

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Spartanburg County

S.C. Supreme Court

J. Derham Cole, Circuit Court Judge

BRIAN ONEIL ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000736

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5)
6 PLAINTIFF,) OF
7)
8 vs.) RECORD
9 BRIAN O'NEIL ROBINSON,) 2011-GS-42-5932
10)
11 DEFENDANT.)

12
13 January 30th, 2012
14 Spartanburg, South Carolina

15
16 B E F O R E :

17 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

18
19 A P P E A R A N C E S :

20 BARRY BARNETTE
21 SOLICITOR
22 Attorney for the State

23
24 ROBERT HALL
25 ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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SOLICITOR BARNETTE: Your Honor, we do need to arraign the defendant on Count 2 of the indictment.

THE COURT: All right. Thank you very much.
Do you have that indictment?

SOLICITOR BARNETTE: Yes, sir, I do.

THE COURT: All right. Call, call the case for me.
Okay.

SOLICITOR BARNETTE: Your Honor, this is the State versus Brian O'Neil Robinson. He's been indicted on 11-GS-42-5932, Your Honor. The first count was felony DUI with death. He has been arraigned on that by the magistrate, Your Honor. He was directly indicted on Count 2, which is reckless homicide. We'd ask to arraign the defendant. I've given notice to Mr. Hall in this case.

May I approach the bench, Your Honor?

THE COURT: You may.

Sir, if you'll come forward.

Please swear the defendant for me.

(WHEREUPON, the defendant was placed under oath at this time.)

THE COURT: Your name is Brian O'Neil Robinson?

DEFENDANT: Yes, sir.

THE COURT: Mr. Robinson, I'm going to arraign you on

1 Count 2 of an indictment that's before the Court. The
2 purpose is to inform you of the charge that you, that's been
3 lodged, and to give you an opportunity to plead either
4 guilty or not guilty.

5 DEFENDANT: Yes, sir.

6 THE COURT: You're here with your lawyer. Of course,
7 at anytime you want to discuss something with your attorney
8 you have the right to do so.

9 You understand that, sir?

10 DEFENDANT: Yes, sir.

11 THE COURT: All right. The indictment that I'm going
12 over with you at this time is Case Number 11-GS-42-5932.
13 That indictment, in Count 1, is for Felony DUI resulting in
14 death. The -- Count 2 is reckless homicide. That is the
15 count that I'm indicting you on or I'm arraigning you on at
16 this time.

17 The indictment states that Brian O'Neil Robinson did,
18 in Spartanburg County, on or about August 12 of 2011, drive
19 a motor vehicle in a reckless, in reckless disregard for the
20 safety of others and such driving proximately caused the
21 death of Larry Wayne Weaver in violation of Section
22 56-5-2910 of the Code of Laws of South Carolina, 1976 as
23 amended, against the peace and dignity of the State and
24 contrary to the statute in such case made and provided.

25 Mr. Robinson, did you understand the indictment that I

1 just read to you?

2 DEFENDANT: Yes, sir.

3 THE COURT: You have the right to plead either guilty
4 or not guilty to that indictment.

5 How do you plead?

6 MR. HALL: Your Honor, we had -- he might be a little
7 confused. We had discussed making an offer to plea on the
8 reckless driving, but given they're trying the, both cases
9 together, I believe he's entering a plea of not guilty on
10 that charge also.

11 THE COURT: All right, sir. Is that correct, you're
12 entering a plea of not guilty?

13 DEFENDANT: No, sir, if I could -- I mean reckless
14 homicide. I mean --

15 THE COURT: Well, sir, now talk to your lawyer.

16 MR. HALL: Your Honor, as I said, he had offered to
17 plead to the reckless homicide if they dismissed the Felony
18 DUI.

19 THE COURT: Oh, I understand that.

20 MR. HALL: And---

21 THE COURT: But I'm asking him as far as whether he
22 wants to be tried on this or not, whether he's going to
23 plead guilty or not guilty. Your lawyer tells me you're
24 going to enter a plea of not guilty.

25 Is that true?

1 So, are you entering a plea of not guilty?

2 DEFENDANT: I mean ain't the same thing we talked about
3 or not?

4 MR. HALL: May I have a moment with him, Your Honor?

5 THE COURT: Please talk with him.

6 MR. HALL: He's had a lot this morning.

7 THE COURT: Oh, I understand, sir.

8 (Pause.)

9 MR. HALL: Excuse me, Your Honor.

10 THE COURT: Mr. Hall, have you had an opportunity to
11 consult with your client?

12 MR. HALL: Yes, sir.

13 THE COURT: All right, sir. Are you entering a plea of
14 not guilty, sir?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right. How does he wish to be tried,
17 Mr. Hall?

18 MR. HALL: By a jury, Your Honor.

19 THE COURT: All right. God grant him a speedy
20 delivery. You may be seated.

21 MR. HALL: Your Honor, I, I might -- we -- with what we
22 were going through this morning, I need to note and I've not
23 had a chance to speak with him because we had come in here,
24 but the last thing he said to me was his family has the
25 money to hire an attorney. They thought the case was gonna

1 come up later, and they would hire a private attorney.

2 I've not had an opportunity to discuss that with him
3 beyond that statement, and what I thought might happen if he
4 said that today.

5 THE COURT: Yes, sir.

6 MR. HALL: And I've not had a chance to even tell Mr.
7 Barnette or anybody that cause I just heard about it a few
8 moments ago.

9 THE COURT: Well, Mr. Robinson, step back up to the
10 microphone.

11 (Defendant complies.)

12 THE COURT: What's your position in regards to your
13 attorney, sir?

14 DEFENDANT: I was just -- with most people, I ain't
15 know about this type of situation, and most people telling
16 me it can take some time and basically like you have some
17 time to then get yourself together and like try to hire me
18 an attorney like to help me on my situation. But when I had
19 got out of the jail I had got a Court appointed lawyer, and
20 I didn't -- I take what I get and I just went and talked to
21 him.

22 But my family was telling me that if I could wait, they
23 would, they would all go in and like try to get me an
24 attorney. But my family spread out so much apart that's why
25 they couldn't make it today. But I was calling them. They

1 was just letting me know, you know what I'm saying, they got
2 the money to help me out, but I'm like it's probably too
3 late for that, and I just --.

4 THE COURT: Well, sir, the situation is that your
5 attorney -- you have a Court appointed attorney and you've
6 not articulated to me yet any reason why he could not handle
7 your case.

8 DEFENDANT: Yes, sir.

9 THE COURT: And, so, unless you can tell me some reason
10 why you feel that he could not handle your case today,
11 obviously you've had some time in which to hire an attorney.
12 This has been pending, it appears, for several, several
13 months. And, so, if there's no -- unless you can tell me
14 some reason why he can't handle the case, if you were to
15 release him today, the Court would not appoint you another
16 attorney. The case is on the docket and subject to call and
17 it would be tried.

18 So, there would not be another appointed attorney.
19 Unless you have already hired an attorney, you would
20 probably be required to go forward without counsel unless
21 you can tell me some reason why you feel that Mr. Hall's not
22 capable of handling your case today.

23 DEFENDANT: It ain't, it ain't nothing that I think he
24 can't handle. It's just---

25 MR. HALL: Your Honor, I think, I think -- if I may. I

1 think I can articulate what he's talking about. In our
2 discussions I told him that it would be probably six months
3 or after when the case came up. It's been about five
4 months.

5 I guess, at this point, he is serious, he feels his
6 family could hire an attorney, I would make a motion for a
7 continuance based on I told him I thought it would probably
8 be six months now and our time since this got placed on a
9 docket. I've not heard about -- to be frank with the Court,
10 I've not heard about a private attorney, but---

11 THE COURT: well, I would assume it's been on the
12 docket for at least 21 days.

13 MR. HALL: Yes, sir.

14 THE COURT: That would normally be the case in our
15 circuit.

16 MR. HALL: Yes, sir.

17 THE COURT: It's been three weeks since it was noted
18 for trial this week.

19 MR. HALL: And, Your Honor, I guess, for the record on
20 his behalf, he says his family can hire him an attorney, and
21 I would ask for a continuance for that purpose. I had -- I
22 know I told him, like I tell most of my clients, it's
23 come -- it's generally after six months that a case comes
24 up.

25 THE COURT: Yes, sir, I understand that.

1 Now, Mr. Hall, is there any reason why you could not
2 try the case today?

3 MR. HALL: No, sir, other than the cough I have, but
4 --.

5 THE COURT: I'll hear from Mr. Barnette.

6 Do you wish to be heard on that, Mr. Barnette?

7 SOLICITOR BARNETTE: The reason why this case is being
8 called is the defendant was given a bond. The victim's
9 family was never notified. It wasn't this Court. It was
10 actually the Magistrate Court. It was not notified for the
11 bond hearing obviously, and we felt like we needed to call
12 it as quickly as we could based off the charges and the
13 nature. The defendant was in North Carolina. I'm glad he's
14 here today. We didn't know if he would show up or not
15 facing the nature of the charges he has.

16 So, that's one reason why we moved this case ahead of
17 time cause he is out on bond on these charges and found---

18 THE COURT: Had it been noted on the docket for three
19 weeks?

20 SOLICITOR BARNETTE: Actually for longer than that I
21 think. I think it's actually been more than four I would
22 think. But take -- Mrs. Parris usually does that three to
23 four weeks ahead of time.

24 THE COURT: All right.

25 MR. HALL: And, Your Honor, I did tell him that if I

1 felt like if the Court was inclined to grant him an
2 opportunity to hire the lawyer that his bond probably would
3 be revoked, and he would -- his family would have to do that
4 while he's in the Spartanburg County Jail.

5 THE COURT: well, sir, again, the administrative order
6 in our circuit says that cases will be disposed of more
7 rapidly than the track date. There's nothing to prevent
8 that.

9 The case has been on the docket for, for at least three
10 weeks. Apparently longer. No motion was made prior to
11 today.

12 And, Mr. Hall, I appreciate your honesty about it. But
13 you weren't notified of this situation until this morning.
14 I see no reason to continue the case at this time if -- and
15 there's been nothing articulated to me that indicate that
16 there's anything that would prevent him from receiving a
17 full and fair trial in this matter.

18 So, I'm gonna deny the continuance.

19 MR. HALL: Thank you, Your Honor.

20 SOLICITOR BARNETTE: Your Honor, there's one matter I
21 just want to put on the record before we get started too.
22 I'd made an offer of 15 years, a cap of 15 years on the
23 Felony DUI, dismiss the reckless homicide.

24 THE COURT: Yes, sir.

25 SOLICITOR BARNETTE: I've passed that onto Mr. Hall. I

1 think he's passed that onto his client. I just wanted to put
2 on the record that it was made, and just make sure it was
3 rejected before we start with this jury.

4 THE COURT: Mr. Hall, is that the case, that the
5 solicitor's offer has been rejected in the case?

6 MR. HALL: If I may just have just a moment, Your
7 Honor?

8 THE COURT: Yes, sir.

9 (Pause.)

10 DEFENDANT: Your Honor, can I say something?

11 THE COURT: Well, sir, I want you to talk to your
12 lawyer because something you say in here could be used
13 against you in the trial, and you probably ought to talk to
14 your lawyer before you say anything.

15 (Pause.)

16 MR. HALL: Your Honor, my preparation with Mr. Robinson
17 has been possibly three meetings. Some of that -- I tried
18 to set up as much time as I could last week. I had trouble
19 notifying him. In fact, I told him I had to have the docket
20 sounded last week to make sure I was cleared up from the
21 docket, and I tried, started calling him Friday -- no,
22 excuse me, Monday afternoon.

23 I was able to get him and I left messages. I spoke
24 with him on Tuesday. I don't have all my notes in front of
25 me, but -- and he came -- said he'd try to be there that

1 afternoon. He came at 3:30, four o'clock. We had a few
2 hours, two or three hours then. He'd went to get some
3 witnesses and contact information in-between Plea Court, and
4 I was stuck in Plea Court Wednesday, Thursday, into Friday,
5 and then probation Court on Friday, and set up times to meet
6 with him on Saturday, and I was at work at my office
7 Saturday to meet with him Saturday morning.

8 He and his witnesses didn't get there until Saturday
9 afternoon, and we spent three or four hours there, and he's
10 saying he needs more time. But I've tried to be available.

11 THE COURT: Are his witnesses available?

12 MR. HALL: Yes, sir, we've got at least one of them
13 here. Two of them here now. Two of the three witnesses.
14 The other -- they all have been subpoenaed. I had them
15 served on Saturday.

16 THE COURT: Well, they're, if they're here and
17 available, then I don't see any reason to continue the case
18 for that reason.

19 MR. HALL: And what precipitated that statement was I
20 told him that the theory that I understand the solicitor
21 goes on is that he could be convicted of both charges and
22 actually receive 25 years plus ten years, and he said he did
23 not understand that because we didn't have enough time to
24 talk. I had addressed that with him when I told him about
25 the additional charge.

1 I don't know that it didn't register with him or what,
2 but I had, in my mind, I had discussed---

3 THE COURT: well, they both arise, they both arise out
4 of the same facts and circumstances, is that correct?

5 MR. HALL: Yes, sir.

6 THE COURT: I don't know much about this case. So, I'm
7 asking. That's more of a question than a statement.

8 MR. HALL: Yes, sir, it is. The, the reckless
9 homicide, the death, and the reckless and the Felony DUI are
10 both the same and individual.

11 THE COURT: And the, and the same occurrence I would
12 suspect?

13 MR. HALL: Yes, sir.

14 THE COURT: Okay. Well, I mean he's gonna have
15 sometime, as the trial progresses, to consult with you.
16 It's not gonna be -- we're not gonna be going every hour of
17 everyday, and if he was late to his meetings and things of
18 that nature, those would be some of his problems. Not
19 necessarily the Court's problems.

20 So, I'm going to -- I don't see a reason to continue
21 the case for that reason. If you need sometime to talk with
22 him, we can give you some additional time to consult with
23 him as we, as we proceed.

24 MR. HALL: Yes, sir.

25 THE COURT: Matter of fact, we can pull the jury and

1 give you sometime today.

2 MR. HALL: Yes, sir. Your Honor, I have our requested
3 for voir dire, I think they're pretty standard, and our
4 witness list.

5 THE COURT: Give a copy to the, the solicitor.

6 MR. HALL: And three witnesses. Two of whom are here,
7 and one --.

8 THE COURT: Have you seen the solicitor's requested
9 voir dire?

10 MR. HALL: No, sir, I have---

11 THE COURT: Well, I'll allow both sides to take a
12 moment and review the voir dire requests and address that
13 with me in a moment. So, I'll give you a minute to look at
14 it.

15 (Pause.)

16 SOLICITOR BARNETTE: Your Honor, the State don't have
17 any objection to the request.

18 MR. HALL: No objection, Your Honor.

19 THE COURT: All right. Anything further before we
20 select a jury, from the State?

21 SOLICITOR BARNETTE: None from the State, Your Honor.

22 THE COURT: Any from the defense?

23 MR. HALL: Not from the defense, Your Honor.

24 THE COURT: All right. Strikes, strikes in this case
25 are -- I haven't looked that up.

1 SOLICITOR BARNETTE: Five and five, Your Honor.

2 THE COURT: Five and five I believe. I don't think
3 there's any reason for ten.

4 Okay. All right. Mr. Hipp, if you would, bring the
5 jury panel in please. I'd ask those in the gallery to move
6 to the back rows of the, of the gallery area please so that
7 you won't be sitting among the jurors. So, if you move to
8 the back rows. We'll let you move back up later on. The
9 jury's gonna sit in the front.

10 Thank you.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Ladies and gentlemen of the jury panel,
14 we're about to begin the trial of the State of South
15 Carolina against Brian O'Neil Robinson.

16 Before we select the jury panel there are some
17 questions that I'm going to ask you that will apply
18 specifically to this case, and, as always, it's important
19 that the information that you give back to the Court in
20 response to those questions is truthful information, that
21 it's honest, and it's complete information. So, again, it's
22 necessary that you be sworn concerning the responses that
23 you're about to give to the questions that I'm going to ask.

24 Madam Clerk, please swear the jury panel for me at this
25 time in this case.

1 (WHEREUPON, the jury panel was placed under oath at
2 this time.)

3 THE COURT: If there was any member of the jury panel
4 who either failed or refused to take the oath that was just
5 administered by the clerk, I would ask that you now please
6 stand.

7 (No response.)

8 THE COURT: The record will then reflect that all
9 jurors have been sworn for purposes of my questioning at
10 this time.

11 Now, before I begin to ask questions about this case,
12 and I know you know very little or nothing about the case at
13 this time I would assume, I am going to go over with you the
14 indictment in this matter. The indictment is the document
15 that brings the case before this Court. It informs the
16 Court of the charges, charges to be tried and it informs the
17 defendant of the charges that have been lodged against the
18 defendant.

19 Now, the indictment is merely the allegations that's
20 been made, and it can not be used by a jury in any manner
21 whatsoever in determining the guilt or the innocence of the,
22 the defendant in this matter. Again, I'm reading it to you
23 so that you might be in a position to more fully answer the
24 questions that I'm going to ask you in just a few minutes.

25 Now, the indictment in this case is Indictment Number

1 11-GS-42-5932. The indictment has two counts or two
2 charges. Count 1 is for the charge of Felony DUI resulting
3 in death.

4 The indictment states that Brian O'Neil Robinson did,
5 in Spartanburg County, on or about August 12 of 2011, drive
6 a motor vehicle while under the influence of alcohol, drugs,
7 or a combination of alcohol and drugs and violated an act
8 forbidden by law or neglected any duty imposed by law in the
9 driving of the vehicle. To wit, one, failing to maintain
10 proper control of the vehicle and/or driver's failure to
11 exercise due care according to Code Section 56-5-3230,
12 and/or failure to follow right of way restrictions, Article
13 17 section 56, and/or driving too fast for conditions,
14 section 56-5-1560, and/or failing, failure of driving on
15 the, the roadway laned for traffic, section 56-5-1900, or,
16 and/or failure to maintain a proper lookout for other
17 traffic and/or pedestrians, and/or failure to follow right
18 of way restrictions, again, Article 17, section 56, which
19 proximately caused the death to Larry Wayne weaver in
20 violation of section 56-5-2945(a)(2) of the Code of Laws of
21 South Carolina, 1976 as amended.

22 The second count of the indictment is for reckless
23 homicide. The indictment states that Brian O'Neil Robinson
24 did, in Spartanburg County, on or about August 12 of 2011
25 drive a motor vehicle in reckless disregard for the safety

1 of others and such driving proximately caused the death of
2 Larry Wayne Weaver in violation of Section 56-5-2910 of the
3 Code of Laws of South Carolina, 1976 as amended, against the
4 peace and dignity of the State and contrary to the statute
5 in such case made and provided.

6 That's the indictment that brings the case before the
7 Court, and, again, my only purpose in reading that to you is
8 for you to understand a little more about the case and more
9 fully answer the questions that I'm about to ask.

10 Now, before I begin to ask questions I'm going to ask
11 that the attorneys introduce themselves to you, and in the
12 case of the defense, I'll ask the defense attorney introduce
13 the defendant to you as well.

14 For the State.

15 SOLICITOR BARNETTE: May it please the Court, Your
16 Honor.

17 THE COURT: Yes, sir.

18 SOLICITOR BARNETTE: Barry Barnette for the Solicitor's
19 Office for the State. Thank you.

20 THE COURT: And for the defense.

21 MR. HALL: Please the Court.

22 I'm Robert Hall. This is my client, Brian O'Neil
23 Robinson.

24 THE COURT: Thank you very much.

25 Now, ladies and gentlemen of the jury, I'm going to,

1 again, ask questions as I did during qualification. we will
2 follow the same procedure that we used during that. In
3 other words, when I ask a question, for responses, I'll ask
4 that you stand. I'll need your name and number on the
5 record before I discuss any response that you might have to
6 the questions that I'm about to ask.

7 First of all, any member of the jury panel ever been
8 related by marriage or are you related by blood to either
9 the defendant, Brian O'Neil Robinson, or the alleged victim
10 in this case, Larry Wayne Weaver, if that's true, please
11 stand.

12 (No response.)

13 THE COURT: Has any member of this jury panel ever had
14 a close personal or a social relationship with either the
15 defendant, Brian O'Neil Robinson, or the alleged victim,
16 Larry Wayne Weaver, if that's true, please stand.

17 (No response.)

18 THE COURT: Has any member of this jury panel ever been
19 represented by either of the attorneys involved in this case
20 or have they appeared on the other side of some legal matter
21 from you, if that's true, please stand.

22 (Juror responds.)

23 THE COURT: Name and number please, ma'am.

24 JUROR: Jan Cox, 25.

25 THE COURT: Yes, ma'am.

1 JUROR: Barry Barnette represented a case with my
2 family some years ago.

3 THE COURT: All right. That case is now been ended, is
4 that correct?

5 JUROR: That's correct.

6 THE COURT: And was he in, was he in the form of
7 prosecutorial -- was he prosecuting the case?

8 JUROR: That's correct.

9 THE COURT: Now, ma'am, would the fact that you were
10 involved in that case in that manner, would that affect your
11 ability to be fair and impartial in this matter?

12 JUROR: No.

13 THE COURT: Thank you, ma'am. You can be seated.
14 Anyone else?

15 (No response.)

16 THE COURT: Now, has -- have either of the attorneys
17 ever been related by marriage or are they related by blood
18 or have you had a close personal or a social relationship
19 with either of the attorneys who are involved in the trial
20 of this case, if that is true, please stand.

21 (No response.)

22 THE COURT: Now, ladies and gentlemen of the jury, I'm
23 going to go over a list of potential witnesses in this case.
24 The list is rather lengthy. I want to listen carefully as I
25 go through the list, and, of course, I'll -- at the close of

1 that list I'll be asking you some questions about the people
2 that have been identified as possible witnesses in the
3 trial.

4 First of all, Kristen Snyder from Forest City, North
5 Carolina.

6 Michael Wright from Rutherfordton, North Carolina.

7 Anthony Edgerton, Junior from Forest City, North
8 Carolina.

9 Trooper Chris Mace with the South Carolina Highway
10 Patrol.

11 Corporal L.M. Donkle with the South Carolina Highway
12 Patrol.

13 Corporal J.R. Elrod with the South Carolina Highway
14 Patrol.

15 Trooper Homer Rose with the South Carolina Highway
16 Patrol.

17 Corporal C.M. Burgess with the South Carolina Highway
18 Patrol.

19 Connie Vinson from Cowpens, South Carolina.

20 Investigator Ellen Holmes with the Spartanburg County
21 Coroner's Office.

22 Leatha Neal with Spartanburg Regional Medical Center.

23 Shana or Shana Sorrells with the South Carolina Law
24 Enforcement Division.

25 Doris Yarbrough with the South Carolina Law Enforcement

1 Division.

2 Trooper Richard Hemly with the South Carolina Highway
3 Patrol.

4 Corporal T.R. Whitt with the South Carolina Highway
5 Patrol.

6 Trooper Fortner with the South Carolina Highway Patrol.

7 Investigator Terri Carter with the Spartanburg County
8 Coroner's Office.

9 Doctor J. David Wren with Spartanburg Regional Medical
10 Center.

11 Investigator Rick McGraw with the Spartanburg County
12 Coroner's Office.

13 Nikki Perry Hughes with the South Carolina Law
14 Enforcement Division.

15 Toni Broome with the South Carolina Law Enforcement
16 Division.

17 Sergeant Bruce Brock with the South Carolina Highway
18 Patrol.

19 Elmedia Stepp.

20 Anthony Edgerton, Junior.

21 Julian Miller.

22 Lance Corporal J.L. Craig with the South Carolina
23 Highway Patrol.

24 Lance Corporal M.E. Duncan with the South Carolina
25 Highway Patrol.

1 Steve Leviner from Spartanburg, South Carolina.
2 Caleb Satterfield from Spartanburg, South Carolina.
3 Captain Mike Jones or another representative from the
4 Spartanburg County Detention Center.

