honor, that those are SLED item numbers relating
6 to the testing done as opposed to State's exhibits. And I,
7 again --

8 **THE COURT:** So -- so the next question --

9 **MR. STROM:** Ms. Mayes, do you have any recollection of
10 that?

11 **THE COURT:** -- so the next question says they were
12 taken in on the 15th of 2010 and also have the same items
13 resubmitted to our lab in 2011 and these are the same items
14 she previously received and -- so she didn't do any testing
15 or anything, that was done -- was done by the next witness,
16 Michael Moskal?

17 **MR. STROM:** Yes, Your Honor. And I don't -- Michael
18 Moskal definitely does the analysis on it. I don't know if
19 she did any testing or -- or not.

20 **THE COURT:** So considering the limited
21 cross-examination which consists of fifteen -- fifteen
22 lines, kind of has you conclude that she was the evidence
23 custodian who just -- who received -- the technician who
24 received something and had someone else to test it?

25 **MR. STROM:** That could very well be the case, Your

1 Honor.

2 **THE COURT:** So -- so I guess you'll give the argument
3 later after we hear everything. So if -- if there's some
4 dispute as to whether she said something significant is
5 missing or whether or not we have the gist of it or not
6 because typically these evidence custodians is someone
7 who receives it, marks it and then passes it on to someone
8 else and they typically don't do -- don't give much
9 testimony of substance and if they give something of
10 substance, then typically the cross-examination would be
11 pretty rigorous in challenging what they testified to, and
12 it appears here that Mr. Floyd didn't challenge her on
13 anything, he just got clarification of what she did or what
14 her role in it was. Am I missing anything?

15 **MR. STROM:** The only potential other issue there is
16 that we don't know if that's the entirety of Mr. Floyd's
17 cross-examination as of yet. Ms. -- Ms. Mayes may have a
18 better recollection.

19 **THE COURT:** Okay. All right. So let's see. Well, it
20 doesn't say anything is missing from cross-examination.

21 **MR. STROM:** No, Your Honor. It just says the
22 beginning.

23 **THE COURT:** It says cross-examination and then -- then
24 Stephens on cross that starts on the bottom of 218, top of
25 219, and that cross takes fifteen -- fifteen lines. So

1 there's no indication that any cross is missing, only the
2 direct.

3 **MR. STROM:** Yes, Your Honor.

4 **THE COURT:** So we'll -- you can move on.

5 **MR. STROM:** Thank you, Your Honor.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. STROM:

8 Q. Mr. Floyd, turning to Page 274, it's the next red tab
9 on the transcript, you're talking about State v. Burgess
10 and the multi-jurisdictional traffic enforcement agreement
11 that was at issue in this case.

12 **MR. STROM:** And, Your Honor, I have a copy of that
13 agreement if you -- if you'd like to look at that.

14 **THE COURT:** Okay. Yes, sir.

15 BY MR. STROM:

16 Q. And, Mr. Floyd, would a copy of the agreement refresh
17 your memory?

18 A. Yes.

19 Q. (Hanging.)

20 A. Thank you.

21 Q. What do you -- Mr. Floyd, what do you recall the basis
22 for your objection to the multi-jurisdiction traffic
23 enforcement agreement was?

24 A. Well, the context with which this issue arose was that
25 a search warrant was issued for Mr. Caughman's residence

1 and the search warrant was issued in Cayce, Cayce was the
2 one -- the agency investigating this incident because it
3 occurred in Cayce, but Mr. Caughman, however, resided in
4 West Columbia. The West Columbia officers came and
5 exercised the warrant in West Columbia at Mr. Caughman's
6 residence and so we raised the question of whether or not
7 they had jurisdiction to execute the search warrant and it
8 was during the execution of that search warrant that the
9 vehicle which they claim was involved in the accident was
10 located in Mr. Caughman's garage and, of course, from that
11 vehicle there was some evidence that was obtained and used
12 against Mr. Caughman in the trial including the condition
13 of the vehicle, the doors were missing, and paint chips
14 from the vehicle which Agent Moskal tried to tie in with
15 the paint chips from the motor -- motorcycle parts.

16 Q. And your argument was that this agreement didn't give
17 them jurisdiction, that it wasn't properly executed?

18 A. That's correct. I didn't see anything in the
19 agreement that covered the execution of search warrants or
20 the obtaining of any evidence whatsoever, nor did I -- nor
21 -- and it also was my position at trial that the agreement
22 was invalid because it was not signed by the governing
23 bodies. Pursuant to the stat -- statute it required the
24 governing bodies to approve it.

25 Q. And just to move things along just a little bit, the

1 State's argument was that it was valid because there was
2 also a SLED agent present who gave them statewide
3 jurisdiction, that he participated in the search even
4 though he didn't sign the warrant or the return?

5 A. Well, I don't think there was any evidence he
6 participated in the search, but there was some evidence he
7 was present.

8 Q. Okay. Turning to the specifics of your testimony --
9 of the -- of the arguments, beginning in Line 11, you
10 reference State v. Burgess, which is 408 S.C. 421. It's a
11 2014 case from the Supreme Court -- or our Supreme Court,
12 and then obviously at Line 15 and 16 you and His Honor have
13 a -- a colloquy that is not recorded. Do you have any
14 recollection as to the length of that?

15 A. I don't know how long that would have been. This was
16 a big issue and we did have -- to my memory, we did have
17 significant conversation concerning it, but as to the
18 length I couldn't tell you for sure.

19 **MR. STROM:** Thank you, Mr. Floyd. We don't have any
20 other questions on that.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. APLIN:

23 Q. Just briefly, Mr. Floyd, flipping back to Page 273 of
24 that transcript --

25 A. Yeah.

1 Q. -- and if you look at Line 16 through 23, does that
2 summarize or put forth your -- essentially your argument
3 for why that multi-jurisdictional task force wasn't
4 sufficient for jurisdiction?

5 **THE COURT:** Line what?

6 **MR. APLIN:** Lines 16 to 23 on Page 273.

7 **THE COURT:** Okay. 273.

8 A. Yeah, that -- that's it in a nutshell.

9 Q. That's it in a nutshell. And then don't you say we
10 previously argued that motion and the Court goes on at the
11 bottom of that page, top of the next page talking about
12 having heard arguments on the issue yesterday. It even
13 says in Lines 3 through 6 we heard it -- we spent a good
14 bit of time on the issue yesterday whether the agency
15 agreement was signed by county council, et cetera.

16 And if I could have you look down at Page -- I mean,
17 Line 17 on Page 274, after the missing colloquy where the
18 judge says he's gonna deny your motion, does that appear to
19 be a recorded on the record denial of your motion that was
20 previously argued to the Court?

21 A. Yeah, he says that he denies it.

22 Q. Okay.

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

24 CONTINUED DIRECT EXAMINATION

25 BY MR. STROM:

1 Q. Just a quick follow-up question, Mr. Floyd. Do you
2 recall the Judge's reasoning, if there was any specific
3 reasoning laid out in that inaudible section? I know that
4 he's talked about it previously. Was it simply just a
5 reiteration of -- a renewal of that prior argument and --
6 or objection and argument and ruling?

7 A. I mean, I assume that's correct. I'm sure we'd argued
8 the motion earlier when the Cayce police officers were
9 testifying as to what they found at the location and so
10 forth, so -- so we -- we had -- we had made the motion to
11 try to suppress any testimony about that at the time the
12 Cayce officers testified earlier in the trial.

13 **MR. STROM:** Your Honor, I'm ready to move on to the
14 next section if --

15 **THE COURT:** Okay.

16 **MR. STROM:** -- if the Court is ready.

17 **THE COURT:** Yes, sir.

18 BY MR. STROM:

19 Q. Getting to Page 282, very briefly, Line 23 and 24,
20 whereupon the disc ended for the day and the case resumed
21 on May 23, 2013, if you could briefly read the preceding
22 pages, do you have any recollection as to whether that is
23 the end of discussions about the applicable statute and I
24 believe also jury instructions? The bottom of 282.

25 A. 282?

1 Q. Lines 23 and 24.

2 A. No, I have no independent recollection as to whether
3 or not there was anything else argued after that statement.

4 Q. Moving on to --

5 **MR. STROM:** Well, Ben, do you want to ask any
6 questions about that?

7 **MR. APLIN:** No. No, thank you.

8 BY MR. STROM:

9 Q. Just saying that the disc has ended for that day to
10 my mind sort of mirrors the issues with Amy Stephens. I
11 just wanted to see if you had any recollection as to an
12 additional charge made or discussion about the charges or
13 the interpretation of the statute?

14 A. No, I have no independent recollection.

15 **MR. STROM:** And then finally, Your Honor, the last --

16 **THE COURT:** Let me just ask you on that -- on that
17 point just looking at this Page 282, does it seem to you
18 that I was agreeing with you and not agreeing with the
19 State where Ms. -- starting back at Line 9, let's see --
20 well, or Page 6. Your Honor, number two, we think is not
21 the wording of the statute. How about that Ms. Mayes?
22 Yes, Your Honor. Yes, sir, Your Honor. Again, I do not
23 believe the interpretation of the word "immediately". It
24 is the State's position that it means the driver shall
25 immediately stop, speaking of the duty of the driver to

1 stop, rather than immediate death of the victim. Beyond
2 that we believe the wording in the statute is clear.
3 Mr. Floyd: Would give the wrong application to the
4 wording. Mr. Floyd: The statute speaks for itself. The
5 Court: All right. The Court: I will give the statute
6 as -- as it exists and it's up to the jury to determine
7 whether or not death or serious bodily injury occurred as
8 a result of the accident.

9 **THE WITNESS:** Now, Judge, I remember that point and
10 you ruled -- you gave the statute as it was.

11 **THE COURT:** Okay.

12 **THE WITNESS:** But I was trying to get you to accept --
13 or to give us a jury charge of -- I argued that the term
14 "immediately" in the statute meant that the death must
15 immediately occur as a result of the accident --

16 **THE COURT:** All right.

17 **THE WITNESS:** -- rather than "immediately" referred to
18 the time of the death rather than the time of stopping, if
19 that makes sense.

20 **THE COURT:** And you were trying to get me to explain
21 something in the statute or explain death as part of the
22 statute?

23 **THE WITNESS:** Yeah, I think I had a jury charge
24 asking -- asking that you accept our interpretation of the
25 statute.

1 **THE COURT:** So the jury charge would be -- that you
2 requested would be part of the record?

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** And then I gave the -- I said I'm giving
5 the statute as it is.

6 **THE WITNESS:** That's correct.

7 **THE COURT:** Okay. And let the jury decide this
8 question of whether or not this wreck resulted in the man's
9 death. So if we're talking about a jury charge, jury
10 charges, and the defense requested a charge that's --
11 that's a part of the record and I gave the charge different
12 from what was requested, then that issue was -- all of
13 that's pretty much preserved it appears. Because here
14 we're talking about jury charges, we're not talking about
15 testimony anymore, and if someone submits a request to
16 charge and I don't give that charge, the charge that they
17 requested is made a part of the record. That request to
18 charge was in the record here that Mr. Floyd requested?

19 **MR. STROM:** The request to charges are listed as
20 Court's exhibits. And my additional concerns -- my main
21 concern was whether or not there was any further argument
22 or any other requested instructions that either weren't
23 reflected in the previously listed ones, but if you'll turn
24 -- Page 6 of the Court's exhibit index --

25 **THE COURT:** Okay.

1 **MR. STROM:** -- it -- it's advise of rights form, a
2 transcript -- a transcript and then a traffic agreement, so
3 it doesn't list the Court's exhibits as an exhibit. Now
4 that could also be a function of they were just simply
5 marked after the disc stopped, but that's my concern -- my
6 only concern from a preservation standpoint.

7 **THE WITNESS:** And, Your Honor, if I might add
8 something?

9 **THE COURT:** Yes, sir.

10 **THE WITNESS:** It seems -- it appears back at Page 282
11 when we were discussing this issue, it looks like my
12 argument was inaudible. If you look over to Line 7 of
13 that page, that's where I started to argue -- to present
14 our argument about the way that the statute should be
15 interpreted and it looks like that's all inaudible.

16 **THE COURT:** The only thing is that if -- if the
17 reason is that that requested jury charge is -- should be
18 or are supposed to be preserved is that if someone requests
19 that the Court charge a particular law, statute or whatever
20 the request to charge, if the Court doesn't give that
21 charge -- give that charge and there's an objection in the
22 end after the charge is given to the jury, then all of that
23 is preserved. The specific details as to why you wanted
24 the Court to give that charge, I imagine that could be
25 important for your argument for why you wanted it and, of

1 course, your argument for what you wanted -- why you wanted
2 it seems to be here. I'm not sure what else can be done
3 with this if you have the request to charge that he wanted
4 that I didn't give, assuming that he objected at the end of
5 the jury charge to the charge that I ultimately gave --

6 **MR. STROM:** Yes, Your Honor.

7 **THE COURT:** -- if he needed to. I don't know if he
8 did or not.

9 **MR. STROM:** Yes, Your Honor. Moving on to the closing
10 argument --

11 **THE COURT:** All right.

12 **MR. STROM:** -- being missed -- being not transcribed,
13 on Page 292 -- and this is the last -- the last point, Your
14 Honor.

15 **THE COURT:** All right.

16 FURTHER DIRECT EXAMINATION

17 BY MR. STROM:

18 Q. Obviously closing statements of both sides were not
19 transcribed, but there were no objections. Mr. Floyd, do
20 you have any recollection as to, again, from an appellate
21 review, as to whether or not you made any objections,
22 whether this note by the court reporter is correct?

23 A. I don't -- I have no independent recollection of
24 whether or not I made any objections during the argument.

25 Q. As a general practice, some attorneys don't make

1 objections. They, you know, are very reticent to make
2 objections. What is your just general practice just to
3 give us an idea of how likely it may have been that there
4 was an objection?

5 A. I frequently make objections. Whether I did at this
6 time, I have no clue.

7 Q. No -- no specific recollection?

8 A. But I frequently do.

9 **MR. STROM:** And -- and that's all for the defense,
10 Your Honor.

11 **THE COURT:** All right. Any other questions for
12 Mr. Floyd?

13 **MR. APLIN:** Not on that issue, Your Honor.

14 **THE COURT:** All right. Okay. Well, just looking
15 on Page 308 where Mr. Floyd would take exception to
16 Your Honor's failure to charge Defendant's request --
17 Defendant's -- refusing to charge numbers one, two, three,
18 four, five, six and seven, so those particular ones, are
19 they part of the record somewhere?

20 **MR. STROM:** If you'll give me one moment to find the
21 page where they're argued, Your Honor.

22 **THE COURT:** All right.

23 **MR. STROM:** Your Honor, the -- beginning on -- I
24 just want to make sure that I'm stating it correctly.
25 Beginning on 270 -- 277, this is right after you've asked

1 Mr. Caughman whether he wishes to testify, you then excuse
2 the jury. Turning to 279 is where the discussion -- 278
3 and 279 is where the discussion begins about the jury
4 charges. And then, again, at 282 is when the disc ends.
5 There's no specific reference made in that section to
6 numbered charges.

7 **THE COURT:** Okay. So Line -- 280, Line 15, Mr. Floyd:
8 We would object to number one. I think that is taken out
9 of content, it should be context. I think the statute is
10 sufficient and gives the purpose of the statute although it
11 was all somewhat cumulative. Our position is that the
12 State would have to show the Defendant's failure to stop
13 somehow lent to the possibility that the victim would have
14 died because of his failure to stop. We think that's not
15 the intent of the statute, so we would ask that it not be
16 charged.

17 So looking -- he's talking about number one here, so
18 back on Page 308 where after I've charged the jury he says
19 we would take exception to Your Honor's failure to charge
20 Defendant's request to -- the Defendant takes exception to
21 Your Honor refusing to charge one, two, three, four, five,
22 six, seven. I guess he -- he has to be talking about the
23 Defendant's -- well, he did object to me charging the
24 State's request number one because that's what was being
25 talked about on 280, but on Page 308 he's, I guess,

1 referring to his own requested charges one, two, three,
2 four, five, six, seven. Does that -- does that seem to be
3 what they're talking about there?

4 **MR. STROM:** Yes, Your Honor.

5 **THE COURT:** So -- so the question I have is where are
6 his one, two, three, four, five, six, seven? Where are
7 those requested charges? Typically at the -- their request
8 to charges are marked, turned over and made a part of the
9 record, so that was my question. Are they a part of the
10 record in this case?

11 **MR. STROM:** They are not listed in the exhibits and I
12 don't believe they're a part of the record in this case.

13 **THE COURT:** All right.

14 **THE WITNESS:** It must be when it says brief pause.

15 **THE COURT:** Yeah. Well, do you have a copy of your
16 one, two, three, four, a five, six, seven, if that's what
17 you were talking about?

18 **MR. STROM:** Yes, sir.

19 **THE COURT:** Something you wanted me to charge and I
20 didn't charge. Do you have those in your file?

21 **MR. STROM:** Yes, Your Honor, they're in the defense
22 attorney's file and I can e-mail those to the Court.

23 **THE COURT:** Well, then if you-all would look at that
24 and agree that this was discussed --

25 **MR. STROM:** I'll -- I'll send you a copy of it.

1 **THE COURT:** If you're in agreement, if we were to
2 reconstruct and that's missing and we put it in there, then
3 that covers -- probably covers most of that because if he's
4 requesting a charge and we had a charge conference after
5 all the evidence is in and if you-all agreed or disagreed,
6 but whatever it is the requests speak for -- will speak for
7 themselves.

8 **MR. APLIN:** I agree with that, Your Honor, and I think
9 that discussion on 282 as far as Mr. Floyd's reasoning, his
10 argument about what the word "immediately" means in the
11 Statute --

12 **THE COURT:** Right.

13 **MR. APLIN:** -- if you have that request to charge, I
14 think it would be fairly obvious how that argument ties in
15 to which charge it was that he was requesting, but --

16 **THE COURT:** Okay.

17 **MR. STROM:** And, Your Honor, again, that was just all
18 from the defense.

19 **THE COURT:** All right. Are we through with Mr. Floyd
20 or do you need him some more?

21 **MR. STROM:** Just the closing argument is all we would
22 have.

23 **THE COURT:** Mister, are you through with Floyd?

24 **MR. APLIN:** I think so, Your Honor. I don't think it
25 would serve any purpose to have him tell us what he thinks

1 his closing argument was or would that be worthwhile?

2 **THE COURT:** I don't know.

3 **MR. APLIN:** I was gonna ask Ms. Mayes to do that
4 because it's more relevant to whether there are appellate
5 issues because if Mr. Floyd did or didn't object to that
6 argument would be the issue. But as far as the substance
7 of Mr. Floyd's closing argument, I -- I don't think it's
8 relevant or necessary, but I wanted to check with Your
9 Honor since we're reconstructing.

10 **THE COURT:** Well, I don't know. I -- I have no idea.
11 I mean, I don't know if it is or isn't, so.

12 **MR. STROM:** I don't believe the defense's closing
13 argument is relevant. I do think for the purposes of
14 harmless error analysis or weighing the importance of
15 different evidence to the State, I think trying to get some
16 rough idea of what Ms. Mayes' closing is, if Mr. Floyd
17 doesn't remember an objection, if Ms. Mayes doesn't
18 remember being interrupted by an objection, if Your Honor
19 doesn't remember ruling on one, you know, then sort of so
20 be it, but I do think perhaps getting a rough outline of
21 Ms. Mayes' closing would be good.

22 **THE COURT:** That's fine.

23 **MR. APLIN:** Thank you, Your Honor.

24 **THE COURT:** You can step down, Mr. Floyd.

25 **THE WITNESS:** Thank you, Your Honor.

1 (Witness excused.)

2 **THE COURT:** All right, Mr. Aplin.

3 **MR. APLIN:** Thank you, Your Honor. The State would
4 call Ms. Suzanne Mayes.

5 (Whereupon, Suzanne Mayes was duly sworn by the Clerk
6 of Court.)

7 **THE CLERK:** Now have a seat and state your name on the
8 record, please.

9 **THE WITNESS:** Suzanne Mayes.

10 SUZANNE MAYES,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. APLIN:

14 Q. Solicitor Mayes, I'm gonna hand you stack of the
15 defense exhibits that Mr. Floyd was referring to so we're
16 all on the same page here at what we're looking at. And I
17 guess to start off with and it may be in reverse order
18 since we were just discussing closing arguments, do you
19 recall giving a closing argument in this case?

20 A. I did.

21 Q. Okay. Do you have a recollection of the general
22 substance of that closing argument, what was the State's
23 theory of the case?

24 A. It would have been a combination of the direct
25 evidence that was presented during the trial and the

1 circumstantial evidence that had been collected at the
2 crime scene.

3 Q. Do you remember enough about that direct and
4 circumstantial evidence to do a brief rundown of what your
5 argument would have consisted of substantively?

6 A. So with the direct evidence there was a witness that
7 the Defendant had actually made a confession to and this
8 was a longtime friend and acquaintance and so his testimony
9 was that he directly heard an admission from Mr. Caughman
10 that he was driving the vehicle on the night in question,
11 where he had come from, he had come from a bar that was
12 known as the Hard Knox Grill on Knox Abbott Drive and that
13 he had fled the scene after he had hit someone on a
14 motorcycle and that witness actually observed the truck in
15 Mr. Caughman's garage and it was severely damaged, so that
16 was the direct evidence in the case. There was also an
17 additional witness who had been with Mr. Caughman and that
18 other witness -- earlier in the night and both of them were
19 able to substantiate that he had been drinking, he was
20 driving that vehicle, and all of that is what I would
21 consider direct evidence in the case.

22 Q. So your closing would have recounted or focussed on
23 that direct evidence?

24 A. Primarily. And then the circumstantial evidence
25 consisted of the evidence recovered from the crime scene,

1 which is the motorcycle that the victim was riding, and
2 then ultimately paint that was left on that motorcycle was
3 a match to the paint on the Defendant's truck which had
4 been recovered from his residence, so that would be the
5 circumstantial evidence.

6 Q. Would you have referenced statutory language as well
7 in your closing?

8 A. Yes, I would have addressed the law.

9 Q. Do you recall in this case Mr. Floyd objecting to your
10 closing argument?

11 A. I don't recall any objections and if the court
12 reporter noted in the transcript that there were no
13 objections, I would trust her --

14 Q. Okay.

15 A. -- her account.

16 Q. And would you agree or disagree with his assessment
17 that he frequently objects to closing arguments? Do you --
18 I mean, you've tried cases with Mr. Floyd before?

19 A. I don't know that we have tried any others. Maybe
20 this one and one more --

21 Q. Okay.

22 A. -- so I really can't say.

23 Q. Okay. So you can't say. That's fine.

24 **MR. APLIN:** I think that's all I have with regard to
25 closing arguments and I'll do the same procedure we had

1 before and pass it over to Mr. Strom.

2 **THE COURT:** All right, Mr. Strom.

3 **MR. STROM:** I don't have any cross or questions.

4 **THE COURT:** All right.

5 BY MR. APLIN:

6 Q. And, Ms. Mayes -- and I'll try to go quickly through
7 the -- the specific points that were raised as far as the
8 missing portions of the transcript and I'll direct you to
9 those pages. Again, I'll try to go in the same order that
10 we covered before.

11 Looking first at Pages 208 and 209, and this is when
12 Dr. Moffatt was testifying, do you recall her testimony
13 being sort of soft-spoken or hard to hear at points?

14 A. I don't recall that, but the record reflects that she
15 was requested to speak up.

16 Q. Okay. And in looking at that portion of the
17 transcript at 208 through about 210, there are several
18 specific examples where she was asked to speak up. Did you
19 see any place where either you or Mr. Floyd was asked to
20 speak up?

21 A. No.

22 Q. Do you recall the judge having any trouble hearing or
23 understanding the things that you two said as advocates in
24 the courtroom?

25 A. No, I don't recall any issues with that.

1 Q. And do you happen to recall if Mr. Floyd objected
2 during her testimony?

3 A. He did.

4 Q. Do you remember him objecting in this portion of the
5 testimony we're looking at about the medical evidence
6 itself?

7 A. No, his objection was about her referencing -- her
8 referencing the fact that he had been hospitalized. It was
9 actually noted in the autopsy report and I think she was
10 able to clear that up; that she knew where he was when he
11 died and the reason he was there.

12 Q. And if I could have you turn back to Page 196 of the
13 transcript, do you recall this hearsay objection that
14 Mr. Floyd made during the trial?

15 A. Yes.

16 Q. And this was to Dr. Moffatt's testimony?

17 A. Correct.

18 Q. The portion that's reflected here on Page 196, the
19 argument that he makes, do you recall that capturing the
20 essence of his hearsay argument or is there something
21 missing that you can tell?

22 A. That seems to be the essence of it.

23 Q. But as far as you recall, the Judge ruled on that
24 objection?

25 A. Correct.

1 Q. You even argued at one point on the record, I think at
2 Page 201, what the State's position was with regard to the
3 objection?

4 A. Correct. I believe 1 -- 196 through 201 was all
5 conducted -- or 196 through 200 was all conducted
6 in-camera.

7 Q. Okay. And that's largely been transcribed. There's
8 only those points we mentioned that were inaudible,
9 correct?

10 A. Correct.

11 Q. And then moving on to Page 218 of the transcript --

12 **MR. STROM:** Your Honor --

13 **MR. APLIN:** Oh, I'm sorry.

14 **MR. STROM:** I'm sorry. No, I'm sorry.

15 **MR. APLIN:** I forgot to give him a chance to ask.

16 CROSS-EXAMINATION

17 BY MR. STROM:

18 Q. Just a quick point on 196. Ms. Mayes, obviously
19 Line 23, Page 196 says portion inaudible. In addition to
20 the hearsay argument, there was also a Rule 5 argument. To
21 your recollection, was it in that inaudible portion either
22 reiterated or expanded upon there?

23 A. I believe that had been covered -- that had been
24 covered in-camera as well that she had access to certain --
25 she had access to certain information because he was in the

1 hospital when he died and then she works at the hospital.

2 Q. Right.

3 A. As far as Rule 5, we didn't have what she had to
4 provide to Mr. Floyd, but she made it clear to both of us
5 that she was referencing what was in her autopsy and in her
6 autopsy she had made reference to the fact that she, I
7 guess, had access to his computer file there and could see
8 the date he was admitted and the type of surgery he
9 received.

10 Q. And those weren't files that you received, his
11 treatment files?

12 A. We gave Mr. Floyd everything we had, so we did not
13 have that. The autopsy referenced those facts and she
14 explained that in her testimony.

15 Q. Okay. And just Page 196, Line 23, portion inaudible,
16 any recollection -- did he renew it there? Did he, you
17 know, expand on it? Do you have any recollection as to
18 what may have been inaudible?

19 A. I do not.

20 **MR. STROM:** Okay. No further questions, Your Honor.

21 **THE COURT:** All right.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. APLIN:

24 Q. Ms. Mayes, moving on to Page 218, this was the missing
25 direct examination of witness Amy Stephens. Who -- who is

1 Amy Stephens?

2 A. Amy Stephens is the evidence log-in technician at the
3 State Law Enforcement Division, so she works in what I
4 would reference the evidence lobby area where any law
5 enforcement agency who is bringing evidence into SLED will
6 actually see her or I believe there's a -- a second analyst
7 who also has the same job title, but she actually logs in
8 the evidence and enters it into a computer and gives it a
9 specific number that is consistent with the SLED lab number
10 for that case. She does not test evidence, she does not
11 have any involvement in any case other than to simply log
12 in the evidence and then it is sent on to the individual
13 analyst depending on what type of testing needs to be done.

14 Q. And your recollection of why she was called in this
15 case is in that function?

16 A. Correct. It was limited to chain of custody and she
17 would have identified any of the items that were submitted
18 to the State Law Enforcement Division for analysis and
19 then she would have also stated who that item went to for
20 further testing and in this case all of the items that were
21 tested went to Michael Moskal. He is the trace analyst who
22 conducted the testing on all of the paint samples in this
23 case. So, in essence, Mike -- Mike Moskal's testimony
24 would have also identified those same evidence items and
25 there would have to have been a showing by the State that

1 the chain of custody was complete prior to Agent Moskal
2 giving his opinion as to the results of the trace analysis.

3 Q. Do you recall whether she was on the stand for a long
4 time, a short time?

5 A. She would be a very brief witness.

6 Q. And that's actually your recollection of it or just --

7 A. Correct.

8 Q. -- you know, she would have been --

9 A. Correct, and in general.

10 Q. Okay. And then I -- you know, we do have in the
11 transcript on Page 219 some cross-examination by Mr. Floyd.
12 Do you recall that that is the extent of the
13 cross-examination or does it seem that something's missing?

14 A. That would be the extent of it to my recollection.
15 He's basically asking her about the items that were
16 submitted and she's saying yes, that the records do reflect
17 those items were submitted and on what date and that would
18 have been summarizing what she had testified to in direct
19 in my opinion just looking at the cross.

20 Q. Do you remember that reference to numbers 15 and 16 in
21 his cross? Do you have any recollection if that referenced
22 the State's exhibits, SLED's identification numbers or
23 what? And if you don't remember, that's fine. I'm just --

24 A. I don't recall what items 15 and 16 were.

25 Q. Okay. Do you recall during your direct examination

1 of Ms. Stephens whether Mr. Floyd -- Ms. Stephens whether
2 Mr. Floyd objected at all?

3 A. I don't recall.

4 Q. You don't recall.

5 **MR. APLIN:** I think that's all I have on this.

6 **MR. STROM:** Just briefly, Your Honor.

7 **THE COURT:** Yes, sir.

8 CONTINUED CROSS-EXAMINATION

9 BY MR. STROM:

10 Q. Who did -- to the best of your recollection, who did
11 Stephens receive the evidence from?

12 A. It would have been submitted by either the Cayce
13 Department of Public Safety or by Agent Moskal himself.
14 He actually came out to the Cayce Department of Public
15 Safety and removed some of the paint chips himself. Both
16 the truck and the motorcycle were maintained by Cayce
17 Department of Public Safety on their lot pursuant to chain
18 of custody standards and Agent Moskal actually did an
19 on-site visit and collected multiple paint chips, so he may
20 have submitted some of them himself to Amy Stephens for
21 log-in so that they could get a lab number associated with
22 the case and then they would ultimately make their way back
23 to him and then there would also have been some items
24 submitted to her most likely from the evidence custodian at
25 Cayce Department of Public Safety.

1 Q. So it won't have been -- 15 and 16 then wouldn't have
2 been the photo boards, they would have been actual items of
3 evidence?

4 A. I don't know.

5 Q. Okay.

6 A. She could have been identifying items that are on a
7 photograph.

8 Q. Sure. Sort of a spread of the evidence?

9 A. Correct. If -- if I recall, the way we handled the
10 motorcycle because it was so large, and the truck as well,
11 we didn't physically bring the motorcycle or the truck into
12 the courtroom and have them marked as exhibits. We were
13 using photographs.

14 Q. And your recollection of the chain of evidence is
15 the wreck happens, it goes to Tillman's yard, friends
16 pick it up and then Cayce gets it? Because it was stored
17 for a period of time at one of -- an individual who's a
18 professor, at one of his houses because he's a friend of
19 the guy, I think he worked on the motorcycles with him.

20 A. The body of the motorcycle, that does sound correct.
21 There was also a fender that I believe came from the
22 motorcycle and also had some paint chips on it that were
23 a match to the truck and then there was -- as Mr. Floyd
24 referenced, there was also some various debris that had
25 been collected from the accident scene.

1 Q. Right. And the debris went from the accident site to
2 Tillman's yard, stayed at Tillman's yard --

3 A. Correct.

4 Q. -- and was at some point later collected after the
5 motorcycle was removed?

6 A. Correct. And I do recall that the fender from the
7 motorcycle, which had the truck paint left behind on it,
8 the paint from that fender was matched to the actual
9 motorcycle so we were able to establish that the fender
10 came from the motorcycle.

