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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post-Conviction Relief

Frank R. Addy, Jr., Presiding Judge

Case No.: 2014-000688

William C. Martin #332078 Appellant,

vs.

State of South Carolina Respondent.

APPENDIX
VOLUME II

TOMMY A. THOMAS
P.O. Box 88
Irmo, SC 29063
(803) 732-5507
ATTORNEY FOR APPELLANT

J. WALT WHITMIRE, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
ATTORNEY FOR RESPONDENT

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1 patient tolerated procedure well?

2 A That we were able to perform what we did and
3 had the result that we wanted.

4 Q And had no problems as a result of the
5 procedure?

6 A From the technical aspects of the procedure.

7 Q And as far as the patient tolerate procedure,
8 meaning they weren't having any problems after you
9 had completed?

10 A That doesn't mean -- it's mean that the
11 procedure itself was what we wanted to do. Doesn't
12 mean that they improved, they were 100 percent better
13 and they could go home. That's not what it means.

14 Q Do you know if it means in this particular
15 case that she was better after you performed the
16 surgery on July 29th?

17 A There were things that improved and things
18 that didn't improve.

19 Q Well how about on the surgery that was done on
20 July 30th, which was actually again you were the
21 surgeon. Again you list, patient tolerated the
22 procedure well. Now are you saying that your
23 procedure was well or that the patient?

24 A My procedure was well.

25 Q Why don't you say your procedure was well?

1 A Because that's the way I say it.

2 Q The patient tolerated the procedure well?

3 A That's way it's stated in the surgical
4 literature.

5 Q The surgery on August 6th of 2007, you were
6 copied that from -- you were present at the surgery
7 also. In that particular surgery you said, patient
8 tolerated the procedure well with no signs of
9 E-C-T-O-P-Y throughout the procedure. What is that?

10 A Let me see your sheet. Where are you seeing
11 that? That means she didn't have any irregular heart
12 rate when the catheter was changed.

13 Q Okay. Then there was a surgery on August the
14 6th in which the surgeon was actually Alexandro J.
15 Lewis, Lewis being the last name maybe, he was the
16 resident surgeon, attending surgeon was Jeffery
17 Brown. Are you familiar with that one?

18 A Show me. Let me see your sheet. All right.

19 Q Are you familiar with that surgery?

20 A I see it now. I wasn't present at the time in
21 which it was done.

22 Q You were copied that, weren't you?

23 A Yeah.

24 Q And this surgery when they do their dictation
25 at the end of their surgery report they type in here,

1 complications none.

2 Is that like patient tolerated procedure well?

3 A Correct. That she had no complications from
4 the procedure, from what we did.

5 Q Now there was a surgery on August 8th, 2007 in
6 which -- well, it indicates that the attending
7 physician was James E. Morrison?

8 A Yes, sir.

9 Q Is he a surgeon?

10 A Yes, sir.

11 Q Does he work in your group?

12 A Yes, sir.

13 Q Again, there was no known immediate
14 complications?

15 A Of the procedure, yes, sir. And if you look
16 on my sheet it says that the condition is still
17 guarded in the ICU. On the handwritten sheet, this
18 one.

19 Q Well I'm just going by --

20 A I'm just showing you here's another which
21 states that through the process that her overall
22 condition is still critical but yet --

23 Q Well, you should always be on guard after
24 surgery, should you not, doctor?

25 A I don't think that I'm on guard with surgery,

1 I'm saying her condition is guarded.

2 Q Right, which mean you pay attention?

3 A No, it means that's what her condition is.

4 Does not have anything to do with me, it says patient
5 condition, that's the way it's stated.

6 Q So when we reference patient tolerated things
7 well, we are referencing not the procedure but the
8 patient?

9 A The procedure.

10 Q Now on -- did you -- here is -- did you
11 perform any additional surgeries other than the ones
12 that I referenced?

13 A I think that's all the procedures that she
14 had.

15 Q Well look at July 29, 2007. That was an
16 operative procedure in which you were present at this
17 procedure?

18 A So can I ask a question? You are asking me
19 about the procedures going where? What I'm trying to
20 figure out what you want me to say, what you are
21 trying -- information you are trying to get from me.

22 Q I want you to answer my questions.

23 A I'm just asking a question.

24 Q That's all you have to do is answer the
25 question. You don't have to get inside my head or do

1 anything.

2 A I'm just trying to figure out what you are
3 asking me to lead me where.

4 Q Answer my questions. That's all I need.

5 And on that July 29th procedure, again you
6 wrote patient tolerated procedure well meaning the
7 procedure went well, correct?

8 A Correct.

9 Q Now did you talk to her family physician?

10 A Did I personally? I don't remember.

11 Q Well, with all of the consults and the
12 surgeries it's important to know, would it not be,
13 her previous medical history, right?

14 A Yes, sir.

15 Q So are you telling us you don't remember
16 talking to her family physician or you did not talk
17 to her?

18 A I said I don't remember. That was --

19 Q Do you show in your notes that you received
20 the medical reports from her previous family doctor?

21 A I don't have it written in here, the
22 information that I have in front of me.

23 Q Do you have in your medical report -- well,
24 okay. So if you don't have it written does that mean
25 you don't have it?

1 A That I don't -- that I did not do it or -- I'm
2 saying it was a year ago.

3 Q Either you didn't do it, don't have it?

4 A Normally we get information back from family
5 doctors. That's our standard operation that we
6 request that information.

7 Q And are you showing in your records that you
8 have that?

9 A I need the rest of the records. Can I have
10 the --

11 MR. STUMBO: We can go into that if he needs
12 to.

13 THE COURT: Please approach. No speaking
14 objection.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 THE COURT: Overruled.

18 Q (By Mr. Williams) So it's my understanding
19 that you don't have anything that indicates that you
20 actually received those documents from -- who was her
21 previous family physician?

22 A I don't remember.

23 Q Don't know?

24 A Don't remember.

25 Q Now I believe you testified that her prior

1 family history included the history of diabetes?

2 A Yes, sir.

3 Q Do you know what other ailments she had?

4 A Hypertension.

5 Q And what other? Did you note any other
6 ailments that she had?

7 A Previous surgeries performed, we have that
8 written in.

9 Q And which previous surgeries had she already
10 had done?

11 A She also had thyroid disease, she had a
12 hysterectomy and two knee replacements and the right
13 partadone (phonetic) syndrome.

14 Q What is the significance of thyroid disease?

15 A What's the significance of it?

16 Q In this particular case, is there a
17 significance of thyroid disease?

18 A In reference to?

19 Q Her condition when she presented. What does
20 thyroid disease do to you, I guess?

21 A You can have hyper or hypothyroid. Most folks
22 have hyperthyroid which means that you have an active
23 thyroid gland.

24 Q What does that do?

25 A In terms of blood pressure and those things,

1 not much. It's -- her thyroid function, as we noted,
2 did not -- was not contributory to her hypotension
3 and to her other injuries.

4 Q Were you aware that the family was concerned
5 about at least two episodes of overdose for her?

6 A Didn't have that.

7 Q Did they come to you and tell you that, that
8 they were concerned about too much drugs?

9 A You mean while she was in the hospital?

10 Q Yes.

11 A I don't remember that. I don't have that
12 documented.

13 Q How many types of infections did she develop
14 when she was in the hospital?

15 A She had a bloodstream infection with staph
16 aureus, methicillin sensitive. And she had a urinary
17 tract infection with E.coli.

18 Q Is that the same thing as MRSA?

19 A No.

20 Q What is the difference?

21 A MRSA is methicillin resistant. This is
22 sensitive.

23 Q All right. And your notes that you have
24 indicate that it was sensitive versus resistant,
25 right? Your notes from the hospital indicate that?

1 A Say that again.

2 Q Your notes indicate that it's sensitive but
3 not resistant; is that correct?

4 A Correct.

5 Q She obviously didn't have that before she came
6 in the hospital, did she?

7 A Not that I can make the diagnosis of, no, sir.

8 Q Did you -- there was nothing in her previous
9 medical records which would indicate that she had any
10 kind of infection before she came in there?

11 A Not that I have a history of.

12 Q But then you don't remember actually talking
13 to her doctor about that, right?

14 A I have talked to probably a thousand -- I've
15 had 2,000 patients since that time period so, no, I
16 don't remember specifically, sir.

17 Q Well why do you document medical records, to
18 help your memory? Is that it?

19 A To try to help us figure out how to take care
20 of a patient.

21 Q And you had no contact with her after she left
22 your facility?

23 A No, sir.

24 Q And when she left your facility she was not in
25 a life-threatening condition?

1 A Correct.

2 MR. WILLIAMS: No further questions.

3 THE COURT: Any redirect.

4 MR. STUMBO: Briefly, Your Honor.

5 THE COURT: You may proceed.

6 REDIRECT EXAMINATION

7 BY MR. STUMBO:

8 Q Dr. Bynoe, Mr. Williams talked about you
9 weren't there for every procedure. In a hospital
10 setting is it common for one doctor to be there the
11 entire time?

12 A No, sir, not in a trauma setting.

13 Q Trauma setting, do you work as a team?

14 A Yes, sir.

15 Q But as far as the first surgery that was done
16 on Ms. Stone when she came in, you were involved with
17 that?

18 A Correct.

19 Q And you were the one who dictated the transfer
20 summary when she was transferred, when she left,
21 right?

22 A Well, my team did.

23 Q So when it came to the team concept here
24 though you were the lead, were you the lead guy?

25 A Correct, sir.

1 Q Now this thing about the procedure being
2 tolerated well, I believe you've answered this, but
3 could a patient still be in critical condition after
4 they have tolerated a procedure?

5 A Yes, sir.

6 Q And Ms. Stone was in a critical to stable
7 range the entire time?

8 A Correct, sir.

9 Q And there was some questions about the past
10 medical history. You say it's a matter of course you
11 discuss or procedure you would discuss past medical
12 history?

13 A Correct. There is no way we can gather all of
14 that information. The family can tell us some, but
15 for the most part we try to either have the nurses
16 call, or we either have our residents call, someone
17 will call and gather the information to try and get
18 additional information about patient status. That's
19 kind of how it's done.

20 Q And you did have knowledge of the prior
21 diabetes, we talked about that already?

22 A Correct.

23 Q So you did look into her prior medical
24 histories?

25 A Correct, yes. We attempted to. We always try

1 to.

2 Q Even though Mr. Williams characterized you
3 saying that these injuries were not life-threatening
4 when she left your care, the injuries are still
5 present, correct?

6 A Correct. They were still -- they weren't
7 life-threatening as if she came through the door with
8 the injuries that were dying. She did not get
9 transferred in that manner. But she was transferred
10 to the hospital because they were ongoing issues that
11 needed to be addressed.

12 Q Were those injuries to an extent could have
13 become life-threatening again at any time?

14 A Yes, sir. At any given time.

15 Q So she still needed critical care?

16 A She still needed care, ongoing hospital care.

17 MR. STUMBO: No further questions, Your Honor.

18 MR. WILLIAMS: Just one question.

19 THE COURT: You may.

20 RECROSS-EXAMINATION

21 BY MR. WILLIAMS:

22 Q The last statement to you from the solicitor
23 was that she still needed ongoing critical care. And
24 your response was she still required care. Are we
25 dealing with semantics here?

1 A In which manner? I mean if I'm still in the
2 hospital that still as far as I'm concerned some form
3 of critical care. She is still on a breathing
4 machine which means that she's not off. If you're
5 off a breathing machine that's different. Any time
6 you're on a breathing machine, that's critical care.

7 Q So the use of the word -- use of the adjective
8 critical imports important care?

9 A Correct.

10 MR. WILLIAMS: That's all I have, Your Honor.

11 THE COURT: Anything further from the state?

12 MR. STUMBO: Nothing further.

13 THE COURT: Any objection to the witness being
14 excused from the state?

15 MR. STUMBO: No, ma'am.

16 THE COURT: From the defense?

17 MR. WILLIAMS: None from the defense.

18 THE COURT: Thank you, Doctor, you are
19 excused.

20 THE WITNESS: Yes, ma'am.

21 MR. STUMBO: Beg the Court's indulgence for
22 just a moment, Your Honor.

23 THE COURT: Yes.

24 You may call your next witness.

25 MR. STUMBO: Your Honor, state has no more

1 witnesses.

2 THE COURT: Does the state rest?

3 MR. STUMBO: Your Honor, at this time I'm
4 waiting at any time for my investigator to return
5 with a certified copy of a document that I'd like to
6 admit without a witness. I have no more witnesses
7 though.

8 THE COURT: Please approach.

9 MR. STUMBO: Yes, ma'am.

10 (Whereupon, a discussion was held at the bench
11 off the record.)

12 THE COURT: Is there anything further from the
13 state?

14 MR. STUMBO: State rests, Your Honor.

15 THE COURT: And the other document will remain
16 under advisement. I will deal with that at another
17 time.

18 Madam Forelady, ladies and gentlemen, the
19 state has rested their case. I have a matter of law.
20 I need to take up with the attorneys. It will
21 probably take about five minutes, but our break will
22 probably be until 11:15.

23 I have a separate administrative matter that I
24 need to deal with that has absolutely nothing to do
25 with this case, it's probably going to take me ten

1 minutes. I appreciate your indulgence while we take
2 care of that.

3 We will resume probably take us until 11:00 to
4 deal with this and then I need 10 minutes to deal
5 with the other matter and then we'll resume. It will
6 probably be right around 11:15.

7 So if any of you would like to walk around, if
8 you'd like to go outside to smoke or otherwise, let
9 the bailiff know and I'll give you all permission to
10 go ahead and go outside. It's cold but at least it's
11 fresh air if you'd like it.

12 Please leave your notepads in your seats.
13 Please don't discuss the case during the break.

14 (Whereupon, the jurors exit the courtroom.)

15 THE COURT: Are there any motions?

16 Now is the state has rested. Are there any
17 motions?

18 MR. WILLIAMS: Defendant has a motion, Your
19 Honor.

20 THE COURT: Yes, you may proceed.

21 MR. WILLIAMS: Your Honor, we would move for a
22 directed verdict of not guilty. Well, let me mention
23 this first, if we could, Your Honor. When we were
24 actually objecting to the felony, this goes really to
25 the introduction of the blood. I think prior to

1 trial we mentioned that there were several items that
2 we would object to. During the trial we basically
3 argued or objected to foundation.

4 Your Honor, you have been trying cases so long
5 you knew what we were arguing, but if I can state
6 those specifically for the record.

7 THE COURT: Well, you had to argue that at the
8 time of the contemporaneous objection. You did not
9 argue for the suppression of the blood evidence. You
10 made other contemporaneous objections which I ruled
11 on. But I'm not now going to go back in hindsight
12 and re-argue and rule on those.

13 Any contemporaneous objections you've made
14 have been preserved for the record. But you did not
15 ask for any in-camera hearing for suppression of the
16 blood evidence.

17 MR. WILLIAMS: Your Honor, as I recall prior
18 to the trial of the case both the solicitor and I
19 approached the bench.

20 THE COURT: You did, but neither of you asked
21 for an in-camera hearing. Neither of you -- I
22 assumed that you had a change in strategy at some
23 point because nobody requested it. You made other
24 contemporaneous objections, but no one requested an
25 in-camera hearing on the admission of blood evidence.

1 I don't know that it really matters, because
2 the case law is really against the proposition in any
3 event. Under the statute he is required to take a
4 blood test or any other test. He cannot refuse it in
5 a felony DUI.

6 MR. WILLIAMS: I understand the court's ruling
7 and my only other argument had to do with the other
8 blood.

9 THE COURT: Well now you have a factual issue
10 as to whether he lost it, whether they did something
11 with it. I think that is something evidentiary you
12 all can argue. I don't know what sort of motion you
13 would have been able to argue to suppress based on
14 that. There is case law from the Supreme Court that
15 indicates no independent right is created by that
16 statute.

17 But while you have the right to have it
18 tested, it does not give you extra due process rights
19 for the suppression of the blood evidence.

20 So, based on my research I would not have
21 suppressed the blood in any event. And that is very
22 clearly supported by 56-5-29-33, as well as State
23 versus Mave, M-A-V-E, I hope I pronounced that right,
24 as well as State versus Cueves, C-U-E-V-E-S stands
25 for the proposition under 26-5-29-46 you cannot

1 refuse the test.

2 So I don't know under really -- I don't know
3 that it's here nor there, it certainly hasn't
4 prejudiced your client. I think there are certainly
5 factual issues that exist and you all will both be
6 free to argue those. I'm certain that you will argue
7 that your client was never given his blood, they're
8 going to argue that he was and that he, like
9 everything else, refused it. So it becomes a factual
10 issue.

11 But certainly he has the right to request an
12 additional test, he has the right to have one, but
13 that's not going to form a basis to have the evidence
14 suppressed.

15 Certainly the state has proved more than
16 adequately the chain of the blood. I'm sure you'll
17 argue about whether it was refrigerated or not, those
18 are all factual issues. That doesn't form the basis
19 of it being excluded. But no one asked for an
20 in-camera hearing regarding that. We did have a
21 small in-camera hearing before the analyst, forensic
22 analyst from SLED testify. But I assumed that there
23 was some change in theory so I didn't -- but any
24 contemporaneous objections you made certainly have
25 been preserved for the record.

1 MR. WILLIAMS: We would move for directed
2 verdict of not guilty on the indictment in that as I
3 understand 56-5-29-55 states that the person who is
4 under the influence and driving the vehicle does an
5 act forbidden by law or neglects a duty, and that
6 that proximately causes -- since we are dealing with
7 the death, at least he was indicted under the death
8 -- that that would proximately cause the death, the
9 evidence that has been presented in this case
10 indicates that the victim was in the hospital for
11 approximately two and a half months. And that the
12 final cause of her death was, this is -- I don't know
13 mean for this to sound so badly -- was the patient
14 taking herself off the ventilator.

15 We would move underneath that statute that
16 there be a directed verdict of not guilty in regards
17 to this particular charge, and that is that his
18 felony DUI resulting in death. Arguably they have
19 provided sufficient evidence that he might be guilty
20 of felony DUI great bodily injury. And we would also
21 argue that taking the evidence in the light most
22 favorable to the state as a whole would be
23 insufficient for proving the directed verdict of to
24 prove that he is guilty of felony DUI death resulting
25 in death.

1 THE COURT: Is that the full extent of your
2 argument on the directed verdict?

3 MR. WILLIAMS: It is.

4 THE COURT: Okay. Would the state like to
5 respond?

6 MR. STUMBO: Just briefly, Your Honor. Dr.
7 Love's testimony yesterday that in terms of not
8 getting back on the ventilator called his opinion
9 beyond a reasonable -- to a degree of medical
10 certainty would have prolonged her agony had she
11 gotten back on the ventilator. So I certainly don't
12 believe that the issue that Mr. Williams raises in
13 any way distorts proximate cause.

14 I believe we put sufficient evidence up for us
15 to go to the jury. It's an issue of fact at this
16 time from the proximate cause issue. We put three
17 medical doctors up who link the chain from the time
18 she came into the ER on the night of the accident
19 until the day she died. The injuries sustained in
20 the accident were ultimately the cause of her death,
21 her demise. That's all the state has, Your Honor.

22 THE COURT: Anything further, Mr. Williams?

23 MR. WILLIAMS: Your Honor, I incorporated in
24 that motion that the evidence as a whole, so it's for
25 a directed verdict of not guilty on the indictment,

1 but I've incorporated specifically the facts in
2 regards to the causation of death as well as the
3 evidence as a whole. So in other words, I just want
4 to make sure that's clear. Nothing further.

5 THE COURT: In viewing the evidence in the
6 light most favorable to the state, which is what the
7 court is required to do, the Court is concerned on
8 directed verdict with the existence or nonexistence
9 of evidence and not its weight.

10 In addition, the Court is required to allow
11 the matter to go to the jury if there is direct
12 evidence or substantial circumstantial evidence
13 reasonably tending to prove the guilt of the accused.
14 Certainly there is abundant proof in the record
15 regarding the guilt of this defendant based on that
16 standard.

17 Again, the Court is not concerned with the
18 weight of the evidence, only concerned with the
19 existence or nonexistence of evidence.

20 And the case law is very clear, a motion
21 should be granted if the evidence merely raises a
22 suspicion of the defendant's guilt, however if the
23 state presents any evidence which reasonably tends to
24 prove the defendant's guilt, or for which the
25 defendant's guilt could be fairly and logically

1 deduced the case must go to the jury.

2 The focus of the defendant's argument on
3 directed verdict is that there is a lack of proof of
4 proximate cause. In order to prove felony driving
5 under the influence pursuant to code section
6 56-5-29-45 the state must prove several things beyond
7 a reasonable doubt.

8 They must prove that the defendant drove a
9 vehicle while under the influence of alcohol and/or
10 drugs; there is direct and substantial circumstantial
11 evidence in the record reasonably tending to prove
12 that element.

13 That the defendant was driving; there is
14 sufficient evidence in the record to support that
15 element.

16 The state must also prove beyond a reasonable
17 doubt that the defendant was sufficiently under the
18 influence to impair his ability to drive with
19 reasonable care, with due regard for others and
20 himself, or as a reasonably prudent person would
21 drive. It is not necessary for them to show that he
22 was helpless, passed out or even intoxicated. And
23 there is direct as well as substantial circumstantial
24 evidence reasonably tending to prove that element.

25 Next is the state must prove beyond a

1 reasonable doubt that while driving the defendant did
2 an act forbidden by law or neglected a duty imposed.
3 And that would be -- I would assume the state would
4 be advocating that that is driving under the
5 influence statute which is what the Court would
6 charge.

7 There are also other duties that I would
8 charge -- I have to think about that, those are kind
9 of in a civil context being a duty for proper
10 lookout, duty to keep your vehicle under the control.
11 But there are certainly direct as well as substantial
12 circumstantial evidence proving all those of
13 elements; taking into account the presumption, based
14 on the blood-alcohol level, as well as the THC that
15 was found that has been testified to regarding it
16 being in the defendant's system.

17 So that element has been met. The last thing
18 the state must prove beyond a reasonable doubt is
19 that the act or neglect of the defendant proximately
20 caused great bodily injury or death to another
21 person. And there is direct as well as substantial
22 circumstantial evidence in the record reasonably
23 tending to prove that element. We have three doctors
24 who testified that the proximate cause of this death
25 was this accident.

1. It started a chain of events. As we know
2 proximate cause is not the only cause, it can be one
3 of conferring causes, it only has to be the direct
4 cause. So while you are arguing that these things,
5 then that's something for you to argue to the jury,
6 it's a factual issues.

7 But there is more than substantial direct
8 evidence, direct and substantial circumstantial
9 evidence in the record that while she may have been
10 diabetic, she certainly was not going to die within
11 two months of this accident without this accident
12 having happened. That this accident was the trigger
13 that caused the downward spiral in her health. All
14 three of the doctors testified that she had what is
15 called a floating rib, that she was bleeding
16 internally and bleeding a great amount in her lungs.

17 And that certainly there is evidence in the
18 record that that did not occur until this accident
19 happened. And that the ventilator, while there could
20 be some argument that she could have survived, Dr.
21 Bynoe testified she could not have survived without
22 the ventilator, it was basically breathing for her.
23 And that is why they did the tracheotomy, or I forget
24 the term he used, but basically where they place that
25 permanent trach tube in her throat to help her

1 breath, and that without it she could not breathe.

2 And that eventually with it, as well as the
3 catheter and other things, she was inevitably going
4 to die as a result of some infection or another
5 caused by these implements.

6 I think there are certain substantial
7 circumstantial evidence as well as direct evidence
8 provided by the doctors to a degree of medical
9 certainty that the proximate cause of this victim's
10 death was this accident.

11 So based on the standard, which is viewing the
12 evidence in the light most favorable to that state,
13 again reenforcing it's not for the Court to act as
14 fact-finder, it's not for me to weigh evidence, it is
15 only for me in a gatekeeper function to determine
16 whether there is direct evidence or substantial
17 circumstantial evidence in the record reasonably
18 tending to prove the defendant's guilt.

19 And there is certainly that in this record
20 therefore the motion is denied.

21 Sir, if you would stand for me please and
22 raise your right hand to be sworn.

23 (Whereupon, the Court placed the defendant
24 under oath.)

25 THE COURT: You can put your right hand down.

1 sir, please state your name for the record.

2 THE DEFENDANT: William Conrad Martin.

3 THE COURT: Mr. Martin, we have now reached
4 the stage of the trial where you may decide to
5 testify or decide not to testify. But I'm going to
6 explain to you certain of your rights.

7 If you do not understand anything that I say,
8 please let me know. If you need me to repeat
9 anything please let me know. Or if you need me to
10 explain anything in more detail to you let me know.
11 Do you understand?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Sir, as I have indicated we have
14 now reached the stage of the trial where you may
15 present your defense. You have the right to claim
16 the protections given to you by the Fifth Amendment
17 to the constitution of the United States.

18 This Amendment states in part that no person
19 shall be compelled in any criminal case to be a
20 witness against himself. This means that you cannot
21 be required to testify in this case. You have the
22 right to testify on your own behalf, however no one
23 can make you testify. It is a personal right. And
24 no one can waive this right except you.

