

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

\_\_\_\_\_  
THOMAS TIEDEMANN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000639

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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ATTORNEYS FOR RESPONDENT

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1 State of South Carolina ) Court of General Sessions  
 2 County of Horry ) 2014-GS-26-05398

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5 State of South Carolina )  
 6 vs. ) Transcript of Record  
 7 Thomas Tiedemann )

7

8

March 23rd, 2015  
 Conway, South Carolina

9

10

11 BEFORE:

12 Honorable Larry B. Hyman, Judge.

13

14 APPEARANCES:

14

15 Scott Hucks, Esq.  
 Attorney for the State

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17 Russel Long, Esq.  
 Attorney for the Defendant

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Teresa J. F. Bautz, RPR  
 Official Court Reporter

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E X H I B I T S

NO.	DESCRIPTION	ID	EV
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No exhibits submitted.			
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Exhibits retained by Clerk of Court.			
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1 (The hearing commenced at approximately  
2 10:09 a.m.)

3 THE COURT: Please just keep your seats.

4 MR. LONG: Your Honor, Mr. Tiedemann can stand.  
5 He's in this wheelchair, he can stand. But it's  
6 painful.

7 THE COURT: That's all right. He may sit.

8 MR. LONG: Thank you.

9 THE COURT: All right. Mr. Hucks, it's my  
10 understanding that our purpose today is to qualify a  
11 plea for a felony driving under the influence, great  
12 bodily injury; is that correct?

13 MR. HUCKS: Yes, sir, Your Honor. And it's the  
14 State versus Thomas Tiedemann, Indictment No.  
15 2013-GS-26-5398, I believe, is in front of you.

16 THE COURT: Okay.

17 MR. HUCKS: And he stands before you today with  
18 his attorney of record, Mr. Long. Mr. Long has  
19 recently been retained on the case. I'll pass forward  
20 the sentencing sheet at this time. He would be  
21 pleading with no recommendation. Your Honor, I believe  
22 there were some personal and professional matters that  
23 Mr. Tiedemann -- that Mr. Long was wanting to put off  
24 sentencing for and only qualify today, and we have no  
25 objection to that.

1 THE COURT: All right, very well. Mr. Tiedemann,  
2 you are presently represented by Mr. Long; is that  
3 correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Did you place him under oath?

6 THE CLERK: No, sir.

7 THOMAS TIEDEMANN, after being duly sworn,  
8 testified as follows:

9 THE COURT: Again, Mr. Tiedemann, you are  
10 represented by Mr. Long; is that correct?

11 THE DEFENDANT: That's correct, Your Honor.

12 THE COURT: And during the time that he has  
13 represented you, have you had an opportunity to discuss  
14 with him the nature of this event, that is what  
15 constitutes felony driving under the influence, great  
16 bodily injury?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And did he advise you that essentially  
19 what that charge means is that you were operating a  
20 motor vehicle within the State after having consumed a  
21 sufficient quantity of alcohol and/or some other  
22 intoxicating substance that your mental and physical  
23 faculties were materially and appreciably impaired, and  
24 that while under the influence you committed some other  
25 driving infraction and as a result of that caused an

1 accident in which a person suffered great bodily  
2 injury. Is that your understanding?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. And do you understand,  
5 sir, that for that offense, you could receive a  
6 sentence of a minimum of 30 days up to 15 years?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Now, Mr. Tiedemann, in your  
9 conversations with Mr. Long, did he have an opportunity  
10 to review with you the discovery materials or the  
11 evidence that the State had in this case?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And did he explain to you how the  
14 State might attempt to use that against you if you were  
15 to have a jury trial?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Then there's no question that you and  
18 Mr. Long have, at least in some degree, have discussed  
19 your right to a jury trial?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you realize, sir, that you do not  
22 have to enter a plea of guilty? That is an option  
23 available to you, but it's only an option. Another  
24 option is a jury trial. And that is an absolute right  
25 you have; do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you realize, sir, that if you enter  
3 a plea of guilty, you are forever waiving your right to  
4 a jury trial?

5 THE DEFENDANT: Yes, Your Honor. I am guilty.

6 THE COURT: All right. Do you understand, though,  
7 that if you enter a plea of guilty today, you cannot  
8 later come back and say, I've changed my mind, I  
9 believe I want a jury trial; you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Whenever a person waives the  
12 general right to a jury trial, and that's precisely  
13 what you do when you plead guilty, when you waive that  
14 general right, you also give up many, many other rights  
15 that are associated with or collateral to a jury trial.  
16 There are many such rights, so many that from a  
17 philosophical standpoint we can stand around and talk  
18 for weeks about all the nuances of a jury trial and how  
19 rights you might have would be related to that jury  
20 trial.

21 But by way of illustration, I would like to point  
22 out just a few of those rights to you, some that, at  
23 least in my view, are some of the more important  
24 rights. I'm sure other people would have different  
25 opinions about that. But I just want to point these

1 out to you to make sure that you understand what I'm  
2 talking about; fair enough?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. You would have things like the  
5 right to remain silent in a jury trial. If we had a  
6 trial, no one could make you take the stand, no one  
7 could make you testify, no one could ask you any  
8 questions. Of course you could testify on your own  
9 behalf if you chose to, but that would be a voluntary  
10 thing, something that you could do or not do.

11 This right is so important that if you chose to  
12 remain silent in a jury trial, I would instruct the  
13 jury that they could not even consider that in their  
14 deliberations, they could not use that against you in  
15 any form or fashion.

16 That's different from a guilty plea, because in a  
17 guilty plea, you are called upon to admit your guilt,  
18 something that you would not have to do in a jury  
19 trial. You, of course in a jury trial, have the right  
20 to have an attorney with you throughout those  
21 proceedings. You have a very fine attorney with you  
22 today, Mr. Long, but he would be with you every minute  
23 of a jury trial; do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And, finally, at the end of the trial,

1 I would tell the jury that they could not convict you  
2 of this offense unless they were convinced beyond a  
3 reasonable doubt of your guilt based solely upon the  
4 evidence presented by the State; do you understand  
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. And, again, that's  
8 different from a guilty plea because as we sit here  
9 today, Mr. Hucks doesn't have to prove anything to me,  
10 he doesn't even have to put up any evidence. All he is  
11 required to do is provide me with a statement or  
12 factual basis for the plea; you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Do you, sir, wish to go forward  
15 with this guilty plea thereby waiving not only your  
16 general right to a jury trial, but the many, many  
17 rights you have that are associated with a jury trial?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: That's what you want to do?

20 THE DEFENDANT: I want to continue on, yes.

21 THE COURT: All right. Now, let's talk about  
22 Mr. Long. Are you satisfied with Mr. Long's  
23 representation?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I understand that he's been

1 representing you for a month or so, and before that you  
2 had Mr. Floyd with the public defender?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Are you satisfied with the  
5 services you received by Mr. Long?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you think he's done everything he  
8 could to help you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you need any more time to discuss  
11 this with Mr. Long?

12 THE DEFENDANT: No, sir.

13 THE COURT: Mr. Long, do you concur in your  
14 client's decision to enter this guilty plea?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Do you think it's in his best  
17 interest?

18 MR. LONG: I do.

19 THE COURT: Mr. Tiedemann, I look at the  
20 sentencing sheet here and I see that you're 59 years of  
21 age; is that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And it would further appear that  
24 you're from over in Myrtle Beach; is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, have you always lived in Myrtle  
2 Beach, or are you a native?

3 THE DEFENDANT: No. 14 years.

4 THE COURT: Okay. Mr. Tiedemann, are you married?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have children?

7 THE DEFENDANT: Yes, sir. Six.

8 THE COURT: Are any of those children under the  
9 age of 18?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Mr. Tiedemann, how far did you  
12 go in school?

13 THE DEFENDANT: Twelfth grade.

14 THE COURT: Okay. Mr. Tiedemann, did you work,  
15 were you working at the time of this accident?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. What kind of work did you do,  
18 Mr. Tiedemann?

19 THE DEFENDANT: I'm a diesel mechanic.

20 THE COURT: Okay. Mr. Tiedemann, who did you work  
21 for?

22 THE DEFENDANT: Coast.

23 THE COURT: Coast Diesel?

24 THE DEFENDANT: Um-hum.

25 THE COURT: Okay. Have you ever had any addiction

1 issues, mental health problems, physical problems; is  
2 there anything going on in your life that might prevent  
3 you or impair your ability to understand what we're  
4 doing here today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you understand fully and completely  
7 what we're doing?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you need to talk with your attorney  
10 anymore?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you need to ask me any questions  
13 about this process? Now, I certainly can't give you  
14 any legal advice, that would be up to your attorney,  
15 but I would be more than happy to answer any questions  
16 you may have generally about this process that we're  
17 going through. Do you have anything you want to ask  
18 me?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. Have you had anything  
21 alcoholic to drink or have you taken any intoxicating  
22 substances within the last 24 hours?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: All right. I want you to listen very  
25 carefully. Mr. Hucks is going to tell me why you were

1 charged with this offense.

