

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

DEC 8 2014

S.C. Supreme Court

JIMMY TAYLOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000669

APPENDIX

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Jury Charge

1 to opinions or conclusions. An exception to
2 this rule exists for witnesses we call expert
3 witnesses, a witness who by education and
4 experience has become expert in some art,
5 science or profession and these witnesses may
6 give opinions as to the subject the witness
7 claims to be an expert. And they also may
8 give their reasons for their opinions.

9 You should consider any expert
10 opinion given by a witness and like any other
11 evidence you give it the weight to which you
12 determine it deserves. If you decide that an
13 expert witness' opinion is not based on
14 sufficient education and experience, or if
15 you decide that the reasons given in support
16 of the opinion are not sound, or that the
17 opinion is outweighed by other evidence, you
18 may disregard the opinion in its entirety.
19 An expert witness' testimony is to be given
20 no greater weight than that of other
21 witnesses simply because the witness is an
22 expert. And you do not have to accept an
23 expert's opinion even though it is
24 uncontroverted.

25 Now, ladies and gentlemen,

Jury Charge

1 statements alleged to have been made by the
2 defendant, by Mr. Taylor, have been admitted
3 into evidence in this case. While the Court
4 has determined that the statements are
5 admissible, I instruct you that you make the
6 ultimate decision of whether or not the
7 defendant made the statements. If the
8 defendant did make the statements, you must
9 determine whether the statements were made by
10 the defendant voluntarily and of his own
11 freewill. This means that the statements
12 were not caused by pressure, force, fear,
13 threats, coercion or intimidation or by hope
14 of a promise of leniency or a reward of any
15 kind.

16 In determining whether the
17 statements were voluntary, you should
18 consider both the circumstances of the
19 defendant and the details of the questioning.
20 Some of the factors that you must consider
21 are the age of the defendant, defendant's
22 education or lack of education, the
23 defendant's mental ability or capacity, the
24 defendant's IQ or intelligence, the
25 defendant's background and environment, the

Jury Charge

1 place and length of detention, the nature of
2 the questioning and the advice or lack
3 thereof to the defendant of his
4 constitutional rights including, but not
5 limited to, the right to remain silent, that
6 any statement could be used against him in a
7 court of law, the right to have a lawyer
8 present, that if he could not afford a
9 lawyer, a lawyer would be appointed to
10 represent him without any cost and that he
11 could stop making a statement at any time.

12 You must carefully consider all of
13 the surrounding circumstances before you give
14 any weight to an alleged statement. The
15 State has the burden of proving beyond a
16 reasonable doubt that the alleged statements
17 were voluntary. If you determine they were,
18 you may give the statements any further
19 consideration that you deem proper. You must
20 decide what weight, if any, should be given
21 to the alleged statements.

22 If you determine the alleged
23 statements were not, were not the free and
24 voluntary statements of the defendant, you
25 should not consider the statements at all.

Jury Charge

1 Now, ladies and gentlemen, the
2 defendant Mr. Taylor is charged with three
3 counts of felony driving under the influence
4 causing death. The State must first prove
5 beyond a reasonable doubt that the defendant
6 drove a vehicle while under the influence of
7 alcohol and/or drugs.

8 Driving a motor vehicle means that
9 the vehicle was in motion. This may be
10 proved by direct or circumstantial evidence.
11 A movement of the vehicle might occur without
12 any affirmative act by a driver or, in fact,
13 by any person. If a vehicle is moved by some
14 power beyond the control of the defendant or
15 by accident this would not be driving. The
16 State must prove beyond a reasonable doubt
17 that the defendant was sufficiently under the
18 influence to impair his ability to drive with
19 reasonable care, with due regard for others
20 and himself or as a reasonably pursuant
21 person would drive. It is not necessary to
22 show that the defendant was in a helpless
23 condition, passed out or even intoxicated.

24 On the other hand, the fact that
25 the defendant at some time prior to this

Jury Charge

1 incident drank an alcoholic beverage or took
2 a drug, does not prove that the defendant was
3 driving under the influence.

4 Next, the State must prove beyond a
5 reasonable doubt that while driving the
6 defendant did an act forbidden by law or
7 neglected a duty imposed by law.

8 All three indictments in this case
9 allege that the defendant committed an act
10 forbidden by law or neglected a duty imposed
11 by law in driving his motor vehicle, by
12 failing to maintain control of his vehicle
13 which crossed over the center line colliding
14 with another vehicle.

15 Ladies and gentlemen, I charge you
16 that the operator of a motor vehicle is
17 required to use the same care that would be
18 used by a person of ordinary reason and
19 prudence if that person were driving the same
20 vehicle at the same time and place and under
21 the same circumstances. The driver of an
22 automobile has a duty to keep a proper
23 lookout for other vehicles on the road. This
24 duty requires the driver to watch attentively
25 so that the driver is able to see a person or

Jury Charge

1 object on the highway.

2 I further charge you that the
3 driver of an automobile also has a duty to
4 keep the automobile under proper control so
5 that the driver is able to slow down, stop or
6 turn the automobile to avoid colliding with
7 other vehicles, pedestrians and objects
8 lawfully on the roadway.

9 Ladies and gentlemen, I further
10 charge you that Section 56-5-1810 states as
11 follows: Upon all roadways of sufficient
12 width a vehicle shall be driven upon the
13 right half of the roadway except as follows:
14 Number one, when overtaking and passing
15 another vehicle proceeding in the same
16 direction under the rules governing such
17 movement.

18 Number two, when an obstruction
19 exists making it necessary to drive to the
20 left of the center of the highway, any person
21 so doing shall yield the right-of-way to all
22 vehicles traveling in the proper direction
23 upon the unobstructed portion of the highway
24 within such distance so as not to constitute
25 an immediate hazard.

Jury Charge

1 Number three, upon a roadway
2 divided into three marked lanes for traffic
3 under the rules applicable thereon.

4 Number four, upon a roadway
5 restricted to one-way traffic. B, upon all
6 roadways any vehicle proceeding at less than
7 the normal speed of traffic at the time and
8 place and under the conditions then existing
9 shall be driven in the right-hand lane when
10 available for traffic or as close as
11 practicable to the right-hand curb or edge of
12 the roadway except when overtaking and
13 passing another vehicle proceeding in the
14 same direction or when preparing for a left
15 turn at an intersection or into a private
16 road or driveway.

17 Upon any roadway having four or
18 more lanes for moving traffic and providing
19 for movement of two-way traffic no vehicle
20 shall be driven to the left of the center of
21 the roadway except when authorized by
22 official traffic control devices designating
23 certain lanes to the left side of the center
24 of the roadway for use by traffic not
25 otherwise permitted to use such lanes or

Jury Charge

1 except as permitted under item 2 of
2 subsection A. This subsection shall not be
3 construed as prohibiting the crossing of the
4 center line and making a left turn into or
5 from an alley, private road or driveway.

6 And finally, the State must prove
7 beyond a reasonable doubt that the act or
8 neglect of the defendant proximately caused
9 great bodily injury or death to another
10 person.

11 Ladies and gentlemen, what is
12 proximate cause under the law? Proximate
13 cause is a direct cause, it is the efficient
14 cause, it is that cause without which the
15 injury, the death of the victim would not
16 have resulted. In law school we learn the
17 but for test to help us learn what is meant
18 by proximate cause. But for the actions of
19 the defendant the death, the injury would not
20 have occurred to the victim.

21 There must be a chain of causation
22 from the time of the injury inflicted by the
23 defendant until the time of the victim's
24 death. Proximate cause does not necessarily
25 mean that it occurred immediately prior to

Jury Charge

1 death. There may be more than one proximate
2 cause. The acts of two or more persons may
3 combine together to be a proximate cause of
4 injury or death of a person. The defendant's
5 act may be regarded as a proximate cause if
6 it is a contributing cause of injury or death
7 of a victim. The fact that other causes also
8 contribute to the injury, to the death of a
9 victim, does not relieve the defendant from
10 responsibility. The defendant's act need not
11 be the sole, the only cause of the injury,
12 the death, but must be a proximate cause
13 contributing to the injury of the -- the
14 death of the victim.

15 The contributory negligence of the
16 victim will not break the causal chain
17 between the defendant's wrongful act and the
18 ultimate harm in a criminal case. An
19 intervening act of the victim or another
20 which is simply a proximate cause along with
21 the defendant's act and the victim's death
22 will not break the causal chain between the
23 defendant's act and the victim's death. Only
24 an intervening act which becomes the
25 proximate cause of the harm will break the

Jury Charge

1 chain.

2 Now, ladies and gentlemen, if you
3 find that the State has failed to prove that
4 the defendant committed felony driving under
5 the influence, you may then consider whether
6 the State has proven beyond a reasonable
7 doubt that the defendant violated the state's
8 law prohibiting driving under the influence.

9 Driving under the influence
10 contains the impairment element that I just
11 described regarding felony driving under the
12 influence. However, driving under the
13 influence does not require the State to prove
14 beyond a reasonable doubt that while driving
15 the defendant did an act forbidden by law,
16 nor does it require the State to prove beyond
17 a reasonable doubt that the defendant's act
18 proximately or directly caused the great
19 bodily injury or death to another person.

20 Ladies and gentlemen, I charge you
21 that the amount of alcohol in a defendant's
22 blood at the time of the alleged violation as
23 shown by chemical analysis of the defendant's
24 breath or other bodily fluids may be
25 considered by you in deciding whether the

Jury Charge

1 defendant was under the influence. If the
2 alcohol concentration was eight one
3 hundredths of one percent or more it may be
4 inferred that the defendant was under the
5 influence. This inference is simply an
6 evidentiary fact to be considered by you
7 along with all the other evidence in the case
8 and you may give it the weight you decide it
9 should receive.

10 Now, ladies and gentlemen, we are
11 now going to go over the verdict forms. All
12 right. Ladies and gentlemen, before we even
13 talk about the verdict forms two things I
14 want to say about them. Number one, your
15 verdict must be unanimous. This must be the
16 verdict of each and every one of you. All 12
17 of you. It must be unanimous. This isn't
18 the verdict of any one of you, this isn't the
19 verdict of the majority. This must be the
20 verdict of each and every one of you. That's
21 a hint to my alternate that the next time my
22 jury leaves I want you to stay here with me.

23 Now, I also want to tell you that,
24 ladies and gentlemen, that when we go through
25 the verdict form there's an order that it's

Jury Charge

1 put on paper and you are not to take any
2 hidden meaning from the order in which these
3 words have been put on paper. It's just
4 reality that when you put words on paper
5 one's got to be first, one's got to be next.
6 I assure you there isn't any hidden meaning,
7 there isn't any hidden message in the way
8 that these words are put on paper, in the
9 order, if you will, in which they've been
10 placed on this paper.

11 Ladies and gentlemen, there are
12 three indictments and there are three verdict
13 forms. There's one verdict form for each
14 indictment. And we're going to go over them.
15 The first verdict form that we're going to go
16 over is for indictment number 2005-GS-38-2141
17 and, ladies and gentlemen, whichever is your
18 verdict I just ask you to circle it,
19 underline it, just be real sure it's very
20 clear what is the verdict, unanimous verdict
21 of this jury.

22 Ladies and gentlemen, number one
23 says as follows: As to the charge of the
24 felony driving under the influence
25 proximately causing the death of George P.

Jury Charge

1 Neeley, we the jury unanimously find the
2 defendant, and there are two possible
3 verdicts here, one is guilty and one is not
4 guilty. Irrespective of what your verdict
5 is, if you -- if you reach a verdict as to
6 this charge, ladies and gentlemen, then just
7 circle it, make it very clear. It can only
8 be one of them.

9 Now, ladies and gentlemen, if you
10 the jury find that the defendant is not
11 guilty of felony driving under the influence
12 then you would proceed to consider number
13 two. Number two here is the lesser included
14 offense of driving under the influence. If
15 you find that the defendant is not guilty as
16 to number one then you would consider number
17 two. Number two is a lesser included offense
18 of number one. I think that is clear here in
19 the instructions.

20 Of course each and every -- when
21 you have concluded your deliberation and you
22 filled out the verdict form as to each of
23 these indictments as to -- on each of the
24 verdict forms, you will sign your name as the
25 presiding juror and date it for me.

Jury Charge

1 All right. The second indictment,
2 ladies and gentlemen, that we will go over is
3 for indictment number 2005-GS-38-4142 and it
4 reads as follows: As to the charge of felony
5 driving under the influence proximately
6 causing the death of Ann Neeley, we the jury
7 unanimously find the defendant, and again
8 there are two possible verdicts regarding
9 this charge, guilty or not guilty. If you
10 find that the defendant is not guilty as to
11 this charge you would consider the lesser
12 included offense of driving under the
13 influence. And, of course, the two possible
14 verdicts for that are guilty or not guilty.
15 Irrespective of what your verdict is if you
16 will circle it so it's very clear.

17 Now, again, if you find Mr. Taylor
18 guilty as to the charge of felony driving
19 under the influence then you would -- you
20 would not consider number two because it is a
21 lesser included charge. And you sign and
22 date.

23 Now, the third indictment is
24 2005-GS-38-2143. Number one reads as
25 follows: As to the charge of felony driving

Jury Charge

1 under the influence proximately causing the
2 death of Madison G. Neeley, we the jury
3 unanimously find the defendant, two possible
4 verdicts, guilty or not guilty. If you find
5 him not guilty of this offense you will
6 consider the lesser included offense of
7 driving under the influence and indicate your
8 verdict there, guilty or not guilty. If you
9 find Mr. Taylor guilty as to this charge you
10 do not consider number two because number two
11 is the lesser included offense. When you
12 have concluded your deliberations, you have
13 filled out your verdict form, dated your
14 verdict form, sign it and date it.

15 Ladies and gentlemen, when you have
16 considered all the evidence and concluded
17 your deliberation and filled out the verdict
18 forms being mindful that your verdict must be
19 unanimous, of course, then you knock on the
20 door, you will return to the courtroom. And
21 you don't have to bring the evidence with
22 you, if you'll just bring the verdict forms
23 that would be sufficient. And then what will
24 occur is you will pass the verdict forms
25 along to our bailiff who will pass them to

Jury Charge

1 me. You do not publish the verdict.

2 Now, ladies and gentlemen, there
3 are a couple matters that I do need you to
4 remember during your deliberations. Ladies
5 and gentlemen, all 12 of you must be present
6 for you to deliberate. Let me say that
7 again. All 12 of you must be present for you
8 to deliberate. If you need to take a break,
9 stop your deliberations, take your break and
10 then reconvene your deliberations when all 12
11 of you are together again.

12 Now, ladies and gentlemen, in a
13 moment I'm going to ask you to step to your
14 jury room with this instruction. Do not
15 discuss this matter or allow anyone to
16 discuss it with you. And because I have told
17 you that this would be the point for your
18 deliberation, I'm going to hasten and tell
19 you what I am doing when I do that. I'm
20 simply going to turn to these lawyers, I'm
21 going to ask them two questions. Have I
22 given the jury all of the law that they may
23 consider or may need, they may need for their
24 consideration and, number two, have I stated
25 it correctly.

Jury Charge

1 Ladies and gentlemen, sometimes I
2 need to bring jury panels back out because I
3 have failed to give the jury all of the law
4 that they may consider. I ask you in advance
5 if I need to bring you out for that reason
6 please, please don't consider that portion of
7 the law with any emphasis, just know I need
8 to be sure that I have given all of the law
9 that you may need for your deliberations.
10 And, ladies and gentlemen, if I need to bring
11 you back out to correct something that I have
12 said incorrectly, I ask you in advance to
13 please allow me to correct any error in your
14 minds.

15 In the event that I do not need to
16 bring you back out, you will be brought the
17 exhibits, the verdict forms and that will be
18 your sign to begin your deliberations.

19 Miss Carmen, Miss Nell now have
20 been doing this for quite a while so I know
21 that they will tell you specifically to begin
22 your deliberations. The judge says to begin
23 your deliberations at that point. But if
24 they forget, they hadn't forgotten since
25 we've been doing this for a long time, but if

Jury Charge

1 they happen to forget on this one occasion,
2 ladies and gentlemen, you will not have, you
3 will not have the verdict forms, you will not
4 have the evidence, these exhibits, unless it
5 is time for you to begin your deliberations.

6 Now, ladies and gentlemen, before I
7 ask you to step back to your jury room with
8 the exception of my alternate, I want to
9 leave you with one concluding thought and
10 it's this: The word "verdict" comes from the
11 Latin phrase "veredicto" which means, which
12 means to speak the truth. To speak the
13 truth. Ladies and gentlemen, that is now
14 your task. Please step to your jury room
15 remembering not to discuss this matter or
16 allow anyone to discuss it with you.

17 THE ALTERNATE JUROR: Can I get my
18 jacket?

19 THE COURT: You got a jacket in there?
20 Absolutely.

21 (Whereupon, the jury retires to the jury room
22 at 12:04 p.m.)

23 THE COURT: What I'm going to ask you to
24 do is I'm going to ask you to go with
25 Miss Carmen, Miss Nell and they are going to

Jury Charge

1 put you in another location away -- not with
2 the jury, but another location. And I'm
3 going to ask you to stay with us for about 15
4 more minutes. And the reason for that is
5 should something happen to one of our jurors
6 in the next 15 minutes, I believe that I
7 could stop the deliberations, seat you and
8 then begin the deliberations again. I
9 wouldn't want to lose the trial when we've
10 come this far. If you would be so kind,
11 watch your watch now and you keep up with it
12 and then I'll have you come back out for just
13 a moment and speak to you. Thank you, sir.

14 THE ALTERNATE JUROR: Okay.

15 THE COURT: All right. Are there any
16 additions or exceptions from the State?

17 SOLICITOR PASCOE: No, ma'am.

18 THE COURT: From the defense?

19 MR. CHANDLER: None from the defense,
20 Your Honor.

21 THE COURT: All right. Very well. If
22 you all would be so kind and help me by
23 looking at each and every piece of evidence
24 to be sure that what is going to the jury is
25 what's supposed to be going to the jury and

Jury Charge

1 look at the verdict forms one more time and
2 then we will be in recess until we hear from
3 our jury.

4 SOLICITOR PASCOE: Thank you, Judge.

5 MR. CHANDLER: Thank you, Your Honor.

6 (Whereupon, the jury commences deliberation
7 at 12:09 p.m.)

8 (The following proceedings were had beginning
9 at 2:19 p.m.)

10 THE COURT: Now, ladies and gentlemen,
11 it is my understanding that the jury has
12 reached its verdict. In a moment I'm going
13 to send for the jury and they will come out.
14 The verdict forms will be passed along to me,
15 I will review them and then they will be
16 published.

17 Irrespective of what the result is,
18 it is very important that you all keep your
19 composure. And again when there are cases
20 such as this case, which for many, many
21 reasons are very emotional, oft times it is
22 very difficult for folks to keep their
23 composure.

24 If you are concerned about your
25 ability to maintain your composure, ladies

Jury Charge

1 and gentlemen, I'll ask that you vacate the
2 courtroom now because it is of the utmost
3 importance that everyone is able to maintain
4 their composure. So if you have any concerns
5 about your ability, I would simply ask that
6 you vacate the courtroom now.

7 Very well. Let me have the jury,
8 please.

9 (Whereupon, the jury returns to open court to
10 report its verdict at 2:20 p.m.)

11 THE COURT: All right. It's my
12 understanding that the jury has reached its
13 verdict; is that correct?

14 THE PRESIDING JUROR: Yes, we have, Your
15 Honor.

16 THE COURT: If you'll just pass that
17 along. Thank you. All right. I find that
18 the verdict forms are in due form.

19 THE CLERK: Call the Court's attention
20 to indictment number 2005-GS-38-2141, the
21 State of South Carolina v. Jimmy Taylor. As
22 to the charge of felony driving under the
23 influence proximately causing death of George
24 P. Neeley, we the jury unanimously find for
25 the defendant guilty. Signed Charles Brown,

Jury Charge

1 5/4/2007.

2 Let me call the Court's attention
3 to indictment number 2005-GS-38-2143, the
4 State of South Carolina v. Jimmy Taylor. As
5 to the charge of felony driving under the
6 influence proximately causing the death of
7 Madison G. Neeley, we unanimously find the
8 defendant guilty. Signed Charlie Brown,
9 5/4/2007.

10 As to indictment number
11 2005-GS-38-2132, the State of South Carolina
12 v. Jimmy Taylor. As to the charge of felony
13 driving under the influence proximately
14 causing the death of Ann Neeley, we the jury
15 unanimously find the defendant guilty.
16 Signed and dated Charlie Brown, 5/4/2007.

17 THE COURT: Ladies and gentlemen, if
18 these were your verdicts in your jury room
19 and continue to be your verdicts here in the
20 courtroom, please indicate by raising your
21 right hand. Let me observe for the record
22 that all of our jurors have their right hands
23 raised. Thank you. You may put your hands
24 down.

25 Anything from the State before we

Jury Charge

1 dismiss the jury?

2 SOLICITOR PASCOE: No. No, ma'am, Your
3 Honor.

4 THE COURT: Anything from the defense?

5 MR. CHANDLER: None from the defense,
6 Your Honor.

7 THE COURT: Very well. Ladies and
8 gentlemen, I want to thank you for your
9 service on this jury and I want to thank you
10 for your service on our jury panel this week.
11 You are now at liberty to talk about this
12 case if you wish to discuss it. If you do
13 not wish to discuss it and there is someone
14 who insists that you talk about this case,
15 please just tell them that you don't want to
16 talk about it. If they are insistent, ladies
17 and gentlemen, if you will contact the clerk
18 of court here Ms. Lisa Mizell she will
19 contact me and I will be happy to intercede
20 on your behalf.

21 Now, when you go home this evening
22 again if this is -- you are at liberty to
23 talk about this matter if you wish, so
24 whomever's curious when you go home this
25 afternoon, this evening, you are at liberty

Jury Charge

1 to talk about the case if you wish.

2 Now, ladies and gentlemen, the --
3 any of you that need something from our
4 clerk's office so that you may present that
5 when you next go to your employment, if you
6 need that now if you'll just stop by the
7 clerk's office downstairs they will get that
8 for you, otherwise when you receive your --
9 your check for your jury service it will be
10 enclosed.

11 I used to tell folks that the check
12 was in the mail and then Ms. Mizell said stop
13 telling people that because it's not. So let
14 me just share with you that you will receive
15 that statement in the near future.

16 Ladies and gentlemen, I hope, I
17 hope that you have found your jury service
18 informative and interesting. I can assure
19 you that your presence in serving on this
20 jury panel and on this jury have been
21 absolutely essential to our system of
22 justice, our way of life and I am so grateful
23 for all of your dear and precious time that
24 you have given to our system.

25 Let me tell you that you are now

Jury Charge

1 disqualified for the balance of 2007 from
2 further service on a jury in a court of
3 record. So if you can keep that in mind in
4 the event that you happen to get summonsed
5 again over the course of 2007 and you, of
6 course, have well earned your exemption for
7 2008 and 2009 should you choose to use that
8 exemption.

9 Ladies and gentlemen, so you
10 understand how we're going to be proceeding,
11 we'll move on to proceed with sentencing and
12 motions at this point. You are welcome to
13 stay, but you are also welcome to go. Thank
14 you all so very much.

15 (Whereupon, the jury is excused at 2:26 p.m.)

16 THE COURT: All right. Yes, sir.

17 SOLICITOR PASCOE: Nothing from the
18 State, Your Honor. Thank you.

19 MR. CHANDLER: Your Honor, at this time
20 we would move for a new trial, yes, and we
21 would like to renew, first of all, all
22 objections and those noted by the Court. In
23 addition specifically with reference to the
24 introduction of evidence introduced by the
25 MAIT officer, evidence which as discussed on

1 the record before Your Honor was evidence
2 that was shared by -- was shared from the
3 State's office that they indicated that they
4 were seeking to introduce, and then once the
5 defense indicated that because of the lack of
6 time under Rule 5 to prepare for it that they
7 indeed decided that they would not introduce
8 it, and then only to find as soon as the MAIT
9 officer came then they would introduce it in
10 a different manner.

11 We would say that that not only is
12 a violation of Rule 5, but I think it's a
13 violation of my client's constitutional
14 rights to be fully notified of the
15 proceedings and the charges that are going to
16 be against him in addition to any ethical
17 obligations that the Court had -- I mean,
18 that the State has in doing justice, that
19 which wasn't done by virtue of the misleading
20 information that was provided to the defense.

21 THE COURT: Very well. I think I heard
22 that fully during the course of the trial and
23 what I determined at that point was that the
24 information that had not been generated had
25 to do with a momentum report and the G forces

1 and the actual, if you will, quantification
2 of the forces on the individuals within the
3 car and that that was a different issue than
4 the positions of the individuals in the car
5 based on the area of impact as determined by
6 the MAIT Team members.

7 So I would respectfully deny your
8 motions for a new trial and note your
9 exceptions thereto.

10 MR. CHANDLER: Thank you, Your Honor.

11 THE COURT: Very well. If you'll come
12 around, please, for sentencing.

13 SOLICITOR PASCOE: May it please the
14 Court.

15 THE COURT: Yes, sir, Mr. Pascoe.

16 SOLICITOR PASCOE: Thank you, Your
17 Honor. As far as Mr. Taylor's record he has
18 no criminal history other than very, very
19 minor traffic offenses for speeding. That's
20 it. That's all that I've been able to pull
21 on him.

22 I'm not going to go over any of the
23 facts, you've heard the whole case, I just
24 want to thank this Court for the -- as usual,
25 the extremely professional manner in which

1 the trial was conducted because of you and
2 everything you've done, the patience you've
3 had for both sides.

4 There are a lot of family members
5 here, Your Honor, from the Neeley family. We
6 have two people, spokesmen, children of
7 Mrs. and Mrs. Neeley that would like to be
8 heard. First Mr. Chip Price. I'm sorry,
9 Chip Price.

10 THE COURT: Well, let me just say that
11 to the victims' families in the context of
12 the trial of the case, I know victims'
13 families and victims oft times feel like
14 they're forgotten and I know that and I'm
15 aware of that.

16 So what I wanted to say to you
17 right now is that I want to hear and I'm
18 listening and I want you to tell me what I
19 know you want to tell me about your -- about
20 your family and I want to listen, so I'm
21 right here. You take your time.

22 MR. PRICE: That's exactly what I wanted
23 to say. This trial has kind of -- it
24 mentioned the victims and the bodies, but it
25 never really got into the lives of the family

1 members and the people that are deceased now
2 because of this accident. And they -- I just
3 want the Court to remember that they were
4 real people and they had family and friends
5 and they're going to be very badly missed.

6 THE COURT: And I want you to tell me a
7 little bit about them. I want to know.

8 MR. PRICE: My mother was an incredible
9 woman. She -- she went to church all of her
10 life, she played an organ in the choir, she
11 didn't have an enemy in the world. She loved
12 horses, she loved to ride horses. She did
13 everything she could to raise us properly and
14 I think she did a pretty good job. There
15 were six of us and so she had her work cut
16 out for her. Unfortunately --

17 THE COURT: How many boys and how many
18 girls?

19 MR. PRICE: Four boys and two girls.

20 THE COURT: Oh.

21 MR. PRICE: So she had her work cut out
22 for her. Unfortunately I didn't know Phil or
23 Mad for very long because my father died in
24 1991 or '93 and she remarried. Phil was a
25 childhood friend of hers and they remet later

1 in life and found each other and wanted to
2 live out their years together out on the
3 river and they had a lot of good years left
4 in them.

5 . Everybody hears their ages of 74
6 and 71 and think, well, they were old people,
7 you know, they were practically gone anyway.

8 THE COURT: Well, the closer I get the
9 younger it gets, let me tell you.

10 MR. PRICE: They had a lot of life left
11 in them, believe me. And I just -- on behalf
12 of them I just want to ask the Court to
13 strongly consider a severe sentencing for
14 Mr. Taylor, because I'm afraid that he was
15 trying to hide the evidence and the Court saw
16 through all that. And I certainly appreciate
17 the decision that the jury came up with
18 because it was the right decision, so we
19 thank the Court.

20 We thank the efforts of both the
21 solicitor and obviously the defense, everyone
22 did a good job, but justice is being served.
23 Thank you.

24 THE COURT: Yes, ma'am.

25 MS. PARKER: I have to read mine.

1 THE COURT: Absolutely. Are you all
2 brother and sister?

3 MS. PARKER: I was Phyllis Neeley
4 Parker. Phil was my father and Mad was my
5 brother.

6 THE COURT: Okay. Okay.

7 MR. PRICE: So we actually have two
8 separate families here.

9 THE COURT: Okay. And did -- and did
10 you all -- I mean, tell me a little bit about
11 that. Are you both -- where are you from?

12 MR. PRICE: We grew up in Charleston.

13 THE COURT: Okay.

14 MR. PRICE: The Price family. My mother
15 she was a Utsey, married my father,
16 Dr. Price.

17 THE COURT: Okay.

18 MR. PRICE: And we lived in Charleston
19 and grew up in Charleston, South Carolina.

20 THE COURT: And you grew up?

21 MS. PARKER: In Denmark.

22 THE COURT: In Denmark.

23 MR. PRICE: My mother was actually from
24 Holly Hill, she was raised in Holly Hill,
25 South Carolina.

1 THE COURT: Okay. All right. So you
2 all are blended families?

3 MR. PRICE: Right. Right.

4 THE COURT: Okay. And when they married
5 you were an adult?

6 MR. PRICE: Yes. Yes.

7 THE COURT: Okay.

8 MS. PARKER: Three years.

9 MR. PRICE: They were only married for
10 like three years.

11 THE COURT: Okay. And, of course,
12 you're a child now so you were a child then,
13 too.

14 MS. PARKER: No. We didn't have a whole
15 lot of opportunities to get together just,
16 you know, Thanksgiving or a summer
17 get-together, but that was about it.

18 MR. PRICE: Unfortunately.

19 THE COURT: What river are we talking
20 about?

21 MR. PRICE: The Edisto River.

22 Unfortunately they were in the process of
23 building a house that was basically a dream
24 house of theirs and it was just about
25 finished and they were probably -- we would

1 have had Thanksgiving dinner there when this
2 accident occurred and so we missed out on
3 that. Never really got to see the house
4 finished. It's been sold now and fortunately
5 a friend of theirs bought it to try to
6 continue the construction in their memory.

7 THE COURT: Oh, yeah. Oh, yeah. And
8 tell me your name again.

9 MS. PARKER: Phyllis Neeley Parker.

10 THE COURT: And you live?

11 MS. PARKER: I live in Orangeburg County
12 now, from Denmark.

13 THE COURT: You moved from Denmark to
14 Orangeburg, okay, I'm with you.

15 MS. PARKER: Anyway, I have three
16 children.

17 THE COURT: I have one more question I
18 have to ask. There was a question that one
19 of the jury panel asked about Neeley
20 Appliance, there's a store apparently in
21 Denmark, is it that Neeley Appliance and
22 somebody asked is that the Neeley and no one
23 knew. I mean, I said assume for purposes of
24 your answer to the juror that it is, somebody
25 raise their hand.