5 Now, ladies and gentlemen, as to that list of people
6 that I've named or gone over with you that are potential
7 witnesses in this case, has any member of this jury panel
8 ever been related by marriage or are you related by blood or
9 have you had a close personal or a social relationship with
10 any individual that I named as a potential witness in this
11 case, if that is true, please stand.

12 (Juror responds.)

13 THE COURT: Name and number please, sir.

14 JUROR: Juror Number 5, Steven Arrowood.

15 THE COURT: Yes, sir.

16 JUROR: I grew up playing sports with Terri Carter's
17 younger son.

18 THE COURT: All right. So, you, you know her from that
19 situation?

20 JUROR: Yes, sir.

21 THE COURT: Now, would -- I assume -- you've grown up
22 now.

23 Do you have any continuing relationship with that
24 person?

25 JUROR: No, sir.

1 THE COURT: Now, would that fact, in anyway, affect
2 your ability to be fair and impartial in the trial of this
3 case?

4 JUROR: No, sir.

5 THE COURT: Thank you, sir. You can be seated.

6 Anyone else?

7 (No response.)

8 THE COURT: Has any member of the jury panel or a
9 member of your immediate family or a close personal friend
10 of yours ever been represented by members of the Spartanburg
11 County Public Defender's Office or the Seventh Circuit
12 solicitor's Office, if that is true, please stand.

13 (Juror responds.)

14 THE COURT: Name and number please, sir.

15 JUROR: 42, Tommy Kirkland.

16 THE COURT: Yes, sir.

17 JUROR: I was represented by a public defender.

18 THE COURT: All right. Go ahead.

19 JUROR: I was---

20 THE COURT: Anything else?

21 JUROR: Mr. Mace for a DUI.

22 THE COURT: All right. Sir, would that fact affect
23 your ability to be fair, fair and impartial in this matter?

24 JUROR: NO.

25 THE COURT: And is that relationship now over?

1 JUROR: Yes, sir.

2 THE COURT: Thank you, sir.

3 Anyone else?

4 (No response.)

5 THE COURT: Has any member of this jury panel or a
6 member of your immediate family or a close, close personal
7 friend of yours ever been charged with or convicted of any
8 crime involving driving under the influence, Felony DUI,
9 reckless driving, reckless homicide, and/or any similar
10 offense, if that is true, please stand.

11 (Jurors respond.)

12 THE COURT: All right. I'm gonna start with this
13 gentleman.

14 Your name and number.

15 JUROR: Kenneth Gilbert, Number 48.

16 THE COURT: Yes, sir, your situation?

17 JUROR: Caught for DUI four times, in the past five
18 times, past 14 years ago.

19 THE COURT: I'm sorry. I didn't hear what you said.

20 JUROR: I been caught for DUI in the past about 14
21 years ago.

22 THE COURT: All right, sir. Would that affect your
23 ability to be fair and impartial in this trial?

24 JUROR: No, sir.

25 THE COURT: Thank you. You can be seated.

1 Name and number please, ma'am.

2 JUROR: 95, Rhonda Manly.

3 THE COURT: Yes, ma'am.

4 JUROR: I have a nephew that was charged with DUI.

5 THE COURT: All right. That case is been ended?

6 JUROR: Yes.

7 THE COURT: And would that fact affect your
8 impartiality in this matter?

9 JUROR: No, sir.

10 THE COURT: Thank you, ma'am. You can be seated.

11 The lady in the front, your name and number.

12 JUROR: Shirley Simmons, 146.

13 THE COURT: Yes, ma'am.

14 JUROR: I had a DUI like 12 years ago.

15 THE COURT: All right, ma'am. Would that affect your
16 impartiality in this trial?

17 JUROR: No.

18 THE COURT: Thank you. You can be seated.
19 Sir?

20 JUROR: Number 5, Steven Arrowood.

21 THE COURT: Yes.

22 JUROR: My dad was charged with DUI about eight years
23 ago.

24 THE COURT: All right. Would that affect your
25 impartiality in the trial, sir?

1 JUROR: No, sir.

2 THE COURT: Thank you. You can be seated.
3 Ma'am?

4 JUROR: Teresa Harrell, Number 60.

5 THE COURT: Yes, ma'am.

6 JUROR: I have a nephew that was, for a pending DUI,
7 and I -- my sister was convicted of DUI.

8 THE COURT: All right. Would that affect your
9 impartiality in this trial, ma'am?

10 JUROR: Not at all.

11 THE COURT: Thank you.

12 Name and number please.

13 JUROR: Sherrie Manuly, 96. My husband got a DUI.

14 THE COURT: And can you tell me about how long ago that
15 was, ma'am?

16 JUROR: Probably about six, seven years ago.

17 THE COURT: All right. Would that affect your
18 impartiality in this trial, ma'am?

19 JUROR: No.

20 THE COURT: Thank you very much.

21 Name and number please, sir.

22 JUROR: John Fortner, Number 39. I was convicted of
23 DUI about 12 years ago.

24 THE COURT: All right. Would that affect your
25 impartiality in this trial, sir?

1 JUROR: No, Your Honor.

2 THE COURT: Thank you.

3 Name and number please.

4 JUROR: Number 1. My husband was charged with DUI
5 about 14 years ago.

6 THE COURT: Would that affect your impartiality in this
7 case, ma'am?

8 JUROR: No.

9 THE COURT: Thank you.

10 Name and number please.

11 JUROR: John Fortner, Number 42. DUI about three years
12 ago.

13 THE COURT: That was your case?

14 JUROR: Yes, sir.

15 THE COURT: You were charged?

16 JUROR: Yes, sir.

17 THE COURT: Would that affect your impartiality in this
18 case, sir?

19 JUROR: No, sir.

20 THE COURT: Thank you.

21 Name and number please.

22 JUROR: Daniel Stanley, 155. I got a case on a pending
23 DUI second that happened about a year ago.

24 THE COURT: So, that case is not yet been completed?

25 JUROR: No, sir.

1 THE COURT: would that affect your impartiality in this
2 trial, sir?

3 JUROR: No.

4 THE COURT: Thank you.
5 Name and number please.

6 JUROR: Missy Drummond, 80. I have two uncles about
7 ten years ago, both of them. I have two cousins. One about
8 eight years, one about five years, and just the second week
9 in January my cousin had a severe wreck under the influence.
10 The case is still -- I mean they're going to be bringing
11 charges against her.

12 THE COURT: It has not yet been charged then?
13 It's under investigation?

14 JUROR: Correct.

15 THE COURT: All right. would those matters, any of
16 those matters affect your ability to be fair and impartial
17 in this matter, ma'am?

18 JUROR: No, sir.

19 THE COURT: Thank you. You can be seated.
20 Anyone else?

21 (No response.)

22 THE COURT: Is there any member of this jury panel
23 that, who is being currently prosecuted by the
24 Seventh Judicial Circuit solicitor's Office, prosecuted for
25 any crime at the present time, if that's true, please stand.

1 (No response.)

2 THE COURT: I'm gonna ask the attorneys to approach
3 briefly.

4 (Whereupon, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: All right. Is there any member of this
7 jury panel who is a member of any group or organization that
8 does not recognize the validity of the government of the
9 United States or the State of South Carolina, if that's
10 true, please stand.

11 (No response.)

12 THE COURT: Is there any member of this jury panel who
13 is related by blood or have you ever been related by
14 marriage to anyone who is currently employed in the Seventh
15 Judicial Circuit Solicitor's Office, Spartanburg County
16 Coroner's Office, the South Carolina Highway Patrol,
17 Spartanburg County EMS, or the State Law Enforcement
18 Division, if that is true, please stand.

19 (Juror responds.)

20 THE COURT: Name and number please, ma'am.

21 JUROR: Rhonda Manly, Number 95.

22 THE COURT: Yes, ma'am.

23 JUROR: I'm related to the, Jerry Clevenger, the
24 coroner.

25 THE COURT: All right.

1 JUROR: I'm related to---

2 THE COURT: And can you give me some idea of the
3 relationship that the---

4 JUROR: We're cousins.

5 THE COURT: Counsins.

6 Okay. All right. And you were gonna tell me somebody
7 else.

8 JUROR: Highway Patrol. We have a cousin that's on the
9 Highway Patrol.

10 THE COURT: All right. Ma'am, would the fact that you
11 have those relations, would that affect your ability to be
12 fair and impartial in the case?

13 JUROR: No.

14 THE COURT: Thank you, ma'am. You can be seated.

15 Now, has -- is, is there any member of the jury panel
16 who has been themselves employed in the, at the present or
17 in the past, by any civilian or military law enforcement
18 agency, if that's true, please stand.

19 (No response.)

20 THE COURT: Has any member of the jury panel or a
21 member of your immediate family ever owned a motorcycle, if
22 that's true, please stand.

23 (Jurors respond.)

24 THE COURT: I thought we might get a good many for that
25 one. I'm gonna ask this side just be seated. I'll deal

1 with this side over here.

2 All right. what I'm going to do is I'm going to ask
3 that you -- I'm gonna go through and get your names and
4 numbers. Then I'm gonna ask one question, and I'll deal
5 with anybody who has any difficulty with being fair and
6 impartial as a result of this, and I'd take it the case must
7 involve something to do with a motorcycle or we wouldn't be
8 asking the question.

9 All right. Now, ma'am, your name and number.

10 JUROR: Teresa Harrell, Number 60.

11 THE COURT: Ma'am, name and number.

12 JUROR: Holly Britton, Number 14.

13 Next row.

14 Ma'am?

15 JUROR: Angela Costa, Number 1.

16 THE COURT: And the gentleman.

17 JUROR: Mike Smith, 150.

18 JUROR: Tommy Fulgham, 42.

19 THE COURT: Ma'am.

20 JUROR: Christine Gay, 56.

21 THE COURT: Ma'am.

22 JUROR: Charlotte Crosby, 27.

23 JUROR: Glenda Tilsdale, Number 65.

24 THE COURT: Behind her.

25 JUROR: Kristen Robinson, 134.

1 JUROR: Ashley Squires, 154.

2 JUROR: Jill Thrift, 164.

3 JUROR: Lauren Byers, 169.

4 THE COURT: And on the row behind there.

5 JUROR: Jennings, 168.

6 JUROR: Angela Burnette, 18.

7 JUROR: Margrieta Bibelnieks, 11.

8 THE COURT: I think that's everyone on that side.

9 Now, if, if any of you would have any difficulty in
10 being fair and impartial in this case because of the fact
11 that you may be a family member or you have a motorcycle,
12 and this case may involve that, if that would cause some
13 difficulty in your impartiality, please remain standing.
14 Otherwise you can be seated.

15 (WHEREUPON, all jurors sit down at this time.)

16 THE COURT: Thank you.

17 Now on this side. Those that were standing would stand
18 again.

19 (Jurors respond.)

20 THE COURT: Name and number please, ma'am.

21 JUROR: Mary Gabert, 43.

22 JUROR: Karen Lawson, 87.

23 THE COURT: Yes, sir.

24 JUROR: Joe Wilson, 184.

25 JUROR: John O'Neal, 117.

1 JUROR: John Hovelsrud, 74.

2 JUROR: Avery McClintock, 99.

3 JUROR: Clint Bryant, 19.

4 JUROR: John Sprouse, 153.

5 JUROR: Thomas Robinson, 135.

6 JUROR: Charles Kinlaw, 85.

7 JUROR: Roy Gilliam, 49.

8 JUROR: Janna Cox, 25.

9 THE COURT: Thank you.

10 JUROR: James Hammett, 59.

11 JUROR: Kenneth Gibson, 48.

12 THE COURT: Now, again, if the, if, if this case did
13 involve a motorcycle, and if your former ownership or a
14 family member's former ownership of a motorcycle would cause
15 you, in anyway, to question your impartiality in this
16 matter, I'd ask that you remain standing. Otherwise you can
17 be seated.

18 (WHEREUPON, all jurors sit down at this time.)

19 THE COURT: Now, has any member of the jury panel
20 gathered any information outside of this courtroom such that
21 it would of caused you to form or express an opinion about
22 any issue or matter that might be involved in this case,
23 please stand.

24 (No response.)

25 THE COURT: If any member of the jury panel is aware of

1 any bias or prejudice that you might have either for or
2 against either the State or the defense in this matter,
3 please stand.

4 (No response.)

5 THE COURT: Is there any member of the jury panel who
6 may have been a member of the Grand Jury which issued the
7 indictment in this case, that indictment was issued on
8 October 21st of 2011, if that's true, please stand.

9 (No response.)

10 THE COURT: Now, is there any member of this jury panel
11 who is a member of or a contributor to any group which has
12 as its primary concern the promotion of law enforcement or
13 victim's rights?

14 These groups would include, but not be limited to, such
15 groups as Mothers Against Drunk Driving, Students Against
16 Drunk Driving, Citizens Against Violent Crime, the South
17 Carolina Troopers Association, the South Carolina Sheriff's
18 Association, or similarly oriented organizations.

19 If you are a member of or a contributor to such a
20 group, please stand.

21 (Jurors respond.)

22 THE COURT: Ma'am, name and number.

23 JUROR: Mary Gatlin, 43.

24 THE COURT: Yes, ma'am.

25 JUROR: I was a member of the Mayor's Alliance in

1 Kentucky for educating for alcohol and drugs.

2 THE COURT: All right. Ma'am, would that affect your
3 ability to be fair and impartial in the trial?

4 JUROR: Well, it -- I have so much knowledge of it. So
5 --.

6 THE COURT: Well, ma'am, would you -- do you think that
7 would affect your impartiality?

8 JUROR: No.

9 THE COURT: All right then. I'm gonna allow you to
10 remain. You may be seated.

11 Name and number please.

12 JUROR: Karen Lawson, 87.

13 THE COURT: Yes, ma'am.

14 JUROR: I just give money to the Troopers Fund every
15 year.

16 THE COURT: Oh, I understand that. But I'm gonna ask
17 you would that affect your impartiality if they participated
18 in this trial?

19 JUROR: No.

20 THE COURT: Thank you, ma'am. You can be seated.
21 Name and number please.

22 JUROR: Kristen Robinson, 134, and I give to Mothers
23 Against Drunk Drivers and Troopers Association.

24 THE COURT: All right. Would that affect your
25 impartiality in this case, ma'am?

1 JUROR: No, sir.

2 THE COURT: You can be seated.

3 Name and number please, ma'am.

4 JUROR: Jill Thrift, Number 164.

5 THE COURT: Yes, ma'am.

6 JUROR: I do contribute to the South Carolina Troopers
7 Association.

8 THE COURT: Would that affect your impartiality if they
9 participated in this trial?

10 JUROR: No, sir.

11 THE COURT: Thank you. You can be seated.
12 Anyone else?

13 (No response.)

14 THE COURT: Is there any member of this jury panel who
15 has any religious or moral opposition to the consumption of
16 alcohol or other drugs that would somehow cause you or
17 affect your ability to be fair and impartial in this case,
18 if that's true, please stand.

19 (No response.)

20 THE COURT: Does any member of this jury panel know of
21 any reason whatsoever why he or she should not serve as a
22 juror in this case with particular emphasis being placed
23 upon your ability to be both fair and impartial to the State
24 and the defense, if that's true, please stand.

25 (No response.)

1 THE COURT: Any additional questions from the State?

2 SOLICITOR BARNETTE: None from the State, Your Honor.

3 THE COURT: Any from the defense?

4 MR. HALL: None from defense, Your Honor.

5 THE COURT: All right. I'll declare then that the
6 remaining members of the jury panel will be qualified to
7 serve as jurors in this case. I'll ask that the clerk
8 prepare a list of potential jurors in this matter, and let
9 me explain to you, ladies and gentlemen, the process that
10 we're going through at this time.

11 what we're doing is the clerk is using a computer
12 program that will randomly select names from your group and
13 place them on a list. Once we've received that list we will
14 go through the process of calling your names in the order in
15 which they appear on the list.

16 When your name is called we'll ask that you come
17 forward. They'll be a bailiff standing in front of the
18 clerk. Come up to that bailiff and turn and face the door
19 at the back of the courtroom, and at that time both the
20 state and the defense will be in a position to strike the,
21 the jury.

22 Now, bring with you any personal belongings that you
23 have with you at this time. If you are selected to serve on
24 the jury panel you will immediately have a seat in the jury
25 box to my left. So, if you have pocketbooks or a book or a

1 jacket or whatever you have with you, bring it with you when
2 you come forward. If you're selected you won't be going
3 back with the panel. You'll be going into the box on my
4 left.

5 All right. Madam Clerk, you can begin the jury
6 selection process by calling the names.

7 CLERK: Yes, sir.

8 (WHEREUPON, the jury panel of 12 jurors was selected at
9 this time.)

10 THE COURT: We are now selecting the alternate.
11 The defense will have two strikes. The State will have
12 one.

13 (WHEREUPON, an alternate juror was selected at this
14 time.)

15 THE COURT: Do you wish to talk to the Court?

16 JUROR: Yeah, I do. To you, judge.

17 THE COURT: Well, I can only talk with you in the
18 presence of the attorneys.

19 JUROR: Okay.

20 THE COURT: If you'll step around to the court
21 reporter.

22 Ask the attorneys to come up.

23 (WHEREUPON, the following takes place out of the
24 hearing of the remaining jurors and the sitting jury panel.)

25 THE COURT: If you'll face me, ma'am.

1 JUROR: I did not hear you ask if -- but my husband
2 was caught in 2010 for open container and possession of a
3 firearm.

4 THE COURT: well, I asked about DUI.

5 JUROR: And that was my understanding. I just wanted
6 to be honest and open.

7 THE COURT: I understand.

8 Do you wish to ask any other questions?

9 SOLICITOR BARNETTE: No, sir.

10 MR. HALL: What's her number?

11 JUROR: My number is 47. I didn't hear you ask that.
12 I just wanted to be sure.

13 THE COURT: Do you wish to ask any follow-up questions?

14 MR. HALL: No, sir.

15 SOLICITOR BARNETTE: No, sir.

16 THE COURT: All right. You can have a seat.

17 JUROR: Thank you.

18 (WHEREUPON, the following takes place within the
19 hearing of all jurors.)

20 THE COURT: Any objection to the jury selection process
21 from the State?

22 SOLICITOR BARNETTE: None from the State, Your Honor.

23 THE COURT: Any from the defense?

24 MR. HALL: Your Honor, I do have a matter we need to
25 bring up.

1 THE COURT: All right. Then I'm gonna ask, if you
2 would, have -- take this jury panel into the jury room.

3 The remainder of the jury panel, if you'll take them
4 back to the assembly room.

5 Thank you very much.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right. I think everyone is present.
9 Mr. Hall.

10 MR. HALL: May it please the Court, Your Honor.

11 I am about to do something that, in my years of
12 practice, that I've never done. But the State exercised
13 four strikes. Every -- each of those were against
14 African-Americans. I don't have a choice, but I would ask
15 for an explanation, Your Honor.

16 THE COURT: All right. Well, the -- you know, it does
17 appear that all four of the strikes exercised by the State
18 were against one ethnic or identifiable ethnic group.

19 For that reason I'd like you to give me a prima facie
20 response, if you would, as to why those strikes may of been
21 exercised, Mr. Barnette.

22 SOLICITOR BARNETTE: Yes, sir, Number 27, which I
23 believe is Ms. Crosby. She has a conviction for CDV. In
24 that case, Your Honor---

25 THE COURT: Just one second. Let me make some notes

1 here.

2 SOLICITOR BARNETTE: Yes, sir.

3 THE COURT: She had a past CDV you said?

4 SOLICITOR BARNETTE: Yes, sir.

5 THE COURT: Is that a conviction?

6 SOLICITOR BARNETTE: Yes, sir.

7 THE COURT: All right. Yes, sir.

8 SOLICITOR BARNETTE: Number 12 works in North Carolina.
9 The defendant's from North Carolina. His witnesses are from
10 North Carolina, Your Honor, in that case.

11 Number 174, he's a similar age of the defendant. If
12 you look at the make-up of the jury, the jury was all older
13 folks. He's similar age to him. That hair, that he wore
14 the dreads and everything that I noticed. Usually people of
15 gang nature in this, in this county, Your Honor. So,
16 therefore, I felt like that I didn't want him on the jury
17 based off that reason, Your Honor, and plus he is similar
18 age to the defendant while all the rest of the jurors I
19 don't think is a similar age from him.

20 Number 85, Your Honor, has a record of violation of
21 vehicle backing. With vehicles in this case -- obviously
22 it's a felony DUI and reckless homicide. I feel like that
23 he would not be a good juror in this case based off that
24 reason.

25 MR. HALL: I think -- what was the conviction?

1 SOLICITOR BARNETTE: It is -- I'll let you see it.

2 MR. HALL: I didn't---

3 THE COURT: I'll hear from you on that, Mr. Hall.

4 MR. HALL: Your Honor, I, I don't know what backing up
5 violation is. It says Spartanburg P.D. So, it's a
6 municipal violation, Your Honor. I don't have privy -- I'm
7 not privy to everybody's criminal record like they are. I
8 don't know if any of the other people that he presented have
9 minor offenses, and I don't know there's anyway I would know
10 that unless they show each and every one of them to the
11 other jurors.

12 But it's Number 174, Your Honor, similar age, I'm not
13 sure if any of the other jurors, I don't think there are,
14 that were seated were close to there, Your Honor. But
15 the -- just that saying, dreads, hair similar to the way,
16 what he had in that means a gang or denotes gang activity,
17 Your Honor, I think those are not racially neutral. The
18 dreadlocks or dreads usually associated with
19 African-Americans, and, Your Honor, I would challenge
20 specifically Number 174.

21 And like I said, Number 85, I don't, I don't know if
22 any of the other jurors who were selected have minor
23 violations or traffic violations. I just have no way of
24 knowing that.

25 THE COURT: I would suspect if they do -- Mr. Barnette,

1 can you enlighten us as to whether or not this is the only
2 person who might have a minor traffic violation.