2 MR. HUCKS: Yes, sir, Your Honor. On or about  
3 June 18th of 2013, about 3 o'clock in the afternoon,  
4 Mrs. Scarsgard who is present here in the court, was  
5 driving down Forestbrook Road in Horry County behind a  
6 pick-up truck that was pulling a trailer with another  
7 vehicle in front of that pick-up truck.

8 The lead vehicle looks up, Mr. Tiedemann's vehicle  
9 is driving towards them in the wrong lane of traffic,  
10 coming directly head-on towards them. He starts  
11 flashing his lights, laying on the horn. When that  
12 happened, the Defendant notices it, swerves into the  
13 opposite lane of his --

14 THE COURT: Correct lane.

15 MR. HUCKS: -- the lane he should be in, his  
16 correct lane. When he does, he goes off the road,  
17 overcorrects, comes back, hits the truck that's in  
18 front of Ms. Scarsgard's, it's pulling a landscaping  
19 trailer, it's a landscaping crew. He hits that  
20 landscaping trailer, knocks the axle out from under it,  
21 overcorrects and hits Ms. Scarsgard head on.

22 She's driving a mini van, he's driving a Dodge  
23 pick-up truck, full size truck. He hits her hard  
24 enough to knock the engine of her vehicle into the  
25 passenger compartment where it lands on top of her legs

1 and pins her. He then attempts to get out of his  
2 vehicle while some bystanders are around trying to --  
3 he attempts to get out of his vehicle and walk off.  
4 Some bystanders stop him, an EMS comes. They -- it  
5 takes about an hour and a half for Ms. Scarsgard to get  
6 cut out of her vehicle. She's had 15 surgeries related  
7 to her legs and arms. Her arms were shattered, her  
8 legs were shattered and she received a hernia as a  
9 result of the impact.

10 He was taken into custody where they drew blood.  
11 His blood came back .14 alcohol, and he was positive  
12 for morphine, Valium and diazepam.

13 THE COURT: All right.

14 MR. HUCKS: It's the State's position that the  
15 intoxication led directly to the wreck.

16 THE COURT: Okay. Mr. Tiedemann, do you admit,  
17 sir, that on June the 18th of 2013 you were operating a  
18 motor vehicle within this county while under the  
19 influence of alcohol or drugs or a combination of both,  
20 and that you were under the influence to the extent  
21 that your mental and physical faculties were materially  
22 and appreciably impaired?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And do you further admit that while in  
25 that condition you did commit some other forbidden act

1 which resulted in an accident, and that accident  
2 resulted in great bodily injury to the victim in this  
3 case?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And is that why you're pleading  
6 guilty?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you been promised anything,  
9 threatened in any way, has anyone done anything  
10 inappropriate or improper in order to make you feel as  
11 though you had to enter this guilty plea?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Are you pleading freely and  
14 voluntarily?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you, sir, believe that this plea is  
17 in your best interest?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Have you had all the time you need to  
20 think about it?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Do you need any further time  
23 with Mr. Long, family, friends, anyone else that you  
24 would like to talk to about this?

25 THE DEFENDANT: No, sir.

1 THE COURT: Would you like to discuss it further  
2 with me?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right.

5 THE DEFENDANT: I'm guilty.

6 THE COURT: All right, sir, I find that there is a  
7 substantial factual basis for the plea, that the plea  
8 is made freely, voluntarily, knowingly and  
9 intelligently after the advice of a very competent  
10 attorney with whom Mr. Tiedemann tells me he is  
11 satisfied, and I will accept his plea. I will defer  
12 sentencing for a period not to exceed 90 days.

13 MR. LONG: Thank you very much.

14 MR. HUCKS: Thank you, Your Honor.

15 MR. LONG: Thank you for the Court's time.

16 THE DEFENDANT: Thank you, Your Honor.

17 (The hearing concluded at approximately  
18 10:23 a.m.)

19 (End of Transcript of Record)  
20  
21  
22  
23  
24  
25



STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY ) 2013-GS-26-05398

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	May 19, 2015
	)	
Thomas Tiedemann,	)	Sentencing
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson  
Horry County Courthouse  
Conway, South Carolina

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

Martin Spratlin, Esquire  
Attorney for Plaintiff

Russell Long, Esquire  
Attorney for Defendant

Grace L. Hurley, CVR-CM-M  
Circuit Court Reporter

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E X H I B I T S

(There were no exhibits marked during the hearing.)

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State v. Tiedemann

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1 (On the record, May 19, 2015.)

2 THE COURT: All right, sir. What have we got?

3 MR. SPRATLIN: Good morning, Your Honor. The first case  
4 for the Court this morning is State of South Carolina, County  
5 of Horry versus Thomas Tiedemann, T-I-E-D-E-M-A-N-N, charged  
6 in indictment and already pled guilty on indictment 2013-GS-  
7 26-05398. He pled guilty to felony DUI resulting in great  
8 bodily injury, carries anywhere from 30 days to 15 years in  
9 prison, represented by Attorney Russell Anderson, I mean,  
10 Russell Long, excuse me. He pled guilty to that charge.  
11 Sentencing was deferred until he could cooperate in the civil  
12 case. I have talked with the defense attorney or the  
13 Plaintiff's attorney on the civil case, Mr. Preston Brittain,  
14 who's present here in the courtroom, along with the victim on  
15 this case, Ms. Coleen Skrogstad. He has been deposed in that  
16 civil case, and we are here for sentencing. At the  
17 appropriate time, the victim would like to be heard.

18 THE COURT: All right.

19 (Defendant is sworn by clerk.)

20 THE COURT: All right. Well, I see where Judge Hyman  
21 took the plea. I don't know anything about the case, so.

22 MR. SPRATLIN: Yes, sir, Your Honor. I can provide a  
23 factual basis for the Court of what was substantiated on that.

24 THE COURT: Okay.

25 MR. SPRATLIN: Back on or about June 18<sup>th</sup>, 2013, a motor

1 vehicle being driven by the Defendant crossed the center line  
2 and struck head on a vehicle being driven by Ms. Coleen  
3 Skrogstad. At the time of this accident, the Defendant was  
4 under the influence of both alcohol and drugs. He had a blood  
5 alcohol level, according to the SLED toxicology report, of  
6 .140 -- so the legal -- almost two times the legal limit.  
7 Additionally, he tested positive, his blood tested positive  
8 for morphine, cyclobenzaprine, diazepam and nordiazepam, all  
9 of which impaired his ability to operate a motor vehicle, and  
10 he did neglect the duty imposed by law, that is staying within  
11 his lane, across the center line. This accident was severe,  
12 Your Honor. Ms. Skrogstad was trapped in the vehicle for  
13 several hours, had to be cut out of the vehicle by EMS  
14 personnel and fire department personnel. She received several  
15 fractures, including a broken neck, a broken back. Metal rods  
16 had to be placed into her body. She had to have new hip, I  
17 think actually she -- the new hip was a recent because she  
18 actually did not have a hip for a while. They had to remove  
19 it it was so damaged. Her chest was broken. For her entire  
20 life she'll have mobility issues, and she'll be permanently  
21 disabled, resulting in that qualifies, Your Honor, as severe  
22 bodily injury or great bodily injury under the statute. She's  
23 had lengthy surgeries in the amount of five lengthy surgeries.  
24 The Defendant has admitted through the civil deposition that  
25 he was at the Sun Up Bar and Grill where he was served several

1 beers and liquor drinks of bourbon and cokes, which resulted  
2 in his intoxication, which was a direct and proximate cause of  
3 the accident in this case.

4 THE COURT: All right. All right. Mr. Long, anything in  
5 mitigation?

6 MR. LONG: Judge, I will -- you know, we did come here in  
7 front of Judge Hyman I think a couple of months ago, and we  
8 asked for some time before sentencing. Tommy Brittain was  
9 here on behalf of the victim. We asked for some time in order  
10 to, to help them with their -- get their civil case started or  
11 at least get them the, the information that they needed,  
12 information that they didn't have. So Mr. Tiedemann and I  
13 have met with them now. We've taken a deposition and a sworn  
14 statement. He's signed an affidavit this morning that sort of  
15 corrected some things that needed to be corrected in that.  
16 It's -- I think there are several hundred thousand dollars and  
17 counting in medical bills for the victim in this case, and,  
18 and Tom wants to do everything he can. He can't make it  
19 right. He's not ever going to get it back the way it was  
20 before, but he's in the position now and trying his best to  
21 help them in any way that he, that he can with their civil  
22 lawsuit. He started upon -- right before the plea, he started  
23 posting \$1,000 into my trust account to help go towards the  
24 restitution in this case. So we've, we've started that up.

