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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Honorable R. Scott Sprouse, Circuit Court Judge

KEVIN C. CASEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001686

APPENDIX

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¹ The exhibits referenced in the amended PCR application are the same exhibits admitted as Applicant’s Exhibit at the PCR hearing. To avoid redundancy, the exhibits are included in the Appendix once, beginning on page 162.

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
Kevin Charles Casey,) 2011-GS-42-6361(A);6362(A)6363
Defendant.) February 14, 2012
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. MARK HAYES, II, JUDGE

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

BARRY JOE BARNETTE, ESQUIRE
Attorney for the State

RICHARD WARDER, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Incident report and chain of custody		4
S-2	Affidavit		4
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1 (Incident report and chain of custody marked State's
2 Exhibit No. 1; affidavit marked State's Exhibit No. 2;
3 advisement of rights and SLED intake forms marked State's
4 Exhibit No. 3; SLED report marked State's Exhibit No. 4;
5 MAIT report and C.D. marked State's Exhibit No. 5; autopsy
6 report for Megan W. marked State's Exhibit No. 6;
7 autopsy report for Steven Ray Mills marked State's Exhibit
8 No. 7; medical records for Jason Simmons marked State's
9 Exhibit No. 8; defendant's rap sheet marked State's Exhibit
10 No. 9; defendant's driving record marked State's Exhibit
11 No. 10.)

12 MR. BARNETTE: May it please the Court, Your Honor.

13 This is the case of the State vs. Kevin Charles Casey.
14 He is pleading guilty to three indictments, Your Honor.

15 The first one is 11-GS-42-6363 which is felony D.U.I.
16 with great bodily injury.

17 The second one, Your Honor, is 11-GS-42-3632(A), Your
18 Honor. He's pleading to count one of the indictment,
19 felony D.U.I. with death. Count two, reckless homicide,
20 will be dismissed once the plea is completed, Your Honor.

21 And the next indictment and last indictment is
22 11-GS-42-6361(A), Your Honor. It's also, he's pleading to
23 count one which is felony D.U.I. with death.

24 Your Honor, count two, reckless homicide, will be
25 dismissed once the plea is taken.

1 Your Honor, these have been true billed by the grand
2 jury. Your Honor, this is a straight-up plea, Your Honor,
3 in this case.

4 Mr. Richard warder represents the defendant.

5 Your Honor, I believe there was ten exhibits that
6 we've handed up to the Court. I talked to Mr. warder and
7 shared those with him before we gave them to the Court,
8 Your Honor.

9 Your Honor, I'll be glad to introduce those when we
10 introduce the facts of the case, Your Honor. I hope I
11 counted that right.

12 THE COURT: Yes, sir. I've got ten. I wanted to be
13 sure that I brought them all with me.

14 All right. Yes, sir.

15 MR. BARNETTE: May I approach the bench, Your Honor?

16 And we do have victims' family members that would like
17 to speak at the appropriate time, Your Honor.

18 (Whereupon, the defendant was duly sworn.)

19 THE COURT: All right. Mr. Casey, it is your intent
20 to enter a plea to the charges that were announced by the
21 solicitor?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. All right, sir. If ever during
24 this process if you wish to speak to your lawyer, just let
25 me know, and I'll allow you to speak to your lawyer in

1 private.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Let me apologize to the state and also to
4 the defense for my delay in coming out.

5 The state had provided me with a copy of the exhibits
6 and I -- and I wanted to review the exhibits before I came
7 out.

8 And the audio tape that is part of State's Exhibit 5
9 was almost an hour long. So it was longer than what I had
10 expected.

11 But I have reviewed the exhibits, as well as the audio
12 tapes that consist of several notes, audio notes, by the
13 officers, as well as the interviews by the witnesses that
14 the officers found.

15 Sir, how old are you?

16 THE DEFENDANT: Forty.

17 THE COURT: How far did go in school?

18 THE DEFENDANT: Eleventh grade.

19 THE COURT: Did you ever obtain a G.E.D.?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Presently are you married, single,
22 divorced, widowed?

23 THE DEFENDANT: Married.

24 THE COURT: Do you have children?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How many?

2 THE DEFENDANT: Six.

3 THE COURT: How old is the oldest and how young is the
4 youngest?

5 THE DEFENDANT: Twenty-seven and fourteen.

6 THE COURT: And prior to your arrest on these charges
7 did you have a job outside of the home?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What were you doing?

10 THE DEFENDANT: Working at the rock quarry.

11 THE COURT: How long had you been there?

12 THE DEFENDANT: Four years.

13 THE COURT: Ever served in the military?

14 THE DEFENDANT: No, sir.

15 THE COURT: And on this charge how long have you been
16 in jail?

17 THE DEFENDANT: Four months.

18 THE COURT: Since you were arrested?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you remember the date that you were
21 arrested?

22 THE DEFENDANT: The 15th, I think.

23 THE COURT: All right. Sir, within the last 24 hours
24 have you consumed any type of substance that is adversely
25 or negatively affecting your ability to understand what

1 we're doing today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you ever been treated for any type of
4 substance abuse, for a drug problem or an alcohol problem?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you satisfied with the work that your
7 lawyer has done for you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Feel like you've had enough time to talk
10 to him about the charges that are against you, the legal
11 elements of those charges, the facts behind the cases and
12 also any possible defenses you may have to these cases?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody come to you and threatened you
15 in any way or have they made you any promises in order to
16 get you to make the decision to enter the pleas today?

17 THE DEFENDANT: No, sir.

18 THE COURT: I am correct in concluding that your
19 decision to enter these pleas today is a free and
20 voluntarily decision on your part?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Sir, I need for you to understand that
23 under the law you are presumed innocent of all of these
24 charges, and you do have right to have a jury trial on any
25 or all of these charges.

1 At any jury trial that would take place it would be
2 the state that has the burden of proof, and the state would
3 have to convince all 12 members of a jury that you are, in
4 fact, guilty beyond a reasonable doubt of these charges.

5 Now, sir, do you wish to have a jury trial on any of
6 these charges?

7 THE DEFENDANT: No, sir.

8 THE COURT: Sir, I need for you to understand that
9 there are other very important constitutional rights that
10 you are entitled to but that you have to give up in order
11 to enter these pleas.

12 You have to give up your right to confront and
13 cross-examine the state's witnesses. You also have to give
14 up your right to present evidence which you or your lawyer
15 may feel would establish some type of defense to these
16 charges. And you have to give up your right of subpoena
17 and you have to give up your right to remain silent. Do
18 you understand all of those rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you wish to give up those rights
21 and proceed with entering the plea to these charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Mr. Casey, if you would,
24 please listen to the solicitor. He is going to provide us
25 with the facts behind these cases. And then I'll have some

1 more questions for you, sir. Please listen to the
2 solicitor.

3 MR. BARNETTE: May I approach the bench, Your Honor,
4 and receive those exhibits? Thank you.

5 Your Honor, this occurred on October 15th of 2011,
6 Your Honor, approximately 12:13 a.m., Your Honor, out on
7 Highway 417 near Workman Road here in Spartanburg County.

8 Your Honor, Trooper Thornton with the highway patrol,
9 Your Honor, was dispatched to a crash in that area, Your
10 Honor. He arrived there. Firefighters were there and so
11 forth, Your Honor.

12 It was found that the defendant was driving a Nissan
13 vehicle, Your Honor. MAIT team in their examination saw
14 him going 91 miles an hour at the time of impact. I
15 believe the speed limit was 45 at the time in that limit,
16 Your Honor.

17 He ran into a motorcycle that was being driven I
18 believe by Mr. Simmons there. Steven Mills and Megan W.

19 was on the motorcycle, Your Honor. He hit them.

20 The MAIT team report goes through the details where
21 they were hit, where they were done.

22 Megan W. and Steven Mills was killed in the
23 accident, Your Honor.

24 Jason Simmons was severely injured. He was taken to
25 the Greenville Memorial for his injuries, Your Honor, in

11
1 this case.

2 Mr. Casey was on bond for D.U.I. third from Union
3 County at the time of the wreck, Your Honor. He was
4 given -- they took a blood sample, Your Honor, under the
5 felony D.U.I. law. His blood alcohol came back to be .21,
6 Your Honor, in this case. He was arrested for felony
7 D.U.I. for death, two counts, felony D.U.I. great bodily
8 injury, Your Honor.

9 The exhibits I have, Your Honor, I have -- I'd like to
10 make those a part of the facts of the case also, Your
11 Honor.

12 State's Exhibit 1, Your Honor, consists of the
13 incident report by Trooper Thornton in this case, as well
14 as a chain of custody involving the blood evidence in the
15 case.

16 State's Exhibit No. 2, Your Honor, is written
17 statements given by three witnesses at the scene, Your
18 Honor -- Jason Sloan, Denise Lancaster and Donald Moore.
19 It consists of three pages.

20 State's Exhibit 3, Your Honor, is implied consent
21 rights that were given to Mr. Casey, two different copies
22 of them, as well as the blood draw, Your Honor, as well as
23 the evidence that was taken down to SLED and the testing
24 that was requested by the highway patrol, Your Honor.

25 State's Exhibit 4, Your Honor, is the SLED toxicology

1 report showing he had a blood alcohol of .211, Your Honor.
2 It was done by Tim Granbo, the toxicologist from SLED, Your
3 Honor. It consists of two pages. It is SLED lab No.
4 L11-11796.

5 State's Exhibit 6, Your Honor, is the autopsy report
6 on Megan W. And, Your Honor, it was done by Dr. Wren
7 in this case. It consists of four pages.

8 State's Exhibit 7, Your Honor, is Steven Ray's autopsy
9 report that was done by Dr. Wren, Your Honor. It consists
10 of five pages, Your Honor.

11 State's Exhibit 8, Your Honor, is the medical records
12 from the Greenville Hospital System concerning Jason
13 Simmons, Your Honor, his injuries. I believe it consists
14 of seven pages talking about the injuries he received. And
15 he'll talk to you in detail about that once he stands up to
16 address the Court, Your Honor.

17 State's Exhibit No. 9, Your Honor, is the rap sheet of
18 the defendant. I'll be glad to go into more detail on it
19 shortly.

20 State's Exhibit 10, Your Honor, is a copy of the
21 10-year driving record of the defendant, Your Honor. I'll
22 be glad to go into more detail at a later time with that.

23 And State's Exhibit No. 5, Your Honor, was the MAIT
24 team report that was done by the MAIT team. Also, included
25 with that was their C.D. where they did their investigation

1 including the interview notes and everything, the audio
2 files that was heard by the Court in this case. Your
3 Honor, and of course on the MAIT team they calculated the
4 speed for the defendant's vehicle approximately 91 miles an
5 hour at impact, Your Honor. And they show their findings
6 in the MAIT team report.

7 I'd like to make those a part of the record, Your
8 Honor. And the family would like to address the Court at
9 the appropriate time, Your Honor.

10 would you like these back, Your Honor?

11 THE COURT: Yes.

12 MR. BARNETTE: May I approach again? Thank you.

13 THE COURT: Mr. Casey, were you able to hear the
14 solicitor when he told me the facts behind these cases?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you believe that as he stated the facts
17 that he is substantially correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And, sir, the possible range of sentences
20 on the felony D.U.I. resulting in death --

21 MR. BARNETTE: Is one to 25, Your Honor, minimum one
22 year and 25 years maximum, a fine of \$10,000 to \$25,000 on
23 each count. And the great bodily injury, Your Honor, is 30
24 days up to 15 years and a fine of \$5,000 up to 10,000, Your
25 Honor, plus costs.

1 THE COURT: And, Mr. Casey, do you understand that on
2 the felony D.U.I. resulting in great bodily injury that I
3 could sentence you between 30 days and up to 15 years and
4 that I am required to also issue a fine of at least five
5 but could be a fine of up to ten thousand dollars on that
6 charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And with that understanding, the possible
9 sentence I could impose, you still wish to enter this plea?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Sir, do you understand that on the felony
12 D.U.I. resulting in death that under both of those charges
13 I could sentence you between one year and could sentence
14 you up to 25 years at the Department of Corrections and
15 that I am required to fine you between ten thousand and up
16 to -- or up to \$25,000, somewhere in that range of fine
17 between ten to twenty-five thousand dollars?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And, sir, do you also understand that each
20 of those felony driving under the influence resulting in
21 death -- do you understand that each of those charges is
22 classified as a serious offense under the law?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And, sir, have you been able to talk to
25 your lawyer as to the consequences and ramifications of the

1 those offenses being classified as serious?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And with that understanding of the two
4 classifications of serious and the ramifications of those
5 classifications, as well as the possible sentences I could
6 impose, do you still wish to enter pleas to those charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir, are you, in fact, guilty of both of
9 these charges, the felony driving under the influence
10 resulting in death?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you also guilty of the felony driving
13 under the influence resulting in great bodily injury?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you been able to hear all of my
16 questions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have all of your answers been truthful and
19 honest?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Discovery has been shared with the
22 defense?

23 MR. BARNETTE: Yes, sir.

24 THE COURT: And I know that I had reviewed the prior
25 record, and I have a copy of it. Do you wish to recite it

1 for the record?

2 MR. BARNETTE: Your Honor, if you'd like for me to,
3 I'll be glad to. Either way. I know you have a copy of
4 both the rap sheet and the driving record.

5 THE COURT: I had --

6 MR. BARNETTE: Just to make the Court aware, I know
7 you probably saw the two previous D.U.I.s that he has had
8 on his record. And he was out on bond on a D.U.I. third
9 from Union County at the time that this wreck occurred.

10 THE COURT: That was what I did not see when I
11 reviewed the record, was the prior D.U.I. third.

12 MR. BARNETTE: It's on the rap sheet, Your Honor, I
13 think near the last page.

14 THE COURT: Okay. I saw the other ones.

15 MR. BARNETTE: I think it's just a charge pending.
16 There is no -- there's no conviction on that, because there
17 has not been a conviction on that.

18 THE COURT: I see it. Yes. It's on the same page at
19 the top. Yes.

20 MR. BARNETTE: Yes, sir. And it's not a conviction,
21 but it was a pending charge when this occurred.

22 THE COURT: All right. And did you say that you did
23 have some individuals that wished to address the Court on
24 behalf of the victims?

25 MR. BARNETTE: Yes, sir. I'd just like to -- a few

1 people from the victim's family. Sergeant Jones from the
2 highway patrol is standing here for the highway patrol.

3 Your Honor, Trooper Thornton wasn't able to come here
4 today. Both attorneys on behalf of the family is here in
5 this case -- Mr. Mark Thaxton and Mr. Eppes. They're not
6 going to address the Court, but I just wanted to let you
7 know they're here.

8 If everybody for the families -- please stand up.

9 (Whereupon, members of the victims' families stood.)

10 MR. BARNETTE: Your Honor, these are members of the
11 victims' family. All of them is going to address the
12 Court, but I'd like to call them one at a time, Your Honor,
13 to address the Court.

14 THE COURT: Okay.

15 MR. BARNETTE: Your Honor, first one will be Teresa
16 Mills. She is the mother of Steven Mills, one of the
17 victims in the case.

18 THE COURT: Ma'am, if you would, we are making a
19 recording of everything that happens here. So just speak
20 up loud so that both the court reporter and I can hear you.
21 Just start by giving us your full name.

22 TERESA ANN MILLS: Teresa Ann Mills.

23 THE COURT: Yes, ma'am.

24 TERESA ANN MILLS: I just wanted you to know what
25 Casey took from me was my youngest son, and he wasn't just

1 my youngest son. He took my best friend.

2 He was 20 years old, but he wasn't really 20 in age.
3 He acted like, probably like, a 12-year-old. And he was
4 just my everything. He just -- he made sure I was all
5 right.

6 And then he brought Megan in. And Megan was about to
7 go to college and become a nurse. And then he took away --
8 he took away my next generation as far as my grandbaby.

9 And I just don't think he should be able to get out.
10 He should be able to suffer like the rest of us. He's not
11 suffering. We're suffering outside prison, outside, just
12 like he should be suffering inside.

13 THE COURT: Thank you, ma'am.

14 MR. BARNETTE: Your Honor, next one is Jason Simmons.
15 He is one of the victims in the crash.

16 THE COURT: Mr. Simmons, if you would, just speak up
17 loud enough so both the court reporter and I can hear you.

18 JASON MATTHEW SIMMONS: Yes, sir. Do you want to hear
19 my name?

20 THE COURT: Yes, sir.

21 JASON MATTHEW SIMMONS: It's Jason Matthew Simmons.

22 See, I got my real good friend who was like my
23 brother, I lost him and a girl that she was in school. She
24 was about to graduate and stuff. Man, it's real hard.

25 I've got kids myself. And what if it had been one of

1 my kids. You know what I'm saying? It's really hard. And
2 sticking with family and stuff, and, I mean, if it was me
3 in his shoes I would -- I would want justice, you know what
4 I'm saying, doing for what's right?

5 Do you want to know what injuries I had?

6 THE COURT: Yes, sir.

7 JASON MATTHEW SIMMONS: well, I broke my arm right
8 there and I broke my shoulder. I busted my liver, and I
9 broke my back in four different places, and I broke my leg.

10 THE COURT: Thank you, sir.

11 JASON MATTHEW SIMMONS: All right. Thank you.

12 MR. BARNETTE: Your Honor, Kristen Workman would like
13 to address the Court next. She is a friend of the family.

14 KRISTEN MICHELLE WORKMAN: My name is Kristen Michelle
15 Workman. I was good friends with both Stevey and Megan.

16 Your Honor, nothing can bring them back. There's no
17 point in revenge. It's not going to change the
18 circumstances.

19 But that doesn't excuse what did occur. It doesn't
20 excuse what happened that night. There should be penalties
21 and there should be laws to protect us.

22 The healing process would be much easier knowing that
23 every day that he serves time is one day that we don't have
24 to worry about another family going through this. It's
25 just been a horrible time.

1 We should be preparing for Megan's graduation. We
2 should be looking forward to future events in their lives.
3 This is time Jason lost with his children. I believe that
4 a longer sentence would be safer for the general
5 population. The habitual repetition of the drunk driving
6 can't be excused.

7 THE COURT: Thank you, ma'am.

8 MR. BARNETTE: Violet Callaway. Your Honor, she is
9 the mother of Megan W. Your Honor.

10 VIOLET CALLAWAY: Violet Callaway.

11 THE COURT: I'm sorry?

12 VIOLET CALLAWAY: Violet Callaway.

13 THE COURT: Yes, ma'am. I'll be more than happy to
14 hear from you.

15 VIOLET CALLAWAY: He's done this more than once, and
16 now he's taken two innocent lives, and I think he should
17 be severely punished. I don't think jail is good enough
18 for him. He'll be taken care of for the rest of his life
19 by the taxpayers.

20 I lost my baby. I'll never see her again, ever. She
21 is gone. And I'm depressed too and I'm hurt myself. I
22 cannot mourn my own daughter because I'm so messed up. I
23 can't even cry for my daughter.

24 He does not deserve even jail. He deserves worse.
25 He's done this more than once. Somewhere down the line you

1 change. He keeps doing it over and over again. Now he's
2 two took innocent lives. Thank you.

3 THE COURT: Thank you, ma'am.

4 MR. BARNETTE: Your Honor, David Warren, father of
5 Megan W. would like to address the Court.

6 DAVID WARREN: David Warren. Megan was my -- my life.
7 single parent. It was just a tragedy. Now she's gone.
8 There's nothing. There's no way I can get her back. I ask
9 you please to give him the max so this won't happen to
10 another family, have to go through what I will never get
11 over as long as I live. Thank you, sir.

12 THE COURT: Thank you, sir.

13 MR. BARNETTE: Your Honor, thank you very much.

14 THE COURT: Let me ask the officer a question.

15 THE OFFICER: Yes, sir.

16 THE COURT: The -- so that the record is clear, I
17 believe the solicitor might have misspoke.

18 He said that Jason was the driver, but I believe the
19 driver -- was it the other gentleman? In the -- in the
20 interview that I read where Jason gave he said that the
21 other person was the driver.

22 MR. BARNETTE: No. Jason Simmons was the driver
23 according to the record, what I've got, Your Honor, from
24 that standpoint.

25 THE COURT: Okay. The audio tape indicates the other

1 way.

2 MR. BARNETTE: I apologize. That's the information
3 that I received on the information there, Your Honor. I
4 appreciate you pointing that out to us. I apologize.

5 THE COURT: Will lawyers approach a moment? Lawyers
6 approach a moment.

7 (Bench conference held off the record.)

8 MR. BARNETTE: Can I have one second, Your Honor?

9 (Pause.)

10 (Bench conference held off the record.)

11 MR. BARNETTE: Your Honor, may it please the Court.

12 I checked with Mr. Simmons, Your Honor. I talked to
13 him just briefly. He told me that he was on the back of
14 the motorcycle, as you heard on the interview, Your Honor,
15 and Steven Mills was actually the one driving it just to
16 clear up the record on that.

17 Your Honor, I don't know if it makes any difference
18 who was driving the vehicle, but we know who's at fault.
19 Just to make sure that's correct on the record, Your Honor.

20 THE COURT: Thank you, sir.

21 MR. BARNETTE: Thank you, Your Honor.

22 THE COURT: Anything else from the state?

23 MR. BARNETTE: No, sir.

24 THE COURT: Yes, sir, Mr. Warder.

25 MR. WARDER: Your Honor, if it please the Court.

1 This is one of those cases where the events are so
2 tragic that it almost hides a man.

3 He, my client, is someone other than the person that
4 this one event portrays and the image it leaves.

5 He's a man that's worked hard. He worked at an
6 electric company for five years. They moved and went out of
7 business, and he was retrained to be a heavy equipment
8 operator. He worked for Vulcan Materials for four years.
9 He never missed a day, Your Honor, was only late a couple
10 of times when he had car trouble.

11 THE DEFENDANT: Yes, sir.

12 MR. WARDER: He was a man that alcohol had certainly
13 played a role in his life. But what you wouldn't think --
14 he wasn't a regular drinker in the sense that he drank
15 every day, used alcohol every day. He usually drank on the
16 weekends, and would usually drink only one day of the
17 weekend. And there would be weekends he wouldn't.

18 Your Honor, this accident doesn't portray the man that
19 was the father. He married. He and his wife had been
20 married nine years, to his present wife.

21 They both worked. He helped support. She had four
22 children when they got married. He became involved in
23 their lives.

24 This is a man that the day the accident happened was
25 at his wife's aunt's house. While he was down there they

1 had drank some Red Bull and tequila.

2 Your Honor, it was an occasion that events happened to
3 create almost the perfect storm or scenario for this
4 accident.

5 Shortly before the accident he had gotten in an
6 argument and became upset, and they told me was actually
7 crying when he left.

8 He was headed home. He was on the way, and he went to
9 plug his cell phone into the cigarette lighter, and the
10 next thing he knew he had collided with a motorcycle, Your
11 Honor.

12 He saw no taillight, no red light, anything that
13 indicated a motorcycle was there. He wasn't aware of the
14 collision until after the air bag had exploded. He really
15 come back around when he was being loaded into the
16 ambulance.

17 All of the events turned out to just make this happen.
18 It happened to be the motorcycle there, happened to be
19 three people on the motorcycle, happened to be the
20 motorcycle that the investigators couldn't ever find a
21 taillight for. There was no evidence they could determine
22 whether the front light was on or not.

23 Your Honor, certainly this is not caused by the faults
24 of some of these victims or somebody, but this is a man
25 that when this accident happened, it happened in someone

1 that certainly didn't intend to, and it happened in the
2 most severe way possible.

3 This is a man that had great loyalty to his family, to
4 his friends, to his job. He's a man that worked hard to
5 get where he had got.

6 Certainly this is life-changing for all of the
7 victims. This is life-changing to my client and all of his
8 family.

9 He's turned 40 February 1st of this year.

10 Your Honor, some of his family wants to speak. His
11 best friend wants to speak for him. And I would urge Your
12 Honor to allow me.

13 THE COURT: Yes, sir.

14 MR. WARDER: We would call -- come on up. Your Honor,
15 if it please, this is Kenneth --

16 KENNITH GEHR: Kenneth Gehr.

17 THE COURT: Yes, sir, Mr. Gehr. Just if you would,
18 speak up loud enough so that both the court reporter and I
19 can hear you. Your last name is spelled?

20 KENNITH GEHR: Gehr, G-E-H-R.

21 THE COURT: Thank you, sir.

22 KENNITH GEHR: And it's Kenneth with an "I".

23 THE COURT: Okay.

24 KENNITH GEHR: I just want to tell you that Kevin is a
25 good friend. He's a good father and a husband to his wife.

1 He's very loyal.

2 I just -- I don't want the one incident to describe
3 Kevin as a whole because I've known him for almost five
4 years. I saw him lose his job, work hard to get a degree.
5 And I helped him get his job where he was. I know all of
6 the people there. He's a very good independent person.

7 As far as the drinking, me and him were close. We saw
8 each other approximately every other day. We would take a
9 Friday, and I would drive. And we'd go and have an
10 enjoyable time. Several weeks later we might take a Friday
11 and he would drive.

12 He wouldn't abuse the law. And I do know that that
13 particular night I had asked him to come to my house. And
14 his words were he couldn't because he did have a drink and
15 he wouldn't drive it or chance it.

16 Kevin is just not a very violent person or an abusive
17 person. I'd just like for you to take that into
18 consideration.

19 I'm sorry for everybody's loss too.

20 THE COURT: Thank you, sir.

21 MR. WARDER: Teresa Pickens.

22 Your Honor, this is Teresa Pickens.

23 THE COURT: If you would, give us your full name.

24 TERESA PICKENS: My name is Teresa Pickens.

25 THE COURT: Yes, ma'am, Ms. Pickens.

1 TERESA PICKENS: Okay. I just had -- mine's a little
2 longer, but this is how I feel if you don't mind. These
3 are just some words of wisdom and comfort for Kevin Charles
4 Casey.