11 Q. Okay. But, again, numbers 15 and 16, no recollection?

12 A. I do not recall.

13 **MR. STROM:** Okay. No further questions, Your Honor.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. APLIN:

16 Q. Ms. Mayes, looking at Page 273 of the transcript,
17 there's -- onto 274 as well, there's a discussion of this
18 jurisdictional issue with the multi-jurisdiction task force
19 agreement, whatever that document was, do you remember that
20 being an issue at the trial?

21 A. Yes.

22 Q. And the references on those two pages to the fact that
23 there was some argument on that issue yesterday it says or
24 the day before --

25 A. Right.

1 Q. -- do you remember actually having an in-camera
2 hearing calling various witnesses in regard to that
3 agreement?

4 A. Yes, there had been an extensive in-camera proceeding
5 the day before.

6 Q. Okay. And if you look at Page 104 of that transcript,
7 just turn back and keep your thumb on the page where you
8 are now, at the top of 104 do you see it says jury excused
9 from the courtroom for lunch period? If you just scan
10 through that page really quickly, does that appear to be
11 where that in-camera hearing started or discussion started
12 about jurisdiction?

13 A. Yes, that is it.

14 Q. Okay. And I think that carries the witnesses all the
15 way over to Page 129 approximately.

16 **MR. STROM:** That's right.

17 Q. And so there were several witnesses. It looks like a
18 Rick Collins and an E. Pareia -- Pereira, I can't say that
19 name, I'm sorry, and also a J. Simmons, the three people
20 who testified at that hearing?

21 A. Uh-huh.

22 Q. Okay. So I guess the question is do you remember if
23 this issue was fleshed out pretty thoroughly in front of
24 Judge Newman?

25 A. Correct. There was testimony and then counsel for

1 both the State and the defense argued this matter.

2 Q. Do you remember what the State's position was, why
3 that this wasn't a jurisdictional problem?

4 A. Because SLED agent Mike Robinson was present at the
5 scene for the execution of the search warrant.

6 **MR. APLIN:** I think that's all I have on this issue,
7 Your Honor.

8 **MR. STROM:** No questions, Your Honor.

9 **THE COURT:** All right.

10 **MR. APLIN:** Your Honor, I'm trying to make sure I
11 haven't missed something. There's Page 282. Okay. Yes.

12 **FURTHER DIRECT EXAMINATION**

13 **BY MR. APLIN:**

14 Q. On Page 282 of the transcript at the bottom of the
15 page, right after the judge gives the ruling about that
16 he's gonna charge the statute as it exists, then it says
17 the disc ended for the day and the case resumed on May 23rd
18 and then all of a sudden it says good morning, and flipping
19 to the part at the top of Page 283 you say you have
20 something ready as a redaction of the other document. Do
21 you remember if anything else happened that day after the
22 judge made his ruling on that particular issue and then the
23 beginning of the next morning?

24 A. I do not.

25 **MR. APLIN:** That's all I have, Your Honor.

1 **MR. STROM:** No questions, Your Honor.

2 **THE COURT:** All right. Thank you.

3 (Witness excused.)

4 **MR. APLIN:** And, Your Honor, the State doesn't have
5 any other witnesses to call. I would ask to keep the
6 record open for us to attempt to get the audio recordings
7 from the court reporter or court administration. I have
8 not attempted to do that yet. I know Mr. Strom and I
9 talked about it, but neither one of us have gotten those
10 audio recordings. My thought was that if Ms. Mayes and
11 Mr. Floyd could sit down and listen perhaps they could
12 understand things the court reporter said were inaudible
13 and we might be able to fill in some of these blanks. It
14 may be they can't, but we just haven't had a chance to try
15 that yet.

16 **THE COURT:** All right. Mr. --

17 **MR. STROM:** And we'd agree and then rather than maybe
18 having a second hearing if they listen to it and happen to
19 just do an affidavit if it jogs any of their memory as well
20 as also, Your Honor, submit to the Court the proposed jury
21 instructions from the defense.

22 **THE COURT:** All right. At this time we'll leave the
23 record open and if we need to have a further hearing, we
24 will; otherwise, if you-all agree on what it says, then
25 that will be fine as well.

1 **MR. APLIN:** Thank you, Your Honor.

2 **MR. STROM:** Thank you, Your Honor.

3 **THE COURT:** Or if you need to me to rule without
4 having anything further, I'll do that as well.

5 **MR. APLIN:** Okay.

6 **MR. STROM:** Yes, sir.

7 **THE COURT:** All right. Thank you-all.

8 **MR. FLOYD:** Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded at
10 12:45 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 16th day of September, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

March 12, 2017

SI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State

6 v.

7 William Craig Caughman

8 Defendant.

)
)
) Transcript of Record
) 10-GS-32-2294
)
)

9
10 May 1, 2017

11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable Clifton B. Newman, Judge.

15
16 A P P E A R A N C E S:

17 John B. Aplin, Assist. Attorney General
18 Attorney for the State

19 John H. Strom, Esquire
Attorney for the Defendant

20
21
22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

1

I N D E X

2

WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on May
2 1, 2017.)

3 **THE COURT:** If I can have everyone introduce
4 themselves for the record.

5 **MR. STROM:** John Strom appearing on behalf of
6 Appellant Defendant Craig Caughman.

7 **MR. APLIN:** Ben Aplin with the Attorney
8 General's Office here on behalf of the State.

9 **THE COURT:** All right. This is our, what,
10 second or third time?

11 **MR. APLIN:** Yes, Your Honor. I think it's the
12 second time. We were here September 16th of last
13 year for a reconstruction hearing.

14 **THE COURT:** All right. And I received proposed
15 orders from both sides and wanted to see you all one
16 more time and then submit my order to the appellate
17 court. With regard to the proposed order by the
18 attorney general -- you work for the -- deputy
19 attorney general, Mr. Strom, anything you'd like to
20 comment?

21 **MR. STROM:** Thank you, Your Honor. May it
22 please the Court.

23 The first comment with regards to the State's
24 proposed order is that it omits two of the issues
25 that we raised. Specifically, it omits the issues

1 regarding the defendant's requests to charge. And
2 I've got copies of those requests to charge. We
3 submitted some by e-mail after the record was held
4 open.

5 **THE COURT:** All right.

6 **MR. STROM:** We were able to find, I believe,
7 charges -- it lists charges one through nine. I was
8 unable to find charge number six. You may recall,
9 Your Honor, that during the trial, the defense
10 submitted nine requests to charge.

11 **THE COURT:** Yeah. I don't recall anything, not
12 specifically. How many years ago was that?

13 **MR. STROM:** This would have been back in May of
14 2013.

15 **THE COURT:** No, I don't remember what Mr. Floyd
16 may have requested.

17 **MR. STROM:** Yes, Your Honor. On page 308
18 through 312 of the trial record, the defense request
19 charges numbers one through -- and it lists one
20 through seven, but there is numbers one through
21 nine. And I apologize, that's on line 12 of page
22 308. The Court, Your Honor, then says, We reviewed
23 that yesterday, and he simply -- Mr. Floyd simply
24 renews the motion.

25 We discussed back in the September hearing,

1 that they would submit those charges because I do
2 have Mr. Floyd's file and I was able to find
3 requests one through five and then seven through
4 nine. So we are missing requests to charge number
5 six.

6 **THE COURT:** What was it?

7 **MR. STROM:** We don't know, Your Honor. I mean,
8 it was just denied. That's part of the missing
9 record is request number six.

10 **THE COURT:** So what do you want me to do about
11 that?

12 **MR. STROM:** Well, under State v. Ladson, the
13 remedy is, essentially, where there's a specific
14 appellate claim that the court will be unable to
15 review effectively using the reconstructed record is
16 the standard for a finding that can't be
17 reconstructed. And so along with the other grounds
18 raised in our proposed order, the lack of a number
19 six jury -- requested jury instruction from the
20 defense would be a grounds for granting a new trial
21 or at least an order determining that the record
22 cannot be reconstructed.

23 **THE COURT:** And you said that that wasn't
24 addressed in the State's proposed order?

25 **MR. STROM:** No, Your Honor. And it's number

1 six in my proposed order.

2 **THE COURT:** It says, The defendant submitted a
3 list of eight written requests to charge. This
4 Court denied all of the requests to charge
5 instructions. This Court has had the opportunity to
6 review seven of those requested charges.
7 Defendant's six requested charges could not be
8 located and no one had any recollection as to what
9 it was. So, therefore, the Court finds that the
10 missing proposed jury instruction prevents the Court
11 from adequately restructuring the record so as to
12 allow meaningful review. That's -- that's your
13 proposed order addressing that. And the --

14 **MR. STROM:** Yes, Your Honor, and I believe --

15 **THE COURT:** Just a moment, you'll get a chance
16 to talk.

17 The other side says, As noted, following the
18 reconstruction hearing, defendant submitted eight
19 requested charges. This Court finds these written
20 requests to charge efficiently and adequately
21 reconstructs the substance of the requests to charge
22 as they were presented to and rejected by the Court
23 and, therefore, provide meaningful appellate review
24 on any issues regarding the charge.

25 All right. Go ahead.

1 **MR. STROM:** May I approach, Your Honor?

2 **THE COURT:** Yes, sir.

3 **MR. STROM:** When it's referred to the eight
4 requests to charge, sir, there are nine total
5 requests. So eight were submitted because we're
6 missing number six. I'm sorry if that language was
7 unclear on my part.

8 **THE COURT:** No. I was just reading what you
9 each submitted to me.

10 (Pause.)

11 **THE COURT:** All right. Go ahead.

12 **MR. STROM:** The additional grounds, pursuant to
13 the Ladson test, would be the chain of custody issue
14 surrounding the missing testimony of SLED evidence
15 technician, Amy Stephens. She was the, I guess, the
16 State's witness right before the paint chip analyst.
17 Her entire testimony is missing. I believe at the
18 reconstruction hearing, we established that she is
19 the evidence technician that takes it from the field
20 into the state -- in the SLED system.

21 The issue here is at the September hearing,
22 Mr. Floyd testified that he absolutely would have
23 objected to the issue regarding the chain of custody
24 of the paint chips, of the motorcycle parts that the
25 paint chips were taken from. The motorcycle was in

1 a private lockup for a number of days to weeks and
2 then it was allowed to go home with friends of the
3 deceased. And so having already released it, the
4 police had sort of, my understanding, had to
5 scramble to get the motorcycle back into their
6 custody and then had to go collect the remaining
7 parts or parts in the same area where they had
8 placed the motorcycle that were still there.

9 And so there's a chain of custody issue that
10 the objection doesn't appear in the transcript, but
11 Mr. Floyd's testimony was to the effect that this
12 was on my radar, that I would have objected to this,
13 it's my practice to object to it. And so, again,
14 looking at the test of whether or not there's a
15 specific appellate issue that can be reviewed, this
16 is one that, because of the missing testimony,
17 because of the missing objection itself, would not
18 be available for appellate review.

19 **THE COURT:** Now, the appellate court sent this
20 back to me to help reconstruct the record; is that
21 right -- or to reconstruct the record?

22 **MR. STROM:** I believe --

23 **THE COURT:** Or to consider the hearing as a
24 motion for a new trial?

25 **MR. STROM:** I believe it would be whether or

1 not in order -- determining whether or not the
2 record can be reconstructed. Unfortunately, the
3 wording of the remand -- and I may have it right
4 here.

5 **THE COURT:** Well, what was their charge to me?

6 Let me just read what I have: Appellant has
7 filed a motion to hold this appeal in abeyance and
8 remand to the circuit court to reconstruct the
9 record. The motion is granted and it's remanded, an
10 order to contact me within ten days to schedule such
11 a hearing. Counsel shall provide an update to the
12 clerk and shall immediately notify this court when
13 the circuit court issues an order relating to a
14 reconstruction.

15 So they sent it to me to reconstruct. And you
16 want me to conclude it can't be reconstructed?

17 **MR. STROM:** Correct, Your Honor.

18 **THE COURT:** And, therefore, he should get a new
19 trial?

20 **MR. STROM:** Correct, Your Honor.

21 **THE COURT:** So, in effect, your motion to me is
22 grant him a new trial?

23 **MR. STROM:** Correct, Your Honor, as a finding
24 that there are specific appellate issues that aren't
25 preserved for review based on the ability to

1 reconstruct this record from a 2013 trial.

2 **THE COURT:** And so you want me to tell them I
3 can't do it?

4 **MR. STROM:** Is that based on the -- applying
5 the Ladson standard to the testimony that we've had
6 to the evidence that's been presented is that it
7 cannot be reconstructed so as to allow for a
8 meaningful appellate review.

9 **THE COURT:** All right. Any other comments
10 about the proposed order for the State?

11 **MR. STROM:** Just to touch briefly on the lack
12 of closing arguments from either side is from a
13 appellate perspective, while it's not a stand alone
14 issue, Your Honor, it does factor strongly as to
15 whether or not an evidentiary ruling can be
16 challenged to overcome a harmless error analysis.
17 One of the major portions of that is whether or not
18 it's used in closing argument. And so without the
19 closing argument, it's very difficult to argue that
20 any particular evidentiary ruling, if incorrect,
21 constitutes reversible error.

22 I would also note that there are -- with
23 respect to the multijurisdictional agreement, while
24 the main argument takes place on page 104 through
25 129 of the record, there's additional unreported --

1 or additional argument that was not transcribed
2 beginning on page 274 and 276. And those are
3 really --

4 **THE COURT:** Was anything important transcribed
5 or just the important things were the things not
6 transcribed?

7 **MR. STROM:** Well, no, the -- it -- argued
8 extensively between page 104 and 129. Mr. Floyd
9 does make a reference to, I guess, being, I guess,
10 somewhat surprised by the State's order of
11 presentation, so he says he's not fully prepared to
12 present on the issue, but he does argue State v.
13 Burgess, which is a major case on that issue. He
14 does mention -- he does refer to the different
15 jurisdictional agreement statutes.

16 There is a second argument that is taken up
17 afterwards. It's hard to say whether it's a renewal
18 or whether it is additional grounds because it's
19 just not there. But in fairness, Your Honor, it is
20 covered extensively in that earlier portion.

21 **THE COURT:** All right.

22 **MR. STROM:** Thank you, Your Honor.

23 **THE COURT:** Mr. Aplin.

24 **MR. APLIN:** Thank you, Judge Newman.

25 Just quickly in response to some of the

1 comments, I think that Mr. Strom pointed out there
2 were two things that he said the State's proposed
3 order didn't cover. I think the order did cover the
4 requests to charge. There's a specific portion in
5 the State's proposed order that actually does talk
6 about those requests to charge and proposes findings
7 that the Court can make.

8 It does acknowledge that that charge number
9 six, that we're not able to find the specific
10 whatever that charge was that was requested by
11 Mr. Floyd. I would, for that point, fall back to
12 State v. Ladson and the burden of proof on the party
13 seeking to -- a new trial for an inadequately
14 reconstructed record, that the court has found that
15 the party challenging the reconstructed record on
16 appeal has to demonstrate specific prejudice flowing
17 from an inadequate record.

18 And without any suggestion of what this
19 proposed request to charge was, now I understand
20 that's what we're trying to do is reconstruct the
21 record, but I think the burden still is on
22 Mr. Caughman to give us some idea what that charge
23 was so we would then know whether there was any
24 significance in the Court's denying, basically out
25 of hand, all the requests to charge whether that

1 particular charge had any bearing on what would be a
2 valid appellate issue.

3 And, frankly, if all that we have of this
4 transcript, including everything that we were able
5 to reconstruct at that last hearing, if this isn't
6 sufficient to reconstruct a record that's going to
7 get somebody a new trial, then I would suggest
8 there's no point in having reconstruction hearings
9 because this is such a minor little point compared
10 to the grand picture of what we've done here. It
11 doesn't fit at all in what we're talking about
12 happened in Ladson where they couldn't really not
13 reconstruct anything despite the best efforts of the
14 trial judge to do so. The appellate court said,
15 This is all conclusory. There's really nothing to
16 go from for where we can review an appeal.

17 **THE COURT:** Well, when looking at the requested
18 charges, you've got number one is the statute in
19 Title 56, there's a title in section -- under 56-5,
20 that's the first charge. The second one, same
21 thing. The third one, No person can be compelled to
22 be a witness against themselves. Fourth one, In order
23 to convict, must be convinced beyond a reasonable
24 doubt, under State v. Burton, that the defendant --
25 that the defendant was the cause of death.

1 The next one, number five, it's not a defense
2 that the victim might have recovered according to
3 the most approved surgical or medical standards or
4 reasonable -- as a reasonable doctor would have
5 treated in the case or even showing -- by showing
6 that the treatment was negligent. Another State v.
7 Burton request. And the next one, State v.
8 Peterson, in order to establish that the death was
9 the natural and probable consequences. The conduct
10 of the defendant, the State must prove beyond a
11 reasonable doubt that a reasonable person in the
12 defendant's position could have foreseen that the
13 death would result, foreseeability request. Then
14 definition of reasonable doubt under Victor v.
15 Nebraska, State v. Manning, and then criminal intent
16 in number nine.

17 Now, how did I treat these requests? Did I
18 give them in substance or I gave the standard
19 charges in these areas?

20 **MR. APLIN:** My recollection, I think it was
21 just very short in the transcript that you just
22 rejected the requests to charge. And I -- maybe
23 Mr. Strom can clarify, but I think you said that,
24 yeah, your general charge covered the substance of
25 what was here.

1 **THE COURT:** I mean, because I don't see
2 anything earth shattering in any of this other --
3 that would not be addressed in the standard charge.
4 So to the extent that one is missing, it's hard to
5 figure anything unusual would be included in that
6 because the substance of these requests are
7 something generally like standard requests, some
8 from statutes, some Ralph King Anderson, some just
9 standard. And there's no objection, apparently, to
10 what I opted to charge. So what are we talking
11 about?

12 We're trying to figure out something unusual
13 that might have existed that the jury should have
14 heard that no objection was made to, but
15 nevertheless it's such a flaw by the court reporter
16 or someone that a new trial should be granted?

17 **MR. APLIN:** Your Honor, if I may, in two
18 points, I think that is a good point you make that
19 when you did make your requests to charge, which I
20 believe is transcribed, if there wasn't an objection
21 to it, renewing the request to have this charge at
22 the end of it, then there's -- arguably, it wasn't
23 preserved for appellate review anyway.

24 **THE COURT:** So the Court of Appeals will need
25 to judge whether or not a good charge was given to

1 the jury.

2 **MR. APLIN:** Correct. And that charge is
3 available to them in the transcript.

4 The second point I was going to make is if you
5 look at the flow of these requests to charge, number
6 six is the one that's allegedly missing. And number
7 five and number seven both have to do with -- one's
8 about foreseeability of the death and one is about
9 proximate cause. And I would argue it's reasonable
10 to suggest that number six that's missing, if it is
11 in fact missing, is somewhere along the same lines,
12 having to do with state of mind or something --

13 **THE COURT:** We don't know whether number six
14 existed, ever existed.

15 **MR. STROM:** If I may, Your Honor, it's listed
16 among the ones that are rejected. You do say, with
17 regards to the Victor v. Nebraska charge, that
18 you'll give that, but that the other ones are all
19 denied. And then Mr. Floyd renews that objection
20 just prior to the charges being given.

21 **THE COURT:** All right. Well, I think the Court
22 of Appeals should be able to determine whether or
23 not, given the nature of the charge and the evidence
24 presented, whether the charge given to the jury was
25 a proper charge under the law. And they could gauge

1 that without any consideration of what Mr. Floyd
2 would have requested, can't they?

3 **MR. STROM:** Respectfully, Your Honor, no,
4 because the standard is any evidence. And so it's a
5 -- it's a charge that was requested by the defense.
6 It would be the failure to give that in and of
7 itself as opposed to the rest of the charge. If we
8 knew what that charge was, you could then compare it
9 to whether the charge, when given as a whole, is
10 still -- is a correct and adequate statement such to
11 -- one potentially improper charge or --

12 **THE COURT:** No, but as his lawyer -- as his
13 lawyer, wouldn't you go and say, well, Caughman has
14 been prejudiced because the judge should have said
15 -- should have told the jury this, that -- that the
16 charge that was given is flawed in that the court
17 should have done something differently? Shouldn't
18 you have to come up with some kind of prejudice
19 rather than just kind of taking advantage of the
20 fact that the court reporter didn't take something
21 down?

22 **MR. STROM:** The issue, Your Honor, is that it's
23 a specific -- one specific charge we're missing, not
24 we could have charged this, could have charged this,
25 could have charged this. It's a --

1 **THE COURT:** But you don't know what's missing.
2 And, you know, with all the mines of someone charged
3 with, you know, leaving the scene of an accident
4 involving death -- was that the charge?

5 **MR. STROM:** Yes, Your Honor.

6 **THE COURT:** Given the nature of the charge, the
7 evidence, wouldn't you -- wouldn't it be incumbent
8 upon you to say that, well, the judge told the jury
9 what is reflected in the transcript; what is missing
10 is that the judge should have told the jury such and
11 such pursuant to State v. Burton, State v. Peterson
12 statute otherwise and because he didn't, the jury
13 did not fairly consider the charge?

14 **MR. STROM:** I agree, Your Honor, but we're
15 restricted to an error preservation state, so that
16 has to be presented to you first. Without knowing
17 what charge has been presented, we don't have a
18 specific appellate issue to raise on appeal.

19 **THE COURT:** Well, I mean, obviously, I think
20 that the jury was properly charged and that I gave
21 them a good charge, and at the end of the trial, no
22 one objected. So for me to figure out something
23 else that might have been on Mr. Floyd's mind and
24 said, oh, yeah, I should have told the jury that --
25 and to get back to what the Court of Appeals asked

1 me to do and that is to reconstruct it, the best I
2 can do is confer with you all and reconstruct it as
3 good as possible. If they're -- if they're not
4 satisfied that they have a complete record for
5 appellate review, that would be what you would be
6 arguing to them not to me.

7 **MR. STROM:** Correct, Your Honor, and that would
8 be, regardless of the ruling here, the next stage
9 would be the appeal from this. But, again, it's --
10 ultimately, it's been remanded to you, Judge, to
11 make that initial determination so that it can be a
12 written order.

13 **THE COURT:** Yeah. And I can't go back and
14 re-create anything other than giving a reasonable
15 assessment of what was presented. And -- and if
16 appellate courts are satisfied, fine; if they're
17 not, that would be their prerogative.

18 Well, as we speak, we go back in our database
19 of things. Defendant's request number six, it's an
20 e-mail from Michelle at Wayne Floyd Law May 20th,
21 2015: Good afternoon. Attached please find our
22 memorandum along with supporting documentation in
23 connection with the Caughman hearing scheduled
24 tomorrow and attached exhibits.

25 And number six says, The defendant is always

1 entitled to the benefit of any doubt. So if you
2 have any doubt as to whether or not the defendant is
3 guilty of a greater charge or a lesser charge, you
4 must give the defendant the benefit of the doubt and
5 only convict on the lesser charge. Likewise, if you
6 have any doubt as to whether the defendant is guilty
7 of -- guilty of not guilty of any charge, you must
8 give the defendant the benefit of that doubt to the
9 defendant and find him not guilty, State v. King,
10 Brightman v. State.

11 So that's under number six that Mr. --

12 **MR. STROM:** That's prior to the post-trial
13 hearing, Your Honor, an e-mail that was sent?

14 **THE COURT:** All right.

15 **MR. STROM:** I'm sorry. I just don't have that.

16 **THE COURT:** No. We just pulled up -- my law
17 clerk has pulled it up. It was sent to us by
18 Mr. Floyd. That was, I guess, before the hearing.
19 But he couldn't find it after the hearing?

20 **MR. STROM:** In the hard copy, the two boxes
21 that I have just don't have number six in the files.

22 **THE COURT:** Okay. Well, we now have it.

23 **MR. STROM:** I mean, that would essentially do
24 it for the issue with the jury instruction, Your
25 Honor.

1 **THE COURT:** So we'll reconstruct it and then
2 let the appellate court consider whose charge is
3 best or --

4 **MR. STROM:** Yes, Your Honor --

5 **THE COURT:** In regard to the charges. So do
6 you all e-mail -- do y'all accept that? Mr. Floyd
7 is here. Does he want to look at it?

8 **MR. FLOYD:** If it came from my office, it came
9 from my office.

10 **THE COURT:** So number six has appeared through
11 the wonderful world of law clerk's computer saving
12 techniques.

13 **MR. APLIN:** All right. Thank you, Your Honor.

14 And still responding, I think, to originally
15 why I stood up, the other issue about Amy Stephens
16 being the forensic technician in the chain of
17 custody testimony, I admit I did inadvertently omit
18 that issue from my proposed order. So that one was
19 not covered in what I submitted to you, so I would
20 need to add some language to address that.

21 **THE COURT:** All right. Well, let's just talk
22 about that because I mean I, you know, trying to --
23 the reason I'm coming over and meeting with you all
24 rather than trying to deal with this in the abstract
25 is I see a reconstruction hearing as putting all

1 heads together to come up with the best response to
2 the court as we can. So what is -- what's the issue
3 again?

4 **MR. APLIN:** I think, and again Mr. Strom can
5 jump in and correct me, but the transcript reflects
6 that her direct -- the direct testimony of
7 Ms. Stephens, as a State's witness, is not -- was
8 not transcribed.

9 **THE COURT:** And who was she again?

10 **MR. APLIN:** She was, based on the testimony
11 from a reconstruction hearing, was the log-in
12 technician, the evidence technician, who worked at
13 SLED, who -- according to Ms. Mayes' testimony from
14 this reconstruction hearing, she's the person who
15 would log the evidence in that came from the
16 sheriff's department and then somebody else would
17 actually do testing, that Ms. Stephens didn't do any
18 testing of evidence. She was literally an evidence
19 technician.

20 **THE COURT:** Quite often we don't see that
21 person, do we, if we've got a law enforcement
22 officer says, we sealed the evidence in a bag and we
23 put it in a drop box at SLED, and someone else gets
24 it out of the drop box and tests it and come here
25 and talk about it?

1 **MR. APLIN:** Right. And Mr. Floyd's testimony
2 was that he did object to the chain of custody of
3 some paint chips that came from this motorcycle at
4 the accident scene or something to that effect. But
5 our position would be, I think the cross-examination
6 at least -- we would submit the entire
7 cross-examination of Ms. Stephens is in the record.
8 I think there's been a suggestion that maybe it's
9 only part of the cross-examination, but either way,
10 it's hard to understand how, based on what was cross
11 that we have in the testimony from the trial, what
12 possible appellate issues could come from a chain of
13 custody issue when the chain of custody person was
14 there and actually did testify. So if the --

15 **THE COURT:** What page did you talk about in the
16 transcript again?

17 **MR. STROM:** It begins on 218, Your Honor, and
18 that's 218 of the trial transcript. Just before
19 Michael Moscow's testimony.

20 **THE COURT:** I'm just looking at something that
21 Stacy Johnson -- who is that? Oh, this is the
22 transcript of the September hearing. I need the
23 transcript of the original hearing.

24 I'm looking at a transcript of Stacy Johnson's
25 who transcribed the hearing we had in September.

1 Can I see one of these original transcripts that
2 y'all might be talking about?

3 **MR. APLIN:** I can hand him mine.

4 Your Honor, if I can approach.

5 **THE COURT:** Okay. I'm going to start on this
6 line ten on page 218: Ladies and gentlemen, we'll
7 stop for you to get your lunch at this time. We'll
8 take an hour, and please do not discuss the case.

9 We came back after that.

10 Audio portion on disk which next has witness
11 Amy Stephens on the stand. Direct examination of
12 witness by solicitor was not present.

13 Audio beginning with cross-examination of
14 Mr. Floyd: Okay. She's Employed with SLED on March
15 15th, 2010. When the evidence came in and received
16 by you and was previously discussed, I believe,
17 numbers 15 and 16. Original items were taken in.
18 We also have the same items resubmitted to our lab
19 in 2011. They're the same items that were
20 previously submitted. I guess our record reflects
21 they're the same items that had been previously
22 submitted.

23 Same exactly?

24 Yes, sir.

25 I have no further questions.

1 Well, that's a rather short cross-examination.
2 And what's the problem with it?

3 **MR. STROM:** Your Honor, the first issue is that
4 exhibits number 15 and 16, which on the index are
5 titled as photo boards, were never entered into
6 evidence according to the index or the exhibit
7 index.

8 The other issue is, again, Mr. Floyd testified
9 at the September hearing that he objected to the
10 chain of custody. There is no objection in this
11 record. And with the gaps, we don't know where it
12 is. And so my thought at the September hearing was
13 that he objected some time when 15 and 16 were
14 entered into evidence, but since -- those are the
15 photo boards of the pieces of the motorcycle, but
16 since it's -- it's impossible to tell where it is in
17 the evidence because it's just not in there.

18 **THE COURT:** What evidentiary value -- was that
19 chips or whatever --

20 **MR. STROM:** Sure. The chips -- I'm sorry, Your
21 Honor. I didn't mean to interrupt.

22 **THE COURT:** No. Go ahead.

23 **MR. STROM:** The chips are paint chips taken off
24 of the motorcycle. The motorcycle was released to
25 the deceased family and friends almost immediately

1 after the accident. Some time later the police
2 decided that they need to test the motorcycle and so
3 they go retrieve it from the friends. They also go
4 into the junk yard --

5 **THE COURT:** In order to determine what?

6 **MR. STROM:** In order to determine whether
7 there's a paint match between Mr. Caughman's car and
8 scrapings on the motorcycle fenders.

9 The issue here is that for an unknow -- period
10 of time, you have the parts just sitting in the
11 junkyard. And so there's an issue as to whether or
12 not these parts are the motorcycle parts, whether
13 it's a complete chain for the purposes of it being
14 admissible. So that would be the appellate issue,
15 but it's a twofold problem if there's no
16 objection --

17 **THE COURT:** And, again, the defense in the case
18 is that Mr. Caughman didn't hit the motorcycle? Is
19 that an issue or --

20 **MR. STROM:** Well, again, without the closing
21 arguments, it's hard to see how the defense's theory
22 sort of finally --

23 **THE COURT:** You seem to have a real good
24 working knowledge of the transcript. I was just
25 wondering what -- does it tie in with the defense

1 or --

2 **MR. STROM:** Well, it ties in with the defense,
3 but to both a -- it's a common car and a whole
4 general putting -- testing the State's evidence.
5 The other issue is, again, the cause of death issue
6 is somewhat attenuated because he does survive and
7 is beginning rehab when he essentially has a brain
8 clot.

9 **THE COURT:** Right. And that was sort of a
10 separate issue.

11 **MR. STROM:** Correct.

12 **THE COURT:** And I do recall there was a
13 vigorous cross-examination on cause of death and
14 whether or not there's an intervening cause by the
15 negligence of the hospital and all of those things
16 or someone else.

17 **MR. STROM:** But the argument that the paint
18 chips are from a common car is part of the defense's
19 case, as best they can tell without --

20 **THE COURT:** The paint chips was from the
21 motorcycle, did you say?

22 **MR. STROM:** Correct. Were taken off of the
23 motorcycle fender and the State says, well, this is
24 the link.

25 **THE COURT:** It came from Caughman's truck.

1 **MR. STROM:** Correct.

2 **THE COURT:** All right. What do you say about
3 that, Mr. Aplin?

4 **MR. APLIN:** Your Honor, I think the record that
5 we do have, I think, speaks for itself as to the
6 cross-examination of this witness. It doesn't
7 appear to have anything to do with the specifics of
8 these paint chips and the evidentiary value
9 themselves, the chain of custody. I mean, it looks
10 like a fairly cursory examination of what would be a
11 chain of custody witness who got up and said, yes, I
12 received the evidence and I processed it. So I
13 don't see that the missing portions of the direct
14 testimony would be particularly relevant.

15 I think Ms. Mayes, her testimony from the
16 reconstruction hearing, she didn't recall that there
17 was any particular objection one way or the other
18 made during that testimony. And it just strikes me,
19 again, it's a very -- very minor piece of missing
20 testimony from this trial, that there hasn't been a
21 showing of, in my mind, how it would be an appellate
22 issue.

23 **THE COURT:** And this is evidence that
24 Mr. Michael Moscow testified concerning --

25 **MR. APLIN:** He testified about the actual

1 evidence itself and was cross-examined extensively
2 about the testing of those paint chips and the
3 matching to the car and all the rest of it.