3 SOLICITOR BARNETTE: Well, Your Honor, I looked through
4 the records here or whatever. I would say that's the
5 only -- it's a traffic violation, and obviously I think the
6 Court's got the same information possibly I have from the
7 previous, I mean when they were qualified from this.

8 But none of those -- it's a traffic violation in that
9 case. I don't think any of the other jurors, from the
10 information I've got, have got something like that on there,
11 and it's also vehicle backing. The problem, this being a
12 traffic violation in that situation, I felt like it would be
13 a person not to be good on the jury in that situation. He's
14 been convicted of one before because I think the facts will
15 be developed in this case that he felt like he didn't do
16 anything wrong just based off what I understand from the
17 case and everything.

18 And, Your Honor, just to clarify what I said before, I
19 wasn't talking about the defendant per se. He was wearing
20 dreads at the time. But it's just my, my relationship with
21 working with the gang members here in Spartanburg County
22 that we've dealt with before is that wear that type of
23 hairstyle. He wears the long -- I mean this is really long
24 with the thing. That is a sign of certain gang activity
25 here in Spartanburg County.

1 THE COURT: Well, now --.

2 SOLICITOR BARNETTE: I just wanted to clarify what I
3 said earlier.

4 THE COURT: This case doesn't involve gang activity,
5 does it?

6 MR. HALL: No, sir.

7 SOLICITOR BARNETTE: No, sir.

8 MR. HALL: It's driving a vehicle.

9 SOLICITOR BARNETTE: And for the record, Your Honor, I
10 did seat 152, which is an African-American. I did have
11 another strike left in that case, but there was nothing
12 that -- she looked like a perfectly fine juror to the State.

13 THE COURT: Well, as to the strikes, other than 174,
14 the Court is going to find that racially neutral reasons for
15 the strikes have been shown to the Court. However, in the
16 case, in the case of Number 174, I will go to the third step
17 of the process. That is it would be your burden, Mr. Hall,
18 to prove that there's some purpose for racial discrimination
19 going forward.

20 Be happy to hear from you.

21 MR. HALL: Your Honor, the -- basically my client's
22 African-American. At the time that he did have some short
23 dreads I guess you could say, and, Your Honor, it's, it is a
24 hairstyle that's associated with African-Americans,
25 predominantly African-American males, and my client is an

1 African-American male, Your Honor, and that basically,
2 similar age, he said the dreads is what he associates with
3 gang activity.

4 I believe African-American gang activity I think it is,
5 it is not racially neutral, and the hairstyle, those type of
6 things are associated with African-Americans. That's what
7 stood out about it. I'm not sure what it was---

8 THE COURT: Mr. Barnette, I'll hear from you.

9 SOLICITOR BARNETTE: Yes, sir, I prosecuted I know
10 Charlie Teamer, head of the Park Hills gang here in
11 Spartanburg. I've also prosecuted another murder concerning
12 a gang initiation involving those cases, Your Honor, and
13 I've dealt with these type individuals -- they have -- I
14 didn't strike him because he had -- he doesn't have dreads
15 now. That's not the reason why I struck him. It's my
16 dealing with those type of individuals. I've also
17 prosecuted Southern Boys, which is a white group here in
18 Spartanburg County.

19 THE COURT: Yes, sir, but my, my concern is there are
20 those in the African-American community who wear dreads that
21 play on football teams, and I don't know that that means
22 that they're members of gangs, and, of course, that racial
23 group is the only racial group that I'm aware of that wears
24 dreads predominantly.

25 SOLICITOR BARNETTE: Yes, sir, and I don't know if he

1 belongs with a gang or not. I can just tell, from my
2 previous experience in prosecuting things like that, if he
3 is a gang---

4 THE COURT: And I think that's what I'm gonna require
5 here is that some evidence to show that that individual is
6 involved in that kind of activity. Otherwise, I take it it
7 would be your position that everybody in the black community
8 who has dreads is subject to being struck, and that's -- I
9 don't find that to be racially neutral.

10 So, I'm gonna grant your motion. I'm gonna dissolve
11 the jury. We'll put them back in the pool and we're gonna
12 pick, and if Number 174 is again presented, they'll have to
13 be some reason, other than his hairstyle, that he's stricken
14 from the jury.

15 SOLICITOR BARNETTE: Yes, sir, and for the record, it's
16 also with the age of the -- I think he's the only similar
17 with anybody on the panel.

18 THE COURT: I understand that. I don't know that age
19 is a reason for striking.

20 MR. HALL: There's about a five year difference in the
21 age I think against us.

22 THE COURT: Okay. All right. I'm gonna ask you to
23 bring, put that group back with the main group and bring
24 them back into the courtroom.

25 BAILIFF: All right, sir. Thank you.

1 SOLICITOR BARNETTE: Just make sure, the three that was
2 struck, did the court find those were racially neutral
3 reasons?

4 THE COURT: I found those -- the prior convictions, I
5 find that to be racially neutral and not subject to a Batson
6 challenge.

7 SOLICITOR BARNETTE: Yes, sir.

8 MR. HALL: Your Honor, before the jury gets back,
9 I've -- at the -- this morning my client was trying to get
10 in touch with his mother. She couldn't be here, but he
11 wanted to talk to her before he made a final decision.

12 THE COURT: Yes, I understand.

13 MR. HALL: I'm -- I would like an opportunity, before
14 we get into the trial, to at least try to get him to---

15 THE COURT: Well, we're gonna break for lunch once I
16 get a jury seated.

17 MR. HALL: Yes, sir.

18 SOLICITOR BARNETTE: Yes, sir.

19 THE COURT: They'll be some time.

20 Madam Clerk, you need to prepare a new list for me.

21 CLERK: Yes, sir.

22 THE COURT: Thank you, ma'am.

23 SOLICITOR BARNETTE: Your Honor, may one of the
24 victim's family members go use the bathroom real quick?

25 THE COURT: Oh, sure. That will be fine.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. Ladies and gentlemen, I have
4 granted a motion invalidating the selection, first selection
5 process. We're going to go through the same process again
6 at this time. As we did before, when your name is called,
7 come forward, stand in front of the clerk's position, and at
8 that point in time the parties will be in a position to
9 exercise their strikes.

10 Madam Clerk, you can begin the selection process.

11 (WHEREUPON, a jury panel of 12 was selected at this
12 time.)

13 THE COURT: We're selecting the alternate.

14 The State has one strike. Defense has two.

15 (WHEREUPON, an alternate juror was selected at this
16 time.)

17 THE COURT: Any objection to the jury selection process
18 from the State?

19 SOLICITOR BARNETTE: I believe we have a matter, Your
20 Honor, to take up.

21 THE COURT: All right. I'm gonna ask that this jury
22 panel be taken to the jury room, and put the rest of the
23 jury panel to be taken back to the assembly room.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Yes, sir, Mr. Barnette.

2 SOLICITOR BARNETTE: Well, Your Honor, this is the
3 first time I've ever done this myself. We're going
4 backwards.

5 Your Honor, I make a reverse Batson motion. The four
6 folks the defense struck was all white. Two of them was
7 actually seated on the first jury, Number 69 and Number 47.
8 Both of those were, and I'd just like to have an explanation
9 for why they're now struck now. He had not ran out of
10 strikes.

11 THE COURT: Once you make your objection he has to
12 state a racially neutral reason---

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: ---or explanation of why the strikes were
15 exercised.

16 MR. HALL: Okay. Your Honor, Juror Number 69, upon
17 reflection, I -- the first juror I failed -- the first pick
18 I failed to notice that she worked for Spartanburg Regional,
19 and this case involves a death, an automobile accident. I'm
20 not sure where she works at Regional, but, Your Honor,
21 her---

22 THE COURT: Well, one of the witnesses identified as
23 Doctor Wren is also an employee of Regional.

24 MR. HALL: Yes, sir. And 47, Your Honor, if you'll
25 give me a moment. I didn't have a note by him. Again,

1 that's a nurse at Spartanburg Regional.

2 THE COURT: Same situation with that one?

3 MR. HALL: Yes, sir.

4 THE COURT: All right, sir. Other strikes would be
5 Number 87.

6 MR. HALL: Trooper Association.

7 THE COURT: And Number 91. I believe you struck him in
8 the first case, first time.

9 MR. HALL: Yes, sir.

10 THE COURT: You want to give me a racially neutral
11 reason?

12 MR. HALL: Your Honor, I can't. I'm gonna have to see
13 what -- I can't remember him. It's---

14 THE COURT: He's the gentleman with the ponytail, white
15 headed fellow.

16 MR. HALL: Your Honor, I believe in each of those I
17 asked my client did he want him on the jury or not. He said
18 strike him. It was at the request of my client, Your Honor,
19 on each of those.

20 THE COURT: On each -- you mean on Mr.---

21 MR. HALL: Oh, excuse me. Yeah, on each.

22 THE COURT: Striking Mr. Liebmann both times?

23 MR. HALL: Yes, sir.

24 THE COURT: You might want to ask him why he felt like
25 he should be strike, struck then.

1 MR. HALL: Your Honor, it's the similarity to the
2 victim in the case.

3 THE COURT: See I don't know anything about the victim.
4 So, you're gonna have to tell me about him.

5 MR. HALL: It was a motorcycle. He was a -- he was
6 driving a motorcycle when he was rear ended by my client.
7 It's a -- presumably turning into an establishment at Mayo,
8 and after the accident, when my client went to that
9 establishment, which had some biker type people in there
10 that, from his prospective, he was threatened by them until
11 they realized there really was an accident when they tried
12 to go in, Your Honor. He felt uncomfortable and---

13 THE COURT: I don't have the numbers.

14 Did Mr. Liebmann answer that he had bikes?

15 We asked that question. I'm sure somebody took some
16 notes on that or I can look back in the record.

17 MR. HALL: Yes, sir, I don't see that he did, Your
18 Honor. But it's basically my client's preference because he
19 did look, had that look about him.

20 THE COURT: That's kind of similar to what the State
21 said about the other gentleman.

22 MR. HALL: Well, Your Honor, there are people in this
23 that own motorcycles or have family members that own them,
24 both races that we have here. So, it transcends racial
25 lines. I know people in the white community and

1 African-American community that both routinely ride
2 motorcycles and have that appearance of the, for lack of a
3 better word, like the leather and all that, Your Honor. But
4 it was -- there was -- like I said, I hadn't even looked
5 back on the sheets and see what race, or excuse me, I
6 believe you told me what race he was.

7 THE COURT: All right. I'll hear from the State.

8 SOLICITOR BARNETTE: Your Honor, unfortunately, I, I
9 know I had stated my reasons the first time around. It's
10 very similar to what -- they're doing the same thing. They
11 don't know -- he didn't own a motorcycle according to the
12 notes I've got, and that information is available to the
13 defense. Obviously that wasn't a race -- that wasn't a
14 reason from that standpoint. I don't think it's a race
15 neutral reason. I think he struck him because of the, based
16 on what he looked like from that standpoint.

17 THE COURT: Well, I do note that all of the strikes
18 exercised by the defense in this case were against white
19 individuals. On this one I do not find that there is a
20 racially neutral reason. So, I'm going to throw the jury
21 panel out and we'll pick again. That gentleman can not be
22 struck for that reason unless you can show he's a biker or
23 has something to do with motorcycles.

24 MR. HALL: Thank you, Your Honor.

25 THE COURT: That doesn't appear to be the case cause

1 that question was specifically asked during the voir dire.

2 All right. We're gonna try one more time, and I don't
3 know if we will get to lunch today or not. But it doesn't
4 matter. We're gonna do it right.

5 MR. HALL: Yes, sir.

6 THE COURT: Take that panel back to the assembly room
7 and bring the panel back in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. Ladies and gentlemen, I have
11 granted a motion invalidating the second pull of the jury.
12 So, we're going to make a third pull of the jury. We'll
13 follow the same procedure that we followed in the past, and
14 now the computer is balking just a little bit. So, as soon
15 as we get that straightened out we'll be in a position to
16 start.

17 (Pause.)

18 THE COURT: All right. Madam Clerk, when you're ready
19 you can begin the selection process.

20 (WHEREUPON, a jury panel of 12 was selected at this
21 time.)

22 THE COURT: We're now selecting an alternate.

23 (WHEREUPON, an alternate juror was selected at this
24 time.)

25 THE COURT: Any objection to the jury selection process

1 from the State?

2 SOLICITOR BARNETTE: None from the State, Your Honor.

3 THE COURT: Any from the defense?

4 MR. HALL: None from the defense, Your Honor.

5 THE COURT: All right.

6 (WHEREUPON, the remaining jurors were dismissed at this
7 time.)

8 THE COURT: All right. Ladies and gentlemen, you've
9 been selected to serve as members of this jury, and what
10 we're gonna do is we're going to break for lunch at this
11 time. I am going to give you some instructions concerning
12 your behavior as members of the jury panel, and, of course,
13 upon your return and re, reconvening the case, I'll be
14 asking you concerning whether or not you've been able to
15 follow these instructions.

16 First of all, I'm going to ask that you not attempt to
17 gather any information about this case outside of this
18 courtroom. Later on, when you come back and you take an
19 oath concerning your duties and responsibilities in this
20 case, you will be taking an oath and that oath will be to
21 decide this case solely upon the law and the evidence that's
22 presented during the trial.

23 Now, the only evidence you'll hear during the trial is
24 testimony of witnesses who have been sworn to tell the
25 truth, they'll testify from the witness stand here, and

1 whatever documents or other evidence comes in the record
2 through that testimony will be the evidence in the case, and
3 the law will be given to, to you by me at the close of the
4 trial.

5 So, there is no information upon which you should
6 decide this case outside of this courtroom. So, don't
7 attempt to do an Internet search. Don't attempt to Google
8 anybody. Don't attempt to try to read media reports or
9 anything about this case outside of the courtroom. I'll be
10 asking you about that every time you come back into the
11 courtroom. The only place you need to gather information
12 about this case will be in this courtroom during the trial
13 of the case.

14 Also I'm going to ask you not to discuss the case even
15 among yourselves or with anyone else. We've gone to a lot
16 of trouble this morning and into the afternoon to be sure
17 that we've gotten open minded and fair jurors on the jury
18 panel. I want you to keep that open mind until such time as
19 you've heard all the arguments of counsel, all the evidence
20 that's been presented, and I've charged you concerning the
21 law, and only then, when I tell you to begin your
22 deliberations, should you begin to discuss any aspect of
23 this case.

24 I hope you realize that even if you sat down with a
25 fellow juror and discussed what the charges were about or

1 how you felt about certain things that you might have seen
2 or heard already today, that might begin to color your
3 ultimate decision before you even have any information upon
4 which to reach a decision.

5 So, again, don't discuss the case with anyone. Don't
6 allow anyone to discuss the case with you. It's okay to
7 tell family members or friends, friends you've been selected
8 to serve on a jury. When the, the case is all over, if you
9 choose to, you'll discuss it with them at that time, and I
10 tell jurors all the time you have no obligation to discuss
11 any part of the case with anyone at anytime. What a juror
12 does on a jury is not subject to review by anyone else.
13 And, so, you're not required to discuss it with anybody
14 unless you choose to do that.

15 Also, I'm going to tell you, should someone try to
16 contact you about your service on this jury please report
17 that when you come back to the court house. I've explained
18 that jury tampering is a felony in this state. I take it as
19 a very serious matter. And should someone try to call you
20 or talk to you about your service on this jury or try to
21 influence your decision, I'd like to know about that cause I
22 can assure you I'll take the appropriate action should
23 something like that occur.

24 Now, I'm going to ask that you be back in the jury
25 room. We've got, got a little matter I have to take up with

1 the attorneys before we actually begin the trial of the
2 case. An hour would be about ten minutes after 3:00. why
3 don't we say at 3:30. Be back in the jury room at
4 3:30 this, this afternoon. At that point in time we should
5 be in a position to start the trial of the case shortly
6 thereafter.

7 Now, as I told you, you'll be reporting back to the
8 jury room in use for this trial. The bailiffs show you
9 where that is when you leave and how to get back to that
10 location. So, you need to report there. Be there at 3:30
11 this afternoon, and, again, don't attempt to gather any
12 information outside of the courtroom, courtroom. Don't
13 listen to, watch, or read media reports, and don't allow
14 anyone to discuss the case with you.

15 At this time you're free to go. The bailiffs will show
16 you where to report back.

17 Thank you very much.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. I've received a copy of a
21 motion from my law clerk from the State, a motion in limine.

22 Is there any other motions that we'll be taking up
23 besides that motion?

24 MR. HALL: Yes, sir, Your Honor. I'll be making a
25 motion pursuant to 56-5-2953 and requirements of, excuse me,

1 roadside video and Mirandizing at that point, Your Honor.

2 THE COURT: All right.

3 SOLICITOR BARNETTE: Your Honor, I have two affidavits.
4 I've given copies to Mr. Hall for it. I'll hand those up to
5 the Court --

6 THE COURT: All right.

7 SOLICITOR BARNETTE: -- concerning the clarity on the
8 videotape. I think his argument on Miranda is he was --
9 when he first started talking to the defendant he gave him
10 his Miranda warnings at that time. Went through several
11 things with him. When he went to place him under arrest he
12 started Miranda again. He did not finish it. My position
13 would be the Miranda was complied with.

14 THE COURT: Oh, I understand your position. We don't
15 need to argue them right now. If you would, pass up the
16 affidavits so we can review those---

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: ---before the motion hearing, and what
19 we'll do is we'll start back in about an hour. So, we're
20 gonna be looking at about 3:15. That gives us time for
21 lunch, and we'll start back at that time.

22 Court will be in recess during that period of time.
23 The defendant will be in custody during the break.

24 MR. HALL: Your Honor?

25 THE COURT: Thank you very much.

1 MR. HALL: May I have an officer let him use the phone
2 in our office cause---

3 THE COURT: Oh, absolutely.

4 MR. HALL: It's a long distance call. So, if somebody
5 could take him around.

6 THE COURT: I'll allow him to go -- he needs to go to
7 the office and call his family. But after that he'll stay
8 in custody.

9 All right. Thank you. Just stay with him and wait
10 outside.

11 Thank you very much.

12 SOLICITOR BARNETTE: Thank you, Your Honor.

13 (WHEREUPON, Court was in recess for the lunch hour.)

14 THE COURT: Are you ready to proceed in the case, Mr.
15 Barnette?

16 SOLICITOR BARNETTE: Yes, sir, we are.

17 THE COURT: Come forward please, sir.

18 Stand in front of the microphone and you can speak by
19 speaking directly to me. You don't have to bend over to the
20 microphone.

21 All right.

22 SOLICITOR BARNETTE: May it please the Court, Your
23 Honor.

24 THE COURT: Yes, sir.

25 SOLICITOTR BARNETTE: This is the case of State versus

1 Brian O'Neil Robinson. 11-GS-42-5932. Your Honor, he's
2 pleading to Count 1, which is felony DUI with death. There
3 is a recommendation of a cap of 15 years on that case, Your
4 Honor. Once the plea is completed, on Count 2, Your Honor,
5 the reckless homicide will be dismissed. The family's in
6 agreement with this as well as the Highway Patrol. I've
7 talked to them, Your Honor. I do have 23 exhibits to enter
8 at the appropriate time and make those part of the facts of
9 the case.

10 May I present this to the Court, Your Honor?

11 THE COURT: Pass it up please.

12 SOLICITOR BARNETTE: Thank you.

13 THE COURT: Madam Clerk, please swear the defendant.

14 (WHEREUPON, the defendant was placed under oath at this
15 time.)

16 THE COURT: All right, sir. Your name is Brian O'Neil
17 Robinson, is that correct?

18 DEFENDANT: Yes, sir.

19 THE COURT: Mr. Robinson, you're in front of me today
20 on a charge. The one charge that you're pleading on is
21 Felony DUI with death as resulted. That is Count 1 of the
22 indictment that I went over with you earlier.

23 Now, sir, I will tell you that that case has gone to
24 the Grand Jury. It was properly indicted by the Grand Jury,
25 and it is properly before the Court.

1 The State is making a recommendation concerning the
2 sentencing, and that is there will be a cap of 15 years on
3 the, the case.

4 Now, I will tell you that felony driving under the
5 influence where death results carries a penalty of a minimum
6 of one year up to a maximum of 25 years and a fine of
7 between \$10,100 and \$25,100.

8 Are you aware of that charge?

9 DEFENDANT: Yes, sir.

10 THE COURT: Are you aware of the potential penalties
11 that are involved?

12 DEFENDANT: Yes, sir.

13 THE COURT: Also I will tell you that that particular
14 offense is classified as a -- is it, is it violent or
15 nonviolent?

16 SOLICITOR BARNETTE: It's nonviolent, but it's serious,
17 Your Honor.

18 THE COURT: It is serious.

19 Okay. It is a serious offense. As such, it would
20 constitute what is commonly known one, as one of your
21 strikes. In the future, if you were to be found guilty of
22 or pled guilty to other crimes that were similarly
23 classified, your plea in this case could be used in
24 connection with those future convictions to make the
25 serious, the sentences much more severe. It could

1 ultimately result in a sentence of life imprisonment without
2 ever receiving a parole.

3 Have you discussed that aspect of this case with your
4 lawyer?

5 DEFENDANT: Yes, sir.

6 THE COURT: Are you familiar with that, that, with that
7 aspect of this matter --

8 DEFENDANT: Yes, sir.

9 THE COURT: -- what we call the enhancement features
10 for this statute?

11 Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: All right. Now, now this is also defined
14 as what is known as a no probation offense, offense, I'm
15 sorry, no parole offense, which means that you will have to
16 serve a certain length of time, your lawyer probably
17 discussed that with you, before you would be eligible for
18 parole.

19 Are you aware of that as well?

20 DEFENDANT: Yeah, but you say it wasn't no parole, is
21 that right?

22 THE COURT: No, it's no probation, but it is also a
23 limited parole.

24 DEFENDANT: Yeah, I understand no probation. I didn't
25 know I---

1 MR. HALL: It's the 80 to 85 percent. You're not
2 paroled until you serve 80 to 85 percent of your sentence.

3 THE COURT: You've discussed that with your lawyer?

4 DEFENDANT: Yes, sir.

5 THE COURT: So, you're familiar with the 80 to 85
6 percent requirement---

7 DEFENDANT: Yes, sir.

8 THE COURT: ---before you would be eligible for parole?

9 DEFENDANT: Yes, sir.

10 THE COURT: And, of course, parole can change anytime.
11 It's a creature of statute and, of course, so you can't
12 really count on anything till you get there.

13 Do you understand that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Okay, sir. Now, Mr. Robinson, do you
16 suffer from any mental, physical, nervous conditions, any
17 conditions that would affect your ability to reason or make
18 good decisions today?

19 DEFENDANT: No, sir, but I have went to seen a couple
20 psychiatrist about, about my just, just me in general just
21 about what happened that night. I just couldn't get over
22 it. I just---

23 THE COURT: I can understand that, but my, my question
24 has to do mainly with your ability to be able to handle your
25 plea today.

