

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Darlington County
Honorable Thomas A. Russo, Circuit Court Judge

VOLUME II OF II

RECEIVED

AUG 17 2016

SC SUPREME COURT

CHARLTON L. HILL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002428

A P P E N D I X

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ATTORNEYS FOR RESPONDENT

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WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

863

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

**ARREST WARRANT NUMBER
DAR0888**

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:

2011-GS-16-0424

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:

April 2011

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

Manslaughter / Involuntary manslaughter

§16-03-0060

CDR Code: 0218

COPY

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2013 MAR 25 PM 1:03

FILED

William B. Rogers, Jr., Solicitor

13CP160261

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Manslaughter / Involuntary manslaughter

§16-03-0060

At a Court of General Sessions, convened on April 11, 2011, the Grand Jurors of Darlington County present upon their oath:

INVOLUNTARY MANSLAUGHTER

CDR: 0218 16-03-0060

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, unintentionally kill Sylvia Mattox Hill, without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily injury, or while engaged in a lawful activity with reckless disregard for the safety of others, in violation of Section 16-03-0060, S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

ARGUMENT

10. WERE APPLICANTS' CONSTITUTIONAL RIGHTS VIOLATED WHEN TRIAL JUDGE COMMANDEERED THE TRIAL APPARATUS DURING DIRECT EXAMINATION OF STATE'S EXPERT WITNESS, AND/OR WAS COUNSEL INEFFECTIVE FOR NOT OBJECTING TO ERROR, AND, THUS, SAVING SAME FOR APPEAL?

FACTS

A) (DURING COLLOQUY REGARDING THE ADMITTING OF EVIDENCE, EXHIBIT NUMBER 124, COUNSEL OBJECTED, CITING Rule 6.) To MR. HOLT: YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE TO HAVE HER REPORT ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 124.

THE COURT: WHAT SAYS THE DEFENSE?

MR. SWILLEY: YOUR HONOR, I DON'T BELIEVE THE OFFICIAL LINK OF CHAIN OF CUSTODY HAS BEEN ESTABLISHED UNDER Rule 6. I DON'T BELIEVE THAT SHE TESTIFIED THAT SHE GOT --- FROM WHOM SHE GOT THE SAMPLE FROM. TRIAL TRANSCRIPT, PAGE 214, LINES 13-20.

B) (AFTER SUSTAINING COUNSEL'S OBJECTION TO EVIDENCE, TRIAL JUDGE COMMENCED IMPERMISSIBLE QUESTIONING OF STATE'S WITNESS?) TO WIT:

THE COURT: OKAY. SUSTAINED. Q. NOW, WITHOUT TALKING ABOUT THIS, AND WE ARE GOING TO SUM THIS UP REAL QUICK. LET ME ASK YOU THIS. YOU ARE A TOXICOLOGIST? A. CORRECT. TRIAL TRANSCRIPT, PAGE 214, LINES 21-25; ALSO, IN REFERENCE TO AFORESAID QUESTIONING, PLEASE SEE: TRIAL TRANSCRIPT, PAGE 215, LINES 1-25, PAGE 216, LINES 1-25.

C) (FOLLOWING TRIAL JUDGE'S ERRONEOUS SUPERVENING DIRECT EXAMINATION

OF STATES' EXPERT WITNESS, MR. HOLT AGAIN MOVED THE COURT TO ADMIT STATES' EXHIBIT NUMBER 124.) To wit:

MR. HOLT: ALL RIGHT. YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE TO ADMIT, I BELIEVE IT IS 124.

THE COURT: ALL RIGHT. IS THERE AN OBJECTION?

MR. SWILLEY: YES, YOUR HONOR TRIAL TRANSCRIPT, PAGE 217, LINES 1-4.

D) (TRIAL JUDGE THEN OVERRULED COUNSEL'S OBJECTION, AS WELL AS THE COURT'S EARLIER SUPPORT OF REITERATED OBJECTION, BASED ON TRIAL JUDGE'S IMPROPER INTERVENTION OF TRIAL APPARATUS.) To wit:

THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED TRIAL TRANSCRIPT, PAGE 217, LINE 10.

DISCUSSION

AS HEREIN SHOWN, COUNSEL DID NOT OBJECT TO TRIAL JUDGE'S ERROR, THUS, SAVING SAME FOR APPEAL. FURTHER, IT IS REASONABLE TO PRESUME THAT THE OUTCOME OF TRIAL WOULD HAVE BEEN DIFFERENT HAD COUNSEL OBJECTED ACCORDINGLY. THAT FAILURE TO OBJECT TO TRIAL JUDGE'S ERROR WAS DEFICIENT PERFORMANCE, AND THAT INSUFFICIENCY PREJUDICED APPLICANT.

THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION PROVIDES THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT... TO HAVE THE ASSISTANCE TO COUNSEL FOR HIS DEFENSE."

THE TEST FORMULATED IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), FOR DETERMINING WHETHER COUNSEL HAS RENDERED CONSTITUTIONALLY INEFFECTIVE REFLECTS THIS CONCERN. IN STRICKLAND, THE COURT IDENTIFIED TWO (2)

COMPONENTS TO ANY INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM. (1) DEFICIENT PERFORMANCE; (2) PREJUDICE. UNDER THIS DECISION, A CRIMINAL DEFENDANT ALLEGING PREJUDICE MUST SHOW THAT COUNSEL'S ERRORS WERE SERIOUS ENOUGH TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL.

CONSTITUTION OF SOUTH CAROLINA ★ ARTICLE V § 21

JUDGES SHALL NOT CHARGE JURIES IN RESPECT TO MATTERS OF FACT, BUT SHALL DECLARE THE LAW.

THE PURPOSE OF THIS SECTION IS TO PREVENT TRIAL JUDGE FROM INTIMATING TO JURY HIS OPINION OF THE CASE, WHAT WEIGHT SHOULD BE GIVEN TO THE EVIDENCE, AND PARTICIPATING IN ANY MANNER WITH JURY'S FINDING OF FACT.

ENLEE V. SEABOARD, 110 S.C. 137, 96 S.E. 490 (1918).

THE REAL OBJECT OF THIS CLAUSE OF THE CONSTITUTION IS TO LEAVE THE DECISION OF ALL QUESTIONS OF FACT TO THE JURY EXCLUSIVELY, UNINFLUENCED BY ANY EXPRESSIONS OF OPINION BY THE JUDGE. STATE V. WHITE, 15 S.C. 381 (1881).

A JUDGE VIOLATES THIS PROVISION WHEN HE EXPRESSES IN HIS CHARGE HIS OWN OPINION UPON THE FORCE AND EFFECT OF THE TESTIMONY OR OF ANY PART OF IT, OR INTIMATES HIS VIEWS OF THE SUFFICIENCY OR INSUFFICIENCY OF THE EVIDENCE IN WHOLE OR IN PART. NORRIS V. CLINKSCALES, 47 S.C. 488, 25 S.E. 797 (1896).

A TRIAL JUDGE MAY NOT, EXPRESSLY OR BY IMPLICATION, INTIMATE ANY OPINION AS TO THE FORCE AND EFFECT OF TESTIMONY IN A CASE STATE V. DOWKINS, (1917) 268 S.C. 110, 232 S.E. 2d 228.

CRIMINAL LAW KEY 656 (8).

2013 MAR 25 PM 1:03
SCOTT B. SUGGS
CLERK OF COURT/R.O.
DARWIN COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-16-0261
COUNTY OF DARLINGTON	)	
	)	
Charlton L. Hill,	)	
S.C.D.C. No. 152778,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the Application for Post-Conviction Relief filed March 25, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Applicant was indicted at the April 2011 term of the Darlington County Grand Jury for failure to stop for a blue light (2011-GS-16-0422), reckless homicide caused by injury from vehicle (2011-GS-16-0423), and involuntary manslaughter (2011-GS-16-0424). Applicant was also indicted at the September 2010 term for felony DUI, death results (2010-GS-16-1335), and driving under suspension (2010-GS-16-1336). Matthew S. Swilley, Esquire, represented the Applicant.

The State took the case to trial, and on April 13, 2011 a jury found Applicant guilty. The Honorable J. Michael Baxley sentenced Applicant to concurrent terms of twenty-five (25) years imprisonment for felony DUI resulting in death, ten (10) years imprisonment for reckless homicide, five (5) years imprisonment for manslaughter, and ninety (90) days imprisonment for driving under suspension. Judge Baxley also sentenced Applicant to a consecutive ten (10) year

term for failure to stop for a blue light resulting in death.

A notice of appeal was filed at the South Carolina Court of Appeals. Breen R. Stevens, Esquire, of the South Carolina Office of Appellate Defense represented Applicant on appeal. Respondent filed a motion to dismiss, arguing Applicant failed to timely serve written notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal by order filed May 24, 2012. The remittitur was returned to the circuit court on August 7, 2012.

Attached herewith and incorporated by reference are the records of the Darlington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. The State reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Seeking belated appeal.
2. Actual innocence.
3. Ineffective assistance of counsel.
4. Failure to investigate.
5. Conviction.
6. Sentence in violation of United States and South Carolina Constitutions.
7. Conflict of interest.
8. Double jeopardy.

III.

Respondent interprets the allegations as ineffective assistance of counsel. The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the

standard of “reasonableness within professional norms” for a criminal defense attorney.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

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

IV.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

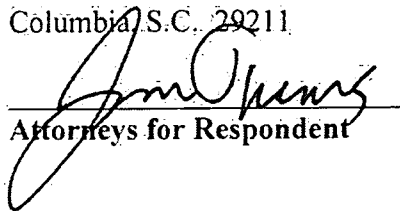
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Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

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

By:


Attorneys for Respondent

April 1, 2014

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS

2013-CP-16-0261

CHARLTON L. HILL, #152778,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

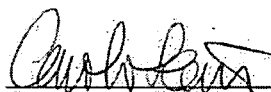
STATE OF SOUTH CAROLINA,

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:

Tristan Michael Shaffer, Esquire
Shaffer Law Firm
120 Gantt Street
Lexington, SC 29072

DATED this 1st day of April, 2014.



Caroline Kaiser, Legal Assistant
For Respondent

Charlton L. Hill)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 State of South Carolina,)
)
 Defendant.)
)
)

July 27, 2015
Darlington, South Carolina

B e f o r e:

The Honorable Thomas A. Russo, Judge

A p p e a r a n c e s:

Tristan Shaffer, Esquire
Attorney for the Plaintiff

Joshua L. Thomas, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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Mr. Shaffer 47	
Emily Crayton	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
A-1	SLED Chain of Custody Form, 1 pg.		18
A-2	Incident Report, 1 pg.		
A-3	Medical Records Document, 2 pgs.		
A-4	Consent Form, 1 pg.		

1 MR. THOMAS: Please the Court?

2 THE COURT: Yes, sir.

3 MR. THOMAS: The last case today is *Charlton Hill vs.*
4 *the State of South Carolina*, 2013-CP-16-261, April 2011
5 indictment for failure to stop, vehicular homicide, and
6 involuntary manslaughter. Then a September 2010 indictment
7 for felony DUI, death resulting; and driving under
8 suspension.

9 Represented on those charges by Matthew Swilley and
10 Emily Crayton, he went to trial April 11 through 13, 2011.
11 Jury convicted him as indicted. Judge Baxley sentenced him
12 to -- get straight here -- 25 years for felony DUI, death
13 resulting; a consecutive 10 years for failure to stop for a
14 blue light, death resulting; and then a concurrent 10 years
15 for vehicular homicide, 5 years for involuntary
16 manslaughter, and 90 days for driving under suspension.

17 There was an appeal filed. That was ultimately
18 dismissed by the Court of Appeals as untimely. This PCR
19 was filed in March, 2013, raising various allegations. He
20 is represented by Mr. Shaffer. State's ready to proceed.

21 I'm going to let Mr. Shaffer sort of -- sort of sort
22 through what the allegations are.

23 THE COURT: All right. Mr. Shaffer, be happy to hear
24 from you, sir.

25 MR. SHAFFER: Thank you, Your Honor. And there's --

1 all the allegations that we're raising him today are
2 contained in his application for PCR. Granted, his
3 application for PCR is very lengthy. I believe there's
4 about 70 pages of actual text, and then there's also
5 exhibits attached to it.

6 It's all pro se. I'm going to hit some of the high
7 points briefly, and then some of the -- the issues I will
8 let him explain. And we'll try to do that in as efficient
9 a manner as possible just because I -- I -- I understand
10 the Court's time is valuable. So I'm going to try to go
11 through it very quickly whenever we ---

12 THE COURT: All right.

13 MR. SHAFFER: --- I do have him on the stand.

14 But the first thing is belated issue under *White v*
15 *State*. I believe that the -- the notice of appeal of the
16 trial was filed one day late. The Court of Appeals says
17 it's missed it. I'm happy to introduce a document
18 supporting my -- that claim. That being said, I don't know
19 if the State's actually opposing that particular issue.

20 MR. THOMAS: Your Honor, I think the -- the records
21 speak for themselves on that one in terms of the dates and
22 everything. I don't know ---

23 THE COURT: All right. All right.

24 MR. SHAFFER: Okay.

25 THE COURT: All right.

1 MR. SHAFFER: Thank you. Your Honor, there's also an
2 issue with the indictment, which the reason that there's an
3 issue with the indictment, he was originally charged and
4 indicted I believe it was on September -- either September
5 2 or September 20, 2011. He was charged with failure to
6 stop for a blue light resulting in death.

7 Those -- those were his indictments that he was
8 prepared to go to trial on. They ended up indicting him
9 within a couple of days of trial, and I think it was
10 actually served on him the day of trial -- the other
11 charges, Your Honor. And I believe that that would create
12 a problem because I don't think he -- he had proper notice
13 under the indictment to proceed under those because of the
14 fact that the timing of when he was actually served with
15 it. When you're served something the morning of trial, I
16 think that there's a problem there.

17 There's also maybe an issue with ineffective
18 assistance of counsel for failure to request a continuance.
19 There might even be a per se ineffective assistance of
20 counsel claim. If -- if you're going to that level of --
21 of -- you know, all the charges changing -- or three of the
22 charges changing the morning of trial. I don't think he
23 had enough time -- I don't think any attorney would have
24 enough time to try a felony DUI whenever they got served
25 with the indictment the morning of trial.

1 Your Honor, there's also a claim that he has related
2 to grand jury dates. We also have a claim related to the
3 blood that was taken. We have a couple of claims related
4 to the blood that was taken.

5 First, the -- the blood was -- his blood was tested.
6 They found various intoxicants in the blood. But there's a
7 problem both with the chain of custody, I believe, and with
8 the actual taking of the blood.

9 Since it was a felony DUI -- DUI case, the trooper
10 took the position that they were going to take the blood no
11 matter whether he -- he wanted to or not. Your Honor, I
12 think that there's a Fourth Amendment violation related to
13 that.

14 There's also an issue related to the chain of custody
15 of the blood. The -- the blood -- originally -- at the
16 hospital, I don't think that there necessarily is a chain
17 problem there, minus the fact that there's no indication
18 that either of those people who took the blood were
19 properly trained.

20 But I believe that the chain problem comes in whenever
21 it actually gets to SLED. Apparently approximately four
22 people handled the -- handled it at SLED. But there's no
23 indication that they actually handled it.

24 There's also a problem with who transported it to
25 SLED. He never actually signed off on the chain.

1 So there's several chain problems related to the blood
2 that I'll let my client go into, more in depth.

3 Your Honor, there is a failure to investigate claim,
4 and -- and some of this -- in order for the Court to
5 understand, what happened the -- the -- law enforcement
6 tried to do a traffic stop on this vehicle. Okay? The
7 vehicle then fled the scene -- or fled where -- the blue
8 light.