4 **THE COURT:** So you're saying that Mr. --
5 Mr. Floyd says he objected to it and it's not in the
6 transcript. There's nothing in his
7 cross-examination that challenged anything in regard
8 to a defective chain of custody.

9 **MR. APLIN:** Yeah. I think his testimony at the
10 reconstruction hearing was that he think -- he
11 remembers he objected to the chain some time during
12 the trial. He doesn't have any recollection of
13 objecting to it necessarily during Ms. Steven's
14 testimony, but he feels that he did --

15 **THE COURT:** If you object to the chain and the
16 -- as far as if the Court allows it in, wouldn't you
17 have to show the jury that there's something flawed
18 in what the witness did or some gap in the chain
19 since that's something that ultimately you would
20 then argue to the jury, well, how do we know that
21 it's -- this paint came from there because their
22 chain was disrupted and this witness' testimony
23 bears that out?

24 **MR. APLIN:** That is what you would have to do.
25 And I believe you also would have to object when the

1 evidence was introduced at trial on that basis. I
2 don't know that just objecting -- raising some
3 challenge to it during a particular witness'
4 testimony until that piece of evidence is introduced
5 at trial for error preservation purposes, you would
6 have to object to the introduction of that evidence
7 or else you're going to waive any objection you had
8 to her testimony anyway. So, again, I think this
9 record is sufficient for appellate review.

10 **THE COURT:** I see the witness on page 210 talks
11 pretty extensively about the pain and what he
12 observed and all that. Does this tie in with the
13 same thing or is this something different? Because
14 he's on the stand for quite a while. Of course, the
15 reference was to the motorcycle chips embedded in
16 the motorcycle and his testimony about the paint
17 chips and all. And then, of course, he starts out
18 saying, There's no evidence of any tampering, on
19 page 228.

20 Was he sort of a chain of custody type witness
21 as well?

22 **MR. STROM:** Moscow is the SLED analyst. So
23 he's not involved -- my understanding -- and, again,
24 if I'm mistaken, let me know -- is that he's not
25 involved in the collection of the -- the Cayce, West

1 Columbia Police Department took it to the impound
2 lot, released it to the family and, at some point
3 later in time, took it back.

4 **THE COURT:** Well, he's talking about the paint
5 chips that was on the motorcycle. That's what this
6 witness was testifying to, right?

7 **MR. STROM:** Correct. And I think State's
8 Evidence 15 and 16 are the photo boards that are the
9 pieces of this motorcycle. That's what we can't
10 place into evidence as to when it was moved into
11 evidence. And as far as the objection goes, Your
12 Honor, the objection will be when it's moved into
13 evidence, and that goes to this issue of
14 preservation of this potential issue with the chain
15 of custody.

16 And I can point Your Honor to where in the
17 September hearing Mr. Floyd speaks at length about
18 how the paint chips were a significant issue for the
19 defense and that would begin on page 28 line 11.

20 **THE COURT:** Page 28?

21 **MR. STROM:** Two-eight, yes, Your Honor, line 11
22 and through page 31.

23 **THE COURT:** Okay. 28 line 11.

24 **MR. STROM:** Yes, sir.

25 (Pause.)

1 **MR. STROM:** And, Your Honor, also on the
2 September 2016 hearing, page 62 is -- Ms. Stephens'
3 recollection is that Cayce, West Columbia maintained
4 control over these parts the entire time when that's
5 not the case.

6 **THE COURT:** Did Moscow also do the testing to
7 determine that the paint chips came from Caughman's
8 truck?

9 **MR. STROM:** Yes. He did the later testing at
10 the SLED lab, but the initial collection at the
11 accident scene was all done by the police
12 departments.

13 **THE COURT:** Well, of course, this says Agent
14 Moscow actually did an on-sight visit and collected
15 multiple paint chips.

16 **MR. STROM:** And I believe that's from after
17 Cayce and West Columbia took it back from the
18 friends and family and then picked up the pieces
19 again in the junkyard.

20 **THE COURT:** Well, he said he -- and that's his
21 testimony in the original transcript, paint chips
22 being embedded and paint chips that he collected and
23 his conclusions.

24 Yes, sir.

25 **MR. APLIN:** Just if I might, I'm just trying to

1 kind of bring all this back together. The bigger
2 picture here is what exactly is the objection we're
3 talking about? And they keep referring to a chain
4 of custody objection or a problem with the chain.
5 In all of these talks about who collected the paint
6 chips and who gave them to who and all that,
7 Ms. Stephens' only role, and I don't think this is a
8 dispute, is she's the evidence technician at SLED.
9 She wasn't involved in collecting the paint. She
10 wasn't transporting it anywhere. She was working at
11 SLED, someone brought the evidence to her, she
12 logged it or whatever she did it with it, maybe
13 logged it back out.

14 We don't know what her exact testimony was, but
15 I'm not sure what challenge to the chain we're
16 talking about that can be a viable appellate issue
17 that we don't have enough of a transcript that can
18 be reviewed by the Court of Appeals. I guess, I'm
19 having a hard time wrapping my brain around that.

20 **THE COURT:** We get challenges to chain of
21 custody, you know, blood, saliva, drugs. Trying to
22 figure out whether paint chips came from a certain
23 vehicle, that's not a typical chain of custody type
24 issue.

25 **MR. APLIN:** And, of course, the fender itself

1 is not even a fungible item. I mean, it was a
2 broken fender. They had the fender. The motorcycle
3 itself, those aren't things that chain of custody
4 are even an issue or involved --

5 **THE COURT:** Fungible items are the ones that
6 are usually the most significantly contested chain
7 of custody type items.

8 But -- yes, sir.

9 **MR. STROM:** Just very, very briefly, Your
10 Honor. The issue is that we don't have the
11 objection in the trial transcript that Mr. Floyd
12 testified that he made. And so trying to place it
13 in the broader scheme of the transcript is the issue
14 for the reconstruction. You know, the merits of it,
15 everything else aside, it's whether or not we have
16 this specific appellate issue. And in this
17 transcript with all it's little gaps, and it's sort
18 of little, almost like, razor cuts, we just don't
19 have it. And so he testified that he recalls an
20 objection to it, that he would have objected to it
21 and it's just in one of these sort of vaguely
22 annotated or described gaps.

23 You know, again, Your Honor, a finding that the
24 objection was made so that it can be preserved for
25 appellate review, that it is these issues that we're

1 talking about, you know, would be fine. It's just
2 that we don't know where this objection was made or
3 again, because it doesn't show up in the transcript,
4 if it was made.

5 **THE COURT:** Okay. Well, Mr. Aplin acknowledges
6 that he didn't address that issue. You did, didn't
7 you?

8 **MR. APLIN:** Right. I did not put that in the
9 proposed order. We addressed it at the hearing, but
10 I forgot to --

11 **THE COURT:** You need to put that in the
12 proposed order and share it with Mr. Strom.

13 **MR. APLIN:** Yes, Your Honor. And I -- I mean,
14 if you would like, I can address any other issues,
15 but I think they're addressed in the proposed order,
16 the rest of the specific allegations that were made
17 as far as the reconstruction and --

18 **THE COURT:** Well, the defendant's proposed
19 order that, in essence, saying I can't reconstruct
20 it sufficiently to help the appellate courts out, I
21 don't believe I can make that conclusion. I think
22 that -- I didn't review the entire transcript or
23 maybe if I did, I don't recall the specifics of it.

24 We were provided this transcript and I think I
25 did review it prior to the first hearing. I won't

1 express my opinion as to the quality of it or the
2 meaning of it. I'll let the appellate courts do
3 their job. They'll make their own assessments and
4 hear your arguments as to whether or not it's --
5 well, I will give my view, that it adequately -- we
6 have adequately reconstructed the essence of it, but
7 on the argument as to what they need for them to
8 make their determination, that's their -- within
9 their purview. But I'm ready to wrap this up and
10 get it on to them and let you all take it from
11 there.

12 So I think that -- I've tweaked some of what
13 was in the original order that was given to me, but
14 you can still send me what you have addressing the
15 additional issue and also including -- including in
16 it that number six has emerged that fill -- fills in
17 that blank, so that's one significant thing we've
18 done here today. And then, you know, I'm ready
19 to -- how many days do you think it'll take you? We
20 need to get this done.

21 **MR. APLIN:** I can do it within ten days, Your
22 Honor.

23 **THE COURT:** Ten days? To write the one
24 paragraph?

25 **MR. APLIN:** We can do five. We can do three if

1 you want.

2 **THE COURT:** How about three? While we're all
3 working on it, let's get it done and get it to
4 Mr. Strom and get it to wherever it needs to go.

5 **MR. APLIN:** Okay. We can do that.

6 **THE COURT:** Anything else, Mr. Floyd,
7 Ms. Mayes, Mr. Caughman, anybody?

8 **MR. STROM:** I don't believe so, Your Honor.

9 **MR. FLOYD:** No, Your Honor. It's good to see
10 you again.

11 **MS. MAYES:** Nothing further, Your Honor.

12 **THE COURT:** How are you getting along,
13 Mr. Caughman?

14 **DEFENDANT:** I'm doing okay.

15 **THE COURT:** All right. Thank you all. And
16 here's your transcript back.

17

18 END OF PROCEEDINGS

19

20

21

22

23

24

25

1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF LEXINGTON

5

6 I, the undersigned, Stacy L. Sheppard, Circuit
7 Court Reporter for the Eleventh Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Lexington County, South Carolina, on the
14 1st of May, 2017.

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

17

18 January 30, 2018

19

20 s/Stacy L. Sheppard

21

22 Stacy L. Sheppard, RPR

23 Circuit Court Reporter

24

25

WITNESSES

Cayce Department of Public Safety

Edward L. Pereira

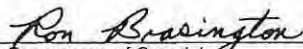
Law Enforcement Case #: 1001243

DEM

ARREST WARRANT NUMBER

1203629

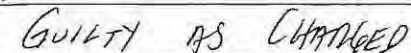
ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 5-6-13

VERDICT




Foreperson of Petit Jury

Date: 5-23-13

DOCKET NO. 2010GS3202294

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

vs.

William Craig Caughman

CDR #: 2463

Indictment for

HIT AND RUN
ACCIDENT RESULTING IN DEATH

§ 56-05-1210(A)(3)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

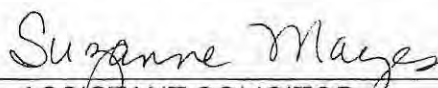
INDICTMENT FOR
 HIT AND RUN
 ACCIDENT INVOLVING DEATH

§ 56-05-1210(A)(3)

At a Court of General Sessions, convened on MAY 2013, the Grand Jurors of Lexington County present upon their oath:

That **William Craig Caughman** did in Lexington County, on or about February 21, 2010, being the driver of a vehicle involved in an accident resulting in injury to or the death of a person, to wit: Fredric Tobias Morriss, did unlawfully fail to immediately stop the vehicle at the scene of the accident or as close to it as possible, furthermore he did fail to return to and in every event remain at the scene of the accident until he had fulfilled the requirements of S.C. Code Section 56-5-1230, 1976, as amended, setting forth the duty to give information and render aid or reasonable assistance to any person injured in such accident, the aforesaid actions of failing to stop or comply with the requirements of law in violation of Section 56-5-1210 (A) and Section 56-5-1210(A)(3) of the Code of Laws of South Carolina (1976) as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
 STATE VS.
William Craig Caughman

INDICTMENT/CASE#: 2010GS3202294A/W#: 1203629Date of Offense: 2/21/2010S.C. Code § : 56-05-1210(A)(3)CDR Code #: 2463

AKA: _____

Race: _____ Sex: M Age: 48DOB: 1964 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: 008304514 SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Traffic / Hit and run, duties of driver involved in accident with death☒ CONVICTED OF or ☐ PLEADS

SENTENCE SHEET

in violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk Beth CorrigCourt Reporter: [Signature]

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.
Presiding Judge C. NewmanJudge Code: 12127Sentence Date: May 23, 2013

STATE OF SOUTH CAROLINA

County of LexingtonWilliam Craig Caughman

Full name and prison number (if any) of Applicant

355503

v.

IN THE COURT OF COMMON PLEAS

2020-CP-32 Q Q 3 8 8APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2020 JAN 27 PM 2:57
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

State of South Carolina

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 BRCI
2. Name and location of Court which imposed sentence. Lexington, 205 EAST
MAIN ST. Lexington, S.C. 29072
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010GS3202294 Hit and Run with Death
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 23, 2013 20 years AT 85%
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (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?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JANUARY 15, 2020
- 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 Counsel Richard Breibart
- (b) Ineffective Counsel Wayne Floyd.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Richard Breibart I paid \$40,000.00 To, ^{He} GOT ^{more or other parts}
- (b) Suspended AND Arrested While my CASE pending
- (c) Wayne Floyd Went To Trial for me but didn't get me ^{more on other sheet}
AN EXPERT WITNESS TO CHALLENGE THE STATES.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? A motion for New Trial
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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. Wayne Floyd filed A motion for New Trial
- ii. And Reconsideration on May 26, 2013. IT WAS
- iii. Denied on July 25, 2015 by Judge Clifton Newman
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Lexington 205 East main Street Lexington SC. 29012
- 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? _____
 (b) your trial, if any? yes _____
 (c) your sentencing? yes _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Direct Appeal _____
 (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. Richard Breibart Disbarred Don't Know
Where he IS.
 ii. Wayne Floyd 1611 Augusta Rd. PO Box 3972
West Columbia, S.C. 29171-3972
 iii. Taylor Gilliam Appellate Defense 1330 Lady St.
Columbia, S.C. 29201-3332
 (b) the proceedings at which each such attorney represented you:
 i. _____

 ii. _____

 iii. _____

FILED

2020-07-32-20388

①

2020-JAN-27 PM 2:58

LISA M. CONER
CLERK OF COURT
LEXINGTON SC

Reasons Richard Breibart was Ineffective
On May 11, 2010 Cayce detective Edward
Pereira And SLED Agent Mike Robinson
Came to my work to question me About
A Hit And Run Accident that happened on
February 21, 2010 on Knox Abbott Dr.
On May 11, 2010 I had An Appointment
With Richard Breibart. After TALKing With
him I paid him forty thousand dollars
To Represent me. On May 17, 2010 I WAS
Arrested AT my home by detective Pereira
And Agent Robinson. On May 18, 2010 Mr.
Breibart Came to my bond hearing, And
I was given A One Million dollar bond.
While in Jail When I would Call Breibarts
Office I would TALK to MAURA DAWSON.
She would Tell me we Are WAITing on The
Right Judge for A bond Reduction. While
In Jail WAITing on The Right Judge for A
bond Reduction I never TALKed To or SAW
Mr. Breibart. The man I Paid forty Thousand
dollars To NOT Once said ANYting About my
Case. While in Jail he Told my parents
he would need Thirty Thousand dollars
To get me out on bond. I had Told

2020-09-32 00388

②

My parents that I had a Credit Card With A Thirty Thousand dollar Limit. They gave him The Card And he got The money On September The 9th 2010 I went In front Of Judge Thomas Russo And he Reduced my bond To Two hundred fifty Thousand dollars. And Ordered To wear A GPS Leg monitor And placed on house Arrest. Mr. Breibart Said he would have To give The bondsman Twenty five Thousand And he would use The other five Thousand To make payments on The Leg monitor. On September 29, 2010 A bondsman Came To The Jail And put The monitor on my Leg And I was Released. When I got out on bond I went To Breibarts Office maybe Three Times The Last Three months of 2010. I met With MAURA DAWSON She played The Audio Of my Interview With The Cayce Detective And SLED Agent. Then she Let me hear Rhett Campbells first Interview. Then I heard my Ex-wifes Interview Then She played Danny Gilberts Interview.

2020-CP-32 Q2388

③

Then MAURA DAWSON Let me hear Rhett's Second Interview where Detective Pereira Threaten To Lock him up If he didn't Tell Them The Truth. They Told him he Knows more Than what he Told Them In his first Interview. Then Rhett Told Them I Told him a motorcycle hit my Truck. And Then Richard Breibart Told me you Fucked up when you Told somebody. THATS what I got for Seventy Thousand dollars. From September 29, 2010 Til June of 2012 21 months and I SAT down with Richard Breibart Two or Three Times AT The most. And when I did he Wanted more money. After A Roll Call Around The first of May 2011 Ms. Dawson Told me Richard Wanted To see me. After I Left The Courthouse I went To his Office. When I SAT down with him he Said I got To Tell you About A plea THATS The Law. I Said Richard I WANT To do what you Advise me To do. He said If They Offered

2020-07-31. 20388

④

One hundred days To One Thousand
What would you do? I said I would
Take The One hundred days. He said
Thats Right but They Are not going
To offer That. Thats All I heard
About A Plea deal. He said we are
going To Trial you are gonna walk.
Then he Told me he could handle
Campbell and Gilbert but your Daddy
Scares The Shit out of me. I want
him out of The picture. He Told me
To Tell my dad To Call Leigh Leventis.
He said he want Charge much. He said
he did NOT want my dad Called To
The stand. I Told my dad him and my
mom met with Leigh Leventis And
he got Twenty Thousand dollars
from my Parents. To This day I still
don't know what for. We were
Scared And he Knew IT. I bet
Mr. Breibart And Mr. Leventis
Split That money. After That happen
After Another Roll Call I WAS Told
Richard wanted To see me Again. I
Went To his Office After I Left

2020-CP-32 00388

⑤

The Courthouse Again. IT WAS A Friday. I waited All Afternoon The I was Told To meet him Saturday morning AT 9:00. So Saturday morning my Dad Took me To Breibarts office, Richard got There. We Went In SAT down And he Said Im glad your dad Went To see Leventis We got THAT TAKEN CARE Of. Then he said he had some Medical Records, he Knows A Lady THAT CAN Look Over These Records And I Know you Will WALK, She Want Charge much Ten Thousand dollars. He Knew I WAS Scared And Ignorant To The LAW but I Said Richard I have no more money. He said OKAY we will be Alright. Three years Later I find out There were no medical Records, Just A Autopsy Report. We Are going To Trial This Summer 2011. But Then I see The Solicitor THAT Came To my bond Reduction hearing quit The Solicitors Off And Went To work In Breibarts Office. Then Suzanne Mayes Took over The Case. We didnt TALK much The Rest of 2011. In 2012 I was Told by Maura Duncan 11/2 11/11 Probably

2020 CP 32 QQ 388

⑥

Probably go To Trial This Summer,
But In June of 2012 Richard Breibart
WAS suspenden And Later Arrested.
So for Seventy Thousand dollars I
Paid Richard Breibart he did nothing
for my case. And In my opinion THAT
IS not only Ineffective Counsel
ITS ALSO Called Robbery. One of
The guys THAT Worked for Breibart
Came To my house and helped me
fill out some papers To The S.C. BAR
ASSOCIATION To Try and get my money
back. His name WAS Jonathan I dont
Remember his LAST name. The S.C. BAR
ASSOCIATION gave me A Check for
four Thousand fifty nine dollars. About
Ten percent of The forty Thousand
dollar Fee. I got A Letter from A LAW firm
on Bull St. In Columbia To Come
pick up my files. My Dad And I went
And picked Them up And gave Them
To Wayne Floyd When he was
Appointed my new Lawyer. Six months
Later we Went To Trial.

William Craig Caughman

1-20-20

FILED

2020-01-27 00:38

① REASON ^{2020 JAN 27 PM 2:58} <sup>LISA M. COMPTON
CLERK OF COURT
LEXINGTON, SC</sup> Wayne Floyd was Ineffective
 I met with Wayne Floyd After
 Richard Breibart had been Suspended
 And Arrested. I Told him my Charges.
 I Told him I didnt have Any more
 money After What my parents And
 I had given Richard Breibart Mr.
 Floyd Told me he would have Taken
 my Case for fifteen Thousand dollars.
 Then he said Let him see what he
 could do. He Called me Two days
 Later And Told me he spoke with
 A Judge And The Judge said I
 could pick An ATTORNEY. I ASKED mr.
 Floyd If he would TAKE The Case
 And he said yes. The next week
 We went In front of A Circuit
 Court Judge And he Appointed
 Mr. Floyd my ATTORNEY. My dad
 And I had picked up my files
 That Breibart had from A LAW
 firm on Bull St. In Columbia.
 When Mr. Floyd was Appointed my ATTORNEY
 my dad And I Took The files
 To Wayne Floyds office. Wayne
 Came In said he had A LOT of

2020-CP-32 QQ 388

②

Reading To do. He said nothing will happen This year, IT WAS LATE AUGUST OR EARLY September of 2012. I did not speak To Mr. Floyd Again The Rest of The year. SomeTime In EARLY 2013 I WAS Told we would probably go to Trial I The Spring. In march of 2013 I got A Letter from Mr. Floyd's Office saying we were going To Trial on Monday MAY 20, 2013. Mr. Floyd Came by my house one day Weeks before The Trial To TALK with me And LOOK Around The yard. He Wanted To see where The Truck WAS PARKED, And Where Rhett Campbells house WAS. When Mr. Floyd Left THAT day he made A Coment I will never forget. he said I wish I never would have TAKEN This CASE. On Sunday MAY 19 The day before The Trial he wanted me To Come To his office And see If I had ANY questions. He Told me THAT day THAT Danny Gilbert WAS The one THAT Called Crimestoppers And on Tuesday he would have To get ON THAT stand And Tell The Jury And everybody else.

2022-CP-32-00388

③

That Monday morning we picked
A Jury And The Trial Started.
I WAS Charged with Hit And Run Death
And Obstruction of Justice. Mr. Floyd
Argued The Obstruction Charge And
Judge Newman Threw THAT out.
Mr. Floyd Argued The death And
Judge Newman SAID he would Let
The Jury decide. We got on The
Elevator That day I ASKed Mr. Floyd
Whats great bodily Injury? He SAID
One To Ten years Non-violent. I ASKed
Whats Death? he SAID One To Twenty
five violent. I Knew nothing About
65% And 85%. On May 23, 2013
I WAS found guilty of Hit And Run
Death And sentenced To Twenty years
Imprisonment.

① Wayne Floyd WAS Ineffective for
not Trying To get me A Plea Deal
When he Knew The State had
Overwhelming evidence on me.

② Wayne Floyd WAS Ineffective for
not ASKing The Court To provide

2020 CP-32.00388

④

An expert witness for me to Challenge
The States expert,

The State called Dr. Elizabeth
Moffatt A Pathologist from Lexington
Medical Center. Who performed The
Autopsy on The Victim. She Ruled
The Cause of death was A Pulmonary
Embolism. She Testified That WAS
A blood clot In The Lungs. IT IS
A Known Risk factor when you
have body TRAUMA And Bruised
Ribs. from A Automobile accident.

She Testified That she used Records
on The Computer AT The hospital
To determine The Cause of death.

The Records she used WAS not
provided To The defense. All we
had WAS A Autopsy Report And NO
expert In The medical field To
LOOK AT IT. Mr. Morris The Victim
In This Case spent The week In The
hospital up walking The halls of The
hospital And WAS walking The stairs When
he Collapsed And died. He WAS scheduled
To Leave The hospital The next day.

2024-CP-32-QQ388

⑤

THAT WAS SEVEN DAYS AFTER THE ACCIDENT. HE HAD BEEN UP WALKING THE HALLS. I COULD UNDERSTAND THE DEATH BEING CAUSED BY THE ACCIDENT IF HE HAD BEEN IN ICU ALL WEEK. BUT HE WAS RECOVERED ENOUGH TO LEAVE THE HOSPITAL THE NEXT DAY. IF I WOULD HAVE HAD A EXPERT HE OR SHE WOULD HAVE WANTED TO SEE ALL THE RECORDS AND MAYBE WOULD HAVE HAD AN OPINION OF GROSS NEGLIGENCE ON LEXINGTON MEDICAL CENTER. THEN THE JURY MIGHT HAVE GIVEN ME THE LESSER CHARGE. WHEN I PAID RICHARD BREIBART FORTY THOUSAND DOLLARS MAURA DAWSON TOLD ME IF WE HAVE TO HIRE AN EXPERT THATS COVERED. I KNOW I DIDNT GIVE MR. FLOYD ANY MONEY FOR HIS SERVICES, BUT IN MY OPINION HE COULD HAVE ASKED THE COURT TO APPOINT ME AN EXPERT IN THE MEDICAL FIELD. ON THE STAND THE STATES EXPERT USED THE RECORDS ON THE COMPUTER. WHEN WE DIDNT HAVE THOSE RECORDS IT WAS A RULE 5 VIOLATION.

2020-CP-32-QQ 388

① Time Served Credit

I WAS ARRESTED ON MAY 17, 2010 AND GIVEN A ONE MILLION DOLLAR BOND. I WAS RELEASED ON BOND ON SEPTEMBER 29, 2010 AFTER JUDGE THOMAS RUSSO GAVE ME A BOND REDUCTION AND ORDERED ME TO WEAR A GPS LEG MONITOR AND BE ON HOUSE ARREST. I WENT TO TRIAL ON MAY 20 THROUGH MAY 23, 2013. I WAS FOUND GUILTY AND SENTENCED TO TWENTY YEARS AT 85% SCDC GAVE ME 135 DAYS JAIL TIME SERVED. SO SCDC CALCULATED MY TIME AND WENT FROM MAY 24, 2013 20 YEARS WOULD BE MAY 24, 2033 MINUS 3 YEARS FOR 85% MAY 24, 2030. THEN THEY TOOK MY JAIL TIME OF 135 DAYS AND CAME UP WITH MY MAX-OUT AT JANUARY 4, 2030. WHEN I READ THE TRANSCRIPT JUDGE NEWMAN SAID I WOULD GET CREDIT FOR ANY TIME I MAY HAVE SERVED. SCDC GENERAL COUNSEL TOLD ME I DIDN'T GET THE OTHER 874 DAYS OF HOUSE ARREST BECAUSE JUDGE NEWMAN DIDN'T WRITE IT ON THE SENTENCE SHEET. I HAVE IT ON RECORD FOR ANY TIME SERVED

②

GPS Leg Monitor house Arrest
Is Time Served. I Paid Thirty
Thousand dollars To get on house
Arrest so I would Like To ASK
That I get That Time Taken
off my sentence. I Served IT
I Shouldn't have To serve IT Again.
I WAS Arrested on MAY 17, 2010
THATS Where my Time Should start.
20 years would TAKE IT To MAY 17,
2030. minues Three years for 85 %
would make my MAX. OUT MAY 17,
2027. I would ASK The Court
To please give me That Time
That I have served Already.

William Craig Carpenter 1-20-20

FILED

2020 JAN 27 PM 2:58

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

19. State clearly the relief you seek in filing this application: A Reduced Sentence Released with Time Served. or AT Least I would Like my house Arrest Time, with GPS monitor THAT Judge Newman did not put on Sentence sheet more information on separate sheet of paper
20. Are you now under sentence from any other court that you have not challenged? NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Lexington)

I, William Craig Caughman, 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.

William Craig Caughman

SWORN to and subscribed before me this 21st day of January, 2020.

Kenzia Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2024

FILED
2020 JAN 27 PM 2:58
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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

I, William Craig Caughman, 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.

William Craig Caughman
Applicant

SWORN or affirmed to and subscribed before me this

21st day of January, 2020.

Kangor Robins
Notary Public

My Commission Expires: 8/5/2024

FILED
2020 JAN 27 PM 2:59
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
William Craig Caughman,	)	Case No. 2020-CP-32-00388
SCDC #355503,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN, PARTIAL MOTION TO
	)	DISMISS, AND MOTION FOR A MORE
	)	DEFINITE STATEMENT
State of South Carolina,	)	(COUNSEL APPOINTED)
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by William Craig Caughman (Applicant) on January 27, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its May 2013 term, the Lexington County Grand Jury indicted Applicant for hit and run accident resulting in death (2010-GS-32-02294) and obstruction of justice (2010-GS-32-02842). H. Wayne Floyd, Esquire (Counsel), represented Applicant.¹ Assistant Solicitors Suzanne Mayes and Robert E. McNair, III, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On May 20, 2013, Applicant proceeded to a jury trial before the Honorable Clifton Newman.

A. Summary of Evidence Adduced at Trial

Officer Marion Green of the Cayce Department of Public Safety was dispatched to the scene of a hit and run at 10:08 p.m. on February 21, 2010. R. pp. 113-14. When he arrived at the

¹ Applicant initially retained Andrew Breibart to represent him; however, Mr. Breibart was placed on suspension prior to Applicant's trial. *In Re Breibart*, 398 S.C. 123, 727 S.E.2d 470 (Mem) (2012).

scene, Officer Green observed a heavily damaged motorcycle and the victim, Frederick Morris, laying in the road. R. p. 114. Officer Green testified the road was littered with parts from Mr. Morris's motorcycle. R. p. 116. Mr. Morris was able to tell Officer Green his name but was unable to recall any details of the accident. R. pp. 114-15. Kevin Washington, a witness at the scene, told Officer Green he observed a red Ford Ranger driving down 9th Street and he believed that was the vehicle that struck Mr. Morris's motorcycle. R. p. 115. Officer Green noted the street lights could influence someone's perception of color at the scene, as they project an amber color. R. pp. 124-25.

Jennifer Prather, a friend of Mr. Morris, received a phone call from Lexington Medical Center around 3:00 a.m. on the evening of the incident informing her that he was in the emergency room. R. p. 88. Ms. Prather described Mr. Morris as "pretty beat up," and noted he was treated for body fractures. R. p. 88-89. Ms. Prather also described Mr. Morris's condition as, "he had a lot of injuries." R. p. 92. Ms. Prather continued to visit Mr. Morris "around the clock" for the next week while he was hospitalized. R. p. 92. The night before he was due to be discharged, Mr. Morris passed away. R. p. 93.

Dr. Elizabeth Moffatt, a pathologist at Lexington Medical Center, conducted an autopsy on Mr. Morris. R. p. 441. Dr. Moffatt testified there was evidence of trauma to Mr. Morris's body. R. p. 452. Mr. Morris's injuries included bilateral rib fractures, thoracic vertebral fractures in his spinal column, a fracture at the base of his skull, pulmonary contusions, a left wrist fracture, and hematomas. R. pp. 453-54. Dr. Moffatt testified this litany of injuries would necessitate the patient being at least partially immobile while being treated. R. p. 454. Dr. Moffatt testified Mr. Morris's cause of death was a pulmonary embolism. R. p. 456. Dr. Moffatt explained that a pulmonary embolism is a blood clot that travels through the blood stream until it is stopped somehow. R. pp.

456-57. Dr. Moffett stated the most common cause of a blood clot is immobility. R. p. 457. Dr. Moffett further stated trauma and surgery relate to risk factors for a blood clot. R. p. 458. Dr. Moffatt testified it was her opinion to a reasonable degree of medical certainty that the blood clot that killed Mr. Morris was a result of trauma sustained in an automobile collision on February 21, 2010. R. p. 458.

Mr. Morris's motorcycle was subsequently transported to SLED on March 3, 2010, for analysis. R. p. 473. Mike Moskal, a trace evidence analyst for SLED, performed a visual examination of the motorcycle and was able to observe foreign paint embedded between the wheel and the rim of the front tire. R. p. 476. Moskal was able to determine the paint on the motorcycle was an original manufacturer's paint from another vehicle. R. p. 478. The vehicles that were painted with the particular paint found on Mr. Morris's motorcycle were Ford Rangers manufactured from 1999 to 2001, Ford S series vehicles manufactured from 1998 to 2001, Ford Escorts manufactured from 1998 to 1999, Ford Expeditions manufactured from 1998 to 2001, Ford Focuses manufactured from 2000 to 2001, Mercury Tracers manufactured from 1998 to 1999, and Lincoln Navigators manufactured from 1998 to 2000 and 2002. R. p. 479.

On March 10, 2010, Detective Edward Pereira of the Cayce Department of Public Safety was notified by SLED that they found foreign paint on Mr. Morris's motorcycle. R. p. 398. Aside from knowing the suspect's vehicle was a Ford, Detective Pereira testified there were no significant leads in the case until May 5, 2010. R. p. 399. On May 5, 2010, SLED received a Crimestoppers tip stating Applicant was the culprit. R. p. 400. The Crimestoppers tip was made by an individual named Lawrence Gilbert. R. p. 401.