1 Do any of the conditions that you might have or could
2 have, would they affect your ability to be able to make good
3 decisions?

4 DEFENDANT: No, sir.

5 THE COURT: Have you taken or used any drugs or other
6 medications that might have that same effect?

7 DEFENDANT: No, sir.

8 THE COURT: So, do you know what this hearing is about?

9 DEFENDANT: Yes, sir.

10 THE COURT: Do you understand the importance of this
11 plea today?

12 DEFENDANT: Yes, sir.

13 THE COURT: And you discussed that thoroughly with your
14 lawyer, is that correct?

15 DEFENDANT: Yes, sir.

16 THE COURT: Well now, are you satisfied with what he's
17 done thus far?

18 DEFENDANT: Yes, I am.

19 THE COURT: Is there anything else that he, you feel
20 that he ought to do for you before we go forward at this
21 time?

22 DEFENDANT: No, I just wanted to just say something to
23 the family.

24 THE COURT: Just, just respond to my questions, Mr.
25 Robinson. I'm gonna give you an opportunity, later on, to

1 speak with me freely---

2 DEFENDANT: All right.

3 THE COURT: ---about anything you want to discuss with
4 him, but right now I want you to answer my questions.

5 DEFENDANT: Yes, sir.

6 THE COURT: And I ask you do you feel that, that
7 Mr. Hall needs to do anything else before we go forward in
8 this matter?

9 DEFENDANT: No, sir.

10 THE COURT: And do you feel that you need to discuss
11 anything further with him before we go forward in this
12 matter?

13 DEFENDANT: No, sir.

14 THE COURT: All right, sir. Now, do you understand the
15 charge?

16 DEFENDANT: (Witness nods affirmatively.)

17 THE COURT: Do you?

18 DEFENDANT: Yes, sir.

19 THE COURT: And you understand the penalties that could
20 be involved?

21 DEFENDANT: Yes, sir.

22 THE COURT: And you understand that the recommendation
23 is a recommendation?

24 DEFENDANT: Yes, sir.

25 THE COURT: It does not have to be followed.

1 Do you know that either way?

2 You understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: All right. Now, as to this charge, you
5 have the right to plead either guilty not guilty.

6 How do you plead?

7 DEFENDANT: Plead guilty.

8 THE COURT: Counselor, have you discussed the plea
9 thoroughly with Mr. Robinson?

10 MR. HALL: Yes, I have, Your Honor.

11 THE COURT: I would suspect that among the many things
12 you may have discussed with Mr. Robinson, you may have
13 discussed the statutes under which he's been charged, the
14 alternatives to those statutes, the potential penalties that
15 are involved in those cases, any defenses that he may of had
16 to the charges, and any motions he may of been in a position
17 to make concerning suppression. I would suspect that you
18 would have also discussed with him the, the possibilities
19 involved in the plea arrangement. I would also suspect that
20 you would of discussed this issue concerning parole and the,
21 the effect that this statute has on this matter.

22 Have I correctly stated some of the things you've
23 talked about?

24 MR. HALL: Yes, you have, Your Honor.

25 THE COURT: And are you satisfied that Mr. Robinson

1 understood those discussions?

2 MR. HALL: Yes, sir, Your Honor. In fact, I, in the
3 negotiations, I've explained to him the position of the
4 state and where they were and several different factors.
5 So, we went over it in some detail.

6 THE COURT: All right. Do you agree with the decision
7 that Mr. Robinson has made at this time?

8 MR. HALL: Yes, sir.

9 THE COURT: And has he been able and been in a position
10 to assist you in his defense if that were necessary at all
11 times?

12 MR. HALL: Yes, sir, he's been very, quite emotional.
13 But yes, sir, he can.

14 THE COURT: Mr. Robinson, how old are you?

15 DEFENDANT: Twenty-two years old.

16 THE COURT: And how far did you go in your schooling?

17 DEFENDANT: I got my GED.

18 THE COURT: Are you married?

19 DEFENDANT: No, sir.

20 THE COURT: Do you have any children?

21 DEFENDANT: No, sir.

22 THE COURT: Did you have -- do you have a job at the
23 present time?

24 DEFENDANT: I did until the accident.

25 THE COURT: Okay. And what were you doing until that

1 time?

2 DEFENDANT: I was working in Greenville at Grable Van
3 Line. It's a moving company traveling around the State
4 moving people's furniture in and out was the job.

5 THE COURT: I understand.

6 All right. Now, Mr. Robinson, has anybody done
7 anything such as threaten you, put pressure on you, tried to
8 intimidate you, in other words, done anything to try to
9 force you or make you offer your plea today?

10 DEFENDANT: No, sir.

11 THE COURT: So, are you offering this plea freely and
12 voluntarily?

13 DEFENDANT: Yes, sir.

14 THE COURT: That means to me that you've thought about
15 it and you've decided this is the best way to proceed, is
16 that correct?

17 DEFENDANT: Yes, sir.

18 THE COURT: Have you had plenty of opportunity to
19 discuss this with family members or friends?

20 DEFENDANT: Yeah, I mean -- can you say that again?

21 THE COURT: I asked you if you had enough time to
22 discuss your decision with family members or friends?

23 DEFENDANT: Yes. Yes, sir.

24 THE COURT: Okay, sir. And has anyone made any
25 promises, guarantees, or assurances to you about any matters

1 in connection with your plea today and that would include
2 such things as pardon, parole, probation, early release,
3 length of sentence, anything of that nature?

4 DEFENDANT: No, sir.

5 THE COURT: So, you've not received any promises,
6 guarantees, or assurances about any of those matters, is
7 that right?

8 DEFENDANT: I mean -- I don't fully understand.

9 THE COURT: Well, I'm trying to find out if anybody's
10 promised you something saying I promise if you do this plea,
11 I'll see that this happens, something in particular happens.

12 Has anybody guaranteed that anything's gonna happen in
13 this plea?

14 DEFENDANT: Yeah.

15 THE COURT: What did they guarantee to you?

16 DEFENDANT: That I would get what the, the solicitor
17 offered me. That's guaranteed.

18 THE COURT: Well, the offer was that he recommended a
19 cap on your sentence.

20 Do you understand that, Mr. Robinson?

21 DEFENDANT: Not fully.

22 THE COURT: Well, I'm gonna let you talk to your
23 lawyer. Let's get that real clear before we go forward.

24 (Pause.)

25 THE COURT: Now, Mr. Robinson, what I've asked you was

1 had anybody guaranteed a certain result to you in this case?

2 DEFENDANT: No, sir.

3 THE COURT: So, there's no guarantees?

4 DEFENDANT: No, sir.

5 THE COURT: Do you understand that the recommendation

6 from the State is that the sentence be capped at 15 years.

7 But it is a recommendation. I am not bound by that. I have

8 the right to look at all the facts and circumstances and

9 decide what is the appropriate decision.

10 Do you understand that?

11 DEFENDANT: Yes, sir.

12 THE COURT: And I may take the recommendation of the

13 State or I may actually give you less time or I could reject

14 it and give you more time. It's my decision.

15 Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: And is your lawyer made that clear to you?

18 DEFENDANT: Yes, sir, he had.

19 THE COURT: And are you pleading based on that

20 understanding?

21 DEFENDANT: Yes, sir.

22 THE COURT: All right, sir. Any other promises or

23 guarantees about anything that you're, you're aware of?

24 DEFENDANT: No, sir.

25 THE COURT: All right. Now, Mr. Robinson, when you

1 plead guilty you waive or give up your Constitutional
2 rights. It's my responsibility to be sure you've done that
3 knowingly and intelligently. In other words, you know what
4 your Constitutional rights are and you've made an
5 intelligent decision to proceed with your plea in spite of
6 the fact that you're giving up those rights.

7 DEFENDANT: Yes, sir.

8 THE COURT: For that reason I'm going to explain your
9 rights to you in detail. When I finish I'll give you a
10 chance or opportunity to ask any questions you'd like to
11 ask. I want to be sure you understand these.

12 Do you understand that, sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. First of all, you have a
15 Constitutional right to have your case considered by the
16 Grand Jury. That's already happened and a true bill was
17 issued.

18 You have a Constitutional right to a lawyer. Your
19 lawyer is here. He's available to consult with you anytime
20 during this process.

21 Now, Mr. Robinson, as you're aware, since we've already
22 pulled a jury in your case, you're entitled to a trial by
23 jury, and at that trial you would be presumed to be innocent
24 until such time as the State proves your guilt, and they
25 would have to prove that guilt beyond a reasonable doubt.

1 You are presumed to be innocent. So, for that reason,
2 you're under no obligation to prove anything during the
3 trial.

4 Now, at the trial and under the Constitution, you would
5 have the right to do several things. You could have the
6 clerk issue subpoenas to witnesses if you had to compel them
7 to come to the hearing, and they would be required to attend
8 the hearing.

9 At the hearing you would have the right to confront or
10 question anyone who testified during the trial. You would
11 also have the right to present all the defenses that you
12 might have to the charges during the trial. You would have
13 the right, on constitutional grounds, to try to suppress any
14 evidence the State may have against you. That includes any
15 statements that you might of made prior to the time of the
16 trial.

17 At all times, Mr. Robinson, you have the absolute right
18 to remain silent, and if you choose to remain silent, during
19 your trial, the judge has the obligation of instructing the
20 jury that your silence could not be used against you.

21 So, Mr. Robinson, do you understand the rights I just
22 explained?

23 DEFENDANT: Yes, sir, I do.

24 THE COURT: Do you have any questions about any of
25 those rights?

1 DEFENDANT: No, sir.

2 THE COURT: So, do you understand them?

3 DEFENDANT: Yes, sir.

4 THE COURT: Now, do you realize that if you continue to
5 plead guilty, and later on I decide to accept the plea, you
6 will be giving up all of the Constitutional rights that I
7 just described to you as they relate to this charge except
8 the right to have your lawyer. You could have -- you could
9 continue to be represented by an attorney until your case is
10 been completed.

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that, sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: Now, does the fact that you have to give up
15 those rights, does that cause you to want to change your
16 plea in anyway?

17 DEFENDANT: No, sir.

18 THE COURT: So, you're still pleading guilty at this
19 time?

20 Is that true?

21 DEFENDANT: Yes, sir.

22 THE COURT: Is that because you are guilty?

23 DEFENDANT: Yes, sir.

24 THE COURT: All right. I'm gonna ask the solicitor to
25 go over the facts in this case. They're gonna be rather

1 lengthy. So, listen to them carefully. When he finishes
2 I'll be asking you about the facts he's told me about.

3 You understand, Mr. Robinson?

4 DEFENDANT: Yes, sir.

5 THE COURT: Mr. Barnette.

6 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

7 Before I go into the facts I'd like to make part of the
8 facts the exhibits that will be entered. Part of them was
9 gonna be entered for the trial.

10 State Exhibit No. 1 is the videotape of Trooper Mace,
11 Mace's video at the scene, Your Honor, on Highway 221.

12 THE COURT: If you'll just identify them all. Then
13 I'll ask Mr. Hall if he has objections to any of them before
14 you go forward.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 State Exhibit 2, Your Honor, is the M.A.I.T. team went
17 and interviewed the defendant in the jail. This happened --
18 the wreck occurred about 10:57PM on August 12th, 2011.

19 The next morning, at 5:20AM, the M.A.I.T. team went to the
20 jail and interviewed him. That was Trooper Craig and
21 Trooper Duncan I think, Your Honor.

22 State Exhibit 2 was the copy of their interview, Your
23 Honor.

24 State Exhibit 3, Your Honor, is a diagram just showing
25 basically what happened on Highway 221 up near Bailey's

1 Club, Your Honor. It's in Spartanburg County on Chesnee
2 Highway, Your Honor, near Mayo.

3 State Exhibit No. 4, Your Honor, is a scale model of
4 what happened is, I don't know if the Court can see, but
5 basically it was where the defendant was driving a pickup
6 truck. He had two passengers with him. It was a 1993 GMC
7 truck, Your Honor. Ran into the back of the motorcycle
8 being driven by the victim in this case, Your Honor.

9 Basically Larry weaver, he was hit on his motorcycle.
10 It's a Honda motorcycle, and that was where the impact
11 occurred. About 150, 150 feet before it got to the private
12 drive where you turn into Bailey's Club, Your Honor.

13 State Exhibit 5, Your Honor, shows where -- what
14 happened was Mr. Weaver was knocked off his motorcycle. It
15 left on the right side of the road. The bicycle -- the
16 motorcycle jammed underneath of the truck, and you can see
17 there's one red mark that moves up the line. They're --
18 that's the truck -- the mark from the tire of the motorcycle
19 bike that's being pushed by the truck.

20 He drove on by and then he eventually hit his brakes,
21 and you'll see where the two comes in. He traveled about
22 272 feet before he applied his brakes, and then that's where
23 you see three actually tire marks. You see his two and then
24 the one -- he stops I think it's 372 feet up or
25 approximately that beyond the first point of impact.

1 The victim, Mr. Weaver, was left in the road. A
2 mini-van came up and she was able to see, where she's higher
3 up, it's like a crown on where this is. You go up hill
4 beside -- when you get to the second drive, you turn into
5 Bailey's. It starts cresting going over. The truck had
6 reached that point. She could see it. So, she veered off.
7 The second car behind it was driven by a Honda. The person
8 couldn't avoid that, ran into Mr. Weaver. He was hit a --
9 well, really the first time. The second impact that
10 occurred ran over the top of him. He was found dead on
11 Highway 221 there. Your Honor, he pulled off to the side
12 after he realized he had hit him.

13 State Exhibit No. 6, Your Honor, is a, where the body
14 finally comes at rest in this case, and just showing where
15 the truck ended up in relationship to the truck.

16 State Exhibit No. 7, Your Honor, this is going
17 northbound on Highway 221 in Spartanburg County. It shows
18 the first impact. You can see Bailey's sign barely in
19 the -- it's on the right side of the road, and that was
20 where the first impact occurred where the defendant was
21 driving his truck and ran into the motorcycle, Your Honor.

22 State Exhibit No. 8, Your Honor, is the -- it shows the
23 second area of impact. That's where Mr. Weaver wind up
24 after he was knocked off the motorcycle and then he was hit
25 by the, the vehicle, the Honda, and it shows the drag marks.

1 It shows where the body winds up basically in front of
2 Bailey's, that sign at Bailey's Club.

3 State Exhibit No. 9 is a picture of the motorcycle, how
4 it was embedded in the front of the pickup truck where it,
5 the wheel was jammed underneath of the bumper, and the
6 motorcycle was actually embedded in the grill.

7 State Exhibit No. 10, Your Honor, was basically where
8 the body, Mr. Weaver's body ended up. It shows the blood
9 area there. It shows where the car that hit him was pulled
10 off to the side of the right, and you can see the truck
11 driven by Mr. Robinson up here on the crest of the hill.

12 State Exhibit No. 11 was a copy of a, is a picture of
13 the front of the vehicle driven in this case. Mrs. Vinson
14 was the driver of that car. She was the one that hit him
15 and where she pulled off to the side of the road after
16 hitting him.

17 State Exhibit 12, Your Honor, shows the motorcycle
18 wheel that's embedded underneath the bumper of the truck
19 where the back of the motorcycle was embedded in the grill
20 in the GMC.

21 State Exhibit 13, Your Honor, shows from the other side
22 showing where the motorcycle was embedded into the grill of
23 the truck.

24 State Exhibit 14 shows where the tire is under
25 pressure. You can see where it's flattened out in the

1 bottom of it. That's right underneath of the truck.

2 State Exhibit 15 shows the motorcycle from another
3 angle, how it's embedded and underneath the truck and into
4 the grill.

5 State Exhibit 16, Your Honor, is the blood sample that
6 was collected, form used to collect the blood sample from
7 the defendant in this case. Mrs. Leatha Neal collected it.
8 She used a Betadine swab to do that. It was given to
9 Trooper Mace to take in his custody.

10 State Exhibit 17, Your Honor, is the blood alcohol and
11 drug report from the blood sample given from Mr. Robinson.
12 He had a blood alcohol .052 at the time of the draw, which
13 is 1:15AM on August the 13th, 2011. He also had
14 marijuana, THC, the actual marijuana in his system, 6.1
15 milligrams per liter, and he also had THC metabolite. Had
16 19 milligrams per liter in that also, Your Honor. That was
17 done by Shannon Sorrells at SLED.

18 State Exhibit 18, Your Honor, there was also a blood
19 sample taken from Mr. Weaver. He had no alcohol or no drugs
20 in his system. None.

21 State Exhibit No. 19 and 20, Your Honor, No. 19 is what
22 we talked about prior to taking the break. This was an
23 affidavit concerning the videotape that was done at the
24 scene. There was some interference with that videotape. It
25 was due to the lighting of the vehicles, condensation on the

1 windshield, radio interference, weather conditions, and
2 recording range limitations of the equipment when the
3 officer was going around talking to different witnesses,
4 Your Honor.

5 And then State Exhibit 20, Your Honor, there wasn't a
6 individual at the hospital obviously for the blood draw.
7 There was no equipment there at the hospital for it.

8 State Exhibit 21, Your Honor, is the incident report
9 that was done by Trooper Mace in this case as well as his
10 accident report. It consists of five pages. We'll make
11 that part of the record.

12 State Exhibit 22, Your Honor, is the implied consent
13 right that was given to the defendant to make sure his
14 Felony DUI rights under this case, and that was done by
15 Trooper Mace and signed by the defendant.

16 State Exhibit 23, Your Honor, is a chain of custody.
17 It was done on the defendant's blood sample from a point
18 that Trooper Mace received it at the hospital to the point
19 where it was taken to SLED by the different people that
20 handled it in this case, Your Honor.

21 Just briefly go into the facts, and like to make these
22 part of the facts, Your Honor, at this time.

23 MR. HALL: No objection.

24 THE COURT: Any objection to any of these exhibits?

25 MR. HALL: No objection, Your Honor.

1 THE COURT: All right. Then they'll be made a part of
2 the record.

3 (WHEREUPON, State's Exhibit Nos. 1 through 23 were
4 received into evidence at this time.)

5 THE COURT: You may proceed, Mr. Barnette.

6 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

7 Again, this occurred on August 12th, 2011,
8 approximately 10:57AM, Your Honor. It happened on 221 or
9 Chesnee Highway in Spartanburg County about 4.33 miles north
10 of Cowpens, Your Honor.

11 Brian Robinson was driving a 1993 pickup GMC truck,
12 Your Honor. He had two passengers with him. Larry Weaver,
13 he was driving northward, Your Honor. He had been to a
14 party from the interviews that was done at Inman with these
15 two individuals, and at party, Your Honor, and talking to
16 Trooper Mace and also talking to the M.A.I.T. officers at
17 the, the jail, he basically had taken two, two and a half
18 shots of beer, a bong type game. He also had took some sips
19 of Bud Lite, and he also took a hit of marijuana at the
20 party, Your Honor, and afterwards it came back this way,
21 Your Honor.

22 He had not eaten. I think he'd ate two cheeseburgers
23 all day. He woke up at 1:00 that afternoon, and this is
24 approximately a little bit before 11:00PM when this
25 happened.

1 Larry Weaver was also traveling north, Your Honor, on
2 his Honda motorcycle. He had actually went to make a
3 right-hand turn. The light was still on when the M.A.I.T.
4 team officers got there. His lights had worked fine. They
5 made a mechanical check of that, and, like I say, his
6 flasher to turn right to go into Bailey's was still on.

7 The defendant was going 57 to 59 miles an hour when he
8 made impact with Mr. Weaver's motorcycle as he slowed down
9 to make that turn. The wheel jammed underneath. You could
10 see the drag marks for 200 and some feet from there.

11 Mr. Weaver was knocked off the motorcycle, hit in the
12 right. The truck and the motorcycle actually went into the
13 left lane and kept going up that way. He eventually hits
14 his brakes after traveling 270 something feet, and then
15 slows, and stops after 300 and some feet up the road.

16 THE COURT: The defendant hit his brakes, the driver of
17 the truck hit his brakes?

18 SOLICITOR BARNETTE: He eventually did, but it's about
19 270 something feet before he hit his brakes.

20 THE COURT: I understand. That's what I'm trying to
21 understand.

22 SOLICITOR BARNETTE: And the victim was knocked over in
23 the road. Of course, the one -- the mini-van driver saw him
24 and was able to avoid him, but the second driver of the
25 Honda was not. He was hit and was killed at the scene.

1 Trooper Mace took a video at the scene, Your Honor. In
2 talking to him he admitted he was the driver. He also
3 admitted to him drinking alcohol and the marijuana in this
4 case at the party.

5 Later on he was interviewed by the M.A.I.T. team at the
6 jail, and, of course, he was Mirandized by Trooper Mace
7 before he made those statements at the hospital -- not the
8 hospital. At the, at the jail. The M.A.I.T. team talked to
9 him. He admitted, and I want to make sure I got this, he
10 was feeling a little twisted, and a matter of fact he was
11 probably the most soberest of the three, and that's the
12 reason why he wound up driving the vehicle that night in
13 that case.

14 I've already told you the SLED blood alcohol and drug
15 results in this case, Your Honor. He was charged with
16 Felony DUI with death in this case.

17 THE COURT: Mr. Robinson, did you hear what the
18 solicitor told me about the facts in this case?

19 DEFENDANT: Yes, sir, I did.

20 THE COURT: Is what he told me the truth?

21 DEFENDANT: Well, everything but -- I mean yes, he told
22 the truth about everything. But I hit my brakes as soon as
23 that happened. I didn't, I didn't --.

24 THE COURT: Well, I think what he indicated, and what
25 I, what I believe is that you began to leave skid marks at

1 some point in time on the road, and that was 200 feet down
2 the road.

3 Do you disagree with where the skid marks started?

4 DEFENDANT: No, sir, I don't. I don't.

5 MR. HALL: He just said -- he says he was trying to
6 apply the brakes before that point, but apparently locked it
7 up on, up the road.

8 THE COURT: I understand.

9 Okay. Other than that do you disagree with any of the
10 facts that I've heard?

11 DEFENDANT: Other than---

12 THE COURT: This is your chance to tell me any problems
13 you have with those facts.

14 DEFENDANT: Other than the fact I said I was the word
15 twisted, and I don't -- that's the only thing I don't
16 understand. I mean when I say twisted, I don't, I don't
17 know which way they took it like. But what's -- what I was
18 really trying to say was twisted meaning like, like I wasn't
19 feeling too good. I was -- my stomach was tossing and
20 turning.

