

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable D. Craig Brown, Circuit Court Judge

RECEIVED

AUG 08 2018

S.C. SUPREME COURT

MARTY BAGGETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002413

APPENDIX

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situation provided for in subsection (B), compliance with subsection (A) must begin at the time videotaping becomes practicable and continue until the arrest is complete."). The law enforcement officers were responding to the report of a dead body in the roadway. Therefore, the normal protocol for a traffic stop was not applicable. See *id.* at 14, 774 S.E.2d at 461 ("During a traffic stop, the subject, his vehicle, and his interaction with the officer can be videotaped by the car-mounted camera that is initiated by the officer's blue lights."). At least fifteen people, including Emergency Medical Service personnel, volunteer fire fighters, law enforcement officers, and members of Baggett's family, were present at the incident site. See *id.* at 15, 774 S.E.2d at 462 (finding "the legislative concerns with videotaping one-on-one traffic stops to capture the interactions between an officer and the subject are not present" when "[n]umerous officers and emergency personnel observed [the defendant's] conduct at the scene" and multiple officers described the defendant's symptoms of intoxication). Although Corporal Staggars stated he identified Baggett as the driver of the truck, he testified Baggett told him the victim had been driving and had fallen out of the truck. Corporal Staggars turned the investigation of the case over to Investigator Boston, who arrived on the scene as Corporal Staggars questioned Baggett. Investigator Boston testified Baggett was already in Corporal Staggars's patrol car when he arrived. Thus, Baggett would not have been within camera range of a car-mounted camera. Baggett also told Investigator Boston the victim was driving. Corporal Staggars testified he did not have Baggett perform any field sobriety tests due to safety concerns because Baggett was so unsteady on his feet. Accordingly, the videotaping requirements of section 56-5-2953(A)(1)(b) were not applicable. We find dismissal of the felony DUI charge was not required under the totality of the circumstances.

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

THE STATE,

RECEIVED
NOV 05 2015
SC Court of Appeals

RESPONDENT,

V.

MARTY BAGGETT,

APPELLANT

Appellate Case No. 2011-204146

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-311

PETITION FOR REHEARING

On June 24, 2015, this Court unanimously reversed Appellant's conviction for felony driving under the influence (DUI) in an unpublished opinion. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed June 24, 2015). On July 9, 2015, the state filed a petition for rehearing. On October 21, 2015, this Court granted the petition for rehearing, dispensed with further briefing and argument, and substituted an opinion for the previously issued opinion. In the new opinion, this Court affirmed Appellant's conviction for felony DUI. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed Oct. 21, 2015). Pursuant to Rule 221(a), Appellant files this petition for rehearing in light of the significant points overlooked and/or misapprehended by this Court in granting the state's petition for rehearing and issuing a new opinion explained more fully below.

First, this Court ignored the clear and unambiguous *facts* indicating the police officers were aware they were investigating a potential DUI prior to their arrival to the scene or, at a minimum, shortly after their arrival based upon their observations of and conversations with Appellant. Second, this Court relied heavily upon State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015). This reliance was misplaced. Third, the “exception” *created* by this Court in affirming Appellant’s conviction swallows the “rule” and denies the plain meaning of the statute.

Procedural history

In the opinion released on June 24, 2015, this Court unanimously held the trial court erred in failing to direct a verdict of acquittal on the felony DUI charge where law enforcement failed to abide by the statutory video requirement. Specifically, this Court held the record contained no evidence to support the trial court’s conclusion that the “totality of the circumstances” exception found within the statute was applicable to excuse law enforcement’s failure to comply. This Court rejected the trial court’s explanation that “the circumstances at the incident site did not immediately point to a DUI scenario and the law enforcement officers were investigating the incident as a kidnapping and murder.”

In rejecting the trial court’s explanation, this Court noted that Appellant was charged with DUI, *and only DUI*, on the night of the incident. Further, this Court relied upon testimony by multiple police officers that Appellant appeared “highly intoxicated” and had admitted to driving. In fact, a police investigator admitted that “at first it was a DUI that kind of morphed into something else.” Thus, law enforcement was required to begin videotaping “as soon as practicable” pursuant to the statute. As this Court explained, by the time the officer first read Appellant his rights, the officer knew or should have known that this was a DUI case and should have begun videotaping the

incident site. In light of the officer's failure to begin videotaping as soon as practicable, as required by the statute, this Court held the trial judge should have dismissed the felony DUI charge.

On July 9, 2015, the state filed a petition for rehearing. The state argued this court (1) failed to afford "great deference" to the trial court in making findings of fact and determinations regarding the totality of the circumstances, (2) only referred to facts supporting Appellant's position, and (3) created a definition of "as soon as practicable" tied solely to the type of crime involved and gave no consideration to the actual scene of "totality of the circumstances" the officer faced when they were investigating.

On October 21, 2015, this Court granted the state's petition, withdrew the previous opinion, and substituted a new opinion, in which this Court affirmed Appellant's conviction for felony DUI. Relying heavily on State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015), this Court held "videotaping never became practicable," the statutory videotaping requirements were not applicable, and that the "dismissal of the felony DUI charge was not required under the totality of the circumstances."

Undisputed record facts requiring statutory videotaping

According to this Court, statutorily-mandated videotaping was *not* required because the police were unaware they were investigating a felony DUI or a DUI; rather, "[t]he law enforcement officers were responding to the report of a dead body in the roadway." A review of the record reveals the police were aware from the *very* beginning that this matter involved a potential DUI. At a minimum, the officers were aware of the potential DUI charge when the officers smelled alcohol on Appellant and obtained admissions from Appellant that he was drinking and driving.

During the 911 call, Carolina Jones informed the dispatcher that Appellant, whom she called "the white guy," was acting like he was drunk. See 911 call transcript. The police were also aware that Appellant was driving the white truck at the scene according to the 911 call made by his father,

Ralph Baggett. See 911 call transcript. Further, the dispatcher inquired if Appellant “hit this person” and Appellant’s father responded, “I reckon, but I don’t know what happened.” See 911 call transcript. Based on this information, the dispatcher characterized the incident as an accident during radio discussions with law enforcement, emergency medical personnel, and the fire fighters. See 911 call transcript. There is *no doubt* that Juan Ballard, one of the first officers on the scene and the officer who charged Appellant with DUI, was in direct contact with the dispatcher and was aware of the nature of the call. R. 184, line 18 – R. 185, line 4. Boston testified that he “received a call from Sergeant Ballard in reference to a vehicle versus a pedestrian,” which prompted him to respond to the scene. R. 141, lines 12-14.

Staggers testified that Appellant “seemed to be unstable on his feet,” and “had a[n] odor of alcoholic beverages on his person.” R. 130, lines 10-14. In fact, Staggers told the jury Appellant “had been drinking.” R. 130, lines 14-15. Staggers also told the jury that he identified Appellant as the driver of the white truck on the scene. R. 130, lines 19-21. Staggers also advised Appellant of his rights. App. 130, line 24 – App. 131, line 1. Thereafter, Staggers took a statement from Appellant. App. 132, lines 13-21. Although Staggers claimed Appellant had been drinking alcohol and that Appellant had admitted to driving the truck, he did not administer any field sobriety tests. App. 137, lines 1-16; App. 138, lines 2-7. Staggers claimed that Appellant “was unsteady on his feet and it was not safe to conduct [field sobriety tests] at the time.” App. 137, lines 19-20; App. 138, line 7.

Sergeant Juan Ballard observed Appellant after Staggers had spoken to him. Although Appellant was sitting in Staggers’s car when Ballard initially approached him, the officers “pulled him out [of] the car” so that the police chief could speak to him before the investigator arrived. App. 182, line 20 – App. 183, line 4. Ballard saw that Appellant “was staggering around a little

bit.” App. 183, lines 5-9. Stagers advised Ballard that Appellant was driving the white truck at the scene. App. 183, lines 13-17. Ultimately, Ballard was the officer who charged Appellant for DUI in this case. App. 184, lines 23-25. His decision to charge Appellant with DUI was based on “the initial investigation.” App. 185, lines 3-5. He clarified that he decided to charge Appellant with DUI because (1) Appellant appeared to be highly intoxicated and (2) Appellant initially told Stagers that he was driving. App. 188, lines 9-19.

When Boston arrived, which was shortly after Stagers arrived, Stagers informed Boston of Appellant’s statements. App. 133, lines 17-23. Boston also advised Appellant of his rights. App. 141, lines 20-22. Boston testified that prior to speaking to Appellant, it was his understanding that Appellant was the driver of the white pick-up truck. App. 142, lines 1-3. Like Stagers, Boston claimed he “could smell alcohol” on Appellant. App. 144, lines 14-15. Boston said that Appellant’s “speech was slurred” and he was “slouched down in the back of the patrol car.” App. 144, lines 15-17. When Boston advised Appellant of his rights, Boston believed Appellant “was very intoxicated.” App. 144, lines 17-19. Thereafter, Boston, Stagers, and another officer took Appellant to the police department and continued questioning. App. 145, lines 3-8. When the interrogation ended, Appellant was charged with DUI and transported to the detention center. App. 147, lines 18-24. Boston based the DUI arrest on Appellant’s admission that he was drinking. App. 148, lines 2-17. According to Boston, “at first it was a DUI that kind of morphed into something else.” App. 149, lines 6-8. Further, Boston testified that the deceased’s head “looked like it had been run over by a tire.” App. 173, lines 10-13.

The clear, unambiguous, and undisputed facts showed the police were aware they were investigating a potential DUI involving a fatality. Based on the 911 call alone, the officers were aware (1) that a “dead body” was in the roadway, (2) that Appellant had been driving the truck

present at the scene, (3) that Appellant may have hit the person who was lying dead in the roadway, and (4) that Appellant may have been drinking. Contrary to this Court's assertion that "law enforcement officers were responding to the report of a dead body in the roadway," the uncontroverted facts show the officers were responding to a potential felony DUI and were aware of the nature of the incident prior to their arrival based on the 911 call.

At a minimum, the officers were aware of the potential DUI charge based upon their observations of Appellant at the scene and his alleged admissions. Stagers was aware of the nature of the investigation based on his observations of Appellant at the scene and his conversation with Appellant in which, according to Stagers, Appellant admitted he had been drinking and driving. Further, the uncontroverted facts show Boston, the lead investigator, was aware that he was responding to "a vehicle versus a pedestrian" situation prior to his arrival because of his telephone call from Ballard. Additionally, when he arrived, Stagers conveyed his observations and Appellant's alleged admissions to Boston. There can be no doubt the officers were well aware they were investigating a potential DUI involving a fatality.

Additionally, this Court held that because Appellant was in Stagers's patrol car when Boston arrived, Appellant "would not have been within camera range of a car-mounted camera." This is not supported by the record. Stagers testified to approaching Appellant, advising him of his rights, and interrogating him. Stagers never indicated where Appellant was during this encounter. R. 130, line 8 – R. 133, line 10. It seems unlikely that Appellant was sitting in a patrol car during the entirety of the interrogation because Stagers claimed *repeatedly* that Appellant was "unsteady on his feet." In order to make such an observation, Appellant would have had to have been "on his feet" at some point during the encounter. R. 137, lines 19-20; R. 138, line 7. While it is true that

Appellant was in Staggers's patrol car when Boston arrived, this was *after* officers were aware of the potential felony DUI charge. R. 141, lines 12-22.

Further, even if Appellant were not "within range of a car-mounted camera" because he was in Staggers's patrol car, there was no evidence in the record that Appellant was immobile or that the cameras were immobile. The officers could have easily moved Appellant to a position in which he would have been within range of a car-mounted camera. In fact, Ballard removed Appellant from Staggers's patrol car so that the police chief could speak to Appellant before Boston arrived. R. 182, line 22 – R. 183, line 4. If Appellant could be removed from the car in order for the police chief to interrogate him prior to the investigator's arrival, then he could have been moved in order for the police to comply with statutorily-mandated videotaping. Finally, this Court's opinion assumes the car-mounted cameras were immobile. The record is devoid of such evidence. Likely, the cameras swiveled to allow law enforcement to capture conduct of individuals in the rear passenger area.¹ Even if the cameras were forward facing only, then the cameras were still mobile by the fact that they were mounted on cars, which are by their nature mobile. The cars could have been moved to place Appellant within range of a forward facing only camera.

State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015)

This Court's reliance upon Henkel, *supra*, is misplaced. The South Carolina Supreme Court held "when an individual's conduct is videotaped during a situation provided for in subsection (B) [of S.C. Code Ann. § 56-5-2953], compliance with subsection (A) must begin at the time videotaping becomes practicable and continue until the arrest is complete." Henkel, 413 S.C. at 15-

¹ In State v. Henkel, 413 S.C. 9, 10 n. 2, 774 S.E.2d 458, 459 n.2 (2015), the Supreme Court noted that when the officer arrived at the scene, he activated his patrol car's video recording camera, but the "forward facing camera only recorded the highway" in front of the car. However, when the officer placed defendant in his patrol car following his DUI arrest, the officer "faced the in-car camera" toward the defendant. Id. at 11, 774 S.E.2d at 460.

16, 774 S.E.2d at 462. The trial judge's finding that the videotaping began as soon as practicable was not challenged on appeal. Id. at 12 n.5, 774 S.E.2d at 460 n. 5. The *precise* issue in this case is *when* did videotaping become practicable and was the failure to videotape excused; thus, Henkel has limited applicability to the case before this Court because Henkel involved whether the videotape in the case complied with the statutory requirements.

In Henkel, 413 S.C. at 10, 774 S.E.2d at 459, a witness saw a car being driven erratically and ultimately crashing. However, when the officer arrived on the scene, the driver had fled. Id. Several hours later, the same officer responded to a call regarding an individual walking down the same highway where the car crashed. Id. The officer found the individual receiving treatment in an ambulance. Id. The officer advised the individual of his rights and conducted a horizontal gaze nystagmus test. Id. at 10-11, 774 S.E.2d at 459. The officer also initiated his audio recording device during the administration of the test. Id. at 11, 774 S.E.2d at 459. Thereafter, the officer had the individual recite the alphabet, which was audio recorded. Id. at 11, 774 S.E.2d at 460. The advisement of rights and administration of tests were not captured on video. Id. When the officer placed the individual under arrest for DUI, the officer placed the individual in his patrol car and ensured the video captured the individual's conduct thereafter. Id.

In light of the fact that neither party appealed the trial judge's finding that videotaping began as soon as practicable, the only matter before the Court was whether the video that existed complied with the statute. See id. at 12 n. 5, 774 S.E.2d at 460 n. 5. The precise question was whether an officer would have to re-advise an individual of his rights and re-administer tests after videotaping began if those activities occurred prior to videotaping becoming practicable. Id. at 13, 774 S.E.2d at 461. The Court answered this question in the negative and explained that when the videotaping

became practicable, then the videotape had to capture the individual's conduct at the scene. Id. at 14, 774 S.E.2d at 461.

Henkel offers little help in determining when videotaping becomes practicable pursuant to the statute or when the videotaping requirement may be excused due to the "totality of the circumstances" pursuant to the statute as neither of those questions was addressed by the Court. Nevertheless, resolution of those two questions is necessary in order to adjudicate the issue raised on appeal in this matter. Therefore, this Court erred in relying upon Henkel, *supra*, in arriving at its conclusion that "videotaping never became practicable," the statutory videotaping requirements were not applicable, and that the "dismissal of the felony DUI charge was not required under the totality of the circumstances."

Plain meaning of the statute

The purpose of the videotaping requirement "is to create direct evidence of a DUI arrest." Roberts, 393 S.C. at 347, 713 S.E.2d at 285. "[T]he videotaping provisions of section 56-5-2953 are mandatory and not optional." Id. at 346, 713 S.E.2d at 285. "A law enforcement agency's failure to comply with [section 56-5-2953] is fatal to the prosecution of a DUI case." Id. In Murphy v. State, 392 S.C. 626, 631, 709 S.E.2d 685, 688 (Ct. App. 2011), this Court explained the plain language of section 56-5-2953(A)(1)(a)-(b) required the video recording to capture "(1) the accused's conduct and (2) Miranda warnings prior to field sobriety tests, if such tests occur." This Court defined "conduct" as one's behavior, action, or demeanor. Id.

This Court's opinion eviscerates the statutory requirement of videotaping by excusing it whenever there is a situation that would not be considered a "normal ... traffic stop," including a traffic accident. The statute specifically contemplates that a DUI investigation will occur outside of "a normal traffic stop" by noting that in some circumstances, such as traffic accident investigations,

an arrest will be made and the videotaping equipment will not be activated by the blue lights. Nevertheless, the statute requires videotaping to begin as soon as practicable even in those situations. See S.C. Code Ann. 56-5-2953(B)(2007). Taking this Court's conclusion that when officers respond to a situation in which "the normal protocol for a traffic stop [is] not applicable" the videotaping requirement does not arise to its logical end, there would never be the need to videotape in *any* traffic accident. Frankly, requiring compliance with the statutory videotaping requirement *only* in "normal traffic stops" would result in almost no videotapes because no two traffic stops are the same and some abnormality would always permit law enforcement to claim the normal protocols, including videotaping, were not followed as a result.

By finding the statutory videotaping requirement not applicable to the instant case because of the presence of other people at the scene, this Court's opinion further guts the statute. In arriving at this conclusion, this Court relied upon Henkel's proposition that the videotaping statute "was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses." See Henkel, 413 S.C. at 14, 774 S.E.2d at 461. Oddly, the Supreme Court cited Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011) to support this conclusion. Roberts provides no support for such a conclusion. The purpose of the videotaping requirement is "to create direct evidence of a DUI arrest" as the Court held in Roberts, 393 S.C. at 347, 713 S.E.2d at 285. The intent of the legislature to create direct evidence of a DUI arrest was not, and cannot, be limited to situations "where there are no other witnesses" because doing so would eliminate the videotaping requirement in all but the fewest DUI arrests, particularly those where there has been a traffic accident. By its very nature, a traffic accident will require the presence of personnel other than law enforcement – witnesses/bystanders, emergency medical personnel, fire and

rescue personnel. Certainly, the legislature was aware of the likelihood of the presence of others at traffic accidents, but still the legislature required videotaping as soon as practicable at traffic accident scenes when the investigation culminates in a DUI arrest.

The legislature was concerned with more than creating direct evidence only in “one-on-one traffic stops” as evidenced by the language chosen in the statute. See Henkel, 413 S.C. at 15, 774 S.E.2d at 462. Had the legislature been concerned only with “one-on-one traffic stops,” the legislature could have made this very point by requiring videotaping only in those circumstances. Instead, the legislature did the opposite and required videotaping in *all* DUI arrests, including those which by their nature would necessitate the presence of others, such as road blocks, traffic accidents, citizens’ arrests, and felony DUIs. Additionally, the legislature never carved out an exception, which would permit officers not to comply with the videotaping requirement when others were present on the scene. Such an exemption would have been easy to craft had the legislature actually intended for the videotaping requirement to exist only during “one-on-one traffic stops.” Based on the clear language of the statute – and most importantly, language not in the statute – the intent of the legislature was to create direct evidence of DUI arrests in every case. The purpose of the creation of direct evidence is to eliminate a “swearing match” among witnesses regarding what transpired at the incident site.

This Court’s opinion creates two exceptions to the videotaping requirement: (1) whenever the arrest is not the product of a “normal traffic stop” and (2) whenever the arrest occurs in the presence of others. The creation of these two exceptions swallows the rule because no videotaping will be required in any DUI arrest as all arrests will likely fall into one of these exceptions. Not only are the exceptions not within the statute, rendering them judicially created laws, the exceptions defy the clear and unambiguous language of the statute.

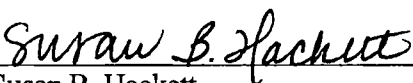
Statutory Exception

This Court failed to consider the exception that is *actually* contained within the statute. The statute allows courts to consider “any other valid reason for failure to produce the videotape based upon the totality of the circumstances.” S.C. Code Ann. § 56-5-2953(B)(2007). Oddly, this Court’s opinion uses the totality of the circumstances language, but appears to do so when reviewing the trial judge’s refusal to dismiss the felony DUI charge: “[T]he videotaping requirements of section 56-5-2953(A)(1)(b) were not applicable. We find dismissal of the felony DUI charge was not required under the totality of the circumstances.” Not only does the clear language used by the Court show the “totality of the circumstances” language is not being used to consider the statutory exception, but the juxtaposition of the “totality of the circumstances” language with the finding that the statutory videotaping requirement was “not applicable” demonstrates the Court was not considering the statutory exception to the videotaping requirement.

Had this Court reviewed the exception, this Court would have determined the record fails to support the trial judge’s finding that the totality of the circumstances excused law enforcement’s failure to video record Appellant’s conduct at the incident site. As demonstrated, the officers had ample notice of the potential felony DUI on the scene, and in fact, arrested Appellant for DUI within minutes of arriving. The failure by law enforcement to create the video denied the jury the ability to assess Appellant’s conduct. In light of the fact that law enforcement failed to conduct any chemical testing, which would have provided the jury with objective evidence of Appellant’s intoxication or lack of intoxication, the video would have been the only objective evidence for the jury to make a determination concerning whether Appellant engaged in felony DUI.

For all the foregoing reasons, Appellant respectfully requests this Court grant the petition for rehearing, withdraw the second opinion, and re-instate the initial opinion.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

This 5th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 05 2015

SC Court of Appeals

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

APPELLANT

CERTIFICATE OF SERVICE

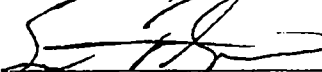
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blicht, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Marty Baggett #216091, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 5th day of November, 2015.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 5th day
of November, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

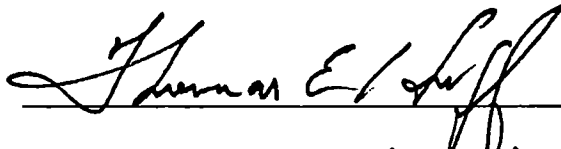
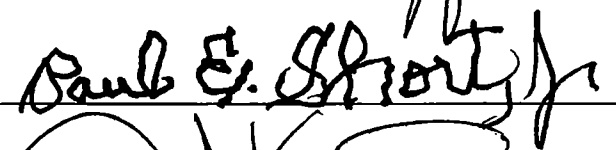
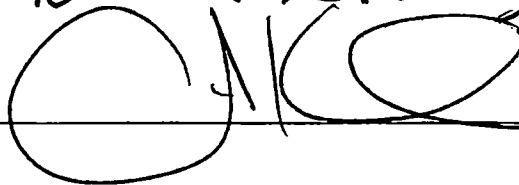
v.

Marty Baggett, Appellant.

Appellate Case No. 2011-204146

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____. J.

_____. J.

_____. J.

Columbia, South Carolina

FILED

cc:

Susan Barber Hackett, Esquire
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
The Honorable George C. James, Jr.

December 17, 2015

RECEIVED

FEB 01 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-311 (S.C. Ct. App. filed Oct. 21, 2015)

10-GS-45-00269-00270.

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

PETITIONER

Appellate Case No. 2016-000093

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALSSUSAN B. HACKETT
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ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on December 17, 2015. App. 33.

QUESTION PRESENTED

Did the Court of Appeals err in reversing its prior decision to direct a verdict of acquittal in Petitioner's favor on the charge of felony driving under the influence where the prosecution failed to present video evidence of Petitioner's conduct at the incident site as statutorily mandated and where the state failed to present evidence of a statutory exception?

STATEMENT OF THE CASE

Procedural history

A Williamsburg County grand jury indicted Petitioner for reckless homicide (2010-GS-45-0269) and felony driving under the influence (DUI) (2010-GS-45-0270) during its October 2010 term. R. 361-362; R. 364-365. The case proceeded to trial on July 18, 2011, before the Honorable George C James and a jury. R. 1. David Stumbo and Dale Scott of the Attorney General's office prosecuted the case. Sam Floyd represented Petitioner. R. 1. The jury found Petitioner guilty as charged. R. 337, lines 11-17. Judge James sentenced Petitioner to ten years' imprisonment on the reckless homicide conviction. R. 341, lines 8 – 12; R. 366. Judge James sentenced Petitioner to twenty years' imprisonment and a fine of \$25,000 on the felony DUI conviction. He ordered the sentences to be served concurrently. R. 342, lines 5-9; R. 363. Petitioner filed a motion for new trial on July 29, 2011. R. 343-349. By an order filed December 2, 2011, Judge James denied Petitioner's motion. R. 359-360.