1 MS. PARKER: That's his store.

2 THE COURT: All right.

3 MS. PARKER: But anyway, I just was
4 going to say that this week has brought about
5 again just, you know, the pain and the hurt
6 that we had to endure a year and a half ago
7 and it's obviously just brought it all back
8 up to us all again. And we just ask that you
9 consider only, you know, the fair sentence
10 for Mr. Taylor, but in consideration that
11 three of our family members were lost. I
12 mean, it's just been detrimental to our lives
13 to lose all three people like that at one
14 time.

15 THE COURT: And I'm sure that phone call
16 is a phone call that is indescribable.

17 MS. PARKER: I mean, you just can't
18 imagine.

19 THE COURT: Indescribable.

20 MS. PARKER: Having the empty seats in
21 our homes and the holidays without our family
22 and that you would please consider a maximum
23 sentence for him in all fairness.

24 THE COURT: Thank you. Thank you so
25 much.

1 Yes.

2 MR. CHANDLER: May it please the Court.
3 Your Honor, I'd like to say few things about
4 Mr. Taylor, of course, before we move forward
5 that certainly this, of course, is a sad
6 occasion for the family. And I'm quite sure
7 with the number of years that has passed that
8 there has at least brought some closure to
9 that extent.

10 I'm happy for the families and, in
11 fact, both families for what has gone on.
12 Certainly I'm not comparing the damage, but
13 as I stand here as the defense attorney
14 representing Mr. Taylor, certainly he's had
15 strong support from his family and also from
16 his community.

17 He is a long-time member, former
18 past chair of the Board of Decons for the
19 Cooper Branch Baptist Church which is in
20 Williston, South Carolina. Many of the
21 individuals who are here, in addition to some
22 who decided to slip out for lunch are, of
23 course, longstanding members.

24 Unfortunately here Mr. Taylor's
25 also been accompanied by his two daughters

1 and his wife who worked very closely with us,
2 worked with us as we prepared for his
3 defense. They are not here at this moment
4 because they slipped out for lunch.

5 Your Honor, as the solicitor's
6 already indicated, doesn't have significant
7 priors, not like those individuals that we
8 would normally see in DUI cases where we see
9 it multiple times, repeat offenders,
10 individuals who have basically had a complete
11 disregard for the life and safety of
12 individuals.

13 However, as has been indicated and
14 as the jury has found that certainly there
15 was some decisions that Mr. Taylor made on
16 that day that has brought us here today,
17 whether it was just to have two drinks or
18 even to drive on Highway 70 we're here now.

19 You've heard the defense, Your
20 Honor, and I'll stand here today with all
21 candor and believe that, in fact, Mr. Taylor
22 totally believes that defense that he's put
23 forth to the extent that where I've
24 admonished him greatly that that is something
25 that would be very difficult for me to

1 present during the trial and he indicated
2 that he can only present to me what he
3 believed to be the truth, Your Honor. And so
4 as we stand here today we stand here
5 recognizing that Mr. Taylor recognize that
6 if, in fact, he was found guilty that he
7 would be before the Court and before the
8 mercy of the Court, Your Honor.

9 And I would ask mercy and I ask you
10 to consider the fact that he -- again, I
11 don't want to belabor this occasion but I
12 think he stated where he's worked, how long
13 he's been in the community, how long he's
14 served the Orangeburg community and
15 businesses and helping them grow and all of
16 the things that he's done. And I would ask
17 that you take that in account, take in
18 account that he has not had a prior offense.

19 He has a family and a community
20 that loves him. Certainly he has to answer
21 again now for the fact that the jury has come
22 back with a verdict. Your Honor, we would
23 ask for your leniency and he's before the
24 mercy of the Court at this time.

25 I haven't spoke within Mr. Taylor

1 and asked him whether or not he would like to
2 address the Court, but I would like for him
3 to have this opportunity.

4 THE COURT: I would like to hear from
5 him or anyone on his behalf.

6 THE DEFENDANT: Yes, Your Honor. This
7 has been a trying time for self and family.
8 It is accepted that what has been shared is
9 the truth as it has been affirmed before God.

10 Now, knowing though that we're
11 coming before the Court and the decision
12 which come from the jurors this will be
13 accepted based upon what were presented. The
14 depth of my heart truly with all earnestness,
15 all earnestness in regards to the Neeley
16 family, there is sympathy and concern. It is
17 also an accepted fact and do not mean any
18 harm, do not mean for it to hurt anyone with
19 me stating this, but Mother Neeley did speak
20 to me that evening and with accepting that
21 then it was truly, truly known that I did not
22 do. But yet I do stand to be at the mercy of
23 the Court.

24 THE COURT: All right.

25 THE DEFENDANT: Yeah.

1 THE COURT: Yes. I think this gentleman
2 is coming forward.

3 MR. CHANDLER: This is Pastor Phillip
4 Watson who is his long-time pastor of the
5 church in Williston, South Carolina.

6 PASTOR WATSON: Your Honor, I want to
7 commend you first of all for your handling of
8 this court. And I stand here not to try to
9 justify or try to persuade anything. I can
10 understand how the family feels. I've been
11 knowing this young man I guess 30 years.
12 I've been his pastor 37 years and he's always
13 been in church, he become the vice chairman
14 of the board and then the board chairman. He
15 was the Bible school scholar and one of the
16 leaders. He's always ready to do anything
17 for humanity.

18 I'm not here to try to persuade you
19 any way, but I hope that in your deliberation
20 and your passion you find in your heart that
21 Jesus will come in and pacify this here
22 today. Thank you.

23 THE COURT: Thank you so much. Thank
24 you very much.

25 MR. CHANDLER: Your Honor, I just

1 briefly -- I almost feel compelled because
2 his wife was not here and I know how strongly
3 his daughters were here in support of him, I
4 mean lock step, and I can, of course, not
5 speak for them, but again, Your Honor,
6 Mr. Taylor is a man who is deeply loved by
7 his family, as so were the victims, and his
8 wife who is disabled, a dependent, of course,
9 on his care and, of course, the income that
10 he brings to the family.

11 Of course his children are grown
12 and they're not dependent on that and, of
13 course, as you know the family, with the
14 number of counsel that he's had, the family
15 incurred tremendous amount of debt that she's
16 going to be under as a result of this. This
17 is just right, the privilege they extended,
18 and they have been given their day in court.

19 Your Honor, I just ask that you be
20 as lenient as possible on Mr. Taylor.

21 THE COURT: Thank you. Thank you, sir.
22 Mr. Chandler, did Mr. Taylor spend any time
23 pretrial detained?

24 MR. CHANDLER: None at all, Your Honor.

25 THE COURT: Okay.

1 MR. CHANDLER: None at all.

2 THE COURT: Okay. All right. Does
3 anyone know any reason why at this point
4 sentence should not be passed?

5 SOLICITOR PASCOE: No, ma'am.

6 THE COURT: Very well. All right. And
7 I'll speak just a minute to the family when
8 I'm finished, but I'll speak to you,
9 Mr. Taylor, and I will tell you that this
10 sentence is very difficult. It's very
11 difficult because of the measure that you
12 have taken from this very large and extended
13 family. I can only imagine, I can only
14 imagine those first hours, those first
15 moments and the absolute agony that this
16 family went through. It's unspeakable. No
17 human ought to ever have to experience that.
18 You were the source of that. I know that you
19 don't think that you're the source of that,
20 but you're the source of that. And you
21 brought that to this family. Were looking
22 for nothing wrong, didn't do anything wrong,
23 living life, wonderful evening, going to the
24 fair. I love horses, too. Probably wanted
25 to see if there were horses at the fair,

1 looking forward to a lovely evening. And the
2 one person that was in control of his
3 activities that would have made a difference
4 is you.

5 When you drink you assume the
6 responsibility for all that comes from that.
7 What makes this extremely difficult also,
8 Mr. Taylor, is that you have not -- you're 56
9 years old and to large measure you have lived
10 a good life. You've been gainfully employed,
11 you look after a disabled spouse and you also
12 served your community so it makes this very
13 difficult.

14 Our legislature has determined the
15 punishment that is appropriate for this
16 offense. And there's no question in my mind
17 but that you committed this offense and the
18 result tremendous, terrible. And I just
19 share that with you because I want you to
20 know that all these things are in my mind as
21 I pass a sentence for you.

22 Mr. Taylor, with regards to 2006 --
23 let me start -- -GS-38-2141, I'm going to
24 commit you to the State Department of
25 Corrections for a period of 20 years. With

1 regards to 2006-GS-38-2142 I'm going to
2 commit you to the State Department of
3 Corrections for a period of 20 years. With
4 regards to 2005-GS-38-2143 I am going to
5 commit you to the State Department of
6 Corrections for a period of 20 years and
7 these sentences will run concurrent.

8 Now, it is my hope that this will
9 begin to close this chapter for all of you.
10 I will tell you that the only thing that
11 makes it better is time. I know that and I
12 want you to know that I know that. The only
13 thing that makes it better is time. And what
14 happens is, is those thoughts that you think
15 and then that crushing sadness that comes
16 immediately gives way to those gentler
17 thoughts and the happier memories. And I
18 want you to know that I know that and that I
19 wish that for you.

20 MS. PARKER: Thank you.

21 THE COURT: Cling together. You know,
22 we only get through this world together, so I
23 wish your family well, I wish you well.

24 Very well, Mr. Taylor, that will
25 conclude these matters.

1 SOLICITOR PASCOE: Thank you, Your
2 Honor, very much.

3 MR. CHANDLER: Thank you.

4 THE COURT: All right.

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Davis, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 9th day of November 2007.



Robin L. Davis, CSR, RMR

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ATTORNEY GENERALS
OFFICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
The Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2005-GS-38-2141, 2142, 2143

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JIMMY R. TAYLOR #00321636,

APPELLANT.

[FINAL] BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR IN ALLOWING THE TESTIMONY OF THE STATE'S EXPERT WITNESS AFTER THE STATE AFFIRMED THAT THE EXPERT COULD AND WOULD NOT TESTIFY AS TO WHICH COLLISION CAUSED THE ACCIDENT AND DEATH?

STATEMENT OF THE CASE

Jimmy Taylor was charged with three counts of Felony Driving under the Influence ("DUI") Death as a result of an accident that occurred on October 21, 2005. The accident involved two collisions. The first collision between the Appellant and the Neeleys immobilized the vehicle of the Neeleys for some period of time on Highway 70 in Bamberg County, South Carolina. The second collision involving the Neeleys and a third party driver, Jessie Glover, occurred later where a third vehicle collided with the victim's vehicle while traveling at a high rate of speed on the same highway.

On May 2-4, 2007, the case was tried by a jury which found Mr. Taylor guilty on all three counts of Felony DUI death. On May 14, 2007, Mr. Jimmy Taylor served the Notice of Appeal on the State of South Carolina.

FACTS

On October 21, 2005, Mr. Jimmy Taylor was traveling in his champagne colored Chevrolet Trail Blazer from Orangeburg County to his home in Williston, South Carolina. (R. p. 155, line 13-15). Mr. Taylor was driving westbound in Bamberg County on Highway 70. (R. p. 147, line 22-23). The Appellant, a conscientious motor vehicle operator, lost control of his vehicle and veered across the center line coming in contact with a Ford escort driven by Mr. George Neeley. As a result of the overcorrection of the vehicle, Mr. Taylor's vehicle traveled off

of the road into a field where it came to a stop. (R. p. 148, line 9-11). After the first collision, the vehicle driven by George Neeley became immobilized, and the Neeley family was tragically subjected to another collision by another Trailblazer that was driven by Jesse Glover which caused additional injuries to the Neeley family. Due to the unfortunate accident, George Neeley, Ann Neeley, and Madison Neeley were dreadfully killed in the accident. Mr. Taylor, as the driver of the car causing the first collision, was charged with three counts of Felony DUI Death.

Before Mr. Taylor's allegations were presented in court, the Appellant chose to change representation and retained current counsel a few weeks prior to the trial commencing. At this time, counsel for the appellant worked vigorously in becoming abreast of the Mr. Taylor's legal allegations and becoming properly prepared for trial proceedings. During pre-trial discussions, Mr. Chandler and the State engaged in discussions about the planned strategy of defense to be used by the Appellant and both parties agreed that neither counsel would present expert testimony on which collision caused the deaths of the Neeleys without having performed a momentum study conducted by the South Carolina Highway Patrol's Multidisciplinary Accident Investigation Team ("MAIT"). Days before the trial began, the Appellant made desires to known to the State to request the court's indulgence and grant the Defense a continuance to have the momentum study completed to determine which vehicle collision caused the fatalities if the State intended to introduce evidence through the expert testimony. Upon further discussions with the State, Appellant's counsel agreed not to request a continuance in return for the State restraining from questioning any witnesses as to which collision caused Mrs. Neeley to go through the windshield causing her and her family's death that likely could have been answered by a momentum study of the accident scene.

During direct examination, the State asked and received qualification for First Lieutenant Ricky Dixon to speak as an expert only on accident reconstruction. (R. p. 287-290). Counsel for the Appellant objected to the State's questioning of the expert witness purporting that the first collision caused the deaths of the Neeleys. However, the State proceeded to examine the witness to determine which accident caused Mrs. Ann Neeley to go through the windshield to attempt to provide evidence to prove the proximate cause prong of the test for actionable Felony DUI under South Carolina Code of Laws §56-5-2945. (R. p. 312, line 7-9). Subsequently, the Appellant's counsel objected to the line of questioning on the basis that the State, on the record, agreed not to present evidence to differentiate which collision caused the death unless a momentum study was done. (R. p. 333, line 10-16). Based on this knowledge, the Appellant stated that if a momentum study needed to be completed a continuance would have been requested to review the findings of the study and plan a strategy of defense. (R. p. 333, line 16-25). On the record, the State did not deny the assertion that the MAIT teams could not differentiate between which accidents caused the deaths without a momentum study. (R. p. 334, line 7-9)

The court conducted an in camera review of the evidence and determined that under S.C. Rules of Criminal Procedure 5(a)(1)(D) the State's legal duty was to offer the Highway Patrol's investigation report to the defense counsel for inspection or copying but not required to offer up the opinions of any expert witness to which the State complied. (R. p. 331, line 6-22). The court ruled in favor the State on the objection to impeach the statements of the expert witness on the basis that there are two issues as to which the expert witness could properly testified. The first issue was whether or not a MAIT team member could testify regarding which of these accidents, given the area of impact, would have moved the bodies in which direction; the other issue was

which accident caused the deaths. (R. p. 335-337). The Honorable Circuit Court Judge Dianne S. Goodstein limited the expert witness testimony to the accident reconstruction precisely the positioning of the bodies of the deceased based on the first collision. *Id.* Before the jury retired to deliberate the charges against Mr. Taylor, the judge charged the jury that they may find the Appellant not guilty, guilty of simple DUI, or guilty of Felony DUI death as a result of the evidence presented in this case. (R. p. 511, line 7-9) As a result of the ruling on the expert witness and subsequent witness testimony, Mr. Taylor was found guilty of three counts of Felony DUI death.

ARGUMENT

I. THE TRIAL COURT ERRED IN ALLOWING THE TESTIMONY OF THE STATE'S EXPERT WITNESS AFTER THE STATE AFFIRMED THAT THE EXPERT COULD AND WOULD NOT TESTIFY AS TO WHICH COLLISION CAUSED THE ACCIDENT AND DEATH DURING PRE-TRIAL PROCEEDINGS.

A. The Appellant's objection of the State using an expert witness to testify as to which collision caused the death's of the Neeley family which the State presented, in essence, to circumvent to agreement between the State and defense counsel.

Prior to the trial of Mr. Jimmy Taylor on charges of Felony DUI, defense counsel for Mr. Taylor clearly and unequivocally stated the trial strategies that would be used to defend the allegations against the Appellant. The State was notified of the Appellant's wishes to request a continuance from the court to have a momentum study completed by the South Carolina Highway Patrol if the State intended to present evidence as to show which collision caused the deaths of the Neeleys. Mr. Taylor contends that a momentum study conducted by the Highway Patrol's MAIT team is the most accurate method of testing and investigation of accident

reconstruction to properly determine the actual proximate cause of which collision caused the deaths of the Neeley family. In addition, a MAIT momentum test will clearly conclude if any intervening causes were present resulting in the Neeley family's death. The court qualified First Lieutenant Ricky Dixon, of the South Carolina Highway Patrol, to be an expert solely for the purpose of accident reconstruction as it pertains to the investigation report the Appellant received pursuant to S.C. Criminal Procedure Rule 5(a)(1)(D). During direct examination of the State's expert witness, the State questioned Lieutenant Dixon and proffered his opinion based on his investigation report on whether or not the first collision caused by Mr. Taylor was the only factor in the deaths of the Neeley family.

Circuit Court Judge Dianne S. Goodstein properly concluded that under South Carolina Criminal Procedure Rule 5(a)(1)(D) that as a matter of law the State's only obligation under the rule is to allow the Appellant "to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution." S.C. R. Crim. P. 5(a)(1)(D). Judge Goodstein ruled that the disputed issue of which collision caused the deaths was not erroneous. The court gave deference to the Lieutenant's field examination, measurements, his foundation of having worked on multiple accident reconstruction cases, and based on his experiences if a collision to the front of a vehicle would move a person in a particular direction as it allegedly happened to the Neeleys. (R. p. 335-337) However, she limited the expert's testimony to only the accident reconstruction and not which collision caused the deaths of the Neeleys, which would involve extensive calculations and other investigations that would likely be determinable using a momentum study of G forces. *Id.*

The Appellant believes that the Circuit Court judge properly applied the law in a strict but correct manner. The issue for the Appellant is the fact that the State assured the Appellant that no witness would be questioned based which collision caused the deaths of the Neeley family. During pre-trial preparations, the State agreed not present testimony that would attempt to bifurcate which collision caused the unfortunate deaths of the Neeley family, which was a piece of the puzzle for the defense. The only way the accurately determine, not withstanding expert testimony, which collision caused the deaths of the Neeleys would have been for the South Carolina Highway Patrol's MAIT team to perform an accident reconstruction and momentum study of the accident because Felony DUI requires the State prove beyond a reasonable doubt that Mr. Taylor was the proximate cause of the accident. Mr. Taylor contends that the State failed to prove beyond a reasonable doubt that Mr. Taylor was the cause of the accident without the momentum study. In reliance of the State's counsel assurances, defense counsel agreed to depart from requesting a continuance of the proceedings to conduct a momentum study.

- B. Since the State decided to present and question an expert witness on issues that counsel for both sides agreed not to pursue, consequently, the State violated Mr. Taylor's due process of law.

The counteractions of the State deprived the Appellant of the right to a fair trial. The Tubbs court held that the defendant was denied a fair trial based on remarks made by the prosecutor during trial. The standard for determining whether a prosecutor's remarks deprived the accused due process of law is whether the prosecutor's comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *State v. Tubbs*, 333 S.C. 316, 320 (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 1871, 40 L.Ed.2d 431, 437 (1974)) (S.C. 1999). The Appellant analogizes this to the instant case. The

State's actions of presenting direct questioning to the issue of which collision caused the deaths of the Neeley after the State clearly stated to the Appellant that their trial strategy would not include such questioning infected the trial with unfairness that has resulted in the conviction of Mr. Jimmy Taylor. Initially, if the State wished to conduct questioning on which vehicle caused the deaths; they should have not rushed the case to trial but allowed the defense to request a continuance to allow the State to complete a momentum study to corroborate or disprove any witness testimony presented by either the State or the Appellant on which collision caused the deaths.

Rule 7(c) of the Rules of Criminal Procedure in South Carolina affords the Appellant the opportunity to petition the court for a continuance if good cause is shown. *See* S.C. R. Crim. P. 7(c). First, the State had actual knowledge that the Appellant retained new counsel in the weeks leading up to the trial. Next, the State had actual knowledge that the data from the Highway Patrol's investigation could not bifurcate which collision caused the death which was conveyed to the Appellant. The State wished to conduct the study before the beginning of the trial. However, Appellant's counsel stated that a continuance would be requested to allow the Appellant time to review the momentum study before any court proceedings. The Appellant affirms that any prior knowledge of the State's plan to engage in impermissible questioning of the expert witness to which collision caused the deaths would have warranted the request for continuance to have a momentum study performed. We believe a continuance would have been granted because there is no evidence other than the momentum study that could have been produced and introduced by the defense on behalf of Mr. Taylor and other points could have been raised on his behalf had more time been granted for the purpose of preparing the case for the

defense during trial. *State v. Tanner*, 299 S.C. 459, 462 (citing *State v. Squires*, 248 S.C. 239, 244) (S.C. 1989).

Furthermore, the State should be held to a higher judicial standard for prosecuting citizens for crimes the State alleges that one of its citizens has committed. "Every South Carolinian has a vital interest in the fair administration of justice." *State v. Quattlebaum*, 338 S.C. 441, 449 (S.C. 2000). As a resident of South Carolina, Mr. Taylor placed his faith in the State and the solicitor who prosecute cases for the public whose main job is to seek justice for those who do not abide by the law. At the heart of the judicial system in the State of South Carolina and United States of America lie principles which rely upon the integrity of the participants within the judicial process. *Riddle v. Ozmint*, 369 S.C. 39, 43 (citing *State v. Quattlebaum*, 338 S.C. 441) (S.C. 2006). Quintessentially, the State did not display the requisite integrity when they questioned the expert witness outside the parameters agreed upon by both counsel.

"Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady v. State of Maryland*, 373 U.S. 83, 87. The State's agreement not to present evidence by the expert witness declaring his opinion as to which collision caused the deaths of the Neeley but proceeding to introduce this theory on to the record is the result of guile and does not comport with the standards of justice. *Id.* at 88. "Prosecutors are ministers of justice and not merely advocates. A prosecutor has special responsibilities to do just and is held to the highest standards of professional ethics." *Quattlebaum*, 338 S.C. at 449. Mr. Taylor asserts that the State did not

possess the highest standards of ethics when questioning the expert on issues that were not to be introduced into evidence at trial.

C. The necessity of conducting a momentum study if evidence would be presented by the State as to which collision caused the deaths.

If the State wished to have the expert witness testify as to which collision caused the deaths, a momentum study should have been completed by the South Carolina Highway Patrol that would have clearly defined which collision killed the Neeley family. This study would have been necessary prove or refute the State's case in chief and determine whether the State clearly satisfied the elements of Felony DUI under the laws of South Carolina.

The elements for Felony DUI Death under South Carolina Code §56-5-2945 are (1) a person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, (2) drives a vehicle and when driving does any act forbidden by law or neglects any duty imposed by law in the driving of the vehicle, (3) which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of a felony. S.C. Code Ann. §56-5-2945. The Appellant presents uncertainty as to whether the State's completely satisfied the third element of the statute beyond a reasonable doubt.

A party's negligence is the proximate cause only when, without the negligence, the injury could have been avoided or would not have happened. *Hamilton v. R&L Transfers, Inc.*, 361 S.C. 286, 290 (citing *Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 296, 417 S.E.2d 631, 633 (Cl.App.1992)) (S.C. App. 2004). Proof of proximate cause requires proof of both causation in fact and legal cause. *Vinson v. Hartley*, 324 S.C. 389, 400 (citing *Oliver v. South Carolina Dep't of Hwys. and Pub. Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992)) (S.C. App. 1996). Causation

in fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence. *Id.* Legal cause is proved by establishing foreseeability. *Id.* Foreseeability is determined by looking to the natural and probable consequences of the act complained of. *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 493 (citing *Young v. Tide Craft*, 270 S.C. 453, 462, 242 S.E.2d 671, 675 (1978)) (S.C. 1994).

The Appellant concedes that he was the proximate or "but-for" cause of the events triggering the first vehicle collision between he and the Neeleys. However, the Appellant adamantly insists that the State failed to properly present to the court Mr. Taylor was the proximate cause of the Neeleys death because there existed an efficient intervening cause through the negligent and reckless driving of Jessie Glover. The Appellant's counsel questioned Lance Corporal Steven Pearrow, of the South Carolina Highway Patrol, stated that a person who operates a motor vehicle in excess of twelve to fourteen miles over the speed limit would be charged with driving too fast for conditions or reckless driving. (R. p. 251-252). The questioning of the highway patrolman shows that the State should not be able to introduce this evidence of which collision caused the deaths because there are disputed facts as to whether a person violating the speed laws and subsequently collides with another vehicle could have caused an accident resulting in deaths. In this case, a momentum study may clearly have defined the speeds of each of the three vehicles and determined which vehicle collision caused the deaths of the Neeleys. However, without the study, the State made known they would not use attempt to present evidence of which collision caused the deaths. Thus, the actions of Mr. Taylor, albeit the proximate cause of the accident, likely could have not been the natural and probable consequence of the deaths of the Neeley without a clear determination of any potential intervening actions of

Jessie Glover's reckless driving which could not be accurately presented in court without bifurcating which collision caused the deaths using the momentum study.

The purpose of the momentum study would clearly and accurately have shown which collision caused the deaths of the Neeley family and whether Mr. Jessie Glover was the actual super intervening cause of the death. An efficient intervening cause is an event that is independent of the defendant's criminal act or omission and which is adequate to cause the victim's death and which was not reasonably foreseeable by the defendant. *State v. DesChamps*, 126 S.C. 416, 420 (S.C. 1923). In *Dobson*, the South Carolina State Supreme Court reversed the verdict against the defendant for reckless homicide because there was an efficient super intervening cause of the death. *State v. Dobson*, 281 S.C. 36, 37 (S.C. 1984). The court determined that evidence existed as to whether the accident that caused the death was caused by mechanical failure of the vehicle; specifically the locking of Dobson's left front wheel, instead of his recklessness was the proximate cause of the accident. *Id.*

In this case, the Appellant has confidence the State could not have proven the elements of Felony DUI without introducing forbidden evidence instead of conducting a momentum study to prove whether the State erred and did not meet their circumstantial evidence test to disprove that no other collision resulted in the deaths of the Neeley other than the first collision involving Mr. Taylor and not the second collision, the actual intervening cause without the momentum study. Whether an automobile accident was caused by defendant motorist's excessive speed, or was caused by plaintiff motorist's decision to turn left in front of defendant motorist's oncoming vehicle, or was caused by the acts of both motorists, presented questions for the jury. *Clark v. Cantrell*, 339 S.C. 369, 381, 529 S.E.2d 528, 534 (S.C. 2000). The State erred in presenting to

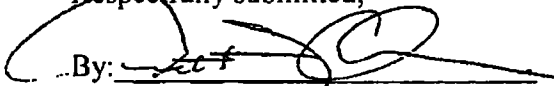
the court evidence of which collision potentially caused the deaths of the Neeleys without a momentum study that did not allow the jury access to the complete set of facts nor evidence to properly decide the questions presented.

The State erred in presenting testimony on matters agreed that would not be presented as evidence in a court of law. Additionally, the error committed by the State and affirmed by the circuit court judge was not harmless. Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it "could not reasonably have affected the result of the trial." *State v. Mitchell*, 286 S.C. 572, 573 (quoting *State v. Key*, 256 S.C. 90, 180 S.E.2d 888 (1971)) (S.C. 1985). During jury instruction, Judge Goodstein declared to the jury three findings they may have concluded in the case against Mr. Jimmy Taylor. The judge instructed the jury to either find Mr. Jimmy Taylor not guilty, guilty of simple DUI, or guilty of three counts of Felony DUI Death under the statute. In this case, a momentum study would have allowed the circuit court and jury to have all of the facts presented would have disproved the State's case beyond a reasonable doubt against Mr. Jimmy Taylor as to the three counts of Felony DUI Death and present to the court a different verdict. Thus, the Appellant maintains that this error of introducing evidence of which collision caused the deaths of the Neeley family without a preparation of a momentum study did, in fact, reasonably affect the results of the Mr. Jimmy Taylor's trial.

CONCLUSION

For the foregoing reasons, the Appellant, Jimmy Taylor respectfully requests that the South Carolina Court of Appeals reverse the judgment of the circuit court and remand with an order of a new trial for Mr. Jimmy Taylor on the three charges of Felony DUI Death.

Respectfully submitted,

By: 

Everett K. Chandler
Post Office Box 2391
Aiken, South Carolina 29802
(803) 644-5335
Attorney for Appellant

April 30, 2008

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from ORANGEBURG COUNTY
The Honorable Diane S. Goodstein, Circuit Court Judge
2005-GS-38-2141, 2142, 2143

STATE OF SOUTH CAROLINA,

RESPONDENT,

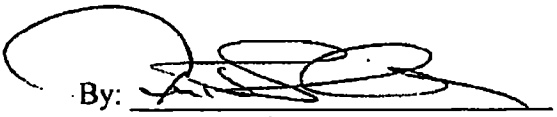
v.

JIMMY R. TAYLOR,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Appellant
complies with Rule 211 (b), SCACR.

By: 

Everett K. Chandler
Post Office Box 2391
Aiken, SC 29802
(803)-644-5335
Attorney for Appellant

April 30, 2008

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from ORANGEBURG COUNTY
The Honorable Diane S. Goodstein, Circuit Court Judge
2005-GS-38-2141, 2142, 2143

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JIMMY R. TAYLOR,

APPELLANT.

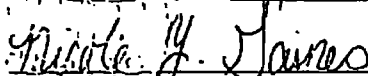
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that two copies of the Final Brief of Appellant and Certificate of Counsel in the above referenced case has been served upon The Honorable Christina J. Catoe, Assistant Attorney General, Post Office Box 11549, Columbia, South Carolina, 29211, this 30th day of April, 2008.



Everett K. Chandler
Post Office Box 2391
Aiken, SC 29802
(803)-644-5335
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me:

This 30th day of April, 2008

Notary Public for South Carolina

My Commission Expires: February 27th, 2016

564
THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jimmy R. Taylor, Appellant.

Appeal From Orangeburg County
Diane S. Goodstein, Circuit Court Judge

Unpublished Opinion No. 2009-UP-148
Submitted March 2, 2009 – Filed March 30, 2009

AFFIRMED

Everett K. Chandler, of Aiken, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, Assistant Attorney General Christina
J. Catoe, all of Columbia; and Solicitor David M. Pascoe, of
Orangeburg, for Respondent.

PER CURIAM: Jimmy R. Taylor appeals his conviction for felony driving under the influence. Taylor alleges the trial court erred in admitting the testimony of the State's expert witness after the State allegedly violated a pre-trial agreement concerning the subject of the expert testimony. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Jamison, 372 S.C. 649, 652, 643 S.E.2d 700, 701 (Ct. App. 2007) ("The qualification of a witness as an expert and the admissibility of his or her testimony are matters left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of that discretion and prejudice to the opposing party."); State v. Johnson, 306 S.C. 119, 127-28, 410 S.E.2d 547, 552-53 (1991) (holding there is no reversible error where the defendant fails to demonstrate prejudice resulting from the violation of a pre-trial agreement with the solicitor and the solicitor attempts in good faith to comply with the agreement).