9 It -- there was a high-speed chase; two occupants
10 inside the vehicle, my client and his wife. The car loses
11 control, and my client's wife is killed and he is not.
12 She's actually ejected from the car.

13 Now, we do have a video because the officer pulled up
14 -- was -- throughout the chase was there immediately. And
15 there are several logs that go through the car. The car is
16 very badly destroyed. I mean, it -- it flipped several
17 times.

18 By the time they made it to -- by the time the officer
19 showed up at the door of the car, my client was in the
20 driver's seat. Now, my client contested at trial that he
21 was not driving. That was essentially the defense is that
22 he was not driving.

23 There are people who -- there are potential witnesses
24 who would have said that -- that he was actually -- or that
25 she was driving earlier that evening. Okay. And I -- I

1 believe there's a failure to investigate claim related to
2 those.

3 There's several arguments relating to the closing
4 arguments. We believe that the officer crossed the line in
5 -- on a couple of different occasions, and I'll
6 specifically bring those up through my client.

7 An issue related to failure to request a continuance
8 as we said previously. The -- I mean, the indictments were
9 given to them the morning of.

10 Various issues with the charge from the judge.

11 There's also an issue where I believe that -- well, my
12 client's going to argue that -- that certain offenses that
13 he were -- was convicted of never should have been
14 submitted to the jury because they were lesser included. I
15 certainly believe that reckless homicide in involuntary --
16 I'm going to make the argument that involuntary's actually
17 a lesser included of reckless homicide because of the fact
18 that involuntary involves negligence, recklessness --
19 reckless homicide's obviously recklessness.

20 There are several civil cases that -- that deal with
21 the fact that recklessness is part and parcel of
22 negligence. It's just a more -- more defined role of
23 negligence or -- or more -- more egregious form of
24 negligence. But it's assumed in a claim of negligence.

25 Because of the law -- civil court recognizes that. I

1 certainly believe that it's a lesser included of reckless
2 homicide, Your Honor.

3 Your Honor, there's also an issue related to the
4 alcohol evidence being admissible for an involuntary
5 charge. Obviously, whenever they do the -- the implied
6 consent or whenever they take blood, the statute -- the DUI
7 statute says that it cannot be used for anything outside of
8 Title 56, and he was charged for involuntary.

9 And Your Honor, I think the other issues I -- I will
10 bring out through my client on the stand.

11 THE COURT: Let me -- just -- and it may just be a
12 matter of the way it was said. You indicated -- it -- it
13 almost -- the way you presented some of this stuff, it's
14 almost like you indicated that you'd be arguing some things
15 and your client would be arguing some things.

16 And I -- I'm not going to -- I mean, I'm going to hear
17 from the attorney. I mean, I'm going to let your client
18 testify from the stand and say what he needs to say. But
19 I'm not going to hear separate argument from your -- the
20 applicant.

21 MR. SHAFFER: Yes, Your Honor, and I -- I understand
22 that. I'm -- I'm going to -- he makes many, many claims in
23 his -- in his application, Your Honor, that are obviously,
24 you know, part of the pleadings in this, even though it is
25 about 70 pages long.

1 The -- what I would like to touch on -- I guess I'm in
2 -- in somewhat of a situation that I don't want to waive
3 any argument that he makes. But I'm not going to -- to
4 delve very deep in certain arguments that he -- that he
5 raises in the pleadings, Your Honor, because it's very --
6 it's already been -- in the pleadings, I personally would
7 not go very far in depth on. But I -- I can't waive them
8 without my client's approval.

9 And Your Honor, I -- I'm not going to let him argue
10 it. I'm just saying -- I -- I guess what I'm trying to say
11 is that it's already in the record that he's making these
12 arguments or that these allegations -- I'm not going ---

13 THE COURT: Yeah. But at some -- at some point -- I
14 mean, we always have applications that are handwritten by -
15 - by the applicant, and then an attorney is appointed and
16 counsel presents the case. And oftentimes we have
17 allegations that applicants make that have no basis.

18 I'm not saying that's the case here, but I'm just
19 saying -- and -- and so it's up to the attorney to put
20 forth before the Court those things that are relevant and
21 applicable and -- and to be able to say that -- that --
22 that's not an issue. You see what I'm saying?

23 MR. SHAFFER: Yes, Your Honor. I think that the ---

24 THE COURT: I mean, there -- there may be some --
25 there may -- there may be a ton of stuff in here that Mr.

1 Hill alleges that aren't appropriate or -- or maybe that
2 they -- they are all appropriate. I -- I don't know. But
3 I certainly expect for counsel to present the case and not
4 -- not the applicant.

5 MR. SHAFFER: Yes, Your Honor. I can probably pare it
6 down to some degree. I -- well, I know I can pare it down
7 because there's certain issues I just wouldn't raise in
8 there.

9 Your Honor, they're -- they're a whole lot of issues
10 that he raises that are actually viable issues. And
11 they're -- I mean -- you know, that you have a arguable
12 base -- basis in law to argue. And I'll try to hit the --
13 the ones I actually think would make a difference.

14 THE COURT: All right.

15 MR. SHAFFER: And I'll try not to go into the other
16 ones. I'm happy to ---

17 THE COURT: I mean, I have -- I have his application.
18 So it's not like I'm not privy to what he's got here.

19 MR. SHAFFER: Yes.

20 THE COURT: I've got the application.

21 MR. SHAFFER: If -- if you would like, I can actually
22 -- I thought about doing this, which is paring it down in a
23 list form so that the Court -- it would be easier for the
24 Court to do. But I couldn't do that, obviously, today. I
25 would have to submit that afterwards. I couldn't make out

DIRECT EXAMINATION BY MR. SHAFFER - CHARLTON HILL 13

1 a list, typed out, that is in my own, you know -- after
2 I've -- I've reviewed it.

3 THE COURT: Well, let's -- let's go ahead and proceed
4 here, and I'll let you present your case here today. And
5 I'll receive whatever it is you would like to submit.

6 MR. SHAFFER: All right. Thank you, Your Honor.
7 Applicant would call Charlton Hill to the stand.

8 THE COURT: All right. Mr. Hill, if you would please
9 come around to be sworn, sir.

10 CHARLTON HILL, having been first
11 duly sworn, testifies as follows:

12 Q Mr. Hill -- Mr. Hill, where are you from, sir?

13 A Darlington County, Lake Swamp community.

14 Q And where do you currently reside?

15 A Currently I'm at the McCormick Correctional
16 Institution.

17 Q Who -- who were your attorneys for your trial?

18 A That would be Ms. Emily Crayton and Mr. Matthew
19 Swilley.

20 Q And what are the allegations against them?

21 A Those allegations would consist of basically
22 ineffective assistance based on failure to investigate, a
23 lack of preparation, and --

24 Q Well -- and what -- whenever I ask you, "What are the
25 allegations against you," what I mean is what did they say

1 you did?

2 A My allegations, allegations against me.

3 Q Yeah. What -- what did the State say you did at
4 trial?

5 A That I was -- that I failed to stop for a blue light;
6 that I was driving intoxicated and that was the proximate
7 cause of my wife's demise.

8 Q How many times did you meet with your attorney before
9 your trial?

10 A Maybe two, maybe three times.

11 Q Okay. And what did you discuss whenever you met with
12 your attorney those times?

13 A I tried to formulate a defense by giving him
14 information, where to contact witnesses, how to retrieve my
15 telephone so that he could check my itinerary and interview
16 potential witnesses.

17 Q Okay.

18 A I spoke with him briefly about evidence against me,
19 including the video tape. We watched the 22-minute video
20 tape during one of our visits. And at the end of that, he
21 said that there were some pictures. He asked me would I
22 like to see the pictures, and I said, "No. I guess I've
23 seen enough." I didn't realize that they had 120 pictures
24 of -- of me, where they posed me.

25 Q What do you mean "where they posed you?"

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1 A They told me to put my hands on the wheel. They told
2 me to sit back down in the seat and put my hands on the
3 wheel.

4 Q And them saying, "Put your hands on the wheel," was
5 actually in the video, correct?

6 A Yes, sir. It should be in the video.

7 Q Okay. What was the defense that you ended up going
8 with whenever you went to trial?

9 A I pled to DUI involving a -- well, I didn't plea. I
10 took a jury trial on DUI involving a death and failure to
11 stop for a blue light.

12 Q Okay. What -- what theory did you present for the
13 jury?

14 A The theory being that I wasn't driving, that my wife
15 was actually under the wheel when -- when the traffic stop
16 was initiated.

17 Q Okay. Now, did they have forensic evidence indicating
18 that you were driving?

19 A No, sir. There was a lack of forensic evidence.

20 Q What do you mean by that?

21 A There were several instances where DNA and blood-
22 related evidence was submitted to SLED for analyzation and
23 it was returned unanalyzed.

24 Q Okay.

25 A It was incomplete.

1 Q Okay. So they never actually did the DNA analysis,
2 correct?

3 A No, sir.

4 Q Did they do a blood alcohol analysis?

5 A They did a blood alcohol analysis at the hospital, and
6 they also did one at SLED.

7 Q Okay. And the one at SLED is the one they presented
8 at the trial, correct?

9 A And that would have been -- yes. That would have been
10 the second one, and they -- that's the one they used.

11 Q Now, you have several issues related to the blood that
12 was taken, correct?

13 A Yes, sir.

14 Q One of those issues is that you didn't consent to the
15 search, correct?

16 A No, sir, I did not consent. I tore off the Philly
17 collar. I -- I -- I really acted really, really bad. I
18 jerked out the IVs. I refused everything: catheter,
19 treatment, everything.

20 Q Despite your resistance, they actually seized the
21 blood, correct?

22 A I was -- I was told by Pat Lee, the officer -- the
23 investigating officer, that it didn't matter what I said,
24 that they were gonna forcibly take the sample.

25 Q Okay. And my -- my recollection is, inside your

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1 application for post conviction relief, you have a document
2 attached to it that basically was a police report
3 containing a --

4 MR. THOMAS: Your Honor, I'm going to object to any
5 reference to things in the pleadings that aren't evidence.
6 If we want to talk about some police reports, we're gonna
7 need original copies, and they're gonna need to be
8 authenticated. So ...

9 THE COURT: All right.

10 MR. THOMAS: I -- I guess that would be an
11 authentication -- rather than say -- hearsay objection, all
12 in one.

13 THE COURT: Sustained as being hearsay.

14 Q Did your trial attorney object under the Fourth
15 Amendment to the blood being taken?

16 A No, sir.

17 Q Did they object to the chain of custody?

18 A Yes, sir.

19 Q Did they introduce all the documents you wanted to --
20 wanted introduced related to the chain of custody?

21 A There was a particular document, I think it's Exhibit
22 124 -- I -- I -- I can't get to my notes -- that is
23 unsigned, and it is the submitting officer. And it -- it
24 has a disclaimer at the top that says "Please print legibly
25 except where signature is required." And no signature is -

1 - is existent there. That would be your first in -- in
2 your chain of custody.

3 (Brief pause.)

4 (Mr. Shaffer hands exhibit to the applicant.)

5 (Marked Applicant's Exhibit No. 1, Chain of Custody
6 Form.)

7 Q I'm showing you what's been marked Applicant's --

8 (Brief pause.)

9 Q I'm showing you Petitioner's Exhibit 1. Is that the
10 unsigned chain of evidence form that you were discussing?

11 A Yes, sir, that's it.

12 Q Does that appear to be a true and accurate copy of
13 that document that you obtained through discovery?

14 A Yes, sir, through my *Brady* motion with Mr. Swilley.

15 MR. SHAFFER: Move to admit Petitioner's 1.

16 MR. THOMAS: No objection.

17 THE COURT: All right. Without objection,
18 Petitioner's 1.

19 (Applicant's Exhibit No. 1, Chain of Custody form, in
20 evidence.)

21 Q Specifically related to that document, what is the
22 issue that you -- you have with your attorney?

23 A If Mr. Swilley would have perused the document, he
24 would have seen that it was lacking the signature of the
25 delivering officer at the bottom of the form, and he would

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1 have seen the disclaimer at the top that says the
2 signature's required. There was actually some discussion
3 about who actually delivered the specimen to SLED.

4 Q Okay. And is that the extent of your chain of custody
5 issue on PCR?

6 A No, sir.

7 Q What -- what else regarding the chain of custody did
8 you take issue with?

9 A I took issue with -- Mr. Holt cited the *Hatcher* case.
10 And according to the *Hatcher* case, everyone who handles the
11 specimen in a significant way must either be present or
12 give affidavits, sworn testimony that they handled it and
13 in what way they handled it. And there were -- the -- the
14 chain went on and on.

15 In my transcript, you'll find Ms. Patricia Cook,
16 you'll find Ms. Nicki Perry also handled this. Neither
17 were at my -- at my trial to -- to verify their handling of
18 -- of the evidence.

19 Q Okay. Did you have any indication prior to your trial
20 that these people handled your evidence?

21 A No, sir.

22 Q What did the solicitor say regarding who handled the
23 evidence at your trial?

24 A (No audible response.)

25 Q Do you recall him making a statement about how the

1 chain was complete?

2 A All -- all I can remember is the reference -- all I
3 can remember is the reference to the *Hatcher* case. He said
4 that I believe -- I think he said, "I believe we satisfy
5 the *Hatcher* case, Your Honor."

6 Mr. Swilley was very adamant, and that chain of
7 custody -- he -- he raised it numerous times.

8 Q Okay. So he did raise that numerous times. But did
9 he introduce the unsigned document?

10 A No, sir. He was not able to -- to -- to show the
11 evidence.

12 Q Do you think it would have made a more complete record
13 had he done that?

14 A Yes, sir, it would have -- would have been much better
15 case in my favor.

16 Q Now, additionally, related to the blood, you had
17 raised an issue related to the people who took your blood,
18 correct?

19 A Yes, sir.

20 Q And do you believe that they properly laid a
21 foundation for -- that they were qualified to take the
22 blood, in the transcript?

23 A No, sir.

24 Q What's your basis for saying that?

25 A My basis for saying that is that I have -- you know,

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1 my -- through my -- through my legal investigation, I've
2 found that there's supposed to be -- according to 29-45,
3 under the statute that I'm charged with, they're supposed
4 to be qualified, use methods approved by SLED, and be --
5 and be trained by SLED in order to do that.

6 I actually wrote FBI under the Freedom of Information
7 Act to -- to gain their credentials ---

8 Q Well, let's -- let's stick to this.

9 A Okay.

10 Q During the trial transcript, did anyone indicate that
11 they were qualified by SLED to take ---

12 A Nobody ever ---

13 Q Okay.

14 A --- admitted to any type of --

15 Q Did your attorney object to that?

16 A No, sir.

17 Q Okay. Do you believe that he should have?

18 A Yes, sir. He should have questioned them about the
19 training.

20 Q What other issues related to the actual taking of the
21 blood -- you had raised one related to Betadine in your
22 arm?

23 A Betadine -- the prep site. I -- I -- I came across --
24 I can't refer to the case law. My hands are tied. But it
25 has to do with the --

1 Q And -- and I don't need you to necessarily make legal
2 argument.

3 A Yes, sir.

4 Q What I'd like you to do is at least state: Was their
5 Betadine on your arm?

6 A It's -- yes, sir, I think so. Betadine was the
7 solution they used. It was a non-alcoholic solution that
8 they prepped the site with, according to them. Yes.