Petitioner filed a timely notice of appeal, which was perfected. After oral argument on October 6, 2014, the Court of Appeals directed a verdict to Petitioner on the felony DUI charge in an unpublished opinion. State v. Baggett, 2015-UP-311 (S.C. Ct. App. filed June 24, 2015); App. 1-3. On July 9, 2015, the state filed a petition for rehearing. The state argued the Court of Appeals (1) failed to afford "great deference" to the trial court in making findings of fact and determinations regarding the totality of the circumstances, (2) only referred to facts supporting Petitioner's position, and (3) created a definition of "as soon as practicable" tied solely to the type of crime involved and gave no consideration to the actual scene of "totality of the circumstances" the officers faced when they were investigating. App. 4-14.

Without requesting a response, argument, or further briefing, the Court of Appeals granted the petition for rehearing, withdrew the opinion granting Petitioner a directed verdict, and substituted a new opinion affirming Petitioner's conviction on October 21, 2015. App. 15-18. Petitioner filed a petition for rehearing on November 5, 2015. App. 19-32. The Court of Appeals denied the petition by written order filed on December 17, 2015. App. 33.

Petitioner now files this petition for writ of certiorari asking this Court to review the Court of Appeals' decision.

Relevant facts

On the afternoon of March 8, 2007, Carolina Jones turned onto Clare Road in Williamsburg County. She saw the road was blocked by Petitioner in a white pickup truck. When she asked to get by, Petitioner refused and stated he had found a dead body. Jones saw Petitioner standing over the body of Jean Turner. R. 106, line 9 – R. 107, line 7; R. 115, lines 2-6. According to Jones, Petitioner seemed kind of drunk because he was staggering and repeating himself. R. 107, lines 15-16; R. 107, lines 22-25. Jones left the area, returned home, and called 911. R. 113, lines 23-25. During the 911 call, Carolina Jones informed the dispatcher that Petitioner, whom she called “the white guy,” was acting like he was drunk. See 911 call transcript.¹

Also, on March 8, 2007, Ralph Baggett received a phone call from his son, Petitioner, concerning the accident. R. 120, lines 18 – R. 121, line 10. Ralph called 911 to report the accident. During the call, Ralph told the dispatcher that Petitioner was driving the white truck at the scene. See 911 call transcript. Further, the dispatcher inquired if Petitioner “hit this person” and

¹ The parties transported the recording of the 911 calls to the Court of Appeals. However, the recordings were misplaced. Therefore, the parties agreed to substitute a transcript of the 911 calls in lieu of the actual recordings.

Petitioner's father responded, "I reckon, but I don't know what happened." See 911 call transcript. Based on this information, the dispatcher characterized the incident as an accident during radio discussions with law enforcement, emergency medical personnel, and the fire fighters. See 911 call transcript.

Vincent Staggars, employed by the Williamsburg County Sheriff's Department, responded to the scene. R. 128, lines 15-21; R. 129, lines 6-8. Staggars claimed Petitioner was unstable on his feet and had an odor of alcoholic beverage on his person. R. 130, lines 10-15. Despite his belief that Petitioner was intoxicated, Staggars did not perform any field sobriety tests on Petitioner. R. 137, lines 12-16. He also conducted no scientific testing to determine if Petitioner had been drinking. R. 137, line 21 – R. 138, line 1. According to Staggars, Petitioner stated Turner was driving the vehicle when she suddenly fell out of the truck. Petitioner then tried to help her. R. 132, lines 9-21.

Steve Boston, another employee of the Williamsburg County Sheriff's Department, responded to the scene. Boston advised Petitioner of his rights. R. 141, lines 9-22. Boston claimed that Petitioner stated that he picked up an unknown woman, who was homeless, at the liquor store. R. 142, lines 10-17. Petitioner stated that he was too drunk to drive so he let the woman drive. As they were traveling down Clare Road, "she just fell out of the truck." R. 143, lines 8-16. Boston testified that he could smell alcohol on Petitioner and that Petitioner's speech was slurred. Boston described Petitioner as "very intoxicated." R. 144, lines 12 – 19; R. 178, lines 19-22. Thereafter, Petitioner was transported to the police department. R. 145, lines 3-8.

Juan Ballard, an officer with the Williamsburg County Sheriff's Office, responded to Clare Road as well. R. 180, line 16 – R. 181, line 14. When Ballard arrived on the scene, Petitioner was in the back of a patrol car. R. 182, lines 22-23. When the police pulled Petitioner

out of the car so that the Police Chief could speak to him, Petitioner was “staggering around a little bit.” R. 183, lines 5-9. Ballard testified that it would have been his call “to do DUI testing on the suspect.” R. 184, lines 20-22. Ballard arrested Petitioner for DUI based upon Petitioner appearing highly intoxicated and allegedly admitting to Staggers that he had been driving. R. 184, lines 23-25; R. 188, lines 13-19.²

At the police department, Petitioner allegedly told Boston that he had picked up a homeless woman and a white male. Thereafter, Petitioner invoked his right to silence. R. 147, lines 5-13. Boston testified that the arrest was based upon Petitioner allegedly admitting to being drunk. R. 148, lines 2-5. Boston testified that Petitioner was ultimately charged with murder, and Boston was unaware of what happened to the DUI charge, as he was not the investigating officer concerning the charge. R. 148, lines 18-24.

Less than a month later, Ballard dropped the DUI charge. R. 185, line 13 – R. 186, line 1. Ballard dropped the charge because Petitioner was charged with murder the day following the accident and he did not have “any blood anything like Breathalyzer blood alcohol” to support the charge. R. 186, lines 20-24; R. 186, line 25 – R. 187, line 2. Regarding testing for DUI, Ballard testified he thought “the BA machine ... was down at that time” in Kingstree. R. 191, lines 4-7. He further testified he thought Hemmingway had a BA machine, but he was uncertain. He denied ever going to Hemmingway to determine if the machine was in working order and available. R. 191, lines 8-18. In direct contradiction of his earlier testimony, Ballard testified

² Boston explained that he did not take Petitioner to the hospital in an attempt to draw blood, and that it would have been the job of the evidence custodian to do that. R. 169, lines 19-25. He was aware of the statutory requirement that a person must submit to a blood draw if there is probable cause to believe the person engaged in felony DUI. R. 170, lines 6-15; R. 175, lines 8-12.

that the investigator in charge, presumably Boston, made the decision not to administer breathalyzer test or take blood sample. R. 197, line 20 – R. 198, line 3.

Boston claimed that Petitioner gave another statement to law enforcement. Petitioner ran into Turner and a white male at the liquor store. Petitioner stated that while he was riding he had been drinking all day. Turner and the white male argued while in the vehicle, and Turner asked Petitioner to stop so the man could get out. Petitioner stopped the vehicle and the man got out. Then, Turner was driving the truck. As they went down Clare Road, Turner fell out of the truck. R. 150, lines 12 – R. 151, line 5; R. 152, lines 15-19.

Over the course of the investigation, the police interviewed Thomas “Rod” Garris who provided background information concerning why Petitioner and Turner were together. Garris was romantically involved with Turner for thirteen years. R. 3, line 19 – R. 4, line 2. On March 8, 2007, Garris and Turner began drinking beer around three o’clock in the afternoon. R. 5, lines 5-11; R. 5, line 21 – R. 6, line 8. Garris and Turner met Petitioner at a convenience store where all three agreed to return to Petitioner’s house. On the way to Petitioner’s house, they stopped at a liquor store. R. 10, line 2 – R. 11, line 20; R. 39, lines 16-18; R. 40, lines 21-22; R. 41, lines 11-23; R. 43, lines 20-25. Garris claimed Petitioner purchased a fifth of Smirnoff vodka at the liquor store, R. 13, lines 8-13, but the owner of the store testified Petitioner purchased one pint of Lord Calvert, R. 48, lines 11-25. According to Garris, Petitioner informed them they would not get out of the truck until they drank the rest of the liquor. R. 15, lines 3-17. Thereafter, they “finished the liquor.” R. 15, line 20. The trio continued driving “all over Williamsburg County.” R. 17, lines 3-5.

Garris claimed that while he was urinating in a field, Petitioner drove his truck approximately one hundred yards from Garris and then backed up real quick, causing Garris to

jump into a ditch to get out of his way. Despite this alleged act of aggression, Garris returned to the cab of the truck. R. 17, lines 8-24. Garris further admitted that his statement to police did not include anything about Petitioner allegedly trying to back over him. R. 29, line 21 – R. 30, lines 2. When Petitioner stopped the truck on the shoulder of the road about twenty feet from Turner's driveway, Garris exited the truck. Garris claimed he had Turner by the hand to assist her as she got out of the truck. According to Garris, Petitioner grabbed Turner by the arm to prevent her from leaving the truck. Garris threw his beer in the ditch and tried to jerk Turner out of the truck. Petitioner then ran over Garris's arm and left. R. 18, line 14 – R. 19, line 8. Although the Garris claimed Petitioner ran over his arm with his truck, Garris's arm was not broken. R. 32, line 19.³ Garris walked to Turner's mother's house. Turner's mother took Garris home. Garris did not call law enforcement. Garris admitted that he was high at the time, but denied that he was drunk. R. 20, line 11 – R. 21, line 23.

When questioned by police the following day, Garris stated that he believed Turner probably jumped out the truck. R. 26, lines 1-18. When law enforcement asked if Petitioner had been drunk, Garris told law enforcement, "they had been drinking." R. 30, lines 17 – R. 31, line 9. Garris testified that Turner drank one beer and three or four drinks of liquor that day. R. 35, lines 14-21.

Jeff Scott, an employee with the Williamsburg County Sheriff's Office, responded to the crime scene on Clare Road. R. 52, lines 15-18; R. 53, line 24 – R. 54, line 8. Scott processed the truck several days after the accident, and while the truck was at a private garage. R. 76, lines 8-

³ The police officer who interviewed Garris did not observe any injuries to Garris. Further, Garris did not tell the police that Petitioner allegedly tried to run over him. R. 154, lines 8-25; R. 155, lines 1-6.

21. Scott admitted he was not aware of how the truck was transported to the private garage. R. 77, line 23 – R. 78, line 1.⁴ While processing the truck, Scott found a small stain on the undercarriage of the truck. R. 66, lines 2-14. Scott swabbed the area. R. 67, lines 11 – 17. Scott did not find any of Turner's hair under the truck. R. 92, lines 1-4. Scott's examination of the truck revealed no indentations or impact marks. R. 93, lines 13-24. He testified that the bumper and everything were intact. R. 93, line 24.

Jasper Humbert, a former employee of SLED in the forensic DNA department, analyzed blood samples he received in this case. Humbert's testing of six swabs taken from under the passenger door of Petitioner's truck revealed the presence of blood. Thereafter, Humbert conducted DNA analysis on the six swabs. Humbert testified that based on his DNA analysis, he concluded Turner's blood was found on one of the swabs taken from under the passenger door. R. 245, lines 4-12; R. 249, lines 12-22; R. 255, lines 5-9; R. 255, line 16 – R. 256, line 8; R. 259, lines 1-10; R. 260, lines 16-19. Humbert also tested a swab taken from the front side bumper under the headlight. This sample was negative for blood. R. 263, lines 9-18.

At the trial, Dr. Erin Presnell, a forensic pathologist performed an autopsy on Turner on March 9, 2007. R. 216, lines 15-18. She determined the cause of death was a lot of head trauma. Relying upon the investigation, Dr. Presnell determined Turner's blunt head trauma was most likely caused by a vehicle running over her. However, Dr. Presnell could not determine the manner of death – homicide or accident. R. 218, line 3 – R. 219, line 22. Her scientific results

⁴ Boston, the investigator on the case, was unaware of how the truck left the crime scene, but he was aware that the truck was recovered the following day from the Baggett's residence. R. 160, line 16 – R. 161, line 5. In other words, the police did not maintain custody and control over the truck prior to processing it for evidence. Although Boston was the investigator over the case, he testified that it would then be the decision of the evidence custodian, Scott, to determine whether to impound the truck. R. 161, lines 14-24.

were inconclusive in that regard. Dr. Presnell drew Turner's blood at the time of the autopsy as part of her standard procedure. Turner's blood alcohol level was 0.387. R. 224, lines 20-23. Further, examination of Turner's liver revealed it was consistent with someone who suffered from chronic alcohol abuse. R. 226, lines 8-24.

Dr. Presnell explained that if Turner had been standing upright outside the truck, she would expect to see leg injuries, often called "bumper fractures." She found no such injuries on Turner. She admitted that one possible scenario was that Turner was upright and a slow moving vehicle knocked her over and then ran her over. R. 229, lines 6-23. However, she explained an equally possible scenario was that Turner fell out the car and was run over, just as Petitioner said. R. 229, line 24 – R. 230, line 4.

At the close of the state's case, Petitioner moved for a directed verdict regarding the charge of felony DUI. Petitioner relied upon Section 56-5-2953 of the South Carolina Code to support his position that Petitioner was entitled to a directed verdict because the state failed to produce a video of Petitioner's roadside arrest. Additionally, Petitioner relied upon case law, primarily Town of Mount Pleasant v. Roberts and City of Rock Hill v Suchenski, to support his motion. R. 273, lines 5-19; R. 275, lines 8-15; R. 274, line 22 – R. 275, line 9; R. 276, line 10 – R. 277, line 5.

The prosecutor argued that the video requirement of section 56-5-2953 provided for an exception. He relied upon the portion of the statute providing "nothing in this section prohibits the court from considering any other valid reason for failure to produce a video recording, based on the totality of the circumstances." The prosecutor argued the exception applied based upon the evidence presented. Specifically, the prosecutor argued that because law enforcement "was

responding to a dead body on the open road out in the rural part of Williamsburg County” the exception applied. He claimed this case was

[A] completely different scenario than ... in probably 99 percent of the DUI cases in this state, where an officer pulls over a vehicle for, even pulls over a vehicle for suspected DUI or arrives on an accident scene where there [are] injured people and people inside a car, where there’s a smell of alcohol. Here you had an individual who was deceased on the side of the road and at that point, the officers, ..., from their testimony on the stand, I believe that they would say they were looking at this dead body, is this a murder or is this an accident or what is this? And they were trying to wrap their arms, at that point, around what they were investigating.... [A] lot of the procedural requirements that are built into the statute here, particularly video tape requirement, ..., I believe under the totality of the circumstances, was not, was not at play here. I believe that’s a valid reason why Your Honor could essentially give Williamsburg County Sheriff’s Department a pass here for not having a video tape of this crime scene, based on what had happened. ... [A]fter the fact, when they realized that [Petitioner] himself said he was drunk and they had other witnesses there to talk to during the course of the next day or so that confirmed that, that they thought at that point, okay, maybe we have a DUI on our hands as well and he was ticketed for DUI.

R. 289, line 23 – R. 291, line 24.

The prosecutor continued this rationale later when he argued the police had “no thought of video camera taping or anything else relating to the DUI requirements” when they arrived on the scene because there was a dead body on the side of the road and “[t]hey were trying to figure out how to investigate a homicide.” In the prosecutor’s view, the police could not be expected “to be thinking about the procedural rigors of the DUI statute.” R. 303, lines 4-14. Essentially, the state conceded the videotaping requirements applied to Petitioner’s case, but argued their failure was excused.

Petitioner countered that the statutory requirements and the case law were clear – the police were required to video the incident site. Failure to do so was fatal to the prosecution’s case of Petitioner. R. 293, lines 9-24.

The trial judge denied Petitioner's motion for a directed verdict on the felony DUI charge. Relying upon City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007), the judge found the appellate courts "indisputably established that the videotaping provisions [were] mandatory and not optional." R. 302, line 8 – R. 303, line 1. However, he found the totality of the circumstances excused the mandatory videotaping requirement. R. 304, line 25 – R. 305, line 12.

After the judge charged the jury on the law, the jury asked the judge whether chemical testing was necessary in order to prove felony DUI and/or DUI. The judge responded that he had instructed the jury on the elements of both charges, which was all the prosecution was required to prove. The jury asked to be re-instructed as to both, and the judge complied. R. 331, line 13 – R. 336, line 1. The jury ultimately found Petitioner guilty of reckless homicide and felony driving under the influence. R. 337, lines 11-17.

After the trial, Petitioner filed a motion for new trial. He challenged the prosecution's failure to present videotaping of the incident site. He cited Town of Mount Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011) to support his position. Based upon the failure of the state to produce a video of the incident site, Petitioner moved for a new trial resulting in a dismissal of the charge. R. 343-349.

By order dated November 30, 2011, Judge James held the videotaping requirements applied to Petitioner's case, but that the failure to videotape the incident site was excused based on the totality of the circumstances exception under section 56-5-2953(B). Judge James concluded that "law enforcement was dispatched to the scene and encountered [Petitioner], his truck, the victim's body, and other circumstances that did not immediately point to a DUI scenario." He acknowledged the police testified Petitioner was "visibly intoxicated" and "charged at some point

with DUI.” But, he relied upon Investigator Boston’s testimony that the incident was being investigated as a possible kidnapping and murder to excuse the officer’s failings. R. 359-360.

ARGUMENT

The Court of Appeals erred in reversing its prior decision to direct a verdict of acquittal in Petitioner's favor on the charge of felony driving under the influence where the prosecution failed to present video evidence of Petitioner's conduct at the incident site as statutorily mandated and where the state failed to present evidence of a statutory exception.

In 2007, at the time of the accident, South Carolina law concerning the offense of felony DUI provided as follows:

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a vehicle and when driving does any act forbidden by law or neglects any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself is guilty of a felony.

S.C. Code Ann. § 56-5-2945(A)(2007). Thus, felony DUI required proof of three elements: (1) the person drove a vehicle while under the influence of alcohol and/or drugs; (2) the person engaged in an act forbidden by law or neglected a duty imposed by law; and (3) the act or neglect proximately caused great bodily injury or death to another person. State v. Grampus, 288 S.C. 395, 397, 343 S.E.2d 26, 27 (1986) abrogated on other grounds by State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997).

South Carolina statutory law also provided that a person who violated section 56-5-2945 "must have his conduct at the incident site and breath site videotaped." S.C. Code Ann. § 56-5-2953(A)(2007). The statute provided that the videotaping at the incident site:

must begin not later than the activation of the officer's blue lights and conclude after ... a probable cause determination that the person violated Section 56-5-2945; and include the person being advised of his Miranda⁵ rights before any field sobriety tests are administered, if the tests are administered.

⁵ Miranda v. Arizona, 384 U.S. 426 (1966).

Id. The statute excused failure to produce the videos where the officer submitted sworn affidavits regarding inoperable equipment. The statute also provided that in accident investigations, where an arrest was made and the videotaping equipment was not activated by blue lights, the failure by the arresting officer to produce the videotapes required by the statute was not alone a ground for dismissal. S.C. Code Ann. § 56-5-2953(B)(2007). However, the statute required “as soon as videotaping is practicable *in these circumstances*, videotaping must begin and conform with the provisions of this section.” S.C. Code Ann. § 56-5-2953(B)(2007)(emphasis added). Additionally, the statute allowed courts to consider “any other valid reason for failure to produce the videotape based upon the totality of the circumstances.” S.C. Code Ann. § 56-5-2953(B)(2007).

Recently, this Court addressed whether a videotape complied with the statute. See State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015). This Court held “when an individual’s conduct is videotaped during a situation provided for in subsection (B) [of S.C. Code Ann. § 56-5-2953], compliance with subsection (A) must begin at the time videotaping becomes practicable and continue until the arrest is complete.” Henkel, 413 S.C. at 15-16, 774 S.E.2d at 462. The trial judge’s finding that the videotaping began as soon as practicable was not challenged on appeal. Id. at 12 n.5, 774 S.E.2d at 460 n. 5. The *precise* issue in this case is *when* did videotaping become practicable and was the failure to videotape excused; thus, the question left unanswered in Henkel presents itself in this case. This is a novel question of law, and this Court should grant certiorari to provide guidance to the Bench, Bar, law enforcement to ensure the relevant parties comply with the dictates of the legislature. See Rule 242, B)(1), SCACR.

Plain meaning of the statute – As soon as practicable

The purpose of the videotaping requirement “is to create direct evidence of a DUI arrest.” Roberts, 393 S.C. at 347, 713 S.E.2d at 285. “[T]he videotaping provisions of section 56-5-2953

are mandatory and not optional.” Id. at 346, 713 S.E.2d at 285. “A law enforcement agency’s failure to comply with [section 56-5-2953] is fatal to the prosecution of a DUI case.” Id. In Murphy v. State, 392 S.C. 626, 631, 709 S.E.2d 685, 688 (Ct. App. 2011), the Court of Appeals explained the plain language of section 56-5-2953(A)(1)(a)-(b) required the video recording to capture “(1) the accused’s conduct and (2) Miranda warnings prior to field sobriety tests, if such tests occur.” The Court defined “conduct” as one’s behavior, action, or demeanor. Id.

In City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007), this Court held that a violation of the videotaping requirement of section 56-5-2953(A) may result in the dismissal of the charges if no exceptions apply. In light of the trial judge’s order not addressing of the exceptions and the prosecution’s failure to seek a ruling on the potential applicability of the statutory exceptions, this Court did not review the case to determine if any exceptions applied. Id. at 16-17, 646 S.E.2d at 880-881.

Recently, this Court examined the videotaping requirement of section 56-5-2953 in State v. Elwell, 403 S.C. 606, 743 S.E.2d 802 (2013). This Court concluded that if a person refuses a breath test, the officer is not required to videotape the twenty-minute pre-test waiting period. Id. In a companion case decided the same day, State v. Hercheck, 403 S.C. 597, 743 S.E.2d 798 (2013), this Court likewise concluded that law enforcement was not required to videotape the entire pre-test waiting period where the arrestee refused a breath test. This Court noted that the “purpose of section 56-5-2953 is to create direct evidence of a DUI arrest.” Id. (quoting Roberts, 393 S.C. at 347, 713 S.E.2d at 285). This Court found that when “an arrestee refuses the breath test, the evidence gathering portion is over.” Id.

In Henkel, 413 S.C. at 10, 774 S.E.2d at 459, a witness saw a car being driven erratically and ultimately crashing. However, when the officer arrived on the scene, the driver had fled. Id.

Several hours later, the same officer responded to a call regarding an individual walking down the same highway where the car crashed. Id. The officer found the individual receiving treatment in an ambulance. Id. The officer advised the individual of his rights and conducted a horizontal gaze nystagmus test. Id. at 10-11, 774 S.E.2d at 459. The officer also initiated his audio recording device during the administration of the test. Id. at 11, 774 S.E.2d at 459. Thereafter, the officer had the individual recite the alphabet, which was audio recorded. Id. at 11, 774 S.E.2d at 460. The advisement of rights and administration of tests were not captured on video. Id. When the officer placed the individual under arrest for DUI, the officer placed the individual in his patrol car and ensured the video captured the individual's conduct thereafter. Id.

In light of the fact that neither party appealed the trial judge's finding that videotaping began as soon as practicable, the only matter before this Court was whether the video that existed complied with the statute. See id. at 12 n. 5, 774 S.E.2d at 460 n. 5. The precise question was whether an officer would have to re-advise an individual of his rights and re-administer tests after videotaping began if those activities occurred prior to videotaping becoming practicable. Id. at 13, 774 S.E.2d at 461. This Court answered this question in the negative and explained that when the videotaping became practicable, then the videotape had to capture the individual's conduct at the scene. Id. at 14, 774 S.E.2d at 461.

The Court of Appeals' opinion in this case eviscerates the statutory requirement of videotaping by finding it inapplicable whenever there is a situation that would not be considered a "normal ... traffic stop," including a traffic accident. The statute specifically contemplates that a DUI investigation will occur outside of "a normal traffic stop" by noting that in some circumstances, such as traffic accident investigations, an arrest will be made and the videotaping equipment will not be activated by the blue lights. Nevertheless, the statute requires videotaping to

begin as soon as practicable even in those situations. See S.C. Code Ann. 56-5-2953(B)(2007). Taking the Court's conclusion that when officers respond to a situation in which "the normal protocol for a traffic stop [is] not applicable" the videotaping requirement does not arise to its logical end, there would never be the need to videotape in *any* traffic accident. Frankly, requiring compliance with the statutory videotaping requirement *only* in "normal traffic stops" would result in almost no videotapes because no two traffic stops are the same and some abnormality would always permit law enforcement to claim the normal protocols, including videotaping, were not followed as a result.