AFFIRMED.[1]

HEARN, C.J., PIEPER and LOCKEMY, concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

2011-CP-38-00766

STATE OF SOUTH CAROLINA)

County of)

Orangeburg, SC)

Jimmy Taylor 321636)

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

2011 JUN 27 A 11:11
 FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC

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 South Carolina Department of Corrections (L.C.I./Stono A-53, P.O. Box 205, Ridgeville, SC 29472)
2. Name and location of Court which imposed sentence General Session Court, Orangeburg, SC
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 06 GS 38-2141 Felony DUI involving death
 - (b) 06 GS 38-2142 Felony DUI involving death

ATTEST: TRUE COPY

Winnie B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

- (c) 05 GS 38-2143 Felony DWI Involving death; This is possible error, there is no guilty plea of record
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 04, 2007 20 years concurrent
- (b) May 04, 2007 20 years concurrent
- (c) May 04, 2007 20 years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes, judgment of conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appellate Court of S.C.
- ii. Writ of Certiorari to the Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction - affirmed
- ii. Writ of Certiorari to the Supreme Court of S.C. Denied
- iii. _____
- (c) the date of each such result:
- i. Court of Appeals Opinion Filed March 30, 2009
- ii. Writ of Certiorari Denied Nov. 2010
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Jamison, 372 S.L. 649, 652, 643 S.E.2d 700, 701 (Ct.App. 2007)
- ii. State v. Johnson, 306 S.L. 119, 127-28, 410 S.E.2d 547, 552-53 (1991)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) allowed to go to trial without effective assistance of counsel
 (b) were not allowed to enjoy the rights of a fair trial before an impartial jury.
 (c) did not invoke the adversarial testing process.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) various witnesses not call, not competently prepared, made noncontractual agreement.
 (b) Jurors not tested for prejudice or biases; witness seat manipulated.
 (c) performance of attorney during opening statement, on examinations & closing argument is below reasonable standard.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: If any ground existed that could have been presented and has not; because of lack of constitutional representation
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of: Correction → an attorney were on record yes
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you: Correction → attorney of record
- i. C. Bradley Hutto
Williams & Williams, P.O. Box 1084, Orangeburg, SC. 29116
- ii. John Mobley, 925 Calhoun St., Columbia, SC. 29201
Everett Chandler, P.O. Box 2351, Aiken, SC. 29801
- iii. Tara Dawn Shurling, 3614 Landmark Dr., Suite D,
Columbia, SC. 29204
- (b) the proceedings at which each such attorney represented you: Correction → attorney of record
- i. Bond arraignment + preliminary hearing + pretrial (Hutto)
- ii. (Mobley) Pre trial (Chandler) trial + direct appeal
- iii. (Shurling) reconsideration + writ of certiorari

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

vacating and setting aside this unconstitutional conviction

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

NO

STATE OF SOUTH CAROLINA)

County of Orangeburg, SC.)

VERIFICATION

I, Jimmy D. Taylor, 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.

affirmed

SWORN to and subscribed before me this 20th day of June, 2011.

Stella Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

I, Jim D. Saylor, 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.

Jim D. Saylor
Applicant

SWORN or affirmed to and subscribed before me this
20th day of June, 2011.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF South Carolina
 County of Orangeburg, SC.
 Jimmy Taylor # 321636

v.

State of South Carolina

2011-CP-38-00766
 In The Court of Common Pleas

Motion To Amend In Part
 Post Conviction Relief
 Application Questions
 10-11

2011 DEC - 7 AM 9:43

Post-Conviction Relief Application filed June 27, 2011
 at 11:12 AM is hereby requesting the amend-in-part
 pertaining to questions 10-11 as follows.

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

Counsel was ineffective for not subpoenaing witness
 as requested by defendant. Witness #7 would have testified
 that I (the defendant) were seen out of the vehicle and
 walking prior to any emergency responders arrival
 and that she witnessed the Glover's vehicle swerve to
 the right striking the car or colliding with the car.
 Witness #1 also would have testified that she called
 911 and were assisted by another traveler coming from
 the east side of the accidents describing what were
 witnessed at the scene.

These two witnesses would have discredited the
 state's witnesses as to what actions they actually
 took upon arriving at the scene, such as, the responders
 reported that they in approaching the SUV driven by
 Jimmy Taylor and while removing him from his
 vehicle a strong odor of alcohol was smelled. Their COPY
 testimony created a false image of this driver being
 drunk (intoxicated).

CLERK OF COURT
 ORANGEBURG COUNTY, SC

This fabricated statement by South Carolina's finest created a false image that persisted throughout their investigation and the county's prosecution.

shall counsel had conducted the affairs for his client according to the U.S.C.A. Constitution, Amendments 6, 14; S.C. Code of Law Art. 1, 14 than these witnesses would have been present and testified contradicting the county's emergency responders testimonys.

Coroner's testimony was not substantiated with any outside statements, no documentation presented to validate his testimony. Prior to cross-examination of coroner, statements and documentation should be made available for counsel's review, to effectively implement the truth seeking method technique to ascertain the truth of the matter.

Counsel did not establish whether or not vitto fluids were withdrawn prior to moving the bodies from the wreckage. No diagrams or sketches were prepared for neither deceased specifying injuries and types etc...

Bodies were released from morgue without coroner's consent (authorization) by an own duty security guard, so claimed. Before the funeral directors were informed to return the bodies, the embalming process had begun.

No documentation of medication present taken by deceased or on their person, not any itemization of any personal affects recorded on or about their person.

Anne Nealey is pictured with her upper torso protruding through the windshield with her head on the hood.

The credibility of the responders are not reliable and counsel could have shown no reason other than to disfigure the front end of the vehicle as much as possible for there is no reasonable necessity to have removed the hood in order to remove the deceased which, were inside the vehicle.

Cotoner's duty also is to determine who the drivers are, who the passengers are; rather, front or rear, left or right. The cotoner's testimony pertaining to the positions of the occupants in the Neeley's vehicle were not subjected to the adversarial testing (truth finding).

Matt Neeley which were proclaimed as the driver of the Neeley's vehicle is also documented as mentally challenged. Even though probable, but highly unlikely, that two elderly persons would have consented to such behavior or action by their son at such high speed to attend a county fair, and mean while remain unrestrained. Not just shoulder harness but also lap belt or (seat belt).

Jurors were deprived of all this pertinent information, data/evidence. By counsel not requesting, demanding or finding it needful, for surely, Jurors to have had access to all the above knowledge (evidence) there is reasonable probability that the verdict may have been different.

Jessie Glover testified that he was driving their vehicle, but according to _____, injuries received by Gloria is consistent with Gloria being the driver. At one point Jessie mentioned the phrase (when I woke up) the assistant solicitor immediately cover that up without any objections from counsel.

Documentation show that Gloria Glover on two previous occasions has attempted suicide; in fact Gloria was placed on suicide watch that night.

Ineffective assistance of counsel of a grave magnitude was the decision to proceed to trial without a reconstructionist available without the consent of his client of whom life and liberty was entrusted to his ability of getting the truth heard.

Counsel failed to address yet another grave question. An SUV traveling 59 mph 5 seconds before a triggering event, reduced to 47 mph / second before the triggering event; no signs of applying brakes nor signs of friction

from vehicle revolving 80°-90° in order to receive a (tee-bone) strike which generally happens at intersections etc... For Counsel allowed the state to paint a false image of a head on collision.

Corporal Pearson, speaking confidently and adamantly that the magnitude of the impact were so great (severe) that it knocked the battery out of the slot. As you can see, the battery is in place and connected to the posts.

IE } This is testimony (evidence) that counsel should have extracted from State's witnesses in front of the jurors by way of adversarial testing (The Truth Seeking Process). With this knowledge before the fact finders, than yes, it is reasonable to say that, the verdict of the jury may have been different.

1a/b) Defendant were not allowed to enjoy the rights of a fair trial before an impartial jury.

This incident involved 5 caucasians and 1 African American, a (Blackman). Three caucasians died, 2 elderly couples most recently married living out their final years in their golden years of life and a son mentally challenged which is claimed to have been driving.

This Blackman, the accused of violating the Code of Laws in the State of S.C., and in so doing caused 3 deaths (Caucasians). It is absolutely essential imperative to ensure that all possible prejudices and or biases is addressed and if found, removed eliminated.

Counsel was ineffective for not ensuring that his client were before an impartial jury. Of the minorities that were jurors, were they stable enough not to have been persuaded by the pressure or (biases/prejudices)? Counsel should have ensured that these extremes were remedied.

Counsel informed defendant that he and assistant solicitor Jefferies agreed in Judges chamber on the record that the state would not call an expert

to testify in order to bifurcate which accident killed the Neely's. Counsel consented to go to trial rather than establishing grounds for a continuance. Even though Judge Goodstein had assured counsel that defendant was using this ploy of hiring and changing attorneys when it became known that his case would be called for next upcoming session. Request for a reconstructionist has been requested for each previous attorney of record, including the hired appellate Attorney.

Counsel were ineffective to have consented to go to trial at that time without expert consultation for defense. Its some three years later, in the mist of a direct appeal that it were discovered that counsel did not take proper precautions to have preserved the issue for review.

Counsel were ineffective at trial and at the Appellate Level for not properly preserving the agreement (arrangements) with the Prosecutors Office. And but for lack of professionalism for not having present a reconstructionist which would have contradicted (rebutted) the state's expert witness and their theory. There is reasonable probability the jury's verdict may have been different. Without strategic measures taken an egregious miscarriage of justice resulted which also persisted at the Appellate Level for yet lack of professionalism. Even shall proper measures had been taken to have preserved the issue for review at the appellate Court this egregious miscarriage of justice may have been remedied.

Fundamentally, Mr. Taylor did not have a fair trial as demanded by the U.S.C.A. Constitution, Amendments 6, 14; The South Carolina Code of Law Annotated

Desiring to tell my story (testify), defendant were not given the opportunity to have spoken freely in his own words to the tribunal. The jurors heard only responses to questions asked by state prosecutors and by defense counsel. This method restricted the defendant from sharing his story.

The testimony seat were locked in place to prohibit the defendant from speaking with the jurors. The state's witnesses had free reign of movement and the ability to be expressive.

It is obvious that counsel were vigilante and attentive for prior to me taking the witness stand a lady approached the witness from the left and she literally tapped with the seat. I knew not what were happening during those moments, but after taking the witness stand it became obvious because movement were restricted and it affected my testimony (the ability to speak persuasively). Counsel did not afford his client these latitudes during testimony. The state dominated the trial because of counsel's legal preparation, knowledge of the magnitude of the charges and the many inconsistencies in the State's Investigation and witness testimony. In essence, this war were murderous. To have allowed Mr. Taylor to have testified with the manipulations from the state (county officials) contributed to jurors testimony as noncredible. With counsel's proper preparation and vigilance to have witness the prejudices of trial Mr. Taylor would have been able to speak freely.

Counsel were ineffective for not pursuing evidence pertaining to 911 calls documentation and their improper procedures followed for that night.

Counsel's investigation would have substantiated calls made by pertinent persons at specific times.

For clearly, there are major discrepancies with the 911 facilities in the Orangeburg, Bamberg County.

The "Public safety answering point" (PSAP) with an "Enhanced 911 system capabilities, per system requirements, 23-47-20, 1996 Act No 459 section 50; for such time as this, not being able to account for calls made which Counsel did not hold accountable to establish the inefficiency of the PSAP's operations made known to the fact finders. Silence prevented noncredible testimony by client.

Should Counsel had performed his duties reasonably in establishing the fact that the calls were made or made known of the supposed mishap, would have prevented a question for the jurors in regards to the state's witness credibility and their continued intent to prosecute.

Counsel did not object to the reading of an indictment by Judge Goodstein stating that the indictment had been sent to me. This is a grave constitutional error for the state not to have presented the indictment in the appropriate statutory manner, and yet more so for Counsel not to have corrected this grave constitutional error which violated all safeguards that the Constitution preserves. If Jimmy Taylor were tried unconstitutionally which makes this conviction unconstitutional and Counsel were unprofessional in his doings.

10.c) Counsel did not invoke the adversarial testing process, the preferred method for ascertaining the truth.

Counsel's performance in opening statement consenting to his client's crossing the center-line being struck by the Neeleys, Counsel conceded Counsel also agreed with the Judge and the solicitor in stating how short this trial is going to be and we will not be holding you long.

Even during examinations, questions were quick, less adversarial and apologetic for appearing to be delaying of time. Counsel even commented to a bad judgment that Mr. Taylor may have exercised that night.

In the examination of witnesses in search for the truth pertaining to Blood Alcohol Concentration (BAC) measurements, Authoritative sources reveals that the matter is not so simple or certain. Adversarial testing and the search for truth should have included questions relating to the gas chromatography system, quantitative analyses, the analyst awareness of and what to adhere to, what is good analytical practices and understanding what is being done and why. Errors that occur in any step can invalidate the best chromatographic analysis, so attention must be paid to all steps.

Through this search for truth, jurors would have been informed that 93% of errors in laboratory tests for BAC levels are human errors that occur either before or after machines analyze samples.

Jurors knowing the fallibility of these experts is reasonably probable that the jury's verdict may have been different.

Were Regina Guinyard Licensed and authorized to draw Jimmy Taylor's blood on October 21, 2005?

Did Corporal Pearson violate Mr. Taylor's constitutional rights by deceitful and unlawfully invading his person? Mr. Taylor was not charged, not arrested, not informed why he were being questioned, or why it was necessary that his body be invaded.

The position of Matt Neeley's body in the vehicle which is stated by LT. Dixon as being the driver, the jurors needed to hear that his resting place were in between the seats, feet in the back seat, laying on his back looking up.

Jurors needed to know that the dash board, fire wall, engine not radiator were pushed back. For such a frontal impact as the image created, this is virtually impossible.

Counsel, what happened to the fourth car that is reported to have been in this accident?

Counsel's ineffectiveness in the truth seeking process denied the jurors of facts that are reasonably probable that it's verdict would have been different.

Closing arguments of prosecutor were not objected to by counsel when solicitor violated the defendant's rights to his choice of representation rather it is one attorney of record or several attorneys of record. Belittling, demeaning, and distorting the facts; Mr. Taylor is entitled to be represented by his choice of counsel if he can afford it! Neither counsel of record were appointed.

By counsel not objecting, jurors were lead to believe that defendant were running from lawyer to lawyer looking for a way out. Taylor's true search were for an advocate. Solicitor went on to state that the defense presented were like shooting a shotgun hoping to hit something. This is prosecutorial misconduct and these remarks were so unprofessional and unethical, having lasting effects upon the jurors. The trial is rendered fundamentally unfair, the prejudicial affect is non curable. And counsel witnessed this and tolerated.

The relief sought in this motion To Amend In Part is the vacating and setting aside this unconstitutional conviction.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2011-CP-38-0766
	)	
Jimmy Taylor, #321636,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 27, 2011,¹ 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 Orangeburg County Clerk of Court. The Applicant was indicted for three counts of Felony DUI Resulting in Death (2005-GS-38-2141, 2142, & 2143). Everett Chandler, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. Applicant was found guilty, and on May 4, 2007, Applicant was sentenced to concurrent terms of twenty years each.

A notice of appeal was filed and an appeal perfected. The Court of Appeals affirmed Applicant's convictions and sentences. State v. Taylor, Op. No. 2009-UP-148 (S.C. Ct. App. filed March 20, 2009). Applicant's Petition for Rehearing was denied on June 29, 2009. The

¹ The application was received by Respondent on January 11, 2012.

South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on September 2, 2010, and the Remittitur was sent on September 22, 2010.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial 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.
 - a. "Various witnesses not call; not competently prepared; made noncontractual agreement."
2. "Were not allowed to enjoyed the rights of a fair trial before an impartial jury."
 - a. "Jurors not tested for prejudice or biases; witness seat manipulated."
3. "Did not invoke the adversarial testing process."
 - a. "Performance of attorney during opening statement, on examinations, + closing argument is below reasonable standard."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

For purposes of this return, all allegations are interpreted as allegation of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the

Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

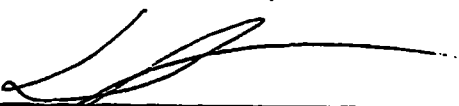
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

April 12, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS)

2011-CP-38-0766)

JIMMY TAYLOR, 321636,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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

W. Scott Palmer, Esquire
W. Scott Palmer Attorney at Law
8818 Old #6 Highway
Santee, SC 29142

DATED this 12th day of April, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2011-CP-38-00766

3
4 JIMMY R. TAYLOR,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Wednesday, May 22, 2013

11 in Orangeburg, South Carolina

12
13 BEFORE:

THE HONORABLE EDGAR W. DICKSON

14
15
16
17 APPEARANCES:

Counsel on Behalf of the Applicant:
18 W. Scott Palmer, Esq.

19
Counsel on Behalf of the Respondent, State of SC:
20 Walt Whitmire, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
P O Box 5232
24 Aiken, SC 29803-5232
25

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1 ON WEDNESDAY, MAY 22, 2013 AT 11:20 A.M.:

2 MR. WHITMIRE: Jimmy Taylor.

3 THE COURT: Mr. Whitmire?

4 MR. WHITMIRE: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. WHITMIRE: The State calls Jimmy Taylor V State of
7 South Carolina, 2011-CP-38-766.

8 Mr. Taylor is presently confined to the Department of
9 Corrections pursuant to orders of commitment from the
10 Orangeburg County Clerk of Court. Mr. Taylor was indicted
11 on three counts of felony DUI resulting in death.

12 Everett Chandler represented Mr. Taylor. Mr. Taylor
13 proceeded to a jury trial before the Honorable Judge
14 (verbatim) Goodstein. Was found guilty on May 4, 2007.
15 Judge Goodstein sentenced Mr. Taylor to 20 years -- three
16 terms of 20 years imprisonment to run concurrently.

17 Notice of appeal was filed by Mr. Chandler. The Court
18 of Appeals affirmed his conviction, State V Taylor opinion
19 2009-UP-148.

20 Mr. Taylor filed a petition for rehearing which was
21 denied June 29th, 2009. Subsequently Mr. Taylor filed a
22 writ of cert with the Supreme Court which was denied
23 September 22nd, 2010.

24 Mr. Taylor filed his application for post-conviction
25 relief July 27th, 2011. The State filed its return April

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 12th, 2012.

2 At this time Mr. Taylor is present represented by
3 counsel. At this time the State turns the matter over to
4 counsel and asks that Mr. Taylor put his allegations on
5 the record that he's proceeding on today.

6 THE COURT: Mr. Palmer.

7 MR. PALMER: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 MR. PALMER: Call Mr. Jimmy Taylor.

11 THE COURT: Mr. Taylor, if you'd come forward, please,
12 sir. If you would, put your left hand on the Bible and
13 raise your right hand so I can swear you in.

14 THE APPLICANT: Put my left hand on the Bible, and
15 raise my right hand.

16 THE COURT: As well as you can. Okay.

17 JIMMY R. TAYLOR, having been duly sworn, was examined
18 and testified as follows:

19 THE APPLICANT: I confirm to tell the truth.

20 THE COURT: Okay. That's just as well. Thank you,
21 sir. Okay.

22 All right. Mr. Palmer?

23 MR. PALMER: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

DIRECT EXAMINATION

BY MR. PALMER:

Q. Are you Jimmy Taylor?

A. I am Jimmy R. Taylor.

Q. And you're presently confined at Lieber Correctional Institution?

A. I am.

Q. Mr. Taylor, you filed a PCR application as has been noted by the State. I want to go over that application with you. I want to first talk about this jury trial that you had in 2007.

You were represented at that trial by Mr. Everett Chandler?

A. Correct.

Q. And at the time, was Mr. Chandler hired by you or was he appointed?

A. He was hired.

Q. Okay. And when the case went to trial, and I believe that was in May of 2007 --

A. Correct.

Q. -- or maybe late April, how long had Mr. Chandler been your attorney in this case?

A. About two weeks.

Q. Two weeks. Had you had any other attorneys prior to Mr. Chandler?

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 A. Two.

2 Q. Okay. And why did you feel it was necessary to
3 disengage those attorneys and go with Mr. Chandler?

4 A. They each recommend for me to plead. The first
5 couldn't tell me where the accident happened at. The
6 response was, what difference does it matter. He couldn't
7 tell me where the accident happened at, he could not
8 advise me to plea. The second attorney did likewise.

9 And each were hired, neither were appointed.

10 Q. And just to put your testimony in perspective for the
11 Court, this is a felony DUI case?

12 A. That's what it's called, right.

13 Q. At that time you were alleged to have caused the death
14 of three individuals who were riding in the same car as a
15 result of your being impaired due to a blood-alcohol
16 level; is that correct?

17 A. That's what they're saying.

18 Q. I mean, that's what the case was about. It was a DUI
19 case?

20 A. Right, right.

21 Q. Unfortunate accident. But it was sort of a twist to
22 this case; wasn't it?

23 A. Twist meaning?

24 Q. There was some unusual facts in this particular case.

25 A. Several.

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 Q. And tell us about your understanding of what those
2 facts were.

3 A. The State stated that upon arrival that I was pulled
4 from the car.

5 Q. Well, let's back up a minute.

6 A. Okay.

7 Q. You were driving your vehicle by yourself?

8 A. Correct.

9 Q. And on what roadway was that?

10 A. Highway 70.

11 Q. Okay.

12 A. Traveling west.

13 Q. And there was an accident?

14 A. Correct.

15 Q. And you were accused of crossing the center line and
16 impacting a car coming the other way in the opposite lane
17 with, was it three individuals?

18 A. That was in the vehicle?

19 Q. Yes.

20 A. So they're saying, right.

21 Q. Right, right. And then, and then after the impact
22 with your vehicle, then it was alleged another vehicle
23 coming from the opposite direction ran into that car that
24 was in the middle of the road?

25 A. Right.

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 Q. So what was the controversy there?

2 A. It shows that the vehicle that I was driving was
3 travel at 57, 59 miles per hour five seconds before a
4 triggering event. Four seconds later the vehicle was
5 traveling 47 miles per hour, but there are no skid marks
6 where you had to hit on brakes to decrease 12 miles per
7 hour from 57 (verbatim) to 47.

8 Q. So but --

9 A. And the vehicle was traveling east to west, the
10 vehicle --

11 Q. Basically --

12 A. -- the vehicle that was hit.

13 Q. -- wasn't there some question as to which collision
14 had caused the fatalities, whether it was the one with
15 your car or the second car that came along? Wasn't that
16 the big issue?

17 A. The question -- that is the question.

18 Q. Right. And that was -- those issues were brought up
19 at trial and litigated; correct?

20 A. I'm not under the impression -- I'm not at liberty to
21 state that it was litigated because if it would have been
22 litigated then there are other facts that would have come
23 out that would have denounced what the State was saying.

24 Q. Okay. Now getting back to your representation. You
25 first had, let's say, attorney A. And you became

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 dissatisfied with your first attorney. And your testimony
2 is that that attorney had recommended that you plead
3 guilty --

4 A. Correct.

5 Q. -- is that correct?

6 A. (Nods head.)

7 Q. And was there a specific term of punishment that had
8 gone along with that recommendation?

9 A. Ten years.

10 Q. Okay. And then so you disengaged that attorney and
11 you hired attorney number two?

12 A. Correct.

13 Q. And how long did attorney number two represent you?

14 A. About eight months.

15 Q. Okay. And at some point you decided to fire that
16 attorney. That was Mr. Mobley?

17 A. Correct.

18 Q. And what was the reason you fired Mr. Mobley?

19 A. He did no investigation, as the previous attorney had
20 did no investigation. And whatever recommendations that
21 each of them offered were not based upon their previous
22 investigation which made their recommendation invalid.

23 Q. Okay. Now what I want to know is when you decided to
24 not go with Mr. Mobley anymore and hire Mr. Chandler, were
25 you informed that the case was going to be called for

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 trial?

2 A. It was suspected that it may be. He did not state
3 definitely. And based upon what he thought, then he's --
4 made the suggestion that I should go with the offer that
5 were on the table.

6 Q. Okay. And was it the same offer that you had with
7 your first attorneys?

8 A. Yes, it was.

9 Q. Ten years?

10 A. Well, I'm not at liberty to state that. Just the
11 offer.

12 Q. Okay.

13 A. For the offer, yeah.

14 Q. So for whatever the offer was, you found it
15 unacceptable?

16 A. Definitely.

17 Q. And why did you find it unacceptable, sir?

18 A. It had been stated that there were no witnesses at
19 that scene, and when the responders arrived that they
20 pulled me out of the car.

21 I have been aware of the fact, or I know for a fact
22 that I exited the car myself. And while leaving the car
23 there was a person that was standing on the side of the
24 highway in front of the vehicle with the headlights on and
25 the inside lights on.

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 Q. Okay.

2 A. And a lady spoke to me.

3 Q. Can I stop you a second, sir? We'll get into some
4 detail about the facts in a minute.

5 A. Okay.

6 Q. What I want to do is just sort of establish a
7 procedural history. So you had -- you were on your third
8 attorney. Had you indicated to any of these attorneys
9 that you would agree to plead guilty under any
10 circumstances?

11 A. None.

12 Q. Okay. So when you retained Mr. Chandler, I assume
13 that you were out on bail. You were able to meet with
14 him?

15 A. Right.

16 Q. And you said that he represented you for two weeks
17 before the case went to trial?

18 A. Approximately.

19 Q. And at what point during that two weeks did you find
20 out that you had a trial coming up?

21 A. Either the Thursday or that Friday before. It was, it
22 was the preceding week. When we went to his office to
23 speak with him, he even went and called here, I presume,
24 and asked was the case scheduled for hearing. And he came
25 back and said it was not on the docket, not even for that

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 upcoming session. But the following week we're going to
2 court.

3 Q. Now he told you that the following week you're going
4 to court?

5 A. Okay. When we went to his office to speak with him,
6 he left us in the office, went and made a phone call to
7 confirm whether or not the case was being called for the
8 upcoming session. When he returned we were informed that
9 it was not on the docket to be called for trial.

10 But now the following week then we were informed that
11 it's scheduled for trial, was being called for trial.

12 Q. Okay. At that point when you got that news, how much
13 time did you have before the trial was going to start?

14 A. Six, seven days.

15 Q. Okay. And did you think that was sufficient?

16 A. No, sir.

17 Q. Did you discuss that with Mr. Chandler?

18 A. Definitely.

19 Q. What did you or he or both of you decide to do?

20 A. Request a continuance.

21 Q. Okay. And why did you think that the case needed to
22 be continued?

23 A. Mr. Chandler was just being called on to the case and
24 it would require him to do some investigative work for
25 some things that had come to our attention that had

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 happened that no one else was speaking of.

2 Q. Okay. And, specifically, what kind of investigative
3 efforts did you expect or want him to do?

4 A. One of the most important ones would have been: Who
5 made that 9-1-1 call? Who was the family? Who was the
6 family and the person that was standing abreast my vehicle
7 as I was crawling out that spoke to me and informed me to
8 lie down and be still?

9 Q. Okay.

10 A. That's very -- okay.

11 Q. So do you know at that point if either -- if any of
12 your attorneys had made an effort to obtain that
13 information, that information about the 9-1-1 calls,
14 whether it be recordings or transcripts?

15 A. Not sufficiently.

16 Q. Okay. And when this case went to trial, how long had
17 it been between this traffic collision that you were
18 involved in and when the case went to trial? I mean, how
19 long was the case pending?

20 A. About 18 months.

21 Q. Okay. And during that 18 months you're saying that no
22 one had made any effort to get to the bottom of this 9-1-1
23 call?

24 A. Attorney Palmer, here it is 2013 and I'm still
25 striving to collect the data.

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 Q. Was the issue of the 9-1-1 call brought up at trial?

2 A. I do not recall it even being mentioned, none.

3 Q. Okay. Now, you would agree that this was a felony DUI
4 case which means that one of the issues was whether or not
5 you had a blood-alcohol level; is that correct?

6 A. Say that again, sir.

7 Q. This was a DUI case.

8 A. Okay.

9 Q. One of the issues was alcohol; correct?

10 A. Correct.

11 Q. Now, following this collision were you tested either
12 by a breath machine or a blood draw for any kind of
13 alcohol content, a B-A level?

14 A. It was a blood draw that were compelled for me to
15 give.

16 Q. And were you provided the results of that blood draw?
17 I assume it was tested in some laboratory?

18 A. At some point down the road; correct.

19 Q. And which of your attorneys obtained those results for
20 you?

21 A. Attorney A.

22 Q. Okay. So you had that evidence when you first met
23 with Mr. Chandler?

24 A. Correct.

25 Q. I mean, you had knowledge of it at least; correct?

APPLICANT JIMMY R TAYLOR - DIRECT BY PALMER

1 A. Right.

2 Q. And so did you discuss this issue of blood-alcohol
3 with Mr. Chandler? And if you did, what was the substance
4 of the discussion?

5 A. That he has experience with instructing law
6 enforcement how to do such-and-such and he can handle that
7 and take care of that.

8 Q. Okay.

9 A. Now, he -- something to that effect.

10 Q. Did he indicate to you that he had experience and
11 expertise with DUI cases?

12 A. I'm more at liberty to state dealing with BAC,
13 alcohol --

14 Q. Blood-alcohol content?

15 A. Right, yeah. I'm more at liberty to state it from
16 that perspective.

17 Q. All right. And did you and Mr. Chandler as you
18 prepared for this trial discuss that as an issue in this,
19 that was going to be an issue in the case?

20 A. It was made known that I was not intoxicated.

21 Q. Is that something you told him?

22 A. Yes, sir.

23 Q. And did you ask him to challenge the State's evidence
24 in that regard?

25 A. Since we knew that it was a DUI case, then it had to

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1 be challenged.

2 Q. Okay.

3 A. I was not intoxicated.

4 Q. But my question, sir, is -- I understand your
5 position.

6 A. Uh-huh.

7 Q. And you maintain that position. But my question is:
8 With regard to you and Mr. Chandler preparing for this
9 trial that's coming up, you say, in a matter of days, did
10 you specifically discuss a strategy or a plan to challenge
11 the State's evidence with regard to BAC?

12 A. With my lack of knowledge of the law at that
13 particular time, even if it would have been discussed
14 whether or not I would have comprehended or understood it,
15 that would have been another whole different story.

16 Q. Did you have an understanding, either from
17 Mr. Chandler or some other source, that the State was
18 going to call a toxicologist at trial to present evidence
19 of your blood-alcohol content?

20 A. No.

21 Q. You didn't know that?

22 A. No.

23 Q. Did you and Mr. Chandler discuss the prospects of
24 retaining your own expert, your own chemist or -- a blood
25 chemist or toxicologist, to examine and/or challenge the

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1 State's evidence at trial?

2 A. No.

3 Q. Did you and Mr. Chandler discuss the prospect of
4 talking with and/or retaining an accident
5 reconstructionist to challenge the State's evidence at
6 trial?

7 A. No.

8 Q. Well, if you did discuss the trial strategy, if you
9 want to call it that, with Mr. Chandler, what was the
10 substance of your discussion? I mean, what did you plan
11 to do to defend yourself at trial?

12 A. It was requested to have a reconstructionist.

13 Q. Now you're talking in the past tense. Did you request
14 that?

15 A. Yes.

16 Q. So you asked --

17 A. That was required. That was required from day one to
18 have this, this accident reconstructed, period. There was
19 no wavering from it. None whatsoever, with neither
20 attorney, from A, B, to C. Neither one. That was
21 required.

22 Q. I'm not, I'm not really following you. Are you saying
23 that you asked your attorney to consult with a
24 reconstruction expert?

25 A. Yes, sir.

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1 Q. Okay. And that was in the days before you went to
2 trial?