5 I, Teresa Pickens, am Mr. Casey's aunt.

6 First of all, I would like to say my nephew utilizes
7 characters of being -- of caring dependability. He has a
8 good heart, and he likes to help people, especially the
9 elderly. And he is very kindhearted.

10 My nephew is a wonderful mentor for his grandchildren,
11 his nieces, nephews, his cousins and his grandchildren.

12 Kevin has a loving wife, Angela Casey. They have been
13 in a relationship for ten years and united in marriage for
14 nine years.

15 The two share six children together, and seven
16 grandchildren. His children and grandchildren are very
17 honorable to him, and they miss him dearly from him being
18 detached from them.

19 Mr. Casey and his family attend church. They take
20 family trips and spend a lot of bonding time together.
21 Therefore he is very loyal and faithful with his family.

22 He has well earned the title of a real man, real
23 father. Kevin is a hardworking man. He believes in
24 providing for his family.

25 He has worked at Vulcan Incorporation for four years

1 as a heavy equipment operator. He is very considerate in
2 working overtime on his off days and his regular schedule.
3 He believes in playing his part as a team member.

4 Mr. Casey had spoken with me about assisting him with
5 enrollment into college so that he could further pursue his
6 education. He is an ambitious man and very determined to
7 succeed.

8 Kevin is my oldest sister's son. She suffers with
9 health issues, does not get around very well, and neither
10 can she drive. He is dedicated to fulfilling her needs,
11 as -- as a son is supposed to do. She depends and need --
12 she depends -- she needs and depends on him for so much to
13 help her. Therefore, she needs her son to be home and
14 available to help her with transportation and contribute to
15 her daily needs.

16 His grandfather, 85 years old, just recently passed.
17 He was in -- here incarcerated so therefore he wasn't able
18 to attend.

19 And that leaves my mother. She's 81 years old, and
20 she depends on him for a lot to help her out too. He is
21 very faithful and dedicated in doing that.

22 I am asking the Court if you would please give my
23 nephew, Kevin Charles Casey, an opportunity to be released
24 back into society. I am sure that there are other types of
25 punishment that he can endure to help sustain his living

1 standards to a higher level.

2 He could enroll in classes; he could take alcohol
3 bracelets, house arrest, just anything that will allow him
4 to be home with his family and friends.

5 Furthermore, he deserves a chance because it was a
6 huge mistake. I know that my nephew has a heart of gold
7 and he would not have intentionally ever done anything to
8 hurt anyone because he loves everybody.

9 In conclusion I feel that everyone that was involved
10 in this accident made huge mistakes. They all should have
11 been accountable for what happened. The other victims that
12 were involved committed illegal events as well.

13 Well, and it's very unfortunate. And I'm sorry for
14 the losses of everyone. I'm sorry for what happened with
15 my nephew.

16 And, you know, he has two daughters that are 18 and
17 one daughter that is 15. He said 14. But she had a
18 birthday Saturday. So she's 15.

19 So what I'm saying is that he would not have ever did
20 anything to my knowledge to do anything to hurt anybody
21 else's child with the respect that he has daughters around
22 the same age. So I plead -- please, that he have fair
23 justice. Thanks.

24 THE COURT: Thank you, ma'am.

25 MR. WARDER: Your Honor, we would ask Cassandra Casey

1 to be next.

2 THE COURT: If you would, ma'am, just give us your
3 full name.

4 CASSANDRA CASEY: My name is Cassandra Casey, and it's
5 hard for me.

6 The first thing that I can say is while I can't
7 believe my daddy is in here, it still affects me every day.

8 I know that this has been a tragedy to everyone, but
9 always remember that daddy is going to remember this for
10 the rest of his life.

11 Not many people consider their daddy as their best
12 friend, but like too I am. My daddy is all that I have.
13 He impressed me in so many ways.

14 My daddy is the only one that I turn to. He is my
15 inspiration. He is the only one that helped me get
16 enrolled in school when no one else would.

17 I want him to see me graduate this year. He won't be
18 able to see me. I'm 18 years old, and I never thought that
19 my daddy would do something like this.

20 I'm only a year older than the young lady that passed
21 away. I'm so sorry. If anything, my daddy would help
22 someone. He would never hurt anyone. Mistakes happen for
23 a reason, so you can learn from them. And I promise you
24 that all of us have learned a lesson. Thank you.

25 THE COURT: Thank you, ma'am.

1 CASSANDRA CASEY: You're welcome.

2 MR. WARDER: Lastly Sean Jones.

3 SEAN JONES: How are you doing, Your Honor? My name
4 is Sean Jones.

5 Kevin and my mother have been married now for nine
6 years. Kevin came at a time where my mother was going
7 through abusive relationship. She had just had a divorce.
8 And he came and he showed me and my other siblings the
9 proper way to be loved by a father figure.

10 Kevin has never hurt anybody, intentionally hurt
11 anybody. This all has just been one big tragic accident.
12 And, I mean, that's exactly what it is -- accident.

13 You know, our condolences goes out to the family
14 because we have been on the side y'all are on. We know
15 where y'all are coming from. And if there's anything we
16 can do to help, I mean, I don't know y'all would want it,
17 but we are willing. And I'm just sorry for everything
18 that's happened on Kevin's behalf.

19 My children, his grandchildren, they miss him. They
20 miss going up there on Sundays and him sneaking them snacks
21 before dinner. And, you know, it just -- we've all taken a
22 loss here that, I mean, I don't know if this is supposed to
23 be a win-over-lost situation, but everybody has lost all
24 the way around. And I just know Kevin is remorseful. He
25 said it over and over on conversations I've had with him

1 since this accident. And I don't want this one accident to
2 define his character. That's all.

3 THE COURT: Thank you, sir.

4 MR. WARDER: Your Honor, if it please the Court.

5 That's all we have. We just wanted Your Honor to know
6 that there's more to him than just this terrible event, set
7 of events.

8 THE COURT: Mr. Casey, is there anything that you
9 would like to say or want me to know or consider?

10 THE DEFENDANT: Yes. I was going to apologize to the
11 family and tell them I'm very sorry for this accident. I
12 would never nothing to happen like that. If I could change
13 anything, I would, but I can't. I'm sorry.

14 THE COURT: Thank you, sir.

15 I will find that there is a substantial factual basis
16 for the plea and that the defendant's decision to enter the
17 plea has been made freely, voluntarily, knowingly and
18 intellectually by him.

19 And I find that he's received the services from a very
20 competent and able legal counsel, services he's indicated
21 to the Court he's satisfied with and has relied on in
22 reaching the decisions that he's made. Therefore I will
23 accept the plea.

24 On the -- on the felony driving under the influence
25 resulting in death charges, these will be concurrent

1 sentences, a like sentence under each.

2 Sentence of the Court is that the defendant will be
3 confined to the State Department of Corrections for a
4 period of 25 years and the payment of a \$10,000 fine.

5 He will get credit since 10/15/2001 [sic]. I've
6 indicated while he's at the Department of Corrections my
7 desire is that he receive the addiction treatment unit.

8 It will also run concurrent with the 15-year sentence
9 and the \$10,000 fine that's on the felony driving under the
10 influence with great bodily injury.

11 Again, he'll receive credit since October the 15th of
12 2011. And, again, my desire is that he receive the
13 addiction treatment unit while he's in the Department of
14 Corrections.

15 Good luck to you, sir.

16 MR. BARNETTE: Thank you, Your Honor.

17 END OF REQUESTED TRANSCRIPT OF RECORD
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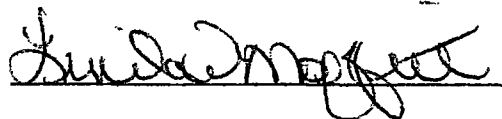
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 14th day of February 2012.

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

December 26, 2012



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of SPARTANBURG

Kevin C. Casey, #349715

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Corr. Inst.
2. Name and location of Court which imposed sentence
Spartanburg County Court House
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-42-06361 DUI Beach
 - (b) 2011-GS-42-06362
DUI Beach

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CLERK OF COURT
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(c) 2011-GS-42-06363 GBI

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

(a) February 14, 2012 25 yrs.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

results:

i. N/A

ii. _____

iii. _____

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

(a) Lawyer didn't appeal

(b) _____

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

- (a) See Attached Page.
- (b) _____
- (c) _____

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

- (a) See Attached Page
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

2012 OCT 18 AM 9:51
 H. HOFFBLANKLEY
 Clerk of Court

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

N/A

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

(a) which grounds have been presented:

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

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

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

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 CLERK OF COURT
 J. J. BLANKLEY

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

- (a) N/A
- (b) N/A
- (c) N/A

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

- (a) the name and address of each attorney who represented you:
 - i. Richard Warder, P.O. Box 26133,
Greenville, S.C.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

2012 OCT 08 AM 9:55
 MARJORIE D. HUNTER
 CLERK

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

Vacate sentence/New trial, or resentence.

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

NO

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)

VERIFICATION

Kevin C. Casey, #349715

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

Kevin C Casey

SWORN to and subscribed before me this 16th day of October, 2012.

Stewart M. Melanby (L.S.)
Notary Public

My Commission Expires: November 7, 2016

2012 OCT 18 AM 9:51
K. M. P. C. L. F. M. L. E. Y

2012-CP-42-4387

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

I, Kevin C. Casey, #349715, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true;

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

Kevin C. Casey
Applicant

SWORN or affirmed to and subscribed before me this
16th day of October, 2012.

Thomas M. Mulcahy
Notary Public

My Commission Expires: November 7, 2016

2012 OCT 18 AM 9:5
M. JOSE BURTONLEY

Applicant contend that his conviction and sentences were in violation of the Constitution of the United States and the Constitution and Laws of this State.

The Applicant is asserting a 5th, 6th and 14th Amendment violation which sets forth a prima facie violation of my constitutional rights.

The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of a fair procedure. It would be a denial of Due Process not to give the applicant an evidentiary hearing.

CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 18 AM 9:51
FR. MOFFETT/ACULEY

ANSWER'S TO QUESTION #10 ON PCR APPLICATION.

- 1) Counsel ineffective for failure to insure that applicant understood the waiving of his three constitutional rights.
- 2) Counsel ineffective for failure to apprise applicant of the sentencing consequences of his guilty plea.
- 3) Counsel ineffective for failure to place applicant's plea agreement on the record.
- 4) Counsel failed to use applicant's medical history as mitigating evidence.
- 5) Counsel ineffective for failure to put the State's case through adversarial testing.
- 6) Counsel ineffective for not advising applicant of the lesser included offenses which the jury would be instructed on if he went to trial.
- 7) Counsel failed to challenge the chain of custody of applicant's blood.
- 8) Counsel failed to challenge the fraudulent indictment's.
- 9) Involuntary plea which was unlawfully induced and not made voluntarily or with a complete understanding of the nature of the charge and the inadequacies of the plea potential.
- 10) Counsel failed to interview victim & witnesses.
- 11) Counsel ineffective for advising applicant to plead guilty when valid defenses existed to proceed to trial.
- 12) Reserve the right to Amend PCR Application Pro-Se upon receipt of transcript.

M. JEFF BLAUNLEY

2012 OCT 18 AM 9:51

CLERK OF COURT
SPARTANBURG COUNTY

ANSWER TO QUESTION #11 ON PCR APPLICATION

- 1) My attorney did not do the necessary factual investigation on my behalf.
- 2) My attorney did not try to have my case settled in a manner that would have been to my best advantage.
- 3) My attorney did not advise me of all of my rights or take any of the actions that were necessary to protect or preserve them.
- 4) My attorney never properly ascertained whether or not I actually understood or comprehended all the issues that were involved in my case.
- 5) My attorney failed to pursue any of the legal recourses that were available to him.
- 6) My attorney failed to function as the governments adversary in any sense of the word.
- 7) My attorney did not explain to me any of the elements of the crime charged.
- 8) My attorney failed to serve my cause in good faith.

2012 OCT 18 AM 9:51
THOMAS DEPUKLEY

Counsel was ineffective for failure to insure that petitioner waived the three main constitutional rights.

The U.S. Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving.

Specifically, a defendant must be aware of the privilege against self incrimination, the right to a jury trial and the right to confront one's accusers.

In addition to the requirement of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, max and minimum and the nature of the constitutional rights being waived.

Applicant did not understand the nature of the constitutional rights being waived.

The record in this case shows that the trial court did not clearly establish it.

2012 OCT 18 AM 9:51
PLUMRE DEKORLEY

Trial counsel ineffective for failing to fully apprise applicant of the sentencing consequences of his guilty pleas.

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the nature of the charges and the consequences of his plea. *Hinson v. State*, 377 S.E.2d 338; *State v. Hazel*, 271 S.E.2d; *Dover v. State*, 405 S.E.2d 391.

In Dover, the Court reversed where the defendant, who pled guilty to twenty-nine (29) indictments involving various counts of larceny and burglary, and received a sentence of twenty-five (25) years, did not previously understand that he could have received a prison term in excess of two-hundred (200) years, and that his case was a major case. Compare *Alexander v. State*, 402 S.E.2d 484.

Here, applicant's guilty plea was given involuntarily because he was not adequately advised of the sentencing consequences of his plea. Applicant's plea was given involuntarily in violation of *Boykin v. Alabama*, 395 U.S. 238 and the 5th, 6th amendments of the U.S. Constitution and Art. 1, § 12 and 14 of the S.C. Constitution. See also *Hill v. Lockhart* 474 U.S. 52.

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Applicant must be advised of any lesser included offenses which the jury would be instructed on if he went to trial. *Kerrigan v. State*, 406 S.E.2d 160

In evaluating post-trial Brady claims, the applicant can show that:

- (1) Prosecution and attorney suppress/hid evidence.
- (2) The evidence would have been favorable to the accused, and
- (3) The suppressed/hidden evidence is material.

The Brady disclosure rule requires the prosecution/attorney to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. See *State v. Kennerly*, 503 S.E.2d 214, *Brady v. Maryland*, 83 S.Ct. 1194, *United States v. Bagley*, 105 S.Ct. 3375.

Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defendant, the result of the proceeding would have been different. *Clark v. State*, 434 S.E.2d 266.

PHILOPE BLANCHET

2012 OCT 18 AM 9:51

CLERK OF SUPERIOR COURT
SPRINGFIELD, MASSACHUSETTS

Counsel failed to challenge the chain of custody. *Beaton v. Pellum*, 100 S.E.2d 534. While proof need not negate all possibility of tampering, it is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed. As stated in *Rodgers v. Commonwealth*, 197 Va. 527, 90 S.E.2d 257, 260, where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. See also *State v. Chisolm*, 584 S.E.2d 401.

THOMAS BLANCHLEY

2012 OCT 18 AM 9:51

CLERK OF COURT
SPRINGFIELD, MO

APPLICANT GUILTY PLEA FAILED TO COMPLY WITH THE MANDATES SET FORTH IN BOYKIN V. ALABAMA:

DUE PROCESS OF LAW requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. BOYKIN V. ALABAMA, 395 U.S. 238, 89 S.Ct. 1709 (1969). In STATE V. ARMSTRONG, 263 S.C. 594, 211 S.E.2d 889 (1975), the Court held that the "ESSENCE" of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In STATE V. PATTERSON, 278 S.C. 319, 295 S.E.2d 269 (1982), this state court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In Boykin, supra, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of right occurring with the guilty plea.

The record in this case shows that the trial court failed to do this. Counsel failed to protect the rights of the applicant when he failed to withdraw guilty plea and did not file motion regarding this when other sentence was given than agreed upon. SEE JORDAN V. STATE, 374, S.E. 683.

YOUNGER V. COX, 323 F. Supp. 412 also NELSON V. PEYTON, 415 F.2d 1154 (4th Cir). The absence of such advise in this matter constituted ineffective assistance of counsel.

In this application applicant asserts ineffective assistance of counsel due to the attorney failing to interview the victim, the states chief witness, before advising him to plead. If applicant's case had gone to trial rather than to the original plea proceeding, the victim's testimony could have changed the outcome, or at

MOORE CLAUDE

2012 OCT 18 AM 9:51

CLERK OF DISTRICT COURT
SPRINGFIELD, MISSOURI

16
50 least changed his decision to plead to the charges. (SEE AFFIDAVIT OF VICTIM ATTACHED).

This evidence that demonstrates that counsel was ineffective for not interviewing the victim. Applicant must state that this prejudiced the outcome of the case. STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. (2d) 674 (1984); COBB V. STATE, 305 S.C. 299, 408 S.E. (2d) 223 (1991). Where the petitioner pleads guilty or nolo contendere to the original charges, than he must demonstrate that for the ineffectiveness of his counsel, he would have requested a trial rather than entering a plea. HILL V. LOCKHART, 474 U.S. 52, 106 S.Ct. 366.

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SPAINBARGER, III
THOMAS E. BLANCHLEY

In this Application, applicant asserts ineffective assistance of counsel due to the attorney failing to interview the State's chief witness, before advising him to plead. If applicant's case had gone to trial rather than to the guilty plea proceeding, the state's witness could have changed the outcome, or at least changed his decision to plead to the charge.

This evidence that demonstrated that counsel was ineffective for not interviewing my co-defendant. This prejudiced the outcome of the case. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052; Cobb v. State, 408 S.E.2d 223.

Where the applicant plead guilty or nolo contendere to the original charges, than he must demonstrate that but for the ineffectiveness of his counsel, he would have requested a trial rather than entering a plea. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, Jordan v. State, 374 S.E.2d 683.

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 OCT 18 AM 9:51
MURKIN BLANKLEY

Clerk,

Would you please stamp-
clock and file the original
PCR application and return
the extra copy to me.

Enclosed is a self-addressed
envelope.

Thanks

Kevin C Casey 349715

CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 18 AM 9:51
H. HOPE BLANKLEY

11 Prosecution misconduct Counsel allowed prosecution misconduct in applicant case.

A conviction acquired through the knowing use of perjured testimony by the prosecution violates due process. See Napue, 360 U.S. at 269. This is true regardless of whether the prosecution solicited testimony it knew to be false or simply allowed such testimony to pass uncorrected. See Giglio v. United States, 405 U.S. 150, 153 (1972); Napue, 360 U.S. at 269. The Supreme Court has held that a defendant is entitled to relief on such a claim when there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. Kyles v. Whitley, 514 U.S. 419, 433 n.7 (1995) quoting United States v. Agurs, 427 U.S. 97, 103 (1976). See also Brady v. Maryland, 373 U.S. 83, 87 (1963) Under Brady, The government violates defendant's constitutional right to due process when it withholds material, exculpatory evidence from defense. See Brady, 373 U.S. at 83, 83 S. Ct 1149. Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Hoke, 92 F.3d at 1356 (quoting United States v. Bagley, 473 U.S. 667, 682, 105 S. Ct. 3375). The applicants conviction and sentence should be vacated.

FILED
CLERK OF COURT
SPARKS COUNTY
2020 NOV - 11 PM
M. THOMAS
CLERK

DM

State of South Carolina) 2012-CP-42-4389
 County of Spartanburg) In The Court of
 Kevin C. Casey #349715) Common Pleas.
 Applicant)
 v.) Amendant Grounds for
 State of South Carolina) Post Conviction Relief
Defendant)

Discovered Evidence : The applicant move the court to grant him leave to Amend the following ground to his PCR application.

The applicant in the above case respectfully request to Amend his original PCR application that was filed in the Clerks Office on Oct 18, 2012. The applicant request to incorporate/amend case 2012-Cp-42-3778 to his original PCR application. This case serves as after discovered evidence which was discovered on or about 9-7-12.

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 M. HOPE BUCKLEY

Therefore the applicant request that his Amendment to support his Claim be granted in the Intrest of Justice.

DM

AW

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 Kevin C. Casey, #349715,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4389

RETURN

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 SPARTANBURG COUNTY
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 M. HURF BLACKLEY

Respondent, making its Return to the application for post-conviction relief (PCR) filed October 18, 2012, and amendment filed November 29, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the November 2011 term of the Spartanburg County Grand Jury for two counts of felony DUI – death and reckless homicide (2011-GS-42-6361, -6362) and felony DUI – great bodily harm (2011-GS-42-6363). Richard Warder, Esquire, represented Applicant. On February 14, 2012, Applicant pled guilty to two counts of felony DUI – death and felony DUI – great bodily harm. The two counts of reckless homicide were dismissed as part of the plea agreement. He was sentenced by the Honorable J. Mark Hayes II, to confinement for twenty-five (25) years for each of the felony DUI – death charges and fifteen (15) years for felony DUI – great bodily injury, all to be served concurrently. Applicant did not appeal his convictions or sentences.

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AW

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to insure that Applicant understood the waiving of his three constitutional rights,
 - b. Counsel failed to apprise Applicant of the sentencing consequences of his guilty plea,
 - c. Counsel failed to place Applicant's plea agreement on the record,
 - d. Counsel failed to use Applicant's medical history as mitigating evidence,
 - e. Counsel failed to put the State's case through adversarial testing,
 - f. Counsel failed to advise Applicant of the lesser included offenses which the jury would be instructed on if he went to trial,
 - g. Counsel failed to challenge the chain of custody of Applicant's blood,
 - h. Counsel failed to challenge the fraudulent indictments,
 - i. Counsel failed to interview victim & witnesses,
 - j. Counsel advised Applicant to plead guilty when valid defenses existed to proceed to trial;
2. Involuntary guilty plea, in that;
 - a. Plea was unlawfully induced and not made voluntarily or with a complete understanding of the nature of the charge and the inadequacies of the plea potential.
3. "Reserve the right to Amend PCR Application Pro-Se upon receipt of transcript."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record.

Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

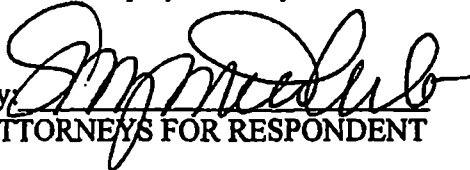
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 14 PM 4:28
M. HUFF BLACKLEY

January 9, 2014

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SPARTANBURG COUNTY
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2014 JAN 13 AM 11:14
M. HUFF BLACKLEY

Kevin C. Casey)	7 th Judicial Circuit
Plaintiff)	Court of Common Pleas
)	
v.	)	Motion to Relieve/Appoint
	)	New Counsel
State of South Carolina)	
Defendant	)	Case No: 2012-CP-42-4389
_____)	

To the presiding Judge of Common Pleas:

I, Kevin Casey, Plaintiff, file this pro-se motion in regards to the above referenced case number and matter at hand. Mr. Casey, respectfully requests that his current court appointed counsel be relieved of this legal matter and be appointed new counsel. His current legal representative is:

Mrs. Leah B. Moody
Law Office of Leah B. Moody. LLC
235 East Main Street
Suite 115
Rock Hill, S.C. 29730

Mr. Casey requests that attorney Moody be relieved as counsel due to the following grounds.

- 1) Attorney Moody was contacted by U.S. Mail on April 24, 2014 in regards to contact information for his witness Donald Moore. Attorney Moody has failed to contact said witness and;
- 2) Mr. Casey has had no contact with attorney Moody since his April 10, 2014 PCR hearing. This hearing was subsequently placed in a "continuance" status due to attorney Moody failing to contact Mr. Casey's witnesses: Since said hearing, she has still made no contact with said witness and;

3) Attorney Moody was contacted by U.S. Mail on January 14, 2014 in reference to amending his PCR issues. To this date, she has failed to address this matter and;

4) Attorney Moody's professional conduct has dropped well below a standard of being effective and is currently hindering Mr. Casey's due diligence in this entitled matter.

With the above reasons cited, I do hopefully pray that this motion is granted and appointed new legal representation.

June 30, 2014

KCC

Kevin C. Casey, 349715
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

September 24, 2014

Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Rock Hill, SC 29730

RE: Kevin C. Casey v. State of South Carolina
C.A. No. 2012-CP-42-4389

Dear Ms. Moody,

I am requesting the toxicology report to be subpoenaed of Jason Matthew Simmons from Greenville Hospital System University Medical Center.

I am also requesting any and all documentation of my, (Kevin Casey), case file pertaining to this accident on 10-15-11.

Sincerely,

Kevin C. Casey

s/ Kevin C Casey

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

State of South Carolina
County of Spartanburg
Kevin C. Casey, SCDC # 349715

In the Court of Common Pleas
Seventh Judicial Circuit

Applicant,

C/A No. 2012-CP-42-4389

v

State of South Carolina
Respondant,

Proof of Service

I Kevin C. Casey (Applicant), in the above action, certify that I have this day served; a letter upon the following parties, by depositing one (1) original and one (1) copy of the same in the U.S. Mail by and through the Perry Correctional Institute's legal mail system. The below parties have been served at the following addresses:

1. M. Hope Blackley
Clerk of Court, Spartanburg County
Post Office Box 3483
Spartanburg, SC 29304-3483

2. Suzanne H. White
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

3. Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Rockhill, SC 29730

Sworn to and Subscribed before me
this 24th Day of September 2014
Notary Nancy C. Merchant
Expires 1-23-2023

S/ Kevin C. Casey
Kevin C. Casey, 349715
Perry Correctional Institution
Q1B-214
430 Oaklawn Road
Pelzer, SC 29669

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 SEP 29 AM 11:50
M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 KEVIN C. CASEY,) TRANSCRIPT
 5) APPLICANT,) OF
 6) vs.) RECORD
 7 STATE OF SOUTH CAROLINA,) 2012-CP-42-4389
 8) RESPONDENT.)

9
 10) September 17th, 2014
 11) Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

17 LEAH B. MOODY
 18 ESQ.
 Attorney for the Applicant

19 J. CLAYTON MITCHELL and SUZANNE WHITE
 20 ASSISTANT ATTORNEY GENERALS
 Attorneys for the State

21

22

23

24

25

PAMELA E. GREEN
 Circuit Court Reporter
 Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

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THE COURT: All right. You may call the next case.

MR. MITCHELL: Your Honor, the next case is Kevin Casey versus the State of South Carolina. Docket Number 2012-CP-42-4389.