9 Q Okay.

10 A According to Ms. ---

11 Q Did you think that that was proper?

12 A I -- I don't know. I don't know the procedure. That
13 should have been brought up by Mr. Swilley I would imagine.

14 Q Now, during their closing argument -- or during the
15 closing argument, the State at one point said, "Don't let
16 them fool you with the DNA," correct?

17 A Yes, sir. Mr. Holt said that.

18 Q Had you presented a defense during this case?

19 A I have -- no, sir.

20 Q And you didn't testify.

21 A No, sir.

22 Q Did anyone else testify?

23 A No, sir. The Defense had no testimony.

24 Q Do you think it was improper for them to say that?

25 A Yes, sir. I think that -- that was -- that was

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1 improper.

2 Q What other issues did you have with your closing
3 argument -- during the closing argument made, they made
4 comments about the community, correct?

5 A Yes.

6 Q It's going to be around 49 in your document -- in the
7 application.

8 MR. SHAFFER: 48, Your Honor. Page 48 of the
9 application.

10 THE WITNESS: I really need one of my hands to work
11 with these notes --

12 THE COURT: Get -- get --

13 THE WITNESS: -- please.

14 THE COURT: Take these handcuffs off. Okay.

15 THE WITNESS: Thank you, Judge.

16 (The deputy complies.)

17 THE WITNESS: Thank you very much.

18 (To Mr. Shaffer) Would you bring me that one sheet of
19 paper, please, on top or those two right there together
20 (indicates.)

21 (Mr. Shaffer complies.)

22 DIRECT EXAMINATION BY MR. SHAFFER (continues):

23 A Okay. What was your question, Mr. Shaffer?

24 Q I was asking you -- you, related to their closing
25 argument, what issues did you have concerning the State

1 mentioning that the jury was acting for the community?

2 (Brief pause.)

3 A This is the closing argument?

4 Q Yes. It would be around 48 in your ---

5 A Okay.

6 Q --- application.

7 A 48. He made several -- the -- the way I see it --
8 improper arguments. He -- he -- in essence vouching for
9 Ms. Quick, he made statements that they didn't just find
10 him in the car, take a photo on one of those throw-away
11 cameras, throw it away. He referenced, "She ain't got no
12 dog in this fight. She ain't got no reason to lie. Even
13 if I had half of what I brought up here, I could pass
14 reasonable doubt. Where is the DNA? Where is the DNA?
15 What DNA do I need? These things -- and you heard the
16 testimony today, you couldn't get fingerprints off of them
17 because of the wreck."

18 Those are they type of things that he -- he used all
19 through his argument.

20 Q What -- now ---

21 THE COURT: I'm going to interrupt you here. Nothing
22 that I've heard is improper argument. So what is the
23 issue?

24 MR. SHAFFER: And Your Honor, I believe at -- at one
25 point he says they're acting for the community. And

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1 there's a site in there -- and I'm trying to pull it up
2 right now and -- and -- my copy of it. It's just moving
3 slow. There should be a site in there. I -- I can move
4 forward, Your Honor.

5 (Brief pause.)

6 MR. SHAFFER: And Your Honor, I'm happy to move
7 forward.

8 THE COURT: Well, I -- I was just trying to maybe help
9 you find it. That -- usually that's something that you
10 would expect near the wrap-up of the closing argument.

11 So I started from the back and working my way forward.
12 And I'm on page 285, and I haven't seen any reference to
13 that yet.

14 MR. SHAFFER: And Your Honor, I -- once again, I
15 apologize. I -- I have -- do have notes on this case.
16 It's just my -- my notes reference his application and the
17 application references the transcript. And I don't have my
18 application in front of me at the moment. I'm pulling it
19 up. It's just ---

20 THE COURT: I'm looking at the application.

21 MR. SHAFFER: --- moving very slow

22 THE COURT: And I'm not seeing it in the application
23 where he makes that ...

24 MR. SHAFFER: Your Honor, I -- I'll just move forward
25 with another issue.

1 THE COURT: All right.

2 DIRECT EXAMINATION BY MR. SHAFFER (continues):

3 Q Mr. Hill, when were you indicted for these charges?

4 A I'm not sure of the dates of the indictment, but there
5 are three indictments added on the day of trial.

6 Q Okay. And what were you initially indicted for?

7 A I was initially indicted for failure to stop for a
8 blue light, according to Mr. Swilley's letter. But that's
9 -- I don't think that's correct.

10 Mr. Swilley -- (indicates) this is his letter, and
11 when I wrote him, his answer was (as read): "Please find a
12 motion for the change of venue that I filed today. Also
13 please find an indictment for failure to stop for a blue
14 light with death resulting that's been true billed. At --
15 at this time, to my knowledge, this is the only indictment
16 that the Solicitor's Office has submitted to the grand
17 jury."

18 And that was dated March 24, 2011.

19 Q And then -- then when were you indicted for the other
20 three charges?

21 A So I would have been indicted on the day of trial.

22 Q Well, you would have been served the indictment on the
23 day of trial, correct?

24 A Yes, sir.

25 Q Okay.

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1 THE COURT: The -- the grand jury shows they were
2 indicted April the 7, 2011.

3 Q You were unaware of those charges until that day?

4 A I -- I knew that I had been charged. I hadn't seen
5 the indictments. But no, sir, I knew that I had been
6 charged. That's what -- my original charges were failure
7 to stop for a blue light involving a death, and failure to
8 stop for a blue light.

9 Q You went to trial. Your trial started on April 13,
10 2011; is that correct?

11 A I think it ended on April 13. That was a Wednesday?

12 Q I believe it started that day, according to the
13 transcript.

14 A Or was it April the 11. I thought it started on the
15 11th.

16 Q Safe to say ---

17 THE COURT: No. April -- April 13.

18 THE WITNESS: Okay. It started on April 13.

19 Q Safe to say the -- there wasn't a whole lot of time
20 between those new indictments and the trial, correct?

21 A Yes, sir.

22 Q Do you think your attorneys had adequate time to
23 prepare for these new indictments?

24 A No ---

25 MR. THOMAS: Objection. Calls for speculation.

1 Q How -- how many times did you discuss with your
2 attorneys, between April 7 and April 13 --

3 THE COURT: Just want to correct -- it's -- it's minor
4 -- but Mr. Hill -- it appears, looking at the transcript,
5 Mr. Hill's correct. It started Monday, April the 11 of
6 2011. That was the Monday of that week.

7 THE WITNESS: Yes, sir. And it ended on the 13th.

8 THE COURT: Okay.

9 THE WITNESS: And it was -- it was at 9 o'clock that I
10 entered my plea of not guilty, and it was about 11 o'clock
11 when these indictments were served, two hours later.

12 MR. SHAFFER: Thank you, Your Honor. I -- I apologize
13 for that. I had -- I was going off the wrong date there.

14 DIRECT EXAMINATION BY MR. SHAFFER (continues):

15 Q So how many times did you have to discuss the new
16 indictments between April 7 and April 11?

17 A I had no opportunity whatsoever to -- to discuss the
18 new charges.

19 Q Do you recall meeting with them during that time
20 period to discuss the new charges?

21 A Only for a brief interval, maybe five minutes behind
22 the scenes here.

23 Q What was your initial plea offer in this case -- or
24 what was their initial plea offer?

25 A There was a plea offer of 22 years, with a stipulation

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1 that they would -- if I would plead to the DUI, death
2 resulting, for 22 years, they would take it to Judge King,
3 wherever he was, because Judge Baxley was not on the
4 circuit anywhere.

5 Q And you did not accept that offer?

6 A No, sir. It was -- it was actually offered, I think,
7 on a Thursday, and the deadline was the next day; and if I
8 would have wanted to take it, I wouldn't have had the
9 opportunity. Mr. Swilley didn't return til after the
10 deadline.

11 I didn't take it at the time he presented it, and
12 after -- after sleeping on it, if I wanted -- would have
13 wanted to take it, I -- I wouldn't have had the
14 opportunity.

15 Q You wouldn't -- you didn't have time to take it.

16 A No, sir.

17 Q Okay. Now, in your application, you alleged that
18 there is an issue related to the -- to the fact that you
19 were tried for involuntary and evidence was also used for
20 the involuntary charge of your alcohol -- blood alcohol
21 content, correct?

22 A Yes, sir.

23 Q Okay. Explain that issue a little bit to us.

24 A Okay. Well, we're talking about -- what are we
25 talking about, number 9?

1 Q We're talking about the allegation on page 68 of the -

2 --

3 A Page 68.

4 Q --- application.

5 A Okay.

6 (Brief pause.)

7 A Well, I really don't -- I'm -- I'm confused as to the
8 question right now.

9 Q Do you believe that it was proper to allow your blood
10 alcohol level to be introduced in a trial that was pursuant
11 -- that was for involuntary --

12 A All right.

13 Q -- because we had -- we had discussed that -- or under
14 the code, you -- you had your blood drawn pursuant to the
15 56-5-2950, correct?

16 A Yes, sir.

17 Q And in that statute, it actually says you can't do
18 that, right?

19 A That's what I was looking for. I was looking for the
20 -- the -- the statute that states that you can't use the
21 evidence procured in any other statute other than the 56.

22 Q Okay. And obviously, involuntary manslaughter is not
23 --

24 A It's under 16, I think. Not ---

25 Q And you raised that as an allegation in the PCR

1 application?

2 A Yes, sir, I did. I found that during my study.

3 Q Now, at one point, on page 216 of the trial transcript

4 --

5 THE COURT: 216 or 60?

6 MR. SHAFFER: 216.

7 THE COURT: 216.

8 MR. SHAFFER: 216 through 217.

9 Q You raised an issue related to the judge asking
10 certain questions in that section, correct?

11 A Yes, sir.

12 Q Why did you raise that issue?

13 A Okay. Now I've found what I was looking for just a
14 minute ago. (As read) "Any evidence obtained under the
15 provisions of 29-50 -- 56-5-2950 shall not be admissible as
16 evidence to prove a criminal offense, other than those
17 offenses delineated under Title 56.

18 Q And I can discuss this a little bit -- that issue a
19 little bit more with your trial attorney, but specifically
20 related to 216 and 217, the judge asked questions laying a
21 foundation, correct?

22 A Excuse me.

23 Q I -- I'll -- I can bring it up through your trial
24 attorney.

25 MR. SHAFFER: Court's indulgence.

1 (Brief pause.)

2 THE WITNESS: I found the reference to the last
3 question you asked.

4 (Brief pause.)

5 Q And Mr. Hill, I know that there's several other
6 allegations. What I plan on doing is bringing up certain
7 allegations through your trial attorney. But specifically
8 related to what happened after your -- your case, did you -
9 - was an appeal filed timely?

10 A During the sentencing phase of my trial, I was asked
11 to make a final statement. And during that statement, I
12 asked for an appeal based on a violation of my rights,
13 including due process. And the judge informed me that me
14 so stating that I want an appeal did not place it on
15 appeal, that Mr. Swilley, or any attorney that I hired,
16 would have to follow through with that.

17 And Mr. Swilley and Ms. Crayton also informed me that
18 all jury trials that they handled were automatically --
19 that they automatically appealed those. And I made that
20 known to them that I wanted an appeal.

21 I actually wrote Mr. Swilley from R and E, after I was
22 sentenced, to that affect, that I wanted an appeal. He did
23 file the appeal, and I think -- it's my understanding that
24 it was Easter Monday and that was the deadline. And he was
25 -- he didn't file it that day but the next day, one day

1 late.

2 Q Okay. Now, at the end of the case, right before
3 sentencing, you had made a statement about it being a fair
4 trial. Why did you make that statement?

5 A Well, I felt like -- that I was -- I really -- in all
6 actuality, I was in the middle of writing that dissertation
7 -- or that -- or that closing statement; and I was rushed
8 back in here at two o'clock, without benefit of a defense
9 and witnesses. And that rushed it and that really came off
10 just the top of my head, trying to validate what I -- what
11 I felt was more of -- of a travesty, not -- not a -- not a
12 trial. And ...

13 Q Well, you had said it was a fair trial.

14 A Yes. Like I said ---

15 Q Why -- why did you say that? Do you -- do you believe
16 that?

17 A No, sir.

18 MR. THOMAS: I'm going to object ---

19 A No, sir.

20 MR. THOMAS: --- to the relevance of this line of
21 questioning, Your Honor.

22 THE COURT: Sustained.

23 A One of my allegations --

24 MR. SHAFFER: I have no further questions at this
25 time.

1 THE COURT: Mr. Thomas.

2 CROSS-EXAMINATION BY MR. THOMAS:

3 Q Mr. Hill, how many meetings did you have with your
4 attorneys before your trial?

5 A Two or three.

6 Q And during those meetings, y'all discussed the
7 discovery the State had?

8 A Partially.

9 Q And y'all basically worked up a defense. I mean, your
10 version of events was you weren't driving the car?

11 A Yes, sir.

12 Q And you told your attorneys that the police posed you
13 in those pictures they took?

14 A I don't think I -- I told them that, no, sir.

15 Q Did you tell them that the police forced you to give
16 your blood at the hospital?

17 A Yes.

18 Q You said you gave them some people they needed to go
19 out and investigate?

20 A Yes, sir. I also reiterated that I needed the
21 telephone itinerary so that he could find those people.

22 Q You said that you -- you talked to -- Mr. Swilley
23 talked to you about a plea, but you told him you didn't
24 want to take it? Is that a fair characterization?

25 A I -- no, sir. I -- no, sir. He -- he told me about

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1 the plea, and I -- I -- I didn't want to take a plea. I
2 wrote him and told him I didn't want to take a plea.

3 Q All right. Mr. Hill, that's all I have. Thank you.

4 MR. SHAFFER: No further questions.

5 THE COURT: I -- I need -- I've got questions. I need
6 to get something clarified here.

7 DIRECT EXAMINATION BY THE COURT:

8 Q Mr. Hill, you -- you were arrested at some point, and
9 you indicated your -- your initial charges were driving
10 under the -- or excuse me -- driving under the influence
11 resulting in death --

12 A Yes, sir.

13 Q -- a failure to stop for a blue light resulting in
14 death? In other words, let -- let me ---

15 A It was failure -- excuse me, Your Honor.

16 Q Your initial charges, the -- the warrants that were
17 served on you -- because I'm looking here and you were
18 convicted pursuant to this trial on -- on five -- five
19 charges: involuntary manslaughter, reckless homicide,
20 failure to stop for a blue light where death results,
21 driving under suspension, and driving under the influence
22 involving death; is that correct?

23 A Yes, sir.

24 Q All right. When were those warrants that were -- not
25 -- not -- not indictments, but warrants, when were those

1 warrants served on you?

2 A Those warrants were served on me when Fred's bounty
3 hunter picked me up and brought me in.

4 Q All right. Do you recall roughly when that was?

5 A That would have been in October, October of 2000 ---

6 Q 2000 and --

7 A --- 10?

8 Q -- 10.

9 A Yes, sir.

10 Q Okay. And what -- what -- what I'm trying -- what I'm
11 trying to figure out is -- and maybe I should just withhold
12 my questions until we get further along -- because I --
13 I've had cases oftentimes where the defendant and his
14 attorneys are -- are getting ready for trial and they know
15 what cases are -- are going to trial, but the indictment
16 doesn't get true billed until the week before the trial
17 starts. But that's not really an issue because they knew
18 that's what they were going to trial on. It just hasn't
19 been presented to the grand jury until the last minute.

20 A Yes, sir.

21 Q Is that the case here or do we truly have a couple of
22 indictments that came out of the blue on Monday morning of
23 the trial and were caught completely by surprise of it.