3 A. Yes, sir.

4 Q. And do you know if he ever did that?

5 A. No.

6 Q. Do you know if any of your previous attorneys had
7 talked with, retained, consulted with, or otherwise had
8 any dealings with an accident reconstruction expert?

9 A. No, sir.

10 Q. Okay. You don't have any knowledge of any effort made
11 by either of your previous attorneys?

12 A. Now attorney B sought an engineer that viewed data
13 that was taken from the black box to see if it was
14 consistent with the vehicle being struck by another
15 vehicle while it was parked. Well, that made a lot of
16 sense.

17 Q. Okay. And did you and Mr. Chandler discuss some
18 alternate reason that your car may have lost control that
19 night other than your impairment?

20 A. Yes, we did.

21 Q. And what was that reason?

22 A. A simple blowout. It was a blowout, and it was an
23 accident.

24 Q. Did you tell him when you hired him and you discussed
25 the case that you had a blowout or you thought you might

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1 have had a blowout.

2 A. I did not use those terms in order to describe the
3 accident as such. The term that I used was to describe
4 what I experienced.

5 Now, whatever inference or assumption that was taken
6 from what was stated from what I experienced, that's a
7 different thing. Are we on the same page?

8 Q. Yes. So when you went to trial, was this issue of a
9 blowout presented as part of your defense?

10 A. That's the way the solicitor stated it that it was.

11 Q. Okay. And what about your lawyer, did he talk
12 about -- either to any witnesses or to the Court or to the
13 jury about a blown-out tire being part of this case?

14 A. Yes, sir.

15 Q. And at the time you went to trial, did you have any
16 evidence to substantiate that?

17 A. At the time in which we were forced to go to trial,
18 the evidence were not there because of lack of
19 investigative work.

20 Q. Okay. Now as far as witnesses did you testify at your
21 trial?

22 A. Did I?

23 Q. Yes.

24 A. I testified, yes.

25 Q. And was that something that you did intelligently,

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1 knowingly, and voluntarily?

2 A. I did that intelligently, knowingly and voluntarily
3 believing that I would be able to speak without being
4 directed to questions just asked by the prosecutor or
5 questions just asked by the defense attorney, and only
6 thing that was presented was what they wanted to hear.

7 Q. Okay. Now what about other witnesses, were you -- did
8 you make Mr. Chandler aware of any witnesses that you
9 thought would be important to the case, besides yourself?

10 A. Yes, we did.

11 Q. And, were those witnesses called and were present at
12 trial?

13 A. One witness was called that was present. Another
14 witness was present and was not called. And another
15 witness that was suggested and recommended to be
16 subpoenaed to be present, we were shown a document that
17 the person was subpoenaed but didn't show up. Come to
18 find out the person was not subpoenaed.

19 Q. And which person was that?

20 A. Bridgette Glover.

21 Q. Bridgette Glover. Now, was Bridgette Glover an
22 eyewitness to the accident?

23 A. She was an eyewitness to the second, second vehicle
24 coming through which struck the victim's, the victim's
25 vehicle.

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1 Q. Okay.

2 A. She was a witness to the Glovers striking the Neeley's
3 vehicle. She was directly behind the Glovers.

4 Q. Okay. And that's the second car that came along and
5 struck these victims' vehicle?

6 A. Correct.

7 Q. You were aware that Ms. Glover had this knowledge or
8 had seen this at the time you hired Mr. Chandler?

9 A. Correct.

10 Q. And did you ask him to call her at trial?

11 A. Correct.

12 Q. And did -- she did not testify at the trial?

13 A. She did not know of the trial.

14 Q. Okay. And is that the one you said was not
15 subpoenaed?

16 A. Yes, sir.

17 Q. On. Now what -- you mentioned two others. Was one of
18 them Benjamin Holmes?

19 A. Yes, sir.

20 Q. Who is Benjamin Holmes?

21 A. Benjamin Holmes is the gentleman that drove my wife to
22 the hospital to see me that evening.

23 Q. Okay. And what did he know about the collision out
24 there that night?

25 A. No, his testimony would have substantiate the fact of

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1 whether or not there was a strong odor of alcohol flowing
2 from me, or if I looked or spoke as though that I were
3 intoxicated.

4 Q. How would he have known whether or not that was true?
5 Did he have some contact with you after the collision?

6 A. At the hospital.

7 Q. At the hospital?

8 A. At the hospital.

9 Q. Is this a gentleman that you knew?

10 A. It is a gentleman that I knew.

11 Q. Okay. So his testimony might have been his observing
12 you at the ER and as to whether or not you appeared
13 intoxicated; is that --

14 A. Or spoke intoxicated or smelled of what they call
15 alcohol. This is the same thing that the respondent
16 responded to. She stated she smelled alcohol upon me.

17 Q. We'll get to that.

18 A. That's what she say.

19 Q. So Mr. Holmes did or did not testify at your trial?

20 A. He was not called to testify.

21 Q. And did you discuss that prospect before trial with
22 your attorney, Mr. Chandler? Did you ask him to call
23 Holmes?

24 A. Yes, we did.

25 Q. And was there some recommendation that he not be

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1 called for any reason?

2 A. Not that I can recall.

3 Q. And did you understand why he wasn't called as a

4 witness to testify at your trial?

5 A. I can make a statement now.

6 Q. Well, whatever your understanding is, sir.

7 A. For him not being called.

8 Q. Yes.

9 A. The less defense, convict. What other than to get a

10 conviction. What else.

11 Q. I don't follow you.

12 A. You asked the question, and I'm just responding the

13 way I now see this. It was a conviction that was after

14 and a conviction in what they got. Don't mean no harm.

15 Q. Well let me ask you this.

16 A. Yeah.

17 Q. Did you expect that your attorney was going to call

18 Mr. Holmes to testify?

19 A. I expected it.

20 Q. And were you surprised when he was not called?

21 A. Definitely.

22 Q. And was there ever any explanation or any strategy

23 articulated to you why he wasn't called at trial?

24 A. By that time, sir, it was, the case was closed.

25 That's it.

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1 Q. Now I think you said there was another witness, a
2 third one that you had on your list so to speak?

3 A. I was mentioning that even with Bridgette Glover not
4 being the only person that was there immediately after the
5 accident because there was a gentleman that come up from
6 the Orangeburg side that assisted her and placing
7 additional calls for -- well, to 9-1-1.

8 And there are no evidence showing those calls and
9 there are no evidence showing even he was present on the
10 scene. And, yes, I mean, there are some things that just
11 aren't answered.

12 Q. All right. So just to make sure I understand your
13 answer.

14 A. Yeah, okay.

15 Q. We got Bridgette Glover, we got Benjamin Holmes and
16 there's another individual?

17 A. David Page.

18 Q. David Page. What would David Page have known about
19 this case?

20 A. David Page will confirm the fact that Bridgette were
21 there. Bridgette also made a phone call and Bridgette was
22 on the telephone when she was, uh, not stable enough to
23 continue to speak with 9-1-1 in order to inform them
24 pertinent information pertaining to where the accident
25 stuff was at.

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1 Q. Now Bridgette Glover, was she any relation to Jesse
2 Glover?

3 A. Not as I know of.

4 Q. Okay. Jesse Glover was the gentleman that drove the
5 third car?

6 A. It is stated that he was driving the third car.

7 Q. Okay.

8 A. Not consistent with the evidence.

9 Q. Okay. All right. Now, you mentioned something a
10 moment ago about a first responder. What was your purpose
11 in mentioning that?

12 A. Because she was used to testify upon my demeanor and
13 what she smelled and me being removed from the vehicle.

14 Q. Okay.

15 A. The importance --

16 Q. Didn't mean to talk over you. Go ahead.

17 A. The importance of referring to that is because it
18 contradicts with what Bridgette Glover and David Page saw
19 themselves.

20 Q. Okay. So --

21 A. Which is not correct.

22 Q. So the first responder was a State's witness; is that
23 correct?

24 A. Correct.

25 Q. Called during the State's case in chief?

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1 A. Right.

2 Q. And that was, was that individual's name Lynn Drawdy?

3 A. Drawdy, Dawdy, something of that nature.

4 Q. Some type of EMS tech or a paramedic?

5 A. Right.

6 Q. And her testimony included an observation that you
7 smelled of alcohol. Is that what you're saying?

8 A. Yes, sir.

9 Q. And you think that if Bridgette Glover and Benjamin
10 Holmes would have been called to testify they do have
11 refute that assertion?

12 A. Definitely.

13 Q. Okay. Now, when Lynn Drawdy testified and made these
14 statements about at the scene that you smelled of alcohol,
15 did your attorney have an opportunity to cross-examine
16 her?

17 A. Yes, he did.

18 Q. And did he cross-examine her about those statements,
19 what she observed and what that really meant?

20 A. He may have posed some questions; yes, sir.

21 Q. Now there was also, as we've noted, a SLED
22 toxicologist that testified at your trial for the State?

23 A. Yes, sir.

24 Q. And what did that -- to your recollection or
25 knowledge, what did that witness establish?

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1 A. He established the fact that there was a presence of
2 alcohol in my bloodstream that was beyond the .08 level.

3 Q. So that was the BAC witness?

4 A. Right.

5 Q. And they're a pretty important witness, you would
6 agree?

7 A. Yes, sir.

8 Q. Did Mr. Chandler have an opportunity to cross-examine
9 that witness?

10 A. Yes, he did.

11 Q. And do you remember that examination, cross-
12 examination?

13 A. No.

14 Q. Okay. Do you think it was effective?

15 A. No.

16 Q. Why not?

17 A. There's a reference that was made with individuals
18 being .3 to .35 or .4, that it's unconsciousness and near
19 to death or death and that had nothing to do with Jimmy
20 Taylor and what impact it may have had upon the jurors
21 without opposing or -- it need to be rectified.

22 Q. Let me make sure I understand. This witnesses
23 established some level of blood-alcohol on your part. Do
24 you remember what the number was, if it was above .08?

25 A. .1 -- .12.

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1 Q. .12?

2 A. .12.

3 Q. So you're saying that this SLED witness went into
4 testimony about .3 and much higher levels that had nothing
5 to do with your case?

6 A. Yes, sir.

7 Q. And did your attorney object to those statements?

8 A. I'm not sure if he did or not, sir, but if he did I do
9 not recall the judge intervening and saying strike this or
10 strike that from the record.

11 Q. Okay. Now, did you ask Mr. Chandler to hire a
12 toxicologist or talk to one?

13 A. No, sir. I was not, I was not aware that it was
14 necessary to, to make preparations from that perspective.
15 See, I'm not a lawyer nor am I trained in law. That was
16 the purpose of hiring an attorney with the expectations of
17 having all rights to be saved. That's the purpose of it,
18 supposedly. And that's what was expected.

19 Well if you're not a lawyer what is your line of work,
20 what was it?

21 A. At that time?

22 Q. Yes, sir.

23 A. An economic development manager.

24 Q. And had you had any or much involvement with the
25 criminal justice system prior to this case?

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1 A. No.

2 Q. Had you been to court before?

3 A. No.

4 Q. Had you ever been in a lawsuit or dealt with lawyers?

5 A. Worker's comp perspective.

6 Q. Okay. Nothing in the criminal realm?

7 A. No, no.

8 Q. And did you feel that Mr. Chandler did an adequate job
9 of speaking to you as a layman about what these legal
10 issues were, and what the consequences of going to trial
11 versus pleading might be?

12 A. Mr. Chandler spoke to me once. He say -- he asked me,
13 even if we could get them to offer you one year, would you
14 be willing to accept the plea. And it was shared with
15 him, no.

16 So now, if this answers the question that you just
17 asked me, that's the response to even what was suggested.

18 Q. Okay.

19 A. The position that was taken is this: If there were
20 misleading information up front and it's known misleading
21 information, then what else is in between that is
22 misleading? And you want me to plead to this. And I know
23 differently.

24 I could not bring myself to compromise in anything
25 like that.

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1 Q. Putting this in a nutshell. You maintain your
2 innocence throughout this whole proceeding; is that
3 correct?

4 A. I maintain what had been proclaimed prior to the fact,
5 that what happened that evening happened as it was
6 described. Now the inference and assumptions that has
7 been drawn from it without other facts being placed in it,
8 all of this is unconstitutional.

9 Q. And did you -- were you provided adequate explanation
10 and did you have an adequate understanding of the maximum
11 punishment you could get if you were found guilty on three
12 counts of felony DUI?

13 A. And with you standing saying that, come to find out
14 that ruling reads, somewhat -- I was told I could get 25
15 years per death which is a total of 75 years. That is not
16 correct.

17 Q. Why is it not correct?

18 A. Because it being one event, and it would have been 25
19 years concurrent and not consecutive. I was told -- and
20 see now, that was used in order to coerce me to plead.
21 seventy-five years, 25 per body.

22 Q. But you didn't plead?

23 A. No.

24 Q. Okay. And are you saying that that information was
25 given to you by Mr. Chandler or another attorney?

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- 1 A. That information was given from A, B and C, each.
- 2 Q. Okay. And did you, did you have an understanding that
- 3 if you went to trial there would be a certain risk
- 4 involved of getting convicted?
- 5 A. Yes, sir.
- 6 Q. I mean, you must have acknowledged that there was
- 7 evidence against you in this case? Even though you
- 8 maintain your innocence, you were told that there was
- 9 unfavorable evidence; correct?
- 10 A. I was told that there three different elements that
- 11 needed to be proven in order for me to be guilty of what
- 12 was stated. And one of those elements were not proven.
- 13 And that is intoxicated, impaired.
- 14 Q. Okay. Were you -- was it explained to you that if
- 15 your B-A level was over a certain amount there was a legal
- 16 inference that the trier of fact in this case, the jury,
- 17 could have concluded that you were impaired, even without
- 18 any evidence of bad driving? I'm asking theoretically.
- 19 A. No.
- 20 Q. You didn't understand that?
- 21 A. No, no.
- 22 Q. Okay. Was the .12, was that entered into evidence
- 23 without objection?
- 24 A. It was entered into evidence.
- 25 Q. Okay. Now, I'm looking at your application you filed

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1 in this case. And you prepared this by yourself, I
2 assume?

3 A. I did.

4 Q. You filed it in 2011?

5 A. (Nods head.)

6 Q. In paragraph 10-A you state that -- and the question
7 is: State concisely the grounds on which you base your
8 allegations. And your answer was, or your statement was:
9 Allowed to go to trial without effective assistance of
10 counsel.

11 Specifically, what did you mean by that?

12 A. At trial it was brought out that an expert witness was
13 being allowed to be called --

14 Q. By the State?

15 A. By the State. -- that would testify as to what
16 accident did what. And here I'm finding myself now at
17 trial and the State is being allowed to do this but here
18 I've been requesting a reconstruction of this accident
19 ever since day one.

20 So then this attorney of whom we've hired has made an
21 agreement to come, to go to trial as long as the State
22 doesn't call an expert witness that would testify as to
23 who did what. And here I find myself now without a
24 representative. Ineffective assistance of counsel.

25 Q. Okay. So, this agreement you speak of, this was

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1 something that you were involved in prior to trial?

2 A. This is -- no, sir.

3 Q. And what was your understanding of what the agreement
4 was and with whom was it?

5 A. The agreement was between Attorney Chandler and, to my
6 understanding, the solicitor's office.

7 Q. Okay. And what was your understanding of the terms of
8 the agreement?

9 A. No expert witness would be called that will state what
10 accident -- in order to bifurcate (phonetically) or to
11 tell the difference between which accident may have killed
12 the Neeleys.

13 Q. Neeleys being the three victims?

14 A. The three victims.

15 Q. So was this agreement honored or upheld at trial?

16 A. No, it wasn't.

17 Q. And how was it not honored or upheld at trial?

18 A. Well, the State were allowed to call an expert witness
19 or one that were deemed to be an expert and to testify in
20 his opinion and bifurcate, and bifurcate what happened.
21 But yet there's no documentation that would reflect his
22 opinion --

23 Q. Okay.

24 A. -- to substantiate his opinion. The documentation
25 isn't there.

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1 Q. So when the agreement was entered into and then it
2 become apparent to you that the agreement was not going to
3 be followed, did your attorney respond or react to that?

4 A. He objected to the State calling -- he informed the
5 Court of the agreement that had been made and, yes, he did
6 object to it.

7 Q. Okay.

8 A. The judge allowed it.

9 Q. And was that an issue on appeal by the way in your
10 case?

11 A. That was the main issue on appeal.

12 Q. Okay.

13 A. But on appeal come to find out in order to make an
14 agreement as such, it has to be done in open court on the
15 record or it has to be done in writing with the consent of
16 the attorneys.

17 At the appeal level it was basically denied because it
18 was not reserved or preserved for appeal.

19 Q. And you think your lawyer should have done something
20 else or something differently to ensure that it was
21 preserved?

22 A. To be effective is to safeguard your client.

23 Q. Wouldn't you think --

24 A. That's not safeguarding your client.

25 Q. What do you think he should have done or not done

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1 differently?

2 A. I'm sorry. That's way out of my league.

3 Q. Okay.

4 A. Yeah.

5 Q. Fair enough. Now, I'm referring to paragraph 11 of
6 your application. 11-A says that various witnesses were
7 not called, not completely prepared, and then it says,
8 made non-contractual agreements.

9 Is that what you're referring to, what you just
10 testified about?

11 A. Yes.

12 Q. And the various witnesses not called. Have we gone
13 over that? Ms. Glover and Mr. Holmes?

14 A. Exactly.

15 Q. And the other fellow, David --

16 A. Page.

17 Q. -- Page. Now, in 11-B you state that jurors not
18 tested for prejudice or biases, witness seat manipulated.
19 What do you mean by that, Mr. Taylor?

20 A. The juror seat, the jurors -- there's a case come out
21 of Carolina, Hammond versus South Carolina, where an
22 individual of color, where it needs to be assured that
23 everyone that's sitting on the juror (verbatim) is
24 non-prejudice, non-prejudiced, no bias, none whatsoever
25 exists there. And because of the victims that were killed

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1 in these accidents and me being an African-American and
2 they being Caucasians, yes, it should have been made sure
3 there were no prejudices on that juror (verbatim). Was it
4 done? No, it was not. Is it required? Yes, it is.

5 Q. Now were you in court when Judge Goodstein qualified
6 the jurors? And do you understand what I mean? Do you
7 remember that process?

8 A. The ruling requires for it to be specifically asked.
9 It was generally asked.

10 Q. What, what needs to be asked?

11 A. One's prejudices.

12 Q. Do you mean that there should have been some question
13 to the jury panel or the jury pool as to whether or not
14 they harbor any racial prejudice?

15 A. Yes, sir.

16 Q. And you're saying that wasn't done and should have
17 been done?

18 A. Was not done. Should have been done.

19 Q. Was this something you discussed with Mr. Chandler?

20 A. It was known because of all the participants that was
21 involved in these accidents, and there was one minority in
22 the Orangeburg County, and I'll express it, in Orangeburg
23 County you should have known to do so. You don't take it
24 for granted, even in 2005 or 2007.

25 Q. Okay. All right. And under 11-C you state that

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1 performance of attorney during opening statement, on
2 examinations and closing argument is below reasonable
3 standard.

4 Well, let's start with opening statement. What about
5 Mr. Chandler's performance during that phase of the trial
6 do you think fell below the reasonable standard?

7 A. Mr. Chandler introduced himself as being an attorney
8 with a small office over in Aiken. And which, he didn't
9 he didn't charge us no small-time fee. So, if we were
10 hiring a rookie then, that's a different thing. But you
11 coming up against the county and you're operating out of a
12 small office.

13 He also used the phrase that he conceded, he conceded
14 that his client did what the State were alleging that he
15 did by saying, yes, I did cross the center line, striking
16 the Neeleys, or the Neeleys striking me.

17 It was not concluded that the Neeley vehicle was the
18 one that actually hit me. Who had said that? Where's the
19 evidence to substantiate that?

20 Q. Did you know he was going to say that in his opening
21 statement?

22 A. No.

23 Q. Did he mention anything about blown tire in the
24 opening statement?

25 A. I believe he did, sir.

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1 Q. And did you know he was going to do that?

2 A. Now, there again, not ever being in a courtroom
3 setting and to specify for an opening statement, I wasn't
4 even familiar with how the proceedings in a court setting
5 actually flowed. So whether or not I was aware that he
6 was going to relate to that in his opening statement, I'm
7 not at liberty to say that.

8 Q. Well, would you say that you knew ahead of time before
9 the trial, for example, you were going to testify?

10 A. Right.

11 Q. Did you and he discuss that?

12 A. Yes.

13 Q. Did you and he discuss what other ways you were going
14 to defend the case at trial? What I'm asking you,
15 Mr. Taylor, is: What was your plan to defend this case?
16 What was the strategy? What was the theory of your
17 defense?

18 A. I was hoping the truth. That's the best I can say,
19 sir.

20 Q. What would that truth be? What was going to get you
21 out of this trouble you were in? If that truth was
22 revealed and that jury came back and said not guilty, what
23 was going to be the shining light that got you out of this
24 case?

25 A. Well, the State didn't prove that Mr. Taylor was

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1 intoxicated.

2 Q. Okay.

3 A. Which was impaired, and by being impaired this is what
4 caused the accident.

5 Q. And did your attorney state in opening statement that
6 his belief, his theory of the case is that you weren't
7 intoxicated? Is that the reason he gave them?

8 A. I'm not sure if that was his thesis or not, sir.

9 Q. Okay. Now, you said on examination -- I'm going back
10 to 11-C here.

11 A. Okay.

12 Q. On examination. Are you referring to examination of
13 witnesses?

14 A. Read the statement again.

15 Q. Okay. I'll read the whole thing. The question is:
16 State concisely and in the same order of facts which
17 support each ground set out. And 10, you know, what your
18 allegations. And you went back and said without effective
19 assistance of counsel. And then this is the detail I
20 guess. Performance of attorney during opening statement,
21 on examinations and closing.

22 Examinations you're referring to are witnesses,
23 witness examinations?

24 A. In his opening statement it was stated that he
25 conceded, conceded is basically saying that your client

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1 did it. And in the midst of conceding, he also stated
2 that he was from a small office over in Aiken.

3 That does not look well for a gladiator that was hired
4 to be a gladiator to come in before individuals that was
5 really out of their league.

6 Q. But what does that have to do with the word
7 examinations? What did you mean when you wrote that?

8 A. Read that again. It has to be a reason for me putting
9 it in there.

10 Q. Okay. It says: Performance of attorney during
11 opening statement. We talked about that.

12 A. Uh-huh.

13 Q. Examinations and closing.

14 A. May I see it?

15 Q. Certainly. (Document handed to witness). Let me ask
16 you in a different way.

17 A. 11-A, -B, -C.

18 Q. You know, you here alleging ineffective assistance of
19 counsel, does that ineffective -- does that assertion of
20 ineffective assistance include the way Mr. Chandler
21 performed at trial when he was either examining direct
22 witnesses or cross-examining the State's witnesses?

23 A. Yes, sir.

24 Q. Okay. And what's your understanding of what he did or
25 didn't do that he should or shouldn't have done?

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1 A. One witness, one State witness when asked a question
2 stated, when he woke up and when -- he stated when he woke
3 up the attorneys, the solicitor said, oh, you mean, you
4 were knocked out when you hit. So now he led the witness
5 in his testimony. Attorney Chandler did not challenge
6 that nor did he go back to that on his cross-examination
7 because there's evidence now that has come out to show
8 that his wife could have been driving that vehicle and not
9 himself driving it.

10 But he --

11 Q. Okay.

12 A. -- was testifying as though he was the driver and he
13 testified as being the driver of the vehicle.

14 This is -- this is the reason for placing that in
15 there. That's just one of the incidences of, on
16 examinations.

17 Q. So is it fair to say that you don't feel he adequately
18 cross-examined the State's witnesses?

19 A. Yes, sir.

20 Q. And what about closing. You said something about
21 closing arguments. What is wrong with what he did there?

22 A. This is the solicitor in his closing. He made a
23 comment to the many attorneys that have been hired and the
24 reasons for Mr. Taylor hiring the attorneys.

25 He spoke in regards to the defense that had been

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1 presented and he categorized it as being like using a
2 shotgun effect, just trying to hit something. And those
3 statements coming from the prosecutor was not appropriate
4 in closing arguments before the jurors and the attorney
5 allowed it without objecting to it.

6 Q. I see.

7 A. Yeah.

8 Q. Okay. Now, Mr. Taylor, who is Eric Brown?

9 A. (Hands document back to Attorney Palmer.)

10 Q. Thank you. Do you know an Eric Brown?

11 A. He's an individual that has, that was felt to look at
12 this and give his professional opinion.

13 Q. And what does he have to do with these issues? Is
14 this somebody that you know?

15 A. He's a professional that is well schooled, well
16 learned, and has carried himself well through the years.

17 Q. And, sir, what profession is he in?

18 A. He's a chemical professional.

19 Q. Have you asked him to be here today as a witness?

20 A. It is expected for him to have come.

21 Q. And you're asking that he testify today? And if the
22 answer is yes, what is he going to -- what is he going to
23 provide the Court that's going to support your allegations
24 in your application?

25 MR. WHITMIRE: Objection. Hearsay.

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1 MR. PALMER: Let me ask it a different way. I'll
2 withdraw question, Your Honor.

3 THE COURT: Okay.

4 BY MR. PALMER:

5 Q. Why do you need him here today, Mr. Taylor?

6 A. A professional who can look at some data and some
7 numbers and decipher and discern whether or not they jive.
8 Do we understand that language?

9 Q. Yes, I do. Mr. Taylor. Did you know Mr. Brown prior
10 to this case going to trial?

11 A. I am aware of Mr. Brown.

12 Q. Okay. And let me shift topics just a minute here.

13 Now we've talked about your application. We've gone
14 over it. And you've provided some detail about, in
15 support of this allegation.

16 Is there anything else that we haven't talked about
17 that you think is important for the Court to know about
18 why you're here today and why you're asking for a new
19 trial? Any other things that you think should be on the
20 record about Mr. Chandler's performance or how the trial
21 was conducted that you haven't talked about?

22 And before you answer that, sir, please keep in mind a
23 couple things. This isn't a retrial of your case as far
24 as specific evidence and that sort of thing. We're
25 focused on whether or not you received effective

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1 assistance of counsel.

2 And the other thing before you respond is, you
3 understand, sir, that should you be granted the relief
4 you're seeking, the relief you will get is a new trial.
5 And that's, that's what's available as far as -- if you
6 win this hearing, you get a new trial.

7 You understand that, correct? That's what PCRs are
8 all about.

9 A. New trial.

10 Q. Start over. Okay. So with that knowledge, what else
11 do you think was ineffective about your attorney's
12 representation that we haven't talked about?

13 A. Was the seizure of blood from the hospital, was it
14 seized appropriately according to rules and regulations
15 and statutes? That's a question.

16 Q. Okay.

17 A. It is required that you be under arrest. I was not
18 under arrest and yet the blood was compelled to be
19 withdrawn and it was withdrawn.

20 Indictment. There is nowhere on record where you will
21 see that an indictment was ever even presented to me, but
22 it is in the record where it was sent to me. And
23 according to rules, regulations and statutes,
24 constitution, that's not even appropriate.

25 So does that even make the trial constitutional in the

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1 beginning? No, it doesn't. Does it make the conviction
2 correct now? No, it doesn't.

3 There were, bodies of the deceased were released from
4 the morgue before an autopsy could be performed.
5 According to regulations, that's inappropriate. The
6 bodies were released without the coroner's authorization.
7 Is this something that happens at the hospital often? Why
8 was it just done in this case then? Who released the
9 bodies? Who is held accountable for what transpired
10 there?

11 Even I was mentioning the fact that there are
12 individuals that can testify that I was out of the vehicle
13 when first responders arrived and we now know that first
14 responders have come in and have misled the Court that
15 that they pulled me out of the vehicle themselves, and
16 they painted a picture that I was intoxicated. Who's to
17 be held responsible for this?

18 The 9-1-1 call. We're informed that they run out of
19 tape or they run out of paper, or they're unable to
20 identify who made the calls. And they only show two or
21 three calls. These are things that were known prior to
22 trial. These are inconsistencies.

23 It is required for me to have been found guilty beyond
24 a reasonable doubt. If I felt as though I was guilty, I
25 would have taken a plea. I would not have come to trial.

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1 There are too many inconsistencies. The data does not
2 support what the State claim that they proved.

3 Q. Okay. How does all of that relate to -- and I need
4 you to relate that to your attorney's performance in
5 representing you.

6 A. These are things me as a layman now know and probably
7 90 percent of the people that are in here now know, and he
8 being a trained attorney as well as any other attorneys be
9 on this case should know, it reads: You should know or
10 should have known. There are no latitude of you being a
11 professional that you are and not knowing, and allow so
12 many inconsistencies to come forward before a jury that
13 will make a decision upon someone's life.

14 If you can find that effective assistance of counsel,
15 then this whole industry need to be revamped.

16 Q. Anything else, sir?

17 A. Allow me a moment, please.

18 (Pause.) In regards to 9-1-1 call.

19 MR. WHITMIRE: Objection. Asked and answered.

20 THE COURT: I'll let him go forward. Go ahead. You
21 can answer the question.

22 THE APPLICANT: In regards to 9-1-1 calls. There is
23 an organization that has been keeping data since '96,
24 1996, of every call that is made in North America.

25 Is there any reason why we do not know who made those

1 calls that night? Is it acceptable? It should not be.

2 BY MR. PALMER:

3 Q. Just so I'm clear on that last statement. Are you
4 suggesting that your attorney should have made some effort
5 to get the calls?

6 A. The client, being myself, said that there's a lady
7 standing before a vehicle with the headlights on that
8 informed me that they had called the rescue squad and for
9 for me to lie down and be still.

10 But it has been presented to this Court that because
11 of being intoxicated it could have been a fabrication of
12 my mind. That's the significance of the calls.

13 Hopefully this is sufficient, sir.

14 Q. Excuse me?

15 A. Hopefully this is sufficient.

16 Q. All right.

17 A. It is believed that, yes, should these things have
18 been taken care of during trial, then there is reason to
19 believe that the verdict of the jury would have been
20 different.

21 MR. PALMER: Thank you. Please answer any questions
22 the State may have.

23 THE COURT: Mr. Whitmire.

24 MR. WHITMIRE: May it please the Court.

25 THE COURT: Could I see y'all for one second before we

1 go forward?

2 MR. WHITMIRE: Yes, Your Honor.

3 (Off-the-record discussion.)

4 THE COURT: Ladies and gentlemen, we're going to take
5 a break for lunch now. I ask y'all to be back here at
6 about 1:45. Okay?

7 Mr. Taylor, you can be able to step down for a while
8 but you cannot talk about your testimony with anybody,
9 okay, because you're going to be called back to the stand
10 to do cross-examination after lunch. Okay?