25 If you decide to testify you will be subject

1 to the same rules that govern other witnesses, and
2 you may be examined and cross-examined on any
3 relevant issue in this case. In addition if you have
4 any convictions involving dishonesty or false
5 statement or for crimes punishable by imprisonment
6 for more than one year and this Court determines that
7 the probative value of admitting this evidence
8 outweighs its prejudicial affect to you, the
9 solicitor will be able to introduce your record to
10 attack your credibility.

11 However, based on discussions with your lawyer
12 and with the solicitor it is my understanding that
13 the state will not be seeking to introduce any
14 records to impeach your credibility; is that correct?

15 MR. STUMBO: That's correct, Your Honor.

16 THE COURT: Sir, if you decide to testify this
17 decision on your part must be made freely,
18 voluntarily and intelligently, with knowledge of the
19 protections given to you by the Fifth Amendment and
20 the consequences of your decision to testify.

21 If you decide not to testify I will instruct
22 the jury that they cannot give the fact that you did
23 not testify any consideration whatsoever. As a
24 matter of fact I will instruct them that they cannot
25 discuss it, that you have no burden of proof in this

1 case, that it is the state's burden to prove each and
2 every element of the offense beyond a reasonable
3 doubt, and you have the right to say absolutely
4 nothing. And that the fact that you did not testify
5 cannot be discussed in any manner whatsoever during
6 jury deliberations.

7 Sir, it is left entirely up to you whether or
8 not you testify. You may talk with your attorney,
9 your family members or friends or anyone else. But
10 the final decision will be left entirely up to you.

11 Do you understand, sir, your rights as I have
12 just explained them to you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you need to ask me about
15 anything that we have been over?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Have you discussed with your
18 lawyer whether you should or should not testify?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Sir, do you need to talk to him
21 some more at this time?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. I'm going to give you a few
24 minutes to talk to him while I take care of this
25 other matter, and then we will resume questioning of

1 the defendant regarding his right to testify. We
2 will be at ease for about 10 minutes.

3 (Whereupon, a recess was taken.)

4 THE COURT: Sir, please stand. Have you had
5 enough time to discuss whether you should or should
6 not testify with your attorney?

7 THE DEFENDANT: I have.

8 THE COURT: And, sir, do you wish to testify?

9 THE DEFENDANT: No, ma'am, I don't.

10 THE COURT: Okay. So that means the defense
11 will rest; is that correct?

12 MR. WILLIAMS: That's correct, Your Honor.

13 THE COURT: And, sir, you can take your seat.
14 I assume then that you would want last argument?

15 MR. WILLIAMS: I would, Your Honor. I would
16 renew motions that would normally be made had I
17 presented the case.

18 THE COURT: Absolutely. Are you all ready to
19 begin closing argument?

20 MR. STUMBO: Just if I could have five minutes
21 to set up my laptop. I'm going to do a power-point.

22 THE COURT: Do you all mind if we do a quick
23 charge conference?

24 MR. STUMBO: That will be fine. Would you
25 like to do that on the record, Your Honor?

1 THE COURT: Absolutely, I'm going to do that
2 right now.

3 I will give the jury a general charge
4 regarding their responsibility and my responsibility,
5 how they are to judge witness credibility and
6 believability.

7 I will instruct them that the prior record of
8 a witness can only be considered for them by them on
9 the issue of a person's credibility. I will instruct
10 them regarding expert witness testimony, how they are
11 to judge that.

12 I will then give them an instruction regarding
13 direct and circumstantial evidence from State versus
14 Raton (phonetic). I will then give an instruction
15 regarding any statements made by the defendant which
16 is basically how they are to judge it based on
17 whether he was Mirandized, et cetera. And whether
18 the statement was voluntary.

19 I will then instruct them that the charge and
20 the arrest and the indictment are not evidence. The
21 charge regarding the presumption of innocence. I
22 will then charge Victor vs Nebraska as regards
23 reasonable doubt.

24 MR. STUMBO: Victor v Nebraska, Your Honor,
25 firmly convinced language?

1 THE COURT: (Affirmative head shake.)

2 MR. STUMBO: Thank you.

3 THE COURT: You're welcome. And after
4 presumption of innocence I will charge regarding the
5 defendant not testifying. In other words, that is
6 his absolute right. I will then charge the elements
7 of felony driving under the influence which I have
8 kind of already gone through, but one that the state
9 has to prove that the defendant was driving under the
10 influence; and that the defendant drove the vehicle
11 while under the influence -- drove the vehicle while
12 under the influence of alcohol and/or drugs; and then
13 defines driving.

14 State must prove beyond a reasonable doubt
15 that the defendant was sufficiently under the
16 influence to impair his ability to drive with
17 reasonable care, with due regard for others and
18 himself or as to reasonably -- or as a reasonably
19 prudent person would drive. It is not necessary to
20 show that the defendant was in a helpless condition,
21 passed out or even intoxicated.

22 And it will also say, the fact that the
23 defendant at some time prior to the incident drank an
24 alcoholic beverage or took a drug does not prove that
25 the defendant was driving under the influence. Next

1 the state must prove beyond a reasonable doubt that
2 while driving the defendant did an act forbidden by
3 law, or neglected a duty imposed by law.

4 You can bear with me one moment, that is the
5 other part that is printing right now. And I will
6 give you all the option, I can leave that just as it
7 is which is, next the state must prove beyond a
8 reasonable doubt that while driving the defendant did
9 an act forbidden by law or neglected a duty imposed
10 by law.

11 The only thing that -- we of course would then
12 charge, any act forbidden by law or neglected duty
13 alleged by the state. Are there any -- the only
14 thing that I would think of would be the common law
15 duty to keep the drivers -- to keep his car -- the
16 driver's duty of care which is, one, to lookout for
17 someone else roadway; duty to keep proper lookout;
18 and duty to keep your vehicle under control. But I'm
19 not certain that those would necessarily be
20 applicable or that it's even necessary to charge
21 that. I think it might tend to confuse the jury.

22 What duties would you all be alleging that --
23 what acts are you alleging other than drinking?

24 MR. STUMBO: Speeding was one, Your Honor.
25 The MAKE team testified his average speed was

1 between --

2 THE COURT: What was the speed on that road?

3 MR. STUMBO: 55.

4 THE COURT: I can charge the statute on speed
5 limits.

6 MR. STUMBO: I believe the MAKE team also
7 testified to the speed limit.

8 THE COURT: What other act forbidden by law or
9 neglected duty do you allege, other than the driving
10 under the influence? Because I'm going to charge
11 them regarding that.

12 MR. STUMBO: I think the speeding statute and
13 the driving under the influence are -- would be
14 sufficient.

15 THE COURT: I wouldn't charge driving under
16 the influence twice, because you already charged
17 driving under the influence within the body of the
18 felony DUI.

19 MR. STUMBO: Speed --

20 THE COURT: You already have to prove that.
21 You already have to prove that he was driving
22 impaired.

23 MR. STUMBO: Correct. As long as the jury is
24 clear that that violation of the law, elements one,
25 could satisfy -- one could also satisfy element two,

1 correct? If he has violated the first --

2 THE COURT: I would simply charge the actual
3 DUI statute which says it is forbidden to drive, but
4 I'm not going to recharge all the elements of the DUI
5 that's within the elements of felony DUI. And that
6 would be giving additional element to this offense
7 that it does not have.

8 MR. STUMBO: Okay. Your Honor, only other one
9 I can think of --

10 THE COURT: Bear with me one second.

11 Yes, sir.

12 MR. STUMBO: I guess he was cited with open
13 container as well.

14 THE COURT: I'm sorry, I can't hear you.

15 MR. STUMBO: Open container based on the beer
16 bottle. There is an inference circumstantially that
17 he had an open container.

18 MR. WILLIAMS: How could that possibly be
19 related?

20 THE COURT: I don't think there is any --
21 there is an inference, I don't think there is any --
22 for there to be driving with an open container, the
23 only proof that you have is that there was an open
24 container on the side of the road and that it was
25 discarded from his vehicle.

1 The statute is broad for open container, there
2 is no evidence anyone saw him driving with an open
3 container. I think that would be problematic.

4 MR. STUMBO: I don't know if the MAKE team
5 officer cited this specifically, but I think failure
6 to yield right of way would be ultimately the cause
7 of the accident. I can't cite the statute, but they
8 did testify that were too fast for the conditions.
9 Essentially the victim's truck was established in the
10 roadway at the time it was struck in the rear by the
11 defendant's vehicle.

12 THE COURT: Well, I will tell you what I can
13 do is I was going to charge, there are common law
14 duties that you have to abide by, one of which is use
15 the same care a person would use while driving the
16 same vehicle at the same time and place under the
17 same circumstances. That's basically the speeding
18 statute. So to some extent that's cumulative.

19 He has a duty to keep a proper lookout which
20 is the driver of an automobile has a duty to keep a
21 proper lookout for other vehicles on the road. This
22 duty requires the driver to watch attentively so that
23 the drive is able to see a person or object on the
24 highway. Another is the duty to keep a vehicle under
25 control. The driver of an automobile also has a duty

1 to keep the automobile under proper control so that
2 the driver is able to slow down, stop or turn the
3 automobile to avoid colliding with other vehicles,
4 pedestrians and objects lawfully on the road.

5 MR. STUMBO: I think all those duties would be
6 applicable here, Your Honor. We would agree with
7 that.

8 THE COURT: 56-5-1520 deals with speed limits,
9 and I think the only would be applicable would that
10 subsection A which is, person shall not drive a
11 vehicle on a highway at a speed greater than is
12 reasonable and prudent under the conditions, and
13 having regard to the actual potential hazards then
14 existing. Speed must be so controlled to avoid
15 colliding with a person, vehicle or other conveyance
16 on or entering the highway in compliance with legal
17 requirements and the duty of a person to use care..

18 And then of course I would skip most of
19 subsection B doesn't really apply because it deals
20 with you know if there are special hazards exist you
21 can go a lower speed or a higher speed. And a person
22 shall not drive a vehicle on a highway at a speed in
23 excess of the maximum limit. And then it sets forth
24 the limit for interstates which I don't think I need
25 to read all of that.

1 Then it goes into the penalty if you are
2 speeding. And actually, now that I've read
3 56-5-15-20 it covers all that, it's really just a
4 codification of common law duty. I really don't
5 think I need to charge that two times. It's the same
6 language. It's a proper lookout, duty to keep your
7 vehicle under control and all of that in one is
8 56-5-15-20.

9 MR. STUMBO: So you're just going to cite the
10 statute?

11 THE COURT: Uh-hum. 56-5-1520(A). And then
12 the last clause of (B) which is a person shall not
13 drive a vehicle on the highway in speeds in excess of
14 these maximum limits.

15 MR. STUMBO: We have no problem with that,
16 Your Honor.

17 THE COURT: Then I am looking up the DUI
18 statutes and you have code section failure to yield
19 right of way that you are referring to.

20 MR. STUMBO: We can look at that, Your Honor.
21 I really believe what you just cited --

22 THE COURT: Is sufficient.

23 MR. STUMBO: -- is sufficient. So we will
24 withdraw that. I think the speeding statute covers
25 all the bases there.

1 THE COURT: 56-5-3048, it is unlawful for a
2 person to drive a motor vehicle within this state
3 while under the influence of alcohol to the extent
4 that the person's faculties to drive are materially
5 and appreciably impaired; under the influence of any
6 other drug or a combination of other drugs or
7 substances which causes impairment to the extent that
8 the person's faculties to drive are materially and
9 appreciably impaired; or under the combined influence
10 of alcohol and any other drug or drugs or substances
11 which cause impairment to the extent that the
12 person's faculties to drive are materially and
13 appreciably impaired.

14 And that is all I would charge. I would not
15 charge anything else other than that.

16 And then finally the state must prove beyond a
17 reasonable doubt proximate cause. I will go through
18 all the elements of that which is basically
19 recitation of civil proximate cause which is the
20 chain of causation from the time of the injury
21 inflicted by the defendant until the time of the
22 victim's death.

23 Proximate cause does not necessarily mean that
24 it occurred immediately prior to death. There may be
25 more than one proximate cause which is as I have

1 already explained there may be combining or
2 concurring causes. Defendant's acts may be regarded
3 as a proximate cause if it is a contributing cause of
4 the death of the victim. The fact that other causes
5 also contribute to the death does not relieve the
6 defendant from responsibility.

7 Defendant's acts need not be the sole cause of
8 the death, but must be a proximate cause contributing
9 to the death. And also case law, and this part of
10 our standard charge, it is not a defense to show that
11 the victim might have recovered had she been treated
12 according to the most approved medical and surgical
13 standards, or as a reasonably prudent doctor would
14 have treated in the case, or even by showing that
15 the treatment was negligent.

16 If however the death was caused not by the
17 wound or the injury that the victim had but was
18 caused by the gross, erroneous, willful deliberate
19 treatment the defendant would not be liable. In
20 other words, negligence on the part of someone else
21 would not relieve the defendant from liability if the
22 injury was a proximate cause of the victim's death.

23 However, gross negligence or intentional
24 activity on the part of the practitioner would
25 relieve the defendant of liability. The propriety of

1 the medical procedure is an integral question in
2 determining causation.

3 And then I was contemplating -- I will
4 instruct the jury that the defendant has a right to
5 refuse the test. Take that back, he does not under
6 case law once the charge changed, sorry. I will
7 charge regarding the inferences from test results
8 which is 56-5-2950(B), the amount of alcohol in the
9 defendant's blood at the time of the alleged
10 violation as shown by chemical analysis of the
11 defendant's breath or other bodily fluids may be
12 considered by you in deciding whether the defendant
13 was under the influence.

14 If the alcohol concentration was .10 or 1
15 percent of more, it may be inferred that the
16 defendant was under the influence. This inference is
17 simply an evidentiary fact to be considered by you
18 along with the other evidence in the case, and you
19 may give it the weight you decide it should receive.

20 Then charge the forms of the verdict regarding
21 unanimity, et cetera.

22 Are there any exceptions to the charges as
23 proposed from the state?

24 MR. STUMBO: Your Honor, just to clarify it is
25 my understanding that --

1 THE COURT: I cannot hear you.

2 MR. STUMBO: The change in the DUI statute
3 essentially changed the legal threshold from .10 to
4 .08.

5 THE COURT: What did I say, .10?

6 MR. STUMBO: Yes, ma'am.

7 THE COURT: I apologize. Our charge book
8 should have been updated and it must not have been.
9 Or maybe I did my update wrong, that is always
10 possible. I will change it to .08, I'm sorry.

11 MR. STUMBO: And just one other case that came
12 out this year from the Court of Appeal, State versus
13 Dantonio. I think it lays out what the Court says
14 here was the exact charge necessary in felony DUI
15 cases for probable cause.

16 I did not know if Your Honor had a copy of
17 that case.

18 THE COURT: I read it. Our charge books are
19 updated, we all work on the reflections of cases.

20 MR. STUMBO: I just wanted to make sure that
21 that case was part of your updated charges. Thank
22 you.

23 THE COURT: How is it different? I gave the
24 whole charge on proximate cause already. I read it
25 to you.

1 MR. STUMBO: I believe it was the same, Your
2 Honor. You mentioned importing it from a civil
3 context and I --

4 THE COURT: No, no, I charged -- the only
5 thing I look at from a civil context was any duty you
6 were alleging he breached, because we are talking
7 about driving. So there are common law duties about
8 keeping control of your car, keeping a lookout, a
9 duty for a proper lookout and again keeping your
10 vehicle under control. That's the only thing I was
11 referring to.

12 MR. STUMBO: Okay.

13 THE COURT: Some of those duties could have
14 been civil, what we would traditionally consider
15 civil in nature.

16 MR. STUMBO: Yes, ma'am. That's all we have,
17 Your Honor.

18 THE COURT: Repeat the citation of the case
19 you just cited.

20 MR. STUMBO: State versus Dantonio, Stanley
21 Dantonio, Jr., Court of Appeals case this year, 376
22 S.C. 594, or 658 S.E.2d 337, January 16th of this
23 year, Your Honor.

24 THE COURT: I just wanted to make sure it was
25 clear for the record.

1 Any exceptions to the charges proposed from
2 the defense?

3 MR. WILLIAMS: Not exceptions but an addition.
4 The 56-5-2953, we request the Court to charge that.

5 THE COURT: Say that one more time.

6 MR. WILLIAMS: 56-5-2953.

7 THE COURT: 2953?

8 MR. WILLIAMS: 2953.

9 THE COURT: Why would that be applicable?

10 MR. WILLIAMS: There was a lot of testimony
11 dealing with the videotape or absence thereof.

12 THE COURT: That's a legal issue for the Court
13 about the admissability of those things, that's not a
14 jury issue. I think you can argue spoliation if you
15 wanted to. You can argue that if we had a video we
16 would have a better idea of what happened.

17 But 29 -- that's the statute for the Court in
18 a gatekeeper function about whether a case should be
19 dismissed or not, whether it goes forward or not.

20 But it does not talk about -- I don't think that's
21 applicable to the jury and I think you all sort of
22 withdrew your objection about that I would imagine
23 because the affidavit was provided which met the
24 exception in subsection B dealing with the affidavit.

25 We never proceeded with it so I assumed you

1 withdraw it for strategic reasons.

2 MR. WILLIAMS: That's the Court's section on
3 whether or not I agreed with the affidavit of not --

4 THE COURT: You didn't make an objection so
5 the record speaks for itself.

6 MR. WILLIAMS: That's right. But in regards
7 to whether or not there was referencing of
8 videotaping and the requirement providing
9 videotaping, and whether or not an affidavit was
10 produced, there was a lot of cross-examination
11 dealing with whether or not it was an effective
12 affidavit because we questioned whether or not it was
13 signed on the date that it was supposed --

14 THE COURT: Whether it's an effective
15 affidavit or not that's a legal issue for the Court.
16 I think you can argue about -- you can argue it
17 factually as to whether the jury as the fact-finder
18 should give credibility to the officer's testimony
19 and whether they want to really believe the video
20 camera -- I think you can argue all these things.

21 MR. WILLIAMS: My concern is whether or not
22 the jury understands that the law enforcement is
23 required to do that. And that would take an
24 instruction from the Court to tell them that law
25 enforcement is required to provide a videotape.

1 They may just think it's just something that
2 we like for police officers to do versus being
3 required to do.

4 THE COURT: What are you requesting that the
5 Court charge?

6 MR. WILLIAMS: 56-5-2953 section A.

7 THE COURT: I would charge section B also.

8 MR. WILLIAMS: One and D. I'm sorry, Your
9 Honor, D on the -- D.

10 THE COURT: It was videoed at the breath test
11 site.

12 MR. WILLIAMS: I guess I'm more concerned with
13 56-5-2953(A)(1).

14 THE COURT: Is there any exception from the
15 state to charging that section? It says, a person
16 who violates, and goes through all of these which I
17 would not, I don't think the jury would understand
18 what any those statutes mean, one is felony DUI, one
19 is DUI, and one is -- there are three separate
20 sections that are cited, one is reckless driving,
21 reckless homicide actually which is 2945, 56-5-2933
22 is DUI, and 56-5-2930 is -- actually 56-5-2930 is
23 DUI, and then 56-5-2933 which deals with alcohol
24 concentration -- I don't know if any of that would be
25 relevant.

1 I think that would confuse the jury me just to
2 cite the statutes without an explanation. But it
3 says, a person who violates section 56-5-2930, 2933
4 and 2945 must have his conduct at the incident site
5 and the breath test side videotaped. The videotaping
6 at the incident site must begin not later than the
7 activation of the officer's blue lights and conclude
8 after the arrest of the person for a violation of
9 56-5-2930 and 2933, or a probable cause determination
10 that the person violated 56-5-2945, which is what he
11 is charged under.

12 I would say, begin not later than the
13 activation of the officer's blue lights and conclude
14 after -- and conclude after a probable cause
15 determination that the person violated 56-5-2945.

16 Then I would also charge subsection B which
17 is, nothing in the section may be construed as
18 prohibiting the introduction -- I would skip that. I
19 would simply charge, failure by the arresting officer
20 to produce a videotape is not alone a grounds for
21 dismissal of any charge if the arresting officer
22 submits a sworn affidavit certifying that the
23 videotape equipment at the time of the arrest,
24 probable cause determination or breath test device
25 was in an inoperable condition stating reasonable

1 efforts have been made to maintain the equipment in
2 an operable condition and certifying that there was
3 no other operable -- actually that deals with breath
4 test facility, so.

5 MR. STUMBO: Your Honor, as long as they get
6 the message that in the absence of the videotape a
7 sworn affidavit is sufficient to cover that statute
8 we have no problem with that.

9 THE COURT: Okay, I will charge (A)(1), and I
10 will exclude about the DUI stuff. And then I will
11 charge that other clause in (B) about the affidavit.
12 Is that acceptable to both parties?

13 MR. WILLIAMS: That's fine.

14 MR. STUMBO: It is, Your Honor.

15 MR. WILLIAMS: For the record 56-5-2953(A)(1)
16 includes the little (b) section down there which
17 talks about the Miranda rights.

18 THE COURT: You want the whole (1)(a) and (b)?
19 You said originally (1)(a).

20 MR. WILLIAMS: (1)(a) and (b). The whole
21 section 1 which references the incident site.
22 Because they're not going to know what the videotape
23 is supposed to show if we don't tell them that.

24 THE COURT: There is no contest about it being
25 videotape at the breath site.

1 MR. WILLIAMS: Yeah, but (A)(1) -- we may be
2 talking about different A's and B's.

3 THE COURT: I'm going to charge (A)(1)(a) and
4 (b).

5 MR. WILLIAMS: That's what I want.

6 THE COURT: I thought you were talking about
7 subsection 2 which deals with the breath site, and
8 there is no contest about that having been complied
9 with.

10 I need you all to approach to review the
11 verdict form.

12 Is there any exception to the form of the
13 verdict by the state?

14 MR. STUMBO: No exception by the state, Your
15 Honor.

16 THE COURT: From the defense?

17 MR. WILLIAMS: Could I have two seconds with
18 my client, Your Honor?

19 THE COURT: Certainly, go right ahead.

20 MR. WILLIAMS: Defendant has no exception to
21 the verdict form.

22 THE COURT: We will staple that to the
23 original indictment and send it in with the jury.

24 MR. STUMBO: Your Honor, one point on that
25 issue. We had discussed earlier the possibility Mr.

1 williams may ask for a lesser included of great
2 bodily injury.

3 THE COURT: He has not asked, he has waived
4 that.

5 MR. STUMBO: I understand, Your Honor. But
6 just for purposes of protecting the record if we
7 could have assurance on the record that that's a
8 strategic decision not to ask for that charge.

9 THE COURT: I think it's evident. Correct?

10 MR. WILLIAMS: That's correct, Your Honor.

11 MR. STUMBO: Yes, ma'am.

12 THE COURT: How long will closing be? I'm
13 trying to, for purposes of planning, I need to know
14 how long you estimate your closing argument to be,
15 Mr. Williams?

16 MR. WILLIAMS: 30 minutes, 45 minutes.

17 THE COURT: Yeah, 30 or 45?

18 MR. WILLIAMS: Well having not heard what the
19 state is going to say --

20 THE COURT: I just need you to give me your
21 best case estimate because I'm trying to plan lunch
22 and jury --

23 MR. WILLIAMS: 45 minutes.

24 THE COURT: How long will the states go?

25 MR. STUMBO: I don't foresee me going over 20.

1 minutes, Your Honor.

2 THE COURT: Okay.

3 (Whereupon, a recess was taken.)

4 THE COURT: Is the state ready to proceed?

5 MR. STUMBO: Ready, Your Honor.

6 THE COURT: Is the defense ready to proceed?

7 MR. WILLIAMS: Defense is ready, Your Honor.

8 THE COURT: Please bring in the jury panel.

9 (Whereupon, the jurors enter the courtroom.)

10 THE COURT: Ladies and gentlemen, we
11 appreciate your patient. The Court has disposed of a
12 great deal of business during this break. The state
13 has rested. Mr. Williams, you may proceed.

14 MR. WILLIAMS: Your Honor, we are prepared to
15 argue to the jury.

16 THE COURT: Does the defense rest?

17 MR. WILLIAMS: Yes, we do.

18 THE COURT: We have already disposed of
19 motions. Ladies and gentlemen, we have now reached
20 the stage of the trial where you will hear closing
21 arguments and the Court's instruction on the law.
22 You will hear from the state, after which you will
23 hear from the defense, after which the Court will
24 give you its instructions.

25 We have already ordered your lunch, it is

1 here, and during closing arguments Hope will situate
2 it for you so that at the close of arguments you will
3 be able to have your lunch as you begin your
4 deliberations. I would ask that you give the
5 attorneys your undivided attention. Thank you.

6 You may proceed.

7 MR. STUMBO: Thank you, Your Honor, may it
8 please the Court.

9 You remember Christy Shealy early on in this
10 case. She said that when she heard that sound after
11 her grandmother left it was like a bomb going off.
12 It's a sound, ladies and gentlemen, she will never
13 forget. It's a sound that shows how hard William
14 Martin's Dodge Ram truck hit the back of that GMC
15 Jimmy that TJ was driving and Ms. Rugsy Stone was
16 riding in the passenger seat of.