Lawrence Gilbert knew Applicant for almost his entire life. R. p. 298. Gilbert testified they played baseball together, vacationed together, and were in each other's weddings. R. p. 298.

Gilbert went by Applicant's home on the afternoon of February 21, 2010. R. pp. 298-99. Gilbert arrived sometime around 4:00 p.m. and stayed sometime between thirty and forty-five minutes. R. p. 299. Gilbert noted he saw alcohol but did not remember anyone drinking. R. p. 299. Gilbert subsequently left Applicant's house and did not see him at any point that evening. R. pp. 299-300. Applicant called Gilbert the next afternoon and told him "he messed up or he had screwed up or something." R. p. 300. Gilbert went to Applicant's home and found him sitting on the back porch. R. p. 300. Applicant took Gilbert into the garage where his truck was parked and Gilbert observed, "the passenger window was broke. The side door was dented up. It seems like that the mirror was dangling down. I noticed that the bottom of the foot jam - - there was a dent about three inches wide and about three inches deep that was black." R. pp. 300-01. Gilbert clarified all of the damage was to the passenger side of Applicant's truck. R. p. 302. Applicant told Gilbert he went to eat and "was leaving and heading toward Columbia at Knotts-Abbott (sic). He said that he had stopped at the light. Nothing was coming and he said he turned and heard a loud bang. R. p. 302. Gilbert asked Applicant whether he hit a car and Applicant replied, "I hit a fucking motorcycle." R. p. 302.

Gilbert later saw a news report about the accident Applicant was involved in. R. p. 303. Applicant told him he wished he didn't use his credit card when he paid for dinner because they had a time that he was there.² R. p. 304. Applicant later told Gilbert he removed the doors from his truck and buried them in his backyard. R. p. 304. Applicant subsequently told Gilbert he moved them because law enforcement was searching for them and that they would never find the doors. R. p. 304. Applicant later covered his truck with a white tarp. R. p. 304. The news that Mr. Morris died affected Gilbert greatly, causing him to lose twenty pounds and affecting his ability to sleep.

² Peter Koutrakis, the owner of Hard Knocks Grill on Knox-Abbott Drive testified Applicant conducted a credit card transaction at the restaurant at 10:00 p.m. on the evening on February 21, 2010. R. p. 324.

R. p. 306. Gilbert noted that Applicant, “was hurt but it seemed like to me it was hurting me more than him.” R. p. 307. Gilbert testified he “stewed on it” for about two months before calling Crimestoppers. R. p. 306.

Charles Campbell was also a neighbor and friend of Applicant. R. p. 275. On the afternoon of February 21, 2010, Campbell spent the day doing yard work and drinking beer with Applicant. R. p. 277-78. Campbell sent his wife to buy more beer at one point during the afternoon because they did not have enough at their home. R. p. 278. Applicant subsequently left Campbell’s home when it began to get dark outside. R. p. 279. Two days later, Applicant called Campbell and asked if he could borrow one of his trucks because his truck was damaged on the passenger’s side. R. p. 280. Campbell noted Applicant drove a green Ford Ranger. R. p. 280. Applicant told Campbell he went to get something to eat at Wal-Mart and was on Route 7 when he struck the motorcycle. R. p. 283. Campbell later observed Applicant’s truck in his garage and saw the damage. R. p. 282. Campbell noted he worked in the towing industry and told Applicant his truck was totaled. R. pp. 282-83. Applicant told Campbell that he thought he hit a motorcycle. R. p. 283. Applicant told Campbell that in the event he was questioned by police, he would just tell them he hit the side of a truck. R. p. 284. Campbell testified Applicant later moved the truck to his back yard and removed the vehicle’s doors. R. p. 287. Applicant’s truck was later moved behind a tool shed and hidden under a tarp. R. pp. 292-93.

After receiving the Crimestoppers tip, Detective Pereira, Lieutenant Jeffrey Simmons of the Cayce Department of Public Safety, and Agent Mike Robinson of SLED went to Applicant’s home and observed a vehicle hidden underneath a tarp in the back of the residence. R. p. 343, 346. The officers then went through a public field at the end of Applicant’s street and could see that the vehicle underneath the tarp was the green Ford Ranger described in the tip. R. p. 343. Officers

subsequently obtained a search warrant and executed a search of Applicant's property on May 5, 2010. R. p. 347. Lieutenant Simmons noted Agent Robinson was with the Cayce officers when they executed the search warrant. R. p. 351. Once the search warrant was executed, Applicant's vehicle was taken into custody. R. p. 376. The truck was transported to the Cayce Department of Public Safety where SLED came and conducted forensic analysis. R. p. 377.

Detective Pereira noted that the investigative team was never able to find the doors to Applicant's truck. R. p. 409. After the search warrant was executed on May 5th, Detective Pereira and Agent Robinson went to Applicant's workplace to make contact with him. R. p. 410. Detective Pereira and Agent Robinson subsequently interviewed Applicant at the Cayce Department of Public Safety. R. p. 413. The audio of the interview was played for the jury. R. p. 418. Detective Pereira noted the cuts to Applicant's vehicle were jagged and looked like someone hurriedly completed the task. R. pp. 420-21. Detective Pereira testified the damage to Applicant's truck was consistent with the vehicle colliding with a motorcycle. R. p. 422.

At trial, the State called Clarissa Mack of the South Carolina Department of Motor Vehicles. R. pp. 334-35. Ms. Mack confirmed Applicant owned a Ford Ranger on February 21, 2010. R. p. 336. Interestingly, Applicant purchased a Jeep Wrangler on February 25, 2010. R. p. 336. Ms. Mack noted the tag number on the Jeep was different than that of the Ranger. R. pp. 336-37.

B. Verdict & Subsequent Proceedings

On May 23, 2013, the jury found Applicant guilty of hit and run accident resulting in death.³ Judge Newman sentenced Applicant to a term of twenty years' imprisonment. On May 31, 2013, Counsel filed a motion for a new trial and reconsideration of sentence. The court convened

³ The trial court granted Applicant's motion for a directed verdict on the obstruction of justice charge. R. pp. 514-38

a hearing on Applicant's motion on May 21, 2015. R. pp. 585–633. Judge Newman denied Applicant's motion by order dated July 25, 2015.

Applicant filed a timely notice of appeal. Appellate Defender John H. Strom initially represented Applicant on appeal. On June 17, 2016, Counsel Strom filed a motion to hold appeal in abeyance and to remand for reconstruction of the record. The Court of Appeals granted the motion and remanded to the circuit court for reconstruction of the record. The court convened two reconstruction hearings on September 16, 2016, and May 1, 2017. R. pp. 657–726. On May 26, 2017, Judge Newman issued an order finding the record had been sufficiently reconstructed so as to provide a full and complete record and allow for meaningful appellate review. R. pp. 765–76.

Appellate Defender Taylor Gilliam represented Applicant for the remainder of his appellate proceedings. Both parties submitted briefs on the following issues:

- I. Did the trial judge err in denying Appellant's motion to suppress, where law enforcement lacked jurisdiction to execute a search warrant on Appellant's property because the multijurisdiction agreement was invalid?
- II. Did the trial court err by improperly considering Appellant's alleged alcohol use, where witnesses offered conflicting statements on whether Appellant had been drinking hours before a motor vehicle accident, where there was no testimony that Appellant had any alcohol with his evening meal prior to the accident, and where the trial court suggested immediately prior to sentencing that things might have been different if Appellant had not been drinking?

Following briefing and oral argument, the Court of Appeals affirming Applicant's conviction and sentence in an unpublished per curiam opinion. *State v. Caughman*, Op. No. 2020-UP-009 (S.C. Ct. App. filed Jan. 15, 2020). The case was returned to the circuit court on January 31, 2020. Applicant commenced this PCR action on January 27, 2020.⁴

⁴ The State would note that Applicant improperly filed this action prior to the issuance of the remittitur.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on (verbatim):

1. Ineffective Assistance of Counsel (Richard Breibart)
 - a. “Richard Breibart I paid \$40,000 to, he got suspended and arrested while my case pending.”
2. Ineffective Assistance of Trial Counsel (Wayne Floyd)
 - a. “Wayne Floyd went to trial for me but didn’t get me an expert witness to challenge the State’s.”
 - b. “Wayne Floyd was ineffective for not trying to get me a plea deal when he knew the State had overwhelming evidence on me.”

Applicant requests relief as follows:

“A reduced sentence, released with time served, or at least I would like my house arrest time with GPS monitor that Judge Newman did not put on sentence sheet.”

Attached herewith and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records, including the trial transcript, and the records of the current PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials.

III. PARTIAL MOTION TO DISMISS

Applicant was originally represented by Richard Breibart, who was disbarred prior to Applicant’s trial. Applicant contends Mr. Breibart was ineffective because Applicant allegedly paid him \$40,000 to represent him. The State submits this allegation should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An applicant may commence a post-conviction relief action on the following

grounds:

1. 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 [was] 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).

To prevail on a Sixth Amendment ineffective assistance claim, an applicant must show that counsel's representation "fell below an objective standard of reasonableness," *Strickland v. Washington*, 466 U.S. 668, 688 (1984), and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694; *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' " (quoting *Strickland*, 466 U.S. at 687)).

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Mr. Breibart did not represent Applicant at trial, the State submits Applicant cannot show he was prejudiced based on any alleged

deficiency on the part of Mr. Breibart.⁵ Therefore, this claim should be dismissed pursuant to Rule 12(b)(6), SCRCP, for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

Applicant next contends Counsel Floyd rendered ineffective assistance by failing to negotiate a plea agreement due to the State's overwhelming evidence against him. This allegation should be dismissed as a matter of law. "Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. . . . Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." *State v. Thrift*, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994). While "it is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced... a defendant has no constitutional right to plea bargain." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999) (citation omitted).

Because Applicant is not entitled to any particular plea offer, his attorney cannot be constitutionally ineffective for failing to obtain one. Therefore, this portion of the allegation should be denied and dismissed with prejudice as a matter of law. See S.C. Code Ann. § 17-27-70(c) (authorizing the court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law").

⁵ The State would note that the proper avenue to assert this claim would likely be a complaint with the Office of Disciplinary Counsel.

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). 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 or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal

assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of

hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not*

whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both

components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

B. Failure to Retain Expert

Applicant contends Counsel Floyd was ineffective for failing to retain a pathologist to counter the State’s expert regarding the victim’s cause of death. While the State is without sufficient information to adequately respond to this claim; however, *Strickland* notes that there are “countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” 466 U.S. at 689. Rare are the situations in which the “wide latitude counsel must have in making tactical decisions” will be limited to any one technique or approach. *Harrington*, 562 U.S. at 106 (quoting *Strickland*, 466 U.S. at 689). “It can be assumed that in some cases counsel would be deemed ineffective for failing to consult or rely on experts, but even that formulation is sufficiently general that state courts would have wide latitude in applying it.” *Harrington*, 562 U.S. at 106.

Moreover, our Supreme Court has held that counsel’s failure to call an expert witness at trial to rebut the State’s expert testimony will not necessarily rise to the level of deficient performance where he undertakes a vigorous cross-examination of the State’s witness. *Frasier v. State*, 306 S.C. 158, 160–61, 410 S.E.2d 572, 573 (1991). “Where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such conduct will not be deemed ineffective.” *Reeves v. State*, 415 S.C. 366, 377, 782 S.E.2d 747, 752 (Ct. App. 2015) (citation omitted). An applicant must produce the testimony of a favorable witness or otherwise offer the

testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Bannister*, 333 S.C. at 303, 509 S.E.2d at 809 (1998) (citation omitted).

C. Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant's claims of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has completely failed to provide any specific facts to support such claims. The State requests Applicant, through counsel, provide specific claims and facts to support these vague allegations. See S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); see also *Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRPC (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRPC ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."). Thus, the State moves to require Applicant to provide a more definite statement of

his allegation of ineffective assistance of counsel pursuant to Rule 12(e), SCRCP.

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. 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. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and

oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VII. GENERAL DENIAL

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

VIII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section V, and thereafter convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 17, 2020

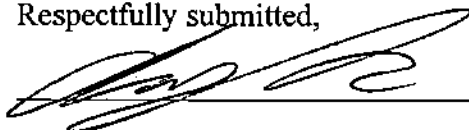
WILLIAM CAUGHMAN,	)	CASE NO.: 2020-CP-32-00388
	)	
Applicant,	)	
	)	
v.	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. Prior to the trial, Applicant's counsel Richard Breitbart, misled the defendant and failed to explain the details of the Applicants case including failing to discuss potential offers from the state.

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2. Applicant's counsel, Wayne Floyd, failed to subpoena victim's medical records (p. 449, Line 16-19) to determine the cause of death and failed to retain an expert to testify regarding this or review records.
 3. Applicant's counsel, Richard Breibart and Wayne Floyd, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
 4. Applicant's counsel, Richard Breibart and Wayne Floyd, failed to negotiate effectively for the applicant and communicate with the applicant.
 5. Applicant's counsel, Wayne Floyd failed to ensure the defendant received proper time served credit at sentencing (including house arrest time).
 6. Applicant's counsel, Richard Breibart and Wayne Floyd, failed to properly investigate the facts of this case.

Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

FILED

803-360-8692 Phone

2023 OCT 12 PM 3:15

ola.johnsonlaw@gmail.com

CLERK OF COURT
LEXINGTON SC

This 12th day of October, 2023.

FILED

STATE OF SOUTH CAROLINA PH 3:45

COUNTY OF LEXINGTON

WILLIAM CAUGHMAN,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-32-00388

CERTIFICATE OF SERVICE

I, Ola Johnson, hereby certify on that on October 12, 2023, I served a copy of the AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF on Don Zelenka, Deputy Attorney General by Email and U.S. Mail to the following address:

Don Zelenka, Deputy Attorney General

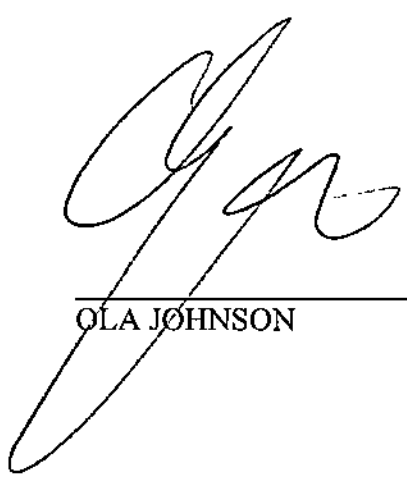
SC Attorney General's Office

P.O. Box 11549

Columbia, S.C. 29211

10-12-23

Date



OLA JOHNSON

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	2020-CP-32-00388
	)	
	)	
	)	
	)	
WILLIAM CRAIG CAUGHMAN,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE,	)	
RESPONDENT.	)	
_____	)	

October 24, 2023
Lexington, South Carolina

B E F O R E:

THE HONORABLE DANIEL COBLE, JUDGE.

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

OLA JOHNSON, ESQ.
Attorney for the Applicant

DONALD J. ZELENKA, ESQ.
Attorney for the Respondent

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

Page No.(AW) WILLIAM CRAIG CAUGHMAN:

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Redirect Examination by Mr. Johnson.....	27

(RW) SUZANNE MAYES:

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Respondent's Exhibits)			
1	Record of Appearance		36
2	Roll Call Sheet		37

All Exhibits were retained by the Clerk of Court for
 Lexington County.

P R O C E E D I N G S

THE COURT: Who's next?

MR. ZELENKA: Your Honor, the next case is William Craig Caughman vs. State of South Carolina. It's civil action 2020-CP-32-388. This matter arises from a Post-Conviction Relief filed by Mr. Caughman on January 27th, 2020. Ola Johnson was subsequently appointed as counsel in this matter. He filed an amended application on October 12th, 2023.

This matter arises from two indictments in May of 2013 for a hit and run accident resulting in death and obstruction of justice. At the time of trial, he was represented by Wayne Floyd. As Your Honor may be aware, Mr. Floyd died on August 24th, 2021.

Assistant Solicitor Suzanne Mayes and Robert McNair of the 11th Circuit prosecuted the case and it proceeded to trial on May 20th, 2013 before Judge Clifton Newman. He was found guilty of the accident charge resulting in death and Judge Newman did not allow the State to go forward on the obstruction of justice indictment during the trial over the State's objection.

After the conviction on that matter and the sentence, he was -- he was sentenced to 20 years in prison on that. There was a motion for reconsideration of sentence filed. The Court convened a hearing on that motion on May 21st,

1 2015. Almost two years after the fact, the motion was
2 pending and it was denied on July 25th, 2015.

3 There was an appeal to the appellate court and,
4 subsequently, a motion for reconstruction of a part of the
5 record and Judge Newman made those determinations. The case
6 proceeded on appeal and it was dismissed by an unpublished
7 opinion by the Court of Appeals on January 15th, 2020. The
8 matter had a remittitur subsequent to that period of time.

9 In this particular application, he is alleging -- and
10 let me point out one other thing. Prior to Mr. Floyd being
11 involved in the trial and preparation, the Applicant had
12 Richard Breibart represent him. And Mr. Breibart was
13 subsequently suspended from the practice of law and
14 subsequently disbarred by the court, so that reverted to
15 Wayne Floyd.

16 Allegations made are ineffective assistance of counsel
17 concerning Mr Breibart, who got suspended and arrested while
18 this case was pending, and ineffective assistance of counsel
19 related to Wayne Floyd. With the amended application, he's,
20 essentially, alleging the following: That Mr. Breibart
21 failed to discuss pending offers from the State, that Mr.
22 Floyd failed to subpoena the victim's medical records to
23 determine the cause of death and failed to retain an expert
24 to review those records that he had not obtained and that
25 both counsel failed to meet with him a sufficient number of

1 times and that they failed to negotiate effectively for the
2 Applicant and communicate with the Applicant. There was an
3 allegation that he failed to receive time-served credit at
4 sentencing and that Mr. Breibart and Floyd failed to
5 properly investigate the facts in the case.

6 While this matter was pending, both Counsel Johnson and
7 myself learned that another lawyer, Tommy Thomas, has filed
8 a motion in the Court of General Sessions requesting
9 clarification by Judge Newman maybe of the credit for time
10 served that he sentenced in that case. Apparently, it
11 evolves from the fact that he was under monitor and house
12 arrest with GPS that hasn't been accounted for by the
13 Department of Corrections. That matter will be resolved,
14 probably it would have been that or by my discussions with
15 the Department of Corrections once that monitor/house arrest
16 issue is resolved. Judge Newman just gave a bare he gets
17 credit for time served at the conclusion. He didn't set out
18 any particular time frame.

19 The State is ready to go forward, Your Honor.

20 THE COURT: Mr. Johnson, are you ready?

21 MR. JOHNSON: Yes, sir. We just had some things to put
22 on the record first.

23 THE COURT: Yes, sir.

24 MR. JOHNSON: First, as Mr. Zelenka discussed, there's
25 an amended bond order and this was filed back September

1 2010, and I'd ask the Court to take judicial notice of that
2 fact. I think Mr. Zelenka is in agreement.

3 What happened was he had an order -- and this was,
4 actually, signed September 17th, 2010. And the allegation
5 we have for ineffective assistance of counsel, of course,
6 that relates to that. There's no argument on the record
7 where Mr. Floyd made it clear to the Court that he was under
8 house arrest all that time. And that totals, looks like
9 we're talking about --

10 Well, in the motion to clarify sentence by Tommy
11 Thomas, he put September 17th, 2010, as the date that he
12 appears and that there was an order signed September 9th.
13 It says he was under electronic house arrest from September
14 29th, 2010 until convicted on May 23rd, 2013. That would,
15 actually, be 968 days.

16 So I was just going to ask the Court to take notice of
17 the fact that he did get that house arrest order. I've got
18 a copy here, it's been filed. It was filed back in 2010.
19 That is part of the record.

20 Another issue that I wanted to -- and there's no
21 objection I don't believe.

22 MR. ZELENKA: No objection.

23 MR. JOHNSON: The other one, we had two motions that
24 were denied. We had -- that order denying our motions was
25 clocked in March 7, 2023. We had an issue in this case

1 regarding medical records because Mr. Floyd was defending
2 the case and we'll cite that during testimony. There was a
3 part where there's argument over whether or not certain
4 records should be admitted. Mr. Floyd did not obtain
5 records from the hospital during the week-long stay when the
6 victim was there. The victim went in the hospital and died
7 a week later.

8 So we had two different notice of motion and motion to
9 authorize discovery and what we're looking for is victim's
10 medical records. Obviously, we would need that to obtain
11 those.

12 We had another motion for an expert in pathology and
13 we're going for an expert that can use these records and
14 assist my client in his PCR. Since that was the whole
15 issue, we are concerned that Mr. Floyd overlooked something
16 there. This is another motion and it says motion for
17 professional services and we need an expert in pathology.
18 So they're connected. Those were both denied in the order
19 saying the Court denied it. So we couldn't get the records,
20 we couldn't hire the expert and have the funding for it. I
21 just wanted to take exception to that ruling and put that on
22 the record as we go forward.

23 THE COURT: Noted for the record.

24 MR. JOHNSON: Thank you, Judge.

25 My witness is Mr. Caughman.

William Caughman - Direct by Mr. Johnson

1 THE COURT: If you'll stand right there and face the
2 clerk and raise your hand.

3 WILLIAM CAUGHMAN,

4 after being duly sworn, testified as follows:

5 THE COURT: State your name when you sit down so the
6 court reporter can hear you.

7 THE WITNESS: William Craig Caughman.

8 DIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q Mr. Caughman, we'll start out, you were represented at
11 one point by Mr. Breibart?

12 A Yes, sir.

13 Q Now, when we talked about Mr. Breibart, it came to your
14 attention later on that -- didn't you receive some
15 information, even today confirmation there were some offers
16 made that Mr. Breibart received, but did not relate to you,
17 or his employee, Ms. Dawson, received?

18 A Yes, sir.

19 Q Describe to me, did you have any conversations with Mr.
20 Breibart or Ms. Dawson, anybody in his employ about these
21 offers?

22 A I was never offered anything.

23 Q Offers from the State?

24 A Or Ms. Dawson, yes, sir.

25 Q Okay. And the issue of medical records, I'm going to

William Caughman - Direct by Mr. Johnson

1 cite Page 449, Line 16 through 19, wasn't there a discussion
2 during the trial when they're determining cause of death and
3 Wayne Floyd made an admission that he did not receive or go
4 after and subpoena these records of the victim at the
5 hospital?

6 A Yes, sir.

7 Q Did you have a conversation with Mr. Floyd about that?

8 A No.

9 Q He didn't come to you and talk about the importance of
10 that?

11 A No.

12 Q And to your knowledge, he never sought those records?

13 A No.

14 Q And that discussion in court was about the fact that he
15 didn't have the records and they were relying solely upon
16 the State's expert and her limited records?

17 A Yes, sir.

18 Q And, ultimately, you were convicted after that
19 testimony?

20 A Yes, sir, I was.

21 MR. JOHNSON: And, Judge, that was number two. We're
22 going to touch upon number three in my amended application.

23 Q How many times did Mr. Breibart come meet with you and
24 prepare for this case?

25 A Probably not over four times.

William Caughman - Direct by Mr. Johnson

1 Q Where did you meet?

2 A At his office.

3 Q And you retained him?

4 A Yes, sir.

5 Q How much did your family pay him?

6 A \$40,000.

7 Q Did anybody else with his office meet with you?

8 A Maura Dawson.

9 Q How many times?

10 A Well, she was the one that I most of the time talked
11 with.

12 Q Okay. And did Mr. Floyd meet with you to prepare for
13 this case?

14 A I met with Mr. Floyd after what happened with Breibart
15 and discussed what I was charged with, and then he called me
16 back and said that he would take my case.

17 Q Okay.

18 A Then I gave him the records. When Breibart got
19 suspended, we had to go to Bull Street at some law office
20 and pick up all the files. So we took those to Mr. Floyd.

21 Q How many times did Mr. Floyd meet with you to prepare?

22 A None that I recall.

23 Q You didn't meet with him?

24 A He said nothing will happen until after the first of
25 the year. Then after the first of the year, we might have

William Caughman - Direct by Mr. Johnson

1 sat down and talked one time and then he said I'll let you
2 know.

3 Q Okay. Did Mr. Floyd make any comments to you about
4 whether or not he felt like he should be involved in the
5 case anymore or regretted taking the case?

6 A One time, he come to the house. He wanted to see where
7 my truck was and where Mr. Campbell lived that had to
8 testify against me and he wanted to look over the yard. And
9 he made the comment that he wished he had never took this
10 case.

11 Q Okay. Were there any negotiations --

12 MR. JOHNSON: We're moving on here to number four,
13 touching on that, Judge.

14 Q Are you aware of any negotiations between Mr. Breibart
15 and Mr. Floyd to try to get some sort of a deal for you or
16 communicate that to you?

17 A No.

18 Q They didn't talk --

19 A I was never asked or told about a plea deal.

20 Q Okay.

21 A He said we're going to trial, that's all Mr. Breibart
22 said.

23 MR. JOHNSON: And referencing number five and the time
24 served issue, Judge.

25 Q Do you recall Mr. Floyd ever speaking to you at

William Caughman - Direct by Mr. Johnson

1 sentencing or bringing up the fact that you had all this
2 house arrest time that you should be getting credit for?

3 A No, sir. No, sir.

4 Q And that was not put on the record at the sentencing?

5 A No.

6 Q And you are sitting at SCDC now and you don't have
7 credit for any of that?

8 A No, only the jail time.

9 Q Only the jail time. And do you have any knowledge of
10 anyone hiring a private investigator to work on this case?

11 A No, sir.

12 Q Nobody ever met with you?

13 A No, sir.

14 Q And did you ever have any conversation or any
15 indication anyone was going to hire a medical expert to
16 review the State's evidence?

17 A Mr. Breibart, after he had my parents pay
18 [indiscernible] \$20,000 for I don't know what, he told me he
19 had some -- he said I'm glad we got your daddy taking care
20 of you. He said now, I've got some medical records. I've
21 got this lady that can look at these records and I guarantee
22 you'll walk. He said she don't want much, only about
23 \$10,000. And I said, Mr. Breibart, I have no more money.
24 He said, That's okay. That's fine.

25 Q Do you feel Mr. Breibart made any misleading statements

William Caughman - Cross by Mr. Zelenka

1 to you?

2 A Yes, sir, plenty.

3 Q Tell me about those.

4 A One of them was that.

5 Q Uh-huh.

6 A And then like I said, most of the time, I spoke with
7 Maura Dawson. And when I spoke with her, mostly, I heard my
8 conversation with the Cayce Police. I heard Mr. Campbell's
9 conversation. I heard my ex-wife's conversation and I heard
10 Danny Gilbert's conversation and then Rhett's second
11 conversation. And that's about all I heard the whole time,
12 the whole two and a half years I had Richard Breibart as an
13 attorney.

14 Q Is there anything else you'd like to say about his
15 representation?

16 A He was crooked.

17 Q And you never received any information about an offer?

18 A No, sir, I did not.

19 MR. JOHNSON: Judge, those are all my questions.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. ZELENKA:

23 Q Mr. Caughman, did you want to plead guilty?

24 A If knowing the evidence they had on me and I was, yes,
25 I would have.

1 Q But you knew the evidence they had on you?

2 A I did not know. I mean, I did not know who said what.

3 Q Okay. Well, let me go back to your earlier testimony.

4 You said Maura Dawson told you about the statements that
5 were given by your friends?

6 A Right.

7 Q Those statements were given to CrimeStoppers?

8 A Right.

9 Q And then to law enforcement where they said you
10 acknowledged you had the accident?

11 A Yes, sir.

12 Q And that you had spoken to them about the accident?

13 A Yes, sir.

14 Q And they had come forward. And, also, about you
15 burying the door from the truck; isn't that correct?

16 A That was the comment made, yes, sir.

17 Q And so you had that information, that was the
18 additional information that was put forward to result in
19 your conviction?

20 A Yes, sir.

21 Q So your admissions to them was something you were aware
22 that was going to come out at trial?

23 A Yes, sir.

24 Q Did you ever ask Mr. Floyd to have you plead guilty to
25 the charges?

William Caughman - Cross by Mr. Zelenka

1 A No, I did not.

2 Q Why didn't you?

3 A Because I didn't know what to do. I was trusting
4 attorneys.

5 Q Okay.

6 A That's all I know. I was scared and I didn't know what
7 to do.

8 Q Okay. Are you acknowledging that you, in fact --
9 because you said you would have pled guilty, but that you
10 were driving the truck that night --

11 A Yes, sir.

12 Q -- the red Ranger or the green Ranger?

13 A Yes, sir.

14 Q And that your driving the truck that night after you
15 left the Hard Knocks Cafe resulted in the accident with Toby
16 Morris?

17 A Yes, sir.

18 Q And that, in fact, you left that scene at that
19 particular time for whatever reason?

20 A I made the most stupid mistake I've made in my life.

21 Q Uh-huh.

22 A I panicked, got scared and left.

23 Q Did you share that information with Mr. Floyd?

24 A No, I don't think I did.

25 Q So you never acknowledged you had committed the crime

~~William Caughman - Cross by Mr. Zelenka~~

1 to Mr. Floyd?

2 A Yes, I told -- well, I told him the hit and run
3 accident on Knox Abbot Drive, yes.

4 Q And did you testify at court?

5 A No, sir, I did not.

6 Q And did you talk with Mr. Floyd about testifying in
7 court?

8 A Yes, I did. He called me the day before they was going
9 to ask me to take the stand. And I said -- he said they're
10 going to hear what you told the police. They're going to
11 play that. And I said, Well, I'm not going to take the
12 stand.

13 Q So, basically, what Henry was telling you was they're
14 already going to have your story?

15 A Yes.

16 Q So you would not be subjected to cross-examination if
17 you took the stand, so your story would already be there, is
18 that what he was saying? I'm not trying to put words in
19 your mouth, I just trying to --

20 A He just advised me not to take the stand.

21 Q Okay.

22 A And I wasn't going to take the stand. I wanted to not
23 testify.

24 Q With respect to that case, do you know who the
25 prosecutors were in that case?

William Caughman - Cross by Mr. Zelenka

1 A In my case?

2 Q In your case, yes.

3 A Suzanne Mayes.

4 Q Is she here in the courtroom? She's got a mask on back
5 there --

6 A Yes, sir, I see her.

7 Q And before that, there was another prosecutor in the
8 case. Were you aware of him?

9 A Derrick Mobley.

10 Q Did you -- go ahead.

11 A I first saw him when I came in for my bond reduction
12 hearing. He come over and said, Are you William Caughman?
13 We were sitting in the jury box. And I said, Yes, I am. He
14 said, Okay. And walked off. I didn't know who he was until
15 I got up -- when Maura Dawson came in, we stood up about the
16 bond reduction and he come up and started speaking. That's
17 when I realized he was the solicitor. I never saw him again
18 until I was out on bond and went to Mr. Breibart's office
19 and I saw him walk across the parking lot.

20 Q Okay.

21 A And that was when I listened to one of the statements.
22 And when I left that day, was leaving, Maura Dawson asked me
23 if I had any questions and I said, Yes, that's the
24 solicitor. And she said, No, he works for us now.

25 Q So he ended up working for Mr. Breibart's office?

1 A Yes, sir.

2 Q And subsequent to that, that's when Suzanne Mayes took
3 over as prosecutor; is that correct?

4 A Yes, sir.

5 Q And did Ms. Mayes ever communicate with you, either Mr.
6 Breibart or you or Mr. Floyd in your presence, in their
7 presence concerning whether this case was going to be a
8 trial or a guilty plea?

9 A No.

10 Q You don't recall any of that during any of the
11 appearances when you showed up?

12 A The only time I would see Ms. Mayes would be at roll
13 call that I'm aware of.

14 Q Do you know if there were any discussions at that time
15 whether it was going to be a plea or a trial?

16 A A trial.

17 Q Okay. So when she was involved in the case, you knew
18 this was always going to be a trial?

19 A I mean, from the time I got out on bond, I heard him
20 say we're going to trial. No one ever came to the jail and
21 offered me anything. They was waiting for a bond reduction.

