

**VOL. II OF II**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

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MAR 24 2014

Appeal from Chesterfield County

**S.C. Supreme Court**

Brooks P. Goldsmith, Circuit Court Judge

---

MICHAEL CHAD LAMBERT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000584

---

**A P P E N D I X**

---

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Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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(b) 2009-GS-1118

(c) 2009-GS-1119

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

(a) 2-11-10

(b) 2-11-10

(c) 2-11-10

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?

No

8. If you answered Ayes@ to (7), list:

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

A True Copy Attest  
Clerk of Court C.P. & G.S.  
CHESTERFIELD COUNTY, SC  
Taye J. Williams

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Misunderstood Attorney when told appeal ~~was~~ probably not help me

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) was not provided with a fair trial
- (b) InSufficient counselling
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) The victim work for god lived in chestfield county
- (b) Things was brought to his attention and nothing done about it
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petition if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

CLERK OF COURT C.P. & G.S. CHESTERFIELD COUNTY, SC

A True Copy Attest  
Joyce J. Sellers

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. \_\_\_\_\_

A. True Copy Attest  
*Joyce J. Sellers*  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

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) Just now filing
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. James C Cox JR PO Box 519 Hartsville, SC 29551
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. plea, Trial, and Sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

CLERK OF COURT C.P. & G.S.  
DISTRICT OF FIELD COUNTY, SC

A True Copy Attest  
*Joyce J. Sellers*

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

9 New Trial or a reduced sentence because I was not offered a plea

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Chester Field )

VERIFICATION

I, Michael Ehad Lambert, 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.

Michael Ehad Lambert

SWORN to and subscribed before me this 3 day of Feb. 2011.

Debra Lynn (L.S.)  
Notary Public

My Commission Expires: 5-16-14

A True Copy Attest  
Joyce D. Bellard  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

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

I, Michael Chad Lambert, 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.

Michael C. Lambert  
Applicant

SWORN or affirmed to and subscribed before me this  
3 day of Feb., 2011.

Shirley J. Smith  
Notary Public

My Commission Expires: 5-16-11

A True Copy Attest  
Faye J. Sellers  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHESTERFIELD )  
 )  
 Michael Chad Lambert, )  
 S.C.D.C. No. 339270, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-13-0049

RETURN

2011 AUG 11 AM 9 30  
 FAYE L. SELLER  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, SC

A True Copy Attest  
*Faye L. Seller*  
 CLERK OF COURT C.P. & G.S.  
 CHESTERFIELD COUNTY, SC

In response to the post-conviction relief application filed February 4, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the October 2008 term of General Sessions for felony driving under the influence (DUI), resulting in death (2008-GS-13-0787) and at the January 2010 term for reckless homicide (2009-GS-13-1118) and involuntary manslaughter (2009-GS-13-1119). James C. Cox, Jr., Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On February 11, 2010 the Honorable Paul M. Burch sentenced the Applicant concurrent terms of twenty-two (22) years for felony DUI, resulting in death, ten (10) years for reckless homicide, and five (5) years for involuntary manslaughter. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Chesterfield County Clerk of Court regarding the subject convictions and the Applicant's records

from the South Carolina Department of Corrections. The trial transcript will be forwarded upon receipt.

## II.

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

1. Ineffective assistance of counsel:
  - a. "Insificent counseling."
  - b. "Things was brought to his attion and nothing done about it."
2. "Was not provided with a fair trial."
  - a. "The victim work for and lived in Chestfield County."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

#### V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

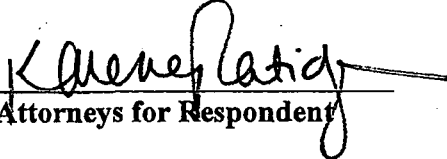
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

August 10, 2011

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS

2011-CP-13-0049

MICHAEL CHAD LAMBERT, 339270

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

*Handwritten:* A True and Correct Copy of the Original as Filed

AFFIDAVIT OF SERVICE BY MAIL

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

**Michael Chad Lambert, 339270  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010**

DATED this 10th day of August, 2011.

*Judy A. Carey*  
\_\_\_\_\_  
Judy A. C. Carey, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA            )  
   ) COURT OF COMMON PLEAS  
COUNTY OF CHESTERFIELD            ) 2011-CP-13-00049

MICHAEL CHAD LAMBERT            )  
   ) APPELLANT                            )  
   ) vs.                                    )  
   )                                        ) TRANSCRIPT OF RECORD  
   )  
STATE OF SOUTH CAROLINA            )  
   ) RESPONDENT                            )

January 11, 2013  
 Darlington, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.

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

ANDREW F. MCLEOD, ESQUIRE  
 Attorney for the Appellant

TYSON A. JOHNSON, SR., ASSISTANT ATTORNEY GENERAL  
 Attorney for the State

JAMES C. COX, JR., Esquire

HATTIE O. GORDON  
 Circuit Court Reporter

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

MR. JOHNSON: Your Honor, this is Michael Chad Lambert v. South Carolina. It's 2011-CP-13-0049. Mr. Lambert was indicted for felony D.U.I. resulting in death. And at the January 2010 term for reckless homicide and in voluntary manslaughter Mr. James C. Cox represented him. Mr. Cox is in the courtroom at this time.

The State brought the case to trial, and Mr. Lambert was found guilty. On February the 11th 2010 Judge Paul Burch sentenced him to concurrent terms of 22 years for felony D.U.I. resulting in death, 10 years for reckless homicide, 5 years for involuntary manslaughter. He's represented today by Mr. Andrew McLeod, and at this time I would invite Mr. McLeod to advise the Court and counsel of what issues they're going forward with today.

THE COURT: All right. Mr. McLeod.

MR. McLEOD: May it please the Court, Your Honor. I'm Andrew McLeod here. I've been appointed by the Court to represent Mr. Michael Chad Lambert on this application for post conviction relief. And he is filed an application alleging essentially that he was not able to receive a fair trial in Chesterfield County. The decedent involved in this accident was a sheriff's deputy in Chesterfield County, and there was quite a bit of press coverage at the time. And not it was at the time but

1 there continued to be coverage in the press right through  
2 up until trial for various reasons, and as a result of  
3 that he believes that there was just not way that he could  
4 get a fair trial.

5 There was a motion for change of venue. It was  
6 denied, but there was no appeal of that motion. That  
7 falls under the second cause of insufficient counsel by  
8 his attorney. And so those are the grounds he's brought  
9 forward. In addition to that we would just address for  
10 the Court the fact that he was found guilty of felony  
11 D.U.I, involuntary manslaughter and reckless homicide we  
12 would just state that the involuntary manslaughter,  
13 reckless homicide were lessor included offenses of felony  
14 D.U.I.

15 And when you have a death that those conviction -- it  
16 would have been incumbent present upon his attorney to  
17 move to have those second two verdicts or arrest the  
18 judgment or what not to have those dismissed on the  
19 grounds of double jeopardy type of argument; that he's  
20 being convicted of the same thing three times. And that  
21 the charges do run concurrently, but it's just a matter of  
22 what it looks like. He's got three convictions, but it's  
23 the same charge.

24 And so that information along with the fact that the  
25 failure of counsel was ineffective in advising him of the

1 appeal, setting up the appeal or preserving issues for  
2 appeal we would like to address to the Court today on post  
3 conviction relief.

4 THE COURT: All right. You're ready to proceed now?

5 MR. McLEOD: Yes, sir, Your Honor.

6 THE COURT: All right, sir.

7 MR. McLEOD: Your Honor, at this time, we call Mr.  
8 Chad Lambert.

9 MICHAEL CHAD LAMBERT, after being duly sworn,  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. McLEOD:

13 Q. Mr. Lambert, please give me your full name?

14 A. Michael Chad Lambert.

15 Q. And what sentences are you currently serving?

16 A. Felony D.U.I. resulting in death, involuntary  
17 manslaughter and reckless homicide.

18 Q. Okay. And what are those charges were you actually  
19 arrested for?

20 A. I was initially arrested for felony D.U.I. resulting  
21 in death.

22 Q. And then how -- where did these other charges come  
23 forward?

24 A. They come February of -- I mean January of 2010. I  
25 was straight indicted while I was incarcerated in

1 Chesterfield County.

2 Q. Okay. And then you were sentenced -- when were you  
3 sentenced?

4 A. February of 2010.

5 Q. Okay. So those other charges came right before  
6 you -- your trial?

7 A. The month before my trial.

8 Q. Okay. Now, your issues that you have raised on  
9 P.C.R. include ineffective assistance of counsel and also  
10 the fact that you felt like you were not able to get a  
11 fair trial in Chesterfield County?

12 A. Yes, sir.

13 Q. Okay. And combined with the issue of the three  
14 charges -- the three verdicts on three separate charges?

15 A. They were guilty, and the way it seems is that I have  
16 been charged with three bodies.

17 Q. All right.

18 A. With three deaths.

19 Q. All right. Concerning the issue of the change of  
20 venue what motion was made by your attorney in regards to  
21 that?

22 A. He did file a motion for change of venue. It was  
23 denied saying that I had to attempt to pull a fair jury.

24 Q. Okay. When did that occur?

25 A. It was sometime there in, I believe '09.

1 Q. Okay. So that was in 2009?

2 A. Yes.

3 Q. And was there ever any mention about the motion for  
4 change of venue at the time of your trial?

5 A. No.

6 Q. Okay. That motion was not renewed?

7 A. It was not.

8 Q. Okay. Did you believe -- what discussion did you  
9 have with Mr. Cox concerning the possibility that that was  
10 an appealable issue?

11 A. I wasn't advised of the appeal.

12 Q. Appeal, whether or not that was -- you could appeal  
13 the denial of the motion for change of venue?

14 A. Yes, sir.

15 Q. Okay. And as far as the appeal of your case in  
16 general after the trial of this case what conversation did  
17 you have with your attorney about the appeal?

18 A. He asked me if I wanted to appeal, and I told him no  
19 and that was within minutes of me being sentenced to  
20 S.C.D.C.

21 Q. Okay. So that was right there in the courtroom?

22 A. Right there in the courtroom.

23 Q. Okay. Right after you were sentenced?

24 A. Right after I was sentenced.

25 Q. Okay. Did you ever have any conversation with him

1 any time beyond that point?

2 A. No.

3 Q. Okay. And as far as your mental state at that point  
4 do you think you were in a position to make a conscious  
5 decision about your legal options?

6 A. No, sir.

7 Q. Okay. When you went to trial what issues came up  
8 concerning the jury when they actually did the jury  
9 selection?

10 A. We had one that was questioned, 'was he any kin to  
11 law enforcement', and he stood up and said his wife was  
12 kin to the Judge, the circuit judge. And he -- they asked  
13 for him to state her name. He did, and the Judge said he  
14 didn't know her. When we seated this jury, which was the  
15 12th juror, the Judge said he needed to clear something up  
16 on the record; that he jokingly said he didn't know the  
17 man's wife. And he was actually in fact married to his  
18 cousin.