17 We talked a lot about at the beginning of the
18 case about choices and consequences. Mr. Williams
19 was able to point out to you all, correctly, that you
20 did not have a choice about being here. You fine
21 folks came here because you were summoned to court
22 for jury duty. You didn't have a choice in that.
23 You didn't have a choice in having to sit here for
24 three days and listen to this testimony, listen to
25 this case, be put on the jury.

1 Ladies and gentlemen, now it's time for you to
2 render the ultimate choice in this case. And you
3 have as a collective body, the 12 of you, to go in
4 there and deliberate as reasonable human beings,
5 deliberate about the facts and the evidence in this
6 case, and make a choice, the ultimate choice of what
7 we have been here for the last three days. And
8 that's if whether that man sitting over there is
9 guilty or not of what he is charged with.

10 I thank you right now already for your
11 attention and your time in this case. Times you are
12 going to put in when you go in and talk about the
13 evidence.

14 It has been our burden here to prove this case
15 and the facts and evidence beyond a reasonable doubt.
16 The Judge again will tell you what that is. But just
17 as a general rule what that means is that it doesn't
18 mean that we have to prove this case beyond all
19 possible doubt. In other words, if there is a little
20 thing that would not lead to a person of -- to be
21 firmly convinced, that's one thing.

22 Ladies and gentlemen, I submit to you this
23 though. Even though that's not our burden to prove
24 this case beyond all doubt, Mr. Johnson and I and the
25 witnesses we put up have come about as close as we

1 can do to do that. We are very confident in this
2 case when you go back to deliberate about the
3 evidence that you are not going to have any doubt
4 that we have met our burden on each of the three
5 elements that we have to meet.

6 It's our burden. And what the Judge is going
7 to instruct you on is that it's proof that leaves you
8 firmly convinced. That means when you get back there
9 you consider the evidence that has been before you,
10 if you feel firmly convinced as a reasonable analysis
11 of this case that he is guilty of what he has been
12 charged of then there is one verdict and that's
13 guilty.

14 Now one of the things we have to firmly
15 convince you of -- and we will talk a little bit
16 about the law, and the Judge is going give you these
17 elements as well, I want you to give her your close
18 attention when she charges you. First of all the
19 element that the defendant was driving the vehicle
20 under the influence of alcohol, drugs or both.

21 The Judge is also going to instruct you that
22 the legal limit for blood-alcohol content is .08. We
23 are going to talk a little bit more in a second about
24 the evidence you heard in this case that proves
25 William Martin was drunk that night.

1 Secondly, we have to prove to you that the
2 defendant did some sort of act that was illegal when
3 driving the car that caused this accident or caused
4 the crash. So the Judge is going to instruct you on
5 the speeding laws, she is going to instruct you on
6 the common law duties of drivers when there is
7 someone established in the roadway. You cannot run
8 up behind them and knock them off the road. Those
9 are duties imposed by law. We are going to talk a
10 little bit more about those in a second as well.

11 Element number three, the last element,
12 because of his actions and his choices that as a
13 proximate cause of that someone died. And here in
14 this case Ms. Rugsy Stone died because of his actions.
15 We are going to talk a little bit more about that in
16 a second.

17 What does proximate cause mean? That's kind
18 of a legalese type term that is sometimes hard to
19 define. The is what our court defines it as.
20 Proximate cause as an act may be regarded as a
21 proximate cause which is a contributing cause of the
22 death of the deceased. Defendant's act need not be
23 the sole cause of the death, provided that it be a
24 proximate cause actually contributing to the death of
25 the deceased.

1 So essentially there can be other causes, but
2 it does not obviate the originating cause be the act
3 of the defendant if it's a proximate cause, even if
4 there were other causes in the meantime. We are
5 going to talk a little bit more about that in a
6 second.

7 A person who inflicts a fatal injury upon a
8 person and that person dies at a later time, you have
9 to be convinced beyond a reasonable doubt that the
10 infliction of the first injury was the cause of
11 death, that is was the proximate cause. There was a
12 chain of causation from the time it happened until
13 the time of the death.

14 The fact that other things contributed to it
15 or sped it up, things of that sort are not a defense.
16 So I want you to remember that when we start talking
17 about going over the facts again in this case.

18 One thing this reminds me of, ladies and
19 gentlemen, is it's a fable that I've heard before of
20 what we do in this case. It's our job, Mr. Johnson
21 and I's job, to come before you to prove the case
22 beyond a reasonable doubt. It's Mr. Williams' job to
23 tell you or argue to you that we did not prove our
24 case beyond a reasonable doubt. So he doesn't want
25 you to see that proof that we put before you.

1 It reminds me of a man that was standing by a
2 puddle one time. At the bottom of the puddle was a
3 little gold coin. Another guy approached the old
4 wise man by the puddle standing there with a stick in
5 his hands, he tells the young man that walks up to
6 the puddle he says, I'll bet you five dollars I can
7 make that coin at the bottom of that puddle disappear
8 without touching it. Young man says, that sounds
9 like a pretty good bet to me, I don't think you can
10 do it, I will take that bet.

11 The old man takes the stick in his hand and
12 starts scribbling up the dirt around the coin without
13 touching it. And that puddle becomes so muddy that
14 you cannot see the gold coin. Mr. Williams does not
15 want you to see the gold coin at the bottom of the
16 puddle, ladies and gentlemen. So let's clear the
17 waters.

18 Element one, did we meet our burden on that
19 element? Was the defendant impaired or intoxicated?
20 was he drunk? Let's look at the evidence. Trooper
21 Caldwell told you that his speech was slurred when he
22 approached him, that he smelled of alcohol right away
23 when he approach him at the crash scene when he first
24 arrived.

25 That after he gave him his Miranda warnings

1 and his implied consent as is required by the law; he
2 did everything he was supposed to do, he offered him
3 some field sobriety tests. Mr. Martin agreed to do
4 those.

5 what Trooper Caldwell testified to was that
6 Mr. Martin failed several of those tests; the eye
7 test where he did vertically and horizontally; he
8 failed the heel to toe, he said he almost fell down
9 when he turned around.

10 what else? You saw the video, ladies and
11 gentlemen. That man in that breathalyzer room on the
12 video that fell flat on his face, did he look like he
13 was sober? You can use your common sense on that.

14 How about the toxicologist that we heard from
15 last night. Brandon Landrum from SLED told you that
16 after he analyzed William Martin's blood it was
17 0.167, which as we know because the legal limit is a
18 .08, that's over twice the legal limit in South
19 carolina.

20 Not only that, ladies and gentlemen, they took
21 the blood about four hours after the wreck according
22 to Trooper Caldwell's timeline. What the SLED
23 toxicologist told you yesterday is that over that
24 four hours, actually if he hadn't taken a drink in
25 the meantime, there would be a decrease. So this is

1 what we have documented. What the SLED expert told
2 you is that it was probably somewhere greater than
3 that at the time of the accident four hours earlier.

4 He told you that when people get in the upper
5 1 range to .2, get close to that, they're severely
6 intoxicated and are not, clearly not safe to operate
7 a vehicle under our laws.

8 How about the marijuana and Xanax, that, Mr.
9 Landrum, when he analyzed that blood, he found that
10 stuff in William Martin's bloodstream. Not only
11 that, did you hear Mr. Williams ask him, well how do
12 you know how far back it was that he actually
13 consumed the marijuana? You can't tell us that, can
14 you?

15 What did Mr. Landrum tell us, or Agent
16 Landrum? He said, no, I actually can tell you that
17 because the active component of the marijuana, the
18 THC, was still in his bloodstream. Because of the
19 half-life of that, he could say with pretty confident
20 certainty that Mr. Martin had consumed marijuana no
21 more than six hours before the blood was taken.

22 Now if the blood was taken four hours after
23 the crash, I'm not real good at math but I think I
24 can do six minus four. We are looking at anywhere in
25 the two-hour range before this accident, the man

1 right there consumed some marijuana based on the
2 opinion of the SLED expert.

3 He told you about the synergistic effects of
4 the narcotics with the alcohol. So he said when two
5 and two usually equals four, two and two could equal
6 ten in this scenario when you have drugs and alcohol
7 together it's like a tornado effect, and it greatly
8 enhances the intoxication of that individual.

9 How about the beer bottle? You are going to
10 have that back in the jury room with you. Charlie
11 McCorkle came out on the scene shortly after the bomb
12 went off, sees William Martin throwing some beer
13 bottles out of his truck. Low and behold Trooper
14 Caldwell goes to the area and he says in that
15 vicinity there is a Bud Light bottle with about a
16 quarter of beer in it cool to the touch.

17 Now I'm sure Mr. Williams will tell you, that
18 could have been anybody's beer bottle. Could have
19 been. You can use your common sense though, this is
20 circumstantial evidence which the Judge is going to
21 tell you about. This is unlikely that it was someone
22 else's beer bottle.

23 But, ladies and gentlemen, even without this,
24 there is plenty of evidence in this case for you to
25 find that that man was severely intoxicated when he

1 took the wheel of the car that night.

2 Element one has been met, ladies and
3 gentlemen. How about element number two? Was he the
4 cause of the collision? Did he violate some duty
5 imposed by the law? Well you heard the MAKE team
6 officer say that he was going between 64 and 68 miles
7 an hour. The speed limit on that road was 55. He
8 was going anywhere from 9 to 13 miles over.

9 I'm sure all of us in this room have gone 9 to
10 13 miles over the speed limit in some time or another
11 in our lives. But were we as severely intoxicated as
12 this man was that night? He had a duty not to barrel
13 into the back of that vehicle that was driven by TJ.

14 The Judge is going to tell you the duties that
15 the law imposes. We all know that, we are all
16 drivers in this room I'm assuming. We know that when
17 somebody is in front of us in the roadway they are
18 established in that lane that you have to slow down
19 and not run into the back of them.

20 You remember the MAIT team officer, Trooper
21 Coffin or Corporal Coffin testified that William
22 Martin had at least 5.8 seconds, and maybe as many as
23 7.7 seconds, somewhere in that range, that was the
24 time he had from the time that that Jimmy pulled out
25 on the road for him to stop his vehicle or slow down

1 to the point where he wouldn't hit him. That's a
2 long time.

3 You heard Mr. Johnson count that out for us
4 yesterday; one, one-thousand; two, one-thousand;
5 three, one-thousand; four, one-thousand; five,
6 one-thousand; six, one-thousand. He had at least
7 that long, maybe longer. He had plenty of time to
8 slow down that vehicle, ladies and gentlemen.

9 So was he the cause of the collision? TJ,
10 what did he tell you? When he pulled out on to the
11 road and looked both ways, he didn't see any cars
12 coming. He got out on the roadway and started
13 accelerating and he saw in his rearview mirror that
14 the truck speeding toward him without slowing down.
15 The MAKE team determined that TJ was established in
16 his lane; they determined that William Martin had
17 five to seven seconds to stop; and even at the point
18 of impact after he hit his brakes he was still
19 traveling close to 50 miles an hour when he hit the
20 back of that Jimmy.

21 Are there any surprises it sounded like a bomb
22 going off when Christy heard that after she walked
23 back in the house? Element two has been met, ladies
24 and gentlemen.

25 How about the last element, proximate cause.

1 You heard from a lot of doctors in this case and I'm
2 sure you didn't want to sit there and hear all that
3 boring medical terminology. It's kind of brutal for
4 me to listen to and have to ask those questions too.
5 We had three medical doctors though in this case who
6 are very experienced, all experts in their field.
7 They all treated Ms. Rugy Stone in this case.

8 And what were their findings, ladies and
9 gentlemen? How about Dr. Brown, he is the ER doctor,
10 you remember hearing him first. Dr. Brown says when
11 she comes in he knows right away that this is a
12 situation where there is traumatic life-threatening
13 injuries. Right away he makes a determination that
14 she needs to have a ventilator. That it's that
15 severe, her breathing is that decreased that it's --
16 she is very close, could have died without those
17 treatments.

18 They find blood in her chest as well. He
19 finds out this right away and essentially brings in
20 Dr. Bynoe immediately. Dr. Bynoe, as you heard from
21 today, the most experienced trauma surgeon in this
22 state, has been doing this for years, he has
23 testified in court hundreds of times. What did Dr.
24 Bynoe tell us? He told us they were potentially
25 fatal injuries from the get-go. If they hadn't

1 drained the chest cavity of all the fluid that was in
2 there, if they hadn't put the ventilator on, if they
3 hadn't stabilized her, she could have died very
4 quickly.

5 Fortunately those doctors are good at what
6 they do. They were able to revive Ms. Stone and
7 stabilize her for the time being. Stabilized her
8 enough to send her over to Dr. Love at Baptist. She
9 was with him and his team over at the Intermedical
10 facility for about two months.

11 What did Dr. Love say? He said pretty
12 conclusively that all of the things that caused Ms.
13 Stone's death could be traced back to the injuries
14 from the crash that William Martin caused.

15 Talked about the hemothorax which is the blood
16 in the chest cavity that had long range effects,
17 internal injuries, respiratory failure because of the
18 broken ribs. Also told you about the significant
19 spinal injuries. She had a broken back, ladies and
20 gentlemen, four -- as Dr. Bynoe told you this
21 morning, at least four of her vertebrae were
22 fractured.

23 Those injuries never healed until the day she
24 died on October 12th. Eventually deteriorated to a
25 point where she had completed paralysis the week she

1 died from the waist down.
2 You also heard Dr. Love and Dr. Bynoe testify
3 that the infections that she got, the staph
4 infection, urinary tract infection, malnutrition that
5 she suffered, increased complications from the
6 diabetes, all these trace back to the injuries from
7 the accident or treatments that were necessary for
8 those injuries.

9 If she hadn't had a catheter in because she
10 was in the hospital, she wouldn't have had the
11 urinary tract infection. She hadn't had the tube in
12 to help her breath, probably wouldn't have gotten the
13 staph infection. Dr. Love told you that her weakened
14 state of her body because of the significant injuries
15 of this wreck made her more susceptible to those
16 things.

17 How about the diabetes that she had prior to
18 this? You heard Dr. Bynoe and Dr. Love testify that
19 the diabetes could be complicated by the injuries
20 from the accident. So in other words if it was
21 controlled before, because of the significant
22 internal injuries, complications could actually
23 increase because of the internal injuries because of
24 her inability to digest food because of her blood
25 level being low. All of those things contributed to

1 the diabetes running rampant.

2 Bottom line, ladies and gentlemen, is this.

3 We read the case law on proximate cause. It says
4 that there could be other causes. Mr. Williams I'm
5 sure is going to argue to you, well, she could have
6 died from the diabetes, she could have died from the
7 infections. What about the malnutrition and the
8 feeding tube? He is going to argue to you, we don't
9 know.

10 We have three experienced doctors who
11 testified to you the significance of this lady's
12 injuries. And Ms. Stone died, ladies and gentlemen,
13 and the proximate cause, the originating cause was
14 that man running into the back of her vehicle and
15 flipping it over and caused the injuries that were
16 significant to the point that she could never recover
17 from that. She never recovered from her broken back.
18 Her lungs healed to the point where she could get off
19 the respirator for a couple days, but as Dr. Love
20 told us she had to get back on that respirator or she
21 was going to die.

22 At that point the family made the decision, in
23 consultation with Dr. Love, that it would only
24 prolong her suffering.

25 So because they made the decision not to

1 prolong her suffering, does that exonerate this man
2 for what he did to her? Don't let him cloud the
3 water and make you believe that. She died because of
4 the accident, ladies and gentlemen. There is no
5 question about that. The injuries were significant
6 and life-threatening from the beginning, and they
7 continued to be life-threatening throughout the
8 course of her treatment. Element three, ladies and
9 gentlemen, has been met.

10 Was he drunk? Absolutely. Did he drive
11 negligently, violate the traffic laws? Absolutely,
12 caused the wreck. And because of that did Ms. Rugs
13 Stone lose her life? Absolutely.

14 The defenses in this case? Mr. Williams
15 cross-examined our doctors on the other causes. This
16 is actions here are indefensible. He has no defense,
17 ladies and gentlemen. His action are indefensible.
18 What Dr. Love told us conclusively when I asked him
19 would she still be here but for this accident? He
20 said absolutely.

21 Do choices have consequences? You better
22 believe they do. It's the family that you heard from
23 this week is about to spend their second Christmas
24 without their grandmother, without their mother.
25 That's a consequence of a choice that William Martin

1 made on the night of July 29th. It's heartbreaking.
2 Heartbreaking for everybody in this room, including
3 Mr. Martin.

4 But he made a choice, ladies and gentlemen,
5 that he can't get back. When you go back into the
6 jury room I'm going to ask you to take a look at
7 everything we put before you; the pictures, memory of
8 the testimony from the officers and SLED folks and
9 the doctors, family.

10 I want you to remember that there is one
11 verdict in this case that you can come to. All three
12 elements, ladies and gentlemen, have been met. And
13 really believe as difficult as jury service often is,
14 what we have put before you has left you with an easy
15 choice, ladies and gentlemen, because the elements
16 have been met and William Martin is guilty.

17 I ask you to go back in the jury room and find
18 him guilty of felony DUI. Thank you.

19 THE COURT: Stand up for me, go ahead and
20 stretch a little bit, ladies and gentlemen. We are
21 going to proceed with argument.

22 Everybody okay?

23 Mr. Williams, you may proceed.

24 MR. WILLIAMS: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. WILLIAMS: Madam Forelady, ladies and
2 gentlemen of the jury, I thank you for being here for
3 three days. I heard the solicitor talk about it
4 being easy. Well, I don't know, if you have been
5 here for three days. If it was that easy, it would
6 not take three days.
7 I told you at the beginning of this case that
8 you didn't have a choice. That you had a subpoena to
9 be here, you had to be here. Once you said that you
10 were going to be fair and impartial jurors, you took
11 that oath that you would not be swayed by passion or
12 prejudice, then you don't have that choice anymore.
13 You have to be analytical; that's hard. That's hard
14 sometimes.
15 I don't have a choice either. I don't have a
16 choice other than to represent my client the best way
17 I can. The Judge doesn't have a choice. The Judge
18 has to give you the law as she understands the law as
19 presented by the Supreme Court. Having said all
20 that, I'm going to ask you that you take your emotion
21 -- and because that really guides a lot of what we do
22 in life, I know I have been married three times,
23 trust me, it guides a lot of what you do in life --
24 take that away, and focus with your mind.

25 Because that's what we are looking for. And I

1 want you to remember the first thing that you focus
2 on is what are we trying today?

3 We are trying a felony DUI resulting in death.
4 We are not trying public intoxication. We are not
5 trying DUI. We are not trying DUI great bodily
6 injury. We are trying a felony DUI death involved.

7 Arguably the solicitor could have charged him
8 with whatever they wanted to charge him, and try him
9 for whatever they want to charge him. So focus on
10 what the charge is. Now having said that, you know
11 that you will hear more in the future about what the
12 elements are. They are essentially someone driving a
13 vehicle while they are under the influence of
14 alcohol, drugs, or a combination thereof. Just like
15 any other kind of DUI, like a DUI you'd see at
16 magistrates court.

17 Now in addition to that, in addition to that,
18 you have to focus on what does under the influence
19 mean? Well, if you are sitting in your chair and if
20 you are doing nothing but sitting there drinking
21 wine, then you are not driving under the influence,
22 are you? So you have to first get the person in the
23 vehicle going down the road in the state of South
24 Carolina, and their driving must evidence the
25 intoxication.

1 Now, so now you know it's not that simple.
2 What started out as what you thought was just a
3 simple little thing, it's getting a little
4 complicated. Because now not only do we have to find
5 beyond a reasonable doubt that the person who is
6 charged has been drinking or taking pills, we have to
7 find that they are actually going down the road, and
8 we have to find that they're driving improperly.

9 And remember this, that when we talk about
10 these things and we are finding it, we are finding it
11 beyond a reasonable doubt. The Judge will charge you
12 that beyond a reasonable doubt is a doubt -- I say
13 she will, she talks after I do so I don't really know
14 until she says it -- that it leaves you firmly
15 convinced that the person is guilty or the person has
16 done this beyond a reasonable doubt.

17 All right. So now we have got him going down
18 the road. Now we get to the tricky part, because we
19 must prove that that causes the death of someone.
20 Now I want to tell you that I don't necessarily agree
21 with the solicitor that there is no question but what
22 caused the death of this lady.

23 But, you know, it does not matter what I
24 think, it only matters what you think. And the only
25 way which you can think anything is if you are

1 informed with the facts. Meaning you have to have
2 the evidence before you. You have to have someone
3 bring the evidence before you. Because you come in
4 here with a blank, empty bank, if you will, except
5 for your common sense. You don't know anything about
6 the case. So they have to put the evidence on, they
7 have to give it to you. You cannot assume something.
8 So assuming always gets you in trouble.

9 You know the solicitor told you this little
10 fable he said about it, I don't know, some guy
11 standing around he had a mud puddle and had a coin, a
12 gold coin in the middle, and he said I will bet you
13 five dollars that I can fix it so that you can't see
14 that coin by stirring the muddle puddle. That's
15 cute. But you know what, if you don't put the coin
16 in the puddle, you are not going to see it.

17 And that's what we have here. You know, the
18 most important witness, my opinion -- I'm just
19 curious when we get through all this I'm going to see
20 if you can guess who I think the most important
21 witness is when this is all over -- was one of the
22 MAKE team officers.

23 And he was the corporal, big corporal who I
24 guess was in charge of doing the measurements or
25 whatever. And he made a kind of a trite statement.

1 I don't know that I would have used those words, I
2 might have used a cooking analogy or something like
3 that, he said trash-in, trash-out.

4 what he means by that simply is if you have
5 pad information going into the formulation of
6 whatever you getting ready to determine, then you are
7 not going to get a good result. You are not going to
8 get an accurate determination.

9 Let's go through -- let's just focus on
10 causation of the wreck. Let's just focus on that
11 one. They are saying, referring to the state of
12 South Carolina, solicitor, they're saying that my
13 client drove improperly. They're basing that on
14 alleging that my client sped, perhaps. Perhaps my
15 client didn't give enough room. Remember when he
16 said the solicitor counted, one-thousand-one,
17 one-thousand-two, one-thousand three.

18 They are saying that the impact occurred on
19 the right rear of the vehicle, that the victim was
20 in. Notice I use the word that the victim was in.
21 Doesn't detail who was driving, did it?

22 Who was the person who made the initial marks
23 on the road from which all of these measurements
24 could be determined? Wasn't Caldwell. It was not
25 Trooper Caldwell. Remember when we went through and

1 he had to be recalled? Did you think to yourself,
2 well something strange, he has already testified.
3 why is he going back up on the stand to testify to
4 something?

5 And he testified in essence in his second time
6 that he testified, well that was my corporal,
7 Corporal Shelton, who did the markings. Because
8 remember we asked the Lieutenant, who actually looked
9 like he got mad a little bit, you know you did these
10 measurements, you went out there two days later and
11 you saw this orange paint, or you put the orange
12 paint down there, where did you put the orange paint,
13 well it was already marked, it was already set up. I
14 did not go out there that night, I did not go out
15 there the next day, I went out there two days later.

16 Who put the orange paint down there? I don't
17 know, it had to be the investigating officer. Well,
18 of course it wasn't, it was the Corporal Shelton.
19 why is that important? why do you keep talking about
20 Corporal Shelton, Corporal Shelton. His supervisor.
21 He had been on the road for two months. The Corporal
22 who was over him was the one who made the marks on
23 the road. Why? Because Corporal Shelton was out
24 here in the audience when the Trooper was testifying.

25 Remember I asked the Trooper when he was on

1 the stand, I asked him I said, did you see Corporal
2 Shelton, his Corporal, in the audience when you were
3 testifying earlier? He said yes. Who made the marks
4 on the roadway? Corporal Shelton.

5 This train begins with the marks on the road.
6 If you're looking for causation of a wreck, we have
7 spent two and a half days of trying a case, three
8 medical doctors, you heard that, it was said like
9 that, three medical doctors taken away from their
10 practice, a heart doctor. We have the guy who did
11 the marks on the roadway in the audience, and we
12 don't call him to prove that he put the marks in such
13 a such a place and whether it was done accurately or
14 what information he had before he put those orange
15 marks on the road.

16 I want you to tell me, when this is all over
17 with, why. So now we can get all upset, this is
18 going to sound trite, we can get all upset about the
19 type of case that we have, it's a DUI in Lexington
20 County, we got somebody hurt. That's a terrible
21 thing. We have got people who are going to have a
22 Christmas without their mother or grandmother.
23 That's not a good thing. Who can say that is good a
24 thing? I don't have a mother either, but you know
25 that's not a good thing.

1 why don't we put the Corporal on the stand to
2 testify? Why don't we prove our case? We want you
3 to assume something. How can you assume how fast
4 those vehicles were going if the measurements that
5 were made by the Corporal were based on what somebody
6 else put on the road? And he is not subject to being
7 cross-examined.

8 Why would you not put him up there? You go to
9 the trouble of putting up every other kind of witness
10 involved in this case who even looked at the blood
11 sample, three doctors who examined her. I hope
12 that's bothering you to a certain extent. I don't
13 know the answer.