Applicant was indicted at the November 2011 term of the Spartanburg County Grand Jury for two counts of Felony DUI where death results and Felony DUI where great bodily harm results. Richard Warder represented Applicant, and, on February 14th, 2012, Applicant pled guilty to two counts of Felony DUI where death results and to the Felony DUI with great bodily injury. The two counts of reckless homicide were dismissed as part of the plea agreement.

He was sentenced by the Honorable J. Mark Hayes to confinement for 25 years on each Felony DUI where death results charge and 15 years on the felony DUI with great bodily injury. He did not appeal his conviction or sentence.

Applicant filed this applicant for post-conviction relief on October 18th, 2012, and then filed an amended application on November 29th, 2012. Applicant is present and represented by Counsel Leah Moody.

THE COURT: Ms. Moody, I'll be happy to hear from you.

MS. MOODY: Thank you, Your Honor.

1 May it please the Court?

2 THE COURT: Yes, ma'am.

3 MS. MOODY: I guess I need to turn this over to my
4 client to allow him to speak with the Court. I believe he
5 has a motion with regard to going forward on his case.

6 THE COURT: All right. Well, let's ask Mr. Casey to
7 please stand.

8 (WHEREUPON, the Applicant complies.)

9 THE COURT: Sir, if you would, to the best of your
10 ability, raise your right-hand.

11 (WHEREUPON, the Applicant was placed under oath at this
12 time.)

13 THE COURT: Put your hand down.

14 (WHEREUPON, the Applicant complies.)

15 THE COURT: Mr. Casey, your attorney informs me that
16 there's a issue or a matter that you would like to take up
17 with the Court before we go forward in your PCR, and, at
18 this time, I'll be happy to hear from you, sir.

19 THE APPLICANT: Yes, sir. I'd filed a motion to
20 relieve counsel.

21 THE COURT: Yes, sir.

22 Well, there needs to be -- you need to articulate some
23 reason as to why the Court should do that. Generally people
24 benefit from the advice of an attorney. I -- and, of
25 course, if your attorney was appointed, this Court would

1 like to know the reason why you think that that attorney
2 should be replaced.

3 The State doesn't have an obligation just to continue
4 to appoint attorneys for you. So if there is not a rational
5 basis for you to dismiss the attorney, then I would not be
6 of a mind to appoint another attorney for you. So there
7 needs to be some rational basis or reason why you feel that
8 that, the attorney that was appointed can not handle your
9 case and I haven't heard that yet.

10 So I'm waiting to hear from you as to why you think the
11 Court appointed attorney should be either replaced or
12 removed.

13 Now, you have every right to represent yourself if you
14 choose to do that. That would be your choice as -- to
15 whether you'd like to go forward without an attorney, and I
16 don't know your wishes in that regard. So there's some
17 things you and I need to discuss at this point in time as --
18 concerning your representation.

19 So I'll listen to you.

20 THE APPLICANT: I'd -- the reason I filed the motion, I
21 was asking for some evidence, toxicology reports and other
22 things I was needing to substantiate my claims and I haven't
23 received them. I haven't had a conversation with Ms. Moody
24 since the last PCR hearing, which was April 10th. We got
25 a continuance for I didn't have my witnesses that I needed

1 to get and still haven't received nothing or heard nothing
2 from my witnesses.

3 I have documentations for -- I can show you for stuff I
4 was requesting and the letter I had wrote her since the last
5 PCR hearing and I haven't received nothing else or still
6 haven't heard nothing.

7 THE COURT: what's the date of the letter, sir?

8 THE APPLICANT: The last one was the 24th of---

9 THE COURT: Of what month?

10 THE APPLICANT: April.

11 THE COURT: April.

12 THE APPLICANT: The last PCR hearing.

13 THE COURT: And you're asking concerning -- you know,
14 why don't you pass the letter up to me?

15 Let me look at it.

16 (WHEREUPON, the Applicant complies.)

17 THE COURT: Just give me a minute to look over it, sir.

18 (Pause.)

19 THE COURT: All right. Anything else you want to make
20 me aware of, sir?

21 THE APPLICANT: No, sir.

22 THE COURT: All right. Anything else you want to make
23 me aware of, sir?

24 THE APPLICANT: No, sir.

25 THE COURT: All right. I'll hear from -- Ms. Moody,

1 can you shed some light on the situation in Mr. Casey's
2 case?

3 MS. MOODY: Yes, sir, Your Honor.

4 We've -- I've had this case for quite sometime. I've
5 had it since December 2012 and I have requested everything
6 that Mr. Casey has asked for including copies of the
7 affidavits that are filed with the Clerk's Office regarding
8 any discovery that was turned over to Mr. Casey's attorney.
9 I even got Mr. Casey's attorney to send me his previous
10 file. He sent those things on disk. Every time Mr. Casey's
11 asked me a question I answer the questions.

12 Just for the Court's purpose, this was a plea. And so
13 the witnesses that he's speaking of, one of the witnesses
14 here in the courtroom today, Mr. Donald Moore, not really
15 sure how he can like help substantiate his case against his
16 attorney as to the prejudice because one of the things I've
17 discussed with Mr. Casey is that you have to prove that your
18 attorney some, in some way, prejudiced you in your matter.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. MOODY: Based on what I understand from his
21 letters, this one is one of the many that I've received, is
22 from February 18th, 2014, where he asked questions that go
23 into whether or not he should of been entitled to a reckless
24 homicide versus a DUI Felony death. I went through. I
25 pulled all the cases. I provided him the cases and

1 explained to him that a plea offer is a plea offer. If the
2 state offers him a DUI Felony death, that's the offer. Your
3 attorney can not make them allow you to plead to a reckless
4 homicide. So---

5 THE COURT: The defendant doesn't get to set the offers
6 by the State. That doesn't happen.

7 MS. MOODY: Correct.

8 THE COURT: Right.

9 MS. MOODY: So the other option is you get to go to
10 trial. So he elected to follow his counsel's advice on a
11 negotiated plea. I don't know the exact conversation that
12 took place. However, he did provide me with two witnesses,
13 Cassandra Casey and Teresa Pickens.

14 Cassandra Casey, I believe, is his daughter and I
15 talked to her at length before the previous PCR. I talked
16 to her for about an hour. At that time I tried to get her
17 address so that I could subpoena her to court. She refused
18 to give it to me at that time and I have then asked her if
19 she would talk to her father so that she could, you know,
20 decide whether she wanted to plea on, not plea, but testify
21 on his behalf.

22 The address to Teresa Pickens, which is I believe his
23 sister-in-law, but I know it's her aunt, she would not give
24 me that individual's address, and I asked her if she could
25 have Ms. Pickens call my office. Did not hear from Ms.

1 Pickens.

2 So I'm a little bit limited in terms of his daughter
3 did not want to testify. So I felt like that that was not
4 gonna be -- bode well in his favor as well as she was not
5 present during the conversation with his attorney as to why
6 he was gonna plead. She was there, I believe, on the same
7 day but she was hesitant about testifying.

8 As far as Mr. Moore's concerned, he's here. He was
9 there on the night of the car accident -- well, the Felony
10 DUI. I don't know how he would be able to prove what my
11 client is trying to prove. I believe he's trying to prove
12 contributory negligence, but that doesn't even matter, if
13 you decided to take a plea and you're just mad because you
14 didn't get the plea you wanted.

15 THE COURT: I think I got, got the picture.

16 Mr. Casey, what is it that you asked her that she
17 hasn't answered?

18 THE APPLICANT: I wasn't trying to prove contributory
19 negligence. It was something else and I---

20 THE COURT: well, that wasn't my question. I asked
21 what is it that you've asked her or what questions of yours
22 has she not responded to.

23 THE APPLICANT: I was asking her to get my witnesses,
24 my daughter and my aunt, and they didn't---

25 THE COURT: well, she apparently has made efforts to

1 contact those individuals. She has subpoenaed -- one of the
2 witnesses is present.

3 THE APPLICANT: No, sir, she haven't. I've talked---

4 THE COURT: Let me finish saying it.

5 what she said was she has talked to the daughter and
6 the daughter does not wish to testify on your behalf.

7 THE APPLICANT: That's not true.

8 THE COURT: Go ahead.

9 what?

10 THE APPLICANT: That's not true.

11 THE COURT: well, I don't know what to say other than
12 she's -- she indicated she talked to her and she didn't want
13 to testify, and you're telling me that's not true. And so
14 apparently there -- efforts have been made to talk to her by
15 your attorney.

16 THE APPLICANT: No, sir, I mean she's even called her
17 last week to get in touch with her.

18 THE COURT: Okay. So she did call her?

19 THE APPLICANT: My daughter called her and --.

20 THE COURT: Okay.

21 THE APPLICANT: She said I haven't got a response
22 either.

23 THE COURT: Have you talked to the daughter, Ms. Moody?

24 MS. MOODY: Your Honor, I've been in my office last
25 week. We tried to contact him to talk to him about his

1 case. I was in a trial in York County with four other
2 attorneys and I had my paralegal contact him to go over the
3 questions.

4 THE COURT: Right.

5 MS. MOODY: He refused to talk to her. And so I didn't
6 know that his daughter was gonna call. I have an answering
7 service till about nine o'clock at night. My paralegals, my
8 law clerk, they tend to give me all my messages, but I don't
9 have Cassandra Casey listed unless my paralegal failed to
10 give me the message. I don't have a message.

11 THE COURT: I see.

12 Is your daughter present?

13 THE APPLICANT: No, sir. No, sir, and my --.

14 THE COURT: Have you talked to your daughter?

15 THE APPLICANT: A couple days ago.

16 THE COURT: Did you tell her the hearing was today?

17 THE APPLICANT: Yes, sir, I asked her -- she said she
18 didn't receive a subpoena or nothing.

19 THE COURT: So she won't come unless she's subpoenaed?

20 THE APPLICANT: No, cause of her work. She just start
21 back working from my grandson had passed away and she has
22 been out of work for a while.

23 THE COURT: All right. Interesting.

24 Anything else you feel that she hasn't done that you've
25 asked her about?

1 THE APPLICANT: Toxicology report that I need.

2 THE COURT: What's the status of the toxicology report?

3 MS. MOODY: He wants one of the victim's toxicology
4 reports. I've given him everything that I had that was
5 given to the State.

6 THE COURT: That's the discovery in the case?

7 MS. MOODY: Yes, sir, and so one of the things, when he
8 talks about the toxicology, is that the driver of -- it's a
9 moped and the moped and he was driving his car. The driver
10 of the moped -- there was some kind of discrepancy as to who
11 was actually driving it but I don't think that it got
12 down---

13 THE COURT: Driving the moped?

14 MS. MOODY: The moped, yes, sir. I don't think it got
15 down into that far because he decided to---

16 THE COURT: Offer a plea.

17 MS. MOODY: Yes, accept the negotiated plea.

18 THE COURT: Okay.

19 MS. MOODY: So I don't know that that would of had any
20 impact on as to whether he himself was driving under the
21 influence and caused the death of two individuals.

22 THE COURT: So you're wanting the toxicology report of
23 the moped operator?

24 THE APPLICANT: Yes, sir, it was the dirt bike too.

25 THE COURT: All right. Anything else you feel she

1 hasn't done?

2 THE APPLICANT: No, sir.

3 THE COURT: All right. Now, if you wish to dismiss
4 this attorney, you have the right to do that. I've not yet
5 heard anything that I would say was deficient in what she
6 has done. So I've not of a mind to appoint another attorney
7 for you if that is -- this attorney is dismissed at this
8 point in time.

9 Now, do you -- how do you wish to proceed?

10 THE APPLICANT: Proceed as of --?

11 THE COURT: Right now.

12 Do you want me to dismiss the attorney?

13 THE APPLICANT: Yes, sir.

14 THE COURT: And -- but I'm indicating I'm not going to
15 appoint another attorney.

16 THE APPLICANT: I understand.

17 THE COURT: Do you understand that?

18 THE APPLICANT: Yes, sir.

19 THE COURT: All right. I'll grant his motion.

20 Ms. Moody, if you'll prepare an order, I'll sign it.

21 MS. MOODY: Thank you, Your Honor.

22 THE COURT: And indicate in there that the Court does
23 not find that your services have been deficient at this
24 point in time. Therefore, the Court is not appointing
25 another attorney in the case.

1 I'll return your letters to you, sir.

2 (Pause.)

3 THE COURT: Ms. Moody, if you could, before leaving
4 for -- before Mr. Casey leaves, you may want to go over with
5 him the things he'll need to do to be prepared for his
6 hearing when it is next scheduled. So I'll ask you to
7 advise him as to what he might need to do to subpoena
8 witnesses and things of that nature so that he will be
9 prepared for the hearing.

10 MS. WHITE: And, Your Honor, I would just like to note,
11 to note that the next scheduled term is the week of
12 November 3rd.

13 THE COURT: Okay.

14 MS. WHITE: It's before the Honorable Keith Kelly. So
15 it would---

16 THE COURT: It would probably come up at that time?

17 MS. WHITE: Yes, Your Honor.

18 THE COURT: You understand that, sir?

19 THE APPLICANT: Yes, sir.

20 THE COURT: So you have until November 3rd to get
21 your case ready. Ms. Moody will advise you as to what you
22 need to do yourself to get the clerk to issue subpoenas for
23 information and/or individuals. You'll need to talk to her
24 about getting those matters served through the Sheriff's
25 Office. I'm sure she can advise you as to how you can take

1 care of those facts, factors.

2 Good luck to you, sir.

3 THE APPLICANT: Thank you.

4

5

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

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 17th day of September, 2014.

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

January 23rd, 2017



PAMELA E. GREEN, Court Reporter

OCT 15, 2014

M. Hope Blackley
Clerk of Court, Spartanburg County
Post office Box 3483
Spartanburg, South Carolina 29304-3483

re: Kevin C. Casey v. State Of South Carolina
C.A. No.: 2012-CP-42-4389

Dear Ms. Blackley

I had a PCR Hearing on 9/17/14. I filed a motion to have my Counsel (Leah B. Moody) relieved before this hearing. Honorable Judge Couch granted relief of Counsel, but I never received an order for relief of Counsel. Can you please help me with this matter. Sincerely Kevin C. Casey

Kevin C. Casey # 349715
PCT Q1 B 214
430 Oaklawn Rd.
Pelzer, SC 29669

CLERK OF COURT
SPARTANBURG COUNTY
2014 OCT 23 PM 12:59
M. HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Kevin C. Casey,
Applicant.

C/A NO.. 2012-CP-42-4359

v.

APPLICANT'S OBJECT TO THE
HONORABLE ROGER L. COUCH (PCR
JUDGE) RULING/ORDER TO DISMISS
PCR COUNSEL AND FAILURE TO
APPOINT NEW PCR COUNSEL

The State of South Carolina,
Respondent.

Now comes Applicant objecting to the Honorable Roger L. Couch presiding PCR Judge's Ruling/Order To Dismiss PCR Counsel and Failure to appoint new PCR counsel pursuant to the South Carolina Post-Conviction Relief Act, The South Carolina Constitution, Article I §3 (Due Process of Law), The United States Constitution Fourteenth Amendment (Due Process Clause), and Case V. Nebraska, 331 U.S. 346 (1965) and it's progeny.

FACTS

Applicant was involved in a DUI homicide (10/15/11) where in two (2) individuals were killed while riding on the back of a motor cycle on Highway 417 in Spartanburg County. Said motor cycle was being driven by another individual (Jason M. Simmons) who was operating the bike without proper lights on the back or front of the bike.

Mr. Simmons had also been drinking and was injured himself during this unfortunate accident. Applicant did plead guilty on (2/14/12) under the pretense of receiving a ten year sentence as his lawyer told him he would get. Applicant even was asked to sign some sentencing sheets two weeks before he plead guilty, the sheets represented he would get ten years. The same sentencing sheets were then written over and the time he received was different from what he was told.

2014 NOV 14 PM 2:24
M. HOPE BRADLEY
CLERK OF COURT
SPARTANBURG COUNTY



Unknown to Applicant at his guilty plea, the Solicitor committed knowing acts of misconduct. As Applicant was in court to plead guilty, the Solicitor was explaining the facts of their case to the court and stated "Jason Matthew Simmons" was the driver of the motor cycle where the two people were struck and killed. The Judge stopped the Solicitor and asked for clarification on who actually was driving the bike. The Solicitor stopped the plea and went and talked with Mr. Simmons, who was sitting in the courtroom. After this Mr. Simmons said he was a passenger, the Solicitor presented to the court Mr. Simmons was the passenger. See guilty plea transcript page 22, lines 12-16. In spite of various reports in the solicitor's possession that clearly stated and proved Mr. Simmons was the driver of the motor cycle, the Solicitor not only allowed Mr. Simmons to commit perjury, but assisted him with it by telling the court as a officer of the court, Mr. Simmons was not the driver and then went on with the guilty plea. See Riddle v. Jaming, Op. No. 26153, heard February 1, 2006, filed May 22, 2006 (366 S.C. 39, 631 S.E.2d 70 (S.C. 2006)), Miller v. Pate, 336 U.S. 1, 37 S.Ct. 735 (1967), and Mooney v. Hoohan, 294 U.S. 103, 112 (1935) (Per Curiam). See exhibits ___.

So after guilty plea counsel tricks Applicant into believing he will get ten years if he pleads guilty and even has him sign some sentencing sheets to this affect weeks before the plea and then the sentencing sheets are altered to fit the time the Judge actually gave Applicant. The Solicitor then knowingly commits acts of prosecutorial misconduct. Applicant then files a PCR application trying to assert his guilty plea was not entered voluntarily, knowingly, and intelligently and he was denied due process of law. See sentencing sheet, exhibit ___.

The Court then appoints attorney Leah B. Wood, (12/20/12) who just utterly refuses to help Applicant by ways of the following.

- 1). Ascertain Mr. Simmons "Toxicology Report."
- 2). Refuses to subpoena any witnesses Applicant requested per 13.

such as interviewing Donald Moore, who was the second witness on the accident scene and actually spoke with Mr. Simmons shortly after this accident while Mr. Simmons was lying in the field hurt and was asked what happened, and Mr. Jason M. Simmons stated spontaneously to Mr. Moore that he (Jason M. Simmons) was driving the bike and the car hit us. Mr. Donald Moore has even given an affidavit to this effect and is willing to testify about it. See affidavit, exhibit ___.

Then there is Applicant's two other witnesses, Teresa Pickens and Casandra Casey, who heard Applicant's plea counsel, Mr. Richard Warden tell Applicant if he plead guilty, he would receive ten years. PCR counsel, Ms. Moody refused to subpoena these witnesses also. Ms. Moody even refused to amend Applicant's PCR applicant with any kind of claims (S.C.R.C.P. 11.1 (d)). Ms. Moody refused to communicate with Applicant about his PCR claims and she became upset once Applicant filed a motion (7/7/14) to have her removed as his PCR counsel. Applicant went to a PCR hearing on September 17, 2014, his motion to relieve counsel was addressed by the Honorable Roger L. Couch, who granted the motion, but told Applicant he would have to represent himself now. Said Judge never made any findings as to why Applicant would be forced to represent himself in such a serious situation as this. Honorable Couch also instructed Ms. Moody to help Applicant subpoena the witnesses he wanted. Ms. Moody wrote Applicant and told him she would tell him how to subpoena witnesses but not assist him with it and then ended her with "you now represent yourself."

Attorney Leah B. Moody has not met her obligation in this PCR matter and no doubt she has turned in a voucher for work she has not done and her unethical attitude in this matter should not go unchecked, as she is a member of the South Carolina Bar and also took a oath of office to uphold the constitution, which she has not done in this matter. And why the PCR judge would force Applicant to attempt to represent himself in this matter is beyond Applicant.

With Applicant having proof of the things his motion mentions, it would seem he will be denied due process of law if he is not appointed PCR counsel to investigate such claims and assist Applicant with the presentation of those claims. It would be in the interest of justice to appoint new PCR counsel and investigate the herein allegations.

CONCLUSION

For the foregoing reasons this motion should be granted.

Dated: 11-12-14

Kevin C Casey
Kevin C. Casey

CLERK OF COURT
SPARTANBURG COUNTY
2014 NOV 14 PM 2:24
14 HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Kevin C. Casey,
Applicant,

Case No. 2012-01-01-0399

v.

The State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I, Kevin C. Casey, hereby certify that on this day, I have served a "Applicant's Motion To The Honorable Roger D. Couch (PCR Judge) Filing/Order To Dismiss PCR Counsel and Petition To Appoint New PCR Counsel" upon the following Parties. One (1) original and one (1) copy to The Spartanburg County Clerk of Court, M. Hope Blackley/ P.O. Box 3488/ Spartanburg, S.C. 29304, one (1) copy to The South Carolina Attorney General's Office/ P.O. Box 11543/ Columbia, S.C. 29211, and one (1) copy to The South Carolina Supreme Court, Daniel Shearouse, Clerk/ P.O. Box 11320/ Columbia, S.C. 29211; by and through Perry Correctional Institution's Legal Mail System.

SUBSCRIBED AND SWORN TO before me
This 12 day of November, 2014

Kevin C Casey
Kevin C. Casey

Notary: Tamara Crwell

My Commission Expires
September 25, 2023

Expire: _____

CLERK OF COURT
SPARTANBURG COUNTY
2014 NOV 14 PM 2:24
M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Kevin C. Casey, #349715,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4389

ORDER OF CONTINUANCE

This matter comes before the Court by way of an application for post conviction relief. An evidentiary hearing was convened on September 17, 2014, at the Spartanburg County Courthouse. Applicant was present and represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented Respondent.

The Applicant requested to relieve counsel and a continuance to secure retained counsel. The Respondent took no position on the motion. This Court granted the continuance until the next appropriate term for post-conviction relief matters in the Seventh Judicial Circuit. Additionally, this Court instructed Applicant that if he chose to relieve his appointed counsel in this matter, the Court **would not** appoint further counsel in the event that Applicant is unable to retain an attorney. Applicant will be required to proceed *pro se* in this matter; however, Ms. Moody is instructed to assist Applicant in securing the issuance of subpoenas from the Spartanburg County Clerk of Court's office.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued until the next appropriate post-conviction relief term of court for the Seventh Circuit;
2. Ms. Leah B. Moody, Esquire, is relieved from the representation of the Applicant and there will be no other appointed attorney;


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 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 NOV 24 PM 4:35
 M. HOPE BLAUGHER



✓

3. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 24th day of November, 2014.



Roger L. Couch
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 NOV 24 PM 4:35
M. HOPE BLACKLEY

PCR

Kevin Casey, #349715
 PCI Q1-B214
 430 Oaklawn Rd.
 Pelzer, SC 29669

December 21, 2014

Clerk Of Court, Spartanburg Courty
 P.O. Box 3483
 Spartanburg, SC 29304

RE: Kevin Casey C/A No: 2012-CP-42-4389

Dear Mrs. Blackley,

I received your letter from your senior court clerk A. Miller, dated November 7, 2014, stating we do not have the signed order from the judge as far as for your request to relieve Leah B. Moody as your counsel as of yet. Once Judge Cole signs the order we will mail you a copy.

I also sent a letter to be clocked and stamped and returned to me from Leah B. Moody when I sent this request for the order, but your office have not returned. Can you please return this letter to me. With being said, I had filed a motion to object to the Honorable Roger L. Couch (PCR Judge) Ruling/Order to dismiss PCR counsel and failure to appoint a new PCR counsel.


With the Judge failure to appoint me another counsel, I am now pro-se and scheduled for the PCR court docket on January 16, 2015. With "eyes wide open," I'm requesting to be appointed counsel. I have no legal background and this case is very complicated considering I need a toxicology report and a subpoena for Jason M. Simmons, who was admitted on the 10/15/2011 and discharges on 10/21/2011 from the Greenville Hospital system. I also need help with subpoena for witnesses Teresa Pickens, P.O. Box 723 Spartanburg, SC 29304 and Cassandra Casey, 691 Rainbow Lake Rd. Boilingsprings, SC 29316. Any help on my behalf would greatly be appreciated. ~~I also need to subpoena Donald Hill~~

Also, I'm sending a return envelop for this to be stamped and clocked and for other information requested.

Sincerely,

Kevin C. Casey

Kevin Casey, #349715

OFFICE OF THE CLERK OF COURT
 SPARTANBURG, SC 29304
 2014 DEC 29 AM 11:11
 M. HOPE BLACKLEY
 SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Kevin C. Casey, SCDC# 349715
Applicant / Petitioner

vs.

State of South Carolina,
Respondent.

COURT OF COMMON PLEAS

Case # 2012-CP-42-04389

ORDER

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: denied granted _____ under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:

_____ The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied _____ under advisement based upon the _____ statute of limitations and/or _____ the successive nature of the application or _____ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

_____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

_____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.

5. Other: Continued by Chief Administrative Judge

6. The court further orders:

_____ The _____ Attorney General _____ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days.

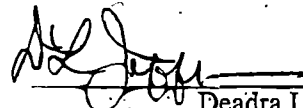
_____ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

_____ The court does not request proposed orders.

IT IS SO ORDERED.

Date: January 16, 2015

Spartanburg, S.C.


Deadra L. Jefferson
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
JAN 16 2015
M

January 23, 2014

M. Hope Blackley, Clerk
Spartanburg County
P.O. Box 3483
Spartanburg, SC. 29304

RE: Kevin C. Casey v. State of SC.
C/P No: 2012-cp-42-4389

Dear Mrs. Blackley:

I mailed a letter to your office dated October 9, 2014, from my attorney Leah B. Moody, to be date stamped, filed, and a copy mailed back to me for my records.

As of the date of this letter, I still have not received that copy from your office. Please forward a copy of that letter to me as soon as possible. I will need it for my P.C.R. hearing.

Also, I am in need of serving a subpoena for Toxicology results on a Hospital. Please inform me how I can go about doing this, as it is also important for my P.C.R.

And I have requested an attorney to be appointed for handling my case, by filing a Motion with the court. I still have received no response regarding that motion. Please tell me what the court's decision is, as this Motion was filed on November 14, 2014.

Lastly, I was informed that my P.C.R. Hearing was to be held on January 16, 2015, and was not transported to that hearing. I have received no word from anyone about why. Please inform me as to the reason, and what to ~~expect~~ next.
expect

Thank you for your time, and I look forward to your response.