25 Tom himself was severely injured in the collision as

1 well. He broke his neck, fractured his spine. He served a  
2 little over five months out at J. Reuben before bonding out,  
3 wasn't able to get physical therapy while he was out there.  
4 So he's now lost, for practical purposes, lost all the  
5 strength in his legs and he's not a hundred percent wheelchair  
6 bound, but it's very difficult to walk and difficult to stand  
7 without the wheelchair.

8 I know that, that Ms. Skrogstad was not in our -- in my  
9 office when Tom expressed his, his deep sympathy, and, and  
10 apologies for what he's caused to Mr. Brittain. I know he  
11 wants to do that today. He knows how wrong his actions were,  
12 and he knows that those are the only cause of now what's  
13 caused her to, to have a much more difficult life than she  
14 already had planned, and he wants to do what he can going  
15 forward to help her in any way that he can.

16 Judge, we would ask that you consider some type of split  
17 sentence with some suspended sentence and give him an  
18 opportunity to continue to earn and continue to pay towards  
19 the restitution in this case.

20 He needs four surgeries. He's being told by doctors and  
21 hospitals that he's going to have to wait until he's on  
22 Medicare to get those surgeries. He doesn't have health  
23 insurance, and so those, you know, you know, many thousands of  
24 dollars worth of surgeries can't be done right now, but Judge,  
25 we would just ask you to consider the fact that he is trying.

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1 Again, he can't, he can't undo the event, but he is trying to  
2 do what he can to help in going forward, and I know that he  
3 would like to address the Court and, and the victim if the  
4 Court would allow him to.

5 THE COURT: All right. Well, now, as I'm, I'm looking at  
6 my strickler according to this there is no probation; is that  
7 correct?

8 MR. SPRATLIN: Your Honor, I believe it's 30 days to 15  
9 years, and --

10 THE COURT: No suspension, a mandatory sentence, says no  
11 probation.

12 MR. LONG: No probation. I, I, I read that -- you read  
13 that to be no probation possible at all? I read that to be  
14 not in lieu of the minimum sentence.

15 THE COURT: I don't know. I hadn't look at the statute.  
16 It just says no suspension, a mandatory minimum sentence, no  
17 probation, mandatory minimum. I guess we'll need to pull the  
18 statute and let me take a look at it.

19 MR. LONG: Right. And with that being said, Judge, also  
20 and, and when I say split sentence, considering the  
21 possibility of some house arrest or something based on his  
22 medical condition and his desire to want to continue. He's,  
23 he's on -- he receives social security, but he also is earning  
24 money trading vehicles. He's an auto trader. He's able to  
25 make, make money to live, and he's been able to make this

1 extra \$1,000 a month to go towards the restitution.

2 MR. SPRATLIN: Your Honor, if I may, I pulled the statute  
3 up on my phone, and if I may read the exact portion regarding  
4 the felony DUI resulting in great bodily injury, "By a  
5 mandatory fine of not less than \$5,100, nor more than \$10,100  
6 and mandatory imprisonment for not less than 30 days, nor more  
7 than 15 years when great bodily injury results." A later  
8 portion under section two says, "A part of the mandatory  
9 sentence is required to be imposed by this section, must not  
10 be suspended and probation must not be granted for any  
11 portion."

12 THE COURT: Okay. So it says probation cannot be granted  
13 for any portion.

14 MR. SPRATLIN: And Your Honor, I can hand -- and, and --

15 THE COURT: That's fine. No.

16 MR. LONG: Okay.

17 THE COURT: That's what it says.

18 All right. Anything further, Mr. Long?

19 MR. LONG: No, Your Honor

20 THE COURT: All right. Mr. Tiedemann, anything you want  
21 to say?

22 MR. TIEDEMANN: Yes, sir. I'd like to say I'm sorry to  
23 the victim, okay, and she was innocent. It was totally my  
24 fault, you know, that's pretty much, you know, like I said,  
25 I'm trying to pay the \$1,000 a month or have been paying the

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1 \$1,000 a month for five, five years, which we've offered that,  
2 you know, whatever I can do to help them because I caused this  
3 whole thing.

4 THE COURT: All right. All right. You said the victim  
5 wished to speak?

6 MR. SPRATLIN: Yes, Your Honor, Ms. Coleen Skrogstad did  
7 wish to speak. I'd ask that we be able to pull the microphone  
8 around and she speak at the end of this table.

9 THE COURT: That'll be fine. Yes, ma'am, your name?

10 MS. SKROGSTAD: Hi. I'm Coleen Skrogstad.

11 THE COURT: All right. Ms. -- could you spell your last  
12 name for us?

13 MS. SKROGSTAD: S-K-R-O-G-S-T-A-D.

14 THE COURT: All right.

15 MS. SKROGSTAD: I just wanted to state to Mr. Tiedemann  
16 that I hope when you are in jail you will straighten your act  
17 up. I hope you will feel all the pain and suffering that I've  
18 gone through every day since the accident. I want you to know  
19 that I do have you in my prayers to hope that you get better.

20 MR. TIEDEMANN: Thank you.

21 MS. SKROGSTAD: Thank you.

22 THE COURT: All right. All right. Any prior criminal  
23 record?

24 MR. SPRATLIN: Your Honor, I show a 1989 driving under  
25 the influence, 1990 assault, a drug charge in '96, 2003 public

1 disorderly conduct, 2007 grand larceny and 2008 criminal  
2 domestic violence.

3 THE COURT: Okay. All right. What was the prior record?  
4 What was the most recent one?

5 MR. SPRATLIN: Your Honor, the most recent one is a 2008  
6 criminal domestic violence.

7 THE COURT: Okay. And the one before that?

8 MR. SPRATLIN: 2007 grand larceny.

9 THE COURT: And what did he get for that?

10 MR. SPRATLIN: Let me check the actual NCIC, Your Honor.

11 MR. LONG: Three years probation on receiving stolen  
12 goods he tells me, Judge.

13 THE COURT: Now, they said he was convicted of grand  
14 larceny.

15 MR. SPRATLIN: Your Honor, it says grand larceny where  
16 Mr. Hucks made the notes. He was original prosecutor on this.  
17 Looking at the actual NCIC it does look like it was a  
18 receiving stolen goods 30 months suspended to five days, \$500  
19 fine and two years probation.

20 THE COURT: All right. Let's go back over it now because  
21 I want to make sure I've got an accurate prior criminal  
22 record.

23 MR. SPRATLIN: Yes, sir.

24 THE COURT: Tell me what he's been convicted of.

25 MR. SPRATLIN: I was reading the notes as the -- from the

State v. Tiedemann

11

1 previous prosecutor on the case, I apologize. Driving while  
2 ability impaired by the consumption of alcohol, what's  
3 commonly called DUI in 1990, an assault charge in 1990,  
4 attempt to possess Fylenol, a scheduled drug in 1996, 2003 I  
5 show a public disorderly conduct, a hunting without license,  
6 2007 the receiving stolen goods that I mentioned earlier 30  
7 months suspended to five days and two years probation, a  
8 criminal domestic violence conviction in 2008 and that's the  
9 last conviction I show, Your Honor.

10 THE COURT: All right. All right. Mr. Tiedemann, the  
11 sentence of the Court is that you be confined to the State  
12 Department of Corrections for seven years and to pay a fine of  
13 \$5,000.

14 MR. SPRATLIN: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. LONG: Thank you, Judge.

17 THE COURT: Thank you.

18 (Adjourned.)

19

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## C E R T I F I C A T E

1  
2  
3  
4 I, the undersigned, Grace L. Hurley, Official Court  
5 Reporter for the State of South Carolina, do hereby certify  
6 that the foregoing is a true, accurate and complete Transcript  
7 of Record of the sentencing hearing held in the case of State  
8 versus Thomas Tiedemann, held in the Court of General Sessions  
9 for Horry County, Horry County Courthouse, Conway, South  
10 Carolina, on May 19, 2015.