By finding the statutory videotaping requirement not applicable to the instant case because of the presence of other people at the scene, the Court of Appeals' opinion further guts the statute. In arriving at this conclusion, the Court relied upon the proposition that the videotaping statute "was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses." See Henkel, 413 S.C. at 14, 774 S.E.2d at 461. The intent of the legislature to create direct evidence of a DUI arrest was not, and cannot, be limited to situations "where there are no other witnesses" because doing so would eliminate the videotaping requirement in all but the fewest DUI arrests, particularly those where there has been a traffic accident. By its very nature, a traffic accident will require the presence of personnel other than law enforcement – witnesses/bystanders, emergency medical personnel, fire and rescue personnel. Certainly, the legislature was aware of the likelihood of the presence of others at traffic accidents, but still the legislature required videotaping as soon as practicable at traffic accident scenes when the investigation culminates in a DUI arrest.

The legislature was concerned with more than creating direct evidence only in “one-on-one traffic stops” as evidenced by the language chosen in the statute. See Henkel, 413 S.C. at 15, 774 S.E.2d at 462. Had the legislature been concerned only with “one-on-one traffic stops,” the legislature could have made this very point by requiring videotaping only in those circumstances. Instead, the legislature did the opposite and required videotaping in *all* DUI arrests, including those which by their nature would necessitate the presence of others, such as road blocks, traffic accidents, citizens’ arrests, and felony DUIs. Additionally, the legislature never carved out an exception, which would permit officers not to comply with the videotaping requirement when others were present on the scene. Such an exemption would have been easy to craft had the legislature actually intended for the videotaping requirement to exist only during “one-on-one traffic stops.” Based on the clear language of the statute – and most importantly, language not in the statute – the intent of the legislature was to create direct evidence of DUI arrests in every case. The purpose of the creation of direct evidence is to eliminate a “swearing match” among witnesses regarding what transpired at the incident site.

The record fails to support the conclusion that the officers were not aware of what they were investigating and as a result, the police were not considering the procedural rigors of DUI law as held by the Court of Appeals. The 911 calls in evidence provide ample support that the police were aware of a potential felony DUI prior to and upon their arrival. In Jones’ call to 911, she informed the dispatcher that she saw a white man near a dead body and the white man was drunk. Additionally, Petitioner’s father spoke to the 911 dispatcher and explained that he believed his son,

whom he identified by name, had hit the person who was lying in the road. The emergency calls alone placed officers on notice that a potential felony DUI was afoot.⁶

The first officer on the scene, Stagers, spoke to Petitioner within moments of his arrival. His initial observations of Petitioner were that Petitioner was unsteady on his feet – too unsteady to conduct field sobriety tests safely – and had “an odor of alcoholic beverages on his person.” Stagers concluded quickly that Petitioner “had been drinking” and was the driver. R. 130, lines 10-15; R. 130, lines 19-23; R. 137, lines 19-20; R. 138, line 7. Recognizing the direction the investigation was taking, Stagers advised Petitioner of his rights. R. 130, line 24 – R. 131, line 3.

When Ballard arrived, he initially spoke to Stagers to obtain an update on the investigation thus far, and learned that Petitioner was driving the truck. R. 181, lines 21-24; R. 183, lines 13-17. Ballard observed Petitioner staggering. R. 183, lines 1-9. Ballard further testified that he was in communication with the dispatcher as evidenced by the 911 tape. R. 183, lines 18-21. Based on the observations made by police, information relayed to the 911 dispatcher, and statements allegedly made by Petitioner, Ballard charged Petitioner with DUI. R. 184, lines 23-25; R. 185, lines 2-5. Specifically, Ballard testified the charge was based upon Petitioner appearing highly intoxicated and telling Stagers he was driving. R. 188, lines 13-19.

When Boston arrived, which was shortly after Stagers arrived, he initially spoke to Stagers who relayed all information he had. Boston’s understanding was that Petitioner was the driver of the truck that ran over Turner. R. 133, lines 17-23; R. 141, line 12 – R. 142, line 3.⁷

⁶ There is *no doubt* that Juan Ballard, one of the first officers on the scene and the officer who charged Petitioner with DUI, was in direct contact with the dispatcher and was aware of the nature of the call. R. 184, line 18 – R. 185, line 4.

⁷ Boston testified that he “received a call from Sergeant Ballard in reference to a vehicle versus a pedestrian,” which prompted him to respond to the scene. R. 141, lines 12-14.

Boston immediately detected alcohol on Petitioner and noticed his speech was slurred. Boston opined that Petitioner was "very intoxicated." R. 144, lines 13-19. Boston also advised Petitioner of his rights. R. 141, lines 20-22. Thereafter, Boston, Staggers, and another officer took Petitioner to the police department and continued questioning. R. 145, lines 3-8. When the interrogation ended, Petitioner was charged with DUI and transported to the detention center. R. 147, lines 18-24. Boston based the DUI arrest on Petitioner's admission that he was drinking. R. 148, lines 2-17. According to Boston, "at first it was a DUI that kind of morphed into something else." R. 149, lines 6-8. Further, Boston testified that the deceased's head "looked like it had been run over by a tire." R. 173, lines 10-13.

Thus, the record fails to support the decision of the Court of Appeals that videotaping never became practicable because the officers were unaware they were investigating a DUI. As demonstrated, the officers had ample notice of the potential felony DUI on the scene, and in fact, arrested Petitioner for DUI within minutes of arriving. The clear, unambiguous, and undisputed facts showed the police were aware they were investigating a potential DUI involving a fatality. Based on the 911 call alone, the officers were aware (1) that a "dead body" was in the roadway, (2) that Petitioner had been driving the truck present at the scene, (3) that Petitioner may have hit the person who was lying dead in the roadway, and (4) that Petitioner may have been drinking. Contrary to the Court of Appeals' assertion that "law enforcement officers were responding to the report of a dead body in the roadway," the uncontroverted facts show the officers were responding to a potential felony DUI and were aware of the nature of the incident prior to their arrival based on the 911 call.

At a minimum, the officers were aware of the potential DUI charge when the officers smelled alcohol on Petitioner and obtained admissions from Petitioner that he was drinking and

driving. By the time the officer first read Petitioner his rights, the officer knew or should have known that this was a DUI case and should have begun videotaping the incident site. There can be no doubt the officers were well aware they were investigating a potential DUI involving a fatality.

Additionally, the Court of Appeals held that because Petitioner was in Stagg's patrol car when Boston arrived, Petitioner "would not have been within camera range of a car-mounted camera." This is not supported by the record. Stagg testified to approaching Petitioner, advising him of his rights, and interrogating him. Stagg never indicated where Petitioner was during this encounter. R. 130, line 8 – R. 133, line 10. It seems unlikely that Petitioner was sitting in a patrol car during the entirety of the interrogation because Stagg claimed *repeatedly* that Petitioner was "unsteady on his feet." In order to make such an observation, Petitioner would have had to have been "on his feet" at some point during the encounter. R. 137, lines 19-20; R. 138, line 7. While it is true that Petitioner was in Stagg's patrol car when Boston arrived, this was *after* officers were aware of the potential felony DUI charge. R. 141, lines 12-22.

Further, even if Petitioner were not "within range of a car-mounted camera" because he was in Stagg's patrol car, there was no evidence in the record that Petitioner was immobile or that the cameras were immobile. The officers could have easily moved Petitioner to a position in which he would have been within range of a car-mounted camera. In fact, Ballard removed Petitioner from Stagg's patrol car so that the police chief could speak to Petitioner before Boston arrived. R. 182, line 22 – R. 183, line 4. If Petitioner could be removed from the car in order for the police chief to interrogate him prior to the investigator's arrival, then he could have been moved in order for the police to comply with statutorily-mandated videotaping. Finally, the Court's opinion assumes the car-mounted cameras were immobile. The record is devoid of such evidence. Likely, the cameras swiveled to allow law enforcement to capture conduct of individuals in the rear

passenger area.⁸ Even if the cameras were forward facing only, then the cameras were still mobile by the fact that they were mounted on cars, which are by their nature mobile. The cars could have been moved to place Petitioner within range of a forward facing only camera.

Statutory Exception

The Court of Appeals' opinion *creates* two exceptions to the videotaping requirement: (1) whenever the arrest is not the product of a "normal traffic stop" and (2) whenever the arrest occurs in the presence of others. The creation of these two exceptions swallows the rule because no videotaping will be required in any DUI arrest as all arrests will likely fall into one of these exceptions. Not only are the exceptions not within the statute, rendering them judicially created laws, the exceptions defy the clear and unambiguous language of the statute.

The Court of Appeals failed to consider the exception that is *actually* contained within the statute. The statute allows courts to consider "any other valid reason for failure to produce the videotape based upon the totality of the circumstances." S.C. Code Ann. § 56-5-2953(B)(2007). Oddly, the Court's opinion uses the totality of the circumstances language, but appears to do so when reviewing the trial judge's refusal to dismiss the felony DUI charge: "[T]he videotaping requirements of section 56-5-2953(A)(1)(b) were not applicable. We find dismissal of the felony DUI charge was not required under the totality of the circumstances." Not only does the clear language used by the Court show the "totality of the circumstances" language is not being used to consider the statutory exception, but the juxtaposition of the "totality of the circumstances"

⁸ In State v. Henkel, 413 S.C. 9, 10 n. 2, 774 S.E.2d 458, 459 n.2 (2015), this Court noted that when the officer arrived at the scene, he activated his patrol car's video recording camera, but the "forward facing camera only recorded the highway" in front of the car. However, when the officer placed defendant in his patrol car following his DUI arrest, the officer "faced the in-car camera" toward the defendant. Id. at 11, 774 S.E.2d at 460.

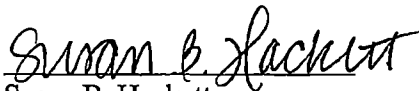
language with the finding that the statutory videotaping requirement was "not applicable" demonstrates the Court of Appeals was not considering the statutory exception to the videotaping requirement.

Had the Court of Appeals reviewed the exception, the Court would have determined the record fails to support the trial judge's finding that the totality of the circumstances excused law enforcement's failure to video record Petitioner's conduct at the incident site. As demonstrated, the officers had ample notice of the potential felony DUI on the scene, and in fact, arrested Petitioner for DUI, *and only DUI*, within minutes of arriving. The state presented no evidence that videotaping the incident scene was impossible or impractical. The failure by law enforcement to create the video denied the jury the ability to assess Petitioner's conduct. In light of the fact that law enforcement failed to conduct any chemical testing, which would have provided the jury with objective evidence of Petitioner's intoxication or lack of intoxication, the video would have been the only objective evidence for the jury to make a determination concerning whether Petitioner engaged in felony DUI.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER.

This 1st day of February, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
FEB 01 2016
SC Court of Appeals

Certiorari to Williamsburg County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-311 (S.C. Ct. App. filed 6/24/2015)
10-GS-45-00269-00270.

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on William M. Blich, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Mr. Marty Baggett #216091, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, and the S.C. Court of Appeals this 1st day of February, 2016.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of February, 2016

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Williamsburg County
Hon. George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2016-000093

RECEIVED

FEB 23 2016

SC Court of Appeals

The State,

Respondent,

v.

Marty Baggett,

Petitioner.

Opinion No. 2015-UP-311 (S.C. Ct. App. filed October 21, 2015)

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals correctly found initiation of the video recording was never practicable, and even if it became practicable, would not have accomplished the underlying purpose of Section 56-5-2953(A), so the trial court did not err in denying Petitioner's motion for a directed verdict.

STATEMENT OF THE CASE**Procedural History**

The State agrees with Petitioner's procedural history within the Statement of the Case.

ARGUMENT

I. The Court of Appeals correctly found initiation of the video recording was never practicable, and even if it became practicable, would not have accomplished the underlying purpose of Section 56-5-2953(A), so the trial court did not err in denying Petitioner's motion for a directed verdict.

The Court of Appeals correctly found video recording of the incident scene never became practicable and, therefore, pursuant to Section 56-5-2953(B) of the South Carolina Code, the trial court properly refused to dismiss Petitioner's case.¹ First, there is ample evidence in the record to support the trial court's decision to deny the directed verdict as to felony DUI. To the extent the argument is for dismissal of the charge based on the failure to produce a video recording, Section 56-5-2953(B) contains an exception which allows the trial court to consider the totality of the circumstances regarding the failure to produce a video recording. The trial court in this case correctly determined the totality of the circumstances excused the failure to produce a videotape, and he correctly denied Appellant's motion for a directed verdict.

Directed Verdict

Appellant made a motion for directed verdict on the felony DUI charge. The trial court had ample evidence in the record supporting his decision to allow the charge to go forward to the jury. "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence

¹ As will be discussed below, Petitioner did not move to dismiss the case. Instead, he made a motion for directed verdict including a reference to the State's failure to provide a video recording.

and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” Id. A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Pursuant to section 56-5-2945 of the South Carolina Code (Supp. 2010):

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence.

The State presented testimony demonstrating Appellant was driving the vehicle. First, Officer Staggers testified Appellant was driving the vehicle. (T.153; R.130). Additionally, Investigator Boston indicated Appellant’s first story was that Appellant was driving the vehicle. (T.213; R.177). Appellant’s story changed to indicate the victim was driving the vehicle. Further, blood stains were found under the passenger door and material was located in the passenger wheel well indicating the victim was struck on the passenger side of the vehicle, and not the driver side, when she fell out of the truck. (T.88-90; 302; R.65-67; 256). The blood tested positive for the victim. (T.306-307; R.260-261).

Most significantly, Appellant has not challenged his conviction for reckless homicide. As a result, the jury’s conclusion Appellant was driving in order to convict

him of reckless homicide is the law of the case. See S.C. Code Ann. § 56-5-2910(A) (Supp. 2010); State v. Watson, 349 S.C. 372, 563 S.E.2d 336 (2002) (finding reckless homicide requires proof that the defendant (1) operated an automobile; (2) in reckless disregard for the safety of others; (3) the defendant's conduct proximately caused injury to the victim; and (4) within three years, the victim died as a result of these injuries).

Numerous witnesses testified Appellant was intoxicated both at the time of the discovery of the accident and at his arrest. Most significant is the testimony of Carolina Jones, the woman who first came across Appellant and the victim. She testified she came across the truck blocking the road and Appellant indicating he found a dead body. She asked him if he had called 911, and he said no. She testified he was "kind of drunk," "staggering around," and "repeating the same thing over again." She testified she believed he was under the influence of alcohol. (T.129-130; R.106-107).

Officer Staggers was one of the initial officers to arrive on scene. He testified he spoke with Appellant. He indicated Appellant "had a[n] odor of alcoholic beverages on his person. He had been drinking." (T.152-153; R. 129-130). He also testified Appellant was "unsteady on his feet." (T.160; R.137).

Investigator Boston arrived at the scene and also talked with Appellant. He indicated Appellant claimed to be too drunk to drive so the victim was driving. (T.177; R.143). Investigator Boston further testified he could smell alcohol on Appellant, Appellant's "speech was slurred," and Appellant was "slouched down in the back of the patrol car." He then stated: "I was advising him of his Miranda Warnings and he blurted out I know my rights and to me he was very intoxicated." (T.178; R.144). Investigator Boston testified based on his experience, Appellant was intoxicated. (T.179; R.145). He

indicated the basis for the original DUI charge against Appellant was Appellant's admission he was drinking. (T.182; R.148). Investigator Boston also took a statement from Appellant's father who described his son as "crazy and drunk." (T.189; R.153). Appellant's father then told Investigator Boston Appellant indicated "he had run over [the victim]." (T.189; R.153). Finally, Investigator Boston testified Appellant did not appear in shock at the scene of the homicide, instead he appeared intoxicated. (T.214; R.178).

The State presented evidence Appellant was driving the truck while intoxicated. The victim died as a result of Appellant's failure to exercise due care while driving intoxicated. The cause of death was found to be blunt force trauma from being run over. (T.259-261; R.222-224). As a result, the State presented sufficient evidence to sustain the trial court's decision to deny the motion for a directed verdict.

Dismissal for Failure to Produce Video

Appellant's main contention on appeal has been the felony DUI charge should have been dismissed because the State failed to provide a video recording of the incident scene pursuant to section 56-5-2953 of the South Carolina Code. At the incident site, the officers were not investigating a DUI, but were instead investigating a possible homicide. The Court of Appeals correctly determined, based on the totality of the circumstances which existed at the incident site, it was never practicable to begin video recording or to offer Appellant field sobriety tests. Finally, the Court of Appeals correctly found even if video recording became practicable, then it would have been a futile act and, therefore, not a basis for directed verdict of dismissal of the charges.

Pursuant to section 56-5-2953:

(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site videotaped.

(1) The videotaping at the incident site must:

(a) begin not later than the activation of the officer's blue lights and conclude after the arrest of the person for a violation of Section 56-5-2930, 56-5-2933, or a probable cause determination that the person violated Section 56-5-2945; and

(b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered.

S.C. Code Ann. § 56-5-2953(A) (Supp. 2010).

Additionally, the statute provides:

[I]n circumstances including, . . . traffic accident investigations . . . where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section.

S.C. Code Ann. § 56-5-2953(B) (Supp. 2010).

First, Appellant moved for a directed verdict and not dismissal of the charges. The production of the video under section 56-5-2953(A) is not an element of the offense, and therefore, should not be a basis for the grant of a directed verdict. See Rule 19, SCRCrimP ("On motion of the defendant . . . the court shall direct a verdict in the defendant's favor . . . if there is a failure of competent evidence tending to prove the charge in the indictment."). Instead, the production of a video is a collateral procedural requirement. While dismissal may be an appropriate remedy for the failure to produce a

video recording which is not excused by one of the exceptions in subsection B of the statute, the trial court cannot be found to have erred in failing to direct a verdict based on the failure to produce a video. See City of Rock Hill v. Suchenski, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007) (finding dismissal for failure to comply with section 56-5-2953 “an appropriate remedy”). Additionally, as the State maintains above, ample evidence was presented to the jury to support a conviction for felony DUI, and, as a result, the trial court properly denied a directed verdict motion.

Appellant never moved for dismissal based on the failure to videotape the incident scene. Instead, he waited until the State had presented its case and rested prior to raising the issue to the trial court. Based on his actions, there is no evidence in this record indicating the beginning of video recording was practicable because the issue was never addressed. The trial court ruled in the State’s favor finding the totality of the circumstances allowed the case to proceed and so the State was not required to then present further evidence showing video recording was also not practicable as it was the successful party on the motion on a different theory. See e.g., I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 423, 526 S.E.2d 716, 725 (2000) (“However, when the lower court rules in one party's favor, it is not necessary for that party to return to the court and ask for a ruling on remaining issues and arguments in order to preserve those arguments for use in an appeal.”).

The testimony at trial, as well as the facts and circumstances of the scene, indicated the officers were investigating a homicide or accident and not a DUI. As the Court of Appeals and trial court both properly found, the totality of the circumstances excused the recording at the incident site. The trial court is the only court which has the

ability to consider the facts and credibility of the witnesses and make its own findings of fact. This Court must give deference to those findings and uphold them if there is any evidence to support them. Id. at 6, 545 S.E.2d at 829 (“We are bound by the trial court’s factual findings unless they are clearly erroneous.”). The Court is not free to insert its own opinion or view of the facts for that of the trial court. See e.g., State v. Barrs, 257 S.C. 193, 184 S.E.2d 708 (1971) (“It was [the trial court’s] duty to judge the credibility of the witnesses and resolve the issue accordingly. He has done so, and we have no authority to interfere with his finding.”).

First, Appellant told several versions of what happened, but frequently claimed the victim was driving the truck and fell out of the vehicle. (R.132; 143; 150-152). Even at trial his counsel explained “consistently, throughout the course of this trial, Mr. Baggett has maintained, she fell out the truck?” (R.156). His own statements belie the argument the State was required to video record the scene because he maintains he was not driving the vehicle.² The officers were responding to a call involving a body in the road. The only person present at the time of the actual incident indicated multiple times the victim was the driver.³ They were not responding to a DUI or even a typical accident scene involving a drunk driver. As a result, there was no reason for them to believe they needed to record the incident site pursuant to section 56-5-2953.

Additionally, the scene did not make it practical to begin a video recording under the statute. Officers testified fire and emergency medical personnel were already on the scene when they arrived. (R.129). According to Mr. Staggers, who was a corporal in the

² His driving the vehicle was a clear question for the jury and one they answered finding he was driving based on their guilty verdict for both felony DUI and reckless homicide.

³ The State acknowledges there is also evidence in the record indicating he told Staggers he was driving as well as the fact the victim was hit by the vehicle on the passenger’s side and not the driver’s side.

Williamsburg County Sheriff's Department at the time of the incident, roughly fifteen people arrived before he did including fire, voluntary fire, and medical personnel. (R.135-136). There were numerous individuals on scene, including Appellant's family. (T.161-162; R.138-139). Investigator Boston also indicated numerous individuals were on scene, including Appellant's family. (R.168-169). The officers were more interested in securing the scene and investigating the homicide than they were a DUI. (T.77; 160; 198; 208; 211; 218; R.54; 137; 162; 172; 175; 182). Significantly, when asked about conducting field sobriety tests, Officer Staggers testified: "it was not safe to conduct that at the time." (T.160; R.137).

Even Appellant's counsel's own questions demonstrate why this was not a typical DUI investigation or even a DUI investigation after a traffic accident. This scene was considered more of a possible murder scene. Appellant's counsel asked Officer Scott: "You were there that night and you were going to determine whether this was an accident or a murder. Isn't that correct?" Officer Scott indicated he was merely there to process the scene for evidence. (T.95; R.72)(emphasis added). Later he was asked by Appellant's counsel: "That night you processed the scene like it might be a murder, correct?" Officer Scott responded: "I don't know what we had at the time . . . Processing the scene, it was based on what we had." (T.98-99; R.75-76)(emphasis added).

The trial court, in making its ruling that the totality of the circumstances excused the failure to provide a video, specifically found the testimony of Investigator Boston relevant and significant. His testimony, specifically relied on by the trial court, should be given great deference. Investigator Boston testified his main concern was not the DUI but was "the situation at the time." (R.149). That situation included a dead body, numerous

people at the crime scene, Appellant's family being at the crime scene, and a scene in which it was not safe to perform field sobriety tests.

Appellant's counsel again asked a very poignant question: "Okay, now initially, you were investigating a murder. Isn't that right?" Investigator Boston testified he was initially investigating a murder. (T.198; R.162) (emphasis added). He specifically testified: "I was concentrating on the murder." (T.208; R.172). Appellant's counsel then asks: "Okay, because this case was investigated as a murder?" Investigator Boston responds: "That's right." (R.172) (emphasis added). He was not investigating a DUI, and, as a result, he had no reason to institute the protocols for a DUI investigation instead of the much more serious murder investigation.

When questioned about Williamsburg County Sheriff's Department's failure to follow the law regarding a DUI, Investigator Boston indicated he "can't say not following the law . . . to investigate a murder." (T.211; R.175). Appellant's counsel responds: "but now that's not what we're doing here today." His response clearly acknowledges the investigation at the time of the incident was a murder investigation and, subsequently, the charges involved DUI. Clearly, the officers on the scene did not believe at the time they were investigating a DUI or a simple traffic accident. Instead they were investigating a possible homicide and so the video recording of the incident scene was not necessary.

It is apodictic the testimony from Investigator Boston, which was specifically listed in the trial court's order as support for the court's conclusion to not dismiss the case, has to constitute some evidence indicating the totality of the circumstances supported the decision to allow the trial to proceed without a video recording. Couple Investigator Boston's testimony with the testimony of Officers Staggers and Scott indicating the

nature of the scene, and the confusion as to what the actual situation involved, clearly the totality of the circumstances excused the failure to video tape.

Importantly, initiating the video recording would have accomplished nothing and been a purely futile act. See State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015). Corporal Staggers indicated he read Appellant his Miranda warnings and placed him in his vehicle upon his arrival. Even assuming the camera could have been activated at the point in which they should have known he was drunk, nothing further would have been recorded except the general scene.⁴ As mentioned above, it was too dangerous at the scene to perform field sobriety tests, so once Appellant was placed in a vehicle, the camera would have only shown various people coming and going from the scene and offered no evidence relevant to the issue of Appellant's intoxication.

"Subsection (A) was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses." Id. citing Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011). (finding the purpose of § 56-5-2953 is to create direct evidence of a DUI arrest). Pursuant to this Court's recent opinion in Henkel, the State did not have to go back and do the Miranda warnings in front of the camera. Accordingly, the video recording would have shown nothing related to Appellant or the determination of his intoxication.⁵ As discussed in Henkel, the video recording is relevant to establish

⁴ As discussed above, because Appellant waited to make his motion as part of a directed verdict motion, we do not know if initiating the camera would have ever been practical, much less at what point it could have become practical.

