

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No: 2020-000343

STATE OF SOUTH CAROLINA,

PETITIONER,

v.

RANATA JONES,

RESPONDENT.

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 RANATA D. JONES,)
8 DEFENDANT.) 2017-GS-42-979

9
10 August 9th, 2017
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROBIN B. STILWELL, Judge; and a jury.

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

16 ANDREW MILLER and SYDNI KALLAM
17 ASSISTANT SOLICITORS
18 Attorneys for the State

19 JOSH SCHULTZ
20 ESQ.
21 Attorney for the Defendant

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

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P R O C E E D I N G S

THE COURT: Okay. While you're waiting, Mr. Solicitor, I've got the State's witness list.

Is there a -- is there a witness you want me to add to it?

MR. SCHULTZ: Randall Scott, Your Honor, if the, if that's not on the State's witness list.

THE COURT: Okay. I see it. Randall Lamar Scott. So, that would be your guy too? So---

MR. SCHULTZ: That would, that would be my witness.

THE COURT: I've got Trooper Elder, Randall Scott, Keith Lee, and Shaw.

Is that all?

MR. SCHULTZ: Yes, that's---

SOLICITOR MILLER: That's correct, Your Honor.

THE COURT: Okay. Good. Thanks.

All right.

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: All right. Ladies and gentlemen, we're starting a little bit later than I had anticipated. That's because two jurors didn't show up, and I was waiting for them, but I elected to go ahead and proceed. I think we have enough jurors, and I didn't want to make y'all wait any

1 longer than we absolutely had to.

2 So, ladies and gentlemen, we are going to call to Bar
3 the case of the State of South Carolina versus Ranata -- is
4 it Reneta (phonetic) or Ranata?

5 THE DEFENDANT: Ranata.

6 MR. SCHULTZ: Ranata, Your Honor.

7 THE COURT: Ranata Jones and that is Case Number
8 2017-GS-42-979.

9 Now, ladies and gentlemen, you -- some of you may have
10 been here when we picked a jury on the first case that was
11 called to Bar. Some of you may not have. So, I just want
12 to tell you, and advise you, that the process for selecting
13 a jury for a case is very similar to the process for
14 qualification, and that is I'll ask you questions. These
15 questions are -- bear upon, bear upon this specific case and
16 your suitability and appropriateness of you presiding as a
17 juror on this particular case as opposed to qualification,
18 which are general questions bearing upon qualifications, but
19 the process is similar.

20 So, when I ask questions, if the answer is in the
21 affirmative, what I'd ask you to do is stand up, state your
22 name, and your juror number. Again, state your name and
23 your juror number so it will be clear for the record who's
24 answering the questions, and then respond, if appropriate.

25 So, ladies and gentlemen, before we get started, what

1 I'm going to do is I'm gonna read to you the allegations on
2 the indictment. Now, before I do that, I want to tell you
3 something that's important, and that is, in this case, just
4 like in every single case that comes to Court in the United
5 States of America, the defendant is presumed innocent until
6 the State meets its burden of proving each and every element
7 of the offense beyond a reasonable doubt.

8 The State has the burden of proof in this matter. The
9 defendant does not have to prove anything. Under our
10 Constitution, the defendant has the right to remain silent,
11 and, therefore, has no burden of proof. So, as we sit here
12 now, the defendant is presumed innocent, and she will retain
13 that presumption of innocence until such time as 12
14 deliberating jurors determine that the State has met its
15 burden of proof of proving the defendant or each and every
16 element of the offense beyond a reasonable doubt.

17 Now, the reason I tell you that is because, as we go
18 forward, I want you to keep that in mind, and I want you to
19 make sure that you're keeping that in mind as I'm reading
20 the allegations on the indictment. Some people think, if
21 the judge is reading the indictment, he's telling us the
22 facts of the case. Well, in fact, I'm not. I'm just
23 telling you what the allegations are so that you can
24 intelligently answer the questions that I pose to you.

25 So, ladies and gentlemen, in this indictment is an

1 indictment for driving under the influence, and the State
2 would allege that Ms. Jones did, in Spartanburg County, on
3 or about November 19th, 2016, drive a vehicle while under
4 the influence of alcohol, drugs, or a combination of the
5 same, which caused impairment to the extent that the
6 defendant's ability to drive was materially and appreciably
7 impaired.

8 Now, ladies and gentlemen, is there anyone among you
9 who has any prior knowledge, any prior disposition, or any
10 prior opinion regarding the facts or, excuse me, regarding
11 the allegations, circumstances, or parties to this case?

12 (No response.)

13 THE COURT: All right. Ladies and gentlemen, the
14 defendant in this case is Ms. Ranata Jones.

15 Is there anyone among you who has a personal,
16 professional, or family relationship with Ms. Jones?

17 (No response.)

18 THE COURT: Let the record reflect no affirmative
19 response.

20 Ladies and gentlemen, the defendant, Ms. Jones, is
21 represented by Mr. Josh Schultz of the Spartanburg County
22 Bar.

23 Is there anyone among you who has any personal,
24 professional, or family relationship with Mr. Schultz or
25 anyone employed in his law office?

1 (No response.)

2 THE COURT: All right. Let the record reflect no
3 affirmative response.

4 Ladies and gentlemen, the State will be represented in
5 this matter by Mr. Andrew Miller with the Spartanburg County
6 Solicitor's Office.

7 So, I'll ask you, is there anyone among you who has any
8 personal, professional, or family relationship with
9 Mr. Miller or with anyone employed in the Spartanburg County
10 Solicitor's Office?

11 (WHEREUPON, a juror responds.)

12 THE COURT: Yes, ma'am.

13 THE JUROR: Juror 121, Mitzi Peeler. My sister-in-law,
14 Sharon Peeler, we call her Cookie, she works -- I think she
15 works for the Solicitor's Office here.

16 THE COURT: Okay. Given that fact, whether she does or
17 not, do you think you could still be a fair and impartial
18 juror in the trial of this case?

19 THE JUROR: I do.

20 THE COURT: Okay. All right. Good. Thank you for
21 telling me. I appreciate it.

22 Okay. Ladies and gentlemen, I'm gonna read to you a
23 list of potential witnesses who may take the stand and
24 testify in this case.

25 MR. SCHULTZ: Your Honor, I have one more witness, Your

1 Honor.

2 THE COURT: Okay.

3 MR. SCHULTZ: And, and you want me to read that for the
4 record?

5 THE COURT: Yeah, just tell me.

6 MR. SCHULTZ: Kimberly Hughes Lyles.

7 THE COURT: Kimberly Hughes Lyles. Okay.

8 MR. SCHULTZ: Thank you, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, I'm gonna
10 read for you a list of witnesses that may testify in this
11 case. All of these witnesses may testify, and only some of
12 them -- or some -- only some of them may testify. It could
13 be that additional people take the stand as well, but, as I
14 sit here right now, these are the witnesses that I
15 anticipate will testify. I'm gonna read the list to you and
16 I'm gonna ask you the same question. That is, do you know
17 them.

18 Trooper Gregory Elder.

19 Randall Lamar Scott.

20 Keith Lee.

21 Sergeant Bradley Shaw.

22 Kimberly Hughes Lyles.

23 Ladies and gentlemen, is there anyone among you who has
24 any personal, professional, or family relationship with any
25 of those prospective witnesses?

1 (No response.)

2 THE COURT: All right. Let the record reflect no
3 affirmative response.

4 Ladies and gentlemen, is there anyone among you who is
5 a contributor to or a member of an organization which, any
6 organization, which advocates for criminal prosecution or
7 victim's rights?

8 And, by way of example, I mean organizations like MADD,
9 Mothers Against Drunk Driving, or SADD, Students Against
10 Drunk Driving, or, again, any organization that advocates
11 for criminal prosecution or victim's rights?

12 (No response.)

13 THE COURT: All right. Let the record reflect no
14 affirmative response.

15 Ladies and gentlemen, is there anyone among you who has
16 either been employed by law enforcement or has an immediate
17 family member who is employed by law enforcement?

18 (WHEREUPON, a juror responds.)

19 THE JUROR: Tim Dickerson, Number 36. My nephew is a
20 police officer with the City of Florence

21 THE COURT: Okay. Given that fact, sir, do you think
22 you can still be a fair and impartial juror in the trial of
23 this case?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. Thank you. I do appreciate

1 that, sir.

2 Ladies and gentlemen, is there anyone among you who has
3 ever been arrested for or accused of driving under the
4 influence?

5 (No response.)

6 THE COURT: Ladies and gentlemen, is there anyone among
7 you who has a immediate family member who has ever been
8 accused of or arrested for driving under the influence?

9 (WHEREUPON, jurors respond.)

10 THE COURT: Okay. Y'all just go in turn.
11 You're closest. So, you can go first.

12 THE JUROR: Okay. Katikcus Gianopoulos, Juror Number
13 49. I do have an aunt that, a few years ago, she was
14 charged with a DUI.

15 THE COURT: Okay. Do you think you can still be fair
16 and impartial in this case?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you. I appreciate you telling me.
19 Yes, ma'am.

20 THE JUROR: 113, Anna Oleksiyenko. My brother was
21 arrested a few years ago.

22 THE COURT: Okay. Do you think you can still be fair
23 and impartial, ma'am?

24 THE JUROR: Yes, sir.

25 THE COURT: Okay. Thank you.

1 Yes, sir.

2 THE JUROR: Kevin Smith, Juror 151. My brother got
3 arrested twice.

4 THE COURT: Okay. Do you think, given that fact, you
5 can still be fair and impartial, sir?

6 THE JUROR: Yes, sir.

7 THE COURT: Okay. Good enough.

8 Okay. Is there anyone among you who has ever been
9 arrested by either the Spartanburg County Sheriff's Office
10 or the South Carolina Highway Patrol?

11 I'm not talking about stopped for traffic violations.
12 I'm talking about arrested by them.

13 (No response.)

14 THE COURT: Okay. Okay. Let the record reflect no
15 affirmative response.

16 Ladies and gentlemen, is there anyone among you who,
17 for whatever reason, feels as though you can not be a fair
18 and impartial juror in the trial of this case?

19 (WHEREUPON, a juror responds.)

20 THE COURT: Yes, sir.

21 THE JUROR: Juror Number 140. I currently have a
22 daughter and a son-in-law. My son-in-law was a full blown
23 alcoholic, and it's tearing the family apart. So, my mind
24 is biased.

25 THE COURT: Okay. I appreciate you telling me that.

1 what's your juror number?

2 THE JUROR: 140, sir. 1-4-0, Frank Rusk.

3 THE COURT: Okay. Okay. I'm going to take Mr. Rusk
4 off of the jury list for the trial of this case, counsel.

5 Okay. Thank you. I appreciate you telling me that.

6 THE JUROR: Thank you.

7 THE COURT: Okay. Any additional questions in voir
8 dire from the parties?

9 SOLICITOR MILLER: None from the State, Your Honor.

10 MR. SCHULTZ: None from the defense.

11 THE COURT: Okay. All right. Ladies and gentlemen, at
12 this point, we're gonna proceed with jury selection. Those
13 of you who were in here before have been through it. So,
14 you know what's gonna happen.

15 Those of you who have not, what I'm gonna do is just
16 go -- run through it real quick so you'll understand what's
17 happening, and how things will proceed.

18 In jury selection, each party will get five peremptory
19 challenges or jury strikes. They are going to strike or,
20 excuse me, your name is gonna be called from a randomly
21 generated strike list that the, that the Clerk of Court has
22 generated. It is generated by the computer. So, it's in an
23 entirely random and arbitrary order.

24 When your name is called, what I'll ask you to do is
25 stand up, and just stand right where you are. And the

1 parties will exercise strikes.

2 Now, if you hear, if you hear from both sides, from
3 both sides either please swear the juror or please seat the
4 juror, then you will have been selected for this case, and
5 I'll ask you to take all of your things and come have a seat
6 in the jury box. However, if you hear from just either one
7 of the attorneys, either one of them, please strike the
8 juror or please excuse the juror from the trial of this
9 case, then you will have been stricken from the trial of
10 this case.

11 Now, parties are given great latitude and discretion in
12 who they select or who they strike. So, please don't take
13 any offense whether you're stricken or whether you're asked
14 to serve on the jury. You won't know why you may of been
15 selected or stricken. I won't know either frankly. But
16 parties to a lawsuit always calculate strikes in keeping
17 with their strategy of the case, and you and I may not know
18 the strategy of the case. So, just understand, you
19 shouldn't take any offense either way.

20 So, ladies and gentlemen, again, we'll have five
21 strikes a piece. We're gonna pick one alternate in this
22 case, and, for alternates, the strikes will be one and one,
23 counsel.

24 So, having said that, Madam Clerk, you may call the
25 names.

1 THE CLERK: Yes, sir.

2 (WHEREUPON, the jury panel was selected at this time.)

3 THE COURT: Okay. We'll pick one, one alternate.

4 Y'all satisfied with one alternate?

5 MR. SCHULTZ: I am, Your Honor.

6 THE COURT: Okay. The strikes are one and one.

7 THE CLERK: Yes, sir.

8 (WHEREUPON, an alternate juror was selected at this
9 time.)

10 THE CLERK: Jury selection has been completed.

11 THE COURT: All right. Gentlemen, any issues or
12 matters of law or exceptions to take with the qualification
13 and/or selection of this jury?

14 SOLICITOR MILLER: None from the State, Your Honor.

15 MR. SCHULTZ: None from the defense.

16 THE COURT: Okay. All right.

17 (Pause.)

18 THE COURT: All right. Ladies and gentlemen,
19 congratulations. I look forward to working with you over
20 the next day.

21 I anticipate you've heard the number of witnesses that
22 will be called today or during the course of the trial, and
23 I suspect we'll call them all today. Somewhere around five
24 or six witnesses. Maybe a little bit more. Maybe a little
25 bit less. We'll see as we go forward.

1 Now, ladies and gentlemen, I always find that, before
2 we start a jury trial, it is instructive for me to tell the
3 jury, first of all, what your role is as jurors in the trial
4 of a case, and, secondly, what process and procedure will
5 follow so that you'll know what comes next, and you'll also
6 know what to expect and how we can expect to finish the
7 trial.

8 Let me ask, before we get started, is there any of you
9 who are -- who were previously on a jury this week?

10 (WHEREUPON, jurors responds.)

11 THE COURT: You were?

12 So, y'all are gonna hear this again, right?

13 Y'all are veterans at this point.

14 Okay. So, ladies and gentlemen, your role as jurors in
15 the trial of a case is to be the judges of the facts, the
16 finders of the facts. You will determine what the facts are
17 and your exclusive determination by analyzing the evidence
18 which is admitted in the trial of this case.

19 Now, ladies and gentlemen, both of the parties have an
20 opinion about what the facts are, but they don't tell you
21 what the facts are. They give you the evidence and they
22 advocate and they argue in an attempt to persuade you to
23 their position, but you, ultimately, determine what the
24 facts are in the case based on the evidence. Ultimately,
25 you'll determine, based on the evidence that's presented in

1 this trial, what the facts are. You'll apply those facts to
2 the law as I give it to you and determine whether the State
3 has met its burden of proof. Remember, again, that the
4 defendant, Ms. Jones, is presumed innocent until 12
5 deliberating jurors determine that the State has met its
6 burden of proving each and every element of the offense
7 beyond a reasonable doubt.

8 Now, ladies and gentlemen, you, again, have the sole
9 and exclusive responsibility for determining what the facts
10 are. My responsibility, as distinguished from you, is to be
11 the judge of the law, and I tell you what the law is as it
12 relates to the evidence that's been presented in this trial.
13 I'll wait till the end and I'll -- because I'm in the same
14 position that you are. I'm gonna see the evidence that's
15 presented in this case for the first time just like y'all
16 will. So, I'm gonna wait until the end to give you a, a
17 charge on the law because I need to see the evidence as
18 well.

19 Now, ladies and gentlemen, in my capacity as judge,
20 basically all I'm concerned with is ensuring that the
21 parties get a fair trial. I have no stake in the outcome of
22 this case. It doesn't matter to me, ultimately, what your
23 determination is. The only thing that matters to me is that
24 the parties get a fair trial, and that, by extension, you
25 get a fair trial too because you are committing some of your

1 valuable time to this case.

2 In the course of this trial, essentially I'll act as
3 the, the objective umpire, and I'm just gonna be calling
4 balls and strikes, and, in doing that, what I'm gonna do is
5 make rulings on objections and motions that are posed by the
6 parties.

7 When an objection or a motion is made by the parties,
8 I'm gonna make a ruling based on my understanding of the
9 law, and my understanding of the rules of Court. If I rule
10 for someone and against someone else, which I necessarily
11 must if there are two parties, then don't think that I have
12 a bias or a prejudice against either party. I'm simply
13 making an objective determination. So, otherwise, I make
14 sure that we follow the rules of Court, we follow the rules
15 of procedure, and I keep everything in-between the lines as
16 it were.

17 So, the way we'll start this case is, after I give you
18 a short opening charge, just kind of give you an idea of
19 what we're gonna be doing, then I'll give each party the
20 opportunity to make opening statements. Now, opening
21 statements are not evidence. Opening statements is an
22 opportunity for each of the parties to introduce themselves
23 and their theory of the case. Generally speaking, they're
24 short because, again, they're just intended to be, not
25 argument, but just an introduction of people and of

1 theories.

2 After you've heard the opening statements from each
3 party, then the State will have the opportunity to begin the
4 presentation of its case. The State goes first because, as
5 I've told you, the State has the burden of proof. Usually
6 what will happen is the State will begin to call witnesses.
7 A witness will be called to the stand, take the stand, take
8 the oath of a witness, and the State will examine that
9 witness. That is ask that witness questions.

10 The defense will have the opportunity to cross-examine
11 that witness, and then, after all of the questions have been
12 exhausted of one witness, all of the evidence that is
13 intended to be introduced through a witness has been
14 introduced, then that witness will be excused, and the next
15 witness will be called. Again, examination by the State,
16 cross-examination by the defense.

17 After the State has called all of the witnesses it
18 intends to call, the State will rest. Then the defense will
19 have the opportunity to offer evidence as well. The defense
20 does not have to offer any evidence because the defense
21 doesn't have a burden of proof. So, often times, it comes
22 to pass the defense won't offer any evidence. However, they
23 do have the opportunity. And, when the State rests, then
24 the defense will, if they elect to, call witnesses to the
25 stand as well.

1 The process is the same. Defense calls a witness to
2 the stand. That witness is examined by the defendant, and
3 then cross-examined by the State. After the defense calls
4 all of its witnesses to the stand, then the, then the
5 defense will rest. And, after you've heard all of the
6 evidence that will be introduced in the case, then we'll
7 have closing arguments.

8 Now, closing arguments by each attorney are intended to
9 advocate for their respective sides in an attempt to
10 persuade you to their position. Again, those statements are
11 not evidence because you will have already heard all of the
12 evidence. It's simply an attempt, again, to advocate and
13 persuade.

14 After you've heard from the attorneys in closing
15 statements, then, closing arguments, then I'll give you a
16 closing charge on the law. Again, I wait till the end so
17 that I can hear the evidence and I can only give you that
18 law which is relevant to what you're gonna hear in this
19 case. After that, I'll send you back to your jury room, and
20 you can begin your deliberations.

21 Now, please don't begin your deliberations until the
22 very end of the case until I give you very specific
23 instructions to do so. It's very important that you don't
24 begin any deliberations until you have heard all of the
25 evidence that bears upon the matter to be decided. It's

1 just like any other important decision in your life. You
2 can't make an important decision until you know everything
3 that bears upon the decision to be made. So, please wait
4 and don't begin any deliberations or discussions until I
5 tell you to.

6 Now, that includes, when we take breaks, please don't
7 go back, get into your jury room, and discuss whether a
8 witness was believable or not, credible or not, whether he
9 was good or bad, and where each party stands in relation to
10 the charges. Don't discuss any of that yet. Just wait.
11 You'll have as much time to do that as possible.

12 Also, when we take breaks, which we will, please don't
13 go out and try to find out anything about this case. I
14 don't know that you could. I don't think you'd go out and
15 find media accounts of it, and I don't think you could find
16 anything through the public records of the Clerk's Office.
17 But just know that you shouldn't try that because the only
18 thing that's appropriate for your consideration is that
19 evidence that is presented on the stand under oath in
20 accordance with the rules. So, please don't go do any
21 self-help.

22 Also, when we take breaks, don't discuss the case with
23 anyone outside of your jury. I know that you probably have
24 friends, you might have spouses like I do, who are gonna
25 quiz you and want to know what you're doing. Avoid the

1 temptation to discuss it because, when you start to discuss
2 it, one question leads to another and to another and to
3 another, and, before you know it, you're deliberating with
4 someone who's not on the jury and discussing the case. So,
5 just avoid doing that if you will please.

6 Ladies and gentlemen, having said all of that -- by the
7 way, we're gonna take breaks during this, this trial. So,
8 I'm not gonna intend to hold you hostage in your jury, in
9 your jury box.

10 Okay. You know, right now, you're the 13 most
11 important people in the courtroom.

12 Okay. So, if, at any point during this trial, you need
13 to take a break, get my attention or the bailiff's attention
14 and we'll take a break because I'd rather you be listening
15 and paying attention to what is being presented on the stand
16 as opposed to wondering when all the lawyers are gonna be
17 quiet so that you take a break. Just tell me you want to
18 take a break and we'll do it.

19 Okay. I also like to take breaks about every hour,
20 hour and a half, depending on when -- just depending on
21 where we are in testimony, where we are in presentation of
22 evidence cause that's about as long as anybody can really
23 pay close attention to anything.

24 So, what we're gonna do this morning is we're gonna go,
25 go ahead and do our opening statements, and then I'm gonna

1 release you for lunch, and we're gonna come back this
2 afternoon and start with the presentation of evidence. The
3 reason for that is, is because several of the essential
4 witnesses couldn't be here this morning. So, the State is
5 in a position where we just need to, need to wait so that
6 they can call those initial witnesses to the stand.

7 So, ladies and gentlemen, we're going to go through
8 opening statements, then we're gonna take a break until one
9 o'clock, and then we're gonna come back and start with the
10 presentation of evidence.

11 Is that gonna be sufficient for you, Mr. Miller?

12 Are they gonna be back -- are they gonna be here at
13 1:00?

14 SOLICITOR MILLER: Your Honor, I believe they will be
15 here at 1:00.

16 THE COURT: 1:00. Okay. Good.

17 All right. So, ladies and gentlemen, having said that,
18 we're gonna go ahead and get started.

19 Now, before you hear opening statements, I'm gonna get
20 the Clerk of Court to swear you in. Now, you took an oath
21 earlier in the week to tell the truth. This is a little bit
22 different. This is a, this is an oath to truly and verily
23 try this case in accordance with the law, and in accordance
24 with the evidence that's been presented. She'll present the
25 oath and the appropriate response will be I will.

1 Madam Clerk, I'll turn it over to you.

2 THE CLERK: Yes, sir.

3 (WHEREUPON, the jury panel was placed under oath at
4 this time.)

5 THE COURT: Okay. All right. We'll begin opening
6 statements.

7 Mr. Miller, you may proceed, sir.

8 SOLICITOR MILLER: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 SOLICITOR MILLER: May it please the Court.

11 My name is Andrew Miller. I work with the Solicitor's
12 Office here, and here with me today is Sydni Kallam. And,
13 today, we're here on a driving under the influence case.

14 As you heard, the State has to prove this defendant was
15 driving a vehicle in Spartanburg County, was under the
16 influence of alcohol or drugs, and she was under that
17 influence to the extent her ability to drive was materially
18 and appreciably impaired.

19 You're gonna hear some testimony today that this all
20 stemmed from a one vehicle wreck that happened on I-85 at the
21 67-mile marker in November of 2016. You're gonna hear from
22 the now retired state trooper that responded to the scene.
23 He found a vehicle with three individuals sitting on the
24 guardrail nearby, spoke to all these individuals, and
25 decided to make a DUI arrest based on all of the

1 circumstances.

2 Now, the main issue in this case, as we proceed, is
3 gonna be who was driving that vehicle. Now, the State is
4 alleging and expects to prove to you today that this
5 defendant was the one driving the vehicle, and that she was
6 impaired that evening.

7 After this wreck, this defendant was taken to
8 Spartanburg Regional Medical Center by EMS. The trooper
9 went to see her there and offered a blood test to see what
10 the alcohol level may have been in her system. She was read
11 the Implied Consent Rights as the statute requires, and
12 you'll hear a lot more about that from the officer, and,
13 after that, she refused the test.

14 I urge you to pay close attention to all the evidence
15 and the testimony in this case, and, remember, you don't
16 have to leave your common sense at the door. Apply that to
17 what you hear today before you, and I'm confident that,
18 after you hear all of that, and, after you deliberate
19 amongst yourselves, you'll be able to return a verdict of
20 guilty.

21 Thank you.

22 THE COURT: Mr. Schultz.

23 MR. SCHULTZ: Thank you, Your Honor.

24 May it please the Court, opposing counsel.

25 My name is Attorney Joshua Schultz. I represent Ranata

1 Jones on this case. This is a case that's very important,
2 not only to the State, but also to my client, Ranata.

3 Now, Mr. Miller, the prosecutor in this case, is indeed
4 correct. The main issue in this case is who was driving.
5 That's what we got to determine here.

6 (WHEREUPON, a microphone in the courtroom starts making
7 a noise.)

8 MR. SCHULTZ: I'm hoping it's not me, Judge.

9 THE COURT: Yeah, stay away from that mic. Back up and
10 speak more softly there.

11 MR. SCHULTZ: Okay.

12 THE COURT: Quit breathing so heavily.

13 MR. SCHULTZ: Thank you, Judge.

14 THE COURT: Yes, sir.

15 MR. SCHULTZ: The main issue in this case, as I said
16 before, is who was driving.

17 Now, in some cases, you know, murder cases, armed
18 robbery cases, there's -- there are some questions of
19 identity. In this case, that is exactly the question that
20 we're going to be answering here, and that's why we have --
21 that's why we picked you folks here to determine what was
22 going on in November of last year on 85.

23 In those cases, as I said, in those more serious cases,
24 assaults or armed robberies or burglaries or whatever,
25 identity is often an issue. In this case, I foresee that a

1 gentleman is going to be standing up here in a couple hours
2 taking the stand and telling you -- y'all that he indeed was
3 the driver and not Ranata. He's gonna be truthful, and I
4 believe that, after he's done, I think there will be no
5 doubt in your mind that my client was in the car back in
6 November of last year, but she wasn't the one that was
7 driving.

8 You're gonna see at least one video of the accident
9 that night, and you can see exactly what happened. You're
10 not, you're not gonna see the accident itself, but you are
11 gonna see exactly what happened in the aftermath of that
12 wreck. That's the beautiful thing with the driving under
13 the influence cases is usually you can see exactly what
14 happened on that date on that time. You're not gonna have
15 to rely on some, you know, witness that said well, I saw
16 this, and then another witnesses said I saw that. What
17 you're gonna see is you're gonna see a video in a couple
18 hours here.

19 So, you're gonna sit down back in your jury
20 deliberation room, and you're gonna weigh all the evidence.
21 You're gonna weigh all the facts that we have, and that's
22 why it's such an exciting part of our judicial process, and
23 that's why I thank you for being here today. I know the
24 State thanks you. I thank you. My client thanks you.
25 Because, at the end of the day, I think, in fact, I probably

1 know that y'all are gonna come back with a not guilty
2 verdict for my client.

3 You're gonna see and hear everything, and there's two
4 things I want you to remember before I go sit down and
5 before we all excuse you for lunch. Two things.

6 Reasonable doubt. Reasonable doubt, and Judge
7 Stilwell, in a couple hours there, is gonna address you
8 about what reasonable doubt means. Reasonable doubt is the
9 kind of doubt that would cause a reasonable person some
10 hesitation to act.

11 And, also, burden of proof. These folks, Sydni and
12 Andrew, they have the burden of proof. They have to prove
13 their case. The Judge told you a couple minutes ago that we
14 don't have to prove anything, but, nevertheless, you're
15 gonna see somebody who I anticipate is going to say that he
16 was the driver of the car that night. They have to prove
17 their case guilty beyond a reasonable doubt.

18 I will present to you that, at the end of the day, they
19 can't, and, again, a couple hours, I'm gonna get up here and
20 ask you again, and I'm gonna ask you a couple questions.