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

13  
14  
15  
16 Grace L. Hurley  
17 Grace L. Hurley, CVR-CM-M  
18 Official Reporter  
19  
20  
21  
22  
23  
24

25 October 12, 2015.

John

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
Thomas Tiedemann 364050 )  
Full name and prison number (if any) of Applicant. )

IN THE COURT OF COMMON PLEAS

20 15 CP26 8055

v. )  
 )  
State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

HORRY COUNTY  
CLERK OF COURT  
MELANIE HUGHINS-MAZUR  
NOV - 6 PM 3:24

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 KIRKLAND R&E Center, 4344 Broad River Rd. Cda, SC 29310
2. Name and location of Court which imposed sentence Horry County General Sessions, Conway SC
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2013-GS-26-05398, DUI w/ GBI
  - (b) N/A
  - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) MAY, 19, 2015, 7 years
  - (b) N/A

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Attorney Long SAID HE WOULD FILE, BUT FAILED TO DO SO.

(b) N/A

(c) N/A

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

- (a) Violation of 4<sup>th</sup> Amendment illegal Search and Seizure
- (b) Ineffective Assistance of Counsel, NO SEARCH WARRANT FOR BLOOD
- (c) \_\_\_\_\_

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

- (a) Ofc. Demiren, collected a blood sample without a proper warrant.
- (b) MR. LONG DID NOT CHALLENGE THE BLOOD THAT WAS TAKEN w/o my consent.
- (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
  - i. 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
- (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?

NO

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

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) Attorney Long failed to file my appeal, as promised.
- (b) Wanted to leave PCR Avenue open.
- (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? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Alex Hyman, 2nd Ave, Conway SC. 29526
  - ii. Thomas Floyd, PD Office Conway SC. 29526
  - iii. Russell Long, 5307 N. King Hwy, MB. SC 29577
- (b) the proceedings at which each such attorney represented you:
  - i. Initial Bail Hearing
  - ii. Bail Hearing, Roll Calls 10/13 thru 10/14
  - iii. Remaining Court Appearances before Judges Hyman + Culbertson

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

SET ASIDE SENTENCE FOR RECONSIDERATION, VACATION OF SENTENCE

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

NO

STATE OF SOUTH CAROLINA )  
 )  
County of HORRY )

20 15 CP26 8055  
VERIFICATION

I, THOMAS TIEDEMANN, 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.

Thomas Tiedemann

SWORN to and subscribed before me this 4th  
day of November, 2015.

[Signature] (L.S.)  
Notary Public

My Commission Expires **DEVERLE ALBERT**  
**Notary Public, State of South Carolina**  
**My Commission Expires May 3, 2023**

MELANIE HUGGINS-WARD  
CLERK OF COURT  
NOV - 6 PM 3:08  
HORRY COUNTY

20 15 CP26 8055

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

I, THOMAS T. BEMANN, 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.

Thomas Tiedeman  
Applicant

SWORN or affirmed to and subscribed before me this 4th day of November, 2015.

[Signature]  
Notary Public

My Commission Expires:

DEVERLE ALBERT  
Notary Public, State of South Carolina  
My Commission Expires May 3, 2023

MELANIE HUGGINS-WARD  
CLERK OF COURT  
NOV 9 9 48 AM  
HORRY COUNTY

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )  
 )  
 )  
 Thomas Tiedemann, #364050, )  
 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-8055

RETURN

2017 JAN 12 PM 1:48  
 Horry County  
 CLERK OF COURT  
 HORRY COUNTY, SC

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on November 6, 2015, would respectfully show this Court:

I.

Thomas Tiedemann ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Horry County. Applicant was indicted at the December 2013 term of the Horry County Grand Jury for felony driving under the influence, great bodily injury (2013-GS-26-5398). Applicant was represented by Russell Long, Esquire. On March 23, 2015, Applicant pled guilty before the Honorable Larry B. Hyman, Jr., as indicted. Judge Hyman deferred sentencing upon the request from Applicant. The Honorable Benjamin H. Culbertson, on May 19, 2015, sentenced Applicant to seven (7) years imprisonment. Applicant did not appeal his conviction.

II.

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

1. "Violation of 4<sup>th</sup> Amendment illegal search and seizure."

- a. "Ofc. Demiren collected a blood sample without a proper warrant."
2. "Ineffective assistance of counsel, no search warrant for blood."
  - a. "Mr. Long [Applicant's attorney] did not challenge the blood test that was taken w/o (without) my consent."

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript and the records of this action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

### III.

Applicant alleges his constitutional rights were violated due to an unlawful search and seizure, such that the arresting officer did not obtain a search warrant to draw Applicant's blood for the purpose of testing Applicant's blood-alcohol content (BAC). Respondent interprets Applicant's allegation that the blood sample obtained through the alleged illegal search and seizure as that of insufficient evidence to convict him. Respondent submits that this allegation 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). Further, claims challenging the sufficiency of the evidence are specifically barred by §17-27-20(6) of the Uniform Post-Conviction Procedure Act.

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 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 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Furthermore, a guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). Therefore the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708, 709 (2000). Additionally, PCR is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6).

#### IV.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have 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 to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

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

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed

by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRPC. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not the inmate, is the only individual authorized to file amendments to this application. Rule 11, SCRPC. Filings by inmates will not be considered at the PCR hearing.

## VI.

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

## VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the sole allegation of ineffective assistance of counsel.

Respectfully submitted,


ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI  
Assistant Attorney General

By:

 for V66  
ATTORNEYS FOR RESPONDENT  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

11/10, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Horry )  
 )  
 THOMAS TIEDEMANN, 364050, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2015-CP-26-8055

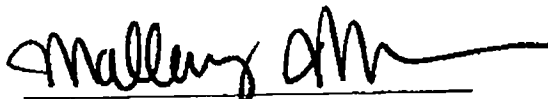
AFFIDAVIT OF SERVICE BY MAIL

2017 JAN 12 PM 1:40  
 Horry County  
 Clerk of Court  
 Horry County, SC

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

**Mr. Daniel A. Selwa, II, Esquire**  
**516 29<sup>th</sup> Avenue North**  
**Myrtle Beach, SC 29577**

DATED this 10<sup>th</sup> day of January, 2017.

  
 \_\_\_\_\_  
 Mallory Morris, Legal Assistant  
 For Respondent

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State of South Carolina ) Court of Common Pleas  
County of Horry ) 2015-CP-26-08055

Thomas Tiedemann )  
vs. ) Transcript of Record  
State of South Carolina )

November 30, 2017  
Conway, South Carolina

BEFORE:  
Honorable William H. Seals, Judge.

APPEARANCES:  
Daniel A. Selwa, II, Esq.  
Attorney for the Applicant  
  
Johnny E. James, Jr., Esq.  
Attorney for the State

Teresa J. F. Bautz, RPR  
Official Court Reporter

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## I N D E X

WITNESS	DIR	CROSS	RED	REC
Thomas Tiedemann				
Mr. Selwa	4	--	--	--
Mr. James	--	17	--	--
Russell B. Long				
Mr. Selwa	18	--	27	--
Mr. James	--	26	--	--

## E X H I B I T S

NO.	DESCRIPTION	ID	EV
Plaintiff's-1	Search Warrant	15	--

Exhibits retained by Clerk of Court.

1 (The hearing commenced at approximately  
2 12:41 p.m.)

3 MR. JAMES: Your Honor, this is the matter of  
4 Thomas Tiedemann versus State of South Carolina, Docket  
5 No. 2016-CP-26-8055. Mr. Tiedemann is present in the  
6 courtroom here today, and he is represented by  
7 Mr. Daniel Selwa, Esquire. Mr. Tiedemann was indicted  
8 at the 2013 term of the Horry County Grand Jury for  
9 felony driving under the influence resulting in great  
10 bodily injury. Mr. Tiedemann was represented by  
11 Mr. Russell Long, Esquire.

12 On March 23rd, 2015 Mr. Tiedemann pled guilty  
13 before the Honorable Larry B. Hyman, as indicted.  
14 Sentencing was deferred upon request of Mr. Tiedemann.  
15 On May 19, 2015, the Honorable Benjamin R. Culbertson  
16 sentenced Mr. Tiedemann to seven years incarceration,  
17 and the Applicant did not appeal that conviction.

18 With that procedural history set forth, Your  
19 Honor, the State cedes the floor to opposing counsel.

20 THE COURT: All right. Ready when you are.

21 MR. SELWA: Thank you, Your Honor. Your Honor, I  
22 believe I did this last time, I just want to get it on  
23 the record with you.

24 THE COURT: Sure.

25 MR. SELWA: And make sure that it's known,

THOMAS TIEDEMANN-DIRECT BY MR. SELWA

4

1 Mr. Tiedemann is scheduled to be released in March.  
2 And so I have counselled him on the risks of the PCR,  
3 winning the PCR. And ultimately facing those charges  
4 in their entirety and even the ones that were  
5 dismissed, if there were any, if he were to win, then  
6 he could get more time.