11 THE APPLICANT: Yes, sir

12 THE COURT: Okay. Appreciate it. Thank y'all.

13 MR. WHITMIRE: Thank you, Your Honor.

14 THE COURT: See you all back here at quarter till.
15 Thanks.

16 (Lunch break taken at 12:32 p.m. At 1:49 p.m., the
17 hearing of this case resumed:)

18 THE COURT: Mr. Taylor, if you'd come on back up and
19 have a seat where you were, please, sir.

20 THE APPLICANT: (Complies.)

21 THE COURT: All right. Mr. Taylor, I remind you, you
22 are still under oath. Do you understand that?

23 THE APPLICANT: Still under oath.

24 THE COURT: Mr. Whitmire, your witness.

25 MR. WHITMIRE: May it please the Court, Your Honor.

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1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. WHITMIRE:

4 Q. Good afternoon, Mr. Taylor. Mr. Taylor, do you recall
5 your testimony at trial? Do you recall testifying at
6 trial?

7 A. Word for word?

8 Q. No, no.

9 A. So what are you asking me?

10 Q. Did you testify truthfully at trial? Is that your
11 version of the offense?

12 A. Yeah.

13 Q. You're under oath. Mr. Taylor, wasn't it your version
14 of events that your right tire blew out causing you to
15 enter the eastbound traffic?

16 A. You read the transcript. Is that what it say to you?

17 Q. Yes, that's what it says.

18 A. Here's what it says. I recall hearing a thump in the
19 rear and it made me, it reminded me of a tire blowout.

20 Q. Now --

21 A. And my car began to veer to the left. That's my
22 testimony.

23 Q. And do you recall Lance Corporal Pearrow's testimony
24 on behalf of the State, that if your tire would have had
25 some sort of issue, it would have created a puncture

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1 mark? I'm sorry, a gouge mark, or it would have flattened
2 and enlarged, the tire tracks. Do you recall that?

3 A. I recall to that effect.

4 Q. And do you also recall Lieutenant Dickson, page 344,
5 testified that the skid marks that your Blazer caused
6 indicated that your tire was not punctured or harmed until
7 you made contact with the Neeley's vehicle. Do you recall
8 that?

9 A. It is not recalled that testimony by Dickson, nor is
10 it reflected in the transcript that the Trail Blazer made
11 skid marks reflecting what you just said.

12 Q. So you're testifying now your Trail Blazer made no
13 skid marks at all?

14 A. I'm testifying that Lieutenant Dickson did not say
15 that in trial, and it's written in the transcript as such.

16 Q. And considering -- well, this evidence you claim
17 doesn't exist, didn't your second attorney, Attorney
18 Number B, John Mobley, consult an accident reconstruction
19 expert?

20 A. Consult him in regards to what?

21 Q. Examining the crash data recorder from your Trail
22 Blazer?

23 A. To determine what?

24 Q. To determine -- I mean, do you recall this at all?

25 A. I recall Attorney Mobley --

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1 Q. Uh-huh.

2 A. -- consulting with an engineer to determine whether or
3 not the vehicle that Mr. Taylor was driving was struck
4 while it was parked.

5 Q. And didn't that report that Mr. Mobley got for you,
6 didn't it do nothing or help you in regards to backing up
7 your story about a tire blowing out or having some sort of
8 tire issue, it didn't help you at all; is that correct?

9 A. That question that was posed to the engineer --

10 Q. Uh-huh.

11 A. -- was not even relevant to the accident.

12 Q. But it was relevant to verifying your explanation of
13 the accident; was it not?

14 A. Sir, it's not to me now nor was it then.

15 Q. But don't the tire tread marks speak for themselves?

16 A. I'm stating the question that was asked for the
17 engineer to determine.

18 Q. And isn't it --

19 A. I'm not saying the logic nor the reason in it.

20 Q. But isn't this why John Mobley tried to advise you to
21 plea, to accept a favorable plea offer from the State?

22 A. Well, he did not make that question, reasonable or
23 logical considering the incident.

24 Q. In all of the State evidence, didn't Mr. Mobley and
25 Mr. Chandler review this with you prior to trial?

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1 A. View that?

2 Q. Review that with you prior to trial?

3 A. When Mobley and I discussed this issue right here --

4 Q. Uh-huh.

5 A. -- it was by, it was by telephone. About a 10- or
6 15-minute conversation. And the same thing that being
7 discussed now, how is, you ask an engineer to determine if
8 Mr. Taylor's vehicle was struck while it was in park.

9 Q. Now, I think you're misconstruing this, Mr. Taylor.

10 A. Oh, am I?

11 Q. Yes, you are indeed.

12 A. Attorney Palmer, do you have the question there, sir?

13 Q. Mr. Taylor, please answer my question.

14 THE COURT: And, Mr. Taylor, I need to remind you.
15 You need to answer his questions.

16 THE APPLICANT: Okay.

17 THE COURT: Thank you, sir.

18 MR. WHITMIRE: I'll move on.

19 THE COURT: Okay. Thank you, sir.

20 MR. WHITMIRE: Thank you, Your Honor.

21 BY MR. WHITMIRE:

22 Q. And didn't you testify that -- well, it was your
23 testimony that you never physically made impact with the
24 Neeley's Ford Escort?

25 A. And that was based upon site recall, exactly.

APPLICANT JIMMY R TAYLOR - CROSS BY WHITMIRE

1 Q. So you knew -- when you were driving that day, you
2 never physically touched the Ford Escort at all? That's
3 what you testified to.

4 A. When I was driving that evening.

5 Q. Uh-huh.

6 A. I also stated that I did not see a vehicle.

7 Q. But again, on page 304, since you have the transcript,
8 didn't Lieutenant Dickson testify that the damage on this
9 Ford Escort was distinctly caused by two vehicles, one of
10 which was yours?

11 A. That's what Dickson says.

12 Q. And didn't the damage also correspond to your vehicle
13 too, on the rear right side?

14 A. Now that's a very good question. Who showed evidence
15 that it corresponded with it?

16 Q. Well, didn't the State present pictures in Exhibit
17 Number Two of this? And a video in Exhibit Number Eight?

18 A. They, they presented pictures of vehicles that was in
19 the accident, but the picture doesn't say that, who hit
20 what.

21 Q. Now, one more question regarding your testimony. You
22 testified that a white-haired lady came up to you and
23 spoke with you and let you know that she had phoned
24 emergency and dispatch; is that correct?

25 A. Excuse me. No, sir.

APPLICANT JIMMY R TAYLOR - CROSS BY WHITMIRE

1 Q. No.

2 A. I did not say that a white-haired lady came up to me.

3 I said, as I was crawling out of my vehicle there was a
4 Caucasian lady, white headed.

5 Q. That's what I said, white haired, not white headed,
6 white haired.

7 A. Uh-huh. Standing on the shoulder of the highway in
8 front of a vehicle with the headlights on speaking with
9 me.

10 Q. Now, is it your contention that this was Ms. Neeley
11 who did this, who spoke with you?

12 A. I am of that persuasion.

13 Q. And do you recall the deputy coroner's testimony that
14 Ms. Neeley's head went completely through the windshield?

15 A. That's what he said.

16 Q. Do you recall Lieutenant Dickson's testimony that the
17 frontal collision would have caused this?

18 A. The frontal collision, that's what he said.

19 Q. And you told your attorney all of this prior to
20 trial. This was your version, this is what you wanted to
21 present. This was the truth. This is the truth as you
22 say now?

23 A. Oh now, when you say I told my attorney all of what
24 you just said here?

25 Q. Yeah. Your version of how you testified.

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1 A. Well, it was not up to me to tell my attorney that
2 Ms. Neeley went through the windshield.

3 Q. Not through the windshield --

4 A. Okay.

5 Q. -- but your version of the statement. Not the State's
6 case, your version of the facts.

7 A. My version of what?

8 Q. Your version of the offense, what you claim is the
9 truth. You told your attorney this; is that correct?

10 A. Which is what?

11 Q. That you were driving, you had right end tire issues,
12 that probably a flat tire caused you to swerve, you did
13 not make contact with the Escort, and then an occupant of
14 the Escort, presumably, got out and came and spoke to you?

15 A. That is not what I told him.

16 Q. So all the transcript reflects it.

17 A. Very good.

18 Q. And the last part of your testimony. Didn't you
19 testify that you only had the two Bacardi shots --

20 A. Right.

21 Q. -- prior to the offense? Is that all you had to drink
22 that day? Is that truthful? Was that truthful
23 testimony?

24 A. That stand for itself. That's what was said. That's
25 what was written

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1 Q. And you're claiming here today that your attorney just
2 missed something and that blood-alcohol test should have
3 never got in; is that correct? That it was inadmissible.

4 A. Well, if you receive it in error and against rules and
5 regulations then that itself would make it non-admissible.

6 Q. Do you have any proof that there was a chain of
7 custody defect today with your sample?

8 A. I have -- I've stated that I was compelled in order to
9 render that blood, and according to your rules and
10 regulations that's inappropriate.

11 Q. Now --

12 A. Your rules and regulations also requires you to have
13 me under arrest. I was not under arrest and your document
14 reflects that.

15 Q. Now --

16 A. Isn't that correct?

17 Q. Now, Mr. Taylor, just please answer my questions. You
18 hired two of the best criminal defense lawyers in the
19 area, in this part of the state, isn't that correct, John
20 Mobley and Everett Chandler?

21 A. Now you're classifying to that.

22 Q. Well, you said that you're upset with him earlier
23 because he portrayed himself --

24 A. You called him --

25 Q. -- a small town Aiken lawyer; is that correct?

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1 A. You called them two of the best.

2 Q. Uh-huh.

3 A. You called them that.

4 Q. But --

5 A. I'm not, I'm not -- I'm not acknowledging --

6 Q. Can we agree on this, Mr. Taylor, didn't you testify

7 early on direct that you were upset with Mr. Everett

8 because he referred to himself as a small town Aiken

9 lawyer and you hired a -- you hired one of the best?

10 A. No, I did not use the term that I was upset with

11 Mr. Chandler because he used the phrase --

12 Q. But you're alleging ineffective assistance of

13 counsel --

14 THE COURT: Mr. Whitmire, you just need to let him

15 finish answering the question. I know you're anxious to

16 ask him a question, but he gets to finish. Okay?

17 Mr. Taylor, go ahead.

18 THE APPLICANT: No, I did not state on direct that I

19 was upset with Attorney Chandler because he used the

20 phrase that he was operating out of a small office. I

21 used that to state the fact that that's how he referred to

22 himself in introducing himself to the Court and the jurors

23 in representing me in this case.

24 BY MR. WHITMIRE:

25 Q. Now, so it's your contention here today that your

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1 attorneys just missed a clear suppression issue, that that
2 evidence should not have came in; correct? I'm just
3 trying to understand.

4 A. Among several other issues that may have been stated
5 to indicate ineffectiveness which enabled me to have been
6 prejudiced during trial, and which if it wouldn't have
7 been for those prejudicial issues then the verdict of the
8 jury would have been different. That's what I'm here for
9 today.

10 Q. Now regarding some of the other allegations that you
11 have brought to the Court's attention today.

12 You said that Mr. Chandler had never notified you that
13 you were up, set for trial; is that correct?

14 A. No.

15 Q. But didn't Mr. Chandler file a motion for continuance
16 prior to trial on your behalf?

17 A. Did he?

18 Q. Didn't he?

19 A. I don't -- I don't have it. You show it.

20 Q. Were you present? And wasn't your case on the docket
21 for trial when Mr. Chandler took over representation?

22 A. It was clearly stated, sir, on direct --

23 Q. All right.

24 A. -- that Mr. Chandler left my wife and I while we were
25 in the office and went and used the telephone to call to

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1 verify. And he come back saying that it was not on the
2 docket for trial.

3 Q. All right. Now you've also made an allegation about
4 the 9-1-1 tapes. Didn't Mr. Chandler investigate and try
5 to obtain those tapes for you?

6 A. I have no documentation to reflect what Mr. Chandler
7 did pertaining to the 9-1-1 types.

8 Q. And, but -- I may be wrong, but I do recall at the end
9 of your direct examination prior to lunch you said, we
10 were informed the tapes were destroyed. Can you clarify
11 that?

12 A. Want -- excuse me, sir. Judge, I don't like his
13 insinuations.

14 THE COURT: Well --

15 THE APPLICANT: And by under oath, I've already
16 testified to some things that he's coming back on cross-
17 examine and saying what he heard me say which is
18 incorrect.

19 THE COURT: Well Mr. --

20 THE APPLICANT: That is not in the record.

21 THE COURT: Mr. Taylor.

22 THE APPLICANT: Yes, sir.

23 THE COURT: I'm going to -- he has the right -- you
24 were called as a witness. He has the right on cross-
25 examination to ask you anything about your prior

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1 testimony. If you believe he misunderstood your prior
2 testimony, you can say that is not what I said, this is
3 what I said on direct. Okay?

4 THE APPLICANT: All right. Thank you, sir.

5 THE COURT: Yes, sir. Now if you'll answer his
6 question.

7 THE APPLICANT: That's helpful.

8 THE COURT: It's supposed to be.

9 THE APPLICANT: What's your question again?

10 BY MR. WHITMIRE:

11 Q. I just want some clarification, Mr. Taylor. When you
12 said, we were informed the tapes were destroyed or we
13 couldn't obtain them, who is who and when were you
14 informed?

15 A. Often time when I'm speaking I'm speaking of my wife
16 because my wife and I was in consultation with this
17 thing. We were discussing the issues. And oftentimes she
18 was present. So I say we, me and the wife.

19 Q. And when were you informed about the status of the
20 9-1-1 tapes?

21 A. When was I informed about the status of the 9-1-1 tape
22 set?

23 Q. When they were destroyed or when they were not able to
24 be obtained, when was it prior to trial?

25 A. Well, actually, solicitor, it hasn't been stated from

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1 myself nor my wife that the 9-1-1 tapes that were made
2 available or heard about were destroyed.

3 Q. And didn't Mr. Chandler review these tapes prior to
4 trial? Did he discuss that with you; do you recall it?

5 A. No, I do not recall if he reviewed the tapes or if
6 there were any tapes that were available.

7 Q. The reason I'm asking you, it's a serious point of
8 contention you had at the end of your direct. I just want
9 to clear it up. I appreciate that.

10 A. It is very serious.

11 MR. WHITMIRE: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 BY MR. WHITMIRE:

14 Q. Now, you testified that you wanted Mr. Taylor -- I
15 mean, I'm sorry -- Mr. Everett to have an expert
16 toxicologist to testify for you at trial?

17 A. Would you repeat the question again, sir?

18 Q. You testified on direct that you wanted Mr. Everett to
19 consult and bring in an expert toxicologist for you at
20 trial?

21 A. What was desired from, not only from Attorney Chandler
22 but from each attorney of record was to present evidence
23 that had been shared with them by me or testimony to
24 indicate what had transpired.

25 Q. Mr. Taylor --

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1 A. What? I mean --

2 Q. -- do you have a toxicologist here to testify for you
3 today?

4 A. Is there a toxicologist?

5 Q. And do you have -- you mentioned Mr. Holmes and
6 another witness, I believe David Page. Are they here to
7 testify for you today?

8 A. Are they?

9 Q. And, do you recall the stipulation Mr. Everett made,
10 the agreement with the State prior to trial regarding what
11 that expert testimony would be about? About the MAIT
12 reconstructionist.

13 A. Repeat your question again, sir.

14 Q. Do you recall Mr. Everett explaining to you that he
15 had gotten the State to not mention certain things at your
16 trial?

17 A. Mr. Chandler stated that there was an agreement
18 between he and the solicitor that they would not solicit
19 testimony to bifurcate (verbatim) what accident killed --

20 THE COURT: You need to speak up just a little louder
21 --

22 THE APPLICANT: Killed the Neeleys.

23 THE COURT: -- I can't hear you.

24 BY MR. WHITMIRE:

25 Q. Right. They wouldn't -- that expert would not testify

APPLICANT JIMMY R TAYLOR - CROSS BY WHITMIRE

1 to which accident caused death; is that correct?

2 A. To my understanding.

3 Q. And do you recall that expert testifying that
4 Ms. Neeley's head went through the window but not that the
5 accident caused her death?

6 A. No. The expert did not testify to that.

7 Q. Do you recall Mr. Chandler still objecting for you on
8 that?

9 A. Mr. Chandler objected to expert witness being called.

10 Q. And didn't Mr. Chandler file an appeal for you on that
11 exact same issue?

12 A. Mr. Chandler did file an appeal with an un-preserved
13 issue which makes the issue before the appellate court
14 non-reviewable which you got two years of time in jail for
15 no avail.

16 Q. You're saying that it wasn't preserved?

17 A. That's exactly what I'm saying

18 Q. All right. You had a chance to review your -- the
19 opinion filed by the Court of Appeals?

20 A. That's what the report from the attorney general's
21 office come back saying.

22 Q. Let's let the record reflect what it is. And didn't
23 you hire Tara Shurling to file the petition?

24 A. She did.

25 Q. On this exact same issue?

APPLICANT JIMMY R TAYLOR - CROSS BY WHITMIRE

1 A. Well, actually it was other issues that were there but
2 she asked for leave in order to amend the record and you
3 all wouldn't allow it.

4 Q. Now, how involved were you with your defense at trial?
5 Were you actively engaged?

6 A. Explain that.

7 Q. Did Mr. Chandler give you a pen and paper and tell you
8 to write down questions? Did Mr. Chandler -- was that a
9 yes?

10 A. I'll repeat. I was a layman then.

11 Q. Uh-huh.

12 A. And a layman now. Not trained in court procedures nor
13 your language.

14 So, regarding giving me pen and paper, just being
15 traumatized by what's going on and what's being witnessed
16 just takes one's mind.

17 Q. Do you recall meeting with Mr. Chandler the weekend
18 before trial to discuss strategy, you and your wife?

19 A. Yes, sir.

20 Q. And didn't Mr. Chandler run by all of his strategy
21 with you and give you full discretion?

22 A. Which included expert witness going to be called,
23 which included that the State doesn't have the evidence to
24 prove the case --

25 Q. Now --

APPLICANT JIMMY R TAYLOR - CROSS BY WHITMIRE

1 A. -- which included that we would rejoice on the steps.

2 Q. Now, Mr. Taylor, didn't Mr. Chandler discuss how he
3 was going to proceed with his opening statement with you?

4 A. If he does, it's not fresh in my mind. And if he
5 would have mentioned that he would introduce himself as
6 operating a small office, I probably fired him then too.

7 Q. Now, do you remember picking a jury for your trial?

8 A. Do I remember? I remember a jury being picked for the
9 trial.

10 Q. Did you help actively select which jurors you would
11 want to strike?

12 A. Based on one's limited knowledge or understanding.

13 Q. Did you ever tell Mr. Chandler you had any concerns
14 with the composition of the jury racially?

15 A. Mr. Chandler was aware of the fact that there were
16 difficulties with this trial being in Orangeburg County,
17 having three Caucasians dead and five Caucasians involved
18 in it and no, no fluids drawn from no one that evening.
19 And some fabrication that had been presented that was
20 going to be presented. He were aware of that before
21 trial.

22 Q. Now, just a few more questions for you, Mr. Taylor.
23 One moment, Your Honor, beg the Court's indulgence.

24 THE COURT: Take your time.

25 (Pause.)

APPLICANT JIMMY R TAYLOR - CROSS BY WHITMIRE

1 BY MR. WHITMIRE:

2 Q. Now do you recall who John Mobley consulted on your
3 behalf regarding the tire tread marks?

4 A. No.

5 Q. Do you recall that expert's qualification?

6 A. Say again.

7 Q. Do you recall if that expert who did this study for
8 you is going to try to help you recall what he was
9 qualified in?

10 A. That an expert was going to try to help me?

11 Q. Yeah.

12 A. From John Mobley?

13 Q. Mr. Poplin. You don't remember any of this?

14 A. The one he asked --

15 Q. Uh-huh.

16 A. -- to, uh, verify whether or not this vehicle was
17 struck while it was parked?

18 Q. If you say so. I'm just asking, do you remember what
19 he was qualified in?

20 A. I remember him posing that question to Poplin, and the
21 response that Poplin gave him pertaining to that question.

22 Q. Now, does it sound about right that Mr. Poplin was an
23 expert in accident reconstruction?

24 A. Maybe he is.

25 Q. That's who Mr. Mobley consulted. Now, you brought an

APPLICANT JIMMY R TAYLOR - REDIRECT BY PALMER

1 expert here today, didn't you, to testify for you?

2 A. An expert. An individual that has the qualifications
3 of being accepted as an expert has been asked to be
4 present here today to render his opinion based upon
5 information that he has.

6 Q. Do you recall -- do you know what Mr. Brown's
7 qualification is since you hired him?

8 A. Well, if he has he can speak for himself, sir.

9 MR. WHITMIRE: All right. No further questions, Your
10 Honor. Thank you, Mr. Taylor.

11 THE COURT: Thank you, Mr. Whitmire. Anything on
12 redirect?

13 MR. PALMER: Just a few, Your Honor. May it please
14 the Court.

15 REDIRECT EXAMINATION

16 BY MR. PALMER:

17 Q. All right. Mr. Taylor, would you agree with me that
18 at your trial in 2007 your attorney presented what I would
19 call a blown tire defense?

20 A. That's what it sounded as though of.

21 Q. And you recall him making that, starting the --
22 presenting that defense in his opening statement?

23 A. Yes, sir.

24 Q. Now when you were in a contractual agreement with
25 Mr. Mobley, when you had hired him and he still

APPLICANT JIMMY R TAYLOR - REDIRECT BY PALMER

1 represented you, he had consulted with Woody Poplin?

2 A. Poplin.

3 Q. And were you made aware of the results of that consult
4 with Mr. Poplin?

5 A. Yes.

6 Q. And was Mr. Poplin asked among other things or maybe
7 this was the sole issue is whether or not there was
8 evidence that a blown or flat tire had caused this loss of
9 control of your vehicle?

10 A. No, sir.

11 Q. Do you remember receiving a letter from Mr. Mobley in
12 March of 2007 discussing this among other issues?

13 A. Is that the one where he would -- he had heard that
14 this case should be coming up within the next month or so,
15 and based upon, based upon that information he suggested
16 that I also accept the plea?

17 Q. Yeah.

18 A. Is that the time?

19 Q. Excuse me, just a moment, Your Honor.

20 THE COURT: Sure.

21 MR. PALMER: Plaintiff's Exhibit One marked.

22 (Applicant's Exhibit No. 1, letter of 032607,
23 consisting of three pages, marked for evidence.)

24 BY MR. PALMER:

25 Q. Mr. Taylor, I'm showing you what's marked as

APPLICANT JIMMY R TAYLOR - REDIRECT BY PALMER

1 Plaintiff's Exhibit One for identification. Do you need
2 some help with that?

3 A. (No response.) Okay.

4 Q. Do you recognize that document?

5 A. Yes, sir.

6 Q. What is that document?

7 A. Say again.

8 Q. What is the document?

9 A. Correspondence from John Mobley, March 26, 2007.

10 Q. And is that addressed to you?

11 A. Yes, it is.

12 Q. And do you remember receiving that letter in 2007?

13 A. Yes, I do.

14 Q. And that letter was signed by Mr. Mobley?

15 A. Yes, it is.

16 Q. And he was your attorney at the time?

17 A. Yes, he was.

18 Q. Okay. And does that letter discuss the issue of Woody
19 Poplin and the blown tire issue?

20 A. It does state: As you are aware, I consulted -- am I
21 to read it?

22 Q. Please.

23 A. I consulted with an accident reconstruction expert,
24 Woody Poplin, who indicates there is no evidence to
25 indicate a blown tire was a contributing factor in the

APPLICANT JIMMY R TAYLOR - REDIRECT BY PALMER

1 accident.

2 Q. Okay. Thank you. And is this to the best of your
3 knowledge an unaltered copy, besides the highlighting, of
4 the letter you received? Move to admit as Plaintiff's
5 One, Your Honor.

6 THE COURT: Any objection?

7 MR. WHITMIRE: No objection, Your Honor.

8 THE COURT: All right. Applicant's One is in evidence
9 or Plaintiff's One, however it's designated.

10 (Applicant's Exhibit No. 1, John Mobley letter dated
11 March 26, 2007 consisting of three pages, received into
12 evidence.)

13 BY MR. PALMER:

14 Q. Now, so is it fair to say, Mr. Taylor, that when you
15 received this letter and read it you were aware of the
16 fact that at least this expert's opinion was that the tire
17 issue wasn't a factor in your case?

18 A. Yeah.

19 Q. Okay. And then after that you disengaged Mr. Mobley's
20 services and hired Mr. Chandler?

21 A. Right.

22 Q. And did you make this issue aware -- I mean, did you
23 make him aware of this issue? Mr. Chandler, I mean.

24 A. I would hope that I did, because to have, to have
25 requested a change of attorneys would have required -- I

APPLICANT JIMMY R TAYLOR - REDIRECT BY PALMER

1 would hope that I did, sir.

2 Q. Okay. Well, you were asked on cross-examination
3 whether you met with Mr. Chandler before the trial and
4 discussed your trial strategy. And you seemed to indicate
5 that you did.

6 My specific question with regard to that testimony
7 is: Did you specifically address the issue of the blown
8 tire? And was it your understanding that your attorney at
9 trial was going to present that as a defense?

10 A. While reviewing this now from my explanation of the
11 way it proceeded that things happened, then I could see
12 how he or anyone else may have assumed that this is the
13 contributing factor.

14 But for me to have stated directly out of my mouth
15 saying that this is the contributing factor, that is not
16 what transpired. I only state what I experienced and the
17 experience placed me in the, in the mind frame of this is
18 what is happening. Okay.

19 Q. Well, let me just ask you very specifically,
20 Mr. Taylor.

21 A. Yeah.

22 Q. In light of all of this, did you know that Everett
23 Chandler was going to basically present this defense in
24 his opening statement, that this accident wasn't a result
25 of your impairment, it was a result of a blown-out tire?

APPLICANT JIMMY R TAYLOR - RECROSS BY WHITMIRE

1 A. I can recall him alluding to that.

2 Q. And is that something you asked him to do?

3 A. No, sir.

4 Q. Okay. Thank you.

5 A. No, sir.

6 MR. PALMER: No further questions, Your Honor.

7 THE WITNESS: No, sir.

8 THE COURT: Anything on recross?

9 MR. WHITMIRE: Beg the Court's indulgence for just one
10 moment.

11 THE COURT: Sure.

12 MR. WHITMIRE: May I approach the witnesses, Your
13 Honor?

14 THE COURT: You may.

15 MR. WHITMIRE: A few quick questions.

16 RECROSS-EXAMINATION

17 BY MR. WHITMIRE:

18 Q. Two quick questions for Mr. Taylor. Mr. Taylor, I got
19 your trial transcript in front of me. Can you read
20 starting on line 17 through line 24 for me, please?

21 THE COURT: What page is that?

22 MR. WHITMIRE: I do apologize. Page 416, Your Honor.

23 THE COURT: Say again.

24 MR. WHITMIRE: Page 416, Your Honor. Mr. Taylor's
25 trial testimony, line 17 through 24.

1 THE APPLICANT: Are you going to hand it to me, sir?

2 MR. WHITMIRE: Yeah, I will. Apologize.

3 THE APPLICANT: Question: What happened when you were
4 traveling on Highway 70. There is the appearance as
5 though I had a right rear tire blowout. And who gave you
6 that appearance, question. I heard and felt -- I heard
7 and I felt that. Question: What did you hear. Answer:
8 Thump. And I felt it. Question: Well, what did you do
9 as a result of it.

10 Seventeen through, what?

11 BY MR. WHITMIRE:

12 Q. Twenty-four. That's good enough. I appreciate that,
13 Mr. Taylor. And you testified truthfully?

14 A. I testified as to what I experienced --

15 Q. And you --

16 A. -- that evening and according to that question.
17 That's how I responded.

18 Q. And you were experiencing some sort of tire issue?

19 A. I was traveling some 50-some-odd-plus miles per hour
20 and it was somewhere near dark. So now I was on the
21 inside of the car. I wasn't on the outside looking at it.

22 Q. Mr. Taylor, one last question. And you asked
23 Mr. Chandler to present your case, your story the best he
24 possibly could; is that correct?

25 A. I have an explanation as to what I experienced that

ERIC VINCENT BROWN - DIRECT BY PALMER

1 evening and that is what has been shared with A, B, C, and
2 D attorney, and Attorney Palmer. That's what has been
3 shared now. What you extract from it --

4 Q. The record speaks for itself.

5 A. Yes, it does.

6 MR. WHITMIRE: No further questions, Mr. Taylor.

7 THE COURT: Thank you, Mr. Taylor. You may step
8 down. Appreciate it. All right, Mr. Palmer?

9 MR. WHITMIRE: Call Eric Brown.

10 THE COURT: Eric Brown. Mr. Brown, I need you to
11 stand up and put your left hand on the Bible and raise
12 your right hand

13 ERIC VINCENT BROWN, having been sworn, was examined
14 and testified as follows:.

15 THE COURT: Thank you, sir. I apologize. Now get
16 comfortable.

17 THE WITNESS: Okay. Thank you.

18 THE COURT: Thank you, sir. All right. Mr. Palmer,
19 your witness.

20 MR. PALMER: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. PALMER:

23 Q. Good afternoon, sir. Would you state your full name?

24 A. Yes, sir. My name is Eric Vincent Brown.

25 Q. Mr. Brown, where are you from and what do you do for a

ERIC VINCENT BROWN - DIRECT BY PALMER

1 living?

2 A. Okay. I'm currently from Harrisburg, North Carolina.
3 And what I do currently for a living is I'm an engineer,
4 consulting engineer.

5 Q. Okay. And are you appearing in court today as an
6 engineer as opposed to a simple lay witness?

7 A. I'm appearing as an engineer.

8 Q. And are you in the employ or have you been retained by
9 either Mr. or Mrs. Taylor?

10 A. I've been retained by Mrs. Taylor, uh-huh.

11 Q. Okay. And what is your understanding of the purpose
12 of your presence here today?

13 A. Well, I know Mrs. Taylor when she retained me she
14 asked me to come into this case as just to comment on some
15 facts regarding the use of applied science and momentum
16 studies.

17 Q. Have you previously supplied me with your curriculum
18 vitae, your resume?

19 A. Yes, sir. That's what I've supplied to you; yes, sir.

20 Q. And could you briefly tell us what kind of engineer
21 you are?

22 A. Yes, sir. My background is chemical engineering. I
23 have a degree from Clemson University in chemical
24 engineering, graduated with honors. And I also graduated
25 from Georgia Tech with a master's in chemical

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1 engineering. And I also have a master's in civil
2 engineering which is environmental quality or
3 environmental engineering degree. And I got that from the
4 University of California at Berkley.

5 Q. Have you done any work in the field of mechanical
6 engineering?

7 A. Yes, sir. Chemical and mechanical engineering are
8 very much related because they do cross over, and the use
9 of physics is pertinent to both fields.

10 Q. Now what is the particular qualification that you have
11 that supports your presence, your purpose in this hearing
12 today?

13 A. Yes, sir. A couple of things. Over the course of my
14 20-plus years I've done numerous studies in the area
15 ranging from planning and white paper development to
16 feasible, technical reviews and evaluations.

17 And also I've done design studies as well as going in
18 documentation. And, in addition that covers my whole
19 career where I've spent most of time doing engineering as
20 a consultant. And I've also taught as well physics, both
21 at the college level, community college level to be exact,
22 as well as at the secondary school level.

23 And in those cases I taught physics non-career track
24 students, but I also taught international baccalaureate
25 students, two courses at the secondary school level and I

ERIC VINCENT BROWN - DIRECT BY PALMER

1 also taught advanced-placement physics to students for
2 college credit.