Sincerely, Kevin C. Casey

Kevin C. Casey, 349715
P.C.I., Q1B-214
430 Oaklawn Road
Pelzer, SC. 29669

CLERK OF COUNTY
SPARTANBURG COUNTY
2015 JAN 27 PM 1:06
M. HOPE BLACKLEY

SCANNED

M. Hope Blackley, Clerk of Court,
Spartanburg County
P.O. Box 3483
Spartanburg, SC 29304-3483

County

Phone (864) 221-2211
Fax (864) 221-2211

Dear Ms. Blackley,

Blackley

Enclosed is a subpoena for
a toxicology report that I have
been requesting. Can you help
me with the proof of service
for subpoena and provide me
with the information needed
to serve and complete the
following document. Thank you

February 4, 2015

we cannot fill out any
legal advice.

Wesley L. Casey
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 29 AM 10:27
HOPE BLACKLEY

The State of South Carolina	)	In the Court of Common Pleas
County of Spartanburg	)	The Seventh Judicial Circuit
)	
Kevin C. Casey,	)	C/A: 2012 – CP – 42 - 4389
Applicant)	
	)	Notice of Motion AND Motion
Vs.	)	To Amend Original Post-Conviction
	)	Relief Application
The State of South Carolina,)	
Respondent)	
)	

Applicant (“Kevin Casey”) hereby moves this honorable Court to amend his original Post Conviction Relief Application, Pursuant to the South Carolina Post Conviction Relief Act Rules and the South Carolina rules of Civil Procedure.

Applicant request the following grounds be amended:

Applicant contends he was denied effective assistance of counsel and due process of law in violation of the South Carolina Constitution, Article I, §§ 3 and 14; and the United States Constitution Sixth and Fourteenth Amendments.

Applicant contends his guilty plea was not entered voluntarily, knowingly, and intelligently.

Applicant was involved in a DUI homicide (10/15/11) wherein two (2) individuals were killed while riding on the back of a motor cycle on Highway 417 in Spartanburg County. Said motor cycle was being driven by another individual (Jason M. Simmons) who was operating the bike without proper lights on the back or front of the bike. See Exhibit A

Mr. Simmons had also been drinking and injured himself during this unfortunate accident. (See Exhibit B) Applicant did plead guilty on 2/14/12 under the pretense of receiving a ten year sentence as his lawyer told him he would get. Applicant even was asked to sign some sentencing sheets two weeks before he plead guilty that represented he would be sentenced to ten years. (See Exhibit B) The same sentencing sheets were then written over and the time he received was different from what he was told. (See Exhibit C)

Unknown to applicant as his guilty plea hearing, the Solicitor committed knowing acts of misconduct. As applicant was in Court to plead guilty, the solicitor was explaining the facts of their case to the Court and stated "Jason Mathew Simmons" was the driver of the motorcycle where the two people were struck and killed. The judge stopped the Solicitor and asked for clarification on who was actually driving the dirt bike. The Solicitor stopped the plea to speak with Mr. Simmons, who was sitting in the courtroom. After this Mr. Simmons said he was a passenger, the Solicitor then presented to the Court Mr. Simmons was the passenger.

(See Exhibit D) See guilty plea transcript, page 22, lines 12-16. In spite of various reports in the Solicitor's possession that clearly stated and proved Mr. Simmons was the driver of the motorcycle. The Solicitor not only allowed Mr. Simmons to commit perjury, but assisted him with it by telling the Court as an officer of the Court, Mr. Simmons was not the driver and then went on with the guilty plea. See Riddle Vs. Ozmint, op. No. 26153, heard February 1, 2006, filed May 22, 2006 (369 S.C. 39, 631 S.E.2d 70 (S.C.2006)); Mooney Vs. Holohan, 294 U.S. 103, 112 (1935) (Per Curiam). See Exhibits E, F, G, H, I.

After guilty plea, Counsel tricks applicant into believing he will receive a ten year sentence if he pleads guilty and even has him sign sentencing sheets that are altered to fit the time the Judge actually gave applicant. The Solicitor then knowingly commits acts of prosecutorial misconduct. Applicant then files a PCR Application trying to assert his guilty plea was not entered voluntarily, knowingly,

and intelligently and he was denied due process of law. See sentencing sheet Exhibit C.

Trial Counsel failed to interview Mr. Donald Moore, who was the second witness on the accident scene and actually spoke with Mr. Simmons shortly after this accident while Mr. Simmons was lying in the field hurt. When Mr. Jason M. Simmons was asked what happened, he stated spontaneously to Mr. Moore that he (Jason Simmons) was driving the bike and the car hit us. Mr. Donald Moore has even given an affidavit to this affect and is willing to testify about it. See Affidavit, Exhibit J & K. Then there is Applicant's two other witnesses, Teresa Pickens and Cassandra Casey, who heard Applicant's plea counsel Mr. Richard Warder tell applicant if he plead guilty he would receive ten years. See Boykin Vs. Alabama, 395 U.S. 238 (1969), Pittman Vs. State, 331 S.C. 597, 524 S.E.2d 623 (1999), Strickland Vs. Washington, and it's progeny.

Conclusion

If but not for Counsel's ineffectiveness and being denied due process of law, applicant would not have plead guilty but insisted on going to trial.

s/ Kevin C. Casey
Kevin C. Casey

The State of South Carolina)
 County of Spartanburg)
 Kevin C. Casey,)
 Applicant)
 Vs.)
 The State of South Carolina,)
 Respondent)

In the Court of Common Pleas
 Seventh Judicial Circuit
 C/A No: 2012 - CP - 42 - 4389

Certificate of Service

I, Kevin C. Casey, hereby certify that on this day I have served a "Notice of Motion and Motion to Amend original Post Conviction Relief Application" upon the following parties: One (1) original and One (1) copy to Spartanburg County Clerk of Court, M. Hope Blackley / PO Box 3483 / Spartanburg, SC 29304; One (1) copy to The South Carolina Attorney General's Office / PO Box 11549 / Columbia, SC 29211; and One (1) copy to the South Carolina Supreme Court, Daniel Shearouse, Clerk / PO Box 11330 / Columbia, SC 29211; by and through Perry Correctional Institution's Legal Mail system

SI Kevin C Casey
 Kevin C. Casey

Subscribed and Sworn To Before Me
 This 9th day of February 2015
 Notary: Tamara Chevrolet
 Expire: My Commission Expires
 September 25, 2023

The State of South Carolina)
 County of Spartanburg)
)
 Kevin C. Casey,)
 Applicant)
)
 Vs.)
)
 The State of South Carolina,)
 Respondent)
)
 _____)

In the Court of Common Pleas
 The Seventh Judicial Circuit

 C/A: 2012 – CP – 42 - 4389

 Notice of Motion for Continuance
 On Post Conviction Relief Hearing

Now comes Applicant filing notice of motion for continuance on Post Conviction Relief hearing.

Facts

I plead guilty to felony DUI GBI. (Feb 14, 2012) Attorney Leah B. Moody was assigned to my PCR on 12-20-12. Over the course of a year and a half, Attorney Moody failed to amend my PCR issues I prepared and she failed to prepare and amend issues of her own. I continuously requested her help and she was never available. I have several crucial witnesses I asked her to subpoena and she refused to. Then all communication stopped. So I had absolutely no choice but to file Motion to relieve Counsel. (7-7-14) See Exhibit A

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 CLERK OF COURT
 SPARTANBURG COUNTY
 16 MAR 16 PM 4:46
 M. HOPE BLANKLEY

I was called to the PCR Court on 9-17-2014 for my evidentiary hearing and Honorable Roger L. Couch presided and at that time my motion to relieve counsel was heard. For some reason Judge Couch released Ms. Moody with instructions to assist me with subpoenaing my witnesses and the toxicology report; but failed to appoint me new PCR counsel to assist me. Then Judge Couch sent me an order relieving PCR counsel (Moody) see exhibit B but never appointed me new PCR counsel. In said order, it states I told the court I was going retain counsel. Sir, my motion to relieve counsel never stated such and as the hearing I never stated such.



I filed objections to his order. See exhibits (C) and did request appointment of counsel.

I also had requested Ms. Moody assist me as the Judge's order directed her to. She refused. See Exhibit D. I even wrote the Attorney General's Office trying to get assistance in getting my subpoena and toxicology report. They refused to assist me also. See Exhibit E Then I was assigned a new Judge. Judge Jefferson to hear my PCR and a hearing was scheduled for 1-16-15. See exhibit F I wrote Judge (Honorable Jefferson) and told her everything I'm telling you (see Exhibit G) and asking her to appoint me a new PCR lawyer. Now she is no longer going to hear my PCR. It is somehow back in Judge Couch's hands and I'm still without a PCR lawyer to assist me with subpoenaing my witnesses, the toxicology report and properly arguing my issues. See exhibit H

I do have some very serious Federal Constitution violations in my PCR. Such as claims of Prosecution Misconduct (knowingly misrepresenting material facts about this incident) which caused me to plead guilty. Also serious claims of ineffective assistance of plea counsel. I believe I should be given one fair bite at the apple to prove my constitutional issues.

Without the assistance of new PCR counsel I believe I will be denied due process law and equal protection of the laws. In the interest of Justice, please appoint me new PCR counsel

Conclusion

For the forgoing reason this motion for continuance should be granted.

Date: 3-11-15

SI Kevin C Casey

Kevin C. Casey

M. ROPE BLACKLEY
MAR 16 PM 4:44
CLERK OF COURT
SPARTANBURG COUNTY
FHE ED

The State of South Carolina)
 County of Spartanburg)
 Kevin C. Casey,)
 Applicant)
))
 Vs.)
))
 The State of South Carolina,)
 Respondent)

In the Court of Common Pleas
 Seventh Judicial Circuit
 C/A No: 2012 - CP - 42 - 4389

Certificate of Service

I, Kevin C. Casey, hereby certify that on this day I have served a "Notice of Motion for Continuance on Post Conviction Relief hearing" upon the following parties: One (1) original and One (1) copy to Spartanburg County Clerk of Court, M. Hope Blackley / PO Box 3483 / Spartanburg, SC 29304; One (1) copy to The South Carolina Attorney General's Office / PO Box 11549 / Columbia, SC 29211; and One (1) copy to the South Carolina Supreme Court, Daniel Shearouse, Clerk / PO Box 11330 / Columbia, SC 29211; by and through Perry Correctional Institution's Legal Mail system

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2015 MAR 16 PM 4:44
 M. HOPE BLACKLEY

Kevin C. Casey
 Kevin C. Casey

Subscribed and Sworn To Before Me
 This 11th day of March, 2015
 Notary: Mary E. Merchant
 Expire: 1-23-2023

RECEIVED
 MAR 11 2015
 P.C.I. MAILROOM

EX A
Original

Clerk of Court
Spartanburg County
P.O. Box 3483
Spartanburg, S.C. 29304-3483

RE: Motion to Relieve/Appoint New Counsel
Case No. 2012-CP-42-4389

To Clerk,

My name is Kevin Casey and I am an inmate housed at Perry Correctional Institution located in Pelzer, South Carolina. I am the named plaintiff in the above referenced legal matter. My reason for contacting your office is in regards to the enclosed petition I am submitting to be heard by the presiding Judge of the court of common pleas expeditiously.

The attorney in which I have been appointed to assist in my current Post Conviction Relief hearings has been "below an acceptable level" of representation; hindering my ability to Due Process. Henceforth, my petitioning to relieve my current counsel and appointed new representative. If possible, can your office forward this motion to the courts so this issue can be addressed and resolved by his/her honor.

Thank you for your time and assistance in this pertinent matter.

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SPARTANBURG COUNTY
2015 MAR 16 PM 4:44
M. HOPE BLACKLEY

Sincerely, Kevin C. Casey

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JUL 07 2014

P.C.I. MAIL ROOM

Enclosed (1)

Kevin C. Casey)
Plaintiff)
)
v.)
)
State of South Carolina)
Defendant)
_____)

7th Judicial Circuit
Court of Common Pleas

Motion to Relieve/Appoint
New Counsel

Case No: 2012-CP-42-4389

To the presiding Judge of Common Pleas:

I, Kevin Casey, Plaintiff, file this pro-se motion in regards to the above referenced case number and matter at hand. Mr. Casey, respectfully requests that his current court appointed counsel be relieved of this legal matter and be appointed new counsel. His current legal representative is:

Mrs. Leah B. Moody
Law Office of Leah B. Moody, LLC
235 East Main Street
Suite 115
Rock Hill, S.C. 29730

RECEIVED

JUL 07 2014

P.C.I. MAILROOM

Mr. Casey requests that attorney Moody be relieved as counsel due to the following grounds.

1) Attorney Moody was contacted by U.S. Mail on April 24, 2014 in regards to contact information for his witness Donald Moore. Attorney Moody failed to contact said witness and:

2) Mr. Casey has had no contact with attorney Moody since his April 10, 2014 PCR hearing. This hearing was subsequently placed in a "continuance" status due to attorney Moody failing to contact Mr. Casey's witnesses. Since said hearing, she has still made no contact with said witness and:

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M. HOPE BLACKLEY

3) Attorney Moody was contacted by U.S. Mail on January 14, 2014 in reference to amending his PCR issues. To this date, she has failed to address this matter and;

4) Attorney Moody's professional conduct has dropped well below a standard of being effective and is currently hindering Mr. Casey's due diligence in this entitled matter.

With the above reasons cited, I do hopefully pray that this motion is granted and appointed new legal representation.

July 7, 2014

KCC

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P.C.I. MAILROOM

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Kevin C. Casey, #349715,)
)
Applicant.)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4389

ORDER OF CONTINUANCE

This matter comes before the Court by way of an application for post conviction relief. An evidentiary hearing was convened on September 17, 2014, at the Spartanburg County Courthouse. Applicant was present and represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented Respondent.

The Applicant requested to relieve counsel and a continuance to secure retained counsel. The Respondent took no position on the motion. This Court granted the continuance until the next appropriate term for post-conviction relief matters in the Seventh Judicial Circuit. Additionally, this Court instructed Applicant that if he chose to relieve his appointed counsel in this matter, the Court will not appoint further counsel in the event that Applicant is unable to retain an attorney. Applicant will be required to proceed *pro se* in this matter; however, Ms. Moody is instructed to assist Applicant in securing the issuance of subpoenas from the Spartanburg County Clerk of Court's office.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued until the next appropriate post-conviction relief term of court for the Seventh Circuit;
2. Ms. Leah B. Moody, Esquire, is relieved from the representation of the Applicant and there will be no other appointed attorney;


Handwritten signature

VOID
NO POST-CONVICTION RELIEF
SEP 18 2014 4:18 PM
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CLERK OF COURT
SPARTANBURG COUNTY
2014 NOV 24 PM 4:35

v

3. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 24th day of November, 2014.



Roger W. Couch
Presiding Judge

CLERK OF COURT
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SERIALIZED
INDEXED
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M. HOPPE, R. J. WOODS

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THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Kevin C. Casey,
Applicant,

C/A NO.. 2012-CP-42-4339

v.

APPLICANT'S OBJECT TO THE
HONORABLE ROGER L. COUCH (PCR
JUDGE) RULING/ORDER TO DISMISS
PCR COUNSEL AND FAILURE TO
APPOINT NEW PCR COUNSEL

The State of South Carolina,
Respondent.

Now comes Applicant objecting to the Honorable Roger L. Couch presiding PCR Judge's Ruling/Order To Dismiss PCR Counsel and Failure to appoint new PCR counsel pursuant to the South Carolina Post-Conviction Relief Act; The South Carolina Constitution, Article I 13 (Due Process of Law), The United States Constitution Fourteenth Amendment (Due Process Clause), and Case v. Nebraska, 331 U.S. 346 (1965) and it's progeny.

FACTS

Applicant was involved in a DUI homicide (10/15/11) where in two (2) individuals were killed while riding on the back of a motor cycle on Highway 417 in Spartanburg County. Said motor cycle was being driven by another individual (Jason M. Simmons) who was operating the bike without proper lights on the back or front of the bike.

Mr. Simmons had also been drinking and was injured himself during this unfortunate accident. Applicant did plead guilty (2/14/12) under the pretense of receiving a ten year sentence as his lawyer told him he would get. Applicant even was asked to sign some sentencing sheets two weeks before he plead guilty that represented he would get ten years. The same sentencing sheets were then written over and the time he received was different from what he was told.

2014 NOV 14 PM 2:24
HONORABLE ROGER L. COUCH

such as interviewing Donald Moore, who was the second witness on the accident scene and actually spoke with Mr. Simmons shortly after this accident while Mr. Simmons was lying in the field hurt and was asked what happened, and Mr. Jason M. Simmons stated spontaneously to Mr. Moore that he (Jason M. Simmons) was driving the bike and the car hit us. Mr. Donald Moore has even given an affidavit to this affect and is willing to testify about it. See affidavit, exhibit'___.

Then there is Applicant's two other witnesses. Teresa Pickens and Casandra Case, who heard Applicant's plea counsel, Mr. Richard Warner tell Applicant if he plead guilty, he would receive ten years. PCR counsel, Ms. Moody refused to subpoena these witnesses also. Ms. Moody even refused to amend Applicant's PCR applicant with any kind of claims (S.C.R.217. 71.1 (a)). Ms. Moody refused to communicate with Applicant about his PCR claims and she became upset once Applicant filed a motion (7/7/14) to have her removed as his PCR counsel. Applicant went to a PCR hearing on September 17, 2014, his motion to relieve counsel was addressed by the Honorable Roger L. Couch, who granted the motion, but told Applicant he would have to represent himself now. Said judge never made any findings as to why Applicant would be forced to represent himself in such a serious situation as this. Honorable Couch also instructed Ms. Moody, to help Applicant subpoena the witnesses he wanted. Ms. Moody wrote Applicant and told him she would tell him how to subpoena witnesses but not assist him with it and then ended her with "you now represent yourself."

Moody, Lisa B. Moody, had not met her obligation in this PCR matter and no doubt she has plenty of a voucher for work she has not done and her unethical attitude in this matter should not go unchecked, as she is a member of the South Carolina Bar and also took a oath of office to uphold the constitution, which she has not done in this matter. And so, the PCR judge would force Applicant to attempt to represent himself in this matter as

etc

Unknown to Applicant at his guilty plea, the Solicitor committed knowing acts of misconduct. As Applicant was in court to plead guilty, the Solicitor was explaining the facts of their case to the court and stated "Jason Matthew Simmons" was the driver of the motor cycle where the two people were scruck and killed. The Judge stopped the Solicitor and asked for clarification on who actually was driving the bike. The Solicitor stopped the plea and went and talked with Mr. Simmons, who was sitting in the courtroom. After this Mr. Simmons said he was a passenger, the Solicitor presented to the court Mr. Simmons was the passenger. See guilty plea transcript page 22, lines 12-15. In spite of various reports in the solicitor's possession that clearly stated and proved Mr. Simmons was the driver of the motor cycle, the Solicitor not only allowed Mr. Simmons to commit perjury, but assisted him with it by telling the court as a officer of the court, Mr. Simmons was not the driver and then went on with the guilty plea. See Ripple v. Coming, Op. No. 26153, heard February 1, 2006, filed May 23, 2006 (306 S.C. 30, 531 S.E.2d 70 (S.C. 2006)); Miller v. Pate, 386 U.S. 1, 27 S.Ct. 735 (1957), and Honey v. Holohan, 29 U.S. 103, 112 (1935) (Per Curiam). See exhibits ___ , ___ , ___ , ___ .

So after guilty plea counsel tricks Applicant into believing he will get ten years if he pleads guilty, and even has him sign some sentencing sheets to this affect weeks before the plea and then the sentencing sheets are altered to fit the time the judge actually gave Applicant. The Solicitor then knowingly commits acts of prosecutorial misconduct. Applicant then files a PCR application trying to assert his guilty plea was not entered voluntarily, knowingly, and intelligently and he was denied due process of law. See sentencing sheet, exhibit ___ .

The Court then appoints attorney, Mark C. Hood, (12/20/12) who use attorney, refuses to help Applicant by ways of the following:

- 1) Ascertain Mr. Simmons "Toxicology Report."
- 2) Refuses to subpoena any documents pertinent to the case.

THE STATE OF SOUTH CAROLINA
COUNTY OF [unclear]

IN THE COURT OF COMMON PLEAS
JAMES H. STUBBS, CLERK

Kevin C. Casper,
Applicant,

D/A NO. 2012-09-02-4303

vs.

The State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I, Kevin C. Casper, hereby certify that on this day I have served a Final Order of Denial to Reappoint to the Bench (see case) relating to the denial of reappointment to the bench of Kevin C. Casper upon the following parties: one (1) original and one (1) copy to the Clerk of Court, James H. Stubbs, Clerk of Court, c/o Post Office Box 2403/ Charleston, S.C. 29304, one (1) copy to the South Carolina Attorney General's Office/ P.O. Box 11311/ Columbia, S.C. 29211, and one (1) copy to the South Carolina Supreme Court, Daniel G. Harbison, Clerk/ P.O. Box 11330/ Columbia, S.C. 29211, by and through Perry Professional Expeditionary's legal mail system.

WITNESSED AND VERIFIED TO be true and correct this 12th day of November, 2014.

Kevin C Casper
D/A No. 2012-09-02-4303

By: James Caswell

My Commission Expires

September 25, 2023

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exc 07/11/14

With Applicant having proof of the things his motion mentions, it would seem he will be denied due process of law if he is not appointed PCR counsel to investigate such claims and assist Applicant with the presentation of those claims. It would be in the interest of justice to appoint new PCR counsel and investigate the herein allegations.

CONCLUSION

For the foregoing reasons this motion should be granted.

Dated: 11-12-14

s/ Kevin C Casey
Kevin C. Casey

2014 NOV 14 PM 2:24
U.S. HOUSE OF REPRESENTATIVES

Please file & Return

EXD

Original

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbmoody@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

October 9, 2014

Kevin Casey, #349715
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

RE: Kevin C. Casey v. State of South Carolina
C.A. No.: 2012-CP-42-4389

Dear Mr. Casey:

In response to your letter dated September 24, 2014, Judge Couch stated that I was to tell how you to subpoena your witnesses NOT subpoena your witnesses. I did do that previously and you desired to have me relieved off your case. Judge Couch granted your motion. Therefore, I am doing as instructed and providing you information on how to subpoena your witnesses for your hearing. I will not be assisting you on your matter other than providing this enclosed information. You now represent yourself.

This is what you have to do:

The Sheriff's Office serves subpoenas for residents within Spartanburg County, SC jurisdiction. The fee for the service is \$10 per subject. They ask that you submit the following:

1. Check or Money Order payable to Spartanburg County Sheriff's Office.
2. Include a stamped, self-addressed envelope for return of signed Affidavit.
3. You have the option of submitting your standard Affidavit or the Sheriff's Office will prepare one.
4. Include a letter detailing whom it is to be served upon, along with their address.
5. Forward the package including all above documents to:
Spartanburg County Sheriff's Office
8045 Howard Street, Spartanburg, SC 29303
ATTN: Civil Division

2014 OCT 23 PM 12:59
SPARTANBURG COUNTY
CLERK OF COURT
HOWARD BLAUGLEY

Original

Kevin C. Casey #349715
Perry Correctional Inst.
Q1, B-214
430 Oaklawn Rd.
Pelzer, S.C. 29669



March 18, 2015

Ms. M. Hope Blackley
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304

RECEIVED

MAR 18 2015

P.C.I. MAILROOM

Re: Kevin C. Casey vs The State of South Carolina
C/A No.: 2012-CP-42-4389

Dear Ms. Blackley;

On March 11, 2015 I forward your office a "Notice of Motion for Continuance on Post-Conviction Relief hearing", Schedule for March 27, 2015. I did include a self-addressed envelope for my extra copy to be returned. I further sent you another copy of the same thing, with a letter asking you to see that the Chief Administrative Judge, R. Keith Kelley received it.

In the begining of March 2015 the Attorney General's office forwarded me a PCR roster & letter, which informed me that I needed a continuance, I needed to write to the Administrative Judge, R. Keith Kelley & their office.

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 KEVIN C. CASEY,) TRANSCRIPT
 5) APPLICANT,) OF
 6) VS.) RECORD
 7 STATE OF SOUTH CAROLINA,) 2012-CP-42-4389
 8 RESPONDENT.)

9
 10 March 26th, 2015
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 KEVIN CASEY
 17 Pro Se
 18 Applicant

19 SUZANNE WHITE
 20 ASSISTANT ATTORNEY GENERAL
 21 Attorney for the State

22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

1
2
3 THE COURT: All right. We're on the record in the
4 case of Kevin C. Casey versus the State of South Carolina.
5 Mr. Casey is present. This is a motion -- this is a hearing
6 concerning his post-conviction relief application.

7 The Court has received -- it's been pointed out to the
8 Court that there has -- is a motion for a continuance that
9 is being filed by Mr. Casey.

10 Mr. Casey, please raise your right-hand to the best of
11 your ability.

12 (WHEREUPON, the Applicant was placed under oath at this
13 time.)

14 THE COURT: You can put your hand down, Mr. Casey.

15 (WHEREUPON, the Applicant complies.)

16 THE COURT: Mr. Casey, I have received this motion.
17 Do you wish to proceed on your motion today?

18 MR. CASEY: Yes, sir.

19 THE COURT: All right. Now, Mr. Casey, you're
20 appearing in front of me without lawyer.

21 Is it your desire to proceed without counsel in this
22 matter?

23 MR. CASEY: No, sir, I wanted to ask for counsel.

24 THE COURT: Is that what you're -- is that the reason
25 for your motion?

1 MR. CASEY: Yes, sir.

2 THE COURT: All right. Then I will hear from you.

3 MR. CASEY: Okay. On September 17th, 2014 --

4 THE COURT: Yes, sir.

5 MR. CASEY: -- I was here for my PCR hearing.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. CASEY: My actual PCR hearing began on addressing a
8 motion to relieve counsel. From -- I had addressed the
9 motion. The motion was from 7/17/14 to relieve counsel and
10 due to she never did subpoena my witnesses or my toxicology
11 report, and she failed to amend the issues as I'm gonna
12 address, and she failed to communicate, and you relieved
13 her.