21 Reasonable doubt. I think you will have a couple
22 reasonable doubts in this case, and, if you have one, just
23 one reasonable doubt in this case, then you can't convict.
24 You got to find my client not guilty.

25 Thank you again, folks.

1 THE COURT: All right. Ladies and gentlemen, we're
2 gonna break until one o'clock this afternoon. Please be
3 back at 1:00. Please be on time because, as you know this
4 morning, we started a little bit later because two people
5 out of 35 came in late. Don't do that to each other. Out
6 of respect for each other, please be on time. Not out of
7 respect from any of the parties, but out of respect for each
8 other cause I'm gonna have to wait on all 13 of you before
9 we get started.

10 So, please go to lunch. Don't discuss the case. When
11 you come back, we'll start as quickly as we possibly can.

12 All right. I hope y'all have a great lunch and I'll
13 see you at 1:00.

14 Thank you.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Ladies and gentlemen, do we
18 have a witness that I need to, that I need to ask some
19 questions about Constitutional privileges?

20 (WHEREUPON, Mr. Schultz nods affirmatively.)

21 THE COURT: Okay. And who is that?

22 MR. SCHULTZ: I would anticipate. That's, that's
23 Mr. Randall Scott.

24 THE COURT: You're Mr. Scott, sir?

25 MR. SCOTT: Yes, sir.

1 THE COURT: Will you come up please and just stand
2 right here next to Mr. Schultz.

3 (WHEREUPON, Mr. Scott complies.)

4 THE COURT: Mr. Scott, will you raise your right-hand?

5 (WHEREUPON, Mr. Scott was placed under oath at this
6 time.)

7 THE COURT: Okay. And what's your full name, sir?

8 MR. SCOTT: Randall Lamar Scott.

9 THE COURT: Sir, it's my understanding that you intend
10 to -- that you intend to testify in this case?

11 MR. SCOTT: Yes, sir.

12 THE COURT: Okay. You, just like anybody else in our
13 society, just like me, just like the officers, just like the
14 attorneys, just like anybody in the United States of
15 America, has certain Constitutional rights. You have the
16 right to remain silent, which means you are not compelled to
17 do or to say or to prove anything in this courtroom, but you
18 do understand that, if you do make statements in the public
19 record under oath, then those statements could be used
20 against you if the State were to elect to prosecute you at a
21 later date.

22 Do you understand that?

23 MR. SCOTT: Yes, sir.

24 THE COURT: And I'm not suggesting that they will, and
25 I'm not suggesting anything that you would say would

1 incriminate you. I really don't know, but I do want to make
2 sure, out of concern for your rights and out of concern for
3 you, that you recognize that anything you say is gonna be on
4 record and it could be held against you.

5 You understand?

6 MR. SCOTT: Yes, sir.

7 THE COURT: Okay. You comfortable with that, sir?

8 MR. SCOTT: Yes, sir.

9 THE COURT: Do you have any questions that you want to
10 ask me about your rights?

11 MR. SCOTT: No, sir.

12 THE COURT: You also have a right to have an attorney,
13 and, if what I've explained to you gives you any cause for
14 concern or you have any questions that you're just not
15 comfortable asking me, you have the right to ask an attorney
16 of your choosing about those rights, and about the
17 consequences of testifying.

18 Do you understand that?

19 MR. SCOTT: Yes, sir.

20 THE COURT: Okay. All right, sir. Thank you. I
21 appreciate that.

22 MR. SCOTT: Thank you.

23 THE COURT: I hope you have a good lunch and I'll see
24 you, see you this afternoon.

25 MR. SCOTT: All right.

1 THE COURT: Okay.

2 MR. SCHULTZ: And, Your Honor, just, just so I can
3 address Mr. Scott there, Mr. Scott, you're under subpoena
4 still. So---

5 MR. SCOTT: Okay.

6 MR. SCHULTZ: ---I just wanted to make you aware of
7 that.

8 MR. SCOTT: No problem.

9 MR. SCHULTZ: All right. Thank you.

10 MR. SCOTT: Thank you.

11 THE COURT: All right. Anything additional we need to
12 put on the record this morning?

13 SOLICITOR MILLER: Your Honor, we had briefly discussed
14 whether it is -- whether the defendant's would stipulate
15 that this is a third?

16 MR. SCHULTZ: Yeah, I'm stipulating to jurisdiction,
17 Your Honor.

18 THE COURT: Okay.

19 SOLICITOR MILLER: And, additionally, I would, I would
20 tell you an additional problem. One of the witnesses that
21 does include statements regarding prior, prior DUIs and
22 their existence, and we would just ask if there is a
23 stipulation that they be warned not to go into that to avoid
24 potential of a mistrial.

25 THE COURT: Yeah, y'all take a look at it, and I don't

1 know if you intend to introduce a statement or ask questions
2 about the statement. If you intend to introduce it, then
3 you need to redact any of those portions. Otherwise, to the
4 extent that any testimony is offered, I'm sure y'all will
5 avoid it. I don't think Mr. Schultz wants that in.

6 MR. SCHULTZ: Well, well, it's actually -- I can, I can
7 kind of maybe clarify that a little bit, Judge. I know
8 we're breaking for lunch, but this is a statement Mr. Scott
9 filled out at my office.

10 THE COURT: Yeah.

11 MR. SCHULTZ: And I shared that with the State just now
12 under reciprocal Rule 5.

13 THE COURT: Right.

14 MR. SCHULTZ: And I don't plan on introducing that
15 statement.

16 THE COURT: Okay.

17 MR. SCHULTZ: I don't think the State plans on
18 introducing that statement either.

19 THE COURT: Okay.

20 MR. SCHULTZ: But it does talk about my client's two
21 prior arrests for DUI.

22 THE COURT: Yeah.

23 MR. SCHULTZ: I'm not gonna introduce it, and I can't
24 anticipate what he's gonna say on the stand.

25 THE COURT: Yeah.

1 MR. SCHULTZ: But I anticipate that he's probably not
2 gonna say that. I hope -- hopefully he won't.

3 THE COURT: You can still talk to him. He hadn't
4 taken---

5 MR. SCHULTZ: Yeah.

6 THE COURT: He hasn't been sworn in yet. So, you can
7 talk to him about it.

8 SOLICITOR MILLER: Your Honor, we would avoid that, but
9 I just don't want to run into a situation where the State
10 asks him a question and he runs into that.

11 THE COURT: And, if he does, then, you know, we'll,
12 we'll just have to -- we'll have to deal with it at that
13 time. I presume that what he would say is she ain't -- she
14 wasn't driving. She's not that dumb. She already had two
15 DUIs. She learned her lesson. I presume that's what he
16 would say.

17 But, anyway, we'll deal with it if we cross that
18 bridge, but, but talk to him and make sure that he knows
19 that that's off limits.

20 okay?

21 MR. SCHULTZ: Yes, sir.

22 THE COURT: All right. Thank you.

23 SOLICITOR MILLER: Thank you, Your Honor.

24 MR. SCHULTZ: Thank you, Your Honor.

25 SOLICITOR MILLER: That's all from the State.

1 MR. SCHULTZ: Nothing from the defense.

2 THE COURT: All right.

3 MR. SCHULTZ: Thank you, Judge.

4 (WHEREUPON, Court was in recess for the lunch hour.)

5 THE COURT: You got all your witnesses, Mr. Miller?

6 SOLICITOR MILLER: I believe so, Your Honor.

7 THE COURT: Okay. Good.

8 All right. Well, y'all ready for the jury?

9 MR. SCHULTZ: Defense is ready, Judge.

10 THE COURT: Defendant---

11 SOLICITOR MILLER: State's ready, Your Honor.

12 THE COURT: Okay. Let's bring them in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. Welcome back, ladies and
16 gentlemen. Thank you for being on time. I do appreciate
17 it. I think we're ready to get started.

18 So, having said that, Mr. Miller, you may call your
19 first witness, sir.

20 SOLICITOR MILLER: Thank you, Your Honor.

21 The State would Trooper Glen (sic) to the stand.

22 GLEN ELDER, being first duly
23 sworn, testified as follows:

24 THE CLERK: You may be seated.

25 (Witness complies.)

1 DIRECT EXAMINATION

2 BY SOLICITOR MILLER:

3 Q Trooper Elder, would you state your name for the jury
4 please?

5 A Gregory Glenn Elder.

6 Q Okay. And where are you currently employed?

7 A I'm currently employed with Amazon Corporation.

8 Q And where were you employed in November of 2016?

9 A South Carolina Highway Patrol before retirement.

10 Q What was your title at that time?

11 A Lance corporal.

12 Q What were some, some of your general duties and
13 responsibilities as a lance corporal?

14 A Accident investigation, DUI detection, drugs,
15 interdiction, speeding detection. That, that type of thing.

16 Q And how long had you been in that position when you
17 retired?

18 A Nineteen years seven months.

19 Q Okay. And you were in that position on
20 November 19th, 2016?

21 A Correct.

22 Q Did you have any special training or certifications at
23 that point that would aid you in those duties?

24 A Accident investigation and, and accident
25 reconstruction.

1 Q And were you on-duty the night of November 19th of
2 last year?

3 A Yes, sir, I was.

4 Q On that date, did you see or come into contact with the
5 defendant, Ms. Ranata Jones?

6 A Yes, sir.

7 Q And when and what time of day did you first see the
8 defendant?

9 A I got the call at 3:50 in the morning on the 19th.
10 well, that's when the accident happened is 3:50. By the
11 time the Highway Patrol dispatcher got the, the accident and
12 gave it to me, it was 3:53, and I arrived on scene at 04:02.

13 Q And is that 4:02AM?

14 A That's correct.

15 Q And where was that?

16 A It was Interstate 85 northbound at the 67-mile marker.

17 Q Is that on an exit ramp or just the middle of the
18 interstate?

19 Do you remember?

20 A It's in the middle of the interstate.

21 Q Okay. And is that in Spartanburg County?

22 A It is.

23 Q You said you got to an accident scene.

24 what did it first look like when you got there?

25 A They was a car that was off the roadway in what we call

1 Lane Number 3. Lane Number 1 is the lane closest to the
2 wall. Then you have Lane Number 2, the middle lane. Lane
3 Number 3 is the most outer lane. The vehicle was in Lane
4 Number 3 and the hood of the vehicle was up against the
5 guardrail. So, half the vehicle was in the outer lane.

6 Q Okay. Do you recall who all was present when you
7 arrived?

8 A I know they were EMS units there, fire department was
9 also there, and three occupants was in the vehicle.

10 Q Do you remember what kind of vehicle it was?

11 A Not right off. The report is showing a 2009 Toyota. I
12 do remember it being a four door vehicle.

13 Q Okay. Were you able to determine who owned the
14 vehicle?

15 A Yes, sir, from the paperwork found in the vehicle, it,
16 it belonged to Ranata Jones.

17 Q Okay. And is that the defendant in this case?

18 A Yes, sir.

19 Q And, from that, do you mean -- did you interact with
20 Ranata Jones?

21 A I did.

22 Q And do you see her in the courtroom today?

23 A Yes, sir.

24 Q And where---

25 A She's seated by counsel.

1 Q Thank you.

2 Did you interact with any of the other occupants of the
3 vehicle?

4 A Yes, sir.

5 Q And did you interact with Ms. Ranata Jones?

6 A Yes, sir.

7 Q And what did you notice about Ms. Ranata -- Ms. Jones
8 when you interacted with her?

9 A Okay. Ms. Jones was actually seated on the guardrail
10 outside the vehicle. I asked her what happened. She kept
11 looking at the ground, never would answer my questions as to
12 what took place there. I also talked to -- Randall Scott
13 was on scene and Ms. Kimberly Lyles was actually in the back
14 of an ambulance when I was talking to her. She was gonna be
15 transported to the hospital for treatment.

16 Q Okay. Did you notice any odor of alcohol coming from
17 any of the individuals?

18 A Yes, sir, all of them.

19 Q Did you notice any slurred speech coming from any of
20 them?

21 A Not right off. I noticed they were kind of acting odd,
22 but the smell of, you know, alcohol about their breath the
23 whole time I was with them.

24 Q So, did you attempt to have a conversation with the
25 defendant?

1 A I did.

2 Q Could she answer any of your questions?

3 A No, sir.

4 Q Were any field sobriety tests offered at the scene?

5 A No, sir.

6 Q And why not?

7 A Ms. Jones decided to go to the hospital to be treated.

8 Anytime that somebody has decided to go to the hospital, we

9 don't do field sobriety. In case they have some kind of

10 injury, we could further the injury.

11 Q And was your vehicle that evening equipped with an in
12 car dash camera?

13 A Not that I'm aware of.

14 Oh, my car?

15 Q Yes.

16 A Yes, sir. Yes, sir.

17 Q Oh, okay. Was it functioning that night?

18 A Yes, it was.

19 Q Have you had a chance to review that video?

20 A Yes, sir.

21 Q And it was properly functioning on the evening in
22 question?

23 A Yes, sir.

24 SOLICITOR MILLER: Your Honor, may I approach the
25 witness?

Glen Elder - Direct examination
by Solicitor Miller

1 THE COURT: Sure.

2 Q Trooper Elder, do you recognize what I've handed to
3 you?

4 A Yes, sir, this is a DVD that was in the player of my
5 car at that night at the scene.

6 Q And is that your handwriting on the disk?

7 A Yes, it is.

8 Q And were you able to review the disk before---

9 A Yes, sir.

10 Q ---this?

11 A Yep.

12 Q And is it a true and accurate depiction of the -- your
13 interaction with people at the scene that evening?

14 A Yes, sir.

15 SOLICITOR MILLER: Your Honor, at this time, the State
16 would offer that into evidence as Exhibit 1.

17 THE COURT: Objections, sir?

18 MR. SCHULTZ: No objection.

19 THE COURT: All right. Without objection, it's offered
20 as Exhibit 1.

21 Do you need to mark that?

22 THE COURT REPORTER: Yes, sir.

23 THE COURT: Can you -- officer, can you just---

24 THE WITNESS: Sure.

25 THE COURT: ---pass that to her so we can mark it?

1 (WHEREUPON, the DVD was marked as State's Exhibit No. 1
2 and received into evidence at this time.)

3 Q So, was the defendant transported from the scene by
4 EMS?

5 A Yes, sir.

6 Q Okay. And where did she go?

7 A To the Spartanburg Regional Medical Center.

8 Q And did you go see her there?

9 A I did.

10 Q And did you interact with her at the hospital?

11 A I did.

12 Q And what was her demeanor like?

13 A Well, it wasn't good from the time I walked in from the
14 time we met. She was like really uncooperative and didn't
15 want to answer any questions that I had. I asked her to
16 give -- you know, we were here to take a blood sample. She
17 refused to give blood.

18 Q Did you read the defendant her Implied Consent Rights?

19 A I did.

20 Q And was she provided a copy of those?

21 A Yes, sir.

22 SOLICITOR MILLER: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, sir, you may.

25 Q Trooper Elder, can you identify what I've handed you?

1 A This is Implied Consent Rights.

2 Q Okay. And can you generally walk through I mean what
3 those are?

4 A Basically it's telling that law enforcement is asking
5 that breath or blood samples be taken for drug and alcohol
6 testing. The samples will be taken and tested according to
7 SLED policies, and the person has the right to take the test
8 or refuse the test, but if you refuse to submit to the test,
9 your privilege to drive will be suspended for six months,
10 and it goes on down to say about the percentage of alcohol
11 that's in your system, and you have a, a right to have a
12 contested case hearing if you do not give the samples.

13 Q The defendant was informed of those rights at the
14 hospital?

15 A Yes, sir.

16 Q And did you then offer a blood test?

17 A Yes, I did.

18 Q Did she elect to take that test?

19 A She refused it.

20 Q And is that the same form you read that evening?

21 A Yes.

22 Q Is it dated and signed?

23 A It is by me and I also signed that subject refused and
24 I signed and dated it and it's---

25 Q And, when you say you signed and subject refused, what

1 do you mean by that?

2 A That the subject did not wish to sign it.

3 Q But they were, in fact, read to her?

4 A Correct.

5 Q Okay. Based on your investigation, who did you come to
6 believe was the driver of the vehicle?

7 A Ms. Ranata Jones.

8 Q And, based on your past experience of 19 years, do you
9 have -- do you -- you've observed individuals who were under
10 the influence of alcohol and drugs before?

11 A Yes, sir.

12 Q And approximately how many times probably if you could
13 --?

14 A Probably thousands.

15 Q And, based on your experience and observation of the
16 defendant that evening, would you say she was under the
17 influence of either alcohol or drugs?

18 A Yes, sir.

19 Q And do you have an opinion as to whether her mental and
20 physical abilities to drive may have been affected by those?

21 A I would say, by looking at her and talking to her, she
22 was impaired, yes, sir.

23 Q All right. State has no further questions.

24 THE COURT: Mr. Schultz.

25 CROSS-EXAMINATION

1 BY MR. SCHULTZ:

2 Q Trooper, you're no longer employed with the South
3 Carolina Highway Patrol.

4 Is that correct?

5 A That's correct.

6 Q Okay. And you're working for Amazon, right?

7 A Correct.

8 Q Now, did you, did you retire from Highway Patrol or did
9 you just quit or---

10 A I retired. I also had six years with -- as a paramedic
11 at Spartanburg EMS. So, that's State Retirement. So,
12 total, I had a little over 26 years in the retirement
13 system. So, I retired.

14 Q All right. And you were on duty on November 19th,
15 2016, correct?

16 A Yes, sir.

17 Q Okay. And you interacted with all the people in here,
18 right?

19 A Yes, sir.

20 Q Okay. And how many drivers or how many people were in
21 the car on that, on that night or early morning I guess?

22 A Yeah, three people.

23 Q Three people?

24 A Yes, sir.

25 Q And you, you wrote an incident report here, right?

1 A Correct.

2 Q Okay. And that incident report is a pretty good,
3 accurate representation of your recollections from that
4 night?

5 A Yes, sir.

6 Q All right. And, when you write incident reports,
7 according to your testimony there that Mr. Miller said,
8 you've, you've written thousands of these---

9 A Probably, yes, sir.

10 Q ---at this point?

11 Okay. And you try to be as thorough and accurate as
12 possible, right?

13 A Correct.

14 Q Okay. And you try to be as detailed as possible,
15 right?

16 A Right.

17 Q And what, what are generally reasons why officers like
18 yourself write incident reports?

19 A Actually for -- just for Court. Sometimes cases are
20 years before they come to Court, and it's no way we can
21 remember every detail. So --.

22 Q Now, you, you had a chance to interact with a
23 gentleman, Mr. Scott, right?

24 A I did, yes, sir.

25 Q Okay. And did you -- would it be fair to say or

Glen Elder - Cross-examination
by Mr. Schultz

1 accurate to say that you were able to interact with him more
2 than you did Ms. Jones?

3 Is that right?

4 A On the scene, yes, sir.

5 Q On the scene?

6 A Right.

7 Q Okay. Did you talk to Mr. Scott later on or anything?

8 A By telephone, I think, the day after the collision.

9 Q All right. And what did Mr. Scott say to you on the
10 telephone?

11 SOLICITOR MILLER: Objection, Your Honor. That calls
12 for hearsay.

13 THE COURT: Okay. Your position, sir?

14 MR. SCHULTZ: Well, could we approach briefly?

15 THE COURT: Sure.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 THE COURT: Now, you can go ahead and finish your
19 examination of this witness.

20 MR. SCHULTZ: All right. Thank you, Your Honor.

21 Now, trooper, as far as the other interaction that you
22 had with anybody at the scene there, did you have any
23 interaction with Kimberly Lyles---

24 A Yes, sir.

25 Q ---I believe her name is?

1 A I did.

2 Q Okay. And was, was she helpful in determining whether
3 anybody was intoxicated that night or no?

4 A Well, basically she said they were coming from a club
5 in Greenville.

6 Q Now, when you arrived actually on the scene, which is
7 sort of the crux of the matter here, did you see anybody in
8 the driver's seat?

9 A No, sir.

10 Q Did you see anybody in the passenger seat?

11 A No, sir.

12 Q All right. So, everybody was outside of the car when
13 you actually arrived on scene, right?

14 A Correct.

15 Q Okay. According to your recollection of events, did
16 anybody see, at that point, or is anything in your incident
17 report reflective of who was driving?

18 A You talking about based on what I've seen or---

19 Q Right.

20 A ---based on what I was told?

21 Q What you were seen and what you were told.

22 A Okay. There was no one there at the scene that could
23 tell me the positioning of the occupants in the vehicle.

24 Q Okay.

25 A On the scene, Mr. Scott basically told me where

1 everybody was sitting in the vehicle.

2 Q Okay.

3 A Ms. Lyles also told me where she was sitting in the
4 vehicle.

5 Q All right. And what did Ms. Lyles say?

6 A She said that she was sitting in the back seat.

7 Q All right. Now, you went over to the hospital and
8 what, what hospital, again, was it?

9 A Spartanburg Regional Medical Center.

10 Q Spartanburg Regional?

11 A Yes, sir.

12 Q Okay. And you -- did you talk to any other -- did you
13 talk to Mr. Scott at the hospital?

14 A No, sir.

15 Q Did you talk to Ms. Lyles at the hospital?

16 A I did.

17 Q All right. And did you talk to Ms. Jones at the
18 hospital?

19 A I did.

20 Q Okay. And, according to your direct testimony, is
21 that -- you're, you're saying that Ms. Jones was
22 uncooperative, correct?

23 A Correct.

24 Q All right. And do you know if Ms. Jones was medically
25 cleared to leave the hospital?

1 A She was medically cleared according to -- she had CT
2 scans and everything done. I was not the one that
3 transported Ms. Jones from the hospital to the jail. That
4 was done by a supervisor on the day shift. So, she was
5 medically cleared or the jail wouldn't take her.

6 Q Did Ms. Jones have slurred speech?

7 A No.

8 Q Okay. You made a determination that everybody was
9 drinking?

10 A Yes, sir.

11 Q Okay. And Mr. Scott, in particular, did, did you
12 notice the smell of alcohol on his breath?

13 A Yes, sir.

14 Q All right. And was Mr. Jones slurring his speech a
15 little bit?

16 A Who?

17 Q I'm sorry. Mr. Scott, was he slurring his speech a
18 little bit?

19 A Not to me, no. I mean, you know, sometimes it would,
20 it would take a second or two before a question was
21 answered, but not like real slurred speech.

22 Q Did you offer Mr. Scott any field sobriety tests?

23 A No, sir.

24 Q All right. Did you offer him a breath test or
25 anything?

Glen Elder - Cross-examination
by Mr. Schultz

1 A No, sir.

2 Q Did you offer him a blood test?

3 A No, sir.

4 Q All right. But it was your opinion that Mr. Scott was
5 drinking, right?

6 A Yes, sir.

7 Q Could you even smell it on him?

8 A Correct.

9 Q Right.

10 Okay. Any open containers in the car or anything?

11 A No, sir.

12 Q Where did, where did Mr. Scott say that he was coming
13 from?

14 A They were coming from a club in Greenville.

15 Q A club in Greenville?

16 A Yes, sir.

17 Q Okay. And, again, it was your determination that
18 Mr. Scott was, was drinking?

19 A Yes, sir.

20 Q Okay. Did he admit to you how much he had to drink?

21 A No, sir.

22 Q Okay. Based upon your opinion and your skills meaning
23 that you've done thousands of these, these cases, do you
24 think that Mr., Mr. Scott was intoxicated?

25 A I think he would of been close to being intoxicated,

1 yes, sir.

2 Q Do you think he was impaired?

3 A That's what I mean. Close to being impaired. On a
4 breathalyzer, he would of been right at the limit if not
5 over.

6 Q If not over?

7 A Correct.

8 MR. SCHULTZ: All right. That's all I have, Your
9 Honor.

10 THE COURT: Do you have any redirect?

11 SOLICITOR MILLER: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY SOLICITOR MILLER:

14 Q Trooper, just briefly, you were able to ascertain who
15 the car belonged to in that case?

16 A Yes, sir.

17 Q And you stated that witnesses at the scene, on cross,
18 informed you where everyone was sitting in the vehicle.

19 What were those positions?

20 A Mr. Scott was -- Randall Scott was in the front
21 passenger seat. Ms. Kimberly Lyles stated that she was in
22 the back seat behind the driver.

23 Q Okay. And is there a reason you did not offer
24 Mr. Scott field sobriety tests?

25 A Because he stated he was a passenger.

Glen Elder - Recross examination
by Mr. Schultz

1 SOLICITOR MILLER: No further questions, Your Honor.

2 THE COURT: Recross.

3 RE CROSS EXAMINATION

4 BY MR. SCHULTZ:

5 Q I think it was just clear that you never saw anybody
6 inside the car that night when you arrived on scene, right?

7 A Correct.

8 Q All right. Thank you.

9 THE COURT: Okay. Did -- do you still need to proffer
10 a question into the record?

11 MR. SCHULTZ: I do, Your Honor.

12 THE COURT: Okay. All right. Ladies and gentlemen,
13 I'm gonna ask you to leave the courtroom for just a few
14 seconds. There's a matter of evidence that I need to take
15 up, and I can't do it in front of you cause it may or may
16 not be admissible. I don't know yet. I won't know until I
17 hear it. So, I'm gonna ask you to please go back to your
18 jury room, and I'll bring you back out in just a second.

19 okay.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. You may proffer your question,
23 sir.

24 MR. SCHULTZ: Yes, sir. Thank you, Your Honor.

25 PROFFER

1 BY MR. SCHULTZ:

2 And I don't, I don't want to confuse you here, officer.
3 I'm just trying to be as brief as possible here.

4 The -- did you, did you talk to Randall Scott that day?

5 A Yes, sir.

6 Q Okay. Did you, did you talk to him the day after the
7 accident?

8 A I did.

9 Q Okay. Did you call him or did he call you?

10 A He called me.

11 Q All right. And what did he say?

12 A Wanted to tell me that he was driving the car and not
13 Ms. Jones.

14 Q Okay. And why, why did he -- did he indicate why he
15 was doing that?

16 A I guess he was trying to take the rap for a friend is
17 the way that I perceived it.

18 Q Yeah, but did, did he indicate why he was doing that?

19 A No, sir.

20 Q Okay. But he, he wanted to clear everything up and
21 tell you that he was driving is it -- was that your
22 recollection of events?

23 A Right.

24 Q Okay. And, again, I don't want to be confused here.
25 He called you?

Glen Elder - Proffer
by Mr. Schultz

1 A That's correct.

2 Q Okay. All right. And you gave -- I'm assuming you
3 gave him your cell phone number or dispatch number?

4 A No, he called, he called the patrol and they give me
5 his number and I returned his call.

6 Q And -- okay. So, you returned his calls?

7 A Correct.

8 Q And then he just said I was the driver?

9 A Right.

10 Q Okay. And that was in 24-hours of the actual accident
11 happening, right?

12 A Correct.

13 Q Okay.

14 THE COURT: Okay. All right. I don't have any issue
15 with the fact that there was a call, and that he called him
16 and the circumstances surrounding the call. But I, but I --
17 unless you can articulate it to me with specificity, I don't
18 know how the statement itself is not hearsay. It's not a
19 party opponent. Isn't present sense impression. And he is
20 in the courtroom to say what he said. And I assume you
21 intend to call him.

22 MR. SCHULTZ: I'm gonna call him.

23 THE COURT: Okay.

24 MR. SCHULTZ: Yeah.

25 THE COURT: So, I -- as to the statement, I do think

1 that's hearsay unless, of course, you can tell me some
2 exception, and I just can't think of one.

3 MR. SCHULTZ: Well, I, I -- and, Judge, to be truthful,
4 I can't think of an exception right now. However, if I
5 present Mr. Scott later on, then I recall Trooper Elder, and
6 then I'm thinking it may come in not under hearsay.

7 THE COURT: Well, I mean I think probably the more
8 efficient way for you to handle it is to ask him those
9 questions about the phone call --

10 MR. SCHULTZ: All right.

11 THE COURT: -- so it's clear that he received the phone
12 call, and then you can fill it out with testimony from, from
13 Mr. Scott. Then you don't have to start and stop.

14 MR. SCHULTZ: Yes, sir.

15 THE COURT: I mean I'm, I'm not -- far be it from me to
16 tell you how to try a case. I got fired from practicing law
17 cause I couldn't do it very well. So -- but that's just
18 what I think.