⁵ Appellant contends the camera could have been turned to show Appellant in the back seat of the vehicle, and maintains there is no evidence the cameras were immobile. All arguments are purely speculative and without any support in the record. Further, the failure to fully develop the practicality of turning on the camera or turning it to face Appellant while in the vehicle is a result of Appellant moving for a directed verdict and not a pretrial motion to dismiss and not facts the State had to develop based on the trial court's ruling under the totality of the circumstances.

Appellant's intoxication and the process of determining his intoxication. As in Henkel, there was sufficient testimony from numerous witnesses, including individuals not associated with law enforcement, to support a conclusion Appellant was intoxicated without resort to field sobriety tests or any other indicator. The video recording was not necessary to preserve the interactions between the lone individual and law enforcement as there were numerous individuals on scene, including Appellant's own family. As a result, the recording would have provided absolutely zero evidentiary value and certainly would not have supported the intent of the statute as discussed in Roberts and Henkel. Accordingly, the Court of Appeals properly affirmed the trial court's determination that the failure of the State to produce a video recording should not result in dismissal of the case based on the totality of the circumstances. Therefore, this Court should deny the Petition for Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

February 23, 2016

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Williamsburg County
Hon. George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2016-000093

The State,

Respondent,

v.

Marty Baggett,

Petitioner.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 23rd day of February, 2016.


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The Supreme Court of South Carolina

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SC Court of Appeals

The State, Respondent,

v.

Marty Baggett, Petitioner.

Appellate Case No. 2016-000093
Lower Court Case Nos. 2010-GS-45-00269,
2010-GS-45-00270

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

November 9, 2016

cc:

Susan Barber Hackett, Esquire

Alan McCrory Wilson, Esquire

William M. Blich, Jr., Esquire

The Honorable Jenny Abbott Kitchings

The Honorable Sharon W. Staggers



The South Carolina Court of Appeals

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TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 14, 2016

The Honorable Sharon W. Staggers
125 W Main St
Kingstree SC 29556-3343

REMITTITUR

Re: The State v. Marty Baggett
Lower Court Case No. 2010GS4500269, 2010GS4500270
Appellate Case No. 2011-204146

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".
CLERK

Enclosure

cc: Susan Barber Hackett, Esquire
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire

FORM 5

STATE OF SOUTH CAROLINA

County of WilliamsburgMarty Baggett #216091

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2016-CP-45-587
IN THE COURT OF COMMON PLEAS

2016 DEC -5 PM 4:07

FILED

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE County Correctional Inst., F6A-1146,
990 Wisacky Hwy, Bishopville, SC. 29010
2. Name and location of Court which imposed sentence Williamsburg Court
House,
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010 - GS - 45 - 0270 - 20 yrs.
 - (b) 2010 - G - 45 - 0269 - 10 yrs

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July, 22, 2011
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. December 6, 2011, Filed Dec 2, 2011
- iii. @ 3:07 p.m. Williamsburg County Clerk of Court
- (b) the result in each such Court to which you appealed:
- i. ~~Denied~~ DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE Attachment A
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE Attachment A
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NONE

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Post-Conviction Relief actions present first appropriate
 - (b) opportunity for review of these issues.
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
 - (b) your trial, if any? YES
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Sam Floyd, Atty. at Law, 15 Courthouse Sq., Kingstree
S.C. 29556
 - ii. Susan B. Hackett, S.C. Commission of Indigent
Defense, Division of Appellate Defense, P.O. Box 4589,
 - iii. Columbia, S.C. 29211-1589
 - (b) the proceedings at which each such attorney represented you:
 - i. TRIAL LAWYER
 - ii. Appellate Atty.
 - iii. _____

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

Vacation of Judgement and sentence. Applicant
SEeks a NEW trial

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

N/A

STATE OF SOUTH CAROLINA)

County of

Williamburg)

VERIFICATION

I, Marty Baggett, 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.

Marty Baggett

SWORN to and subscribed before me this 29
 day of Nov., 2014.

Debra Easton (L.S.)
 Notary Public

My Commission Expires: 3/3/2024

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

I, Marty Baggett, 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.

Marty Baggett
Applicant

SWORN or affirmed to and subscribed before me this

29 day of Nov, 2016.

Debra Eantubye
Notary Public

My Commission Expires: 3/3/2024

a) The Applicant received Ineffective Assistance of Counsel prior and during his Trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, section 14 of the South Carolina Constitution. The judgement and sentence against the Applicant were in violation of his rights to due process of law and effective assistance of Counsel.

11.

10:

a) Trial Counsel failed to provide the Applicant effective assistance of counsel in that he failed to have squashed indictments; 2010-GS-45-0270 and 2010-GS-45-0269 that was presented to the Grand Jury on Oct. 7, 2010 on a Direct Presentment 3 1/2 years later, that the State had NO evidence against the Applicant for a Felony DUI or Reckless homicide. One of the elements in a felony DUI requires proof: 1) the actor drives a vehicle while under the influence of Alcohol or drugs. This would be consider a DUI. To prove a DUI you must follow statute 56-5-2946, "State v. Cuevas (S.C. App. 2005) 365 S.C. 198, 616 S.E. 2d 718. Statute 56-5-2950. If your charged with 56-5-2945 you must follow statute 56-5-2953 as it reads. The Applicant NEVER had a BA, urine, Blood or video taping done by the arresting officer. This is in violation of Applicant's due process.

11.

10.

b) Trial Counsel was ineffective for allowing Jeffery Scott testimony to the jury to be heard without The Judge qualifying him as an expert in his field of work. "Tr. pg. 75 Lns. 13-25, Tr. pg. 76 Lns 1-25 In closing Arguments Judge explains to the jury what an Expert witnesses is; Tr. pg. 404 Lns. 22-25, Tr. pg. 405 Lns. 1-14. This is violations of Applicant's due process.

c) Trial Counsel was ineffective for Not objecting to the State questioning Officer Stagers about he identified the Applicant as the Driver that night of the accident. Tr. pg. 153 Lns. 19-23.

d) Trial Counsel was ineffective for allowing the ~~the~~ statements Officer Stagers and Officer Boston gave in front of the jury about Applicant statements the night of the accident. Applicant was intoxicated and gave statement involuntary; cite 378 US 368 Jackson v. Denno; 84 S. Ct. 1774; 12 L. Ed 2d 908. This is violation of Applicant's due process, Officer Stagger, Tr pg. 153 Lns 24-25, Tr. pg. 154 Lns 1-25, Tr. pg. 155 Lns. 1-25, Tr. pg. 156 Lns. 1-9. Officer Boston; Tr pg. 175 Lns. 18-25, Tr. pg. 176 Lns 1-25, Tr. pg. 177 Lns 1-25, Tr. pg. 178 Lns. 11-12, Tr. pg. 180 Lns 1-25, Tr. pg. 181 Lns 1-17, Tr. pg. 182 Lns. 12-17, Tr. pg. 183 Lns. 19-25.

Attachment 'A'

572 e) Trial Counsel was ineffective for allowing the State to tell the jury a false version of Applicant's statement. Trial Counsel did not Object to the State Version. Tr. pg. 372 Lns. 13-25; Tr. pg. 373 Lns 1-4. The ^{true} statement Officer Stagger made is on Tr. pg. 154 Lns. 12-25; Tr. pg. 15. Lns 1-19. This is in violation of Applicant Due Process.

f) Trial Counsel was ineffective for not objecting to State's closing Arguments on the second version that Officer Boston gave. State version was false. SEE Tr. pg. 373 Lns. 5-25. Boston true version is on, Tr. pg. 176 10-25, Tr. pg. 177 1-25. This is in violation of Applicant Rights and Due Process.

g) Trial Counsel was ineffective for not objecting to ^{the} State testimony to the jury. Telling the jury how a passenger falls out of a car. SEE Tr. p. 374 Lns. 7-13. The State is Not a qualified expert in this field.

h) Trial Counsel was ineffective for not objecting to the State testimony to the jury. Telling the jury "None of these stories are the at any given time. Tr. pg. 376 Lns 11-13. According to Officer Boston Stories NEVER changed SEE, Tr. pg. 184 Lns. 13

i) Trial Counsel was ineffective for not objecting to the State testimony to the jury. Telling the jury a version that the Applicant ran Ms. Turner down while she was walking. SEE Tr. pg. 16-21. The Expert witness Dr. Prenell testify the victim had No leg injuries from the truck Bumpers SEE Tr. pg. 266 Lns 2-23.

j) Trial Counsel v s ineffective for not objecting⁵⁷³ to the second jury charge to the jury when they had to questions. see Tr. pg. 420 Lns 19-21. The judge charges the jury with 2 elements of felony DUI and there 3 elements total. The State must show Burden of Proof of all three elements. The judge did not charge the jury with the 1st element of a felony DUI. 1) the actor drives a vehicle while under the influence of Alcohol or drug. see Tr. pg. 423-22-25, Tr. pg. 424 1-25, Tr. pg. 425 Lns 1-9. Also see statute J6-S-2945; ~~state~~ 7.5 Burden of Proof,

k) Trial Counsel LeGrande Loreway was ineffective for not getting Applicant his 1st plea offer to him in a timely manner.

L)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	THIRD JUDICIAL CIRCUIT
	)	
Marty Baggett, #216091,	)	2016-CP-45-0587
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on December 5, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. In October 2010, the Williamsburg County Grand Jury indicted Applicant for reckless homicide (2010-GS-45-0269) and felony DUI (2010-GS-45-0270). Sam Floyd, Esquire represented Applicant. Assistant Attorney Generals Dale Scott, Esquire and David Stumbo, Esquire prosecuted the case. On July 18, 2011-July 20, 2011, Applicant proceeded to trial before the Honorable George C. James, Jr. The jury found Applicant guilty as indicted on both charges. Judge James sentenced Applicant to imprisonment for concurrent terms of ten years for reckless homicide and twenty years for felony DUI.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals initially reversed Applicant's conviction for felony DUI on June 24, 2015. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed June 24, 2015). The State then submitted a petition for rehearing on July 9, 2015 and it was granted by the South Carolina Court of Appeals on October 21, 2015. The Court

dispensed with further briefing and argument and substituted an opinion for the previously submitted opinion. In the new opinion, the Court affirmed Appellant's conviction for felony DUI. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed October 21, 2015). Appellant submitted a petition for rehearing on November 5, 2015. On December 17, 2015, after consideration, the Court denied the petition, as it was unable to discover any material fact or principle of law that would provide a basis for granting a rehearing.

Applicant subsequently filed a petition for writ of certiorari to the South Carolina Supreme Court on February 1, 2016. On November 9, 2016, the Supreme Court denied the petition. The remittitur was subsequently returned to the circuit court on November 14, 2016.

While his direct appeals were pending, Applicant filed an application for post-conviction relief on July 13, 2015. However, on August 9, 2016, the Court issued an order dismissing the action without prejudice until his appeals were finalized.

Attached to this Return and incorporated by reference are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. Failed to have quashed indictments. The State had no evidence against Applicant for a Felony DUI or Reckless Homicide. Applicant never had a BA, urine, blood, or videotaping done by the arresting officer. This is violation of Applicant's due process.

- b. For allowing Jeffrey Scott's testimony to the jury to be heard without the judge qualifying him as an expert in his field of work. This is violation of Applicant's due process.
- c. For not objecting to the State's questioning of Officer Staggers about him identifying Applicant as the driver that night of the accident.
- d. For allowing the statements of Officer Staggers and Officer Boston given in front of the jury about Applicant's statements the night of the accident. Applicant was intoxicated and gave the statement involuntarily.
- e. For allowing the State to tell the jury a false version of Applicant's statement. Trial counsel did not object to the State's version. This is in violation of Applicant's due process rights.
- f. For not objecting to the State's closing arguments on the second version that Officer Boston gave. The State version was false. This is in violation of Applicant's rights and due process.
- g. For not objecting to the State's testimony to the jury. Telling the jury how a passenger falls out of a car. The State is not a qualified expert in this field.
- h. For not objecting to the State testimony to the jury. Telling the jury "none of these stories are the at my given time." According to Officer Boston stories never changed.
- i. For not objecting to the State testimony to the jury. Telling the jury a version that Applicant ran Ms. Turner down while she was walking. The expert witness Dr. Prenell testified that the victim had no leg injuries from the truck bumpers.
- j. For not objecting to the second jury charge to the jury when they had two questions. The judge charged the jury with two elements of felony DUI and there's three elements total. The State must show a burden of proof of all three elements. The judge did not charge the jury with the first element of a felony DUI: 1) the actor drives a vehicle while under the influence of alcohol or drugs.
- k. For not getting Applicant his first plea offer to him in a timely manner.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, 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, Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] 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 v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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). The 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 the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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, 106 (1985).

Respondent submits Applicant can satisfy neither 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).

IV.

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 pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

V.

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

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

[signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

MARTY BAGGETT, # 216091

Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent,

IN THE COURT OF COMMON PLEAS

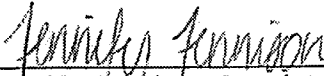
2016-CP-45-0587

AFFIDAVIT OF SERVICE BY MAIL

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
1400 Laurel Street
Suite 4A
Columbia, SC 29201

DATED this the 15th day of June, 2017.


Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

COURT OF COMMON PLEAS

MARTY BAGGETT)
216091)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
16-CP-45-00587

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

July 25, 2017
Sumter, South Carolina

B E F O R E :

THE HONORABLE D. CRAIG BROWN, JUDGE

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

LANCE S. BOOZER, ESQ.
Attorney for the Petitioner

JULIE COLEMAN, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

I N D E X

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(There were no exhibits submitted.)

1 MS. COLEMAN: May it please the Court,
2 this is Marty Baggett versus State of South
3 Carolina, 2016-CP-45-587. Applicant is presently
4 confined in the State Department of Corrections
5 pursuant to orders of commitment of the Williamsburg
6 County Clerk of Court. In October 2010 the
7 Williamsburg County grand jury indicted applicant
8 for reckless homicide and felony DUI. Sam Floyd,
9 Esquire, represented the applicant at trial.
10 Mr. Legrand Carraway previously represented him
11 before that. Assistant Attorney General Dale Scott,
12 Esquire, and David Stumbo, Esquire, prosecuted the
13 case. On July 18th, 2011, through July 20th, 2011,
14 applicant proceeded to trial before the Honorable
15 George C. James, Jr. The jury found applicant
16 guilty as indicted on both charges. Judge James
17 sentenced applicant to imprisonment, Your Honor,
18 terms of 10 years for reckless homicide and 20 years
19 for felony DUI. Applicant filed a timely notice of
20 appeal. Susan B. Hackett, Esquire, of the Office of
21 Appellate Defense perfected the appeal. South
22 Carolina Court of Appeals initially reversed
23 applicant's conviction for felony DUI on June 24th,
24 2015. The State then submitted a petition for
25 rehearing on July 9th, 2015, and it was granted by

1 the Court of Appeals October 21st, 2015. The Court
2 dispensed for further briefing and argument and
3 substituted an opinion for the previously submitted
4 opinion. In the new opinion the Court affirmed
5 applicant's conviction for felony DUI.

6 Applicant submitted petition for rehearing
7 November 5th, 2015. On December 17th, 2015 after
8 consideration the court denied the petition as it
9 was unable to discover any material fact or
10 principle of law that would provide basis for
11 granting a rehearing. Applicant subsequently filed
12 a petition for writ of certiorari to South Carolina
13 court on February 1st, 2016. The Supreme Court
14 denied the petition. The remittitur was
15 subsequently returned to the circuit court
16 November 14th, 2016. While his direct appeals are
17 pending, the applicant filed application for
18 post-conviction relief on July 13th, 2015; but on
19 August 9th, 2016, the court issued an order
20 dismissing the action without prejudice until his
21 appeals were finalized.

22 So the applicant filed his second
23 application for post-conviction relief on
24 December 5th, 2016, alleging several allegations of
25 ineffective assistance of counsel. The State filed

PW - M. BAGGETT - DIRECT

1 its return June 15th, 2017, and he's present today
2 and represented by Mr. Lance Boozer.

3 THE COURT: All right. Mr. Boozer.

4 MR. BOOZER: Thank you, Your Honor, if it
5 pleases the Court, we will call Marty Baggett to the
6 stand.

7 THE CLERK: Place your left hand on the
8 Bible, raise your right hand. State your name
9 please.

10 THE WITNESS: Marty Baggett.
11 WHEREUPON,

12 **MARTY BAGGETT,**
13 having been duly sworn by the Clerk, testified
14 as follows:

15 THE CLERK: Thank you. Have a seat up
16 here please. Please state your full name, spell
17 your last name for the record.

18 THE WITNESS: Marty Andrew Baggett,
19 B-A-G-G-E-T-T.

20 **DIRECT EXAMINATION**

21 BY MR. BOOZER:

22 Q Mr. Baggett, how are you doing today?

23 A I'm good.

24 Q Okay. Now Mr. Baggett, do you know what it is
25 that you're doing here in court today?

PW - M. BAGGETT - DIRECT

1 A Yes, sir, I come to post-conviction relief court
2 to try to resolve this situation.

3 Q Okay. And what are you currently incarcerated
4 for?

5 A Felony DUI and reckless homicide.

6 Q And did you have a trial on the case?

7 A Yes, sir, I did.

8 Q And you were convicted at trial?

9 A Yes, I was.

10 Q What type of sentence did you receive?

11 A I received 10 years for reckless homicide and 20
12 years for felony DUI, run together.

13 Q And now you, your case has certainly been through
14 the ringer of the appellate courts; is that right?

15 A Yes, sir, it has.

16 Q When was your trial?

17 A July 18th, 2011.

18 Q All right. What's your max-out date right now?

19 A March 2024.

20 Q All right. 2024?

21 A Yes, sir.

22 Q All right. So you've got a little less than
23 seven years left on your sentence?

24 A Yes, sir.

25 Q And you and I have talked about sort of what can

PW - M. BAGGETT - DIRECT

1 be done for you in post-conviction relief case.

2 A Yes, sir. Briefly, yes, sir.

3 Q And you understand that this judge, the only
4 thing His Honor can do is to grant you a new trial?

5 A Yes, sir.

6 Q And you understand that there's certainly some
7 risk in doing that considering when your max-out
8 date is, right?

9 A Yes, sir.

10 Q And is it your decision knowing that risk, you
11 still want to have your PCR?

12 A Yes, I do.

13 Q And Mr. Baggett, just let me do this for Madam
14 Court Reporter, let me finish the question before
15 you answer so she can type it all down.

16 A All right, sir.

17 Q Thank you. Who represented you at your trial?

18 A Sam Floyd.

19 Q All right. Let's get a little background in your
20 case. Did you have a lawyer before Mr. Floyd?

21 A Yes, sir.

22 Q All right. When were you first arrested -- and
23 I'm talking about these exact charges, but when were
24 you first arrested after whatever it was that
25 happened happened?

PW - M. BAGGETT - DIRECT

1 A March 8th, 2007.

2 Q Okay, so it's been some time ago?

3 A Yes, sir.

4 Q All right. When you were first arrested kind of
5 walk the Court through what you were initially
6 charged with.

7 A I was charged with DUI on March the 8th the
8 Friday night, and then on March the 10th that Sunday
9 I was charged with murder, voluntary manslaughter,
10 kidnapping, and a rape test done on Jean Turner.

11 Q Okay. And then what happened?

12 A Well, nothing really happened. I went to a
13 preliminary hearing a time and they evaluated me,
14 sent me to Columbia to be evaluated and then on
15 February 2010 I was offered a plea bargain of
16 involuntary manslaughter.

17 Q All right, who was representing you at that time?

18 A Mr. Legrand Carraway.

19 Q And tell me again what you were offered?

20 A Involuntary manslaughter, five years time served.

21 Q So was it your understanding that you would, if
22 you entered that plea, you would be sentenced to
23 five years time served for voluntary manslaughter
24 and you would not have to actually serve any time?

25 A I'd already stayed in the county jail. I had no

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1 bond or anything.

2 Q All right, what happened with that plea?

3 A It was denied.

4 Q When you say it was denied, what do you mean it
5 was denied?

6 A The judge didn't go along with it.

7 Q Who was the judge?

8 A Clifton Newman.

9 Q What specifically happened at the plea, if you
10 recall? Or why was it, why would the judge, as you
11 say, not go along with it?

12 A The family just said it wasn't enough time and
13 they spoke against me and, you know, that's all I
14 know.

15 Q Okay, so that plea doesn't happen, right?

16 A Yes, sir.

17 Q And who was prosecuting the case at that time?
18 Do you recall if it would have been Ms. Barr?

19 A No, sir. Mr. Barr — Ms. Barr was on the next
20 one. Ronnie Sabb, I'm sorry. Ronnie Sabb,
21 Mr. Ronnie Sabb.

22 Q Okay. Now they didn't, they were not the
23 prosecutors at the trial, were they?

24 A No, sir.

25 Q Who picked up your case for the trial?

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1 A The attorney general.

2 Q All right. So let's back up to when you had this
3 plea that didn't go through. What conversations
4 were you having with Mr. Carraway about the plea?

5 A I really had no conversations with Mr. Carraway.

6 Q Okay. Well, did you talk to him about sort of
7 what happened at the plea and why the judge wouldn't
8 take it?

9 A No, sir.

10 Q All right. What happened after the plea? Did
11 you have any discussions with Mr. Carraway then?

12 A No, sir, they locked me back up.

13 Q All right. After you get, as you said locked
14 back up, what happens then?

15 A Well, the next month come around, March 2010, and
16 Solicitor Kimberly Barr carried me in front of the
17 judge Clifton Newman and told the judge that they
18 had no evidence, that they wasn't taking me to
19 trial.

20 Q And at that time you're being charged with what?
21 What were the charges that were pending against you
22 that specific time?

23 A Murder, voluntary manslaughter, kidnapping.

24 Q Okay. So as a result of that appearance before
25 Judge Newman, what happened next?

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1 A Say it again please.

2 Q Yes, sir. You just indicated that you went, your
3 understanding is you went back before Judge Newman
4 and there was some indication where you're saying
5 that the solicitor, their position was they didn't
6 have enough evidence to convict you of those
7 charges?

8 A Yes, sir.

9 Q What happened as a result of that hearing?

10 A Well, the Judge Clifton Newman denied that, told
11 them to lock me back up.

12 Q Who appeared with you at that hearing?

13 A I don't think no one did.

14 Q Was Mr. Carraway with you?

15 A If he did I don't remember. He never spoke up or
16 anything, never said anything.

17 Q And this was March of 2010?

18 A Yes, sir.

19 Q All right. So after that hearing what then
20 happens?

21 A I was -- the judge told them to lock me back up
22 and I stayed locked up till October 7th, 2010, where
23 I was indicted for felony DUI and reckless homicide.

24 Q All right, so you go from -- initially you're
25 being charged with DUI, was that your understanding?

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1 A That was the first charge, yes, sir.

2 Q All right. So did they dismiss that?

3 A Yes, sir. They dismissed, I believe it was
4 April 4th, less than a month later.

5 Q Then you're indicted, were you indicted for the
6 murder and kidnapping?

7 A Yes, sir.

8 Q Okay. And then that is dropped or dismissed?

9 A Nol processed, sir.

10 Q And then you're indicted for felony DUI and
11 reckless homicide?

12 A Yes, sir.

13 Q All right. At that point in October of 2010 when
14 you're indicted for those charges, who was your
15 lawyer?

16 A The felony DUI, reckless homicide, Sam Floyd was
17 my attorney.

18 Q Okay. In October of 2010 did you have, was Mr.
19 Carraway on your case and he got relieved, or did
20 you —

21 A Conflicted.

22 Q I'm sorry? Go ahead.

23 A Conflict of interest.

24 Q What was the conflict of interest at that point?

25 A He had a, there was, he was representing a

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1 gentleman that was going to testify against me.

2 Q And who was that?

3 A William Foxworth.

4 Q Okay. So he indicated that he was representing
5 Mr. Foxworth and could no longer represent you?

6 A Yes, sir.

7 Q Do you know how long he had been representing
8 Mr. Foxworth?

9 A No, sir, I didn't.

10 Q All right. Did you ask him any questions about
11 that?

12 A Well, he never told me that he was representing
13 Mr. Foxworth. I just found out as time goes along
14 when Mr. Floyd took over.