24 MR. SHAFFER: I think to a certain extent what we have
25 is -- is -- while the trial attorneys might have one idea.

1 Obviously he had been indicted. But one of them --
2 the odd thing here is that he was indicted for one thing
3 far in advance. You know, a year prior he had been
4 indicted for ---

7 MR. SHAFFER: And Your Honor, I ---

11 MR. SHAFFER: Okay. Well, thank you, Your Honor.

14 (The witness complies.)

17. MR. SHAFFER: The applicant would actually rest at
18 this time.

21 MR. THOMAS: I'm going to start with Mr. Swilley, Your
22 Honor. I'll call him to the stand.

25 MATTHEW SWILLEY, having been first

1 duly sworn, testifies as follows:

2 DIRECT EXAMINATION BY MR. THOMAS:

3 Q Mr. Swilley, let's just cut straight to the chase.

4 What -- he was indicted for -- originally just the two --
5 the felony DUI, death resulting, and the driving under
6 suspension?

7 A Correct.

8 Q Where did those other three charges come from? Were
9 those direct indictments or warrants or ...

10 A They were directly presented to the grand jury. I --
11 I -- at some point proceeding Mr. Hill's trial, while
12 speaking with -- I -- I believe it was -- I believe it was
13 Mr. Holt, he -- I was informed that they would -- they
14 would be seeking indictments on those other three charges.

15 Before Charlton went to -- Charlton had -- he had
16 these charges. He actually bonded out. He got arrested
17 for, I think, a breach of trust; And I moved for the Court
18 to set bond on the breach of trust, and they did. But I
19 believe for some reason, because Mr. Wilhelm had come off
20 of his bond, he was still stuck in the detention center.

21 And at the bond hearing, I think, that's when either
22 Mr. -- either Mr. Holt or Ms. Baugh, I can't remember. I
23 think -- I'm almost sure it was Mr. Holt, but they -- they
24 informed me that if we went to trial, it would -- they
25 would be indicting him for -- for involuntary as well as

1 reckless homicide.

2 I don't -- I -- I know they -- they told me about
3 those two. I mean, and -- and with felony DUIs in the
4 Fourth Circuit, they usually do get indictments on reckless
5 homicide and involuntary manslaughter. I don't really know
6 why. I think it's kind of overkill, but you know, that's
7 their -- I mean, that's what they typically do.

8 Q And so as far as the facts -- I mean, the facts aren't
9 any different. There -- there sort of the same sort of
10 circumstances and everything. So there's no new evidence
11 that you'd need to investigate for those new charges?

12 A I mean, I'm familiar with the elements. I mean, it
13 didn't really -- it didn't really change any -- if you're -
14 - to answer your question, it didn't really change anything
15 about our trial strategy. I don't -- I mean, I just don't
16 really see why they had to do that, but it happened.

17 Q And do you recall making an objection -- you moved for
18 your directed verdict, basically objecting under the Eighth
19 Amendment, double jeopardy, saying that reckless and
20 involuntary were the same thing?

21 A I don't -- I don't -- I don't have any independent
22 recollect -- recollection myself doing that. But I mean,
23 if it's in the transcript, then ...

24 MR. THOMAS: Can I approach, Your Honor?

25 THE COURT: Yes, sir.

1 (Mr. Thomas hands a document to the witness.)

2 Q I'm going to show you page 262 of the transcript. If
3 you'll just start reading on line 9. Just read, basically,
4 to the bottom of the page, and tell me if that refreshes
5 your recollections.

6 A (As read) "I'm sorry. As far as motions go, Your
7 Honor, I apologize. I would move to dismiss the
8 indictments on relation or -- or pertaining to reckless
9 homicide as well as involuntary manslaughter. I think this
10 would be in violation of the defendant's Eighth Amendment
11 rights, should be -- should he be convicted, due to the
12 fact that he would be convicted for multiple crimes for the
13 same occurrence. And I would move for a dismissal on those
14 grounds."

15 And then Judge Baxley replies, "All right. Let me
16 hear from the State on that. Do you have a response?"

17 Mr. Holt, "Yes, sir, Your Honor. The State, after
18 speaking with Deputy Solicitor Kenard Remond, he wishes to
19 move forward on all charges. We find that under the case
20 law, the reckless homicide, as well as the involuntary
21 manslaughter, has separate elements and are separate
22 crimes. And I think it is well-settled case law that they
23 are not lesser included of felony DUI. They are, in fact,
24 their own separate crimes."

25 Q And so Judge Baxley heard your arguments and denied

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1 your motion?

2 A Yes. It would appear so.

3 Q Do you recall Mr. Hill ever telling you the officers
4 posed him in the car for those pictures?

5 A I -- I do -- I -- I feel like Charlton -- we did -- he
6 did -- when he was taken into the hospital and was
7 photographed, he felt as though that they had been -- they
8 had placed him in an unflattering position.

9 But as far as posing him in the driver's seat, I don't
10 -- I don't remember him telling me that. I don't believe
11 he did.

12 Q And do you recall the -- sort of the facts of the
13 officer that was engaged in pursuit? The officer said that
14 he saw Mr. Hill driving the car.

15 A He did. He -- he said that and -- and the video
16 corroborated. He -- he was following Mr. Hill's vehicle.
17 The officer says on the video, "Wide turn," and then he
18 hits the blue lights.

19 And then the car comes to a stop, seatbelt comes
20 undone, the officer's seatbelt that is. The car comes --
21 becomes stationary. And then as the officer is about to
22 get out, it accelerates at a high rate of speed.

23 And the trooper did state that he did see Mr. Hill
24 turn around and look at him from behind the driver's side.

25 Q And as far as the chain of custody on the blood, do

1 you recall objecting to that?

2 A I -- I -- I don't.

3 Q Let me direct you to page 217. And I -- I think it's
4 about the middle of the page --

5 A Says -- states that I say (as read): "Yes, Your
6 Honor. I still don't believe in record there has been
7 testimony proffered that would satisfy a chain of custody
8 under Rule 6 as far as the identity of those that handled
9 the substance. As far as practical, I don't believe the
10 witness has testified from whom she actually got the
11 sample, when/where, I believe."

12 And then Judge Baxley says (as read): "All right.
13 The objection's overruled."

14 Q And did Mr. -- did Mr. Hill ever tell you that they
15 forced him to give that blood sample?

16 A I don't -- I don't recall. I don't -- I really don't.

17 Q Well, do you recall everybody -- do you recall the
18 nurse who took the blood testifying at trial?

19 A I do.

20 Q And do you ever recall her -- well, let me ask you
21 this: Did she testify that he consented to that blood
22 draw?

23 A Again, I -- I don't recall. If you want to tell me
24 what page. I -- I really don't remember.

25 Q Well, her testimony starts on page 154. But I -- I'm

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1 not going to -- if I told you that the transcript said she
2 testified she asked him and he said "yes," does that sound
3 familiar to you?

4 A I -- I -- to be candid, I -- I don't remember. I -- I
5 recall -- I'm trying not to get this case confused with
6 another case. I can't recall if she testified that it was
7 on the direction of the trooper that she took it or not. I
8 don't -- I can't remember.

9 Q Okay. That's -- and that's fine. The transcript will
10 speak for itself.

11 Sort of the same thing, I guess, with Russ Harrell? I
12 know he -- you probably don't recall his testimony
13 specifically?

14 A I -- I -- I only recall that Mr. Harrell was the
15 evidence custodian of the Sheriff's Office. I don't recall
16 anything he said.

17 Q What kind of plea offers did the State make here?

18 A If I'm not mistaken, the State proffered me with a
19 plea offer of either 22 or 23 years at one point. As far
20 as plea negotiations go, I -- I brought that to Mr. Hill
21 and I believe Mr. Hill's response to any kind of plea was,
22 "I'm not gonna plea for love nor money."

23 If we would have pled, I would have just -- I -- I
24 probably try to -- I -- I would have asked just that we
25 just do a straight-up plea if we were gonna end up pleaing.

1 But he -- he wasn't interested in taking a plea.

2 Q And how many meetings do you think you had with him?

3 A Several. I can't remember the exact number. I do
4 recall though going through the evidence with him, showing
5 him the video. He asked me to turn the video off after the
6 -- the wreck in the video.

7 Q And based on that, you formulated this defense theory
8 of he wasn't driving the car?

9 A That's what he told me.

10 Q And that's about what you had to go forward with at
11 the trial, right?

12 A Yeah. I -- I mean, I -- yeah. It was -- it was just
13 a really difficult situation for Charlton. I -- I felt bad
14 for him, but yeah, the -- I -- I did feel as though, and I
15 -- I told him as much, that I can't really fathom a jury
16 finding him not guilty of anything with the video. I mean,
17 it was -- it -- it was overwhelming.

18 Q And I guess, as far as -- I'm -- I'm kind of skipping
19 around, and I apologize. But as far as the blood draw
20 goes, why didn't you make a Fourth Amendment argument as to
21 why they ---

22 A I -- I don't -- I don't know. I'm sorry. I don't
23 recall why I didn't make a Fourth Amendment argument there.

24 THE COURT: The cross-examination of that witness,
25 that deals with a consent or the permission, is on 158, if

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1 you want to review it.

2 MR. THOMAS: Do you want to review that briefly?

3 (The witness complies.)

4 THE COURT: It's basically starting line 7 down.

5 (Brief pause.)

6 A It states (as read): "Question: Okay. So the only
7 ones you do in the hospital are not for chain of custody
8 purposes, correct? Answer is: "Correct" or I'm sorry, the
9 answer is "Right."

10 And I -- I asked, "How did this differ from that?"

11 Response, "An officer has to request it and the
12 patient has to give permission, and then it is handed
13 directly to the officer and then sent with the officer. It
14 is not run in the hospital."

15 "Okay. Did Mr. Hill give permission in this
16 situation?"

17 Response, "He did."

18 Question: "He did? Okay. And you were present the
19 entire time?"

20 Response: "Yes." "Okay."

21 Q So the nurse did testify that Mr. Hill consented to
22 the blood draw?

23 A Yes.

24 Q Where there any witnesses that he asked you to
25 investigate that you didn't get an opportunity to

1 investigate?

2 A He -- he told me to speak with his mother about
3 actually letting -- letting Silvia have the car keys. His
4 mother was in the hospital and I did go and -- and I went
5 and met with her, I believe, on a Sunday; and she was in a
6 hospital bed.

7 And I asked her what she recalled from that day, but
8 she couldn't -- she didn't really seem -- I mean, she was
9 conscious, but she didn't really seem very lucid and
10 couldn't recall very much from the date that Sylvia had
11 died. And I just -- I -- I left her at that. I mean, I
12 was there for maybe -- maybe 10 minutes.

13 As far as the individuals he -- he did tell me that
14 there were some individuals whom they had been with
15 preceding to the auto chase, but I was unable to locate
16 them. I can't remember any of those individuals' names.

17 Q And the closing argument by the solicitor, did you see
18 anything in there that seemed objectionable to you?

19 A I can't remember much about Mr. Holt's closing
20 argument other than he was very animated. I don't -- I
21 don't recall anything he said that would have been
22 inflammatory or objectionable. And I -- I -- I can't -- I
23 can't recall anything that would -- that would be -- that
24 would be objectionable.

25 Q But you would have objected if you'd seen anything.

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1 A I -- if I -- yeah. If I felt -- if I felt that it
2 was, I would have.

3 MR. THOMAS: Thank you, Mr. Swilley. I'll let you
4 answer any questions Mr. Shaffer has.

5 CROSS-EXAMINATION BY MR. SHAFFER:

6 Q Mr. Swilley, if you could, look at page 121 of the
7 trial transcript.

8 A 121?

9 Q Yeah.

10 A Okay.

11 Q And if you could, look at page -- line 13 of that, and
12 read 13 til the end of that answer.

13 A If I'm not mistaken -- I'm not -- this is Patrick Lee.
14 I believe ---

15 Q He -- he was the officer -- I apologize.

16 A I'm sorry? I believe Ms. Crayton cross-examined him,
17 if I recall correctly. But I don't -- I really don't
18 recall --

19 Q Okay. But he would have been the officer that
20 actually was there when they took the blood, correct?

21 A He was, yes.

22 Q Okay. What did he say about it on page -- at line 13?

23 A It says, "Let me -- Question: "Let me ask you this,
24 and this is what I'm really getting at: When you got the
25 blood, what did you do?"

1 And he responds, "Well, at the time the defendant was
2 charged and we told him he was under arrest for felony DUI
3 or DUI related death or anything like that, we're allowed
4 to forcibly take blood samples under those guidelines.
5 When people sign for their driver's license in South
6 Carolina, they agree to give their blood in -- in this
7 particular circumstance."

8 Q So they informed him that they have the right to
9 forcibly take his blood?

10 A It says that -- line 16 says that Officer Lee told him
11 he was under arrest for felony DUI. And then he just says,
12 "We're allowed to forcibly take blood samples."

13 Q Okay.

14 A And then the following question (as read): "So right
15 before you got the blood, you put the defendant under
16 arrest?" And he says, "Yes, I did."

17 Q Would you agree that being told that the officers
18 could forcibly take your blood before they -- before
19 allowing them to take your blood is not a valid consent?

20 A Say that -- ask that question again.

21 Q Do you think that it's a valid consent to -- for an
22 officer to say, "We're allowed to forcibly take your
23 blood," do you think that they're consenting at that point
24 when they allow the officer to?

25 A No, I don't think that.

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1 Q Okay. Let me ask you this: Did you ever question him
2 on whether or not they forcibly took his blood?

3 A Did I ever question Charlton?

4 Q No, the officer.

5 A I -- I -- I never -- I never questioned Officer Lee.
6 I think Ms. Crayton did the cross-examination.

7 Q Did you ever know if they forcibly took his blood?

8 A No. Not -- I mean, not until the nurse testified that
9 he -- he volunteered it.

10 Q So you had no knowledge that they forcibly took his
11 blood?

12 A No.

13 Q Did you receive discovery in this case?

14 A I did.

15 Q I going to show you what's been marked Applicant's
16 Exhibit 2.

17 (Marked Applicant's Exhibit No. 2, incident report,
18 one page.)

19 Q Now, if you could refer to this paragraph right here,
20 it would be the third paragraph on the page.

21 A It says -- and this is ---

22 Q Well, let -- let me just ask you this first: Does
23 that appear to be an incident report that you received in
24 discovery?

25 A Yes.

1 Q Okay. Now, if you could, read over that third
2 paragraph.

3 A It's from Patrick Lee (as read): "I did post Deputy
4 D. M. Tanner at Carolina Pines Hospital until the suspect
5 Hill was at the hospital. I did arrive at the hospital and
6 was accompanied by Trooper Josh Edwards as an observer.
7 Did observe Mr. Hill being evaluated in the ER and did
8 speak with him, stating that I was investigating a traffic
9 collision in which he was driving a car which resulted in
10 the death of his wife Sylvia Maddox, a passenger in the
11 same car. I advised Mr. Hill he was under arrest for
12 felony DUI, failure to stop for a blue light with a
13 fatality, and driving under suspension. I did read
14 Miranda warning verbatim off my Miranda card.

15 "I advised Mr. Hill that they would be seizing a
16 sample of his blood and urine, and did read verbatim
17 advisement of complied consent rights at 20:15 hours. Mr.
18 Hill was very dirty and bloody. Mr. Hill did ask, 'What
19 happened to my wife?' I responded that she didn't survive
20 the collision. Mr. Hill closed his eyes and began to cry
21 for a moment.