7 Mr. Tiedemann has expressed that he wants to  
8 proceed. And so, therefore, if the Court doesn't want  
9 to talk to him, I will call him to the stand.

10 THE COURT: Go ahead and call him to the stand.

11 MR. SELWA: Thomas Tiedemann to the stand, Your  
12 Honor.

13 THE COURT: Off the record.

14 (Discussion off the record.)

15 THOMAS TIEDEMANN, after being duly sworn,  
16 testified as follows:

17 THE CLERK: Just state your name, okay.

18 THE APPLICANT: My name is Thomas Tiedemann.

19 MR. SELWA: May it please the Court, Your Honor.

20 THE COURT: Sure.

21 DIRECT EXAMINATION

22 BY MR. SELWA:

23 Q Mr. Tiedemann, you are present today for post  
24 conviction relief; is that correct?

25 A Yes, sir.

1 Q All right. And what were you convicted of?

2 A Felony DUI, great bodily injury.

3 Q Okay. Was it a plea or a trial?

4 A It was a plea, sir.

5 Q Okay. And do you know if it was a recommended  
6 plea or a negotiated plea?

7 A Oh.

8 Q Was it a recommendation where the State makes a  
9 recommendation and the judge can make a decision as to  
10 how much time you get, or was it negotiated wherein you  
11 decided the amount of time with the prosecutor and the  
12 Defense attorney?

13 A I had turned down a five-year plea that was  
14 negotiated. I don't believe this plea was negotiated.

15 Q Okay. And so this was something that was handed  
16 down from the judge without you knowing what you would  
17 get?

18 A Correct, sir.

19 Q Okay. When did you hire Mr. Long?

20 A During -- I was sitting outside the courtroom when  
21 they offered the five years, contemplating whether to  
22 take the five years, and Mr. Long happened to walk by.

23 Q Okay. Were you represented at that point?

24 A Yes, by Tom -- I can't recall his last name.

25 Q Floyd?

1 A Yes, Thomas Floyd.

2 Q With the public defender's office?

3 A Yes, sir.

4 Q And he was an appointment?

5 A Yes, sir.

6 Q Okay. And did you hire Russell Long at that  
7 point?

8 A Yes, sir.

9 Q Okay. How many times did you meet with Mr. Long?

10 A I don't recall exactly, a few times.

11 Q Did you have time with Mr. Long to review your  
12 discovery?

13 A No, sir, we never looked at my discovery.

14 Q Okay. Did you get any indication from him that he  
15 received discovery, or did he talk about the discovery  
16 in the case to you?

17 A I gave him the discovery.

18 Q Okay. But prior to the plea, did you see any  
19 evidence the State had against you?

20 A No. I never looked at the discovery. I thought I  
21 had a lawyer, why would I -- what would I find.

22 Q Okay. Did Mr. Long offer to go over the discovery  
23 with you?

24 A No, he never brought it up.

25 Q And I didn't ask you this earlier, but did

1 Mr. Floyd -- was he representing you long enough  
2 wherein he would have gone over the discovery from the  
3 State?

4 A Mr. Floyd never even answered a letter. I wrote  
5 him half a dozen letters or so.

6 Q Okay. So prior to the plea you had not reviewed  
7 the discovery yourself, and you had not met with your  
8 attorney to go over the discovery from the State that  
9 he had received?

10 A No. Pretty much when I was -- Russell was --  
11 wanted me to do an affidavit to -- for the victim, and  
12 a thousand dollars a month for five years and would be  
13 paid.

14 Q You're talking about there was an accompanying  
15 civil case?

16 A Yes. That's what we were trying to do to get out  
17 from me going to jail.

18 Q Okay. All right. And what led up to you pleading  
19 guilty?

20 A Mr. Long had told me that an agreement had been  
21 reached with the Plaintiff, okay, and that's when I did  
22 the affidavit and pled guilty.

23 Q Okay. Did he tell you what that agreement was?

24 A Yes. A thousand dollars a month for five years  
25 for a total of \$60,000. And the Plaintiff was to not

1 ask for jail time. Or the victim, I'm sorry.

2 Q All right. Did you ask Mr. Long to challenge any  
3 of the evidence, or what were your wishes in  
4 representation or his representation of you?

5 A Well, I thought he would review my case and see if  
6 there were any loopholes whatsoever to go to trial and  
7 beat it.

8 Q Okay. And so you relied upon his representation  
9 and trusted him as that; right?

10 A Yes, sir. When Thomas Floyd, the public  
11 defender's, case load, I don't believe they have time  
12 to look at the cases.

13 Q And at that time were you satisfied with  
14 Mr. Long's representation until you pled guilty?

15 A Yes, up to I got sentenced I was, because I didn't  
16 think I was going to jail.

17 Q Okay. And the judge at that point asked you if  
18 you had enough time with Mr. Long and had asked you if  
19 you needed any more time, and you indicated that you  
20 didn't; is that correct?

21 A Yeah. Well, I was kind in shock about 20 minutes  
22 before we went into the sentencing as he told me and  
23 called me in the bathroom and told me that this may  
24 involve jail time now.

25 Q At what point did you review your discovery?

1 A I received the discovery while I was in jail with  
2 Kirkland R and E.

3 Q And how did you receive that?

4 A Through the mail from Mr. Long's office.

5 Q Okay. And approximately how long after your plea  
6 did you receive that?

7 A I believe I received it July 25th, and my plea was  
8 May 19th, I believe.

9 Q And that was 2015?

10 A 2015, correct.

11 Q Okay. And just to back up a little bit, you had  
12 gotten seven years; is that correct?

13 A That's correct.

14 Q Okay. When you reviewed the discovery in jail,  
15 did you notice anything that stood out to you?

16 A Yes, sir. About my second hour of reviewing it, I  
17 noticed the police report said that there was a warrant  
18 for my blood. And I went through the whole discovery,  
19 and there was none in there, no warrant existed in the  
20 discovery for my blood.

21 Q Okay. And just to inform the Court, they took  
22 your blood at the hospital; is that correct?

23 A That's correct.

24 Q And you were in the hospital for what reason?

25 A A traffic accident.

1 Q Okay, relating to the felony DUI?

2 A Yes, sir.

3 Q Okay. And what kind of damage did you sustain to  
4 your body at that point?

5 A Broken leg, back, neck and arm.

6 Q Were you conscious?

7 A Yes, sir.

8 Q Did you consent to any blood draw?

9 A No, sir.

10 Q Could you indicate that to the officer?

11 A Yes, sir.

12 Q And did you indicate that to the officer?

13 A Um-hum.

14 Q Okay. And what were you told by the officer at  
15 that point?

16 A Nothing. He just drew my blood.

17 Q He didn't draw your blood, a nurse did; correct?

18 A Yeah, a nurse, yes.

19 Q Okay. Knowing that there was no search warrant  
20 issued, would you have proceeded to trial?

21 A Without the warrant, yes, I would have.

22 Q Okay. When you were arrested for the felony DUI,  
23 you were taken straight to the hospital; is that  
24 correct?

25 A That's correct.

1 Q Okay. And so the officer did not complete any  
2 field sobriety tests; is that correct?

3 A That's correct, sir.

4 Q Did you provide any statements that you had been  
5 drinking or were on any intoxicants that would not  
6 allow you to drive in a safe manner?

7 A I said I had some wine to the officer at the  
8 hospital.

9 Q Okay. Did you indicate how much?

10 A No, sir.

11 Q All right. To your knowledge, what did the blood  
12 draw reveal your blood alcohol to be?

13 A I believe it was 1.4 something.

14 Q Okay. If you could have gotten that suppressed  
15 for not having -- for the State not having a valid  
16 search warrant, would you have challenged that?

17 A Yes, sir, I would have.

18 Q Okay. And your testimony is that you never  
19 received the discovery much less any search warrant for  
20 your blood; is that correct?

21 A That's correct.

22 Q Okay. And so you are stating that Mr. Long was  
23 ineffective for not providing that to you?

24 A Yes, I think if I found it in two hours, he should  
25 have found it more rapidly than me.

THOMAS TIEDEMANN-DIRECT BY MR. SELWA

12

1 Q Okay. You just recently filed a motion in circuit  
2 court, pro se; is that correct?

3 A Yes, sir.

4 Q And what was that motion for?

5 THE COURT: Hold on one second. He needs to get  
6 off the phone. Phone doesn't need to be in the  
7 courtroom. You can be held in contempt of court for  
8 doing that. Signs are all over the courthouse in that  
9 regard. Why don't you give that phone to the deputy  
10 right here.