15 Q Okay. Did Mr. Foxworth end up ultimately
16 testifying at your trial?

17 A Yes, he did.

18 Q All right. And was the testimony testimony that
19 was not favorable to you?

20 A No, sir, it was all lies.

21 Q All right. So after Mr. Carraway is relieved who
22 came on to your case next?

23 A Sam Floyd, Samuel Floyd.

24 Q Did you hire Mr. Floyd or was he appointed?

25 A No, sir, he was appointed.

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1 Q All right. So this is in October of 2010 you
2 think?

3 A October 7th, 2010, I was indicted.

4 Q Okay. How many times did you probably meet with
5 Mr. Floyd you think?

6 A Gosh, I would say three at the most.

7 Q What would y'all discuss?

8 A We really didn't discuss nothing, said he worked
9 on my case countless hours.

10 Q Okay. Did you, did you have any discussion with
11 Mr. Floyd about any of the past sort of pleas or
12 anything like that?

13 A No, sir.

14 Q All right. Did he ask you about any of that?

15 A Not that I remember.

16 Q All right. Why didn't you tell him, hey
17 Mr. Floyd, I had a plea offer for five years back
18 when I was charged with murder, why didn't you bring
19 that up to him?

20 A Well, I assumed that was already known.

21 Q You thought it was already known?

22 A Yes, sir, I thought they already know that.

23 Q Okay. But he didn't ask you any questions about
24 it?

25 A No, sir.

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1 Q All right. When Mr. Floyd was representing you
2 where there any plea offers that were presented?

3 A No, sir.

4 Q All right. So ultimately you end up having a
5 trial in July of 2011 which is, I guess, about nine
6 months after Mr. Floyd comes on your case?

7 A I would say, yes, sir.

8 Q All right. So, and do you know what y'all did to
9 prepare for trial?

10 A He told me he prepared countless hours, weekend
11 after weekend, said he run his own firm but he done,
12 he spent countless hours on the weekends.

13 Q Okay. Well, did you discuss with Mr. Floyd what
14 your trial strategy or the defense that would be
15 presented at trial would be?

16 A No, sir.

17 Q All right. Did you -- let me ask you this, after
18 the accident was there any blood or Breathalyzer or
19 video taken of that?

20 A No, sir. No breath, blood, urine, or videotaping
21 done.

22 Q All right. Was that something that y'all tried
23 to argue to the trial court?

24 A Mr. Floyd argued the videotaping, objected to
25 that, but he never objected to the Breathalyzer or

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1 blood test when the law says they must submit to a
2 blood drawing.

3 Q Okay. Now tell the court a little bit about what
4 happened during — after your conviction you had an
5 appeal?

6 A Yes, sir.

7 Q All right. What happened with the initial
8 appeal?

9 A Well, the appeal went — they granted in my favor
10 on the felony DUI, said the videotape was prac— was
11 practical, then they should have videotaped. Then
12 about I guess six or eight months back they said
13 that, you know, it wasn't practical, that there was
14 15 people around plus fire and rescue; but the law
15 says that — I'm not trying to quote the law — says
16 that when it's practical. They put me in the car
17 and carried me to the town jail and, you know, I was
18 took out the back seat on the driver's side, walked
19 in front of the car into the town jail, and they
20 could have videotaped me then. That would have been
21 practical.

22 Q All right. So ultimately what happened though
23 with the appeal?

24 A It was just went away.

25 Q Okay, so it was granted and then basically got

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1 reversed again?

2 A Yes, sir.

3 Q All right. Now you've raised a number of
4 allegations in your PCR application so I want to
5 walk through those with you. One of your
6 allegations is that your lawyer failed to quash
7 indictments that were presented to the grand jury in
8 October of 2010, three-and-a-half years later after
9 this. Is that one of your allegations?

10 A Yes, sir.

11 Q All right. Describe — and I think you've
12 already done some of this, but just so we're clear,
13 what do you think your lawyer should have done in
14 October of 2010?

15 A My lawyer should have objected to counsel failed
16 to object to my indictment, prejudiced my case. Had
17 he have, counsel objected to the indictment it could
18 have been dismissed because it was not true billed.
19 It wasn't, what evidence could they have presented
20 to the grand jury? There's no breath, no blood, no
21 urine, no videotaping.

22 Q Did you have any discussion with your lawyer
23 about trying to challenge the indictments?

24 A No, sir.

25 Q Okay.

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1 A He wanted to direct verdict.

2 Q And we'll get to that in a moment at the trial.

3 A All right.

4 Q You also alleged that your lawyer was ineffective
5 for allowing Jefferey Scott to testify without the
6 judge qualifying him as an expert. If you would,
7 explain who Mr. Scott was and what you mean by that
8 allegation.

9 A I think Mr. Scott was the first one on the scene,
10 you know. He was qualified and telling how a person
11 falls out of a car. I'd really have to look it up.

12 MR. BOOZER: Judge, just for Court's
13 information, Mr. Scott's examination begins on page
14 75.

15 THE COURT: All right.

16 BY MR. BOOZER:

17 Q So let me ask you this, you're talking about the
18 person who died in this incident was someone that
19 was in a vehicle, and it was your position that they
20 fell out of the car?

21 A Yes, sir, she was the driver.

22 Q Okay. And you take issue with Mr. Scott
23 testifying as to his opinion how she may have fallen
24 out of the car?

25 A Right. He said he's never heard of anything like

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1 that.

2 Q Well, let me ask you this, did your lawyer make
3 any objection to challenge that?

4 A I would say no.

5 Q Okay. Let's talk about another allegation that
6 you've got we're gonna spend a little bit of time on
7 where you allege that your lawyer was ineffective
8 for not objecting to the State questioning another
9 officer, Officer Staggers, about identifying you as
10 the driver that night. Who, to your recollection
11 who was that officer?

12 A Scott.

13 Q Scott Staggers I believe.

14 A Yes, sir.

15 Q Okay.

16 MR. BOOZER: Your Honor, I'm looking
17 specifically at page 153 of the trial transcript.

18 THE COURT: Got you.

19 BY MR. BOOZER:

20 Q Mr. Baggett, in your trial transcript at 153, —
21 and do you have a copy with you?

22 A Yes, sir.

23 Q If you would, while you're looking at that,
24 specifically at line 19.

25 A Yes, sir.

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1 Q All right. And this is on the direct examination
2 by the State where they asked officer, or Corporal
3 Staggers at that point, were you able to identify
4 him as the driver of the white truck that was there
5 on scene that night? Yes, sir. Did he indicate
6 that was his truck? He did. Okay, in your -- flip
7 over to page 155 at line 13, or excuse me, line,
8 beginning at line 9. The question is asked, What
9 did Mr. Baggett tell you, Corporal Staggers, as to
10 what happened?" And then he says, "He stated he was
11 in the vehicle with Ms. Turner," and I have to read
12 it off. Just to refresh your recollection from what
13 you have then, you can tell us what he said. And he
14 states, "All right. He stated that Ms. Turner was
15 driving the vehicle and suddenly she fell out." Do
16 you recall at any point ever telling Mr., Officer
17 Staggers, that you were the driver of the vehicle?
18 A Earlier that day ---
19 Q Earlier that day you told him that?
20 A Yes, before we switched. I told him I was too
21 drunk to drive and let her drive.
22 Q Okay, you told him earlier in the day you had
23 been driving, but at some point y'all switched and
24 when the accident happened she was driving?
25 A Yes, sir.

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1 Q Okay.

2 A She ---

3 Q So going back to line, to page 153, "Were you
4 able to identify him as the driver of the white
5 truck that was there on the scene that night?"

6 "Yes, sir." Is that entirely accurate in your
7 opinion?

8 A No, sir, I was not the driver. The body and the
9 blood and all is on the driver's side. Ms. Turner
10 didn't, she got out the truck to pee and put the
11 truck in reverse instead of park and I, I told him
12 however it happened she pushed her foot down, the
13 truck is backing up, the door knocks her and she
14 falls, and I grab at her but it wasn't fast enough.
15 And when I, when I pull myself up and throw the
16 truck in reverse, the truck has already backed over
17 her.

18 Q Okay. You've also got an allegation that your
19 lawyer was ineffective for allowing Officer Staggers
20 and Boston to testify to statements made by you in
21 front of the jury as you were intoxicated when you
22 made those statements making them involuntary. Now
23 I know you had a hearing pursuant to Jackson v.
24 Denno. Do you recall that?

25 A I hate to ask you to say it again.

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1 Q That's absolutely okay. You've alleged that your
2 lawyer was ineffective for allowing Officer Staggers
3 and Boston to testify to statements that you made in
4 front of the jury as you were intoxicated when you
5 made those statements, what you feel was

6 involuntary. What action or discussion did you have
7 with your lawyer about any statements you had made?

8 A We never talked about that.

9 Q Okay. What did you want your lawyer to do about
10 those statements?

11 A Well, I was under the influence of alcohol and I
12 guess I should have had a lawyer, but I told the
13 truth. They got in another place where Boston — I
14 don't know what to say to that.

15 Q Okay, that's okay. I mean, you just feel like
16 your lawyer should have made certain motions or
17 tried to keep out any statements you may have been
18 made, you may have made because you were
19 intoxicated?

20 A Yes, sir.

21 Q Okay. Let's talk about another allegation you
22 have, and that's that you believe your lawyer was
23 ineffective for allowing the State to tell a false
24 version of your statement.

25 MR. BOOZER: And Your Honor, I'm looking

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1 at page 372. And this is specifically lines 13
2 through 25 and then on to page 373, lines 1 through
3 4.

4 BY MR. BOOZER:

5 Q In looking at this, Mr. Baggett, this is during
6 the State's closing argument they indicate, ladies
7 and gentlemen, Vincent Staggers, if memory serves,
8 was the next witness we called and he was with the
9 sheriff's department at the time and he was the
10 first person who was able to get the first version
11 of the story out of Marty Baggett at the scene. If
12 you'll recall, the version was he told Corporal
13 Staggers after being mirandized was, I was driving
14 my truck and I went in the liquor store and I saw a
15 lady that said she was homeless so I was going to
16 take her home to feed her. And I was driving her,
17 driving her to my house to feed her and she had a
18 heart attack and fell out the car and must have
19 gotten run over. That's the first version. That's
20 the version, he's driving. Now looking back to
21 Officer Staggers' testimony, is there anywhere that
22 you recall where you made that statement to him that
23 you were driving at that point when she fell out of
24 the car?

25 A No, sir, not when she fell out the car.

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1 Q Okay. So is it your position that the statement
2 that is made in the closing by the solicitor is
3 false?

4 A Yes, sir.

5 Q All right.

6 A I told him that I was — she was driving and,
7 like I said, she gets out to pee, puts the truck in
8 reverse instead of park.

9 Q Did your lawyer make any sort of objection at
10 that point?

11 A He didn't object to nothing.

12 Q All right. Now you've also got an allegation
13 along the same lines that your lawyer failed to
14 object to the closing on the second version that
15 Officer Boston gave. And specifically we're looking
16 back at page 373, lines 35 through 25. And this,
17 again, is the State's closing where the State
18 indicates Steve Boston I believe was next. He was
19 the, the lead investigator in this case. He's now
20 with Kingstree Police Department, but at the time he
21 was with Williamsburg Police Department. He talked
22 about what he observed at the scene and he got the
23 next version of the story from Marty Baggett, and I
24 believe at that point they had already — well, what
25 happened was he gets to the liquor store and that

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1 version and he comes across Jean Turner and she's
2 homeless in the store as well. He's going to take
3 her home and feed her, but at some point during the
4 ride he realizes he's too drunk so he asked this
5 homeless person who he's never met in his life to
6 act as the designated driver and drive home. Well,
7 that story doesn't make sense either, but that was
8 his second version. What's your position with
9 regard to the Solicitor talking about Officer
10 Boston's testimony?

11 A Well, they was, was making it up. We went to
12 school together. I was in shock. I don't remember.
13 They had to put me in another county in isolation
14 cell something for several weeks I think.

15 MR. BOOZER: Beg the Court's indulgence,
16 Your Honor.

17 THE COURT: Yes, sir.

18 BY MR. BOOZER:

19 Q Let's move on to another allegation. You got
20 that your lawyer failed to object to State testimony
21 to the jury, specifically telling the jury how a
22 passenger can fall out of a car. And according to
23 Officer Boston's story that you say the stories
24 never changed. This is specifically on page 376.
25 What do you mean by that allegation in particular?

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1 A Well, I kept telling the story about the putting
2 the truck in reverse instead of park and stepping
3 out and the truck backing and falling. The State
4 told different stories. But Boston testified that
5 my story never changed. I told the same story the
6 whole time, that's what happened.

7 Q All right. When you say that Officer Boston said
8 your story never changed, you're talking about at
9 page 184 in the transcript specifically at line 13?

10 A Yes, sir.

11 Q What'd he tell you at this point, pretty much the
12 same story. Is that where you get that from?

13 A Yes, sir.

14 Q Okay.

15 A I tell the same story. I never changed my story,
16 that's what happened.

17 Q All right. Let's go back and make sure we
18 covered this 'cause I may have skipped over it,
19 where you feel like the State or your lawyer should
20 have objected to State testimony about passenger
21 falling out of the car and you believe State's
22 witness was not an expert. We've covered that when
23 you talked about it during the officer who was
24 testifying to that, but you believe your lawyer
25 should have done something in addition to that at

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1 closing?

2 A Yes, sir.

3 Q Okay. And did your lawyer take any action or
4 make any objection?

5 A No, sir.

6 Q All right. You've also got an allegation that
7 your lawyer failed to object to the State telling
8 the jury a version that you actually ran down this
9 victim as she was walking and that the expert
10 witness Doctor Presnell testified the victim had no
11 leg injuries from the truck's bumpers. What do you
12 mean by that?

13 A Well, Mr. Foxworth testified that I told him that
14 the subject of sex came up and Ms. Turner got out
15 the truck and started walking and behind the truck,
16 I cranked the truck up and backed over her. Doctor
17 Presnell, the medical doctor, said there was no leg
18 injuries on her, they call bumper fractures, and
19 would have been broke up. That's on trial page 266,
20 line 223, where she said about the bumpers would
21 have been broke up.

22 Q Okay. Now you've also got an allegation that you
23 believe your lawyer should have objected to the
24 second jury charge following questions from the
25 jury. And you point specifically to page 420 and

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1 you'll be beginning at line 13 and on. But did the
2 jury come back with some questions after they were
3 given their jury instructions?

4 A Yes, sir. The jury came back asking about the
5 elements again. The judge told the jury two
6 elements twice. He never told the jury the first
7 element that an actor drives a vehicle while under
8 the influence of alcohol or drugs. That's on 423,
9 lines 22, 25, 424.

10 Q Is it your belief that the jury was never given
11 that instruction that they had to find that you were
12 driving the vehicle under influence?

13 A Yes, sir, that prejudiced my case.

14 Q Okay.

15 A Had he objected, it would have been, the outcome
16 would have been different.

17 Q And is that a pretty big deal to you that
18 regarding that whether you were found to be driving
19 under the influence?

20 A Yes, sir.

21 Q I mean, you've indicated to me you got real, an
22 issue with there not being any test that had been
23 administered after the wreck.

24 A Yes, sir. There's no breath, no blood, no urine,
25 no sobriety test, no nothing.

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1 Q Do you believe your lawyer properly argued or
2 made motions with regard to there being no test
3 administered after the accident?

4 A No, sir.

5 Q Okay. Now we've discussed the plea offer that
6 had been made. Now obviously, Mr. Baggett, this is
7 certainly your day in court. We've covered quite a
8 bit of ground, and I think that we've covered all of
9 your allegations but I want to make sure. Is there
10 anything in your PCR application or that you'd like
11 to bring to the Court's attention that we have not
12 covered with regards to errors that you believe your
13 lawyer made or mistakes that were made at trial or
14 anything like that?

15 A Not that I can think of. The main thing was they
16 got no breath, no blood, no urine, no sobriety test,
17 nothing, just prejudiced my case by not telling the
18 jury the first element of felony DUI.

19 Q Okay. At this time please answer any questions
20 that the State may have for you, and that's all the
21 questions I have right now.

22 THE COURT: Cross.

23 MS. COLEMAN: Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 BY MS. COLEMAN:

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1 Q Good morning, Mr. Baggett.

2 A Good morning, ma'am.

3 Q You testified about how there was no blood test,
4 no breath, no urine samples to prove that you were
5 intoxicated; is that right?

6 A Yes, ma'am.

7 Q But there were several witnesses at the trial who
8 testified that you were drunk at the time, right?

9 A Yes, ma'am, I never denied being drunk.

10 Q Right.

11 A I denied driving.

12 Q That's right. And you told law enforcement at
13 the time you were arrested that you were
14 intoxicated, right?

15 A Yes, ma'am.

16 Q Okay. But your story is that she was driving?

17 A Yes, ma'am.

18 Q Why was she driving?

19 A 'Cause I was too drunk to drive I felt like and
20 let her drive.

21 Q Where was she going?

22 A We was headed home.

23 Q Home to your —

24 A It was on Claire Road. She lives on one end of
25 the dirt road and I live on the other. We was

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- 1 headed that way.
- 2 Q To your house or to her house?
- 3 A To her house.
- 4 Q Okay. So you hadn't just left her house?
- 5 A No, not at that time.
- 6 Q Okay. What about her husband, was he with you at
- 7 the time?
- 8 A Not at that time, no, no, ma'am.
- 9 Q Was he with you earlier?
- 10 A Yes, ma'am.
- 11 Q And what happened to him? Did you drop him off
- 12 somewhere?
- 13 A Yes, ma'am, we dropped him off about halfway to
- 14 her mom's house. They was fighting and we put him
- 15 out, or she put him out and I went by and told to
- 16 cut around. She said cut the block so we kept
- 17 riding and Jean's mom carried him home, and he
- 18 testifies against me too.
- 19 Q Who was driving when you dropped him off?
- 20 A I was driving at that time.
- 21 Q When did you switch?
- 22 A About 30, 40 minutes later.
- 23 Q 30 or 40 minutes later?
- 24 A Yeah.
- 25 Q Just driving up that same road?

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1 A Well, we went around by the bootleggers and
2 stuff.

3 Q Okay. How long after you dropped off her husband
4 was it that she fell out of the truck?

5 A I'm not real sure, ma'am.

6 Q Okay.

7 A It wasn't long. 30, 40 minutes I guess.

8 Q Okay. And that's about when you said you
9 switched?

10 A Yes, ma'am, right before it happened.

11 Q Okay.

12 A When we got on the dirt road — we was on the
13 highway, and when we got on the dirt road that's
14 where she stopped to pee I guess.

15 Q Okay. You gave several different statements to
16 different people; didn't you?

17 A No, ma'am, I never told a different story.

18 Q Didn't you tell your dad that you hit her with
19 the car?

20 A No, ma'am, I never told him that.

21 Q Did you call your dad right after it happened?

22 A Yes, ma'am.

23 Q What did you tell him?

24 A I told him that we'd had an accident on the dirt
25 road. I can't remember that. That's been ten years

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1 ago.

2 Q Okay. But your dad testified at trial that you
3 called him and told him that you had hit her, right?

4 A No, no, ma'am.

5 Q Okay. What about the lady who came up on you on
6 the road? She drove up. She came around the curve
7 and saw you there. She testified at trial she saw
8 you there, and you told her you had found a dead
9 body; is that right?

10 A Well, ma'am, I was in shock. I was out of it for
11 several days. They had to carry me to another
12 county and put me in a isolation cell. I don't
13 hardly remember seeing that woman.

14 Q Okay. But she testified that you told her that
15 you had found a dead body, right?

16 A That's what she testified to, yes, ma'am.

17 Q Okay. And what did you tell your cell mate,
18 Mr. Foxworth, who testified —

19 A I told him the same thing, the girl put the truck
20 in reverse instead of park. Never told me nothing
21 about no sex or nothing. They done a rape test on
22 her. All that's negative, fingernails negative.

23 Q But he testified at trial that you told him that
24 you had hit her, you backed into her; is that
25 correct?

PW - M. BAGGETT - CROSS

1 A He told that same story too, yes, ma'am.

2 Q Okay.

3 A But the medical examiner said there was no leg
4 injury on her, that it couldn't have happened. She
5 would have had been called bumper fractures, that
6 she would have been most likely broke all up from
7 being under the truck. It never happened.

8 Q And your attorney argued all that at trial;
9 didn't he?

10 A I don't know what he done.

11 Q But he cross-examined Doctor Presnell on this
12 issue, on the issue of the bumper injuries; is that
13 right?

14 A Yes, ma'am.

15 Q So the jury heard of all that argument, right?

16 A Ma'am?

17 Q The jury heard him argue that?

18 A They also heard that they had no breath, no blood
19 no urine too —

20 Q Okay.

21 A —from Mr. Juan Ballard. On page 222 Juan
22 Ballard drops the DUI, doesn't have any Breathalyzer
23 or blood, alcohol, to support the DUI charge.
24 That's on trial transcript page 22, lines 20, 24,
25 and 25 and 22, 3.

PW - M. BAGGETT - CROSS

1 Q And your attorney -- sorry.

2 A And he didn't hear that. Steve Boston told, he
3 must submit to a blood draw to be convicted of
4 felony DUI, statutory requirement. Transcript page
5 206, line 6 through 15. Transcript page 211, lines
6 8 through 12. You must submit to a blood draw,
7 State versus Kevis (ph). You got to submit to one
8 or a combination of one. They got no breath, no
9 blood, no urine, no sobriety test, no nothing. I
10 wasn't even driving.

11 Q And your attorney argued that to the judge;
12 didn't he?

13 A He, all he argued to was videotape and the judge
14 and the attorney general telling me that the
15 videotape wasn't practical, they was investigating a
16 dead body in the road.

17 Q And you appealed on that issue as well; didn't
18 you?

19 A Yes, ma'am.

20 Q And you lost on appeal?

21 A Yes, ma'am. There's a fly in the pie somewhere
22 'cause they said it wasn't practical. The law said
23 -- not quoting the law -- but the law says when it
24 practical to do the videotape. They carried me to
25 the county jail, to the town jail, walked me in from

PW - M. BAGGETT - CROSS

1 the car going in, walked me in front of the car
2 going out, I was in the jail. They carried me to
3 the big jail, just me and the officer, two people,
4 they walked me in front of the car, no videotape.
5 That was practical in that time. They got no
6 breath, no blood, no urine. The jury heard all
7 that, but how, I wasn't even driving.

8 Q All right. Thank you. No further questions.

9 THE COURT: Mr. Boozer?

10 MR. BOOZER: No redirect, Your Honor.

11 THE COURT: Mr. Baggett, you may step
12 down, sir.

13 THE WITNESS: Thank you, Judge, sorry.

14 THE COURT: Before — any other witnesses
15 by you, Mr. Baggett?

16 MR. BOOZER: Nothing further, Your Honor.

17 THE COURT: We'll proceed with the State's
18 case.

19 (WHEREUPON, a recess was taken from the
20 proceedings.)

21 THE COURT: State ready to proceed?

22 MS. COLEMAN: Yes, Your Honor.

23 THE COURT: Call your witness please.

24 MS. COLEMAN: Yes, sir. The State calls
25 Legrand Carraway.

RW - W. CARRAWAY - DIRECT

1 THE CLERK: State your name please.

2 THE WITNESS: Legrand Carraway.

3 WHEREUPON,

4 **LEGRAND CARRAWAY,**

5 having been duly sworn by the Clerk, testified
6 as follows:

7 THE CLERK: Thank you. Have a seat.

8 Please state your full name, spell your last name
9 for the record.

10 THE WITNESS: William Legrand Carraway,
11 C-A-R-R-A-W-A-Y.

12 **DIRECT EXAMINATION**

13 BY MS. COLEMAN:

14 Q Good morning, Mr. Carraway, how are you?

15 A I'm good.

16 Q How did you come to represent Mr. Baggett in this
17 case?

18 A I was the public defender for Williamsburg
19 County.

20 Q And you were appointed to the case?

21 A I was appointed.

22 Q All right. What were his charges when you
23 represented him?

24 A Seems like it was DUI and reckless driving or,
25 whatever.

RW - W. CARRAWAY - DIRECT

1 Q Do you recall a charge of murder and kidnapping?

2 A I recall that coming about later on, yes.

3 Q Later, but not at the time you represented him?

4 A I don't think he was charged with that. There
5 was a question about that; but they didn't charge
6 him with that, I don't believe, when I represented
7 him.