22 "Mark McCuens [phonetic] did draw blood samples, and
23 urine samples was also obtained. These samples were
24 secured by me" -- in parenthesis, Sargent P. Lee -- "until
25 placed in the custody of Deputy R. Harrell, which is the

1 evidence officer.

2 "Dr. Balvish [phonetic] did advise me that Mr. Hill
3 would be admitted to the hospital overnight for evaluation.
4 At no time did Mr. Hill leave my sight nor take a drink of
5 any alcoholic beverage or drugs while being observed."

6 Q Now, from that paragraph, do you believe that there
7 was an indication that he advised him that he was going to
8 seize the blood sample before it was taken?

9 A Yes.

10 Q Okay.

11 A But I -- but based -- I mean, and I'm not -- I'm just
12 -- I'm just telling you, I don't see where it says Mr. Hill
13 refused or anything that would indicate that he didn't give
14 a voluntary sample from the incident report.

15 Q But at that point, they -- they did say he was -- he -
16 - they were planning on seizing it before they took it,
17 correct?

18 A It does, yeah.

19 Q Okay. And at trial, he said that they have the right
20 to seize it, correct?

21 A Right.

22 Q Okay. And it's -- you had testified previously that
23 if they tell you that they're going to take it, that it
24 might not be a voluntary consent to allow them to take it -
25 --

1 THE COURT: That's not what was testified to, Mr.
2 Shaffer. Your question was if someone is told that they
3 are going to forcibly take your blood, would you consider
4 that a voluntary consent. That was your question earlier.

5 Now you've changed it to where if someone tells you
6 they're taking your blood. It's completely different.

7 MR. SHAFFER: Well, I suppose that -- Your Honor,
8 would you mind if I asked him that question?

9 THE COURT: Because you -- you earlier couched the
10 testimony in the record as the officer telling Mr. Hill
11 that he was going to forcibly take his blood. And that's
12 not what this says. It clearly doesn't say that.

13 So I think you have to read things carefully and
14 slowly because that testimony in the record says, "... at
15 the time the defendant was charged, and you told him he was
16 under arrest for felony DUI or DUI related to death, or
17 anything like that." Then he says, "We are allowed to
18 forcibly take blood samples from individuals under those
19 guidelines."

20 That appears that he told him he was under arrest, and
21 then, in answering the question, he informed -- I don't
22 know if it was -- I don't know. Was it Ms. Crayton who was
23 doing that or Mr. Swilley, but he's informing the attorney
24 we have the right to forcibly take it under those
25 scenarios.

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1 MR. SHAFFER: And Your Honor, I -- I would actually --
2 while I -- I understand the Court's position and I actually
3 believe that it could be read either -- either way, Your
4 Honor, if he's saying that he's arresting him under that
5 and that they have the right to do it, Your Honor -- I
6 guess it's unclear, due to the punctuation, because it's
7 all part of one sentence.

8 So Your Honor, I -- I guess, based off the way I read
9 the transcript, it's saying, "We're telling you that you're
10 under arrest for this, and therefore we can take it."

11 THE COURT: Well, "therefore" is not there. Neither
12 is the word "and" there, which would both indicate that he
13 informed him he was under arrest and he was going to
14 forcibly take his blood.

15 MR. SHAFFER: And ---

16 THE COURT: Neither one of those connectors are there.
17 There is a comma there, which again, you're right, it's a -
18 - it's a matter of how you read it. So I guess we can move
19 on because it depends on whoever's reading it.

20 MR. SHAFFER: Thank you, Your Honor. Court's
21 indulgence.

22 (Brief pause as Mr. Shaffer confers with the
23 applicant.)

24 CROSS-EXAMINATION BY MR. SHAFFER (continues):

25 Q So once again, you testified that there was -- that

1 you had no indication that he refused the sample, correct?

2 Was that your testimony earlier?

3 A Yeah. I think when he -- when Patrick Lee said --
4 gave his testimony, he was actually responding to Mr.
5 Holt's direct, according to the transcript.

6 I -- I don't -- based upon my recollection, I can't
7 recall anything that would suggest that Charlton refused to
8 give a sample of his blood and it was involuntarily taken
9 from him.

10 Q Did you receive a copy of his medical records in
11 discovery?

12 A I should have.

13 (Marked Applicant's Exhibit No. 3, medical records
14 document, 3 pages.)

15 Q I'm going to show you what's been marked Applicant's
16 Exhibit 3 for the purposes of identification only. I would
17 like you to review this document.

18 (Brief pause as the witness complies.)

19 Q Does that appear to be medical records that were
20 provided to you in discovery?

21 A Yeah. It's -- it's pages -- records from Carolina
22 Pines.

23 Q I'd like you to review the discovery and tell the
24 Court whether, after reviewing it and refreshing your
25 recollection, if you were aware of a time that he had

1 refused give a blood sample.

2 (Brief pause.)

3 A Where -- where on here are you -- is -- is it say --
4 where -- specifically where on here are you asking me
5 about?

6 MR. THOMAS: Your Honor, I'm going to, I guess, object
7 if we're going to start reading from the record before it's
8 been entered into evidence. He's using it to refresh his
9 recollection that's one thing. If he's going ---

10 THE COURT: Well, I think that's where we're at right
11 now is to reflect his recollection -- or to refresh his
12 recollection. But you might need to give him some guidance
13 on where you're talking about.

14 MR. SHAFFER: Thank you, Your Honor. May I approach?

15 THE COURT: (No audible response.)

16 Q (Indicating) And particularly ...

17 A Are you pointing to the bottom line?

18 Q Yeah. They -- and I -- I guess I needed to lay a
19 foundation question before this, which is: They also took
20 a urine sample from him, correct?

21 A Yes.

22 Q Did he -- did he fight for -- fight against the urine
23 sample?

24 A Said -- well, based upon my reading of this it -- I --
25 there's nothing to suggest that he fought against a urine

1 sample. It indicates he agreed to give a voided urine
2 sample, but did refuse to have a Foley catheter done. This
3 also indicates he refused a tetanus injection. But at
4 19:35, suggests that the patient's cooperative.

5 Q I'll -- I'll move on to something else.

6 A Okay.

7 Q You're familiar with the implied consent form,
8 correct?

9 A Yes.

10 (Marked Applicant's Exhibit No. 4, Advice of Rights
11 form.)

12 Q I'm showing you what's been marked -- I'm showing you
13 Applicant's Exhibit 4. Does that appear to be the implied
14 consent form that's given?

15 A Yes.

16 Q Is does it appear to be the implied consent form that
17 was given to my client?

18 A Yes.

19 Q With DUI procedure, is that form generally given
20 before samples are?

21 A Yes.

22 Q Okay. And that form says they have the right to take
23 it in felony DUI, correct?

24 A Yes.

25 Q So he was informed that they have the right to take a

1 blood sample, that he didn't have a choice, right?

2 A Yeah.

3 Q And that would have been given to him before he had
4 taken the blood sample, correct?

5 A Yes. I'm -- well, yeah.

6 Q Now, I'm going to go back to your argument on summary
7 judgement,

8 And Your Honor, I would actually move that fourth
9 exhibit into evidence.

10 MR. THOMAS: No objection to 4 or 3 or 2. No
11 objections to any exhibits yet.

12 MR. SHAFFER: Your Honor, I'll move them all into
13 evidence.

14 THE COURT: Okay. All right. Those are in evidence.

15 (Applicant's Exhibits 1 through 4 in evidence.)

16 Q Regarding your -- your motion for directed verdict,
17 you -- you made a motion to both reckless homicide and
18 involuntary manslaughter are basically lesser included to
19 the --

20 A Yes.

21 Q -- DUI? Did you make an argument specifically related
22 to involuntary being a lesser included of reckless
23 homicide?

24 A Let me look over it again. What page is that?

25 Q It's 2 -- that's 260. I'm sorry. 262.

1 A Just -- I -- I just said (as read): "I move to
2 dismiss the indictments for reckless homicide, as well as
3 involuntary manslaughter, due to the fact he would be
4 convicted to multiple crimes for the same -- crimes of the
5 same occurrence." That's all I said.

6 Q Okay. So you were moving both on -- based off the
7 fact that he was being charged with DUI or can you explain
8 to us what you were trying to accomplish?

9 A Well, my argument was that reckless homicide, as well
10 as involuntary manslaughter -- I guess I didn't really
11 elaborate, I guess. I felt that the elements of those
12 crimes were within the felony DUI. I didn't really talk
13 about *Blockburger* or the *Blockburger* test, but I mean, from
14 my understanding at the time, I think the case law was
15 against me on that; and I was just trying to preserve, you
16 know, anything I could for the record at that point.

17 MR. SHAFFER: Court's indulgence.

18 (Brief pause.)

19 MR. SHAFFER: No further questions, Your Honor.

20 MR. THOMAS: Brief re-direct?

21 THE COURT: Yes, sir.

22 RE-DIRECT EXAMINATION BY MR. THOMAS:

23 Q Under the statute, and I'm specifically referencing
24 56-5-2946, felony DUI, the officer can -- it's a mandatory
25 blood draw, right? The officer -- if the officer says, "I

1 want the blood drawn," he has to give it to him; is that
2 your understanding ---

3 A Yes.

4 Q --- of the statute?

5 A Uh-huh.

6 Q And in terms of Fourth Amendment issues, he was under
7 arrest at the time they took that blood draw, right?

8 A Yes.

9 Q So there's other exceptions to the Fourth Amendment or
10 requirement possibly, right?

11 A Yes. It would appear so.

12 Q Such as exigency or incident to arrest?

13 A To be -- I mean, what it looked like, it didn't look
14 like he tried to -- from the evidence, it didn't look like
15 he tried to refuse the blood sample, even though he was
16 instructed they were going to take it from him any way. I
17 mean, he didn't -- he didn't refuse it. It looked like he
18 -- he gave it to them. That's what the nurse said on that.
19 And after that I -- I didn't really -- I didn't really
20 focus in on that issue any longer.

21 Q And you -- you said you looked at Exhibit No. 3? Can
22 I get that from you.

23 A The medical records, yes.

24 Q And in that, it says that he was cooperative?

25 A At 7 -- or 19:35, yes.

RE-DIRECT EXAMINATION BY MR. THOMAS - MATTHEW SWILLEY 60

1 Q And then at 21:32, he agreed to give the voided urine
2 sample?

3 A Yes.

4 MR. THOMAS: That's all I have. Thank you.

5 THE COURT: All right. Anything further?

6 RE-DIRECT EXAMINATION BY MR. THOMAS:

7 Q And he agreed to give the voided urine sample, that
8 came after they had threatened -- after they told him they
9 were going to get a catheter or he refused the catheter?

10 A Says he refused the -- and they -- said that he
11 refused to have -- to have Foley catheter done, but agrees
12 to give voided urine sample.

13 Q Okay. So the -- the Foley catheter, do you know what
14 that is?

15 A I know what a catheter is. I don't know what a Foley
16 catheter is.

17 Q Okay. What's a catheter?

18 A It's a device that goes inside someone's urethra to
19 take out urine.

20 Q Okay. No further questions.

21 THE COURT: All right. Thank you very much, sir. You
22 may step down.

23 (The witness complies.)

24 MR. THOMAS: And we would ask Mr. Swilley be excused.

25 MR. SHAFFER: No objection.

DIRECT EXAMINATION BY MR. THOMAS - EMILY CRAYTON

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1 THE COURT: All right.

2 MR. THOMAS: The State would call Ms. Crayton to the
3 stand.

4 THE COURT: Ms. Crayton, please come around to be
5 sworn, ma'am.

6 EMILY CRAYTON, having been first
7 duly sworn, testifies as follows:

8 DIRECT EXAMINATION BY MR. THOMAS:

9 Q Thank you for waiting around for us, Ms. Crayton.

10 A You're welcome.

11 Q I'm just going to cut straight to it. How'd you
12 become involved in this case?

13 A I became involved about maybe three or four weeks
14 before trial. Normally our procedure in the Fourth
15 Circuit, there were a bunch of attorneys, and if somebody
16 had a trial we would just help the lead attorney. So I was
17 just kind of assigned to sit second chair and help Matt
18 with whatever he needed.

19 Q Did you ever get a chance to meet with Mr. Hill?

20 A Yes, I did. I met with him probably two or three
21 times with -- with Mr. Swilley. That was within the three
22 or four weeks following up to trial. I was not assigned to
23 the Darlington office, so I was not -- until -- well, I was
24 assigned later to the Darlington office, but at the time of
25 his trial, I was assigned to the Dillon office. So Mr.

1 Swilley met with Mr. Hill more often than I did because I
2 just wasn't in the circuit as much.

3 Q Did you get a chance to sit down with him and talk
4 about plea offers?

5 A I was actually present when we had that conversation
6 with Mr. Hill. He did not give us any indication that he
7 wanted to plea to anything except maybe an involuntary
8 manslaughter, which was absolutely not the plea.

9 On -- I do have -- I just see in the exhibits that we
10 were given a written plea offer, on 3/28/11, that did
11 include all of the charges, even the ones that had not been
12 indicted. And there was a note "to be indicting --
13 indicted in upcoming grand jury," so we were aware, several
14 weeks out, that those charges would be tried and indicted
15 that term if Mr. Hill did not accept the 22-year offer that
16 he had.

17 Q And he declined that?

18 A He absolutely declined that and only wanted to plea to
19 involuntary, which was never offered or even discussed to
20 be offered by the solicitor.

21 Q Did you get a chance to review the discovery before
22 this trial started?

23 A Yes, I did.

24 Q Was there anything in there that indicated to you that
25 he may have refused to give a blood sample in this case?

CROSS-EXAMINATION BY MR. SHAFFER - EMILY CRAYTON

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1 A Not that I was aware of, nor did I -- did I think it
2 was a really big issue for trial, given the fact that I
3 don't think it matters whether he consented or not.

4 I think under the statute, you -- you're required to
5 give that blood. I think even after *McNeely*, I think
6 there's an argument that you're required to give that blood
7 on a felony DUI case.

8 Q And *McNeely*, that's a U.S. Supreme Court case that's
9 come out since this trial.

10 A Since after this trial, but I still think that you
11 would be required. That was a normal DUI case and not a
12 felony DUI case. And our law, specifically the statute,
13 says you have to give it, I think you have to give it. So
14 it -- it wasn't really a big concern for me whether he
15 consented to it or not.

16 Q So in your view, was there any Fourth Amendment
17 argument that -- a viable one, at least, that could have
18 been made at trial?

19 A Not in my opinion, but it's just my opinion. I mean,
20 Mr. Snilly -- Swilley may have felt differently, but ...

21 Q Thank you, Ms. Crayton. That's all I have.

22 THE COURT: Cross?

23 CROSS-EXAMINATION BY MR. SHAFFER:

24 Q Was there any objection or is there -- I'll actually
25 withdraw that question. I won't ask any -- any other

1 questions.

2 THE COURT: Okay.

3 MR. SHAFFER: Thank you.

4 THE COURT: Thank you very much, ma'am. You may step
5 down.

6 (The witness complies.)

7 MR. THOMAS: And we would ask Ms. Crayton be excused.

8 THE COURT: Any objection to Ms. Crayton being
9 excused?

10 MR. SHAFFER: No, Your Honor.

11 THE COURT: All right.

12 MS. CRAYTON: Thank you.

13 MR. THOMAS: That's the State's case.

14 THE COURT: All right. Mr. Shaffer, I'll be more than
15 happy to hear from you, sir.

16 MR. SHAFFER: Your Honor, I -- I certainly believe
17 that we -- we have laid out the fact that there are -- and
18 in the transcript there are missing pieces of the -- the
19 chain of custody. I understand that it was raised. We
20 introduced a document that we it thought was ineffective
21 not to raise because it would buttress the argument about
22 the chain. That was essentially why we introduced that
23 document, not to --

24 THE COURT: Could -- could I ask a question about that
25 document?

1 MR. SHAFFER: Yes, Your Honor.

2 THE COURT: We're -- and we're referring to the SLED
3 laboratory forensic services request, the first exhibit,
4 correct?