22 Q With regard to the medical records, I understand you're
23 not a lawyer, you're not a doctor, but why did you think
24 that was important to your case? What was your
25 understanding?

1 A To see if there was anything that could have happened
2 at Lexington Medical Center to cause Mr. Morris's death or
3 could have prevented his death.

4 Q Okay. Now, the pathologist who testified, she said,
5 basically, after he got there, he began to recover. After
6 he was there a number of days, he was walking with his
7 girlfriend and had a blood clot that resulted in his death?

8 A Correct.

9 Q And the pathologist testified that it wasn't unusual --
10 these are my words, unusual that a blood clot would have
11 developed from the type of trauma the victim had as a result
12 of the accident, that was pretty much it, wasn't it?

13 A Yes, sir.

14 Q And your lawyer, Mr. Floyd, tried to challenge that by
15 saying there could be other causes that caused the blood
16 clot. It happens everyday is, basically, what his theory
17 was in the case at that particular time; isn't that correct?

18 A Yes, sir.

19 Q And she responded there were many different things that
20 caused the blood clot?

21 A Right.

22 Q So that went to the jury, correct?

23 A Right.

24 Q And the Judge gave instructions on proximate cause
25 related to the cause of death and related to -- and gave an

1 instruction both on hit and run causing death and hit and
2 run causing greatly bodily injury that can lead to death?

3 A Correct.

4 Q So all those choices were given to the jury as well as
5 the State had proved all the evidence beyond a reasonable
6 doubt; isn't that correct?

7 A Correct.

8 Q So that information got before the jury for them to
9 make a determination in the case. And there was no
10 information presented through the pathologist that, in fact,
11 there was an independent reason that would have caused the
12 blood clot, correct?

13 A Correct.

14 Q Are you asserting it's your desire that there could
15 have been -- you're speculating there could have been
16 another reason other than what the --

17 A I'm asserting --

18 Q -- pathologist testified?

19 A I'm saying that I feel I should have had a medical
20 expert to challenge what she said or to find out if he was
21 given to proper medication to prevent a blood clot.

22 Q So --

23 A So he could have told the jury that and that could have
24 swayed one of the jury members to give me the lesser charge
25 of great bodily injury that can lead to death.

William Caughman - Cross by Mr. Zelenka

1 Q Okay. Do you recall Wayne Floyd asking the pathologist
2 in the case as to whether he was on blood thinners --

3 A I read something --

4 Q -- that would have potentially prevented the blood
5 clot?

6 A Yes.

7 Q And her reaction was she didn't know?

8 A She wasn't an expert in that field or something.

9 Q But he did answer his questions?

10 A Yes, he did.

11 Q And do you recall that there was sort of a challenge to
12 that testimony by Wayne Floyd on whether, in fact, he was
13 not properly provided hospital records?

14 A Yes.

15 Q He said the State should have given me the hospital
16 records?

17 A Yes.

18 Q And Suzanne Mayes indicated that she had not received
19 the hospital records either, correct?

20 A Right.

21 Q So she was unable to provide them to him, she didn't
22 have them either, correct?

23 A Yes, sir.

24 Q And the Judge denied the objection that was made. And
25 Mr. Floyd, in fact, asked for sanctions against the State

1 during the trial for not providing the hospital records, do
2 you recall that?

3 A Yes, sir.

4 Q And then there was a subsequent hearing held where,
5 again, the issue came up about the hospital records after
6 the verdict, after the convictions, do you recall that?
7 Were you present for that?

8 A Yes, at the reconsideration hearing and motion for a
9 new trial.

10 Q That's correct.

11 A Yes, sir.

12 Q And the Judge in this case heard that again, heard Mr.
13 Floyd asking for those records and heard again that Suzanne
14 Mayes declared she didn't have those records, that what they
15 got was the autopsy report or the necropsy report, I can't
16 remember which it was called, and that was given to the
17 defense in that case; does that sound correct?

18 A Correct. And Judge Newman said if you would have hired
19 an independent expert, I can see where he would turn the
20 records -- they would have to turn the records over.

21 Q That's correct, he did say that. And that wasn't hired
22 in your case because he could get access to certain
23 materials that don't automatically come to the State under
24 these circumstances, correct?

25 A Yes, sir.

William Caughman - Cross by Mr. Zelenka

1 MR. ZELENA: Court's indulgence.

2 (Pause.)

3 BY MR. ZELENA:

4 Q At the time of the trial, do you think that Mr. -- let
5 me ask it differently. At the time of the trial, did you
6 think you had an adequate understanding of what the State
7 was going to put up against you factually? I'm not talking
8 about your defense, I'm talking about what the State was
9 going to present?

10 A I've never done this before, so I didn't know what to
11 expect.

12 Q Oh, I understand and I'm asking you some difficult
13 questions.

14 A Correct.

15 Q But did you think you knew the State was going to be
16 putting up the individuals who had given the CrimeStopper
17 report and the other individual, both your friends at that
18 particular time about your inculpatory statements that you
19 made? You thought they were going to testify against you?

20 A Yes.

21 Q And you knew that there was going to be evidence about
22 the paint that connected your truck with the motorcycle, you
23 were aware of that, also, weren't you?

24 A Yes.

25 Q And you were aware that not only that, but they visited

William Caughman - Cross by Mr. Zelenka

1 the scene -- not the scene, visited your home and found the
2 truck covered with the tarp at that time?

3 A Uh-huh.

4 Q And still didn't find the door --

5 A Right.

6 Q -- that was taken off? Where is the door?

7 A I put it in the metal dump.

8 Q So it was gone, it wasn't buried?

9 A No.

10 Q And they were going to put up that you were at the Hard
11 Knocks Cafe that night close to the time of the incident and
12 had drinks at that particular club, correct?

13 A I had two Bud Lights.

14 Q And they had the receipts from that, correct?

15 A Correct.

16 Q So you were aware of that information coming in at the
17 time of the trial and you were aware that there were some
18 individuals who were trying to make some identity of the
19 truck that came off and they were putting different colors
20 on the type of truck and then, potentially, thinking over
21 the numbers of months or the period of time before the
22 CrimeStoppers report came in and they were trying to find
23 that information?

24 A Yes.

25 Q So you knew, basically, the extent of the State's case

1 against you and then they, also, had whatever statement you
2 had given to law enforcement?

3 A Yes, sir.

4 Q And that was pretty much the bulk of the case against
5 you, wasn't it?

6 A Yes, sir.

7 Q And the fact that the victim suffered traumatic
8 injuries and went to Lexington County Hospital and was there
9 for a number of days and seemed to regain his coherence and
10 competence and was hopeful for a period of time that he was
11 about -- fingers crossed about to be released?

12 A Yes, sir.

13 Q To some sort of rehab or something, but released from
14 the hospital, correct?

15 A Yes, sir.

16 Q And that was the State's case?

17 A Yes, sir.

18 Q So you did have a full understanding of the State's
19 case against you at the time of the trial?

20 A Yes, sir.

21 Q And you were satisfied that your lawyers had an
22 understanding of the case against you; is that correct?

23 A Yes, sir.

24 Q But your complaint right now is your hope that,
25 possibly, the hospital records may have suggested something

William Caughman - Cross by Mr. Zelenka

1 different to the pathologist, who had reviewed the records
2 for the State and testified as to the cause of death being
3 the result of an accident?

4 A I didn't know nothing about great bodily injury and
5 death. I knew I was charged with death. And Wayne was
6 arguing for the lesser charge, Mr. Floyd was arguing. We
7 got on that elevator and I asked him, What is death? He
8 said, One to 25 violent. I said, What is great bodily
9 injury? He said, One to ten nonviolent. I still didn't
10 know nothing about what that meant.

11 Q Okay.

12 A Except a lot of time.

13 Q I understand that. Did you involve any other lawyers
14 on your case after the trial?

15 A Just the appellate lawyer.

16 Q And who was that?

17 A It started out as John Strong, I believe, and then I
18 had Taylor Gilliam.

19 Q Okay. And they were both with South Carolina
20 Commission of Appellate Defense?

21 A Yes, sir.

22 MR. ZELENKA: Court's indulgence one moment.

23 (Pause.)

24 MR. ZELENKA: I don't have anything further, Your Honor.

25 THE COURT: Any redirect?

William Caughman - Redirect by Mr. Johnson

1 MR. JOHNSON: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q So Mr. Caughman, during that exchange about the
5 records, the Court actually reminded everyone that Mr. Floyd
6 had the opportunity to subpoena victim's records at the
7 hospital but did not do it, correct?

8 A Yes, sir.

9 Q And the basic common sense, when you look at the
10 conviction and the charge, if there had been something that
11 could have independently caused the death of the victim,
12 that might have resulted in a not guilty verdict or, as you
13 said, a lesser included offense?

14 A Yes, sir.

15 Q And to your understanding, neither attorney ever tried
16 to get those records?

17 A No.

18 MR. JOHNSON: No more questions, Your Honor.

19 THE COURT: Thank you, sir. You may step down.

20 MR. JOHNSON: Your Honor, we have no more witnesses.

21 THE COURT: Yes, sir, Mr. Zelena.

22 MR. ZELENA: The State would call Suzanne Mayes.

23 SUZANNE MAYES,

24 after being duly sworn, testified as follows:

25 THE CLERK: Please be seated in the witness stand.

DIRECT EXAMINATION

BY MR. ZELENA:

Q Ms. Mayes, what's your current occupation?

A I'm deputy solicitor here in Lexington County for the solicitor's office. We prosecute criminal cases in Lexington, Edgefield, McCormick and Saluda Counties. And I have been a member of the Lexington County Solicitor's Office since March of 2011.

Q And prior to that, what was your role as a lawyer?

A So I've been a prosecutor my entire career, which is 32 years. I began as an assistant solicitor in the Third Judicial Circuit, which is Sumter and Clarendon and Lee. I was there for approximately five years, then I went to the South Carolina Commission on Prosecution Coordination where I worked as a special prosecutor statewide in cases involving homicide by child abuse and child sexual assault.

Q And at some point in time, did you come to be involved in the prosecution of Mr. Caughman?

A Yes. So when I came to the solicitor's office in March of 2011, this file already existed. The crime occurred back in 2010. It was previously prosecuted by Derrick Mobley. Derrick Mobley had already left the office when I came and he went to work for the firm of Richard Breibart and became one of the associates along with Maura Dawson. So he, actually, went to the firm that was representing Mr.

Suzanne Mayes - Direct by Mr. Zelena

1 Caughman.

2 Q Okay. And in your role as the prosecutor in the case,
3 do you have an understanding of the State's obligations
4 under Rule 5 and Brady to disclose information to the
5 defendant?

6 A Yes. So in my correspondences with both Mr. Breibart
7 and Ms. Dawson, Maura Dawson, who was an associate of Mr.
8 Breibart and, also, actively involved in the defense of Mr.
9 Caughman, I offered to meet with them and review the file.
10 I, also, continued to provide any discovery material that I
11 came across in preparation of this case.

12 Q And did you review your records prior to your testimony
13 today to refresh your recollection on those types of
14 exposures that were made by your office and by you to either
15 Mr. Breibart or Mr. Floyd?

16 A Yes. We pulled e-mail correspondence between myself
17 and Mr. Breibart and Ms. Dawson as well as Mr. Floyd and
18 have continued to pull information throughout this morning.

19 Q And did you develop a packet of information for your
20 review?

21 A Yes, that I provided to you and a copy for the defense.

22 Q And in that information, did it reveal information that
23 had been provided to Mr. Breibart and then independently
24 provided to Wayne Floyd prior to the time of the trial?

25 A Yes. There was an indication that when Mr. Breibart

1 was removed from the case and the file went to a trustee
2 that Mr. Caughman himself came and picked the file up. He
3 then would have hired Mr. Floyd and provided that file to
4 him.

5 Now, in addition to that, I, also, served followup
6 e-mails where I provided discovery to Mr. Floyd as well and
7 asked him to check his file and make sure he had all of
8 those same materials, including the DVD and that they were
9 in working order.

10 Q And what were the DVDs of?

11 A Should have been recordings of his audio interviews
12 with law enforcement, the Defendant speaking with the law
13 enforcement officers about these allegations.

14 Q And in those DVDs, what was the position Mr. Caughman
15 took about his culpability in this incident?

16 A He denied any involvement. He did not admit that he
17 was driving the vehicle that struck the victim.

18 Q Which is different from the way he testified today,
19 correct?

20 A Today, he acknowledged, which would be the first time
21 that we would be aware that he would be acknowledging that
22 he was the driver.

23 Q In addition to that information, were you able to
24 attempt to review the records in the solicitor's office on
25 whether, in fact, some plea offers had been made to Mr.

Suzanne Mayes - Direct by Mr. Zelena

1 Caughman?

2 A Right. So I don't have a record of any of Mr. Mobley's
3 correspondence. I don't have access to any e-mails that
4 would have preexisted and I don't have any written
5 correspondence. We have pulled and requested from storage
6 this file and what we received today, we have in the
7 courtroom, but we know that we are still missing
8 correspondence that Mr. Mobley would have had directly with
9 defense attorneys. We're, also, missing what would be his
10 roll call and court appearances when Mr. Mobley had that
11 case. We can't locate those. We've only been able to
12 locate a few of the roll call sheets from when I was
13 involved in the case, which would have been 2011 and 2012.

14 With that said, I do see a correspondence from April
15 22nd of 2011 where I e-mailed both Mr. Breibart and Ms.
16 Dawson and said, I'm looking to schedule this case for
17 disposition in the near future. When you have the
18 opportunity, can you advise us to whether Mr. Caughman will
19 be pleading guilty or requesting a trial. And later that
20 same day, I, also, advised that it was my understanding that
21 Mr. Mobley had made a plea offer and it had been rejected.

22 I never heard anything different from them. I can't
23 find that they responded to that e-mail at all.

24 Q Were you able to locate any record of that rejected
25 plea offer was?

Suzanne Mayes - Direct by Mr. Zelena

1 A No, I don't know that. And I don't want to speculate
2 about it, but I do believe that the plea offer had been made
3 and that they had had discussions about it. From the time I
4 had the case, it was my understanding that it was going to
5 be a trial.

6 Q And who did you get that understanding from?

7 A Well, I would have had appearances, which are, also,
8 known as roll call, where Mr. Caughman comes to court and
9 from my recollection, Ms. Dawson was present on multiple
10 occasions.

11 Q Did you provide me a copy of those appearances?

12 A I did.

13 Q Let me provide you a series of documents and tell me if
14 you can identify that.

15 A I'm going to start with the one on the bottom, which is
16 from March 25th of 2011, and this shows that he was present
17 because it has his signature as well as the signature of Ms.
18 Dawson. And I wrote at the bottom in my handwriting,
19 possible trial date May term. And I underlined guilty plea
20 or trial, meaning that was the purpose of this appearance
21 for me to determine from them, they're both together at the
22 time, Ms. Dawson and Mr. Caughman, is the objective of this
23 roll call appearance for me to determine is this a guilty
24 plea or a trial.

25 Q Okay.

Suzanne Mayes - Direct by Mr. Zelena

1 A So it would have been indicated that this was a trial
2 because I wrote possible trial date May term at the bottom.
3 And then he returned for another followup appearance on May
4 6th and at this point in time, again, both his signature and
5 that of Ms. Dawson.

6 Q And is it important or does it reflect on that notation
7 to you the importance of when you underlined guilty plea or
8 trial?

9 A Yes.

10 Q What does that mean?

11 A Yes, that means I am trying to determine is this a
12 guilty plea or trial. And that, also, corresponds with the
13 e-mail that I sent to both Ms. Dawson and Mr. Breibart
14 saying can you confirm this is a guilty plea or trial. And
15 here, I would have been told it's a trial and I followed up
16 by writing possibly May 6th.

17 And then from that point forward, there are multiple
18 correspondences with Ms. Dawson in which Mr. Breibart would
19 have been copied and we're trying to select a trial date.
20 We discussed May. We discussed June. Then at some point in
21 time, she had an order of protection because that was
22 discussed.

23 Also, found an e-mail that Mr. Breibart sent to me and
24 he, basically, said he only needed short notice and would be
25 ready for this trial as well as he mentioned two others at

1 the same time. But he was, basically, saying we will be
2 ready to go on these trials and Caughman was one of those
3 trials.

4 Q When you became the prosecutor in the case, did you
5 involve yourself with some negotiations with either Mr.
6 Breibart or Mr. Floyd?

7 A I did not make any offers.

8 Q Why was that?

9 A So my philosophy on the case was different than
10 whatever philosophy Mr. Mobley may have made and any plea
11 offer he may have extended. I looked at the case and we had
12 a USC professor who was on his motorcycle following the law.
13 He is hit and he -- the person driving the vehicle flees the
14 scene. Then we recover evidence of alcohol use in
15 conjunction with him fleeing the scene and I did not believe
16 that a plea offer was appropriate.

17 Q Okay.

18 A It carried one to 25 and I felt like it was a case that
19 was suitable if he wanted to plea, he could plead guilty
20 straight up.

21 Q And had either of those lawyers approached you
22 requesting negotiation that you recall?

23 A If they wanted a plea, it would have been -- they would
24 have been open to something that I absolutely would not have
25 been comfortable with. That's my recollection of when we

Suzanne Mayes - Direct by Mr. Zelena

1 were at roll call and it's apparent now that it will be a
2 trial because they weren't willing to accept anything that's
3 going to be significant jail time.

4 Q I was just handed something by one of your staff. If I
5 could provide that information to you and see if it
6 refreshes your recollection. And let me provide this same
7 thing that has not yet been provided to Mr. Johnson.

8 A I think what we were --

9 Q Hold on one minute. Let's let Mr. Johnson read this.

10 MR. ZELENKA: Court's indulgence.

11 (Pause.)

12 THE COURT: Are you good, Mr. Johnson?

13 MR. JOHNSON: Yes, sir, we're good. Thank you.

14 BY MR. ZELENKA:

15 Q Does that refresh your recollection about some of these
16 matters?

17 A Yes, I think it does indicate that there were what we
18 call roll call appearances in 2010 as well as the ones that
19 I scheduled in 2011. And I don't know the date that he
20 would have made bond. He testified that he had a bond
21 hearing and then, ultimately, made bond. From my
22 recollection, he was already out on bond when I got on the
23 case.

24 MR. ZELENKA: Your Honor, we would like to make this an
25 exhibit.

~~Suzanne Mayes - Direct by Mr. Zelena~~

1 Q What is this?

2 A So we have a court appearance or roll call sheet signed
3 by Mr. Caughman and Ms. Dawson. It is for the date of March
4 25th, 2011, in which I am requesting that they come back on
5 May 6th to determine whether it will be a guilty plea. And
6 then we have the sheet from May 6th, 2011. It is signed by
7 Mr. Caughman and Ms. Dawson. And it looks like I'm again
8 having him come back June 6th, 2011 for further discussions.

9 And then from there, I see -- or I saw some
10 correspondence with Ms. Dawson where we began scheduling a
11 trial date around that time.

12 MR. ZELENKA: Your Honor, we would introduce this as
13 Respondent's Exhibit 1.

14 Any objection?

15 MR. JOHNSON: No objection, Your Honor.

16 THE COURT: So entered.

17 (WHEREUPON, Respondent's Exhibit No. 1 was admitted
18 into evidence.)

19 BY MR. ZELENKA:

20 Q Let me ask if you can identify this, please?

21 A Yes. This would be a record in our system showing all
22 of the appearances or roll call dates for Mr. Caughman.

23 MR. ZELENKA: We'd like to introduce this as
24 Respondent's Exhibit No. 2.

25 MR. JOHNSON: No objection, Your Honor.

1 THE COURT: So entered.

2 (WHEREUPON, Respondent's Exhibit No. 2 was admitted
3 into evidence.)

4 BY MR. ZELENA:

5 Q Let me go back to the Rule 5 and the issues with
6 respect to the hospital records. Did you obtain hospital
7 records involving Toby Morris?

8 A No, we did not have hospital records. We had the
9 autopsy report, which was, also, done by a pathologist at
10 LMC and that was an LMC record. With that, she included, I
11 believe, several pages of documentation to support her
12 findings, but that was the extent of the records we had.

13 He previously had an attorney handling this matter who
14 requested our office to pull the file last year, or within
15 the last two years and they did a thorough search of the
16 file and we provided everything that was recovered from that
17 search and that appeared to be the extent of the LMC
18 records.

19 Q Did you try to acquire the hospital records for the
20 trial?

21 A I don't remember anything about it until we, actually,
22 started the trial. And Mr. Floyd at that time requested
23 records and at that time, we didn't have them. So it was
24 not going to be a situation that we would resolve right then
25 at that stage with the trial underway.

Suzanne Mayes - Direct by Mr. Zelena

1 So looking back, I'm trying to remember from a strategy
2 perspective how we approached this. I believe we had the
3 autopsy report, which is usually what we're going to rely on
4 in building a case where we're trying to prove a death.
5 Obviously, he had been hospitalized and that is addressed in
6 the autopsy report. So it incorporates the findings of the
7 doctor as to the extent of his injuries. I believe there
8 were bilateral rib fractures, several fractured vertebrae as
9 well as other fractures of the body and then contusions of
10 the lungs and other locations on the body.

11 So because the pathologist had incorporated those
12 findings in her report -- and this is over ten years ago,
13 our approach to that was from a strategy perspective, that
14 is sufficient to prove death. So because of HIPAA, we don't
15 have a living victim to obtain the records by consent form,
16 so the ordinary approach would be that both attorneys submit
17 an order and request the records. Of course, that would
18 need to be in advance of trial. And Mr. Floyd doesn't
19 request them until we're, actually, underway or beginning of
20 the trial. And at that point, I suppose he could have
21 requested the order and maybe it could have -- the records
22 could have been obtained by the end of the week or
23 something, I don't know.

24 And then the other possibility would be that, you know,
25 Mr. Breibart and I could have, also, proposed a consent

Suzanne Mayes - Direct by Mr. Zelena

1 order or something like that for the records, but in looking
2 back at the correspondence, it was just never an issue for
3 us or for them. There were certain things we did request,
4 but the medical records weren't one of those.

5 Q Okay. And the subsequent motion for reconsideration of
6 sentences came up again, also. And at that time, isn't it
7 correct that you indicated to the Court you still don't have
8 the hospital records?

9 A We do not have the hospital records. We've never
10 obtained them. So because of HIPAA and we have a deceased
11 victim who can't sign a consent form, there would be two
12 methods. Law enforcement initially could have pursued a
13 search warrant for the records if they would have felt the
14 need to do that, and they didn't.

15 And secondarily, we could, by consent, do a court order
16 where both the State and the Defense request the records.
17 And, again, that was not done. Mr. Floyd did raise the
18 issue with Judge Newman at the outset of trial, so it could
19 have been ordered at that time, but wasn't. But I do think
20 if Judge Newman had ordered the records, they could have
21 been obtained by the end of the week and still have been
22 something that the Defense and the State would have had
23 access to.

24 But, again, we weren't trying to prove injuries. Our
25 indictment was hit and run resulting in death. So we had an

1 autopsy report and the findings of the pathologist that
2 incorporated all of the injuries that were noted. There
3 were photographs that went along with those injuries to
4 document them as well. And that is what we were relying on,
5 the death and the injuries that led to the death.

6 Q Thank you. You referred previously to an e-mail about
7 a plea offer being rejected. Could you point out those
8 copies in the material you have in front of you?

9 A Yes. So the first e-mail I see about this case was
10 both to Mr. Breibart and copying Maura Dawson on it. And I
11 am providing multiple items of discovery, a trace analysis
12 report from SLED, a crime scene report from SLED and then
13 DNA and evidence processing from SLED. I'm, also,
14 addressing 11 items of audio and DVD evidence, including
15 audio-taped interviews with witnesses and U-Haul security
16 camera recordings, evidence photos. And then it looks like
17 some dash camera video from some various officers in the
18 case.

19 And then the next e-mail is on April 22nd of 2011.
20 Dear Mr. Breibart -- again, this goes to Mr. Breibart and
21 Ms. Dawson -- I am looking to schedule this case for
22 disposition in the near future. When you have the
23 opportunity, can you advise us as to whether Mr. Caughman
24 will be pleading guilty or requesting a trial.

25 And later that same day, I followed up with Mr.

Suzanne Mayes - Cross by Mr. Johnson

1 Breibart and Ms. Dawson, Just to clarify, my understanding
2 is that a previous plea offer made by Mr. Mobley was
3 rejected and, currently, no plea offer has been extended.
4 Please feel free to give me a call to discuss any matters in
5 relation to this case.

6 Q And what was the date on that?

7 A April 22nd, 2011.

8 Q Okay.

9 A And so, I had him come in for roll call with Ms. Dawson
10 present as well following this correspondence. So, again, I
11 was reiterating is this a plea or a trial. And I can't
12 speak further on what Mr. Mobley offered or any of that
13 because he had already left our office. So that information
14 was coming to me either from Ms. Dawson herself or a
15 combination of Ms. Dawson and Mr. Breibart as well as from
16 our victim advocate that there had been some type of plea
17 discussion, I just don't know the details of it.

18 MR. ZELENKA: With that testimony, I don't think I'm
19 going to put those documents in evidence. I have no further
20 questions at this time. Thank you.

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q Ms. Mayes, you never communicated any offer directly to
24 Mr. Caughman?

25 A No. Mr. Johnson, I didn't make any plea offers in the

1 case.

2 Q And you never witnessed either Attorney Breibart or
3 Floyd or Ms. Dawson or anybody communicate an offer to Mr.
4 Caughman?

5 A No.

6 Q Or anything in writing from them to him, you never saw
7 anything like that?

8 A No.

9 Q But an offer did exist according to your records?

10 A I'm the one who wrote the e-mail saying it was my
11 understanding a plea offer had been made and that's coming
12 to me secondhand by Ms. Dawson, our victim advocate. I just
13 know there were plea discussions, I don't know the extent of
14 it.

15 Q So all the appearances that you have a record of, they
16 don't necessarily include any conversation with Mr. Caughman
17 about a plea offer?

18 A So when I bring them in, they're together, Ms. Dawson
19 and Mr. Caughman are together and I'm giving them an
20 opportunity to talk alone and I'm not privy to that
21 conversation, but they're there to tell me is this a plea or
22 a trial.

23 Q And as far as autopsy report and medical records, you
24 can't say what was in the hospital records because you never
25 got them?

Suzanne Mayes - Cross by Mr. Johnson

1 A Right.

2 Q And you can't say if they contradict the autopsy and
3 findings because you don't know?

4 A I can't say anything about the medical records except
5 that the pathologist would have had access because she is
6 part of the LMC staff. She would have had access to all of
7 that. So it's sort of like the mychart that most hospitals
8 have now for patients to use. She is able to pull up and
9 look at anything that she needs to see. It's not like the
10 pathologist is in Newberry or down in Charleston and they're
11 looking only at the patient and not having access to those
12 records. She would have had access to all of that and it
13 looks like from her report she was incorporating the
14 diagnosis of those various injuries. She, also, mentioned
15 the surgical procedures that he received. So I do think she
16 had access to that and that was all part of the underlying
17 data that she relied on in reaching her opinion.

18 Q But without reviewing all the hospital records and
19 comparing them, you just can't know?

20 A I don't know what's in the records.

21 MR. JOHNSON: No more questions, Your Honor.

22 THE COURT: Thank you.

23 Thank you. You may step down.

24 MR. ZELENKA: No further witnesses, Your Honor. I
25 would just point out for the Court that the pathologist's

1 testimony begins in the record on Page 428. With that, Your
2 Honor, including the submission of the trial transcripts,
3 the order of the Court of Appeals, the briefs that are
4 before the Court, we would rest.

5 THE COURT: All right. Anything else from the
6 Applicant?

7 MR. JOHNSON: Nothing further, Your Honor.

8 THE COURT: I'm going to take this under advisement and
9 consider everything I've heard today and the transcripts and
10 all the other records. I'll have a decision to you shortly.

11 MR. JOHNSON: Thank you, Judge.

12 MR. ZELENKA: Thank you, Your Honor.

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CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

March 15, 2024

Penny M. Johnson
Penny M. Johnson
Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE

RECORD OF
APPEARANCE

vs

WILLIAM CRAIG CAUGHMAN

Defendant

The Defendant made his/her appearance in court as required on March 22, 2013 with/without his/her attorney, H. Wayne Floyd

☒ You are hereby notified and ordered that you and your attorney shall appear in General Sessions Court at the Lexington County Judicial Center at 9:00 AM on 5/3/13 for a Second Appearance / Follow-up. At that time, it will be determined whether your case will be disposed of by guilty plea or trial.

☐ You and your attorney have accepted the Plea Offer previously made, and the Plea will be taken on _____, 2013 at 9:00 AM.

☐ You and your attorney have not accepted the Plea Offer extended by the Solicitor's Office, consequently all Plea Offers are withdrawn and are null and void. Thus, you and your attorney have requested a jury trial and must appear at 9:00 AM in Court on _____, 2013 for trial of your case. If your case is not tried on this date, your attorney will be notified of a future trial date.

☐ You do not have an attorney. Therefore, you must appear in Court on _____, 2013 at 9:00 AM and appear before the Presiding Circuit Judge

All future correspondence from the Solicitor's Office will be directed to your attorney of record. It remains your responsibility to notify the Solicitor's Office in writing, and to file with the Clerk of Court's Office any change of your mailing address and/or contact numbers.

Failure to Appear as directed above may result in your case being tried in your absence, a bench warrant being issued for Failure to Appear, and bond estreatment proceedings being commenced.

I have read this form or had it read to me. I understand the instructions and have been given a copy to keep.

[Signature]
Defendant's Signature

[Signature]
Attorney of Record

03/22/2013

Date

A-2010-32-01585

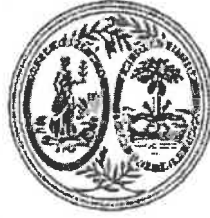
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State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

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FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. ROOM 309
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

February 25, 2013

William C. Caughman
1149 Gunter Circle
West Columbia, SC 29169-6218

Dear Mr. Caughman:

You are hereby notified that you are to appear in Courtroom 4, Lexington County Judicial Center on **Friday, March 22, 2013** at 9:00 A.M. You must come with your attorney. If you do not have an attorney, you still must appear.

You must make contact with me before leaving the courthouse. You must remain that day and every day until excused by Assistant Solicitor Suzanne Mayes. Failure to appear as required will result in the issuance of a BENCH WARRANT FOR YOUR ARREST. You will not receive any other notice of this appearance.

Do not call the Solicitor's Office if you have questions. All questions should be directed to your attorney or bondsmen.

Sincerely,

s/

L. Suzanne Mayes
Assistant Solicitor

LSM/gh
cc: 24/7 Bonding Company, 4431 Bluff Road, Columbia, SC 29209, Wayne Floyd,
Esquire, PO Box 3972, West Columbia, SC 29171

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

737
LSM

THE STATE

RECORD OF
APPEARANCE

vs

William Caughman
Defendant

The Defendant made his/her appearance in court as required on 8/8/12
with/without his/her attorney, _____.

☒ You are hereby notified and ordered that you and your attorney shall appear in General Sessions Court at the Lexington County Judicial Center at **9:00 AM** on 8/10/12 for a Second Appearance / Follow-up. At that time, it will be determined whether your case will be disposed of by guilty plea or trial.

____ You and your attorney have accepted the Plea Offer previously made, and the Plea will be taken on _____, **2012 at 9:00 AM.**

____ You and your attorney have not accepted the Plea Offer extended by the Solicitor's Office, consequently all Plea Offers are withdrawn and are null and void. Thus, you and your attorney have requested a jury trial and must appear at **9:00 AM in Court on** _____, **2012** for trial of your case. If your case is not tried on this date, your attorney will be notified of a future trial date.

____ You do not have an attorney. Therefore, you must appear in Court on _____, **2012 at 9:00 AM** and appear before the Presiding Circuit Judge.