11 A VOICE: Sir?

12 THE COURT: You can give the phone to the deputy,  
13 or you can leave the courtroom.

14 A VOICE: Yeah, we'll step out.

15 (Discussion off the record.)

16 THE COURT: Go ahead.

17 MR. SELWA: Thank you, Your Honor. I forgot what I  
18 was saying.

19 THE APPLICANT: The motion was to withdraw my  
20 plea.

21 Q I'm sorry. So the motion that you filed in civil  
22 court, in Common Pleas court, that was for what?

23 A For no search warrant and ineffective assistance  
24 of counsel to withdraw my plea.

25 Q To withdraw your plea. And did you appear for

1 that motion?

2 A Yes, sir, on October 4th.

3 Q Okay. And who was the prosecutor on the other  
4 side of that?

5 A George DeBusk.

6 Q Okay. And did he present any evidence to the  
7 Court, to your knowledge?

8 A He said they didn't have a warrant.

9 Q Okay. They didn't have a warrant at all?

10 A No, that they didn't have a warrant for my blood.

11 Q Okay. Have you come to know that they have a  
12 warrant?

13 A They sent me. I don't think it's valid.

14 Q Okay. But you do have some warrant; is that  
15 correct?

16 A Yes. I've been trying to get a warrant for four  
17 and a half -- for, well, since June 25th of 2015.

18 Q Did Mr. DeBusk indicate to you anything about  
19 having that warrant at the time of the plea?

20 A Yes. He said that defense didn't have it, and  
21 they didn't have it either.

22 Q Okay. But subsequently you have received a copy  
23 of a search warrant; is that correct?

24 A Yes, sir.

25 Q What are your issues with that search warrant?

1 A There's no description of the property whatsoever,  
2 okay, and what was to be sought on the warrant. And  
3 there is no witness of what was obtained on the  
4 warrant.

5 Q Okay.

6 MR. SELWA: Court's indulgence one minute. Your  
7 Honor, may I approach the witness?

8 THE COURT: You may.

9 Q Mr. Tiedemann, do you recognize this document?

10 A Yes, sir. It was sent in a letter to you, by you  
11 to me.

12 Q Okay. What is that document, to your knowledge?

13 A It's a search warrant.

14 Q Okay. And who's the search warrant -- what case  
15 is the search warrant in?

16 A What case?

17 Q Yes.

18 A Doesn't have the case number.

19 Q Okay. It doesn't have a case name or anything?

20 A No. Description of premises to be searched,  
21 there's nothing there. Description of property,  
22 there's nothing there.

23 Q Okay. Does your name appear anywhere on the  
24 search warrant?

25 A No, sir.

1 Q Not at all?

2 A Unless I'm missing it. No.

3 Q Okay. And what's the date on the initial search  
4 warrant?

5 A 6/18/2013.

6 Q Is that the date of your accident?

7 A Yes, sir.

8 Q And what did they recover -- what's indicated on  
9 the third page, I believe?

10 A Two vials of blood.

11 Q Okay.

12 A And there is no witness that -- on there either.

13 Q All right. And you understand that to be the  
14 warrant, the search warrant for your blood; is that  
15 what you understand that to be?

16 A I -- they are trying to make it as the search  
17 warrant for my blood, yes.

18 Q Okay.

19 MR. SELWA: Your Honor, I would move to introduce  
20 this as --

21 THE COURT: Any objection?

22 MR. JAMES: Without objection, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, Plaintiff's Exhibit No. P-1 was marked  
25 for identification only.)

1 Q So Mr. Tiedemann, just to summarize, you feel and  
2 are asking the Court for this Court to grant your PCR  
3 based on the fact that Mr. Long was ineffective for not  
4 going over discovery, not finding the absence of that  
5 search warrant, and had he done that, you would have  
6 not been convicted in your mind; is that correct?

7 A That's correct, sir.

8 Q Okay. Do you believe the blood would have been  
9 suppressed?

10 A I believe so.

11 Q And do you believe you would have been victorious  
12 in a trial?

13 A There is no other evidence.

14 Q And obviously you relied upon his advice and took  
15 it and received jail time; is that correct?

16 A That's correct.

17 Q Mr. Tiedemann, this is not the only allegation  
18 that you made under your PCR claim. Is there any other  
19 part of your claim which you wish to go forward on or  
20 bring forward to the Court at this time?

21 A No, sir.

22 Q Okay.

23 MR. SELWA: No further questions. Please answer  
24 any questions the Attorney General will have for you.

25 THE COURT: Thank you.



1 THE WITNESS: I am Russell B. Long.

2 MR. SELWA: May it please the Court, Your Honor.

3 THE COURT: Sure.

4 DIRECT EXAMINATION

5 BY MR. SELWA:

6 Q Mr. Long, you represented Thomas Tiedemann; is  
7 that correct?

8 A Yes, sir.

9 Q And that's not the first time that -- I'm sorry.  
10 Had you represented Mr. Tiedemann before?

11 A I had.

12 Q And how many times prior had you done that?

13 A I don't know, it's multiple. He and friends of  
14 his over the years before this case had brought certain  
15 things to me. I actually can't even tell you what kind  
16 of cases they were, but I definitely knew Tom many  
17 years before this case.

18 Q And you were in the courtroom to hear his  
19 testimony. Was his recollection of how you guys hooked  
20 up for this case accurate to your knowledge where he  
21 ran into you at the court?

22 A That part of it is correct, for sure.

23 Q And through your meetings do you remember how many  
24 times you met with Mr. Tiedemann?

25 A Many. He was, you know, having trouble, not well,

1 wheelchair bound. So we would have someone bring him  
2 -- we have an elevator there, but I always -- you know,  
3 it's different when somebody shows up in a wheelchair.  
4 So it was many, many times that we met, I can't even  
5 tell you how many.

6 Q Okay. And he alleged that you had not gone over  
7 the discovery with him; is that accurate?

8 A No, no. I definitely went over the discovery. We  
9 definitely talked about the case itself. But you also  
10 have to keep in mind, back to your first question if I  
11 can explain, he was set to plead guilty with the public  
12 defender, but he was unhappy with the recommendation  
13 that the solicitor had presented him.

14 He came to me with the -- kind of with the thought  
15 or the understanding that he was pleading guilty, he  
16 just didn't like the sentence that he was supposed to  
17 get. And he wanted to know if I could help him with  
18 that, and I definitely thought I could. I thought I  
19 had a good plan to help him with his potential sentence  
20 as a guilty plea.

21 Tom and I never discussed or even considered  
22 taking the case to trial. It was a bad case, I mean,  
23 it was in broad daylight, wipeout of a lady who, you  
24 know, he maimed and crippled. And it was -- there was  
25 a bad set of facts that he, you know, could have --

1 could be in prison for a much longer period of time had  
2 he taken that case to trial.

3 Q Had you gone over the possibilities of that  
4 sentence, the amount of time that he would have gotten,  
5 the fine associated with it?

6 A Certainly.

7 Q And did you -- you did not have any negotiated  
8 plea with the prosecutor's office on this case; did  
9 you?

10 A No. He had a -- he didn't have a negotiated plea  
11 to begin with. The solicitor -- the first solicitor  
12 was Scott Hucks, and Tom Floyd was his attorney. And  
13 Scott Hucks offered to recommend five years, which is  
14 not necessarily a guaranteed plea but a recommendation.  
15 The judge can give you more time than the  
16 recommendation. They turned that down, and then he  
17 came to me.

18 Q Okay. And so was that an arraignment, was that  
19 off the table, is what I'm asking?

20 A I don't think he was arraigned. They just took it  
21 at whatever the deadline was for him to accept it  
22 passed.

23 Q He also brought up the fact that he didn't review  
24 the discovery because he was relying upon your  
25 representation but that he'd got it while he was in

1 jail after his plea and after he had been sentenced. Is  
2 that accurate?

3 A No. I think he testified he gave me his  
4 discovery. The first set of discovery, I believe, he  
5 gave to me. So he had the discovery, he had gone over  
6 it himself. And then he -- so he gave it to me. And  
7 then, of course, we got up with the solicitor at the  
8 time to see if there was anything in addition to it or  
9 something that we were missing. But, yeah, he gave me  
10 the discovery to begin with.

11 Q I'm sorry I misunderstood that. Did you send in a  
12 Rule 5 Brady motion?

13 A I did.

14 Q Okay. And did they give you any additional  
15 discovery, or did they just repeat what he had given  
16 you?

17 A Yeah, there were some additional things that came,  
18 some MAIT team information came later. Let me see if I  
19 can look at the dates on that. But, yeah, there was  
20 some additional stuff that came later.

21 Q Do you recall -- when you did go over the  
22 discovery, do you recall what evidence you discussed  
23 with him that you felt and relied upon as the evidence  
24 which would have led to a conviction?