19 Okay?

20 MR. SCHULTZ: All right. Thank you, Judge.

21 THE COURT: Okay. Do you want -- do you want to, to
22 ask him that line of questioning with the exception of the
23 statement with the jury coming back in?

24 MR. SCHULTZ: That's fine.

25 THE COURT: Okay. And, of course, Mr. Miller, I'll

Glen Elder - Proffer
by Mr. Schultz

1 give you the opportunity to follow-up on that line of
2 questioning as well.

3 MR. SCHULTZ: I, I guess I have one last thing.

4 THE COURT: Sure.

5 MR. SCHULTZ: Not about his testimony. Well, I guess
6 it is about his testimony, but does the State intend to
7 call -- to present the video?

8 SOLICITOR MILLER: Not at this time.

9 THE COURT: Okay. All right. Did you have something
10 you need to put on the record, Mr. Miller?

11 SOLICITOR MILLER: Your Honor, I know it is incredibly
12 untimely, but the State intended to move to sequester the
13 witnesses at the beginning of the trial. I'm sure that --
14 unless defense objects to that.

15 THE COURT: I think the horse might be out of the barn
16 on that one. I think. Okay.

17 SOLICITOR MILLER: All right, sir.

18 THE COURT: Okay. All right. Well, will you bring the
19 jury back in please?

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 THE COURT: All right. Mr. Schultz.

23 MR. SCHULTZ: Thank you, Your Honor.

24 RECROSS EXAMINATION

25 BY MR. SCHULTZ:

1 Q Trooper, did you talk to anybody about this accident
2 after -- the day after this happened?

3 A Yes, sir.

4 Q All right. Who did you talk to?

5 A I talked to Mr. Scott.

6 Q Mr. Scott?

7 A Right.

8 Q Did you talk to him in person or did you talk to him
9 over the phone?

10 A Over the phone.

11 Q Over the phone.

12 Did he call you or did you, you call him?

13 A He called the Highway Patrol dispatch and left his name
14 and number, and it was emailed to me by dispatch and then I
15 returned his call.

16 Q All right. That's all I have. Thank you.

17 THE COURT: Okay. Mr. Miller, do you have any
18 questions within the scope of that examination?

19 SOLICITOR MILLER: No, Your Honor.

20 THE COURT: Okay. Good.

21 All right. You may step down. Thank you, sir. I
22 appreciate you being here.

23 THE WITNESS: Thank you.

24 THE COURT: Okay.

25 SOLICITOR MILLER: Your Honor, at this time the State

Randall Scott - Direct examination
by Solicitor Miller

1 would call Mr. Randall Scott.

2 THE COURT: Okay.

3 RANDALL SCOTT, being first duly
4 sworn, testified as follows:

5 THE CLERK: Thank you. You may be seated.

6 (Witness complies.)

7 DIRECT EXAMINATION

8 BY SOLICITOR MILLER:

9 Q Mr. Scott, could you state your full name for the jury
10 please?

11 A Randall Lamar Scott.

12 Q And do you live in Spartanburg?

13 A I do.

14 Q Okay. How do you know Ms. Ranata Jones?

15 A She's my cousin.

16 Q And how do you know Ms. Kimberly Lyles or Hughes-Lyles,
17 Lyles-Hughes?

18 A She's a friend.

19 Q Are y'all related in anyway?

20 A No, sir.

21 Q Okay. Do you own a vehicle, Mr. Scott?

22 A No, sir.

23 Q Were you in a vehicle that belonged to Ms. Ranata Jones
24 on November 19th of last year?

25 A I was.

1 Q And who else was in that vehicle?

2 A Me, Ms. Jones, and Kimberly Hughes.

3 Q Okay. And where were you coming from?

4 A Coming from Greenville.

5 Q And where were you going?

6 A Back home.

7 Q And what were y'all doing in Greenville?

8 A We was just out having a get together with friends.

9 Q Okay. Did y'all end up getting in a wreck?

10 A We did.

11 Q Did another vehicle cut you off or --?

12 A Yes, sir.

13 Q And how did that happen?

14 A As I was coming down the exit ramp on I guess it's like
15 a little, little mom and pop store, Arab Store, gas station,
16 I stopped and got two bottles of water and a bag of peanuts.
17 That's exactly what Shad say she wanted. And, as I
18 proceeded to come off the exit ramp, it was a car coming
19 down the highway, and they slowed down and blinked their
20 lights as they was letting me come up, get on to the
21 highway, and I accelerated to get onto the highway. But as
22 I got close to the exit ramp, they sped up to where it was
23 either hit a guardrail or go off in the ditch. So, I hit
24 the brakes and locked it down and ran into the guardrail.

25 Q Okay. Did you make a call to 9-1-1 that night?

1 A I did.

2 Q And where was everyone else seated in the vehicle?

3 A Ms. Jones on the passenger side, and Ms. Kimberly
4 Hughes was in the back.

5 Q Okay. And what were they doing?

6 A Asleep.

7 Q Okay. And who wanted peanuts?

8 A Ms. Jones.

9 Q Okay. When did she tell you that?

10 A She told me that on the way down the highway --

11 Q Okay.

12 A -- as soon as she got in the car.

13 Q Were they still asleep when you made that 9-1-1 call?

14 A They were.

15 Q Do you remember speaking with Trooper Elder that night?

16 A I do.

17 Q Do you remember even your conversation with him?

18 A Yeah, somewhat.

19 Q Do you remember telling him that she was driving and a
20 black Honda Accord wasn't letting you get on the highway?

21 A Somewhat like that I was.

22 Q Do you remember telling Trooper Elder you had said cuz,
23 slow down, slow down just prior to the accident?

24 A Yeah.

25 Q And who did you tell him you addressed that to?

1 A I addressed that to him.

2 Q Yeah.

3 A I was---

4 Q But who did you tell cuz, slow down, slow down to?

5 A I was talking about Ms. Jones, but she wasn't the
6 driver. I was intoxicated.

7 Q And do you remember telling Trooper Elder that Ms.
8 Hughes was in the back seat?

9 A Yes, she was.

10 Q Okay. And why did you tell him those things?

11 A Shit, I don't know. I was, I was already intoxicated
12 and they was just nervous, shook up.

13 Q Okay. And how soon after the accident did you tell him
14 those things?

15 A I told him that the next day when I called him and told
16 him that I was the driver.

17 Q Did you see Ms. Ranata Jones consume alcohol that
18 evening?

19 A I did.

20 Q About how much?

21 A It wasn't that much.

22 Q Okay. would you say she was intoxicated?

23 A I was intoxicated. I wouldn't say she was like
24 actually like sloppy drunk. No, she wasn't.

25 Q So, your testimony that said you had drove her car?

1 A I did.

2 Q And you were intoxicated?

3 A I was. I had been drinking.

4 Q And she was not?

5 A But she was not the driver.

6 Q Was she intoxicated?

7 A I mean she had been drinking too, but I feel like I
8 was -- I had -- I know what I had to drink. I had a lot to
9 drink.

10 Q Do you remember telling Trooper Elder that Ms. Jones
11 you had called to pick her up from where your -- her to come
12 pick you up?

13 A Yes.

14 Q And why did you tell him that?

15 A That was before we even went out that night.

16 Q That was before.

17 You didn't say that you called her to pick you up for a
18 ride home?

19 A No, she came and got me before we went out.

20 SOLICITOR MILLER: Okay. Your Honor, at this point,
21 the State would request permission to publish Exhibit 1
22 that's already been admitted.

23 THE COURT: All right. Is that the video?

24 SOLICITOR MILLER: Yes, Your Honor.

25 THE COURT: Okay. Issues to that, sir?

1 MR. SCHULTZ: Not with the publication.

2 THE COURT: Okay. Good enough. You may do so.

3 (WHEREUPON, a portion of State's Exhibit No. 1 was
4 played for the jury at this time.)

5 Q Mr. Scott, did you hear your own voice on the tape?

6 A Yes, sir, I did.

7 Q Did you understand what you were saying?

8 A My word's a little slurry. Yeah, I can.

9 Q Were you able to call a wrecker service?

10 A Yeah.

11 Q Were you able to get all the necessary paperwork out of
12 the vehicle?

13 A I had a hard time finding it, but I got it.

14 Q Did you hear Ms. Jones' voice?

15 A Yes, I did.

16 Q Did you hear her attempt to give a phone number?

17 A Yes, she tried.

18 Q And what happened?

19 A She just kept hollering her neck was hurting.

20 Q And it's your testimony today that you were
21 intoxicated?

22 A I was.

23 Q And your testimony that Ms. Jones was not?

24 A She wasn't intoxicated like I was.

25 SOLICITOR MILLER: No further questions right now, Your

Randall Scott - Cross-examination
by Mr. Schultz

1 Honor.

2 THE COURT: Okay. Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. SCHULTZ:

5 Q Mr. Scott, how are you today?

6 A I'm doing all right.

7 Q Good.

8 You were present on November 19th, 2016, right?

9 A Yes, sir.

10 Q Okay. And you know my client, Ranata Jones, right?

11 A Yes, sir, I do.

12 Q Okay. And you were the driver that night, right?

13 A Yes, sir, I was.

14 Q Okay. You heard what you said to the -- do you
15 remember what you said to the state trooper there?

16 A Yeah, I seen the video.

17 Q Okay. One of the first words you said to the trooper
18 was she was the driver, right?

19 A Yeah.

20 Q Okay. But you were the driver, right?

21 A Yes, sir, I was.

22 Q Okay. Why did you lie?

23 A Drunk. Scared.

24 Q You been in trouble before?

25 A Yeah, I have.

1 Q Been to prison?

2 A Yes, sir.

3 Q For what?

4 A Probation violation. No, it wasn't probation. Yeah,
5 probation violation.

6 Q Okay. So, you don't want to go back, did you?

7 A No, sir.

8 Q So, you lied, right?

9 A Yes, I did.

10 Q All right. Did you call the trooper the next, the next
11 day?

12 A Yes, sir, I did.

13 Q Anybody tell you what to say?

14 A No, sir.

15 Q All right. You did it cause you were trying to be
16 honest, right?

17 A Yes, sir, I was sober.

18 Q Sir?

19 A I was sober then.

20 Q You were sober?

21 A Yeah.

22 Q Of the three of you in the car that night, who was the
23 most intoxicated?

24 A I was.

25 Q You?

- 1 A (Witness nods affirmatively.)
- 2 Q You weren't charged with this, right?
- 3 A Yes, sir.
- 4 Q You were or no?
- 5 A I wasn't charged ever --
- 6 Q Okay.
- 7 A -- about the accident.
- 8 Q You were not charged with the accident, right?
- 9 A No, I was not.
- 10 Q Okay. But she, she was charged with DUI, right?
- 11 A Yes, sir.
- 12 Q Okay. But you're the one that should of been charged
- 13 with driving under the influence?
- 14 A Yes, sir.
- 15 Q Cause you were the driver?
- 16 A Right.
- 17 Q And you were under the influence, correct?
- 18 A Yes, sir.
- 19 Q Is this the truth?
- 20 A Yes, it is.
- 21 Q Anybody tell you what to say?
- 22 A No, sir.
- 23 Q You doing it for any reason---
- 24 A No, sir.
- 25 Q ---other than it's the truth?

1 A That's it. Just the truth. I'm sober.

2 Q Thank you.

3 THE COURT: Okay. Redirect, sir?

4 SOLICITOR MILLER: No further questions, Your Honor.

5 THE COURT: Okay. Thank you, sir. You may step down.

6 I appreciate you being here.

7 All right. You may call your next witness, sir.

8 SOLICITOR MILLER: Your Honor, at this point the State
9 would rest.

10 THE COURT: Okay. All right. Do you have any motions
11 that you need to make, sir?

12 MR. SCHULTZ: Outside the presence of the jury, yes.

13 THE COURT: Sure. I didn't, I didn't expect you to
14 articulate. I just wanted to make sure that you had them.

15 MR. SCHULTZ: Yes, sir, thank you.

16 THE COURT: All right. Ladies and gentlemen, the State
17 has introduced all the evidence that it intends to
18 introduce, and they have rested. So, at this point, it's
19 incumbent upon me to, to listen to motions from the parties,
20 and I must do that outside of your presence. So, take a
21 short break. Please don't discuss the case, and we'll come
22 in, and we'll proceed with our -- proceed in the matter when
23 we're done.

24 Okay. Thank you.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: Yes, sir.

3 MR. SCHULTZ: Thank you, Your Honor.

4 At this time, I would move for a directed verdict on
5 the driving under the influence. I don't -- do not believe
6 the State, even in the light most, light most favorable to
7 the State, has met their burden of proof in this case. I do
8 not believe, as a matter of law, and also in the light most
9 favorable to the State, that they have met their burden
10 because of the -- this is, in fact, they haven't proved that
11 there was driving by my client.

12 The State offered two witnesses here. They offered
13 Trooper Elder, who testified that he arrived before he could
14 see anybody in the, in the car. The State also, also
15 presented a witness that said that he was the one that drove
16 under oath. Not my witness. It's the State's witness. So,
17 I would move for a DV.

18 Thank you.

19 THE COURT: All right. Mr. Miller.

20 SOLICITOR MILLER: Your Honor, that's why we believe
21 that there is enough for a jury to determine whether she
22 was, in fact, the driver in this case. There was the wreck,
23 the refusal, the odor of alcohol, and hear her voice slurred
24 on the video. Also that, on the evening, the witness did
25 give an account of who was the driver, a detailed account of

1 who was the driver, who was sitting where. That seems to
2 fit with everything else in the situation. I believe that
3 his differing testimony today, and its contradictory nature,
4 should not lead to a directed verdict in this case, Your
5 Honor, at this point.

6 THE COURT: Okay. The standard for a review of, of
7 motion of directed verdict is, of course, to view the
8 evidence in the light most favorable to the nonmoving party
9 in determining whether there is any evidence in the record
10 upon which the State, the State could meet its burden of
11 proof.

12 In this instance, there is contradictory evidence as to
13 who was driving, but it exists, and I think that is
14 quintessentially a jury determination to determine who can
15 be believed and who, who should not be believed.

16 So, on that basis, I respectfully deny the motion.

17 MR. SCHULTZ: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Do you intend to, to call witnesses to the stand, sir?

20 MR. SCHULTZ: Your Honor, if, if I could possibly have
21 a recess?

22 THE COURT: Sure.

23 MR. SCHULTZ: About five minutes.

24 THE COURT: Yeah, that's fine. We'll do that.

25 We'll take a recess and then we'll come back in and let

1 me know what you want to do.

2 MR. SCHULTZ: All right. Thank you, Judge.

3 THE COURT: Yes, sir.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: Okay. Mr. Schultz, is the defendant gonna
6 present any evidence, sir?

7 MR. SCHULTZ: I'm not gonna call my, my client, Your
8 Honor.

9 THE COURT: Okay.

10 MR. SCHULTZ: I'm not sure if the Court wants to go
11 through the colloquy---

12 THE COURT: Yeah, I'll do that.

13 MR. SCHULTZ: ---with my client or not.

14 THE COURT: I'll do that.

15 Okay. How many witnesses do you intend to call?

16 MR. SCHULTZ: I'm not gonna call anybody.

17 THE COURT: Nobody?

18 MR. SCHULTZ: No, sir.

19 THE COURT: Okay. All right. Good enough.

20 All right. Ms. Jones, would you please stand.

21 (Defendant complies.)

22 THE COURT: Raise your right-hand please.

23 (WHEREUPON, the Defendant was placed under oath at this
24 time.)

25 THE COURT: Okay. You may sit down.

1 (Defendant complies.)

2 THE COURT: Ms. Jones, as you heard, I was just asking
3 if you were gonna present any evidence, evidence. You
4 certainly don't have to present any evidence because, as
5 I've already told the jury any number of times, you don't
6 have the burden of proof. You don't have to say or do or
7 prove anything.

8 The State has the burden of proof, and, in that vein,
9 it's also true that you don't have to testify if you don't
10 want to. You have a right to remain silent, and that is a
11 very important and sacred right in our society, and it's so
12 sacred, in fact, that, if you elect not to testify, I'll
13 tell the jury that they can't take it against you, and
14 it's -- in fact, they can't even discuss it in their jury
15 room.

16 But you understand, of course, if you elect not to
17 testify, then you won't have the opportunity to tell the
18 jury anything. You won't have the opportunity to tell them
19 your side of the story, and that's a risk that you assume
20 when you don't testify.

21 You also have, of course, a corresponding right to
22 testify if you want to. But, if you do testify, then you
23 would be subject to cross-examination, and, during
24 cross-examination, the State has the ability to ask you a
25 very wide range of questions in an attempt to try to throw

1 your credibility into question. And I don't know if you
2 have any type of prior record at all other than DUI
3 convictions, but they can ask you questions related to your
4 prior record if it's admissible under the rules. So, if you
5 testify, you also assume certain risks as well.

6 Now, your attorney, Mr. Schultz, can advise you one way
7 or the other. Can tell you what his opinion is. You can
8 talk to members of your family. You can talk to friends and
9 they may advise you one way or the other and tell you what
10 they think you should do. But understand that, ultimately,
11 that is your decision and your decision alone. Nobody can
12 make it for you. So, it is entirely up to you.

13 Now, Ms. Jones, do you understand your right to remain
14 silent and your corresponding right to testify?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Do you have any questions that you'd like
17 to ask me or Mr. Schultz about that, ma'am?

18 THE DEFENDANT: No.

19 THE COURT: Okay. And have you made your decision,
20 ma'am?

21 THE DEFENDANT: Yes.

22 THE COURT: And is it your decision?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: Okay. And is it my understanding that you
25 will not testify?

1 Is that correct?

2 THE DEFENDANT: That's correct.

3 THE COURT: Okay. All right. Good enough. Thank you,
4 Ms. Jones. I appreciate that.

5 MR. SCHULTZ: Thank you, Your Honor.

6 THE COURT: Okay. So, do you rest at this point?

7 MR. SCHULTZ: I rest.

8 THE COURT: Okay. Are you ready -- y'all ready to go
9 to closing argument?

10 MR. SCHULTZ: Yes, sir.

11 THE COURT: Okay. If I'm -- y'all have to correct me
12 if I'm wrong, but I don't think the defense put any evidence
13 into the record.

14 Am I correct?

15 Is that your understanding, Mr. Miller?

16 SOLICITOR MILLER: That's my understanding, Your Honor.

17 THE COURT: Okay. So, the order of closing will be,
18 Mr. Miller, you will open and then, Mr. Schultz, you have
19 the opportunity to close, and I'll---

20 MR. SCHULTZ: And that's applicable in the Beaty -- so,
21 the Beaty decision doesn't change that?

22 THE COURT: It does not.

23 MR. SCHULTZ: All right.

24 THE COURT: It does not change that at all.
25 okay?

1 MR. SCHULTZ: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 Okay. Y'all ready?

4 SOLICITOR MILLER: I believe so, Your Honor.

5 THE COURT: Okay. Just so you know, with respect to
6 charge, I know this is, this is a DUI. So, you've probably
7 heard the charge a million times. It will be a very simple
8 charge. There won't be anything in particular, but -- and
9 the reasonable doubt definition that I will give is the
10 firmly convinced language as opposed to the type of doubt
11 that would cause a reasonable person to hesitate to act. I
12 tell you that so that you can tailor your arguments in that
13 vein.

14 Any other specific requests for charge?

15 SOLICITOR MILLER: Nothing with charges, Your Honor.

16 THE COURT: Okay. And so---

17 MR. SCHULTZ: Nothing, Your Honor.

18 THE COURT: Okay. And so you know, in this case, I'm
19 not gonna charge the implied consent and all of those
20 gradations because I don't think that's at issue in this
21 case.

22 Are we all on the same sheet of music in that regard?

23 MR. SCHULTZ: Yes, sir.

24 SOLICITOR MILLER: Yes, Your Honor.

25 THE COURT: Okay. All right. Mr. Miller, is there

1 something else you need to put on the record, sir?

2 SOLICITOR MILLER: May we approach?

3 THE COURT: Sure. Yeah.

4 (WHEREUPON, a bench conference was held at this time.)

5 THE COURT: Okay. Can you bring the jury in please?

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: Okay. Ladies and gentlemen, the State has
9 rested and the defense has elected not to introduce any
10 evidence into the record.

11 Now, as I've told you, the State, excuse me, the
12 defense is not required to place any evidence into the
13 record, and the defendant does not have to say, do, or prove
14 anything. Again, as I've told you, the defendant is
15 presumed innocent until 12 jurors determine that the State
16 has met its burden of proof.

17 Now, understand that the defendant has elected not to
18 testify. It's important for me to let you know that that is
19 an important Constitutional right that we all enjoy. That
20 is a right to remain silent, which means she is not
21 compelled to say anything and to testify in this case.

22 Now, because that's an important Constitutional right,
23 you can not hold it against her that she has elected not to
24 offer testimony in this case. As a matter of fact, that is
25 such an important right that you can't even discuss it in

1 your jury deliberations. It's not relevant in any way,
2 shape, or form to your ultimate determination because what
3 you are to determine is whether the State has met its burden
4 of proof.

5 So, ladies and gentlemen, given that the defense will
6 not enter -- offer any evidence into the record, then we
7 will proceed to closing arguments in this case. The State
8 will begin, and then the defense will have the opportunity
9 to argue to you.

10 Now, remember, closing arguments are not evidence
11 because you've already heard all the evidence in the case.
12 This is simply advocacy and argument in an attempt to
13 persuade you to one side or the other.

14 So, ladies and gentlemen, having said that, I will turn
15 it over to Mr. Miller for his closing argument.

16 SOLICITOR MILLER: Thank you, Your Honor.

17 May it please the Court, Mr. Schultz.

18 Ladies and gentlemen, I want to thank you for your
19 attention to this case. We got through it a little quicker
20 hopefully than we expected, but I want you to think about
21 what happened that night.

22 It's clear, in that vehicle, all three parties were
23 intoxicated. They'd been out drinking, partying, whatever
24 they want to do in Greenville, and were on their way back to
25 Spartanburg. I also submit it's clear the defendant was

1 driving that night, and they got in a wreck in Spartanburg
2 County right on 85 at the 67-mile marker.

3 You saw what happened at the scene. You heard from the
4 trooper. You saw the video. You saw what Mr. Scott said
5 that night. You saw what happened at the scene, and no one
6 contested it at the scene that she was the driver.

7 Now he comes in here and says that he's the driver.
8 Had a little time to think about it, get his story. You
9 heard his first sense reaction immediately after the events.
10 He said Cuz, slow down, slow down. We hit the guardrail.
11 She was driving.

12 Now, Mr. Scott came in here and claimed that,
13 throughout this incident, the passenger in the vehicle --
14 two passengers in the vehicle, that he claims the defendant
15 and Ms. Hughes was in the back seat, were both asleep. They
16 were asleep the whole time. They were asleep during the
17 9-1-1 call. They apparently were asleep when he stopped for
18 peanuts that one of them wanted. I don't know who asked for
19 that, but they were asleep. Also asleep during the 9-1-1
20 call. They apparently slept through it in hitting the
21 guardrail and the car spinning around.

22 Ladies and gentlemen, that doesn't really make a whole
23 lot of sense. What does make sense is what he said that
24 night. You saw him. You saw his demeanor up here. You saw
25 how he testified to you.

1 Now, I urge you, as the Judge is gonna instruct you,
2 you are the judges of credibility of the witnesses when they
3 come in here to testify.

4 There were three people in that car. One of the three
5 was driving, and it's clear that all three were intoxicated,
6 and they got in the wreck. Trooper Elder told you it was
7 clear she was intoxicated. She was read her Implied Consent
8 Rights. That will be back with you as one of our exhibits.
9 You can take a look at that, and look at what was read to
10 her, what was told to her before she took a test, refused to
11 take that test. That refusal would be used against her
12 today, and you know that her license would be suspended as a
13 result of that refusal.

14 Once again, I want you to think about judging the
15 credibility of witnesses, who you believe, and when do you
16 believe them. Part of that is the situation.

17 Once again, he was just in an accident. Not a whole
18 lot of time to think. Gets out of the car and he gives a
19 perfectly detailed account of what happened that makes
20 perfect sense, and he comes in later and tells a story that,
21 ladies and gentlemen, I submit just doesn't make sense, and
22 one of those two has to be correct.

23 I encourage you, if you would like, to take another
24 look at that video. It's in evidence. You can come out
25 here. You can watch it. You can hear it again. Hear

1 everything.

2 I submit to you that we have proven, beyond a
3 reasonable doubt, that Ms. Jones, on the evening in
4 question, was driving a vehicle and was intoxicated, and I'm
5 confident that you will return a verdict of guilty.

6 You've heard also that evening Mr. Jones voice or Ms.,
7 excuse me, Ms. Jones voice on that evening unable to recall
8 her own phone number sitting on the sidewalk. You also
9 heard Mr. Scott speaking up there, and he said he was too
10 intoxicated. He was driving. So, he was scared of getting
11 a DUI. You heard him testify today.

12 I submit to you he sounds the same. His voice sounds
13 the same if you would like to listen to his voice on the
14 video again.

15 Based on all of this, just take into account all of it,
16 I believe that the State has proven, beyond a reasonable
17 doubt, that Ms. Jones was driving that vehicle and was
18 intoxicated and was to the extent that her ability to drive
19 that vehicle was materially and appreciably impaired.

20 Once again, I thank you and I'll sit down.

21 THE COURT: Yes, Mr. Schultz.

22 MR. SCHULTZ: Thank you.

23 May it please the Court.

24 I, I agree with what the solicitor just said there that
25 somebody was materially and appreciably impaired and was

1 driving the car that night, but it was not my client. It
2 wasn't Ranata. It was him sitting back there, Randall
3 Scott.

4 He testified truthfully here today just a couple
5 minutes ago. He had nothing to gain, nothing to lose by
6 testifying. He told you, and you, and you, and everybody
7 that he was the one that was driving.

8 Now, when he was there on the video, you're gonna --
9 hopefully you do go back and look at that video again, and I
10 think -- and oh I -- and go back and look at this. But my
11 recollection of what the video said or what the video
12 showed, at least, was Trooper Elder, he's right over there,
13 he testified that that's his job as -- that's what he did
14 for work. Now he works elsewhere, but he, actually, I, I
15 believe, be my, my opinion, that he had a little doubt as to
16 whether Ms. Jones, my client, was the driver that night
17 because he said the guy that says he's the passenger says
18 dot, dot, dot, whatever.

19 Okay. You can -- it's pretty clear on the video that
20 the trooper says the guy that says he's the passenger. So,
21 I submit, and I believe, my opinion, and I think that maybe,
22 if you look at the video, I think you will probably share
23 this opinion that the trooper had doubts about him driving
24 as well or her driving. Simple fact of the matter is that
25 he's not sure who was driving the car that night, and I

1 would submit that that one fact alone would be reasonable
2 doubt.

3 Judge Stilwell, in a couple minutes, is gonna tell you
4 what reasonable doubt means, and I told you this about a
5 couple hours ago about what reasonable doubt means.
6 Reasonable doubt is some kind of doubt that causes a
7 reasonable person some hesitation to act, and you all are
8 reasonable folks here. That's why we picked you. That's
9 why you're in the jury pool in the first place, and you must
10 be convinced of my client's guilt beyond a reasonable doubt.

11 There, there can't be any doubt in your mind. In fact,
12 Judge Stilwell, in a couple minutes there, is gonna tell you
13 two words that I want you to remember when you go back there
14 for -- and, and deliberate. You must be firmly convinced,
15 firmly convinced, firmly convinced of Ranata, Ranata Jones,
16 that she was impaired, and she was driving. I don't think
17 the State has done it, and I would submit to you that they
18 have not.

19 Now, Mr. Miller just got up there a couple minutes ago
20 and said that Mr. Scott has had some time to think about
21 this. well, he did say he had some time to think about it,
22 and you know what?

23 He accepted responsibility and some people accept
24 responsibility for something they did months and months and
25 months later.

1 well, I think the evidence is pretty clear that Mr.
2 Scott, Mr. Scott called the trooper the next day. Not the
3 next week. Not the next month. Not here in Court in August
4 of 2017. He called the trooper. Said he was the driver.

5 He's being honest. This is a man that knows the
6 consequences of doing something wrong and then going to
7 prison because you know what?