____ All future correspondence from the Solicitor's Office will be directed to your attorney of record. It remains your responsibility to notify the Solicitor's Office in writing, and to file with the Clerk of Court's Office any change of your mailing address and/or contact numbers.

Failure to Appear as directed above may result in your case being tried in your absence, a bench warrant being issued for Failure to Appear, and bond estreatment proceedings being commenced.

I have read this form or had it read to me. I understand the instructions and have been given a copy to keep.

William Caughman
Defendant's Signature

Wayne Angel
Attorney of Record

Date

8/8/12

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE

RECORD OF
APPEARANCE

vs

WILLIAM CRAIG CAUGHMAN

Defendant

The Defendant made his/her appearance in court as required on August 03, 2012 with/without his/her attorney, Richard J. Breibart.

☒ You are hereby notified and ordered that you and your attorney shall appear in General Sessions Court at the Lexington County Judicial Center at 9:00 AM on 8/8 for a Second Appearance / Follow-up. At that time, it will be determined whether your case will be disposed of by guilty plea or trial.

☐ You and your attorney have accepted the Plea Offer previously made, and the Plea will be taken on _____, 2012 at 9:00 AM.

☐ You and your attorney have not accepted the Plea Offer extended by the Solicitor's Office, consequently all Plea Offers are withdrawn and are null and void. Thus, you and your attorney have requested a jury trial and must appear at 9:00 AM in Court on _____, 2012 for trial of your case. If your case is not tried on this date, your attorney will be notified of a future trial date.

☐ You do not have an attorney. Therefore, you must appear in Court on _____, 2012 at 9:00 AM and appear before the Presiding Circuit Judge

☐ All future correspondence from the Solicitor's Office will be directed to your attorney of record. It remains your responsibility to notify the Solicitor's Office in writing, and to file with the Clerk of Court's Office any change of your mailing address and/or contact numbers.

Failure to Appear as directed above may result in your case being tried in your absence, a bench warrant being issued for Failure to Appear, and bond estreatment proceedings being commenced.

I have read this form or had it read to me. I understand the instructions and have been given a copy to keep.

Defendant's Signature

Attorney of Record

08/03/2012

Date

LSM

A-2010-32-01685

3rd floor courtroom on
August 8th for Attorney Appointment

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE

VS

WILLIAM CRAIG CAUGHMAN

Defendant

RECORD OF
APPEARANCE

The Defendant made his/her appearance in court as required on June 29, 2012 with/without his/her attorney, Richard J. Brammer.

You are hereby notified and ordered that you and your attorney shall appear in General Sessions Court at the Lexington County Judicial Center at 9:00 AM on 8/3/12 for a Second Appearance / Follow-up. At that time, it will be determined whether your case will be disposed of by guilty plea or trial.

You and your attorney have accepted the Plea Offer previously made, and the Plea will be taken on _____, 2012 at 9:00 AM.

You and your attorney have not accepted the Plea Offer extended by the Solicitor's Office, consequently all Plea Offers are withdrawn and are null and void. Thus, you and your attorney have requested a jury trial and must appear at **9:00 AM in Court on** _____, 2012 for trial of your case. If your case is not tried on this date, your attorney will be notified of a future trial date.

You do not have an attorney. Therefore, you must appear in Court on _____, 2012 at 9:00 AM and appear before the Presiding Circuit Judge.

All future correspondence from the Solicitor's Office will be directed to your attorney of record. It remains your responsibility to notify the Solicitor's Office in writing, and to file with the Clerk of Court's Office any change of your mailing address and/or contact numbers.

Failure to Appear as directed above may result in your case being tried in your absence, a bench warrant being issued for Failure to Appear, and bond estreatment proceedings being commenced.

I have read this form or had it read to me. I understand the instructions and have been given a copy to keep.

Defendant's Signature

Attorney of Record

06/29/2012

Date _____

LSM

A-2010-32-01685

Return August 3rd, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE

RECORD OF
APPEARANCE

vs

WILLIAM CRAIG CAUGHMAN

Defendant

The Defendant made his/her appearance in court as required on May 06, 2011 with/without his/her attorney, Richard J. Breibart.

☒ You are hereby notified and ordered that you and your attorney shall appear in General Sessions Court at the Lexington County Judicial Center at 9:00 AM on June 6, 2011 for a Second Appearance / Follow-up. At that time, it will be determined whether your case will be disposed of by guilty plea or trial.

☐ You and your attorney have accepted the Plea Offer previously made, and the Plea will be taken on _____, 2011 at 9:00 AM.

☐ You and your attorney have not accepted the Plea Offer extended by the Solicitor's Office, consequently all Plea Offers are withdrawn and are null and void. Thus, you and your attorney have requested a jury trial and must appear at 9:00 AM in Court on _____, 2011 for trial of your case. If your case is not tried on this date, your attorney will be notified of a future trial date.

☐ You do not have an attorney. Therefore, you must appear in Court on _____, 2011 at 9:00 AM and appear before the Presiding Circuit Judge.

☐ All future correspondence from the Solicitor's Office will be directed to your attorney of record. It remains your responsibility to notify the Solicitor's Office in writing, and to file with the Clerk of Court's Office any change of your mailing address and/or contact numbers.

Failure to Appear as directed above may result in your case being tried in your absence, a bench warrant being issued for Failure to Appear, and bond estreatment proceedings being commenced.

I have read this form or had it read to me. I understand the instructions and have been given a copy to keep.

William Craig Caughman
Defendant's Signature

[Signature]
Attorney of Record

05/06/2011

Date

LSM

A-2010-32-01685

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE

RECORD OF
APPEARANCE

vs

WILLIAM CRAIG CAUGHMAN

Defendant

The Defendant made his/her appearance in court as required on March 25, 2011 with/without his/her attorney, Richard J. Breibart.

☒ You are hereby notified and ordered that you and your attorney shall appear in General Sessions Court at the Lexington County Judicial Center at 9:00 AM on May 6th for a Second Appearance (Follow-up). At that time, it will be determined whether your case will be disposed of by guilty plea or trial.

☐ You and your attorney have accepted the Plea Offer previously made, and the Plea will be taken on _____, 2011 at 9:00 AM.

☐ You and your attorney have not accepted the Plea Offer extended by the Solicitor's Office, consequently all Plea Offers are withdrawn and are null and void. Thus, you and your attorney have requested a jury trial and must appear at 9:00 AM in Court on _____, 2011 for trial of your case. If your case is not tried on this date, your attorney will be notified of a future trial date.

☐ You do not have an attorney. Therefore, you must appear in Court on _____, 2011 at 9:00 AM and appear before the Presiding Circuit Judge.

☐ All future correspondence from the Solicitor's Office will be directed to your attorney of record. It remains your responsibility to notify the Solicitor's Office in writing, and to file with the Clerk of Court's Office any change of your mailing address and/or contact numbers.

Failure to Appear as directed above may result in your case being tried in your absence, a bench warrant being issued for Failure to Appear, and bond estreatment proceedings being commenced.

I have read this form or had it read to me. I understand the instructions and have been given a copy to keep.

William Craig Caughman
Defendant's Signature

Mane [Signature] RSR
Attorney of Record

03/25/2011

Date

LSM

A-2010-32-01685

possible trial date -
May term

Details

Assessments

Case Parties w/Pic

Charges

Dispositions

Notes

Filings

Associations

Bond

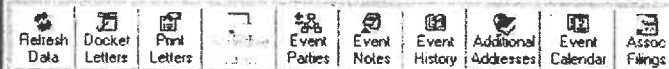
Investigators

Agency/SLED

Discovery

Warrant	Defendant	LE Case Number	Status code	Charge Description
I203629	William Craig Caughman	1001243	APPL	Traffic / Hit and run, duties of driver involved
I203630	William Craig Caughman	1001243	DISP	Obstructing / Obstructing justice

Days Old 1099



Event	Event Description	Master Case L	Event Date	Event Time	Judge	Event Completion Description	Event Completion Date
PLEASCHCON	Plea Scheduled/Conducted	☒	5/20/2013	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	5/3/2013	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	3/22/2013	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	8/10/2012	9:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	8/8/2012	9:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	8/3/2012	9:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	6/29/2012	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	6/8/2011	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	6/6/2011	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	5/6/2011	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	3/25/2011	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	12/10/2010	12:00:00 am			0/0/0000
FOLLOWUP	Follow-up Appearance	☒	10/1/2010	12:00:00 am			0/0/0000
1STAPPEAR	First Appearance	☒	7/23/2010	12:00:00 am			0/0/0000
CMRECYD	Case Manager Received Case	☒	6/9/2010	12:00:00 am			0/0/0000



Case Flags

Notes

Indictment

Event Code	Plea scheduled/Conduct	Description	Resources	
Event Date	5/20/2013	Plea Scheduled/Conducted	Judge	
Event Time	12:00:00 am		Prosecutor	
Comments			Court Agency	
			Courtroom code	
Completion Code	None	Completion Date	0/0/0000	Continue new? ☐ CHANGE MODE
Status code	None	Hearing Length	0 Mins ☒ Master Case Level ☐ Reason For Delay?	☒ Apply Changes ☐ Add Mode ☒ Delete Record

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
William Craig Caughman,	)	Case No. 2020-CP-32-00388
SCDC #355503,	)	
	)	
Applicant,	)	ORDER OF DISMISSAL
	)	
v.	)	
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

This matter comes before this Court by an application for post-conviction relief filed by William Craig Caughman on January 27, 2020. The Applicant was appointed Ola Johnson to represent him on May 6, 2020. The Respondent's original Return was made June 2020. The Applicant made an amended application for post-conviction relief filed by appointed counsel, Ola Johnson, dated October 12, 2023.

On October 24, 2023, the matter was convened for an evidentiary hearing before this Court. The Applicant was present and represented by his appointed counsel, Ola Johnson. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. During the hearing, testimony was received from the Applicant and Deputy Solicitor Suzanne Mayes. After the hearing, the Court took the matter under advisement.

Pursuant to S.C. Code Ann. Section 17-27-80, and based upon careful consideration of the record and the evidence presented, this Court makes the following findings of fact and conclusions of law and deny the application for post-conviction relief, as amended, in its entirety.

ALLEGATIONS

In his initial application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on (verbatim):

1. Ineffective Assistance of Counsel (Richard Breibart)
 - a. “Richard Breibart I paid \$40,000 to, he got suspended and arrested while my case pending.”
2. Ineffective Assistance of Trial Counsel (Wayne Floyd)
 - a. “Wayne Floyd went to trial for me but didn’t get me an expert witness to challenge the State’s.”
 - b. “Wayne Floyd was ineffective for not trying to get me a plea deal when he knew the State had overwhelming evidence on me.”

Applicant requests relief as follows:

“A reduced sentence, released with time served, or at least I would like my house arrest time with GPS monitor that Judge Newman did not put on sentence sheet.”

In his amended application filed by appointed counsel Johnson, he makes the following allegations:

1. Prior to the trial, Applicant’s counsel Richard Breibart, misled the defendant and failed to explain the details of the Applicant’s case including failing to discuss potential offers from the state.
2. Applicant’s counsel, Wayne Floyd, failed to subpoena victim’s medical records (p. 449, Line 16-19) to determine the cause of death and failed to retain an expert to testify regarding this or review records.
3. Applicant’s counsel, Richard Breibart and Wayne Floyd, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
4. Applicant’s counsel, Richard Breibart and Wayne Floyd, failed to negotiate effectively for the applicant and communicate with the applicant.
5. Applicant’s counsel, Wayne Floyd failed to ensure the defendant received proper time served credit at sentencing (including house arrest time).
6. Applicant’s counsel. Richard Breibart and Wayne Floyd, failed to properly investigate the facts of this case.

ATTACHMENTS BEFORE THE COURT

The Court has before it the Lexington County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, including the trial transcript, and the records of the current PCR action.

FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its May 2013 term, the Lexington County Grand Jury indicted Applicant for hit and run accident resulting in death (2010-GS-32-02294) and obstruction of justice (2010-GS-32-02842). H. Wayne Floyd, Esquire (Counsel), represented Applicant.¹ Assistant Solicitors Suzanne Mayes and Robert E. McNair, III, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On May 20, 2013, Applicant proceeded to a jury trial before the Honorable Clifton Newman.

On May 23, 2013, the jury found Applicant guilty of hit and run accident resulting in death.² Judge Newman sentenced Applicant to a term of twenty years' imprisonment.

On May 31, 2013, Counsel filed a motion for a new trial and reconsideration of sentence. The court convened a hearing on Applicant's motion on May 21, 2015. R. pp. 585–633. Judge Newman denied Applicant's motion by order dated July 25, 2015.

DIRECT APPEAL

Applicant filed a timely notice of appeal. Appellate Defender John H. Strom initially represented Applicant on appeal. On June 17, 2016, Counsel Strom filed a motion to hold appeal

¹ Wayne Floyd died on August 24, 2021. Applicant initially retained Richard Breibart to represent him; however, Mr. Breibart was placed on suspension prior to Applicant's trial. *In Re Breibart*, 398 S.C. 123, 727 S.E.2d 470 (Mem) (2012). Wayne Floyd died on August 24, 2021.

² The trial court granted Applicant's motion for a directed verdict on the obstruction of justice charge. R. pp. 514–38

in abeyance and to remand for reconstruction of the record. The Court of Appeals granted the motion and remanded to the circuit court for reconstruction of the record. The court convened two reconstruction hearings on September 16, 2016, and May 1, 2017. R. pp. 657–726. On May 26, 2017, Judge Newman issued an order finding the record had been sufficiently reconstructed so as to provide a full and complete record and allow for meaningful appellate review. R. pp. 765–76.

Appellate Defender Taylor Gilliam represented Applicant for the remainder of his appellate proceedings. Both parties submitted briefs on the following issues:

- I. Did the trial judge err in denying Appellant’s motion to suppress, where law enforcement lacked jurisdiction to execute a search warrant on Appellant’s property because the multijurisdiction agreement was invalid?
- II. Did the trial court err by improperly considering Appellant’s alleged alcohol use, where witnesses offered conflicting statements on whether Appellant had been drinking hours before a motor vehicle accident, where there was no testimony that Appellant had any alcohol with his evening meal prior to the accident, and where the trial court suggested immediately prior to sentencing that things might have been different if Appellant had not been drinking?

Following briefing and oral argument, the Court of Appeals affirming Applicant’s conviction and sentence in an unpublished *per curiam* opinion. *State v. Caughman*, Op. No. 2020-UP-009 (S.C. Ct. App. filed Jan. 15, 2020). The remittitur was issued on January 31, 2020.

SUMMARY OF TRIAL EVIDENCE

Officer Marion Green of the Cayce Department of Public Safety was dispatched to the scene of a hit and run at 10:08 p.m. on February 21, 2010. R. pp. 113-14. When he arrived at the scene, Officer Green observed a heavily damaged motorcycle and the victim, Frederick Morris, laying in the road. R. p. 114. Officer Green testified the road was littered with parts from Mr. Morris’s motorcycle. R. p. 116. Mr. Morris was able to tell Officer Green his name but was unable

to recall any details of the accident. R. pp. 114-15. Kevin Washington, a witness at the scene, told Officer Green he observed a red Ford Ranger driving down 9th Street and he believed that was the vehicle that struck Mr. Morris's motorcycle. R. p. 115. Officer Green noted the street lights could influence someone's perception of color at the scene, as they project an amber color. R. pp. 124-25.

Jennifer Prather, a friend of Mr. Morris, received a phone call from Lexington Medical Center around 3:00 a.m. on the evening of the incident informing her that he was in the emergency room. R. p. 88. Ms. Prather described Mr. Morris as "pretty beat up," and noted he was treated for body fractures. R. p. 88-89. Ms. Prather also described Mr. Morris's condition as, "he had a lot of injuries." R. p. 92. Ms. Prather continued to visit Mr. Morris "around the clock" for the next week while he was hospitalized. R. p. 92. The night before he was due to be discharged, Mr. Morris passed away. R. p. 93.

Dr. Elizabeth Moffatt, a pathologist at Lexington Medical Center, conducted an autopsy on Mr. Morris. R. p. 441. Dr. Moffatt testified there was evidence of trauma to Mr. Morris's body. R. p. 452. Mr. Morris's injuries included bilateral rib fractures, thoracic vertebral fractures in his spinal column, a fracture at the base of his skull, pulmonary contusions, a left wrist fracture, and hematomas. R. pp. 453-54. Dr. Moffatt testified this litany of injuries would necessitate the patient being at least partially immobile while being treated. R. p. 454. Dr. Moffatt testified Mr. Morris's cause of death was a pulmonary embolism. R. p. 456. Dr. Moffatt explained that a pulmonary embolism is a blood clot that travels through the blood stream until it is stopped somehow. R. pp. 456-57. Dr. Moffatt stated the most common cause of a blood clot is immobility. R. p. 457. Dr. Moffatt further stated trauma and surgery relate to risk factors for a blood clot. R. p. 458. Dr. Moffatt testified it was her opinion to a reasonable degree of medical certainty that the blood clot

that killed Mr. Morris was a result of trauma sustained in an automobile collision on February 21, 2010. R. p. 458.

Mr. Morris's motorcycle was subsequently transported to SLED on March 3, 2010, for analysis. R. p. 473. Mike Moskal, a trace evidence analyst for SLED, performed a visual examination of the motorcycle and was able to observe foreign paint embedded between the wheel and the rim of the front tire. R. p. 476. Moskal was able to determine the paint on the motorcycle was an original manufacturer's paint from another vehicle. R. p. 478. The vehicles that were painted with the particular paint found on Mr. Morris's motorcycle were Ford Rangers manufactured from 1999 to 2001, Ford S series vehicles manufactured from 1998 to 2001, Ford Escorts manufactured from 1998 to 1999, Ford Expeditions manufactured from 1998 to 2001, Ford Focuses manufactured from 2000 to 2001, Mercury Tracers manufactured from 1998 to 1999, and Lincoln Navigators manufactured from 1998 to 2000 and 2002. R. p. 479.

On March 10, 2010, Detective Edward Pereira of the Cayce Department of Public Safety was notified by SLED that they found foreign paint on Mr. Morris's motorcycle. R. p. 398. Aside from knowing the suspect's vehicle was a Ford, Detective Pereira testified there were no significant leads in the case until May 5, 2010. R. p. 399. On May 5, 2010, SLED received a Crimestoppers tip stating Applicant was the culprit. R. p. 400. The Crimestoppers tip was made by an individual named Lawrence Gilbert. R. p. 401.

Lawrence Gilbert knew Applicant for almost his entire life. R. p. 298. Gilbert testified they played baseball together, vacationed together, and were in each other's weddings. R. p. 298. Gilbert went by Applicant's home on the afternoon of February 21, 2010. R. pp. 298-99. Gilbert arrived sometime around 4:00 p.m. and stayed sometime between thirty and forty-five minutes. R. p. 299. Gilbert noted he saw alcohol but did not remember anyone drinking. R. p. 299. Gilbert

subsequently left Applicant's house and did not see him at any point that evening. R. pp. 299-300. Applicant called Gilbert the next afternoon and told him "he messed up or he had screwed up or something." R. p. 300. Gilbert went to Applicant's home and found him sitting on the back porch. R. p. 300. Applicant took Gilbert into the garage where his truck was parked and Gilbert observed, "the passenger window was broke. The side door was dented up. It seems like that the mirror was dangling down. I noticed that the bottom of the foot jam - - there was a dent about three inches wide and about three inches deep that was black." R. pp. 300-01. Gilbert clarified all of the damage was to the passenger side of Applicant's truck. R. p. 302. Applicant told Gilbert he went to eat and "was leaving and heading toward Columbia at Knotts-Abbott (sic). He said that he had stopped at the light. Nothing was coming and he said he turned and heard a loud bang. R. p. 302. Gilbert asked Applicant whether he hit a car and Applicant replied, "I hit a fucking motorcycle." R. p. 302.

Gilbert later saw a news report about the accident Applicant was involved in. R. p. 303. Applicant told him he wished he didn't use his credit card when he paid for dinner because they had a time that he was there.³ R. p. 304. Applicant later told Gilbert he removed the doors from his truck and buried them in his backyard. R. p. 304. Applicant subsequently told Gilbert he moved them because law enforcement was searching for them and that they would never find the doors. R. p. 304. Applicant later covered his truck with a white tarp. R. p. 304. The news that Mr. Morris died affected Gilbert greatly, causing him to lose twenty pounds and affecting his ability to sleep. R. p. 306. Gilbert noted that Applicant, "was hurt but it seemed like to me it was hurting me more than him." R. p. 307. Gilbert testified he "stewed on it" for about two months before calling Crimestoppers. R. p. 306.

³ Peter Koutrakis, the owner of Hard Knocks Grill on Knox Abbott Drive testified Applicant conducted a credit card transaction at the restaurant at 10:00 p.m. on the evening on February 21, 2010. R. p. 324.

Charles Campbell was also a neighbor and friend of Applicant. R. p. 275. On the afternoon of February 21, 2010, Campbell spent the day doing yard work and drinking beer with Applicant. R. p. 277-78. Campbell sent his wife to buy more beer at one point during the afternoon because they did not have enough at their home. R. p. 278. Applicant subsequently left Campbell's home when it began to get dark outside. R. p. 279. Two days later, Applicant called Campbell and asked if he could borrow one of his trucks because his truck was damaged on the passenger's side. R. p. 280. Campbell noted Applicant drove a green Ford Ranger. R. p. 280. Applicant told Campbell he went to get something to eat at Wal-Mart and was on Route 7 when he struck the motorcycle. R. p. 283. Campbell later observed Applicant's truck in his garage and saw the damage. R. p. 282. Campbell noted he worked in the towing industry and told Applicant his truck was totaled. R. pp. 282-83. Applicant told Campbell that he thought he hit a motorcycle. R. p. 283. Applicant told Campbell that in the event he was questioned by police, he would just tell them he hit the side of a truck. R. p. 284. Campbell testified Applicant later moved the truck to his back yard and removed the vehicle's doors. R. p. 287. Applicant's truck was later moved behind a tool shed and hidden under a tarp. R. pp. 292-93.

After receiving the Crimestoppers tip, Detective Pereira, Lieutenant Jeffrey Simmons of the Cayce Department of Public Safety, and Agent Mike Robinson of SLED went to Applicant's home and observed a vehicle hidden underneath a tarp in the back of the residence. R. p. 343, 346. The officers then went through a public field at the end of Applicant's street and could see that the vehicle underneath the tarp was the green Ford Ranger described in the tip. R. p. 343. Officers subsequently obtained a search warrant and executed a search of Applicant's property on May 5, 2010. R. p. 347. Lieutenant Simmons noted Agent Robinson was with the Cayce officers when they executed the search warrant. R. p. 351. Once the search warrant was executed, Applicant's

vehicle was taken into custody. R. p. 376. The truck was transported to the Cayce Department of Public Safety where SLED came and conducted forensic analysis. R. p. 377.

Detective Pereira noted that the investigative team was never able to find the doors to Applicant's truck. R. p. 409. After the search warrant was executed on May 5th, Detective Pereira and Agent Robinson went to Applicant's workplace to make contact with him. R. p. 410. Detective Pereira and Agent Robinson subsequently interviewed Applicant at the Cayce Department of Public Safety. R. p. 413. The audio of the interview was played for the jury. R. p. 418. Detective Pereira noted the cuts to Applicant's vehicle were jagged and looked like someone hurriedly completed the task. R. pp. 420-21. Detective Pereira testified the damage to Applicant's truck was consistent with the vehicle colliding with a motorcycle. R. p. 422.

At trial, the State called Clarissa Mack of the South Carolina Department of Motor Vehicles. R. pp. 334-35. Ms. Mack confirmed Applicant owned a Ford Ranger on February 21, 2010. R. p. 336. Interestingly, Applicant purchased a Jeep Wrangler on February 25, 2010. R. p. 336. Ms. Mack noted the tag number on the Jeep was different than that of the Ranger. R. pp. 336-37.

SUMMARY OF PCR TESTIMONY

At the outset of the proceeding, Respondent set out generally the claims related to this proceeding. He also advised this Court that the Applicant, through retained counsel Tommy Thomas, had filed a motion in the Court of General Sessions that was pending requesting clarification of Judge Newman's sentencing order on whether he was entitled to credit for time while he was out on bond for house arrest. In that action, Applicant is claiming that Judge

Newman's order did not specify the credited time.⁴

⁴ At the time of his trial and sentencing on May 23, 2013, S.C. Code Ann § 24-13-40 read as follows:

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall no receive credit for time served prior to trial in reduction of his sentence for the second offense.

In State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004), the Court held that time served credit under § 24-13-40 could only be given to inmates serving time in a penal institution and not on home detention.

However, subsequent to Applicant's trial and May 23, 2013 sentencing, on June 7, 2013, S.C. Code Ann. § 24-13-40, was amended to read as follows:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, **full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest.** Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

S.C. Code Ann. § 24-13-40 (emphasis added). The statute, by its terms, gives trial courts the discretion to give - or not to give - credit for time spent on monitored house arrest prior to trial. See State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (explaining statute providing court "may" revoke probation vested court with discretion). In 2023, Act No. 83, §8 was amended and added the following: "(3) when the prisoner commits a subsequent crime while out on bond; or (4) has bond revoked on any charge prior to trial or plea," effective June 20, 2023.

Counsel Johnson requested the Court to take judicial notice of an Amended Bond Order filed Sept 2010. He stated an allegation for ineffective assistance of counsel relates to that bond and his release under its terms. The claim is that Mr. Floyd failed to argue for Applicant's time served while out on bond under house arrest from September 17, 2010 through May 23, 2017. He calculated calculated 968 days of additional time served would have been potentially available. Counsel Johnson ask the court to take notice of record. State has no objection. Counsel Johnson also advised the Court that he had earlier made two motions that were denied, including an order denying request for certain hospital medical records of the victim prior to the victim's death. Counsel Johnson also advised this Court of his second motion that had been denied requesting funding for an expert in pathology which can assist in client's PCR.

Applicant William Caughman's PCR Testimony

The Applicant, William Caughman was the first witness to testify. He initially claimed that he was never advised of any plea offers from the State by either his initial counsel Richard Breibart or Maura Dawson. He also testified that his trial counsel Wayne Floyd never advised him of any plea offers from the State. Caughman complained that his trial counsel never acquired or subpoenaed hospital records for the victim, which counsel Floyd admitted at trial, citing Tr.p. 449, l. 16-19. He claimed counsel solely relied upon the State's expert (pathologist Dr. Elizabeth Moffat)

Concerning the claim counsel met with him insufficient times, Caughman asserted he met with counsel Breibart probably not over 4 times. Since he was out on bond, Applicant stated he met him at the office. He claimed that his family paid Breibart \$40,000.00. He said Breibart's associate, Maura Dawson was the person he talked to most of the time.

Caughman stated he met with Mr. Floyd after what happened to Breibart. He stated they discussed the charges, and Floyd later called him back and agreed to take the case. Caughman stated he received the records they took Breibart's files and gave them to Mr. Floyd. Counsel Floyd told them nothing will happen after the 1st of year. He recalled that they may have talked once and said I'll let you know. One time counsel Floyd came to the house where my truck was and wanted to look over the yard and made comment that he wished that he never took case.

Caughman stated he was never aware or talked about any plea deals with counsel. Breibart advised him that they were going to trial.

Concerning the allegation about credit for jail time or house arrest, Caughman indicated this was not discussed. Caughman acknowledge the only credit he received was for actual jail time.

Caughman claimed he was not aware of any private investigator being involved in his case. Mr. Breibart had my parents pay some fees to Leigh Leventis. He was advised at one point that he was told "I have this lady and I'll guarantee you'll walk." However, he told him that he did not have any more money. Caughman indicated that there were misleading statements in the investigation. He stated he spoke with Maura Dawson about the conversations with Cayce Police Department by Charles Campbell, his ex-wife, and Lawrence Gilbert.

On cross-examination, Applicant claimed that knowing evidence they had on him, he would have pled guilty, but admitted that he did not know. He claimed the evidence against him was strong based upon the statements by his friends given to law enforcement and the admissions. He stated that he did not ask his lawyers to take a plea, but was trusting his lawyers. He claimed he was scared and did not know what to do.

At the PCR hearing, he admitted he was driving the truck that night after he left the café, resulting in accident with Toby Morris. He admitted that he left the scene for whatever reason. He

described it as “the stupidest mistake in my life” and he panicked and left.

The Applicant stated he did not testify at trial. He admitted he spoke with counsel Floyd about testifying. Floyd advised them that they had the video and it would be played and that he should not take the stand. He stated he was not going to testify.

He was aware the prosecutors in the case were Suzanne Mayes and Derrick Mobley earlier. He stated he first saw Mobley when he came to court for his bond reduction hearing. He stated that was the only time he saw Mobley. The next time he saw him was when he saw Breibart and Mobley walking together and learned he then worked with Breibart’s firm.

He never had any discussion in his presence about a plea offer from Suzanne Mayes, who he only saw at roll call prior to the trial. Caughman stated from the time he got out on bond, he was only told that they were going to trial.

The applicant indicated that they wanted the medical records from the hospital to see if there was anything that happened at Lexington hospital that caused or could have prevented his death. He noted there was evidence presented at trial that after the victim got to the hospital, he began to recover. However, a blood clot formed and caused his death. He confirmed that counsel Floyd challenged that blood clots can happen because of other things. He also confirmed the trial judge gave instructions on proximate cause and a lesser included offense instruction on hit and run causing death and causing great bodily injury, and not guilty.

The Applicant stated that he should have had a medical expert to challenge what said about the blood clots or if given the proper medication to prevent blood clots. He speculated that it could have swayed jury to give me a lesser charge. He recalled counsel asking the pathologist about whether the victim was on blood thinners. He claimed the State should have given him the hospital records. He admitted at trial, the State indicated that they did not have the medical records, when

counsel Floyd asked for sanctions against them for not providing them to the defense. He admitted the failure to provide the hospital records came up at a subsequent hearing before Judge Newman. He acknowledged that during that hearing, Judge Newman said if you had hired an independent expert, they would have needed to request those records.

The Applicant indicated he was aware of the State's case against him before the trial. He stated that this was his first trial and did not know what to expect. He thought his friends would be testifying against him. He was they had visited his home, found his truck, but still didn't find the door. He claimed at the hearing that he put the door in a metal dumpster and that it was not wasn't buried. He confirmed he had two Bud Lights and was aware the State had receipts of it. He confirmed he knew the bulk of the State's case and statements from law enforcement. He was aware that the victim seemed to gain coherence and was confident he was about to be released to some sort of center. He acknowledged this was counsel's understanding also. However, he claimed he did not know about great bodily injury and death, because he was charged with death, He admitted he asked counsel what a potential sentence for death was and told 1 to 25 years, band for great bodily injury it would be 1 to 10 years. He understood it except that it was a lot of time. As for the appeals, he was initially represented John Strom and then by Taylor Gilliam of the South Carolina Office of Appellate Defense.

On re-direct, counsel inquired that counsel Floyd had an opportunity to get the hospital records, but did not do so. He speculated it might have resulted in a lesser offense. However, he was aware that neither side got those records.

Deputy Solicitor Suzanne Mayes PCR Testimony

Deputy Solicitor Suzanne Mayes testified about her extensive experience as a prosecutor for 32 years. She became a member of the Eleventh Circuit Solicitor's Office in March 2011. At

that time, this file already existed. She stated it was previously handled by then Assistant Solicitor Derrick Mobley after the 2010 crime. She stated Mobley had left the office and began working with Richard Breibart's firm who was representing the Applicant.

She testified that they had provided discovery with counsel Breibart and Maura Dawson and communicated with them. In her correspondence she reviewed prior to this hearing, she offered to meet with them and offered to send any material in preparation of trial. She stated there was an indication that when Breibart was removed and his materials went to the Court's trustee that Applicant came and picked the Breibart file and provided file to Wayne Floyd. She stated she communicated with counsel Floyd and observed files provided to Floyd and asked him to check all materials and DVDs to check that they were working in order.

The DVDs should have been the audio recordings with law enforcements and allegations. In his meeting with law enforcement, Applicant denied any involvement and did not admit that he was driving vehicle that struck victim. Deputy Solicitor Mayes stated that today at this hearing was the first time aware acknowledging he was driver.