14 After you relieved her, I received an order several
15 months later, and in that order it said I'm gonna retain
16 counsel but there must have been a mistake as I never stated
17 I was gonna retain counsel nor did I state I wanted to do
18 pro se.

19 THE COURT: Well, sir, generally -- well, let me ask
20 the State to go over the -- your knowledge of the status of
21 the case please.

22 MS. WHITE: Thank you, Your Honor.

23 We did -- we had received this application and the
24 exact dates -- I'm sorry. It was filed on October 18th,
25 2012, amended November 19th, 2014, and Ms. Leah Moody was

1 in the case. There was a hearing in September of 2014 with
2 you presiding at the time, and you did -- and we were going
3 to proceed with Ms. Moody. You informed him he could go pro
4 se if he would like.

5 There was some discussion about whether or not -- this
6 had also been continued previously in April of 2014 as well.
7 He discussed some witnesses he wanted -- some subpoenas.
8 You told him Ms. Moody could explain to him how to do that
9 pro se, and then you indicated that you would dismiss Ms.
10 Moody but would not appoint a new attorney, and he would
11 have to retain one if he wanted one. And he asked that --
12 that's how he, he's been able to proceed.

13 So, an order was submitted and signed by Your Honor
14 indicating as such. I do believe I have received copies of
15 at least one letter I know from Ms. Moody advising him about
16 subpoenas. I believe I've received some communication with
17 him as well where he did get some copies of subpoenas from
18 the Clerk's Office, and then we received this, this motion,
19 Your Honor.

20 THE COURT: In cases, it's not unusual for -- it's my
21 practice and practice of other judges that, when a person is
22 wishing to relieve appointed counsel, if I find that, that I
23 don't believe you have sufficient cause shown for relieving
24 appointed counsel, I'll allow them -- you to have them be
25 relieved and there's no problem with you doing that but I

1 don't see the need to appoint additional counsel when you've
2 already had adequate counsel appointed for you.

3 So, it's not usual for me, in that circumstance, not to
4 appoint another attorney but give you the right to act as
5 your own attorney, which is what I did.

6 Yes, sir.

7 MR. CASEY: The only thing I asked was to get a --
8 relieve her because she wasn't getting the stuff I was
9 needing.

10 THE COURT: Well, there was no showing that she was not
11 capable of doing that or that she wouldn't have done that,
12 in my opinion. That's my finding.

13 MR. CASEY: Well, I mean I still requested her to get
14 this. She didn't have reason---

15 THE COURT: I'm hearing from the State's attorney that
16 there have been letters sent to you explaining how you go
17 about subpoenaing witnesses.

18 MR. CASEY: A letter.

19 THE COURT: Let me finish. Just a second, sir, and
20 you---

21 MR. CASEY: Yes, sir.

22 THE COURT: ---can talk.

23 MR. CASEY: Yes, sir.

24 THE COURT: I have no problem in assisting you in
25 signing subpoenas if they're presented to me for the

1 production of documents if you need documents produced to
2 you. So, subpoena -- the subpoena power is available to
3 you.

4 MR. CASEY: Oh.

5 THE COURT: Can you tell me what you would like to have
6 subpoenaed?

7 MR. CASEY: Toxicology reports.

8 THE COURT: From whom?

9 MR. CASEY: Greenville Hospital System.

10 THE COURT: Okay. What else?

11 MR. CASEY: And my witnesses.

12 THE COURT: Give me the names.

13 MR. CASEY: Terry Pickens.

14 THE COURT: Are you making notes?

15 MS. WHITE: Yes, sir, Your Honor.

16 THE COURT: Yes.

17 MR. CASEY: And Dawn Moore.

18 THE COURT: Do you have addresses for those witnesses?

19 MR. CASEY: Not with me, sir.

20 THE COURT: Just -- what?

21 MR. CASEY: Not with me, sir.

22 THE COURT: Oh, but you can produce those?

23 MR. CASEY: Yes, sir.

24 THE COURT: All right. Could you send that to the
25 State's attorney, to her office?

1 MR. CASEY: Yes, sir.

2 THE COURT: All right. If you get those for me, I can
3 see that subpoenas are issued for those people and they're
4 delivered to the county sheriff in which those people reside
5 for service.

6 MR. CASEY: Okay.

7 THE COURT: Anything else?

8 MR. CASEY: No, that's about it right now, sir.

9 THE COURT: Okay. So, what do -- when do think you --
10 let's see.

11 When is the next PCR week?

12 MS. WHITE: The next term of a PCR week I believe is
13 June 8th, Your Honor.

14 THE COURT: All right, sir. And you will need to get
15 those addresses to her as soon as possible.

16 MR. CASEY: Okay.

17 THE COURT: When we get them, they will get to the
18 Clerk's Office and we will see that subpoenas are issued and
19 then delivered to the county where the addresses are
20 located. The sheriff will service them and then one
21 directed to the hospital system.

22 MR. CASEY: Yes, sir.

23 THE COURT: They will be delivered to the hospital
24 system in Greenville.

25 MR. CASEY: Thank you, sir.

1 THE COURT: All right. Anything else?

2 MR. CASEY: No, sir.

3 THE COURT: Now, you need to give us the, the -- do you
4 have the toxicology report -- do you have the date on which
5 that report was generated?

6 MR. CASEY: Yes, sir.

7 THE COURT: Tell me when.

8 MR. CASEY: 10/15/2011.

9 THE COURT: Okay. That's your toxicology report?

10 MR. CASEY: No, sir, it was one of the victims.

11 THE COURT: All right. Give the name of the person
12 that the toxicology report is that you're seeking.

13 MR. CASEY: Jason Matthews Simmons.

14 THE COURT: Jason Matthews Simmons.

15 Is he living?

16 MR. CASEY: Yes, sir.

17 THE COURT: There may be some problems getting that,
18 sir. Be HIPAA and things that might get in the way of you
19 getting that for what it's worth.

20 MR. CASEY: Okay.

21 THE COURT: We will deliver the subpoena to the
22 hospital system and see what they say.

23 MR. CASEY: Thank you.

24 THE COURT: All right. Anything else you will need?
25 Are you ready for the hearing?

1 MR. CASEY: No, sir, not at this moment.

2 THE COURT: Well, sir, I'm gonna let you know it's your
3 responsibility to let the Court know so that we'll have
4 sufficient time to take up this issue when it comes back up.

5 MR. CASEY: Yes, sir.

6 THE COURT: You understand that?

7 MR. CASEY: Who would I send something to?

8 THE COURT: Well, you sent it to the office or to the
9 State's attorney, Ms. White.

10 MR. CASEY: Okay. Thank you.

11 THE COURT: All right. Anything further?

12 MS. WHITE: It will be put on the roster for the next
13 term.

14 THE COURT: Okay.

15 MR. CASEY: Thank you.

16 MS. WHITE: Thank you, Your Honor.

17 MR. CASEY: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19

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

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 26th day of March, 2015.

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

February 10th, 2017



PAMELA E. GREEN, Court Reporter

The State of South Carolina)
 County of Spartanburg)
)
 Kevin C. Casey,)
 Applicant)
)
 Vs.)
)
 The State of South Carolina,)
 Respondent)
 _____)

In the Court of Common Pleas
 The Seventh Judicial Circuit

 C/A: 2012 – CP – 42 - 4389

 Motion for Appointment of Counsel

Now comes Applicant (Kevin C. Casey) requesting appointment of counsel in the above case pursuant to the South Carolina Post Conviction Act.

Date: April of 16th, 2015

2015 APR 21 AM 9:58
 M. HOPE BLACKLEY

s/ Kevin C. Casey
 Kevin C. Casey

The State of South Carolina)
 County of Spartanburg)
 Kevin C. Casey,)
 Applicant)
))
 Vs.)
))
 The State of South Carolina,)
 Respondent)
 _____)

In the Court of Common Pleas
 Seventh Judicial Circuit
 C/A No: 2012 - CP - 42 - 4389

Certificate of Service

I, Kevin C. Casey, hereby certify that on this day I have served a motion for "Appointment of Counsel for Post Conviction Relief hearing" upon the following parties: One (1) original and One (1) copy to Spartanburg County Clerk of Court, M. Hope Blackley / PO Box 3483 / Spartanburg, SC 29304; One (1) copy to The South Carolina Attorney General's Office / PO Box 11549 / Columbia, SC 29211; and One (1) copy to the South Carolina Supreme Court, Daniel Shearouse, Clerk / PO Box 11330 / Columbia, SC 29211; by and through Perry Correctional Institution's legal Mail system

2015 APR 21 AM 9:59
 MADEIRA BLACKLEY

SI Kevin Casey
 Kevin C. Casey

Subscribed and Sworn To Before Me
 This 16 day of April, 2015
 Notary: Tamara Conwell
 Expire: My Commission Expires
 September 25, 2023

copy

Kevin C. Casey # 349715
Perry Correctional Institution
Q-1-B-214
430 Oaklawn Rd.
Pelzer, SC 29669

PLEIN
SPARTANBURG COUNTY
2015 JUN -2 AM 11:20
M. HOPE BLACKLEY

May 29, 2015

Ms. Hope Blackley
Spartanburg County Clerk of Court
Spartanburg S.C. 29304

Re: Kevin C. Casey vs The State of South Carolina
C/A No.: 2012-CP-42-4389

Dear Clerk,

Enclosed please find Applicants Notice of Motion for
Continuance for Post Conviction Relief with one
Exhibit and a proof of Service.

Also enclosed is A prepaid self addressed envelope,
for the return of the extra copy here with.

Thanking you in advance.

s/ Kevin C. Casey
Kevin C. Casey

128
The State of South Carolina)
County of Spartanburg)
Kevin C. Casey)
Applicant)

In the Court of Common Pleas
The Seventh Judicial Circuit
CIA No.: 2012-CP-42-4389

vs
The State of South Carolina)
Respondant)

Notice of Motion for Continuance
ON Post Conviction Relief Hearing

Now Comes Applicant Moving this Honorable Court for a
Continuance of his upcoming PCR hearing (June 12 2015)

Facts

Attached is exhibit (A) Applicants previous Notice of Motion
for continuance on Post Conviction Relief Hearing, filed
March 16, 2015 At my last PCR Hearing before Judge Couch
April 2015 he told me he would assist me with having
my witnesses subpoenaed (sic) & help me get the needed
toxicology report. I am still without the help as stated.
I need PCR counsel appointed + need assistance with
subpoena's for my witnesses and I need the toxicology
report.

I am hereby requesting the assistance of Honorable R. Scott
Sprouse (presiding PCR Judge at my June 12, 2015 hearing
& the assistance of the Chief administrative Judge R. Keith
Kelly.

Conclusion

For the foregoing reasons Counsel should be appointed
& a continuance granted.

Dated: may 29 2015

SI Kevin C Casey
Kevin C. Casey

2015 JUN -2 AM 11:20
SPARTANBURG COUNTY
KERRY L. BLACKBERRY
CLERK OF COURT

The State of South Carolina)
County of Spartanburg)
Kevin C. Casey)
Applicant)

In the Court of Common Pleas ¹²⁹
The Seventh Judicial Circuit
C/A No.: 2012-CP-42-4389

VS.
The State of South Carolina)
Respondent)

Proof of Service

REC-1

MAY 29 2015

CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLACKLEY
2015 JUN -2 AM 11:40

I Kevin C. Casey (Applicant) certify that I have this Day served Applicants motion for a continuance; one(1) exhibit (A) & cover page; upon the Spartanburg County Clerk of Court; by depositing (1) original & one(1) copy of same in the U.S. Mail by & through the Perry Correctional Institutions legal mail system.

The Above has been served at the below addresses:

- (1) MS. Hope Blackley
Spartanburg County Clerk of Court
Spartanburg, S.C. 29304
- (2) Honorable R. Scott Sprouse
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC. 29304-3483

- (3) Chief Administrative Judge
R. Keith Kelly
Spartanburg County Clerk of Court General
P.O. Box 3483
Spartanburg S.C. 29304-3483
- (4) Assistant Deputy Attorney
General
P.O. Box 11549
Columbia, SC 29211-1549

Sworn to and subscribed before me
This 29th Day of May, 2015
Notary: Nancy C. Muehler
Exp. 1-23-2023

SI Kevin C. Casey
Kevin C. Casey # 349715
PCT Q1B214
430 Oaklawn Rd.
Pelzer, SC 29669

1	State of South Carolina		In the Court of Common Pleas
2	County of Spartanburg		
3			
4	Kevin C. Casey,)	
5	Applicant,	)	2012-CP-42-04389
6	-vs-)	June 12, 2015
7	State of South Carolina,)	
8	Respondent.)	Transcript of Record
9	-----)	

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B E F O R E:
The Honorable R. Scott Sprouse, Judge

A P P E A R A N C E S:
Kevin C. Casey, Pro Se
For the Applicant
Suzanne H. White, Esquire
Attorney for Respondent
State of South Carolina

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

Kevin C. Casey v. State of South Carolina 2012-CP-42-04389 June 12, 2015

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I N D E X

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E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
1	Group Exhibit A-K	12	
2	Jail visitation log	25	

For the Respondent:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:51 a.m.)

4 MS. WHITE: May it please the court. This is the
5 case of Kevin Casey versus the State. Your Honor, it's
6 cause number 2012-CP-42-4389. Mr. Casey was indicted
7 November of 2011 for two counts of felony DUI and
8 reckless homicide and one count of felony DUI resulting
9 in great bodily injury. He was represented by
10 Mr. Richard Warder, proceeded to a plea on February 14,
11 2012, where he received two concurrent sentences of
12 25 years for felony DUI resulting in death, 15 years
13 for felony DUI resulting in great bodily injury, and
14 the two reckless homicides were dismissed in accordance
15 with the plea.

16 He raised ten allegations that are detailed in the
17 return, your Honor, for ineffective assistance of
18 counsel and involuntary guilty plea. He was previously
19 represented by Ms. Leah Moody at a previous hearing
20 several terms ago. He asked to have her relieved.
21 Judge Couch instructed him that if he did ask to have
22 her relieved, he would not be appointed counsel but
23 could either retain or proceed pro se. And at this
24 point I believe he's filed a motion for continuance.

25 I can turn it over to Mr. Casey if you would like.

1 THE COURT: Before I hear from Mr. Casey, was
2 there an order from Judge Couch?

3 MS. WHITE: Yes, sir.

4 THE COURT: I'm looking through the packet here.
5 Let's see how far we go back here.

6 MS. WHITE: Let me pull that out.

7 Your Honor, I'm going to approach. This is the
8 copy, and we can get a copy made for you. I'm sorry.
9 That was our file copy, but --

10 THE COURT: Okay. Mr. Casey, be happy to hear
11 from you, sir.

12 THE DEFENDANT: Yes, sir. I was asking for a
13 continuance because I had talked to -- the last time I
14 had talked with Mr. Couch, he was supposed to help me
15 get my witnesses and subpoenas, toxicology reports. I
16 still don't have none of the stuff I need to present to
17 the courts for my claims.

18 THE COURT: All right. What I see before me is an
19 order dated November 24, 2014, which Judge Couch
20 continued your hearing. It looks like the hearing was
21 set for September 17th, 2014, and you were represented
22 by Ms. Leah Moody; is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And it looks like you requested that
25 she be relieved and that the case be continued, and

1 Judge Couch did so.

2 What have you -- what have you not received that
3 you have requested?

4 THE DEFENDANT: Well, your Honor, beforehand I had
5 her relieved, I had filed a motion to have her relieved
6 and have other counsel appointed, but he relieved her.
7 I mean, I still need some help because I don't
8 understand how to do a lot of the stuff pro se. I
9 never requested to do that or even state that I was
10 going to retain a counsel because I don't have the
11 funds to do that either.

12 THE COURT: Judge Couch ruled in this order dated
13 November 24, 2014, that there would be no further
14 counsel appointed if she was relieved. So did you get
15 a copy of Judge Couch's order?

16 THE DEFENDANT: After the fact, yes, sir, but I
17 didn't really understand that I was going to be pro se
18 either.

19 THE COURT: The order states explicitly,
20 "Applicant will be required to proceed pro se in this
21 matter." So you were put on notice back in November
22 that you either were going to have to hire your
23 attorney or proceed pro se. The court wasn't going to
24 appoint you an attorney. Do you understand that?

25 THE DEFENDANT: I understand now.

1 THE COURT: Okay.

2 MS. WHITE: Your Honor, I can give a little more
3 procedural history as well.

4 Mr. Casey filed an objection with the supreme
5 court seeking review of Judge Couch's order back on
6 November 24th. They dismissed that, obviously, because
7 it was not a final ruling in his case.

8 We then scheduled the case for our term in
9 September. Mr. Casey appeared and requested a
10 continuance at that point. We also then scheduled the
11 case for March. Mr. Casey appeared and requested a
12 continuance at that point, and there is -- I do have a
13 copy of a letter that he sent me as well as Judge Couch
14 back in March. Judge Couch did say on the bench that
15 if he needed something subpoenaed, let us know the
16 names and he would make sure he got subpoenas.

17 To my understanding, that has been provided. It
18 may not be that the information that Kevin Casey
19 provided in March, the three names of the witnesses he
20 wanted and he wanted a toxicology report of the victim,
21 which I'm not sure that he's going to be able to have
22 access to anyway --

23 THE COURT: Well, were the witnesses subpoenaed?
24 Did he subpoena --

25 Did you subpoena any witnesses, Mr. Casey?

1 THE DEFENDANT: I'm not able to because I don't
2 have a counsel, and it's difficult trying to do it
3 myself. And the judge told me he would help me, assist
4 me with doing so, getting the subpoenas and stuff.

5 MS. WHITE: My understanding was that based on his
6 information that he provided, Judge Couch would make
7 sure that he had the subpoenas and the clerk's office
8 would issue those for him, but --

9 THE COURT: Well, were they issued?

10 MS. WHITE: I have never received copies of
11 anything. Unfortunately, I'm not sure what Mr. Casey
12 is doing on his own behalf other than expecting the
13 court and our office to continue to write and ask us to
14 subpoena the witnesses. He's written us several times
15 including evidence that he already has including
16 notification forms, notes of various things. And I
17 think this is the MAIT team report.

18 THE DEFENDANT: M-A-I-T report.

19 MS. WHITE: Your Honor, I will note that Ms. Leah
20 Moody, I believe the reason he said he wanted her
21 relieved at the time was because she was not
22 subpoenaing the information. However, she had tried to
23 contact some of the witnesses, and they would not
24 provide information for her to subpoena because they
25 didn't want to get involved. So I don't know if that's

1 the same situation or not.

2 THE COURT: Okay. Looking through the packet that
3 I have, I don't see any witnesses that were subpoenaed;
4 however, you're unaware if the clerk subpoenaed them or
5 not?

6 MS. WHITE: No, your Honor. And if we can -- I
7 can certainly go check. I have not ever been served
8 copies of anything, but I'm not sure if that is
9 directly related to. We subpoenaed, obviously, our
10 witness, Mr. Dick Warder, that's been here.

11 I do have copies of an affidavit that Mr. Casey
12 submitted to the clerk's office with a certificate of
13 service, notice of motion, and motion to amend where he
14 wanted to submit an affidavit of one of the witnesses
15 that he has listed, and that was in March of 2015.

16 THE COURT: Mr. Casey, who are the witnesses that
17 you wanted subpoenaed?

18 THE DEFENDANT: Teresa Pickens, Donald Moore. I
19 was going to subpoena the toxicology report, if
20 possible.

21 THE COURT: What purpose -- for what purpose are
22 you wanting to subpoena these witnesses? What
23 knowledge do they have that you think could help you?

24 THE DEFENDANT: Okay. On the affidavits, to let
25 them corroborate their statements to be true.

1 THE COURT: Do you have affidavits from these
2 witnesses?

3 THE DEFENDANT: Yes, ma'am -- I mean yes, sir.

4 THE COURT: Ms. White, have you looked at the
5 affidavits of the witnesses?

6 MS. WHITE: The only affidavit, your Honor, that
7 we have received a copy of is an affidavit of Teresa
8 Pickens. But I have no independent knowledge of
9 whether or not that is accurate or not, but it was one
10 that we received from Mr. Casey directly on March --
11 excuse me, April 9th of 2015. That's the only
12 affidavit I have.

13 THE COURT: Okay. Does the State have any
14 objection to making that affidavit part of the record?

15 MS. WHITE: Your Honor, our only concern is,
16 obviously, with an affidavit, I don't have any
17 knowledge, since this came directly from the inmate, if
18 there's any authenticity to it or not. So pending
19 other than that objection, we can have that made part
20 of the record.

21 THE COURT: All right. This is what we're going
22 to do.

23 Mr. Casey, I'm going to deny your motion for a
24 continuance. We're going to proceed. However, at the
25 conclusion of the testimony, I will give you ten days

Kevin C. Casey v. State of South Carolina 2012-CP-42-04389 June 12, 2015
Kevin C. Casey - Direct Examination

10

1 to supplement the record with any exhibits subject to
2 the objection of the State.

3 All right. Mr. Casey, if you would like to come
4 around to the witness chair. It's your application.

5 THE DEFENDANT: Yes, sir.

6 KEVIN CHARLES CASEY,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE COURT: State your full name for the record.

9 THE DEFENDANT: Kevin Charles Casey.

10 THE COURT: All right.

11 Mr. Casey, you have filed an application for
12 postconviction relief. Tell the court why you believe
13 you received ineffective assistance of counsel in this
14 case.

15 DIRECT EXAMINATION

16 THE DEFENDANT: My claim is ineffective assistance
17 of counsel, due process violation of the South Carolina
18 Constitution and the United States Constitution. The
19 plea was not knowingly, voluntarily, nor intelligently.
20 The case, the DUI homicide, takes place on 10/15/2011
21 on Highway 417 in Spartanburg County.

22 In this tragic accident, I collided with a dirt
23 bike with a total of three people on it. The two
24 passengers were killed, and the driver was said to be
25 Jason Matthew Simmons, who was driving a motorcycle

1 with no headlights, no taillights, and intoxicated.

2 My first argument is prosecution misconduct. And
3 how this takes place, the prosecutors presenting the
4 State's case, as they presented the States's case, they
5 also presented Mr. Simmons to be the driver of the
6 motorcycle in this tragic accident.

7 And as he was presenting the State's case, the
8 judge asked for clarification as to who was the actual
9 driver of the motorcycle because they had a confusion
10 beforehand. Before the court began, the judge had read
11 a statement and heard the audio recording, and the
12 audio recording stated Mr. Simmons was the passenger.
13 Mr. Simmons stated that he was the passenger.

14 And after that, in spite of that, after that, he
15 had talked to Mr. Simmons, who was in the courtroom at
16 the time. As he spoke with him, Mr. Simmons stated
17 that he was a passenger instead of the driver. In
18 spite of the various reports that the solicitor had
19 stating that Mr. Simmons was the actual driver,
20 Mr. Simmons committed a perjury, and the solicitor
21 assisted him in doing so.

22 And I have exhibits that I would like to present
23 to show my claim, to prove my claim.

24 THE COURT: Let Ms. White see the exhibits.

25 Ms. White, if you would just step around, make

1 this easier.

2 MS. WHITE: Certainly, your Honor.

3 THE COURT: See if you have any objection to those
4 exhibits.

5 THE DEFENDANT: It's Exhibits A through K.

6 MS. WHITE: Just for the record, your Honor, and
7 I'm not sure. Mr. Casey may not realize that you have
8 the copy of the entire plea transcript and your
9 application.

10 THE DEFENDANT: Okay.

11 THE COURT: The court would note for the record
12 that the transcript is part of the record.

13 THE DEFENDANT: Would you like for me to present
14 each exhibit?

15 THE COURT: Do you have any objection, Ms. White?

16 MS. WHITE: No, your Honor.

17 Do you want the sentencing sheet, too, all that?

18 THE DEFENDANT: Yes, ma'am. That goes to the next
19 argument.

20 THE COURT: Why don't we mark these as Applicant's
21 Exhibit 1.

22 (WHEREUPON, Applicant's Exhibit Number 1
23 was marked for identification.)

24 THE COURT: Mr. Casey, when you talk about these,
25 I want you to refer to what document that you're

1 referencing. They're all marked as 1 as a group, but
2 let the court know what document you're referencing.

3 THE DEFENDANT: Yes, sir.

4 Exhibit A is from the South Carolina Highway
5 Patrol, M-A-I-T report. Section one states Mr. Simmons
6 to be the driver of the motorcycle. Section five
7 states the motorcycle didn't have any headlights nor
8 taillights.

9 Exhibit B is from the assessment report from the
10 Greenville Hospital System which shows that Mr. Simmons
11 was drinking the night of this accident.

12 Exhibit D from there. In Exhibit D, states
13 where -- shows where from the guilty plea transcripts,
14 shows where Mr. Simmons changing his statement to say
15 that he was basically a passenger on the motorcycle and
16 the solicitor let him change his statement.

17 Exhibit E is from a lieutenant, major incident
18 notification form, which states Mr. Simmons to be the
19 driver from the police report. Exhibit -- it's another
20 part of Exhibit E. Part two of it shows the passengers
21 of the motorcycle which was Steven Ray Mills and Megan W.

22
23 Exhibit F is from the -- the transport sheet where
24 the officers -- the officers' notes stating where each
25 individual was transported to the hospital or to the

1 morgue, and it just states where Mr. Simmons was
2 transported, to be the driver of the motorcycle as
3 well. From the police notes.

4 Exhibit G is a sequence of events stating the
5 positions of each individual and their position in this
6 tragic accident, sir.

7 Exhibit H is a South Carolina traffic report form
8 which states that Mr. Simmons owned a motorcycle and
9 was the driver.

10 And Exhibit I is part of that, too. Just states
11 the seating locations of each individual, basically
12 just stating where each individual was sitting.