8 He admitted, just a couple minutes ago to me, that he's
9 been to prison before. He's had -- he does have a record,
10 and he didn't want to get in trouble that night. He, he was
11 drunk, he panicked, and he was impaired, and he told a lie.

12 Now, back in November 2016, his hand was not on a Bible
13 swearing to tell the truth, the whole truth, and nothing but
14 the truth. Today it was and he knows the consequences of
15 what could happen. But, today, he told the truth, and I
16 think the day after that accident he told the truth too.

17 Mr. Miller is being corrected. It all comes down to
18 credibility. So, credibility is the main thing in this
19 whole thing.

20 who's more credible?

21 Somebody that claims -- somebody that comes in here,
22 swears on the Bible, that knows the consequences of his
23 actions, and still tells the truth because the alternative
24 that we have is that we just don't know what happened, and
25 that, I would consent, is the crux of this case. That can

1 not leave you firmly convinced.

2 You have to be firmly convinced of guilt. If you're
3 not firmly convinced, then you must acquit. If you're not
4 firmly convinced, you must acquit. That's what the Judge,
5 in a couple minutes, is gonna tell you. That's the most
6 important part of our process.

7 Thank you, again, for your time.

8 THE COURT: Okay. Ladies and gentlemen, where is Ms.
9 Atkins?

10 Yes, sir. No, no, no, leave it there. I'm coming
11 down.

12 Ms. Atkins, you're gonna be the forelady of the jury.

13 Okay. Congratulations. I know that makes you happy.

14 On every jury we have to have a foreperson, and the,
15 the duties of the foreperson of a jury is to ensure that
16 everyone on a jury has a voice during deliberations. Every
17 time 12 people who don't know each other otherwise come
18 together, they're gonna have some people who are louder than
19 others. Some are more willing to express their opinions,
20 and some who are more reticent or reluctant to express their
21 opinion. The foreperson's job is to make sure that everyone
22 has the opportunity to have a voice during your
23 deliberations.

24 So, I can't tell you, beyond that, how to conduct your
25 deliberations because I've never been on a jury and I'm not

1 allowed to go into your jury room. But each individual jury
2 comes to its own method of deliberations.

3 So, again, Ms. Atkins, you just make sure that everyone
4 has the opportunity to be heard. Beyond that, you can take
5 whatever type of lead that you think is appropriate or
6 efficient or, or, or necessary. Also, if there are any
7 questions that you have during deliberation, you can simply
8 write those down and hand them to the bailiff to give to me,
9 and I'll see if I can answer them or not.

10 A lot of times, in jury trials, juries have questions
11 of me that I can't answer. I've told you I can't have an
12 opinion about the facts. Sometimes I get questions about
13 what the evidence said and I can't say that. So, if you get
14 a curt response from me, it's not because I don't want to
15 answer your question. It's because I just can't answer the
16 question that you posed.

17 Okay. All right. Ladies and gentlemen, we started
18 this case and you took an -- each of you took an oath to
19 truly and verily try the case in accordance with the
20 evidence and in accordance with the law. Your job is to be
21 the triers of the facts. So, you'll determine from the
22 facts what or, excuse me, from the evidence what the facts
23 are.

24 Now, my job in this case, as I've told you, is the
25 judge of the law, and it's my job to tell you what the law

1 is as it applies to the evidence that's been presented in
2 this case.

3 Now, when you took your oath, you, you swore to accept
4 the law as I give it to you, and you must accept it as I
5 give it to you. So, if you come into this courtroom with
6 any prior opinions about what the law is or about what it
7 should be, disregard that. You have to follow the law as I
8 give it to you in this case.

9 Now, ladies and gentlemen, you will, of course, analyze
10 the evidence and determine whether the State has met its
11 burden of proof. I remind you the defendant is presumed
12 innocent. The defendant is presumed or retains that
13 presumption of innocence until 12 deliberating jurors
14 determine that the State has met its burden of proving each
15 and every element of the offense beyond a reasonable doubt.

16 Now, we've banded about this term reasonable doubt, but
17 I think it's -- it will be instructive for me to define that
18 to you, and proof beyond a reasonable doubt is that proof
19 which leaves you firmly convinced of the defendant's guilt.

20 Now, ladies and gentlemen, there's nothing on the face
21 of this earth that can be known with absolute certainty, and
22 the law does not require that the State prove its case
23 beyond any possible doubt. However, if, after your review
24 of the evidence, you're firmly convinced of the defendant's
25 guilt, under your oath, you would find her guilty. However,

1 ladies and gentlemen, if, after your review of the evidence,
2 you believe there's a real possibility that she is not
3 guilty, then, under your oath, you would find her not
4 guilty.

5 Now, ladies and gentlemen, you'll determine that,
6 again, by looking at the evidence and determining the weight
7 and the value of the evidence. You'll look at the
8 credibility of witnesses, and determine who you should
9 believe and who you shouldn't believe.

10 Now, you'll use your common sense as a tool for
11 determining that. You know that, through your own common
12 sense, that you have clues and signals as to whether
13 somebody's telling the truth or not. You can look at them,
14 hear what they have to say, see how they say it, and how
15 they express themselves. Look at their facial expressions,
16 their body language. You can determine whether they have
17 something to gain or something to lose as a consequence of
18 their testimony. And, from all that, you'll determine
19 whether a witness is believable or credible.

20 You'll also -- and you'll take the witnesses testimony
21 and you'll decide that some of it may be believable and some
22 of it may just be discounted and discarded all together.
23 That's entirely up to you.

24 Same thing with the weight of evidence. You decide
25 what has weight and what is important, and you take a

1 portion of a witnesses testimony and you decide if it's
2 important, and discount the rest, and you can take all of
3 it, and you can take none of it. It's entirely up to you
4 for you to decide what the facts are in the case.

5 Now, in any case that comes before the Court, in any
6 case, you're gonna have evidence which comes in in two
7 different categories. Two different categories of evidence.
8 You've probably heard of it before. You've got direct
9 evidence and you have circumstantial evidence.

10 Now, direct evidence is evidence which immediately
11 establishes the fact to be proven. Circumstantial evidence
12 is proof of a chain of facts, of collateral facts that, when
13 taken together, prove the main fact to be proven.

14 Now, that's kind of a sterile definition, but I'm gonna
15 give you an example that hopefully will help you understand
16 and appreciate it a little better. Let's say that, on a
17 January evening, you go to bed and you walk past your front
18 door or your front window and you see outside. There's no
19 precipitation on the ground. The next morning, when you get
20 up, you look out that very same window or door, and you see
21 a blanket of snow in your front yard or in front of your
22 house or apartment, and you know and you see in that snow
23 footprints which come to your door and then which lead away.

24 well, given that scenario, you've got direct evidence
25 that it snowed last night because the existence of the snow

1 is self-evident. You can pick the snow up. You can touch
2 it. You can feel it. It's there. But you have
3 circumstantial evidence that somebody, either early that
4 morning or late that night, walked to your door and then
5 walked away. You can't see the person. You can't talk to
6 them. You can't touch them but you know, as a consequence
7 of the timing of that snow falling and the existence of the
8 footprints in the snow, that somebody must have come and
9 then walked away. That's circumstantial evidence.

10 Now, ladies and gentlemen, the law does not prefer
11 direct evidence over circumstantial evidence or
12 circumstantial evidence over direct evidence. You decide
13 what value and what weight all of this evidence has
14 regardless of whether it's direct or circumstantial
15 evidence. Understand that, to the extent that the State
16 relies upon circumstantial evidence to prove its case, all
17 of those circumstances, when taken together, must prove the
18 guilt of the defendant beyond a reasonable doubt.

19 Now, ladies and gentlemen, I'm gonna make sure that I
20 haven't missed anything before I give you a precise
21 definition in this case.

22 (Pause.)

23 THE COURT: Okay. Ladies and gentlemen, as you know,
24 this is an indictment for driving under the influence. The
25 State must prove the case for driving under the influence

1 beyond a reasonable doubt, and the State must show that the
2 defendant was driving a motor vehicle while under the
3 influence of drugs or alcohol to the extent that her
4 faculties were materially and appreciably impaired.

5 Now, if you look at that, you break it down into three
6 parts essentially. They must prove driving beyond a
7 reasonable doubt. They must show under the influence of
8 drugs or alcohol to a reasonable doubt. And that they were
9 under the influence to the extent that the faculties to
10 drive were materially and appreciably impaired. All of that
11 must be proven beyond a reasonable doubt.

12 Now, understand, this is a case for driving under the
13 influence. It doesn't mean that the State has to prove that
14 the defendant was knee walking drunk, knee walking, commode
15 hugging, out of control drunk. All they have to prove is
16 that the defendant was driving while under the influence of
17 drugs or alcohol, and that her faculties were materially,
18 materially and appreciably impaired.

19 It's important to know that it's not against the law to
20 consume some portion of alcohol and then drive a motor
21 vehicle. Again, it must be demonstrated that the faculties
22 to drive were materially and appreciably impaired.

23 All right. Ladies and gentlemen, I have a verdict form
24 for you. Now, this is a very simple verdict form that I
25 have prepared, and you'll see this verdict form says State

1 of South Carolina versus Ranata Jones, verdict, and it
2 begins we, the jury, unanimously, by unanimous agreement,
3 find the defendant. Now, it's important to know that it
4 says by unanimous agreement. That's because your verdict
5 must be unanimous. It's got to be all 12 of you who agree
6 on the verdict. It can't be eleven to one or ten to two.
7 It must be a unanimous verdict.

8 Also, understand that your verdict must be based on the
9 evidence and the law that's been presented in this case. It
10 can't be based on sympathy or prejudice or any bias of any
11 sort. It has to be based on a reasonable calculation based
12 on the law and the evidence that's been presented.

13 So, ladies and gentlemen, you'll see, there are two
14 options, not guilty and guilt. Do not take from the order
15 in which I have presented these that I have a preference. I
16 do not. There are two choices. They got to go in some
17 order.

18 Okay. No subliminal messages here. Not guilty and
19 guilty.

20 Ms. Atkins, when the jury has reached a unanimous
21 verdict, then you would check either not guilty or guilty or
22 you can initial. Whatever you would prefer. Just so it's
23 clear to me what the choice is.

24 Okay. And then you would sign as foreperson of the
25 jury, and let the bailiff know that you have come to a, to a

1 unanimous verdict.

2 Now, I'm gonna send you back to your, your jury room.
3 Don't start your deliberations quite yet.

4 Okay. And the reason for that is I'm gonna give the
5 attorneys the opportunity to correct what I've -- something
6 I may have misstated or to give you additional charges on
7 something that I may have omitted. This is the opportunity
8 for them to give me some quality control so I will not have
9 neglected to tell you something or told you something wrong.

10 So, if I have omitted anything or I've neglected or if
11 I've said, misstated anything, I'll bring you back out and
12 I'll correct it and then I'll send you back out. But you'll
13 know it's time to start deliberating when the bailiff gives
14 you this verdict form, and then you can begin your
15 deliberations.

16 Now, also, you'll get a copy of the evidence in this
17 case. I think there was a video, a video that was entered
18 in this case. If you need -- I'm gonna give that to you.
19 If you need to look at it let me know and I'll try to get
20 a -- I'll try to get a computer so that you can watch it if
21 you want to. It's entirely up to you. I'm not suggesting
22 that you should or shouldn't cause it's entirely up to you.

23 Okay. So, if you will, please return to your jury
24 room, and I will be back with you in just a few moments.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. Exceptions to charge?

3 SOLICITOR MILLER: Not from the State, Your Honor.

4 MR. SCHULTZ: None from the defense.

5 THE COURT: Okay. Good enough.

6 well, gentlemen, what I'm gonna do is give the verdict
7 form to the bailiff, and hand this to the -- yeah, give that
8 to them, but please have the alternate, the alternate come
9 back to my chambers. Let them begin their deliberations and
10 bring him back to my chambers before they begin their
11 deliberations. I'm gonna dismiss the alternate from, from
12 chambers.

13 SOLICITOR MILLER: And inform the Court that the laptop
14 that we were using is actually a clean laptop.

15 THE COURT: Okay. All right. Good. If they request
16 it, then we'll send it back to them unless you want --
17 unless y'all just want to go ahead and give it to them so
18 they'll have it if they need it. It's up to y'all. You
19 decide. And, if you decide that, just give it to the
20 evidence when you hand this to them.

21 SOLICITOR MILLER: Thank you.

22 THE COURT: Anything else that we need before we go off
23 the record?

24 (No response.)

25 THE COURT: Okay. All right. Thank you, gentlemen. I

1 appreciate it. You tried an excellent case.

2 MR. SCHULTZ: Thank you, Your Honor.

3 (WHEREUPON, the jury began deliberations at 2:45PM and
4 returned with a question at 3:23PM.)

5 THE COURT: Okay. I received a note from the jury
6 asking to get a written copy of the testimony. I've written
7 in response, and, of course, counsel's had an opportunity to
8 look at the response. I'm gonna make this Court Exhibit No.
9 -- Court's Exhibit No. 1.

10 (WHEREUPON, the note from the jury was marked as
11 Court's Exhibit No. 1 and received into evidence at this
12 time.)

13 THE COURT: All right. Go ahead and bring the jury in
14 if you would please.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. Ladies and gentlemen, we got
18 your note. We're gonna cue it up and see if we can listen
19 to it from start to finish.

20 Okay. Play it.

21 (WHEREUPON, the testimony of Mr. Randall Scott was
22 played for the jury at this time.)

23 THE COURT: All right. Ladies and gentlemen, you can
24 return to your jury room.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. We'll be in recess.

3 (WHEREUPON, the jury began deliberations again at
4 3:41PM, and returned with a verdict at 4:02PM.)

5 THE COURT: All right. I've been advised that the
6 jury's reached a verdict.

7 State prepared to receive the verdict?

8 SOLICITOR MILLER: State's ready, Your Honor.

9 THE COURT: And the defense?

10 MR. SCHULTZ: Defense is ready.

11 THE COURT: Okay. Can you bring them in please?

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. Ms. Atkins, has the jury
15 reached a unanimous verdict?

16 THE FORELADY: We have.

17 THE COURT: Will you pass the verdict form to the
18 bailiff?

19 (The forelady complies.)

20 THE COURT: Thank you, sir.

21 All right. Can you publish the verdict please, ma'am?

22 THE CLERK: Yes, sir.

23 In the State of South Carolina, County of Spartanburg,
24 the State versus Ranata Jones, on Case Number
25 2017-GS-42-0979, we, the jury, unanimously -- we, the jury,

1 by unanimous agreement, find the defendant guilty. Signed
2 by the foreperson dated August the 9th of 2017.

3 Ladies and gentlemen of the jury, is this your verdict
4 and still your verdict, if so, please raise your
5 right-hands.

6 (WHEREUPON, all jurors raise their hands.)

7 THE CLERK: So say you all.

8 THE COURT: Okay. Thank you, ladies and gentlemen. I
9 do appreciate -- anything further for this jury from the
10 State?

11 SOLICITOR MILLER: Nothing from the State, Your Honor.

12 THE COURT: From the defense?

13 MR. SCHULTZ: No, sir.

14 THE COURT: Okay. Ladies and gentlemen, if you return
15 to your jury room, I'm gonna come in and dismiss you
16 informally, and then I'm gonna dismiss you for the entire
17 week, and take you off the rolls so you won't have to come
18 back for the remainder of the week. I just come back and
19 say thanks and give you the opportunity to ask me any
20 questions, just general questions, or make any comments that
21 you might have about jury service or this trial.

22 Okay. All right. Thank you.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right, counsel. I'm gonna go dismiss

1 the jury, and then we'll come back in and proceed to, to any
2 posttrial motions for sentencing.

3 okay?

4 MR. SCHULTZ: Thank you, Your Honor.

5 SOLICITOR MILLER: Thank you, Your Honor.

6 (Pause.)

7 THE COURT: Any posttrial motions from the State?

8 SOLICITOR MILLER: Nothing from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. SCHULTZ: None from the defense, Your Honor.

11 THE COURT: Okay. All right. Then please stand for
12 sentencing.

13 MR. SCHULTZ: Yes, sir.

14 THE COURT: Do we, do we have the sentence sheet?

15 MR. SCHULTZ: We're doing that right now.

16 THE COURT: Oh, okay. All right. Good enough.

17 (Pause.)

18 SOLICITOR MILLER: Your Honor, can I approach briefly?

19 THE COURT: Yes, sir, thank you.

20 All right. We'll proceed to sentencing.

21 Mr. Miller, I've, obviously, had the opportunity to
22 hear the facts in this case.

23 Is there anything else you needed to put on the record
24 as far as sentencing is concerned?

25 SOLICITOR MILLER: Your Honor, the State has no

1 recommendation for sentencing. Your Honor, the defendant
2 does have a prior record if you'd like to hear that for
3 sentencing.

4 THE COURT: I would please.

5 SOLICITOR MILLER: 1999, driving under suspension.

6 2000, simple possession of marijuana.

7 2001, giving false information and driving under
8 suspension.

9 A 2009 trafficking marijuana ten to a hundred pounds.

10 2008, DUI.

11 2012, DUI.

12 THE COURT: Okay. Ms. Jones, does that sound like a
13 fair account of your prior record, ma'am?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. All right. And what is the maximum
16 possible penalty for driving under the influence third
17 offense?

18 SOLICITOR MILLER: Your Honor, I believe that's 60 days
19 to three years.

20 THE COURT: And a fine of up to \$5,100?

21 SOLICITOR MILLER: Your Honor, I believe that is 3,800
22 to 6,300.

23 THE COURT: Got it. I'm looking at it as well.

24 Do you agree with that, Mr. Schultz?

25 MR. SCHULTZ: I do agree with that, Judge.

1 THE COURT: Okay. All right. Good enough.

2 All right. Mr. Schultz, I'll be happy to hear from
3 you.

4 MR. SCHULTZ: Thank you, Your Honor.

5 May it please the Court.

6 Obviously you've heard the facts in this case. Ranata
7 has been an ideal client in every respect. We've gone over
8 her discovery. I think we've gone over the videotape of the
9 stop there and the accident several times.

10 I've had the occasion to talk to her family and friends
11 several times as well. We thank them for coming with her
12 today. They're all in support of her. She has a very good
13 support network.

14 Your Honor, her -- as far as her record goes, I think
15 she does have two convictions for DUI. One was in 2008.
16 One was in 2012. Unfortunately (sic), in this case, nobody
17 was seriously hurt. Ranata has been, like I said before,
18 she's been an ideal client in every respect. She's very
19 soft spoken. She, I think, she's worked right now. And so
20 she's trying to do the best that she can.

21 Obviously, she, as I said before, Your Honor, she does
22 have a record, but I would like to take that into account
23 that I don't believe -- I do not believe that prison or any
24 form of incarceration would do her a lot of good at this
25 point here. We would respectfully request that the Court --

1 that fine be imposed and/or home detention, and/or, and/or
2 probationary sentence for Ms. Jones.

3 Thank you.

4 THE COURT: All right. Ms. Jones, anything you'd like
5 to tell me?

6 THE DEFENDANT: No, sir. Just that my son is here
7 today in the courtroom with me. He's 15 years old. He's a
8 junior at Spartan High, and I'm, I'm his only support system
9 besides my mother helping me, and I just ask that you take
10 that into consideration please.

11 THE COURT: Okay. Thank you, Ms. Jones.

12 MR. SCHULTZ: Thank you, Your Honor.

13 THE COURT: Okay. Sentence of the Court is you be
14 committed to the Department of Corrections for a period of
15 18 months. Provided upon the service of 90 days in the
16 County Detention Center, the balance is suspended to
17 probation for two years. During that term of probation,
18 substance abuse counseling, random drug and alcohol testing,
19 and attend a MADD Victim Impact Panel.

20 Good luck to you, ma'am.

21 MR. SCHULTZ: Thank you, Your Honor.

22 SOLICITOR MILLER: Thank you, Your Honor.

23

24

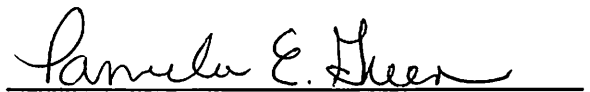
25 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th day of August, 2017.

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

March 21st, 2018

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

County of

SPARTANBURG

RANATA D. JONES

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2018-CP-42-2769

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG - 6 PM 12:10
HOPE BLACKLEY**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 (HOME) 15 Pine Ridge Road
Spartanburg, SC 29302
2. Name and location of Court which imposed sentence STATE OF SOUTH
CAROLINA, Spartanburg, South Carolina (General Sessions)
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) 2017-GS-42-979 (DUI)
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 09, 2017. 90-days incarceration & 2-years
- (b) Probation.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty After Trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel failed to file NOA as expressed
- (b) _____

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CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG -6 PM 12:10
M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See Memorandum of Law and Facts attached
- (a) Ineffective Assistance of Counsel. Strickland v. Washington, 466 U.S. 648 (1984); Cronin, 466 U.S. 648 (1984).
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): See Memorandum of Law and Facts in Support.
- (a) Strickland v. Washington, 466 U.S. 668 (1984) U.S. V.
- (b) Cronin, 466 U.S. 648 (1984).
- (c) Ineffective Assistance of Counsel.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG -6 PM 12:10
M. HOPE BLACKLEY

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. N/A
- 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?

N/A

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

(a) which grounds have been presented:

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

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

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

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2018 AUG -6 PM 12:10
M. HOPE BLACKLEY

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: Grounds & Claims of Ineffective Assistance of Counsel are best raised on PCR in initial

(a) review, Trevino v. Thaler, 1335 S.Ct. 1911, 1918, 185 L.
 (b) Ed. 2d 1044 (2013) (Martinez, 132 S.Ct. at 1318-19,
 (c) 1320-21.

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

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

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. Josh Schultz
184 N. Daniel Morgan Ave.
 ii. Spartanburg, SC 29306

iii.

(b) the proceedings at which each such attorney represented you:

i. Josh Schultz

ii.

iii.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2018 AUG -6 PM 12:10
 M. HOPE BLACKLEY

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

Please See Memorandum of Law and Facts attached.

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

NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

* I, Ranata D. Jones, 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.

* Ranata Jones
Ranata D. Jones
Defendant, Pro Se

SWORN to and subscribed before me this 6th
day of August 2018.

Emily T. Vassey (L.S.)
Notary Public

My Commission Expires: Notary Public State Of South Carolina
My Commission Expires 6-28-2028

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG -6 PM 12:10
M. HOPE BLACKLEY

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

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG -6 PM 12:18
M. HOPE BLACKBURN

* I, Ranata D. Jones, 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.

* Ranata Jones
Applicant

Ranata D. Jones
Defendant, Pro Se

SWORN or affirmed to and subscribed before me this
6th day of August, 2018.

Emily T. Vassey
Notary Public

My Commission Expires: Notary Public Emily T. Vassey
State Of South Carolina
My Commission Expires 6-28-2028

IN THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF SPARTANBURG
COURT OF GENERAL SESSIONS
AT THE SEVENTH JUDICIAL CIRCUIT

RANATA D. JONES,
Defendant/Movant,

-VS-

Case No. 2017-GS-42-979

STATE OF SOUTH CAROLINA,
Respondent.

DEFENDANTS PRO SE MOTION
FOR POST CONVICTION RELIEF
WITH MEMORANDUM OF LAW
AND FACTS TO SUPPORT
AND APPLICATION ATTACHED

JURISDICTION

This Honorable Court has subject matter jurisdiction
To entertain and rule on defendant's PCR motion.

IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
COURT OF GENERAL SESSIONS
AT THE SEVENTH JUDICIAL CIRCUIT

RANATA D. JONES,
Defendant/MOVANT,

- VS -

Case No. 2017-GS-42-979

STATE OF SOUTH CAROLINA,
Respondent. _____

COMES NOW, Ranata D. Jones, the defendant Pro Se, in the above-styled Criminal action, and, respectfully moves this Honorable Court, Under local rules and procedures governing Defendant's said Petition/Motion. This Court has subject matter jurisdiction to entertain and rule on defendant's Post Conviction Relief (PCR) motion.

For GOOD CAUSE and in GOOD FAITH, The defendant contends actual, factual, and legal innocence. Also in this Court granting such extra-

Ordinary relief the defendant will show as follows:

I. PRELIMINARY PROSE STATEMENT

The defendant presents this motion in the prose manner and would liberally urge this Honorable Court to construe it as such with less stringent bars and high standards. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir. 1978); see also *Gordon v. Lake*, 574 F.2d 1147, 1151 (4th Cir. 1978).

II. PROCEDURAL HISTORY/BACKGROUND

On November 19, 2016, the Defendant was alleged to be detained for Driving Under the Influence of alcohol, drugs, or a combination of the same. The State of South Carolina at Spartanburg County presented an indictment charging Defendant with said offenses.

On August 02, 2017, the defendant proceeded to

exercise her Fifth and Sixth Amendment Rights to Contest a trial by Jury.

On August 09, 2017, after a one day trial, the Jury returned a verdict of guilty to said Charges.

On August 09, 2017, the defendant was sentenced by the Honorable Judge Robin B. Stilwell. The Court imposed a sentence of 90-days in incarceration (jail time), Two-years of probation, and substance abuse counseling, as well as attend a MADD Victim Impact Panel.

On July of 2018, the defendant files a timely Post Conviction Relief Motion claiming Ineffective Assistance of Counsel.

III. STATEMENT OF CASE/ISSUES AND GROUNDS FOR RELIEF

A. Counsel Rendered Ineffective Assistance of Counsel which Deprived and Prejudiced Defendant's Fifth and Sixth Amendment of Due Process. *Strickland v. Washington*, 466

U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); United States v. Cronle, 466 U.S. 648, 658, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984).

1. Counsel Failed to Investigate Case, Prepare For Trial, and Request Exculpatory Medical and Adequate Documents and Photos As Expressed.

Defendant contends that she vehemently requested and expressed that Counsel request for medical records, records, and documentation from the automobile insurance company and photos of the automobile incident so that Counsel could solidify her alibi and make a strategic and solid argument proving her actual, factual, and legal innocence before the jury. Counsel assured defendant that he would compel, compile and gather all information and documentation that the defendant requested to be investigated for trial preparation.

Defendant expressed to Counsel that she was not the driver of the vehicle the night of

Of the accident and that she was the passenger. She expressed to Counsel that the passenger side front windshield was damaged due to her head hitting the windshield, which is consistent to her medical records, the picture of the car, as well as the statement from the actual driver, Randall L. Scott and the third rear passenger, Kimberly Hughes Lyles. Counsel failed to make any reasonable search into any of the Defendant's request for this exculpatory evidence. Counsel abandoned and sabotaged defendant's express concerns in this matter. This was not strategic nor professional. The Jury was never presented nor notified of any of this evidence. The medical records clearly identify that the defendant had treatment to the head and skull. The photos of the automobile showing the

damage, compelled with the two-eyewitness parties part and parcel to the incident, is clear and convincing that had a reasonable juror been alerted the entire outcome may have been different.

Counsel has a duty to perform effective, efficient, and professional. Counsel failed to conduct pre-trial investigation or develop a defense strategy in mounting adequate and competent performance. Without the documentations, evidence, or the thorough investigation of information presented to Counsel that was relevant and tangible it was impossible to conclude a strategic decision was made. It can be presumed that Counsel violated the defendant's fifth and sixth amendments to due process. Counsel was deficient, defective, and performed ineffective assistance of counsel.

Counsel prejudiced defendant and there is a

reasonable likelihood that but for Counsel's deficient and ineffective assistance the outcome would have been different. Counsel's performance fell below an objective reasonableness at the critical stages and during trial. Counsel failed to exercise all significant decisions of professional judgement. *Burr v.*

Lassite, 513 Fed. App'x 327, 340 (4th Cir. 2013) (citing *Strickland*, 466 U.S. at 689).

Counsel's error and deficient performance was so serious that it constituted a fundamental violation of the right to counsel guaranteed... by the Sixth Amendment. Counsel's errors had a conceivable effect on the outcome of the pre-trial and trial proceedings. There is a reasonable probability that the results would have been different and the probability is sufficient to undermine confidence in the outcome. Absent the errors there is reasonable probability the fact-

finder(s) would have had a reasonable doubt respecting guilt.