5 MR. SHAFFER: Yes, Your Honor.

6 THE COURT: All right. Someone -- and I -- I think it
7 might have Mr. Hill -- but someone testified that this
8 document specifically states it requires a signature.

9 MR. SHAFFER: And --

10 THE COURT: And I don't see that anywhere on here.

11 THE APPLICANT: At the top.

12 THE COURT: At -- at the top, I -- it says this (as
13 read): "Use a ballpoint pen and press firmly. Print all
14 information except where signature is required."

15 So if there's a line that says -- like for example, at
16 the bottom, it says (as read): "Print name of delivering
17 officer." And then, there's another line says (as read):
18 "Signature of delivering officer." So I -- I think what
19 that says is on that line, if you're going to put a
20 signature, it has to be a written signature, not -- not
21 printed.

22 But that -- that doesn't say a signature is required.

23 MR. SHAFFER: I think the argument essentially it's a
24 small piece of the -- of the argument related to the chain
25 of custody ---

1 THE COURT: Okay. But -- which was ---

2 MR. SHAFFER: Yes, Your Honor.

3 THE COURT: --- objected to, and dealt with by the
4 Court.

5 MR. SHAFFER: And -- and obviously, he's not going to
6 get a second chance at a PCR. So he wanted to introduce
7 that because he thought his lawyer should have introduced
8 them at the trial for the appeal.

9 THE COURT: Okay.

10 MR. SHAFFER: Because obviously, this will go up to
11 appeal and they'll hear in the motion what we would like
12 the appellate court to do is consider that as well.

13 THE COURT: Okay.

14 MR. SHAFFER: And that's the reason that we introduced
15 that.

16 THE COURT: Okay. Okay.

17 MR. SHAFFER: Your Honor, related to the Fourth
18 Amendment argument, I think that essentially there was some
19 talk about *McNeely*. *McNeely* is favorable to us, obviously,
20 but the -- *McNeely*'s not some new rule. *McNeely* is just
21 the application of the old rule, and what -- what we have
22 here is the State had a rule, and that rule was we get to
23 seize it from you because we're assuming you consent just
24 by driving on our roads.

25 (Brief pause.)

1 MR. SHAFFER: So the State presumes that you consent
2 based off of that.

3 I don't think that that was a valid law even before
4 McNeely came out. I don't think that's effective consent.
5 But the State presumed it, and they -- they'd given him the
6 document and DUI procedure was followed; and then, if you
7 read the transcript, they'll -- they'll say that.

8 And DUI procedure would -- would mandate they handed
9 that document to him saying that we're going to retrieve
10 this basically whether you like it or not; which is
11 consistent with his testimony, consistent with the fact
12 that he didn't want the Foley catheter in him, but agreed
13 to give it once they told him they were going to catheter
14 him. And he said, "Okay. I'll just give you a urine
15 sample."

16 I think it's consistent with the fact that, you know,
17 there was some indication that they were going to take it
18 regardless of what happened. Okay? And I think that that
19 was conveyed to him. I don't think he -- it was a valid
20 consent after that point.

21 Your Honor, I think that based off of that, if he
22 didn't consent to it, the question is whether or not we can
23 -- whether or not the State could have properly presumed
24 that he consented based off of driving on the roadway or
25 allegedly driving on the roadway. In this situation, I

1 don't believe they -- they could.

2 I don't think that they established any exigent
3 circumstances, which they would have had to do, outside of
4 their consent law. They would have actually had to
5 establish them.

6 McNeely obviously says that the -- the blood alcohol
7 level going down in your system is not a per se exigent
8 circumstance. In this situation, there's nothing else
9 other than, "We -- we need to collect evidence and he was
10 driving in our roadway."

11 So we would challenge the fact that -- we would
12 challenge the pull of blood, and say that that was actually
13 unconstitutionally obtained based off of that.

14 And Your Honor, I will let the -- well, the other
15 issue related to the -- to the lesser included offense and
16 the directed verdict motion, the directed verdict motion
17 Mr. Swilley testified, and I think that you can read from
18 his motion, the intent of it was to get rid of both
19 reckless driving and involuntary manslaughter. My -- my
20 argument is that it was ineffective not to argue that
21 voluntary -- I mean, involuntary manslaughter should go
22 away as a lesser included of reckless driving, that you
23 can't be convicted of both; which is slightly different
24 than the argument he made to the judge in this case.

25 And I will let the other issues stand based off of

1 what we discussed earlier --

2 THE COURT: All right.

3 MR. SHAFFER: -- the evidence in the record.

4 THE COURT: Mr. Thomas?

5 MR. THOMAS: In terms of the -- the chain witnesses, I
6 think the record's pretty clear it was a sufficient chain.
7 There was an objection to that, so any objection now, I
8 mean, you can't re-raise that on PCR.

9 Even if you could, all the witnesses -- a sufficient
10 chain was laid. So we're -- I -- I think the State met its
11 burden in that regard.

12 As far as all the other various allegations of
13 ineffectiveness that Mr. Shaffer hasn't really touched on
14 here, we'll just let the record be -- speak for itself and
15 submit that the attorneys were competent in their
16 representation in that regard.

17 As far as the blood draw itself goes, the statute
18 specifically allows for the State to take the blood sample
19 when someone is arrested for felony DUI. Tried to talk it
20 out with Ms. Crayton a little bit.

21 To start with, *McNeely* is distinguishable in that it
22 was a regular DS -- DUI case, talking about breath tests or
23 -- or something along those lines. But again, even if
24 we're going to assume that the Fourth Amendment would apply
25 in this situation, there would be some sort of Fourth

1 Amendment prohibition, there's still the requirement -- a
2 search isn't illegal simply because there's no warrant. A
3 search is illegal if it's unreasonable.

4 And I would submit that in this case, the
5 reasonableness of it is the State has a -- driving is a
6 privilege, and the State has a valid interest in protecting
7 its roadways from impaired drivers. If you're going to
8 operate a car on this -- on the road of this state, you've
9 abrogate -- you -- you've given up just a little bit of
10 your privacy and expectation by doing that. And I would
11 just submit it would be a reasonable statute -- it would
12 reasonable to require someone to submit to a blood draw
13 under those circumstances.

14 Even if it's not reasonable, actual consent is still
15 an exception to the warrant requirement. I think the
16 evidence in this case has clearly stated that there's
17 nothing in the record that says he declined. When given
18 the option to give the sample, one of the records we
19 introduced said he voluntarily handed over a urine sample.
20 There's nothing -- the nurse testified at trial, he
21 consented to giving the blood draw. There's no evidence in
22 the record that he actually declined to give these samples
23 to anybody.

24 And as far as, you know, another exception to the
25 warrant requirement, search is incident to arrest. Those

1 are still allowed when it's necessary to collect evidence
2 of the crime that's committed. In this case the blood
3 sample is necessary to prove the DUI element, so that would
4 clearly be a valid search incident to arrest.

5 And I would just submit also -- I know exigency by
6 itself might not be enough, But I would submit that the
7 circumstances here would show exigency. He came back --
8 his blood test came back for more than just alcohol. It
9 came back for other drugs, and we've had no testimony that
10 those may -- may not have dissipated quicker than the
11 alcohol dissipates, they could have gotten out of his
12 system quicker. So we would be within our rights to take a
13 blood sample from him to preserve that evidence in that
14 case.

15 So we would just submit that there's any number of
16 reasons why the blood draw in this case is a valid blood
17 draw.

18 As far as the lesser included, voluntary requires
19 negligence; recklessness requires recklessness. Those are
20 two different elements. So that's -- therefore, it's not a
21 lesser included or it is a lesser -- not a lesser included.
22 It's a separate element or a separate crime.

23 And other than that, we'd just rest on the record and
24 ask ---

25 THE COURT REPORTER: Rest on...? I'm sorry?

1 THE COURT: The record.

2 MR. THOMAS: Rest on the record. I apologize.

3 THE COURT: All right. What I'm -- there are --
4 obviously we addressed some issues here, but there are also
5 a lot of other issues that appear in the application. I
6 want to have an opportunity to thoroughly read the
7 application and then read the transcript so that I can
8 address -- address those issues. So if you'll give me that
9 opportunity, I'll have an answer for you shortly. Okay?

10 MR. SHAFFER: Thank you, Your Honor.

11 MR. THOMAS: Thank you, Your Honor.

12 -- END OF TRANSCRIPT RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 27th day of July, 2017.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

April 10, 2016



SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

13CP16028

FORM: LAB-003
NOVEMBER 1993
Previous Editions
May Be Used

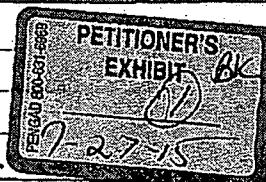
Name of Investigating Officer: Patrick Lee Rank: Sgt
 Department: Wolfe County Sheriff's Office Telephone Number: 843-378-4501
 Street Address or Post Office Box: P.O. B. 783 County: Wolfe
 City: Charlottesville State: VA Zip Code: 22904
 Incident Date: 07-08-2010
 CC: _____ Related Lab No. _____

Subject # <u>1</u>	Victim # _____	Sex: M ☒ F ☐	SID/FBI DLSS NO: _____ Race: Cau ☐ Blk ☐ Other ☐ DOB: _____
Last Name <u>Hill</u>	First Name <u>Charles</u>	Middle Name <u>Leafe</u>	
Subject # _____	Victim # _____	Sex: M ☐ F ☐	SID/FBI DLSS NO: _____ Race: Cau ☐ Blk ☐ Other ☐ DOB: _____
Last Name _____	First Name _____	Middle Name _____	
Subject # _____	Victim # _____	Sex: M ☐ F ☐	SID/FBI DLSS NO: _____ Race: Cau ☐ Blk ☐ Other ☐ DOB: _____
Last Name _____	First Name _____	Middle Name _____	
Subject # _____	Victim # _____	Sex: M ☐ F ☐	SID/FBI DLSS NO: _____ Race: Cau ☐ Blk ☐ Other ☐ DOB: _____
Last Name _____	First Name _____	Middle Name _____	

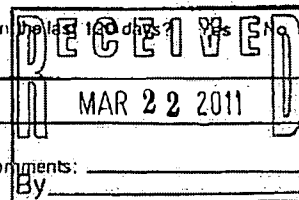
* Could any subjects or victims have the following: (circle) AIDS VD Hepatitis Tetanus TB Lice
 Comments: _____

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)
 Homicide Suicide Accidental Death Natural Death Child Fatality Autopsy Performed: Yes No
 (A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
 (K) Heart Related (L) Disease (M) Other _____
 Accident Fatality Victim: (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating
 TYPE OF CASE: (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other _____

FOR TOXICOLOGY CASES: (Circle Appropriately)
 DUI Felony DUI Was a Breath Test given? Yes ☐ No ☒ If Yes, Reading _____
 Number of Specimens Enclosed: Blood 2 Urine 1 Ocular Fluid _____ Other _____
 Examination Requested: Blood Alcohol Drug Screen CO Blood Type Other _____
 Drugs Suspected: Yes No List Drugs Marijuana - Bupropion - Cocaine



FOR SEROLOGY/ DNA/HAIR/FIBER CASES: (Circle Appropriately)
 Was the subject(s) bleeding? Yes No Unknown Have any of the victims / subjects been transfused in the last 100 days? Yes No Unknown
 Crime occurred: Suspect's residence Victim's residence Suspect's vehicle Victim's vehicle Other _____
 Was a weapon involved? Yes No Unknown Type of weapon? _____
 Have standards from all possible bleeders or body fluid donors been submitted? Yes No Unknown Comments: _____
 Submission of victim and suspect standards is necessary before complete analysis can be performed.



THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER.
 Print Name of Delivering Officer: _____ Signature of Delivering Officer: _____

AGENCY I.D.
SC0160000

SUPPLEMENTARY INCIDENT REPORT
Darlington County Sheriff's Office

CASE NUMBER

201001-0201

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of 11 PAGES

NARRATIVE

L. HILL, WAS REFUSING TO WAIT IN THE DRIVER'S SEAT FOR RESCUE PERSONNEL TO CUT HIS WAY OUT. MR. HILL CRAWLED OUT THE DRIVER'S SIDE WINDOW AND LAYED ON THE ROADWAY. EMS DID EVALUATE AND TRANSPORTED HIM TO CAROLINA PINES HOSPITAL FOR FURTHER MEDICAL TREATMENT. MR. HILL DID ASK ALOUD "WHERE IS MY WIFE"?

CHIEF-DEPUTY J. THOMPSON, CAPTAIN W. LOCKLAIR, CAPTAIN J. HUDSON, AND SHERIFF J. W. BYRD WERE ADVISED OF THE INCIDENT AND THE SOUTH CAROLINA HIGHWAY PATROL STAFF (SERGEANT KOLLUCK, FIRST SERGEANT T. CHAVIS, AND CAPTAIN J. NELL WERE ADVISED). DARLINGTON COUNTY CORONER T. HARDEE DID ARRIVE AT SCENE AS WELL WITH HIS ASSISTANT M. LOCKLAIR. DARLINGTON RESCUE SQUAD AND DARLINGTON COUNTY FIRE DISTRICT WERE INVOLVED IN THE RESCUE OPERATION AS WELL.

I DID POST DEPUTY D. M. TANNER AT CAROLINA PINES HOSPITAL UNTIL THE SUSPECT, HILL, WAS AT THE HOSPITAL. I DID ARRIVE AT THE HOSPITAL AND WAS ACCOMPANIED BY TROOPER J. EDWARDS AS AN OBSERVER. I DID OBSERVE MR. HILL BEING EVALUATED IN ER AND I DID SPEAK WITH HIM STATING THAT I WAS INVESTIGATING A TRAFFIC COLLISION IN WHICH HE WAS DRIVING THE CAR WHICH RESULTED IN THE DEATH OF HIS WIFE, SYLVIA MADDOX, THE PASSENGER OF THE SAME CAR. I ADVISED MR. HILL HE WAS UNDER ARREST FOR FELONY DUI, FAILURE TO STOP FOR BLUE LIGHT WITH A FATALITY, AND DRIVING UNDER SUSPENSION. I DID READ MIRANDA WARNING, VERBATIM, OFF MY MIRANDA CARD. I ADVISED MR. HILL THAT WERE WOULD BE SEIZING A SAMPLE(S) OF HIS BLOOD AND URINE AND DID READ, VERBATIM, ADVISEMENT OF IMPLIED CONSENT RIGHTS AT 2015 HOURS. MR. HILL WAS VERY DIRTY AND BLOODY. MR. HILL DID ASK WHAT HAPPENED TO MY WIFE? I RESPONDED THAT SHE DIDN'T SURVIVE THE COLLISION. MR. HILL CLOSED HIS EYES AND BEGAN TO CRY FOR A MOMENT. MARLA KOONTZ DID DRAW BLOOD SAMPLE(S) AND URINE SAMPLE WAS ALSO OBTAINED. THESE SAMPLES WERE SECURED BY ME (SERGEANT P. LEE) UNTIL PLACED IN THE CUSTODY OF DEPUTY R. HARRELL, WHICH IS THE EVIDENCE OFFICER. DR. BALVICH DID ADVISE ME THAT MR. HILL WOULD BE ADMITTED TO THE HOSPITAL OVERNIGHT FOR EVALUATION. AT NO TIME DID MR. HILL LEAVE MY SIGHT NOR TAKE DRINK ANY ALCOHOLIC BEVERAGE OR DRUGS WHILE BEING OBSERVED.