8 Q Okay. And do you recall who the solicitor was at
9 the time that you represented him?

10 A Kimberly Barr.

11 Q Okay. Did you enter into plea negotiations on
12 the applicant's behalf?

13 A Yes, we did.

14 Q And were you able to reach an agreement with the
15 solicitors?

16 A Yes, we were.

17 Q Do you recall what that agreement was?

18 A I think it was perhaps a DUI and a involuntary
19 manslaughter.

20 Q Okay. And were you in the courtroom earlier when
21 Mr. Baggett testified about this plea offer?

22 A I was.

23 Q Did you hear his testimony about how it was an
24 offer for five years time served to involuntary
25 manslaughter I believe?

RW - W. CARRAWAY - DIRECT

1 A I don't, I do not recall that that's what it was;
2 it may have been that. But it was, it was, it was
3 certainly an offer for -- he'd already served an
4 awful lot of time. I don't know whether he was
5 going to have to serve a little more. He could be
6 right; it could have been time served, whatever. He
7 already served a significant amount of time, and it
8 would not have been much more time.

9 Q And was this a negotiated sentence that you had
10 agreed upon with the solicitor?

11 A Yes, it was.

12 Q Okay. Can you tell us what happened at the plea
13 hearing in front of Judge Newman?

14 A It's my recollection that the -- more than one
15 member of the victim's family objected to the plea
16 and the time and that's what I recall and that Judge
17 Newman then rejected as when it's a negotiated plea
18 he either accepts it or he does not, and he did not
19 accept it.

20 Q Okay. What happened after that? Or let me
21 narrow it down for you, that was a very broad
22 question. Did the Solicitor continue to negotiate
23 plea offers with you after this was rejected?

24 A I don't think, I don't think so.

25 Q Okay. At some point did the Solicitor's Office

RW - W. CARRAWAY - DIRECT

1 release this case and turn it over to the Attorney
2 General's Office?

3 A That is what happened. I don't know what they
4 were going to do, but the Attorney General too, yes,
5 but the Attorney General did take it over.

6 Q And do you remember why that was, or how that
7 came to be the arrangement?

8 A Well, I mean they'd already come into court and
9 stated their reasons for charging him, for reducing
10 the charges or for charging him with what they did.
11 They'd already put on the record that. And I also
12 had gone in and said on the record what I thought
13 had happened or whatever, and of course, that I
14 thought it was a fair plea for him.

15 Q How did you come to be relieved from this case?

16 A I think it was because the Solicitor's Office for
17 the reason I just stated, they stated on the record
18 their reasons for charging with that and for not
19 charging him with murder. And I, likewise, stated
20 on the record my reasons for believing that that was
21 a fair plea there and certainly a good plea for him,
22 or whatever. So I already stated on the record what
23 I thought about that certain things that he had
24 done, that he had done this, but that he hadn't
25 don't other things or whatever, so it was for that

RW - W. CARRAWAY - CROSS

1 reason that I was relieved.

2 Q Okay. Did you ever represent Mr. Foxworth, the
3 cell mate who testified against him at trial?

4 A I know Mr. Foxworth, and I may -- it seems like
5 he had been in a little, in two or three little
6 scrapes in Williamsburg County and had -- I perhaps
7 took him before a judge for some plea. I knew
8 Mr. Foxworth.

9 Q Okay. Is, was that a conflict of interest in
10 this case?

11 A I don't recall that being a conflict.

12 Q Okay. So that was not the reason why you were
13 relieved?

14 A No, it was not.

15 Q Okay. Was there anything in your opinion that
16 you did or could have done to help the negotiated
17 sentence, the negotiated plea offer go forward?

18 A No.

19 Q Okay. So in your opinion it was just Judge
20 Newman rejecting the plea offer?

21 A It was Judge Newman considering what the family
22 had to say and that was it.

23 Q Okay. Thank you. Nothing further.

24 THE COURT: Mr. Boozer.

25 MR. BOOZER: Thank you, Your Honor, just

RW - W. CARRAWAY - CROSS

1 briefly.

2 **CROSS-EXAMINATION**

3 BY MR. BOOZER:

4 Q Mr. Carraway, how are you?

5 A I'm fine.

6 Q Good. Would you agree with me that this was kind
7 of a unique, I guess, procedural history that this
8 case had with regard to how the solicitor was
9 handling it and initially with the DUI charge and
10 then going on to the murder charge and then what
11 happened later on?

12 A It was a little unusual, yes, a little different.

13 Q Okay. Going back to the, specifically the plea
14 offer, this would, you indicated that this was taken
15 to a DUI to involuntary manslaughter?

16 A That's what I recall, I'm not quite sure, but
17 that seems like to me what it would have been.

18 Q And I may have been taking note that you've
19 already answered this question, but I'm gonna ask it
20 anyway. What was the parameters of that plea
21 agreement? Was it for five years time served? If
22 you remember.

23 A It could have been, but it was not — he had
24 already served a significant period of time. It was
25 not for much more time as I recall. It was

RW - W. CARRAWAY - CROSS

1 certainly something that, you know, you would, that
2 was — it was a very fair plea for Mr. Baggett.

3 Q And he was ready to accept it?

4 A Yes, he was.

5 Q Okay. So y'all were actually there to do it and
6 then the judge would not accept the plea?

7 A The judge would not accept the plea after hearing
8 from the family, the objections from the family.

9 Q After you were relieved of the case or moved on
10 or however we'll describe it, did you have any
11 discussions with M. Floyd about the prior history in
12 the case and that plea offer specifically?

13 A Yes, I did.

14 Q Okay. He was aware of the, that prior plea?

15 A Yes, he was.

16 Q All right. Now let's go back to talking about
17 Mr. Foxworth and then the reasons why you were
18 relieved. What was it you said your belief is to
19 why you were, came off of the case?

20 A Well, we'd already made certain statements on the
21 record about what we thought had occurred and
22 certain facts of the case or whatever; and the
23 solicitor of course stated why, Ms. Barr stated why
24 she believed that that was a fair and just plea that
25 she was offering Mr. Baggett. And I put on the

RW - W. CARRAWAY - CROSS

1 record, you know, that, you know, I stated what I
2 believed the facts were and that I also thought it
3 was a very fair plea for Mr. Baggett.

4 Q Is it your understanding that it was because the
5 statements you had made in court that you were
6 relieved or did you ask to be relieved? How did
7 that work?

8 A Well, I asked to be relieved and for those
9 reasons.

10 Q Okay. You -- were you relieved because you had
11 any sort of conflict with Mr., with representing Mr.
12 Foxworth, or was it solely on the statements and why
13 you wanted be relieved?

14 A I don't think Mr. Foxworth had anything to do
15 with it.

16 Q All right. Do you recall what you would have
17 represented Mr. Foxworth on?

18 A Seems like he had some drug charges or minor
19 burglary, minor theft charges, or something like
20 that.

21 Q Do you know if Mr. Foxworth was in the County
22 Detention Center at any time with Mr. Baggett while
23 you were representing Mr. Baggett?

24 A Not that I recall.

25 Q Do you know if you would have been representing

RW - W. CARRAWAY - CROSS

1 Mr. Foxworth at any time while you were representing
2 Mr. Baggett?

3 A I wouldn't — I would know that, but I don't
4 recall that I was ever representing Mr. Foxworth at
5 the same time that I was representing Mr. Baggett.

6 Q Did you ever have any discussions with Mr.
7 Foxworth — Mr. Foxworth ultimately ended up
8 testifying for the State in Mr. Baggett's trial.
9 Were you aware of that?

10 A I was aware of that.

11 Q Okay. Did you have any conversations with Mr.
12 Foxworth about Mr. Baggett's case?

13 A No, I did not.

14 Q Did you have any conversations with Mr. Foxworth
15 about anything that Mr. Baggett, any discussions he
16 may have had with Mr. Baggett?

17 A No.

18 Q Okay.

19 MR. BOOZER: Beg the Court's indulgence,
20 Your Honor.

21 THE COURT: Yes.

22 BY MR. BOOZER:

23 Q Was there any preliminary hearing that you
24 appeared at on behalf of Mr. Baggett?

25 A Yes, there was.

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1 Q Okay. And obviously the case was allowed to
2 proceed forward?

3 A Correct.

4 Q Do you recall at the preliminary hearing making
5 any sort of arguments about there not being any
6 tests administered after that accident to Mr.
7 Baggett?

8 A I do not recall.

9 Q Okay. Thank you, Mr. Carraway, that's all I
10 have.

11 MS. COLEMAN: Nothing further.

12 THE COURT: Sir, you may step down. Thank
13 you.

14 MS. COLEMAN: Your Honor, would you mind
15 if we took a five minute break?

16 THE COURT: That's fine.

17 MS. COLEMAN: Thank you.

18 (WHEREUPON, a recess was taken from the
19 proceedings.)

20 MS. COLEMAN: The State calls Sam Floyd.

21 THE CLERK: Place your left hand on the
22 Bible, raise your right hand. State your name
23 please.

24 THE WITNESS: Samuel Lanue Floyd.

25 WHEREUPON,

RW - S. FLOYD - DIRECT

1 **SAMUEL FLOYD,**
2 having been duly sworn by the Clerk, testified
3 as follows:

4 THE CLERK: Thank you. Have a seat up
5 here please. Please state your full name, spell
6 your last name for the record.

7 THE WITNESS: Samuel Lanue Floyd,
8 F-L-O-Y-D.

9 **DIRECT EXAMINATION**

10 BY MS. COLEMAN:

11 Q Good morning, Mr. Floyd.

12 A Good morning.

13 Q I'll just start a little bit with your background
14 as an attorney. How long have you been practicing
15 law?

16 A Since 2002.

17 Q Okay. And have you ever tried a DUI case before?

18 A Many times.

19 Q Are you familiar with the DUI statutes?

20 A Very.

21 Q Okay. How did you come to represent the
22 applicant in this case?

23 A I was appointed by the Attorney General's Office
24 in March of 2010 I think it was.

25 Q Okay. And what was your understanding of what

RW - S. FLOYD - DIRECT

1 had happened with this case before you came to
2 represent him?

3 A Mr., I actually was in the courtroom the day that
4 Legrand or Mr. Carraway attempted to plead
5 Mr. Baggett to the, I think it was a manslaughter
6 charge so I heard some of the facts that day. I had
7 no idea that I would ever be representing him, but I
8 remember it 'cause I remember how the family members
9 were. Numerous family members were upset and Judge
10 Newman was the trial judge; he wouldn't take the
11 plea. But at that time Mr. Baggett was charged with
12 the murder and kidnapping. I don't know if he was
13 charged with DUI. I know the DUI had been dismissed
14 shortly after he was charged in 2007 'cause when I
15 got the case I went and got the records from
16 magistrates court as to what day it was dismissed.
17 It was shortly thereafter.

18 Q Okay.

19 A I think it was on the murder and kidnapping I
20 think.

21 Q Now at the time you represented the applicant it
22 was being prosecuted by the Attorney General's
23 Office, is that ---

24 A That's correct.

25 Q Did you enter into any plea negotiations with the

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1 AG's Office?

2 A I did not. They wouldn't, the family got
3 involved and got the press involved and a couple of
4 newspaper articles, and I want to say the day or the
5 week of trial they offered me a plea of like 20
6 years and that was it. Prior to that there was no
7 offer.

8 Q Did you think that your chances of winning at
9 trial were very good?

10 A Well, I, I didn't have a choice but to try it.
11 We had to come up with a theory and try to, you
12 know, piece together unsolved mystery really. We
13 did the best we could. I'll tell you when the jury
14 went out I was a little bit surprised they came back
15 guilty, but not shocked. You know, I thought we had
16 tried a good case and certainly had a chance. I had
17 had several attorneys watching it come back, come to
18 me and a couple of deputies, they told me, said, I
19 don't think they'd find him guilty, you know.

20 Q What were the facts of this case?

21 A In a nutshell?

22 Q Sure.

23 A Marty and Mr., a fella named Mr. Garris and Ms.
24 Jean Turner, Marty picked them up from Hemingway
25 somewhere that day and they were riding around

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1 drinking. They had gone to, they were in Hemingway
2 area. They had gone to Westside Grocery. They had
3 gone to Mr. Hannah's liquor store. They'd gone to a
4 number of places. And later that afternoon Marty,
5 Mr. Baggett, was carrying Jean Turner and Mr. Garris
6 home. The testimony was that when Mr. Garris got
7 out of the truck, that Mr. Baggett backed his truck
8 up and knocked him down and had Ms. Turner by the
9 bra strap driving off. There was other testimony by
10 witnesses of the store saying Mr. Baggett was saying
11 some sexual things of nature he was going to do with
12 Ms. Turner. They were on Claire Road which is right
13 off of Cow Head Road which is right near Georgetown,
14 Williamsburg County line. And on the same road
15 where Mr. Baggett drove off with Ms. Turner, at the
16 other end of that road headed in the same direction
17 the accident occurred, whatever, whatever happened.
18 There was a lady came by in a pickup and vehicle
19 headed home and Mr. Baggett was standing over the
20 body in the road going, I found this body in the
21 road, was her testimony. And he — law enforcement
22 came and you heard the testimony about what was
23 said. Marty gave several reflections about what
24 happened. Marty's father said when he called him he
25 said, daddy, I ran over something. And so when I

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1 got the case it was basically, it was a mystery.
2 Nobody could understand how this accident occurred.
3 So I hired Woody Poplin in accident reconstruction,
4 I got the Court to approve me hiring Mr. Woody
5 Poplin, Poplin Engineering, paid him 3 or
6 4,000-dollars through the court. And Mr. Poplin
7 called me and all of the blood splatter analysis was
8 under the passenger's undercarriage with one drop of
9 blood being inside the cab of the passenger side
10 door. So there was none under the driver's side
11 undercarriage so, and Ms. Turner, her head was
12 basically, she was run over on her head so put Marty
13 under the, I mean, putting her on the driver's seat
14 didn't really add up. Plus the fact the toxicology
15 report came back she had a .387 blood alcohol
16 content. So I had to come up, Marty and I had to
17 come up with a theory of what happened that night.
18 Mr. Poplin told me don't call him to testify, he
19 said, 'cause he said if I testify it's gonna be bad
20 for Mr. Baggett. He said, I'm convinced Mr. Baggett
21 ran over this woman. He said, no doubt in my mind.
22 He said, I'm not even gonna submit a report to you
23 so there won't be anything in writing. And so what
24 we were able to come up with, and I met with Marty
25 numerous times, was that only logical conclusion was

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1 Ms. Turner was so intoxicated she either stepped out
2 the truck or fell out of the truck and he ran over
3 her. And so that's basically what happened.

4 Q Now did you discuss this theory and this trial
5 strategy with Mr. Baggett?

6 A I discussed it with Mr. Baggett on several
7 occasions. Mr. Baggett and I, Mr. Baggett was
8 always pleasurable dealing with when I dealt with
9 him. Yes, we talked about it. I don't know that I,
10 he was thoroughly convinced of it, but that's what
11 he and I discussed.

12 Q Did he seem to understand?

13 A He understood it.

14 Q Okay. And he was evaluated for competency,
15 right?

16 A That's correct.

17 Q And found to be competent?

18 A That's correct.

19 Q Okay. There's been some testimony today and in
20 the trial transcript about the lack of evidence from
21 blood, breath, or urine samples to prove that he had
22 a certain blood alcohol content. Did you argue this
23 to the judge or make any objections on this basis at
24 trial?

25 A Adamantly.

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1 Q Okay.

2 A We ---

3 Q And what was your theory behind your argument?

4 A Well, DUI statute, it has to, there are certain

5 requirements that you are required to follow. You

6 have to within a certain amount of time offer a

7 person a Breathalyzer if they are arrested for DUI.

8 In a felony DUI you have to physically within three

9 hours get them to a hospital and extract blood from

10 them. What really happened that night was nobody

11 knew what happened so they just, one of the deputies

12 looked at the other one and said, carry him to jail

13 for DUI. We know he was charged with that, so they

14 carried him to jail for DUI. And then, you know,

15 subsequent to that after interviewing witnesses and

16 stuff, then they came back and charged him with

17 murder and kidnapping. And they went to

18 magistrate's court on the ticket date for

19 magistrates for the DUI and dismissed the DUI

20 according to the records. But my argument to the

21 court was, when you're charged, you know, they had

22 him, if they had just charged him with kidnapping

23 and murder that night and not the DUI, then, no,

24 they wouldn't have to do any of the requirements.

25 But the fact that they charged him with DUI they

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1 were required to do those steps of videotaping at
2 the scene; if not, submit an affidavit as to why
3 their cars weren't equipped with video equipment.
4 They had to give him, offer him a breath test. And
5 subsequently, since they charged him with DUI they
6 were required to charge him with, I mean, draw
7 blood. And the Court of Appeals said I was right,
8 and the Supreme Court said I was wrong.

9 Q And that was the direct appeal issue at the Court
10 of Appeals, correct?

11 A Correct.

12 Q Okay. Did you ever make a motion to quash the
13 indictments on that basis?

14 A I did not.

15 Q Okay. And were the indictments true billed?

16 A They were.

17 Q Did you believe, did you see anything about the
18 indictment other than that that you thought were
19 improper?

20 A I did not.

21 Q Okay. So in your opinion was there any reason to
22 move to quash those indictments?

23 A They were properly prepared by the Attorney
24 General's Office from what I could tell. I don't
25 know that they're required to tell you about breath,

RW - S. FLOYD - DIRECT

1 blood, and urine in the indictment ---

2 Q No, sir.

3 A ---as has been alleged today.

4 Q Okay. And was Mr. Baggett on notice of the
5 charges against him before the trial took place? I
6 know he was originally indicted for some other
7 charges, those were changed later, and he was
8 indicted with felony DUI and reckless homicide. Did
9 he have sufficient notice before the trial of the
10 new charges?

11 A Sure he did. I mean, we talked at length about
12 it.

13 Q Okay. So I'll just go through his allegations
14 and we've already addressed the first one, failure
15 to quash the indictments. His second allegation is
16 you were ineffective for allowing Jefferey Scott's
17 testimony to the jury to be heard without the judge
18 qualifying him as an expert in his field of work.
19 Was Mr. Scott qualified as an expert at trial?

20 A He was qualified and he testified that he had a
21 associate degree in criminal justice and a master's
22 degree in criminal justice. The only thing the
23 State didn't do was move to have him recognized as
24 an expert. They went through all of his
25 qualifications.

RW - S. FLOYD - DIRECT

1 Q Did you find any reason, see any reason at the
2 time to object to the State failing to move to
3 qualify him?

4 A No, ma'am.

5 Q Okay. Do you think that that, the fact that he
6 was not technically qualified as an expert, do you
7 think that changed the outcome of the case or
8 changed the jury's verdict?

9 A No, ma'am.

10 Q Okay. His third allegation for not objecting to
11 the State's questioning of Officer Staggers about
12 him identifying applicant as the driver that night
13 of the accident. Was there anything about Officer
14 Staggers' testimony that you found objectionable?

15 A There were probably some things that were
16 objectionable; but again, going back to the theory
17 of the case, our theory was to put Ms. Turner in the
18 truck, whoever driving, and her falling out of the
19 truck and Marty consistently throughout his
20 statement saying she fell out of the truck, she fell
21 out the truck, she fell out of the truck each time.
22 And so, you know, I want the jury to hear that one
23 thing that he was aware of, was she fell out of that
24 truck. Now whether the evidence suggested he was
25 driving or she was driving but, you know, that fact

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1 that I wanted to get to the jury. And I knew that
2 we were not gonna, Mr. Baggett was not gonna testify
3 so that's the reason for, I guess, allowing some of
4 that stuff in.

5 Q Okay. Now, this might be similar, for allowing
6 the statements of Officer Staggers and Officer
7 Boston giving in front of the jury about applicant's
8 statement the night of the accident. Applicant was
9 intoxicated and gave a statement involuntary. Did
10 you see a need to move to suppress these statements
11 based on his voluntary intoxication?

12 A I did not.

13 Q Okay. Do you believe he would have been
14 successful had you made that motion?

15 A I do not.

16 Q Okay. And why is that?

17 A 'Cause in a DUI, which is all he was charged with
18 that night, he's supposed to be videotaped so the
19 jury could see his statement. I mean, you know, in
20 a DUI case which at that time that's all he's
21 charged with, that's it, several days. And so, you
22 know, I'm of the opinion that that statement would
23 come in.

24 Q Was he given his Miranda rights before he gave
25 any statements?

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1 A The officers testified he did; I wasn't there.
2 But in their testimony they said — the first person
3 there was Corporal Staggers. I think he said he
4 mirandized him.

5 Q Okay. The next allegation I'm looking at "E", is
6 ineffective for allowing the State to tell the jury
7 a false version of applicant's statement. Trial
8 counsel did not object to the State's version. Was
9 there any reason to object to any of the accounts of
10 applicant's statements to law enforcement or to any
11 other witnesses?

12 A I didn't see any reason to object. You're
13 talking about in his closing argument?

14 Q I believe so.

15 A Well, like I said, all of the circumstantial
16 evidence that night came in say, it appeared that
17 Marty was driving, no question about that. And
18 Marty's father, in his statement that was played to
19 the jury, said that he called him and said I think I
20 just ran over something.

21 Q So —

22 A That was Mr. Baggett, Marty's, Mr. Baggett, Sr.,
23 from what I recall.

24 Q So Mr. Baggett, the applicant gave several
25 different statements to different witnesses and law

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1 enforcement; is that correct?

2 A Well, yes and no. I mean, he gave varying
3 accounts. I mean, he told Ms -- and I don't
4 remember the lady's name, but the first lady on the
5 scene that he had found the body, that he was coming
6 down the road and found a body. He told his dad he
7 thinks he ran over something. Then he told numerous
8 law enforcement officers that she was driving and
9 fell out of his truck. But again, you know, really
10 none of the evidence supported that.

11 Q Okay. Was there any circumstantial evidence
12 presented that he was intoxicated?

13 A Mr. Baggett?

14 Q Yes.

15 A Yeah. His own father testified he was
16 intoxicated, said he'd been around him many times he
17 was intoxicated, said, yeah, he was intoxicated.

18 Q And were these witnesses, did they have maybe
19 prior experiences with him in the past being
20 intoxicated that they could use to form their
21 opinion?

22 A They asked his dad that at trial, if he's ever
23 seen him, knew what he was like when he was
24 intoxicated. The lady that, I can't remember her
25 name, but the first person on the scene testified

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1 that he was stumbling around and appeared to be very
2 intoxicated. All of law enforcement, of course,
3 testified he was intoxicated. I want to say and by
4 his own admi— I didn't read his statement last
5 night so don't quote me on this, but I think he
6 admitted in one of his statements he was so drunk he
7 didn't know what happened, if I'm not mistaken.

8 Q And did the officer testify at trial that they
9 told him that he was intoxicated when they arrested
10 him?

11 A They did.

12 Q Okay. Did all these witnesses, were they
13 familiar with Mr. Baggett, like had they known him
14 for a long time before this incident occurred, to
15 your recollection?

16 A I don't — they would have to answer that
17 question, but I think Mr. Baggett was fairly well
18 known in Hemingway area. He'd been in and out of a
19 number of incidents.

20 Q Okay. Some of these allegations look very
21 similar. I think number, letter "H" is not
22 objecting to the State's testimony to the jury,
23 telling the jury none of these stories are true at
24 my given time. Is that — you might clarify that, I
25 think that's correct. According to Officer Boston

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1 the stories never changed. And you just testified
2 again about the different accounts that he gave.
3 Telling the jury a version of the story that
4 applicant ran Ms. Turner down while she was walking.
5 The expert witness Doctor Pernell testified that the
6 victim had no leg injuries from the truck bumpers.
7 Did you cross-examine Doctor Pernell on ---
8 A I did.
9 Q ---on leg injuries?
10 A I asked her that question. I asked her all about
11 that. She described it, they call them bumper
12 abrasions, and there were no bumper abrasions. Then
13 we got into her, Ms. Turner's blood alcohol content
14 and I asked her would it be, does it look more
15 consistent -- I don't remember exactly how I asked
16 it -- that does this accident look to be consistent
17 with someone with a .387 just falling out a truck
18 and getting run over versus somebody running over.
19 When I asked it to that certain someone that extent,
20 she said it looked like somebody falling out of a
21 truck, and I argued that in my closing argument.
22 That was the theory. I mean, there were no bumper
23 bruises, nobody knew what happened, everybody's
24 intoxicated. All of the blood spatter is up under
25 the passenger carriage and inside the passenger

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1 doorjamb. It's on the same dirt road he just left
2 driving and dropping another individual off. So
3 that was the theory, that she just stepped out of
4 the truck or fell out of the truck, one of the two.
5 And it was a fairly old truck.