19 Q. Okay. So that -- and what did your counsel do at  
20 that point in regards to that particular jury -- juror?

21 A. He did not object.

22 Q. Okay. Was there any motions made for that juror to  
23 be excused or be replaced?

24 A. The Judge did ask if there was a problem with it, and  
25 the State nor the Defense objected.

1 Q. Okay. Now, during the course of the trial -- well,  
2 let me back up just a minute. Prior to the trial where  
3 did you -- where did you spend the time prior to the trial  
4 of this case as far as between the time of this incident  
5 and the trial of the case?

6 A. I spent a year out on house arrest and then I was  
7 incarcerated from August until I went to trial in  
8 February.

9 Q. During that year on house arrest what information did  
10 you have from your lawyer that helped you prepare yourself  
11 or to prepare him for the trial of your case?

12 A. I didn't receive nothing but accident reports and  
13 insurance form papers.

14 Q. And prior to the trial of your case did you get the  
15 trial notebook from Mr. Cox?

16 A. We had a trial notebook.

17 Q. That was just his notebook that he prepared?

18 A. That was just his notebook that he prepared.

19 Q. Now, since you have had the benefit of seeing the  
20 State's Rule Five information -- you have been able to  
21 look at that at this point in time?

22 A. Yes, sir. When I received it here, August the 23rd  
23 or 24th I believe it is I signed for it at Lee County.  
24 I've been able to go through and find some issues that I  
25 would address at Court if I had had it prior to trial.

1 Q. And do you -- are you -- can you say in particular  
2 what any of those issues were that you could talk -- that  
3 you felt like it would have been beneficial for you to  
4 raise to your lawyer before the trial of the case?

5 A. Some of them was the 911 report where some had been  
6 dispatched. So I could have got a list of who it is if it  
7 is accurate. So the pictures at the time they were took  
8 was not accurate as it would have been when he says he got  
9 them.

10 Q. Okay. And the issue on your case was -- one of the  
11 issues was the weather at the time of the accident?

12 A. Was the weather.

13 Q. And possibly water on the road?

14 A. And possible water on the road.

15 Q. And so timing of when a photograph was supposedly  
16 been taken and when it may have actually been taken could  
17 have been a difference of how much the water showed up in  
18 the photograph?

19 A. Yes. Whether it was a wet road or a dry road.

20 Q. Okay. And you believe that that was an example of  
21 some things you were able to find in the State's Rule Five  
22 information that -- if you had had the benefit of before  
23 you would have been able to discuss that and possibly  
24 bring those issues out?

25 A. Yes.

1 Q. And do you think these issues would have been  
2 beneficial to your case to point out the fact that  
3 possible the photographs were taken at a later than the  
4 person was testifying that they were?

5 A. Yes, sir, I do.

6 Q. Do you know why that you didn't get any of the  
7 State's information that you're talking about prior to the  
8 case?

9 A. No, sir, I don't.

10 Q. Mr. Cox appointed by the Court or was he hired by?

11 A. No, sir, he was hired.

12 Q. Okay. As far as another issue that was involved was  
13 the decedent was -- he was a sheriff's deputy for  
14 Chesterfield County?

15 A. Yes, sir.

16 Q. And he was off duty at the time of this accident?

17 A. He was off duty.

18 Q. Okay. But there was evidence that showed that he had  
19 worked the night before?

20 A. That he worked the night before.

21 Q. How did your attorney handle questions concerning  
22 conflicts in his telephone records and the testimony of  
23 his wife concerning when he was sleeping? When he was  
24 resting?

25 A. He had only asked her if he had -- if he had another

1 cell phone that was other than his issued by the County  
2 and if Darrell had contacted him. There was outgoing  
3 phone calls when Miss Quick said he was supposedly  
4 sleeping on this County issued cell phone. There is also  
5 a call that was made at 1144 on the 23rd. It's placed  
6 last on it, and actually should have read 2344 or either  
7 been placed up after the ten o'clock call.

8 Q. So there was irregularity on that call?

9 A. There is some. It's a misprints or something on  
10 that.

11 Q. And do you think the differences between the fact  
12 that he was either -- one situation says he was asleep,  
13 and the other indicates that somebody was talking on his  
14 phone may have indicated that he didn't get the rest that  
15 they say he got?

16 A. Yes. That is correct.

17 Q. Okay. And this case was about an accident on the  
18 road driving in the rain?

19 A. Driving in the rain.

20 Q. Okay. Now, what witnesses did you want Mr -- want  
21 your attorney to call and ask questions that you felt like  
22 the questions that would have been helpful for you were  
23 not asked?

24 A. I had Mr. Duncan Lead that was employed for the State  
25 of South Carolina road crew I want to say about 20 years

1 to come testify how that part of the road holds water.

2 And when he arrived to the court house to testify Mr. Cox  
3 sent him home.

4 Q. And do you think that would have been beneficial to  
5 your case to establish the fact that that was a bad spot  
6 in the road that held?

7 A. That it held water.

8 Q. Okay. And do you believe that Mr. Lead was able to  
9 testify that based on his experience and -- that water  
10 stopped at that location?

11 A. Yes.

12 Q. And what was the other -- what other witness was not  
13 questioned in regards to the weather issue?

14 A. I would say that the E.M.S. response that was called  
15 out. The emergency people, you know, they ---

16 Q. The first responders?

17 A. One of the first responders. They could have  
18 testified because McBee Rescue actually declined a flight  
19 to air lift me out of there due to weather, and it is, you  
20 know, it's stated in the 911 report.

21 Q. Okay. And that was -- was that report something that  
22 you got after the fact or did you have that?

23 A. After the fact I got it.

24 Q. Okay. So they declined to air lift due to weather?

25 A. Yes, sir.

1 Q. At that time?

2 A. Yes.

3 Q. And how this accident ended up, what was made by your  
4 attorney concerning the fact that the decedent's vehicle  
5 actually ended up on your side of the road -- off the --  
6 on your side of the road?

7 A. We went to Court one day and Mr. Cox wanted to see  
8 the accident scene. And he followed me and my cousin to  
9 the scene and looked up the road and looked down the road,  
10 and he said that he believed that Mr. quick hydroplaned  
11 from looking at the road the way it was and knowing that  
12 he was running 66 miles per hour five seconds prior to  
13 impact.

14 Q. And how did you know that?

15 A. The trial notebook has that he had an A.M.C. airbag  
16 control modular in the vehicle.

17 Q. Okay. So that was on the deceased individual's  
18 vehicle that running?

19 A. Yes, that was on his Cadillac.

20 Q. Okay. And so water, obviously, hydroplaned, and the  
21 water on the road and the weather, those would have been  
22 issues that you would -- that you felt like could have  
23 been better presented to the jury?

24 A. Yes, sir. His car is completely off my side of the  
25 road, and my front tire is sitting on the yellow line with

1 the rear end over in his lane.

2 Q. Was there another weather related witness? Was there  
3 a Dr. Parker?

4 A. Yes, sir. Dr. Parker, he was supposed to be second  
5 on scene. And he testified to no water on the road, light  
6 rain, and Mr. Cox never did question him at trial.

7 Q. You say he testified. You mean he gave a statement  
8 about that?

9 A. He never questioned him after the State had  
10 questioned him.

11 Q. He didn't cross-examine him?

12 A. He didn't cross-examine him.

13 Q. And as far as your --- we've talked about the fact  
14 that there were your three charges, and that there was  
15 no -- was there ever any discussion with you about the  
16 fact that that could be moved to have any of those  
17 dismissed because they were lessor included offenses?

18 A. No.

19 Q. Okay. And how did you -- how did your attorney  
20 address the crossing the center line issue with Mr. Perry  
21 concerning the issue of why that could have happened?

22 A. That he was saying from the way the cars hit and they  
23 determined that from the weights of the vehicles and stuff  
24 and from the transport police records to what my truck  
25 weighs at the time the weights didn't seem accurate and

1 could have had something to do with it along with all the  
2 debris from the accident was put on the back of my truck.

3 Q. And then what about back at the time of the accident  
4 was there a statement made by you?

5 A. There was a statement made by me at the hospital to  
6 Trooper Leslie Davis. It was a video interview. I had  
7 admitted to drinking some beer, but at the time I was  
8 under the influence of narcotics for the pain that I was  
9 in.

10 Q. And were -- was that statement addressed at trial?

11 A. No. When Mr. Perry come to the house the day before  
12 I was arrested I was on pain medication then because I had  
13 been released from the injuries that I had sustained. I  
14 was on a pretty strong pain medicine.

15 Q. And as far as your statement, did they use that  
16 statement against you at trial?

17 A. Yes, sir, they did.

18 Q. They did?

19 A. They did.

20 Q. Okay. And was there ever any motion to suppress that  
21 statement?

22 A. No, sir.

23 Q. Okay. And what kind of injuries did you have at the  
24 time you gave that statement?

25 A. I had lacerations to the head -- front and back of

1 the head; cracked ribs, punctured lung, my ankle was  
2 crushed, and my femur was a compound fracture.

3 Q. And so those were the injuries that you sustained in  
4 the accident?

5 A. Yes, sir.

6 Q. And then the answers you gave to Trooper Davis were  
7 given while you were being treated for those injuries?

8 A. Yes.

9 Q. The day of the accident?

10 A. The night of the accident.

11 Q. The night of the accident?

12 A. Um hum.

13 Q. And that he was allowed to use that statement in  
14 Court?

15 A. Yes, sir.

16 Q. And there was no objection to move to suppress it or  
17 exclude or anything like that?

18 A. No, sir.

19 Q. Okay. Now, we've talked about a number of things.  
20 Is there anything that is relevant to your post conviction  
21 relief application that we have not discussed that you  
22 would like to be able to make sure the Court considers  
23 today?

24 A. That, you know, my Rule Five if I had had it I would  
25 have had Mr. Cox address a lot more questions.

1 Q. Okay. Is there anything else that you feel is  
2 important concerning the issue about the fact that you  
3 didn't -- based on the current situation you didn't grasp  
4 your decision not to appeal?

5 A. You know, if I would have been advised of the appeal  
6 a few days later and known that in the situation that I  
7 was in that they was things left in there that I could  
8 appeal on that I would have directly appealed.

9 Q. And do you feel that -- and when the jury was  
10 selected that the people were able to honestly respond  
11 that even though they may have been aware of the situation  
12 that they were able to make an impartial decision on the  
13 case?

14 A. I don't think they could -- you know, if they wanted  
15 to be on it I don't believe that they could have, you  
16 know, sit there and actually told the truth that they  
17 hadn't heard about this case with all the publicity that  
18 went through.

19 Q. You just think that would have over -- you just think  
20 that even the fact that it was a lot of awareness of it?

21 A. Just the fact that it was, you know, the law  
22 enforcement, and he was a County employee.

23 Q. Okay?

24 A. That it would have made a difference.

25 Q. All right. Okay. The State may have some questions

1 for you, and if you can answer those I may have some in  
2 follow up.

3 THE COURT: Thank you, Mr. McLeod. Mr. Johnson.

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q. Mr. Lambert, now you deny that you were intoxicated  
7 when this death occurred, is that right?