25 A They drew his blood, which they had an absolute

1 right to do under the statute. They didn't have to  
2 have a search warrant to draw his blood. He was under  
3 arrest for felony DUI. He was -- and so the big deal  
4 being made about the lack of and then the appearance of  
5 finally the search warrant itself is kind of moot.

6 I mean, we still had to deal with the fact that he  
7 was -- had a blood alcohol level that was above the  
8 inference level and that we had a state trooper that  
9 was going to testify that he was strong odor -- strong  
10 smell of alcohol, slurred speech, that, you know, he  
11 was going to testify. So to say that there was no  
12 other evidence against him is not a correct  
13 representation.

14 He had a MAIT team report that showed a horrific  
15 collision, an accident. It was a bad set of facts.  
16 And I did firmly believe that a jury was going to  
17 convict him of DUI.

18 Q Okay. Were there any witnesses or witness  
19 statements provided in the discovery?

20 A No.

21 Q Okay. What did you know the condition of  
22 Mr. Tiedemann to be when -- I'm sorry, after his wreck?

23 A Explain that.

24 Q Was he conscious?

25 A You talking about at the hospital?

1 Q Yes, I'm sorry.

2 A Yes.

3 Q And you heard him testify about his injuries, that  
4 was consistent with what you had learned about?

5 A Yes.

6 Q Okay. Was there any other evidence other than the  
7 fact they had smelled alcohol and his speech was  
8 slurred?

9 A Other than the blood alcohol level, no.

10 Q Okay. And so you don't feel like you could have  
11 gotten that blood alcohol blood draw suppressed?

12 A I do not.

13 Q And you didn't receive a copy of the search  
14 warrant; correct, in the discovery?

15 A I'll take your word for that. I thought certainly  
16 that I had. And then, we went back looking for it and  
17 didn't see it. So I will -- I'll say no, I didn't.

18 Q Okay. And if they had gotten one and indicated  
19 that in the discovery at some point and it was missing,  
20 is that something normally that you would try to find  
21 or try to get your hands on?

22 A It wouldn't matter. I didn't have anything that  
23 was going to exclude the blood evidence. They had a  
24 horrible set of facts against him, and he came to me  
25 under the assumption or the understanding that we were

1 going to work to try and get him a better result at a  
2 guilty plea other than -- you know, better than the  
3 recommendation that he had turned down.

4 Q Okay. Were you confident in the fact that you  
5 would get less than five years when you were going into  
6 the plea?

7 A No. I don't know about confidence. You can't  
8 real be confident about what a judge is going to do.  
9 It's entirely 100 percent up to the judge that's  
10 sitting at the plea or the sentencing. I knew that  
11 there were some things that I felt like we could do on  
12 his behalf that would hopefully put him in a better  
13 position with the judge.

14 And we did do those things. And I certainly  
15 thought, I don't know about the word confident, but I  
16 certainly thought when we went the day of his  
17 sentencing that we had a very good chance at getting  
18 less than his five-year recommendation that he had  
19 turned down.

20 Q Okay. And did the victim make a statement at the  
21 plea?

22 A Yes, she did.

23 Q All right. And did you feel that the victim's  
24 impact statement was that which you had previously  
25 understood?

1 A I thought it was certainly more -- it was  
2 difficult to deal with. It was harsher and emotional,  
3 and it was awful. And I was not expecting -- based on  
4 my conversations with her counsel, we were not  
5 expecting that.

6 For the Court's understanding, we -- so we did a  
7 plea in March, he pled guilty in front of Judge Hyman.  
8 We asked for sentencing to be deferred at least a month  
9 to give us time to attempt to cooperate with the victim  
10 and the victim's attorney in the dram shop case that  
11 they were trying to pursue. They didn't have very good  
12 evidence on where he had been and where he had been  
13 drinking, what he had been drinking, how long he had  
14 been drinking, and the victim was in a financial ruin  
15 and was seeking help on that case.

16 And so as in any other felony DUI case, you know,  
17 with the job that I was hired to do, which was to try  
18 and get him a better sentence than he was looking at,  
19 we tried to cooperate with the victim and the victim's  
20 attorney. So we did the plea in March. Then we had a  
21 two-month gap before we did the sentencing.

22 We went and we sat with -- or Tommy Brittain  
23 actually came, he represented the victim, came to my  
24 office. We gave him a statement on the record trying  
25 to help them with the dram shop case. I advised Tom to

1 begin placing money into my trust account once a month,  
2 thousand dollars a month, so I could tell the judge  
3 that, you know, this wasn't just a -- not like he  
4 didn't care about her and that he intended to try and  
5 help make her whole.

6         And then, if he would consider not putting him in  
7 prison for a long period of time, he could continue to  
8 make those monthly payments. You can't do it from  
9 prison. And so we were hoping that that was the plan,  
10 help them with the dram shop case so we would, quote,  
11 "soften" the victim somewhat and begin the program of  
12 setting aside money to help her with her exorbitant  
13 hospital bills and physical therapy bills and all of  
14 that.

15         MR. SELWA: No further questions, Your Honor.

16         THE COURT: All right. Mr. James?

17                         CROSS-EXAMINATION

18 BY MR. JAMES:

19 Q         You indicated a moment ago your belief that the  
20 blood sample was drawn based upon a statutory right to  
21 a blood draw?

22 A         Correct.

23 Q         All right. Can you explain or expand upon that  
24 belief.

25 A         You're under arrest for felony DUI, and you're not

1 in a position at that point to give consent. By the  
2 statute they are allowed to draw.

3 MR. JAMES: All right. No further questions.

4 THE COURT: All right. Anything else, Mr. Selwa?

5 MR. SELWA: Just a follow up, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. SELWA:

8 Q You said that he wasn't able to give consent. Was  
9 that because of his condition or his medical condition  
10 or...

11 A I guess so, yes, sir. I don't think he was  
12 unconscious, but he was unable to give consent.

13 Q What would have prevented him from giving consent,  
14 to your knowledge?

15 A I'm not sure.

16 MR. SELWA: No further questions.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 THE COURT: You have a good day. Call your next  
21 witness.

22 MR. SELWA: No further witnesses.

23 THE COURT: Anything from the State?

24 MR. JAMES: No, Your Honor.

25 THE COURT: All right. I'm going to deny the

1 application and ask the State to prepare me an order by  
2 year's end.

3 MR. JAMES: Thank you, Your Honor.

4 (The hearing concluded at approximately 1:14 p.m.)

5 (End of Transcript of Record)

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## 1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA )

4 COUNTY OF HORRY )

5

6

7 I, TERESA J.F. BAUTZ, Official Court  
8 Reporter for the Fifteenth Judicial Circuit of the  
9 State of South Carolina, do hereby certify that the  
10 foregoing is a true, accurate and complete Transcript  
11 of Record of the proceedings had and evidence  
12 introduced in the trial of the captioned case, relative  
13 to appeal, in the Court of Common Pleas for Horry  
14 County, South Carolina, on the 23rd day of June, 2018.

14

15

16

17 I FURTHER CERTIFY that I am neither of  
18 kin, counsel nor interest to any party hereto.

17

18

19

*S/Teresa J. F. Bautz*

20

TERESA J.F. BAUTZ, RPR  
Official Court Reporter

21

22

23

24

25

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF *Horry* )  
 )

SEARCH WARRANT

Form Approved by  
SC Attorney General  
Section 19-13-160  
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF: *Horry*

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON OR THING) TO BE SEARCHED

Now, therefore, you are hereby authorized to search the subject premises for the property described below and to seize such property if found:

DESCRIPTION OF PROPERTY

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to *any county Magistrate* within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

*Horry*, South Carolina

  
\_\_\_\_\_  
Signature of Judge

Dated: 6/18/2013

6:10 pm



STATE OF SOUTH CAROLINA )

COUNTY OF *Horry* )

AFFIDAVIT

Personally appeared before me, one \_\_\_\_\_, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

*2 vials of blood*

DESCRIPTION OF PREMISES (PERSON OR THING) TO BE SEARCHED

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Sworn to and Subscribed before me  
*18* day of *June*, 20*12*

*[Signature]*  
Signature of Judge

*6:10 pm*

*[Signature]*  
Affiant

) Address 3415 East Palmetto St, Florence, SC  
) Phone 843-661-4820

RETURN

I received the attached Search Warrant on \_\_\_\_\_, and have executed it as follows:

On *JUNE 19*, 20*13* at *12:10* o'clock a.m. *p.m.* I searched (the person / vehicle) described in the warrant and (the premises)

I left a copy of the warrant with *Bradley D. Mayes*

Name of person searched or "at the place of search" with.