Counsel prejudiced defendant in failing to make a strategic decision and honor the defendant's express to gather the documents from the medical records as well as the family's witness in procuring life insurance Company and the information gleaned from the reliable witnesses present. Counsel intentionally and deliberately performed deficient and incompetent performance in this claim. Therefore, it can be presumed that Counsel fell well below the Strickland Standard and rendered ineffective assistance of Counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Cronin*, 466 248 (1984).

Defendant contends that Counsel denied and deprived

her of her Fifth and Sixth Amendment by failing to make an attempt to gather all the facts and critical information surrounding her claim of being innocent of the charges against her. Counsel also failed to make a strategic argument surrounding the witnesses involved in the accident that willingly, knowingly, & voluntarily alerted Counsel. (See Affidavits Attached)

2. Counsel Failed to Interview, Subpoena, or Call Favorable Eye and Alibi Witnesses to Trial as Requested and Expressed.

Defendant avers that she gave Counsel all information and physical contact to several witnesses that were part and parcel to the crime alleged and they were available, ready, and willing to be interviewed, subpoenaed, and able to stand trial. These favorable witnesses also contacted Counsel on numerous accounts. Counsel expressed to these

Witnesses that he would interview them and have them readily available for trial. But at no time did Counsel reach out to contact either witness prior to trial. However Defendant did get Declarations, statements, affidavits to Counsel with witnesses available and present. Counsel never took any measures to correspond with either of the witnesses in preparation for trial.

Specifically, Kimberly H. Lyles, stated that she was the rear passenger in the vehicle and that Defendant was in front of her in the front passenger seat when they left the party and when the accident actually occurred. Ms. Lyles made this vital information available to Counsel following being retained and hired by Defendant. Ms. Hughes protested to Counsel

that she wanted to testify at trial on behalf of defendant because defendant was innocent. However, Counsel failed to contact the favorable witness prior to trial but stated on the record during trial proceedings that he would be calling Kimberly Hughes Lyles as a witness to testify for the defense as well as Randall Lamar Scott. However, Counsel failed to call either one of the Defendant's potential favorable, alibi witnesses as express nor as Counsel said he would on the record. See Trial Transcript page 10 lines 22-25 and Trial Transcript page 11 lines 1-8. Furthermore, it is evident that Counsel had no intention on calling any witnesses on behalf of defendant. At the end of trial the Court asked defendant's counsel if defense had any evidence or anything further

to present and defendant's counsel stated on the record that he rest. See Tr. Tr. pgs# 76, lines 6-25. Counsel never called the available witnesses.

In addition to Counsel failing to interview, failing to present requested witnesses that came forward expressing to testify on behalf of defendant Counsel abandoned his fiduciary and professional duties. Specifically, Counsel failed to interview and use Randall L. Scott as Scott requested and as defendant expressed numerous times. Counsel only took the written statement, declaration from the witness but never further corresponded nor honored witness expressed wishes to testify for the defense. Counsel did not subpoena the witness and in fact allowed the State to use the witness at their advantage and tactics. Counsel stated to

the witness that if he did subpoena him the State would charge and prosecute him with Perjury do to the report witness initially made to Officer Glen Elder the night of the accident. Witness Scott stated to defendant's Counsel at this instance that he did not care what the state charges him with, he lied to the officer in the report and he was not Under Oath and that he was drunk at the time and he was the driver of the vehicle not the defendant who was in the passenger seat. Counsel's refusal and denial of the witness being called by the defense was prejudice and not strategic. However prior to trial Counsel expressed to defendant and Scott that he would call Scott on behalf of defense. Counsel failed to do so. During opening of trial Counsel stated on

the record to the Court that he would be calling as a witness for defense Randall Lamar Scott. Ultimately it was the State who called Scott as one of their witnesses and not the defense. Counsel waited until trial proceedings began and requested the Court to add Randall Lamar Scott as a witness on the States witness list in which Scott was on the State's list. See Tr. Tr. pgs 6, lines 3-17. It clearly shows that Randall Lamar Scott was not a witness for the defense and he was called by the state. See Tr. Tr. pgs 60, lines 25 and continued on pages 61, lines 1-11. Also see Tr. Tr. Pgs 76, lines 6-19. It specifically is clear and convincing that Counsel did not call any witnesses nor did he interview requested favorable, alibi, and eyewitnesses as the witnesses and defendant expressed. See Affidavit/Lc.

Clarations Attached. See Pg 71, lines 12-17. Tr Tr.

Counsel abandoned and sabotaged defendant in a critical stage and gave an incomplete chap-

shot as well as a false choice picture to the defendant and defendant's favorable wit-

nesses. Counsel provided inaccurate, incom-

plete, erroneous, and incompetent advice in this area. Counsel denied defendant fun-

damental due process and effective assis-

tance of counsel. Counsel's deficient per-

formance prejudiced defendant and deprived

defendant a fair trial which created a grave mis-

carriage. There is a reasonable likelihood that

but for Counsel's error the outcome would have

had a different outcome. Had Counsel inter-

viewed and called the willing witnesses

as expressed to prove defendant's actual,

-16-

Jurist would have made a different decision in being a fact-finder. It can be presumed that Counsel rendered ineffective assistance and prejudiced defendant substantially and procedurally. *Griffin v. Warden of Maryland*, 970 F.2d 1355 (4th Cir. 1992). Defendant contends that Counsel's performance was in no shape, form, or fashion tactical or strategic. Counsel's omissions, carelessness, ineptitude and laziness cannot be explained as trial strategy. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). Counsel failed to investigate and conduct an interview to call eye-witnesses Scott and Lyles as expressed by them and defendant. The witnesses

favorable testimony and statements to defendant's Counsel stating that defendant was not the driver of the vehicle at the time of the accident and that the actual driver was witness Randall L. Scott. Even tho Scott testified for the State that he was the driver, Counsel abandoned taking Scott's written sworn statement to his aid. Corroborating it with witness Kim Leroy H. Lyles and using them as witnesses for the defense. Counsel had all this information prior to trial but failed to investigate it and interview it further, for trial strategy and tactical purposes.

Counsel failed to investigate and call defendant's crucial, favorable, and alibi witnesses to confirm defendant's expressed concerns to her innocence. *Huffington v. Nuth*, 140 F.3d 572, 580 (4th Cir. 1993).

Moreover, Counsel failed to subpoena either of these witnesses as each of them requested numerous times by calling Counsel and expressing their willingness to honor the defense at trial or in any way possible to let the truth be heard and know that the defendant was not the driver on the night of the accident on November 19th, 2016, at around or about 3:50 am on Interstate 85 at the 67-mile marker. Counsel's deficient performance in failing to subpoena nor attempt to call any of the witnesses, is out against the defendant and witnesses desired wishes.

This was not a tactical nor part of an informed strategy. *Harvey*, 2011 U.S. Dist. LEXIS 9680, 2011 WL 450067 at *5. Defendant and the witnesses Ms. Lyles and Mr. Scott provides an affidavit/declaration under the penalty

of perjury in support of defendant's Due Process and actual, factual, and legal innocence. Sayre v. Anderson, 238 F.3d 631, 636 (5th Cir. 2001). Counsel placed the Carriage before the horse as well as cast his net far and wide on a fishing expedition that was not sound, trial strategy, tactical, nor professionally effective.

Counsel's deficient performance prejudiced defendant a fair trial. Counsel failed to perform his duties at a critical stage and derailed the entire process. There is a reasonable and highly likelihood that, but for Counsel's error and failure there would have been a different outcome. The defendant has met the test and high hurdle of proving that Counsel performed ineffective assistance of Counsel at a

Critical stage. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2032, 80 L.Ed 2d 674 (1984) United States v. Cronin, 466 U.S. 648, 658, 104 S.Ct. 2039, 80 L.Ed 2d 657 (1984).

3. Counsel Failed to File Notice of Appeal as Expressed by Defendant and Others.

It is the defendant's contention that Counsel would file an appeal on her behalf challenging the sufficiency of the evidence; The Courts denial of the direct verdict, and the question from the jury. Defendant expressed to Counsel at the sentencing trial after the Court pronounced its order of sentencing, that Counsel file an appeal. Counsel assured defendant and her family that he had several issues he would

address and that he only had 10-days to put in a Notice of Appeal.

Defendants family and Others contacted Counsel 3-days following sentencing to check the status of appeal and Counsel stated he would return the call and update them later. Defendant also had family to call Counsel on 3-way to check the status but only to be told by Counsels Secretary that Counsel was not in. When One week, 7-days passed Counsel refused to talk with defendant or her family and ignored there numerous messages to him. Defendant avers that Counsel told her after sentencing he would be filing an appeal as she expressed. Counsel stated to defendant's family outside of the Court that an appeal would be filed by him challenging defendant's con-

Cerns as well as his issues. However, Counsel abandoned defendant and failed to file an appeal as requested. Defendant's family called the Courts requesting the status of appeal but were told that there was no pending appeal for her name or case number.

Defendant alleges there were valid, viable, colorable and with merit that warranted the latitude and measures to be appealed.

Counsel was instructed to file an appeal on defendant's issue of insufficiency of the evidence and her being actually innocent and Counsel preserved issue on the direct verdict. Counsel has a duty when instructed and requested by defendant to file a Notice of Appeal and research claims expressed are those with merit.

Trial Counsel neglected, denied, failed and

abandoned defendant's request which in terms prejudiced defendant at a stage that is fundamental following a trial. Counsel's failure to fulfill these obligations were ineffective and deficient performance. *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed. 2d 985 (2000); *United States*

v. Poindexter, F.3d 263, 273 (4th Cir. 2007).

Failure by a criminal defense attorney to file a notice of appeal when a client has requested such action results in a deprivation of the defendant's Sixth Amendment to the assistance of counsel, irrespective of the likelihood of success on appeal.

United States v. Peak, 992 F.2d 39, 42

(4th Cir. 1993). "Counsel performs in a professional unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." *Roe*,

528 U.S. at 478. Counsel deprived defendant's express for an appeal and a meaningful review and defense, in which the outcome could have been different, which prejudiced defendant due to counsel's errors. Defendant has been deprived of effective representation, due process, equal protection of the law, and a fair trial, which is a violation of Defendant's Sixth and Fourteenth amendment rights protected by the United States Constitution. See Affidavits Attached to Support.

4. Counsel Failed to Understand the Law and Facts of the Case And Failed TO Conduct Pre-trial Reasonable Investigative Facts.

Defendant contends that Counsel was aware of many different tangible and physical pieces of evidence that were fundamental to making a tactical and strategic case at trial to prove defendant's actual innocence.

During pre-trial stages defendant met with Counsel and alerted him to all evidence and leads that would prove defendant's innocence. Specifically, defendant directed Counsel to get medical records of her head injury from hitting it in the front passenger windshield. The defendant requested that Counsel get the photos of the car windshield from the automobile insurance company, however Counsel never did either. Defendant expressed vehemently to Counsel how these key pieces along with eye witnesses testimonies would prove her innocence and solidify that she was not the driver and actually the passenger in the vehicle.

With Counsel's refusal and failure to produce this evidence to present to the Jury defendant was found guilty. It is Counsel's professional norm and duty

to thoroughly gather and inspect all the possible evidence available in proving a defendant's innocence.

Counsel stated in his questioning of Officer Elder about defendant's hospital visit and if she was medically cleared by medical staff.

This further solidifies that Counsel failed to prepare for trial, where Counsel never introduced any medical records to refute or to affirm defendant's claim of not being the driver and having a head injury from hitting a cluttering the front passenger windshield. In addition to the line of questioning on Cross examination Counsel failed to understand the law and how he could question a witness. It is evident that Counsel failed to prepare for defendant's trial or make an adversarial and meaningful defense prior to trial.

The Court had to function and perform for Counsel in many aspects of the trial and case-in-chief. See Tr. Tr. Pg 51 lines 7-25 and pages 52-58 lines 1-25 on each page.

It is essential for a trial Counsel to be prepared for trial and present evidence that points to the innocence of a defendant in protecting the defendants Fifth and Sixth amendment and fundamental due process. Counsel was not prepared and did not present critical evidence to show the jury clear and convincing facts. Counsel deprived defendant of a fair trial and effective assistance.

Competent counsel will make critical efforts to protect its client. Counsel's failure to present fundamental evidence

that can have a substantial effect on a client is to have no defense or Counsel at all. It is well established under prevailing norms of practice, such as the American Bar Association (ABA) Standards, that a defense Counsel has the duty to inform himself or herself fully on the law and then advise the accused concerning all aspects of the case. Counsel's omissions were made recklessly and intentionally without a professionally competent investigation. It is professionally unreasonable action by trial Counsel to be unprepared or to fail defendant's express to obtain tangible and critical information that shows innocence.

It can be presumed that Counsel was ineffective and prejudiced defendant of her Fifth and Sixth Amendment Rights

to effective assistance of counsel. Had Counsel gathered the medical records and the photos from the automobile insurance company compelled with eye witnesses the outcome would have been different.

Therefore, it can be presumed that Counsel was ineffective or incompetent.

Strickland v. Washington, 466 U.S. 668 (1984); United States v. Cronin, 466 U.S. 648 (1984).

Counsel clearly failed to protect the defendant's Fifth and Sixth Amendment in performing below the norms and in a highly deficient manner.

The uncontested evidence and laws that defendant's counsel decided not to explore was

on its face and all 4 corners ineffective and

shows Counsel was absent during critical

stages. Wiggins v. Smith, 539 U.S. 510, 525

(2003); Richter v. Hickman, 578 F.3d 944, 956-

57 (9th Cir.).

5. Counsel Failed To Allow Defendant The Fundamental Right To Testify. As Expressed Before Trial and During Trial.

Defendant avers that during pre-trial preparation she expressed to Counsel that she wanted testify to allow the jury to hear her truthful testimony. Counsel concurred with defendant during these verbal conversations. Defendant explained to Counsel that she wants to testify on her own behalf that she was not the driver and that she was the passenger also that she sustained head injuries from the impact she received from the passenger side windshield that was cracked. However, Counsel failed to solicit the defendant at the conclusion of trial and muzzled defendant and defendant's expressed request and vehement desires to take the stand.

At the conclusion of trial Counsel elected to address the Court stating he would not be calling his Client to testify nor call any witnesses. At this instance defendant alerted Counsel that she wanted to and desired to testify. Counsel pulled one over on the defendant by expressing to her that if she desired to testify it would allow the Court and State to address her prior arrest and convictions of drug and alcohol offenses. He stated the jury would find defendant guilty and convict her in a heart beat. Counsel stated to defendant that he did not and was not prepared for that. Defendant was told by Counsel at this time and during the recess requested by Counsel before the Court was about to do Colloquy and question defendant of

her fundamental rights, that he was not Prepared for defendant to testify and he did not approve of it. Counsel stated to the defendant that when Court adjourns and the Judge questions her on testifying to tell him she would not be testifying and that she knows her rights and wishes not to take the stand. Counsel Coersed defendant and even threaten to withdraw if defendant refused to comply. When the Court resumed, the defendant followed the instructions of Counsel even tho they were against her request and desires. See Tr. Tr. pgs-72 lines 19-25, and Tr. Tr. Pgs 73 lines 1-25, and Pgs-74 and 75, lines 1-25 and pgs-76, lines 1-6.

It is fundamental that as a general rule, a Criminal defendant has a Constitutional right to testify on his/her own behalf at

Trial. *United States v. Midgett*, 342 F.3d 321, 325 (4th Cir. 2003) (Citing *Rock v. Arkansas*, 463 U.S. 44, 51, 107 S.Ct. 2704, 97 L.Ed. 2d 37 (1987)).

It is "the defendant who retains the ultimate authority to decide whether or not to testify."

United States v. McMeas, 927 F.2d 162, 163 (4th Cir. 1992) (Citing *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed. 2d 987 (1983)).

Defendant avers that if Counsel had not improperly prevented her from testifying, she would have taken the stand exercised her Fifth and Sixth amendment to rebut the allegations the State presented to the jury. This is indicative that there is a reasonable probability the jury would not have found her guilty which in terms would have been a different outcome. Counsel's deficient performance prejudiced defendant and de-

prived defendant effective assistance. Defendant's testimony and numerous protest to counsel to allow the jury to hear what actually occurred may have had an adverse and substantial effect on the outcome of guilt or innocence at trial. Defendant was prejudiced by counsel's misadvice and stating defendant's testimony alone would not make any difference due to the evidence that was presented to the jury. Moreover, even if the jury was to hear of defendant's priors it is counsel's duty to make a tactical and strategic decision on how to remedy the exposure to the jury. It may have included counsel questioning defendant on the priors in an effort to show the honesty and to show that those priors were past mistakes, but to portray

that defendant was actually innocent of the instant charges before the jury. Counsel failed to honor defendant's expressed request to testify to her innocence. *United States v. Terry*, 366 F.3d 312, 318 (4th Cir. 2004). Counsel has a duty to honor a defendant's expressed request when it is fundamental and essential, such as the right to testify. ABA Standards for Criminal Justice 4-5.1(a) (2d Ed. 1980). It states that advice is particularly critical regarding whether a defendant should testify because that is a decision that must be made by the accused after full consultation with Counsel. ABA Standards for Criminal Justice 4-5.2(a)(iv). The five minute recess that Counsel requested to go over all the threatening reasons for defendant not to take the stand

as expressed by her, was not ample amount of time to inform defendant on the fact that she has a fundamental right to testify if she wishes. Instead Counsel insisted on defendant not testifying and not one time did Counsel state to defendant it was her choice to testify. Ineffective assistance of Counsel was rendered by Counsel as defendant was prejudiced and deprived of due process. *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Cronin*, 466 U.S. 648 (1984).

It was set out by the States Closing Argument and remarks that they used Randall

L. Scott as their witness even though he attested

that Defendant Jones was not the driver and

in fact he was. Counsel's failure to subpoena

witness Scott as requested by defendant and

Scott the outcome would have been different.

The State took Counsel's theory he tried to pursue in questioning of the Key Witness Randall L. Scott, that expressed to testify for the defense and he even went as far as to write a statement for the defendant's Counsel well prior to trial and Counsel was idle and did not attempt to honor any preparation in using the material information as a strategy for a defense. The State presented all of this to the Jury in closing. The State used the initial video from the scene of the accident and Counsel was aware of this. The State subpoenaed the witness Mr. Scott, and use the video he was on the night of the scene where the witness made a statement under the influence. Had Counsel prepared prior to trial and used

the witness in his favor as expressed by defendant and witness Randall L. Scott he would have set out that the witness was under the influence and that there was two other passengers in the car that were transported to the hospital that were not on the scene when officer Elder arrived and only got a statement from Mr. Scott who was at the scene. Mr. Scott made a statement to officer Elder stating the Defendant was the driver. Fair counsel prepared he could have gone and set the facts in the actual way they were, which would have shown that Randall L. Scott was the driver of the vehicle on the night of the accident. Counsel failed to prepare any meaningful defense leaving the defendant out to dry. Counsel Performed Ineffective Assistance

IV. RELIEF REQUESTED

CONCLUSION

WHEREFORE, the defendant, Ranata D. Jones, respectfully request relief as follows:

- 1.) Defendant request that this Honorable Court Order Respondent to file its response to Defendants claims;
- 2.) Defendant request that the Court Allows the Defendant (45)-days to file its traverse/reply;
- 3.) Defendant request that this Honorable Court conduct a Fact Development hearing to include an evidentiary hearing to flesh out the facts surrounding the Defendant's Claims in her PCR Motion.

4.) Defendant request that this Honorable Court grant any and all relief It deems fair and just in Defendant's Case. Respectfully and Sincerely.

WHEREFORE Defendant prays that this Honorable Court allow any and all measures of relief allowed. Respectfully prayed for on this 6th, day of August, 2018.

* Ranata Jones
Ranata D. JONES
Pro Se

V. CERTIFICATE OF SERVICE/ MAILING

I, Ranata D. Jones, declare under the penalty Of Perjury pursuant to 28 USC Section 1746, that I have served a true and Correct Copy of the foregoing PCR Motion

and Memorandum with application to the Spartanburg County Clerks Office for General sessions and to the Spartanburg County Solicitors office. I addressed the above-referenced and affixed first-class prepaid postage and mailed it Pursuant to mail box procedures at the United States Postal Services on this 6th, day of August, 2018.

* Ranata Jones
Ranata D. Jones
Defendant, Pro Se
15 Pine Ridge Road
Spartanburg, SC
29302

1 (No response.)

2 THE COURT: All right. Let the record reflect no
3 affirmative response.

4 Ladies and gentlemen, the State will be represented in
5 this matter by Mr. Andrew Miller with the Spartanburg County
6 Solicitor's Office.

7 So, I'll ask you, is there anyone among you who has any
8 personal, professional, or family relationship with
9 Mr. Miller or with anyone employed in the Spartanburg County
10 Solicitor's Office?

11 (WHEREUPON, a juror responds.)

12 THE COURT: Yes, ma'am.

13 THE JUROR: Juror 121, Mitzi Peeler. My sister-in-law,
14 Sharon Peeler, we call her Cookie, she works -- I think she
15 works for the Solicitor's Office here.

16 THE COURT: Okay. Given that fact, whether she does or
17 not, do you think you could still be a fair and impartial
18 juror in the trial of this case?

19 THE JUROR: I do.

20 THE COURT: Okay. All right. Good. Thank you for
21 telling me. I appreciate it.

22 okay. Ladies and gentlemen, I'm gonna read to you a
23 list of potential witnesses who may take the stand and
24 testify in this case.

25 MR. SCHULTZ: Your Honor, I have one more witness, Your

1 Is that correct?

2 THE DEFENDANT: That's correct.

3 THE COURT: Okay. All right. Good enough. Thank you,
4 Ms. Jones. I appreciate that.

5 MR. SCHULTZ: Thank you, Your Honor.

6 THE COURT: Okay. So, do you rest at this point?

7 MR. SCHULTZ: I rest.

8 THE COURT: Okay. Are you ready -- y'all ready to go
9 to closing argument?

10 MR. SCHULTZ: Yes, sir.

11 THE COURT: Okay. If I'm -- y'all have to correct me
12 if I'm wrong, but I don't think the defense put any evidence
13 into the record.

14 Am I correct?

15 Is that your understanding, Mr. Miller?

16 SOLICITOR MILLER: That's my understanding, Your Honor.

17 THE COURT: Okay. So, the order of closing will be,
18 Mr. Miller, you will open and then, Mr. Schultz, you have
19 the opportunity to close, and I'll---

20 MR. SCHULTZ: And that's applicable in the Beaty -- so,
21 the Beaty decision doesn't change that?

22 THE COURT: It does not.

23 MR. SCHULTZ: All right.

24 THE COURT: It does not change that at all.
25 okay?

P R O C E E D I N G S

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4

THE COURT: Okay. While you're waiting, Mr. Solicitor, I've got the State's witness list.

5

6

Is there a -- is there a witness you want me to add to it?

7

8

MR. SCHULTZ: Randall Scott, Your Honor, if the, if that's not on the State's witness list.

9

10

THE COURT: Okay. I see it. Randall Lamar Scott. So, that would be your guy too? So---

11

MR. SCHULTZ: That would, that would be my witness.

12

13

THE COURT: I've got Trooper Elder, Randall Scott, Keith Lee, and Shaw.

14

Is that all?

15

MR. SCHULTZ: Yes, that's---

16

SOLICITOR MILLER: That's correct, Your Honor.

17

THE COURT: Okay. Good. Thanks.

18

All right.

19

20

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

21

22

23

24

25

THE COURT: All right. Ladies and gentlemen, we're starting a little bit later than I had anticipated. That's because two jurors didn't show up, and I was waiting for them, but I elected to go ahead and proceed. I think we have enough jurors, and I didn't want to make y'all wait any

1 Q Trooper, did you talk to anybody about this accident
2 after -- the day after this happened?

3 A Yes, sir.

4 Q All right. Who did you talk to?

5 A I talked to Mr. Scott.

6 Q Mr. Scott?

7 A Right.

8 Q Did you talk to him in person or did you talk to him
9 over the phone?

10 A Over the phone.

11 Q Over the phone.

12 Did he call you or did you, you call him?

13 A He called the Highway Patrol dispatch and left his name
14 and number, and it was emailed to me by dispatch and then I
15 returned his call.

16 Q All right. That's all I have. Thank you.

17 THE COURT: Okay. Mr. Miller, do you have any
18 questions within the scope of that examination?

19 SOLICITOR MILLER: No, Your Honor.

20 THE COURT: Okay. Good.

21 All right. You may step down. Thank you, sir. I
22 appreciate you being here.

23 THE WITNESS: Thank you.

24 THE COURT: Okay.

25 SOLICITOR MILLER: Your Honor, at this time the State

Randall Scott - Direct examination
by Solicitor Miller

1 would call Mr. Randall Scott.

2 THE COURT: okay.

3 RANDALL SCOTT, being first duly
4 sworn, testified as follows:

5 THE CLERK: Thank you. You may be seated.

6 (Witness complies.)

7 DIRECT EXAMINATION

8 BY SOLICITOR MILLER:

9 Q Mr. Scott, could you state your full name for the jury
10 please?

11 A Randall Lamar Scott.

12 Q And do you live in Spartanburg?

13 A I do.

14 Q Okay. How do you know Ms. Ranata Jones?

15 A She's my cousin.

16 Q And how do you know Ms. Kimberly Lyles or Hughes-Lyles,
17 Lyles-Hughes?

18 A She's a friend.

19 Q Are y'all related in anyway?

20 A No, sir.

21 Q Okay. Do you own a vehicle, Mr. Scott?

22 A No, sir.

23 Q Were you in a vehicle that belonged to Ms. Ranata Jones
24 on November 19th of last year?

25 A I was.

1 presence of the jury.)

2 THE COURT: Yes, sir.

3 MR. SCHULTZ: Thank you, Your Honor.

4 At this time, I would move for a directed verdict on
5 the driving under the influence. I don't -- do not believe
6 the State, even in the light most, light most favorable to
7 the State, has met their burden of proof in this case. I do
8 not believe, as a matter of law, and also in the light most
9 favorable to the State, that they have met their burden
10 because of the -- this is, in fact, they haven't proved that
11 there was driving by my client.

12 The State offered two witnesses here. They offered
13 Trooper Elder, who testified that he arrived before he could
14 see anybody in the, in the car. The State also, also
15 presented a witness that said that he was the one that drove
16 under oath. Not my witness. It's the State's witness. So,
17 I would move for a DV.

18 Thank you.

19 THE COURT: All right. Mr. Miller.

20 SOLICITOR MILLER: Your Honor, that's why we believe
21 that there is enough for a jury to determine whether she
22 was, in fact, the driver in this case. There was the wreck,
23 the refusal, the odor of alcohol, and hear her voice slurred
24 on the video. Also that, on the evening, the witness did
25 give an account of who was the driver, a detailed account of

Glen Elder - Cross-examination
by Mr. Schultz

1 everybody was sitting in the vehicle.

2 Q Okay.

3 A Ms. Lyles also told me where she was sitting in the
4 vehicle.

5 Q All right. And what did Ms. Lyles say?

6 A She said that she was sitting in the back seat.

7 Q All right. Now, you went over to the hospital and
8 what, what hospital, again, was it?

9 A Spartanburg Regional Medical Center.

10 Q Spartanburg Regional?

11 A Yes, sir.

12 Q Okay. And you -- did you talk to any other -- did you
13 talk to Mr. Scott at the hospital?

14 A No, sir.

15 Q Did you talk to Ms. Lyles at the hospital?

16 A I did.

17 Q All right. And did you talk to Ms. Jones at the
18 hospital?

19 A I did.

20 Q Okay. And, according to your direct testimony, is
21 that -- you're, you're saying that Ms. Jones was
22 uncooperative, correct?

23 A Correct.

24 Q All right. And do you know if Ms. Jones was medically
25 cleared to leave the hospital?

1 A She was medically cleared according to -- she had CT
2 scans and everything done. I was not the one that
3 transported Ms. Jones from the hospital to the jail. That
4 was done by a supervisor on the day shift. So, she was
5 medically cleared or the jail wouldn't take her.

6 Q Did Ms. Jones have slurred speech?

7 A No.

8 Q Okay. You made a determination that everybody was
9 drinking?

10 A Yes, sir.

11 Q Okay. And Mr. Scott, in particular, did, did you
12 notice the smell of alcohol on his breath?

13 A Yes, sir.

14 Q All right. And was Mr. Jones slurring his speech a
15 little bit?

16 A Who?

17 Q I'm sorry. Mr. Scott, was he slurring his speech a
18 little bit?

19 A Not to me, no. I mean, you know, sometimes it would,
20 it would take a second or two before a question was
21 answered, but not like real slurred speech.