THE DUI FORMS WERE ATTACHED TO THIS REPORT. MR. HILL WAS GIVEN A COPY OF HIS IMPLIED CONSENT, AND SLED BLOOD /URINE COLLECTION FORM.

I THEN CLEARED THE HOSPITAL AFTER CORRECTION OFFICER R. BROOKS OF THE DARLINGTON COUNTY DETENTION CENTER WAS ON SITE TO GUARD MR. HILL.

WARRANTS WILL BE SOUGHT FOR FELONY DUI, FAILURE TO STOP FOR A BLUE LIGHT INVOLVING A FATALITY, AND DRIVING UNDER SUSPENSION.

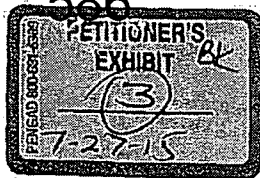
A TRAFFIC COLLISION REPORT (TR-310) WILL BE COMPLETED.

SCOTT PRUITT DID IMPOUND/TOW THE AUTOMOBILE.



ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE	☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
					☐ UNFOUNDED		☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
	70144 - SGT. PATRICK N. LEE		01/09/2010	70144	02096 - LT. ERIC A. HODGES		01/11/2010	
	34549 - SGT. JEBLONSKI D. GREEN				FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☒ NO			

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Carrollia P. RMC
West Bobo Newsom Highway, Hartsville, SC 291
843-339-2100

Patient: HILL, CHARLTON DOB:

Patient #: 8975878 MRN: 0000118203 Date In: 1/8/2010

Treatments 01/08/2010 23:25 MHK

**IV Insertion left hand, with a 18 gauge Introcan, regulated with IV tubing, initiated per ems staff pta to er initiated at 01/08/2010 19:35 by MHK. [Transcribed][JB3]:

**IV Insertion rt ac, with a 20 gauge Introcan, Hep Lock, 1 attempt initiated at 01/08/2010 20:36 by MHK. [Transcribed][JB3]:

Blood Collection marla koontz rn, sent to lab initiated at 01/08/2010 20:18 by MHK. [Transcribed][JB3]:

Urine Collection-Voided pt/ chris bedenbaugh nt, sent to lab initiated at 01/08/2010 21:51 by MHK. [Transcribed][JB3]:

Iv Hydration 1st hour ---d5ns regulated with IV pump, 200 cc/hr initiated at 01/08/2010 21:20 by MHK. [Transcribed][JB3]:

Disposition 01/08/2010 22:56 MHK

Admit: Patient left the department at 01/08/2010 23:33. Patient's disposition is: ADMIT-MED. Patient transported by stretcher. IV infusing during transport. Vital signs taken at 23:10 were: T: 96.6 PO, P: 92 and is regular, R: 18 and unlabored, BP: 119/79, O2 Sat: 97% on RA, O2 delivered by RA, pain level is 8 on a 1-10 scale in the multiple areas.

1935---to er room 10 via ems stretcher. was in mya rollover as trying to avoid being stopped by police. has multiple abrasions with dried blood to face. reddened areas to chest. top front left tooth pushed up into gums. bottom front tooth knocked out. keeps asking "where is my wife?" put onto cardiac, nibp, and pulse ox monitors. pt is fully immobilized on backboard, head straps and c-collar. responding appropriately to questions asked. has 18 ga jelco to left hand initiated per ems staff pta to er. c/o pain to head and rt side of face. sheriff officers present with pt. sts that female riding in vehicle with him was doa at scene. pt cooperative.

2009---sheriff officer talking with pt and pt made aware that female was doa. pt crying.

2014---ekg done showing nsr heart rate 87.

2018---blood drawn for labs and for sheriff blood tests. site prepped with betadine and blood drawn. tubes given to patrick lee---officer, and forms signed by marla koontz rn.

2020---pt has pulled off his c-collar and thrown it to floor. new c-collar applied.

2031---portable xrays done by xray tech, then pt taken to xray via stretcher. sheriff officers to xray with pt.

2036---20 ga jelco to rt ac per zannie woodard rn, for ct scans to be done.

2106---return from xray. remains immobilized.

2120---d5ns infusing at 200 cc/hr.

2132---pt refusing to have foley catheter done, but agrees to give voided urine sample.

2148---pt refusing tetanus injection. states just had tetanus at dr. acaylar's office 2 days ago after having



Carolina Piedmont MC

West Bobo Newsom Highway, Hartsville, SC 29525

843-339-2100



Patient: HILL, CHARLTON DOB:

Patient #: 8975878 MRN: 0000118203 Date In: 1/8/2010

cat scratch to abdomen.

2151---pt has voided with sheriff officers in room. they have collected their sample for drug screening and we have collected our sample for ua/ uds.

2200---md has reviewed all test results and given orders for pt to come off backboard. pt removed from backboard. has 50 cent size abraded area to rt scapula area of back. no other injured areas seen. c-collar remains on.

2217---pts face cleaned of dry blood. multiple abrasions seen.

2248---scalp cleaned. large abrasion to hairline area back approximately 6 inches into hair / scalp area. no laceration seen.

2252---room assignment 316 given for pt.

2315---report given to rose gostlin on 3rd. room and staff ready for pt. sheriff officers aware of pt being admitted. pt remains cooperative.

[MHK: 01/08/2010 23:23]

MARLA KOONTZ 0 All text in this document clearly marked by MHK has been authored and legally signed by use of electronic device. 01/08/2010 23:26



ADVISEMENT OF IMPLIED CONSENT RIGHTS

Christian Lafate Hill
Subject's Name (Print)



Date of Birth 8

Driver's License Number

State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording.
♦ Advise subject of Miranda rights.
If answer is No, start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
- ♦ The arresting officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least ninety (90) days and your refusal may be used against you in court.
- ♦ If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
- ♦ If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
(D) Time stamp Breath Alcohol Analysis Test Report. (Not required if a refusal has occurred.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)
(F) Enter biographical data into BAC DataMaster. (Required for all tests, including refusals.)

FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

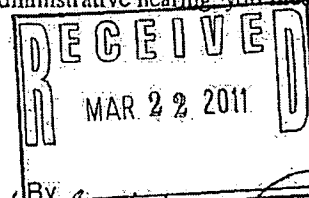
- (B) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording.
♦ Advise subject of Miranda rights.
If answer is No, start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
- ♦ The officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
- ♦ The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
- ♦ If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material.
(D) Time stamp Breath Alcohol Analysis Test Report.
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample.
(F) Enter biographical data into BAC DataMaster.



Sgt. Patrick N. Lee (B-2)
Officer's Name (Print)

Sgt. Patrick N. Lee (B-2)
Officer's Signature

Issued bloody hands and medical attention (Phe)
Subject's Signature (Received Copy)

01-08-2010
Date

2:04
Time

FOR YOUR EXHIBIT XXXI

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Charlton L. Hill, #152778,)

Case No. 2013-CP-16-261

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER OF DISMISSAL
GRANTING WHITE V. STATE APPEAL**

TRUE CERTIFIED COPY,

John B. Sullivan
CLERK OF COURT/RMC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 25, 2013. Respondent made a timely Return on or about April 1, 2014. The Court convened an evidentiary hearing into the matter on July 27, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsels, Matthew S. Swilley, Esquire, and Emily M. Crayton, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Darlington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In September 2010, the Darlington County Grand Jury indicted Applicant for felony driving under the influence resulting in death (2010-GS-16-1335) and driving under suspension (2010-GS-16-1336). In April 2011, the Grand Jury indicted Applicant for failure to stop for a blue light resulting in death (2011-GS-16-422), reckless

homicide (2011-GS-16-423), and involuntary manslaughter (2011-GS-16-424). Matthew S. Swilley, Esquire, and Emily M. Crayton, Esquire, (collectively, "trial counsel") represented Applicant. On April 13, 2011, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. The jury found Applicant guilty as indicted. Judge Baxley sentenced Applicant to concurrent terms of twenty-five years for felony driving under the influence resulting in death, ninety days for driving under suspension, ten years for reckless homicide, and five years for involuntary manslaughter. Judge Baxley sentenced Applicant to a consecutive term of ten years for failure to stop for a blue light resulting in death.

Applicant filed a notice of appeal, but the South Carolina Court of Appeals dismissed the appeal as untimely on May 24, 2012. The remittitur was returned to the circuit court on August 7, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Applicant did not knowingly and voluntarily waive his right to a direct appeal.
2. Trial counsel failed to challenge the sufficiency of the indictment.
3. Trial counsel failed to challenge the blood test.
4. Trial counsel failed to object to the State's closing argument.
5. Trial counsel failed to move for a continuance.
6. Trial counsel failed to object to the jury instructions.
7. Trial counsel failed to object to the State's opening statement.
8. The State's prosecution was vindictive and violated the Double Jeopardy Clause.
9. Trial counsel failed to object to the trial judge questioning a witness.

At the evidentiary hearing, Applicant proceeded on only the following allegations:

1. Applicant did not knowingly and voluntarily waive his right to a direct appeal.
2. Trial counsel failed to object to the indictments that were served the morning of trial.
3. Trial counsel failed make Fourth Amendment and chain of custody objections to the blood draw.
4. Trial counsel failed to investigate witnesses that would have shown the victim was the driver of the car.
5. Trial counsel failed to object to the State's closing argument.

6. Trial counsel failed to request a continuance.
7. Trial counsel failed to argue involuntary manslaughter and reckless homicide are lesser included offenses of felony driving under the influence.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Waiver of Right to Direct Appeal

The Court finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. Trial counsel must ensure a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of a waiver by the defendant, counsel must initiate an appeal. White, 263 S.C. at 118, 208 S.E.2d at 39. Here, the evidence indicates Applicant desired an appeal. Mr. Swilley attempted to file a notice of appeal, but did so untimely. Therefore, the Court affirmatively finds Applicant requested and was denied an opportunity to seek appellate review. Accordingly, the Court hereby grants Applicant's request for a direct appeal of his conviction pursuant to White v. State.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. *Id.* (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. *Id.* at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. *Id.* Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." *Id.* (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

1. Indictments and Continuance

The Court finds Applicant failed to meet his burden to show trial counsel ineffective in failing to object to the timeliness of service of the indictments or to move for a continuance. An indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The Court finds credible and dispositive Swilley's testimony that he knew the failure to stop for a blue light resulting in death, reckless homicide, and involuntary manslaughter indictments would be presented to the grand jury. He also testified the regular practice in the Fourth Circuit is to indict defendants for reckless homicide and involuntary manslaughter when the defendant is also indicted for felony driving under the influence resulting in death. Ms. Crayton also testified she was aware the additional charges were forthcoming when she became involved in the case shortly before trial. The record before this court

indicates trial counsel was on notice of the charges that would be brought to trial. Accordingly, trial counsel was not deficient in failing to move to quash the indictments or to move for a continuance. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where “it would have been futile for Attorney to have made such arguments”). Furthermore, Applicant has not demonstrated he was prejudiced by trial counsel forgoing these motions because they would not have been successful even if made. The record indicates trial counsel conducted a proper investigation, adequately conferred with Applicant, and were thoroughly competent in their representation. They were not ineffective in failing to object to the indictments or to move for a continuance.

2. Challenge to Blood Draw

The Court finds Applicant failed to meet his burden to prove trial counsel ineffective in failing to make a Fourth Amendment objection to his blood draw. A blood draw after an arrest for driving under the influence constitutes a search and implicates the Fourth Amendment prohibition on unreasonable searches and seizures. Schmerber v. California, 384 U.S. 757, 767 (1966). Accordingly, a warrant is normally necessary to conduct a search in the form of a blood draw. Id. at 770. However, the Fourth Amendment “warrant requirement is subject to exceptions.” Missouri v. McNeely, 567 U.S. ___, 133 S. Ct. 1552, 1558 (2013).¹ One such exception is when an individual consents to the search. State v. Provet, 405 S.C. 101, 113, 747 S.E.2d 453, 460 (2013) (citing Palacio, 333 S.C. at 514, 511 S.E.2d at 66).

Here, the record indicates Applicant consented to giving a blood sample at the hospital. The nurse who took the sample testified Applicant consented to the blood draw. (Trial Tr. p. 158, lines 15-16). Applicant’s Exhibit Number Three, Applicant’s hospital records, indicates Applicant was cooperative in the hospital. Swilley testified he did not recall Applicant stating he did not consent to the blood draw. Crayton testified she did not see any information in discovery indicating Applicant

¹ The Court notes McNeely was decided after Applicant’s trial and has no bearing on any issues raised in this Application.

denied consenting to the blood draw. She also testified she did not believe there were any viable Fourth Amendment arguments to challenge the blood draw at the time of trial.

The only evidence in the record that Applicant did not consent is his testimony at the evidentiary hearing, which the Court dismisses as not credible. The Court is also not persuaded by Applicant's argument that the arresting officer reading the implied consent form to him rendered his consent involuntary. See United States v. Sugiyama, No. 15-PO-5065, 2015 WL 4092494, at *9 (D. Md. July 6, 2015) ("Consent is not coerced (and thus rendered involuntary) simply because the State has attached criminal penalties for refusing to provide consent."). Accordingly, Applicant has not demonstrated trial counsel was deficient in failing to raise a Fourth Amendment objection to Applicant's blood draw. See Palacio, 333 S.C. at 514, 511 S.E.2d at 67; see also State v. Sarvis, 265 S.C. 144, 147, 217 S.E.2d 38, 40 (1975) ("The blood sample was withdrawn by the doctor at the hospital with the permission of respondent."). Applicant has also failed to show he was prejudiced by counsel's failure to make a Fourth Amendment objection because such an objection would not have been successful where Applicant consented to the blood draw.²

The Court also find Applicant failed to meet his burden to show trial counsel ineffective in failing to make a chain of custody objection to the blood draw. Initially, the Court notes trial counsel did object to the introduction of the blood sample based on the incomplete chain. (Trial Tr. p. 217, lines 4-9). Therefore, trial counsel could not be deficient in this regard. Similarly, any issues relating to the chain of custody are properly raised in a direct appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.").

² The Court also notes the blood draw may have also been admissible under a number of other exceptions to the warrant requirement. See McNeely, 133 S. Ct. at 1561 (exigent circumstances must be evaluated on case-by-case basis); S.C. Code Ann. § 56-5-2956 (mandatory blood draw where there is probable cause to believe person committed offense of felony driving under the influence); United States v. Reid, 929 F.2d 990, 994 (4th Cir. 1991) (warrantless breath test valid as search incident to arrest).