8 A. Sir.

9 Q. When this death occurred of this off duty officer at  
10 that time you denied that you were intoxicated?

11 A. No, I did not.

12 Q. Do you admit that you were intoxicated when this  
13 death occurred?

14 A. I admitted to him that I had drank some beer. I did  
15 not tell him that I was intoxicated.

16 Q. Okay. So but basically you denied that you were  
17 intoxicated then?

18 A. Yes, sir.

19 Q. And you still deny that you were intoxicated?

20 A. No, sir.

21 Q. Do you admit that you were in fact intoxicated at the  
22 time the death occurred?

23 A. Well, going by the report now, yes, sir.

24 Q. And the report said you had a blood alcohol level of,  
25 what? Do you remember?

1 A. .163.

2 Q. That is two times over the legal limit, is it not?

3 A. Yes, sir.

4 Q. All right. So you don't deny here today that when  
5 this death of the off duty officer occurred you were  
6 intoxicated with over two times the legal limit of alcohol  
7 in your blood?

8 A. I don't feel that I was intoxicated as far as not  
9 being able to drive the vehicle. I was over the legal  
10 limit.

11 Q. Yes, sir. Do you feel that you could safely drive a  
12 vehicle with .16 blood alcohol level?

13 A. Yes.

14 MR. McLEOD: I object to the line of questioning,  
15 Your Honor, as being irrelevant to the P.C.R. application.

16 THE COURT: Counsel?

17 MR. JOHNSON: We think it's very relevant, Your  
18 Honor, because it goes to his credibility. It goes to  
19 defenses that could have been raised and defenses that  
20 were raised.

21 THE COURT: I'll sustain the objection.

22 BY MR. JOHNSON:

23 Q. Now, at some point you alleged that you should have  
24 moved from the venue that you were at to a different  
25 venue; is that right?

1 A. Yes, sir.

2 Q. And what I'm confused about is that Mr. Cox made a  
3 motion for change of venue, didn't he?

4 A. He did make a motion, and it was denied.

5 Q. All right. What else could he have done here?

6 A. I believe he should have went to a higher court and  
7 asked for it saying that this particular case did involve  
8 a County official.

9 Q. How? You mean he should have appealed it?

10 A. Yes, sir.

11 Q. I thought I understood your testimony a minute ago to  
12 be that you told him not to appeal it?

13 A. I did not tell him not to appeal the motion for a  
14 change of venue. I did not even know I could even appeal  
15 that decision.

16 Q. But I just want to make sure I understand. When the  
17 case was over you told him that you did not want to  
18 appeal; is that true?

19 A. Yes, sir. Considering that I had just been sentenced  
20 to 22 years to the State of South Carolina. I was not in  
21 my right mind, and you know, this was within a few minutes  
22 of me being sentenced.

23 Q. Well, how does if you feel that you were not in your  
24 right mind how does this relate to the representation that  
25 Mr. Cox gave you?

1 A. You know, Mr. Cox could have said that he was going  
2 to get back with me and give me a few days to, you know,  
3 be able to make a decision because I never heard anything  
4 else from him after I told him not to file it. And I had  
5 ten days.

6 Q. Now, did you tell him, 'just give me a day or two and  
7 let me think about it'?

8 A. No, sir, I did not because, you know, I had just been  
9 sentenced to 22 years.

10 Q. Was there any question or was there any hesitation in  
11 what you said I'm not sure. I don't think I want to  
12 appeal. I'm not sure, but I'll say no now?

13 A. Actually, my words was, "I don't want to appeal it  
14 right now because -- I mean I don't want to appeal it  
15 because I ain't wanting to put the family back through  
16 this."

17 Q. Now, you say that perhaps he should have come back to  
18 you in a few days, but did you go to him a few days later  
19 and say, "I haven't changed my mind?"

20 A. I did not have any information to contact Mr. Cox.

21 Q. Did you tell anybody that, hey, I changed any mind.  
22 It's three days later. I want to appeal?

23 A. You know, in S.C.D.C. they don't, you know, give you  
24 an opportunity to be able to do that.

25 Q. Well, did you file -- they call it 'pro se notice of

1 intent to appeal'? One that you do yourself. Did you  
2 file anything yourself?

3 A. I did not know anything about it until I heard about  
4 the post-conviction relief.

5 Q. Now, when listening to your testimony just a minute  
6 ago I heard that you've been charged with -- you felt that  
7 you had been charged with three deaths. I tried to write  
8 down exactly what you said. I may have gotten it wrong,  
9 so tell me. "It seems like I've been charged with three  
10 deaths." Was that your testimony?

11 A. I had first said I had been charged with three  
12 bodies, three deaths.

13 Q. Okay. Again, I wonder how that relates to Mr. Cox.  
14 What did he have to do with that? He didn't bring the  
15 charges?

16 A. He, you know, if it comes to be the lessor included  
17 he could have objected to it.

18 Q. Well, as it stands these charges were run  
19 concurrently, weren't they?

20 A. They were.

21 Q. Now, one thing that you have to have to prove, as  
22 you're aware, is that you have been somehow prejudiced.  
23 These charges are funning concurrently. How is that  
24 prejudiced you?

25 A. I mean, it's three convictions, and being that you go

1 to a job and you know, the felony D.U.I. is one thing, but  
2 when you get to looking at the involuntary manslaughter  
3 and the reckless homicide you know, that is actually  
4 showing look like I actually killed somebody other than  
5 being in a motor vehicle in an accident.

6 Q. Another allegation that you made is, and again, I'm  
7 going through any notes so tell me if I've written  
8 something down wrong here. But regarding the jury it was  
9 a juror that you now take exception to, and I just want to  
10 know at the time did you have any strikes left that you  
11 could have used?

12 A. Yes, sir, we did.

13 Q. You had two strikes, didn't you?

14 A. We had one strike.

15 Q. You had one strike. All right. I'm going to go with  
16 that. Let's say you had one strike left. Did you say to  
17 Mr. Cox, 'we got to get rid of that juror. I want that  
18 juror stricken'?

19 A. I had actually missed it at that time.

20 Q. What do you mean?

21 A. That this juror was kin to the Judge.

22 Q. I don't understand that you missed it. Did you not  
23 hear what was said?

24 A. He asked me about it, did I want the juror to be on  
25 there, and I told him, yeah.

1 Q. But you could have said no, couldn't you?

2 A. You know, we had discussed this one and wrote it down  
3 and actually had wanted him on there if he got pulled  
4 for -- I believe it's because he had a prior D.U.I.

5 Q. And so you know where as a minute ago you testified  
6 that this person should be stricken. This was one of the  
7 jurors in planning, detail planning when you're looking at  
8 each juror, you and Mr. Cox said, "We want that guy,"  
9 didn't you?

10 A. Mr. Cox just said -- he would look at me and ask me  
11 if I wanted the juror, and I would tell him yes?

12 Q. But this is a person that has a past D.U.I, wasn't  
13 it?

14 A. Yes, sir. And we were actually saving our one strike  
15 for Ms. Belton that we actually did strike in the  
16 alternates.

17 Q. All right. Now, you and Mr. Cox visited this scene of  
18 the death before the trial, didn't you?

19 A. Yes, sir, we did.

20 Q. And in the context of going over the documents that  
21 he had in his notebook and other documents and your cousin  
22 physically traveled out to this scene to look at the spot;  
23 is that right?

24 A. With Mr. Cox, yes, sir.

25 Q. Now, there was some testimony about the water in the

1 road. There was water in the road, and you, as I  
2 understand it, you're arguing that you feel like -- the  
3 argument in your favor is that there was water in the road  
4 which may have contributed to the death and not the fact  
5 that you had a .16 blood alcohol level?

6 A. Correct.

7 Q. Okay. Now, even in the M.A.I.T. Report they admit  
8 that there was water in the road, don't they?

9 A. They said it was wet. They said no water.

10 Q. No, the M.A.I.T. Report, I think on Page 23, and let  
11 me check myself here. "Roadway was wet." You're correct.  
12 The roadway was wet. Now, what is the different in wet  
13 and having water in the road?

14 A. It's one thing for the road to be wet, but it's a  
15 difference for there to be standing water in that roadway  
16 in that low lying area.

17 Q. You also mentioned Dr. Parker who testified?

18 A. Yes, sir.

19 Q. Mr. Park -- Dr. Parker said -- well, tell me. Do you  
20 remember what his testimony was?

21 A. He said it was light rain, 30 to 50 feet visibility.

22 Q. Well, that's in your favor, isn't it?

23 A. No, because one of our witnesses testified to  
24 standing in the water while they cut me out of the truck.

25 Q. All right?

1 A. And Mr. Cox knew that we were going about the water  
2 because we had Mr. McElveen, which was third on the scene  
3 saying how hard -- you know, how long it took him to  
4 arrive and how hard it was raining when he got there.

5 Q. So, now, Dr. Parker testifying light rain, limited  
6 visibility. Is that true or not? Light rain, limited  
7 visibility?

8 A. Yes.

9 Q. That's what he testified?

10 A. Yes.

11 Q. If you can prove there was light rain and limited  
12 visibility is that not in your favor? That's in your  
13 favor?

14 A. I mean a light rain. It was a down pour. You know,  
15 I need standing water.

16 Q. I hear what you're -- I don't want to argue you or  
17 light rain or down pour. But any water on the road,  
18 wetness in the road would help you establish that there  
19 was some other cause of this accident? The conditions  
20 were somehow part of the cause, right?

21 A. Yes.

22 Q. So Dr. Parker actually helped you establish that to a  
23 certain degree, did he not?

24 A. A little. Yes.

25 Q. A little?

1 A. Yes, sir.

2 Q. A little?

3 A. Yes.

4 Q. So did the State's M.A.I.T. Report?

5 A. Right. No, I mean.

6 Q. All right. And so we're dealing with the condition  
7 of the roadway, and we're also dealing with your argument  
8 that perhaps the deceased victim may not have had  
9 sufficient sleep the night before?

10 A. Correct.

11 Q. All right. Well, I guess if you could establish that  
12 a hazard in the roadway and the officer's lack of sleep  
13 may have contributed how -- don't you think the jury would  
14 have found you not guilty?

15 MR. McLEOD: I object to the form of that question,  
16 Your Honor.

17 MR. JOHNSON: I don't understand the objection.  
18 Well, the form of the question?

19 MR. McLEOD: Well, I don't understand the question, I  
20 guess, is what I'm objecting to.

21 THE COURT: Restate the question.

22 MR. JOHNSON: Beg the Court's indulgence. Let me see  
23 if I can clarify the question.

24 BY MR. JOHNSON:

25 Q. Let me ask it a different way. If there was not

1 water in the road, no bad spot in the road as you  
2 testified to, and if the victim had enough sleep then  
3 would it still be your fault?