22 Q Did you offer Mr. Scott any field sobriety tests?

23 A No, sir.

24 Q All right. Did you offer him a breath test or
25 anything?

Glen Elder - Cross-examination
by Mr. Schultz

- 1 A No, sir.
- 2 Q Did you offer him a blood test?
- 3 A No, sir.
- 4 Q All right. But it was your opinion that Mr. Scott was
5 drinking, right?
- 6 A Yes, sir.
- 7 Q Could you even smell it on him?
- 8 A Correct.
- 9 Q Right.
- 10 Okay. Any open containers in the car or anything?
- 11 A No, sir.
- 12 Q Where did, where did Mr. Scott say that he was coming
13 from?
- 14 A They were coming from a club in Greenville.
- 15 Q A club in Greenville?
- 16 A Yes, sir.
- 17 Q Okay. And, again, it was your determination that
18 Mr. Scott was, was drinking?
- 19 A Yes, sir.
- 20 Q Okay. Did he admit to you how much he had to drink?
- 21 A No, sir.
- 22 Q Okay. Based upon your opinion and your skills meaning
23 that you've done thousands of these, these cases, do you
24 think that Mr., Mr. Scott was intoxicated?
- 25 A I think he would of been close to being intoxicated,

1 yes, sir.

2 Q Do you think he was impaired?

3 A That's what I mean. Close to being impaired. On a
4 breathalyzer, he would of been right at the limit if not
5 over.

6 Q If not over?

7 A Correct.

8 MR. SCHULTZ: All right. That's all I have, Your
9 Honor.

10 THE COURT: Do you have any redirect?

11 SOLICITOR MILLER: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY SOLICITOR MILLER:

14 Q Trooper, just briefly, you were able to ascertain who
15 the car belonged to in that case?

16 A Yes, sir.

17 Q And you stated that witnesses at the scene, on cross,
18 informed you where everyone was sitting in the vehicle.

19 What were those positions?

20 A Mr. Scott was -- Randall Scott was in the front
21 passenger seat. Ms. Kimberly Lyles stated that she was in
22 the back seat behind the driver.

23 Q Okay. And is there a reason you did not offer
24 Mr. Scott field sobriety tests?

25 A Because he stated he was a passenger.

Glen Elder - Recross examination
by Mr. Schultz

1 SOLICITOR MILLER: No further questions, Your Honor.

2 THE COURT: Recross.

3 RECCROSS EXAMINATION

4 BY MR. SCHULTZ:

5 Q I think it was just clear that you never saw anybody
6 inside the car that night when you arrived on scene, right?

7 A Correct.

8 Q All right. Thank you.

9 THE COURT: Okay. Did -- do you still need to proffer
10 a question into the record?

11 MR. SCHULTZ: I do, Your Honor.

12 THE COURT: Okay. All right. Ladies and gentlemen,
13 I'm gonna ask you to leave the courtroom for just a few
14 seconds. There's a matter of evidence that I need to take
15 up, and I can't do it in front of you cause it may or may
16 not be admissible. I don't know yet. I won't know until I
17 hear it. So, I'm gonna ask you to please go back to your
18 jury room, and I'll bring you back out in just a second.

19 okay.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. You may proffer your question,
23 sir.

24 MR. SCHULTZ: Yes, sir. Thank you, Your Honor.

25 PROFFER

Glen Elder - Proffer
by Mr. Schultz

1 BY MR. SCHULTZ:

2 And I don't, I don't want to confuse you here, officer.
3 I'm just trying to be as brief as possible here.

4 The -- did you, did you talk to Randall Scott that day?

5 A Yes, sir.

6 Q Okay. Did you, did you talk to him the day after the
7 accident?

8 A I did.

9 Q Okay. Did you call him or did he call you?

10 A He called me.

11 Q All right. And what did he say?

12 A Wanted to tell me that he was driving the car and not
13 Ms. Jones.

14 Q Okay. And why, why did he -- did he indicate why he
15 was doing that?

16 A I guess he was trying to take the rap for a friend is
17 the way that I perceived it.

18 Q Yeah, but did, did he indicate why he was doing that?

19 A No, sir.

20 Q Okay. But he, he wanted to clear everything up and
21 tell you that he was driving is it -- was that your
22 recollection of events?

23 A Right.

24 Q Okay. And, again, I don't want to be confused here.
25 He called you?

Glen Elder - Proffer
by Mr. Schultz

1 A That's correct.

2 Q Okay. All right. And you gave -- I'm assuming you
3 gave him your cell phone number or dispatch number?

4 A No, he called, he called the patrol and they give me
5 his number and I returned his call.

6 Q And -- okay. So, you returned his calls?

7 A Correct.

8 Q And then he just said I was the driver?

9 A Right.

10 Q Okay. And that was in 24-hours of the actual accident
11 happening, right?

12 A Correct.

13 Q Okay.

14 THE COURT: Okay. All right. I don't have any issue
15 with the fact that there was a call, and that he called him
16 and the circumstances surrounding the call. But I, but I --
17 unless you can articulate it to me with specificity, I don't
18 know how the statement itself is not hearsay. It's not a
19 party opponent. Isn't present sense impression. And he is
20 in the courtroom to say what he said. And I assume you
21 intend to call him.

22 MR. SCHULTZ: I'm gonna call him.

23 THE COURT: Okay.

24 MR. SCHULTZ: Yeah.

25 THE COURT: So, I -- as to the statement, I do think

Glen Elder - Proffer
by Mr. Schultz

1 that's hearsay unless, of course, you can tell me some
2 exception, and I just can't think of one.

3 MR. SCHULTZ: Well, I, I -- and, Judge, to be truthful,
4 I can't think of an exception right now. However, if I
5 present Mr. Scott later on, then I recall Trooper Elder, and
6 then I'm thinking it may come in not under hearsay.

7 THE COURT: Well, I mean I think probably the more
8 efficient way for you to handle it is to ask him those
9 questions about the phone call --

10 MR. SCHULTZ: All right.

11 THE COURT: -- so it's clear that he received the phone
12 call, and then you can fill it out with testimony from, from
13 Mr. Scott. Then you don't have to start and stop.

14 MR. SCHULTZ: Yes, sir.

15 THE COURT: I mean I'm, I'm not -- far be it from me to
16 tell you how to try a case. I got fired from practicing law
17 cause I couldn't do it very well. So -- but that's just
18 what I think.

19 Okay?

20 MR. SCHULTZ: All right. Thank you, Judge.

21 THE COURT: okay. Do you want -- do you want to, to
22 ask him that line of questioning with the exception of the
23 statement with the jury coming back in?

24 MR. SCHULTZ: That's fine.

25 THE COURT: okay. And, of course, Mr. Miller, I'll

1 who was the driver, who was sitting where. That seems to
2 fit with everything else in the situation. I believe that
3 his differing testimony today, and its contradictory nature,
4 should not lead to a directed verdict in this case, Your
5 Honor, at this point.

6 THE COURT: Okay. The standard for a review of, of
7 motion of directed verdict is, of course, to view the
8 evidence in the light most favorable to the nonmoving party
9 in determining whether there is any evidence in the record
10 upon which the State, the State could meet its burden of
11 proof.

12 In this instance, there is contradictory evidence as to
13 who was driving, but it exists, and I think that is
14 quintessentially a jury determination to determine who can
15 be believed and who, who should not be believed.

16 So, on that basis, I respectfully deny the motion.

17 MR. SCHULTZ: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Do you intend to, to call witnesses to the stand, sir?

20 MR. SCHULTZ: Your Honor, if, if I could possibly have
21 a recess?

22 THE COURT: Sure.

23 MR. SCHULTZ: About five minutes.

24 THE COURT: Yeah, that's fine. We'll do that.

25 We'll take a recess and then we'll come back in and let

1 me know what you want to do.

2 MR. SCHULTZ: All right. Thank you, Judge.

3 THE COURT: Yes, sir.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: Okay. Mr. Schultz, is the defendant gonna
6 present any evidence, sir?

7 MR. SCHULTZ: I'm not gonna call my, my client, Your
8 Honor.

9 THE COURT: Okay.

10 MR. SCHULTZ: I'm not sure if the Court wants to go
11 through the colloquy---

12 THE COURT: Yeah, I'll do that.

13 MR. SCHULTZ: ---with my client or not.

14 THE COURT: I'll do that.

15 Okay. How many witnesses do you intend to call?

16 MR. SCHULTZ: I'm not gonna call anybody.

17 THE COURT: Nobody?

18 MR. SCHULTZ: No, sir.

19 THE COURT: Okay. All right. Good enough.

20 All right. Ms. Jones, would you please stand.

21 (Defendant complies.)

22 THE COURT: Raise your right-hand please.

23 (WHEREUPON, the Defendant was placed under oath at this
24 time.)

25 THE COURT: Okay. You may sit down.

1 (Defendant complies.)

2 THE COURT: Ms. Jones, as you heard, I was just asking
3 if you were gonna present any evidence, evidence. You
4 certainly don't have to present any evidence because, as
5 I've already told the jury any number of times, you don't
6 have the burden of proof. You don't have to say or do or
7 prove anything.

8 The State has the burden of proof, and, in that vein,
9 it's also true that you don't have to testify if you don't
10 want to. You have a right to remain silent, and that is a
11 very important and sacred right in our society, and it's so
12 sacred, in fact, that, if you elect not to testify, I'll
13 tell the jury that they can't take it against you, and
14 it's -- in fact, they can't even discuss it in their jury
15 room.

16 But you understand, of course, if you elect not to
17 testify, then you won't have the opportunity to tell the
18 jury anything. You won't have the opportunity to tell them
19 your side of the story, and that's a risk that you assume
20 when you don't testify.

21 You also have, of course, a corresponding right to
22 testify if you want to. But, if you do testify, then you
23 would be subject to cross-examination, and, during
24 cross-examination, the State has the ability to ask you a
25 very wide range of questions in an attempt to try to throw

1 your credibility into question. And I don't know if you
2 have any type of prior record at all other than DUI
3 convictions, but they can ask you questions related to your
4 prior record if it's admissible under the rules. So, if you
5 testify, you also assume certain risks as well.

6 Now, your attorney, Mr. Schultz, can advise you one way
7 or the other. Can tell you what his opinion is. You can
8 talk to members of your family. You can talk to friends and
9 they may advise you one way or the other and tell you what
10 they think you should do. But understand that, ultimately,
11 that is your decision and your decision alone. Nobody can
12 make it for you. So, it is entirely up to you.

13 Now, Ms. Jones, do you understand your right to remain
14 silent and your corresponding right to testify?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Do you have any questions that you'd like
17 to ask me or Mr. Schultz about that, ma'am?

18 THE DEFENDANT: No.

19 THE COURT: Okay. And have you made your decision,
20 ma'am?

21 THE DEFENDANT: Yes.

22 THE COURT: And is it your decision?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: Okay. And is it my understanding that you
25 will not testify?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Ranata D. Jones,	)	Case No.: 2018-CP-42-02769
	)	
Applicant,	)	
	)	
v.	)	RETURN AND
	)	PARTIAL MOTION TO DISMISS
State of South Carolina,	)	(Counsel Appointed)
	)	
Respondent.	)	
	)	

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In response to the application for post-conviction relief filed by Ranata D. Jones (Applicant) on August 6, 2018, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the February 2017 term of the Spartanburg County Grand Jury for driving under the influence (2017-GS-42-00979). E. Joshua Schultz, Esq., represented Applicant. Andrew P. Miller and Sydni D. Kallam, Esqs., of the Seventh Circuit Solicitor's Office, prosecuted the case. On August 9, 2017, Applicant proceeded to trial before the Honorable Robin B. Stilwell and a jury. The jury found Applicant guilty as indicted the same day. Judge Stilwell sentenced Applicant to imprisonment for a term of 18 months, provided that upon the service of 90 days, the balance would be suspended with probation for 2 years. Applicant did not appeal her conviction or sentence.

II. STATEMENT OF THE FACTS

The underlying conviction is a simple DUI arising out of a single-vehicle collision on the side of Interstate 85. On November 19, 2016, Lance Corporal Gregory Glenn Elder, of the South

Carolina Highway Patrol, responded to the scene of an accident at 4:02 A.M. at mile marker 67 on northbound Interstate 85. (Tr. 38-39). Trooper Elder found a 2009 Toyota with its hood “up against the guardrail” in the outermost lane of the highway. (Tr. 39-40). From paperwork found in the vehicle, Trooper Elder determined the car was owned by Applicant. (Tr. 40, ll. 13-18).

Trooper Elder encountered and spoke with three individuals at the scene, all of whom smelled of alcohol: Applicant, Kimberly Lyles, and Randal Scott. (Tr. 41, ll. 9-18). Nobody was in the vehicle when he arrived on scene, but all were waiting outside of the wrecked Toyota. (Tr. 50, ll. 12-14). No field sobriety test was conducted at the scene because the three elected to go to the hospital. (Tr. 42, ll. 4-10). Applicant “never would answer [Elder’s] questions as to what took place there[,]” and was “really uncooperative.” (Tr. 41, ll. 11-12; Tr. 44, ll. 3-14). Applicant refused a blood test at the hospital. (Tr. 45, ll. 16-19). Lyles told Trooper Elder that she had been sitting in the back seat. (Tr. 51, ll. 5-6). Scott initially told Trooper Elder that he was in the front passenger seat. (Tr. 54, ll. 17-25; Tr. 63-64; Tr. 67, ll. 14-19). However, Scott called Trooper Elder the following day and asserted he was actually driving the vehicle at the time of the collision. (Tr. 60, ll. 1-15; Tr. 64, ll. 13-16; Tr. 68-70).

Scott testified at trial that Applicant was his cousin and that Lyles was a friend. (Tr. 61, ll. 14-20). Scott testified that he was actually the driver of the vehicle and that he wrecked into the guardrail trying to get on Interstate 85 after a vehicle on the highway cut him off. (Tr. 62, ll. 14-24; Tr. 67, ll. 20-21). Scott explained Applicant was seated in the front passenger seat and Lyles was seated in the back—both were asleep at the time of the collision. (Tr. 63, ll. 2-6). Scott called 911 after the wreck. (Tr. 62-63). Scott explained he initially told Trooper Elder that Applicant was the driver simply because he was intoxicated and scared at the time of their initial conversation. (Tr. 63-64; Tr. 67-68).

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III. CURRENT APPLICATION

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons (excerpted verbatim):

1. Ineffective assistance of trial counsel, in that:

- a. "[Applicant] contends that she vehemently requested and expressed that Counsel request for medical records, [illegible due to poor scanning], and documentation from the automobile insurance company and photos of the automobile incident so that Counsel could solidify her alibi and make a strategic and solid argument proving her actual, factual, and legal innocence before the jury. Counsel assured defendant that he would compel, compile and gather all information and documentation that the defendant requested to be investigated for trial preparation."
 - i. Defendant expressed to Counsel that she was not the driver of the vehicle the night of the accident and that she was the passenger. She expressed to counsel that the passenger side front windshield was damaged due to her head hitting the windshield, which is consistent to her medical records, the picture of the car, as well as the statement from the actual driver, Randal L. Scott and the third rear passenger, Kimberly Hughes Lyles."
 - ii. "Counsel failed to make any reasonable search into any of the Defendant's request for this exculpatory evidence. . . . The jury was never presented nor notified of any of this evidence."
 - iii. Applicant asserts she is entitled to a presumption of prejudice under United States v. Cronin, 466 U.S. 648 (1984).
- b. "Defendant avers that she gave counsel all information and physical contact to several witnesses that were part and parcel to the crime alleged and they were available, ready, and willing to be interviewed, subpoenaed, and able to stand trial. These favorable witnesses also contacted counsel on numerous accounts. Counsel expressed to these witnesses that he would interview them and have them ready available for trial but at no time did Counsel reach out to contact either witness prior to trial. However Defendant did get declarations, statements, affidavits to Counsel with witnesses available and present. Counsel never took any measures to correspond with either of the witnesses in preparation for trial."
 - i. "Specifically, Kimberly H. Lyles, stated that she was the rear passenger in the vehicle and that Defendant was in front of her in the front passenger seat when they left the party and when the accident actually occurred."
 - ii. Counsel did not subpoena or call Lyles as a witness, and Applicant appears to take exception to the State's calling of Randal L. Scott.
- c. "Counsel failed to file Notice of Appeal as expressed by Defendant and others."

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- i. "It is the defendant's contention that Counsel would file an appeal on her behalf challenging the sufficiency of the evidence; the Court's denial of the direct verdict, and the question from the jury. Defendant expressed to Counsel at the sentencing trial after the Court pronounced its order of sentencing, that Counsel file an appeal, Counsel assured defendant and her family that he had several issues he would address and that he only had 10 days to put in a Notice of Appeal."
 1. "Defendant's family and others contacted Counsel 3 days following sentencing to check the status of appeal and Counsel stated he would return the call and update them later. Defendant also had family to call Counsel on 3-way to check the status but only to be told by Counsel's secretary that Counsel was not in. When one week, 7-days passed Counsel refused to talk with defendant [or] her family and ignored [their] numerous messages to him."
- d. "Counsel failed to understand the law and facts of the case and failed to conduct pre-trial reasonable investigative facts."
- e. "Counsel failed to allow defendant the fundamental right to testify as expressed before trial and during trial."
 - i. "At the conclusion of trial Counsel elected to address the Court stating he would not be calling his client to testify nor call any witnesses. At the instance defendant alerted Counsel that she wanted to and desired to testify. Counsel pulled one over on the defendant by expressing to her that if she desired to testify it would allow the Court and State to address her prior arrest and convictions of drug and alcohol offenses. He stated the jury would find defendant guilty and convict her in a heartbeat. Counsel stated to defendant that he did not and was not prepared for that."
2. "For good cause and in good faith, the [Applicant] contends actual, factual, and legal innocence."

Applicant requests relief as follows:

- "... any and all relief it deems fair and just in Defendant's case."

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the trial transcript, and the current application for relief.

Respondent reserves the right to amend this Return upon receipt of relevant information.

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IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Trial Counsel, Generally

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, 686 (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. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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 "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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Ineffective Assistance of Counsel under Cronic

Applicant contends she should be entitled to a presumption of prejudice. “[T]he right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial.” United States v. Cronic, 466 U.S. 648, 658 (1984). Generally speaking, attorneys are presumed competent to provide “the guiding hand that the defendant needs,” such that “the burden rests on the accused to demonstrate” a violation of the Sixth Amendment. Id. However, there are “circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.” Id. Prejudice may be presumed *per se* in three circumstances: (1) when a defendant is completely denied counsel at a critical stage of his or her trial; (2) when there has been a constructive denial of counsel from an attorney’s complete failure to subject the prosecution’s case to meaningful adversarial testing; and (3) when circumstances of trial are such that the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that the presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006); Cronic, 466 U.S. at 659-60. “A finding of *per se* prejudice under any of these three prongs is ‘an extremely high showing for a criminal defendant to make.’” Nance, 367 S.C. at 552, 626 S.E.2d at 880 (quoting Brown v. French, 147 F.3d 307, 313 (4th Cir. 1998)). Presumption of prejudice as a standard is only used for those cases where counsel fails to “function in any meaningful sense as the Government’s adversary.” Id., 367 S.C. at 552, 626 S.E.2d at 881 (quoting Florida v. Nixon, 543 U.S. 175, 190 (2004)).

Applicant cannot demonstrate that her case falls into any of the three circumstances in which the presumption of prejudice would be appropriate. Applicant was represented by an

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experienced and effective attorney who articulated an extensive opening statement, cross-examined witnesses, and effectively argued in closing. The record reflects the efforts of an attorney operating in accord with planning and strategy. Applicant's trial in no way reflects the functionally complete denial of counsel, and her request for the presumption of prejudice under Cronic should be denied.

Failure to Investigate, Call Witnesses

In order to prevail upon a claim that counsel failed investigate, prepare, and/or call certain witnesses, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared or utilized those witnesses. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the additional investigation witnesses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The evidence introduced at trial provides that the primary witness insisted upon by Applicant, Kimberly Hughes Lyles, was asleep at the time of the collision. Additionally, the substance of her testimony was functionally introduced through law enforcement's testimony—she was in the back seat. Applicant's other witness, Randall Scott, was appropriately called by the prosecution. Applicant probably cannot meet her burden of proof as to either prong of Strickland by introducing Lyles' testimony, but the allegation raises a question of fact.

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White Claim

Applicant alleges that she was denied the right to a direct appeal of his conviction and sentence. "Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal." Turner v. State, 380 S.C. 223, 670 S.E.2d 373 (2008) (citing White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. Where an Applicant does not knowingly and voluntarily waive his right to an appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Day v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Respondent lacks sufficient information to admit or deny this allegation at this time.

Right to Testify

Applicant's contention that Counsel denied her the right to testify is self-defeating. Applicant explains she did not testify due to Counsel's wise advice that doing so could expose her to cross-examination on prior convictions. Counsel's advice was well-founded, and again reflects his preparation and effort in the case.

Conclusion and Action Requested

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

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

V. RESPONSE TO CLAIM OF ACTUAL INNOCENCE

Applicant's claim of actual innocence should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. Claims by an Applicant that he or she is actually innocent, is not guilty, or that the evidence against him or her was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act); Dickson v. State, 247 S.C. 153, 156, 146 S.E.2d 257, 258 (1966) ("The allegation that petitioner is not guilty does not raise a matter for consideration by habeas corpus."). Therefore, the freestanding claim of actual innocence should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims she 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; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). 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

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application. See Rule 11, SCRCP. 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), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. GENERAL DENIAL

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

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[Conclusion and signature on following page]

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its partial motion to dismiss as set forth in Section V, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel.

Respectfully submitted,

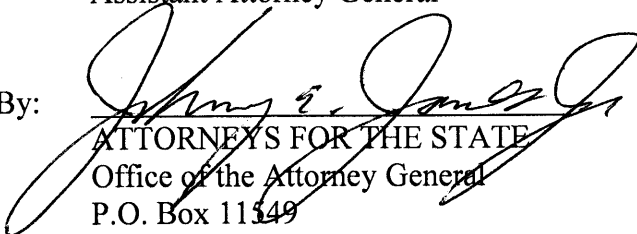
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
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12 June, 2019

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ALAN WILSON
ATTORNEY GENERAL

June 12, 2019

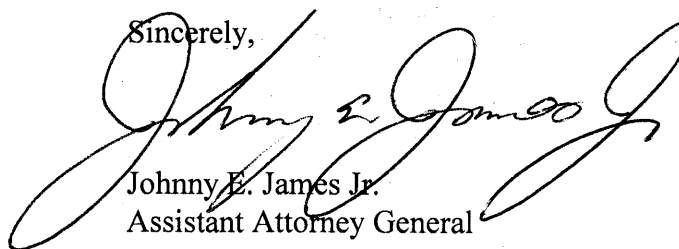
The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304

Re: Ranata Jones v. State of South Carolina
2017-CP-42-2769

Dear Ms. Cox:

Enclosed please find the original **Return and Partial Motion to Dismiss (Counsel Appointed)** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/ec

Enclosures

cc: Susannah C. Ross, Esquire

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Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 RANATA JONES VS. THE STATE OF SOUTH CAROLINA

2 THE COURT: Call your next case.

3 MR. ISENBERG: Your Honor, the State calls Renata
4 Jones versus The State of South Carolina.

5 THE COURT: All right. You may proceed.

6 MR. ISENBERG: Your Honor, this next case is
7 Renata D. Jones versus The State of South Carolina.
8 Case Number 2018-CP-42-02769. This is based upon the
9 application Ms. Jones filed on August 6th, 2018, for
10 postconviction relief. She was previously confined with
11 the South Carolina Department of Corrections pursuant to
12 orders of commitment through the Spartanburg County
13 clerk of court.

14 At the February 2017 term, Spartanburg County
15 grand jury indicted her for driving under the influence.
16 Joshua Schultz, who's present here today, represented
17 her. Andrew Miller and Sydni Kallum of the Seventh
18 Circuit Solicitor's Office prosecuted the case.

19 On August 9th, 2017, she proceeded to trial
20 before the Honorable Robin Stillwell and a jury. The
21 jury found her guilty as indicted the same day. Judge
22 Stillwell sentenced the applicant to imprisonment for a
23 term of 18 months, provided that upon the service of 90
24 days the balance will be suspended with probation for
25 two years. She did not appeal her conviction or her

1 sentence. And with that I'll turn it over to opposing
2 counsel.

3 MS. ROSS: May it please the Court, Your Honor?
4 This is Ranata Jones. She is alleging ineffective
5 assistance of counsel for failure to investigate and
6 present a reasonable defense and present exculpatory
7 evidence. I'd point out on page 96, the jury does ask
8 to ---

9 THE COURT: Page 96 of?

10 MS. ROSS: Of the transcript.

11 THE COURT: Let me see that. Just a minute.

12 MS. ROSS: Sure. I gave away my transcript.

13 I've just got my notes.

14 THE COURT: I have it.

15 MS. ROSS: Okay.

16 THE COURT: All right. I'm on page 96.

17 MS. ROSS: I believe the jury asked just to hear
18 the testimony of Mr. Scott. Again, there's video
19 testimony at the scene. Also, on page 56, over the
20 State's objection, the defense proffered from Mr. --
21 testimony that Mr. Scott called the next day and said
22 that he was actually driving and has lied on that
23 videotape prior to that.

24 THE COURT: What page is that on?

25 MS. ROSS: That is on page 56, Your Honor.

1 THE COURT: 56?

2 MS. ROSS: Yes.

3 THE COURT: That's the way he testified?

4 MS. ROSS: Well, on page 49 ---

5 THE COURT: Well, wait a minute. You're getting
6 ahead of me.

7 MS. ROSS: On page 56 ---

8 THE COURT: Page 56, what lines? What are we
9 talking about? I guess he was trying to take the rap
10 for a friend?

11 MS. ROSS: Yes. Mr. Schultz proffers testimony,
12 line 12, from a police officer who -- a desk officer,
13 who got information from Mr. Scott that he ---

14 THE COURT: So there's no objection to that
15 testimony?

16 MS. ROSS: There was an objection on page 49.
17 And on page 56 defense counsel proffers.

18 THE COURT: So this is proffer?

19 MS. ROSS: Yeah, proffer what would have been
20 said. And there was no appeal to challenge that story.

21 THE COURT: To challenge what?

22 MS. ROSS: Well, he proffered that and the ruling
23 is that the statement can't come in. And since there
24 was no appeal, that ruling was not reviewed by the Court
25 of Appeals. We would argue that there's a 911 tape

1 recording, which we'll offer today, as well as testimony
2 of a witness that would be exculpatory evidence that
3 should have been presented. So we're -- I can give a
4 brief summarization, but the trial essentially was that
5 Ms. Jones was accused of driving under the influence.
6 Mr. Scott ---

7 THE COURT: No, no associated --

8 MS. ROSS: No.

9 THE COURT: -- hit and run?

10 MS. ROSS: No wreck or anything, no. Just drive
11 regular, driving under influence third offence.

12 THE COURT: Third?

13 MS. ROSS: Mr. Scott, who testified at trial,
14 initially at the scene on the video says Ms. Jones was
15 the driver.

16 THE COURT: Okay.

17 MS. ROSS: They're cousins.

18 THE COURT: And Mr. Scott is the officer,
19 arresting officer?

20 MS. ROSS: No, he is the -- there are three
21 people in the car. Mr. Scott calls 911. He then is
22 on ---

23 THE COURT: Why did he call 911?

24 MS. ROSS: To report the wreck.

25 THE COURT: There was a wreck?

1 MS. ROSS: There was a car wreck with no injury
2 to anyone else. There was a wreck.

3 THE COURT: And this lady was in the wreck?

4 MS. ROSS: Yes.

5 THE COURT: She was driving?

6 MS. ROSS: Three people were in the wreck. She
7 submits that she was not driving, that Mr. Scott was
8 driving.

9 THE COURT: All right. Who was in the car with
10 her?

11 MS. ROSS: Kimberly Hughes, who's a witness
12 today.

13 THE COURT: Hugh?

14 MS. ROSS: Hughes, H-u-g-h-e-s. She was a
15 passenger in the backseat.

16 THE COURT: Okay.

17 MS. ROSS: Ranata Jones, who said she was a
18 passenger in the front seat. And Randall Scott, who we
19 would submit was actually the driver.