21 You know what I'm saying?

22 It was like twisted like. I wasn't trying to say like
23 I was---

24 THE COURT: I understand what you're saying.

25 DEFENDANT: I was like, like couldn't control myself.

1 Like I was like totally drunk or nothing. I didn't mean it
2 that way.

3 MR. HALL: You used the word?

4 DEFENDANT: Yeah, I did use the word. I understand
5 that---

6 THE COURT: So, you did say that you were twisted, but
7 you're giving me a different explanation for that word.

8 Is that right?

9 DEFENDANT: Yeah, I told him -- that's what I'm saying.
10 I didn't expect for nobody to take it that type of way. I
11 mean what -- I mean like my stomach was acting a little
12 funny, and it just wasn't right. I was just like just my
13 sign me telling that like, you know what I'm saying, stop
14 whatever you doing before it get worse than what it is,
15 which is -- cause I am the designated driver and I was the
16 only one was with license and insurance that was in there.
17 So, I had to drive home. I knew I did. And that's
18 what I meant by twisted like my stomach was tossing and
19 turning and I wasn't feeling too good. It just -- that just
20 means something, if I don't stop what I'm doing here which
21 y'all something could actually happen, you know what I'm
22 saying. Like I can be worse than what you---

23 THE COURT: I understand that you had a different --
24 what you're saying now is that meant something different to
25 you than perhaps it might mean here today?

1 DEFENDANT: Yes, sir.

2 THE COURT: Okay. I understand that.

3 Any other differences you have to the facts?

4 DEFENDANT: No, sir.

5 THE COURT: All right. Mr. Robinson, have you told me
6 the truth today?

7 DEFENDANT: Yes, sir, I have.

8 THE COURT: Did anyone tell you how to answer my
9 questions?

10 DEFENDANT: No, sir.

11 THE COURT: So, the answers I've gotten to my questions
12 were your own, is that right?

13 DEFENDANT: Yes, sir.

14 THE COURT: Is there any part of what we discussed
15 during this plea that you want to change or amend anything
16 you've told me?

17 DEFENDANT: No, sir.

18 THE COURT: All right. Mr. Robinson, it's going to be
19 my finding that this plea is freely and voluntarily given,
20 that you're aware of the charges, the potential penalties.
21 It's my further finding that you've had the advice of a
22 lawyer, you're satisfied with that legal advice. It's my
23 further finding that there's a factual basis for the plea.

24 Now, what I'm gonna do, Mr. Robinson, is I'm gonna give
25 your attorney an opportunity to talk to me about the case.

1 Then I'm going to give you an opportunity to address the
2 Court. If there's anyone here to speak to the Court on your
3 behalf, once you've completed your statement, I'll be happy
4 to hear from those people as well.

5 Mr. Hall.

6 MR. HALL: Please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. HALL: In preparing for this case and meeting with
9 my client, we discussed a lot of issues. As I, as I told
10 the Court before, there's the issue of the roadside video.
11 I summarized what the case law is and what I thought a
12 likelihood would be in pursuing that motion. The -- and I
13 think, as Your Honor referred to earlier in talking about
14 parole and things like that, those things can change.
15 Opinions of Courts can change.

16 I discussed an issue related to DUI where we, it was a
17 decision and six or eight months later it's exactly the
18 opposite decision. So, we can't depend on the law always
19 staying exactly the same.

20 THE COURT: It does change from time to time.

21 MR. HALL: Yes, sir.

22 In preparing he -- some of the delay for our meeting
23 Saturday was getting an additional witness who would of been
24 very important to us because he was a fourth person in the
25 car on the trip down from North Carolina to Inman who

1 stayed, and had a conversation with Mr. Robinson before he
2 left, and that was the only person in this group that had,
3 had nothing to drink, nothing to smoke. He's -- he was a
4 toe, tee totaler. Excuse me, Your Honor. And he was, in
5 fact, the purpose of the whole trip was to bring him down to
6 where his girlfriend was.

7 As Brian referred, he was the one who was driving and
8 was, and thought he was making a good decision. He made
9 is -- what he called the two shots, which is a double shot.
10 It's one shot, but it's a taller glass. Not a wide glass,
11 but the little narrow glass, and some beer. He did take a
12 hit off some marijuana. Somebody had a joint. He said he
13 did take a hit of that.

14 But that was early on, once they got there, somewhere
15 between 8:00, right around eight o'clock. It's about the
16 time it was getting dark. This was in August and that would
17 of been about the appropriate time for it being sunset.

18 He -- you know, Julian, who was in the vehicle with him
19 in the back seat -- it had one of those little jump seats,
20 seats on the side of the extended bed, excuse me, extended
21 cab pickup truck. I think he was asleep. He had been the
22 one partaking of the playing pong.

23 They all played the beer pong, but Julian -- Julian
24 would have testimony that he was the one who was drinking
25 and nobody else was. After Brian had the shot and a couple

1 sips of beer, I think the marijuana first, then that, he had
2 nothing else to drink before they left. Nothing else to
3 smoke or drink before they left.

4 Julian did. There's Anthony Edgerton who was also in
5 the car. He had some, consumed some things there. They
6 made I think one stop to get gas. I believe the other two
7 people got something to drink, and basically within a few
8 minutes headed up 221 were either asleep or about asleep
9 dozing.

10 Brian says that coming up on this, what he had done in
11 describing his girlfriend's mother's pickup truck, the radio
12 didn't work. He -- apparently the radio was on, but it just
13 doesn't work. It started making noise, and that's probably
14 what he was paying attention to. He said he looked down to
15 make sure the gas gauge had gone up after he had gotten the
16 gas, and he was looking at the radio and it happened that
17 quick.

18 He's -- it's coming up a rise. He came up on a
19 motorcycle before he saw him. We discussed, like I said,
20 the -- he applied brakes and locked the brakes down, but we
21 discussed what the blood alcohol level was in the blood that
22 was drawn, the .05, and then the, adding the active
23 marijuana on top of that.

24 We're -- he and his friends, I believe, felt that he
25 was not impaired, that he was okay to drive, that the jury

1 very well could look at those factors and come to a very
2 different conclusion. If the jury felt like he was
3 impaired, then we would have definitely a Felony DUI here.

4 Your Honor, we, as I said, went over the video. The
5 video you really can't see. But I think pretty much you can
6 hear everything going on. The initial -- Trooper Mace there
7 initially thought that people were, had run off and hidden
8 within -- I think the first version of the video I had,
9 within four or five minutes, Mr. Robinson comes up and Mace
10 said something like we're looking for the driver, and he
11 said I'm the driver. Mace said I'm looking for the driver
12 of that truck. He said I'm the driver of that truck. He
13 cooperated fully, Your Honor.

14 He has told the consistent story. He took a hit, he
15 did the double shot, and a couple sips or sip of beer, felt
16 like that he was all right to drive as did his friends at
17 the time. But he cooperated. He did everything they asked
18 him.

19 From the video, it looks like and sounds like he did
20 fine on the walk and turn, the one leg stand, but it's --
21 you can't tell because of the rain on the windshield. He
22 cooperated at the hospital to give them the blood and urine
23 samples. He agreed to speak with the M.A.I.T. officer, the
24 trooper the next morning. I think he went over a lot of
25 things, asked him a lot of questions, then Mirandized him,

1 but that's -- we talked at some length about that term
2 twisted, that that same jury that would be looking at the
3 blood alcohol and the marijuana and his other statements
4 could take that the wrong way. Not the way he intended it.
5 But they could certainly take it the, the wrong way.

6 And, Your Honor, with the offer that came this morning,
7 he had an opportunity to speak with his mother and his
8 sister. He's talked with his girlfriend who's here on the
9 front row. He helps take care of, helped take care of her
10 two children. She's a widow.

11 He has a past, when he was 17 or 18 years old, being
12 involved with drugs more in North Carolina. I think his
13 record reflects that. But at the time of this, if anything
14 with the drugs, I don't think there's any evidence that --
15 he had marijuana. He did smoke marijuana, but he wasn't
16 transporting marijuana. He had bought some alcohol that, I
17 think vodka that was taken to that party and presumably left
18 there, Your Honor.

19 He just made some bad decisions this night that he
20 understands is going to cost him some of his life in the
21 Department of Corrections. As he told you early on, it is,
22 it is had a psychological effect on. He's gone to seek some
23 assistance in dealing with the issues from what happened
24 that night.

25 He has expressed to me a concern with the victim's

1 family, that, along the lines basically that I can't
2 imagine -- you know, if the things were reversed, I can't
3 imagine how I would feel. He is very sorry and regretful
4 for causing this death because he knows, had he not been
5 inattentive, hit the motorcycle, he would not have been run
6 over. There's no way of knowing how much he would of been
7 injured had the car not run over him, but the fact
8 situation, the scenario, he's the one that caused the person
9 to be in the road in the first place, Your Honor.

10 As I said, he has extended family who cares about him.
11 They're supportive of him. They just couldn't be here this
12 morning. His girlfriend, Mrs. Snyder, is here, and is very
13 upset with everything that happened. In fact, I think she
14 was the, the -- he had borrowed the other gentleman,
15 Anthony's phone, and spoken to her, and she said, you know,
16 you better come on back up here. You don't need to be down
17 here. That's what they did. They left at that point.

18 Your Honor, he is a, basically a good person who was
19 trying to do the right thing. He unfortunately made a
20 couple bad decisions with the consumption, and then driving,
21 and his inattentiveness when he looked down, and it kind of
22 brings home, you know, those others of us who drive and have
23 children who drive to remind them how just a couple seconds
24 can make such a big difference in your life and somebody
25 else's life.

1 The decisions he made that day took another man's life.
2 He's gonna have to live with that for the rest of his life,
3 Your Honor. He's remorseful about that. He's not just
4 upset. He knows he's going to prison today. He knows that
5 these people here that lost a loved one because of his
6 actions, and we do ask that Your Honor at least accept the
7 cap of 15, and possibly consider something a little bit
8 less.

9 He's 22 years old. He's still, with whatever sentence,
10 he will have a life ahead of him, and he told you he got his
11 GED. He was taking some classes I think at a technical
12 school for pipe fitting and those type things. So, he does
13 see being a productive citizen at some point when he gets
14 finished with this.

15 Thank you, Your Honor.

16 THE COURT: Mr. Robinson, I told you I'd give you an
17 opportunity to address the court.

18 Anything you want to say to me at this time?

19 DEFENDANT: Yes, sir.

20 THE COURT: Yes, sir.

21 DEFENDANT: I just let you know that I, I understand
22 like what my action was and the consequences behind the
23 stuff, and I know that it, it's not just gonna be easy. I
24 know that. I know. I understand that, that these type of
25 things happen, and that I do got -- like it's gonna take a

1 part of my life to, you know, saying regardless it got to be
2 some consequences of that, and I, I agree to that. I
3 understand that because I fully do because I wouldn't want
4 nobody else to go through nothing like this, and I -- never
5 again.

6 That's it. That's it.

7 THE COURT: All right. Are there any family members of
8 his that would like to speak, Mr. Hall?

9 DEFENDANT: Yes, I want -- I got something else to say
10 too.

11 THE COURT: Oh, I'm sorry. Go ahead.

12 DEFENDANT: If I could, I -- if I can turn around to
13 the family?

14 THE COURT: No, sir, I need you to address the Court.
15 You can say whatever you want to say to them to me.

16 DEFENDANT: I just want to tell the family that I'm
17 honestly, honestly sorry about what happened that night. It
18 was totally an accident. I made some bad mistakes, I did,
19 and I do know how it feel to lose a father because I did
20 lose my daddy when I was 16. I do understand how it is to
21 lose somebody. I do.

22 And I just want to let them know, anything that I could
23 of did that night to change the way it happened I would. I
24 would. I would not want that to happen. I don't know why
25 it couldn't of been me because I just don't feel like

1 anybody deserved anything like that. So, what happened to
2 them because I just can't forgive about what happened that
3 night. I really, really can't. I can't.

4 THE COURT: Thank you, sir.

5 Any of the family -- his friends or family wish to
6 speak, Mr. Hall?

7 MR. HALL: Your Honor, I'm not sure if Kristen wants to
8 speak or anything. She's very upset. But she's supportive
9 of him, Your Honor.

10 THE COURT: I understand.

11 Mr. Barnette, prior record.

12 SOLICITOR BARNETTE: Your Honor, it looks -- and it's a
13 North Carolina record. So, I checked with Mr. Hall trying
14 to make sure it was correct.

15 July 6th, 2007, possession of Schedule II drugs.

16 September 6th, 2007, possession of coke and
17 possession of Schedule IV drugs, and resisting an officer.

18 August 7th, 2008, he was convicted of no operating
19 license as well as fictitious information to officer.

20 January 21st, 2009, possession with intent to sell
21 scheduled VI which I believe is marijuana.

22 September 22, 2009, resisting arrest, Your Honor, and I
23 think there was a probation violation from the other
24 offenses that was combined with that from what I can tell,
25 Your Honor---

1 THE COURT: All right.

2 SOLICITOR BARNETTE: ---in that, and, Your Honor, just
3 for clarification --

4 THE COURT: Yes, sir.

5 SOLICITOR BARNETTE: I just want to make sure. One
6 thing we would of done, and I told Mr. Hall about this, I
7 talked to Doctor Wren, which had done the autopsy, as well
8 as with Shannon Sorrells from SLED. Both of them felt like
9 he was under the influence based off the amounts. Plus they
10 extrapolated to go back to what his blood alcohol would of
11 been at 10:57PM. They felt comfortable it would of been .08
12 cause going back two hours like that. It would of been --
13 but I just wanted to make sure that was part of the record,
14 Your Honor, for part of the plea, and I also shared that
15 with Mr. Hall.

16 THE COURT: Is that your understanding of what their
17 opinion would of been?

18 MR. HALL: Yes, sir, and I was prepared with a lot of
19 questions on that, Your Honor.

20 THE COURT: Oh, I'm sure that would of been heavily
21 cross-examined, but nevertheless you were aware that that
22 opinion---

23 MR. HALL: Yes, yes, he told me about that this past
24 week.

25 THE COURT: All right.

1 SOLICITOR BARNETTE: Yes, sir, I just wanted to make
2 sure. Not, not just shown what we would of shown concerning
3 the alcohol level, Your Honor.

4 THE COURT: Now, are there individuals from the family
5 of the victim that would like to speak at this time?

6 SOLICITOR BARNETTE: Yes, sir, before I do that, I
7 think Trooper Mace is here, and I know members of the
8 M.A.I.T. team is here, Your Honor. I don't know if they
9 want to address the Court or not.

10 THE COURT: Do any of the officers wish to address the
11 Court at this time?

12 (No response.)

13 THE COURT: All right. Thank you.

14 SOLICITOR BARNETTE: Okay. Your Honor---

15 THE COURT: Now I'll hear from the victims. If the
16 family wishes to speak, come forward.

17 SOLICITOR BARNETTE: Renee Wright and Ruby Saunders,
18 which was sisters of Mr. Weaver and JoAnn Weaver, his
19 mother, is here. But I think his daughter, Tabitha Rooney,
20 would like to address the Court, Your Honor.

21 THE COURT: Right up here beside Mr. Barnette please,
22 ma'am, and your name?

23 MS. ROONEY: Tabitha Rooney.

24 THE COURT: And I'm told you're the daughter of the
25 victim, is that correct?

1 DEFENDANT: Yes, sir.

2 THE COURT: Ma'am, you can address the Court. I'll
3 caution you just like I did the defendant. Whatever you
4 have to say, say it to me.

5 Yes, ma'am, I'll be happy to hear from you.

6 MS. ROONEY: My family and I have waited over five
7 months for this day for just, for some sort of closure. He
8 took away not just a father, a grandfather, and a brother,
9 and a son. He took away a friend. He took away a guardian
10 angel from many people.

11 My daughter spent her ninth birthday without her
12 grandfather. The very first birthday of her entire life
13 without her grandfather. Not for anything that he did
14 wrong. But for someone else's actions.

15 The -- his arrest record, I feel like at some point in
16 time, quit getting a slap on the wrist. Obviously getting
17 charged with minor drug charges didn't stop you from doing
18 it again.

19 My family and I speak on my family's behalf that we
20 request the max because at some point in time enough is
21 enough, and you need to finally realize that your actions
22 have consequences, and that it doesn't just effect you. It
23 effects multiple people.

24 THE COURT: Thank you, ma'am.

25 Anything else you'd like to tell me?

1 MS. ROONEY: No.

2 THE COURT: All right. Thank you. You can be seated.
3 Any other family members wish to speak?

4 (No response.)

5 SOLICITOR BARNETTE: Thank you, Your Honor.

6 THE COURT: Mr. Barnette, if you'd pass up the
7 exhibits. I'd like to take a look at those please, sir.

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: Mr. Robinson, there's one matter that I did
10 not address with you earlier, and that is it's my
11 understanding that, as part of this offense, that your
12 driver's license will be suspended for a period of time that
13 extends five years beyond any incarceration that you have.

14 Do you understand that, sir?

15 DEFENDANT: Yes, sir, I do.

16 THE COURT: And, so, you understand that's a collateral
17 consequence?

18 Did you understand that when you pled?

19 DEFENDANT: Yes, sir.

20 THE COURT: All right, sir.

21 MR. HALL: And, Your Honor, as I said, he is a North
22 Carolina driver. So, I could not tell him exactly what
23 would happen with North Carolina and South Carolina.

24 THE COURT: I don't know what effect that would have
25 either. I just know, in South Carolina, that's the law and

1 I assume they would give some reciprocity to that.

2 MR. HALL: Yes, sir.

3 THE COURT: Mr. Robinson, you said, in your own words,
4 that there are consequence for your actions.

5 DEFENDANT: Yes, sir.

6 THE COURT: You're a young man. It's unfortunate that
7 you find yourself in this position. But as has been said,
8 and as I've learned, you have a record. You've been
9 involved in drug offenses, involved with drugs matters in
10 the past.

11 DEFENDANT: Can I say something?

12 THE COURT: I'm talking now, sir.

13 DEFENDANT: Yes, sir.

14 THE COURT: Nothing that I do here today will bring
15 back the victim, and perhaps what we do here today would
16 send a message to others and perhaps they won't get involved
17 in these situations. We certainly hope so.

18 I have decided to accept the recommendation of the
19 State. The sentence is 15 years. I've given you credit for
20 any time that you've served.

21 Good luck to you, sir.

22 SOLICITOR BARNETTE: Thank you, Your Honor.

23 MR. HALL: Thank you, Your Honor.

24 (WHEREUPON, the jury was dismissed at this time.)

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* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 30th day of January, 2012.

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

November 1st, 2012



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of SPARTANBURGBRIAN ONEIL ROBINSON

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

3582

M. JOPE BLANKLEY

2012 AUG 23 AM 9:07

CLERK OF COURT

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 MCCORMICK CORR. INST.
2. Name and location of Court which imposed sentence SPARTANBURG COUNTY GENERAL SESSIONS
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) 11-GS-42-5932
 - (b) _____

17
1 copy
mailed 8/23/12

MP

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1/30/12 15 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) FIRST(pcr) APPLICATION
- (b) _____

2012 AUG 23 AM 9:07
M. HOPD BLACKLEY

CLERK OF COURT
COUNTY

18

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 1) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) FAILED TO GIVE APPELLANT RULE(5) DISCOVERY
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUNSEL FAILED TO DO AN INVESTIGATION
- (b) INTO THE FACT THAT THE ALLEGED VICTIM WAS
- (c) STRUCK BY ANOTHER VEHICLE
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. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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 HONORABLE CLERK
 CLERK

(c) the disposition thereof:

- i. _____
- ii. _____ N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____ N/A
- iii. _____
- iv. _____

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

- i. _____
- ii. _____ N/A
- 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. _____ N/A
- ii. _____
- iii. _____

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

- i. _____ N/A
- 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) INEFFECTIVE ASSISTANCE FIRST "R.R."
 (b) _____
 (c) _____

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

(a) your arraignment and plea? yes ROBERT HALL
 (b) your trial, if any? yes ROBERT HALL
 (c) your sentencing? yes ROBERT HALL
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? JUDGMENT
 (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 Hall
 ii. Robert Hall
 iii. ROBERT HALL

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

i. plea
 ii. ARR.
 iii. SENTENCING

FILED
 COURT
 CLERK
 2012 JUN 23 AM 9:08
 M. HOPE BLACKLEY

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

A NEW TRIAL OR RECONSIDERATION OF SENTENCE

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of SPARTANBURG)

I, BRIAN ONEIL ROBINSON, 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.

Brian Robinson

SWORN to and subscribed before me this 16 day of August

Joseph L. Young (L.S.)
Notary Public

My Commission Expires: 10 11 2021

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 23 AM 9:08
H. HOPE BLACKLEY

N

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

I, BRIA ONSTI ROBINSON, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

✓ Brian Robinson
Applicant

SWORN or affirmed to and subscribed before me this

16 day of August, 2012

Shirley L. Young
Notary Public

My Commission Expires: 10 11 2021

FILED
COURT
CLERK
2012 AUG 23 AM 9:08
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-3582
Brian Oneil Robinson, #349471,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 23, 2012, 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 Spartanburg County Clerk of Court. He was indicted at the October 2011 term of the Spartanburg County Grand Jury for count one – felony DUI resulting in death (2011-GS-42-5932) and count two – reckless homicide (2011-GS-42-5932A). The Applicant was represented by Robert B. Hall, Esquire. On January 30, 2012, the Applicant pled guilty to the charge of felony DUI resulting in death before the Honorable Roger L. Couch and was sentenced to confinement for fifteen years. Count two was *nolle prossed* as a result of Applicant's plea. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. 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:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to give Applicant the Rule (5) Discovery,
 - b. Counsel failed to investigate the fact that the alleged victim was struck by another vehicle.

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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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.

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

V.

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

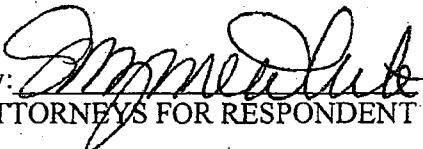
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 19, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Brian Oneil Robinson,

2012-CP-42-3582

Applicant,

v.

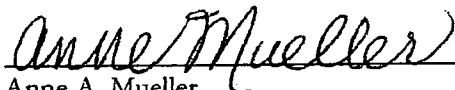
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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

J. Brandt Rucker, Esquire
522 N. Church Street
Greenville, South Carolina 29601


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 19th day of August, 2013.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Brian O. Robinson,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2012-CP-42-3582
7 The State.) October 3, 2013
8 Spartanburg, South Carolina
9
10
11

12 B E F O R E :

13 HONORABLE J. DERHAM COLE, JUDGE
14

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

16 J. BRANDT RUCKER, ESQUIRE
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	A-1	Failure to video form	45	46
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1 MS. WHITE: Thank you, Your Honor.

2 This is the case of Brian Oneil Robinson vs. the
3 State. It's No. 2012-CP-42-3582. He's represented today
4 by Mr. Brandt Rucker.

5 Mr. Robinson was indicted October of 2011 for a felony
6 D.U.I. resulting in death and reckless homicide.
7 Ultimately, the reckless homicide was nolle prossed.

8 He proceeded to trial originally for the felony D.U.I.
9 charge, but following the jury selection it ended up being
10 a plea. So he pled guilty and received a sentence of 15
11 years January 30th of 2012.