3 And then lastly I spent a summer teaching in the Duke
4 University Talent Identification Program where I came up
5 with an engineering course, an astronomy course in
6 physics, was based on both of them.

7 Q. Okay.

8 A. Uh-huh.

9 Q. And are you acquainted personally with Mr. or
10 Mrs. Taylor or both?

11 A. Yes, sir; I am. I do know them because I grew up in
12 hometown. I grew up with Mr. Taylor's younger brothers.

13 Q. I see. And what have the Taylor's asked you to do to
14 prepare for today's testimony?

15 A. Well, prior to and this goes over that 2009,
16 Mrs. Taylor had asked me to come in and just kind of give
17 a different look or look at some of the things that had
18 transpired.

19 So what I ended up doing is meeting with her and she
20 took me to the accident scene, and also showed me the
21 vehicles that was involved in this. And a couple months
22 after that I then wrote a brief and gave it to her. It
23 took a couple months because at that point I was on my way
24 to Africa and I couldn't get that to her until I had
25 already gone overseas. And I sent that back and this was

ERIC VINCENT BROWN - DIRECT BY PALMER

1 in 2009.

2 Q. Okay. So, you're aware that this trial was held in
3 2007, Mr. Taylor was convicted in May of that year, and
4 your involvement didn't start until 2009?

5 A. Yes, sir; I'm aware of that.

6 Q. How is it that you had access to these vehicles?

7 A. My understanding, Mrs. Taylor said they had purchased
8 them and they had possession of them so she was able to
9 show them to me.

10 Q. Okay. And so you looked at the actual vehicles, it
11 was a Ford Escort?

12 A. Yes, sir. I actually got a chance to see the actual
13 vehicles.

14 Q. And what was the other vehicle?

15 A. The other vehicle was a Blazer --

16 Q. Blazer?

17 A. -- that belonged to Mr. Taylor.

18 Q. Now have you done any type of vehicular or accident
19 study in your career?

20 A. In my teachings of physics, one of the topics that's
21 first taught to students is kinematics which is the study
22 of motion. And there are modules there that get into
23 momentum analysis and studies, and some of the basic
24 derivations and applications of such.

25 Q. And has that involved any kind of accident

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1 reconstruction work?

2 A. Well, what I did in working with the students is we
3 went over Newton's three laws and how that applies to the
4 use of this particular application to accident
5 reconstruction. So we didn't work problems in our -- in
6 the classes that talked about that and how to come up with
7 vehicle motions and directions.

8 Q. Okay. And you examined these two vehicle. Did you do
9 anything else at the request of Mr. or Mrs. Taylor?

10 A. Other than examining the vehicles on the site and
11 writing the report which I said that they a momentum
12 analysis study should be be done. That's basically all I
13 did.

14 Q. Okay. Did you interview any witnesses?

15 A. No, sir.

16 Q. Did you have a chance to look through the trial
17 transcript?

18 A. I only looked at the trial's transcript later on which
19 was back last fall or so because what I had written was
20 written in 2009. And that was before I looked at anything
21 in the file or any important information.

22 Q. So is it fair to say that your involvement
23 professionally was limited to the inspection of the two
24 vehicles in 2009 and some review of the trial transcript?

25 A. Yes, sir.

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1 Q. And no interviewing of witnesses. Did you look at any
2 exhibits?

3 A. Other than what was shared with me back last fall
4 forward, those are the only exhibits that I've seen.

5 Q. Okay.

6 A. Uh-huh.

7 Q. And did you visit Mr. Taylor and interview him at all?

8 A. No, sir; I did not visit Mr. Taylor while he's been
9 incarcerated.

10 Q. Okay.

11 A. Uh-huh.

12 Q. And so what you're here for today is to talk about
13 what you found from basically reviewing the vehicles?

14 A. Well, it's more from the perspective of what I wrote
15 in that brief that I did that gets into requesting that
16 momentum studies should be looked at.

17 Q. Do you have that brief?

18 A. Yes, sir. I do -- can I pull it out?

19 Q. Sure.

20 A. Yes. This is the brief. In the second-to-last
21 paragraph --

22 MR. WHITMIRE: Okay, Your Honor. The witness hasn't
23 been qualified as an expert.

24 THE COURT: Well, I understand he hasn't been
25 qualified. You haven't offered him up as an expert yet;

ERIC VINCENT BROWN - DIRECT BY PALMER

1 have you?

2 MR. WHITMIRE: I so offer, Your Honor.

3 THE COURT: Mr. Palmer, are you offering him as an
4 expert in what?

5 MR. PALMER: I offer him as an expert in engineering.

6 THE COURT: Okay. Now he -- my understanding that he
7 has testified he is a chemical engineer and a civil
8 engineer?

9 MR. PALMER: Yes, sir.

10 THE COURT: And when he was talking about what he
11 was -- the basis of his study had to do with physics,
12 basic laws of physics, as I understand, Newton's three
13 laws of physics.

14 MR. PALMER: Yes, sir.

15 THE COURT: And so what I'm going to do, I am going to
16 take his testimony as a proffer since we don't have to
17 worry about a jury. I will take his testimony as a
18 proffer. And I will reserve my ruling on whether or not I
19 believe he is qualified to testify about this.

20 I will note your objection as to his qualifications as
21 an expert, but I will let you go forward and I'm going to
22 reserve my ruling on whether he is. But I will let you go
23 forward with his testimony.

24 And, Mr. Whitmire, you may cross-examine without
25 giving up your objection to him being -- I'm noting that

1 on the record now so you can do that. So we will continue
2 with it since we're here.

3 MR. PALMER: Thank you.

4 MR. WHITMIRE: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 THE WITNESS: Okay. Essentially what I was saying
7 here, the conclusion I basically reach is that a study be
8 done, a detailed study.

9 BY MR. PALMER:

10 Q. Okay. And after you made that recommendation -- by
11 the way, what is the date of that recommendation?

12 A. The date is November the 15th, 2009, and that's when I
13 wrote it and sent it.

14 Q. Okay. And did you, did you discuss your
15 recommendation with the either Mr. or Mrs. Taylor?

16 A. No, sir; I did not. After I sent it to Mrs. Taylor, I
17 had no further discussion with her until late 2011.

18 Q. Okay. So, just to bolster my understanding. Your
19 conclusion, if you want to call it that, is that a further
20 study would be helpful in determining the causation of the
21 accident; is that what your recommendation is?

22 A. Yes, sir. Just take the whole situation process
23 through what we would call scientific inquiry and come up
24 with a report because that's, from an engineering
25 perspective what I have done in all my career, just

1 getting a report and running through everything.

2 Q. I see. All right. Thank you, sir.

3 No further questions, Your Honor.

4 THE COURT: All right. Mr. Whitmire, anything on
5 cross?

6 MR. WHITMIRE: May it please the Court.

7 THE COURT: And, Mr. Whitmire, just for purposes of
8 the record, you are not losing your objection to his
9 testimony as an expert by cross-examining him. Is that
10 correct, that's your intention?

11 MR. WHITMIRE: May it please the Court. I would just
12 like to run through a little bit of my proposed voir dire
13 just to have it on the record.

14 THE COURT: Yes, sir.

15 VOIR DIRE

16 BY MR. WHITMIRE:

17 Q. Good afternoon, Mr. Brown.

18 A. Good afternoon, sir.

19 Q. Do you have any training in accident reconstruction?

20 A. No, sir, other than the work I've done in teaching
21 physics.

22 Q. Had no training in computer-aided diagramming,
23 accelerometer training?

24 A. I've done computer-aided design in other areas.

25 Q. Have you done tire and lamp forensics examination?

1 A. No, sir.

2 Q. Tire damage analysis?

3 A. No, sir, not that specific.

4 Q. Low-speed collision analysis, nothing like that?

5 A. No, sir, other than what I've done in an academic
6 sense.

7 Q. Maybe just a little more general, damage energy
8 relationship and collision reconstruction or specifics?

9 A. The laws of conservation of energy, I do have
10 experience in that because I am a certified energy
11 manager. So I did and have taught students regarding
12 collisions that you do have a change in kinetic energy and
13 loss of energy. So we have talked about that in our
14 academic settings.

15 Q. Notwithstanding your very impressive CV, you don't
16 have any certification in accident reconstruction?

17 A. Oh, no, sir.

18 Q. And have you ever testified in a court of law in South
19 Carolina on any matter?

20 A. No, sir.

21 Q. On accident reconstruction?

22 A. No, sir.

23 Q. When you produced this report, did you review the
24 State's evidence, the MAIT analysis?

25 A. At that point, I wasn't aware of that information.

ERIC VINCENT BROWN - CROSS BY WHITMIRE

1 Q. Did you know that -- you didn't review any of the
2 subpoenaed State's evidence, just the trial transcript?

3 A. No, sir.

4 Q. And --

5 A. Not that I recall; uh-huh.

6 MR. WHITMIRE: And for the record, Your Honor, the
7 State objects to Mr. Brown's qualifications as an expert
8 in accident reconstruction specifically under Watson V
9 Ford Motors. But now that I've done that, I appreciate
10 you letting me put that on the record.

11 CROSS-EXAMINATION

12 Q. Mr. Brown, so the basis of your study, you conclude
13 with your recommendation that a momentum study be done
14 further; is that correct?

15 A. Right, right, more detailed. A detailed study,
16 period.

17 Q. But you haven't done one?

18 A. No, sir. No, sir.

19 Q. Are you qualified to do one?

20 A. No, sir. To do one of that detail, there are various
21 experts out there who are qualified as such.

22 MR. WHITMIRE: Thank you, Your Honor. No further
23 questions. Appreciate it, Mr. Brown.

24 THE COURT: All right. Anything on redirect?

25 MR. PALMER: Just one moment, Your Honor.

KEITH EVERETT CHANDLER - DIRECT BY WHITMIRE

1 THE COURT: Yes, sir.

2 MR. PALMER: (Conferring with client). No further
3 questions, Your Honor.

4 THE COURT: Thank you, sir. You may step down. I
5 appreciate it.

6 THE WITNESS: Okay.

7 THE COURT: Mr. Palmer, are you prepared to call your
8 next witness?

9 MR. PALMER: No more witnesses, Your Honor.

10 THE COURT: All right. Mr. Whitmire, is the State
11 prepared to call its witness?

12 MR. WHITMIRE: Yes, Your Honor. The State calls
13 Everett Chandler.

14 THE COURT: Mr. Chandler.

15 KEITH EVERETT CHANDLER, having been duly sworn, was
16 examined and testified as follows:

17 THE COURT: All right. If you'd please get
18 comfortable and, Mr. Whitmire, as soon as he gets
19 comfortable, he is your witness.

20 DIRECT EXAMINATION

21 BY MR. WHITMIRE:

22 Q. Mr. Chandler, would you state your name for the
23 record?

24 A. My name is Everett Keith Chandler.

25 Q. Mr. Chandler, do you recall the circumstances

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1 surrounding Mr. Taylor retaining you?

2 A. Yes.

3 Q. Can you briefly describe what posture the case was in
4 when you got, when you took it over from Mr. Mobley?

5 A. I met Mr. -- I met with Mr. Taylor and his wife on --
6 I have the intake form. I met with Mr. Taylor and his
7 wife on April the 9th of 2007. It was at that time he
8 gave me the posture of the case. He let me know that he
9 had two attorneys prior. One who was Mr. John Mobley an
10 attorney who I have a deep respect for his ability. And
11 he told me the posture of the case, that there were offers
12 on the table and he intended to move forward with the
13 trial.

14 I actually advised him of the qualifications of
15 Mr. Mobley and told him that this case is probably
16 postured in the way that Mr. Mobley said it is. And he
17 made it clear to me that he was going to -- he was going
18 to try this case. I think he used the term that he was
19 going to ride in on a horse and it just depended on which
20 one it was. He wanted a trial and as he accurately stated
21 earlier, I -- when we were negotiating the case, there was
22 no plea to this case that he was going to accept because
23 he clearly believed that he did not cause the death of the
24 Neeley family.

25 Q. Now did you have the opportunity to review

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1 Mr. Mobley's file?

2 A. I did. I did. Once I was retained, he came to me on
3 the 9th and on the, April the 13th. They paid the
4 retainer fee of \$10,000. And it was at that time that I
5 know it was on a Sunday that I met with John Mobley and
6 basically copied his entire file. Met with him on a
7 Sunday afternoon and we went through his file in its
8 entirety.

9 We knew that the case was postured to be called in
10 court. And, in fact, Mr. Taylor and I met in Calhoun
11 County Courthouse to get an extension beyond one court
12 term, or tried to get one beyond the court term. And we
13 met in front of Judge Goodstein.

14 Q. Do you recall any experts that Mr. Mobley had
15 consulted on behalf of Mr. Taylor?

16 A. Mr. Mobley had consulted a Mr. Poplin. Mr. Poplin,
17 when I was DUI prosecutor in Aiken, Bamberg and Barnwell
18 is the go-to engineer. In fact he has a bachelor's in
19 engineering, master's in reconstruction. I mean, he has
20 just a plethora of knowledge when it comes to accident
21 reconstruction.

22 I read the two conclusions that he had drawn. One
23 conclusion had to do with the blowout, that he could not
24 prove or disprove the theory of the blowout, and on the
25 question of whether the stationary vehicle, whether one of

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1 the vehicles was stationary which Mr. Taylor was making
2 reference. That was the second conclusion that was
3 actually drawn. And that was in the paperwork that I
4 reviewed.

5 Of course I talked to Mr. Mobley in depth about it as
6 we were trying to develop a theory of the case. As I said
7 before, the Taylors made it clear that they wanted to try
8 the case. So we did need to quickly develop a theory of
9 the case.

10 MR. WHITMIRE: May I approach, Your Honor?

11 THE COURT: You may.

12 Q. And you have your file with you today?

13 A. I do.

14 Q. Referencing State's Exhibit One, do you recall what
15 this document is?

16 A. It is a copy of the letter dated October the 10th,
17 2006, listed as State Exhibit One. It's a copy of the
18 letter that Mr. Poplin actually sent to Mr. Taylor -- I
19 mean, Mr. Mobley regarding Mr. Taylor's case.

20 And State Exhibit Two is actually, I guess, the CV of
21 Mr. Poplin that lays out his extensive experience and
22 research in the areas of accident reconstruction. And
23 apparently he has a master's of science in mechanical
24 engineering and civil engineering, and a bachelor's in
25 mechanical engineering.

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1 MR. WHITMIRE: Thank you, Mr. Chandler.

2 MR. PALMER: No objection, Your Honor.

3 THE COURT: Okay. State's One and Two?

4 MR. WHITMIRE: State's One and Two submitted into
5 evidence.

6 THE COURT: No objection?

7 MR. PALMER: No objection.

8 THE COURT: Both are in evidence without objection.

9 (State's Exhibit No. 1, letter of 10-10-06, and
10 State's Exhibit No. 2; Poplin's CV, received into
11 evidence.)

12 BY MR. WHITMIRE:

13 Q. And how involved was Mr. Taylor and his family in his
14 defense?

15 A. Mr. and Mrs. Taylor were very involved in the defense
16 from the very beginning. They were extremely helpful.
17 They actually purchased the vehicles involved in the case.

18 They gave me a number of theories that potentially we
19 could have pursued. And in meeting with Mr. and
20 Mrs. Taylor, I actually convinced them to follow the
21 theory that we pursued and we ultimately went to trial on.

22 I went to the location of the accident and looked at
23 the vehicles. And based on all of the evidence that we
24 had, we were able to present to the State basically our
25 theory that the tire blew out, crossed the center line

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1 which would show that his -- the accident was not caused
2 by impairment but by mechanical defect of the vehicle.

3 And once that vehicle disabled the Neeley's vehicle
4 another gentleman, I believe they had mentioned him as
5 Mr., I believe, Glover, who came later who was traveling
6 in excess, I think 15 to 20 miles in excess of the speed
7 limit, actually struck the Neeleys in the back and it
8 killed all three of them.

9 From the position of the family members that were in
10 the vehicle, the puddle of coolant that was laid on the
11 highway, it was clear that at best Mr. Taylor's vehicle
12 had disabled the Neeley's, and that the second vehicle
13 struck and killed the occupants of the vehicle.

14 That was our theory and once we presented it to the
15 Orangeburg solicitor's office, they definitely got
16 nervous.

17 I never promise my clients victory in any case but I
18 knew that we had a theory that was one that would -- that
19 potentially could be viable in light of the evidence. And
20 it's because of that that we pursued that theory. I
21 personally believe it. I personally believed that
22 Mr. Taylor did not kill those three occupants.

23 And that's one of the reasons why we moved forward.

24 But separate and apart from that, Mr. Taylor talks
25 about alternative things that, that he talks about that I

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1 didn't pursue like these additional witnesses. There, it
2 really was because Mr. Taylor and Ms. Taylor had presented
3 a number of theories to go forward that we could have went
4 forward.

5 And I told them we needed one theory. It had to be
6 consistent with the facts and it had to be something that
7 a jury could follow easily. They agreed with it. I met
8 with them in their living room. I spent a lot of time
9 with them that weekend before the trial. And we all
10 settled in on it. They were aware of the theory.

11 I will promise you that they did believe all of these
12 other things. They believed that it wasn't Mr. Jesse
13 Glover who was driving but it his wife. They believe his
14 wife was impaired. But all of those issues were just too
15 confusing and too convoluted to put together a theory that
16 we could take to the jury. And so we focused on just a
17 second vehicle causing the death and not Mr. Taylor.

18 So while it is true that we did not call those extra
19 witnesses, Mr. and Mrs. Taylor I've spoken in detail with
20 them the weekend before that we were not going to and why
21 we weren't going to call them, and they agreed as we moved
22 forward, as we moved forward in the trial.

23 Q. Did you advise Mr. Taylor that corroborating proximate
24 causation would be a jury issue inevitably?

25 A. Absolutely. And in fact it was an issue that end up

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1 being a full jury issue because the judge also, Judge
2 Goodstein, she actually gave an instruction on simple
3 DUI. She gave one. Which meant that the jury could find
4 Mr. Taylor impaired and still not say that he led to the
5 death of the Neeleys which they would be -- they would
6 only be able to find him impaired if they believed that
7 the vehicle, he crossed the center line because he was
8 drunk. Our theory was that the reason why he crossed the
9 center line was because his tire blew out.

10 And while Mr. Mobley in State Exhibit Number one -- I
11 mean, Mr. Poplin in State Exhibit Number One could not
12 substantiate it, we still were going to make that argument
13 because Mr. Taylor basically said that he felt that
14 blowout or something that was consistent with a blowout
15 and that moved us away from them trying to argue that the
16 reason why he crossed the center line was because he was
17 impaired or drunk.

18 Q. Now regarding his impairment, did you have any
19 potential suppression defenses under the fourth amendment
20 or potentially ...

21 A. No, there was none apparent. I mean, our theory -- of
22 course, I cross-examined, and I had forgotten how thorough
23 it was. I actually read it when I was sitting over
24 there. I cross-examined the SLED toxicologist because
25 they use an example of somebody, the effect of a .12 on an

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1 individual. And we talked about whether a person had an
2 empty stomach versus a full stomach, the testing procedure
3 that they use. And we did everything that we could to
4 undermine basically the credibility of that .12.

5 There was no feasible alternative study that would
6 have been offered. And, again, because we were not trying
7 to do what the Solicitor Pascoe tried to accuse us of
8 and -- in the -- in his closing argument to do a shotgun
9 effect, we were very precise as to our theory of the case
10 as to why we thought that Mr. Taylor was not guilty.

11 And ultimately it was a jury question as I said and
12 they just they found him guilty on all three counts.

13 Q. Not to hammer too much, but didn't you object --

14 A. Oh, I objected.

15 Q. -- to what Mr. Pascoe made mention of that in closing?

16 A. It is common knowledge and of course in the court
17 system that most judges don't like you to object during
18 someone's closing argument, but I objected twice because I
19 did believe that the solicitor had crossed the line on a
20 number of occasions.

21 We still have to measure it as just a matter of
22 keeping an honor in the Court. But I ended up objecting
23 twice to some language that Solicitor Pascoe used.

24 As we specifically focus on this issue of the motion
25 for a continuance. As I said before, once we presented

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1 our theory to the State, they then came to me and called
2 me and said that they were going to have their accident
3 reconstructionist who was basically just a trooper who
4 went to a weekend class or a two-week class in Texas to
5 learn accident reconstruction. They were not going to
6 have him to testify that the first collision as opposed to
7 the second collision caused the death of the Neeleys.

8 Well, I indicated to the Court in chambers that if in
9 fact they were going to do that we were going to need to
10 bring in an expert to do a momentum study.

11 The Judge chose not to move forward with a continuance
12 and allowed us to move forward by suggesting that their
13 expert would not testify towards which accident caused the
14 death, basically caused the death of the Neeleys.

15 But then in court, once we were in court despite my
16 objection, she allowed testimony that basically said which
17 accident caused the death of the Neeleys. And on that
18 basis I appealed it. I thought it was improper. I still
19 do. I appealed it.

20 And when the Court of Appeals came back they didn't
21 come back to say it wasn't properly preserved because they
22 did address the issue, but what they found was that the
23 decision to allow that officer to testify was within the
24 sole discretion of the Court. And that Judge Goodstein,
25 the Court being Judge Goodstein, that she did not abuse

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1 that discretion.

2 That was the final results of the Court of Appeals
3 because it was clearly preserved, and it was a matter that
4 they did take up in the Court of Appeals.

5 Q. And just to clear this up. The stipulation that
6 you're referencing involved the ultimate conclusion of
7 which accident caused the death; right?

8 A. Well, it was my position that the stipulation was in
9 the testimony. We were very specific even on the record
10 that there was any argument about the causation of the
11 death with respect to the collisions.

12 And Judge Goodstein basically indicated based on the
13 civil (verbatim) rules of procedure that because under
14 rule five we were given the data that an officer could
15 draw the conclusion that somebody, that somebody could
16 have been ejected out of a vehicle and later died. She
17 used that as her reasoning despite the fact of the
18 agreement we made in chambers and put on the record.

19 Q. And this whole scenario came to fruition because the
20 State failed to conduct a force momentum study?

21 A. That's correct. And, I mean, honestly -- I mean,
22 to -- not to their defense but, I mean, understandably
23 they didn't know what our theory was. And when I
24 presented the theory the weekend before the trial, they
25 had to come up with something because it was one, it was a

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1 very strong theory.

2 And they needed, they needed something to do it so
3 they brought in this accident reconstructionist who,
4 again, is a trooper with two weeks of study in a
5 reconstruction class, comes in and he comes up with this
6 new theory that they could not substantiate and we
7 couldn't rebut because we were not given that
8 opportunity.

9 We requested we -- had requested a continuance. I'm
10 not going to rehash the appeal, but this is the appeal
11 that we did in fact bring before the Court of Appeals and
12 in fact we were not paid to do.

13 Q. To a couple of my questions you used, the situation
14 that's to the benefit of my client.

15 A. Without any question. Without any question.
16 Mr. Taylor believed that he was innocent and because of
17 that he wanted a trial. And we offered him the best trial
18 that was available under the evidence.

19 And as I stated in my appeal, I believe that what the
20 circuit solicitor did amounted to prosecutorial misconduct
21 because he offered evidence that was contrary to an
22 agreement that was made in court. And that was my
23 position then and that is my position now.

24 Q. Back up just a little bit regarding the evidence. Did
25 you independently file rule five and Brady motions?

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1 A. I would have to look, but I'm not quite sure. I know
2 that judge, the judge, I know she made it based on rule
3 five, she made her decision based on rule five but I'm not
4 quite sure if we independently did it.

5 But of course the rule five doesn't go to the lawyer,
6 it goes to the defendant. So if Mr. Mobley did it it
7 would, the rules would still, would still protect
8 Mr. Taylor. And I can't remember if we filed them
9 independently or not.

10 Q. In preparing for trial, what concerns, if any, did you
11 have regarding the plausibility of Mr. Taylor's version of
12 the offense and the State's evidence?

13 A. Well, sure. As I said, Mr. Taylor had a number of
14 theories that on their own could lead you down a lot of
15 trails. I mean, he had issues, as you heard him
16 articulate, about why the Neeley's family's bodies were
17 removed early, why certain fluids were not taken, the
18 question of whether or not who was actually driving the
19 vehicle, the second vehicle, was that Mr. Glover or his
20 wife.

21 All of which I, basically we sat down together and we
22 evaluated and we just had to make a termination. It is my
23 theory and they accepted it that we cannot go in front of
24 a jury and offer multiple theories and not have a clear
25 road for them to follow us down.

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1 And I think had it not been for the allowance of the
2 testimony of the trooper that that the jury would have
3 found a different conclusion. Unfortunately the judge let
4 in the information and Mr. Taylor was found guilty.

5 Q. And just specifically addressing a few allegations
6 that have not been addressed so far in your very thorough
7 testimony.

8 A. Sure, sure.

9 Q. Your opening statement, how did you formalize it? And
10 how did you consult Mr. Taylor on that?

11 A. I would say this. I shared with the Taylors our
12 theory of the case. I told them at best and this was a
13 long time, I mean, this was a number of years ago. But at
14 best I wouldn't have given them the specifics of the
15 details because I don't write them down like that. But I
16 would have told -- they already knew the theory of case.
17 They approved the theory of the case.

18 So what they knew was at best during my opening
19 argument I would have just been articulating what the
20 theory of the case was.

21 As for the statement that I have a small practice, I'm
22 one lawyer and four paralegals and one runner. I have a
23 small practice. I hear for the first time -- and I use it
24 as an opening statement all the time. That's the first
25 time that I heard that it would hurt my client.

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1 And I just find a hard time believing that, but I will
2 have to take caution in saying that before -- I think it
3 makes me look a lot more palatable than some guy coming
4 out of some power house law firm who gets a bunch of
5 guilty people off. I want to be your local attorney who
6 you know and is not some slickster coming in. That's
7 how -- that's the purpose.

8 But I'm hearing Mr. Taylor. It's the first time I
9 heard that objection. And I will have to look at that. I
10 mean, I'm not saying I know everything but I would say
11 telling people I have a small practice not only is it
12 true, it's definitely not misleading, but I thought it
13 would present that, hey, look, I'm just laying out some
14 simple facts that went on, and garnering a level of trust
15 from the jury.

16 Q. And previous to Mr. Taylor's trial, how much
17 experience did you have with DUI-related crimes and
18 prosecutions?

19 A. I start in 1998 as a DUI prosecutor in Aiken, Bamberg
20 and Barnwell County. And during that time where
21 Mr. Taylor talks about my training, one of the duties of
22 assistant solicitors, at least in my circuit, are
23 sometimes to do trainings with the local Highway Patrol on
24 how the better make those cases. I started off
25 exclusively prosecuting DUIs. So I know DUI prosecution

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1 and I've prosecuted felony DUIs, and so, and I prosecuted
2 them and by that time defended DUI cases as well. And so
3 I definitely have been doing this for a while because
4 basically this is how I cut my teeth in the area of
5 litigation.

6 Q. And when you were retained, was Mr. Taylor's case on
7 the trial docket?

8 A. Yes, it was. In fact, we were getting on the horn.
9 And we were trying to find out exactly -- as trial dockets
10 go, you know, there's always a possibility of things move
11 up or down.

12 But I distinctly remember Mr. Taylor and I having to
13 meet in Calhoun County with the judge to try to give us as
14 much leeway as possible. I used, I used as many reasons
15 to try to get as much of an extension in the case but I
16 will say that by the time we had, we were coming before
17 trial and I was prepared to try this case. I was prepared
18 to try this case on the theory that we had. It was only
19 in chambers when the State was planning on proffering a
20 theory based on the defense that I presented to these guys
21 in hopes, and hoped to get a very low offer plea offer
22 that I could take to Mr. Taylor. In fact, I remember
23 talking to Mr. and Mrs. Taylor in letting them know that I
24 was going to reveal our theory in hopes to get a better
25 deal on the table.

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1 But we always run the risk because once you show your
2 theory then, you know, they can always come back and try
3 to counter. They did but their counter would require us
4 having leeway with having additional experts because they
5 had information that they hadn't provided before. And
6 unfortunately the -- I believe that the judge violated the
7 terms of the in-chambers agreement that we had.

8 Q. And, just touching on some of the issues he did bring
9 up today.

10 A. Sure.

11 Q. I apologize for jumping all over the place.

12 A. No, go ahead.

13 Q. Did you see any potential Batson issues while
14 selecting a jury?

15 A. None, none at all. We picked a jury. And certainly
16 it wasn't lost on the fact as Mr. Taylor said who the
17 parties were involved, but I didn't think that that was an
18 issue.

19 As the judge does, she asked if the parties, were --
20 any of them would have had any prejudices against either
21 party. And I, when the judge asked that I was satisfied.
22 I didn't see there was any Batson issues. And I didn't
23 see if -- Mr. Taylor didn't appear at that time or any
24 time after that to have an issue with the makeup of the
25 jury.

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1 Q. And what was Mr. Taylor's involvement during jury
2 selection?

3 A. It's my practice to actually give my clients a pad and
4 talk to them about why we, talking to them about why we
5 choose who we choose and to let them be actively
6 involved. Mr. Taylor worked in Orangeburg County. He
7 would have a lot more exposure with the people who live in
8 the area. I have some exposure in Orangeburg but only the
9 areas of Orangeburg County that kind of border Aiken
10 County. And so while I know a few people, while my firm
11 does some advertisement in the area, he would have a
12 better feel of the community.

13 And so he would have been -- he would have had that
14 part to kind of let me know if there was some problems
15 that he had and, frankly, he just didn't articulate any
16 issues that he had with the jury at that time.

17 Q. Touching on another one of Mr. Taylor's allegations.
18 What advice did you provide him on the benefits and
19 detriments of testifying in his own defense?

20 A. Sure. We always talked about that. Now Mr. Taylor
21 has -- well, I mean, it's been exhibited today. He has a
22 very peculiar way of speaking officially. And it really
23 does kind of confuse, can potentially cause some level of
24 confusion. And so we spent a lot of time about the past,
25 the way he talks in the past tense or the way he talks

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1 about himself separate and apart in a sentence like, Jimmy
2 Taylor is. And trying to be able to cohesively lay out a
3 theory or lay out his position as he would.

4 You know, one of our theories was that he had a
5 passenger in the vehicle with him during a South Carolina
6 State Homecoming and a Orangeburg County Fair. The
7 traffic was bad. And actually one of our witnesses was
8 able to talk about how he maneuvered through the traffic
9 and everything, how he couldn't have been impaired.

10 And we needed him -- also, if he was going to testify
11 that we needed him to be clear and concise. And that is,
12 that was somewhat difficult for Mr. Taylor but I thought
13 he did, under the circumstances I thought he did a good
14 job laying it out.

15 Q. Did you share these concerns with him prior to him
16 testifying?

17 A. Yes, we did. Because that was an issue. I mean, it
18 was something that we talked about. It was specific.

19 Even throughout the trial, even in the evenings after
20 the trial, I would be on the phone with Mr. and
21 Mrs. Taylor. We would talk about what happened and what
22 we were going to do. So Mr. Taylor as well as Ms. Taylor
23 was very involved throughout the entire process. And they
24 were very helpful in kind of giving me the dynamics that
25 they had because they had firsthand knowledge. And as I

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1 said from the very beginning, they were very involved in
2 his defense.