20 THE COURT: Is he here today?

21 MS. ROSS: He is not here today.

22 THE COURT: Okay.

23 MS. ROSS: His testimony is preserved in the 911
24 call, which we have a copy of, that was not submitted in
25 the trial. There's also body cam video from the first

1 officer on the scene talking to Mr. Scott, who at that
2 point says he wasn't the driver, Ms. Jones was. Then
3 the next day Mr. Scott called into law enforcement and
4 says I lied on video yesterday.

5 THE COURT: Recant.

6 MS. ROSS: I was the driver, not Ms. Jones. Then
7 at trial he testified I was the driver, not Ms. Jones.
8 However, the State argued he's lying under oath. A dash
9 cam video shows that he told the officer at the scene
10 that he was a passenger and Ms. Jones was the driver.
11 Thus, we're alleging ineffective assistance for failing
12 to present the 911 call they did not present.

13 THE COURT: And what was on the 911 call?

14 MS. ROSS: It was Mr. Scott essentially saying I
15 was driving, this is what happened.

16 THE COURT: He said he was driving on the 911
17 call?

18 MS. ROSS: I'll let you listen to it. He didn't
19 -- he said where we've gotten into a wreck. My cousin
20 was asleep in the front seat. Ms. Jones is his cousin.
21 And I didn't hear the words I was driving the car, but
22 I'll let you look and see whether the inference sounds
23 to me like he's saying that. And then trial attorney
24 also failed to present Kimberly Hughes, the backseat
25 passenger, who will testify to that.

1 THE COURT: All right.

2 MS. ROSS: All right. We call Ms. Ranata Jones
3 to the stand. And then come up and raise your right
4 hand and put your left hand on the Bible.

5 (Witness comes forward.)

6 THE COURT: Left hand. Do you solemnly swear or
7 affirm -- left hand on the Bible.

8 Solemnly swear or affirm the testimony you're
9 about to give in this area will be the truth, the whole
10 truth, and nothing but the truth so help you God?

11 THE WITNESS: I do.

12 THE COURT: All right.

13 MS. ROSS: Have a seat.

14 RANATA JONES,
15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. ROSS:

18 Q. Okay. Ms. Jones, you understand this is a
19 postconviction relief proceeding and your relief would
20 be put back in the position you were in before this
21 trial facing a DUI third potentially three years?

22 A. Yes.

23 Q. And do you still wish to proceed?

24 A. Yes.

25 Q. Now, you've alleged ineffective assistance of

1 counsel, why is that?

2 A. Because there was evidence that I felt was
3 instrumental to my case.

4 Q. Detrimental or helpful?

5 A. I mean, helpful, I'm sorry. I'm using the word.
6 Helpful to my case.

7 Q. Did you tell your lawyer about it?

8 A. Yes. I -- when he brought me into his office and
9 sat me down to look at the discovery, the video of Mr.
10 Scott, I told him then about -- asked him could he get
11 the 911 call, so he got the 911 call. I don't even know
12 if he even reviewed it or not. He never even said
13 anything else to me about it, but I kept urging him to
14 play that because I know that in that tape he admits
15 that I was asleep --

16 MR. ISENBERG: Objection, Your Honor.

17 THE WITNESS: -- in the car seat.

18 MR. ISENBERG: It's hearsay.

19 THE COURT: Yeah.

20 BY MS. ROSS:

21 Q. You can't say what someone else told you.

22 A. Okay. Well...

23 Q. Have you listened to the tape?

24 A. Yes, I have. And I know, I know from listening
25 to the tape that ---

1 Q. What was said on the tape?

2 A. What was said on the tape was that he ---

3 MR. ISENBERG: Objection, Your Honor. She's
4 testifying to what was said on the tape.

5 THE COURT: Well, that's the evidence.
6 Overruled. Go ahead.

7 THE WITNESS: I know from listening to the tape
8 that what was said on the tape was that I was in the
9 front seat asleep.

10 THE COURT: Does it say that on the tape?

11 THE WITNESS: Yes. He said my -- well, he says
12 my cousin was in the front seat asleep. And also he
13 said that -- he told the officer on the video that he
14 was in the front seat passenger side. So either, how
15 can I be asleep and driving and he can be -- I mean, it
16 just don't make sense, none of it.

17 BY MS. ROSS:

18 Q. -- Okay.

19 A. I mean, so I felt that being that there was
20 another passenger in the car, I don't understand how
21 three people can be in an accident that bad and I'm
22 being charged with something I didn't do and no -- and
23 everybody is not accounted for.

24 Q. Okay. Now, let's got back to this 911 tape.

25 We're gonna try to let the Court hear this. How did --

1 did you get a copy of the 911 tape?

2 A. Yes, I did.

3 Q. How did you get it?

4 A. I e-mailed the dispatch communications, 911
5 communications, and I e-mailed them the form. I filled
6 out a form via e-mail asking for certain materials from
7 that date, that night from the call. And he e-mailed me
8 back the materials that I asked for.

9 Q. And then did you e-mail them to anybody?

10 A. To my attorney.

11 Q. All right.

12 A. Susannah Ross.

13 MS. ROSS: And I've got my phone here in court,
14 Your Honor, and I can play this for the Court.

15 MR. ISENBERG: Your Honor, I'm just gonna have to
16 object to hearsay. If what she's claiming is on the
17 phone is true, that's an out-of-court statement made by
18 the declarant, who's not here to testify today, that
19 directly goes to the truth. And he ---

20 THE COURT: What about it?

21 MS. ROSS: Well, it's not for the truth of the
22 matter asserting, Judge. It's just for this is what the
23 911 tape says, so it would not come under --

24 THE COURT: Well, what ---

25 MR. ISENBERG: Your Honor, it's the truth of the

1 matter ---

2 THE COURT: Hold on.

3 MR. ISENBERG: Okay.

4 THE COURT: Where, where was the call made from?

5 BY MS. ROSS:

6 Q. Do you know?

7 A. It was made from Randall's phone.

8 Q. And it just ---

9 A. In the ---

10 Q. And this is just ---

11 THE COURT: Well, was it a week later? Two weeks
12 later? When was it made?

13 THE WITNESS: The same night.

14 MS. ROSS: The same night, right at the scene.

15 THE WITNESS: It was before he even talked to the
16 officer. This is what he said.

17 MS. ROSS: And you can hear 911 dispatch as well.

18 THE COURT: I know that. Does it have a date on
19 it?

20 MS. ROSS: I believe so. Can I ---

21 THE COURT: Time on it?

22 MS. ROSS: I believe so. Can I ---

23 THE WITNESS: I have the whole transcript.

24 MS. ROSS: Can I attempt to proffer it at this
25 time and then we can hear that?

1 THE COURT: If it's at the scene of the accident.

2 THE WITNESS: It is.

3 MS. ROSS: It is.

4 THE COURT: Ma'am, just would you let me talk.

5 THE WITNESS: I'm sorry.

6 THE COURT: I'm talking to your lawyer. I'm not
7 talking to you.

8 THE WITNESS: I'm sorry.

9 MS. ROSS: It is. It's clearly presence
10 impression right there at the scene.

11 THE COURT: Excited utterance.

12 MS. ROSS: Yes.

13 THE COURT: Maybe. That's about the only way a
14 911 call can come in.

15 MR. ISENBERG: Yeah, I clearly understand her
16 argument on the objection.

17 THE COURT: Trying to put it in context. Go
18 ahead, Ms. Ross.

19 MS. ROSS: I'm gonna put this right here and ask
20 you if you recognize it.

21 THE COURT: Lay some foundation. Why is it on
22 your tape -- on your phone or how did it get there?

23 MS. ROSS: Ms. Jones received a copy that was
24 sent to her by e-mail, a digital copy of the 911 tape
25 from 911 dispatch.

1 THE COURT: Digital copy by e-mail.

2 MS. ROSS: She forwarded it to me, and then this
3 is what it looks like.

4 THE COURT: What about the authenticity, Mr.
5 Isenberg? Do you question the authenticity of this?

6 MR. ISENBERG: Your Honor, I would, I would just
7 object at this point to a lack of foundation based upon
8 the fact that I have not heard the specific details
9 surrounding her reception of this 911 call from who,
10 when.

11 THE COURT: I'm in the same boat.

12 MR. ISENBERG: Yeah. I just, if we could get
13 some foundation on when she received this copy and whom
14 all she sent it to, including -- obviously she may have
15 sent it to Ms. Ross, but if we could get some foundation
16 on this.

17 THE COURT: Lay some foundation on the telephone
18 call.

19 BY MS. ROSS:

20 Q. Okay. Ms. Jones, I'm handing Ms. Jones an e-mail
21 that she sent me, she forwarded it to me. Who is that
22 e-mail from?

23 A. From Keith Lee from the Spartanburg County
24 dispatch.

25 Q. And what does it say?

1 A. It say: This is what I have. Audio where call
2 was placed. It is in a ZIP file. To open you will need
3 to download a ZIP reader/WINZIP. They are free off
4 internet. You may have one already within your
5 computer, but that is how you can listen to the audio.
6 The AT&T log will show the time that the number you
7 provided called the 911 system.

8 The CAD report is what the tele-communicator
9 created when the call was made into 911 center. It is
10 basically a transcript. Both PDF once you open can be
11 printed. What we try to do is send electronically;
12 however, if you want me to send this to you via USPS
13 and/or if you want to pick this up at our center then I
14 have to charge you for it. Sorry for the inconvenience,
15 KL.

16 Q. And who is KL? Where does he work?

17 A. Keith Lee. Spartanburg County 911 dispatch. And
18 it's called a FOIA request form that you have to do via
19 e-mail.

20 Q. And that stands for Freedom Of Information Act?

21 A. Yes.

22 Q. And then this is what it looks like, what it sent
23 when it comes up on your phone?

24 A. Yes. And it also has the phone number that he
25 had on there also labeled right on top of it.

1 Q. Okay. And that's the ---

2 A. The 864-978-7239.

3 Q. Now, do you know whose phone number that is?

4 A. That's Randall Scott's.

5 Q. And he is your?

6 A. Cousin.

7 MS. ROSS: Okay. I would ask that I be able to
8 play this at this time for the Court.

9 THE COURT: Over the State's objection, go ahead.

10 (Plays 911 tape.)

11 BY MS. ROSS:

12 Q. So, that's what was sent to you with the FOIA
13 request?

14 A. Yes.

15 Q. And was that played at your trial?

16 A. No.

17 Q. Did the State bring that into evidence?

18 A. No.

19 Q. Did your defense attorney bring that into
20 evidence?

21 A. No.

22 Q. And do you feel that it would have changed the
23 outcome of the trial if he had?

24 A. Yes.

25 Q. All right. Now, is there anything else that you

1 think he should have presented?

2 A. He should have presented Kimberly Hughes, which
3 she was a passenger in the backseat.

4 Q. Okay. And were you driving the car?

5 A. No.

6 MS. ROSS: I don't have any further questions.

7 MR. ISENBERG: May it please the Court?

8 THE COURT: Yes, sir. Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. ISENBERG:

11 Q. Good morning, Ms. Jones.

12 A. Good morning.

13 Q. How are you doing today?

14 A. I'm good.

15 Q. So you testified on direct examination that you
16 believe the 911 call would have made a big difference in
17 your trial.

18 A. Yes.

19 Q. Okay. And that's based upon Mr. Scott calling
20 the police?

21 A. It's based upon the video that he said where --
22 the only video that the prosecutors were using against
23 me is based upon that, that he stood on that video and
24 said that he -- the officer didn't only ask him who was
25 driving the car in that video, he asked him where he was

1 sitting also in that video. And he explained that he
2 was sitting in the front passenger seat in that video.

3 Q. Okay.

4 A. So that's why I feel that 911 call would have
5 changed the outcome.

6 Q. And he called the next day and recanted, correct?

7 A. Yes.

8 Q. And your attorney tried to present that evidence
9 at the trial, correct?

10 A. Yes.

11 Q. And he did present that evidence at the trial,
12 correct?

13 A. Yes.

14 Q. Okay. So your attorney actually solicited and
15 elicited testimony from the witness that he notified
16 police that he was, in fact, driving, correct?

17 A. Correct.

18 Q. Okay. And that was heard by the jury, correct?

19 A. Correct.

20 Q. And the jury considered the fact that he told
21 police that he was driving, correct?

22 A. Correct.

23 Q. And then they found you guilty, correct?

24 A. Correct.

25 MR. ISENBERG: Okay. I have no further

1 questions.

2 REDIRECT EXAMINATION

3 BY MS. ROSS:

4 Q. Now, just to clarify, when he called the next
5 day ---

6 THE COURT: Who?

7 BY MS. ROSS:

8 Q. When Mr. Scott called the next day ---

9 THE COURT: Back up.

10 MS. ROSS: Pardon?

11 THE COURT: She's talking about some video. I
12 know nothing about some video.

13 MR. ISENBERG: Your Honor, I think she's talking
14 about the body cam. The body cam.

15 THE COURT: From?

16 MR. ISENBERG: From the scene where Mr. Scott
17 tells police that she was driving a car that he was in
18 the front seat, correct?

19 THE WITNESS: Correct.

20 THE COURT: Okay.

21 BY MS. ROSS:

22 Q. And then you were just asked about Mr. Scott
23 calling into dispatch the next day recanting. He
24 doesn't recant the 911 call where he says he's driving.
25 I mean, he doesn't recant that. He recants the body cam

1 where he says you were driving. I lied yesterday.

2 A. Yes, that's what he recants.

3 Q. Okay. And on page 49 of the transcript your
4 lawyer objected to that testimony coming in from the
5 officer that Mr. Scott called in to recant. Do you
6 recall that?

7 A. No, I don't recall it.

8 Q. Okay. No further questions.

9 THE COURT: Anything further from this witness?

10 MR. ISENBERG: Nothing, Your Honor.

11 THE COURT: Okay. You may come down, ma'am.

12 Thank you.

13 THE WITNESS: You're welcome.

14 (Witness leaves witness stand.)

15 MS. ROSS: Okay. The applicant would call
16 Kimberly Hughes at this time.

17 (Witness comes forward.)

18 THE COURT: Place your left hand on the Bible and
19 raise your right hand. (Complies.)

20 Do you solemnly swear or affirm the testimony
21 you're about to give in this hearing will be the truth,
22 the whole truth, and nothing but the truth so help you
23 God?

24 THE WITNESS: I do.

25 THE COURT: All right. Have a seat.

1 KIMBERLY HUGHES,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q. Okay. Ms. Hughes, how do you know Ranata Jones?

6 A. Friend of the family.

7 Q. All right. And do you know Randall Green? Is it
8 Mr. Green?

9 A. Randall Scott.

10 Q. Randall Scott, sorry.

11 A. Yes, ma'am.

12 Q. How do you know him?

13 A. Friend of the family.

14 Q. Do you know if Ms. Jones and Mr. Scott are
15 related?

16 A. Yes, ma'am.

17 Q. How are they related?

18 A. I think they're brother and they're uncle,
19 cousins.

20 Q. Okay. And were you there the night, the night of
21 this accident?

22 A. Yes, ma'am.

23 Q. And where were you?

24 A. In the backseat.

25 Q. And who was driving the car?

1 A. Randall Scott.

2 Q. Were you asked about that by Mrs. Jones' attorney
3 during her trial?

4 A. No, ma'am.

5 Q. Did he ever talk to you?

6 A. In the office.

7 Q. Okay. Did he talk to you about testifying?

8 A. No.

9 Q. Would you have been willing to testify?

10 A. Yes, ma'am.

11 Q. And you would have told the truth?

12 A. Yes, ma'am.

13 Q. Like you have today?

14 A. Yes, ma'am.

15 Q. And that is who was driving this car?

16 A. Randall Scott.

17 Q. All right. I have no further questions.

18 THE COURT: Cross-examination?

19 MR. ISENBERG: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. ISENBERG:

22 Q. Good morning, Ms. Hughes, how are you doing?

23 A. Fine.

24 Q. Good. Good. Were you at the trial?

25 A. Yes, sir.

1 Q. Okay. And did the defendant ever request that
2 you testify at the trial?

3 A. Yes.

4 Q. Okay, when?

5 A. When we went to trial, he didn't call my name
6 like to testify at all.

7 Q. Did she, did Ms. Jones ask you to testify?

8 A. I don't recall.

9 Q. So she never asked you to testify?

10 A. I mean, I really don't know. Not at the trial.

11 Q. Okay.

12 A. That I'm aware of.

13 Q. So just to clear up, you don't recall her ever
14 asking you to testify?

15 A. Yes.

16 Q. Okay. All right. And on the night in question
17 you were with her and Mr. Scott?

18 A. Yes, sir.

19 Q. Okay. And you did a -- did you do a sobriety
20 test at the scene?

21 A. No, sir.

22 Q. Okay. Did you do any sort of test to test your
23 blood alcohol level that night?

24 A. No, sir.

25 Q. Okay. And that's because you weren't driving,

1 correct?

2 A. Yes.

3 Q. You were in the backseat?

4 A. Yes.

5 Q. Okay. Were you asleep?

6 A. Yes.

7 Q. Okay. So while you were asleep, you weren't
8 having any conversations with anybody else in the
9 vehicle, correct?

10 A. No, sir.

11 Q. Okay. And while you were asleep you weren't
12 observing anyone else in the vehicle, correct?

13 A. Correct.

14 Q. So while you were asleep, you weren't observing
15 who was driving, correct?

16 A. Yes.

17 MR. ISENBERG: Okay. No further questions, Your
18 Honor.

19 REDIRECT EXAMINATION

20 BY MS. ROSS:

21 Q. Who was driving when you got in the backseat and
22 left?

23 A. Randall Scott.

24 Q. Okay. And then did you all stop at any point or
25 anything like that?

1 A. Before ---

2 MR. ISENBERG: Objection, Your Honor. This would
3 be speculation. She just testified she was asleep
4 during the, during the car ride.

5 THE COURT: During the wreck, right?

6 MR. ISENBERG: Your Honor, I believe during my
7 cross-examination of her she said she was sleeping
8 during her car ride. And she's now asking her who was
9 driving while they were riding in the car.

10 THE COURT: Well, she asked her when they
11 started. She says Randall Scott was driving. I assume
12 then she went to sleep. I don't know.

13 THE WITNESS: Yes.

14 BY MS. ROSS:

15 Q. Can you clarify that?

16 A. Yes, ma'am.

17 Q. Okay. What happened? Give me the whole sleep --
18 how ---

19 A. We stopped by the store before we fell to sleep,
20 so he was driving the car while we were asleep.

21 Q. And were you all basically on a highway?

22 A. We was getting off the highway. Like we was at a
23 store right by the highway and we fall asleep after
24 that, but Randall Scott was driving the car.

25 Q. And you're sure of that?

1 A. Uh-huh.

2 Q. Now, why were you at the trial before if Ms.
3 Jones hadn't asked you to be there to testify at some
4 point?

5 A. Just because I was in the backseat of the car
6 when the accident occurred.

7 Q. Okay.

8 A. I was in the vehicle.

9 Q. Were you subpoenaed to be there?

10 A. Yes.

11 Q. Okay. And who subpoenaed you?

12 A. What's his -- Schultz.

13 Q. Okay. So her lawyer had subpoenaed you to be
14 there to potentially be a witness?

15 A. Yes.

16 MS. ROSS: Okay. No further questions.

17 THE COURT: You can come down, ma'am.

18 (Witness leaves witness stand.)

19 MS. ROSS: That's the applicant's case, Your
20 Honor.

21 THE COURT: All right. Anything from the State?

22 MR. ISENBERG: Yes, Your Honor. The State would
23 call Josh Schultz to the stand.

24 (Witness comes forward and puts left hand on the
25 Bible and raises right hand.)

1 THE COURT: Solemnly swear or affirm the
2 testimony you're about to give in this hearing will be
3 the truth, the whole truth, and nothing but the truth so
4 help you God?

5 THE WITNESS: I do.

6 THE COURT: All right. Have a seat.

7 THE WITNESS: Thank you.

8 E. JOSHUA SCHULTZ,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ISENBERG:

12 Q. Good morning, Mr. Schultz.

13 A. Good morning. How are you, sir?

14 Q. Good. How about you?

15 A. Very good.

16 Q. Good. Good. I'm thankful you were able to make
17 it over here today.

18 A. Certainly.

19 Q. First things first, how long have you been
20 practicing law?

21 A. 2005. Since 2005.

22 Q. Okay. And what percentage of that since you've
23 been practicing have been criminal law?

24 A. Large percentage. Over 95 percent.

25 Q. Okay. So that's about 14 years of practice with

1 95 percent of criminal law, correct?

2 A. Yes.

3 Q. Okay. And how many DUI cases do you believe,
4 best estimate, you've tried or done since that time?

5 A. Probably a couple hundred at this point.

6 Q. Okay. How many of those can you estimate you
7 took to trial?

8 A. A good portion. I would say probably 30 or 40 at
9 this point.

10 Q. Okay. And before you began representing Ms.
11 Jones, have you ever had a client indicate or have you
12 ever represented a client and defended a client on the
13 basis that someone else was driving?

14 A. Yes.

15 Q. Okay. So you've tried a case before where you
16 contested that your client was actually driving,
17 correct?

18 A. Yes.

19 Q. Okay. So you're familiar with that trial
20 strategy?

21 A. Ye.

22 Q. Okay. And when you began representing Ms. Jones,
23 how did that first meeting go?

24 A. That went well. I don't remember it
25 specifically, but I remember her asserting that she was

1 not the driver.

2 Q. Okay. And she gave you her version of events,
3 correct?

4 A. Yes.

5 Q. Okay. And what did you receive in discovery from
6 the State?

7 A. I received the usual package of discovery,
8 incident report. The in-car camera video, which I
9 review with a client. I can't remember if I received a
10 911 call. I don't believe I did in the pretrial
11 discovery, but I received the usual incident report,
12 in-car camera video.

13 I believe there was a data master tape as well.
14 I'm not positive about that. In the usual, in the usual
15 course of practice there usually is a data master tape,
16 but I can't remember specifically if there was a data
17 master tape in the room there.

18 Q. So you never had possession of that 911 call,
19 correct?

20 A. I don't believe so, no.

21 Q. Did you ever get any kind of tip from your client
22 or anyone else that that 911 call tape may have been
23 relevant based upon Mr. Scott?

24 A. I can't remember specifically about that.

25 Q. Okay.

1 A. I want to say yes, but I can't remember
2 specifically.

3 Q. Okay. And during the course of your
4 representation of Ms. Jones, did you ever come into
5 contact with Ms. Hughes?

6 A. Yes, I believe I did.

7 Q. Okay. And did you ever interview her about the
8 case?

9 A. Yeah, I talked to her. Yes.

10 Q. Okay. What did she tell you?

11 A. I believe she was in the backseat, I think.

12 Q. Uh-huh.

13 A. And she was asleep. I think she was in and out
14 during the whole course of this incident there, the
15 accident that, that occurred.

16 Q. Okay. And based upon that interview were you
17 planning on calling her at trial?

18 A. I know I subpoenaed her. At least my records
19 indicate as such. But if the transcript reflects, I did
20 not call her as a witness in my case. I can't remember
21 specifically why, but if I had to guess it was probably
22 because she was in and out during the course of the
23 incident there.

24 Q. So you're saying that based upon her story, you
25 didn't believe that her testimony would be relevant and

1 helpful because she was falling asleep throughout the
2 course of the ride?

3 A. Yes, sir.

4 Q. Okay. And did you -- you're saying that you
5 probably considered that during the trial and concluded
6 that it was best not to call her?

7 A. Yes.

8 MS. ROSS: I object to leading.

9 BY MR. ISENBERG:

10 Q. Okay. I can --- what, if any, kind of
11 considerations did you give Ms. Hughes during the trial?

12 A. Can I ask you to clarify that?

13 Q. What, if any, kind of considerations did you give
14 calling Ms. Hughes to testify during the trial?

15 A. Well, if I called her during the trial there
16 could be, I guess is what you're asking -- what do you
17 mean by considerations? I don't, I don't understand
18 that.

19 Q. You subpoenaed her, correct?

20 A. Right.

21 Q. So with that subpoena you intended to potentially
22 call her at trial, correct?

23 A. Yes.

24 Q. Okay. Now, during trial what, if any, kind of
25 consideration did you give actually calling her to the

1 stand?

2 A. Well, I think I answered that. It would be
3 difficult for me to -- well, I don't remember calling
4 her at trial because I felt that her testimony would be
5 attached by the State as to someone that didn't have a
6 clear recollection of events.

7 Q. Okay. And what, if any, kind of consideration
8 did you give to her intoxication level that night?

9 A. Whose intoxication?

10 Q. Ms. Hughes.

11 A. That could have been a factor as well.

12 Q. Okay. And you're testifying that the sleeping
13 and the intoxication may have been impeachment factors?

14 A. Yeah. That the State could have used, yes.

15 Q. Okay. And in regards to the 911 phone call, you
16 were in the courtroom when that was played, correct?

17 A. I was.

18 Q. Okay. And what, if any, kind of impact do you
19 think that would have had at trial?

20 A. It would be difficult to say. I don't think the
21 gentleman on the 911 call said I was the driver. I
22 don't think those were the words out of his mouth.
23 Maybe I misheard the tape. But looking back at it, I
24 wish I had played it. But I don't believe that that
25 gentleman on the phone call specifically said I was the

1 driver, or maybe I misheard it, but I don't recollect.

2 Q. And going into trial what, if any, evidence of
3 impeachment did you have against Mr. Scott?

4 A. Well...

5 Q. I can rephrase if you want me to.

6 A. No, that would be fine.

7 Q. I'm being a little vague.

8 Going into trial, what evidence did you have
9 against Mr. Scott in regards to conflicting statements
10 he had?

11 A. The conflicting statements that he had were
12 contained in the in-car camera video.

13 Q. Okay.

14 A. And then -- and I think it's been established
15 today, as well as the trial, I believe the State trooper
16 later on, I think it was the next day said I was the
17 driver.

18 Q. Okay.

19 A. Does that answer your question?

20 Q. Yes, it does. And what was your strategy in
21 regards to your cross-examination of Mr. Scott?

22 A. Well, just, just to ask him was he the driver.

23 Q. Right. And do you believe that you sufficiently
24 cross-examined him?

25 A. I hope I did.

1 Q. And at the time did you believe that was
2 sufficient level of impeachment evidence against Mr.
3 Scott?

4 A. Yes.

5 Q. Okay. And just, I'm going to be a little vague
6 here, what was your trial strategy for Ms. Jones's case?

7 A. Well, like I said, that she was not the driver
8 and the actual driver admitted to the officer, admitted
9 to the arresting officer that he was the driver later
10 on.

11 Q. Okay.

12 A. And that was, that was my strategy.

13 Q. Correct.

14 A. Yes.

15 MR. ISENBERG: Okay. All right. I have no
16 further questions for this witness.

17 CROSS-EXAMINATION

18 BY MS. ROSS:

19 Q. Afternoon. Morning.

20 A. Afternoon or morning still.

21 Q. Now, did you say -- so you did not receive a copy
22 of the 911 tape from the State in discovery?

23 A. I don't believe so. I can't specifically
24 remember.

25 Q. And did you make any kind of Brady motion --

1 A. Yes.

2 Q. -- regarding -- so you did file Brady?

3 A. Absolutely, yes.

4 Q. And yet they did not provide you a copy of that
5 911 tape?

6 A. I don't believe so. I can't remember
7 specifically, no.

8 Q. Now, I believe it was, according to my notes on
9 page 66 of the transcript, they played the video.

10 THE COURT: 66 or 56?

11 MS. ROSS: 66, I believe. And I note the 911
12 tape was referenced but not played at that time.

13 BY MS. ROSS:

14 Q. Did you make any motion in reaction to that
15 saying I don't have the 911 tape or anything like that
16 at that point?

17 A. I don't believe so unless the transcript reflects
18 it.

19 Q. And in closing you didn't argue why didn't they
20 play this 911 tape, what are they hiding from you? You
21 didn't make that kind of argument in closing.