12 He filed this application August 23rd of 2012 alleging
13 ineffective assistance of counsel in that counsel failed to
14 give him discovery materials and failed to investigate the
15 fact that the victim was struck by a second vehicle.

16 And I'll turn it to Mr. Rucker at this time.

17 MR. RUCKER: Your Honor, in talking to my client
18 earlier today apparently there was an issue as to the
19 appeal. So we'd like amend for a White vs. State notice of
20 appeal issue.

21 He was informed by Mr. Hall about the right to appeal,
22 but when he attempted to the clerk's office sent the
23 paperwork back to him and he missed his time to appeal.

24 So as I understand the law I think we have to address
25 that here at the P.C.R. so that we can get the Supreme

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 Court to look at it.

2 THE COURT: Okay.

3 MS. WHITE: That's fine, Your Honor.

4 I'll talk to Mr. Hall about it, and we can bring out
5 in testimony. That wasn't alleged obviously, but that will
6 be fine.

7 MR. RUCKER: If it pleases the Court, I'll call my
8 client to the stand -- Brian Robinson.

9 BRIAN ONEIL ROBINSON, having
10 been first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. RUCKER

12 Q Brian, we're here today because of a P.C.R.
13 application you made. Do you understand that?

14 A Yes, sir.

15 Q All right. And do you recognize your defense
16 attorney, Robert Hall, here at counsel table?

17 A Yes, sir.

18 Q Okay. Do you understand this is your opportunity if
19 you wanted to withdraw because you have a -- we talked
20 previously that you could be facing more time, that you
21 could withdraw at this time. Do you want to do that?

22 A No, sir.

23 Q Okay. Do you understand the implications that all you
24 can get is a new trial so you would go back to where you
25 started?

Brian Oneil Robinson
Direct examination by Mr. Rucker

- 1 A Yes, sir.
- 2 Q Okay. What is your current sentence?
- 3 A It was a 15-year sentence violent.
- 4 Q Okay. And when did -- and I believe the attorney
5 general announced it, but when did you first go in? When
6 were you first convicted?
- 7 A It was January 30th of 2012.
- 8 Q Okay. Were you convicted of -- well, did you plead
9 guilty to felony D.U.I.?
- 10 A Yes. I was -- I did plead guilty of felony D.U.I.
- 11 Q Okay. Before you entered the plea and before that
12 trial how many times did you meet with your counsel, Robert
13 Hall?
- 14 A If I'm not mistaken, I think it was maybe twice or
15 three times.
- 16 Q Okay. Did you retain Mr. Hall, or was he appointed to
17 you?
- 18 A He was appointed.
- 19 Q Okay. Did you review discovery with him, the
20 discovery material? well, first of all, do you believe he
21 filed discovery for you?
- 22 A At the moment I -- I asked for discovery, but I didn't
23 receive it.
- 24 Q Okay.
- 25 A I didn't receive it until I asked for it after I was

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 sentenced.

2 Q Okay. And is that -- was that part of your P.C.R.
3 application?

4 A I think it was.

5 Q Okay. But do you believe Mr. Hall actually received
6 discovery from the state before your trial?

7 A Yes, sir.

8 Q Did y'all review video tapes?

9 A Yes, we did.

10 Q Okay. And did you go over the facts of the case?

11 A Yes, we did.

12 Q I want to talk a little bit about the facts because
13 there are some wrinkles in there, and you and I discussed
14 the law about that.

15 When you pled guilty the facts were described that you
16 were driving with two other people in the car, that you
17 crashed into a motorcycle. The person on the motorcycle was
18 ejected. And then sometime later a third car or actually a
19 fourth car ran this poor gentleman over, is that right?

20 A It was a third -- it was only -- it was a 3-car --
21 probably only three cars in the accident. The first car
22 pulled up to stop traffic because they had seen the person.
23 And, you know what I'm saying, he was lying on the road,
24 and he was in his well being. And we tried to assist, you
25 know what I'm saying. We got outta the truck and we just

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 started, you know what I'm saying, trying to help him get
2 the body up. But another car had swerved around, and you
3 know what I'm saying, on the outside, and that's when it
4 struck the victim.

5 Q Okay. And to make it clear, there are actually four
6 vehicles that you're talking about -- your vehicle, the
7 motorcycle, a minivan --

8 A Right.

9 Q -- and another vehicle.

10 A Well, yes, four.

11 Q Okay. Could you briefly describe after the accident?
12 First of all, did you see the alleged victim in front of
13 you when you were driving?

14 A It was dark. I couldn't see anything.

15 Q Okay. Did you see him swerve in front of you or
16 anything?

17 A I mean, I -- I do -- something come from my left and
18 caught my attention, but it was too late to react at the
19 time because I think it came from the left side of the
20 road. It was like jumped in front of my lane, and I
21 couldn't -- before -- it just happened so quick I didn't --
22 I couldn't see him or notice him to stop.

23 Q Okay. And after your vehicle ran into him, what did
24 you do?

25 A Well, it was a shock, you know what I'm saying. We

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 eventually, you know what I'm saying, we stopped and we got
2 outta the car. And the motorcycle was stuck to the front
3 of my truck. So we got out. And that's when we looked
4 back. That's when another car pulled up and seen the
5 accident and stopped.

6 Q And what kind of vehicle was that?

7 A I think it was a minivan.

8 Q Okay. And what did that person -- where was -- how
9 did she arrange that vehicle, that minivan?

10 A I think she pulled parallel to the body on the side of
11 the road.

12 Q Okay. Did she have her flashing lights on or
13 anything?

14 A I believe she did.

15 Q Okay. What happened after that?

16 A Well, me and my friends, you know what I'm saying, we
17 started -- you know what I'm saying. A friend of mine had
18 a phone. I jumped on the phone and I called 9-1-1. And
19 that's when we tried to walk towards the body and assist
20 the man, you know what I'm saying, to help him up. But
21 that's when another car came around the van and continued
22 to keep going. And that's when it struck the body.

23 Q Okay. And you said that you, in fact, called 9-1-1.

24 A Yes. I did.

25 Q Did you attempt to leave the scene?

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 A No, sir. I stayed.

2 Q And as we're going through this, have you conveyed
3 these facts to Mr. Hall in the past before the trial week?

4 A Yes, I have.

5 Q Okay. How long was it between the time that your
6 accident happened and the other vehicle struck the victim?

7 A I'd say probably three to four minutes.

8 Q Okay. Did y'all attempt to move the gentleman that
9 was in the road?

10 A No, sir.

11 Q Okay. Did he appear to be alive to you though?

12 A Yes, he did.

13 Q Did you convey that fact to Mr. Hall?

14 A Yes, I did.

15 Q Okay. Now, during your guilty plea you were asked --
16 first of all, let's make it clear. What do you believe
17 that Mr. Hall did wrong in your case?

18 A I believe that he misinformed me about the charges and
19 the elements, about the actual -- the requirements for to
20 be charged under -- he didn't fully understate -- he didn't
21 fully, you know what I'm saying -- it's hard to explain it,
22 because, I mean, it's really -- I didn't understand the
23 elements of this charge he had told me for a plea, but I
24 didn't -- he didn't really inform me of what I was pleading
25 guilty to and what would be the actual outcome if I was to

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 have pled guilty instead of going to trial.

2 Q Did -- did you -- did he tell you he believed you
3 would be convicted if you went to trial?

4 A It was a possibility, yes.

5 Q And what did he base that on when he talked to you
6 about that?

7 A If I ain't mistaken, I -- I think off the evidence of
8 I think the influence, but it wasn't.

9 Q Okay. What -- what evidence of influence are you
10 talking about? Are you saying because your DataMaster
11 reading or not the DataMaster but the -- there was an issue
12 with the blood being taken from you first?

13 A Yes.

14 Q Okay. And what was that issue?

15 A It was -- I mean, they had took my blood alcohol level
16 to determine the alcohol in my level. And I didn't -- I
17 wasn't informed. He didn't inform me that a -- a written
18 copy of the consent was supposed to be given to me before
19 they had took my blood sample or any chemical test.

20 Q Okay. And before that were you given a field sobriety
21 test?

22 A Yes, I was.

23 Q Okay. And did the trooper or the officer indicate to
24 you that you had performed those okay?

25 A Yes, sir. I did.

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 Q And did Mr. Hall say that to you as well?

2 A Yes, sir.

3 Q All right. Were you offered a DataMaster test after
4 they arrested you, a breath test?

5 A No, I was not.

6 Q Okay. And were you then -- were you taken somewhere
7 to do the blood test?

8 A Yes. The officer had took me to the hospital.

9 Q Okay. You were -- in the discovery that we've been
10 provided graciously by Mr. Hall -- and I believe you had a
11 copy of it from your request -- there is an implied consent
12 form. Do you recall that?

13 A Yes.

14 Q A form that you signed in front of the officer?

15 A Yeah. But I didn't sign it. I didn't sign it at the
16 time that they took my blood. It was given -- I didn't
17 sign the consent until I think it was a day after I was
18 locked up and convicted on the charge.

19 Q And was that clear from the discovery that that was
20 true, that it was the next day?

21 A Yes.

22 Q Okay. Tell the judge when this accident happened,
23 around what time and what day.

24 A Judge, it was on the August the 12th or 13th of 2011,
25 approximately like 10:45, close to 11:00 p.m.

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 Q And it's your testimony that you did not -- you were
2 not given that implied consent before you went -- they went
3 forward with getting your blood.

4 A No. I was not.

5 Q Did they offer another -- that you could go somewhere
6 else and get your blood tested as well?

7 A No, they did not.

8 Q Okay. What was your actual reading when it came back
9 from that test?

10 A I think it was a 0.05.

11 Q Okay. Did Mr. Hall explain to you the implications if
12 it -- if it did go to trial and it went in front of a jury,
13 what the jury instructions may be as far as .05 goes?

14 A Yes, he did.

15 Q Okay. And what was that?

16 A That it was a possibility I could be found not under
17 the influence.

18 Q Did anything else show up in your blood stream when
19 you were tested?

20 A Yes. I believe marijuana was in my system.

21 Q Okay. And did Mr. Hall talk to you about that issue
22 as well?

23 A Yes, he did.

24 Q All right. Is it your understanding after reviewing
25 the law and discussing it with me and discussing it with

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 Mr. Hall that you believe you couldn't be found guilty of
2 felony D.U.I. because there was an intervening act between
3 when you initially hit that vehicle?

4 A Yes, sir.

5 Q Okay. And what's that based on?

6 A I mean, if I am not mistaken I think the coroner and
7 autopsy report couldn't determine the actual cause of death
8 and which vehicle actually -- impact was the cause of
9 death. And I wanted to discuss that off the fact that I
10 wasn't the only car.

11 Q Did Mr. Hall talk to you about that, about the
12 coroner's report not indicating which vehicle was the
13 actual cause of death?

14 A Yes, he did.

15 Q Were you also concerned that there was no charge given
16 to the person who went around the minivan and ran over this
17 poor man?

18 A Yes, sir.

19 Q Okay. And is it your belief that he would not have
20 been killed but for her actions because there was some time
21 where she could see that he was laying there in the road?

22 A Yes.

23 Q Okay.

24 A Exactly.

25 Q Did Mr. Hall discuss that with you?

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 A Yes, he did.

2 Q Okay. Why did you, in fact, knowing those things, why
3 did you go forward with your guilty plea?

4 A Well, Robert Hall informed me that if I would plead
5 guilty that I wouldn't receive no more than ten, I would
6 get a lesser sentence by pleading. And I tried to plead to
7 a reckless homicide but not felony D.U.I., but basically my
8 getting a lesser included offense would probably fall under
9 reckless homicide off the time if I was to pled guilty, so.

10 Q How old were you at the time this happened?

11 A I think I was 22 -- 22 -- 21 actually that it
12 happened; 22 when I was sentenced.

13 Q All right. And let's be clear about this. Are you
14 telling me -- are you telling the Court that Robert Hall
15 promised you you would only get 15 years?

16 A No. He did not promise me that I was only going to
17 get 15 years.

18 Q Okay. Did he say that there'd be a recommendation of
19 15 years?

20 A If I'm not mistaken, I wouldn't -- I couldn't -- I
21 understand that I could get a lesser sentence if I was to
22 plead. It would be under 15 years.

23 Q And based on those discussions with Mr. Hall did you
24 think it was going to be less based on --

25 A Yes, I did.

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 Q Okay. And why did you believe it was going to be
2 less?

3 A Because he told me that if I pled guilty that the
4 judge would be more lenient with me, understanding that I
5 accept the charge and that by pleading it'd save time of
6 the court and that I would get a lesser sentence instead of
7 15 years.

8 Q Was it also because you were cooperating with the
9 police --

10 A Yes.

11 Q -- and you did everything they asked? And you, in
12 fact, called 9-1-1 yourself.

13 A Yes, yes, sir.

14 Q Okay. Did Mr. Hall inform you he thought -- well,
15 first of all, let's make this clear too. It's in the
16 transcript that you had actually started to trial, correct?

17 A Yes. I had.

18 Q And y'all had struck a jury. And then that jury was
19 disqualified for some Batson -- for some racial issues, is
20 that right?

21 A Yes, sir.

22 Q How far into the next round of jury strikes did you
23 y'all get?

24 A I believe we had picked three juries.

25 Q Okay.

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 A And on the third jury we was satisfied with the jury,
2 and we was ready to go to trial.

3 Q Okay. What changed between going through all of those
4 jury strikes and then the guilty plea when you decided to
5 go forward with the guilty plea?

6 A Well, Robert Hall informed me that if -- if I was to
7 go forward with the trial and me not taking the plea that I
8 was facing more time and I'd probably be found guilty, so
9 it would be best to take a plea to get lesser -- lesser
10 time.

11 Q Okay. You were indicted. You were charged and
12 indicted with felony D.U.I. death and reckless homicide, is
13 that right?

14 A Yes, sir.

15 Q All right. Did he inform you you could get
16 consecutive sentences on those two?

17 A Yes, he did.

18 Q Okay. Do you -- after reviewing the law do you
19 believe that to be true?

20 A I don't -- I don't think so.

21 Q Okay. What was your prior record before this
22 happened?

23 A I did have some drug offense charges from North
24 Carolina, but it was a few years back. It'd have been two
25 years before, since last time I got into any trouble.

Brian Oneil Robinson
Direct examination by Mr. Rucker

- 1 Q All right. So you were under 20 years old at the time
2 that it happened?
- 3 A Yes, I was.
- 4 Q Okay. And your blood alcohol at the time was .05, and
5 you had a little bit of marijuana just to reiterate.
- 6 A Yes, sir.
- 7 Q Okay. After reviewing the discovery did you find
8 information that the victim in this case had actually been
9 in a motorcycle accident before?
- 10 A Yes, sir.
- 11 Q And that there was a question in the doctor's report
12 that there were some issues with his mental stability based
13 on that accident?
- 14 A Yes. After reading my motion for discovery I had
15 found out that the victim had had a prior accident and been
16 in the hospital and was -- could have been physically
17 harmed or not able to drive or anything like that.
- 18 Q Okay. Did Mr. Hall talk to you about that?
- 19 A No. I don't think we discussed that.
- 20 Q Okay. Were you going to testify in the case if you
21 went forward?
- 22 A Yes, sir, I was.
- 23 Q All right. Did Mr. Hall talk to you about the
24 implications of your prior convictions, whether they could
25 or could not be used against you to impeach you?

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 A I think -- yeah. I think we did.

2 Q Okay. Now, was -- it was your understanding then to
3 make it clear that you thought you were going forward
4 because they were recommending 15 but based on your age and
5 how you acted at the scene and afterwards and that your
6 limited prior conviction record, that you would get less
7 than 15.

8 A Yes, sir.

9 Q And was that based on the advice of counsel?

10 A Yes.

11 Q Okay. Are you suggesting now that you're not --
12 you're not saying that Mr. Hall lied to you. You're just
13 saying he should have explained that to you more clearly?

14 A Yes. He just could've informed me better of my charge
15 and the actual statute of the law and requirements to be
16 charged under a felony D.U.I.

17 Q Okay. Is there anything else that you want to tell
18 the judge or anything you want to add to your P.C.R.? I
19 mean, I think we've covered your issues, but to make sure.

20 A Well, if I'm mistaken I wanted to state and put on the
21 record that as we was -- taken the plea and trial the
22 judge was asking me questions, was I fully understanding
23 and know the plea and what I was pleading to.

24 I tried to -- I wanted to let the judge know that the
25 charge that I was being charged with when he asked me

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 felony D.U.I., I think I said yes, sir, my understanding of
2 the requirement. But as the more he talked to me I started
3 to realize that this is not what me and my lawyer had
4 discussed about. And I wanted to say something, but he
5 didn't let me.

6 Q Did you attempt to back out of the plea at that time?

7 A I did. I did try to.

8 Q And what was your understanding? If you got out of
9 the plea, what would happen?

10 A From my understanding I didn't -- I didn't have no
11 knowledge of that.

12 Q All right. Did you think you were going to be able to
13 go back to trial, or what would happen?

14 A I -- I was -- I was assuming they continue to go with
15 the trial instead of taking the plea.

16 Q Okay. Is there anything -- anything else we haven't
17 covered? Obviously this is important, and I think we've
18 gotten the issues. But if there's something else you
19 considered in meantime, this is the time to say it.

20 what else are you complaining about about Mr. Hall's
21 actions or inaction in this case?

22 A Just other than he failed to formally investigate any
23 witnesses at the crime scene.

24 Q Okay. What witness were there at the crime scene?

25 A If I'm not mistaken, I think the two cars and the

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 friends that was in the vehicle with me.

2 Q Okay. Were there any witnesses to the actual accident
3 other than people inside their vehicle?

4 A Not that I know of.

5 Q Okay. Well, did Mr. Hall provide you discovery
6 showing any eye witnesses at local businesses or residences
7 or other motorists?

8 A No. I don't believe, but he -- the -- the first car
9 that had stopped on the scene of the body, she did witness
10 the actual second-car impact.

11 Q But not your impact.

12 A No, not mine.

13 Q Okay. To your knowledge how many people were prepared
14 to testify against you about what actually happened during
15 the accident itself?

16 A Against me or --

17 Q Yeah. Against you.

18 A If I'm not mistaken, I think it was one.

19 Q All right. And who was that?

20 A I think that was Julian Miller.

21 Q All right. Who is Julian Miller?

22 A He was a passenger in the car with me.

23 Q Okay. And was he a friend of yours?

24 A Yes, he was.

25 Q All right. Where was he at the time of trial?

Brian Oneil Robinson
Direct examination by Mr. Rucker

1 A I think he was incarcerated.

2 Q Okay. And where was he incarcerated?

3 A I think it was in the county jail, Rutherford County,
4 North Carolina.

5 Q Okay. Why do you believe he was going to testify in
6 this case?

7 A Honestly, I didn't know that he was going to testify
8 until I got my paperwork, but I thought it was really on
9 the behalf of my -- on behalf of me to establish basically
10 what happened that night and that he did -- was there and
11 that we did try to help the victim before the second car
12 had ran him over.

13 Q Okay. Was he -- so you believe -- he was actually
14 subpoenaed by the solicitor's office. And do you believe
15 he was going to give favorable testimony for you though?

16 A I did, but from the statements that he had I think he
17 just -- it was against me instead of.

18 Q All right. Well, at the scene -- and you've looked at
19 the discovery. In reviewing that discovery did he make a
20 statement to the police that was -- that was different than
21 what he said later?

22 A Yes, he did.

23 Q Okay. And what was that statement at the scene?

24 A The statement was that he was asleep in the car at the
25 time of the accident.

Brian Oneil Robinson
Cross-examination by Ms. White

1 Q And did Mr. Hall talk to you about the implication?
2 Let's make it clear. What was he going to say at trial?
3 What did his statement say?

4 A That -- that I was texting or driving or something,
5 that I had a phone, which I did not.

6 Q Now, when you reviewed the discovery was there any
7 phone found in your vehicle that was connected to you?

8 A No, sir.

9 Q Okay. So there was a huge discrepancy between the two
10 statements.

11 A Yes, sir.

12 Q Did Mr. Hall say -- talk to you about that and say how
13 to deal with that?

14 A Yes, he did. We did discuss it, but I don't think we
15 had any strategy against it.

16 Q Okay. All right. Anything else you want to mention?

17 A No, sir.

18 Q Okay. Answer any questions they have.

19 CROSS-EXAMINATION

20 BY MS. WHITE

21 Q Mr. Robinson, the Court went through with you, and, in
22 fact, the state originally said that this was a cap of 15
23 years, is that right?

24 A Yes, ma'am.

25 Q Okay. So you do recall them saying that that was a

Brian Oneil Robinson
Cross-examination by Ms. White

1 cap of 15 years but it carried one to 25.

2 A Yes, ma'am.

3 Q And the judge said, "I could sentence you anywhere
4 between that range," that he didn't have to abide by the
5 recommendation.

6 A Yes. But that's what I had started to ask the judge
7 about that, but I was not allowed to say anything.

8 Q Okay. And in regards to the discovery, you said that
9 you had gotten the discovery, you saw the video tapes and
10 the facts of the case. Were you able to talk with him
11 about the accident report through the highway patrol?

12 A Talk to who?

13 Q Your attorney.

14 A Yes.

15 Q Okay. And that indicated that it was about almost
16 300 feet before the brakes were -- the car was stopped,
17 your car, is that right?

18 A Yes, ma'am.

19 Q Okay. And, in fact, the trooper said when he first
20 got there he thought y'all had left because he didn't see
21 anybody.

22 A No. I don't recall that.

23 Q Okay. You don't recall the trooper? You going up to
24 the trooper later and saying I'm the driver?

25 A No, yes. I was there waiting on the scene, at the

Brian Oneil Robinson
Cross-examination by Ms. White

1 scene.

2 Q Okay. And you said you didn't know what you were
3 pleading to. But the Court went over with you the charge,
4 didn't they, and that you knew that you were going to trial
5 originally on that charge?

6 A Yes. I was going to trial. I knew that I was going
7 to trial for the charges, both charges.

8 Q But you said you didn't know that you were pleading to
9 the felony D.U.I.?

10 A I did. If I'm not mistaken, I think I understood. It
11 was -- by the time it was for me to understand that I was
12 pleading to a felony D.U.I., that's when I came. It kinda
13 came to my knowledge what I was pleading to instead of the
14 lesser included offense. And I tried to state that in my
15 transcript. I think it'd be the last page.

16 Q Okay. And you said that obviously the .05. wasn't
17 there a discussion about the fact that if you had actually
18 done a blood alcohol they felt that it would have been
19 probably a .08?

20 A You say that again.

21 Q At the court the state made a comment that had they
22 done a blood alcohol at the time of the accident they
23 thought it would have been .08.

24 A Yes. I think that's what they thought, I guess.

25 Q And your attorney said that he was prepared for

Brian Oneil Robinson
Cross-examination by Ms. White

1 questions, to question that as well.