14 All right, I didn't mean to get excited. But,
15 you know, this is not a case that can just sit back
16 and say, oh well, I kind of guess the state is right.
17 They had a bunch of witnesses, they must win. He is
18 a bad guy, must be because there is something about
19 alcohol. This is a serious situation in which you
20 require the state of South Carolina to prove these
21 things.

22 Now we have already established the problem
23 with causation. Well, let's look at what these
24 witnesses have testified to. You have the driver of
25 the vehicle, who is the grandson who comes out -- and

1 you see there are minor discrepancies, I don't
2 suggest to you that's important -- but you've got a
3 17-year-old boy who's driving the vehicle either
4 owned by his father as he said, or by his grandmother
5 who the father said owns the vehicle, and he tells
6 you that he pulled out, he looked down the road, did
7 not see anything coming, he pulled out, he looked up
8 in the rearview mirror and he sees this vehicle
9 approaching him.

10 Now everything else that we have heard about
11 in this case, to include the little diagrams, are
12 straight. You get these little straight sheets of
13 paper that shows the roadway going just as straight
14 as it can be, so one of two things has to happen
15 here. Either the roadway is not straight, or the
16 grandson, who's looking left for a truck which is
17 coming down the road, just doesn't look that way or
18 he would have seen the truck when he pulled out.

19 Why did I say that? Where did the wreck
20 happen? Do you remember the other lay witnesses -- I
21 call them lay witnesses, a witness is a witness is a
22 witness. The Judge will charge you later on that we
23 call certain witnesses by different names. We call
24 certain witnesses expert witnesses. Not because
25 they're more believable or not believable because you

1 still have to examine whether or not you believe what
2 they're saying, but it's based on their expertise.

3 Some people are doctors, some people are
4 plumbers. So you would expect someone in the field
5 of medicine to be able to give you hypothetical
6 answers to hypothetical questions. But the lay
7 witnesses, the family, the other people who were at
8 the trailer tell you -- Christy, she runs out of the
9 trailer in her bare feet to the scene.

10 Her husband, Mr. McCorkle, Charlie McCorkle
11 runs out there and he can actually see the wreck
12 scene from where he is at, through the trees,
13 remember there are trees out there. The grandson
14 says it's like 50 feet from where he pulls out of his
15 driveway. Are you getting a feel for the problem
16 here? Because if these lay witnesses are telling the
17 truth, if it's right out in front of the trailer,
18 isn't it more likely than not that the vehicle left
19 the driveway, came right out of the driveway and was
20 struck in the approximate area of the driveway.

21 Well how does that affect anything? Number
22 one, it indicates that it might have been an
23 avoidable accident. Number two, it means that any
24 determination of speed by the MAKE team is just
25 wrong. Just wrong. Because you cannot determine

1 speed if you don't know where to begin with. And if
2 they marked the spots further down the road than what
3 it is, then you've got no assessment of speed.

4 So let's see, if they're not speeding then
5 there is that due care situation. I mean you always
6 have to take due care when you drive your vehicle.
7 You can't also plan that somebody is going to pull
8 out in front of you. You can't. I don't know what
9 happened. Don't get me wrong. This is not Theo
10 Williams making up something for you. I don't know,
11 I wasn't there.

12 But you know who has to prove this? The state
13 of South Carolina has to prove this. They have to
14 put up the evidence to prove that these things
15 happened.

16 Now one of the things that you've heard about
17 and which will be told to you about, you will hear
18 about two of the witnesses who testified who had
19 criminal records. I want to say the son of the
20 deceased, and the husband of Christy who ran out
21 there. I think the husband of Christy had maybe a
22 strong armed robbery and maybe a burglary, 12 minor
23 offenses, something like that.

24 You can only use that for purposes of
25 determining credibility. It's got nothing to do with

1 this case in all honesty. It's just like anything
2 else. You know how people judge people about where
3 they be, you use that in your determination of
4 whether or not you believe everything that happened.

5 I think the father maybe had -- he was on
6 probation for drugs, maybe marijuana, I think it was
7 something about cocaine. So you can use that when
8 you listen to their testimony.

9 But what is interesting about the testimony is
10 remember they said that I saw him throw a bottle out.
11 Well, what kind of bottle was it? He said it was a
12 brown bottle. It was a beer bottle. How do you know
13 it was a beer bottle? Because it looked just like a
14 Bud Light bottle. I said, well what do you mean it
15 looked just like a Bud Light bottle? That's the kind
16 of beer I drink. What are the odds? Just so happens
17 that a beer bottle is in the front yard of somebody
18 that drinks Bud Light. I mean it's pretty
19 fascinating, isn't it.

20 Now all we can do here is we as a police
21 officer can pick up the beer bottle and say, well
22 that must be Shoney Martin's beer bottle. That's one
23 more nail. One more nail in the coffin. He had a
24 beer container right here. He had it. It was cool
25 to the touch. I know it was a little trite to talk

1 about whether it was, I take it back. But he had a
2 beer container.

3 well, did you save what was in it? No, I did
4 not save it. Why is that important? well, two
5 reasons. You can actually might be moisture, might
6 be water, I don't know what it is, you know, it's not
7 my job to try the case.

8 Did you do a fingerprint analysis? No, I did
9 not do a fingerprint analysis. Because if I had done
10 a fingerprint analysis, I might know who had touched
11 it. Sometimes not knowing the answer is better than
12 knowing the answer. My case might be stronger with
13 me not knowing whose beer bottle it is than it is
14 knowing whose beer bottle it is.

15 But remember the burden of proof in a criminal
16 case? Maybe we haven't talked about that. The
17 burden of proof in criminal case is on the state.
18 They must prove beyond a reasonable doubt the guilt
19 of the person charged.

20 okay, so you have the lay witnesses that have
21 testified. You have the videotaping which is -- no,
22 that's right, we didn't have that. Now you say,
23 well, Theo, why are you talking about videotaping?
24 what does that have to do with this? Because there
25 is a statute which says that you are required to show

1 a videotape, to videotape a person who's charged with
2 driving under the influence, whether it be DUI or
3 felony DUI death involved. And that it's supposed to
4 show you giving the Miranda warnings.

5 Now you got to figure there is a reason for
6 that. I mean there is a lot of times our state
7 legislature does a lot of things that don't have a
8 reason for I'm sure. But if you have the videotape,
9 jurors who are sitting in judgment can look at the
10 person doing the field sobriety tests and can tell
11 whether or not that person fails the field sobriety
12 tests or not, and not have to rely simply on the
13 officer's impression of whether or not they failed
14 it. Well, we don't have that.

15 What we have is we have an affidavit which was
16 provided by the Trooper and says that it was in an
17 inoperable condition and we made reasonable efforts,
18 signed -- you'll have it -- signed July 29th, 2007.
19 Sworn to and subscribed before me the 29th day of
20 July, 2007, somebody's signature is on that. I think
21 he said it was his first sergeant, except he did not
22 see his first sergeant until at least the next day.

23 Well, why wouldn't you show the repair
24 records? Okay. This is okay. Forgot that. Forget
25 the videotaping, forget that. I just didn't have it,

1 it was broken, that's a given, it's broken. Okay.
2 when my corporal comes, who was on scene, who has
3 more experience than I do, who has a video camera in
4 his car, I am not going to do the field sobriety
5 tests in front of my corporal. Well, the answer to
6 that is, I may have already done, I have already done
7 those field sobriety tests, so there really would be
8 nothing to show on his camera.

9 Well, then we get back to Chris Shelton. We
10 see Chris Shelton was there that night because I
11 showed him everything on the roadway, I showed him
12 where the cars were and he was right there. Well
13 when did he get there? When did he leave? It all
14 comes back to Chris Shelton, doesn't it.

15 All right. So we have gone past the police
16 officers. Oh, no, we have to go through what he
17 said. He said that he was unsteady on his feet, had
18 slurred speech, so we took him to the data master
19 room. Now, I hope you looked at the video in the data
20 master room for many reasons.

21 Number one, if you listened to Shoney talk,
22 you can make a determination whether or not you
23 thought he was suffering from the influence of
24 alcohol or not. And what was real interesting is
25 when you saw him get out of the chair and you saw him

1 walk over against the wall, he disappeared for a
2 period of time, he kind of came back, he propped his
3 leg up, kind of leaning, it looked like he could
4 probably do a one-leg stand, didn't he?

5 He did not look real wobbly when he was
6 standing up there. Then you heard some sort of
7 coughing or something like that. And you kept seeing
8 him grab his chest. Now if you think I am making it
9 up look at it. Look at it. See if he doesn't grab
10 his chest. And then all of the sudden, bam, just
11 blanked out, he is down, down for the count.

12 But he is only down for a short period of
13 time. They come in, they get him up, he looks like
14 he is okay. Now the solicitor will argue to you that
15 he passed out. Have you ever seen a drunk passed out
16 like that and get right back up? well so he wasn't
17 drunk. He was putting on. He was acting because we
18 knew a camera was there. well he fell a good little
19 distance, didn't he? You think he might have hurt
20 himself when he made that fall? Do you think he was
21 acting?

22 Okay. So the ambulance comes, they take him
23 to the hospital. where is the report from the
24 hospital about whether or not he was examined and
25 what they determined was wrong with him or not wrong

1 with him? We just don't have that. Next witness we
2 have that testified is the lady the draws the blood.
3 Now remember, she is the only one in the room. She
4 is the only one in the room, I think she works
5 underneath the supervision of other doctors. They
6 put her up there, real nice person, talks about what
7 she did. She looks over at him, she said, yeah I
8 remember him, I recognize the face.

9 Well then I asked her about how he was acting,
10 whether or not he was acting unusual or wasn't acting
11 unusual. She said, he was acting fine. The
12 solicitor on redirect jumped up and said, well he
13 could have been act wrong, that could have been
14 something wrong with him, couldn't there?
15 Well, there could be snowing outside but I don't
16 think it is.

17 He put her up, she said he looked fine. Fine.
18 She is as close, closer than I am to you. She said
19 he is fine. What does she not say? She doesn't say
20 he smells of marijuana, number one. She doesn't say
21 he has slurred speech. She doesn't say that he is
22 incoherent in any way. No police officer ever says
23 that they smell any marijuana.

24 So they draw two tubes blood. Why do you
25 think they draw two tubes of blood? Why not just

1 one? Because one of them is obviously the
2 defendant's. So we went through this whole deal
3 about what happened to the tube of blood. And
4 remember we put it on his lap when we drove him back
5 to the jail.

6 He was cuffed behind, and he's got his tube of
7 blood on his lap. Takes the tube of blood and gives
8 it the intake officer. Well maybe he did not put it
9 in his lap, maybe he had in his shirt pocket.

10 Did he have a pocket on his shirt that he had on?

11 It's easy enough to tell, all you have to do is look
12 at data master tape in the room and that will show if
13 it has a shirt pocket or not.

14 The bottom line is we don't have that tube.
15 So the officer takes that tube and he puts it in his
16 car somewhere. And next morning he goes down to
17 SLED, turns it in to Ms. Banister, or whatever her
18 name was, real nice lady at SLED.

19 She immediately takes it and she puts it in
20 the refrigerator and she keeps it there until one of
21 the other techs comes, gives it to her, she takes it
22 upstairs, another tech comes, he takes it from her
23 and puts it in another refrigerator. What is the
24 interesting about all this refrigerator stuff? Well,
25 probably don't have a refrigerator in the police

1 officer's car. He didn't testify he put it in a
2 refrigerator.

3 But now see that does not make any difference
4 because we had a witness up there testify, well, you
5 don't have to refrigerate that, we have done studies
6 on this. There is a study which says it does not
7 affect anything. Well, why do you have
8 refrigerators? Why is it your standard operating
9 procedure is to put it in a refrigerator?

10 Do you remember the nice guy who, the tech and
11 I asked him about his education. I didn't really
12 know where he went to school, but I figured he was a
13 pretty smart fellow. He had a biology degree from
14 Costal Carolina. And I kept pressing him a little
15 bit, why did you put it in a refrigerator? It's just
16 standard operating procedure. Because nobody really
17 wants to get involved in that question. You got a
18 refrigerator to keep it cool so something doesn't
19 happen. I mean why buy a refrigerator?

20 All right, so you've basically got this tube
21 that goes up to some analyst who analyzes it and
22 comes up with this, I guess, reading. I can only
23 tell you this, is that the state has to prove that
24 the procedure was properly followed, and that nothing
25 happened to change.

1 We went through some, I guess, what do you
2 call it, not hypotheticals, but some kind of argument
3 where you are talking about, he was talking about,
4 well I suspect that you would still be under the
5 influence and you would show the effects even though
6 you may not show it outwardly. It's kind of like
7 Jimmy Carter, you know, it's like sending in your
8 heart versus doing it outside.

9 If you are not walking badly, if you are not
10 driving badly, then it really doesn't matter what
11 goes on inside your body. But that's what all that
12 theoretical stuff was. You know, the bottom line of
13 this case is you 12 jurors have to make a decision
14 based on evidence presented. You can't guess about
15 it. You cannot say, well isn't it a terrible thing
16 someone is dead.

17 Well look at the doctor's testimony. First
18 doctor testified in his notes that the grandmother
19 was the driver of the vehicle. I don't know who's
20 driving, but you know it's certainly not consistent.
21 I don't know where he got that information from. He
22 had to get it from somebody, had to get it from the
23 ER, remember the ER people.

24 Then we went through about what was wrong with
25 her. I don't doubt that a 72-year-old woman involved

1 in a wreck doesn't get hurt. Because, you know, I
 2 think that would probably be stupid not to think that
 3 a 72-year-old woman could get hurt.
 4 I mean just stupid. But before you make that
 5 leap to DUI, and it's death related, that it caused
 6 the death, you've got to cover what she was before.
 7 And here is the second prong of the Chris Shelton
 8 problem. We was not going to show you the beginning
 9 of the liability issue, and you know what, we are not
 10 going to show you the beginning of the proximate
 11 cause issue, because all they had to do to establish
 12 what her physical condition was prior to this wreck
 13 is to bring her family doctor in here, to bring her
 14 medical reports in here, and that person could
 15 testify to you as to what her physical condition was.
 16 We wouldn't have to guess about whether or not
 17 her diabetes was controlled or not. We wouldn't have
 18 to guess about whether or not her thyroid was
 19 controlled or not.
 20 So when we try this case, we leave off the
 21 first step on both things. And what did the corporal
 22 say? Trash-in, trash-out. No doubt she was hurt.
 23 But it doesn't answer the question whether or not
 24 this person would have died, albeit, the wreck. All
 25 you've got to do is to call two witnesses. Two

1 witnesses would have fulfilled this case, would have
2 tied up any questions probably that you may have.

3 Now some of the doctors probably looked tense
4 with me when I asked them the question. The point of
5 all that is this, either sometimes they didn't know
6 everything because they weren't there, some doctors
7 were only there involved for a short period of time,
8 they had other doctors treat them; they got copied on
9 stuff, but then they want to give you a conclusion
10 that points directly at my client for two reasons:
11 Because if it does it certainly doesn't point at
12 them. What does the family say? The family says
13 they consulted a lawyer about the suing the doctors.

14 Now, this patient tolerated it well. Every
15 surgery that was ever done on this young lady, this
16 lady -- you know, the older I get she may be young --
17 said patient tolerated it well, patient tolerated it
18 well. What do you think that means? That the
19 procedure went well? We did everything we could do
20 in a correct way. That's what that means. That's
21 exactly what that means.

22 Yet while we are in the hospital we get
23 infections, we get paralysis because we don't do
24 surgeries, but we are going to blame it all on
25 somebody else.

1 I have been up here a long time I know it. I
2 know you are tired. I'm going to sit down. I want
3 you to remember what we are trying. If I leave
4 nothing with you today, what are we trying? A felony
5 DUI death related. Death related. Not hurt, not
6 bound up bad, death related. I thank you.

7 THE COURT: Madam Forelady, ladies and
8 gentlemen, your lunch is here so I'm going to let you
9 all go eat. During the break do not discuss the case
10 in any manner whatsoever. Leave your notepads in
11 your seats and once you all have completed eating,
12 then I will give you instructions. Because I would
13 imagine you all are hungry.

14 You want me to go ahead and give you the
15 instructions before you eat or do you all want to
16 eat? By a show of hands who wants to eat?

17 would you all prefer to press forward? I'll
18 defer to your desires. Everybody good? Nobody needs
19 to go to the restroom?

20 Okay. Then we will continue. I thought you
21 all might be hungry so I was going to give you that
22 option.

23 During this trial, ladies and gentlemen, you
24 and I have certain duties to perform. As the trial
25 Judge it is my responsibility to preside over the

1 trial of this case, I also have the duty to rule upon
2 or pass upon the admissability of the evidence
3 offered during this trial. You are to consider only
4 the competent evidence before you, and you are to
5 disregard and disabuse from your mind any testimony
6 that I have ordered stricken from the record during
7 the progress of this trial if there have been any.

8 You are to consider only the testimony which
9 has been presented from this witness stand together
10 with any exhibits which have been made a part of the
11 record in this case.

12 I have the additional duty to charge or
13 instruct you on the law applicable to this case. As
14 the presiding Judge I am the sole Judge of the law,
15 and it is your duty as jurors to accept and apply the
16 law as I now state it to you. If you have a
17 preconceived idea as to what the law is or what the
18 law ought to be in a case, or in this case, and it
19 should not now agree with what I now tell you the law
20 is, you are obligated under the oath which you have
21 taken to abandon this preconception on your part
22 because you are sworn to accept the law and apply the
23 law precisely as I now state it to you.

24 In every case tried in this court before a
25 jury, the jury becomes the sole and exclusive judges

1 of the facts. You, the jury, are the judges of the
2 facts in this case. This Court is the judge of the
3 law. The constitution of our state has declared that
4 a trial judge shall not intimate, state, comment
5 upon, or make any statement to a trial jury about the
6 facts in a case.

7 Since you the jury are the sole finders of the
8 facts in this case, you are not to infer anything
9 from what I have said during the progress of this
10 trial in ruling upon the admissability of evidence or
11 otherwise, or anything that I now say to you during
12 the course of this instruction that I have any
13 opinion about the facts in this case. The law does
14 not permit me to have an opinion about the facts.
15 This is a matter solely for you the jury to
16 determine.

17 As jurors then, it is your duty, as I have
18 instructed you, to determine the effect, the value,
19 the weight of the evidence, and the truth of the
20 evidence presented during this trial. Necessarily,
21 you must assess the credibility of witnesses who have
22 testified in this case. Credibility is simply a
23 legalistic term meaning the believability of each
24 witness who has testified. It becomes your duty as
25 jurors to evaluate and to analysis the evidence and

1 determine that evidence which convinces you of its
2 truth.

3 I instruct you that in determining the
4 question of the credibility or believability of
5 witnesses who have testified in this case you may
6 believe one witness as against several witnesses, or
7 several witnesses as against one witness. You may
8 believe a part of the testimony of a witness and
9 reject the remaining part of the testimony of that
10 same witness.

11 If you have a good and sound reason you may
12 believe the testimony of a witness in its entirety,
13 or reject the testimony of a witness in its entirety.
14 You may consider whether or not any witness has
15 exhibited to you any interest, any bias, any
16 prejudice or other motive in this case. You may
17 consider the demeanor of a witness, that is the
18 appearance and manner of the witness from the witness
19 stand. You can believe as much or as little of each
20 witness's testimony as you think proper.

21 Throughout this process, ladies and gentlemen,
22 you have but one objective, to seek the truth
23 regardless of its source. I instruct you that a
24 person who has a past criminal record is competent to
25 testify during a trial. A past record does not

1 affect the ability of that witness to testify, the
2 past record may be considered -- only be considered
3 by you, if at all, in determining the witness's
4 believability. Remember, ladies and gentlemen, you
5 are the sole judges of the facts in this case. And
6 of the believability of any and all of the witnesses.

7 I further instruct you that the rules of
8 evidence ordinarily do not permit witnesses to
9 testify to opinions or conclusions. An exception to
10 this rule exists for witnesses we call expert
11 witnesses. A witness who by education and experience
12 has become an expert in some art, science, profession
13 or calling may state an opinion as to relevant and
14 material matters in which the witness has claimed to
15 be an expert, and may also state the reasons for that
16 opinion.

17 You should consider any expert opinion
18 received in evidence in this case like any other
19 evidence. Give it the weight you think it deserves.
20 If you decide that the opinion of an expert witness
21 is not based on sufficient education and experience,
22 or if you conclude that the reasons given in support
23 of the opinion are not sound, or that the opinion is
24 outweighed by other evidence, you may disregard the
25 opinion entirely.

1 An expert witness's testimony is to be given
2 no greater weight than that of other witnesses simply
3 because the witness is an expert. Further, you are
4 not required to accept an expert's opinion even
5 though it is not contradicted.

6 Ladies and gentlemen, there are two types of
7 evidence which are generally presented during a
8 trial; direct evidence and circumstantial evidence.
9 Direct evidence is the testimony of a person who
10 asserts or claims to have actual knowledge of a fact
11 such as an eyewitness.

12 Circumstantial evidence is proof of a chain of
13 facts and circumstances indicating the existence of a
14 fact. The law makes absolutely no distinction
15 between the weight or value to be given to either
16 direct or circumstantial evidence. Nor is a greater
17 degree of certainty required of circumstantial
18 evidence than of direct evidence.

19 Ladies and gentlemen, you should weigh all of
20 the evidence. After weighing all of the evidence if
21 you are not convinced of the guilt of the defendant
22 beyond a reasonable doubt you must find the defendant
23 not guilty. Conversely, if you are convinced of the
24 guilt of the defendant beyond a reasonable doubt,
25 then you must find him guilty.

1 Ladies and gentlemen, there are statements
2 alleged to have been made by the defendant. These
3 statements have been admitted into evidence in this
4 case. While the Court has determined that the
5 statements are admissible, I instruct you that you
6 make the ultimate decision of whether or not the
7 defendant made the statement. If the defendant did
8 make the statement, you must determine whether the
9 statement was made by the defendant voluntarily and
10 of his own free will.

11 This means that the statement was not caused
12 by pressure, force, fear, threats, coercion or
13 intimidation, or by hope or a promise of leniency or
14 a reward of any kind. In determining whether the
15 statement was voluntary, you should consider both the
16 characteristics of the defendant and the details of
17 the questioning.

18 Some of the factors you must consider are the
19 age of the defendant; the defendant's education or
20 lack of education; the defendant's mental ability or
21 capacity; the defendant's IQ or intelligence; the
22 defendant's background or environment; the place and
23 length of detention; the nature of the questioning;
24 and the advise or lack thereof to the defendant of
25 his constitutional rights, including but not limited

1 to the right to remain silent, that any statement
2 could be used against him in a court of law, the
3 right to have a lawyer present, that if he could not
4 afford a lawyer a lawyer would be appoint to
5 represent him without any cost, and that he could
6 stop making a statement at any time.

7 You must carefully consider all of the
8 surrounding circumstances before you give any weight
9 to an alleged statement. The state has the burden of
10 proving beyond a reasonable doubt that the alleged
11 statement was voluntary. If you determine it was,
12 you may give the statement any further consideration
13 that you deem proper. You must decide what weight,
14 if any, should be given to the alleged statement.

15 If you determine the alleged statement was not
16 the free and voluntary statement of the defendant,
17 you should not consider the statement at all.

18 Ladies and gentlemen, I instruct you that the
19 fact that the defendant was arrested, charged and
20 indicted is not evidence in this case and cannot be
21 considered by you as evidence of guilt in this case,
22 nor does it create any presumption or inference of
23 guilt. This documentation is simply the formal
24 instrument which contains the charge or charges made
25 against the defendant. It serves as a formal

1 document by which the case is processed or brought
2 through this court.

3 The defendant has pled not guilty to the
4 indictment. And that plea casts the burden on the
5 state to prove the defendant guilty. Because a
6 person charged with committing a criminal offense in
7 South Carolina is never required to prove himself
8 innocent.

9 I instruct you, Madam Forelady, and ladies and
10 gentlemen of the jury, that it is a cardinal and
11 important rule of the law of evidence that the
12 defendant in a criminal trial, no matter what the
13 seriousness of the charge made against him may be,
14 will always be presumed to be innocent of the crime
15 for which he is indicted unless his guilt has been
16 proven by evidence satisfying you of that guilt
17 beyond a reasonable doubt.

18 This presumption of innocence does not cease
19 when you retire to deliberate, but it accompanies the
20 defendant from the time of his appearance throughout
21 the trial until you reach a verdict satisfying you
22 beyond a reasonable doubt.

23 Our Supreme Court has said that the
24 presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

1 defendant, and it remains with him and assigns him to
2 that class, the innocent; until that presumptive robe
3 of righteousness has been stripped from his person by
4 evidence satisfying you of that guilt beyond a
5 reasonable doubt.

6 Madam forelady, ladies and gentlemen, the
7 presumption of innocence is not mere legal theory.
8 It is a substantial right, and it is not just a legal
9 phrase. It is a substantial right to which every
10 defendant is entitled to unless you the jury are
11 satisfied of the evidence of his guilt beyond a
12 reasonable doubt?

13 I instruct you, ladies and gentlemen, and
14 emphasize that the fact that the defendant did not
15 testify is not a factor to be considered by you in
16 any way in your deliberation of this case, and in
17 your consideration on the question of the guilt or
18 innocence of the defendant.