3 Q. And, you filed directed verdict motions on
4 Mr. Taylor's behalf; is that correct?

5 A. Yes.

6 Q. The last question of the day was just a matter of fact
7 for the jury to determine?

8 A. It was when it came down to it. But a little bit
9 more, I thought the judge allowed in evidence that she
10 shouldn't have. And I appealed because of that.

11 I believe that the facts as presented without that,
12 without us being able to have the opportunity to have that
13 momentum study that I believe that the jury would have, I
14 think they would have been hard pressed without any
15 evidence as to which, which accident caused the death of
16 the Neeleys. I think the jury would have been hard
17 pressed to come back with a verdict of guilty on all three
18 count of felony DUI death. I think at best he would have
19 had one count of DUI.

20 Q. Now, actually that brings me to a question I forgot to
21 address.

22 A. Yes.

23 Q. What -- can you describe the State's evidence
24 involving the collision that Mr. Taylor had with the
25 Neeley's vehicle?

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1 A. Well, their evidence was that he basically disabled
2 the, disabled the Neeley's vehicle when his vehicle ran
3 across the center line.

4 Their argument is that the reason why it ran across
5 the center line is because he was impaired. He blew a .12
6 blood-alcohol level. And they believe that that blood-
7 alcohol level would be consistent with, that blood-alcohol
8 level would be consistent with impaired driving and the
9 impaired driving that happened

10 Q. Now when you say disabled, is that was there a big
11 question of fact regarding a physical actual striking of
12 the vehicles?

13 A. I'm about to be as difficult as I was talking about
14 with that Mr. Taylor. Let me bifurcate that. We chose a
15 theory that would not make it an issue.

16 But I would say, as Mr. Taylor articulated, he did
17 have -- they had some questions as to that, that, that
18 collision but we chose a theory, they agreed upon a theory
19 that we would lay out that would say that he did hit them
20 and they disabled it.

21 So by the time it was presented by a defense, we did
22 not choose that line of, that line of questioning so we
23 could -- that line of challenges to the evidence so that
24 we could lay out our theory of the case.

25 Q. Now after hearing Mr. Brown's testimony in

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1 Mr. Taylor's case in chief, how helpful would that report
2 have been for you?

3 A. Well, I mean, I think it was an error. We're saying
4 that we did need the study. So, I mean, in fact, that's
5 the whole basis of our appeal. My, the basis of our
6 appeal is that when we went into chambers and the judge
7 said that she was not going to allow the State to testify
8 to specific evidence then that she should not let the
9 State testify to specific evidence.

10 The study that Mr. Brown is talking about is a study
11 that I was demanding if we were going to go forward that
12 we be allowed. So while I may have questions -- while I'm
13 proud of Mr. Brown especially being from our area to
14 accomplish what he has, I don't think he has the expertise
15 but I think he's dead on when he says that we definitely
16 needed that momentum study. We definitely needed that
17 momentum study. And that was the whole point of my
18 appeal.

19 MR. WHITMIRE: No further questions. Thank you so
20 much, Mr. Chandler.

21 THE COURT: All right. Mr. Palmer?

22 MR. PALMER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. PALMER:

25 Q. Mr. Chandler, is it a fair statement that this theory

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1 that you've testified about that you and the Taylors
2 decided on and that was presented on his behalf at trial,
3 wasn't really your typical DUI defense?

4 A. As Mr. Taylor said, it wasn't your typical DUI case.
5 It had -- it read almost like a law school question with
6 intervening or super-intervening causes versus proximate
7 cause which is one of the requirements that you have in
8 felony DUI.

9 Q. Really the issue is more common to a civil case;
10 wouldn't you agree?

11 A. Sure. Absolutely.

12 Q. If you could have somehow removed, if you could have
13 somehow suppressed the evidence of blood-alcohol in this
14 case, it would have just been a horribly tragic auto
15 accident?

16 A. No, I disagree. Actually the blood-alcohol level
17 would have just went to DUI. And that offer -- I mean,
18 that blood-alcohol level, one, suppressing the blood-
19 alcohol level there needs to be a grounds for it. And
20 there was no apparent grounds to be able to do it as for
21 the way it was collected or even the testimony of my
22 cross-examination which I counted was about three or four
23 pages of the blood-alcohol of the SLED toxicologist.

24 But, yes, if you take blood-alcohol level away from a
25 DUI, you won't have DUI because that's a central element.

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1 But in this case there was no apparent suppression that
2 could be made in this case.

3 Q. Now was, the toxicologist's name was Landrum;
4 correct?

5 A. That's correct.

6 Q. All right. Just give me a moment here.

7 A. Sure.

8 Q. And Landrum was SLED -- he was with SLED? Excuse me.

9 A. Yes, sir.

10 Q. As you understand it. And he went into -- would you
11 agree that he went into quite an involved dialogue about
12 the effect of alcohol in the blood system, the nervous
13 system? In fact, he referred to it as a CNS depressant?

14 A. Right.

15 Q. Do you recall that testimony?

16 A. Yes. And my cross-examination when we addressed that
17 dialogue.

18 Q. Well, do you have a copy of the transcript with you,
19 sir?

20 A. I don't have it with me but if you could hand
21 something to me.

22 Q. Is it possible that we can get him a copy of the
23 transcript?

24 THE COURT: Mr. Whitmire, do you have an extra copy of
25 the transcript?

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 MR. WHITMIRE: Yes, Your Honor.

2 THE COURT: Okay. Would you mind handing it? What
3 page are you looking for?

4 MR. PALMER: The direct examination starts on 355, but
5 I want to refer more specifically to the cross-
6 examination.

7 THE COURT: Okay. What page does that start?

8 MR. WHITMIRE: Here you go. (Document handed to
9 witness).

10 MR. PALMER: Which begins on page 374.

11 THE COURT: Okay. And, Mr. Chandler, once you get
12 there if you'd let Mr. Palmer know.

13 THE WITNESS: I am ready, Your Honor.

14 THE COURT: Sir?

15 THE WITNESS: I am ready, Your Honor.

16 THE COURT: Okay.

17 BY MR. PALMER:

18 Q. Can you tell us any part of this cross-examination
19 that you think was more effective than some of the others
20 in dispersing the expert's testimony?

21 A. The expert actually laid out a scenario that we
22 allowed him to lay out because even in his scenario which
23 he said was his best case scenario, and I'm specifically
24 making reference to line seven, eight, and nine of the
25 page 374, about what effects it would have.

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 And he would have to agree that that was, that would
2 be assuming that someone had nothing to eat and would have
3 to have been an hour before they had a drink.

4 And basically the nature of that cross-examination was
5 to really narrow his scenario to be just something that's
6 a scenario. He didn't know -- he didn't know Mr. Taylor's
7 time that he had the drinks or any of those things. And
8 so in many ways Mr. Landrum was basically just merely
9 speculating as to the effects.

10 And I thought we clearly handled that and even as we
11 move to, well as we completed page 374. And then we went
12 to 375 where I was cross-examining another aspect of
13 this. And this was actually going directly to the
14 methodology of his testing.

15 Q. When you ask a question, like, say I'm on line 11 of
16 page 374, and question would be. I'm sorry. Line 15.
17 When you talk about a .12 you're really talking about .12
18 of a hundred, aren't you. And the expert answers, yes.
19 Aren't you more or less just reinforcing his direct
20 testimony?

21 A. Actually I'm not because what we're highlighting is
22 that the actual percentages that he's using to try to come
23 up with a blood-alcohol level ends up being a very low
24 percentage of blood-alcohol level that's taken even from a
25 small vial.

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 So, in essence we were -- it's a way to actually
2 challenge the sufficiency of the test that a small vial or
3 vials would, they were calculating a small percent of a
4 drop of his blood. And it goes, and it's just a
5 methodology. It's just a way of cross-examining that
6 causes them to question even the entire methodology of
7 testing, because that's the only thing we had in this
8 case.

9 Q. And would agree, not with specific regard to your
10 question --

11 A. Sure.

12 Q. -- But the testimony, well, actually the question
13 beginning on page 377 at line 11, you were -- I'll
14 paraphrase. You were asking him about the effects of a
15 .12, a seasoned drinker, alcoholic. Don't you agree that
16 his answer which starts on line 16 and carries all the
17 way, the entirety of page 378 on into page 379, basically
18 allowed him to extend his dialogue about the effects of
19 alcohol and basically reinforced his testimony once more
20 to the jury?

21 A. Actually, I don't think that. You know, one of the
22 methods that you do in cross-examination is that you allow
23 a witness to say something that everybody based on their
24 own experiences would know is not true. And the reality
25 of it is everybody even in this courtroom today knows that

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 there's some people who could drink 10 drinks and have .12
2 would could walk as straight as they can, walking right
3 out of that. And me on the other hand, I could have half
4 a glass of wine and I would need help walking out of this
5 courthouse. And that effect is effective on every juror
6 that was sitting on this panel.

7 So regardless of what his response was, that when you
8 have a witness say something that's even contrary to human
9 experiences it also undermines his credibility.

10 Now that is something that's not glaring by a simple
11 review of the transcript but that is the methodology that
12 we were using at that time.

13 So if everybody knows what color the sky is, if a guy
14 goes up and says that it's red when it's blue, that goes
15 to his credibility. And most jurors, most people in the
16 gallery today would know or most people in the audience
17 today would know exactly, would know that there are
18 different people that can handle alcohol in different
19 ways. And to come up summarily and say what a .12 does is
20 unreasonable. And that's the point that we were actually
21 bringing out.

22 And juries -- and I just specifically -- as normally
23 when I do this line of questioning, there's jurors who are
24 looking at each other and shaking their heads because they
25 know about their Uncle George who could drive from here to

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 Virginia with a .20 blood-alcohol level and but then they
2 know about the novice who could have a glass of wine and
3 not be able to operate a vehicle.

4 Q. While we're on that thread. As a DUI prosecutor and
5 as a defender of persons accused of this charge, you've
6 heard the statement made by law enforcement and it's my
7 experience it's present in almost every case, I detected a
8 strong odor of alcohol. And that statement was made in
9 this case; was it not?

10 A. Sure.

11 Q. And do you remember which witness made that
12 statement?

13 A. I can't remember. I think -- I can't remember off the
14 top of my head.

15 Q. If I suggested it was Lynn Drawdy who described
16 herself as a first responder, EMS tech or a paramedic.
17 And as far as the transcript goes, I'm referring to --
18 that would have been starting around page 192, down at
19 line 23. Actually page 193 is when she gets into the
20 strong odor of alcohol. Page 193.

21 THE WITNESS: Your Honor, this packet doesn't have
22 that page.

23 THE COURT: He did that on purpose.

24 THE WITNESS: Is that what he did?

25 THE COURT: We got it from the State. I'm sure the

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 State has the one that has all the pages somewhere.

2 MR. WHITMIRE: I inherited a transcript that's come
3 apart.

4 THE COURT: No, it's in different parts.

5 MR. WHITMIRE: Let me get all of them.

6 THE COURT: Okay. It's volume -- it's my volume two.

7 MR. WHITMIRE: (Document handed to the witness.)

8 THE WITNESS: Thank you.

9 THE COURT: Thank you, Mr. Whitmire.

10 MR. WHITMIRE: Yes, sir, Your Honor.

11 THE COURT: Appreciate it.

12 THE WITNESS: Page 193?

13 BY MR. PALMER:

14 Q. One ninety-three, sir, starting at line 14.

15 A. Yes, sir. Okay. Go ahead.

16 Q. Now first of all, I think you'd agree that this is a
17 statement that's commonly made in DUI prosecutions?

18 A. Sure.

19 Q. And would you also agree that it's a very dangerous
20 statement for a defendant for several reasons. And what
21 I'm referring to, would you agree with the assertion, my
22 assertion that the odor of alcohol is no determinant of
23 B-A level? In other words, nobody can smell a subject and
24 give them a B-A score; correct?

25 A. I would agree; yes, absolutely.

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 Q. And in defending DUIs, you would also agree that this
2 statement would open up a line of cross-examination? For
3 instance, along the lines that I just suggested: You
4 being a law enforcement officer, hypothetically, isn't it
5 true that you can't determine anyone's B-A level by the
6 way they smell? Or, how about this one: Isn't it true
7 that you can't determine what type of alcohol, when it was
8 ingested, how much was ingested, and what effect it had on
9 the subject by smelling them at the accident scene? Or,
10 how about this one: Isn't it true that ethanol in its
11 purest form has no odor? Or: Isn't it true that when
12 you're smelling what you call alcohol you're really
13 smelling the inner additives to the beverage? In other
14 words, wine smells different from beer from vodka from
15 grain alcohol?

16 A. That's definitely a question if that came from a SLED
17 toxicologist that I would ask. But I probably would be
18 careful about a local law enforcement person or local, any
19 other person who may not know that. Because we as trial
20 lawyers know we don't ask questions to answers we don't
21 already know.

22 And while I know that and I wouldn't let an expert say
23 that because most of the time the strong-smelling alcohol
24 is also the least toxic, it has less ethanol because the
25 ethanol is odorless.

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 Those points I could point out, but I wouldn't bring
2 that out just as a matter of rehabilitation. She could've
3 opened it up and said, no, I respond to wrecks all the
4 time. And I just smelled that alcohol and I know it's
5 something bad.

6 I'm not going to open up the door for something worse
7 because the value that you're saying that I'm going to get
8 out of just somebody saying that they smelled alcohol, if
9 she smelled alcohol she could smell alcohol. And that's
10 just what she smelled.

11 But for me to answer that -- to ask that question, I
12 could open up the door to some things that would be quite
13 detriment to my client and I wouldn't do that.

14 Q. So is it fair to gather from your response, sir, that
15 that would be a matter of strategy and not --

16 A. I think --

17 Q. -- protocol?

18 A. I think it really would be. I mean, in my
19 experience. And that's being on both sides, as a
20 prosecutor and also doing it, even now doing defense as
21 long as I prosecuted now, that that's a question that you
22 want to be careful about who you ask because you could
23 open up the door to be a lot more damaging to your
24 client.

25 Q. Well, what could the witness have possibly said that

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 would have bolstered the prosecution that she's an expert
2 in smelling alcohol?

3 A. No, no, but she could talk about all the other times
4 that she responded to deaths and people she smelled
5 alcohol and, yeah, I know it when I smell it. And, you
6 know, you just -- and he's the worst of all the ones I've
7 ever smelled.

8 You know, you don't want to open up that door. She's
9 talk -- she can testify to what she's seen, what she's
10 smelled, what she's touched. And we let her do that
11 because we still, we don't have a .20 blood-alcohol level,
12 we have something, we have a .12. And we have the cause
13 of the accident being a blown-out tire. That's our
14 theory. And if she wants to say she smelled a strong odor
15 of alcohol, let her say it. But I'm not going to open up
16 the door for her to say something more damaging for my
17 client.

18 Q. And so your response is the reason you didn't cross-
19 examine her on that issue?

20 A. On that issue, was strategy

21 Q. Now this witnesses also alleged that -- or testified
22 that Mr. Taylor had admitted drinking. Do you remember
23 that?

24 A. Yes, I think I remember it. What line is that on? It
25 sounds familiar.

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 Q. Well, I think we started, say, page 194 and 195. You
2 register an objection. And I believe you objected to that
3 question of what did he say. See 195?

4 A. Yes.

5 Q. Line four. And then -- I tell you what. I'm going to
6 withdraw that question.

7 THE COURT: Okay.

8 MR. PALMER: Because there's an extensive dialogue
9 about it and I think we've covered it.

10 THE COURT: Okay.

11 BY MR. PALMER:

12 Q. Now did you -- Mr. Chandler?

13 A. Yes. Yes, sir.

14 Q. Did you in your discussions with Mr. and Mrs. Taylor
15 talk about hiring your own toxicologist?

16 A. No.

17 Q. And there was no discussion at all about that?

18 A. No.

19 Q. They never brought it up?

20 A. No.

21 Q. Do you think that would have been a good idea?

22 A. No, I don't because I would have brought it up.

23 Q. Why not?

24 A. As I said, there were a number of lines that we could
25 have followed as far as the theory of defending this

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 case. And there were a lot of theories there. And that,
2 that theory, hiring a toxicologist to prove, what, that it
3 wasn't .12 but it was .08?

4 Q. Well, wouldn't you agree that the State tried this
5 case as a DUI case?

6 A. It's a felony DUI case.

7 Q. I mean, they had a toxicologist?

8 A. Sure.

9 Q. They had testimony about odor of alcohol?

10 A. Uh-huh.

11 Q. They had testimony about drinking?

12 A. (Nods head.)

13 Q. And it's your testimony that there was never any
14 discussion about defending it as a DUI case?

15 A. No, there was never a discussion about hiring a
16 forensic toxicologist. The reality of it is, driving is
17 also a central element of a DUI case but we didn't hire a
18 civil engineer to prove that Mr. Taylor was driving in the
19 case because it wasn't at issue.

20 And the blood-alcohol level based on what we noticed,
21 just like in order for this Court to have jurisdiction it
22 would have had to have been in Orangeburg County. But we
23 didn't hire some geographic engineer from Google Maps to
24 come down and prove that that area was Orangeburg County.
25 You don't follow every line of questioning. You choose a

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 theory.

2 Because it sounds like a guilty person. You focus on
3 the issues, you focus on the theory of the case and you
4 pursue it. And at that point that didn't seem like an
5 issue that we could pursue that was going to be viable
6 based on the theory that we came up with.

7 Q. So in retrospect, it's your testimony here today, sir,
8 that you stand by your strategy decision?

9 A. Sure.

10 Q. That your strategy was sound and, really, this man's
11 conviction is based on a procedural error or an abuse of
12 discretion by the Court?

13 A. Well, I mean, honestly, the -- as they described
14 lawyer A, lawyer B and lawyer C, if I'm lawyer C, we all
15 recognize that this was a tough case to try.

16 And so I am not going to be so arrogant to say that my
17 theory was so foolproof that only judge, only Judge
18 Goodstein could mess it up by allowing evidence that she
19 agreed not to allow in.

20 But what I will say is that when you choose a theory,
21 you find a theory and if you ask me what I think happened
22 in this case, with a case so clear about whether or not
23 which accident caused the death -- which collision
24 actually caused the death of the Neeleys, I think it is
25 clear that that was the issue that was the prevailing

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 issue.

2 And that was the theory that we were looking into.
3 The issue wasn't whether or not Mr. Taylor was driving a
4 vehicle. The issue wasn't that we were in Orangeburg.
5 And the issue wasn't whether it was a .12 or a .05. The
6 issue really was who proximately -- who caused the
7 collision that proximately led to the death of the
8 Neeleys.

9 Q. But in your opening statement, sir, you clearly, if
10 you want to use the word promised this jury, that they
11 were going to hear about a blown tire. That was in your
12 opening remarks.

13 You clearly conceded that this man had had something
14 to drink. Basically admitted that in opening statement.
15 And the State came in and tried it as a DUI case. The
16 only evidence -- and if you disagree with me please stop
17 me.

18 A. Well, I'll stop you because even if I conceded that it
19 was, that he had something to drink, it's not illegal to
20 have something to drink and drive a vehicle.

21 Q. Of course.

22 A. It's only illegal to have an amount of alcohol in your
23 system that materially and appreciably impairs your
24 ability to drive the vehicle which means that even if he
25 had .20 in his system, the State still would have to prove

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 that that .20 in his system caused him to cross that
2 center line.

3 And the theory that we had that put Mr. Taylor across
4 that center line was a blown tire. And so we could
5 concede that he crossed the line. We had to, because
6 that's what our theory was. And there was enough evidence
7 out there that he had something to drink so we could
8 concede that. But we didn't concede DUI because in fact
9 we said he wasn't impaired. We just conceded that there
10 was a blown tire that disabled the vehicle, and then
11 somebody else killed the Neeleys.

12 Q. And the only evidence that was actually presented of a
13 broken tire was Mr. Taylor's testimony, that he thought he
14 heard a thump?

15 A. I mean, I haven't reviewed the testimony. Based on my
16 recollection, I knew that we had that in there. How we
17 got it in there, I don't recall.

18 Q. You didn't have a tire in court. You didn't have a
19 reconstructionist. Whatever -- what other evidence would
20 there have been?

21 A. Well, I'm -- I don't know if anybody else on the other
22 side, you say what was presented. I know we got it in
23 through Mr. Taylor. I don't know of any other way that we
24 would have got it in other than somebody saying that he
25 testified to that.

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 But as you already know based on, Mr. Poplin's letter
2 actually says that he could not rule in. So we couldn't
3 bring an expert to say because the expert that we had
4 already consulted said he couldn't say it. So we couldn't
5 bring in an expert to say something that we already knew
6 that our expert said that he couldn't provide.

7 So what we're dealing with is we're not talking about
8 a theory that, a theory that we didn't choose to actually
9 pick. But we needed a theory that would be consistent
10 with the evidence that we had. And our expert says that
11 he cannot prove -- he could not prove -- he could not be
12 used to prove that that tire was blown.

13 Q. Then why proceed with that particular theory?

14 A. Because we had, we had evidence that it was. That was
15 the first thing he told the officers. We still had it.
16 We just didn't have an expert to do it, but that didn't
17 rule out the theory. It just meant that I couldn't bring
18 in a person with a master's in mechanical and civil
19 engineer to say, oh, yes, this is it.

20 But I think that most people who drive would know the
21 feeling or would understand the idea that somebody who
22 drives a vehicle can feel when their back tire's blown out
23 or they have a feeling that their back tire's blown out.

24 Q. And is that the same strategy decision or the line of
25 strategy decisions that compelled you not to call

KEITH EVERETT CHANDLER - CROSS BY PALMER

1 Mr. Holmes or Ms. Glover?

2 A. Absolutely. And, again, it was a matter of this is
3 the theory. We're going to do it.

4 So, there were a number of issues in that case. And
5 even I had -- I mean, my gosh, it was just the strangest
6 thing that I've seen, you know, with somebody else coming
7 down the road and causing, you know, causing what I
8 thought causing the death.

9 And there were questions about whether or not
10 Mr. Glover was covering up for his wife's impairment but
11 not having had her blood-alcohol test and having not had
12 that, that was a theory that we couldn't just throw up
13 there like we have somebody in the grassy knolls during
14 Kennedy's assassination.

15 It would be -- it would require too much speculation
16 and it would be something that would have basically
17 offended the jury. And so, we had to come up with
18 something that we could offer that would be consistent,
19 that they could repeat to themselves and that somebody
20 could believe.

21 And so, while I even conceded probably to the Taylors
22 that I believed that there's something there. And I still
23 do. I just don't know, but that's not anything that
24 practically we could sit down and present to a jury. They
25 understood that. And they moved forward with that. We

1 talked about it that weekend and we talked it about the
2 night before we presented even his case.

3 Because they were very active in the preparation of
4 this trial. And we talked even at night when I got back
5 from Orangeburg back to Aiken about what we were doing and
6 what our next steps were in the case.

7 MR. WHITMIRE: Give me one moment, Your Honor.

8 THE COURT: Take your time.

9 MR. PALMER: (Conferring with client). No further
10 questions.

11 THE COURT: Thank you. All right. Before I ask any
12 other questions, we need to take a short break or do you
13 have any questions?

14 MR. WHITMIRE: No redirect, Your Honor. I'd be happy
15 to brief any issue that you may have.

16 THE COURT: Okay. You may step down.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you. Appreciate it.

19 MR. WHITMIRE: Thank you, Mr. Chandler.

20 THE COURT: Any other witnesses by the State?

21 MR. WHITMIRE: No, Your Honor.

22 THE COURT: Then I'll read over the transcript and
23 everything that's been handing up. I'll get back to y'all
24 with my decision. Okay? Thank you.

25 MR. WHITMIRE: Thank you, Your Honor.

1 THE COURT: Thank you.

2 END OF CASE: 3:43 P.M.

3 ***

4 CERTIFICATE OF REPORTER

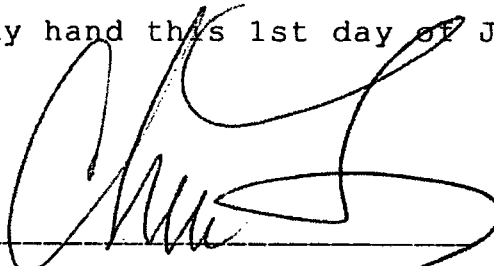
5
6 STATE OF SOUTH CAROLINA)

7 COUNTY OF AIKEN)

8 I, Cheri L. Young, Registered Professional Reporter
9 and Official Court Reporter for the State of South
10 Carolina, Second Circuit-At Large, do hereby certify that
11 the foregoing proceedings were written stenographically by
12 me using computer-aided translation; further, that the
13 foregoing is a true, accurate and complete record, to the
14 best of my skill and ability, of all the proceedings had
15 and evidence introduced in the hearing of the captioned
16 case, relative to appeal, in the Court of Common Pleas for
17 Orangeburg County, on the 22nd day of May, 2013.

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

20 I have hereunder set my hand this 1st day of July,
21 2014.

22
23
24 

25 Cheri L. Young, RPR
Official Court Reporter

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March 26, 2007

Jimmy Taylor

Williston, South Carolina 29853

RE: Case Status

Dear Mr. Taylor:

ATTEST: TRUE COPY

Wingia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



Based on my conversation with the First Circuit Solicitor's Office, this case may be called for trial some time during the month of April 2007. The purpose of this letter is to make certain you are properly advised regarding some important aspects of your case.

First and foremost the penalty you are facing for three (3) counts of Felony Driving Under the Influence is 1-25 years for each count. Probation cannot be granted and your sentence could not be suspended. You would be required to serve 85% of any sentence you receive. If you are convicted and receive consecutive sentences could receive a maximum sentence of 75 years. Additionally, there is a mandatory fine of \$10,100- \$25,000 for each count as well.

While I am prepared to zealously defend you at trial if necessary, it is my opinion you should consider some type of plea. The Solicitor's Office has offered to allow you to plead guilty to a total of 10 years in exchange for a guilty plea.

We have discussed several different defenses in this case. You indicated that you believe a tire may have blown out on your vehicle and that may have been the cause of you losing control of your car. As you are aware, I consulted with an accident reconstruction expert Woody Poplin, who indicates there is no evidence to indicate a blown tire was a contributing factor in the accident. In fact he agrees with the conclusions drawn by the South Carolina Highway Patrol's MATT team.

He could not form an opinion as to whether the three (3) individuals were killed during the impact with your vehicle or the second impact. It would be necessary to have a biomechanical engineer to make that determination; however, from a legal standpoint, it does not appear to be relevant under current South Carolina Law. While there is no criminal case law directly on point, the intervening negligence of the other drivers might be mitigation with regard to punishment, but not a complete defense to the charge.

In accordance with your request I have called and left a message for your nephew who is a Highway Patrolman in another state in order to make any portions of your file available to him. As of this date, he has not called me back.

The remaining defenses would be lack of impairment as a result of alcohol consumption or trying to establish some other cause for your losing control of the vehicle. Taking into account the .12 blood alcohol level as determined by the SLED toxicology report, both would be difficult propositions.

With regard to the latter, you mentioned a history of blackouts in your family which may have been a contributing factor. However, I have reviewed your medical records for a number of years before the accident and can find no documentation anywhere to support advancing that theory at trial. In fact, you met with a doctor 2 days before the accident and he specifically noted you denied any vertigo or dizziness. In your statement to the insurance adjuster you mention sweats and stomach cramps but without something more substantial I do not believe that would help us at trial.

As to the issue of your impairment, the lady you were with immediately before the accident states that in her opinion you were not impaired. Additionally the nurse who triaged you at the hospital noted you were alert and oriented. While there are still some additional witnesses we are trying to locate to interview, it appears our only defense is to argue you were not impaired at the time you were driving.

716

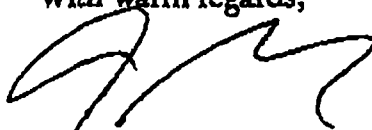
Taylor, Jimmy - Case Status

March 26, 2007

Page 3

As I anticipate this case being called for trial very soon, please contact me so that we me discuss final preparation and payment of outstanding legal fees.

With warm regards,

A handwritten signature in black ink, appearing to be 'J. Mobley', written in a cursive style.

John T. Mobley

JTM/kib



POPLIN ENGINEERING

ENGINEERING ANALYSIS OF ACCIDENTS



WOODROW M. POPLIN, M.S.E., P.E.

Engineer: Mechanical, Civil

Vehicle Accident Reconstruction

STATE'S
EXHIBIT

2

Vehicle Accident Reconstruction
Technical Investigation
Hazards Identification & Analysis
Mechanical/Structural Analysis
Failure Analysis
Machine Design
Products Liability

ATTEST: TRUE COPY
Wingia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Education

- 1989 Master of Science in Civil Engineering
University of South Carolina
- 1983 Master of Science in Mechanical Engineering
University of South Carolina
- 1979 Bachelor of Science in Mechanical Engineering
University of South Carolina

Experience

November 1992 to Present

W Poplin Engineering LLC formed 2002. 1992-2002 Summit Engineering, L.L.P., South Carolina, founding partner and consulting engineer performing specialized consulting in the areas of: Vehicle Accident Analysis and Reconstruction including on and off road motorized vehicles, pedestrian, bicycle, boating/water transportation and industrial transportation accidents; Vehicle and Occupant Dynamics and Collision Analysis; Hazards Identification and Analysis; Vehicle Accident Simulation; Computer Aided Drafting of Accident Site and Accident Sequence; Precision measurement of accident sites to evaluate vehicle mechanics, visibility, and timing; occupant movement and contact analysis; analysis and evaluation of designs, component testing, operating instructions, guards and warnings, standards and code compliance; Accident Evaluation



(machinery, equipment and consumer products); Machine design, controls, guards, warnings, human factors, standards, code compliance, and maintenance.

December 1983 to November 1992

Engineering Design & Testing Corp., Columbia, South Carolina, District Manager - Engineering manager for all consulting activities of Columbia District Office. Supervised engineers, technicians and support staff in a variety of multidisciplinary projects including: mechanical, metallurgical, civil, structural, chemical and electrical analyses, failures, testing and design.

Consulting engineer with Engineering Design and Testing Corporation. Consultant in vehicle accident reconstruction, mechanical designs, mechanical testing, vehicle and occupant dynamics and collision analysis. Typical activities include stress analysis, failure analysis, occupant motion, speed evaluation from vehicle trajectories and braking distances, collision speeds, welding practices, rigging procedures, and cargo securement. Specify procedures, design equipment and supervise the conduct of specialized testing. Consultant to industry in shipping and transport considerations, automotive testing and structural analysis of vehicular systems.

Consulting Activities included investigation, documentation and analysis of hundreds of vehicle accidents. Conducted conventional analysis as well as two-dimensional and three-dimensional photogrammetry, computer analysis, simulation and animation of vehicle accidents.

January 1983 to December 1983

Graduate Research Assistant with the University of South Carolina. Conducted research involving computer-aided examination of composite rocket motor casings for the U.S. Army Missile Command. Developed procedures to perform non-destructive testing on composite structures using computer aided optical techniques.