Regardless, the trial transcript indicates the chain of custody is fully established. The nurse who drew the blood testified. The investigator who took custody of the sample and transported it to the State Law Enforcement Division (“SLED”) testified. The SLED chemist who analyzed the blood testified. This testimony is sufficient to establish the chain of custody. State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (State need only establish chain of custody “as far as practicable.” (citations omitted)). Applicant’s argument regarding the lack of a signature on a SLED request form may go to the weight and credibility of the evidence, but does not affect its admissibility under these circumstances. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995) (reconciliation of discrepancy on forms not necessary to establish the chain of custody but merely reflects upon credibility of evidence). Therefore, Applicant has not shown he was prejudiced by trial counsel not making a further objection to the blood sample.³

3. Failure to Investigate Witnesses

The Court finds Applicant failed to meet his burden to show trial counsel ineffective in failing to investigate witnesses who would have shown the victim was driving the vehicle. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant testified the victim was driving the car at the time it careened off the road, and that the police staged photos of him in the driver’s seat. The Court finds this testimony wholly not credible and refuted by the record. The evidence at trial indicated Applicant was seen driving the car by the pursuing officer. After the car crashed, Applicant was behind the steering wheel. A tree limb entered the passenger side windshield of the car and would have caused serious

³ To the extent Applicant alleges his blood draw cannot be used as evidence in a prosecution for any offenses not listed in the motor vehicle code, that argument is not supported by any authority or argument. Applicant’s intoxication and operation of a motor vehicle are part of the *res gestae* of his involuntary manslaughter and reckless homicide charges, and the blood evidence is both relevant and admissible in the prosecution for those crimes.

injury to the head and neck of any person in the passenger seat. Interestingly, the victim died from injuries to her head and neck consistent with impacting the tree limb.

Swilley testified Applicant maintained he was not driving the car, but that he could see Applicant driving in the dash-cam video. He testified he spoke with Applicant's mother about the possibility the victim was driving the car, but the mother was not able to recall any details. Swilley stated he was unable to locate any witnesses to refute the evidence Applicant was driving the car. The Court finds credible Swilley's testimony that he attempted to investigate this issue, and find his performance in this regard reasonable and not deficient.

Regardless, Applicant also failed to prove prejudice. Applicant presented no witnesses at the evidentiary hearing to demonstrate he was not driving the vehicle when it crashed. As such, the Court will not speculate as to what any other witnesses would testify about at trial. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("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." (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Trial counsel simply was not ineffective in failing to investigate Applicant's absurd claim he was not driving the car.

4. The State's Closing

The Court finds Applicant failed to demonstrate trial counsel ineffective for failing to object to the State's closing argument. Applicant argues the solicitor improperly vouched for the credibility of the investigators and medical personnel. Swilley testified he did not deem anything the solicitor said to be objectionable. The Court agrees with Swilley's analysis. The Court has reviewed the portions of the argument Applicant alleges were inappropriate, and finds no inappropriate vouching. The solicitor neither "places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity" nor "indicat[es] information not presented to the jury supports the testimony." State

v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) (citations omitted). Rather, he indicated the manner in which the witnesses testified lent credibility to their testimony. This argument is not improper because “[a] solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony.” State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990) (citing State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976)), overruled on other grounds by State v. Evans, 371 S.C. 27, 637 S.E.2d 313 (2006). Therefore, trial counsel was not defective in choosing to not lodge an objection to any portion of the State’s closing. See, e.g. Braithwaite v. State, 572 S.E.2d 612, 615-16 (Ga. 2002); (“Here, Braithwaite’s attorney reasonably chose silence, and we will not use hindsight to second-guess that decision on appeal.”); State v. Tokar, 918 S.W.2d 753, 768 (Mo. 1996) (“In many instances seasoned trial counsel do not object to otherwise improper questions or arguments for strategic purposes.”); United States v. Necoechea, 986 F.2d 1273, 1281 (9th Cir. 1993) (“Because many lawyers refrain from objecting during opening statement and closing argument, absent egregious misstatements, the failure to object during closing argument and opening statement is within the ‘wide range’ of permissible professional legal conduct.”).

Applicant also failed to demonstrate the State’s closing was prejudicial in light of the entire record, including the overwhelming evidence of his guilt. Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 914-15 (2009) (citations omitted). Furthermore, the trial judge consistently reminded the jury that an attorney’s arguments are not evidence. See State v. Dawkins, 297 S.C. 386, 393, 377 S.E.2d 298, 302 (1989) (judge’s instruction sufficient to cure error from improper arguments). Accordingly, trial counsel was not ineffective in this regard.

5. Double Jeopardy

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective in failing to object to his prosecution on charges of both reckless homicide and involuntary manslaughter. Swilley testified he objected to Applicant being tried for these two crimes as well as felony driving

under the influence. However, he testified the case law was against him at the time. The Court agrees with Swilley's assessment, as the case law does not regard reckless homicide and involuntary manslaughter as lesser included offenses of felony driving under the influence. State v. Cribb, 310 S.C. 518, 524, 426 S.E.2d 306, 310 (1992) ("[R]eckless homicide and involuntary manslaughter are not lesser included offenses of felony DUI."); see also State v. Easler, 327 S.C. 121, 133, 489 S.E.2d 617, 624 (1997) ("[F]elony DUI requires proof of the element of driving under the influence, whereas reckless homicide does not."). Because felony driving under the influence, reckless homicide, and involuntary manslaughter each require proof of different elements, Applicant can be properly convicted of all three offenses. Trial counsel was not deficient for not making further arguments against precedent, and Applicant was not prejudiced because such arguments are not meritorious. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

6. Overwhelming Evidence of Guilt

Independent of the above analysis, the Court finds Applicant cannot show he was prejudiced by an actions or decision of trial counsel because the record contains overwhelming evidence of his guilt. The arresting officer saw Applicant driving the vehicle before it crashed. After the crash, Applicant was behind the steering wheel. The victim's injuries were consistent with the theory that she was sitting in the passenger seat, where a tree limb entered the passenger side windshield of the car and would have caused serious injury to the head and neck of any person in the passenger seat. Applicant's consensual blood test was positive for alcohol, cocaine, hydrocodone, marijuana, Tramadol, and Soma. Accordingly, Applicant cannot show prejudice from trial counsel's actions. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (no prejudice where there is overwhelming evidence of guilt).

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter

and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

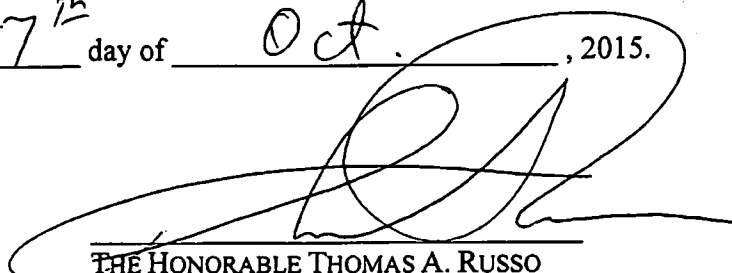
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. However, Applicant is entitled to a review of direct appeal issues pursuant to White v. State.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Counsel and Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), for the appropriate procedure for securing appellate review pursuant to White v. State.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence; and
3. Applicant shall be entitled to seek review of his direct appeal issues.

AND IT IS SO ORDERED this 7th day of Oct., 2015.


THE HONORABLE THOMAS A. RUSSO
Presiding Judge

F. L. Rame, South Carolina

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #: 201001-0201

863

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
J662997

ARRESTED ON: 2010-01-11

ACTION OF GRAND JURY

Grand Jury Foreperson

Date: SEP 02 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-16-1335

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
September 2010

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

DUI / Felony driving under the influence, death
results

§56-05-2945(A)(2)

CDR Code: 0395

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON) INDICTMENT FOR
) DUI / Felony driving under the influence, death
) results

§56-05-2945(A)(2)

At a Court of General Sessions, convened on September 20, 2010, the Grand Jurors of Darlington County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE - DEATH

CDR: 0395 56-05-2945(A)(2)

That Charlton Lafate Hill did in Horry County on or about January 8, 2010 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of Sylvia Mattox in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

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

WILLIAM B. ROGERS, JR.
SOLICITOR

602

STATE OF SOUTH CAROLINA

COUNTY OF Darlington
 STATE VS.
Charlton Lafate Hill

AKA:

Race: W Sex: M Age: DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: DUI / Felony driving under the influence, death results

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-16-1335A/W#: J662997Date of Offense: 1/8/2010S.C. Code § : 56-05-2945(A)(2)CDR Code #: 0395

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Baugh, Sherrie CSC Bar# 77495

Defendant

Northrup, [Signature]

Attorney for Defendant

SC Bar# 78250WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 0☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter: Pamela Cartee

SCCA/217 (06/2010)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2121Sentence Date: 04/13/11

WITNESSES

Eric Hodges

Darlington County Sheriff



Law Enforcement Case #: 201001-0201

863

WAIVER OF PRESENTMENT

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

Defendant

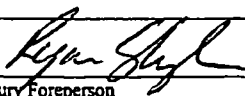
I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J662998

ARRESTED ON: 2010-01-11

ACTION OF GRAND JURY


Grand Jury Foreperson

Date: SEP 02 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-16-1336

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
September 2010

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

DUS / Driving under suspension, license not
suspended for DUI

§56-01-0460(A)(1)(a)

CDR Code: 0624

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

DUS / Driving under suspension, license not
suspended for DUI

§56-01-0460(A)(1)(a)

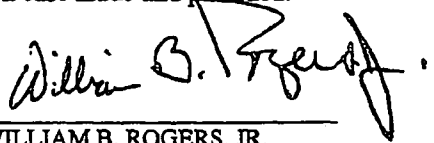
At a Court of General Sessions, convened on September 20, 2010, the Grand Jurors of Darlington County present upon their oath:

DRIVING UNDER SUSPENSION

CDR: 0624 56-01-0460(2)

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, drive a motor vehicle on a public highway of this State when his license or privilege to drive was cancelled, suspended, or revoked, in violation of Section 56-01-0460, S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Darlington

STATE

VS.

Charlton Lafate Hill

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☒ CONVICTED OF or ☐ PLEADS

TO: DUS / Driving under suspension, license not suspended for DUI - 1st offense

in violation of § 56-01-0460(A)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0624

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Baugh, Sherrie C

SC Bar# 77495

Defendant

Attorney for Defendant

SC Bar# 78750

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-65-16-1335☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter: Pamela Carter

SCCA/217 (06/2010)

INDICTMENT/CASE#: 2010-GS-16-1336

A/W#: J662998

Date of Offense: 1/8/2010

S.C. Code § : 56-01-0460(A)(1)(a)

CDR Code #: 0624

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 56-01-0460(A)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0624

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Baugh, Sherrie C

SC Bar# 77495

Defendant

Attorney for Defendant

SC Bar# 78750

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-65-16-1335☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter: Pamela Carter

SCCA/217 (06/2010)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: _____

Sentence Date: _____

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #

863

WAIVER OF PRESENTMENT

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

Defendant

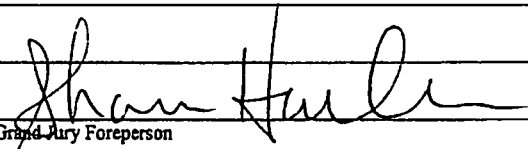
I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0886

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY


Grand Jury Foreperson

Date

APR 07 2011

VERDICT

True Bill

Petit Jury Foreperson

Date

APR 07 2011

DOCKET NUMBER:

2011-GS-16-0422

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
April 2011

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

Traffic / Failure to stop for a blue light, death
results

§56-05-0750(C)(2)

CDR Code: 2398

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON) Traffic / Failure to stop for a blue light, death results

§56-05-0750(C)(2)

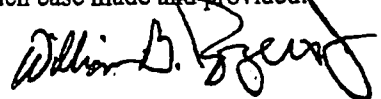
At a Court of General Sessions, convened on April 11, 2011, the Grand Jurors of Darlington County present upon their oath:

FAILURE TO STOP FOR BLUE LIGHT/SIREN-DEATH

CDR: 2398 56-05-0750(C)(2)

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, and that the death of Sylvia Mattox Hill resulted when the defendant performed an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle, in violation of Section 56-05-0750(C)(2), S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

608

STATE OF SOUTH CAROLINA

COUNTY OF DarlingtonSTATE VS.
Charlton Lafate Hill

AKA:

Race: W Sex: M Age: _____DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED] SC

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Traffic / Failure to stop for a blue light, death results

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-16-0422A/W#: DAR0886Date of Offense: 1/8/2010S.C. Code § : 56-05-0750(C)(2)CDR Code #: 2398

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 56-05-0750(C)(2) of the S.C. Code of Laws, bearing CDR Code # 2398☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Baugh, Sherrie C77495 SC Bar#[Signature] Defendant[Signature] Attorney for Defendant78750 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

§ 44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

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

SCCA/217 (06/2010)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge [Signature]Judge Code: 2.21Sentence Date: 4/13/11

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #

863

WAIVER OF PRESENTMENT

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

Defendant

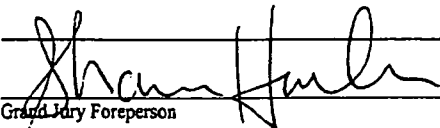
I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0887

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY


Grand Jury Foreperson

Date **APR 07 2011**

VERDICT

True Bill

Petit Jury Foreperson

Date **APR 07 2011**

DOCKET NUMBER:
2011-GS-16-0423

The State of South Carolina**County of Darlington****COURT OF GENERAL SESSIONS**

Term:
April 2011

THE STATE

vs.

Charlton Lafate Hill**INDICTMENT FOR**

Homicide / Reckless Homicide, death results
within one Year

§56-05-2910

CDR Code: 3097

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Homicide / Reckless Homicide, death results within
one Year

§56-05-2910

At a Court of General Sessions, convened on April 11, 2011, the Grand Jurors of Darlington County present upon their oath:

RECKLESS HOMICIDE

CDR: 3097 56-05-2910

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, drive a vehicle in reckless disregard of the safety of others, and that the death of Sylvia Mattox Hill ensued as a proximate result of injury received by the defendant's driving of such vehicle, in violation of Section 56-05-2910, S. C. Code of Laws, 1976, as amended.

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

William B. Green

WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Darlington
STATE VS.

Charlton-Lafate Hill

AKA:

Race: W Sex: M Age:

DOB: SS#:

Address:

City, State, Zip: SC

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehicle

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-16-0423

A/W#: DAR0887

Date of Offense: 1/8/2010

S.C. Code § : 56-05-2910

CDR Code #: 3097

SENTENCE SHEET

in violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Baugh, Sherrie C 77495 SC Bar# Defendant Attorney for Defendant 78250 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-6-16-1315
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter: Pamela Carter

SCCA/217 (06/2010)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Judge Code: 2121Sentence Date: 4/13/11

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

863

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
DAR0888

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

APR 07 2011

VERDICT

True Bill

Petit Jury Foreperson

Date

APR 07 2011

DOCKET NUMBER:
2011-GS-16-0424

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
April 2011

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

Manslaughter / Involuntary manslaughter

§16-03-0060

CDR Code: 0218

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON) INDICTMENT FOR
) Manslaughter / Involuntary manslaughter

§16-03-0060

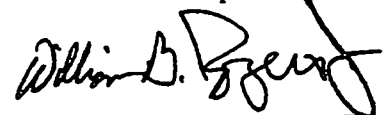
At a Court of General Sessions, convened on April 11, 2011, the Grand Jurors of Darlington County present upon their oath:

INVOLUNTARY MANSLAUGHTER

CDR: 0218 16-03-0060

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, unintentionally kill Sylvia Mattox Hill, without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily injury, or while engaged in a lawful activity with reckless disregard for the safety of others, in violation of Section 16-03-0060, S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

614

STATE OF SOUTH CAROLINA

COUNTY OF Darlington
STATE VS.Charlton Lafate Hill

AKA:

Race: W Sex: M Age: DOB: SS#: Address: City, State, Zip: SCDL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Involuntary manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-16-0424A/W#: DAR0888Date of Offense: 1/8/2010S.C. Code § : 16-03-0060CDR Code #: 0218

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Baugh, Sherrie C77495 SC Bar# Defendant Attorney for Defendant78250 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter: Pamela Carter

SCCA/217 (06/2010)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2171Sentence Date: 04/17/11