19 It must not be considered by you in any manner
20 whatsoever. A defendant has the constitutional right
21 to remain silent, and the assertion of this right
22 must not be considered by you in your deliberations.
23 I repeat, under your oath you are to draw no
24 conclusion whatsoever from the fact that the
25 defendant in this case did not testify. And I

1 emphasize again that the fact that this defendant did
2 not testify should not be discussed in any manner
3 whatsoever during your deliberations in the jury
4 room. And if it is discussed, the foreperson is
5 strictly instructed to report that to the Court
6 immediately. The burden of proof as
7 I have stated to you is on the state. The defendant
8 is not required to prove himself innocent. The
9 burden of proof remains on the state to prove guilt
10 beyond a reasonable doubt.

11 You may ask, what is a reasonable doubt in the
12 law? The state has the burden of proving the
13 defendant guilty beyond a reasonable doubt. Some of
14 you may have served as jurors in civil cases where
15 you were told it is only necessary to prove that a
16 fact is more likely true than not true. And in
17 criminal cases the state's proof must be more
18 powerful than that, it must be beyond a reasonable
19 doubt.

20 Proof beyond a reasonable doubt is proof that
21 leaves you firmly convinced of the defendant's guilt.
22 There are very few things in this world that we know
23 with absolute certainty. And in criminal cases the
24 law does not require proof that overcomes every
25 possible doubt. If based on your consideration of

1 the evidence you are firmly convinced that the
2 defendant is guilty of the crime charged, you must
3 find him guilty. If, on the other hand, you think
4 there is a real possibility that he is not guilty,
5 you must give him the benefit of that doubt and find
6 him not guilty.

7 Ladies and gentlemen, the defendant is charged
8 with felony driving under the influence. The state
9 must first prove beyond a reasonable doubt that the
10 defendant drove a vehicle while under the influence
11 of alcohol and/or drugs.

12 Driving a motor vehicle means that the vehicle
13 was in motion. This may be proven by direct or
14 circumstantial evidence. A movement of the vehicle
15 might occur without any affirmative act by a driver
16 or in fact by any other person. If a vehicle is
17 moved by some power beyond the control of the
18 defendant or by accident, this would not be driving.

19 The state must prove beyond a reasonable doubt
20 that the defendant was sufficiently under the
21 influence to impair his ability to drive with
22 reasonable care, with due regard for others and
23 himself, or as a reasonably prudent person would
24 drive. It is not necessary to show that the
25 defendant was in a helpless condition, passed out or

1 even intoxicated. On the other hand the fact that
2 the defendant at some time prior to this incident
3 drank an alcoholic beverage or took a drug does not
4 prove that the defendant was driving under the
5 influence.

6 The amount of alcohol in the defendant's blood
7 at the time of the alleged violation, as shown by
8 chemical analysis of the defendant's breath or other
9 bodily fluids, may be considered by you in deciding
10 whether the defendant was under the influence. If
11 the alcohol concentration was eight one-hundredths of
12 one percent or more, it may be inferred that the
13 defendant was under the influence.

14 This inference is simply an evidentiary fact
15 to be considered by you along with the other evidence
16 in the case. And you may give it the weight you
17 decide it should receive.

18 Next the state must prove beyond a reasonable
19 doubt that while driving the defendant did an act
20 forbidden by law or neglected a duty imposed by law.
21 I instruct you that 56-5-2930, operating a motor
22 vehicle while under the influence of alcohol or drugs
23 provides as follows: It is unlawful for a person to
24 drive a motor vehicle within this state while, one,
25 under the influence of alcohol to the extent that the

1 person's faculties to drive are materially and
2 appreciably impaired; two, under the influence of any
3 other drug or a combination of other drugs or
4 substances which cause impairment to the extent that
5 the person's faculties to drive are materially and
6 appreciably impaired; or three, under the combined
7 influence of alcohol and any other drug or drugs or
8 substances which cause impairment to the extent that
9 the person's faculties to drive are materially and
10 appreciably altered.

11 I further instruct you that code section
12 56-5-1520 entitled, general rules as to maximum speed
13 limits, lower speeds may be required provided as
14 follows: A person shall not drive a vehicle on a
15 highway at a speed greater than is reasonable and
16 prudent under the conditions, and having regard to
17 the actual and potential hazards then existing.
18 Speeds must be so controlled to avoid colliding with
19 a person, vehicle or other conveyance on or entering
20 a highway in compliance with legal requirement, and
21 the duty of a person to use care.

22 It further provides that a person shall not
23 drive a vehicle on a highway at a speed in excess of
24 these maximum limits.

25 Finally the state must prove beyond a

1 reasonable doubt that the act or negligent -- that
2 the act or neglect of the defendant proximately
3 caused death to another person. Proximate cause is
4 the direct cause, it is the immediate cause, it is
5 the efficient cause. It is that cause without which
6 the death of the victim would not have resulted.

7 There must be a chain of causation from the
8 time of the injury inflicted by the defendant until
9 the time of the victim's death. Proximate cause does
10 not necessarily mean that it occurred immediately
11 prior to the death. There may be more than one
12 proximate cause. The act of two or more persons may
13 combine together to be a proximate cause of the death
14 of a person.

15 The defendant's act may be regarded as the
16 proximate cause if it is a contributing cause to the
17 death of the victim. The fact that other causes also
18 contribute to the death of the victim does not
19 relieve the defendant from responsibility. The
20 defendant's acts need not be the sole cause of the
21 death, but must be a proximate cause contributing to
22 the death of the victim.

23 It is not a defense to show that the victim
24 might have recovered had she been treated according
25 to the most approved surgical or medical standards,

1 or as a reasonably prudent doctor would have treated
2 in the case, or even by showing that the treatment
3 was negligent.

4 If however the death was caused not by the
5 wound or the injury that the victim had, but was
6 caused by the gross erroneous willful, deliberate
7 treatment, the defendant would not be liable. In
8 other words, negligence on the part of someone else
9 would not relieve the defendant from liability if the
10 injury was the proximate cause of the victim's death.

11 However, gross negligence or intentional
12 activity on the part of the practitioner would
13 relieve the defendant of liability. The propriety of
14 the medical procedure is an integral question in
15 determining causation.

16 Ladies and gentlemen, I further instruct you
17 that code section 56-5-2953, which is incident site
18 and breath side videotaping, provides as follows: A
19 Person who violates section 56-5-2930, 56-5-2933 or
20 56-5-2945 must have his conduct at the incident site
21 and the breath test side videotaped. The videotaping
22 at the incident site must begin not later than the
23 activation of the officer's blue lights, and conclude
24 after the arrest of the person for a violation, or a
25 probable cause determination that the person violated

1 section 56-5-2945, and include the person being
2 advised of his Miranda rights before any field
3 sobriety tests are administered if the tests are
4 administered.

5 Subsection B provides as follows: Failure by
6 the arresting officer to produce videotapes required
7 by this section is not alone a ground for dismissal
8 of any charges made, or if the arresting officer
9 submits a sworn affidavit certifying that the
10 videotape equipment at the time of the arrest,
11 probable cause determination, or breath test device
12 was in an inoperable condition, stating reasonable
13 efforts have been made to maintain the equipment in
14 an operable condition, and certifying that there was
15 no other operable breath tests facility available in
16 the county.

17 Ladies and gentlemen, there are two possible
18 verdicts in this case. And they are as follows --
19 and you don't have to write them down, this certainly
20 will go into the jury room with you.

21 We, the jury, by unanimous consent find the
22 defendant guilty of felony DUI resulting in death, or
23 not guilty. Again there is no significance
24 whatsoever to the order in which I state these
25 verdicts, it's simply that one must stated first and

1 so forth.

2 Ladies and gentlemen, your verdict must be a
3 unanimous one, which means that all 12 of you must
4 agree in order to reach a verdict. Madam Forelady,
5 it will be your responsibility to fill out the
6 verdict form once the jury has reached a verdict. It
7 will also be your responsibility to knock on the door
8 and advise the bailiffs once the jury has reached a
9 verdict.

10 Also, if the jury has any questions during
11 deliberations it is your responsibility to write
12 those questions out, and again knock on the door and
13 advise the bailiff that the jury has a question.

14 Ladies and gentlemen, if you have any
15 questions during deliberations, I will tell up front
16 there will be a delay in our responding. That is
17 because there is a procedure that we have to follow
18 in answering your questions. So please know if you
19 have a question we are not ignoring you, we are
20 simply adhering to that procedure.

21 I'm going to ask that you return to your jury
22 room while I take up some matters of law with the
23 attorneys that might require further instructions, or
24 an additional instruction or clarification of an
25 instruction. However, if there is no further

1 instruction we will send in the evidence as well as
2 your notepads and at that time you will be allowed to
3 begin your deliberations.

4 So if you would go with the bailiffs. Again,
5 please don't begin your deliberations and leave your
6 notepads in your seats.

7 (Whereupon, the jurors exit the courtroom.)

8 THE COURT: Are there any exceptions to the
9 charges from the state?

10 MR. STUMBO: No exceptions from the state.

11 THE COURT: From the defense?

12 MR. WILLIAMS: None by the defense.

13 THE COURT: Now there is one thing I neglected
14 to do in my haste, which is no one's fault but my
15 own, I took an exhibit under advisement, that being
16 the breath analyzer person's report, and in the
17 interest of time I did not hear argument on the
18 objection, and I took it under advisement. I had it
19 marked for ID only and I intended to deal with that
20 before closing and charge but we just had too much
21 going on and I just remembered that I did not do it.

22 I believe Mr. Williams' argument was that it
23 was hearsay and my response was that he created it.

24 MR. WILLIAMS: And could I expand upon that?

25 THE COURT: Yeah.

1 MR. WILLIAMS: As I recall his testimony he
2 said that it incorporated his findings in the report,
3 but he did not testify that he did the report.

4 THE COURT: I thought he did testify he did
5 the report. But in any event he is an expert, it's a
6 report he relied -- wasn't he qualified?

7 MR. STUMBO: Yes, he was. He was qualified as
8 an expert in forensic toxicology.

9 MR. WILLIAMS: He did.

10 THE COURT: That would make it admissible.
11 But based on my recollection of the testimony that
12 was a report that he prepared in the ordinary course
13 of business as part of his duties as a forensic
14 analyst. And certainly it's a complete reflection of
15 what he testified to. There are no extraneous or
16 subjective comments on the form. It's a straight
17 report data. And I think certainly it would be
18 admissable.

19 I just didn't take the time -- because I would
20 have had to send the jury out to do the argument and
21 so I just continued with the trial. And we finished
22 so late last night I did not take it up because I
23 did not want to hold you all any longer. I think
24 certainly it is admissible, and I would mark it
25 state's next in line set for ID.

1 Is there anything else we need to take up
2 before we send in the notebooks and the evidence to
3 the jury from the state?

4 MR. STUMBO: Nothing from the state, Your
5 Honor.

6 THE COURT: From the defense?

7 MR. WILLIAMS: Not from the defense.

8 THE COURT: And certainly your contemporaneous
9 objection to it is preserved for the record.

10 The record should reflect the jury
11 deliberations have begun at 2:04. I will have them
12 take in the verdict forms as well as the evidence and
13 their notepads. They have begun to eat their lunch,
14 I have a jury coming at 2:00. I would ask that you
15 all go get yourself some lunch, but leave cell phone
16 numbers. Take this opportunity to eat. Thank you.

17 (Whereupon, a recess was taken.)

18 THE COURT: Now as a preliminary matter I have
19 been advised that the jury has reached a verdict. I
20 know that this is an emotionally charged matter with
21 the death of an individual involved, as well as a
22 trial, as well as the defendant's family being
23 present in the gallery.

24 I need to strongly admonish both families that
25 I expect the decorum of this courtroom to be

1 respected. I do not expect there to be any emotional
2 outbursts. I need to also advise you that I take the
3 security of this courtroom very seriously and I
4 delegate that completely to the deputies. If there
5 are any outbursts they will remove you. If there is
6 any commotion, you will be arrested. I just need you
7 all to be very clear. And I'm not going to get
8 involved in that. I delegate it completely to them.

9 So if there is anything that troubles them,
10 they will handle it. They will handle it very
11 swiftly and very quickly. And it's a matter of
12 security not only for everyone involved, but also for
13 those others in the gallery who may not be involved
14 in a case. So I need for everyone again, and it is
15 not the Court's attempt to sound insensitive because
16 it is not. But I have to be completely objective.

17 So I need -- my main concern is that the
18 decorum of the courtroom and the courthouse and the
19 integrity of this process be maintained. So I need
20 for all of you to abide by those rules and I would
21 greatly appreciate it.

22 Is there anything before we bring in the jury
23 from the state?

24 MR. STUMBO: Nothing from it state, Your
25 Honor.

1 THE COURT: From the defense?

2 MR. WILLIAMS: Nothing from the defendant.

3 THE COURT: Okay. Please bring in the panel.

4 (Whereupon, the jurors enter the courtroom.)

5 THE COURT: You may be seated. Madam
6 Forelady, is it correct the jury has reached a
7 verdict?

8 A JUROR: Yes, it is.

9 THE COURT: If you would give the verdict
10 forms to the bailiff for me, please.

11 Madam Clerk. Sir, if you would stand for
12 publication of the verdict. You may proceed.

13 THE CLERK: Indictment 2008-GS-32-1374, the
14 State versus William Conrad Martin. As to the
15 indictment we the jury by unanimous consent find the
16 defendant guilty of felony driving under the
17 influence resulting in death. It is so signed by the
18 Forelady.

19 Madam Forelady, ladies and gentlemen of the
20 jury, if this is your verdict please indicate, each
21 of you, by raising your right hand.

22 All hands are raised, Your Honor.

23 THE COURT: Thank you. Is there any request
24 to poll the jury from the state?

25 MR. STUMBO: None from the state.

1 THE COURT: From the defense?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: Madam Clerk if you will proceed
4 with polling the jury.

5 Ladies and gentlemen, if you would give the
6 clerk your attention.

7 THE CLERK: As I call your name if you'll hold
8 your hand up so that I can recognize you, I will ask
9 you as to the verdict was this your verdict and is it
10 still your verdict, and then please respond.

11 Jackie Jumper, as to the verdict was this your
12 verdict and is still your verdict?

13 A JUROR: Yes, ma'am.

14 THE CLERK: Kenneth Stokes. As to the
15 verdict, was this your verdict and is it still your
16 verdict?

17 A JUROR: Yes, ma'am. Yes.

18 THE CLERK: Donna Chavis. As to the verdict,
19 was this your verdict and is it still your verdict?

20 A JUROR: Yes.

21 THE CLERK: Hayley Fianchino. As to the
22 verdict, was this your verdict and is it still your
23 verdict?

24 A JUROR: Yes, ma'am.

25 THE CLERK: Joseph Soltish. As to the

1 verdict, was this your verdict and is it still your
2 verdict?

3 A JUROR: Yes, ma'am.

4 THE CLERK: Katharin Bass. As to the verdict,
5 was this your verdict and is it still your verdict?

6 A JUROR: Yes, it is.

7 THE CLERK: Hazel Montgomery. As to the
8 verdict, was this your verdict and is it still your
9 verdict?

10 A JUROR: Yes.

11 THE CLERK: Earline Moore, as to the verdict,
12 was this your verdict and is it still your verdict?

13 A JUROR: Yes.

14 THE CLERK: Michelle Peek. As to the verdict,
15 was this your verdict and is it still your verdict?

16 A JUROR: Yes, ma'am.

17 THE CLERK: Kenneth Easter. As to the
18 verdict, was this your verdict and is it still your
19 verdict?

20 A JUROR: Yes, ma'am.

21 THE CLERK: Gregory Jeffcoat. As to the
22 verdict, was this your verdict and is it still your
23 verdict?

24 A JUROR: Yes.

25 THE CLERK: Flexia James. As to the verdict,

1 was this your verdict and is it still your verdict?

2 A JUROR: Yes, ma'am.

3 THE CLERK All jurors polled, Your Honor.

4 THE COURT: The verdict stands.

5 Madam Forelady, ladies and gentlemen, on
6 behalf of the State as well the defendant and defense
7 counsel we thank you for your time and your attention
8 to this case. I know that jury service is a great
9 sacrifice to you. I hope however that it has been
10 educational for you.

11 I know it has been a hard week. We worked
12 late a couple nights. But I have to admit I knew
13 that was because I was going to excuse you. Of
14 course you all didn't know that but I did. So I
15 appreciate your hard work. You all have been
16 diligent, you have been punctual, you have been
17 attentive. And quite frankly we can't ask anything
18 more of that from you.

19 If you need a work excuse we can provide that
20 to you today before you leave. We have those here.
21 Also if the foreperson would remain with us so that
22 we can have you sign and date the indictment itself
23 and Ms. Hope will show how to do that.

24 If you need, your checks will be mailed out at
25 the end of the week. And for those who don't need

1 work excuses today, those will be mailed out to you
2 at the end of the week.

3 You are free to discuss this case, but I would
4 ask that you not do that until after Friday when the
5 entire panel has been released. By the same token,
6 if someone should persist in trying to speak with you
7 and you don't wish to discuss the case, please
8 immediately report that to the clerk's office so I
9 can take appropriate action to protect your privacy.

10 The next part of the process involves
11 sentencing. If you all would like to remain for that
12 please let the bailiffs know. We will re-seat you
13 back into the jury box for that process.

14 Again, you are excused with the Court's
15 profound thanks. In a moment we will have post trial
16 motions and sentencing. I need you to fill out the
17 sentencing sheet if it's ready.

18 (Whereupon, a recess was taken.)

19 THE COURT: Are there any post trial motions?

20 MR. WILLIAMS: I was talking to the family.

21 THE COURT: I'm going to have the victim stand
22 behind the for security purposes, it's too volatile.

23 MR. STUMBO: Yes, ma'am.

24 THE COURT: I will be glad to hear from him at
25 the appropriate time.

1 Do I have -- I need to hear post trial
2 motions.

3 Sir, you can go ahead and take your seat. I
4 still have some matters of law I need to take care of
5 and then I will hear from you.

6 Are there any post trial motions from the
7 state?

8 MR. STUMBO: None from the state.

9 THE COURT: From the defense?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: You may proceed.

12 MR. WILLIAMS: We move for arrest of judgment
13 and grant the defendant a new trial. The basis
14 mainly being on the basis of the other motion
15 previously made taken into consideration the Court
16 will remember one the arguments I made dealing with
17 the charge of felony DUI death related was that there
18 was substantial evidence that the victim went through
19 an extended period of time with various other
20 ailments, and she had preexisting ailments, and the
21 fact that the victim was the person who actually took
22 the ventilating tube out of her own body.

23 THE COURT: Well the testimony she would have
24 died with the ventilating tube whether she left it or
25 not. She eventually would have gotten an infection

1 that would have killed her. You can't leave a
2 ventilating tube in indefinitely at any age.

3 Some people are comatose it works, but for
4 most people at her age it results in death. And
5 usually by pneumonia. So I don't know that -- at
6 least that's what the doctor's testimony reflects is
7 that she was going to -- either she left it in and
8 died or took it out and died.

9 MR. WILLIAMS: Well that would be the basis
10 for motion for the new trial that along those lines
11 with those intervening causes, the fact there was no
12 establishment of a timeline in regards to what her
13 condition was prior to the wreck, and of course the
14 ventilation machine.

15 I think basically just renew all prior
16 motions. Your Honor already ruled on it at the end
17 of the defense case and the State's case.

18 THE COURT: Anything from the State?

19 MR. STUMBO: Nothing from the State.

20 THE COURT: Court would deny the motion. I
21 find that there is no support in the record for a
22 motion for supporting an arrest of judgment or for a
23 new trial. The State was required to prove beyond a
24 reasonable doubt that the defendant was driving a
25 vehicle while under the influence of alcohol. There

1 is more than abundant evidence in the record to
2 support that finding.

3 The crux or the gravamen of the defendant's
4 argument is that there was not sufficient proof of
5 problem cause. And the Court would find that there
6 is more than direct, and certainly more than
7 substantial circumstantial evidence in the record as
8 supported by three independent medical professionals,
9 who frankly are probably the most objective witnesses
10 in this case. They have no one to reward and no one
11 to punish.

12 And we know scientist rarely give you
13 subjective, just by the nature of their
14 personalities, they are very -- what's the word that
15 I'm looking for -- I don't know that objective is the
16 word that I'm looking for, but certainly in this case
17 they are the most objective witnesses regarding
18 proximate cause.

19 And each of their testimony reflects that the
20 causation or proximate cause of her death was this
21 accident. That as a result of this accident she had
22 severe internal bleeding, she had a floating rib,
23 her lungs filled up with blood, as a result she had
24 to be intubated.

25 And while she had diabetes, they said that did

1 not -- was not a proximate cause of her death. That
2 it made it harder for her to heal in some aspects,
3 but these infections and other things that she got
4 really are a result of the intubation and the other
5 traumatic nature of her injuries.

6 The law is very clear. His proximate cause is
7 the act of two or more persons -- well proximate
8 cause can be the act of one person, but really is a
9 chain of causation. And clearly this accident was a
10 chain of causation that caused this victim's death.

11 The fact that she could have gotten better
12 treatment or the fact that she may have not recovered
13 as quickly or recovered, I don't know that that's
14 what I want to say, the law is just very clear it's
15 not a defense that she might have recovered had she
16 been treated differently.

17 Clearly the evidence in this record is that
18 the proximate cause of her death was this accident.
19 And it's the but for test. Without this accident,
20 the wreck, would still be alive diabetes and all.
21 The traumatic nature of this injury is what caused
22 her diabetes to be so completely out of control.
23 However the doctors indicated that was not the cause
24 of her death and they were all very clear on that. I
25 think the record is very clear on that.

1 The motion is denied. I think there is more
2 than direct and more than substantial circumstantial
3 evidence in the record to support this jury finding.
4 The argument the defense makes is a factual one and
5 it goes to the weight and credibility of witnesses.
6 The Court is not going to substitute its judgment for
7 that of the jury, especially when the jury verdict is
8 supported by the record. Motion is denied.

9 Is there anything further regarding post trial
10 motions from the State?

11 MR. STUMBO: Nothing from the State.

12 THE COURT: From the defense?

13 MR. WILLIAMS: Nothing from the defense.

14 THE COURT: Okay. We will proceed to
15 sentencing. Is there anything further from the
16 State?

17 MR. STUMBO: Your Honor, yes. From the
18 State's perspective in this case and as we have
19 discussed, the State early on in this case made a
20 very generous offer to Mr. Martin. He did not take
21 advantage of that plea offer. Said he wanted a
22 trial.

23 From that point we re-indicted the case as a
24 felony DUI death results. And, Your Honor, we have
25 put this family through a lot. Over the last several

1 months we had this case on the trial list several
2 times, we had to bring them into our office. They
3 have had to relive this case, relive what happened to
4 their grandmother and mother.

5 In fact, Terry Shealy, who was one of our
6 witnesses, I essentially had to advise him today,
7 Your Honor, that I thought it would be best for him
8 not to be in here he was so emotional. He did not
9 know if he could control his emotions. That's why he
10 is not here right now for sentencing.

11 He's put this family through a lot. It ended
12 a fine 72-year-old lady's life that day last year.
13 we would ask as much time as you can give Mr. Martin
14 in this case.

15 THE COURT: Do any of the victims wish to be
16 heard?

17 MR. STUMBO: Yes, ma'am. One of the children,
18 George, one of Ms. Stone's sons is here.

19 THE COURT: Sir, I would be glad to hear from
20 you. If you would state your name for the record.

21 I need you to remain right where you are for
22 security reasons.

23 MR. SHEALY: I'm George Shealy.

24 THE COURT: Yes, sir.

25 MR. SHEALY: She was my mother for 37 years.

1 He took her life. I'm asking you, all I'm asking of
2 is for you to sentence him to the full extent of the
3 law. That's all I got to say.

4 MR. STUMBO: Your Honor, George is the only
5 victim that wished to address the Court.

6 THE COURT: Is there anything further from the
7 State? As I understand it his record is what we
8 originally went over when we were doing it at the
9 conclusion of the State's case; an '86 DUI, a '91 DUI
10 in Georgia and three misdemeanors of shoplifting,
11 open container and public disorderly conduct; is that
12 correct?

13 MR. STUMBO: That's correct, Your Honor.

14 THE COURT: Mr. Williams, I would be glad to
15 hear from you.

16 MR. WILLIAMS: Yes, Your Honor. Your Honor,
17 he is 40 years of age. He has never been in trouble
18 in general sessions court. You've heard his record.
19 He has five children. He has several grandchildren.

20 Seated in the courtroom throughout this entire
21 trial has been one of his sons, the other son was
22 here yesterday, his sister-in-law and his
23 father-in-law, and his wife is here, she's out there
24 in the area, she couldn't remain in the courtroom,
25 Your Honor, because she was upset.

1 Obviously we can't argue about what the jury
2 has done, and because they have reached that
3 decision. Perhaps sometimes it seems cold to the
4 victims to hear defense counsel argue about legal
5 points. And I'd like to take this point in time --
6 and I think I have talked to a couple of them while
7 the trial has been going on.

8 I think some of them understand that sometimes
9 when you argue things in closing arguments it's to
10 point out legal things that to a certain extent
11 defense counsel, as well other lawyers, have to
12 remain aloof, if you will, from the trial itself.