2 A I assume. I think.

3 Q Okay. And your prior record did involve several
4 possessions of drugs, operating with no license, and a
5 resisting arrest.

6 A Yes, ma'am.

7 Q Okay. You said that Mr. Hall didn't promise you the
8 15 years but you understood that you'd get less.

9 A Say that again.

10 Q You said that Mr. Hall did not promise you you would
11 receive a 15-year sentence but you had believed you would
12 get 15 or less.

13 A No. I would receive less than 15.

14 Q And what made you think you were going to receive less
15 than 15, just because you were pleading guilty?

16 A Because of the simple fact that I was pleading guilty,
17 I thought it would be reckless homicide, which is a lesser
18 included offense which carries the maximum of ten years.
19 I'm not trying to say I'm not innocent, but I was willing
20 to plead to a lesser included offense besides felony D.U.I.

21 Q And I know you say that you tried to stop the plea and
22 say you wanted reckless homicide, but they went over with
23 you several times that you were pleading to the felony
24 D.U.I. resulting in death, didn't they?

25 A I believe once in the transcript, I believe he spoke

Brian Oneil Robinson
Cross-examination by Ms. White

1 about it.

2 Q At the beginning of the transcript beginning in the
3 beginning when they -- of the plea?

4 A Yes. When he -- the Court reading my indictments.

5 Q Okay. And if you weren't sure that that's what you
6 were pleading to why didn't you stop or try to stop the
7 plea then?

8 A I did but I didn't -- at the first beginning I
9 didn't -- I wasn't pleading guilty. I was ready for trial.
10 Me and my lawyer, Robert Hall, was ready to go to trial,
11 and we did pick a jury. But I didn't try to negotiate a
12 plea until after we had picked the jury trial. And that's
13 when we went back and we tried to go for the jury trial,
14 for to plead guilty. That's when felony D.U.I. was brought
15 back up, and that's when I tried to stop the plea. I'm
16 like that's not what I wanted to plead guilty to.

17 Q Okay. And you understand that the state has the
18 option of allowing you to plead. Mr. Hall doesn't have the
19 option of getting what charge that you can plead to. He
20 can ask them, but that's it.

21 A No. I didn't know that.

22 Q Okay. All right.

23 MS. WHITE: Your Honor, that's all the questions I
24 have at this time.

25 MR. RUCKER: I have a few followup, Your Honor.

Brian Oneil Robinson
Redirect examination by Mr. Rucker

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY MR. RUCKER

4 Q Brian, I don't think we covered this, but she asked
5 you about how far away the initial impact was and then
6 where they found the motorcycle resting and your vehicle
7 resting. Do you recall that?

8 A Yes.

9 Q How fast did the police determine you were going?

10 A I think it was 57 miles per hour.

11 Q Okay. And what is the posted speed limit there as
12 according to the police?

13 A It's 55 miles per hour.

14 Q Okay. Was there any other evidence provided in
15 discovery of any bad driving other than slight speeding?

16 A No, sir.

17 Q Okay.

18 MR. RUCKER: No further questions.

19 THE COURT: Anything else?

20 MS. WHITE: Nothing else, Your Honor.

21 THE COURT: You may step down.

22 MR. RUCKER: Your Honor, that's the applicant's case.

23 THE COURT: Okay.

24 MS. WHITE: The state would call Robert Hall.

25

Robert B. Hall
Direct examination by Ms. White

1 ROBERT B. HALL, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. WHITE

4 Q Mr. Hall, do you recall representing Mr. Robinson in
5 this case?

6 A Yes, I do.

7 Q And do you agree with him that you met two or three
8 times?

9 A That's probably close. He did not show up for the
10 preliminary hearing, and this case was tried within a short
11 period of time because of the charge of felony D.U.I.

12 If you make bond in this circuit they're probably
13 going to push it up a little quicker. And I think he was
14 tried within five months. In fact, I remember he was I
15 think a little upset with me that it was coming up so
16 quick.

17 Q And obviously we stated that you started with a trial.
18 So obviously you were preparing for a trial, is that right?

19 A Yes, I was.

20 Q What was your -- had you discussed with him possible
21 defenses?

22 A Yes, I had.

23 There were several issues in this case. The --
24 because of the rain at the time the video is not very
25 clear. It's unclear that they did the full Miranda on

Robert B. Hall
Direct examination by Ms. White

1 video at the time of arrest. The field sobriety tests, you
2 really can't see a whole lot.

3 we -- I did a good bit of research on the -- what the
4 level of alcohol, the level of marijuana. There's a
5 difference between somebody who would test positive for
6 having smoked marijuana in the past 30 days versus somebody
7 who still had it in their system as affecting their system.
8 And I did a lot of research with that.

9 This was a time where I was having issues with
10 coughing and breathing. It turned out to be asthma. And I
11 was the -- I think the day before I was at a place to get
12 steroid shots trying to take care of whatever. At that
13 point I didn't know what it was and I believe was going
14 through things and speaking with doctors there about it.

15 I consulted with several attorneys who do a lot of
16 D.U.I. work and -- about the case and the issues we had,
17 and lawyers in our office.

18 But there were issues such as the video, how clear it
19 was -- Miranda -- the, you know, .05 and the marijuana.
20 And, quite frankly, I did not feel that judges in our
21 circuit would have tossed out a felony D.U.I. based on what
22 the public usually calls a technicality, that we would have
23 to fight that out with the Court of Appeals and the Supreme
24 Court.

25 This was about the time the Supreme Court had reversed

Robert B. Hall
Direct examination by Ms. White

1 their for lack of better words -- for defense counsel the
2 good D.U.I. rulings all of a sudden stopped and went and
3 started going the other way.

4 We explored a lot of options. I almost begged him
5 into the week before his trial to come in. He had
6 witnesses. He had the information that I didn't -- I
7 didn't know how to contact them, that he was -- I was
8 depending on him to contact them.

9 I met with he and his girlfriend the week before. I
10 think we rescheduled it to suit them. I know we were in
11 the office well after 6:00 o'clock.

12 And before I had met with them I had gone through the
13 videos and details that had the issues. And the one thing
14 clear on the video was him, I think, two times saying
15 basically could you feel the effects of what you drank, the
16 alcohol you've consumed and all, and he said I'm twisted,
17 you know, I'm twisted. That was going to be a hard ring --
18 a bell to unring even though he explained he meant my
19 stomach was upset.

20 I played the video for other lawyers in our office,
21 and they said, oh, that's bad, that's bad.

22 I came in when I met with him on the 17th of January.
23 I think we met another time.

24 Then we set up a meeting on the 28th of January at
25 9:30 in the morning. That was a Saturday. I got to the

Robert B. Hall
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1 office at 9:15 or 9:20. 9:30 came. No call from him. I
2 had everything set up to review the videos, go through all
3 the evidence.

4 I started calling him after 9:30. They told me he
5 left at 9:20.

6 I was not sitting in my office because I was expecting
7 a group of people, and there's not room in my office. But
8 I kept checking my voice mail. I had one voice mail from
9 him just hello and then hung up.

10 Ultimately, found out that they were rounding up the
11 witnesses they said they could get. They -- they being he
12 and his girlfriend -- I think were headed down at some time
13 late morning. They'd found -- they found Mike, and they
14 went back after Mike.

15 And basically about 3:00 o'clock we were able to sit
16 down, and we spent several hours talking with those
17 witnesses and going over everything.

18 Q And had you attempted or had there been any
19 negotiation talks prior to the trial?

20 A I can't remember if it was before that Saturday or if
21 it was Monday morning, but Mr. Barnette made the offer of
22 15 years and he would dismiss the reckless homicide.

23 He had -- I think right before Mr. Robinson and I met
24 on the 17th or somewhere around there Barry had requested
25 that the reckless homicide be put on the docket because it

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1 wasn't on the docket, and we objected to that. But it
2 was -- the judge said, no, it can be placed on the docket.
3 And he said he would dismiss that and he'd plead with a cap
4 of 15 because of the issues that were on the video and all.

5 Q Did you have a chance to talk with him about the offer
6 and the fact that they would be dismissing the reckless
7 homicide and he would be pleading to felony D.U.I.?

8 A Yeah. We had -- we had discussed that before, and we
9 kept preparing for trial. But on the morning of the trial
10 Mr. Robinson came in and said you told me it was going to
11 be six months or more before this came up, my family's
12 going to hire an attorney. And we actually made a motion
13 for a continuance so he could hire an attorney.

14 I told the judge -- I told him the usual rule is six
15 months it comes up for trial the first time. And Judge
16 Couch said but the rule also -- the order says it can come
17 up before then, and it has come up, it's too late. And he
18 would not grant the continuance.

19 Mr. Barnette I think put the offer on the record. I
20 asked the judge to let us -- let me talk to him about that
21 more and kind of understand more that he had -- if he
22 thought his family was going to hire him an attorney that
23 everything would be delayed. But the judge didn't see it
24 his way. But I said I wanted to discuss it with him more.

25 we did the jury selection. I think I did a challenge

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1 on Barry Barnette, and he did one on me, and then we
2 finally got the jury.

3 I asked Judge Couch to let me speak to the client. He
4 said he would do that and even let me -- at that point we
5 actually had an office in the courthouse, and a telephone.

6 And the thing that Mr. Robinson wanted to do was talk
7 to his mother. And I was able to get him in touch with his
8 mother. And in front of him I explained to his mother the
9 offer on the telephone. And I let her talk to him.

10 Basically, what I explained was this is the
11 recommendation with a cap of 15, that he could still get up
12 to 25. He could get -- if the judge so chose he could
13 actually go under the cap.

14 But I did not think he would get over the 15. I never
15 told him I thought he would get ten. I said you could get
16 more than the 15 but I don't think you will. You could get
17 less, but I don't know what the judge is going to do and --

18 Q Was there -- I'm sorry.

19 A Yeah. Go ahead.

20 Q Was there any question that he driving the car had hit
21 the motorcycle originally?

22 A No, no question at all.

23 The motorcycle was impelled into the front of the car,
24 or the car was impelled into the motorcycle.

25 The MAIT report indicated that the motorcycle was

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1 traveling with its right blinker on. The victim went to
2 Mickey's, apparently was a patron of Mickey's up there on
3 221, and apparently was slowing down to turn in in the
4 right lane when it was struck and I think pushed 200 or
5 300 feet up the road. At some point he had fallen off.

6 Q And so there was -- was there any question that the --
7 the motorcycle, the victim, had swerved suddenly in front
8 of him or there'd been no lights on his motorcycle or
9 anything like that?

10 A There's no indication in the MAIT report as I recall.
11 I think the back light was crushed in the impact but that
12 the lights appeared to be working. And the right blinker
13 was on at the time of the impact.

14 Q Ultimately, in regards to the plea that day did you
15 have any concern over the fact of whether or not he was
16 aware of what he was pleading to?

17 A None at all.

18 Q Did you have any concern or did he indicate any lack
19 of understanding of what the possible sentence was?

20 A Not to me. When we spoke with his mother, his mother
21 asked me the questions. And what his mother told me -- and
22 I'm not sure what she told him -- but she said I spent a
23 great deal of my time, my life, in prison, 15 is a lot -- a
24 chance of 15 is a lot better than a probable 25 if he got
25 convicted. And I said, well, you -- you talk to him. And

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Cross-examination by Mr. Rucker

1 I handed her the phone -- I handed him the phone.

2 Q And did he ever try to -- do you recall him trying to
3 withdraw the plea because he thought he was pleading to
4 reckless and asking you to stop it?

5 A There was some question I think during the plea that I
6 don't -- it wasn't that. I can't remember exactly what it
7 was.

8 Q About parole?

9 A Pardon me?

10 Q Parole perhaps?

11 A Yeah. Something like that. But there's no question
12 he knew what he was pleading to.

13 Q Okay. Thank you.

14 MS. WHITE: That's all I have at this time.

15 MR. RUCKER: May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. RUCKER

18 Q Did Mr. Robinson ever complain to you that he had gone
19 to see a psychiatrist at some point to deal with the
20 ramification of all of this?

21 A I believe he mentioned he sought some kind of
22 counseling because of it.

23 Q Okay. Was he back and forth a lot on this case in the
24 two times y'all met whether he wanted to go to trial or
25 whether he wanted to plead?

Robert B. Hall
Cross-examination by Mr. Rucker

1 A He was pretty much set on trial, and that's what I was
2 preparing. But because of where his witnesses were in
3 North Carolina -- and I didn't have the proper
4 information -- you know, I had to depend on him to get
5 them.

6 And I -- we met a few times, but we spoke a lot, and I
7 tried to get in touch with him a lot. And even one of his
8 witnesses I have a note that once I got a good phone number
9 for him and called him he would not -- because I wanted to
10 prepare a subpoena for him. So if we could get to him and
11 serve him, get him in South Carolina and serve him, we
12 would have everything right.

13 And he wouldn't even tell me where he lived. He said
14 I live in some apartments on such and such street in North
15 Carolina, a town in North Carolina. And when I'm on the
16 phone with him I did a search. It doesn't exist. He was
17 lying to me.

18 But I had to depend on him to get those witnesses.
19 That's why I was trying the week during the 17th to meet
20 with him and get the witness information and get in touch
21 with the people and then ended up on the Saturday before
22 trial setting up an appointment where he said he would get
23 everybody together, bring them down and we could go over
24 everything and prepare for trial. Like I said, I waited
25 for the morning and a good part of the afternoon before

Robert B. Hall
Cross-examination by Mr. Rucker

1 they came in.

2 Q why do you believe he was misleading you about this
3 witness that was supposed to help him? You were on --

4 A Like I said, we get that all the time that witnesses
5 will tell our clients, oh, man, you didn't do it, I know
6 you didn't do it and I know -- and then when we talk to
7 them, well, I don't want to come to court, I'm not going to
8 come to court and tell it.

9 That witness ultimately did come down, but, you know,
10 when I'm having to -- you know, we don't have the manpower
11 to send folks out to North Carolina to trick them into
12 coming into South Carolina so we can serve them with
13 subpoenas. So I'm having to depend on him to help me get
14 his friends in.

15 In fact, I had my son come in and serve the subpoenas
16 we had waiting on everybody.

17 Q Okay. I understand. But what I'm getting at is his
18 mental state. And you're -- you suggested he was giving
19 you false addresses and false information.

20 A No. I didn't say that he gave me a false address.
21 His witness lied about where he lived.

22 Q Okay. But you -- my client, your former client, was
23 being honest with you in following through?

24 A Yes. I mean, he didn't -- he wasn't close to punctual
25 on our meetings, but he did -- he was trying. He was

Robert B. Hall
Cross-examination by Mr. Rucker

1 trying to get the people.

2 Q Do you think meeting two times is sufficient for a
3 trial of this magnitude?

4 A I wish we could have met a lot more, but when he can't
5 come down and won't come down, or when I'm available, he's
6 not available -- let's see.

7 When we got put on the trial docket, like I said, the
8 Solicitor Barnette requested his case be put on the trial
9 docket, the ten percent that they're allowed to. We got
10 notice of that three weeks out. I immediately called him
11 to set up an appointment to start going over everything
12 again. Was it ideal? No.

13 Q I'm not asking if it's ideal. I'm asking how long you
14 had between the time you were notified of the trial date
15 and when you actually had to go to trial for the record.

16 A I think that was three weeks, because I called him on
17 the January 10th and said we've got to meet, your case is
18 coming up.

19 We met on -- I know on the 17th. And I was thinking
20 we had met one other time the week of -- before the 28th at
21 some point. Let's see. Yeah, we met on the -- let's see.
22 Set up an appointment for the 17th. We had that.

23 Then on the 24th, I think on the 24th, he was late on
24 getting back with me and everything. But so we actually
25 met at least the 17th, the 24th and the 30th.

Robert B. Hall
Cross-examination by Mr. Rucker

1 Q Okay. Did you make a motion for a continuance because
2 you believed you did not have enough time?

3 A Motion I made for continuance was because he wanted to
4 hire an attorney.

5 I had time to prepare. I'd put a lot of work into
6 this case. I can't make him come down to be available.
7 But when we met, you know, I had to walk them out of the
8 building because we were in a secure, supposedly a secure,
9 building, and it was 6:30 or so and we were leaving. So I
10 have to as a good employee, I have to make sure nobody's
11 wondering around the building.

12 I put as much time in with him as he was willing to
13 put in with me.

14 Q Okay. Did you -- when putting this time in did you
15 look into the fact that there was an intervening act
16 between the striking of the vehicle and the actual third
17 car being involved -- or vehicle?

18 A Yes. We -- we discussed that, that the person was
19 knocked off.

20 They -- his witnesses at best said they thought they
21 saw him moving before the other car hit him.

22 Now, Brian said he thought he was moving but nothing
23 like he was getting up, that he's, you know -- he's got
24 some road rash that -- but the -- could they tell from the
25 impact of being struck from behind and pushed and then

Robert B. Hall
Cross-examination by Mr. Rucker

1 falling off versus I think getting run over versus the next
2 car hitting him, there's no way to tell. But what was
3 clear, the man would not have been in the road but for what
4 had just happened when the car Brian was driving struck him
5 from the rear.

6 Q But that's really not the way the law works, is that
7 right? I mean, the way intent works with felony D.U.I.
8 with a death is that you -- it has to be the proximate
9 cause, but it's not that simple where you start an act and
10 then at some point later the person's dead and you by
11 definition because you started it are guilty of the crime,
12 is that right? Is that a fair statement of the South
13 Carolina law?

14 A I don't think so. I think he -- he caused the
15 person's death by striking him. I think I understand what
16 you're saying, but I don't think there was enough evidence
17 that would say somebody else caused his death.

18 Q Well, whose burden of proof is it to have that
19 evidence though?

20 A Of course it's the state. It's the state's burden of
21 proof to, you know, prove that he was under the influence,
22 that they followed the statute.

23 Q Well, who did the state bring to prove that it was the
24 cause of death?

25 A I can't remember all of the witnesses, but they have

Robert B. Hall
Cross-examination by Mr. Rucker

1 usually Dr. Wren is -- David Wren is the pathologist that
2 they have.

3 Q Well, they actually had a coroner's report and had a
4 medical doctor work on that who could not say what actually
5 killed him other than it was part of this accident, is that
6 right?

7 A I believe that's fair.

8 Q Okay. Are you familiar with cases such as State vs.
9 Antonio and State vs. Burton? These are cases dealing with
10 proximate cause in similar situations where you have an --
11 some time or a limited amount of time and an intervening
12 act?

13 A Are those felony D.U.I. cases?

14 Q I believe -- Burton actually goes to proximate cause
15 in a criminal case where you have a separation of events or
16 time.

17 A But right offhand am I familiar with those cases, no.
18 I couldn't tell you.

19 Q Okay. But getting -- I'll -- maybe this will help
20 refresh your memory. State vs. Burton is a 1990 South
21 Carolina Supreme Court case on this issue.

22 I'm not asking you to look through it, but I'm simply
23 wanting to find out if you understood at the time that he
24 was -- that you talked to him about the guilty plea that the
25 state had to prove that the intervening act was not the

Robert B. Hall
Cross-examination by Mr. Rucker

1 cause of death.

2 A I know we discussed that issue, and along with all the
3 others that that was something we would pursue vigorously
4 in a trial.

5 Given the charge, felony D.U.I., I think if this had
6 just been a regular D.U.I. a lot of the issues we had would
7 have been a lot simpler and probably gone his way. But
8 this was a felony D.U.I., and I don't think they were going
9 to go his way.

10 Q Well, I have to ask -- I have to ask why you think
11 that's true.

12 why do you think a felony D.U.I. -- I mean, there is no
13 mystery here. Just for the record, why would a felony
14 D.U.I. be treated differently than a D.U.I. by the Court?
15 I'm not talking about the solicitor's office.

16 A That's going to -- by the -- treated differently by
17 both, I think.

18 The -- when you have a death on one side I think the
19 state -- things are -- by some judges are going to go the
20 state's way that if it had just been a garden variety
21 D.U.I. or assault and battery versus murder would go a
22 different way.

23 Q All right. That's based on your experience trying
24 cases up here?

25 A Yes.

Robert B. Hall
Cross-examination by Mr. Rucker

1 Q Is it fair to say you thought this was going to be a
2 plea because of that and once you went through the
3 discovery, then you were going to talk him in -- not talk
4 him into it but talk to him about doing the plea because of
5 those risks?

6 A No. Monday morning I was ready for trial. We were
7 ready to go.

8 The -- when he wanted to consider the plea that was
9 really the first time he had indicated that.

10 He wanted to speak to his mother. I asked the judge
11 since we'd already picked the jury don't -- please don't
12 put him in custody, let me go take him where he can talk to
13 his mother, see about what he wants -- if he wants her
14 advice on the plea and what they're going -- they're doing,
15 you know, there's -- and explain I guess to his mother
16 that, no, we didn't get a continuance so we could hire a
17 lawyer.

18 But the main thing, he wanted to talk to his mother
19 about the plea offer. And, like I said, I explained it to
20 her on the phone before I gave him the phone and made sure
21 that she understood it just like I had gone through it with
22 him.

23 Q Is it your belief that he could have been convicted of
24 reckless homicide and felony D.U.I. death under South
25 Carolina law?

Robert B. Hall
Cross-examination by Mr. Rucker

1 A Under South Carolina law as I understand it I think he
2 could. I think that's ridiculous and I think getting a
3 consecutive sentence on that is ridiculous, that if you
4 can -- could be charged and convicted of both that it would
5 I think have to be a concurrent sentence. But those are
6 issues that would have to be fought out in appellate
7 courts. And if you're convicted and you're fighting it,
8 you're sitting in prison.

9 Q Well, did you inform him you thought he could be
10 convicted of both so this plea was in his best interest to
11 go forward?

12 A I told him the state takes the position that he can be
13 convicted of both. And I think Mr. Barnette has said it
14 many times, he thinks they can get consecutive sentences.
15 I don't think that's proper, and I think ultimately that
16 would not be upheld.

17 (Failure to video form marked Applicant's Exhibit No. 1
18 for Identification; advisement of implied consent rights
19 marked Applicant's Exhibit No. 2 for Identification.)

20 Q Mr. Hall, I'm going to show you what I've already
21 shown to your counsel. It's been marked as Exhibit No. 1.
22 Do you recognize that document?

23 A Yes.

24 Q Okay. What is that document?

25 A That's the -- something they gave us right before

Robert B. Hall
Cross-examination by Mr. Rucker

1 trial saying that they had video interference apparently
2 the week before it was going to be tried. They reviewed
3 the video and saw what I had seen and had discussed with
4 Mr. Robinson.

5 Q Okay. What is the title of the document there?

6 A Failure to video without interference.

7 Q Okay. I'm going to show you -- first, I'm going to
8 ask that be introduced into evidence as Applicant's No. 1.

9 MS. WHITE: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Failure to video form marked Applicant's Exhibit No.
12 1.)