13 Okay. Now, that's basically it on that argument
14 there. And it just goes to show had I known
15 Mr. Simmons was the actual driver, drinking and could
16 be the possible cause of this accident, I would have
17 never entered into a guilty plea. I would have
18 insisted on going to trial.

19 And going on to the next argument --

20 THE COURT: Okay. Go ahead.

21 THE DEFENDANT: My next argument is erroneous
22 advice of counsel. On 11/28/11 I was in Spartanburg
23 County jail, and I spoke with Mr. Warder who come and
24 spoke with me about my case briefly. And when he come
25 to discuss with me my case, he discussed that him and

1 the solicitor had come up with a guilty plea, a
2 sentence of a ten-year sentence.

3 And he said if I was interested, he would be back
4 on February 1st to sign the sentencing sheets. And I
5 remember that so well because it's my birthday. He
6 come back on February 1st, as he said. I signed the
7 sentencing sheets with the agreement of a ten-year
8 sentence. And two weeks later I was sentenced to
9 25 years.

10 I have the affidavit that was from my aunt. She
11 was at the hearing. Before the hearing began, she
12 spoke with Mr. Warder, asking him about the sentence,
13 and he told her the ten-year sentence as well. That's
14 part of the affidavit that I wanted to present as well
15 into the record as evidence.

16 That just shows also with that -- I mean, I don't
17 have a corroborating affidavit, but had I known I
18 wasn't going to receive a ten-year sentence -- also on
19 the sentencing sheet, I have them to present, too, to
20 the record. On the sentence sheets, it states where --
21 you can see where it was a ten-year sentence and where
22 it's been altered to 25.

23 And my last argument is counsel failed to
24 interview a witness, which is Donna Moore, who was a
25 first responder on that scene, just basically saying

1 that he was -- I mean, we won't know who the actual
2 driver of this motorcycle was. And also know that
3 Mr. Simmons was actually drinking the night of this
4 accident as well. And I have a statement and an
5 affidavit from him, from the M-A-I-T report, stating
6 from the police report stating -- his affidavit stating
7 who was the driver and that Mr. Simmons was drinking
8 the night of this accident.

9 And that's basically it. Just to show also had I
10 known all this information, I would have insisted on
11 going to trial instead of going to the guilty plea,
12 taking the guilty plea.

13 THE COURT: Thank you, Mr. Casey.

14 Ms. White, cross-examination?

15 MS. WHITE: Thank you, your Honor.

16 CROSS-EXAMINATION

17 BY MS. WHITE:

18 Q Mr. Casey, you said that you wouldn't have pled
19 knowing that Mr. Simmons was the driver, but you're
20 aware that at the time of the accident your blood
21 alcohol level was found to be .21?

22 A Yes.

23 Q Okay. And you were also on probation or out on
24 bond at that time for a third DUI; is that right?

25 A That was my third, yes.

1 Q Okay. And the accident report indicated that you
2 were speeding almost twice the speed limit?

3 A I don't know. That's what --

4 Q Is that what the State presented as facts that was
5 in the -- in the --

6 A That's what the M-A-I-T report states.

7 Q All right. And so you said that you wouldn't have
8 pled guilty, you would have wanted to go to trial and
9 argue your innocence, but you were aware of those
10 facts?

11 A I didn't say I was innocent. I said I was
12 partially at fault. I wasn't fully at fault for this
13 accident.

14 Q Okay. Did your attorney talk with you about
15 whether or not in a criminal trial they can apportion
16 fault to someone and then partially to you?

17 A No, ma'am.

18 Q Okay. And the fact that if you go to trial, the
19 jury is going to look at the facts and decide if you
20 were actually guilty of the charge of felony DUI?

21 A No, ma'am. We didn't discuss that either.

22 Q Okay. So the only time you met with Mr. Warder,
23 are you saying that was the November 28, 2011?

24 A I met with Mr. Warder November the -- three times,
25 I think. I have a visitation log also.

1 Q Okay. And that was -- sorry. The plea was on
2 February 14, 2012; is that right?

3 A Yes, ma'am.

4 Q What date did the accident happen?

5 A 10/15/11.

6 Q So that was in a period of about five months
7 before your plea?

8 A Four months, I think.

9 Q Four months. And you met with Mr. Warder about
10 three times?

11 A Yes, ma'am. Three times exactly.

12 Q Okay. You testified that you signed a sentencing
13 sheet thinking you got a ten-year plea?

14 A Yes, ma'am.

15 Q When you went before the court and no one
16 referenced you having ten years, did you say anything
17 to the court?

18 A No, because I didn't understand because he never
19 mentioned the time during the plea either. He never
20 mentioned what the amount of time was.

21 Q Okay. But the judge went over with you the
22 maximum time for the sentence, did he not?

23 A The maximum, yes, ma'am.

24 Q Okay. And no one ever said this is a negotiated
25 plea of ten years?

1 A No, ma'am.

2 Q Okay. He asked you about the sentence, and the
3 judge said, "You know I can sentence you any time
4 within that range"?

5 A Yes, ma'am.

6 Q And he said, "With that understanding of the
7 possible sentence, do you still wish to enter this
8 plea," and you said yes?

9 A Yes, because I was agreeing to the plea that I
10 thought I was signing for.

11 Q So you were still under the impression, even
12 though the judge told you that he could sentence you up
13 to 30 years -- or 15 years on the felony great bodily
14 injury and I believe it's 25 on the others?

15 A Yes, ma'am.

16 Q Okay. You also told the court that you were
17 guilty and that you were admitting guilt with this
18 plea, did you not?

19 A Under advice of my counsel.

20 Q Okay. And the court went over on page 22 of the
21 transcript is when they said, "Your Honor, we've just
22 talked with Mr. Simmons. He said he was on the back of
23 the motorcycle. Not sure if that makes a difference.
24 Just want to make sure that's correct for the record,"
25 nothing -- you didn't ask your attorney to say anything

1 at that point?

2 A No, because I really didn't understand, and I was
3 still under the impression of the ten-year sentence.
4 That's why I signed it two weeks before the actual
5 hearing began.

6 Q Okay. And, in fact, your attorney asked for --
7 brought your family up to speak on your behalf, didn't
8 he?

9 A Yes, ma'am.

10 Q Okay.

11 MS. WHITE: Your Honor, I think that's all I have
12 for this witness.

13 THE COURT: Okay. Anything further, Mr. Casey?

14 THE DEFENDANT: No, ma'am -- I mean no, sir.

15 THE COURT: Thank you, Mr. Casey. You can go back
16 to your table.

17 THE DEFENDANT: Okay.

18 THE COURT: Ms. White.

19 MS. WHITE: Thank you, your Honor. We'll briefly
20 call Mr. Richard Warder to the stand.

21 **RICHARD HAROLD WARDER,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 THE COURT: Please state your full name for the
24 record.

25 THE DEFENDANT: Richard Harold Warder.

1 THE COURT: Thank you. Mr. Warder, you can have a
2 seat.

3 Ms. White, your witness.

4 MS. WHITE: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MS. WHITE:

7 Q Mr. Warder, do you recall representing Mr. Casey
8 on these charges?

9 A Yes, ma'am, I do.

10 Q Okay. And were you appointed or retained?

11 A I was retained.

12 Q And was Mr. Casey released on bond or was he in
13 jail the whole time you represented him?

14 A I think he was in jail the whole time.

15 Q Okay. And to your recollection, is the fact that
16 you met three times with him, is that an accurate
17 description?

18 A I honestly don't know. It seems like it might
19 have been more than that, but I don't really remember.

20 Q And you would agree that this happened -- he pled
21 guilty approximately four months or so after the
22 accident?

23 A I was hired in November, so it would have been
24 about that.

25 Q Okay. Do you ever -- do you recall going over

1 with him the possible sentence he could receive?

2 A I'm sure -- I'm sure it was the maximum that we
3 talked about as a possible sentence.

4 Q Mr. Casey has indicated that he thought he was
5 pleading to and that he signed sentencing sheets two
6 weeks before his plea for a ten-year plea. Was that
7 ever anything that you're aware of?

8 A There was never a ten-year offer in it. That was
9 never offered. No solicitor would have went along with
10 that. This was a case that had some precedence. The
11 solicitor himself was handling it. There was no offer
12 for that.

13 Q And have you handled other felony DUIs with the
14 solicitor here in the Seventh Circuit?

15 A Yes.

16 Q And is that your understanding of his general
17 practice in regards to whether or not they have plea
18 offers that low?

19 A I'm sure they're all fact determinative. I think
20 in the right set of facts, they might offer it. But
21 this was as bad a set of facts as it gets. The fact he
22 was out on bond for a DUI at the time it happened and
23 it was a rear-end collision of a motorcycle. Most
24 unusual thing, three people on the motorcycle.

25 Q Is that something -- did you discuss that with him

1 and whether or not, if he went to trial, he could use
2 as a defense whether or not the driver of the
3 motorcycle had been drinking or if the headlights were
4 not working?

5 A I mean, we discussed that, but our ultimate
6 conclusion was that was not going to carry the day. I
7 think they found one -- one light wasn't found after
8 the wreck, as I remember it.

9 Q And so in your discussions with him and based on
10 the facts of the case, you advised him or talked with
11 him about the opportunity to plead guilty?

12 A Yes. We -- Mr. Casey had a lot going for him if
13 it wasn't for the drinking side of him. He was a truck
14 driver. He worked over at the rock quarry. He had an
15 excellent work record. I think there were nine
16 children with him and his girlfriend or wife that he
17 supported. There was a lot that was good about
18 Mr. Casey, but there was no good facts about this
19 incident.

20 Q And so did you feel like when you talked with him
21 about it that he understood that you could go in there
22 and present the facts and then it would be up to the
23 judge to sentence him?

24 A Well, he certainly knew that. And he knew that it
25 was a terrible set of facts we were pleading to, that

1 there was going to be no good outcome from it outside
2 of the benefit of having the two charges dismissed,
3 everything run concurrent.

4 Q Was there anything that concerned you about the
5 fact that during the plea they suddenly made a change
6 and said maybe it wasn't Simmons driving, maybe it was
7 someone else?

8 A I don't think that issue in any of the reports was
9 crystal clear, but no.

10 Q And would that have affected -- if you were at
11 trial, could that have been used as a defense to a
12 felony DUI resulting in death?

13 A No.

14 Q Thank you.

15 MS. WHITE: That's all I have for this witness.

16 THE COURT: All right.

17 Mr. Casey, any cross-examination for this witness?

18 THE DEFENDANT: Yes.

19 CROSS-EXAMINATION

20 BY THE DEFENDANT:

21 Q Mr. Warder, you did represent me in the two counts
22 of DUI felony and DUI with bodily injuries?

23 A I'm sorry. I didn't understand the question.

24 Q I was asking you, you did represent me in the DUI
25 felony -- two counts of DUI felonies and DUI

1 homicide -- I mean great bodily injuries?

2 A Yes. I represented you in this case.

3 Q I was going to ask also how many times did you
4 think that you were coming to visit me or discuss this
5 case with me?

6 A I think four or five, but I'm not sure.

7 THE DEFENDANT: Can you let him look at this, if
8 you don't mind?

9 (WHEREUPON, Applicant's Exhibit Number 2
10 was marked for identification.)

11 THE COURT: Applicant's Exhibit Number 2 has been
12 handed to the witness.

13 Mr. Casey, you can proceed.

14 BY THE DEFENDANT:

15 Q Mr. Warder, just could you look and see the
16 highlighted parts. Shows the times on the visitation
17 log when you came and spent the time with me.

18 A Yes, sir. I see them.

19 Q It's a total of 32 minutes, all three times?

20 A Pardon me?

21 Q It's a total of 32 minutes, all three times that
22 you come to see me. The first time is 26 minutes,
23 which is 11/28/11?

24 A Yes, sir.

25 Q So it just shows -- I mean, we didn't have too

1 much time to discuss the whole matter of the case, sir.

2 A We had all the discovery. We answered all the
3 questions. We gave a recommendation. Quite frankly, I
4 feel like this is not every time, but yes, sir, you --
5 we talked, you understood.

6 Q I really didn't understand because you
7 discussed -- basically you was telling me about the
8 case, but you never really explained who was actually
9 driving. When I asked you who was the driver, you told
10 me you would get back with me on that, and that
11 Mr. Simmons, you told me the deceased was the driver,
12 actually. The day of the -- the day we discussed that,
13 the 26th, the 28th, whatever it was. You told me the
14 deceased was the driver, and you really didn't know
15 basically who was driving?

16 A I'm sure we discussed that, whatever the solicitor
17 was going to say that day.

18 Q Even that day I asked you for a toxicology report
19 for Mr. Simmons, and you stated there wasn't one
20 because he wasn't drinking. But in my --

21 A Yes, sir. The toxicology of the people on the
22 other vehicle wouldn't have made a whole lot of
23 difference in the facts on our case.

24 Q I felt like if I would have known as to who was
25 actually driving and drinking, if he was driving and

1 drinking, he was just at fault as I was, sir. I mean,
2 but we didn't discuss that. If we would have discussed
3 that, I wouldn't have went to do a guilty plea. I
4 would have wanted to go to trial.

5 A I guess you're saying that --

6 THE COURT: Mr. Casey, why don't you do this.
7 Rephrase your statement in the form of a question.
8 This is cross-examination.

9 THE WITNESS: I'm sorry.

10 THE COURT: And I understand you're not a lawyer,
11 Mr. Casey, and I'm giving you some leeway here because
12 of that, but you need to address the witness in the
13 form of a question. If you have a specific question
14 that you would like to ask Mr. Warder, you can do so.

15 THE WITNESS: I'm sorry.

16 THE COURT: Now rephrase your question.

17 BY THE DEFENDANT:

18 Q Would you usually take a person there -- I mean,
19 would you have decided to go to trial if you had known
20 who was actually the driver of the motorcycle? Or does
21 the seating positions, does it matter?

22 A Well, as the facts in your case were, who the
23 driver was wasn't a significant cause of the injury. I
24 mean, your speed was 91 miles an hour. You were
25 intoxicated. And you hit the motorcycle from the rear.

Kevin C. Casey v. State of South Carolina 2012-CP-42-04389 June 12, 2015
Richard Harold Warder - Cross-Examination

1 I don't see who was the driver as particularly
2 important. There were three people on it. Obviously,
3 all three people there, one was dead and two were
4 injured.

5 Q Well, do you think them being in the road with
6 Mr. Simmons driving the motorcycle in the road with no
7 lights couldn't have been a possible cause of this
8 accident and him drinking as well?

9 A Do I think that would have been a defense?

10 Q Yes.

11 A No, I don't think it would have been a defense for
12 you. The driver might have had a drink on the
13 motorcycle. You can't run into an intoxicated person.
14 And there's no evidence that the driver was
15 intoxicated.

16 Q From the Greenville Hospital record, it states
17 that he was drinking. That's why I requested the
18 toxicology report for Mr. Simmons to prove how much he
19 was drinking. And in my witness statement from
20 Mr. Moore, it states that he was drinking as well. Did
21 you get a chance to review those out of the Rule 5? It
22 was all in the Rule 5 that I got from the solicitor's
23 office. Did you get a chance to review that, too?

24 A Yes, sir. We have it someplace. I have the blood
25 alcohol reports or had the blood alcohol reports.

1 Q For Mr. Simmons?

2 A I'm not sure which ones we have. Let's see.

3 Megan W. blood alcohol was negative. However,

4 Megan W. had some marijuana in her system. Steven

5 Ray Mills, I don't have -- I don't think there's any

6 indicated in him.

7 Q Mr. Mills' alcohol level was .15.

8 A I see where the sample was drawn, but I don't have
9 the result now or can't find the result right now.

10 MS. WHITE: Your Honor, I understand that he wants
11 him to look for that, but I think Mr. Warder has
12 already testified that he doesn't believe any of that
13 information would have provided a defense.

14 THE COURT: I'll let him answer the question.

15 THE DEFENDANT: Your Honor, my thing was this
16 really showed that I maybe couldn't have been the
17 proximate cause of this accident. I mean, I was
18 involved in it, sir, but I'm just trying to show to
19 where if I seen they was under the influence as well, I
20 mean, that's not going to make a difference.

21 THE COURT: Mr. Casey, you asked him the question
22 if he thought that it would have made a difference or
23 been a defense, and he's answered that question. So do
24 you have -- and, again, I'm going to let him answer the
25 question you asked him about the final person's blood

1 alcohol, if he has that.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: But you need to move on because the
4 other question has already been answered. Okay? That
5 was Ms. White's -- I believe that was the basis of your
6 objection.

7 MS. WHITE: Yes, your Honor.

8 THE COURT: That it's already been asked and
9 answered.

10 Mr. Warder, if you don't have that --

11 THE WITNESS: I don't find that this morning.

12 THE COURT: All right. He says he doesn't have
13 it, Mr. Casey, so move on.

14 THE DEFENDANT: I have no more questions, sir.

15 THE COURT: Okay. Thank you, Mr. Casey.

16 MS. WHITE: The State has nothing further, your
17 Honor.

18 THE COURT: Thank you.

19 Mr. Warder, you can step down.

20 THE COURT: Okay. I'm going to review the
21 exhibits and review the transcript. I'm going to take
22 this under advisement. Like I stated earlier, each
23 party would have ten days to supplement the record with
24 any documents that they feel are appropriate.

25 You need to provide the other party with a copy

1 when they are submitted, and then the court would deal
2 with any objections at that time.

3 (WHEREUPON, the hearing ended at 10:35 a.m.)

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

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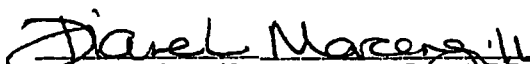
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 12th day of June 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

November 3, 2016

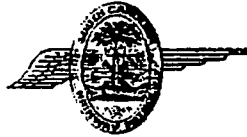

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

CK
A

SOUTH CAROLINA HIGHWAY PATROL

MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Leroy Smith
Director



F.K. Lancaster, Jr.
Colonel

INVESTIGATIVE REPORT

The South Carolina Highway Patrol Multi-Disciplinary Accident Investigation Team reserves the right to amend, correct, or retract any or all inferences, conclusions, or opinions presented in this report. This report is the intellectual property of the South Carolina Department of Public Safety and shall not be duplicated or copied for distribution, unless written permission is granted by the Office of General Counsel.

MAIT CASE NO:	PF-161-11	CAD/CASE NO:	11GV115917
REQUESTING AGENCY:	SCHP		
TROOP:	3		
COUNTY:	SPARTANBURG	COLLISION LOCATION:	S.C. PRIMARY 417
INVESTIGATING OFFICER:	L/CPL. R.B. THORNTON		
DATE:	10-15-11		
MAIT REGION:	PIEDMONT	TEAM LEADER:	SGT. B.S. BROCK

1. INVESTIGATIVE SUMMARY.

Unit's #1 and #2 were traveling west on South Carolina Primary 417. Unit #2 struck unit #1 from the rear. Unit #1 was a motorcycle with a total of three occupants at the time of the collision. The driver of unit #1 and one of the occupants were ejected onto the eastbound shoulder. The third occupant remained with both units #1 and #2 until they came to a stop also on the eastbound shoulder.

2. SPEED CALCULATION.

The speed for unit #2 was calculated to be approximately 91 miles per hour at impact. The speed limit for South Carolina Primary 417 is 45 miles per hour.

3. MAPPING / CAD.

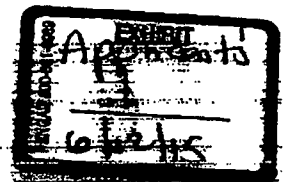
MAIT completed a forensic mapping and CAD of the collision scene.

4. LANE LOCATION.

The collision occurred in the westbound lane of South Carolina Primary 417.

5. LAMP EXAMINATION.

The headlight was removed from unit #1. The examination revealed inconclusive evidence if the lamp was working at the time of the collision. No evidence of a rear light or bracket could be located from unit #1.



EX-104

12/12/2011 Page 3 of 13

Page 2 of 2

PF-161-11

6. AUDIO / INTERVIEWS.

MAIT conducted audio recordings during the course of this investigation.

7. PHOTOGRAPHS.

MAIT took digital photographs during the course of this investigation.

8. VIDEO.

MAIT took digital video footage during the course of this investigation.



Team Leader / Region Commander

ACTAR Number: 2360



Exhibit)

1 of 2

Assessment Report

Pt Name:	SIMMONS, JASON M	MRN:	999436249
Pt ID:	20102015491	Acct No:	
DOB:		Age/Sex:	23Y/M
Adm Date:	10/15/2011	Atn Dr:	Rinkoff, John MD
Dsch Date:	10/21/2011		
Entity:	GMH		
Dx:			

Admission

Assessment Sts	Complete	Collected DTime	10/15/2011 05:00
Collected By	Chad R Morris		
<u>Emergency Contact Info.</u>			
Emergency Contact 1		Who can make health care decisions for you?	Sandra Simmons
Phone Number 1		HC Power of Attorney?	No
Living Will	No		

<u>Admission Vitals</u>			
Temperature	97.3 F	Temperature Site	Oral
Pulse	130	Pulse Site	Automated
Respirations	30	Pulse Character	Regular
SpO2%	98	Oxygen or Room Air	Oxygen
Oxygen Delivery Method	Nasal Cannula	O2 LPM	2
BP #1	134/67	BP #1 Site	LUE
BP #1 Position	Sitting	BP #1 Method	Automated
Diabetes?	No	Height	5/8 ft.in
How Height Obtained	Stated	Weight	86.8 kg
How Weight Obtained	Measured	Body Mass Index	29.10
Source of Vitals	Admission VS		

<u>Past Med/Surg Hx</u>			
History of Cardiac Problems	Hypertension	Past Surgical History	Other
Past Surgical History	Rod in right leg	Caffeine Use?	Yes
Comment		Caffeine	Weekly
Caffeine Type	Soda	Quantity/Frequency	
Tobacco Use?	Current Every Day Smoker	Tobacco Type	Cigarettes
Tobacco	1 pk/day	Alcohol Use?	Yes
Quantity/Frequency		Alcohol	Weekly
Alcohol Type	Beer, Wine, Liquor	Quantity/Frequency	
Recreational Drug Use	Yes - Describe	Describe	Marijuana use about a year ago
Second Hand Smoke	Yes	Smoking Cessation Program?	Yes, Information Provided
Patient Advised to Quit or Continue Abstinence from Smoking	Yes	Patient Advised of Fire Risk While Using Oxygen	Yes
History of prior ETOH withdrawal?	No	Do you have 7 or more drinks a week?	No
Any medical condition resulting from ETOH abuse?	Yes	Alcohol Use Comments	Was drinking the night of this accident.
Other Mouth/Teeth	Yes		

Esh(b) 2012

Assessment Report

Pt Name:	SIMMONS, JASON M	MRN:	999436249
Pt ID:	20102015491	Acct No:	
DOB:		Age/Sex:	23Y/M
Adm Date:	10/15/2011	Attn Dr:	Rinkliff, John MD
Dsch Date:	10/21/2011		
Entity:	GMH		
Dxc			

Assessment History

Assessment Name: Admission Collected DateTime: 10/15/2011 05:00

Version	Entered Date	Status	Reason Revised
Revision: 1.00	10/15/2011 06:04	In progress	

Past Med/Surg Hx

Finding Name	Previous Value	Revised Value	User Name	Entered Date
Finding Name: Patient Advised to Quit or Continue Abstinence			Sidney Ritts Eskew	10/15/2011 05:16
		Yes	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: Patient Advised of Fire Risk While Using Oxy			Sidney Ritts Eskew	10/15/2011 05:16
		Yes	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: History of prior ETOH withdrawal?			Sidney Ritts Eskew	10/15/2011 05:16
		No	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: Do you have 7 or more drinks a week?			Sidney Ritts Eskew	10/15/2011 05:16
		No	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: Any medical condition resulting from ETOH?			Sidney Ritts Eskew	10/15/2011 05:16
		Yes	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: Alcohol Use Comments			Sidney Ritts Eskew	10/15/2011 05:16
		Was drinking the night of this accident.	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: Other Mouth Issues			Sidney Ritts Eskew	10/15/2011 05:16
		Yes	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: Mouth/Teeth Health Comment			Sidney Ritts Eskew	10/15/2011 05:16
		Mouth is bloody	Sidney Ritts Eskew	10/15/2011 06:04
Finding Name: Gingivitis			Sidney Ritts Eskew	10/15/2011 05:16
		Bleeding	Sidney Ritts Eskew	10/15/2011 06:04

Attorney At Law

February 1, 2012

Spartanburg County Solicitors Office
180 Magnolia Street
Spartanburg, South Carolina 29301
Attn: Barry Barnette


Re: Kevin Casey

Dear Solicitor:

Enclosed please find your signed Sentence Sheets in reference to the above captioned case. Mr. Warder would like for this plea to be scheduled before the Honorable J. Mark Hayes, II.

Thank you for your cooperation in this matter.

Sincerely,


Tina, secretary for
Richard H. Warder

Enclosures

proveninnocent@netscape.net

Enco

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2011GS4206361

AKA: Kevin Charles Casey

A/W#: F281027

Race: BLACK Sex: M Age: 39

Date of Offense: 10/15/2011

DOB: SS#:

S.C. Code §: 56-05-2945(A)

Address:

CDR Code #: 0395

City, State, Zip: Gaffney, SC 29340-0000

SENTENCE SHEET

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

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

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

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

ATTEST: Barry B. Barnette, 13039 Kevin C. Casey, Michael A. Miller, 005827
BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 10,000; 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. Since 10/15/11
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP:
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job 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

Table with 3 columns: Description, Rate, Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2945 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-14(BU) (Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCA Surcharge), % to County (if paid in installments), TOTAL.

Other: ATU while in the DOC.