6 Q So you presented that to the jury?

7 A Yes.

8 Q Okay. Now this allegation "J", for not objecting
9 to the second jury charge to the jury when they had
10 two questions. The judge charged the jury with two
11 elements of felony DUI, and there are three elements
12 total. The judge did not charge the jury with a
13 first element of felony DUI. Was it your opinion
14 that the judge correctly charged the jury on all of
15 the elements of the crime that the State was
16 required to prove?

17 A At the time it was my opinion that he was correct
18 on the charge. I was, I thought he was incorrect on
19 my directed verdict motion, but I thought he was
20 correct on his charge to the jury, yes.

21 Q So did you see any reason to object to his
22 charges to the jury?

23 A I did not.

24 Q Okay. And then his final allegation is
25 ineffective for not getting applicant his first plea

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1 offer to him in a timely manner. You testified
2 earlier that the State offered a plea, a plea deal
3 right before the trial maybe for 20 years; is that
4 correct?

5 A That's correct.

6 Q Were there any plea offers before that?

7 A None.

8 Q Okay. Was there anything to convey to the
9 applicant before that?

10 A None that I recall. I mean, if there was a plea
11 offer it was not one that I would be, he would have
12 been interested in entertaining. I mean, it was
13 just, it had become a high profile case and the
14 local newspaper was covering it and the attorney
15 general had come down to prosecute it and, I mean,
16 it wasn't...

17 Q Okay.

18 A It wasn't going away.

19 Q Did you have enough time to prepare for this
20 trial?

21 A I did.

22 Q Okay. And what was, you already testified a
23 little bit about your trial strategy in the case.
24 How did you, how did you go forward with this trial
25 strategy? What kind of details did you bring out of

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1 the witnesses in order to show the jury your theory?

2 A Well, strategy was really to try to state their
3 case. I felt like Williamsburg County didn't do a
4 good job doing investigation. They did a sloppy
5 investigation because nobody really knew what
6 happened. And through that sloppy investigation and
7 establishing the circumstantial evidence to create
8 doubt into the jury's mind as to whether it was an
9 intentional act or just an accident where this lady
10 was so intoxicated and she fell out of the truck and
11 got run over, and that was the strategy. That's
12 what I did.

13 Q Okay. Did you believe the State's evidence
14 against the applicant was strong or overwhelming?

15 A It wasn't overwhelming. It was, I don't think
16 anybody truly knows what happened that night to be
17 honest with you.

18 Q Okay. Were — did the applicant give you any
19 witnesses to investigate? You said you hired an
20 investigator. Were there any other witnesses that
21 you could have put up on the stand as a defense?

22 A Not that I'm aware of.

23 Q Okay. Is there a reason that Mr. Baggett chose
24 not to testify at trial?

25 A His prior statements were not, would not have

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1 helped him. And quite candidly, when I talked to
2 Mr. Baggett, one minute it would, he would say, he
3 would tell it one way and the next minute it would
4 be told another way. There were so many
5 inconsistencies in his statements that I just, I
6 didn't feel it was in his best interest to testify,
7 that we just, you know, came up with theory of what
8 possibly could have happened and tried the case in
9 that manner.

10 Q I have no further questions. Thank you.

11 THE COURT: Mr. Boozer.

12 MR. BOOZER: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. BOOZER:

15 Q Mr. Floyd, how are you doing?

16 A Good.

17 Q Good. When did you come on to this case? Do you
18 recall the time? You said, was it March 2010?

19 A March 2010 when I was appointed.

20 Q Okay. Now in March 2010 what was he charged
21 with?

22 A I don't recall if I had discovery, if I just got
23 appointment at that time to be honest with you,
24 Mr. Boozer. I don't know.

25 Q Okay.

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1 A I have to, it's in that box at that desk, but I
2 don't recall.

3 Q Sure. And if I represent to you that it wasn't
4 until later on, the October 2010 term he was charged
5 with felony DUI and the other charges he wasn't
6 charged on, would that sound right?

7 A I wrote that on a pad last night when I read it.
8 That was when he was indicted, you're correct,
9 October.

10 Q So do you know what charges, if any, he was
11 facing from March 2010 through October 2010?

12 A I would say it was murder, kidnapping if I'm
13 not — I think. And I think I had discussions with
14 Mr. Scott, Mr. Dale Scott, the prosecutor at that
15 time about it, but I think I did. I'm not, I don't
16 promise you that.

17 Q Okay. With regard to when he gets, when they
18 drop the murder charge and whatnot and then indict
19 him on felony DUI, did y'all then have an
20 opportunity to have another preliminary hearing or
21 anything like that?

22 A We did not.

23 Q Okay. And initially, was it your understanding
24 that initially he was charged with a DUI?

25 A He was.

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1 Q Okay. Do you recall if you ever tried to make
2 any sort of argument that because they had nol
3 prossed and dropped the initial DUI, that they
4 couldn't come back and try and charge him basically
5 with the underlying charge being DUI for the felony
6 DUI? Would that be — and I'm just asking you as a
7 practitioner.

8 A I don't remember. I don't remember arguing, and
9 I think you're going like towards the double
10 jeopardy I suppose.

11 Q That's right.

12 A I know I went over to the magistrate's office and
13 pulled that file to see, make sure it was dismissed,
14 if it was not guilty or nol prossed, however it was.
15 I have a copy of it in that box. But what I
16 remember is arguing that because of they botched the
17 DUI so bad that you couldn't get felony DUI. The
18 DUI was an element of felony DUI, and the DUI should
19 have been dismissed based on things they did not do.

20 Q That was your argument at trial of the
21 underlying, that that, it's fatal to the entire
22 felony DUI if they can't have DUI; is that what
23 you're basically saying?

24 A Right.

25 MS. COLEMAN: And Your Honor, I object to

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1 him raising any new issue about double jeopardy or
2 these charges being brought up. That was not in his
3 allegations originally. So to any extent he argues
4 that to the Court, I would object.

5 MR. BOOZER: Your Honor, I'm just
6 listening as I'm sitting here to testimony that's
7 being given from the applicant, from Mr. Carraway
8 who was called in earlier testifying, and then to
9 Mr. Floyd's testimony and at the end of the day I'll
10 probably make a motion to have the pleadings conform
11 to the evidence that's being presented. I think
12 that there is some sort of an issue with DUI being
13 dismissed. Then it transitions to the murder and
14 then it goes back to a felony DUI was initially
15 being dismissed. I'd like to get into that with Mr.
16 Floyd to see what his recollection is about it, and
17 as I said, have the ---

18 THE COURT: Go ahead. At this time I'm
19 gonna let him go ahead.

20 MR. BOOZER: Thank you, Your Honor.

21 BY MR. BOOZER:

22 Q So Mr. Floyd, let me just back to that. You made
23 those arguments at trial. Do you know if you made
24 any attempt at arguing that because the DUI had been
25 dismissed sort of as you suggested under a double

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1 jeopardy claim, that they could not then come back
2 on felony DUI?

3 A I did not.

4 Q Was that something that was, was that in your
5 mind at all, or do you recall?

6 A I don't, to be honest I don't recall.

7 Q How about sitting here thinking about it today as
8 you're kind of reviewing all, playing this in the
9 back in your mind, do you think that that would have
10 been something that you could have raised and
11 argued?

12 A Perhaps in some form of pretrial motion I could
13 have.

14 Q Okay.

15 A Perhaps.

16 Q Is this a pretty unique set of sort of procedural
17 circumstances; is it not?

18 A I think.

19 Q How long have you been practicing law?

20 A Since 2002.

21 Q Have you ever seen anything that sort of got this
22 type of sort of procedural history as far as charges
23 and being dismissed and being brought back as
24 something else?

25 A Not at this length I haven't, no.

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1 Q Okay. So certainly the double jeopardy claim or
2 any other argument, not claim but argument, that
3 could have been something that you could have raised
4 pretrial?

5 A Well, I guess you could and you couldn't 'cause
6 he wasn't charged — he was charged with different
7 charge. He was charged with felony DUI, not DUI at
8 that time.

9 Q Well, but going along with sort of your argument
10 that you presented at trial if the underlying DUI
11 charge fails, then the felony DUI charge would fail.
12 Wasn't that sort of the gist of your argument?

13 A And I think that was argued effectively on my
14 directed verdict motion, that the underlying DUI was
15 insufficient so therefore the felony DUI should be,
16 should be dismissed. And the three panel Court of
17 Appeals agreed with me. And I didn't do it prior to
18 trial, but I did it at the end of the trial and I
19 think I did it effectively.

20 Q Okay. And you, do you still to this day do you
21 think that your position is correct with the lack of
22 tests and the lack of videotaping that was done,
23 that you're correct that the charge should have been
24 dismissed or directed verdict should have been
25 granted?

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1 A The time of the case, the week of that trial, a
2 case called the Town of Mount Pleasant versus
3 Roberts came out and it basically said the statutes
4 were strict compliance, and if they were not
5 followed strictly, that it was the end of the case.
6 I don't remember the verbiage, but it basically said
7 at the end of the case. It was detrimental, fatally
8 detrimental to the case. And that was my argument.
9 In fact, halfway through that trial Mr. Carraway
10 presented with that Town of Mount Pleasant case. It
11 had just been released within like within a week and
12 so I, you know, yeah, I do. I think it's fatal
13 error not have strict compliance with the DUI
14 statute.

15 Q I want to go back to some of the testimony. Were
16 you in the courtroom for Mr. Baggett's testimony
17 this morning?

18 A Yeah.

19 Q Okay. Talking about Officer Staggers and
20 specifically have you reviewed the transcript? Do
21 you have a copy with you?

22 A I read it last night, yes, sir.

23 Q Okay. I'm looking at — and we've already been
24 over this with Mr. Baggett. But on page 153 of the
25 transcript the State asks at line 19, asked this

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1 officer, "Were you able to identify who was the
2 driver of the white truck that was there on the
3 scene that night?" "Yes, sir." "Did he indicate
4 that was his truck?" "He did." Now that's not
5 entirely accurate, is it?

6 A I'm not sure I understand your question.

7 Q Sure. I'll kind of give some background to it.
8 So Mr. Baggett, you would agree with me he did not
9 tell Officer Staggers that he was driving at the
10 time of the accident. He told him he was driving
11 earlier in the day and that they had switched
12 positions and she, the victim, was driving.

13 A I would agree with whatever is in that
14 transcript. Whatever the court reporter put down is
15 what Mr. Staggers said.

16 Q Fair enough. And if I'm overlooking something
17 obviously the transcript will correct me. But if
18 there's nowhere in there that says where Mr.
19 Staggers testifies that he told him he was driving,
20 then that would be reflected in the transcript?

21 A I would, yes. I mean, I don't remember from
22 seven years ago, you know, or however long it was,
23 six years ago, exactly what was said at trial; but
24 I've read the transcript and it appeared to be
25 accurate last night. Nothing jumped out at me.

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1 Q But listening to that testimony where it says
2 were you able to identify him as the driver of the
3 white truck that was there on the scene that night?
4 Yes, sir. That would indicate to the jury that Mr.
5 Baggett said he was the driver that night with
6 regard to that particular question.

7 A It sounds that way.

8 Q Okay. And —

9 A It reads that way.

10 Q And if there was no clarification done on your
11 cross-examination as to, well, Mr. Staggers, that's
12 not exactly what was said, is it, if you didn't ask
13 those questions it'd be in the transcript to clarify
14 that?

15 A That's correct.

16 Q Okay. And then later on actually in the closing,
17 do you recall on page 372 that the Attorney General
18 indicating if you'll recall the version he told
19 Corporal Staggers after being mirandized was, I was
20 driving my truck and I went to the liquor store and
21 I saw a lady that said she was homeless so I was
22 gonna take her home, feed her, and I was driving
23 her. I was driving her to my house to feed her and
24 she had a heart attack and fell out the car and must
25 have got run over. That statement indicates that he

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1 had told Solicitor [sic] Staggers that he was
2 driving and she fell out of the truck because she
3 was so drunk. Is that what you understand that to
4 mean?

5 A That's the way it reads.

6 Q And if Officer Staggers had not testified to that
7 or no statement had ever been given to Officer
8 Staggers, that would be incorrect; wouldn't it?

9 A Not necessarily.

10 Q Why not necessarily?

11 A Because all of the circumstantial evidence
12 pointed to the fact that Marty, Marty was driving.
13 I mean, if he's quoting Marty as saying that it
14 would be incorrect; but all of the circumstantial
15 evidence certainly points that way, including
16 Mr. Baggett's father who said he told him, dad, I
17 ran over something.

18 Q And absolutely. And understanding that though,
19 but as far as him telling Officer Staggers that, and
20 that would be incorrect if he did, in fact, not tell
21 Officer Staggers that and Officer Staggers didn't
22 testify to that earlier.

23 A Restate that question for me again.

24 Q I may have confused myself so let me, I'll ask
25 that again. If on direct examination Officer

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1 Staggars never testified that Mr. Baggett told him
2 that he was driving the woman home and she had a
3 heart attack and fell out, if he, if Officer
4 Staggars never testified to that, that statement
5 made by the Solicitor or the Attorney General would
6 not be true?

7 A Sounds right to me.

8 Q Okay. And whatever the transcript reflects
9 you'll agree with?

10 A I will.

11 Q Okay. Would you agree with me, though, that if,
12 if — let's just take a hypothetical and if the
13 transcript reflects that the Attorney General is
14 stating what are, I guess, his facts in closing that
15 are not accurate as far as Officer Staggars'
16 testimony, that would be improper and objection
17 should be made?

18 A It would be objectionable if he were —

19 Q And you would —

20 A —deliberately trying to mislead the jury as to
21 the facts as they were presented at trial.

22 Q And you would agree that no objection was made at
23 that point?

24 A I would.

25 Q Okay. Do you have any recollection of him

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1 telling the other officer or Investigator Boston
2 that he was driving the car at the time of the
3 accident?

4 A Of Mr. Baggett telling him that?

5 Q Correct.

6 A He told Mr., Investigator Boston on three
7 occasions, he told Investigator Boston at the scene.
8 He told him at the Hemingway Police Department, and
9 he told him the next day on the three sworn
10 statements that Ms. Turner was driving the car. And
11 I think Mr. Boston testified there were four
12 statements, one to Staggers saying he was driving
13 and three to him saying that she was driving, if I'm
14 not mistaken, but don't quote me of that. It was
15 something to that effect.

16 Q Okay. And then along the same lines of the
17 Attorney General's closing, on page 373 the Attorney
18 General says after going over a statement that
19 Mr. Baggett gave where he indicated Ms. Turner was
20 driving, the Attorney General argues, well, that
21 story doesn't make sense either because that was the
22 second version so now at the scene he's gone from he
23 was driving to then he decided she was driving and
24 we're going to get this. So he's -- the Attorney
25 General is arguing that Mr. Baggett made statements

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1 to these officers that he was driving, but then that
2 story changes. Is that what you see from that
3 argument?

4 A It sounds like the Attorney General is arguing
5 there are conflicting stories regarding the facts
6 from what it sounds to me like.

7 Q Okay.

8 MR. BOOZER: Beg the Court's indulgence,
9 Your Honor.

10 THE COURT: Yes.

11 BY MR. BOOZER:

12 Q Your recollection of sort of blood that was under
13 the vehicle, do you recall where it was?

14 A It was under the passenger side undercarriage in
15 the front and back if I'm not mistaken. Don't hold
16 me to the place of it, but I know it was on, all of
17 it was on the passenger side.

18 Q Okay, but —

19 A Because I, the reason I say that is I recall
20 thinking it looks more like he backed the, he may
21 have, if she fell out he may have backed up and
22 backed over her again or something like that because
23 it looked like it was slung all the way up under the
24 truck. It wasn't a lot though. It wasn't but a few
25 drops.

1 Q Okay. I'm sorry?

2 A It's about five or six drops from what I recall.

3 Q Thank you. That's all the questions I have.

4 MS. COLEMAN: Nothing further.

5 THE COURT: Sir, you may step down.

6 THE WITNESS: Thank you, Your Honor.

7 MS. COLEMAN: The State has no further
8 witnesses.

9 THE COURT: Anything by way of argument,
10 Mr. Boozer?

11 MR. BOOZER: Briefly, Your Honor. Judge,
12 and I'm not sure if I'm protected on the record or
13 not so I'll go ahead and make it again and that
14 would be basically based on the testimony that we've
15 heard today about the beginning of the case starting
16 out as a DUI, then transferring over into a murder,
17 then transferring back into then a felony DUI, after
18 listening to testimony of Mr. Carraway and Mr. Floyd
19 I would make a motion to amend the application to
20 conform with the evidence that's been presented.
21 That there was no motion made or attempt to argue
22 double jeopardy in that he'd already been, the DUI
23 had been dismissed but he was being subjected to DUI
24 later on. That would be the motion, Your Honor.

25 THE COURT: It was dismissed at the

1 preliminary hearing?

2 MR. BOOZER: At the preliminary hearing or
3 whatever Mr. Floyd may have been able to conjure up
4 prior to trial.

5 THE COURT: Charges get dismissed at
6 preliminaries all time and turn around and directly
7 indicted.

8 MR. BOOZER: That's true.

9 THE COURT: Correct or not?

10 MR. BOOZER: Correct, that's correct.

11 THE COURT: Ms. Coleman.

12 MS. COLEMAN: And I would object to that
13 amendment and oppose it.

14 THE COURT: Well, I mean, for the record
15 I'm gonna allow you to amend that. However, at this
16 point I don't see any issue pertaining to that, but
17 I'll allow him to amend that.

18 MS. COLEMAN: Thank you.

19 MR. BOOZER: Thank you. And nothing
20 further.

21 THE COURT: All right, I'll let you all
22 know.

23

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

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 2nd day of March, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Marty Baggett, #216091,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2016-CP-45-00587

ORDER OF DISMISSAL

FILED
2017 NOV -6 AM 11:04
SHIRLEY E. BOYD
CLERK OF COURT
WILLIAMSBURG COUNTY

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 5, 2016. Respondent submitted its Return on June 15, 2017. An evidentiary hearing was convened on July 25, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. William Legrand Carraway, Esquire, and Sam Floyd, Esquire ("Trial Counsel") also testified. The Court had before it a copy of the trial transcript, the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. In October 2010, the Williamsburg County Grand Jury indicted Applicant for reckless homicide (2010-GS-45-0269) and felony DUI (2010-GS-45-0270). Sam

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Floyd, Esquire represented Applicant. Assistant Attorney Generals Dale Scott, Esquire and David Stumbo, Esquire prosecuted the case. On July 18 through July 20, 2011, Applicant proceeded to trial before the Honorable George C. James, Jr. The jury found Applicant guilty as indicted on both charges. Judge James sentenced Applicant to imprisonment for concurrent terms of ten years for reckless homicide and twenty years for felony DUI.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals initially reversed Applicant's conviction for felony DUI on June 24, 2015. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed June 24, 2015). The State submitted a petition for rehearing on July 9, 2015 and it was granted by the South Carolina Court of Appeals on October 21, 2015. The Court dispensed with further briefing and argument and substituted an opinion for the previously submitted opinion. In the new opinion, the Court affirmed Appellant's conviction for felony DUI. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed October 21, 2015). Appellant submitted a petition for rehearing on November 5, 2015. On December 17, 2015, after consideration, the Court denied the petition, as it was unable to discover any material fact or principle of law that would provide a basis for granting a rehearing.

Applicant subsequently filed a petition for writ of certiorari to the South Carolina Supreme Court on February 1, 2016. On November 9, 2016, the Supreme Court denied the petition. The remittitur was subsequently returned to the circuit court on November 14, 2016.

While his direct appeals were pending, Applicant filed an application for post-conviction relief on July 13, 2015. However, on August 9, 2016, the Court issued an order dismissing the action without prejudice until his appeals were finalized. This application follows.

PCB
8-2-17

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel

- a. Failed to have quashed indictments. The State had no evidence against Applicant for a Felony DUI or Reckless Homicide. Applicant never had a BA, urine, blood, or videotaping done by the arresting officer. This is violation of Applicant's due process.
- b. For allowing Jeffrey Scott's testimony to the jury to be heard without the judge qualifying him as an expert in his field of work. This is violation of Applicant's due process.
- c. For not objecting to the State's questioning of Officer Staggers about him identifying Applicant as the driver that night of the accident.
- d. For allowing the statements of Officer Staggers and Officer Boston given in front of the jury about Applicant's statements the night of the accident. Applicant was intoxicated and gave the statement involuntarily.
- e. For allowing the State to tell the jury a false version of Applicant's statement. Trial counsel did not object to the State's version. This is violation of Applicant's due process rights.
- f. For not objecting to the State's closing arguments on the second version that Officer Boston gave. The State version was false. This is in violation of Applicant's rights and due process.
- g. For not objecting to the State's testimony to the jury. Telling the jury how a passenger falls out of a car. The State is not a qualified expert in this field.
- h. For not objecting to the State testimony to the jury. Telling the jury "none of these stories are the at my given time." According to Officer Boston stories never changed.
- i. For not objecting to the State testimony to the jury. Telling the jury a version that Applicant ran Ms. Turner down while she was walking. The expert witness Dr. Prenell testified that the victim had no leg injuries from the truck bumpers.
- j. For not objecting to the second jury charge to the jury when they had two questions. The judge charged the jury with two elements of felony DUI and there's three elements total. The State must show a burden of proof of all three elements. The judge did not charge the jury with the first element of a felony DUI: 1) the actor drives a vehicle while under the influence of alcohol or drugs.
- k. For not getting Applicant his first plea offer to him in a timely manner.

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

Applicant's testimony

Applicant testified that he is currently serving time for felony DUI and reckless homicide. He stated that he was arrested on March 8, 2007, and he was originally charged with murder, voluntary manslaughter, and kidnapping. He stated he was evaluated for mental competency and was found competent to stand trial. Applicant stated he was offered a plea deal for involuntary manslaughter for a five year sentence with credit for time served. He stated that he had already served three and a half years when that offer was made, so he would not have to serve any more time. He stated they took that offer before the court and Judge Newman did not accept the plea.

Applicant testified that Ronnie Sabb originally prosecuted the case, then Assistant Solicitor Kimberly Barr took the case over. Applicant stated they went before Judge Newman to plead in March of 2010, and Solicitor Barr told the judge she had no evidence and she was not taking the case to trial. He stated Judge Newman denied his plea and locked him back up, and he stayed locked up until October 7, 2010, when he was indicted for felony DUI and reckless homicide. He stated that after the plea was not accepted by the court, the Solicitor's Office released the case and the Attorney General's Office prosecuted him. He testified that he had no conversations about this with his original attorney, Legrand Carraway.

Applicant testified Legrand Carraway was relieved as his attorney because he had a conflict of interest. Applicant stated Carraway represented his jail cell mate, William Foxworth, who was going to testify against Applicant at trial. He stated Foxworth's testimony was all lies. He testified that after Carraway was relieved, Trial Counsel was appointed to represent him. He stated they did not discuss anything about the case, even though Trial Counsel told him he worked on his case for countless hours. He stated Trial Counsel did not ask him about any prior

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plea offers from the State. He stated they did not discuss trial strategy or any defenses before the trial.

Applicant testified Trial Counsel did not object to the lack of evidence of blood alcohol content in his blood, breath, or urine and did not move to have the indictments quashed on those grounds. He stated Trial Counsel did not object to witness Jeffrey Scott testifying without being qualified by the judge as an expert. Applicant testified Trial Counsel should have objected to Officer Staggers' statements being used against him to say that he ran the victim over, because the victim actually fell out of the car, and her body and all the blood were on the driver's side of the car because she was driving. He stated the State should not have used his statements against him even though he was given his Miranda warnings because they were involuntary; he was intoxicated when he gave the statements.

Applicant testified Trial Counsel should have objected to the State's comments in closing argument about how he changed his story—he stated he has told the same story the whole time. He stated that Dr. Prosnell testified at trial that there were no indications on the bumper of the car that the victim was run over and hit the bumper, and Trial Counsel argued this to the jury and cross-examined the witness on it.