As to plea offers, Solicitor Mayes noted she did not have access to any of Mobley's correspondence or emails that would have preexisted and had requested them from storage and what we received was in the courtroom. She indicated the file was missing some emails between Mobley and counsel Breibart concerning roll call when he had the case. Also, the Solicitor's Office only could locate a few of the rollcalls when she was involved in 2011 and 2012. She noted on April 22, 2011, she emailed Breibart and Dawson and was looking to schedule a disposition and asked them if they could advise her whether they were pleading guilty or requesting a trial. She stated that at some point later that same day, she was advised that Mobley had made a plea offer and it had been rejected. She emailed Breibart on April 22, 2011 @ 6:17 PM stating: "also just to

clarify, my understanding is that a previous plea offer made by Mr. Mobley was rejected and currently no plea offer has been extended.” She testified she never heard anything different nor did they respond to that email.

Concerning her knowledge of the alleged plea offer between Mobley and Breibart, she stated she did not know that and did not want to speculate what it was. She stated that from the time she had case it was going to be trial. She pointed out she had appearances also known as roll call where Applicant came to court and Dawson would have been present.

She pointed out reviewing a March 25th, 2011 document showed that Applicant was present and it has Dawson and Applicant’s signature. She had written possible trial term May term on the document. Solicitor Mayes declared her purpose with that wording was based upon a request if this is a guilty plea or trial, and she would have been told it is going to be a trial. We discussed May and she mentioned she found an email and mentioned to others that basically saying ready to go on those trials.

Suzanne Mayes indicated that she did not make a plea offer in the case. She stated that her philosophy may had been different that than what Mobley may have made. She state she looked at the case and we had a USC professor who was traveling on a motorcycle, he was hit, the person driving the vehicle fled the scene and there was an indication of alcohol in the evidence she had. She declared that she did not believe a plea offer was appropriate and the crime carried 1 to 25, She stated that was also her recollection from roll call and apparent in trial that they weren’t going to accept anything.

Ms. Mayes reviewed additional documents and stated they also indicate what we call roll call appearances in 2010 and 2011 and don’t know date that would have made bond. My recollection is that he was out on bond. She stated they have a court appearance or roll call sheet

signed by applicant and Dawson for March 25, 2011 in which I am requesting May 6 follow-up term to determine whether it will be a guilty plea and then May 6 signed by both applicant and Dawson. and again having him come back June 6, 2011 for further discussion and from there saw correspondence with Dawson where began to schedule trial dates in a subsequent roll call sheet. See Exhibit One and Two.

Concerning his complaint about not receiving the hospital records prior to or during the trial, Deputy Solicitor Mayes declared that they did not have the complete hospital records. She stated they just had the autopsy report done by the pathologist at Lexington Medical Center (LMC). She stated she previously had an attorney pull the Solicitor's file records they did a thorough search of that file and concluded we provided everything we had to the extent of the LMC record.

Mayes testified that she did not remember anything about the records until they started the trial. At that time, when confronted about it during the trial, she stated they didn't have the additional records from the hospital, other than the pathologist materials. She testified from a strategic perspective; they had an autopsy report which is usually what they relied on when trying to prove a death of a person who had been hospitalized. She opined that report incorporated findings of doctors and the injuries of body. From strategy purposes she thought this was sufficient to prove death. Because of HIPAA, she declared they did not have a living person to request consent for the records. She stated she learned that counsel Floyd did not request them from the trial court until the trial was underway. In addition, and at that time, either one could have requested it by an order. Further she noted that counsel Breibart could have done a consent order, but in looking back never was an issue for us or for them.

Deputy Solicitor Mayes further testified that the issue came up during the reconsideration hearing. At that time, she again confirmed that they had not acquired the records from the hospital.

She stated that they do not have the additional hospital records because of HIPAA and we have a deceased person that cannot sign. She testified that prior to trial, law enforcement could have pursued a search warrant, or by consent for a court order where both state and defense requested the records, at the outset could have been ordered, but didn't. She further stated Judge Newman could have obtained by end of week. However, Deputy Solicitor Mayes stated that our indictment was hit and run resulting in death, and based upon the findings of pathologist, that is what we were relying on. She stated as to injuries that led to death, she did not know how the medical records could have helped him.

Upon reviewing the emails in the materials she was able to locate, she saw that her first email about this case is to counsel Breibart and copied to Maura Dawson. This concerned providing the defense with multiple items of evidence, crime scene reports, SLED reports and DNA processing reports from SLED. It also addressed numerous items of audio and video recordings, evidence photographs, dash cam videos from the officers in case. She directed the Court's attention to an email to counsel; Breibart and copying counsel Dawson dated April 22, 2011:

I am looking to schedule case for disposition in the near future. When you have the opportunity, can you advise as to whether Mr. Caughman will be pleading guilty or requesting a trial.

She stated that trial she noted again the follow-up email later that day to same counsel; "just to clarify, my understanding is that a previous plea offer made by Mr. Mobley was rejected and currently no plea offer has been extended. Please feel free to give me a call to discuss." Mayes stated she continued to have the Applicant roll calls subsequently and would have reiterated same (concerning whether it would be a plea or trial).

On cross-examination, Deputy Solicitor Mayes confirmed again that she did not make any plea offers to Applicant or either defense counsel. She further stated it was her recollection that

she never saw anything in writing about earlier offers. She confirmed that she was the one who wrote the email regarding the understanding of previous plea offer, but declared it was coming to her coming secondhand and that she did not know the details of it. She stated when she brought counsel and the Applicant in for roll calls, this gave them the opportunity to talk alone, and there was no indication of plea.

As to the hospital records, she again confirmed that she never had them. She stated that she cannot say anything other than that the pathologist would have had access to *MyChart* that most hospitals have for patients to use and are able to pull up hospital records. She noted that in her report she was including the diagnosis of those injuries and surgeries, and all part of underlying data in reaching her conclusion. She concluded that she did not know what is in the records.

The Respondent's counsel made specific reference to the pathologist testimony that begins at Tr.p. 438 trial transcript, as well as the records attached to the return.

Abandonment of House Arrest Credit Time Served Issue in the Appeal

This Court inquired about the status of the time served issues related to whether trial counsel was ineffective in failing to request home detention credits. *Amended Application Issue 5*. Respondent's counsel noted that the issue is basically in the hands of other counsel Tommy Thomas who filed a motion for clarification that is pending in the Court of General Sessions and the Solicitor's Office. Counsel asserted it had tried to communicate with the SCDC Legal Office about its determination related to this Applicant, but had not learned its position yet. Respondent's counsel recommended that he would recommend to withdraw the claim without prejudice with a commitment to get the facts.⁵ Counsel Johnson advised the Court that his client had not

⁵ As noted above in footnote 4, at the time of Judge Newman's sentence on May 23, 2013, credit for monitored house arrest was not authorized under state law. It became effective June 7, 2013, subsequent to the trial, but only with a discretionary, not mandatory decision by the sentencing

proceeded through the inmate grievance process requesting these type of credits or challenging the SCDC current determination of limited jail credits. Counsel Johnson agreed to withdraw the allegation at this time without prejudice. This Court allowed the allegation considering time served for house arrest is withdrawn without prejudice and rest of allegations were taken under advisement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATED TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). 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).

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 or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1)

judge. *See Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (observing "We have never required an attorney to be clairvoyant or anticipate changes in the law"); *Bowman v. State*, 422 S.C. 19, 35, 809 S.E.2d 232, 241 (2018)(same)

their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong - constitutional deficiency - is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation [-] only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (*quoting Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as

it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, *viewed at the time of counsel's conduct*." *Strickland*, 466 U.S. at 690. (*emphasis added*) An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (*emphasis added*). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and

raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding - counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister*

v. *State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Counsel Breibart and the Alleged \$40,000 Fee (Pro Se Allegation 1)

In his initial *pro se* allegation, the Applicant contends Mr. Breibart was ineffective because Applicant allegedly paid him \$40,000 to represent him, yet he got suspended and arrested during his representation. This allegation alone does not entitle the Applicant to relief. This Court makes the following findings of fact related to this narrow allegation:

1. The Applicant and his family initially retained Richard Breibart after his arrest in 2010.
2. On June 1, 2012, Richard Breibart was placed on suspension from the practice of law by the South Carolina Supreme Court. *In Re Breibart*, 398 S.C. 123, 727 S.E.2d 470 (Mem) (June 1, 2012). Mr. Breibart was disbarred in 2015, subsequent to the trial. *In re Breibart*, 414 S.C. 540, 779 S.E.2d 796 (2015).
3. The Applicant subsequently retained H. Wayne Floyd to represent him on the charges.
4. The Applicant and his family acquired the Breibart files from the Supreme Court’s trustee and provided them to Mr. Floyd.

5. Mr. Floyd represented the Applicant subsequent to Mr. Breibart's suspension at the trial on May 20, 2013 and subsequent proceedings before the trial court.
6. Mr. Floyd appeared during the trial on May 20, 2013 and subsequent proceedings in the trial court.

This Court must conclude that the allegation for relief on this ground and its factual basis does not require this Court to authorize a new trial when Mr. Breibart did not represent the Applicant. Sixth Amendment prejudice has not been proven based upon this limited allegation. The mere fact that he had previously retained counsel who was suspended prior to the trial does not alone authorize the grant of post-conviction relief of a new trial. This Court finds that Mr. Floyd was subsequently retained after the suspension and appeared at the trial on Mr. Caughman's behalf. The allegation for relief must be denied.

PLEA NEGOTIATION ISSUES

In his initial application (*Allegation 2(b)*) and amended application (*Amended Allegations 1 and 4*), he makes allegations against both counsel that they failed to adequately negotiate on Applicant's behalf or failed to advise him of any plea offers by the State. This Court finds and concludes that these claims do not entitle the Applicant to post-conviction relief.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Supreme Court has held that a defendant has the right to effective assistance of counsel during the plea bargaining process. *Lafler v. Cooper*, 566 U.S. 156, 162, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012); *Judge v. State*, 321 S.C. 554, 471 S.E.2d 146 (1996), *overruled on other grounds by Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable

professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596, *cert. denied*, __ U.S. __, 128 S.Ct. 370, 169 L.Ed.2d 247 (2007). “Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.” *Id.* at 700, 104 S.Ct. 2052.

In *Lafler*, the key issue before the United States Supreme Court was how to apply Strickland's prejudice test when trial counsel failed to sufficiently evaluate and convey the State's plea offer to the petitioner. 566 U.S. at 163, 132 S.Ct. 1376. The Court held that in these circumstances, a petitioner must show that but for the ineffective assistance, there is a reasonable probability that the plea offer would have been presented to the court, the court would have accepted its terms, and the conviction or sentence, or both, would have been less severe under the terms of the offer than under the judgment and sentence imposed. *Id.* at 164, 132 S.Ct. 1376.

On the same day the Supreme Court issued *Lafler*, it released *Missouri v. Frye*, 566 U.S. 134, 147, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012). In *Frye*, the Court held: “that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” *Id.* , 566 U.S. 134, 145, 132 S. Ct. 1399, 1408, 182 L. Ed. 2d 379 (2012). It further held “defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel.” To establish prejudice, it is necessary for a defendant to “show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” *Id.* A defendant “must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law.” *Id.* *Simuel v. State*, 432 S.C. 150, 154–55, 850 S.E.2d 642, 643–44 (Ct. App.

2020).

The South Carolina Supreme Court addressed a similar claim to the Applicant's in *Collins v. State*, 422 S.C. 250, 260–63, 810 S.E.2d 871, 876–78 (2018). In that case, the Court dealt with an expired plea offer, which is essentially what happened here with a change in the responsible prosecutors. The Court reversed a circuit court order granting PCR relief of a new trial based upon a failure by the newly appointed defense counsel to request reinstatement of the plea offer that had been made and expired to earlier counsel. In reversing, the Supreme Court found defense counsel's failure to request reinstatement of the earlier plea offer which had expired prior to his appointment as counsel was not deficient performance and further that even if assuming deficiency, the failure to request reinstatement did not prejudice the defendant under *Strickland*. The court found that the defendant failed to demonstrate that he would have accepted the expired offer and that the State would not have rescinded it, he failed to show deficiency.

In addressing Sixth Amendment deficient performance, the Court rejected the lower court's conclusion that counsel was deficient. The Court found that analogous to this situation, the Court noted the decision whether to revive the expired plea offer rested exclusively with the solicitor. *See State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating "[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain"); *see also Weatherford v. Bursey*, 429 U.S. 545, 561, 97 S.Ct. 837, 51 L.Ed.2d 30 (1977) (finding "there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial"). In *Collins*, the defendant admitted he first learned of the expired plea offer after trial counsel brought the offer to his attention. The Court found: "[E]ven assuming trial counsel neglected to discuss the expired offer with the solicitor, the solicitor would have been under no obligation

whatsoever to revive the expired offer. Thus, there is no evidence of probative value sufficient to support the PCR judge's finding that trial counsel was deficient in his handling of the expired plea offer.”

The Court further concluded that even if deficiency was not shown, the defendant in *Collins* failed to prove Sixth Amendment prejudice. As stated in *Frye*, and applicable here, to show prejudice under *Strickland*, a defendant must demonstrate a reasonable probability that: (1) he “would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;” (2) “the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;” and (3) “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” *Frye*, 566 U.S. at 147, 132 S.Ct. 1399; see *Lafler v. Cooper*, 566 U.S. 156, 164, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012) (stating “a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed”). Like Caughman, Collins proceeded to trial rather than pled guilty. Like Caughman, in *Collins*, the record was void of any testimony that expressed any previous desire to accept an earlier offer. To the contrary, the evidence was that Caughman always wanted to go to trial. Most importantly, the Supreme Court found in *Collins*, even if Collins wanted to plead guilty, there was no evidence or testimony from the solicitor that the expired offer was still available before trial, nor is there any evidence or testimony that a new offer existed for Collins to accept. In this case, the credible evidence is that Solicitor Mayes indicated to all parties that she

was not going to negotiate on this case, and it was going to be a trial once she became the prosecutor. The Court found in *Collins* that the defendant failed to demonstrate a reasonable probability that he would have accepted any offer, new or expired. *See Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding the PCR applicant bears the burden of proving the allegations in their application). This Court must do the same in this setting.

Counsel Breibart's Alleged Failure to Offer a Plea Offer or Renew a Prior Offer.

First, this Court must initially find the Applicant failed to show the existence of an actual offer, or at least what if anything the offer actually was that may have been made prior to Solicitor Mayes becoming involved. Certain salient facts are present. The Solicitor's office was unable to locate among its records any particular offer. There is only the testimony of Solicitor Mayes and her April 22, 2011, email to counsel Breibart that "my understanding is that a previous plea offer made by Mr. Mobley was rejected and currently no plea offer has been extended." Solicitor Mayes credibly testified that that after the email, she was involved with numerous roll calls with Breibart (and subsequently Floyd) and there was no indication of either of them in the Solicitor's presence to discuss the elements of the prior alleged plea offer or negotiate anew after the prosecutor firmly declared that no plea offer had been extended. These subsequent discussions with counsel in the Applicant's presence from April 22, 2011 through May 20, 2013 during the roll calls indicated in her signed memorandum that this would always be a trial.

During the PCR hearing, this Court found credible Solicitor Mayes testimony that she was not able to determine what the actual plea offer was, if any, made by former Assistant Solicitor Mobley at the time and refused to speculate about it. What is clear to this Court is that Solicitor Mayes was firm that she was not going to negotiate on this matter with either counsel Breibart or later counsel Floyd. Solicitor Mayes set forth her reasons, including the fact that there was a death

involving a USC professor riding a motorcycle, the flight from the scene, and an additional indication that alcohol was involved. In addition, there was a denial on his part made to law enforcement. Further, the prosecutor had also pursued an additional charge of obstruction of justice with respect to his post-crime attempts “by secreting his vehicle and forcibly removing the door from the vehicle and the rocker panel from the vehicle.” See Tr.p. 37.⁶

Further, this Court was not presented with the precise nature of what the alleged plea offer was that was speculated about at this hearing. The current state of the Solicitor’s records did not reveal any plea offer, other than the limited and speculative information in the April 22, 2011. This Court is aware the burden of proof is on the Applicant.

The record and Mr. Caughman’s testimony reveals that when Mr. Breibart was suspended Caughman took possession of the Breibart file from the trustee before he retained Mr. Floyd. He testified ultimately gave it to Floyd. This gave Mr. Caughman the complete opportunity to review whatever records he had in his file concerning whether any offer was made and if and how it was rejected if available within those files. Mr. Caughman indicated he was not aware of any plea offer. This Court must assume that there was nothing in those records that he received which indicated the existence or substance of any plea offers received or rejection other than Solicitor Mayes email, assuming it was in the file.

Unfortunately, this Court cannot speculate on what, if any, negotiation occurred prior to the change in the prosecution team. The Applicant has failed in his burden of proof in showing the exact nature and substance of any plea offer from the State prior to April 11, 2011. However, this Court can conclusively find as a fact, that after April 11, 2011 through the 2013 trial, the State,

⁶ The trial court ultimately dismissed this charge. Tr.p. 284-290. The State argued there was sufficient evidence to submit the charge. Tr.p. 266-270.

through prosecutor Mayes, had made clear it was not going to negotiate or make offers in this case.

The Applicant proceeded to trial in 2013, as was indicated as the Applicant's intent to do since April 2011 during the roll calls. The record, like in Collins, is devoid of any evidence that expressed a desire to plead guilty after the State's unambiguous position was presented in April 2011, through the duration of the roll calls when the Applicant indicated with his own signature his intent to go to trial rather than plead guilty in the Solicitor and defense counsel's presence. Clearly, whatever alleged offer was made to Breibart was never presented or attempted to be renewed by Breibart and Caughman or Floyd after the April 2011 email because they were aware that any such offer was no longer available, not did a new offer exist for Caughman to accept.

During the PCR hearing, in hindsight, the Applicant speculates without an alleged basis of what the plea offer was, that considering the strength of the state's case against him, he would have pled guilty and accepted the unknown alleged plea offer. However, this Court must also conclude that such retrospective speculation lacks any credible basis without an understanding of what the alleged plea offer prior to April 2011 was. This Court finds that Applicant's testimony is not credible, but only speculation. ⁷ See also *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538,

⁷ This case was uniquely faced with two hurdles. The Applicant's initial retained lawyer has been disbarred and his law firm dissolved. In addition, on August 12, 2013, respondent pled guilty to one count of mail fraud. On March 4, 2014, respondent was sentenced to sixty-three (63) months in the custody of the United States Bureau of Prisons and to three (3) years of supervised release. In addition, respondent was ordered to begin repayment of restitution of \$2,419,326.50 in monthly payments of \$100 sixty (60) days after his release from prison. *In re Breibart*, 414 S.C. 540, 542, 779 S.E.2d 796, 797 (2015). His retained trial lawyer died prior to the PCR hearing. The Supreme Court has found that the undisputed testimony of a petitioner that he or she would not have pleaded guilty can, on its own, form the basis for a finding of prejudice. See, e.g., *Alexander v. State*, 303 S.C. 539, 543, 402 S.E.2d 484, 485–86 (1991) (“[T]he only evidence in the record on this point is petitioner's own testimony that had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he would not have pled guilty. Thus, the second part of the test has been met.”); *Smith v. State*, 369 S.C. at 138, 631 S.E.2d at 261 (finding against petitioner, but noting: “The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove

540 (1995) (observing mere speculation and conjecture by the applicant is insufficient to establish the allegation that counsel's deficient performance resulted in prejudice).

In summary, the Court makes the following conclusion. The Applicant has failed to show deficient performance because he has failed to show that counsel Breibart actually received a specific plea offer, in writing or otherwise, and the specific nature of that elements of the offer. Absent proof of the actual plea offer received by Breibart; counsel cannot be found deficient.

More importantly, the Applicant has failed to prove Sixth Amendment prejudice on this claim. Like the situation in *Collins*, from April 2011 through the time of trial in 2013, the State was firm that there would be no plea offer or negotiations related to the case. Any offer which may have been previously made no longer existed. Addressing the individual prongs for Sixth Amendment prejudice:

- A. The Applicant failed to prove (1) he “would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;”

that defendant would not have pled guilty.”). However, the court has suggested that such testimony is not always enough to fulfill the prejudice prong. *See Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (finding that “Hill makes clear that this prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial”). And in other cases, our supreme court has noted that such testimony can be outweighed by other evidence. *See Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) (“Although Goins testified at the PCR hearing that he accepted the plea because of the erroneous advice on the suppression of the evidence, his testimony specifically was found not to be credible. We therefore find evidence to support the PCR court's finding that Goins failed to prove he was prejudiced by counsel's ineffective assistance because he has not demonstrated he would have gone to trial absent the erroneous advice.”); *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013) (“Despite Petitioner's assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial on the Georgetown County charges had counsel told him about the strike.”); *see also Lee v U.S.*, 137 S. Ct. 1958 at 1967 (2017)(finding, in a case about deficient advice regarding immigration consequences of a guilty plea, that “[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. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences.”).

- B. the Applicant failed to prove (2) “the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;” and
- C. (3) “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.”
- D. The Applicant failed to prove “that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea, and the prosecution would not have withdrawn it in light of intervening circumstances)” and
- E. The Applicant failed to prove “that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.”

Trial Counsel Floyd’s Alleged Failure to Negotiate or Renegotiate for a Plea Offer

The Applicant contends trial counsel Floyd rendered ineffective assistance by failing to negotiate a plea agreement due to the State’s overwhelming evidence against him. This claim must also fail for similar reasons to the above section. By the time counsel Floyd took over the case after Breibart’s suspension from the practice of law in 2012, Solicitor Suzanne Mayes had already established that there were going to be no plea offers in the case. As noted above, she had a basis for her position based upon her understanding of the facts in the case. Plea offers cannot be forced upon a prosecutor by either the defense or the court. “Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. . . . Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” *State v. Thrift*, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994). While “it is

the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced... a defendant has no constitutional right to plea bargain.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999) (citation omitted). The Applicant has failed to show that Suzanne Mayes would have been receptive had any further attempts been made. She credibility stated the only choices were clear – plead guilty to the charge (essentially straight up and face 1 to 25 years) or go to trial. Counsel Floyd was aware of the State’s position upon review of the Breibart file provided to him by Caughman directly.

Because Applicant is not entitled to any particular plea offer, his trial attorney cannot be constitutionally ineffective for failing to obtain one. Deficient performance and prejudice have not been shown as to counsel Floyd for the same reasons set forth above related to the *Collins – Lafler – Frye* standards. The allegation is dismissed.

Counsel Breibart’s and Floyd’s Alleged Failure to Explain the Case or Meet Sufficient Times with Applicant

In his initial amended application, the Applicant further contends that counsel Breibart failed to explain the details of the Applicant’s case. (amended application ground 1). He additionally contends counsel Breibart and Floyd failed to meet with him sufficient times to properly review the evidence and discuss the case with Applicant. (Amended Application ground 3).

There is no established “minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.” *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell*

v. Polk, 447 F.3d 270, 279, n.2 (4th Cir. 2006) (“we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective.”). “[B]revity of consultation time between a defendant and his counsel, alone, ‘cannot support a claim of ineffective assistance of counsel.’” *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) (“A brief consultation does not by itself establish that counsel's performance was inadequate.”); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) (“brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel,” especially where the defendant “fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result”).

In the Applicant’s testimony, he asserted that he met with Breibart not over four times. However, he also acknowledged that Maura Dawson, Breibart’s associate, was the person he spoke with most of the time. Caughman stated he spoke with Floyd about the case after he was retained. Caughman indicated that prior to trial he was aware of the state’s case against him and confirmed this was counsel’s understanding of the case also. Caughman never indicated he was surprised by anything in the case.

This Court concludes that the Applicant has failed to show deficient performance related to either counsel. This Court recognizes that “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. It is evident from a review of the trial record that counsel was fully aware of the facts of the case presented by the State in the matter. The Applicant also indicated that he was aware of the nature of the State’s case against him. As to enough personal meetings between

Applicant and his counsel, Applicant failed to show deficient performance.

Further, Sixth Amendment prejudice has not been shown. The Applicant was unable to indicate any matter missed by trial counsel that additional consultation would have revealed. *United States v. Rogers*, 769 F.2d 1418, 1425 (9th Cir. 1985) (no ineffectiveness without showing what deficient consultation missed). The Applicant fails to identify in any manner in which his defense would have benefited from additional or longer conversations with him. This Court additionally concludes that Caughman wholly fails to demonstrate how additional meetings with counsel would have altered the outcome of his case, to a reasonable probability. Strickland prejudice has not been proven.

Failure to Retain Expert to Review Medical Records of the deceased and determine cause of death and Failure to Obtain the Additional Medical Records.

Applicant contends counsel Floyd was ineffective for failing to retain a pathologist to counter the State's expert regarding the victim's cause of death. The Applicant suggests that counsel Floyd was deficient in failing to acquire the hospital records of Toby Morris prior to trial to further investigate and determine if there was an intervening failure to the part of the hospital which may have caused the blood clot that was the immediate cause of death. The Applicant asserts that if counsel had been more diligent in acquiring the hospital records beyond what was provided in the autopsy report that he was provided, it could have led to a verdict of hit and run causing great bodily injury. This Court must find that the Applicant has failed to prove deficient performance and prejudice.

During the trial, the issue of proximate cause of the death because death resulted from a blood clot was discussed. The State proffered the testimony of Dr. Elizabeth J. Moffatt, the pathologist from Lexington Medical Center (LMC) that conducted the autopsy on the victim. This

testimony was proffered as a result of trial counsel's objection that any judgment or finding as to injuries, treatment received, or anything concerning the hospital was inadmissible hearsay since Dr. Moffatt did not actually treat the victim. (Trial Tr. 195–97; R. 441–43).

During her *in camera* testimony, trial counsel questioned Dr. Moffatt about whether she used information obtained from the victim's LMC medical records to assist her with the autopsy. In response, Dr. Moffatt explained that, since she is an LMC pathologist, she was able to access any of the victim's LMC records "as needed" to conduct the autopsy and make the medical findings required. (Trial Tr. 200; R. 446). Trial counsel then asked Dr. Moffatt whether she would have been able to make her final findings without those records. Dr. Moffatt responded that she would have still reached the same conclusion in terms of the diagnosis. (Trial Tr. 200–01; R. 446–47). Finally, he asked if the records were necessary to form her opinion in this case. She explained that the records were necessary in that they exist and are available. She further clarified that it would be malpractice not to review them. (Trial Tr. 201; R. 447).

After trial counsel concluded his cross-examination, Deputy Solicitor Mayes asserted that Dr. Moffatt's testimony regarding her findings is consistent with Rule 703, SCRE,⁸ which allows for an expert to make reference to any information that she had reasonably relied upon as other input and in reaching an informed decision. (Trial Tr. 201; R. 447). Deputy Solicitor Mayes stated that would be Dr. Moffatt's ultimate opinion not only as to the cause of death but the medical findings in general. (Trial Tr. 201; R. 447).

In response, trial counsel asserted that the State was attempting to produce evidence

⁸ Rule 703 provides that "[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."

through Dr. Moffatt regarding the victim's medical records that do not provide any sort of connection with the represented cause of death. (Trial Tr. 201–02; R. 447–48). Since the State did not provide trial counsel with the information Dr. Moffatt relied upon, trial counsel requested sanctions under Rule 5(C)(2), which would prohibit the Stat from using the information at trial. (Trial Tr. 202; R. 448). Finally, trial counsel argued the State was required to prove the cause of death in the victim in a manner that would satisfy the cause authorities as to the nexus between the leaving the scene of the accident and the death of the victim. (Trial Tr. 202; R. 448).

The Court ultimately found:

You have mentioned Rule Five and mentioned hearsay. An expert can rely upon hearsay in forming an expert opinion. The Rule Five issue deals with whether the statute requires the State to provide the defense with records that they are going to use with an expert reviewing medical records; that that must be provided to you, the medical records.

The State says, well, we provided the autopsy report which gives the witness' findings, and that satisfies Rule Five. The autopsy report gives the witness' findings and opinions.

Outside of this position, I don't find the State is required to provide or produce every record that formed the basis of the party's opinion generally, since the autopsy report was provided to the defense. The autopsy report provided her findings and conclusions.

Had the Defendant attempted to provide some independent autopsy proceeding which alluded to the medical records of the deceased, then they would have been provided to the Defendant. I don't think that that constitutes a Rule Five violation.

I will allow the question.

(Trial Tr. 202–03; R. 448–49). (emphasis added)

In her court testimony, Dr. Moffatt confirmed that she reviewed medical records. She testified that she found the victim was admitted to the hospital on February 21. She described the bruising she found on the body, consistent with a motor vehicle accident in addition to the various fractures. R. 453-456. Tr.p. 207-210. She described the hematoma to the adrenal glands as a "soft

tissue bruise or blood clot.” R. 456. Tr.p. 210. She determined the ultimate cause of death was a pulmonary embolus. She stated it was a blood clot that travels through the blood stream and then breaks free and travels through the vena system and is stopped. It straddled the pulmonary arteries where there was clotting in both the right and left arteries. She stated this was caused by a risk factor of immobility, a small percentage is spontaneous. As to the causes, she declared the immobility of being on bedrest and surgery, trauma, fractures as the top causes, but there are other causes like pregnancy, certain medications, smoking, and emphysema. R. 457. Tr.p. 211.

She concluded in the direct testimony that the blood clot was the result of the trauma. She stated:

Q. All right. Now, if a patient has been hospitalized in a patient 37 years old who has been hospitalized for up to seven days, can you tell us whether or not the injury -- whether that would contribute to inability to withstand the breaking off of the [blood] clot?

A. Yes.

Q. Other factors that you mentioned, would trauma and surgery also relate to risk factors for a blood clot?

A. Yes, the mechanism first of all produced immobility or when you have surgery or trauma the blood clotting system is activated as a sort of mechanism of repair the body's trauma by vascular intervention or trauma to the vessels, and there are, of course, blood vessels all over the body and in all organs, bones included. So when that clotting system is activated, it can propagate clot formation.

Q. Tell us, if any, the significance of multiple fractures as opposed to one fracture?

A. Increased risk.

Q. Dr. Moffatt, do you have an opinion to a reasonable degree of medical certainty as to whether the blood clot was a result of trauma to Toby Morris on February 21st of 2010?

A. Yes, I do.

Q. What is that opinion?

A. That it was the result of trauma sustained in that collision.

R. 458. Tr.p. 212. (*emphasis added*).

On cross-examination, counsel Floyd pointed out that at the time of his death, he was preparing to be discharged at some date and was preparing to ambulate. On that date he was walking. She stated blood clots vary, but not in all cases where a risk factor can be determined. She confirmed the only surgery done was to the wrist to repair the broken bone. It was done with anesthesia. Her opinion was that all the injuries were consistent with the motor vehicle accident a few days before the death. She opined that the blood clot was a few days old as opposed to weeks old when it might not be visible. R. 460-461. Tr.p. 214-15. She admitted that blood thinners can be used. Counsel Floyd asked:

Q. Do you know why they were not given?

A. I do not.

He inquired that they can be used when there is a risk of a blood clot. She was unclear how many days the victim had been immobile. She stated she thought he had been mobile for a day. This was because he had somewhat of an inability because of a cervical collar at some point but refused to speculate otherwise. R. 462 Tr.p. 216.

On re-direct, Solicitor Mayes developed through Dr. Moffatt that she would not expect a person to be mobile with thoracic vertebral fractures. She further opined she did not think to a reasonable degree of medical certainty that this blood clot formed spontaneously. R. 462. Tr.p. 216. On re-cross, she confirmed that he was ambulating during part of his admission. Floyd concluded his examination developing possibilities:

Q. And you can't say with absolute certainty what caused his death?

A. Very few things are a hundred percent but based on the evidence that I have he had those factors, two or three factors for a blood clot.

Q. So, you can't say with absolute certainty, and no one can say with absolute certainty?

...

Q. Well, how many of the factors would have to be present before you could say with absolute certainty that a blood clot was not spontaneous?