4 A. No, sir.

5 Q. Okay.

6 A. With the road being dry you would actually be able to  
7 see skid marks where I locked my truck up.

8 Q. All right.

9 A. My truck will slide on that wet road?

10 Q. Please answer any questions Your Honor or counsel may  
11 have for you.

12 THE COURT: Mr. McLeod.

13 REDIRECT EXAMINATION

14 BY MR. McLEOD:

15 Q. Mr. Lambert, just when you were sitting there and  
16 you'd just been sentenced and Mr. Cox asked you about the  
17 appeal did he ever say that denial of the motion for  
18 change of venue is a possible ground for an appeal? I can  
19 take it up on that issue. Did he ever say anything like  
20 that to you?

21 A. No, sir.

22 Q. And as far as drawing -- selecting your jury and all  
23 that is that something that you have done many times  
24 before?

25 A. No, sir.

1 Q. Okay. As a matter of fact have you ever done it  
2 before?

3 A. No, sir. This is the first time I've got in any  
4 serious trouble.

5 Q. And, of course, that's why you hired Mr. Cox because  
6 he, as an attorney, he's done it many times before?

7 A. Yes.

8 Q. So did you rely on his judgment at the time?

9 A. I relied on his judgment for the entire time from the  
10 day I hired him.

11 Q. And when you sat that juror the Judge had not  
12 clarified the fact that his wife was related to the juror's  
13 wife; is that my understanding?

14 A. That's correct.

15 Q. That came after that juror was seated?

16 A. After he was seated.

17 Q. Okay. And there was no motion to recuse the Judge or  
18 excuse the juror or any of those type of things made by  
19 Mr. Cox?

20 A. No, sir.

21 Q. Okay. And did he explain that if there is no motion  
22 the ruling by the Court that that issue is not saved for  
23 appeal or anything like that? Any discussion of that?

24 A. No, sir.

25 MR. McLEOD: Okay. All right. I don't have any

1 further questions, Your Honor.

2 THE COURT: Any recross?

3 MR. JOHNSON: No, sir.

4 THE COURT: Thank you. You may step down. --You may  
5 call your next witness.

6 MR. McLEOD: Excuse me, Your Honor, but I can't put  
7 my hand on something here. I will go ahead and call Mr.  
8 Cox, Your Honor.

9 THE COURT: All right.

10 JIM COX, after being duly sworn, testified as  
11 follows:

12 MR. McLEOD: And, Your Honor, of course, as this will  
13 be considered an adverse witness to my client, and my  
14 question is going to be, and I'm calling in my case I will  
15 reserve the right to question him as I'm crossing and  
16 examining him and not necessarily direct questioning.

17 THE COURT: All right. Go ahead.

18 DIRECT EXAMINATION

19 BY MR. McLEOD:

20 Q. Mr. Cox, now when you -- in preparing this case for  
21 trial you prepared a trial notebook?

22 A. I did.

23 Q. And then you shared that trial notebook with Mr.  
24 Lambert?

25 A. I did.

1 Q. Okay. But that trial notebook did not include all  
2 the contents of the State's Rule Five material; is that  
3 true?

4 A. That is true, but Mr. Lambert had the Rule Fives  
5 requests just as I received them prior to that notebook.

6 Q. How did he get those?

7 A. I gave them to him.

8 Q. Okay. And did you give them to him when he was at  
9 home ---

10 A. I can't remember.

11 Q. --- Under house arrest?

12 A. He was under house arrest, but if I may. Mr. Lambert  
13 was a good client from the defense standpoint because he  
14 was interested in every step of the case. He had numerous  
15 questions. Could not have had a better family supporting  
16 him, an extended family, cousins, people in the community,  
17 black and white, supporting Chad. And so I was constantly  
18 in touch with Chad, his mother, other members of the  
19 family, and his extended family.

20 And, so I cannot tell you exactly when, but I know  
21 within a day or two of me receiving the Rule Fives he was  
22 given a set. And I may have even given sets to other  
23 members, the portions they needed to work on.

24 Q. Okay. So you believe that you did share all the  
25 information you had with him in a timely manner?

1 A. I did.

2 Q. Okay. Now, you also -- you made a motion to change  
3 venue on this case?

4 A. I did.

5 Q. And you made that motion based on the fact that you  
6 didn't feel like you could get a fair trial?

7 A. Yes, and if I may. I support of that we talked to  
8 different individuals who gave us affidavits, and this was  
9 a time that -- and I shared with Chad that I thought that  
10 our motion would be denied. When the case came down the  
11 first thing that you've got to show is you can't get a  
12 fair trial in that county.

13 And we really never got strong evidence or testimony  
14 that we could not get a fair trial in Chesterfield County.

15 Q. And that motion was denied?

16 A. It was.

17 Q. But you didn't renew that -- that's based on --  
18 that's based on the fact that any problems could be cured  
19 during the jury voir dire?

20 A. That's part of it, yes, sir.

21 Q. Okay. And so at the jury voir dire you don't renew  
22 that motion? Have a ruling on it?

23 A. I probably didn't, but the jury voir dire took a good  
24 while to pick.

25 Q. And, of course, you're aware that if -- you've got

1 make a motion to have a ruling on before you do  
2 anything -- if you have an appeal -- to have an appeal?

3 A. Yes.

4 Q. Okay. So, of course, if somebody is being tried on a  
5 charge as serious as those facing Mr. Lambert it's  
6 important that you have every step documented so in case  
7 doesn't go favorably, as it didn't go favorably for Mr.  
8 Lambert, that you know, that those issues are preserved  
9 and may have been prejudicial towards him?

10 A. You know, I don't remember, but did I not make a  
11 motion before we actually started the testimony? I  
12 renewed all motions made before trial and made to be a  
13 part of the record. I didn't do that?

14 Q. No, I don't know. Maybe you did. I'm asking you if  
15 you did that.

16 A. That's what I normally do.

17 Q. Okay. But ---

18 A. But I may not have.

19 Q. Okay. But the reason you do that so you can appeal  
20 that unfavorable decision?

21 A. That's right.

22 Q. But you did not appeal for him based on him telling  
23 you right after he got sentenced that he don't think he  
24 wanted an appeal?

25 A. He told me that day that he did not want to appeal,

1 but that was not the only time it was discussed. He was  
2 sentenced on February the 12th 2010. I was on the way to  
3 Chesterfield to visit Chad one more time in jail, and they  
4 moved him. He had been moved to R and E. When I talked  
5 with Ms. Louella, his mother, she was upset about that.  
6 Upset that he was moved so quickly. And we talked on the  
7 phone that day. Again, I reminded him about appealing.

8 Q. You talked with Mr. Lambert?

9 A. No, the mother.

10 Q. Okay.

11 A. And -- but, she was not upset about that. She was  
12 not interested in appealing. She had some other concerns  
13 that she was upset that the Judge allowed Sam Parker, the  
14 Sheriff, to speak at the sentencing. And I tried to  
15 explain that's not unusual. He was the Sheriff, the chief  
16 law enforcement officer.

17 It was his deputy that was killed, so it was his  
18 normal calling there. She thought that some members of  
19 Chad's family should have spoken for him, and that would  
20 have made a difference. But I reminded her that Chad and  
21 I had talked. We didn't want to do anything to inflame  
22 the passions of the victim's family in the courtroom.

23 And he made that decision that that's what he should  
24 do. And he was very sincere. He apologized to the family  
25 in the courtroom. He apologized to Darryl Quick's wife,

1 Michelle. And she accepted his apology, and she stated it  
2 that she had forgiven Chad for the accident. So it was a  
3 very emotional time. I made sure Chad knew he had ten  
4 days to appeal. Let's do it. But -- and the fact that he  
5 had turned doing several chances on a plea. He was dead  
6 set on having a trial.

7 Q. And -- but you agree that it is a very emotional time  
8 and it would be hard for somebody to make a clear  
9 decision? And did you ever itemize the issues such as  
10 denial of the motion to change venue as being an issue  
11 that could be brought up on appeal?

12 A. I can't say that I -- I can say that I went down an  
13 appeal checklist, a checklist with Chad. I know I did not  
14 do that.

15 Q. Okay. All right. And as far as other issues such as  
16 the issue coming up after the fact about the Judge's  
17 relation to the juror's wife. Did you put a motion on the  
18 record of any nature in order to reserve that issue for  
19 appeal?

20 A. No. And sitting here listening to it cold in the  
21 courtroom you say, "Well, why didn't you do that." One,  
22 we wanted that person on the jury before that came up, and  
23 based upon the venire structure we were pretty well  
24 satisfied with the jury we got. And we did. We saved one  
25 strike for a particular juror that we -- that had -- that

1 we felt had stated vocally in the community comments that  
2 were very negative to our case.

3 Q. But if you -- and but -- but you weren't able to get  
4 her excluded if she had made negative comments about the  
5 case?

6 A. No. We saved a strike for her, and we did strike  
7 her.

8 Q. You struck her, but you didn't have her excluded  
9 based on those comments that you knew she made and not use  
10 a strike on someone like that?

11 A. She came up as an alternate.

12 Q. But you agree with me that if you don't make a motion  
13 even if the motion got denied then you can't bring it up  
14 later in appeal?

15 A. I'll agree with that.

16 Q. Okay. But you waived -- you're saying that you  
17 waived the fact that you really did want this juror  
18 despite the fact that you found out later he was related  
19 to the Judge, and you chose not to make a motion because  
20 you didn't want him to get dismissed?

21 A. And the fact that she was a distant relative of the  
22 Judge did not concern me as a defense attorney. And Chad,  
23 my client, wanted this woman on the jury cause he decided  
24 with each juror whether we took him or not. He had the  
25 same information I did, and the Judge was not going to

1 have any bearing on the testimony or was not going to  
2 imply any personal feelings he had towards the case.

3 Q. And you said something a minute ago that as a defense  
4 attorney you felt get like that was an issue, but at the  
5 same time an Appellate Court Judge may think that as an  
6 issue and may use that as an illustration of the fact that  
7 there should have been change of venue as a result of the  
8 fact that this case was so closely related to a County  
9 employee.

10 And then the elected sheriff having an opportunity to  
11 speak at the jury trial. I mean you would agree with me  
12 that anybody that's an elected official that serves in the  
13 courthouse can't serve on a jury?

14 A. Yes.

15 Q. You had someone with that much notoriety speak on  
16 behalf of the decedent? Is that not somehow prejudicial  
17 in nature?

18 A. What notoriety you talking about?

19 Q. Being the elected sheriff of the County?

20 A. Who is related to the sheriff.

21 Q. As far as him being -- would it not have been better  
22 if he had it at a different county so if you wanted the  
23 sheriff to speak that he would be speaking to a county  
24 that was not people who voted for him and not people he  
25 sheriffed everyday?

1 A. Certainly. And if you asked me would I have  
2 preferred to try the case in some other county? Yes, I  
3 would have.

4 Q. And that would have been a good ground of appeal, the  
5 fact that there was just a lot of -- that was not fair and  
6 impartial to Mr. Lambert to have that situation where you  
7 have that kind of contact with the jury under the status  
8 of somebody like the sheriff being able to speak directly  
9 to the jury's own behalf.

10 A. May I answer the question like this to me. Any good  
11 grounds on appeal to get you a reversal that's what you  
12 want, is a good ground. But at the time under case law I  
13 did not think we really had a strong case with change of  
14 venue.