13 Doesn't change the emotional aspect of it
14 which obviously no one ever wanted the victim to die,
15 or to have serious injury. That has been evident
16 with my client also. He has gone through -- you
17 know, it's really hard to talk to the Court and the
18 victims about your client when he is the one
19 convicted of committing this act.

20 But for the Court's edification he has gone
21 through a tremendous amount of depression over the
22 death of this lady. He actually was placed in the
23 hospital for an extended period of time because of
24 the grief because he felt guilty because somebody was
25 dead.

1 As a matter of fact he almost killed himself
2 because he drove his vehicle into a tree and they put
3 him in Richland Springs about two months ago. So, he
4 is not without remorse, Your Honor. He is obviously
5 willing to take the punishment that the Court gives
6 him, but he is not without remorse in any way
7 whatsoever.

8 THE COURT: Sir, is there anything you'd like
9 to state for the record on your own behalf?

10 THE DEFENDANT: I apologize, Your Honor, to
11 the family. I really just to know, of course, it
12 never was meant to happen. I just -- I guess I just
13 seen it in a different view as I remember, I remember
14 everything. I seen it from a different view, but I'm
15 very sorry for that family, I really am, truly.

16 THE COURT: Anything further, Mr. Williams?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: Anything further from the State.

19 MR. STUMBO: Nothing from the State, Your
20 Honor.

21 THE COURT: This is classified as violent,
22 isn't it?

23 MR. WILLIAMS: Yes.

24 THE COURT: And serious, so it is a strike,
25 correct, served at 85 percent?

1 MR. STUMBO: Correct, Your Honor.

2 THE COURT: The range of penalty for this
3 offense is a minimum of 1 year, a maximum of 25
4 years. A minimum fine of \$10,100 dollars and maximum
5 fine of \$25,100. As I understand it the imposition
6 of the fine is mandatory; is that correct?

7 MR. STUMBO: That's my understanding.

8 THE COURT: And I understand that no portion
9 of it can be suspended nor probation given.

10 MR. STUMBO: That is my understanding.

11 THE COURT: I think it says fine cannot be
12 suspended. Mr. Stumbo, can you double check my math
13 for me. I thought with felony DUI it was similar to
14 DUI where you have 2,100 and 5,100 that cannot be
15 reduced any lower than 1,100. I'm getting my math --
16 cannot be reduced any lower than \$1,100.

17 It is my recollection in a felony DUI it
18 cannot be reduced any lower than \$5,100 which with
19 the assessments comes out to about \$10,000 by the
20 time they tack on everything else. Is that -- is my
21 memory accurate?

22 MR. STUMBO: Typically with assessments and
23 everything else it's about double.

24 THE COURT: I know it doubles or triples it.
25 I know that there is a minimum mandatory amount that

1 cannot be extended below and I thought it was \$5,100.

2 MR. STUMBO: Your Honor, I thought it was the
3 10,000. But I'll take your word for it.

4 THE COURT: I think I'm getting it confused
5 with felony DUI with great bodily injury, that's the
6 \$5,100. That's the minimum on that.

7 MR. STUMBO: I think the minimum on the death
8 is the 10,000.

9 THE COURT: 10,100. I'm trying to figure out.
10 The statute says that no portion of the active
11 sentence can be suspended, but it does not speak to
12 the fine.

13 And as I know how the statutes are generally
14 written that \$10,100 is going to become about
15 \$21,000, give or take if my math is accurate.

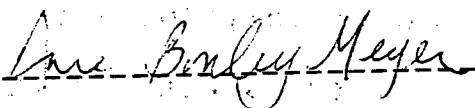
16 Mr. Martin, having been convicted of the crime
17 of felony DUI involving death, sir, you are sentenced
18 to the state department of corrections for a period
19 of 15 years. You will get credit for any time that
20 you have served. That will be calculated by the
21 department of corrections. And I have assessed the
22 fine in the amount of \$10,100 as required by the
23 statute.

24 And not having found any other language
25 regarding the suspension of that fine, if you all can

1
2 CERTIFICATE
3
4
5
6

7 I, the undersigned, ANNE BOULEY MEYER,
8 Official Court Reporter for the State of South
9 Carolina, do hereby certify that the foregoing is a
10 true, accurate, and complete transcript of record of
11 all the proceedings had and evidence introduced in
12 the trial of the captioned case, relative to appeal,
13 in the Circuit Court for Lexington County, South
14 Carolina, in the session starting December 1, 2008.

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

17
18 
19

20 Anne Bouley Meyer, RPR
21 Circuit Court Reporter
22
23
24
25

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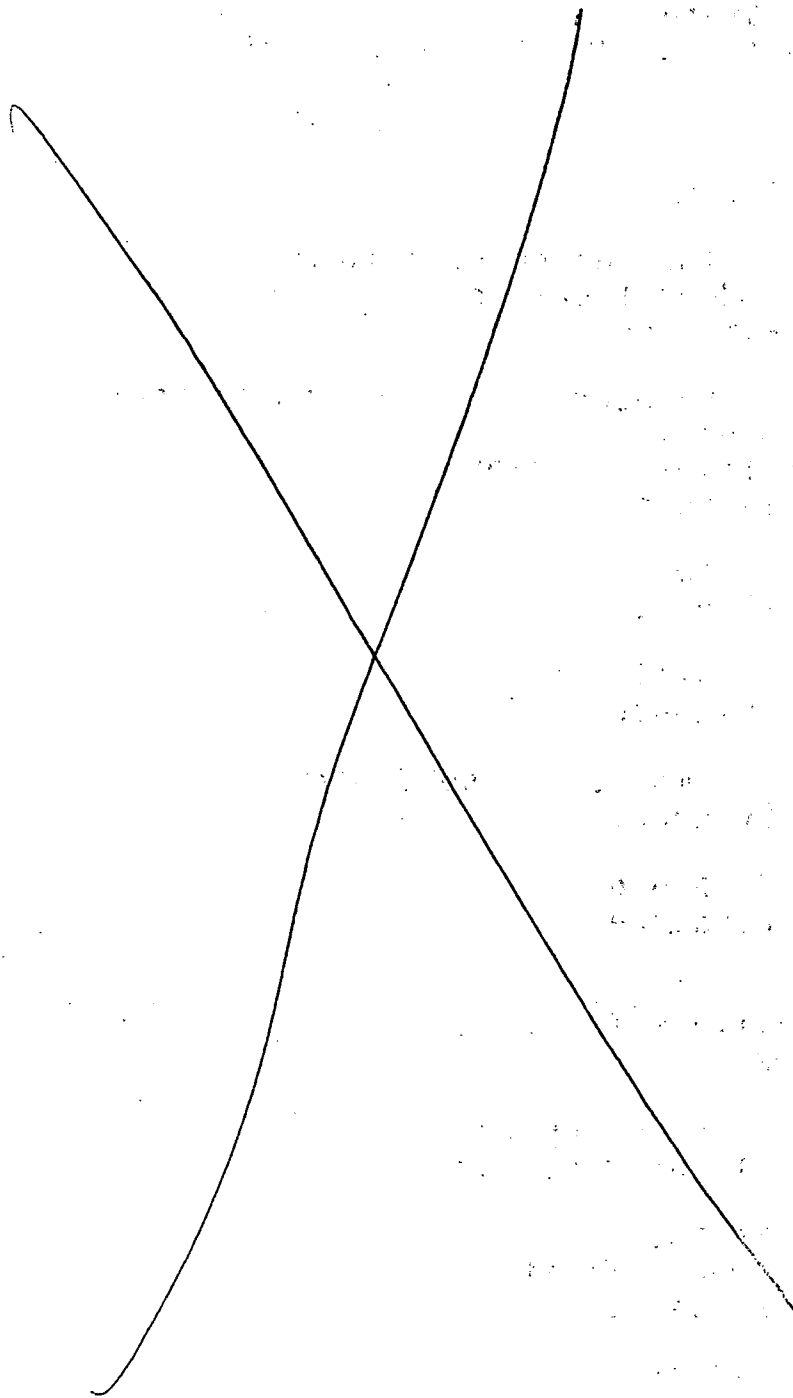
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STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2011 OCT 20 2:22

WILLIAM CONRAD MARTIN #332078

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

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3203972

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, Lexington County Court House, 205 E. Main Street, Lexington SC 29072
3. Name(s) of co-defendant(s) (if any) n/a.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-32-1374 - DUI/Felony driving under the influence, death result
 - (b) _____
 - (c) _____

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

000632

(a) December 3, 2008 - 15 years

(b) _____

(c) _____

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6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

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

i. South Carolina Supreme Court

ii. _____

iii. _____

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

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. February 3, 2011

ii. _____

iii. _____

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

i. Opinion No. 4788

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:

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SETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) _____

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 2011 OCT 20 2:22
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 CLERK OF COURT
 LEXINGTON SC

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? yes(c) your sentencing? yes(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

(a) the name and address of each attorney who represented you:

i. Robert T. Williams, Esq., P.O. 849, Lexington, SC 29071ii. Robert T. Williams, Esq. and Benjamin A. Stitely, P.O. Box 849, Lexington, SC29071

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trialii. Direct Appeal

iii. _____

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

New trial

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

No

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 BETTIE A. CARRIG
 CLERK OF COURT
 LEXINGTON SC

FILED

11. (a) that the Applicant would allege that trial counsel was ineffective in the following particulars.

1. Failure to adequately investigate the case.
2. Failure to adequately prepare the case for trial.
3. Failed to properly discuss the discovery provided by the State with the Applicant.
4. Failed to adequately consult with the Applicant regarding trial counsel's theory of defense.
5. That Applicant's lack of information prevented him from making an informed decision regarding a trial or plea in this case.
6. Failure to adequately convey plea offer(s) to the Applicant.
7. Failure to accept plea offer made by the State of 3 to 6 years with a plea to Felony DUI great bodily injury.
8. That strategic and non-strategic decisions were made by trial counsel without consultation with the Applicant.
9. Any and all other specific allegations currently unknown or yet determined and as may be amended prior to an evidentiary hearing.

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CLERK OF COURT
LEXINGTON, SC

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STATE OF SOUTH CAROLINA)

VERIFICATION

County of RICHLAND)

I, William Conrad Martin, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X William C. Martin

SWORN to and subscribed before me this 24th
day of October, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: 6/16/14

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CLERK OF COURT
LEXINGTON SC

2011CP3203972

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

Case No: 2011-CP-32-3972

William Conrad Martin, #332078,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed October 20, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the May 2008 term of the Lexington County Grand Jury for Felony DUI Resulting in Death (2008-GS-32-1374). Applicant was represented by Robert T. Williams, Sr., Esquire. On December 1-3, 2008, the Applicant proceeded to trial pursuant to which he was found guilty as charged. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for a period of fifteen (15) years.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by Robert T. Williams, Sr., Esquire and Benjamin A. Stitley, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Martin, Op. No. 4788 (Ct. App. filed February 3, 2011). The remittitur was issued on February 23, 2011.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from Applicant's direct appeal proceedings. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

11. (a) that the Applicant would allege that trial counsel was ineffective in the following particulars.

1. Failure to adequately investigate the case.
2. Failure to adequately prepare the case for trial.
3. Failed to properly discuss the discovery provided by the State with the Applicant.
4. Failed to adequately consult with the Applicant regarding trial counsel's theory of defense.
5. That Applicant's lack of information prevented him from making an informed decision regarding a trial or plea in this case.
6. Failure to adequately convey plea offer(s) to the Applicant.
7. Failure to accept plea offer made by the State of 3 to 6 years with a plea to Felony DUI great bodily injury.
8. That strategic and non-strategic decisions were made by trial counsel without consultation with the Applicant.
9. Any and all other specific allegations currently unknown or yet determined and as may be amended prior to an evidentiary hearing.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent

requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

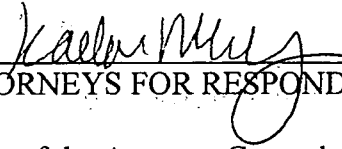
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 5, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

2011-CP-32-3972

WILLIAM CONRAD MARTIN, #332078,)

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 **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
P.O. Box 88
Irmo, SC 29063

DATED this 9th day of April, 2012.


Lena Pelishenko, Legal Assistant
 For Respondent

ORIGINAL

000643

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

William Conrad Martin,)
)
) Post-Conviction Relief
PLAINTIFF,) Hearing
) 2011-CP-32-3972
-VS-)
)
State of South Carolina,)
)
DEFENDANT.)
_____)

BEFORE THE HONORABLE FRANK R. ADDY, JR., JUDGE

APRIL 16, 2013

LEXINGTON, SOUTH CAROLINA

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

Tommy A. Thomas, Esq.
For the Applicant

J. Walt Whitmire, Esq.
For the State

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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EXHIBITS

THERE WERE NO EXHIBITS MARKED AT THIS HEARING.

1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 THE COURT: I think we're ready to go on
5 the case of William Conrad Martin versus State, and
6 I believe this is 11-CP-32-3972. It's a matter of
7 post-conviction relief. I think it's Mr. Thomas --

8 MR. THOMAS: That's correct, Your Honor.

9 THE COURT: Mr. Thomas --

10 MR. THOMAS: Yes, sir.

11 THE COURT: Tommy Thomas is present
12 representing Mr. Martin. Mr. Martin, of course, is
13 present as well.

14 You are ready to proceed, Mr. Thomas?

15 MR. THOMAS: We are, Your Honor.

16 THE COURT: The State's ready?

17 MR. WHITMIRE: Yes, Your Honor.

18 THE COURT: Mr. Thomas, go ahead and call
19 your first witness, please.

20 MR. THOMAS: Your Honor, if it please the
21 court, we call Mr. William Martin to the stand.

22 THE COURT: Mr. Martin, if you'll come on
23 up, please.

24 (Whereupon, the applicant
25 was sworn.)

1 CLERK OF COURT: Have a seat and state
2 your name for the record.

3 MR. MARTIN: My name is William Martin.

4 MR. THOMAS: May it please the Court, Your
5 Honor?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q Mr. Martin, you're here for a post-
10 conviction relief hearing, is that correct?

11 A Yes, sir.

12 Q All right, sir. And you are currently
13 serving a sentence for what?

14 A Felony DUI involving death.

15 Q All right, sir. And how much time did you
16 get for that?

17 A Fifteen years.

18 Q Was this a trial or a plea?

19 A A trial.

20 Q All right. And you're currently being
21 housed where?

22 A Trenton Correctional Institution.

23 Q And when do you max out?

24 A 8/28/21.

25 Q 2021?

William Conrad Martin - Direct

6

1 A 2021, yes, sir, I'm sorry.

2 Q All right. Now, you have -- through your
3 post-conviction relief action, you're asking for a
4 new trial?

5 A Yes, sir.

6 Q Now, you understand that should you be
7 successful with your post-conviction that you could
8 go back and that all these charges could be
9 reinstated or the charge could be reinstated, that
10 you could be retried?

11 A Yes, sir.

12 Q Do you understand that if you did receive
13 the maximum sentence at your original trial that you
14 have exposure and that you could receive additional
15 time?

16 A Yes, sir.

17 Q Given that understanding, you want to
18 proceed today?

19 A Yes, sir, I do.

20 Q All right, sir. Mr. Martin, when were you
21 arrested, just roughly?

22 A When I was arrested is July -- I think
23 it's July 30, 2007.

24 Q All right. What happened? You were in an
25 automobile accident?

William Conrad Martin - Direct

7

1 A Yes, sir, I was in an automobile accident.
2 I was about a mile and a half from home, and I
3 approached a car pulling out of their driveway, and
4 we had collided.

5 Q All right, sir. Now, as a result of that
6 collision, what happened -- somebody was injured?

7 A Yes, sir, the passenger was injured.

8 Q You were originally charged with felony
9 DUI, great bodily injury?

10 A Great bodily injury, yes, sir.

11 Q And this individual, this lady, she passed
12 when?

13 A About two and a half months later.

14 Q After the accident?

15 A Yes, sir. Yes, sir.

16 Q All right, sir. Now, after this did you
17 hire someone to represent you?

18 A Yes, sir, I did.

19 Q And who did you hire?

20 A Theo Williams.

21 Q All right, sir. And what did you and Mr.
22 Williams do to prepare for this case? You met with
23 him?

24 A A couple of times. I had called to see
25 him.

William Conrad Martin - Direct

8

1 Q All right. Now, so how many times did you
2 meet with him?

3 A About three times -- two or three times.

4 Q Were you out on bond during this period of
5 time?

6 A Yes, sir, I was.

7 Q And how long was it from the time that you
8 were bonded out until this case came to trial?

9 A I think approximately a year, year and a
10 half.

11 Q Year and a half?

12 A Something like that, yes, sir.

13 Q So there was enough time in there to
14 prepare this case for trial?

15 A Yes, sir.

16 Q And you met with him how many times?

17 A I think two, three times.

18 Q Okay. What did you talk about?

19 A Well, mainly when I went up there, we
20 talked about just mainly wanted to know what was
21 going to happen and how things were going.

22 Q Okay. Now, in the times that you met with
23 him, did you talk about the discovery? Did you talk
24 about the facts that the State had or the evidence
25 that the State had against you?

William Conrad Martin - Direct

9

1 A No, sir. I didn't even know what
2 discovery was.

3 Q Okay. Did you talk about what they
4 intended to prove at court, what they were going to
5 prove or attempt to prove against you?

6 A No, sir.

7 Q Did you talk about the facts of this case?

8 A No, sir, not as I can recall.

9 Q Did you talk about a private investigator
10 or hiring someone to assist in investigating?

11 A No, sir.

12 Q Did you talk about a medical expert?

13 A No, sir.

14 Q There was going to be medical testimony,
15 and were you aware of that?

16 A After we got to trial, obviously, I was
17 aware of it after I seen witnesses for the State.

18 Q Were you aware of that prior to trial?

19 A No, sir.

20 Q You were aware that she was in the
21 hospital and sought medical treatment for an
22 extended period of time?

23 A Yes, sir.

24 Q Did you ever talk with Mr. Williams about
25 that treatment?

1 A Only that the family had a malpractice
2 suit on the hospital, is all I can recall.

3 Q All right, sir. And then you were aware
4 that, unfortunately, she did pass away?

5 A Yes, sir -- yes, sir.

6 Q And at that time when she passed away, you
7 were still charged with felony DUI, great bodily
8 injury?

9 A Yes, sir.

10 Q All right, sir. Was it at a later point
11 that that was enhanced to death?

12 A Yes, sir.

13 Q Now, did you ever discuss with Mr.
14 Williams what I would call his theory of defense,
15 what he was going to do to defend you?

16 A No, sir, I can't recall of any.

17 Q Had you ever been in a big court like that
18 before, General Sessions Court?

19 A No, sir.

20 Q Were you familiar with that type of
21 procedure or process at all?

22 A No, sir.

23 Q Did you understand what was going on?

24 A No, sir, I'd never been.

25 Q You understood that you had been charged

William Conrad Martin - Direct

11

1 for a crime?

2 A Yes, sir..

3 Q And did you sit down with Mr. Williams and
4 ever talk about the difference between felony DUI,
5 great bodily injury, and felony DUI, death?

6 A No, sir.

7 Q Did you know how much time either one of
8 those charges carried?

9 A Not until the end when we went to trial.

10 Q So what you did is that you relied on Mr.
11 Williams?

12 A Yes, sir, I did.

13 Q And you wholly relied on Mr. Williams?

14 A Yes, sir.

15 Q All right. Now, did you and Mr. Williams
16 discuss what your chances at trial were?

17 A I went to see him right before the trial.
18 He was telling me I had pretty good chances, 60, 40,
19 70.

20 Q What did you interpret "pretty good" to
21 mean?

22 A To be honest with you, sir, I don't know..

23 Q You were real nervous then?

24 A Yes, sir.

25 Q You're real nervous today?

William Conrad Martin - Direct.

12

1 A Yes, sir.

2 Q All right. And you understand what's

3 going on today, don't you?

4 A Yes, sir.

5 Q Now, did you talk about a plea?

6 A He mentioned three to six.

7 Q Okay. And when did he mention three to

8 six? Was that your understanding there was a plea

9 offer for three to six years on what?

10 A Great bodily injury.

11 Q Great bodily injury?

12 A Yes, sir.

13 Q Now, was this after this lady had passed

14 away?

15 A Yes, sir.

16 Q Okay. But you had not been charged with

17 felony DUI, death, yet?

18 A No, sir.

19 Q Okay. And when he told you about the

20 three to six, what happened? Did y'all talk about

21 it, or what did you do?

22 A No, sir, I just more or less told him I

23 didn't know what he had to work with. I mean,

24 that's why I hired him.

25 Q You left the decision --

1 A I mean, I didn't know what to do.

2 Q You left the decision with Mr. Williams?

3 A Yes, sir, I did.

4 Q And what was that decision?

5 A That he'd be better.

6 Q What do you mean by "he'd be better"?

7 A He referred that it could be a lot worse
8 than this.

9 Q Worse case?

10 A And told them no deal.

11 Q So it was your understanding that Mr.
12 Williams was telling you that he could win this
13 case?

14 A Yes, sir. I mentioned that if he couldn't
15 do any better that I would take it, because I didn't
16 want to be away from my family longer than I had to
17 be.

18 Q Right. And this was a really emotional
19 time for you, wasn't it?

20 A Yes, sir, it was.

21 Q And that emotion was around the fact that
22 someone had passed away?

23 A Yes, sir, it sure was.

24 Q And it's emotional for you today?

25 A Yes, sir.

William Conrad Martin - Direct

14

1 Q So you left that decision up to Mr.

2 Williams. Did he decline that offer, or do you know

3 what happened?

4 A He just walked out the door and said, "I'm
5 going to tell them no deal."

6 Q Tell them no deal, okay. Now, do you
7 remember how long it was from that point in time
8 until you came up for trial?

9 A I'm not sure.

10 Q Okay. Was it a long time, short time?

11 A It wasn't a long time.

12 Q Not a long time?

13 A It wasn't long, no, sir.

14 Q And how were you told that your case was
15 coming for trial?

16 A By telephone.

17 Q And what were you told?

18 A Told that I was third in line.

19 Q For trial?

20 A Yes, sir.

21 Q Was that like the next week?

22 A I think a week and a half.

23 Q A week and a half?

24 A Two weeks at the most, yes, sir.

25 Q All right. So a week and a half out, you

William Conrad Martin - Direct

15

1 were noticed that your case was potentially up for
2 trial?

3 A Yes, sir.

4 Q And what did you do with Mr. Williams to
5 prepare for that trial?

6 A I called him to see if I could go in and
7 talk to him. Me and my sister and my ex-wife now
8 and my father-in-law went up there and talked to
9 him. And he was telling me that I had a good
10 chance, you know, they had the wrong vehicle and I
11 think [inaudible]. It wasn't very much.

12 Q Did you talk about at that point in time
13 again about the theory of defense? What was he
14 going to do to defend you?

15 A All I know is before we went in the
16 courtroom, when I was there, that he had told me
17 something about he was -- his strategic move or
18 whatever was going to be on the bloodwork, on the
19 blood or something. Something about the blood is
20 all I know.

21 Q Maybe try and keep the blood out?

22 A Yes, sir.

23 Q The blood evidence out?

24 A Yes, sir.

25 Q So you went to trial. And how did your

1 trial go? You understood the process of what was
2 going on?

3 A I just got into it. I started realizing.

4 Q And what did you realize?

5 A I was realizing that I felt like the only
6 thing he was working with was what the State had.

7 Q It didn't look good?

8 A No, sir.

9 Q And they had -- they put up witnesses, I
10 guess the family who was at the scene?

11 A Yes, sir.

12 Q And then the troopers who investigated the
13 incident, is that correct?

14 A Yes, sir.

15 Q And then they had the MAIT Team. Do you
16 know what the MAIT Team is now?

17 A Yes, sir. I do now, yes.

18 Q And they investigated the accident?

19 A Yes, sir.

20 Q Then they had testimony from SLED?

21 A Yes, sir.

22 Q And were they able to get the blood in --

23 A Yes, sir.

24 Q -- the blood evidence in?

25 A Yes, sir.

William Conrad Martin - Direct

17

1 Q And what was your blood level?

2 A It was twice the limit.

3 Q Do you remember what it was?

4 A No, sir, two something.

5 Q Point one six, I think?

6 A I can't remember.

7 Q Okay, all right. And then they brought
8 the doctors in, is that correct?

9 A Yes, sir.

10 Q And the doctors testified to what? They
11 testified that this lady had passed away as a result
12 of this accident?

13 A Yes, sir.

14 Q And did you know -- had you looked at any
15 of that evidence prior to this trial?

16 A No, sir. No, sir.

17 Q Did you know any of these people were
18 going to testify against you?

19 A No, sir, I didn't know who was testifying.

20 Q Did you know what the medical testimony
21 was going to be?

22 A All I knew is it would be something about
23 the accident.

24 Q Did you understand the possibility of
25 trying to say that her death was not a result of the

William Conrad Martin - Direct

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1 accident?

2 A I'm sorry?

3 Q Did you understand the theory that
4 potentially, since she lived for a period of time
5 after the accident, that your accident is not what
6 injured her to cause her to pass away?