W. Legrand Carraway's testimony

W. Legrand Carraway, Esquire, testified that he was originally appointed to represent Applicant through the Public Defender's Office. He stated when he represented Applicant, he was charged with DUI and reckless driving. He stated he entered into plea negotiations with the State on Applicant's behalf, and they agreed on a plea to DUI and involuntary manslaughter with a negotiated sentence. He stated that at the plea hearing, the victim's family objected to the plea and the sentence, so Judge Newman rejected the negotiated sentence and would not let the plea

go forward. Mr. Carraway testified he was relieved from his representation because of the situation with the Solicitor's Office. He stated he explained his reasons for thinking the plea offer was fair on the record at the plea hearing, and he told the plea court that Applicant did and did not do some things; this is why he was relieved. He stated there was no conflict of interest with William Foxworth, and he does not recall William Foxworth having any connection or involvement in this case. He stated William Foxworth didn't have anything to do with him being relieved on the case, and he did not discuss this case with William Foxworth. Mr. Carraway testified that he discussed the original plea offer with Trial Counsel when he took over the case, and Trial Counsel knew about it.

Trial Counsel's testimony

Trial Counsel testified he was appointed to this case in March 2010 by the Attorney General's Office. He stated he was in the courtroom the day of the original plea, when Applicant was represented by Mr. Carraway, so he was aware of the plea deal and of the situation surrounding this case. He stated the victim's family and the press were very involved in this case. He stated the Attorney General's Office offered a twenty year plea deal right before the trial, which Applicant rejected, so he had no choice but to go to trial and he did the best he could. He stated his theory of defense and trial strategy was to show that the victim was driving the vehicle and fell out, causing the vehicle to run her over, because she was extremely intoxicated and had a .387 blood alcohol content level.

Trial Counsel stated he hired an investigator, Woody Poplin, to help him investigate the case, but he did not have him write a report or testify at trial because his results did not help his case. He stated Mr. Poplin found that all the blood splatter that was analyzed was under the passenger side door of the vehicle, and none of it was under the driver's side door. He stated this

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finding supported the State's story that Applicant ran over the victim on the passenger's side, and negated Applicant's version of the story that the victim was driving the vehicle and fell out. He stated this was the reason he chose not to pursue or argue the theory that the victim was driving the vehicle. Trial Counsel testified that he and Applicant discussed their trial strategy on several occasions.

Trial Counsel testified that he was familiar with DUI cases and had handled them before he did this case. He stated that the statute requires a sample of blood, breath, or urine that shows the defendant's blood alcohol content was above the legal limit while driving, or some other evidence that he was intoxicated, and they did not have a sample here. He stated the DUI charge was dismissed in magistrate's court because of the lack of a sample, but Applicant was later charged by the Attorney General's Office with felony DUI. Trial Counsel testified that he raised the issue of lack of a sample to the trial court in his directed verdict motion in what he thought was an effective argument, but the trial court denied his motion. He stated that the Court of Appeals agreed with him on appeal, finding it was an error not to have strict compliance with the felony DUI statute.¹

Trial Counsel testified Jeffrey Scott was qualified to provide expert testimony at trial, and he listed all his qualifications on the record, but the State must have forgotten to ask to have him qualified as an expert. He stated he did not believe this was objectionable, and there was no resulting prejudice that changed the outcome of the trial. He stated that all circumstantial evidence showed Applicant was driving the vehicle. He stated Applicant told his father that he

¹ The Court notes the Court of Appeals initially reversed the conviction on these grounds, but later substituted the opinion and affirmed the conviction after a petition for rehearing was held. In the new opinion, the court found that, in Applicant's case, the totality of the circumstances shows this was not a typical DUI traffic stop, so law enforcement did not need to follow typical DUI traffic stop procedures. Rather, law enforcement was responding to a call about a dead body found in the road, and appeared at the scene where at least fifteen other witnesses were already gathered. This totality of the circumstances analysis excused the lack of BAC sample or videotape. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed October 21, 2015).

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hit the victim, and he told the lady who found him at the scene of the crime that he "found a body." He stated he cross-examined Dr. Prenell on the issue of the victim's leg injuries and the lack of evidence of a hit on the bumper of the vehicle. He stated he argued that the victim had an extremely high blood alcohol content to the jury in his closing argument.

Trial Counsel testified the evidence against Applicant was not overwhelming, but it was enough to result in a conviction. He stated that Applicant told investigator Boston that the victim was driving the vehicle on three separate occasions—once at the crime scene, once at the Hemingway Police Department, and once the next day during his interview. However, he stated Applicant told Corporal Stagers that he was driving the vehicle himself, which was the basis for the State's argument that there were conflicting stories.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Trial Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. This Court finds Trial Counsel's representation did not fall below the standards of professional norms

in any manner. Based on the testimony presented and the record before the court, this Court finds Trial Counsel's representation was not ineffective in any regard.

Failure to move to quash indictments

Applicant alleges Trial Counsel was ineffective for failing to move to quash the indictments based on the lack of evidence of Applicant's blood alcohol content through a blood, breath, or urine sample. This allegation is meritless. Pursuant to section 56-5-2945 of the South Carolina Code (Supp. 2010):

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to another person, is guilty of the offense of felony driving under the influence.

S.C. Code Ann. § 56-5-2945 (Supp. 2010). South Carolina law provides that a person in violation of this statute must have his conduct at the incident site and the breath test site videotaped. S.C. Code Ann. § 56-5-2953 (Supp. 2010). Applicant argues that Trial Counsel should have moved to quash the indictments based on the lack of videotape evidence or evidence of Applicant's blood alcohol content through a blood, breath, or urine sample, which violates the felony DUI statute. However, the videotaping requirements of section 56-5-2953(A)(1)(b) were not applicable in Applicant's case because law enforcement officers were not making a traffic stop for a DUI, but rather were responding to the report of a dead body in the roadway.

The South Carolina Court of Appeals ruled on this specific issue in Applicant's direct appeal. The Court of Appeals found the trial court did not err in denying Applicant's directed verdict motion over the felony DUI charge because the State was not required in this circumstance to videotape the traffic stop:

In this case, videotaping never became practicable. The law enforcement officers

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were responding to the report of a dead body in the roadway. Therefore, the normal protocol for a traffic stop was not applicable. At least fifteen people, including Emergency Medical Service personnel, volunteer fire fighters, law enforcement officers, and members of Baggett's family, were present at the incident site. Although Corporal Staggars stated he identified Baggett as the driver of the truck, he testified Baggett told him the victim had been driving and had fallen out of the truck. Corporal Staggars turned the investigation of the case over to Investigator Boston, who arrived on the scene as Corporal Staggars questioned Baggett. Investigator Boston testified Baggett was already in Corporal Staggars's patrol car when he arrived. Thus, Baggett would not have been within camera range of a car-mounted camera. Baggett also told Investigator Boston the victim was driving. Corporal Staggars testified he did not have Baggett perform any field sobriety tests due to safety concerns because Baggett was so unsteady on his feet. Accordingly, the videotaping requirements of section 56-5-2953(A)(1)(b) were not applicable. We find dismissal of the felony DUI charge was not required under the totality of the circumstances.

State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed October 21, 2015). The Court of Appeals' opinion, and the South Carolina Supreme Court's denial of Applicant's Petition for Writ of Certiorari, confirms that this issue would not have succeeded if raised in a pre-trial motion to quash the indictments.

The record before the Court shows that although Trial Counsel did not raise this issue in a motion to quash, he did in fact raise and effectively argue the issue in his motion for a directed verdict, which later became the basis for the appeal and the opinion above. This Court finds Trial Counsel was not deficient in failing to move to quash the indictments based on the lack of a videotape or blood, breath, or urine sample because he *did* argue this issue to the trial court in his directed verdict motion. Regardless of the stage at which he raised the issue, it was presented to the trial court.

This Court further finds Applicant can show no prejudice from the lack of a motion to quash the indictments for multiple reasons. First, the motion would have been denied by the trial court, as clearly indicated by the trial court's denial of the directed verdict motion over the same issue. Second, the Court of Appeals' ruling shows the issue was not successful on appeal and

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cannot be the basis for a successful motion to quash. Third, even without the trial court ruling or appellate opinion, it is clear that Applicant's motion on these grounds would not have been successful. In order to prove felony DUI, the statute requires that the State prove the defendant (1) was under the influence of alcohol or drugs; (2) was driving the vehicle; and (3) caused an act forbidden by law or neglected a duty that resulted in great bodily injury or death to another person. S.C. Code Ann. § 56-5-2945. Though the evidence was disputed, the State presented evidence that Applicant was driving the truck, that while driving he ran over the victim and killed her, and that he was intoxicated at the time. The statute does not require the State to prove Applicant's blood alcohol content exceeded the legal limit at the time of the offense. They must only provide some sort of evidence that he was intoxicated. The State's Final Brief of Respondent from the direct appeal best summarizes this evidence:

Numerous witnesses testified [Applicant] was intoxicated both at the time of the discovery of the accident and at his arrest. Most significant is the testimony of Carolina Jones, the woman who first came across [Applicant] and the victim. She testified she came across the truck blocking the road and [Applicant] indicating he found a dead body. She asked him if he had called 911, and he said no. She testified he was "kind of drunk," "staggering around," and "repeating the same thing over again." She testified she believed he was under the influence of alcohol. (T. 129- 130). Officer Staggers was one of the initial officers to arrive on scene. He testified he spoke with [Applicant]. He indicated [Applicant] "had a[n] odor of alcoholic beverages on his person. He had been drinking." (T. 152-153). He also testified [Applicant] was "unsteady on his feet." (T.160).

Investigator Boston arrived at the scene and also talked with [Applicant]. He indicated [Applicant] claimed to be too drunk to drive so the victim was driving. (T.177). Investigator Boston further testified he could smell alcohol on [Applicant], [Applicant's] "speech was slurred," and [Applicant] was "slouched down in the back of the patrol car." He then stated: "I was advising him of his Miranda Warnings and he blurted out I know my rights and to me he was very intoxicated." (T.178). Investigator Boston testified based on his experience, [Applicant] was intoxicated. (T.179). He indicated the basis for the original DUI charge against [Applicant] was [Applicant's] admission he was drinking. (T.182). Investigator Boston also took a statement from [Applicant's] father who described his son as "crazy and drunk." (T.189). Appellant's father then told Investigator Boston Appellant indicated "he had run over [the victim]." (T.189). Finally,

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Investigator Boston testified Appellant did not appear in shock at the scene of the homicide, instead he appeared intoxicated. (T.214).

FBOR at 5-6. The State clearly had enough evidence to convict Applicant under the statute. Therefore, because Applicant failed to prove deficiency or prejudice, this allegation is denied and dismissed with prejudice.

Allowing Jeffrey Scott's testimony without the judge qualifying him as an expert

Applicant alleges Trial Counsel was ineffective for failing to object to the expert testimony of the State's witness Jeffrey Scott when he was not technically qualified by the trial judge as an expert. This allegation is meritless. Trial Counsel credibly testified he saw no reason to object at the time, and this failure to object did not affect the outcome of the trial. This Court agrees. Even if Trial Counsel had objected to Mr. Scott's expert testimony, the State would only have moved to have him qualified as an expert, and his testimony would have come in regardless of the technical mistake made. Therefore, Applicant has failed to prove prejudice that changed the result of his trial, and this allegation is denied and dismissed with prejudice.

Failing to object to the State's questioning of Officer Staggers about him identifying Applicant as the driver the night of the accident

Applicant alleges Trial Counsel was ineffective for failing to object to the State's questioning of Corporal Staggers, who responded to the scene of the accident, about Applicant being the driver of the vehicle. On direct examination, the State asked the witness "Where [sic] you able to identify [Applicant] as the driver of the white truck that was there on the scene that night?" Corporal Staggers responded, "Yes sir." The State then asked, "Did he indicate that was his truck?" Staggers responded "He did." Tr. 153 line 19-23. Applicant argues this questioning was objectionable because the factual finding of who was driving the truck was in dispute at trial; Applicant asserted at trial and at the evidentiary hearing that the victim was driving.

This Court finds Trial Counsel was not deficient for not making an objection to this questioning. The question was simply if Applicant was the driver of the truck that was at the scene. The State did not ask the witness whether Applicant was driving the truck when the accident occurred. The question asked merely inquires into the ownership of the vehicle. This Court further finds that even if a jury did take this testimony to believe Applicant was driving the truck during the accident, this specific testimony alone would not have changed the outcome of the trial because there was other evidence presented that Applicant was driving the truck. Trial Counsel credibly testified he chose not to actively pursue and argue Applicant's theory that he was not driving the vehicle because all of the blood splatter analysis indicated the victim was run over on the passenger side, meaning she could not have been driving.

Therefore, because Applicant has failed to meet his burden of proving deficiency and prejudice, this allegation is denied and dismissed with prejudice.

Allowing testimony of Officer Staggers and Officer Boston about Applicant's statements the night of the accident

Applicant alleges Trial Counsel was ineffective for failing to move to suppress his statements given to Corporal Staggers and Officer Boston on the night of the crime. This allegation is meritless. Before Applicant gave his statements to the officers, he was read his Miranda rights, and he explained that he understood his rights. Tr. 153 line 24 - 155 line 8; Tr. 175 line 21 - 176 line 17. After indicating that he knew and understood his rights, Applicant proceeded to tell the law enforcement officers his version of the story. This Court finds Trial Counsel was not deficient by not challenging the admissibility of the statements, as it appears they were voluntarily given based on the totality of the circumstances. This Court further finds no prejudice resulting from the lack of challenge to the statements, as a motion to suppress likely would have been denied. Therefore, Applicant has failed to prove either prong of the Strickland

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test, and this allegation is denied and dismissed with prejudice.

Allowing the State to tell the jury a false version of Applicant's statement

Applicant alleges Trial Counsel was ineffective for failing to object to the State's comments in closing argument about Corporal Staggars' testimony. On direct examination, Staggars recollected the statement Applicant gave him on the night of the accident and testified that Applicant told him the victim was driving the truck when she fell out and was run over. Tr. 155 line 1-19. However, in closing argument, the State mistakenly argued to the jury that Staggars had testified Applicant told him he was driving the truck when she was run over. Tr. 372 line 13 - 373 line 4.

"Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions." State v. Mouzon, 321 S.C. 27, 31-32, 467 S.E.2d 122, 124-25 (Ct. App. 1995), aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997) (citing Herring v. New York, 422 U.S. 853 (1975)). "Improper comments [by the State] do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

This Court finds Trial Counsel was not ineffective for failing to object to this mistaken representation of the evidence by the State. The mistaken comment did not infect the trial with unfairness as to make the resulting conviction a denial of due process. It was not unreasonable

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for Trial Counsel to choose not to object to the statement, and this Court finds Trial Counsel was not deficient in this regard. Furthermore, this Court finds no prejudice resulting from the comment because the trial court cured any potential error by instructing the jury to rely only on the evidence presented, not the arguments from the attorneys. Before the State's closing argument, the trial judge issued the following jury instruction:

A couple points that I mentioned at the beginning of the trial, the lawyers are not witnesses. If a lawyer stands up and argues to you a piece of evidence or point of evidence does not correspond with your collective memory what the evidence actually was or is, you go with your memory, not what the lawyer tells you... You as jurors have sworn an oath to reach a verdict on the evidence as you see it and the law as I give it to you and not as anybody else gives it to you.

Tr. 363 line 3-18. This jury instruction cured the potential defects of any discrepancies in closing arguments. This Court finds Applicant has failed to prove deficiency or prejudice, and this allegation is denied and dismissed with prejudice.

Failure to object to the State's closing argument

Applicant alleges Trial Counsel was ineffective for failing to object to the State's closing argument summary of Officer Boston's testimony, which he alleges was false. This Court finds the State's comments were not incorrect or misleading, and they were a proper comment on the evidence presented, thus there was no reason to object. Applicant has failed to prove deficiency or prejudice, and this allegation is denied and dismissed with prejudice.

Failure to object to the State's testimony to the jury about how a passenger falls out of a car

Applicant alleges Trial Counsel was ineffective for failing to object to the State's "testimony" to the jury about how a passenger falls out of a car, because the State is not an expert in this field. The comments in question were part of the State's closing argument to the jury. Tr. 374. These statements were a proper and permissible comment on the evidence

presented and Applicant's theory of defense, which the State was entitled to argue against in closing arguments. This Court finds Trial Counsel was not deficient for failing to object to these statements, and there was no prejudice resulting from his failure to object because the objection would not have been successful or changed the outcome of the trial. Therefore, this allegation is denied and dismissed with prejudice.

Failure to object to the State's argument to the jury that Applicant's story changed

Applicant alleges Trial Counsel was ineffective for failing to object to the State's closing argument comments about how Applicant's version of the facts changed over time. This allegation is meritless and must be denied. There was ample evidence presented at trial that Applicant was driving the vehicle during the accident, including the blood splatter analysis showing the victim was hit on the passenger side of the car and could not have been driving. There was also evidence presented that Applicant told his father immediately after the accident that he hit the victim. This evidence clearly contradicts Applicant's assertion that he was not driving the car and shows differences in Applicant's versions of the facts. Therefore, the Solicitor's closing argument about Applicant's changing stories was not objectionable, and there was no resulting prejudice from these comments because they were not improper. Applicant has failed to prove deficiency or prejudice, and this allegation is denied and dismissed with prejudice.

Failure to object to the State telling the jury that Applicant ran Ms. Turner down while she was walking

Applicant's allegation that Trial Counsel was ineffective for failing to object to the State's closing argument regarding their theory of the case is meritless. The State is entitled to present their theory to the jury as long as it is reasonably based on the evidence presented, and it

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becomes the jury's duty to determine whether the evidence supports the theory. The jury was able to weigh the evidence presented, including the testimony of expert witness Dr. Prenell, despite the State's closing argument. There was nothing objectionable about the State's closing argument. Accordingly, this Court finds Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to object to the second jury charge when the jury had two questions

Applicant alleges Trial Counsel should have objected when the trial court failed to charge the jury with the first element of felony DUI (that the actor drive a vehicle while under the influence of alcohol or drugs) when they were recharged after asking a question. This allegation is meritless because the trial court did, in fact, include the first element in his recharge. When the jury asked to be recharged after asking a question, the trial court explained again, for the second time, "The Defendant is charged with felony driving under the influence. In that regard, the State must first prove beyond a reasonable doubt that the Defendant drove a vehicle while under the influence of alcohol and or drugs." Tr. 421 line 10-14. Therefore, this allegation is denied and dismissed with prejudice.

Failure to get Applicant his first plea offer to him in a timely manner

Applicant alleges his original counsel W. Legrand Carraway was ineffective for failing to get his first plea offer to him in a timely manner. This allegation is meritless. Mr. Carraway credibly testified that he entered into plea negotiations with the State during his representation and was able to obtain a plea offer to involuntary manslaughter with a negotiated sentence for five years with credit for time served. He obviously communicated this offer with Applicant, who accepted the offer, and came before the court to plead guilty. Mr. Carraway explained that the plea judge, Judge Newman, would not accept the negotiated plea after the victim's family

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made an objection. The loss of this plea deal was clearly because the plea court would not accept it, not because of any fault of Mr. Carraway or Trial Counsel. Therefore, Applicant has failed to prove any ineffectiveness of either of his attorneys, and this allegation is denied and dismissed with prejudice.

VII. 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 notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[signature page to follow]

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IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. That Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23 day of Oct, 2017.



D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florida, South Carolina

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WITNESSES

FILED

S/A

11 DEC -6 AM 11:07

CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

ARREST WARRANT NUMBER

D.P.

ACTION OF GRAND JURY

True B: 11
Mark A. Smith
Foreperson of Grand Jury

Date: 10-7-10

VERDICT

Foreperson of Petit Jury
Date:

Docket Number 2010-GS-45-0270

The State of South Carolina
County of Williamsburg

COURT OF GENERAL SESSIONS

OCTOBER 2010 Term

THE STATE

vs.

MARTY BAGGETT

DEFENDANT

INDICTMENT FOR

FELONY DUI

S.C. CODE §56-5-2945(A)(2)
CDR Code: 395
FELONY (Class B)

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

Defendant

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

Defendant

Witness:

C.C.C. Pls. And G.S.

A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURTCLERK OF COURT
KINGSTREE, S.C.

10 OCT -7 PM 12:58

Per A. J. Williams

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT

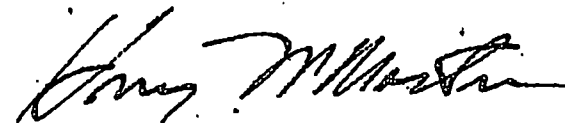
FILED
 11 DEC -6 AM 11:07
 CLERK OF COURT
 WILLIAMSBURG, S.C.

At a Court of General Sessions, convened on Oct. 7, 2010, the Grand Jurors of Williamsburg County present upon their oath:

FELONY DUI

That Marty Baggett did in Williamsburg County on or about March 8, 2007, drive a vehicle, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, and violated an act forbidden by law in the driving of the vehicle, to-wit: Reckless Driving (§56-5-2920); and/or Failure to Exercise Due Care (§56-5-3230), or neglected any duty imposed by law in the driving of the vehicle, to-wit: by failing to use due care in the operation of the vehicle with regards to the safety of others, in that he drove his vehicle recklessly and while intoxicated. The violation of these acts or neglect of duty approximately caused the death of Jean Turner, in violation of §56-5-2945 of the *Code of Laws of South Carolina*, (1976), as amended.

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



HENRY MCMASTER (CDS)
 SOUTH CAROLINA ATTORNEY

10 DEC -7 PM 12:58

CLERK OF COURT
 WILLIAMSBURG, S.C.

WITNESSES

FILED

S/A

11 DEC -6 AM 11:08

CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

Docket Number 2010-GS-45-0269

The State of South Carolina
County of WilliamsburgAfter being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

ARREST WARRANT NUMBER

D.P.

COURT OF GENERAL SESSIONS

OCTOBER 2010 Term

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

ACTION OF GRAND JURY

THE STATE

vs.

MARTY BAGGETT

DEFENDANT

Defendant

Witness:

C.C.C. Pls. And G.S.

Foreperson of Grand Jury
Date: 10-7-10

VERDICT

INDICTMENT FOR

RECKLESS HOMICIDE

S.C. CODE §56-5-2910
CDR Code: 3097
FELONY (Class E)

A CERTIFIED TRUE COPY

CAROLYN F. WILLIAMS
CLERK OF COURT

10 OCT -7 PM 1

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT

At a Court of General Sessions, convened on Oct. 7, 2010, the Grand Jurors of Williamsburg County present upon their oath:

RECKLESS HOMICIDE

Marty Baggett did in Williamsburg County on or about March 8, 2007, drive a motor vehicle in reckless disregard for the safety of others and such driving proximately caused the death of Jean Turner, in violation of §56-5-2910, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


 HENRY MCMASTER (CDS)
 SOUTH CAROLINA ATTORNEY

FILED
 11 DEC -6 AM 11:08
 CATHYLYN F. WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

10 OCT -7 PM 12:58

11 2 3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

685

COUNTY OF Williamsburg
STATE VS.
Marty Baggett

INDICTMENT/CASE#: 2010-GS-45-0270

A/W#: DIR00001

Date of Offense: 3/8/2007

S.C. Code § : 56-05-2910

CDR Code #: 3097

AKA:

Race: 1 Sex: M Age: 48

DOB: SS#:

Address:

City, State, Zip: Hemingway, SC 29554

DL#: SID#:

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

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

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

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

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

ATTEST:

General, Attorney

SC Bar# 73081

Defendant

Attorney for Defendant

SC Bar# 16677

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

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

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code:

Sentence Date:

SENTENCE SHEET

① Up to 10 years
② \$1000 - \$5000
Fine☒ CONVICTED OF or ☐ PLEADS

686

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg
STATE VS.
Marty Baggett

AKA:

Race: 1 Sex: M Age: 48

DOB: SS#: [REDACTED]

Address:

City, State, Zip: Hemingway, SC 29554

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, death results

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

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

ATTEST:

General, Attorney

73081

SC Bar#

Defendant

Sam Floyd

Attorney for Defendant

16677

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 25,000; provided that upon the service of _____ days/months/years and/or payment

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

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

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

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

SPECIAL CONDITIONS:

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

PTUP

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$25,000.00

§ 14-1-206 (Assessments 107.5 %)

\$26,875.00

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$12.00

§ 56-1-286 (DUI Breath Test)

\$25

\$25.00

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$50.00

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$5.00

§ 44-53-450(C) (Conditional Discharge)

\$350

\$

3% to County (if paid in installments)

\$1565.26

TOTAL

\$53,757.76

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-45-0269

A/W#: DIR00002

Date of Offense: 3/8/2007

S.C. Code § : 56-05-2945(A)(2)

CDR Code #: 0395

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADS① Up to 25 years
② Not less than one year
③ \$10,100 - \$25,100 fine

Presiding Judge

Judge Code:

Sentence Date:

2143
7/20/11