15 And I really don't think Sheriff Sam Parker, who is  
16 an excellent sheriff. He treated Mr. Lambert and me and  
17 his whole staff with the utmost courtesy. And after the  
18 verdict was in I really don't think that had any bearing  
19 on the Judge's sentence.

20 Q. And I understand that you -- that you do make a  
21 decision based on what is appealable and what is not  
22 appealable, but don't you agree with me that you've got to  
23 have the issue there in order to make that decision later?  
24 You've got to be able to make that objection in order to  
25 make the decision of whether or not you're going to take

1 it up on those?

2 A. Yes. Yes.

3 Q. Okay. And as far as there being discrepancies  
4 concerning the fact that there was testimony that the  
5 decedent was asleep, but there was other evidence that  
6 showed that he was possibly talking on the phone at that  
7 time. Did that -- in your determination you didn't feel  
8 like that had any bearing on the case?

9 A. To the contrary. I thought that that had a bearing,  
10 and we had, from all telephone records, we had a timely  
11 time -- time schedule of each and every call to Chad and  
12 that Chad made starting at 3:11 a.m. in the morning all  
13 the way up to -- the last call was just a few minutes  
14 before the wreck.

15 We also had the telephone calls from the deputy  
16 sheriff. Two phones. His official phone and then a  
17 private phone. And there is no question in my mind that  
18 before that accident -- I can't tell you exactly before,  
19 that he was on the telephone. Not his official phone, but  
20 to telephone talk. Yes. That was important, and we  
21 stressed that, I thought.

22 Q. You are satisfied that you brought that out?

23 A. Yeah.

24 Q. When you did that ---

25 A. Of course, you know, when your client is found guilty

1 you always know that it might be something else you could  
2 have done.

3 Q. And it was on you -- you made the assessment that the  
4 case could potentially hinge on the fact that it was  
5 hydroplane situation?

6 A. Yes, sir. But let me state. When we went to the  
7 scene to visit the wreck I had already talked to numerous  
8 people who live in the area, drove that road every day.  
9 And one of those witnesses -- individuals came as a  
10 witness, and he testified about standing in water getting  
11 people out the truck. And the road had water standing on  
12 it.

13 I believe it was Dr. Perry that said when he arrived  
14 the road was wet, but he was not standing in water. Other  
15 testimony that there was water on the road. So I did not  
16 attack Dr. Perry on his testimony because that was his  
17 opinion for what he recalled. He was doctor that had a  
18 lot of respect in the community, and it was my trial  
19 strategy don't go after someone where you're going to have  
20 conflicting testimony. The jury is going to have to weigh  
21 that.

22 Q. But you didn't try to clarify the fact that he was  
23 just there later and identified light rain as opposed to  
24 people who were there sooner standing in water?

25 A. Well, if from the transcript, a person reading that

1 transcript, did not understand that point then, no, I  
2 didn't do a good job and the Solicitor didn't do a good  
3 job. But Chad and I thought when the case was over that  
4 we had show that there was water in the road. I thought  
5 that we had show that the accident happened on Chad's side  
6 of the road. The M.A.I.T. Team disagreed with that, but  
7 we were pretty confident that we done a good job there.

8 Q. And then so you felt like it wasn't necessary to call  
9 Duncan Lett who was a D.O.T. employee about the standing  
10 water? You felt like there was ample testimony of  
11 standing water in the road?

12 A. I really don't have an independent -- I know who  
13 Mr. Lett is. I know what his testimony is going to be,  
14 but I believe Chad said he arrived at the courtroom after  
15 testimony was in. I think. Im not sure, but Mr. George  
16 McElveen, who was an excellent witness, who lived and  
17 drove on that road he said the road was flooded and he was  
18 standing in water.

19 So maybe I -- if Mr. Lett had been there in time or  
20 may I should have stopped and brought him up there. But I  
21 thought that we had shown that. The case, in my opinion,  
22 of course, I could be wrong, turned on the fact that was  
23 he under the influence? Was he intoxicated at the time  
24 that accident happened? That's where we had the  
25 timelines, telephone calls, people he was talking to. And

1 the jury didn't believe us.

2 Q. Did -- and I -- no method was available to you to  
3 exclude any -- the blood alcohol content that the State's  
4 attorney mentioned?

5 A. No. And Chad was very honest when the officers came  
6 out and talked to him. And what he told them was the  
7 truth.

8 Q. And as far as that comments that he made while he  
9 was -- had a crushed ankle and all the other injuries he  
10 itemized and was on narcotic medication at the hospital  
11 the day of the accident; was there any motion by you to  
12 exclude that as not being voluntarily given or anything of  
13 that nature?

14 A. All the information I had on the statements, notes  
15 and summaries was what Chad said was true.

16 Q. But even the part -- anything that he would have said  
17 under those circumstances ultimately could have been  
18 viewed as not favorable; is that not correct?

19 A. Certainly, the fact the number of beers that he drank  
20 and the number of beers -- empty beer cans he had in or on  
21 the back of his truck we were able to get some that had  
22 been thrown out and not part of the accident letter. We  
23 were able to get those excluded. Sure.

24 Q. Okay. But as far as his statement of -- there was no  
25 motion made to preserve that as a possible issue on appeal

1 that that statement was in question because of the fact  
2 that he was severely injured at the time?

3 A. No, but he testified to that.

4 Q. Okay. And, of course, as an attorney it's your idea  
5 to give your story across as opposed to the State's story  
6 across, you agree with that?

7 A. Yes, sir.

8 Q. And even though that they may not have granted the  
9 motion it would have been an issue on appeal that could  
10 have been used later?

11 A. Yes. Yes, sir. I agree.

12 Q. Did you make any kind of motion to reserve your time  
13 for the appeal? You have ten days, is that right, to  
14 appeal?

15 A. No, I did not. When he was elected he said he did  
16 not appeal and that he was satisfied ---

17 Q. And ---

18 A. --- with my services.

19 Q. Even though the three charges -- he was convicted on  
20 all three charges and they were sentences to run  
21 concurrent would there be your -- would there be any  
22 benefit in your opinion, in your legal opinion, to move  
23 far I think the term is to arrest the judgments or what I  
24 call a directed verdict on the fact that those other two  
25 were lesser included offenses to the most serious ones.

1 And that just the fact that it wouldn't be on his record  
2 would that be anything that you could have done at the  
3 time to address those to set that up on appeal even if it  
4 wasn't granted?

5 A. No.

6 Q. No in the fact that you didn't make any type of  
7 motion like that?

8 A. No, I did not, and I'm not sure that motion would  
9 have been proper. But if that had been an appeal, if he  
10 had told me he wanted an appeal I would have filed the  
11 appeal for him. And I put him in touch with Appellate  
12 Defense and all appeals would have pressed on.

13 Q. You didn't make a motion to get ruled on?

14 A. I did not.

15 Q. Okay. All right. And I thank you for answering  
16 those questions, and if you will give me a moment I would  
17 like to be able to -- will there be any cross of Mr. Cox?

18 MR. JOHNSON: Just a little bit.

19 MR. McLEOD: Okay. Then I'll -- let me make sure I  
20 don't need anything before the cross starts.

21 THE COURT: Okay, sir.

22 BY MR. JOHNSON:

23 Q. I want to ask a few questions to start with about the  
24 venue?

25 THE COURT: I think Mr. McLeod was asking for a

1 moment.

2 MR. JOHNSON: Oh, I'm sorry.

3 THE COURT: Before he concluded. I'll see if he  
4 wants to ask another question. I think. That's what I  
5 think. Hold on one second.

6 BY MR. McLEOD:

7 Q. Mr. Cox, you did mention the fact that he had turned  
8 down -- Mr. Lambert had turned down a plea?

9 A. He did.

10 Q. Okay. And the plea was -- that the years that they  
11 were offering on the plea was not a lot different than  
12 maybe the maximum sentence, is that?

13 A. I disagree with that.

14 Q. All right. But there was some discussion about the  
15 possibility of a plea but y'all went to trial?

16 A. Mr. Lambert, I believe he stated -- I can pull the  
17 whole sentence. I can pull one day.

18 MR. McLEOD: Okay. I don't anything further at this  
19 time, Your Honor.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q. I'd like to ask you about the venue. Mr. Lambert  
24 was -- had family support and perhaps friends supporting  
25 him from this same county; is that right?

1 A. That's correct.

2 Q. Is it possible that in this same venue that it may  
3 have been beneficial for him depending on the outcome of  
4 the pulling the jury?

5 A. That is possible, but as his defense attorney I would  
6 have liked to have tried him in some other county.

7 Q. Did you make that attempt?

8 A. I did.

9 Q. It was not successful?

10 A. No, it was not.

11 Q. And I think you've even got affidavits in your  
12 attempt, too. Is that right that you said you got  
13 affidavits?

14 A. Yes, several from different segments of the community  
15 stating their opinion that Chad Lambert's trial, because  
16 of the death of a well thought of deputy sheriff who was  
17 also a minister, he could not get a fair trial in  
18 Chesterfield County.

19 Q. With regards to all of the testimony about appeal,  
20 appeal issues which really was quite a bit how important  
21 was it to you that he told you he didn't want an appeal?  
22 How important was that?

23 A. Well, that's the deciding factor. If he had said, "I  
24 need more time to think about it" I would have, if I  
25 hadn't heard from him, I would probably have gone ahead

1 and filed a notice of intent to appeal. But in my limited  
2 knowledge and wisdom I really didn't think we had any real  
3 grounds to appeal the verdict.

4 Q. So, now, if he had expressed some reservation and may  
5 have potentially wanted to appeal and said, 'let me think  
6 about it' you say you would have just filed the notice of  
7 intent to appeal?

8 A. I probably would have.

9 Q. Just to preserve his rights?

10 A. Yes.

11 Q. Now, you said something else I want clarification.  
12 He had told you before you had not just that one time when  
13 you were asking about appeals, but there were other times  
14 when the topic of appeal came up either beforehand or  
15 after. I'd like to ask you about that because I wasn't  
16 clear?

17 A. Well, you know, the day I was going on the 12th that  
18 I was going to see Mr. Lambert he was moved without notice  
19 to us or to the family to R&E. And Miss Lambert was upset  
20 about that, and we talked. And at no time was there ever  
21 any indicated to me that she had complaints; that Chad had  
22 indicated to her that he had complaints. He wanted to  
23 appeal.

24 Her complaints were about the sheriff speaking at the  
25 time of sentencing.

1 Q. His mother would have no doubt very many concerns and  
2 very many valid worries. And I think one of those was  
3 that the sheriff was allowed to speak. Did I hear you  
4 correctly?

5 A. Yes. And she was a very concerned and supportive  
6 mother.

7 Q. But you made sure that he knew that he had ten days?

8 A. Yes. In fact through the course of the trial I  
9 would -- we discussed as the case evolved I told him, "You  
10 know, if things go wrong, if things go south on us, this  
11 is what we've got to do."

12 Q. And in negotiations I think that there were  
13 opportunities for Mr. Lambert to deal with the State, to  
14 negotiate, perhaps enter a plea; is that right?