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

Presiding Judge: [Signature]
Judge Code: 2132
Sentence Date: 2/14/12

SPARTANBURG COUNTY
CLERK OF COURT
MAY 11 11-28 AM '12

Cl. Seaver
Mottitt

Exh(C)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. Kevin Charles Casey

INDICTMENT/CASE#: 2011GS4206362 A/W#: F281026 Date of Offense: 10/15/2011 S.C. Code §: 56-05-2945(A) CDR Code #: 0395

SENTENCE SHEET

*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

CONVICTED OF or PLEADS 1-25 10/15/2011

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

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

Barrette, Barry SC Bar# 13039 Charles E. Casey Defendant Richard W. Hester, 059207 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] 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 years and/or to pay a fine of \$ 10,000; 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: [X] 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. Since 10/15/2011 [] 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:

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

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211 (A)(1) (Conv. Surcharge), § 14-1-211 (A)(2) (DUI Surcharge), § 56-5-2945 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-14(B)(1) (Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCJA Surcharge), % to County (if paid in installments), TOTAL.

Other: ATTORNEY GENERAL

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

Presiding Judge Judge Code Sentence Date

Clerk of Court Deputy Clerk Court Reporter

Handwritten notes and stamps: 'Blacks', 'COURT', 'COUNTY', 'ATTORNEY GENERAL', '11-14-12'

Final

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS.)
 Kevin Charles Casey)
 AKA:)
 Race: BLACK Sex: M Age: 39)
 DOB: SS#:)
 Address:)
 City, State, Zip: Gaffney, SC 29340-0000)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS)
 INDICTMENT/CASE#: 2011GS4206363)
 A/W#: F281028)
 Date of Offense: 10/15/2011)
 S.C. Code §: 56-05-2945(A))
 CDR Code #: 0406)

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: DUI / Felony driving under the influence, great bodily injury results 30 to 15 \$200,00

in violation of § 56-05-2945(A) of the S.C. Code of Laws, bearing CDR Code # 0406
 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.

ALL BY: Barnette, Barry 13039 Kevin C Casey Richard Warden 005922
 BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ 10,000; 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. 10/15/11
 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 DeL Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Defender Fund
 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

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 10,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 4-7.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 9-0.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 1030.51
TOTAL		\$21,041.51

Other: ATV while in the DOC

Appointed PD or appointed 9th court counsel § 47.12 requires \$500 by _____ during probation.

Clerk of Court/ Deputy Clerk [Signature]
 Date of Sentence: 11/15/11

Presiding Judge [Signature]
 Judge Code: 2132
 Sentence Date: 11/15/11

EX-10(D)

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
 3
 4 The State,)
 5 -vs-) TRANSCRIPT OF RECORD
 6 Kevin Charles Casey,) 2011-GS-42-6361(A);6362(A)6363
 7 Defendant.) February 14, 2012
 8) Spartanburg, South Carolina
 9

10 B E F O R E:

11 HONORABLE J. MARK HAYES, II, JUDGE
12
13

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

15 BARRY JOE BARNETTE, ESQUIRE
16 Attorney for the State

17 RICH ARDWARDER, ESQUIRE
18 Attorney for the Defendant
19
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

(EXHIBIT)

1 way.

2 MR. BARNETTE: I apologize. That's the information
3 that I received on the information there, Your Honor. I
4 appreciate you pointing that out to us. I apologize.

5 THE COURT: Will lawyers approach a moment? Lawyers
6 approach a moment.

7 (Bench conference held off the record.)

8 MR. BARNETTE: Can I have one second, Your Honor?

9 (Pause.)

10 (Bench conference held off the record.)

11 MR. BARNETTE: Your Honor, may it please the Court.

12 I checked with Mr. Simmons, Your Honor. I talked to
13 him just briefly. He told me that he was on the back of
14 the motorcycle, as you heard on the interview, Your Honor,
15 and Steven Mills was actually the one driving it just to
16 clear up the record on that.

FALSE HOOD

17 Your Honor, I don't know if it makes any difference
18 who was driving the vehicle, but we know who's at fault.
19 Just to make sure that's correct on the record, Your Honor.

20 THE COURT: Thank you, sir.

21 MR. BARNETTE: Thank you, Your Honor.

22 THE COURT: Anything else from the state?

23 MR. BARNETTE: No, sir.

24 THE COURT: Yes, sir, Mr. Warder.

25 MR. WARDER: Your Honor, if it please the Court.

Exh(D)

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25CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 14th day of February 2012.

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

December 26, 2012



Linda D. Moffitt
Circuit Court Reporter

N-0023
A- 12/12/2011 Page 1 of 37

EXH (E)

1 of 2

CRD # 116-115917



LIEUTENANT MAJOR INCIDENT NOTIFICATION FORM

Traffic Collision

Non-Collision

- Felony DUI
 - Pursuit
 - Leaving The Scene
 - Fatality
 - Patrol Car
 - Other
- (Death)
 - (Death)
 - (Death)
 - (Chargeable)
 - At Fault
 - (GBI)
 - (GBI)
 - (GBI)
 - (Not Chargeable)
 - Not At Fault

- Use of Force
- Pursuit
- Major Drug Seizure
- Haz Mat Incident
- Major Road Closure (Complete)
- Other

Incident Information

Time: ~~0000~~ ⁰⁰¹³ Date: 10/15/11 Post/County: D/Intake Location: J.C. 417 1/2 mi. N. of SC101

Brief Summary:

UNIT #1 WAS TRAVELING SOUTH ON S.C. 417. UNIT #2 WAS TRAVELING SOUTH ON S.C. 417. UNIT #2 STRUCK THE REAR OF UNIT #1

On Scene Personnel (Investigating Trooper, Supervisor etc)

R.B. Thornton, S.R. Snow, T.M. Seibel (Went to Hospital) J.W. Stone

MAIT RESPONSE:

A D

Fatal (Driver) Passenger/Pedestrian

Name: JASON MATTHEW SIMMONS

Address: 29318

DOB: Male Male Female

Name of School (If Student): N/A

- Alcohol: Yes No
- Seatbelt: Yes No
- Child Restraint: Yes No
- Helmet: Yes No

Vehicle: MTL/Jeep 1970's M21

Notifications:

Date: 10/15/11 Time: 0630 CRO: Bill Ryan By: YRL
 Date: 10/15/11 Time: 0725 Command Staff: Michael Warden By: YRL
 Date: 10/15/11 Time: 0134 MAIT: Bruce Bruck By: KOA
 Date: --- Time: --- OPR: --- By: ---
 Coroner TERRY CARTER

Casey has an I.D. Card with his name but another photo on it.

Fatal (Driver) Passenger/Pedestrian

Name: CASEY, Kevin Charles

Address: 29365 272

DOB: Male Male Female

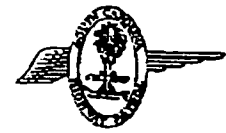
Name of School (If Student): N/A

- Alcohol: Yes No
- Seatbelt: Yes No UNKNOWN
- Child Restraint: Yes No
- Helmet: Yes No 98 NISS MAXIMA 4-DS

Vehicle: White 2-05

Exhibit
PASSENGERS ON MOTORCYCLE
12/12/2011 Page 2 of 37
PAGE (2)

2 of 2



LIEUTENANT MAJOR INCIDENT NOTIFICATION FORM

Traffic Collision

- Felony DUI
 - Pursuit
 - Leaving The Scene
 - Fatality
 - Patrol Car
 - Other
- (Death)
 - (Death)
 - (Death)
 - (Chargeable)
 - At Fault
 - (GBI)
 - (GBI)
 - (GBI)
 - (Not Chargeable)
 - Not At Fault

Non-Collision

- Use of Force
- Pursuit
- Major Drug Seizure
- Haz Mat Incident
- Major Road Closure (Complete)
- Other

Incident Information

Time: _____ Date: _____ Post/County: _____ Location: _____

Brief Summary:

On Scene Personnel (Investigating Trooper, Supervisor etc)

MAIT RESPONSE:

A D

Fatal Driver Passenger Pedestrian

Name: MEGAN

Address: Greer SC 29651

DOB: _____ Male Female

Name of School (If Student): BYRNE'S H.S.

Alcohol: Yes No
 Seatbelt: Yes No
 Child Restraint: Yes No
 Helmet: Yes No

Vehicle: 1970's Mal. Suz.

Fatal Driver Passenger Pedestrian

Name: Steven Ray Mills

Address: Greer, SC 29651

DOB: _____ Male Female

Name of School (If Student): N/A

Alcohol: Yes No
 Seatbelt: Yes No
 Child Restraint: Yes No
 Helmet: Yes No

Vehicle: 1970's Mal. Suz.

Notifications:

Date: _____ Time: _____ CRO: _____ By: _____
 Date: _____ Time: _____ Command Staff: _____ By: _____
 Date: _____ Time: _____ Captain: _____ By: _____
 Date: _____ Time: _____ MAIT: _____ By: _____
 Date: _____ Time: _____ OPR: _____ By: _____

Next of Kin: David Vincent (Father)

Next of Kin: TERESA & Lawrence Mills

EXH (F)

12/12/2011 Page 15 of 37

1st call to 911

0015

10/15/11 0028 0046

CAD-115917

Car -

white 98 NTS 4/2002

4 Kevin: 69504

4 narrow 2191 do

441/2 Lynn 52 27365

4 JNICA71D3WT 510036

Fus - Progressed Next

422706581

D.L.D.

Term class D 10/28/10

- D.U.1 - 6/9/02 10/29/03 - 2004

Sally Regional Unit 4 10-7 Transport

Medic 9 - Driver of Unit 2

Regional 1 - Driver of MTC

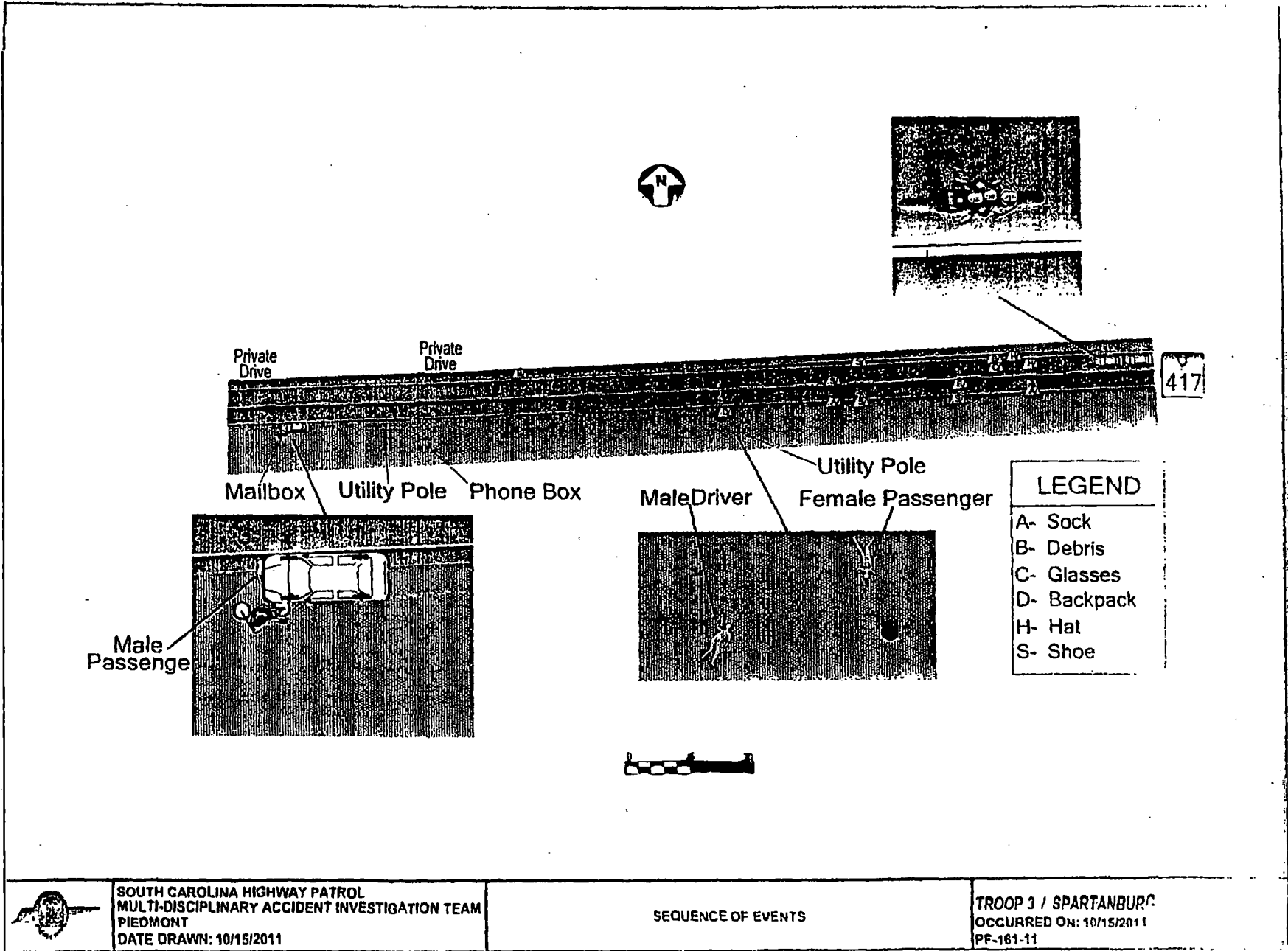
L/CPL R.B. Thornton
NOTES (KDW)

EAH (6)

Finding #3

12/12/2011 Page 12 of 13

PF-161-11



SOUTH CAROLINA HIGHWAY PATROL
 MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
 PIEDMONT
 DATE DRAWN: 10/15/2011

SEQUENCE OF EVENTS

TROOP 3 / SPARTANBURG
 OCCURRED ON: 10/15/2011
 PF-161-11

=(HCF)

Unit	Date of Birth	Sex	Race	INH	Seat	R/S/D	ABD	Eject	LAI	Tran	Name	Street Address	Zip Code
01		M	W	2	01	00	7	3	1	1	SIMMONS JASON MATTH	WOODRUFF SC	29388
02		M	B	1	01	13	1	9	1	1	CASEY KEVIN CHARL	LYMAN SC	293659008
01		M	W	4	51	00	7	3	1	2	HILLS STEVEN RAY	GREER SC	29652
01		F	W	4	51	00	7	3	1	2			

Recep A - Asian/Pacific Islander B - African American 1 - Alaskan Native or American Indian W - Caucasian H - Hispanic O - Other U - Unk.	Injury Status 2 - Non-incapacitating 3 - Incapacitating 4 - Fatal 0 - Not Injured 1 - Possible Injury	Seating Loc. 20 - Pedestrian 30 - Trailing Unit 40 - Bus or Van (4th row or Higher) 50 - Other Enclosed Area (nontrailing) 60 - Sleeper of Cab 70 - Riding on Unit Exterior 80 - Lap 90 - Unit/MA 51 - Other Unenclosed Area (nontrailing)	Restraint/Safety Device 00 - None Used 11 - Shoulder belt 12 - Lap Belt Only 13 - Shoulder & Lap Belt 21 - Child Safety Seat 22 - Other 31 - Helmet 32 - Reflective Clothing 41 - Protective Pads 42 - Lighting
Air Bag Deployment / Switch 1 - Deployed Front 2 - Deployed Side 3 - Deployed Both 4 - Not Deployed 7 - Not Applicable 9 - Deployment Unk.	Ejection 1 - Not Ejected 2 - Part Ejected 3 - Tot. Ejected 7 - Not App. 9 - Unk.	Head Injury 1 - Yes 2 - No	Location After Impact 1 - Not Trapped 2 - Extricated (Mechanical Means) 3 - Freed (non-mech.) 4 - Not Applicable 9 - Unknown
a) 1-Not Both b) 1-Switch in On Position 2-Switch in Off Position	7-Not App. 9-Unk.	3-Freed (non-mech.) 4-Not Applicable 9-Unknown	a) Transported to Medical Facility 1-Yes 2-No 3-Unknown b) By: 1-EMS 2-Police 8-Other 9-Unk.

Non-Collision 01 - Cargo/Equip Loss or Shift 02 - Cross Median/Center 03 - Obstructed Pathway 04 - Equipment Failure 05 - Fire/Explosion 06 - Inattention 07 - Lockdown 08 - Overrun/Rollover 09 - Ran off Road Left 10 - Ran off Road Right 11 - Separation of Units 12 - Spill (Pre-impact Veh) 13 - Other Non-collision 18 - Unk. Non-collision	Collision Not Fixed 20 - Animal (Deer Only) 21 - Animal (All Other) 22 - Motor Veh. (In Transport) 23 - Motor Veh. (Stopped) 24 - Motor Veh. (Other Roadway) 25 - Motor Veh. (Park/ed) 26 - Pedalcycle	Collision Fixed Object 27 - Pedestrian 28 - Railway Veh. 29 - Work Zone Maint. Equip. 30 - Other Movable Object 31 - Other Movable Object 32 - Other Movable Object 33 - Other Movable Object 34 - Light/Luminaire Support	Collision Fixed Object 35 - Embankment 36 - Bridge Overhead Structure 37 - Bridge Support End 38 - Bridge Pier or Abutment 39 - Bridge Rail 40 - Culvert 41 - Curb 42 - Ditch 43 - Encroachment 44 - Equipment 45 - Fence 46 - Guardrail End 47 - Guardrail Face 48 - Highway Traffic Sign Post 49 - Impact Attenuator/Cushion 50 - Light/Luminaire Support 51 - Overhead Sign Support 52 - Other (Post, Pole, Support, Etc) 53 - Other (Wall, Building, Tunnel, Etc) 54 - Tree 55 - Utility Pole 56 - Work Zone Maint. Equipment 57 - Other 58 - Unk.
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Manner of Collision (Struck Veh) 10 - Not Coll. w/ Motor Veh. 2 - Rear End 3 - Head On	30 - Rear-to-Rear 41 - Angle (N/A) 42 - Angle (→ ←) 43 - Angle (↘ ↗)	50 - Sideways Same Dir. 60 - Sideways Opposite Dir 70 - Backed Into 80 - Unknown	1st / Most Deformed Area 	1st Deformed 77 2nd Deformed 12 Most Deformed 77 P 12 P
--	---	---	-------------------------------------	--

Vehicle Type: 01 - Automobile 12 - Pickup Truck 13 - Truck Tractor 14 - Other Truck 15 - Full Size Van 16 - Mini Van 17 - Sport Utility 25 - Motorcycle 28 - Other Motorbike 27 - Pedalcycle 38 - Animal (Deer Veh) 39 - Animal (Hidden) 41 - Pedestrian 51 - Train 61 - School Bus 62 - Passenger Bus 99 - Unk. (Hil and Run Only)	Vehicle Use Code 01 - Personal 02 - Driver Training 03 - Construction/Maint. 04 - Ambulance 05 - Military 06 - Transport Passengers 07 - Transport Property 08 - Farm Use 09 - Winch or Tow 10 - Police 11 - Government 12 - Fire Fighting 13 - Logging 18 - Other 41 - Pedestrian	Vehicle Attachment 1 - None 2 - Mobile Home 3 - Semi-Trailer 4 - Utility Trailer 5 - Farm Trailer 6 - Trailer w/Boat 7 - Camper Trailer 8 - Towed Motor Vehicle 9 - Petroleum Tanker A - Lowboy Trailer B - Autocarrier Trailer C - Other Tanker D - Flat Bed E - Twin Trailers F - Other	Alcohol / Drug Test Given 1 - Given - Known Results 2 - Given - Unusable 3 - Given - Pending 4 - None 5 - Refused	Special Use Only 1 - Under-Compartment Intrusion 2 - Under-No Intrusion 3 - Under-Unknown 4 - Over-MV in transport 5 - Over-Other Vehicle 6 - None 8 - Unk.
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Action Prior to Impact (Vehicle) 01 - Backing 02 - Changing lanes 03 - Entering traffic lane 04 - Leaving traffic lane 05 - Making U-turn 06 - Movements Essentially Straight Ahead 07 - Overtaking/passing 08 - Parked 09 - Stopping or Stopped in traffic 10 - Turning left 11 - Turning right 12 - Working	Action Prior to Impact (Non-motorist) 21 - Approaching/Leaving Vehicle 22 - Entering/Crossing Location 23 - Playing/Working on Vehicle 24 - Pushing Vehicle 25 - Standing 26 - Waiting, Playing, Cycling 27 - Working	Alc Test Results 1 - Two-way, Not Divided 2 - Two-way, Divided, Unprotected Median 3 - Two-way, Divided, Barrier 4 - One-Way 8 - Other 9 - Unk.	Drug Results 1 - Amphetamines 2 - Cocaine 3 - Marijuana 4 - Opiates 5 - PCP 6 - Other	Extent of Deformity 0 - None/Minor 1 - Functional Damage 2 - Severe/Total 3 - Not Applicable
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Weather Condition 1 - Clear (no adverse conditions) 2 - Rain 3 - Cloudy 4 - Sleet, Hail 5 - Snow 6 - Fog, Smog, Smoke 7 - Blowing Sand 8 - Severe Crosswinds 9 - Unk.	Light Condition 3 - Dark 4 - Dark (Lighting Unspecified) 5 - Dark (Street Lamp Not Lit) 6 - Dark (Street Lamp Not Lit)	Junction Type 01 - Crossover 02 - Driveway 03 - Five/More Points 04 - Four-way Intersection 05 - Railway Grade Crossing 07 - Shared Use Paths or Trail 08 - T-Intersection 09 - Traffic Circle 12 - Y-Intersection 13 - Non-junction 19 - Unk.	02 - Flashing Traffic Signal 11 - RR (X-bucks, Lights & Gies) 12 - RR (X-bucks & Lights) 13 - RR (X-bucks Only) 21 - Officer or Flagman 22 - Churning Emergency Vehicle 31 - Pavement Markings (only) 41 - Stop Sign 42 - School zone Sign 43 - Yield Sign 44 - Work Zone 45 - Other Warning Signs 51 - Flashing Beacon 59 - None 69 - Unk.
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Primary Contributing Factors 01 - Disregarded Signs, Signals, Etc. 02 - Distracted/Inattention 03 - Driving Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alertness 08 - Followed Too Closely 09 - Made an Improper Turn 10 - Medical Related 12 - Aggressive Operation of Vehicle 13 - Over-correcting/Over-steering 14 - Swerving to Avoiding Object 15 - Wrong Side or Wrong Way 16 - Under the Influence 17 - Vision Obscured (Wet/Unk) 18 - Improper Lane Usage/Change 19 - Cell Phone 20 - Fading 21 - Other Improper Action 29 - Unk.	Roadway 30 - Debris 31 - Non-highway Work 32 - Obstruction in Roadway 33 - Road Surface Condition (i.e., Wet) 34 - Rut, Hole, Bumps 35 - Shoulders (None, Low, Off High) 36 - Traffic Control Device (i.e., Missing) 37 - Work Zone (Curent/Maint. Utility) 38 - Worn, Travel-Polished Surfaces 45 - Other 49 - Unk.	Non-Motorist 50 - Inattentive 51 - Lying &/or Reclining in Roadway 52 - Obstruction in Roadway 53 - Not Visible (Dark Clothing) 54 - Disregard Signs, Signals, Etc. 55 - Improper Crossing 56 - Daring 57 - Wrong Side of Road 58 - Other 59 - Unk.	Environmental 60 - Animal in Road 61 - Glass 62 - Obstruction 63 - Weather Cond. 66 - Other 69 - Unk.
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50151

12/12/2011 Page 7 of 37



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF Spalding

Case Number _____

PERSONALLY appeared before me Donald Moore

who states:

I reside at _____ in Greer

City

SC

State

Telephone: _____

Work: _____

Home: _____

Date of Birth: _____ Social Security Number _____

I have _____ years of education, and I can/cannot read and write. This statement is given on 10/15/2011 at 0727 am/pm in the presence of P.B. Thomas who has officially identified himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

As I approached the scene a lady was flashing her lights saying please check I think theres a accident. "I'm by myself im afraid to get out" I ran up to the vehicle and the driver was unconscious. Victim under the car was dead on arrival.

I beat on the windows to try and get the driver conscious. (No response) There for I seen a near by neighbors door open and I went and spoke to him. (He said he jus heard the impact) After a friend Courtney said some one was in the field up above so I rushed to assist there. I sat with him until first responder showed up. Then me and vince ran got gloves and helped assist the medic load the driver on the stretcher (never smell Alcohol) my buddy vince heard him say im not drunk. After we assisted All we could we jus stood by for questioning.

(The drive of the Car never got out)
The guy in the field that was conscious said he was the driver and I did smell Alcohol. "We are behind the store is wat he said"

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.

This statement was completed at 0247 am / pm on the 15 day of October, 2011.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS _____ DAY OF _____, 20 _____

Donald Moore
Affiant
P.B. Thomas
Witness

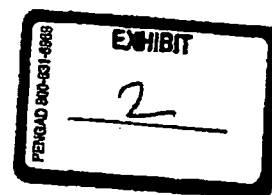
E.S. (K)

3/26/2014

I Donald A Moore am a witness of a accident that took place on highway 417 on the night of 10/15/2011. When I pulled up to the scene I witnessed a young man dead under the front of a white sedan. There was a black male in the sedan unconscious. From a nearby field I heard yelling. So me and Vince Sloan rushed over to see. There was a white male in the field laying on a fire ant hill with his leg bent at the knee level behind his back. Wasn't sure what was broke so we urged him to lay still and try and keep calm with deep breathes. While talking with him he told me he was driving the motorcycle and was threw into the field on impact. He said they all had been drinking and were on their way to the store to get more beer. If there is any more questions I can help with in this matter please contact me at :3748.