STATE OF SOUTH CAROLINA

County of *Horry*

---

SEARCH WARRANT

---

Date: *6.18.13*

Trooper:

*E-Demiret*

Together with a receipt for the items seized, if requested.

The following is an inventory of property taken pursuant to the warrant:

2 vials of blood

Four horizontal lines for additional inventory items.

This inventory was made in the presence of \_\_\_\_\_

And \_\_\_\_\_

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me  
this 18 day of June, 2013.

Signature of Judge

(Signature of Officer Executing Warrant)



GS-26-05398). Russell Long, Esq. represented Applicant, and Scott Hucks, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 23, 2015, Applicant pled guilty as indicted before the Honorable Larry B. Hyman, Jr. Sentencing was deferred at Applicant's request until May 19, 2015, at which time the Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for a term of seven years. Applicant did not appeal his plea or sentence.

#### **Present Application**

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Violation of 4<sup>th</sup> Amendment illegal search and seizure."
  - a. "Ofc. Demiren collected a blood sample without a proper warrant."
2. "Ineffective assistance of counsel, no search warrant for blood."
  - a. "Mr. Long did not challenge the blood test that was taken w/o my consent"

#### **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

##### **A. Ineffective Assistance of Counsel**

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea

counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

#### *1. Failure to Challenge Blood Draw*

Applicant alleges Counsel was ineffective for failing to challenge the validity of law enforcement's collection of a blood sample after his collision and arrest. "A law enforcement officer can order a person suspected of Felony DUI to submit to any chemical test without first offering a breath test." State v. Long, 363 S.C. 360, 364, 610 S.E.2d 809, 812 (2005); see also S.C. Code Ann. § 56-5-2946.

At the evidentiary hearing, Applicant testified he never looked at his discovery with Counsel and that Counsel never brought up the subject. Rather, Applicant recalled Counsel simply told Applicant to cooperate with the victim's "dram shop" case in order to gain the victim's support for favorable sentencing. Applicant testified he found a police report mentioning a warrant for the blood draw, but that he could not find the warrant. Applicant also testified the warrant did not list his name. Applicant admitted he told law enforcement at the hospital that he'd had some wine, and recalled he was under arrest at the hospital. Nonetheless, Applicant stood by his belief the blood test could have been suppressed.

Counsel testified he met with Applicant numerous times, went over discovery with Applicant, and provided a copy. Counsel recalled Applicant faced a *bad* case, with a bad set of facts, but that Applicant rejected an initial plea offer of five years. Counsel was of the opinion the State had a statutory right to draw Applicant's blood after his collision and arrest. Additionally, Counsel recalled that a law enforcement witness would have testified Applicant smelled of alcohol and that the Multi-disciplinary Accident Investigation Team ("MAIT") report was damning. Counsel confirmed he tried to leverage cooperation with the victim's dram shop case in order to secure a more favorable deal, as well as have Applicant pay restitution, but the sentence was harsher than expected.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Applicant failed to offer any compelling argument that Counsel could have advanced to challenge the validity of the blood draw and subsequent blood test, which confirmed Applicant was under the influence of not only alcohol, but "morphine, Valium, and diazepam." (March 23, 2015, Tr. 13, ll. 10-12.) Applicant's testimony, as well as the plea transcript, show that Applicant was in custody at the hospital. As such, law enforcement unquestionably had the right to draw Applicant's blood, and Counsel did not err. Accordingly, Applicant's request for relief is **DENIED.**

### III. CONCLUSION


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of March, 2018.

  
 WILLIAM H. SEALS, JR.  
 Presiding Judge  
 Fifteenth Judicial Circuit

Marion, South Carolina

DOCKET NO. 2013-GS-26-05398

C

**WITNESSES**

Erin Demirer South Carolina Dept of Public Safety

**The State of South Carolina  
County of Horry**

J. Scott Hucks

13H04280

**COURT OF GENERAL SESSIONS**

**December, 2013 TERM**

**ARREST WARRANT NUMBER**

2013A2610700541

CDR: 0406 56-05-2945(A)(1)

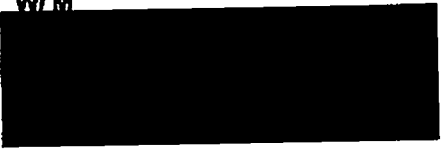
DOA: 8/19/2013

**THE STATE**

**vs.**

**ACTION OF GRAND JURY**

Thomas Tiedemann  
W/M



**TRUE BILL**

DEC 19 2013

Foreperson of Grand Jury

Date:

**ATTORNEY: Floyd, W. Thomas**

**VERDICT**

**Indictment for**

**FELONY DRIVING UNDER THE INFLUENCE  
GREAT BODILY INJURY**

**ORIGINAL**

Foreperson of Petit Jury

Date:

**Jimmy A. Richardson, II, Solicitor**



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry  
STATE VS.

INDICTMENT/CASE#: 2013GS2605398

Thomas Tiedemann

A/W#: 2013A2610700541

AKA: \_\_\_\_\_

Date of Offense: 6/18/2013

Race: WHITE Sex: M Age: 59

S.C. Code § : 56-05-2945(A)(1)

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  
TO: DUI / Felony driving under the influence, great bodily injury (.10 law)  CONVICTED OF or  PLEADS

in violation of § 56-05-2945(A)(1) 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 pleas:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: \_\_\_\_\_ SCB76948 Tom Tiedemann Defendant 65402 SC Bar#  
Hucks, J. Scott SC Bar# \_\_\_\_\_ Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 7 days/months/years or  under the Youthful Offender Act not to exceed X years  
and/or to pay a fine of \$ 5000.00; provided that upon the service of X days/months/years and/or payment  
of \$ X; plus costs and assessments as applicable\*; the balance is suspended with probation for X

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections;  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-195.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

*Fine:		\$ <u>5000.00</u>
§ 14-1-206 (Assessments 107.5 %)		\$ <u>5375.00</u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ _____
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u>12.00</u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u>25.00</u>
Proviso 47.9 (Public Def/Prob)	\$300	\$ _____
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ _____
3% to County (if paid in installments)		\$ _____
TOTAL		\$ <u>10,412.00</u>

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  
prmts. of \$ 200 beginning 6/19/2013  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: Hea qualified on 3-23-15. Sentencing  
to follow within the next  
90 days.  
CR: Teresa Bautz for qualification  
Human qualified  
 Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk Melanie Huggins-Ward  
Court Reporter: Groce Hurley  
SCCA/217 (03/2011)

Presiding Judge \_\_\_\_\_  
Judge Code: 2152  
Sentence Date: \_\_\_\_\_  
Sentencing: Immanuel Culbertson  
Code: 2148 Date: May 19, 2015

FILED IN COURT  
2015 MAY 19 1:38  
CLERK OF COURT

ARREST WARRANT

2013A2610700541

STATE OF SOUTH CAROLINA

County/  Municipality of

Horry

THE STATE  
against

Thomas Tiedemann



Prosecuting Agency: S C Highway Patrol  
Prosecuting Officer: Eren Demirer - 8697  
Offense: DUI / Felony driving under the influence, great bodily injury results  
Offense Code: 0406  
Codal/Ordinance Sec: 56-05-2945(A)(1)

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of  
The accused  
is to be arrested and brought before me to be  
dealt with according to the law.

(U.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to  
defendant Thomas Tiedemann  
on 6/19/13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
PO Box 677  
1301 2nd Avenue  
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Horry

Personally appeared before me the affiant Eren Demirer  
being duly sworn deposes and says that defendant Thomas Tiedemann  
did within this county and state on or about 6/18/2013  
State of South Carolina (or ordinance of  County/  Municipality of Horry)  
violate the criminal laws of  
in the following particulars:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, great bodily injury results

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

That on June 18, 2013 while in the city/county of Horry the defendant was traveling North on Secondary 137 and crossed the center  
lane and struck the victims vehicle head on. It was determined that the defendant was under the influence, thus committing the  
offense of Felon Driving Under the Influence, great bodily injury.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/  Municipality of

Horry

Affiant's Address 4195 Hwy 701 North  
Conway, SC 29526-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe, that

on or about 6/18/2013 defendant Thomas Tiedemann  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of Horry) as set forth below:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the Influence, great bodily injury results

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or  
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant in the time of its execution, or as  
soon thereafter as is practicable  
Subscribed and subscribed before me  
on 6/19/2013

Signature of Judge  
Bradley Dwyer Moyers  
Judge Code: 5081

Judge's Telephone  
(843) 915-5290

Issuing Court:  Magistrate  Municipal  Circuit

2013A2610700541