15 A. There was.

16 Q. And what did he -- did he tell you doing one day is  
17 as good as doing years? What was that?

18 A. Yeah. Yes. We were trying to get a -- well, as  
19 defense attorney I always leave the door open for my  
20 client to jump. Change his mind and keep my client  
21 advised of different information coming to me. And I was  
22 hoping that we could get a deal in the five or eight  
23 years. That would be just too good to turn down.

24 Q. What did he do?

25 A. Whatever. We were not able to. I think 12 years and

1 then they said if he will positively take eight we may  
2 consider it, and we never got there.

3 Q. What did he say we regard to eight years?

4 A. His position was I can serve the whole sentence as  
5 good as I can pull one day. He was right about that. I  
6 can understand it. And I would not want to go to jail  
7 either.

8 Q. All right. Now, when it came to jury selection. I  
9 tried to write down your exact words here. You said, "He  
10 decided with each juror whether we wanted them." Is that  
11 your testimony on direct?

12 A. Yes.

13 Q. Who decided with each juror whether we want them or  
14 not?

15 A. Yes. He had the same information I had on the jurors  
16 he had in front of him and that included, you know, we  
17 have our friends in the community to look at the jury list  
18 and tell us what they think on any given case. He -- and  
19 his family also provided input from family members and  
20 friends. We had that, all that information, down and we  
21 pretty well knew from that jury venire who we wanted on  
22 the jury, we definitely did not want on the jury, and then  
23 there are always those that you're not sure of.

24 So each and every juror that came out we had that  
25 discussion we had a mark by.

1 Q. And you were going through the questionnaires that  
2 the jurors fill out?

3 A. Yes. Yes.

4 Q. Knowing your trial strategy, I'm asking?

5 A. Yes.

6 Q. And you -- did you give Mr. Lambert an equal say in  
7 selecting those jurors.

8 A. Now, when I defend someone I always tell them what I  
9 think, but the defendant has the final say so on what way  
10 they feel towards that juror.

11 Q. Well, ask you about Mr. McElveen. Mr. McElveen  
12 testified that there was standing water in the roadway at  
13 the location where the victim died?

14 A. I talked to Mr. McElveen a number of times, and  
15 Defense Witness Number Two, George McElveen, testified to  
16 flooded road. Expected road to be flooded with that  
17 amount of rain. Road was flooded. He's a voluntary  
18 fireman and he took part in getting the seat belt off of  
19 Mr. Lambert as I recall.

20 Q. So you felt like you had provided to your degree that  
21 the road was in a flooded condition and the jury simply  
22 disagreed; is the right?

23 A. Yeah. Yes, and our third witness, I believe his name  
24 was, first name Howard, his testimony followed Mr.  
25 McElveen's. Standing water. He also -- he supported us

1 in some of the beer cans that they tried to get into the  
2 was litter just picked up. Not even close to the cars.  
3 Yeah. So we had it from more than one witness.

4 Q. You said something along these lines. I think it's  
5 very important. I tried to write it down as you said it  
6 verbatim. I'm going to read it back to you and ask you do  
7 I have it right. The case turned on the opinion whether  
8 he was intoxicated, and the jury didn't believe us; is  
9 that right?

10 A. Yes.

11 Q. So when we're talking about conditions in the roadway  
12 which you tried to prove were a causing factor and the  
13 lack of sleep by the victim which you tried to prove as a  
14 factor as well, you think that this case turned on the  
15 opinion of whether he was intoxicated or not?

16 A. Yes.

17 Q. And they just didn't believe you?

18 A. Yes.

19 Q. His blood alcohol level was what?

20 A. .163, I believe.

21 Q. And the jury heard this?

22 A. Yes.

23 Q. Now, with regard to the statement that he gave to the  
24 State Highway Patrol when he was in the hospital you  
25 indicated that you said what he said was the truth?

1 A. On my notes and what the officers said he said, yes.  
2 It was correct based upon what Mr. Lambert told me.

3 Q. Let me ask you this. Whose decision was it to go to  
4 trial, his or yours?

5 A. It's always the client's, Mr. Lambert.

6 Q. And in this case it was Mr. Lambert?

7 A. Yes, Mr. Lambert.

8 Q. Getting back to your statement that you felt that the  
9 turn on the opinion of whether he was intoxicated did your  
10 trial strategy revolve around whether or not this would be  
11 believed by the jury?

12 A. What we hoped to accomplish was at 5:25 p.m. he  
13 talked with Sherry Lawrence 27 minutes and 52 seconds. At  
14 6:08 p.m. Mr. Lambert called Dennis Byrd. Did not get  
15 him. That call took at 24 minutes, and within a matter of  
16 minutes thereafter the wreck happens. Tried to stress  
17 that if he was intoxicated that he couldn't be dialing  
18 those phones, driving and talking on the phone at the same  
19 time.

20 Also, the deputy had two phones. His official phone  
21 and his private phone. Said he had made phone calls on  
22 both of those phones as he approached that bridge.  
23 Deputy's speed prior was in the 60 miles per hour. The  
24 expert said that with the brakes on that Cadillac that it  
25 would steer properly. Even come to a stop on a wet road

1 and would not have left its lane of travel, you know.

2 So there was conflicting testimony or evidence that  
3 each side was trying to get in so.

4 Q. You were in the courtroom when he testified on my  
5 cross-examination?

6 A. Yes, sir.

7 Q. --- about the case. But blood alcohol level being  
8 .16?

9 A. Yes. I believe he said .163 if I recall. That was  
10 the official .163, I believe. Yeah.

11 Q. And as I heard the testimony that he felt he could  
12 drive with a blood alcohol level of .16?

13 A. Yes.

14 Q. Do you feel that -- is that what he relayed to you at  
15 the time of trial?

16 A. I don't remember him telling me that he could drive  
17 with a .163. His position was that he was not -- he was  
18 not intoxicated. The deputy came into his lane, and the  
19 accident happened in his lane and at no time was he in the  
20 other -- officer's lane only the M.A.I.T. Team took a  
21 different view.

22 Q. All right. Please answer any questions counsel may  
23 have for you.

24 REDIRECT EXAMINATION

25 BY MR. McLEOD:

1 Q. And, Mr. Cox, Mr. Lambert wasn't charged with D.U.I,  
2 was he?

3 A. No.

4 Q. And there is a difference between D.U.I. and felony  
5 D.U.I.?

6 A. Oh, yes, sir.

7 Q. Okay. And you just said that he said that he never  
8 crossed into the lane and that there was a cross-over  
9 accident?

10 A. That's right.

11 Q. So certainly he wouldn't plead guilty if those -- if  
12 that's what you said he said, and that's what he believed.  
13 He would certainly would -- well, you would never want him  
14 to plead guilty to any of these charges, is that true?

15 A. Not unless he felt like he needed to.

16 Q. Well, but I mean that's not -- none of -- his  
17 description of what happened doesn't fit any of those  
18 charges that were against him; is that true?

19 A. Presented the way you present it, yes, sir.

20 Q. Okay.

21 A. And I never tell a client -- I never told Chad  
22 Lambert he ought to plead guilty. I told him to weigh the  
23 evidence, think about it, I'd answer any questions he had.

24 Q. So to talk about the whether or not he would or  
25 wouldn't plead guilty, I mean the fact of the matter is he

1 told you that whether or not he had been drinking  
2 didn't -- was no bearing on the fact that the accident  
3 happened ---

4 A. In his opinion.

5 Q. In his opinion, that's right.

6 A. Okay..

7 Q. So, naturally, you wouldn't expect him to want to  
8 plead guilty to things that said otherwise. And these  
9 three charges say otherwise, is that not true?

10 A. They did.

11 Q. And, of course, one of your jobs as an attorney in a  
12 criminal matter, of course, is just to review --  
13 reasonable doubt is what the jury has to consider, is  
14 that?

15 A. Yes.

16 Q. So any information you can bring out that creates any  
17 type of reasonable doubt about the weather, about the  
18 cross over, about those factors, it's important to get  
19 those out; is that not true?

20 A. Yes.

21 Q. And in fact with regards to the cell phone issue you  
22 did ask Mrs. Quick about the cell phones.

23 MR. McLEOD: And I'm going to show you, if I may,  
24 Your Honor?

25 THE COURT: Yes.

1 BY MR. McLEOD:

2 Q. This is just your cross-examination of Mrs. Quick?

3 A. Yes, sir.

4 Q. She testified that he didn't -- she didn't know of  
5 any private cell phone other than the County cell phone?

6 A. But he did.

7 Q. Okay. But she said that he didn't have one?

8 A. That's right, she did.

9 Q. All right. And based on the gravity of the charges  
10 and the incident you believed that everything you could do  
11 as a defense attorney is to advance the position of your  
12 client?

13 A. That's what I'm supposed to do.

14 Q. Okay. All right. And that would include raising  
15 reasonable doubt wherever you can and making motions to  
16 protect the record. And in the event that you don't get a  
17 favorable verdict there is subject matter, there is matter  
18 there to appeal because you properly preserved it?

19 A. Yes.

20 Q. Okay. All right. And then not only do you have to  
21 properly preserve it you have to file the appeal and  
22 discuss that so that he can make a knowledgeable decision  
23 of whether to appeal or to waive the appeal, is that true?

24 A. Yes, sir.

25 Q. Okay. All right.

1 MR. McLEOD: Beg the Court's indulgence, Your Honor.

2 THE COURT: All right, sir.

3 BY MR. McLEOD:

4 Q. Did you say you saw the record on the second phone?

5 The private phone?

6 A. Somewhere we had the phone number and something  
7 indicated that he had that phone on him.

8 Q. At that time?

9 A. Yeah.

10 Q. But did you ever share that information with Mr.  
11 Lambert?

12 A. I know that we discussed it.

13 Q. But when you cross examined -- you didn't  
14 cross-examine that with Miss Quick, though, did you?

15 A. No. And the reason -- probably the reason I didn't  
16 is the number that was called was a lady that he was not  
17 married to.

18 Q. Okay. And so that you made that decision not to go  
19 into that?

20 A. Yes.

21 Q. Did you make that decision because you felt it was  
22 somehow going to backfire on your client or did you make  
23 that decision for other reasons?

24 A. I did not think, with the deputy's standing in the  
25 community, I did not think, unless we could positively

1 prove it, we should do anything that would inflame the  
2 passion against us.

3 MR. McLEOD: I don't have any other questions, Your  
4 Honor.

5 THE COURT: Any recross?

6 MR. JOHNSON: None, Your Honor.

7 THE COURT: Thank you, sir. You may step down, Mr.  
8 Cox.

9 THE WITNESS: Thank you, Your Honor.

10 MR. McLEOD: Beg your pardon, Your Honor, one moment.  
11 I don't have any kind of recross or anything like that,  
12 and we're not going to call any other witnesses, Your  
13 Honor. So that would be our case.