7 A Yes, sir, I understand that. I understand
8 that it played a role, but that wasn't what caused
9 it.

10 Q Right. But did you ever talk to Mr.
11 Williams about that prior to trial?

12 A No, sir.

13 Q You never discussed with him whether they
14 could prove that or not prove that?

15 A No, sir. No, sir.

16 Q Did you ever look at any of the medical
17 records prior to trial?

18 A No, sir, I've never seen them.

19 Q Now, were you offered a second plea -- a
20 second plea offer was given?

21 A I think when the trial started, yes, sir.

22 Q All right. And you had Ms. Deadra
23 Jefferson -- she was the trial attorney?

24 A Yes, sir.

25 Q Not trial attorney but trial judge.

William Conrad Martin - Direct

19

1 A She was the trial judge.

2 Q Judge Jefferson had instigated, I guess,
3 consultation about a plea?

4 A I never heard her say anything. Theo had
5 come over and said that she had agreed on 10 years,
6 but he wasn't going to accept three to six, so he's
7 not going with 10.

8 Q All right. And this was conveyed to you
9 after he had told Judge Jefferson that he was not
10 going to accept the plea?

11 A Yes, sir.

12 Q All right. Were you ever given an
13 opportunity to accept that 10-year plea?

14 A No, sir.

15 Q Okay. At that point in time at the trial,
16 how were you feeling about your chances?

17 A Not good.

18 Q Not good?

19 A No, sir.

20 Q So in essence, you were offered two pleas,
21 is that correct?

22 A Yes, sir.

23 Q Three to six on great bodily injury?

24 A Yes, sir.

25 Q And 10?

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20

1 A Yes, sir.

2 Q Do you know if the 10 was on great bodily
3 injury or death?

4 A No, sir, I don't recall.

5 Q All right. Now, you didn't testify at
6 trial did you?

7 A No, sir.

8 Q And why didn't you testify?

9 A I mean, I figured I couldn't handle it
10 all.

11 Q Okay. How did you make that decision?
12 How did you come to that decision not to testify?

13 A I was going by -- I mean, I don't know. I
14 was just going by -- I was depending on my attorney.
15 I don't know. I know I was shook up and confused.

16 Q You had a prior record?

17 A Sir?

18 Q Did you have a prior record?

19 A Yes, sir, a year ago.

20 Q Just minor?

21 A Yes, sir.

22 Q And of that, I think the most significant
23 that you had was a 1986 DUI?

24 A Yes, sir.

25 Q And then you had a 1991 DUI?

William Conrad Martin - Direct

21

1 A Yes, sir.

2 Q And those were in Magistrate Court?

3 A Yes, sir.

4 Q Okay. Had you ever had anything in
5 General Sessions, this type of court?

6 A No, sir.

7 Q All right. Have you ever been to prison
8 before?

9 A No, sir.

10 Q Did you talk with Mr. Williams about if
11 you took the stand whether or not those DUIs or
12 those charges could be brought up by the Solicitor,
13 what we would call to impeach you, to ask you "Isn't
14 it true that you had gotten two previous DUIs?"

15 A I don't recall, no, sir.

16 Q All right. So you never talked about
17 whether they could use your prior record?

18 A No, sir.

19 Q So that was not a factor in you making
20 your decision as to whether you were going to
21 testify or not?

22 A No, sir.

23 Q Now, at trial you remember the jury
24 charges? You know what I'm talking about as far as
25 jury charge?

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1 A Yes, sir, I do.

2 Q Where the judge was going -- the
3 instructions the judge was going to give to the
4 jury?

5 A Yes, sir.

6 Q And do you know whether or not Mr.
7 Williams asked for what we call a lesser included
8 offense, felony DUI, great bodily injury?

9 A No, sir.

10 Q Do you remember whether that was charged
11 to the jury or not?

12 A No, sir, it wasn't.

13 Q Okay. Shoney, I know that you've waited a
14 long time for this hearing, and this hearing is
15 important to you.

16 A Yes, sir.

17 Q I'm not implying that I've forgotten
18 something or left something out. Is there anything
19 else that you would like to bring to the Court's
20 attention?

21 A I don't know.

22 Q All right. Do you feel like we've covered
23 all the issues that you've asked me to present on
24 your behalf?

25 A Yes, sir.

1 MR. THOMAS: Your Honor, if I could beg
2 the Court's indulgence.

3 THE COURT: Certainly.

4 MR. THOMAS: Your Honor, we have no
5 further questions.

6 THE COURT: Are you okay? Do you need a
7 moment?

8 MR. MARTIN: I'm all right.

9 THE COURT: You're all right?

10 MR. MARTIN: Yes, sir.

11 THE COURT: Attorney General?

12 MR. WHITMIRE: May it please the Court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. WHITMIRE:

16 Q So I recall from your testimony you
17 testified that Mr. Williams did not review discovery
18 with you?

19 A No, sir, he didn't.

20 Q Certainly, you remember the night in
21 question. Do you remember it?

22 A Yes, sir.

23 Q Referring to page 174, Your Honor.

24 Do you remember passing out in detention?

25 A Yes, sir. I didn't pass out. I remember

William Conrad Martin - Cross

24

1 fainting.

2 Q And do you remember your BAC, page 441 --
3 your blood alcohol level four hours after the
4 offense?

5 A No, sir, I don't remember. All I know is
6 they said it was right at twice the legal limit.

7 Q Four hours later, that's after the
8 diminished time. And do you recall listening at
9 your trial to the arresting officer testifying about
10 your slurred speech, on page 131?

11 A Yes, sir, I remember.

12 Q So why did you hire Mr. Williams?

13 A I needed legal defense, and I know that
14 he's -- I didn't know him. I was going by family.

15 Q Isn't he one of the most noted attorneys
16 in this area?

17 A I never knew him till then.

18 Q So you wanted a miracle worker, didn't
19 you?

20 A No, sir. I wanted a lawyer that --

21 Q So you've never done any serious time in
22 jail, though, have you?

23 A No, sir, I haven't.

24 Q So three to six is a lot of time. You
25 turned that plea offer, right, or by your testimony,

1 you let Mr. Williams turn it down for you? You
2 turned down that plea offer, the first one, correct?

3 A No, sir, I didn't turn nothing down.

4 Q Back to my original question, three to six
5 years would have been a lot of time looking at
6 prison time for somebody who's never been
7 incarcerated?

8 A Sure.

9 Q And do you recall your Court of Appeals
10 opinion?

11 A Yes, sir.

12 Q Do you recall that it was a published
13 opinion or a proximate cause issue, the defense that
14 Mr. Williams raised, a very detailed opinion? So he
15 did the best that he could for you. At the end of
16 the day, it was you who turned down the plea?

17 A I don't understand what you're saying. I
18 didn't understand what he said.

19 Q The proximate cause, the defense that Mr.
20 Williams presented on your behalf -- one of the
21 defenses -- do you recall the Court of Appeals
22 addressing that issue? Do you have any knowledge of
23 that whatsoever?

24 A What, about not getting to appeal?

25 Q Or getting the appeal, having the opinion.

1 A Yes, sir, he mailed me. I got the letter
2 that he mailed.

3 Q So he mailed you a letter after the fact?

4 A Yes, sir.

5 Q And you were out on bond during pre-trial,
6 is that correct?

7 A Yes, sir.

8 Q Did Mr. Williams mail you correspondence
9 and keep in touch with you prior to trial?

10 A To the roll call hearing that you go to
11 once a month. I believe it was once a month.

12 Q You don't recall your conversations with
13 Mr. Williams, do you?

14 A I talked to his secretary most of the
15 time.

16 Q Or viewing discovery?

17 A No, sir, I don't remember no discovery.

18 Q Or your defense?

19 A The defense during trial, that's what I
20 remember.

21 Q And wouldn't this be a really traumatic
22 point in your life considering you haven't been in
23 the criminal system in your life?

24 A Yes, sir, I guess so. I don't understand
25 some of your questions.

William Conrad Martin - Cross

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1 MR. WHITMIRE: No further questions, Your
2 Honor.

3 MR. THOMAS: Your Honor, if it please the
4 Court.

5 THE COURT: Please.

6 REDIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q There was testimony at trial about you
9 passing out?

10 A Yes, sir.

11 Q And you were extremely upset about what
12 happened?

13 A Yes, sir.

14 Q Okay: Did you pass out, or you just
15 fainted?

16 A No, sir, I fainted because I got right
17 back up, and I stood against the wall.

18 Q And then you were taken to the hospital,
19 right?

20 A Yes, sir.

21 Q Now, counsel asked you about your blood
22 alcohol level and what the trooper testified to at
23 trial about your slurred speech. You learned those
24 things at trial? That's when you heard that?

25 A Yes, sir.

William Conrad Martin - Redirect

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1 MR. THOMAS: May it please the Court, Your
2 Honor.

3 THE COURT: Yes, sir.

4 ROBERT THEODORE WILLIAMS, SR., having
5 first been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q Mr. Williams, you had an opportunity to
9 represent Mr. Shoney Martin?

10 A I did.

11 Q And he goes by the name Shoney?

12 A He does.

13 Q All right. And he was charged with felony
14 DUI, great bodily injury --

15 A Originally.

16 Q -- originally, right. And --

17 A And some other charges. I want to say
18 there was an open container charge, smaller stuff.

19 Q Yes, sir. What process did you go through
20 to prepare this case for trial?

21 A Well, we talked to the client. One thing
22 that everybody kind of omitted was that we have a
23 standard practice in my office that we send out
24 discovery to the client, to include supplemental
25 discovery. And what I was doing in the back was I

Robert Theodore Williams - Direct

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1 was checking my correspondence file:

2 And indeed there's evidence that we sent
3 supplemental discovery to the client. So all of my
4 clients have their discovery before they go to
5 trial.

6 Q Right.

7 A We meet with the clients, would have met
8 with him. I checked. We had copies of pictures I
9 guess that we would have blown up because they went
10 to the scene and took some pictures to show the
11 location of the accident, because one of the issues
12 obviously is the curve and the fact that whether or
13 not the witnesses could testify as to what they were
14 saying. So we had some pictures that were taken. I
15 digress. Tell me what else you want to know.

16 Q Okay. I didn't know if you had a standard
17 procedure. Did you hire a private investigator?

18 A No, I did not.

19 Q All right. Did you feel like it was
20 necessary to do that?

21 A No, I didn't.

22 Q Did you go out to the scene?

23 A We had them take pictures of the scene,
24 and I can't remember if I went out there. I don't
25 recall doing that. I probably have been to the

Robert Theodore Williams - Direct

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1 scene before since I'm from Lexington County, but I
2 don't recall going there.

3 Q And what was your theory of defense in
4 this case?

5 A Well, it was -- actually, the theory of
6 defense was causation of the wreck, because if you
7 read the MAIT report, the MAIT report indicates that
8 the vehicle which pulled out in front of Shoney, it
9 seemed to me that they pulled out too quick in front
10 of Shoney. That was one issue.

11 The second issue was causation of the
12 death, because the lady went into the hospital. She
13 was pretty bad off, but she also got some sort of
14 infection when she was in the hospital.

15 And we learned that there was actually a -
16 they had contacted an attorney for a malpractice
17 case against the hospital. And then for whatever
18 reason, she was in like a rehab center. I shouldn't
19 use the word "rehab." I guess that's what it is,
20 where it's kind of like an in-between area where
21 it's not super urgent but they're not in a nursing
22 home, and they're doing certain things to keep them
23 in a certain position.

24 Q Maybe called an intermedical facility?

25 A Intermedical.

1 Q Intermedical, yes.

2 A She was doing better. She got off the
3 lung machine or the tube, the air tube I guess I
4 should say. And then she started doing worse, and
5 she basically told them that she didn't want to
6 live. So she caused her own death to a certain
7 extent. And that was one of the issues actually, is
8 whether or not when she's -- she's an intervening
9 cause. Either she was an intervening cause or the
10 hospital's negligence might have been an intervening
11 cause.

12 Q And that issue actually went up on appeal?

13 A It did.

14 Q That issue, and what was the other issue
15 that went up? Was that the testimony of the expert
16 witness?

17 A The testimony of the expert witness, they
18 had a guy testify as to the effects of the marijuana
19 which was in his system as well as I want to say
20 Xanax. And Ben actually argued -- Ben Stitley
21 actually argued that issue as to -- and they ruled
22 against us. It's hard to figure out why they were
23 allowed to testify to that issue. I mean, they
24 didn't need it. They could have done it with a -- I
25 think it was a .167.

Robert Theodore Williams - Direct

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1 Q Right.

2 A But that was like -- it was added
3 testimony that obviously hurt but that we didn't
4 think they should have been able to use.

5 Q So basically he was testifying as a
6 toxicologist or pharmacologist --

7 A Pharmacologist.

8 Q -- at the same time?

9 A Right.

10 Q Now, you had the medical records prior, I
11 would assume?

12 A We did.

13 Q Prior to this trial?

14 A We did.

15 Q At any time did you think that it would
16 have been necessary to hire your own expert, medical
17 expert, since you were saying that proximate cause
18 was an issue?

19 A No, we knew what the legal issue was, and
20 that was -- you know, there's case law that says
21 that if the initial ball that gets the thing in
22 motion, if it's from the result of a crime, then
23 they're suspect or they could be held responsible
24 for whatever the ultimate results are.

25 It wasn't really a medical -- we didn't

1 need to try a medical negligence case, if you will,
2 because obviously if we could have won that, then I
3 assume the family could have won their negligence
4 action, if you will.

5 Q Right.

6 A And I think -- and they did not. They
7 backed off the case, from what I understand.

8 Q Okay. But it never went forward?

9 A No. They contacted a lawyer, and the
10 lawyer checked into it. And there was insufficient
11 evidence, I guess, to go forward.

12 Q How about the plea offers? Were there two
13 plea offers made in this case?

14 A He said that. I don't remember but the
15 one. You know, I'm not going to say he's wrong, but
16 I don't remember but the one, the three to six. I
17 was talking to Ben Stitley, my young law partner
18 back there, and he recalled the three to six
19 earlier.

20 I don't doubt that maybe they might have
21 offered the 10. But if they had offered it, I feel
22 certain I would have at least shared with my client.
23 Obviously, he knew about it if he's saying he heard
24 it. And if he heard it, why didn't he say, "Oh, no,
25 Theo. I want to take it"?

Robert Theodore Williams - Direct

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1 Q Yes. And then I know Judge Jefferson, and
2 I know that she oftentimes --

3 A She does try to make you work things out.

4 Q Yes. But you don't remember specifically
5 telling him that there was a 10 offer, 10-year
6 offer?

7 A I don't remember that.

8 Q Okay.

9 A I mean, I'm not saying that she didn't say
10 it. I mean, if she did say it, then she said it.

11 Q All right.

12 A And obviously for him to have heard it,
13 then I must have told him. So if I did, why didn't
14 he say, "Theo, why don't you go back and take it?"

15 Q How strongly did you feel about this case?
16 What did you think that your odds --

17 A I have seen worse cases. He was -- the
18 thing I think that really hurt him -- you know, I
19 don't know what hurt him. I don't know if it was
20 the 16 reading or if it was the extra stuff that
21 they were allowed to get into evidence. I don't
22 know which part got him.

23 Q Because they kind of marched -- I mean, in
24 reading the transcript, they kind of marched through
25 this thing. You know, they put the family up as

1 witnesses, and then came the MAIT Team and the
2 troopers, and then SLED, and then finally the
3 doctors. And the last doctor was just saying that
4 clearly that this was the proximate cause.

5 A Yes, that's what he said.

6 Q Yes. Did you have an opportunity to talk
7 to Shoney about that evidence before --

8 A Well, we talked to Shoney about everything
9 that was going on. And if there was any questions
10 in his mind, his brother is a highway patrolman. I
11 hope he would have asked his brother about, you
12 know, what his feelings were also. But he turned
13 down three years. He did not want to go to jail,
14 period.

15 Q The trial itself, from what I could
16 determine from the transcript, the issue that went
17 to the jury was a charge on felony DUI, death. And
18 I didn't see any argument made for I guess what
19 would be a lesser included felony DUI, great bodily
20 injury.

21 A True.

22 Q Do you know why?

23 A The only thing -- in thinking back on it,
24 the only reason I can think that it would have gone
25 that way would have been the feeling that if they

Robert Theodore Williams - Direct

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1 couldn't prove that the lady died --

2 Q Right.

3 A -- as a result of the wreck and he was the
4 cause of her death. If they couldn't prove that he
5 was the cause of her death and if there's no
6 underlying charge for felony DUI, serious bodily
7 injury, does he walk? Is he not guilty? Because
8 the judge didn't charge it either.

9 Q Yes. Did you discuss that with Shoney?

10 A I would have thought we would have.

11 Q Right. How about the --

12 A I don't remember, but I would have thought
13 we would have.

14 Q Right. How about his decision to not
15 testify? How did that come about? Was there a
16 purpose in him not testifying?

17 A Shoney's a real nice guy. He's a very
18 emotional guy. I would have talked to him about it,
19 and I'm sure the judge inquired about whether or not
20 he was going to take the stand or not take the
21 stand.

22 I think if you put Shoney on this stand,
23 you can -- the other side can twist Shoney, because
24 he's such a nice guy, and he felt guilty for the
25 death of this lady.

Robert Theodore Williams - Direct

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1 Q He was sorry for what happened?

2 A He was sorry for what happened, and I
3 honestly believe I think the State probably could
4 have twisted him around a little bit.

5 Q Yes.

6 A But he would have made the call. I never
7 make the call for the defendant to take the stand.

8 MR. THOMAS: Your Honor, if I could beg
9 the Court's indulgence just for a second.

10 THE COURT: Sure.

11 MR. THOMAS: Your Honor, I have no further
12 questions.

13 THE COURT: Cross?

14 MR. WHITMIRE: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. WHITMIRE:

17 Q Good afternoon, Mr. Williams.

18 A Good afternoon.

19 Q Just a few quick questions for you. How
20 long have you been practicing law?

21 A Since 1976.

22 Q And that's primarily in criminal defense?

23 A It is.

24 Q And it's fair to say you've tried hundreds
25 of cases and pled out probably thousands?

Robert Theodore Williams - Cross

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1 A I think it's fair to say I've tried
2 hundreds of cases. I'm not sure it's fair to say
3 I've pled out thousands.

4 Q Have you ever improperly influenced one of
5 your clients to plead guilty?

6 A No.

7 Q Whose decision is that?

8 A It's always the client's decision.

9 Q In fact, do you recall being retained in
10 Mr. Martin's case?

11 A I do.

12 Q And would you describe Mr. Martin as an
13 active client in this case?

14 A That word "active" is --

15 Q Involved.

16 A All I could do is tell him what's going
17 on. I'm not sure I would call Shoney an active
18 participant. I mean, when he came in for roll call,
19 we talked about his case. When he called me on the
20 phone, we talked about his case.

21 But I've had some clients that call me
22 every day, and they have theories about how their
23 case out to be tried. They send me copies of cases.
24 So I guess that's in the eye of the beholder.

25 Q Mr. Martin indicated to you pretty early

Robert Theodore Williams - Cross

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1 on that he wanted to proceed to trial?

2 A He did not want to go to jail. I think if
3 they had made him an offer where he wouldn't have
4 gone to jail, I think probably Shoney would have
5 taken it.

6 MR. WHITMIRE: No further questions, Your
7 Honor.

8 Thank you, Mr. Williams.

9 MR. WILLIAMS: You're welcome.

10 MR. THOMAS: Your Honor, may it please the
11 Court.

12 REDIRECT EXAMINATION

13 BY MR. THOMAS:

14 Q Mr. Williams, based on counsel's
15 questioning about trials and pleas, you don't mind
16 going to trial?

17 A No, I don't.

18 Q And if you feel like you've got a chance,
19 you certainly don't mind taking that chance and
20 trying the case?

21 A You know, I guess it's a philosophy. I
22 see a lot of attorneys who browbeat defendants into
23 taking pleas that they really don't want to do.

24 Q Right.

25 A I tell the client what his odds are. I

1 show him what the evidence is. And then he makes
2 that decision, because that's his life. And on a
3 given day, he might have won that case, truthfully.

4 Q Could have?

5 A Could have won that case. Would have
6 taken a different jury.

7 Q Do you think he understood? Looking back,
8 do you think he understood -- I don't know if saying
9 what's going on is the proper thing for all. But do
10 you think he understood?

11 A He knew that he hit the lady that was in
12 front of him and that his blood alcohol reading was
13 a 16. He was hoping that he could get off.

14 Q If he didn't -- your statement was that he
15 didn't want to go to jail?

16 A Yes.

17 Q If he didn't want to go to jail, would it
18 be fair to say that had he known -- he could have
19 gotten what on the felony DUI, death?

20 A Up to 25.

21 Q I think so, 25. So does it make sense
22 that if he understood that his exposure was 25 that
23 he would be much more inclined to accept the three?

24 A There are a lot of people -- no, it
25 wouldn't, no. You might be thinking like a

1 mathematician when you say that.

2 Q Yes.

3 A Most people would rather not spend one day
4 in jail, and there are a lot of people who would
5 risk one year versus 20 years. At least, that's
6 been my experience. Now, obviously you're a
7 criminal defense lawyer too, and I'm sure you've
8 seen a few of those. But there are a lot of people
9 that they don't equate it that way.

10 Q Yes.

11 A It may be easier for the lawyer to say
12 that.

13 Q Right. Do you remember whether you told
14 him that?

15 A Told him what?

16 Q That his exposure was 25 --

17 A Oh, I'm sure.

18 Q -- and that this was the offer?

19 A I'm sure.

20 MR. THOMAS: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 MR. WHITMIRE: No further questions, Your
23 Honor. I'd just ask that Mr. Williams be released.

24 THE COURT: No objection to releasing Mr.
25 Williams. Thank you very much.

1 MR. WILLIAMS: Thank you, Your Honor.

2 THE COURT: Have a good day. Take care.

3 MR. THOMAS: Your Honor, if it please the
4 Court, we call Ms. Jackie Williams to the stand.

5 THE COURT: Ms. Williams.

6 (The witness was sworn.)

7 CLERK OF COURT: Have a seat and state
8 your name for the record, please.

9 MS. WILLIAMS: Jackie Williams.

10 MR. THOMAS: May it please the Court, Your
11 Honor.

12 THE COURT: Yes, sir.

13 JACKIE WILLIAMS, having first been duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. THOMAS:

17 Q Ms. Williams, you're related to Shoney
18 Martin?

19 A I'm his sister.

20 Q Sister. And you're here to testify today?

21 A Yes, sir.

22 Q And you're here to tell the truth?

23 A Yes, sir.

24 Q Now, the fact that he is your brother, you
25 still understand that you're here to tell the truth?

1 A Yes, sir.

2 Q And that's what you plan to do?

3 A Yes, sir.

4 Q Okay. Ms. Williams, were you with him
5 when Mr. Martin met with Mr. Williams?

6 A Yes, sir.

7 Q And were you there every time that he met
8 with Mr. Williams?

9 A Yes, sir.

10 Q And so you were in the room with him?

11 A Yes, sir.

12 Q Now, how many times did y'all meet?

13 A It was two or three times.

14 Q During those two or three times that you
15 met, what did you talk about?

16 A We were just asking questions about what
17 was going to happen, what we could expect, stuff
18 like that, telling him things that we thought about
19 the truck was not the correct vehicle that they had,
20 asking him if he had looked into that.

21 Q You would try to provide him with whatever
22 information that you could --

23 A Right.

24 Q -- that would assist him in his
25 preparation of the case?

1 A Correct. I actually -- we actually took
2 the pictures and gave him those pictures.

3 Q That he was talking about?

4 A Yes.

5 Q Okay. Now, what was your understanding in
6 talking with Mr. Williams what the defense was going
7 to be in this case?

8 A That --

9 MR. WHITMIRE: Objection to hearsay.

10 THE COURT: Talking about her
11 understanding. You can answer that.

12 A Can you repeat it, please?

13 Q What was your understanding about what the
14 defense was going to be in your brother's case?

15 A That they were going to use the truck,
16 that it wasn't the right vehicle, that the accident
17 is not what caused the death.

18 Q The proximate cause that we're talking
19 about?

20 A Right.

21 Q All right. Now, did you talk about the
22 medical records?

23 A No.

24 Q Did you and your brother ever see the
25 medical records?

Jackie Williams - Direct

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1 A No.

2 Q Did you ever see any of the State's
3 evidence in this case?

4 A No.

5 Q Did you know what the State's evidence
6 was?

7 A No.

8 Q Did your brother know what it was?

9 A No.

10 Q Do you remember the plea offer of three to
11 six?

12 A I do.

13 Q And were you in the room when Mr. Williams
14 told y'all that?

15 A He asked him -- well, actually, my brother
16 asked Mr. Williams if he should take the plea or
17 not, and Mr. Williams told him that he paid him to
18 win the case.

19 Q Did you understand what exposure that your
20 brother had, how much time he could get?

21 A Not really, not until the time of the
22 trial when they started saying.

23 Q What happened at trial? What did you
24 realize at trial?

25 A I realized that we had no evidence. Theo

Jackie Williams - Direct

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1 wasn't calling any witnesses, and all he was doing
2 was using the State's evidence.