13 Q I'm going to show you what's been marked as
14 Applicant's No. 2. Do you recognize that document?

15 A Appears to be the implied consent form in the case.

16 Q Okay.

17 MR. RUCKER: I'd ask that this be introduced into
18 evidence as well.

19 MS. WHITE: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (Advisement of implied consent rights marked
22 Applicant's Exhibit No. 2.)

23 Q I want to start with the Applicant's Exhibit No. 2
24 that you said that is the implied consent form that was
25 signed by your former client, my current client.

Robert B. Hall
Cross-examination by Mr. Rucker

1 A That's what it appears, yes, sir.

2 Q Did you discuss with my client that they had failed
3 to -- to offer him a DataMaster test before they did this,
4 before they followed up with the blood test?

5 A Well, this is a felony D.U.I. I think procedure under
6 the law is to take them for a blood test, not a DataMaster
7 on a felony D.U.I.

8 Q But did -- was there some delay, unexplained delay,
9 between the time he was actually given the blood test and
10 when he was first arrested?

11 A From the arrest to the blood test?

12 Q Right.

13 A Oh, okay. I don't recall it being an extraordinary
14 amount of time that --

15 Q Who signed that form on behalf of the highway patrol
16 or the police?

17 A For the highway patrol is Trooper Mace.

18 Q All right. What's the date where he says he signed?

19 A I don't see a date.

20 Q All right. And is it fair to say that's a copy that
21 you gave in my office that I got from you?

22 A I don't know. I just -- I don't know if there's a
23 date under the sticker or not, but I don't see one.

24 Q Well, there's another copy in Exhibit 1 if you want to
25 see there that should not have the sticker.

Robert B. Hall
Cross-examination by Mr. Rucker

1 A No. It's not dated.

2 Q All right. There's a line actually where it says
3 date, is that right?

4 A Yes, sir.

5 Q Okay. And this is the highway patrol, and they're
6 known to follow through on these kind of things, these
7 technical issues, aren't they?

8 A Uh-huh.

9 Q Did you not find that unusual that it was undated?

10 A I don't recall that I did, no.

11 Q Did -- did my client, your former client,
12 Mr. Robinson, inform you that they did not actually give
13 him that form at the time they drew the blood, it was
14 sometime later?

15 A I don't recall him telling me that.

16 Q Okay. Did you see that in your discovery though?

17 A As I said, I don't recall noticing it was not dated.
18 Whether date or time, I don't recall that.

19 Q Do you -- do you think it's unimportant when the
20 implied consent form was signed by my current client, your
21 former client?

22 A I think it's important.

23 Q Okay. Do you think that's the kind of evidence that
24 could potentially exclude the D.U.I. evidence, or at least
25 the blood evidence?

Robert B. Hall
Cross-examination by Mr. Rucker

1 A Yeah, that's one of the factors, yes, sir.

2 MR. RUCKER: Beg the Court's indulgence.

3 (Pause.)

4 Q Just a few brief questions to summarize.

5 Who -- what eye witnesses were going to be called to
6 say what caused the actual wreck to your knowledge by the
7 solicitor's office?

8 A They were going to have the MAIT team come, and, you
9 know, all the witnesses that they were going to call about
10 the accident. I'm not sure. I don't know if they had any
11 eye witnesses to the accident. We had the only eye
12 witnesses to the accident that I know of.

13 Q Okay.

14 A But they were going to have the MAIT team that did the
15 reconstruction.

16 Q But so to your knowledge the state did not have any
17 eye witnesses to testify.

18 A No. They did not.

19 Q They did have expert witnesses to testify.

20 A Right.

21 Q Did you talk with my client about hiring somebody to
22 attack that?

23 A The MAIT?

24 Q Yes.

25 A No.

Robert B. Hall
Cross-examination by Mr. Rucker

1 Q All right. why did you not do that?

2 A I did not -- I went through the MAIT. I went through
3 the MAIT report with him, and I did not see anything that
4 seemed out of line. And I just -- I didn't see the need
5 for it based on what I had in front of me.

6 Q Did you consider getting another medical doctor to
7 review the work of the coroner's office or any doctors
8 about who actually caused the death?

9 A No, I did not.

10 Q Did you understand there was some -- all evidence
11 indicates and MAIT agrees there were several minutes
12 between the initial collision and the subsequent collision?

13 A Right offhand I don't remember how long it was or how
14 long they thought it was, but from my recollection and
15 talking with the witnesses and even his witnesses it -- the
16 initial hit, stop.

17 By the time they had -- I think one of them said we
18 came, we ran back, we saw him and then he got hit again if
19 I am remembering correctly -- so I don't -- I don't know
20 that it was several minutes or how they could say it was
21 several minutes versus a few seconds.

22 Q When reviewing the discovery did you see that a
23 minivan came later and a lady driving that gave a statement
24 that she actually pulled beside perpendicular to the body,
25 set her --

Robert B. Hall
Cross-examination by Mr. Rucker

1 A Uh-huh.

2 Q -- emergency lamps on and then walked over to the side
3 of the road with our client?

4 A I remember her saying she pulled up beside. All of
5 the -- all of the details you've given out I don't -- I
6 can't dispute but I don't remember them just right offhand.

7 Q Is it fair to say that that is a true fact that she
8 pulled in behind, pulled sideways, set the blinkers on, got
9 out and got to the side of the road? That would be more
10 than an instantaneous accident. And then she pulls
11 immediately beside. I mean, does that make sense to you
12 that it would happen that fast?

13 A What I recall there was an impact. The motorcycle is
14 stuck on the front of the car. At some point it falls off
15 as they're going up to the road.

16 As I recall, Mr. Robinson ended up in from the right
17 lane to the left lane. The lady pulled up I thought in the
18 lane beside. I don't know if it was beside him or on the
19 other side of the road. I think it was beside him -- and
20 cut on her flashers.

21 As I recall, Mr. Robinson came back there and then
22 went to Mickey's to try to get help. The people at
23 Mickey's -- let's just say probably weren't very receptive
24 to African-Americans coming in. And it wasn't until they
25 realized there was a wreck that they actually did anything.

Robert B. Hall
Cross-examination by Mr. Rucker

1 Q All right. So Mr. Robinson leaves his vehicle. How
2 far away from his vehicle was the body?

3 A I would have to look at the MAIT report, but as I
4 recall the -- from the point of impact to the -- let's see.
5 Point of impact to where they were stopped was close to
6 300 feet. I apologize. I don't remember exactly how far
7 it was at this point. I would have to -- I was hoping -- I
8 couldn't remember if they had a diagram that actually
9 showed everything, but I don't think they do. I can't -- I
10 can't recall exactly how far.

11 Q Well, would you concede though based on your
12 discovery, the discovery you reviewed, that it was not a
13 bam-bam accident where this gentleman was struck and then
14 another car immediately hit him? would you concede that?

15 A Oh, yeah.

16 Q Okay. It could be up to several minutes between the
17 time.

18 A I don't think it was several minutes, but it wasn't
19 bam-bam. But what I'm saying, from the point of impact to
20 the stopping is almost 300 feet.

21 I think Mr. Robinson said he applied the brakes as
22 soon as he realized he had hit. And it took some distance
23 for him to stop. And then they went back towards the point
24 of impact. So, you know, I'm thinking less than a minute.

25 Q Is it fair to say as part of your investigation

Robert B. Hall
Redirect examination by Ms. White

1 preparing for an extremely serious trial that you would
2 have talked to the minivan driver who actually saw the
3 separate vehicle strike the victim?

4 A I can't remember if I ever got her. I think I had a
5 phone number for her. And I can't really recall if I did
6 speak to her. I didn't have a note, but on her statement I
7 may have had a note.

8 Q I'm sorry. I didn't hear.

9 A I said I don't recall speaking with her. I think I
10 tried to get her. I do -- I think I had a statement from
11 her, and I don't recall if I --

12 Q What did that statement say?

13 A I think it was a statement she gave to the police
14 saying I pulled over. Well, I think the one you're
15 referring to.

16 Q Okay.

17 MR. RUCKER: No further questions.

18 MS. WHITE: Just brief redirect, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. WHITE

21 Q Isn't it true that there is case law that supports the
22 fact that reckless homicide is not a lesser included of
23 felony D.U.I. and both --

24 A Yes.

25 Q -- can be charged separately and convicted?

Robert B. Hall
Redirect examination by Ms. White

1 There's also case law that discuss that proximate
2 cause, even if there's an intervening act, that the person
3 who contributed to the cause of death, it can be considered
4 the proximate cause in cause of death?

5 A Yes.

6 Q And in regards to felony D.U.I. law about the implied
7 consent, isn't it true that if it's -- if the trooper or
8 somebody suspects they're guilty of a felony D.U.I. that
9 they don't have to have their consent, No. 1, to have them
10 do a blood test?

11 A They can take them and force them to take a blood
12 test, absolutely.

13 Q Okay.

14 MS. WHITE: That's all I have, Your Honor.

15 MR. RUCKER: Nothing further from us.

16 THE COURT: You may step down.

17 MS. WHITE: The state has no other witnesses, Your
18 Honor.

19 THE COURT: Anything further from either side?

20 MR. RUCKER: No, sir.

21 THE COURT: All right. I'll review the record in the
22 case and the transcript and issue an order.

23 END OF REQUESTED TRANSCRIPT OF RECORD

24

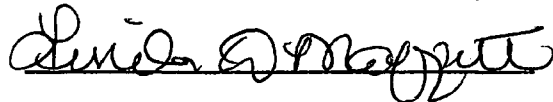
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 3rd day of October 2014.

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

May 6, 2014

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

01/26/2012 Page 1 of 2

FAILURE TO VIDEO WITHOUT INTERFERENCE

I affirm that I cannot produce a videotape without interference from the vehicle that I was operating because:

- () At the time of the defendant's arrest the vehicle that I was operating had not yet been equipped with a videotaping device and therefore, pursuant to Section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding vehicles is not applicable.
- () At the time of the defendant's arrest or probable cause determination, the video equipment in the vehicle I was operating was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition.
- () It was physically impossible to produce a videotape from the vehicle I was operating of the Defendant at the time of the arrest or probable cause determination because:
- () The Defendant needed emergency medical treatment, or
- (X) Exigent circumstances existed which are outlined below:

Other valid reasons existed for failing to produce the videotape without interference bases on the totality of the circumstances. These reasons are outlined below:

Due to radio interference, weather conditions, and recording (range) limitations of the equipment a clear and uninterrupted video tape was unable to be produced.

If additional room is needed for an explanation, please attach a separate sheet to this form referring to the item number addresses.

Signature of Officer: *[Signature]*

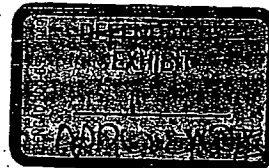
Date: 1-26-2012

State of South Carolina
County of Spartanburg

Sworn to and subscribed
Before me this 26 day of January 2012

[Signature]
Notary Public for the State of South Carolina

My Commission Expires: 07/03/2016



FAILURE TO VIDEO WITHOUT INTERFERENCE

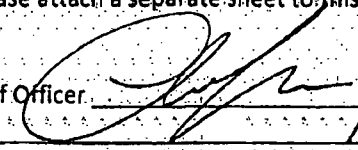
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- () The Defendant needed emergency medical treatment, or
- (X) Exigent circumstances existed which are outlined below:

Other valid reasons existed for failing to produce the videotape without interference bases on the totality of the circumstances. These reasons are outlined below:

Due to lighting of other vehicles, condensation on windshield, radio interference, weather conditions, and recording (range) limitations of the equipment a clear and uninterrupted video tape was unable to be produced.

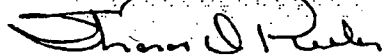
If additional room is needed for an explanation, please attach a separate sheet to this form referring to the item number addresses.

Signature of Officer: 

Date: 1-27-2012

State of South Carolina
County of Spartanburg

Sworn to and subscribed
Before me this 27th day of January 2012



Notary Public for the State of South Carolina

My Commission Expires: 07/03/2016

09/21/2011 Page 1 of 1

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Brian Orl Robinson

Subject's Name (Print)



Date of Birth

[REDACTED] (NC)

Driver's License Number

State Licensed

FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here ☐ - Inform subject of video recording.
If answer is No, start here ☒ - Inform subject of type samples requested (i.e. breath, blood, urine).
- (B) Provide subject with a written copy of the following advisement and read the advisement to the subject:
- You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
 - The officer has directed that samples be taken for alcohol and/or drug testing.
 - The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
 - The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
 - If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month.
 - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
 - You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
 - If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)

ADVERTENCIA POR EL DELITO DE MANEJAR BAJO LOS EFECTOS DE ALCOHOL O DROGAS (FELONY DUI)

- (A) ¿Se grabará en video el análisis? Si la respuesta es Si, empieza aquí ☐ - Informe al sujeto que va a ser grabado en video.
Si la respuesta es No, empieza aquí ☒ - Informe al sujeto de lo que se requiere (ejemplo: soplar, sangre, urina.)
- (B) De al sujeto una copia escrita de la siguiente advertencia y lea la advertencia al sujeto:
- Usted queda detenido por el Delito de Manejar Bajo los Efectos de Alcohol o Drogas (Felony DUI), Sección 56-5-2945, del Código de Leyes de Carolina del Sur de 1976, según su enmienda, o un agente del orden público tiene motivo justificado para afirmar que usted ha quebrantado esta sección.
 - El agente ordenó que usted se someta a que le saquen muestras de alcohol y/o drogas.
 - Se obtendrán y se analizarán las muestras según la Sección 56-5-2950 y las normas de SLED.
 - Según la Sección 56-5-2946, usted tiene que someterse a alguno de los análisis químicos, o a una combinación de los mismos, para determinar si existe la presencia de alcohol, drogas o una combinación de alcohol y drogas.
 - Si usted se resiste, dificulta o se opone a los análisis según la sección 56-5-2946, este hecho se considera prueba admisible ante un tribunal de justicia en un juicio oral.
 - Si en sus análisis o muestras se detecta una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, se le deberá suspender el derecho de manejar en Carolina del Sur por lo menos durante un (1) mes.
 - Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice sus propios análisis adicionales, los cuales usted mismo tiene que pagar y en ese caso, el agente debe brindarle ayuda si usted lo solicita.
 - Usted tiene el derecho de solicitar una audiencia administrativa dentro de los treinta (30) días de la fecha en que se emitió la notificación de la suspensión.
 - Si usted no solicita una audiencia administrativa o si se le confirma la suspensión en la audiencia administrativa, usted tiene que matricularse en un Programa de Medidas Contra el Abuso del Consumo del Alcohol y las Drogas.

Si aplica, efectúe los procesos siguientes:

- (C) Inspecciona la boca del sujeto y quite material ajeno de la boca. (Ignora si se niega el sujeto.)
(D) Anade datos biograficos en el DataMaster DMT. (Esto es requerido para todos los exámenes aunque se niega el sujeto.)
(E) Observe al sujeto un minimo de (20) minutos antes de obtener un ejemplar al soplar aire. (Ignora si se niega.)

Brian Robinson

Subject's Signature

Firma del Sujeto (Recibió una copia)

G. H. [Signature]

Officer's Signature

Firma del Agente

date/time

fecha/hora

SLED Forensics Form # ICS 011, February 2009

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Brian D. Robinson

Subject's Name (Print)



[Redacted]

Date of Birth

[Redacted] (MC)

Driver's License Number

NC

State Licensed

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 - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
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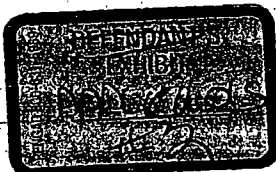
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(E) Observe al sujeto un mínimo de (20) minutos antes de obtener un ejemplar al soplar aire. (Ignora si se niega.)

Brian Robinson

Subject's Signature

Firma del Sujeto (Recibió una copia)



[Signature]

Officer's Signature

Firma del Agente

date/time

fecha/hora

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2012-CP-42-3582
Brian Oneil Robinson, #349471,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 23, 2012. The Respondent made its Return on or about July 17, 2012. An evidentiary hearing into the matter was convened on October 3, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Robert B. Hall, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript and exhibits presented during the hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the October 2011 term of the Spartanburg County Grand Jury for count one – felony DUI – death (2011-GS-42-5932) and count two – reckless homicide (2011-GS-42-5932A). The Applicant

[Handwritten signature]

[Handwritten signature] Page 1 of 8

was represented by Robert Hall, Esquire. On January 30, 2012, the Applicant pled guilty before the Honorable Roger L. Couch and was sentenced to confinement for fifteen years for felony driving under the influence, death results. Applicant did not appeal his conviction and sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to give Applicant Rule (5) Discovery,
 - b. Counsel failed to investigate the fact that the alleged victim was struck by another vehicle.

The Applicant amended his application orally to include a claim that Counsel failed to file a direct appeal on his behalf.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 86, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he pled guilty to a felony DUI charge on January 30, 2012, and received a fifteen year sentence. Applicant testified that he met two or three times with Counsel. Applicant testified that Counsel reviewed the videotape evidence and facts of the case with Applicant. Applicant testified that on the night he hit the victim, a second car stopped to assist and had their flashing lights on, but then a third car did not see the victim and hit the victim. Applicant testified that he called 911 and did not try to leave the scene. Applicant testified that Counsel informed him that the field sobriety tests were okay and that the blood alcohol content

registered .05 and some marijuana. The Applicant testified that he did not know that a consent form was required to take his blood and he signed the form the day after his blood was taken. Applicant testified that he believes an intervening act cause the death of the victim. Applicant also testified that there were questions of the victim's mental stability because of a prior accident the victim was involved in. Applicant testified that the only witnesses were the people in the car with Applicant.

Applicant testified that he did not know what charge he was pleading guilty to. However, Applicant testified that he knew it was possible that he would have been convicted if he proceeded to trial. Applicant testified that Counsel did not promise a sentence of fifteen years or less, but Applicant understood that he would get less than fifteen because he pled guilty.

Counsel testified that this case had been set for a trial the entire time. Counsel testified that he discussed possible defenses with the Applicant, including an unclear video of the sobriety tests, questions regarding his Miranda rights, and research on the blood alcohol content. Counsel testified that he consulted with several attorneys that handled DUI cases regularly. Counsel also testified that he looked into the possibility of there being an intervening act. However, the victim's motorcycle was essentially impaled on the Applicant's truck and the MAIT report indicated that the victim's right blinker had been on. Counsel testified that he did not recall an extraordinary time being between the blood test and the arrest. Counsel reviewed Applicant's Exhibit #1, document regarding interference with video; and Exhibit #2, the implied consent form. Counsel testified that he did not recall the Applicant stating that he had signed the implied consent form at a different time than he was given the blood test or that there was a missing date on the form. Counsel testified that the MAIT team would have testified at trial. Counsel also testified that he could not recall if he spoke to the driver of the second car, the minivan.

Counsel testified that he great difficulty in locating the possible witnesses for trial, even having a witness lie about his residence. Counsel testified that he begged the Applicant to come in the week before trial in order to discuss and get the witness information and was finally able to meet with both the Applicant and the witness. Counsel testified that he did make a motion for continuance on Applicant's behalf on the first day of trial because the Applicant wanted to hire an attorney, but Counsel stated that he was ready for trial. Counsel testified that the State made an offer to dismiss the reckless homicide and allow Applicant to plead to felony DUI with a cap of fifteen. Counsel testified that after the Applicant spoke with his mother about the offer, he decided to accept. Counsel testified that he had no concern based on conversations with the Applicant, that the Applicant did not understand what he was pleading to or the possible sentence.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegation that Counsel did not conduct an adequate pre-trial investigation or was unprepared for trial is without merit. Following testimony and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options that Applicant faced. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). 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); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any

defenses that could have been pursued had Counsel been more fully prepared. This Court finds that the issues raised regarding the consent form, possible intervening act, and blood alcohol content were all issues that could have been developed at trial; however, the Applicant has not demonstrated that pursuit of those issues would have led to a different outcome in this situation. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. Not only did the Applicant fail to establish that Counsel failed to prepare for trial or that Applicant did not fully understand the charge he was pleading guilty to, but the Applicant has failed to establish that he would have proceeded to trial, but for, these alleged deficiencies of Counsel. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

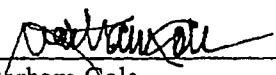
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of February, 2013.



J. Derham Cole
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 20 PM 4:49
M. JEFFREY BLAIR

WITNESSES

SCHP L. Pl. Rd. Marley

RECEIVED

REPORT

GRAND JURY

JURY

GRAND JURY

GRAND JURY

WARRANT NUMBER

F22007 SPARTANBURG Indictment

JURY

ACTION OF GRAND JURY

Tina Bill

Foreperson of Grand Jury

OCT 21 2011

Date:

VERDICT

Foreperson of Petit Jury

DOCKET NO.

11GS-42-5932
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 24 2011

TERM

THE STATE
V.

BRIAN ONEIL ROBINSON

Indictment for

CAUSING DEATH BY OPERATING
VEHICLE WHILE UNDER THE
INFLUENCE OF DRUGS OR ALCOHOL
(FELONY DUI - DEATH)
RECKLESS HOMICIDE

SC Code: 56-5-2945(A)(2) and 56-5-2910

CDR Code(S): 0395 and 3097

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 OCT 31 PM 3:32

M. HOPE BLACKLEY

Count Two - RECKLESS Homicide - NP - domestic - the defendant
 pled to Felony DUI Death on Count One in front of Judge
 Hoyle (and on 1-30-2012 and received a sentence of
 15 years in prison.
 - Barry J. Barnette - 1/30/2012.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 21 2011 the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE - FELONY DUI - DEATH

That, Brian Oneil Robinson, did in Spartanburg County on or about August 12, 2011, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected any duty imposed by law in the driving of the vehicle, to-wit:

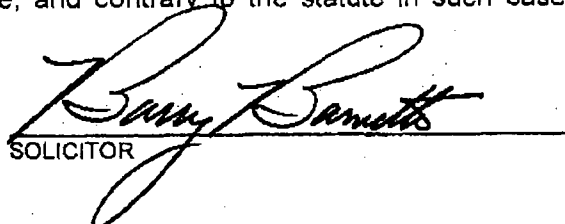
- (1) Failure to maintain proper control of vehicle, and/or
- (2) Driver's failure to exercise due care (56-5-3230) and/or
- (3) Failure to follow right of way restrictions (Art 17, Section 56), and/or
- (4) Driving too fast for conditions (Section 56-5-1560); and/or
- (5) Failure of driving on roadway laned for traffic (Section 56-5-1900).
- (6) Failure to maintain a proper lookout for other traffic and/or pedestrians and/or
- (7) Failure to follow right of way restrictions (Art. 17, Section 56)

which proximately caused death to Larry Wayne Weaver; in violation of §56-05-2945 (A) (2), of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO - RECKLESS HOMICIDE

That Brian Oneil Robinson, did in Spartanburg County on or about August 12, 2011, drive a motor vehicle in reckless disregard for the safety of others and such driving proximately caused the death of Larry Wayne Weaver, in violation of Section 56-5-2910, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


SOLICITOR