14 THE COURT: Okay. The Applicant rests. Mr. Johnson.

15 MR. JOHNSON: The State rests.

16 THE COURT: State rests. Brief argument? Anybody  
17 wish to make a short five minute argue or not?

18 MR. McLEOD: Well, I do, Your Honor. Do I go first?

19 THE COURT: I think you get to go first.

20 CLOSING STATEMENT BY MR. McLEOD

21 MR. McLEOD: Your Honor, I think as we allege in the  
22 application we do believe that there was a serious  
23 question about whether or not this Applicant, Mr. Lambert,  
24 could have actually made a conscious decision to waive his  
25 right to an appeal at the moment where he had just gotten

1 sentenced to a situation where he clearly felt like for  
2 whatever wrong he may have done he had not done that  
3 wrong.

4 And that that affected his constitutional right to  
5 appeal to be knowingly advised of an appeal. And I think  
6 that's an issue supported by case law and also just the --  
7 as far as the ineffective assistance counsel Mr. Lambert  
8 believes that he did not get this information that may  
9 have helped him with his defense and raise a reasonable  
10 doubt that we tried to touch on today about this kind of  
11 case where you do have a factual situation where there  
12 were just two people. One of them is deceased. Those  
13 were the only witnesses.

14 You've got a situation where there would be ample  
15 room for reasonable doubt, and then the issue of -- back  
16 to the issue of a motion for fair trial the circumstances  
17 surrounding -- we know he was a Sheriff's Department. He  
18 was also a preacher. The Sheriff spoke to the jury at  
19 some point. Even though on this local level it didn't  
20 seem to be -- I just think that if an appellant level saw  
21 that then they may believe that that was a change of venue  
22 issue.

23 And that would be something they would  
24 constitutionally have affected this outcome. So based on  
25 that information we are asking the Court to grant the post

1 conviction relief on those grounds as far as the not  
2 knowingly waiving his right to an appeal and the  
3 ineffective assistance of counsel in regards to raising  
4 the issues to be preserve for appeal.

5 And also we would ask the Court to consider the line  
6 of thinking that is addressed in case about the fact that  
7 and while the concept about the fact that if you are found  
8 guilty of a felony D.U.I. that being also found guilty of  
9 the lessor included offense of involuntary manslaughter  
10 and reckless homicide would be a situation where those  
11 verdicts could be set aside as under the double jeopardy  
12 concept.

13 And, Your Honor, we would just ask the Court to  
14 consider those matters.

15 THE COURT: All right. Thank you, Mr. McLeod. Mr.  
16 Johnson.

17 CLOSING STATEMENT BY MR. JOHNSON

18 MR. JOHNSON: Your Honor, this is a case where the  
19 lengthy of time and the amount of effort that we put into  
20 it the Applicant would not legally be entitled to  
21 post-conviction relief. So we're asking that the matter  
22 be dismissed. Let me explain what I mean. On the appeal  
23 issues in order for the Applicant to prevail on any of the  
24 error preservation or issue about didn't file my notice we  
25 would need the following: We would need the appeal that

1 had been filed with the Court of Appeals, and the Court of  
2 Appeals to say we can't address that issue because it was  
3 not preserved at trial. We don't get there because it is  
4 the Applicant himself who very clearly said I don't want  
5 an appeal.

6 Now, if the Applicant can say that I was so  
7 emotionally distraught that I need more than the ten days  
8 that the rules allow for, well, we would have a  
9 circumstance where never again would anybody be restricted  
10 to the ten days. Anybody could go outside. That's what  
11 the rule is there for. They give a defendant ten days.

12 And, Your Honor, you know that at this time when a  
13 defendant is waiting on a jury verdict, they're sitting in  
14 the courtroom, they're senses are never sharper at that  
15 moment when they are waiting to hear what the future  
16 holds. They are deciding consequences and possible  
17 contingencies. If this happens then I do this. If that  
18 happens then I'll do that.

19 So in other for there to be prejudice we would need  
20 that Court of Appeal opinion stating that we can't address  
21 this because it was nervous preserved, and we don't have  
22 that because it was a -- and I've never seen the case so  
23 clear where the Applicant said, "I do not want an appeal"  
24 even though it had been raised more than once and  
25 discussed more than once.

1           When we deal with a case like this, unfortunately,  
2 we -- I look back and I find that we spend our time,  
3 basically, retrying the case. We're dealing with -- we're  
4 rehashing all the issues that were defenses in this trial,  
5 but I want the Court to take note that never did the  
6 Applicant say, "Well, he failed to argue there was water  
7 in the road." We don't have that.

8           Mr. Lambert didn't say that he failed to argue that  
9 the victim was asleep. He did argue there was water in  
10 the road. He did argue that the victim was sleeping. He  
11 did all those things. He consulted with Mr. Lambert.  
12 They went over the jury list. They used trial strategy.  
13 I don't have this many cases where counsel has spent such  
14 a high degree of time and properly utilizing what I regard  
15 as effective trial strategy preparing defense of a matter  
16 such as this.

17           So we don't have a situation where Mr. Lambert can  
18 say it was a clear path for a not guilty verdict, and my  
19 lawyer didn't take it. We simply have the opposite where  
20 counsel pursued every possible way to plant the seed of  
21 doubt in the mind of the jurors; and as you heard Mr. Cox  
22 say, "The jury just didn't believe us."

23           I asked Mr. Lambert one very important question and I  
24 sat down. The question was, "if you had been able to  
25 prove that there was a error in the roadway, if there was

1 water in the roadway, that the victim hadn't had enough  
2 sleep would it still be your fault. And what did he say?  
3 "No, it wouldn't have been my fault." It's very  
4 unfortunate that we have a situation where, even though he  
5 had a blood alcohol level of .16, to this date still  
6 unable to find fault in himself.

7 Even though he gave an apology. Still can't say,  
8 "You know what? This is my fault." So we're asking that  
9 this case be dismissed.

10 DECISION OF THE COURT

11 THE COURT: All right. Thank you, Mr. Johnson.  
12 Mr. McLeod, I agree with the argument made by the Attorney  
13 General. I have, matter of fact, recently granted an  
14 Applicant a new trial because his attorney did not do the  
15 kind of job he could have done and to the prejudice of the  
16 Applicant. But I don't see anything in this case that can  
17 argue that something should have been done differently.

18 But I find in this case insufficient evidence and  
19 that the Applicant has failed to meet his burden of proof.  
20 On the issue of the duty to appeal, in the absence of  
21 extraordinary circumstances, and I find none in this case.  
22 I see the trial attorney has no duty to appeal  
23 particularly when his client tells him he does not want to  
24 appeal and told him why he did not want to appeal.

25 For all those reasons, Mr. McLeod, I feel compelled

1 to deny the application. Mr. Johnson, you prepare an  
2 order.

3 MR. JOHNSON: Yes, sir, Your Honor.

4 THE COURT: Court will be in recess for five minutes.

5 END OF TRANSCRIPT OF RECORD

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHESTERFIELD )  
 )  
 Michael Chad Lambert, 339270 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 11-CP-13-49

ORDER OF DISMISSAL

A True Copy Attest

*Faye L. Bell*

CLERK OF COURT C.P. & G.S.  
 CHESTERFIELD COUNTY, SC.

2013 FEB 25 AM 10 54  
 FAYE L. BELL  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, SC.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed February 4, 2011. The State made a timely Return. A hearing on the matter was convened at the Darlington County Courthouse on January 11, 2013. Applicant was present and represented by Andrew McLeod, Esquire. Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Office of the Attorney General represented the State.

Applicant testified on his own behalf at the hearing. His counsel, James C. Cox, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's trial, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the October 2008 term of General Sessions for felony driving under the influence (DUI), resulting in death (2008-GS-13-0787) and at the January 2010 term for reckless homicide (2009-GS-13-1118) and involuntary manslaughter (2009-GS-13-1119).

James C. Cox, Jr., Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On February 11, 2010 the Honorable Paul M. Burch sentenced the Applicant concurrent terms of twenty-two (22) years for felony DUI, resulting in death, ten (10) years for reckless homicide, and five (5) years for involuntary manslaughter. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel:
  - a. "Insificent counsiling."
  - b. "Things was brought to his attion and nothing done about it."
2. "Was not provided with a fair trial."
  - a. "The victim work for and lived in Chestfield County."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

#### Ineffective Assistance of Counsel and Involuntary Plea

The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under

#2 

prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). This Court will now address each allegation of ineffective assistance of counsel:

**Applicant's expectation of a lower sentence**

Applicant was a party to a fatal auto wreck where the other driver was killed. At the PCR hearing, Applicant denied that he was intoxicated at the time of the wreck and blamed standing water in the road, and that the deceased had not gotten enough sleep the night before the wreck.

Applicant's blood alcohol level was .16 at the time of the wreck as shown on page 23 of the MAIT report. Applicant voluntarily gave a statement to trooper Leslie Davis admitting to drinking alcohol, to which counsel did not object. It had been previously established that Applicant's blood alcohol level was .16, so the trial strategy of essentially allowing the testimony that Applicant had been drinking beer still allowed counsel to present an apparently truthful position with regard to the his drinking, and to argue other road conditions and the victim's condition were the real cause of the wreck, but the jury simply disagreed.

Applicant next alleges he could not have received a fair trial in Chesterfield County. Counsel testified he moved for change of venue, but it was denied. Counsel also obtained

#3 

affidavits from individuals in the community toward this effort and in support of his motion. Applicant did not allege any specific deficiency with counsel's attempt to change venue other than that the motion was unsuccessful. Applicant averred that the motion was not renewed but Counsel testified that in his experience, he could not meet the legal standard for changing venue, but also that in his trial strategy, the venue in Chesterfield may have actually worked and inured to the advantage of Applicant as he had significant contact there. Further, part of counsel's trial strategy was that any defect in venue could likely be cured by proper voir dire.

Applicant's contentions were argued at trial as part of his defense, but the jury simply disbelieved him. Applicant also alleged that as he was charged with Felony DUI resulting in death that he should not have been charged with reckless homicide and manslaughter roughly one month before trial, as he claimed these were lesser included offenses. Applicant's argument fails to show prejudice because all of his sentences were run concurrently, thereby causing him no prejudice. Applicant further alleged his dissatisfaction with his charges as "it seems I had been charge with three deaths." The court is not persuaded by this argument and Applicant has failed to show deficient performance by counsel or prejudice resulting from this claim. Counsel had no control over the indictments brought by the Solicitor, and counsel testified that he had to walk a fine line to put up a vigorous defense without appearing callous or inflaming passions in such a sensitive case.

Applicant further testified that he was offered an eight-year sentence of imprisonment and that he refused, because according to Applicant it would be just as difficult to serve eight years as it would be to serve one day.

Applicant also alleged counsel should have appealed his verdict and sentence. When questioned about this at his PCR hearing, Applicant candidly admitted he told his lawyer he did

#4

not wish to appeal. Counsel still advised Applicant he only had ten days in which to appeal. He argued at his PCR that because he had just been found guilty that he was not in the proper state of mind to make such a decision. This Court is not persuaded by such logic that would serve to expand the statutory time a defendant has to appeal a guilty verdict beyond the ten day period, and therefore this allegation is denied.