A. I have confirmed the factors in my autopsy report and in my testimony, but I cannot say with one hundred percent certainty what was responsible for the blood clot.

R. 463. Tr, p, 217.

In making his motion for a directed verdict on the hit and run death case, counsel Floyd urged the following:

MR. FLOYD: . . . We would next move for a directed verdict on these two grounds. First of all, Your Honor, the State has failed to prove that the collision is what caused the death of Mr. Morris.

It has not proven that anything my client did was the actual cause of death. There was testimony about a blood clot but there is no proof that the blood clot did not occur simultaneously and unrelated to those injuries that were described.

The State provided no evidence whatsoever that would prove — as to why he died. He survived the collision, was taken to the hospital and was known to be mobile before he died. There is no chain of causation as required between the accident and this man's death.

We asked about the toxicology reports because that would show whether or not he was being given any drugs to — any drug that would have prevented such a thing from occurring such as a blood thinner of some kind. There was no such testimony, and the State has failed to establish causation of death.

THE COURT: Are you saying there was simple negligence or gross negligence?

MR. FLOYD: I would say gross negligence, Your Honor, because it is such a known risk factor.

THE COURT: The South Carolina Code says that all persons driving a vehicle — a driver of vehicle involved in an accident resulting in injury or death of a person must stop their vehicle and — this is South Carolina Code [56-5-1210]. It says a driver involved in an accident resulting in injury to or death of a person shall immediately stop -- no question. That's the code. It says the driver shall immediately stop when involved in an accident.

Now, the South Carolina Code goes to the impact on the victim so it is saying in the immediate sense -- it is required that a death -- charging a person with

not stopping immediately, regardless of the chain of causation, so I could not direct a verdict of acquittal on the charge of leaving the scene of a wreck. You can see that when you consider the statute.

The way the word immediately is used — it says resulting in death of a person immediately -- then it says shall stop.

The (inaudible) Code says resulting in injury or death shall immediately stop, rather than resulting in death immediately shall stop. South Carolina says immediately shall stop.

MR. FLOYD: We would suggest that immediately goes to define injury or death of a person -- there is immediate injury or death,

THE COURT: That would mean as long as there is an indication a person is alive there is no indication to stop. There is also mention of leaving the scene with great bodily injury. You may have immediate injury and not have immediate death. How about it, Ms. Mayes?

SOL. MAYES: Yes, sir, Your Honor. The State does not agree with the interpretation posed by Mr. Floyd. There is absolutely nothing to suggest that that was what was intended by the legislation. The words, immediately shall stop at the scene of the accident, describe the duty of the driver, regardless of whether it resulted in injury or death.

THE COURT: If you look at the Georgia law, it is just the opposite of South Carolina law, so it doesn't do any good to consider that, to look at Georgia law.

MR. FLOYD: I think it would rise to the same interpretation, Your Honor.

THE COURT: All right. Well, under a reasonable interpretation of the statute, if the State's evidence is correct, the Defendant could be found guilty of leaving the scene of an accident involving injury or death. It is up to the jury to determine whether the death, Mr. Morris death, was proximately caused by the wreck as claimed by the State. They heard the pathologist.

So, Mr. Floyd, It is the jury's determination to make. I would have to deny that motion.

R. 516-519. Tr.p. 270-273.

The issue came up again at trial in reference to the instructions on whether there should be a lesser included offense of hit and run with great bodily injury. R. 525. Tr.p. 279. Judge Newman decided to leave it to the jury and charge the lesser offense.

THE COURT: Well, there can be great bodily injury not resulting in death. I think it is an issue for the jury, given the fact that you can leave the hospital and start to take therapy with the expectation of recovery from the great bodily injury. The jury would have to determine the proximate cause issue regarding the death. You have brought up the issue of negligence, gross negligence, within the victim's hospital treatment. The great bodily injury could have been the cause of death as well. If there was a charge of great bodily injury, the jury would have to answer the question of whether or not he is guilty of leaving the scene of the accident causing great bodily injury, and not resulting in death.

R. 525-526. Tr.p. 279-280. The closing arguments were not transcribed.

In his jury instructions, after defining the elements of the two crimes instructed “proximate cause” in the following way.

Now, in order to be guilty of the offense — in order to prove the Defendant guilty of hit and run accident that resulted in death, or hit and run accident resulting in great bodily injury, the State must prove that the accident in question was the proximate cause of the great bodily injury to or death of the victim.

Proximate cause means the direct cause. It is the immediate cause. It is the efficient cause. It is that cause without which the injury to or death of the victim would not have resulted.

There must be a chain of causation from the time of the accident inflicted by the Defendant until the time of the victim's death. Proximate cause does not necessarily mean death occurring immediately following the accident. There may be more than one proximate cause.

In fact, two or more persons may combine together to be the proximate cause of injury to or the death of a person.

The Defendant may be regarded as the proximate cause if it is a contributing cause of injury to or the death of the victim. The fact that more than one probable cause contributed to the injury to, or the death of the victim does not relieve the Defendant of responsibility.

The Defendant's acts need not be the sole cause of the injury or death, but it must be the proximate cause contributing to the injury of or death of the victim.

It is not a defense to show that the victim might have recovered if he had been treated according to the most approved surgical or medical standards, or that if a reasonably prudent doctor would have treated him, or even by showing that the treatment was negligent. If, however, the death was caused not by the wound or injury that the victim had, but was caused by the gross, erroneous, willful, deliberate

treatment, the Defendant would not be liable. In other words, negligence on the part of someone else would not relieve the Defendant from liability if the injury was the proximate cause of the victim's death.

However, gross negligent or intentional activity on the part of the practitioner would relieve the Defendant of liability. The propriety of the medical procedure is a critical question to be determined, criminal liability, criminal intent is required.

For example, the negligence may be proven by other things for a particular crime, which might be purpose, intent, knowledge, recklessness or criminal negligence.

R. 548-550. Tr.p. 302- 304.

In the motion for reconsideration hearing held May 21, 2015, the issue concerning the medical records was presented again as the defense raised an issue complaining that the additional medical records had not been provided. R. 581. Counsel Floyd urged that the pathologist testimony should have been stricken under Rule 5 because the medical records, other than the autopsy report were not provided to them. R. 581. Floyd acknowledged that the pathologist had testified that the pulmonary embolism was a result of the accident, but she admitted that anybody could have a pulmonary embolism at any time. R. 591-92. He complained that since she referred to some hospital records that had not been provided to him or the State, it was a Rule 5 violation. He admitted the additional records were never put in evidence. It was reported that the pathologist had reviewed some records. R. 593. Floyd asserted, other than the autopsy report, he never saw the additional records and that they were not presented in court. Id.

Suzanne Mayes at the reconsideration hearing described the access that the pathologist had to the records of the Medical Center. R. p. 619. She stated the pathologist relied upon the records but did not produce the records in her autopsy report or testimony. R. 620. Hearing Tr. 35-36. She discussed with Judge Newman pages two and five of the autopsy report where the pathologist

addressed the information she looked at in the patient data base and included her opinion on the cause of death. She stated this information put the State and defense on notice that she had reviewed the records. This was provided to both sides, according to Solicitor Mayes. R.623. Counsel Floyd argued that this information would have put the State on notice that they needed to provide the additional records to the defense. R. 625.

At the reconsideration hearing, Judge Newman expressed his recollection concerning the presentation of cause of death:

With regard to the issue of whether or not there was some intervening negligence which caused the death versus the injuries that he sustained on February 21st, whether that was the cause of death, that's something that I remember distinctly being attune to and to have the jury closely examine that issue and make a decision on that question. Mr. Floyd engaged in a rather rigorous cross-examination of State's witnesses who offered opinions that the death was caused by the wreck and not by any medical malpractice or any other independent or intervening in jury.

R. 631. Hearing Tr. 47, l. 14-24.

Prior to the hearing in this case, appointed PCR counsel moved to obtain the victim's medical records and professional services of an expert in pathology for purpose of this PCR hearing. In an order filed by the Honorable George McFadden filed March 7, 2023, the request was denied.⁹

This Court finds that the Applicant failed in his burden of proof in showing that counsel was deficient or prejudicial in failing to take steps to acquire the additional hospital records beyond

⁹ This Court notes that the prior order precluded the Applicant from either acquiring the medical records of the victim beyond what counsel and PCR counsel had received or the funding to retain an independent pathologist. The general law in collateral proceedings is that an applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Bannister v. State*, 333 S.C. at 303, 509 S.E.2d at 809 (1998) (citation omitted). However, based upon PCR counsel diligence in attempting to acquire potential information, they cannot be held to that condition, to the extent it is considered a condition precedent.

the autopsy report or seek a pathologist to independent review those records. *Strickland* notes that there are “countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” 466 U.S. at 689. Rare are the situations in which the “wide latitude counsel must have in making tactical decisions” will be limited to any one technique or approach. *Harrington*, 562 U.S. at 106 (quoting *Strickland*, 466 U.S. at 689). “It can be assumed that in some cases counsel would be deemed ineffective for failing to consult or rely on experts, but even that formulation is sufficiently general that state courts would have wide latitude in applying it.” *Harrington*, 562 U.S. at 106. Our Supreme Court has held that counsel’s failure to retain or call an expert witness at trial to rebut the State’s expert testimony will not necessarily rise to the level of deficient performance where he undertakes a vigorous cross-examination of the State’s witness. *Frasier v. State*, 306 S.C. 158, 160–61, 410 S.E.2d 572, 573 (1991).

This Court must find that counsel did not take steps prior to trial to obtain additional medical records from Lexington Medical Center other than his Rule 5 request. He received the autopsy report by Dr. Elizabeth J. Moffatt consisting of five (5) pages, which included the conclusions of the cause of death and the basis of the conclusion. Importantly, he was aware that “during his hospitalization he continued to improve. He was ambulating as part of his therapy on 2/28/10, during which he was witnessed to become light-headed and reportedly dyspneic, shortly followed by collapse and unresponsiveness. Full code and resuscitative measure were unsuccessful, and he was pronounced dead on 1/28/10.” Autopsy Report, p. 5. Counsel was further aware prior to trial that the stated cause of death was “pulmonary thromboembolism.” Report, p. 5. Further, counsel was aware from the Report that the examination of the body demonstrated a large pulmonary embolus involving the right and left pulmonary arteries, injuries consistent with

the history of trauma were identified, including bilateral rib fractures, bilateral pulmonary contusions, and a hematoma of the right adrenal gland.” He was also aware from the report that other findings included pulmonary edema and congestion, congestion of the spleen, and fatty metamorphosis of the liver.” Importantly, there was “no evidence of vertebral artery dissection, intercranial hematoma, or brain stem herniation.”

Although trial counsel Floyd was deceased at the time of the hearing, a portion of his strategy was evidence from the trial and post-hearing motions. First, he relied upon Rule 5 to acquire records from the State related to the witness’s testimony. He sought to sanction the sanction the State and preclude the testimony of the pathologist for the failure to provide the defense with the underlying records that were reviewed by the pathologist to form her opinion. This strategy was unsuccessful when Judge Newman denied the sanction request and determined that Rule 5 had been complied with by providing the autopsy report.

What is also evident from trial counsel’s action in trial was that it was his motivation to identify matters that could have shown that the accident may have caused “great bodily injury” but did not cause the death. On that point, this Court must conclude that counsel Floyd did not retain an independent pathologist to review the report or assist in receiving additional medical information. This was shown at trial as noted above when Judge Newman stated to counsel that if he had attempted to provide an independent autopsy proceeding that the records would have been provided. R. 449, Tr.p. 203.

Due to counsel Floyd’s death, we do not have evidence of any strategic reason from Floyd why he did not retain a pathologist or take steps to move before the Court to have the medical records present and available for his review before or during the trial. *See Dempsey v. State*, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (“[C]ounsel’s decision not to call an expert witness to

rebut the state's expert witness was a legitimate trial strategy," (citing *McLaughlin v. State*, 352 S.C. 476, 575 S.E.2d 841 (2003))) The initial question is normally whether these alleged failures were deficient. Under *Strickland*, there is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A decision "not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* When counsel's performance falls below this standard, a "defendant must show that there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006), abrogated by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). "[A]t 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 v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007).

This Court finds that counsel Floyd was well prepared with the information he had concerning the circumstances of the victim's death from the autopsy report. He utilized the information in his "vigorous" cross-examination. He pointed out that there were other possibilities that could have caused the blood clot, other than the injuries from the accident. He presented information that there may have been a lack of blood thinners being used on the victim at the hospital. He presented that the victim's medical condition was considered improving by the

medical staff. He further presented evidence through the pathologist no one can say with absolute certainty what caused the death. Importantly, he was able to argue for and receive a lesser included charge of hit and run with great bodily injury as well as proximate cause.

Assuming arguendo that the Applicant's counsel was deficient, this Court must find that Caughman has failed to show Sixth Amendment prejudice. *See Frasier v. State*, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991) (finding trial counsel was not deficient in failing to procure an expert witness to challenge DNA evidence presented at trial where the record established that counsel vigorously cross-examined the State's DNA experts and attacked the accuracy of the evidence); *Lorenzen v. State*, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008) (citing *Frasier v. State*, 306 S.C. 158, 410 S.E.2d 572 (1991)). As noted above on the deficiency prong, Sixth Amendment prejudice has not been shown by the prepared and vigorous cross-examination of the pathologist by Floyd. There is no reasonable probability shown that the result of the proceeding would have been different. What the jury learned from his examination, unlike the State's initial presentation was:

- A pulmonary embolism can have many causes.
- There was no absolute certainty that the accident and injury caused the blood clot.
- The only surgery was on the wrist.
- Immobility can be a cause of blood clots.
- Blood thinners were not used.
- The victim was on the road to recovery and improving when the blood clot occurred.
- The victim was walking when the blood clot caused the death.

In addition to getting the instruction on the lesser offense due to his effective cross-examination, he was able to secure an instruction on "proximate cause". *See State v. Burton*, 302 S.C. 494, 498–99, 397 S.E.2d 90, 92 (1990). It has been held in South Carolina that the negligence of an attending physician is reasonably foreseeable. *State v. Matthews*, 291 S.C. 339, 347, 353

S.E.2d 444, 449 (1986). The proper charge in this context is one on the applicable law of proximate cause regarding medical treatment. *State v. Matthews*, 353 S.E.2d at 449. The trial court charged the jury on proximate cause regarding medical treatment. There has been no indication of gross negligence or intentional activity on the part of the Lexington Medical staff. To the contrary the evidence presented and relied upon by the Applicant at trial was that the victim was improving and on the road to recovery.

This Court must find the failure to retain an independent pathologist or the failure to obtain additional medical records of the hospitalization does not undermine confidence in the outcome. In light of the examination by Floyd of the pathologist, there is no reasonable probability the result of the proceeding would have been different.¹⁰

Alleged Failure to Investigate the Facts.

In the Applicant remaining allegation, he complains that his counsel failed to properly investigate the case. (Amended allegation 6). A review of the record and PCR hearing in this case reveals his only specific concern related to the medical records and the failure to retain an expert pathologist. During his PCR testimony, Caughman could not point out any evidence that the State presented that he was not aware. He further acknowledged that trial counsel was aware of the State's evidence. The evidence revealed though Solicitor Mayes was that trial counsel

¹⁰ This conclusion is made understanding that PCR counsel was denied funding for an independent pathologist and authorization by the Court to have discovery in this particular area. This decision is not based upon the fact that a pathologist was not called in the PCR action. See *Porter v. State*, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness[s] testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR."); *Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (holding a PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence). It is based upon the fact that counsel's examination of the pathologist show there was no Sixth Amendment prejudice.

Floyd was provided with the State's evidence, supplementing the evidence the State had previously provided to then suspended counsel Breibart. The Applicant has failed to show matters that a reasonable lawyer practicing criminal law would have further investigated,

Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998); *Porter v. State*, 368 S.C. 378, 385–86, 629 S.E.2d 353, 357 (2006). This Court finds that the Applicant has failed to prove either deficient performance or prejudice under the Sixth Amendment related to this allegation. It must be dismissed.

CONCLUSION

Applicant has failed to show he is entitled to relief on any of the claims for all the forgoing reasons. As such, this Court must deny relief.

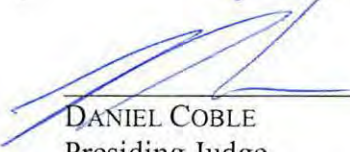
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *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. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Dec, 2023.

Richard, South Carolina.



DANIEL COBLE
Presiding Judge
Eleventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	
	)	
	)	Indictment Number: 2010-GS-32-2294
State of South Carolina,	)	(Appellate Case No. 2015-001867)
	)	
	)	
v.	)	ORDER
	)	
William Craig Caughman,	)	
	)	
Defendant.	)	
_____	)	

This matter came before this Court pursuant to an Order to Reconstruct the Record which was issued by the South Carolina Court of Appeals on August 11, 2016. On September 16, 2016, a reconstruction hearing was convened at the Lexington County Courthouse. The Defendant was present at the hearing and was represented by Assistant Appellate Defender John P. Strom, Esquire, of the South Carolina Office of Indigent Defense. The State was represented by J. Benjamin Aplin, Senior Assistant Deputy Attorney General, and L. Suzanne Mayes, Assistant Solicitor for the Eleventh Judicial Circuit.

The Defendant is currently confined testify but presented the testimony of his trial attorney H. Wayne Floyd, Esquire. He also introduced, without objection, a copy of Mr. Floyd's hand written notes from the trial. Also testifying at the hearing was Assistant Solicitor L. Suzanne Mayes. In addition, this Court had before it: (1) a copy of the transcript of Defendant's May 20-23, 2013 trial, which included notations from the court reporter indicating which portions were inaudible or otherwise unable to be transcribed;¹ (2) a copy of the transcript of this

¹ The trial transcript is divided into two separate volumes due to a change in court

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Court's May 21, 2015, hearing on Defendant's post-trial motions for a new trial and for reconsideration of the sentence; (3) Defendant's June 17, 2016, "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; (4) the State's July 12, 2016, "Return to Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; and (5) the August 11, 2016, Order of the Court of Appeals granting Defendant's motion and remanding to this Court for reconstruction of the record.

On May 1, 2017, this Court convened a follow-up hearing at the Lexington County Courthouse to finalize the reconstruction proceedings and render a decision. The Defendant was again present and represented by Mr. Strom and the State was again represented by Mr. Aplin. Also present were Mr. Floyd and Ms. Mayes.

PROCEDURAL HISTORY

The Defendant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. He was indicted at the May, 2013 term of the grand jury for Lexington County for "hit and run accident resulting in death" under Section 56-5-1210 of the South Carolina Code. He was represented by H. Wayne Floyd, Esquire. On May 20-23, 2013, Defendant proceeded to a jury trial before this Court pursuant to which he was found guilty as indicted. He was sentenced to twenty (20) years' imprisonment.

reporters. The first volume covers the first day of trial, May 20, 2013, and is paginated 1-155, and the second volume is of the remainder of trial, May 21-23, 2013, and is paginated 1-329.

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A notice of appeal was filed and served on Defendant's behalf and on October 22, 2015, Defendant/Appellant timely requested a complete copy of the transcript of his trial. On June 17, 2016, Defendant submitted a "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" with the Court of Appeals. On July 12, 2016, the State submitted a "Return to Motion to Remand for Reconstruction of the Record" with the Court of Appeals opposing remand for reconstruction. In an Order filed August 11, 2016, the Court of Appeals granted Defendant's motion and remanded this matter to this Court for reconstruction of the missing portions of the record.

In his motion to the Court of Appeals, Defendant identified four "missing" portions of the trial which were not transcribed because, as indicated by the court reporter, they were inaudible. These consisted of:

- (1) "An indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant's] residence";
- (2) Closing arguments;
- (3) "Portions of the trial testimony of Dr. Elizabeth Moffatt; and
- (4) "Portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute."

At the reconstruction hearing, Defendant raised two additional concerns about missing portions of the record, specifically in regard to: (1) a discussion at trial about his requests to charge, which this Court ultimately declined to charge to the jury, and (2) a portion of the testimony of State's witness Amy Stephens. Without objection from the State, this Court left the

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record of the reconstruction hearing open to allow Defendant to obtain copies of the written requests to charge from Mr. Floyd's file and include them in the reconstructed record.

Defendant subsequently submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9, which are now before the Court. There was no Defendant's #6 in Mr. Floyd's file and consequently, Appellant did not submit Defendant's #6 to this Court. At the May 1, 2017, follow-up hearing; however, it was discovered that sometime before the initial September 16, 2016, reconstruction hearing, this Court had been sent an email from Mr. Floyd's office with an attached copy of his post-trial motions for a new trial and for reconsideration of his sentence. Those motions included a copy of Defendant's #6, a requested jury charge on giving "the benefit of any doubt" to the Defendant. As a result of this discovery, the parties agreed to add it to the reconstruction proceedings and all nine of Defendant's requests to charge are now part of the record before this Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and has heard the testimony at the reconstruction hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law in response to the Court Of Appeals Order of August 11, 2016.

I.

RECONSTRUCTED RECORD

A reconstructed record on appeal is only sufficient if it allows for meaningful appellate review. State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274-75 (Ct. App. 2007). A new

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trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review. Id.

A. Multi-Jurisdictional Task Force Agreement

The Defendant complained to the Court of Appeals that the transcript omits: “an indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant’s] residence.” The Court finds that a review of pages 271-76 of the transcript reveals that immediately prior to the Court denying Defendant’s motion to suppress, a “colloquy between the Court and Mr. Floyd that was not audible” was not transcribed. However, prior to this colloquy, Mr. Floyd noted: “We have previously argued that motion.” As the trial judge, I agreed stating: “Yes, sir, the Court heard argument on the issue yesterday concerning this agency agreement” and “We spent a good bit of time on that issued yesterday, and whether the agency agreement was signed by County Council or the required officials and all of that, and who had to approve the agreement.”

At the reconstruction hearing the parties agreed that pages 104-129 of the May 21-23, 2013, trial transcript reflect the preceding day’s arguments regarding the search warrant and the Multi-Jurisdictional Task Force Agreement. Mr. Floyd testified that to the best of his recollection, the transcribed arguments articulate the particular grounds he raised at trial for seeking to suppress evidence gathered pursuant to the search warrant obtained as a result of the agreement. The Court finds that the trial transcript combined with the testimony offered at the reconstruction hearing sufficiently reconstructs the record of the missing portions of Defendant’s argument, the State’s response, and the Court’s ruling, so as to provide an adequate record for

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meaningful appellate review.

B. Testimony of Dr. Elizabeth Moffatt

The Defendant asserts: “Additional missing sections of the trial transcript include portions of the trial testimony of Dr. Elizabeth Moffatt” as well as “arguments on objections by defense counsel related to Dr. Moffatt’s testimony.” The Court finds that a review of pages 196 to 210 of the May 21-23, 2013, of the trial transcript demonstrate that in each instance where Dr. Moffatt’s testimony was inaudible, either the solicitor or the Court asked her to speak up and repeat her testimony, or the particular answer was not germane to any possible issue on appeal. The Court finds the inaudible portions of Dr. Moffatt’s testimony would not impact Appellant’s ability to seek meaningful appellate review. Nevertheless, the Court heard testimony on the missing portions of Dr. Moffatt’s testimony at the reconstruction hearing and now finds that to the extent it was lacking, it has been adequately reconstructed so as to provide an adequate record for meaningful appellate review.

As to the objections raised to Dr. Moffatt’s testimony, particular attention was focused on two objections the Defendant made at trial, one that the State had not sufficiently disclosed documents pursuant to Rule 5, SCRCrimP, and that Dr. Moffatt’s testimony was hearsay. The Court finds the existing record on pages 196 to 203 of the May 21-23, 2013, of the trial transcript combined with the testimony at the reconstruction hearing adequately reflect Dr. Moffatt’s testimony, Defendant’s objections to that testimony, the State’s responses to those objections, and the rulings of this Court. The testimony of Dr. Moffatt and the Defendant’s objections to that testimony were sufficiently reconstructed to allow for meaningful appellate review.

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C. Statutory Interpretation of § 56-5-1210

The Defendant states that “portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute were inaudible.” However, this Court finds that a review of pages 281 to 283 of the May 21-23, 2013, of the trial transcript reveals that the only portion inaudible is Mr. Floyd’s explanation for his assertion that: “number two we think is not the wording of the statute.” Immediately after the inaudible portion, the solicitor specifically identified the challenged wording in her response by stating: “I do not believe the interpretation of the word immediately. It is the State’s position that it means the driver shall immediately stop, speaking of the duty of the driver to stop, rather than the immediate death of the victim. Beyond that, we believe the wording of the statute is clear. Mr. Floyd would give the wrong application of the wording.” The Court finds the statute itself, coupled with the solicitor’s response and the testimony offered at the reconstruction hearing provide sufficient clarity of Defendant’s argument at trial to allow for meaningful appellate review.

D. Closing Arguments

The Defendant notes that: “none of the prosecution’s or defense’s closing arguments were transcribed.” This Court finds that although the closing arguments were not transcribed, the court reporter notes at page 292 of the transcript that: “There were no objections made during these statements.” Thus, the Court concludes where no objections were made to the closing arguments, there are no issues preserved for appellate review.

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At the reconstruction hearing, Defendant's counsel suggested that without a transcript of the closing arguments there is no way to confirm that the court reporter's notation was correct. The Court finds however, that there is no evidence to suggest it is not.

Also at the reconstruction hearing and at the follow-up hearing, Defendant's counsel argued that a transcript of the closing arguments is necessary for adequate appellate review because it could impact an analysis of a claim of harmless error. The Court disagrees and finds the record that exists along with the portions reconstructed provide a sufficient record for appellate review, including a review of claims of harmless error if raised on appeal. As to the substance of the State's close, the Court finds the testimony of Solicitor sufficiently reconstructed closing argument to allow for meaningful appellate review.

E. Defendant's Requests to Charge

Following the reconstruction hearing, the Defendant submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9. Defendant's #6 was subsequently discovered and, with the consent of the parties, accepted into the record at the May 1, 2017 follow-up hearing; thus, all nine written requests to charge are now before the Court. The Court finds these written requests to charge sufficiently and adequately reconstruct the substance of the Defendant's requests to charge as they were presented to and rejected by the Court and therefore, provide for meaningful appellate review of any issues regarding the jury charge.

F. Testimony of Amy Stephens

At the reconstruction hearing, the Defendant directed Mr. Floyd's attention to page 218 of the May 21-23, 2013, trial transcript and questioned him about the missing direct examination

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testimony of witness Amy Stephens. (Reconstruction Tr.p.26). The Court notes the transcript includes the following notation:

TRANSCRIPTION NOTE: Audio portion not on disc which next has Witness Amy Stephens on the stand. Direct Examination of witness by Solicitor not present. Audio beginning with Cross Examination of witness by Mr. Floyd.

(May 21-23, 2013 Tr.p.218, lines 21-24). It then includes approximately 19 lines of cross-examination by Mr. Floyd indicating Ms. Stephens was employed as a forensic technician at SLED during which she explained her role in receiving items that were submitted to SLED for forensic testing. (May 21-23, 2013 Tr.p.218-p.219).

During the reconstruction hearing, Mr. Floyd first testified he had no independent recollection as to the substance of Stephens' testimony or whether he objected to any of her testimony. He opined that based on her appearance immediately before State's witness Michael Moskal, it was possible she was a chain-of-evidence witness because Moskal testified about paint chips recovered from the victim's motorcycle, which were a "pretty significant" issue in the case. Mr. Floyd testified he made an objection to the chain of evidence, and assumes he repeated the objection with Stephens, but could not specifically remember doing so, or what that particular objection might have been. (Reconstruction Tr.p.26-p.30). On cross-examination, Mr. Floyd explained the significance of the paint chips to the case, but noted they were not introduced into evidence and was unable to articulate what "chain-of-evidence" objection he would have made in regard to Stephens testimony. (Reconstruction Tr.p.30-p.33). The Court sought further explanation from Mr. Strom in regard to the significance of Stephens' testimony and the need for reconstruction for possible appellate issues and noted the brevity of Mr. Floyd's

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cross-examination as indicative of the non-substantive nature of her missing testimony on direct. (Reconstruction Tr.p.33-p.38).

Ms. Mayes was called to the stand to assist with reconstruction. She testified that Ms. Stephens is the evidence log-in technician at SLED, which means she works in the evidence lobby area where she receives any evidence being delivered from other law enforcement agencies, logs that evidence in, and assigns it a SLED lab number for tracking. Ms. Mayes explained that Stephens does not test evidence or have any involvement in any case besides logging the evidence in and having it sent to the appropriate analyst. Ms. Mayes testified her recollection was that Stephens trial testimony was limited to chain of custody and would merely have consisted of a description of her logging the evidence delivered by the relevant law enforcement agency, and her releasing that evidence to a SLED analyst for testing. Ms. Mayes testified that in the Defendant's case, Stephens would have testified the evidence in question went to Michael Moskal for testing. She explained Moskal is the trace analyst who conducted all of the testing of paint samples in this case and that the State would have had to make a showing the chain of custody of that evidence was complete prior to Agent Moskal giving his opinion as to the results of the trace analysis. Ms. Mayes then reviewed the cross-examination of Ms. Stephens that is transcribed and testified, it does not appear that any of Mr. Floyd's cross was missing. (Reconstruction Tr.p.59-p.62). Under cross-examination from Mr. Strom, Ms. Mayes gave additional details of the specific evidence collected and tested in the case, which helped clarify Ms. Stephens limited role in this case. (Reconstruction Tr.p.62-p.64).

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At the follow-up hearing, the parties presented additional arguments concerning Ms. Stephens' testimony, Mr. Floyd's purported objection to the chain-of-evidence, and the import of the testimony in regard to possible appellate issues.

This Court concludes the testimony of Solicitor Mayes at the reconstruction hearing sufficiently reconstructed the substance of Stephens' direct testimony to allow for meaningful appellate review. In regard to the Defendant's alleged objection to testimony about the paint chips on chain-of-custody grounds, the Court finds that any such objection, if made, would have been made in other portions of the record which have been transcribed. Further, any attack on the integrity of Stephens' role in the chain of custody would have been made during cross-examination.

Based on the testimony at the reconstruction hearing, the Court finds the transcription of Ms. Stephens' cross-examination testimony from trial is complete. Based on the cursory nature of the cross-examination, the Court concludes Defendant has failed to demonstrate any prejudice flowing from the lack of a transcript of Ms. Stephens' direct examination testimony. This portion of the record has been sufficiently reconstructed to allow for meaningful appellate review.

CONCLUSION

The Court convened the reconstruction hearing on September 16, 2016, in Lexington County and devoted significant time in reviewing the existing trial transcript as well as hearing testimony and the presentation of other evidence. The Court concludes that the matters presented at the reconstruction hearing regarding the issues alleged in Defendant's motion to remand for reconstruction are addressed in this Order. Based on the foregoing, the Court concludes that, a

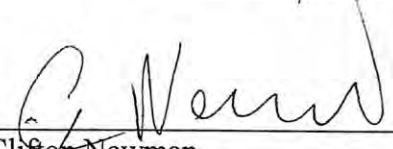
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diligent and good faith effort has been made to reconstruct the missing portions of the record. The missing portions of the record have been sufficiently reconstructed. This Court finds the record is now sufficiently reconstructed to allow the appellate court to conduct a meaningful review.

IT IS THEREFORE ORDERED:

1. The transcripts of both the September 16, 2016, reconstruction hearing and the May 1, 2017, follow-up hearing be obtained by Defendant for submission to the Court of Appeals;
2. The transcripts combined with other evidence submitted at the reconstruction hearing and Defendant's written request for jury charges, sufficiently reconstruct the record so as to provide a full and complete record which satisfies the interests of due process and fundamental fairness so as to allow for a meaningful appellate review; and
3. The Defendant is remanded to the custody of the Department of Corrections pending resolution of his direct appeal.

AND IT IS SO ORDERED this 26th day of May, 2017


 Clifton Newman
 Trial & Reconstruction Hearing Judge
 Eleventh Judicial Circuit

Columbia, South Carolina