3 Q Did the trial start to look bad or good,
4 or what did it look like?

5 A I can only say in my opinion.

6 Q That's all right.

7 A It was starting to look bad whenever Theo
8 just didn't seem like he was asking the proper
9 questions or calling any witnesses.

10 Q The evidence was starting to mount up?

11 A Right.

12 Q Did you have that evidence prior to this
13 trial that you were witnessing at trial?

14 A Yes.

15 Q Did you know those things --

16 A Did I know -- no, did I know?

17 Q I'm sorry, that's kind of a convoluted
18 question.

19 A Okay.

20 Q When you were sitting at the trial, all
21 this evidence started coming out, and you were able
22 to witness it at trial. Did you have that
23 information prior to trial?

24 A No.

25 Q Now --

1 Your Honor, if I could beg the Court's
2 indulgence?

3 THE COURT: Certainly.

4 Q Do you remember the 10-year plea offer?

5 A I know that during the trial that he had
6 taken my brother and his ex-wife in a different room
7 and was talking to them about it. But I was not
8 allowed to be in there at that time.

9 Q But you weren't there, okay. So the only
10 information that you have about the offer would be
11 from your brother?

12 A Correct.

13 Q Okay, all right.

14 Your Honor, if I could beg the Court's
15 indulgence.

16 THE COURT: Certainly.

17 Q Where was Shoney living at the time that
18 he was bond?

19 A With his wife, in Gaston.

20 Q All right. Were you aware of any mailings
21 to Shoney of any information --

22 A Not that I know --

23 Q -- any discovery?

24 A Not that I know of.

25 Q All right?

Jackie Williams - Direct

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1 Your Honor, I have no further questions.

2 MR. WHITMIRE: Beg the Court's indulgence,

3 Your Honor.

4 THE COURT: Certainly.

5 CROSS-EXAMINATION

6 BY MR. WHITMIRE:

7 Q Good afternoon.

8 A Hi.

9 Q Mr. Williams was your brother's attorney,
10 not your attorney, is that correct?

11 A That's correct.

12 Q You weren't facing these charges? So you
13 weren't facing these charges?

14 A That's correct.

15 Q And you weren't present at every meeting?

16 A Yes, I was -- except for the one in the
17 jury, wherever they took him in the court.

18 Q I thought you testified that you weren't
19 present for every consultation that Mr. Williams had
20 with your brother in preparation for the trial?

21 A Yes, I was with him at them.

22 Q Regarding your testimony about what
23 happened at trial, you're not a lawyer, are you?

24 A No.

25 Q And you don't see your brother remain in

Jackie Williams - Cross

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1 jail, do you?

2 A Of course not.

3 Q You want to see him get a new trial?

4 A Sure.

5 MR. WHITMIRE: No further questions, Your
6 Honor.

7 MR. THOMAS: One, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. THOMAS:

10 Q Why do you want to see him get a new
11 trial?

12 A Because I don't think he was treated
13 fairly in the first one as far as his defense.

14 Q Thank you.

15 Thank you, Your Honor.

16 THE COURT: Thank you, ma'am. You can
17 step down.

18 Counsel?

19 MR. THOMAS: Your Honor, if it please the
20 Court, that's the applicant's case.

21 THE COURT: Any witnesses from the State?

22 MR. WHITMIRE: No, Your Honor, the State
23 rests.

24 THE COURT: Very good. I feel like I've
25 got a pretty good feeling for the issues on this.

1 Does anyone need to speak to me about those at this
2 point?

3 MR. THOMAS: Your Honor, if I may --

4 THE COURT: Sure.

5 MR. THOMAS: -- I've got two cases, if it
6 please the Court, that I'd like to hand up.

7 THE COURT: Please.

8 MR. THOMAS: And for some reason, they're
9 big fat ones. May I approach, Your Honor?

10 THE COURT: Please.

11 MR. THOMAS: Your Honor, if it please the
12 Court, this is an unusual case. It's almost I think
13 kind of the reverse of a plea qualification in that,
14 you know, it has to be freely and voluntarily given,
15 knowingly and intelligently given.

16 I think that the reverse part of that is
17 that the decision to go to trial has to be the same.
18 It certainly has to be informed, knowingly, and
19 intelligently given. And in this case, I don't
20 think it was.

21 There are two offers. One is the three to
22 six, and then there's the one that's 10. And they
23 fall under these two different cases. The first
24 one, the advice not to accept the three to six, I
25 think falls under the Kohler versus State case where

1 the Court says that counsel was deficient in
2 advising Kohler that the State's initial offer was
3 not a good deal.

4 And what I think the Court does in that
5 case is basically open this door and say that you
6 can have ineffective assistance of counsel in a
7 plea, because he ends up pleading. But he turns
8 down the original plea, and the Court says there can
9 be ineffective assistance of counsel in the advice
10 given not to accept that plea.

11 The Davis case is the one that I was more
12 familiar with in that that is the case that says
13 failure to convey a plea offer constitutes deficient
14 performance. Now, our Court goes further and says,
15 of course, that you take in on a case-by-case basis
16 and that you have to show prejudice.

17 In this case, I think we clearly have
18 prejudice. We have a trial where he received 15
19 years. The first offer is three to six. The second
20 offer is either 10 or a cap of 10. And then finally
21 after the trial, he's sentenced by Judge Jefferson
22 to 15.

23 So it would be my argument on that issue,
24 Your Honor, that he basically didn't enter into the
25 trial freely and voluntarily or knowingly and

1 intelligently and that it was ineffective assistance
2 of counsel to advise him not to accept the plea;
3 and, two, failure to convey the last plea. Thank
4 you, Your Honor.

5 THE COURT: Thank you.

6 Attorney General?

7 MR. WHITMIRE: Just a brief response.

8 Reviewing Mr. Williams' testimony, Mr. Williams
9 testified that his general practice is to review
10 evidence with his clients and let them decide. It's
11 their lives; he doesn't do the time.

12 Mr. Williams testified that in this
13 particular case, the applicant was just not
14 interested in doing any time at all. He was
15 certainly aware based on the inference of the blood
16 alcohol reading that he was drunk on the night in
17 question.

18 The State would argue that, taking all the
19 testimony as a whole, Mr. Williams' testimony was
20 far more credible than the applicant's. Therefore,
21 in the event of no particular evidence of any
22 un conveyed plea offer, of any misadvice, anything in
23 particular, the applicant has not met his burden of
24 proof just based on hearsay and speculation in the
25 testimony.

1 THE COURT: I'm familiar with the holding
2 of the Davie case. My standard practice in these
3 cases is to think about typically overnight and
4 issue an order tomorrow. So I'm going to follow
5 that same practice in this case.

6 MR. THOMAS: Thank you, Your Honor.

7 THE COURT: Thank you.

STATE OF SOUTH CAROLINA)

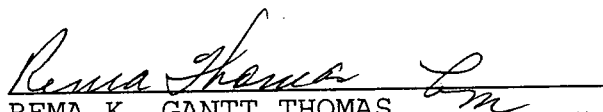
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON APRIL 16, 2013, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE TENTH DAY OF JUNE, 2013.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 06/27/12

C0239

MARTIN, WILLIAM CONRAD FBI # 613383EA7 SID# SC00519988 SCDC # 332078

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... TRENTON CORR INST

SECURITY/CUST.: 2 MINIMUM IN

CURR INCARC SENT....: 15 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #... [REDACTED]

DORM.....: 3D0054A

RACE....:W SEX...:M

PROJ MAXOUT DATE: 08/28/2021

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: CANTEEN OPERATOR

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: CANTEEN

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE....: 43 DATE OF BIRTH...: 9/12/68

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			CATEGORY
	YRS	MOS	DYS		START	V/NV		
FELONY DUI-DEATH RESULTS	15	0	0	LEXINGTON	12/ 1/20	8 N	4	

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

SAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
1/23/12	TRENTON	INCARCERATED	ADMINISTRATIVE
12/23/ 9	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
1/ 8/ 9	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/ 5/ 8	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
CANTEEN OPERATOR	05/03/12	0/ 0/ 0		YF5
SR TRAY LINE OPERATO	04/05/12	5/ 2/12	LATERAL TRANSFER	YF7
FOOD SERVICE AIDE	01/25/12	4/ 4/12	PROMOTION	YF5
WARDKEEPER ASSISTANT	12/29/09	1/23/12	INSTIT TRANSFER	YF5
HAULER	11/06/09	12/23/ 9	INSTIT TRANSFER	YF5
GENERAL WORKER	02/10/09	7/13/ 9	PLACED IN ST/SP CUSTODY	YF5

HISTORY OF EARNED EDUCATION CREDITS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON
EDUCATION 8-11 HRS/WK	08/09/11	1/23/12	INSTIT TRANSFER

***** END OF REPORT *****

TO: DIRECTOR, FBI
FROM: SAC, NEW YORK
SUBJECT: [Illegible]

[The body of the letter is largely obscured by a large handwritten 'X' and contains several lines of illegible text.]

Very truly yours,
[Illegible Signature]

Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

William Conrad Martin

KA: _____

Race: W Sex: M Age: 40

DOB: 02-02-1968 SS# [REDACTED]

Address: 00 SWANSEA BLVD
SWANSEA, SC 29160

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-1374

A/W#: 08-STR-00086

Date of Offense: 7/29/2007

S.C. Code § 56-05-2945(A)(2)

CDR Code #: 0395

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: DUI / Felony driving under the influence. death results

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 §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 10,100.00 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ 10,100.00

§ 14-1-206 (Assessments 107.5 %) \$ 10,857.50

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00

§ 56-5-2995 (DUI Assessment) \$12 \$ 12.00

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90-11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 31,499.50

[Signature]
Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

PRESIDING JUDGE [Signature]

Judge Code: 017

Sentence Date: 12-2-08

[Signature]

[Signature]

[Signature]

000701

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS
OF THE ELEVENTH JUDICIAL CIRCUIT
INDICTMENT NO. 2008-GS-32-1374

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

William Conrad Martin,
Defendant.

AS TO INDICTMENT NO.: 2008-GS-32-1374:

We, the jury, by unanimous consent find the Defendant:

☒ Guilty of Felony DUI-Resulting in Death.

☐ Not Guilty

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Please sign and date.

[Signature: Donna S. Chavis]
Foreperson

December 3, 2008

Please let the bailiffs know when you have finished your deliberations.

000702
800000

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
FELONY DUI-RESULTING IN DEATH

§ 56-05-2945

At a Court of General Sessions, convened on MAY 2008, the Grand Jurors of Lexington County present upon their oath:

That **William Conrad Martin** did in Lexington County, South Carolina on or about July 29, 2007, while driving a vehicle under the influence of alcohol, drugs or both alcohol and drugs, the Defendant, William Conrad Martin did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle; and such act proximately caused death to Rugs Wilkes Stone; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.O.

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

[Signature]
ASSISTANT SOLICITOR

800000
000703

DOCKET NO. 2008-GS-32-1374

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2008

THE STATE
vs.

William Conrad Martin

CDR #: 0395

Indictment for

FELONY DUI-RESULTING IN DEATH

§ 56-05-2945

DONALD V. MYERS, SOLICITOR

WITNESSES

C. Highway Patrol Headquarters

Caldwell

DMS

ARREST WARRANT NUMBER

8-STR-00086

CTION OF GRAND JURY

JULIA BILI

Jada Schellberg
person of Grand Jury
ate:

ERDICT

Guilty

Donald V. Myers

oreperson of Petit Jury

ate: 12/3/08

CMTI330D

SCDC OFFENDER MANAGEMENT SYSTEM

12/14/11

OMCOMITA

RELEASE DATE SCREEN

C023981

SCDC# > 332078

LOC: BROAD RIVER

MARTIN, WILLIAM CONRAD

SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE... ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY... N

SEXUAL PREDATOR... NOT APP

DNA STATUS... COMPLETED

GPS REQUIREMENT... N

PREA DECISION...

CURRENT SENTENCE: 015-00-000

CONSECUTIVE SENTENCE... N

015-00-000

CURRENT SENT START DATE: 12/01/2008

PROJECTED COMPLETION DATES

MAXOUT DATE 08/28/2021

CURRENT EWC : 3 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC: B5

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ... 000260

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS 000093

CATEGORY 4 OR 5 OFFENSE

TOTAL EXTRA EARNED CREDITS .. 000

TOTAL SERVICE TIME EARNED ... 001093

PFKEYS: 5:HISTORY OF DATE CHANGES

4-© 1 Sess-1 167.7.50.33

SCDC1444

3/11

0000705

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 12/14/11

MARTIN, WILLIAM CONRAD FBI # 613383EA7 SID# SC00519988 SCDC # 332078

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION .: BROAD RIVER CORR. INST.
SECURITY/CUST.: 3 MINIMUM IN
CURR INCARC SENT...: 15 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: NO
SOCIAL SECURITY #...: [REDACTED]

DORM.....: C0137A
RACE.....: W SEX...: M
PROJ MAXOUT DATE: 08/28/2021
PROJ PAROLE DATE: 00/00/0000
EWC JOB...: WARDKEEPER ASSISTANT
EDUC PGM.: ADULT ED I
EWC LEVEL: 3F5 EEC LEVEL:
ASSIGNMENT...: WARD HELPER

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 43 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START U/NU DATE
FELONY OUT-DEATH RESULTS	15 0 0 LEXINGTON	12/ 1/20 8 N

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
12/23/ 9	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
1/ 8/ 9	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/ 5/ 8	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
WARDKEEPER ASSISTANT	12/29/09	0/ 0/ 0	
HAULER	11/06/09	12/23/ 9	INSTIT TRANSFER
GENERAL WORKER	02/10/09	7/13/ 9	PLACED IN ST/SP CUSTODY

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
BONUS 8-11 HRS/WK	08/09/11	0/ 0/ 0	

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.William Conrad Martin

AKA:

Race: W Sex: M Age: 40DOB: 09-25-1967 SS#: 1116Address: 400 SWANSEA DRIVESWANSEA, SC 29160

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32- 374A/W#: 08-STR-00086Date of Offense: 7/29/2007S.C. Code § : 56-05-2945(A)(2)CDR Code #: 0395

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: DUI / Felony driving under the influence. death resultsin 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 ☐ §17-25-45
w/minor. 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 10,100 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP: _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ 10,100.00§ 14-1-206 (Assessments 107.5 %) \$ 10,857.50§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00§ 56-5-2995 (DUI Assessment) \$12 \$ 12.00

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 24,997.50[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter: [Signature]

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: CT 1Sentence Date: 8-2-08

SCCA/17 (07/2008)

000707

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

William C. Martin,
S.C.D.C. No. 332078,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2011 CP 323972

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 20, 2011. Respondent made its Return. An evidentiary hearing into the matter was convened on April 16, 2013 at the Lexington County Courthouse. Applicant was present and was represented by Tommy Thomas, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant, Jackie Williams, and trial counsel testified at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the May 2008 term of the Lexington County Grand Jury for Felony DUI Resulting in Death (2008-GS-32-1374). Applicant was represented by Robert T. Williams, Sr., Esq. On December 1-3, 2008, the State called its case to trial where Applicant was found guilty as charged. The Honorable Deadra L. Jefferson sentenced Applicant to a term of fifteen (15) years imprisonment. A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by trial counsel and Benjamin A. Stitley, Esq. The South Carolina

Court of Appeals affirmed Applicant's conviction and sentence. State v. Martin, Op. No. 4788

(Ct. App. filed February 3, 2011). The remittitur was issued on February 23, 2011.

At the PCR hearing, Applicant moved forward on the following allegations:

Ineffective assistance of counsel:

- a. failure prepare Applicant's case;
- b. failure to adequately advise Applicant on the terms of the solicitor's initial guilty plea offer;
- c. failure to convey a second guilty plea offer to Applicant;
- d. failure to request a jury charge to the lesser included offense of driving under the influence resulting in great bodily injury.

FILED
CLERK OF COURT
LEWISBURG, SC

2011 FEB 26 A 11:31

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his version of the facts surrounding his arrest and conviction. Applicant testified he was operating his vehicle when he collided with a vehicle that had entered the roadway in front of him. Subsequent to the automobile accident, law enforcement conducted testing that showed Applicant was twice over the limit required for the inference of intoxication. Applicant recalled that he fainted while being processed by law enforcement. The incident hospitalized the passenger/victim who was riding in the other vehicle. As a result, Applicant testified that he retained Theo Williams to represent him on the initial charge of driving under the influence resulting in great bodily injury. Applicant essentially alleged trial counsel was ineffective for failing to prepare his case. Applicant testified he posted bonded during the interim year and one-half prior to the State calling his case for trial. Applicant's asserted trial counsel neglected to review discovery with him and provide him with a defense strategy. Applicant recalled his charges were enhanced after the victim died. Applicant recalled meeting trial counsel two to possibly three times prior to trial. Applicant also testified to receiving correspondence from trial counsel. Applicant testified trial counsel advised him of a

suppression defense related to his blood test and a defense concerning alternative causation of the victim's injury and death in that the driver of the other vehicle may have been at fault. Applicant stated trial counsel kept him apprised of a pending medical malpractice case against the facility treating the victim. Applicant maintained that trial counsel never reviewed the State's evidence with him or explained to him that the solicitor would present experts to prove its case at trial. Applicant also alleged trial counsel was deficient for not consulting a private investigator or experts prior to trial.

Applicant alleged trial counsel was ineffective for failing to advise Applicant to accept a beneficial plea offer. Applicant testified the solicitor offered to plead Applicant to the lesser included offense of driving under the influence, resulting in great bodily injury. Applicant testified his decision to reject the plea offer resulted from trial counsel's advice because he was unfamiliar with the workings of General Sessions and was emotionally wrecked from the incident. Applicant acknowledged that, because he had never been incarcerated in the Department of Corrections, the three (3) to six (6) year term of imprisonment seemed substantial to him. After rejecting the plea offer, Applicant would not entertain a plea offer with equal or more punishing terms and conditions. Applicant testified trial counsel failed to advise him of the enhanced exposure on the driving under the influence, great bodily injury charge. Applicant testified trial counsel declined a subsequent plea offer of a ten (10) year term of imprisonment at the start of trial. Applicant testified he learned of plea counsel's discussions with the trial judge and the solicitor after the offer had been rejected. Applicant testified he was unaware of the strength of the State's case. Applicant testified that, as he watched the State's evidence mount against him during the trial, he wished he would have accepted either of the plea offers. Applicant alleged trial counsel had falsely led Applicant to believe he would have been

exonerated at trial.

Last, Applicant testified trial counsel was ineffective for failing to advise him of the benefits and detriments of testifying at trial. However, Applicant testified he was apprehensive about testifying but ultimately left the decision to trial counsel. Applicant stated he was unaware his magistrate court convictions for driving under the influence could not be used against him for impeachment purposes. Applicant also alleged trial counsel was ineffective for failing to request a charge on the lesser included offense of driving under the influence, resulting in great bodily injury.

At the PCR hearing, trial counsel testified to his course of conduct during the representation. Trial counsel obtained discovery and formulated a defense strategy. Trial counsel testified his core objective was to first show the driver of the victim's vehicle shared fault for causing the accident, and second to show victim's death was the result of an intervening cause. While obtaining treatment from injuries incurred from the accident with Applicant, the victim's family filed a medical malpractice action against the medical facility. The victim chose to be taken off life support prior to succumbing to an infection. Trial counsel investigated the defense and presented it to the jury through his cross-examination of State witnesses. Trial counsel monitored the victim's civil litigation. When the medical malpractice action faltered, trial counsel decided not to consult an independent expert on the matter to aid Applicant's defense. Trial counsel further reasoned Applicant's case did not necessitate the employment of a private investigator. Trial counsel testified he sent Applicant copies of discovery and supplemental discovery to Applicant as the case developed. Trial counsel discussed all aspects of his representation with Applicant. Furthermore, trial counsel recalled Applicant being an active participant in the case. Trial counsel discussed developments in the case via phone, General

Sessions' appearances, and appointment with Applicant.

Trial counsel testified he would have conveyed the solicitor's guilty plea offers to Applicant despite his lack of recall on the stand. Trial counsel has practiced criminal law for thirty (30) years and explained that as a matter of routine, he does not "brow beat" his clients into pleading but instead opts to advise them on the strength of the State's evidence and the defense's theory of the case. Trial counsel believed the defense theory of the case had merit. Trial counsel testified Applicant was aware of primary causation defense along with the fact that he struck the victim's vehicle from behind after he had been drinking. Trial counsel postulated that a guilty plea that included a six (6) year prison sentence for a charge that potentially exposed Applicant to twenty-five (25) years' incarceration was not a preferable result in Applicant's case. Trial counsel testified Applicant steadfastly did not want to serve a felony prison sentence. As a result, Applicant exercised his option to pursue a jury trial.

Last, trial counsel testified he did not request the trial judge charge the jury with the lesser-included offense of DUI, resulting in great bodily injury because of Applicant's desire to avoid a term of imprisonment in the Department of Corrections. Trial counsel testified he pursued an all-or-nothing approach to seek exoneration. Trial counsel testified he would have discussed the matter with Applicant during the course of the trial.

At the PCR hearing, Jackie Williams, Applicant's sister, testified to her involvement in Applicant's case. Williams testified she accompanied Applicant during his two (2) or possibly three (3) consultations with trial counsel. Williams testified she provided evidence to support an alternative causation defense. Williams testified she had no knowledge of Applicant receiving discovery materials from trial counsel but acknowledged Applicant was living at a separate residence while awaiting trial. Williams recalled trial counsel advising Applicant to reject the

solicitor's initial three (3) to six (6) year plea offer. Williams testified trial counsel discussed the subsequent ten (10) year plea offer with Applicant and his former spouse outside of her presence. Williams stated they discussed the matter in private consultation room during Applicant's trial.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of ~~plea~~ counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

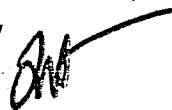
This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A.

This Court finds Applicant failed to meet his burden of proving trial counsel was deficient in preparing Applicant's case for trial. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). This Court finds trial counsel's testimony more credible than Applicant's testimony. Trial counsel conducted a sound investigation and formulated a viable defense strategy, and trial counsel's thorough pretrial preparations were exhibited during his cross-examination of Lt. Day and Dr. Love. (Trial Transcript pp.288-308; pp.344-59). See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005). Furthermore, Applicant failed to produce evidence at the PCR hearing to show what trial should have, but failed to, investigate. See Frasier v. State, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991). Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant failed to meet his burden of proving trial counsel was



deficient in failing to adequately advise him on the three (3) to six (6) year guilty plea offer. "Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary' and that the defendant must make related waivers 'knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.'" Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379-80 (2012) (citing United States v. Ruiz, 536 U.S. 622, 628, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002)). This Court finds trial counsel's testimony more credible than Applicant's testimony and Williams' testimony. This Court finds trial counsel is a seasoned criminal defense attorney who implements standard practices regarding advising clients on guilty plea offers. Trial counsel explained Applicant's only desired result was to avoid incarceration. This Court finds trial counsel kept Applicant apprised of developments in the case throughout the course of representation. Applicant failed to produce credible evidence that trial counsel improperly influenced Applicant's decision to take the case to trial. Therefore this allegation is denied and dismissed.

Additionally, Applicant failed to meet his burden of proving trial counsel was deficient for failing to convey the solicitor's subsequent ten (10) year plea offer to him during trial. "[C]ounsel's failure to convey a plea offer constitutes deficient performance." Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). "Where counsel's ineffective advice led to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed." Lafler v. Cooper, ___ U.S. ___, 132 S. Ct. 1376, 1380, 182 L. Ed. 2d 398 (2012). This Court finds trial counsel's testimony credible and Applicant's testimony not

credible. While Applicant testified he was never made aware of the offer until it had allegedly been improperly rejected by trial counsel, Applicant's own witness, Williams, testified trial counsel discussed the matter with Applicant and his ex-spouse in private during the trial. This Court finds Applicant failed to present any credible evidence that the plea offer was not adequately conveyed to him. Regardless, Applicant provided no indication that he would have even accepted the allegedly unconveyed plea offer. This Court notes Applicant testified he decided not to entertain a more punitive plea offer after rejecting the three (3) to six (6) year plea offer. Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant failed to prove trial counsel was deficient for not requesting the jury be charged with the lesser included offense of DUI, resulting in great bodily injury. "[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (2006), citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). This Court finds trial counsel's testimony credible. Trial Counsel testified his trial strategy was to present the strongest case possible in an effort to achieve Applicant's acquittal. This Court finds trial counsel's strategy valid in this particular case. Therefore, this allegation is denied and dismissed.

II.

Except as discussed above, this Court finds that Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and

intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

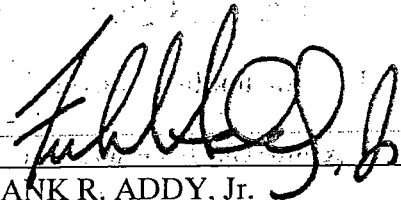
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent.

FILED
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BETH A. CHAMBERS
CLERK OF COURT
LEXINGTON, SC

01888417

IT IS SO ORDERED this 17th day of February, 2014.



FRANK R. ADDY, Jr.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina

LETHA A. GARNING
CLERK OF COURT
LEXINGTON, SC

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FILED