Thank You:

Donald A. Moore



01/12/15
09:45

Spartanburg County Sheriff's Office
Visitation Summary Report, by Visitor Date

226
Page: 1

In	Out	Visitor	Visitee	Relation	Destination
<u>10/25/11</u>					
12:16	12:18	10/25/11 CASEY, CASSANDRA	CASEY, KEVIN CHA	daughter	MAIN JAIL V
Total visits:		1			
<u>11/02/11</u>					
11:53	13:13	11/02/11 CASEY, CASSANDRA	CASEY, KEVIN CHA	Daughter	MAIN JAIL V
12:00	13:30	11/02/11 DRUMMOND, RONNIE	CASEY, KEVIN CHA	UNCLE	MAIN JAIL V
Total visits:		2			
<u>11/07/11</u>					
12:19	13:30	11/07/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	mother	MAIN JAIL V
Total visits:		1			
<u>11/14/11</u>					
12:12	14:00	11/14/11 CASEY, CASSANDRA	CASEY, KEVIN CHA	DAUGHTER	MAIN JAIL V
12:30	14:00	11/14/11 PICKENS, TERESA N	CASEY, KEVIN CHA	aunt	MAIN JAIL V
Total visits:		2			
<u>11/25/11</u>					
13:15	15:00	11/25/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	wife	MAIN JAIL V
Total visits:		1			
<u>11/28/11</u>					
12:13	13:30	11/28/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	wife	MAIN JAIL V
15:04	15:30	11/28/11 WARDER, RICHARD H	CASEY, KEVIN CHA	ATTORNEY	POD 3
Total visits:		2			
<u>12/01/11</u>					
12:00	12:01	12/01/11 DRUMMOND, RONNIE	CASEY, KEVIN CHA	uncle	MAIN JAIL V
12:26	12:28	12/01/11 CASEY, CASSANDRA	CASEY, KEVIN CHA	daughter	MAIN JAIL V
Total visits:		2			
<u>12/05/11</u>					
07:42	09:00	12/05/11 WILLIAMS, MARY	CASEY, KEVIN CHA	sister	MAIN JAIL V
Total visits:		1			
<u>12/09/11</u>					
13:16	14:30	12/09/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	GIRLFRIEND	MAIN JAIL V
Total visits:		1			
<u>12/14/11</u>					
13:19	14:30	12/14/11 JONES, JAVIER KEL	CASEY, KEVIN CHA	son	MAIN JAIL V
13:20	14:30	12/14/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	wife	MAIN JAIL V

01/12/15
09:45

Spartanburg County Sheriff's Office
Visitation Summary Report, by Visitor Date

Page: 226
2

In	Out	Visitor	Visitee	Relation	Destination
Total visits: 2					
<u>12/19/11</u>					
12:22	13:30	12/19/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	wife	MAIN JAIL V
Total visits: 1					
<u>12/26/11</u>					
13:19	14:30	12/26/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	wife	MAIN JAIL V
Total visits: 1					
<u>12/30/11</u>					
13:21	14:30	12/30/11 CASEY, ANGELA MIC	CASEY, KEVIN CHA	wife	MAIN JAIL V
Total visits: 1					
<u>01/13/12</u>					
18:25	19:30	01/13/12 GEHR, KENNITH	CASEY, KEVIN CHA	FRIEND	MAIN JAIL V
Total visits: 1					
<u>01/20/12</u>					
14:18	15:30	01/20/12 CASEY, ANGELA MIC	CASEY, KEVIN CHA	WIFE	MAIN JAIL V
Total visits: 1					
<u>01/25/12</u>					
13:19	15:00	01/25/12 CASEY, ANGELA MIC	CASEY, KEVIN CHA	Wife	MAIN JAIL V
Total visits: 1					
<u>01/30/12</u>					
09:56	11:00	01/30/12 CASEY, ANGELA MIC	CASEY, KEVIN CHA	WIFE	MAIN JAIL V
Total visits: 1					
<u>02/01/12</u>					
09:02	09:04	02/01/12 CASEY, CASSANDRA	CASEY, KEVIN CHA	daughter	MAIN JAIL V
09:46	09:47	02/01/12 WARDER, RICHARD H	CASEY, KEVIN CHA	attorney	POD 3
Total visits: 2					
<u>02/06/12</u>					
12:26	13:30	02/06/12 CASEY, CASSANDRA	CASEY, KEVIN CHA	DAUGHTER	MAIN JAIL V
Total visits: 1					
<u>02/14/12</u>					
09:22	09:28	02/14/12 WARDER, RICHARD H	CASEY, KEVIN CHA	ATTORNEY	POD 3
Total visits: 1					

In State of South Carolina)
County of Spartanburg)
Kevin C. Casey)
Applicant)

In the Court of Common Pleas¹⁸³
The Seventh Judicial Circuit
C/A No.: 2012-CP-42-4389

VS.
The State of South Carolina)
Respondent)

Notice of Motion for Continuance
On Post Conviction Relief Hearing

Now Comes Applicant moving this honorable Court for a
Continuance of his upcoming PCR hearing (June 12, 2015)

Facts

Attached is exhibit (A) Applicants previous Notice of Motion
for Continuance on Post Conviction relief hearing, filed on
March 16, 2015. At my last PCR hearing before Judge Couch
April 2015, he told me he would assist me with having my
witnesses subpoenaed (sic) & help me get the needed toxicology
report. I am still without the help as stated. I need
PCR Counsel appointed, I need assistance with subpoenas for
my witnesses and I need the toxicology report.

I am hereby requesting the assistance of Honorable
R. Scott Sprouse (presiding PCR Judge at my June 12, 2015
hearing & the assistance of the Chief Administrative
Judge R. Keith Kelly.

Conclusion

For the foregoing reasons Counsel should be appointed
& a continuance granted.

Dated May 29, 2015

S/ Kevin C Casey
Kevin C. Casey

CLERK OF COURT
SPARTANBURG COUNTY
2015 JUL -1 AM 11:45
M. HOPE BLACKLEY

The ¹⁸⁴State of South Carolina)
County of Spartanburg)
Kevin C. Casey,)
Applicant)

IN the Court of Common Pleas
The Seventh Judicial Circuit
CIA No.: 2012-CP-42-4389

VS.)
The State of South Carolina)
Respondant)

Proof of Service

I Kevin C. Casey (Applicant) certify that I have this Day Served Applicants Motion for a Continuance; one (1) exhibit A/E cover page; upon the Spartanburg County Clerk of Court; by depositing (1) original & one (1) copy of same in the U.S. mail by & through the Perry Correctional Institutions legal mail system.

The Above has been served at the below addresses:

- (1) MS. Hope Blackley
Spartanburg County Clerk of Court
Spartanburg, SC 29304
- (2) Honorable R. Scott Sprouse
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg S.C. 29304-3483

- (3) Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

- (4) Chief Administrative Judge
R. Keith Key
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg SC 29304-3483

RECEIVED

MAY 29 2015

PG. 1. MAILROOM

Sworn to and subscribe
before me

this 29th Day of May 2015

Notary: Nancy C. Merchant

Exp. 1-23-2023

s/ Kevin C Casey

Kevin C. Casey # 349715

PCI Q1-B-214

430 Oak Lawn Rd.

Pelzer, SC 29669

JUL - 29 11:49 AM '15
CLERK OF COURT
SPARTANBURG COUNTY

Kevin C. Casey, # 349715
Perry Correctional Institution
Q1B-214
430 Oak Lawn Rd
Pelzer, SC 29669

May 29, 2015

Ms. Hope Blackley
Spartanburg County Clerk of Court
Spartanburg, S.C. 29304

Re: Kevin C. Casey Vs. The State of South Carolina
C/A No.: 2012-CP-42-4389

Dear Clerk,

Enclosed please find Applicant's Notice of Motion
Continuance for post conviction relief with
exhibit and a proof of service

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

Also enclosed is a prepaid self-addressed envelope,
for the return of the extra copy here with.

Thanking you in advance.

S/ Kevin C Casey
Kevin C. Casey

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Kevin C. Casey, #349715,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4389

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 18, 2012. Respondent made a timely Return on or about January 9, 2014. The Court convened an evidentiary hearing into the matter on June 12, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and proceeded *pro se*.¹ Suzanne H. White, Esquire, of the South Carolina Attorney General’s Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Richard Warder, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings in this matter, the plea transcript, and Applicant’s Exhibits.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Spartanburg County Grand Jury indicted Applicant in November 2011 for two counts each of felony DUI resulting in death and reckless homicide (2011-GS-42-6361, -6362) and one count of felony DUI resulting in great bodily injury (2011-GS-42-6363). Richard H. Warder, Esquire (“plea counsel”), represented Applicant. On

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¹ The Honorable Roger L Couch relieved Applicant’s appointed counsel by order filed November 24, 2014.

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February 14, 2012, Applicant pled guilty to two counts of felony DUI resulting in death and one count of felony DUI resulting in great bodily injury. In exchange for the plea, the State dismissed the two counts of reckless homicide. The Honorable J. Mark Hayes II, sentenced Applicant to concurrent terms of twenty-five (25) years for each count of felony DUI resulting in death charges and fifteen (15) years for felony DUI resulting in great bodily injury. Applicant did not appeal his plea or sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to insure that Applicant understood the waiving of his three constitutional rights,
 - b. Counsel failed to apprise Applicant of the sentencing consequences of his guilty plea,
 - c. Counsel failed to place Applicant's plea agreement on the record,
 - d. Counsel failed to use Applicant's medical history as mitigating evidence,
 - e. Counsel failed to put the State's case through adversarial testing,
 - f. Counsel failed to advise Applicant of the lesser included offenses which the jury would be instructed on if he went to trial,
 - g. Counsel failed to challenge the chain of custody of Applicant's blood,
 - h. Counsel failed to challenge the fraudulent indictments,
 - i. Counsel failed to interview victim & witnesses,
 - j. Counsel advised Applicant to plead guilty when valid defenses existed to proceed to trial;
2. Involuntary guilty plea, in that;
 - a. Plea was unlawfully induced and not made voluntarily or with a complete understanding of the nature of the charge and the inadequacies of the plea potential.

On November 1, 2012, Applicant filed an amendment to his application vaguely alleging prosecutorial misconduct.

On November 9, 2012, Applicant filed an amendment vaguely alleging after-discovered

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evidence.

On February 13, 2015, Applicant filed an amendment re-alleging his grounds of ineffective assistance of counsel and involuntary guilty plea.

At the outset of the evidentiary hearing before this Court, Applicant made a motion for continuance based upon his desire to subpoena three witnesses and a victim's toxicology report. Respondent objected, noting Applicant's case had been scheduled at least three times following his prior request to relieve appointed counsel and Applicant had ample opportunity to pursue the subpoenas. This Court denied the request for a continuance, but indicated the record would be left open for ten days following the hearing for Applicant or Respondent to supplement the record as needed. The Court received ~~no supplementation within that time frame.~~ *supplementary material from the App. court. RSS.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the 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)). This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

Ineffective Assistance of Counsel

The Court finds Applicant failed to meet his burden to prove plea counsel ineffective. To succeed on a claim of ineffective assistance of plea counsel, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 814 (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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The proper measure of performance is whether plea 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 plea 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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. To meet his burden on this second prong, Applicant must show there is a reasonable probability that, but for plea counsel's actual errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In support of his allegations, Applicant introduced as Applicant's Exhibit #1 a group of documents received through discovery: (a) SC Highway Patrol report; (b) Report from Greenville Hospital System; (c) Simmons' statement; (d) Simmons' statement; (e) major incident form; (f) transport sheet; (g) position of the vehicle; (h) traffic report indicating Simmons' as the driver.

Applicant testified that he believed plea counsel was ineffective for failing to properly investigate the case, in light of the question regarding the identity of the driver of the vehicle and for failing to interview witness Donald Moore.

Applicant testified that he first met with plea counsel on November 28, 2011, at which time

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plea counsel discussed the possibility of Applicant pleading guilty to a charge for a ten year sentence. Applicant testified that plea counsel indicated he would return to discuss the plea with Applicant on February 1, 2012. Applicant testified that on February 1, he signed a sentencing sheet for a ten year sentence, but then received a sentence of twenty-five years at his plea. Applicant testified that at his plea, the facts of the case were originally presented by the State that Simmons was the driver of the vehicle Applicant hit. However, Applicant testified Simmons informed Judge Hayes at the plea that he was a passenger. Applicant testified that he would not have pled guilty had he known Simmons was not the driver because Applicant believed the driver of the vehicle was partially at fault for the accident. Applicant also testified that he would not have pled guilty had he known he was not going to receive a sentence of ten years.

Plea counsel testified he was retained in November 2011 to represent Applicant and visited with Applicant at least three times before the plea. Applicant introduced a copy of the visitation log as Applicant's Exhibit #2. Plea counsel testified it was possible he met with Applicant four or five times, but could not recall exactly and did not believe the visitation log accurately reflected every visit. Plea counsel testified he received all discovery materials and reviewed them with Applicant. Plea counsel testified the case consisted of bad facts for Applicant because he hit the victims while out on bond for a third charge of driving under the influence. Additionally, plea counsel testified Applicant hit the victims while traveling over ninety miles per hour in a forty-five mile per hour zone and his blood alcohol level was approximately .21. Plea counsel testified he discussed with Applicant the possibility of presenting a defense that showed the driver of the other vehicle was possibly drinking and the vehicle was possibly missing a light, but ultimately advised Applicant it was not a viable defense. Plea counsel testified he did not believe that the inconsistencies regarding whether or not Simmons was the driver or if any of the victims had consumed alcohol would have helped Applicant had they proceeded to trial. Plea counsel testified that there was never an offer of ten years and the State never made any

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offer. Plea counsel testified he shared with Applicant the fact they could present Applicant's job stability and family information to the judge and hope for a lower sentence, so Applicant was aware his sentence was decided by the judge.

Applicant's allegation trial counsel failed to advise him of his rights is without merit. Applicant's testimony as to this issue lacks credibility, while plea counsel's testimony is credible. Plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Furthermore, Judge Hayes thoroughly reviewed with Applicant the privilege against self-incrimination, the right to a jury trial, and the right to confront his accusers. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). The record reflects Applicant was fully aware of the rights he waived by pleading guilty.

Also without merit are Applicant's allegations regarding the sentence he expected to receive and his allegation that the State extended a ten-year plea offer. Regarding these allegations, the Court finds plea counsel's testimony credible and gives it great weight. The Court finds Applicant's testimony he was told he would receive a ten year sentence to be not credible. Applicant presented no credible evidence a ten year plea offer existed. Furthermore, plea counsel advised Applicant of the plea negotiations and of the possible sentencing range for his charges. Finally, Judge Hayes informed Applicant of the range of possible sentences, and Applicant acknowledged at the plea colloquy that he understood the terms of his plea. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (possible misconceptions about the possible sentence cured by plea colloquy (citations omitted)). The record reflects Applicant was fully aware of the possible sentence consequences.

Applicant's allegation plea counsel failed to utilize his medical history in mitigation is without merit. Applicant presented no evidence of his medical history at the evidentiary hearing. Accordingly, the Court will not speculate as to what effect this information would have had on sentencing. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (finding of prejudice cannot be based on pure

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conjecture”). Furthermore, plea counsel presented a through and compelling mitigation case at the plea hearing.

The Court finds no merit to Applicant’s allegations that plea counsel failed to subject the State’s case to adversarial testing and that plea counsel failed to challenge the chain of custody for his blood sample. The record reflects plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. The record further reflects Judge Hayes informed Applicant he was waiving any potential challenges to the evidence by entering his plea. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (knowing and voluntary plea waives non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970))).

Similarly without merit are Applicant’s allegation that plea counsel failed to advise on lesser included offenses and encouraged a plea when there were valid defenses. Regarding these allegations, the Court finds plea counsel’s testimony credible and gives it great weight, while finding Applicant’s testimony not credible. Plea counsel advised Applicant on potential defenses including the victim’s intoxication and faulty equipment. Furthermore, Judge Hayes informed Applicant he was waiving any potential defenses by entering his plea. Whetsell, 276 S.C. at 297, 277 S.E.2d at 892. Finally, Applicant failed to demonstrate he would have been entitled to have the jury consider any potential lesser-included offense had he gone to trial. See Hill, 474 U.S. at 59 (“[W]here the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the ‘prejudice’ inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial.”); see also Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense).

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Applicant's allegation that plea counsel failed to challenge the fraudulent indictments is without merit. Applicant presented no evidence to rebut the presumption of regularity in grand jury proceedings. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (absent evidence to the contrary, Court must presume a properly returned indictment is valid (citations omitted)). Furthermore, Applicant has not alleged he was not aware of the charges against him. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) (indictment is notice document). This Court will not indulge this oft repeated, but never substantiated, claim that the grand jury did not issue a proper indictment.

Finally, the Court also rejects as meritless, Applicant's argument that plea counsel failed to investigate the victim and witnesses. Regarding this allegation, the Court finds credible plea counsel's testimony that he was fully aware of the facts of Applicant's case. Applicant failed to show that any additional investigation would have led Applicant to proceed to trial. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Furthermore, Applicant presented no testimony at the evidentiary hearing to support his allegations, and has thus failed to show how these witnesses would have affected his decision to enter a guilty plea. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 810 (1998); Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); see also Clark, 315 S.C. at 388, 434 S.E.2d at 267.

Regardless of the above analysis, the Court further finds overwhelming evidence of Applicant's guilt precludes a finding of any prejudice from plea counsel's actions. See Hutto v. State, 387 S.C. 244, 249, 692 S.E.2d 196, 198 (2010) ("No prejudice occurs, despite deficient performance when there is overwhelming evidence of guilt." (citing Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009))); Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove

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prejudice where there is overwhelming evidence of guilt). Simply put, Applicant has not shown any alternative actions of counsel would have led him to reject the State's plea offer and proceed to trial. Hill, 474 U.S. at 59; see also Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

Involuntary Guilty Plea

The Court finds Applicant failed to meet his burden to show his guilty plea was involuntary. "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52); Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was

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induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

Based on the testimony at the evidentiary hearing in the plea transcript, Applicant was well aware of the charges and potential sentences he faced. Applicant had several opportunities to review discovery materials and discuss the case with plea counsel. As noted above, Applicant failed to demonstrate deficiency or resultant prejudice from plea counsel's performance.

This Court further finds that the record directly refutes Applicant's claims he was unaware of the consequences of his plea. Applicant informed the plea court that he was aware of the charges and of the potential sentences he faced. Applicant further stated that he wanted to proceed with the guilty plea and waived all of the attendant rights. Applicant failed to credibly demonstrate his plea was not knowingly and voluntarily entered with full knowledge of the consequences thereof.

Prosecutorial Misconduct

Applicant also alleged at the hearing that the State committed prosecutorial misconduct by initially presenting the fact that Simmons was the driver, but then changing course at the plea to indicate Simmons was a passenger. This Court finds this allegation lacks merit. Applicant presented no evidence, other than his own self-serving testimony, to show any misconduct occurred. Furthermore, this information was relayed at the guilty plea, and Applicant voiced no complaints about this information at that time. Finally, the Court agrees with plea counsel's observation that information about who was driving the motorcycle was not relevant to any defense Applicant could have presented.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant wholly failed to prove the first prong of the Strickland test – that plea counsel failed to

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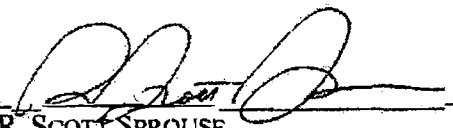
render reasonably effective assistance under prevailing professional norms. Applicant has also wholly failed to prove the second prong of Strickland -- that he was prejudiced by Counsel's performance. His plea was entered knowingly, intelligently, freely, and voluntarily, with full understanding of the consequences. No evidence was presented to show the State engaged in any form of misconduct. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 IT IS SO ORDERED this 17 day of July, 2015.


 R. SCOTT SPROUSE
 Presiding Judge

Waltham, South Carolina

M. HOPE CLACKLEY
 2015 JUL 22 AM 8:51

7-18-2016

The Honorable M.Hope Blackley
Spartanburg Clerk of Court
P.O.Box 3483
Spartanburg S,C 29304

RE: Kevin C Casey v. State of South Carolina. C/A 2012-CP-42-4389

Dear Ms.Blackley,

I am writeing you with concern of my PCR hearing that was held on June 12,2015.I went in front of the Honorable Judge R.Scott Sprouse. As of June 12 of 2016,it has been over a year and I just would like to know the status of my case.I would iike to thank you in advance for your assistance with this matter,and may you and yours have a bless day.

CC:My files

Sincerly:
Kevin Casey

M. HOPE BLACKLEY

2016 JUL 22 AM 9:24

Kevin C Casey

DOCKET NO. **11-GS-42-6361(P)**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 28 2011

TERM

THE STATE
v.

FILED
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SPARTANBURG COUNTY
2011 DEC -5 PM 4:36
M. HOPE BLACKLEY

KEVIN CHARLES CASEY

COUNT TWO - RECKLESS HOMICIDE - NP - Defendant pled guilty to Felony DUI (Death) on Count One in front of Judge Mark Hayes on 2-14-2012 and received a Twenty Five (25) year jail sentence.

Indictment for

CAUSING DEATH BY OPERATING VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL (FELONY DUI - DEATH) RECKLESS HOMICIDE

SC Code: 56-5-2945(A)(2) and 56-5-2910
CDR Code(s): 0395 and 3097

The Defendant also pled to another count of Felony DUI (DEATH) on Indictment No.: 11-GS-42-6362 and received a concurrent 25 year jail sentence and another count of Felony DUI (GBI) on Ind. No.: 11-GS-42-6363 and received a 15 year JAIL SENTENCE CONCURRENT. - 2/14/2013

WITNESSES

D. S. Elder

SCHP 1. SENTENCE MADE

2. REPORT ENDED

Computer

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT

FINE CARD MADE

Computer

8. VIOLATION COPY

ARREST WARRANT NUMBER

F281027 & Direct Indictment

ACTION OF GRAND JURY

True Bill

NOV 22 2011

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

NOV 22 2011

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE – FELONY DUI - DEATH

That, Kevin Charles Casey, did in Spartanburg County on or about October 15, 2011, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected any duty imposed by law in the driving of the vehicle, to-wit:

- (1) Failure to maintain proper control of vehicle, and/or
- (2) Driver's failure to exercise due care (56-5-3230) and/or
- (3) Failure to follow right of way restrictions (Art 17, Section 56), and/or
- (4) Driving too fast for conditions (Section 56-5-1560); and/or
- (5) Failure of driving on roadway laned for traffic (Section 56-5-1900).
- (6) Failure to maintain a proper lookout for other traffic and/or pedestrians

which proximately caused death to Megan W. , in violation of §56-05-2945 (A) (2), of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO – RECKLESS HOMICIDE

That Kevin Charles Casey, did in Spartanburg County on or about October 15, 2011, drive a motor vehicle in reckless disregard for the safety of others and such driving proximately caused the death of Megan W. , in violation of Section 56-5-2910, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 SOLICITOR

DOCKET NO. **11-GS-42-6362 (A)**

The State of South Carolina
County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 28 2011

TERM

THE STATE
v.

KEVIN CHARLES CASEY

*COUNT TWO - RECKLESS HOMICIDE - NP - Defendant pled to Felony
DUI (DEATH) on Count One in front of Judge Mark Hayes on
2-14-2012 and received a Twenty-Five (25) YEAR JAIL SENTENCE.*

Indictment for

CAUSING DEATH BY OPERATING
VEHICLE WHILE UNDER THE
INFLUENCE OF DRUGS OR ALCOHOL
(FELONY DUI - DEATH)
RECKLESS HOMICIDE

SC Code: 56-5-2945(A)(2) and 56-5-2910
CDR Code(s): 0395 and 3097

*The Defendant also pled to
another Count of Felony DUI (DEATH)
on Indictment No.: 11-GS-42-6361
and received a concurrent 25 year
jail sentence and another Count of
Felony DUI (GBI) on Ind. No.: 11-GS-42-
6363 and received a concurrent 15 year*

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CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC -5 PM 4:36
M. HOPE BLACKLEY

WITNESSES

[Signature]

SCHP

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRANSFER WARRANT NUMBER

F281026 & Direct Indictment

Computer

Computer

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

NOV 22 2011

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

NOV 22 2011

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE –FELONY DUI - DEATH

That, Kevin Charles Casey, did in Spartanburg County on or about October 15, 2011, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected any duty imposed by law in the driving of the vehicle, to-wit:

- (1) Failure to maintain proper control of vehicle, and/or
- (2) Driver's failure to exercise due care (56-5-3230) and/or
- (3) Failure to follow right of way restrictions (Art 17, Section 56), and/or
- (4) Driving too fast for conditions (Section 56-5-1560); and/or
- (5) Failure of driving on roadway laned for traffic (Section 56-5-1900).
- (6) Failure to maintain a proper lookout for other traffic and/or pedestrians

which proximately caused death to Steven Ray Mills, in violation of §56-05-2945 (A) (2), of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO – RECKLESS HOMICIDE

That Kevin Charles Casey, did in Spartanburg County on or about October 15, 2011, drive a motor vehicle in reckless disregard for the safety of others and such driving proximately caused the death of Steven Ray Mills, in violation of Section 56-5-2910, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 SOLICITOR

DOCKET NO
11-GS-42-6363

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 28 2011

TERM

THE STATE
v.

KEVIN CHARLES CASEY

Indictment for

FELONY DUI - GREAT BODILY INJURY

SC Code: 56-5-2945 (A) (1)
CDR Code: 0406
Class FEL-D

WITNESSES

[Signature]

SCHP

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

F-281028

7. ASSESSMENT
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: NOV 28 2011

VERDICT

Foreperson of Petit Jury
Date:

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC -5 PM 4:37
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 22 2011

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

FELONY DUI – GREAT BODILY INJURY

That, Kevin Charles Casey, did in Spartanburg County on or about October 15, 2011, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected any duty imposed by law in the driving of the vehicle, to-wit:

- (1) Restriction on Speeding (Article II, Section 56), and/or
- (2) Failure of driving on roadway laned for traffic (Section 56-5-1900), and/or
- (3) Failure to maintain proper control of vehicle, and/or
- (4) Driving Left of Center (Sections 56-5-1810 and 56-5-1880), and/or
- (5) Failure to follow right of way restrictions (Art 17, Section 56) and/or
- (6) Reckless Driving (Section 56-5-2920) and/or
- (7) Driver's failure to exercise due care and/or

Which proximately caused Great Bodily Injury to Jason Matthew Simmons, in violation of §56-05-2945 (A) (1), of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


SOLICITOR