U.S. Navy (Ensign - Lieutenant)

May 1979 to January 1983

Naval Officer assigned to the Weapons and Engineering Departments of USS Davis DD-937. Required intimate familiarity with nautical rules of the road and maritime procedures. Responsible for the maintenance and operation of ship's boats, emergency diesels, steering gear, ground tackle, winch systems, refrigeration and air conditioning systems, air compressors, machining operations, and fire fighting operations and systems. Ship's Gas Free Engineer responsible for toxic and explosive atmosphere testing. Command Safety Assistant responsible for organization and conduct of safety meetings, safety training and investigation of safety related accidents such as fires and flooding. Assigned as Ship's Physical Security Officer and Nuclear Weapons guard force officer. Responsible for all physical security including alarms, perimeters, identification and access control, barriers, intrusion protection, bomb threats and terrorist activities. Responsible for supervision and training of nuclear weapons guard force personnel.

U.S. Naval Reserve (Lieutenant - Commander)**January 1983 - September 2000**

Naval Officer assigned to Charleston Naval Shipyard as Assistant Docking Officer for drydock operations, maintenance and ship drydockings; assigned to Naval Weapons Station Charleston - Commanding Officer of reserve unit responsible for weapons storage and transfer operations; assigned to Naval Research Laboratories supporting Fleet Science and technology projects; assigned to Naval Spare and Warfare Command - Commanding Officer of reserve unit responsible for electronics support for systems and equipment.

November 1976 to August 1977

U.S. Navy - Training as an Electronics Technician; maintenance, troubleshooting and repair of shipboard electronic equipment.

December 1972 to November 1976

Worked as a machinist and welder on the repair and fabrication of agricultural, mining, logging and industrial equipment. Familiar with shop and field maintenance procedures on mechanical systems.

Courses and Seminars Presented

December 6, 1994

Two-hour, State of North Carolina Approved Continuing Education Course entitled "Investigation and Evaluation of a Vehicle Accident Claim", Charlotte, North Carolina.

July 9, 1997

Three-hour, State of North Carolina Approved Continuing Education Course entitled "Identification of a Products Liability Claim", Charlotte, North Carolina.

July 12, 1999

"Broken Parts and Other Failures" presented at the 1999 International Association of Accident Reconstruction Specialists Conference in Charleston, South Carolina

July 13, 1999

"Power Equations" presented at the 1999 International Association of Accident Reconstruction Specialists Conference in Charleston, South Carolina

July 23, 2001

"Accident Reconstruction" presented at the 2001 Strategies In Handling DUI Cases In South Carolina Conference in Columbia, South Carolina



January 10, 2002

"Accident Analysis and Evaluation" presented to the American Society of Mechanical Engineers, Kingsport, Tennessee

February 21, 2003

"Event Data Recorders - Automotive Black Boxes" presented at the 2003 Strategies In Handling DUI Cases In South Carolina Conference in Columbia, South Carolina

April 25, 2003

"Event Data Recorders - Automotive Black Boxes" presented at the South Carolina Claims Association Spring Conference, Myrtle Beach, South Carolina

April 25, 2003

"Evaluation of a Vehicle Accident" presented at the South Carolina Claims Association Spring Conference, Myrtle Beach, South Carolina

March 10, 2005

"Is the accident the driver's fault?" presented at the 2005 Strategies In Handling DWI and DUI Cases In South Carolina Conference in Columbia, South Carolina

April 26, 2006

Event Data Recorders - Crash Data Recorders "The Black Box You Need To Know About" presented at the 2006 Strategies In Handling DUI Cases In South Carolina Conference in Columbia, South Carolina

April 10, 2008

Accident Reconstruction - Tractor Trailers and Heavy Trucks, presented at the 2008 Trucking Accident Litigation Seminar in Columbia, South Carolina

April 1, 2009

Accident Reconstruction - Tractor Trailers and Heavy Trucks, presented at the 2009 Trucking Litigation and D.O.T. Regulations in South Carolina Seminar in Columbia, South Carolina

December 7, 2011

Commercial Vehicle Accident Reconstruction - Trends and Issues, presented at the 2011 Trucking Litigation and D.O.T. Regulations in South Carolina Seminar in Columbia, South Carolina

October 30, 2012

Adjusters Get There "First" - 10 Easy Steps to Capturing Accident Data While it is "Fresh", presented at the Claims Management Association of South Carolina Seminar in Charleston, South Carolina

Professional Organizations

American Society of Mechanical Engineers (Past Chairman of Midlands, SC Chapter, Region IV)
 Society of Automotive Engineers
 South Carolina Society of Engineers
 National Association of Professional Accident Reconstruction Specialists
 South Carolina Association of Reconstruction Specialists

Publications

"Determination of the Displacement Field of a Composite Cylinder Using Digital Image Processing", 1983, Masters Thesis, University of South Carolina.

"Whole Field Experimental Stress Analysis of Composite Joints", with W. Peters, M. Sutton and W. Ranson, 1983 University of South Carolina.

"Whole Field Experimental Displacement Analysis of Composite Cylinders", Proceedings, 1985 Society for Experimental Mechanics Spring Conference, with D. Walker, W. Peters, M. Sutton and W. Ranson.

"A Critical Review of Materials Selected for High Integrity Containers", presented at the 1986 Waste Management Conference, Tucson, Arizona, February, 1986, with T. Jur.

"A Hybrid High Integrity Container for Disposal of Low-Level Radioactive Wastes", presented at the 1987 Waste Management Conference, Tucson, Arizona, March, 1987, with S.B. McCoy and T. Jur.

"Failure Analysis of a Plastic Boat Seat", American Society of Mechanical Engineers Paper No. 87-DE-8, presented at the National Design Engineering Conference, March 1987, Chicago, Illinois, with T. Jur, F. Furno and K. Suggs.

"Accident Analysis in Engineering", The South Carolina Engineer, Camden, South Carolina, Winter 1988.

"Methods of Analysis of Fractured Plastic Parts", Presented at the Society of manufacturing Engineers Conference on Practical Plastic Product Design, February 5 - 6, 1991, Detroit, Michigan, with T. Jur.

"Speed Evaluation - Working With the Vehicle Accident Reconstructionist", South Carolina Trial Lawyer, Columbia, South Carolina, Fall 1993.

"Improper Installation for Traffic Model Fire Hydrant Causes Significant Water Damage to Nearby Retail Establishment," ASSE Paper No. 081-7, presented at Safety Technology 2000 on June 19, 1995, Orlando, Florida, with Jeffery H. Warren.

"Accident Reconstruction" presented at the 2001 Strategies In Handling DUI Cases In South Carolina Conference in Columbia, South Carolina



"Acceleration of Heavy Trucks", presented at the South Carolina Association of Reconstruction Specialists, 4th Annual Southeastern Reconstruction Conference, June 2002, Charleston, South Carolina.

"Event Data Recorders - Automotive Black Boxes" presented at the Strategies In Handling DUI Cases In South Carolina Conference, on February 21, 2003, Columbia, South Carolina.

"Is the accident the driver's fault?" presented at the 2005 Strategies In Handling DWI and DUI Cases In South Carolina Conference in Columbia, South Carolina

Event Data Recorders -- Crash Data Recorders "The Black Box You Need To Know About" presented at the 2006 Strategies In Handling DUI Cases In South Carolina Conference in Columbia, South Carolina

Accident Reconstruction - Tractor Trailers and Heavy Trucks, presented at the 2008 Trucking Accident Litigation Seminar in Columbia, South Carolina

Commercial Vehicle Accident Reconstruction - Trends and Issues, presented at the 2011 Trucking Litigation and D.O.T. Regulations in South Carolina Seminar in Columbia, South Carolina

Registration

Registered Professional Engineer in South Carolina (#10858)

Registered Professional Engineer in North Carolina (#15125)

Accreditation Commission for Traffic Accident Reconstruction (#74)

Continuing Education

December 1987	Traffic Accident Reconstruction - Northwestern University, Evanston, Illinois
October 1988	Brakes: Design & Safety - Society of Automotive Engineers Seminar, Orlando, Florida
March 1990	Heavy Truck Air Brake Systems - Greenville Technical College, Greenville, South Carolina
June 1990	Allowable Stress Design In Steel - Columbia, South Carolina
May 1992	Certificate of Qualification - Accreditation Commission for Traffic Accident Reconstruction
July 1993	Full Accreditation as a Traffic Accident Reconstructionist (Registration Number 74) - Accreditation Commission for Traffic Accident Reconstruction, Denver, Colorado
December 1993	Heavy Duty Vehicle Air Components and Brake Systems - Bendix Heavy Vehicle Systems, Atlanta, Georgia
August 1994	Hazardous Materials Transportation Safety Training, Charleston, South Carolina



January 1996	Land Surveying Mathematics, Spruce Pine, North Carolina
January 1996	Boundary Surveying, Spruce Pine, North Carolina
November 1997	Child Occupant Protection, Orlando, Florida
November 1997	STAPP Car Crash Conference, Orlando, Florida
March 1998	Advanced Accident and Collision Prediction (Simulation) with WINSMAC, Jacksonville, Florida
May 1998	Vehicle Fires - S.C. International Association of Arson Investigators, Columbia, South Carolina
July 1998	State of the Art in Reconstruction - Human Factor Issues; Low Speed Impact Testing; Physical Evidence Issues; Expert Witness Issues, Boston, Massachusetts
August 1998	Fire Dynamics, Columbia, South Carolina
November 1998	First Southeastern Reconstruction Conference, Myrtle Beach, South Carolina
November 1998	Impulse Laser Measurement and Quickmap Software, Laser Technology, Inc., Charleston, South Carolina
March 1999	Acceleration and VC2000 Familiarization, Vericom Computers Inc., Raleigh, North Carolina
July 1999	IAARS 1999 - Biomechanics, Broken Parts, Power Equations, Legal Aspects of Accident Reconstruction, Occupant Kinematics, Vehicle Control Devices and ABS Systems, Charleston, South Carolina
October 1999	Southeastern Reconstruction Conference, Myrtle Beach, South Carolina
September 2000	World Reconstruction Exposition 2000, College Station, Texas
November 2000	Investigation of Vehicle Fires, Lee S. Cole & Associates, Charleston, South Carolina
March 2001	S.C.A.R.S., Southeastern Collision Reconstruction Conference, Myrtle Beach, South Carolina
July 2001	Inspection and Investigation of Commercial Vehicle Crashes, Jacksonville, Florida
June 2002	S.C.A.R.S., Southeastern Collision Reconstruction Conference, Charleston, South Carolina
July 2003	Collision Safety Institute - Crash Data Retrieval System Operator's Certification Course, Charleston, South Carolina
October 2004	MATAI 2004 Combined Annual Conference for Collision Reconstruction, Ocean City, Maryland

May 2005	Heavy Truck Handling, Dynamics & Control Symposium, Greenville, South Carolina
July 2005	S.C.A.R.S., Southeast Collision Reconstruction Conference, North Charleston, South Carolina
September 2006	Applied Vehicle Dynamics, Society of Automotive Engineers Seminar, Greer, South Carolina
November 2007	PhotoModeler Collision Reconstruction Course, Atlanta, Georgia
April 2008	Trucking Accident Litigation Seminar, Columbia, South Carolina
August 2008	Human Factors for Traffic Accident Reconstruction, Spartanburg, South Carolina
May 2009	Kinematics and Compliance Workshop, Michelin Research Center, Greenville, South Carolina
May 2009	SAE Heavy Truck Handling, Dynamics & Control Symposium, Clemson University International Center for Automotive Research, Greenville, South Carolina
October 2009	Bendix Air Brake Course, Ocean City, Maryland
July 2010	S.C.A.R.S., Southeast Collision Reconstruction Conference Including Human Factors and CDR Update, Mt. Pleasant, South Carolina
August 2010	Commercial Vehicle Braking Systems e-Seminar, Society of Automotive Engineers, Warrendale, Pennsylvania
May 2011	Accessing and Interpreting Heavy Event Data Recorders, Society of Automotive Engineers, Charlotte, North Carolina
October 2011	Digital Photography for Accident Investigation, Harrisburg-Hershey, Pennsylvania
October 2011	2011 NATARI Crash Conference: Pedestrian/Bicycle Collisions – The Anatomy and Analysis of a Typical Pedestrian or Bicycle Crash Event, Harrisburg-Hershey, Pennsylvania
October 2011	2011 NATARI Crash Conference: Pedestrian/Bicycle Collisions – The Anatomy and Analysis of a Typical Pedestrian or Bicycle Crash Event, Harrisburg-Hershey, Pennsylvania
December 2011	Trucking Litigation and D.O.T. Regulations, Columbia, South Carolina
January 2012	Crash Data Retrieval User's Summit, Houston, Texas
May 2012	Introduction to Heavy Truck Tires, Steering and Suspension Dynamics, Greenville, South Carolina
May 2012	SAE Heavy Truck Handling, Dynamics & Control Symposium, Greenville, South Carolina



May 2012	Michelin Proving Grounds Ride and Demonstration, Laurens, South Carolina
September 2012	Visual Statement Advanced Online Animation Diagramming Training, Kamloops, British Columbia
November 2012	EDC Reconstruction, Engineering Dynamics Corporation EDCRASH Training Course, Coral Gables, Florida
May 2013	SAE Accessing and Interpreting Heavy Vehicle Event Data, Charlotte, North Carolina

(Rev. 05/18/13)



POPLIN ENGINEERING

ENGINEERING ANALYSIS OF ACCIDENTS

October 10, 2006

STATE'S
EXHIBIT

Mr. John T. Mobley
Attorney at Law
925 Calhoun Street
Columbia, South Carolina 29201

ATTEST: TRUE COPY

Winnys B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

REFERENCE: Vehicle Accident Involving Jesse Glover and Jimmy Taylor
Date of Accident: 10/21/05
W Poplin File Number: PG059

Dear Mr. Mobley:

I have now completed my review of the information you enclosed in the above referenced incident. My findings have been relayed to you in a telephone conversation. The answers to your questions are summarized as follows:

1. The crash data recorder in the 2003 Chevrolet sport utility vehicle provides information about the collision and some of the operating parameters in the time frame of five seconds prior to the triggering event. The triggering event must be something which provides vehicle accelerations outside of normal operation. This could be striking a pothole, hitting a railroad track, or a collision. However, an event that does not provide a significant acceleration to the vehicle will not trigger the data capture. A tire blow out or a vehicle handling problem which does not provide a high acceleration would not trigger data capture. In this particular case, nothing about the data suggests a vehicle problem nor does it rule out one.
2. The data indicates that shortly before the triggering event, the 2003 sport utility vehicle was traveling 59 mph. The last speed capture indicates 47 mph. The triggering event occurred no more than one second later. This data suggests that

October 10, 2006

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the vehicle was still traveling at a significant speed when the triggering event occurred. The damage to the passenger rear appears to be consistent with the event which triggered the data capture. Nothing is observed to support a conclusion that the 2003 sport utility vehicle was stationary when it sustained the collision.

Should you have any additional questions, please give me call. I appreciate the opportunity to work with you.

Sincerely,



Woodrow M. Poplin, P.E.

WMP/lap



POPLIN ENGINEERING

ENGINEERING ANALYSIS OF ACCIDENTS

Federal Identification Number: 03-0450726

October 10, 2006

Invoice To:

Mr. John T. Mobley
Attorney at Law
925 Calhoun Street
Charleston, South Carolina 29201

ATTEST: TRUE COPY

Wingia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Reference: Vehicle Accident Inv.: Glover and Taylor
Date of Accident: 10/21/05
W Poplin File Number: PG059

INVOICE FOR SERVICES RENDERED THROUGH: October 10, 2006

INVOICE NUMBER: PG059-10G52

SERVICES:

Engineer.....(	2.60 hours @	\$180.00 /hour) .. \$	468.00
Staff Asst.....(	0.35 hours @	\$40.00 /hour) .. \$	14.00

Postage, Fax Expenses and Overnight Mailing..... \$ 4.05

Total \$486.05


Woodrow M. Poplin, P.E.

PAYMENT DUE: November 9, 2006

PAGE 2

INVOICE NUMBER: PG059-10G52

SERVICES RENDERED AT

\$180.00 PER HOUR:

DATE	TIME	DESCRIPTION
09/15/06	1.50 hour	Review file materials; review EDR data
10/02/06	0.50 hour	Review file
10/03/06	0.35 hour	Letter to client
10/06/06	0.25 hour	Letter to client
	2.60 hours	TOTAL

ATTEST: TRUE COPY
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Jimmy Taylor,
S.C.D.C. No. 321636,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2011-CP-38-~~776~~ 766

ORDER OF DISMISSAL

FILED FOR RECORD
WITH CLERK OF COURT
ORANGEBURG, SC

2013 OCT 10 AM 11:48

This matter comes before this Court by way of an application for post-conviction (PCR) relief filed on July 27, 2011. The Respondent filed its return on January 11, 2012. An evidentiary into this matter was held at the Orangeburg County Courthouse on May ~~30~~²³, 2013. 

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for three counts of Felony Driving Under the Influence, Resulting in Death (2005-GS-38-2141, 2142, & 2143). Everett Chandler, Esq., represented him. Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. Applicant was found guilty, and on May 4, 2007, was sentenced to twenty (20) years imprisonment on each offense. The sentences were to be served concurrently.

A notice of appeal was filed on behalf of Applicant. Tara D. Shurling, Esq., perfected the appeal. The Court of Appeals affirmed Applicant's convictions and sentences. State v. Taylor, Op. No. 2009-UP-148 (S.C. Ct. App. filed March 20, 2009). Applicant's Petition for Rehearing

was denied on June 29, 2009. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on September 2, 2010, and the Remittitur was sent on September 22, 2010.

At the PCR hearing, Applicant was represented by W. Scott Palmer, Esq., and the Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant, trial counsel, and Eric V. Brown, P.E., testified. The Applicant proceeded on the following allegations that he was being held unconstitutionally:

1. Ineffective assistance of counsel:

- a. "Failure to investigate Applicant's case and States' evidence."
- b. "Failure to prepare and move for a continuance."
- c. "Failure to subpoena witnesses to testify."
- d. "Failure to present an expert accident reconstruction expert."
- e. "Failure to make a Batson motion." 
- f. "Failure to make a sufficient opening statement."
- g. "Failure to move to have Applicant's post-offense blood alcohol test suppressed."
- h. "Failure to challenge the sufficiency of the indictment."
- i. "Failure to object to Solicitor Pascoe's improper closing argument."
- j. "Failure to object to the admissibility of expert testimony."
- k. "Failure to properly cross-examine State witnesses."
- l. "Failure to ensure Applicant testified effectively at trial and was not denied due process."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, supra. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

A.

This Court finds Applicant failed to meet his burden to prove trial counsel was deficient for not conducting a thorough investigation of Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing

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potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). Applicant alleged trial counsel was deficient for not investigating relevant emergency dispatch calls made relative in time to the commission of the offense. This Court finds trial counsel's testimony more credible than Applicant's testimony. Trial counsel inherited Applicant's case from John Mobley, Esq., who conducted a thorough investigation into the matter. Trial counsel testified Applicant had Mr. Mobley removed from representation when he declined Mr. Mobley's advice to enter a guilty plea. Trial counsel had in-depth discussions with Mr. Mobley in preparation for trial. Trial counsel reviewed the State's evidence and visited the sight of the offense. In meeting with Applicant and his family on numerous occasions prior to trial, trial counsel formulated a viable defense strategy that was subsequently executed at trial. This Court finds that trial counsel conducted a thorough investigation into Applicant's case. See Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). This Court finds Applicant failed to produce the alleged emergency dispatch recordings to show what if any evidentiary value they would have had to his case. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Therefore, this allegations is denied and dismissed.

B.

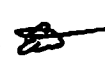
This Court finds Applicant has failed to meet his burden to prove trial counsel was deficient for failing to properly make a motion for a continuance. An applicant "[is] not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial." Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997). This Court finds trial counsel's testimony more credible than Applicant's testimony. Trial counsel testified he was adequately

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prepared to take Applicant's case to trial. Trial counsel testified he underwent representation in Applicant's case in full knowledge that the case was ripe to be called for trial. Trial counsel has a plethora of experience in both prosecuting and defending vehicular offenses. See Smith v. State, 404 S.C. 413, 745 S.E.2d 378 (Cl. App. 2012). Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant has failed to meet his burden to prove trial counsel was deficient for failing to subpoena various potential defense witnesses. "A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008). This Court finds trial counsel's testimony more credible than Applicant's testimony. Trial counsel testified that Applicant and his wife had presented him with numerous speculative theories. First, Applicant alleged trial ^{trial counsel} was deficient for failing to subpoena David Page who would have testified that an eyewitness contacted Applicant prior to trial to tell him a superseding act caused the death of the victims. Second, Applicant alleged trial counsel was deficient for failing to subpoena Benjamin Holmes who would have testified Applicant did not appear to be intoxicated while at the hospital after the commission of the offense. Third, Applicant alleged trial counsel was deficient for not presenting a forensic toxicologist at trial. This Court finds because Applicant failed ^{to} present these witnesses necessary to support his allegations, these allegations are speculative and therefore without merit. See Bannister v. State, 333 S.C. 298, 301, 509 S.E.2d 807, 808 (1998).

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Third, Applicant alleged trial counsel was deficient for not presenting an accident reconstruction expert at trial. Eric Brown, an environmental engineer, testified on behalf of Applicant at the PCR hearing. An applicant must prove how the uncalled witness would have benefited applicant's case. Jackson v. State, 329 S.C. 345, 351, 495 S.E.2d 768, 771 (1998). Upon allowing a proffer, this Court finds Mr. Brown was not qualified as an accident reconstruction expert. See Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). This Court finds Mr. Brown speculatively asserted that his general knowledge of physics resulted in a recommendation for a further force and momentum study to disprove the State's evidence of Applicant's culpability. Mr. Brown conceded that he was not qualified to conduct a force and momentum study. This Court agrees with trial counsel that Mr. Brown's testimony would not have been advantageous at trial. This Court finds trial counsel exercised sound judgment in deciding not to present an accident reconstruction expert. Counsel is not deemed deficient when his "decision not to call an expert witness to rebut the state's expert witness was a legitimate trial strategy." Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005). A reputable accident reconstruction expert, Woodrow Poplin, was consulted on Applicant's behalf prior to trial. Trial counsel testified Mr. Poplin analyzed the data crash recording of the vehicle among other items of evidence and was unable to determine the triggering event that caused Applicant's vehicle to disable the victim's vehicle. Trial counsel testified that Mr. Poplin findings would not have aided Applicant's defense at trial.

Trial counsel testified his trial strategy was to argue a superseding causation negated evidence that Applicant disabled the victim's vehicle. Trial counsel testified that an inordinate focus on the triggering event of the initial accident weakened his argument. Trial counsel presented the triggering event as a tire-blowout on Applicant's vehicle because Applicant

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directed him to do so despite the State's evidence to the contrary. Furthermore, trial counsel testified the Solicitor's inability to conduct a force and momentum study strengthened his superseding causation argument at trial. This Court finds trial counsel pursued a reasonable trial strategy. See Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Therefore, these allegations are denied and dismissed.

D.

This Court finds Applicant failed to prove trial counsel was deficient for failing to object to an alleged Batson violation during jury selection. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). This Court finds trial counsel's testimony credible. Furthermore, trial counsel testified he had no basis for a Batson challenge. This Court finds Applicant failed to present credible evidence that showed Solicitor Pascoe exercised his peremptory strikes in a racially motivated manner. See Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006). Therefore, this allegation is denied and dismissed.

This Court finds Applicant's allegation that trial counsel was deficient for the manner in which he portrayed himself during his opening statement is without merit. "When the PCR court is reviewing a counsel's performance, there is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S.Ct. 2052 (internal quotations omitted). This Court finds trial counsel's testimony credible. Trial counsel testified that he was a "local attorney." Furthermore, trial counsel testified his statements in question were tailored to gain rapport with the Orangeburg County Jury. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011).

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Also, this Court finds trial counsel's performance in explaining Applicant's version of the facts and theory of the case reasonable. Therefore, this allegation is denied and dismissed.

This Court finds Applicant failed to prove trial counsel was deficient for failing to object to the admissibility of the blood alcohol test conducted on Applicant after the commission of the offense. "The admission of this irrelevant and prejudicial evidence undermines confidence in the outcome of the trial." Holman v. State, 381 S.C. 491, 493, 674 S.E.2d 171, 172 (2009). This Court finds trial counsel's testimony credible. Trial counsel testified he had no meritorious basis to mount a suppression defense. This Court agrees with trial counsel. (Trial Transcript p.218; p.266; p.274). See State v. Kimbrell, 326 S.C. 344, 481 S.E.2d 456 (Ct. App. 1997). Therefore, this allegation is denied and dismissed.

This Court finds Applicant's allegation that trial counsel was deficient for failing to object to an invalid indictment is without merit. "The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005). This Court finds trial counsel's testimony credible. Trial Counsel testified there was no basis to challenge the indictments. Furthermore, Applicant was on notice of the charges against him. Trial Counsel testified Applicant was thoroughly involved and cooperated in his defense. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). Therefore, this allegation is denied and dismissed.

This Court finds Applicant failed to prove trial counsel was deficient for not objecting during Solicitor Pascoe's allegedly improper comments made during the State's closing argument. "A solicitor's closing argument must be carefully tailored so as not to appeal to the

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personal biases of the jury.” Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). “The argument must not be calculated to arouse the jurors’ passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” Id. at 609–10, 602 S.E.2d at 744. “The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009). This Court finds trial counsel’s testimony credible. Trial counsel testified he objected to the solicitor’s closing when it was warranted. (Trial Transcript p.480; p.484). Trial counsel further testified none of the solicitor’s comments during his closing argument crossed the line and “infected the trial with unfairness.” This Court agrees with trial counsel. Therefore, this allegation is denied and dismissed.

This Court finds Applicant failed to meet his burden to prove trial counsel was deficient for not objecting when Lt. Dixon testified the collision caused by Applicant resulted in one of the victim’s head going through the windshield. Trial counsel objected. (Trial Transcript p.312). The trial judge ruled the testimony was relevant and did not necessitate an expert study. Therefore, this allegation is denied and dismissed.

D.

This Court finds Applicant failed to prove trial counsel was deficient for failing to properly cross-examine State witnesses. This Court finds trial counsel’s testimony credible. Applicant called into question trial counsel’s cross-examination of the State’s forensic toxicologist and the first responder by opining trial counsel’s cross-examinations were “too short and apologetic.” “Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d

529, 531 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir.1977)). First, Trial counsel testified he limited his cross-examination of Lynne Drawdy, the first responder, in order not to accentuate the testimony or open the door to more harmful testimony. Mrs. Drawdy, testified she detected an odor of alcohol and observed Applicant's slurred speech after the collisions. Trial counsel testified Applicant admitted drinking and that his blood alcohol level tested past the legal inference for intoxication hours after the offense. Trial counsel explained he only cross-examined Mrs. Drawdy regarding her observations as a lay witness. This Court finds trial counsel's tactics here were a product of sound trial strategy. Second, trial counsel testified his strategy in his cross-examination of Brandon Landum, the forensic toxicologist, was to show that any inferences of the effects of alcohol on Applicant were based purely on speculation. This Court again finds trial counsel's performance here valid. Therefore, this allegation is denied and dismissed.

E.

Last, this Court finds Applicant's allegation that he was denied due process because trial counsel failed to ensure Applicant was able to testify "effectively" at trial. A defendant's decision to testify or not must be made with knowledge of the consequences of either choice. Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "An on-the-record waiver of a constitutional or statutory right is but one method of determining whether the defendant knowingly and intelligently waived that right." Brown v. State, 317 S.C. 270, 272, 453 S.E.2d 251, 252 (1994). This Court finds trial counsel's testimony more credible than Applicant's testimony. Trial counsel testified he reviewed the assortment of benefits and detriments of testifying with Applicant. Furthermore, the trial judge asked trial counsel if she needed to conduct a colloquy on the matter. (Trial Transcript p.386). Trial counsel asked the trial judge for

colloquy out of an abundance of caution. Thus, the trial judge conducted a thorough colloquy with Applicant regarding his right to testify and his right not to testify. (Trial Transcript pp.387-94). This Court finds that Applicant made a knowing and intelligent decision to testify after being apprised of the possible ramifications from trial counsel and then secondarily from the trial judge. Applicant does not have a constitutional right to ensure that he is a good witness. Therefore, this allegation is denied and dismissed.

Thus, this Court finds Applicant has failed to meet the first prong of Strickland – that trial counsel rendered deficient performance. This Court finds Applicant also failed the second prong of Strickland – that he was prejudiced by trial counsel's performance.

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 27th day of September, 2013.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina

WITNESSES

SGT. T.R. TAYLOR

**Arresting Agency:
SC Highway Patrol**

ARREST WARRANT NUMBER

H936311

Arrested: Oct 28, 2005

ACTION OF GRAND JURY

Law Clerk

Foreperson of Grand Jury
Date: March 8, 2006

VERDICT

DOCKET NO. 2006⁵GS38-2142

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

March 06, 2006 TERM

**THE STATE
vs.**

Jimmy R. Taylor

**Indictment for
FELONY DUI (DEATH)**

**SC Code: 56-5-2945
CDR Code: 0395
Class: FEL-B**

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

Defendant

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

Defendant

Witness:

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

ATTENTION: TRUE COPY
Wm. B. Davis
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

2

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

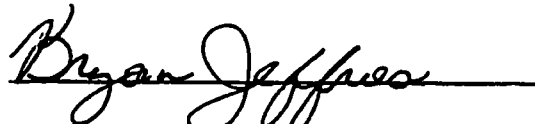
INDICTMENT
2006GS38-2142
g

At a Court of General Sessions, convened on March 06, 2006 the Grand Jurors of Orangeburg County present upon their oath:

FELONY DUI (DEATH)

That Jimmy R. Taylor, did in Orangeburg County, on or about October 21, 2005, drive a vehicle while under the influence of alcohol, drugs, or a combination thereof, to the extent that his faculties to drive were materially and appreciably impaired and committed an act forbidden by law or neglected a duty imposed by law in driving the motor vehicle by failing to maintain control of his vehicle which crossed over the center line colliding with another vehicle, which act or neglect proximately caused death to Anne Neeley and as a result violated Section 56-5-2945, 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.


Bryan S. Jeffries SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

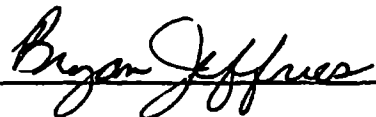
INDICTMENT
2006GS38-2141
8

At a Court of General Sessions, convened on March 06, 2006 the Grand Jurors of Orangeburg County present upon their oath:

FELONY DUI (DEATH)

That Jimmy R. Taylor, did in Orangeburg County, on or about October 21, 2005, , drive a vehicle while under the influence of alcohol, drugs, or a combination thereof, to the extent that his faculties to drive were materially and appreciably impaired and committed an act forbidden by law or neglected a duty imposed by law in driving the motor vehicle by failing to maintain control of his vehicle which crossed over the center line colliding with another vehicle, which act or neglect proximately caused death to George P. Neeley and as a result violated Section 56-5-2945, 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.


Bryan S. Jeffries SOLICITOR