Applicant's claims now of defects in counsel's conduct of his trial are without prejudice because it was Applicant himself that was adamant that he did not wish to appeal. Therefore, no appeal was taken.

Counsel testified he went over discovery with Applicant, traveled to the scene of the wreck with Applicant and investigated potential defenses. Counsel diligently pursued all available defenses in the face of a difficult case resulting in the death of an innocent victim.

This Court finds that applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in order to proceed to trial. Counsel's defense of Applicant was well within the professional norms of competent representation. This Court further finds Counsel's testimony credible and gives it great weight. This Court finds Applicant's testimony to the contrary lacks credibility. Applicant still denied being intoxicated though admitting to a blood alcohol level of .16. Accordingly, Applicant's allegations are denied.

#### CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

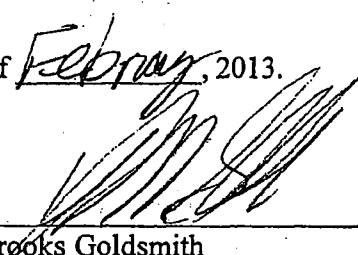
#5 

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

**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 13 day of February, 2013.

  
 \_\_\_\_\_  
 Brooks Goldsmith  
 Presiding Judge  
 4th Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS

2011-CP-13-0049

MICHAEL CHAD LAMBERT, 339270 )  
 )  
Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )

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

**Andrew F. McLeod, Esquire  
Harris, McLeod & Ruffner  
Post Office Drawer 1449  
Cheraw SC 29520**

DATED this 27th day of February, 2013.

*Judy A. Carey*  
\_\_\_\_\_  
Judy A. Carey, Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

ARREST WARRANT

K-073647

STATE OF SOUTH CAROLINA

County/  Municipality of Chesterfield

THE STATE against

Michael Chad Lambert

03905

Address:

29584/Orville A.L. 36767

Phone:

SSK

Sex: M Race: W Height: 508 Weight: 110

DL State: A.L. ni #. Agency ORI #: SC01399SP

DOB: Prosecuting Agency: any lawful officer

Prosecuting Officer: DUI Felony

Offense: Offense Code: 56-5-2945

Code/Ordinance Sec. 56-5-2945

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Michael Chad Lambert on 05-06-2008

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

586

STATE OF SOUTH CAROLINA  County/  Municipality of Chesterfield

AFFIDAVIT

SCHP Leslie Davis

Michael Chad Lambert

Personally appeared before me the affiant being duly sworn deposes and says that did within this county and state on State of South Carolina (or ordinance in the following particulars:

DESCRIPTION OF OFFENSE: Felony DUI

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 7-23-08, Michael Chad Lambert, while driving under the influence of Alcohol, crossed the center line of US Hwy 1, North of K McBee, SC in Chesterfield County, SC and when the victim, Darryl Quick, crossed the line in an attempt to take evasive action, the said Michael Chad Lambert veered his vehicle back to the center of the roadway striking the Cadillac driven by Darryl Quick head-on and causing fatal injuries to the said Darryl Quick.

Signature of Affiant

Jaye S. Sellers

CLERK OF COURT C.P. & G.S. CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA  County/  Municipality of Chesterfield

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

did violate the criminal laws of the State of South Carolina (or ordinance of ) as set forth below:

DESCRIPTION OF OFFENSE: DUI Felony

DUI Felony

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 05-06-2008

Signature of Issuing Judge: 115 Green St Chesterfield, SC 29709

ORIGINAL

WITNESSES

Leslie Davis  
SCHP

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:  
K073647

Arrested on August 06, 2008

ACTION OF GRAND JURY  
**TRUE BILLED**

OCT 21 2008

Foreman: Grand Jury

VERDICT

Foreman: Petit Jury

Date:

DOCKET #: 08GS13-0787

THE STATE OF SOUTH CAROLINA  
County of Chesterfield

COURT OF GENERAL SESSIONS

Term: October, 2008

THE STATE

vs:

Michael Lambert

INDICTMENT FOR

0395

FELONY DUI

56-5-2945 (A) (2)

**COPY**

STATE OF SOUTH CAROLINA )  
 )  
County of Chesterfield . )

INDICTMENT #08GS13-0787

At a Court of General Sessions, convened on October 27, 2008  
the Grand Jurors of Chesterfield County present upon their oath:

COUNT: FELONY DUI  
56-5-2945 (A) (2)

That Michael Lambert in the County of Chesterfield on or about July 23,  
2008, did drive a motor vehicle while under the influence of alcohol, drugs, or  
a combination of both, and did an act forbidden by law and/or neglected a duty  
imposed by law, to wit: did cross the center line of US Highway 1, North of  
McBee, S.C., and hit the Cadillac driven by Darryl Quick head-on causing fatal  
injury, which act and/or neglect proximately caused the death of Darryl Quick in  
violation of Section 56-5-2945(A) (2) of the South Carolina Code of Laws(1976),  
as amended.

Against the peace and dignity of the State, and contrary to the statute  
in such cases made and provided.

A True Copy Attest  
Jaye J. Sellers  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

SOLICITOR:

*[Handwritten signature]*

A True Copy Attest  
Jaye J. Sellers  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Chesterfield  
STATE VS.

Michael Lambert

AKA:

Race: 1 Sex: Age: 35

DOB: #:

Address:

City, State, Zip:

DL#: SID#:

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was TO: DUI / Felony driving under the influence, death results

INDICTMENT/CASE#: 08GS13-0787

A/W#: K073647

Date of Offense: 7/23/2008

S.C. Code §: 56-05-2945(A)(2)

CDR Code #: 0395

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

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.

WITNES: Redmond, Kernard E 066583 SC Bar# Defendant  
Attorney for Defendant 1431 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 22 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 16-25-68 (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 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk: Judge J. Bellows  
Court Reporter: 11-12

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: [Signature]  
Judge Code: 48  
Sentence Date: 7/11/2010

CLERK OF COURT C.P. & G.S. CHESTERFIELD COUNTY

True Copy Attest [Signature]

True Copy, Attest [Signature] CLERK OF COURT C.P. & G.S. CHESTERFIELD COUNTY SC

WITNESSES

LN Davis

S C Highway Patrol

Law Enforcement Case #:

*[Signature]* 583  
WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER  
CHE00369

ARRESTED ON: 2008-08-06

ACTION OF GRAND JURY

Grand Jury Foreperson *FD, Fede* (P)

Date Jan 11 2010

*Guilty* VERDICT

Petit Jury Foreperson *Ricky Jenkins*

Date 2-11-10

DOCKET NUMBER:  
2009-GS-13-1118

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:  
January 2010

THE STATE

vs.

Michael Lambert

INDICTMENT FOR

Homicide / Reckless Homicide, death results  
within one year

§56-05-2910  
A True Copy Attest  
CDR Code: 0135  
*Faye D. Sellers*

CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

A True Copy Attest  
*Faye D. Sellers*  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

INDICTMENT FOR

Homicide / Reckless Homicide, death results within  
one year

§56-05-2910

At a Court of General Sessions, convened on January 11, 2010, the Grand Jurors of  
Chesterfield County present upon their oath:

RECKLESS HOMICIDE

CDR: 0135 56-05-2910

That Michael Lambert did in Chesterfield County on or about July 23, 2008, drive a vehicle in  
reckless disregard of the safety of others, and that the death of Quick Darryl ensued as a proximate  
result of injury received by the defendant's driving of such vehicle, in violation of Section 56-05-  
2910, S. C. Code of Laws, 1976, as amended.

A True Copy Attest

*Faye J. Sellers*

CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

A True Copy Attest  
*Faye J. Sellers*  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*William B. Rogers*  
WILLIAM B. ROGERS, II  
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Chesterfield  
STATE VS.

INDICTMENT/CASE#: 2009-GS-13-1118

Michael Lambert

AW#: CHE00369

AKA:

Date of Offense: 7/23/2008

Race: 1 Sex: M Age: 35

S.C. Code §: 56-05-2910

DOB: SS#:

CDR Code #: 0135

Address:

City, State, Zip:

DL#: SID#:

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or  PLEADS

TO: Homicide / Reckless Homicide, death results within one Y, caused by injury from vehicle

in violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 0135.

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

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: [Signature] 066583 Defendant [Signature] 1431 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 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  
Total: \$ plus 20% fee: \$  
Payment Terms:  
 Set by SCDPPPS

PTUP \_\_\_\_\_ days/hours Public Service Employment

Obtain GED   
Attend Voc. Rehab. or Job Com.   
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: \_\_\_\_\_

Recipient:	
*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$100 \$ 25.00
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk [Signature]  
Court Reporter: [Signature]

Presiding Judge [Signature]  
Judge Code: 48  
Sentence Date: 2/11/2010

CLERK OF COURT C.P. & G.S. CHESTERFIELD COUNTY, SC

True Copy Attest

A True Copy Attest  
CLERK OF COURT C.P. & G.S. CHESTERFIELD COUNTY, SC

WITNESSES

LN Davis

S C Highway Patrol

Law Enforcement Case #:

583

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER  
CHE00370

ARRESTED ON: 0000-00-00

ACTION OF GRAND JURY

TRUE BILLED

JAN 11 2010

Grand Jury Foreperson

Date

VERDICT

COPY

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2009-GS-13-1119

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:  
January 2010

THE STATE

vs.

Michael Lambert

INDICTMENT FOR

Manslaughter / Involuntary manslaughter

§16-03-0060

CDR Code: 0218

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

INDICTMENT FOR

Manslaughter / Involuntary manslaughter

§16-03-0060

At a Court of General Sessions, convened on January 11, 2010, the Grand Jurors of Chesterfield County present upon their oath:

INVOLUNTARY MANSLAUGHTER

CDR: 0218 16-03-0060

That Michael Lambert did in Chesterfield County on or about July 23, 2008, unintentionally kill Darryl Quick, without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily injury, or while engaged in a lawful activity with reckless disregard for the safety of others, in violation of Section 16-03-0060, S. C. Code of Laws, 1976, as amended.

A True Copy Attest  
*Jaye J. Sellers*  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

A True Copy Attest  
*Jaye J. Sellers*  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*William B. Rogers, Jr.*  
WILLIAM B. ROGERS, JR.  
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Chesterfield
STATE VS.

INDICTMENT/CASE#: 2009-GS-13-1119

Michael Lambert

A/W#: CHE00370

AKA:
Race: 1 Sex: M Age: 35

Date of Offense: 7/23/2008
S.C. Code §: 16-03-0060

DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

CDR Code #: 0218

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was

SENTENCE SHEET

TO: Manslaughter / Involuntary manslaughter

CONVICTED OF or PLEADS

in violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Redmond, Kernard E SC Bar# 066583 Defendant
Attorney for Defendant SC Bar# 1431

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 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
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP

Table with columns for Recipient, \*Fine, and various assessment codes (e.g., § 14-1-206, § 14-1-211(A)(1), etc.) with corresponding dollar amounts.

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job
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 bc paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Judge L. E. ...
Court Reporter: ...

Presiding Judge: ...
Judge Code: 48
Sentence Date: 11/16/09