22 A. If the transcript says that, I did not. Or if
23 the transcript doesn't say it, I did not.

24 Q. Okay. Now, I just -- referencing back to page
25 49, line 11, that is where the State objects, saying

1 it's hearsay when you attempt to bring in, bring out Mr.
2 Scott had gone to law enforcement the next day and said
3 I lied on the video yesterday, I really was the driver,
4 right? So they object and say hearsay. And at that
5 point you proffer the testimony. Did you ever argue
6 that you were simply trying to put that, that testimony
7 in or that, that call in, in order to rebut an
8 allegation of recent fabrication by the State?

9 In other words, Mr. Scott testified at trial I
10 was the driver. And then they respond saying you're
11 lying, look at this video, you said you weren't the
12 driver. Did you ever argue well, this phone call where,
13 again, he says he was the driver would rebut the State's
14 allegation of a recent fabrication by the witness?

15 A. No.

16 MS. ROSS: Thank you. I've got no further
17 questions.

18 THE COURT: Anything further?

19 MR. ISENBERG: No redirect, Your Honor.

20 THE COURT: You may come down. Thank you very
21 much.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness leaves witness stand.)

24 THE COURT: Next witness?

25 MR. ISENBERG: Your Honor, the State has no more

1 witnesses.

2 THE COURT: All right.

3 MR. ISENBERG: Or I guess -- yeah, the State has
4 no more witnesses.

5 THE COURT: Anything further?

6 MS. ROSS: No.

7 THE COURT: Any further comments?

8 MS. ROSS: I think we can just brief the issue.
9 I would add, I think a Brady issue has just come up
10 about a 911 tape if that, in fact, was not given to
11 defense.

12 THE COURT: But we dont know that. We don't know
13 that.

14 MS. ROSS: That's true.

15 THE COURT: We suspect that.

16 MS. ROSS: We suspect it. But I'd just add that.
17 And then go back to my, my prior argument that counsel
18 failed to present exculpatory and reasonable defense
19 witnesses in the trial of this case and it went beyond
20 what would be strategic because this was exculpatory
21 evidence.

22 THE COURT: That being?

23 MS. ROSS: The 911 call and then the --

24 THE COURT: Right. But he didn't have the 911
25 call.

1 MS. ROSS: -- passenger in the car. Pardon me?

2 THE COURT: If he didn't have the 911 call, he
3 couldn't present it. He didn't know about it.

4 MS. ROSS: Well, she told -- Ms. Jones told him
5 about the 911 call and asked him to get it.

6 THE COURT: Told him?

7 MS. ROSS: Yes.

8 THE COURT: Okay. And is that the only? You
9 said failure to. Are you talking about ---

10 MS. ROSS: Yeah. I have failure to investigate
11 present reasonable defense witness and testimony through
12 the 911 tape and make reasonable arguments in closing.

13 MR. ISENBERG: Your Honor?

14 THE COURT: Yeah.

15 MR. ISENBERG: I think we're engaging in a little
16 big of a straw man argument here. Counsel testified
17 that his strategy was to present a defense that she
18 wasn't a driver. He cross-examined Mr. Scott on
19 conflicting statements, one of which Mr. Scott called
20 the police sober the next day and told them that he was
21 the driver. He elicited that testimony at trial. The
22 jury got to hear it. They heard his conflicting
23 testimony and they still decided with the evidence
24 presented and the case pointed to Ms. Jones being the
25 driver. He presented a reasonable trial strategy.

1 He presented evidence of any inconsistent
2 statements from Mr. Scott. He doesn't have to have the
3 best trial strategy, he just has to have a reasonable
4 one. And I don't believe he -- she's presented evidence
5 that he's deficient based upon the burden she has to
6 overcome. And I believe the jury heard conflicting
7 statements so from Mr. Scott ---

8 THE COURT: The jury didn't hear the 911 tape.

9 MR. ISENBERG: No, Your Honor. But the jury
10 heard that Mr. Scott gave two different stories.

11 THE COURT: I understand that.

12 MR. ISENBERG: And so I don't believe more, more
13 testimony would have impacted the outcome. And she --
14 and then as previously stated, she has the burden to
15 prove that there was a reasonable probability that it'll
16 have an impact of the outcome. So if they would have
17 had already heard evidence of inconsistent statements,
18 then I don't believe that more inconsistent statements
19 would have had a large impact on their decision.

20 In regards to the failure to investigate, the
21 witness testified that Ms. Jones never asked her
22 testify. And Mr. Schultz subpoenaed her anyway and he
23 decided during the course of the case that the
24 impeachment on her in regards to her intoxication and
25 her being asleep was just -- the positives did not

1 outweigh the negatives, so he decided no to call her.
2 He made a decision in trial not to call her, which means
3 she has not overcome the burden to prove that he was
4 deficient in his failure -- I mean, in his failure -- I
5 mean in his investigation claim. So for that the State
6 will ask you to dismiss this with prejudice.

7 THE COURT: All right.

8 MS. ROSS: Can I just briefly reply?

9 THE COURT: Yeah, sure.

10 MS. ROSS: I have, my notes have on page 81, the
11 State's closing, they start talking about look at this
12 video it's convincing, look at the video. And that
13 would be, I guess, the dash cam video of Mr. Scott at
14 the scene.

15 And then the jury on page --

16 THE COURT: And what's --

17 MS. ROSS: Page 81.

18 THE COURT: What's the significance of that?

19 MS. ROSS: Well, it just goes to how they're
20 relying so strongly on this video to come to the
21 ultimate -- the State recognized how important this
22 video is, yet it's not -- the power of that video is
23 substantially weakened if you have two other -- the 911
24 tape and another time where Scott is saying exactly what
25 he said through the stand.

1 THE COURT: But the trial excluded the phone
2 call, the recantation, did they not?

3 MS. ROSS: Yes.

4 THE COURT: Did the trial court --

5 MS. ROSS: Yes.

6 THE COURT: -- excluded the recantation?

7 MS. ROSS: Of what he said on the video.

8 THE COURT: Yeah.

9 MS. ROSS: So it would hurt Ms. Jones that the
10 trial judge excluded that.

11 THE COURT: That was a decision by the trial
12 judge.

13 MS. ROSS: Correct. But -- and we would argue
14 that ---

15 THE COURT: Even after it was proffered.

16 MS. ROSS: Right. The ruling was -- the
17 objection was that it was hearsay. And we would argue
18 that it was not hearsay because it was offered to rebut
19 the video presentation that the witness was fabricating.

20 THE COURT: So under 801 it's not hearsay?

21 MS. ROSS: That's what we would argue. And I
22 can, I can present that in a written order probably more
23 clearly.

24 THE COURT: That would be better.

25 MS. ROSS: And then on page 96 the jury asked to

1 have the video testimony played again.

2 THE COURT: So that part the jury saw the video?

3 MS. ROSS: Right. And then after closing and
4 close of evidence, the jury comes back with a note and
5 says, hey, we want to hear that video again. So then
6 the last thing they hear is the video yet again.

7 THE COURT: But...

8 MS. ROSS: And that's where I'm just arguing
9 that ---

10 THE COURT: Again, that's the trial judge let
11 that happen.

12 MS. ROSS: True.

13 THE COURT: That has nothing to do with trial
14 counsel.

15 MS. ROSS: True. It's just going to the State
16 made the argument that the 911 tape and the testimony of
17 the witness in the car would not have made much of a
18 difference because they got to cross-examine, but I'm
19 just making that point to say it was close enough that
20 the jury had a question and then they wanted to see that
21 juror -- that video again.

22 THE COURT: Okay. Well, I've got to read the
23 transcript to start with, so...

24 Anything further?

25 MR. ISENBERG: Nothing further, Your Honor.

1 THE COURT: All right. 30 days?

2 MR. ISENBERG: Yes, Your Honor.

3 MS. ROSS: Thank you, Your Honor.

4 (Hearing concluded at 11:35 a.m.)

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6

7 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Court of
10 Common Pleas for Spartanburg County, South Carolina, on
11 the 11th day of October, 2019.

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

14
15
16
17
18 s/Julie A. Cendroski
19 Julie A. Cendroski
20 Circuit Court Reporter
21 Seventh Judicial Circuit
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

RENATA JONES,
APPLICANT.

ORDER GRANTING PETITION FOR
POST CONVICTION RELIEF

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE # 2018-CP-42-2769

This matter comes before the Court by way of application of post conviction relief (PCR) filed August 6, 2018, alleging ineffective assistance of counsel for failure to interview witnesses, prepare for trial, request and present exculpatory evidence, and appeal the case. A Return was made June 12, 2019. Susannah Ross was appointed as Applicant's counsel August 24, 2018.

An evidentiary hearing was convened October 11, 2019, before this court at the Spartanburg County Courthouse. Applicant was present and represented by Susannah Ross, Assistant Attorney General, Jacob Isenberg, represented the State. Testimony was presented by the Applicant, Renata Jones; witness, Kimberly Lyles Hughes; and trial counsel, Joshua Schultz.

After a thorough review of the record in its entirety and the testimony and argument presented at the evidentiary hearing, this Courts finds that the Applicant established ineffective assistance of counsel and orders the case be remanded to the court of general sessions for a new trial pursuant to the following authorities: *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (stating in order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the applicant's case); *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985)

("The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.")

PROCEDURAL HISTORY

The Applicant was indicted by the Spartanburg County Grand Jury for Driving under the Influence (2017-GS-42-2769) arising out of a single vehicle collision on the side of Interstate 85. On November 19, 2016, SCHP responded to an accident at mile marker 67 on northbound Interstate 85. There were three individuals on the scene and all smelled of alcohol. Randall Scott had called 911 and indicated that he was the driver and the Applicant, Renata Jones, was in the front passenger seat. At the scene, Scott told Trooper Elder that he was in the front passenger seat and Applicant, who owned the car, was the driver. However, Scott called Trooper Elder the next day and stated that he was actually driving the car at the time of the accident. The Applicant was tried on August 9, 2017, before the Honorable Robin Stilwell. After a guilty verdict, Ms. Jones was sentenced to eighteen months, suspended to ninety days and probation for two years. Joshua Schultz represented the Applicant and Assistant Solicitors Andrew Miller and Sydni Kallum, Esqs. prosecuted the case. Trial counsel did not file an appeal on behalf of the Applicant.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

The Applicant testified that she understood that the relief given in PCR was to be put back in the position she was in before the trial. She said that she wished to pursue this PCR for ineffective assistance of counsel because she was innocent and her trial lawyer failed investigate and present exculpatory evidence that would have led to an acquittal at trial. During the evidentiary hearing Ms. Jones testified that she was not driving her car the night of the accident that led to her charge of Driving under the Influence. She stated that her cousin, Randall Scott,

EC-2

was driving. She presented a recording of the 911 call Scott made just after the accident in which he states that they had an accident and Ms. Jones was in the passenger seat when the accident occurred. Ms. Jones testified that she was able to get a copy of the 911 call through a FOIA request following her loss at trial. Ms. Jones testified that she told her lawyer that the 911 recording was important, which it was, because at trial the state presented a video of Mr. Scott telling Trooper Elder at the scene that he was a passenger in the car. Ms. Jones stated that the jury had a question during deliberation and asked review Scott's testimony. She stated that the jury's question showed it was a close case and had the jury been able to hear the 911 call and Ms. Hughes' testimony, the outcome of the trial would have been different. She said that Mr. Schultz failed to appeal the loss though she requested that he do so.

Kimberly Lyles Hughes, who was in the back seat of the car at the time of the accident, then testified that the Applicant was not driving at the time of the accident. She admitted that she dozed off at the time of the collision but said that when they left, Mr. Scott had been driving. She stated that she was available and willing to testify at the Applicant's trial but was not interviewed or called by Mr. Schultz.

Trial counsel Joshua Schultz testified that he was retained to represent the Applicant. He said he reviewed the discovery in the case and was prepared for trial. He said that he did not receive the 911 recording in his discovery package. He stated it was ultimately Ms. Jones decision not to testify and he put up no other evidence. He admitted that he did not interview or put up witness Kimberly Lyles Hughes who was in the back seat of the car. He said he thought her testimony would be unconvincing because she was asleep at the time of the accident. He admitted to failing to appeal the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Strickland v. Washington established a two-prong test for evaluating claims of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The first prong of the test requires that a defendant prove his counsel's deficiency by demonstrating counsel's performance fell below an objective standard of reasonableness. *Bennett v. State*, 371 S.C. 198, 203, 638 S.E.2d 673, 675 (2006) (citing *Strickland*). The second part of the test requires a defendant to show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Johnson v. State*, supra. *Pauling v. State*, 503 S.E.2d 468, 331 S.C. 606 (S.C., 1998)

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 466, 730 S.E.2d 601, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (emphasis omitted). However, "The validity of counsel's strategy is reviewed under 'an objective standard of reasonableness.'" *Id.* (quoting *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002)). *Putnam v. State*, 417 S.C. 252, 789 S.E.2d 594 (S.C. App., 2016)

The crux of Ms. Jones case was whether she or Mr. Scott was driving. At Ms. Jones' trial, Mr. Scott testified that he told Trooper Elder at the scene that he was not driving because he was scared, but that he actually was the driver of Ms. Jones' car when it had the accident. The State objected to testimony that Mr. Scott called Trooper Elder the day after the accident and



admitted he was driving Ms. Jones' car and that she was in the passenger's seat. (R. p. 49) Mr. Schulz failed to make the reasonable argument that the call was not hearsay because it was being offered to rebut a charge of recent fabrication. (R. p. 56), SCRE 801(d)(1)(B). Though Mr. Schultz proffered the testimony, the jury did not hear it, and his failure to appeal the case prevented appellate review.

At trial the State showed a video at the scene after the accident of Mr. Scott telling Trooper Elder that he was not driving. In that video, a 911 call is referenced, but it was not played for the jury. (R. p. 66). The defense did not put up a case or argue in closing that the 911 tape should have been presented by the state. This left the jury with the false impression that Mr. Scott had denied being the driver all along until he changed his story at Applicant's trial to protect her. This misrepresentation of the facts allowed the State to attack Mr. Scott's credibility with a convincing argument of recent fabrication. The Solicitor said in closing that the video from the scene was compelling and Scott's trial testimony lacked credibility. 81 Evidence of Scott's call the next day and the 911 call would have shown that argument to be false and likely changed the outcome of the case.

Mr. Schultz testified that he did not receive the 911 call through discovery. If Mr. Schultz was not given a copy of the 911 tape, as he should have been under our rules of discovery, reasonable preparation for trial would require Mr. Schulz to review the video presented by the State at trial which references the 911 call. (R. p. 66) Reasonable investigation would require that he question what the 911 call stated and why it was not produced in discovery. Reasonable representation would require he make timely, appropriate motions regarding discovery violations. Had he done so, the outcome of the case would likely have been different. Either the 911 tape would have been provided in discovery and available to be used to rebut the video at the

scene resulting in Ms. Jones' likely acquittal or, if it was not produced prior to trial pursuant to Brady, the violation would likely result in a dismissal given its exculpatory nature.

I find the first prong of the Strickland test is met. A reasonable investigation would have led to the 911 tape recording which supported Applicant's theory of the case. A reasonable investigation would also require interviewing potential witnesses. Ms. Hughes testified that she was never interviewed by Mr. Schultz. Mr. Schultz testified that he did not have the 911 recording and thought Ms. Hughes' testimony would be unconvincing because he understood she was asleep at the time of the accident. I find that the failure to procure the 911 recording and interview witness Kimberly Lyles Hughes was deficient. *See Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). As counsel did not possess the evidence, it is unreasonable that there could be a valid strategic reason for his failure to present it at trial. *See Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) I find that the Applicant has further met the second prong of the Strickland test. But for counsel's failure to present favorable evidence along with his failure to make effective evidentiary arguments regarding Scott's subsequent call to Cooper Elder, the jury would likely have acquitted Ms. Jones.

THUS, IT IS THE ORDER OF THIS COURT that the Applicant's sentence and conviction is vacated and her case is remanded to the court of General Sessions.

AND IT IS SO ORDERED this 14 day of JANUARY, 2019.



Judge G. Thomas Cooper
Presiding Judge

CAMDEN, South Carolina.

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2018 JAN 27 AM 8:59
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX



ALAN WILSON
ATTORNEY GENERAL

January 17, 2020

The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: Ranata Jones, v. State of South Carolina
2018-CP-42-02769

Dear Ms. Cox:

Enclosed please find the original **Order Granting Petition for Post-Conviction Relief**, signed by the Honorable G. Thomas Cooper, in the above-captioned case for filing in your office. Please forward a time stamped copy back to our office for our file.

Sincerely,

Jacob A. Isenberg
Assistant Attorney General

JAI/my
Enclosure

cc: Susannah Ross, Esquire

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Ranata Jones,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

) Case No.: 2018-CP-42-02769
)

) **MOTION TO RECONSIDER, ALTER, OR**
) **AMEND, PURSUANT TO RULE 59(e), SCRPC**
)
)
)
)

Pursuant to Rule 59 (a) and (e) of the South Carolina Rules of Civil Procedure, Respondent would move before this Court for relief as follows:

I. PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed by Ranata D. Jones ("Applicant") on August 6, 2018. Respondent submitted its return to the application on June 12, 2019. The Court convened an evidentiary hearing into the matter on October 11, 2019, at the Spartanburg County Courthouse in South Carolina. Applicant was present at the hearing and represented by Susannah Ross, Esquire. Assistant Attorney General Jacob A. Isenberg of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on her own behalf and testimony was also presented from Applicant's trial counsel, Joshua Schultz, Esquire ("Counsel"). Following the hearing, this Court requested proposed orders from both parties. Thereafter, this Court adopted Applicant's proposed order and granted post-conviction relief. This order was filed on and received by Respondent on January 27, 2020.

Respondent hereby moves for this Court to reconsider its order granting post-conviction relief pursuant to Rule 59(a) and (e), SCRPC.

II. REQUEST ADDITIONAL TESTIMONY BE ADDED TO ORDER

In its order granting relief, this Court omitted pertinent testimony from its summary of the testimony elicited at the evidentiary hearing. Accordingly, Respondent requests this Court add the following testimony to its order granting relief to accurately and fully represent what occurred at the evidentiary hearing:

1. Counsel's testimony that he does not customarily utilize statements made by intoxicated individuals in trial strategy. Moreover, Counsel's testimony that he had no plans to use statements from the 911 call because they came from Scott while intoxicated. Finally, Counsel's testimony that his trial strategy was to paint Scott as lying while intoxicated and telling the truth while sober.

2. Counsel's testimony that Hughes had no recollection of stopping at a gas station because she was asleep. Counsel's testimony that he opined her testimony would not be relevant in light of the fact that she had no knowledge of who drove after they left the gas station.

3. All other testimony absent from this Court's final order that were considered in Respondent's attached proposed order of dismissal.

III. REQUEST FOR RECONSIDERATION OF THE GRANT OF RELIEF

In addition to the omitted testimony, Respondent respectfully submits this Court erred as a matter of law in granting relief. Respondent respectfully requests this Court read and review the arguments in support of the denial of the application for post-conviction relief made by Respondent during the evidentiary hearing and in its proposed order of dismissal, which has been attached to and is thereby incorporated into this motion. These errors of law include the following:

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SPARTANBURG COUNTY
ANY W. COX

1. The Court conducted an incomplete and insufficient analysis about the admissibility of testimony that was found to be hearsay at Applicant's trial. The Court found Scott's statements, during the 911 call, as non-hearsay under SCRE 801(d) (1) (B). However, the Court did not specify whether these statements were made in response to prior fabrication, improper influence, or improper motive, in light of State v. Jarrell, 350 S.C. 90, 100, 564 S.E.2d 362, 368 (Ct. App. 2002) (holding SCRE 801 (d) (1) (B) is only proper when responding to allegations of recent fabrication, improper influence, or improper motive). Accordingly, Respondent is without sufficient notice of the basis for this Court's finding that the testimony at issue was non-hearsay.

2. This Court overlooked Counsel's valid strategic decision. The validity of Counsel's proffered trial strategy was based upon credibility of testimony and evidence. Counsel's proffered his credibility assessments as valid because the concluded statements made intoxicated appeared less credible, and statements made sober appeared more credible. This strategy is valid, in light of Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (finding counsel's trial strategy is valid where he or she intentionally decides not to proffer evidence he or she does not believe to be credible).

3. The Court overlooked factual circumstances that made recovering this 911 call impossible and an improper basis for a continuance. The undisputed factual circumstances being that a server issue caused the 911 call to be unavailable throughout the entire duration of Applicant's case. The undisputed testimony being that, to the best of Counsel's knowledge, this 911 call would be unavailable for an

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undetermined period of time. Therefore, Counsel appropriately proffered evidentiary review was not appropriate for a continuance requests where the item was impossible to access for an undeterminable period of time, in light of Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding an applicant is not entitled to relief where he or she presents no evidence to show how additional preparation would have had any possible effect on the result at trial).

4. The Court overlooked Counsel's reasonable investigation into Hughes. Counsel interviewed Hughes, placed her on the witness list in anticipation for trial, and ultimately concluded she was not relevant. Counsel proffered Hughes fell asleep before they stopped at a gas station. Counsel proffered Hughes was not relevant because she had no knowledge about who drove the vehicle after they left the gas station. Finally, Counsel proffered Hughes did not wake up until after the vehicle crashed. Accordingly, Counsel reasonably investigated Hughes where he determined an inability to determine who was driving, when the vehicle crashed, severely impacted her relevance, in light of Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013) (holding counsel properly investigate a defense to the crime charged when he or she conducts a reasonable investigation).

5. All other matters of law absent from this Court's final order that were considered in Respondent's attached proposed order of dismissal.

IV. CONCLUSION

Respondent asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRCP. Respondent raised several issues in a proposed order of dismissal ignored in the final order granting post-conviction relief. Respondent has attached and is incorporating its proposed order

of dismissal for review and reconsideration. Respondent requests a hearing with this Court to address these issues. In the alternative, Respondent requests this Court include the above-mentioned testimony, and legal issues, in an amended order granting post-conviction relief.

WHEREFORE, Respondent respectfully requests the Court **GRANT** this motion for reconsideration.

Respectfully submitted,

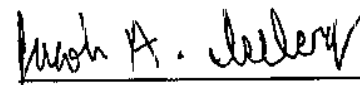
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JACOB A. ISENBERG
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 6th, 2020

FILED
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SPARTANBURG COUNTY
CLERK OF COURT
AMY W. COX

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

February 6, 2020

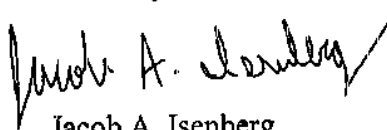
The Honorable Amy W. Cox
Clerk of Court, Spartanburg County
PO Box 3483
Spartanburg, SC, 29304

Re: Ranata Jones v. State of South Carolina
2018-CP-42-02769

Dear Ms. Cox:

Enclosed please find an original **Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59, SCRCP** for filing in your office. Please forward me a **time-stamped copy** back to our office.

Sincerely,



Jacob A. Isenberg
Assistant Attorney General

Enclosures

Cc: Honorable G. Thomas Cooper, Jr.
Susannah Ross, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

RENATA JONES,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

REPLY TO STATE'S MOTION TO
RECONSIDER

CASE # 2018-CP-42-2769

In brief reply to the State's 59(e) motion we argue the following:

(1) the analysis of the admissibility of the 911 SCRE 801(d)(1) was adequate. We do not have a copy of the PCR transcript but if it was not specifically set out in the hearing it is obvious that Scott's call to 911 suggesting he was the driver because Ms. Jones was in the passenger seat would be useful as a response to the State's allegation of recent fabrication. Scott testified at trial that after calling 911 he lied to the responding officer at the scene when he said Mr. Jones was driving. The State charged that he was lying to protect Ms. Jones. Furthermore, trial counsel could have used this same analysis to overcome the State's hearsay objection at trial to the testifying officer's statement that Scott had called him later admitting to be the driver. Counsel proffered the testimony at trial. (Trial Tr. p. 49, l. 11 & p. 56)

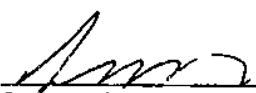
(2) Again, without a copy of the PCR transcript the recollection of Ms. Hughes' testimony was that she was at trial at Ms. Jones' behest and was not interviewed by counsel. Failure to interview a witness cannot be strategic. Despite her admitting that she had been drinking the night in question, her testimony at the PCR hearing was coherent and probative to whether Mr. Jones was

driving. No evidence of a witness list was presented by the State and no testimony of Ms. Hughes was proffered at trial.

(3) Finally, any testimony by trial counsel regarding the 911 call being unavailable due to server error was disputed by the fact that Mr. Jones presented a copy. This was not argued at trial and trial counsel made no continuance requests or motions based on missing or unavailable evidence at trial. Furthermore, the assertion that the 911 tape was lost or unavailable due to server error was not credible since Ms. Jones was able to get it through a FOIA simple request.

WHEREFORE, the Applicant requests the Court deny the State's motion for reconsideration.

Respectfully submitted


 Susannah Ross
 Attorney for the Applicant
 330 E Coffee St.
 Greenville, SC 29601
 (864) 242-0029

FILED
 20 FEB 17 AM 10:22
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COOPER

Greenville, South Carolina
 This 12 day of February, 2020

ROSS & ENDERLIN, PA
ATTORNEYS AT LAW

February 12, 2020

2020 FEB 17 AM 10:22
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

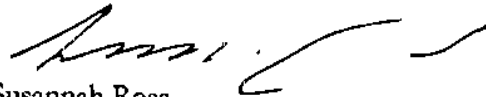
FILED

Ms. Amy W. Cox
Spartanburg Clerk of Court
PO Box 3483
Spartanburg, SC 29304

To Whom It May Concern:

Please find for filing the enclosed Reply. If you have any questions or concerns, please let me know.

Sincerely,



Susannah Ross
Attorney at Law

Enclosures

Cc: Honorable G. Thomas Cooper, Jr.

Office of the Attorney General, PCR Division

330 E. COFFEE ST., GREENVILLE SC 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ranata Jones,

Applicant

Case No.: 2018-CP-42-02769

v.

**ORDER DENYING RESPONDENT'S
59 (e) MOTION TO RECONSIDER,
ALTER, OR AMEND ORDER
GRANTING PETITION FOR
POST CONVICTION RELIEF**

State of South Carolina,

Respondent.

FILED
JAN 24 AM 11:18
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
JAN 24, 2020

After careful consideration of Respondent's Motion and the record in this case, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court DENIES Respondent's Motion pursuant to Rule 59(e) SCRPC to Reconsider, Alter, or Amend this Court's Order of January 14, 2020, filed January 27, 2020, Granting Applicant's Petition For Post Conviction Relief. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

February 18, 2020


G. Thomas Cooper, Jr.
Presiding Judge



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.
Judge, Active-Retired

Post Office Box 1557
1121 Broad Street, Room 313
Camden, South Carolina 29021
Telephone: (803)425-7223
Fax: (803)425-1505
E-Mail: gcooperj@sccourts.org

Honorable Amy W. Cox
Clerk of Court, Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: Ranata Jones PCR
2018-CP-42-02769

Dear Ms. Cox:

Enclosed for filing is my Order Denying Respondent's Motion to Reconsider. Please return a time stamped copy to me. Thank you.

FILED
2020 FEB 24 AM 11:18
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

February 18, 2020


G. Thomas Cooper, Jr.
Presiding Judge

Cc: Jacob Isenberg, Esq.
Susannah Ross, Esq.



ALAN WILSON
ATTORNEY GENERAL

February 25, 2020

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

FILED
2020 FEB 28 AM 9:47
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Re: Ranata Jones, v. State of South Carolina
Case No. 2018-CP-42-02769

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. The PCR transcript is being requested on today's date. Enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.

Sincerely,

Chelsey F. Marto
Assistant Attorney General

CFM/my

cc: Susannah C. Ross, Esquire
South Carolina Department of Corrections
Spartanburg County Clerk of Court
Honorable Barry J. Barnette
Office of Appellate Defense
Victim Advocacy Division

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Post-Conviction Relief Court Judge

Case No. 2018-CP-42-02769

FILED
2020 FEB 28 AM 9:47
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Ranata Jones, ... Respondent,
v.
State of South Carolina, ... Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable G. Thomas Cooper, Jr.'s order granting post-conviction relief filed January 27, 2020. The State filed a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP, which was denied by Judge Cooper by writing order filed on, and received by Respondent on February 24, 2020. Copies of the order granting post-conviction relief and the order denying the State's motion to reconsider, alter, or amend are attached hereto.

February 25, 2020

Respectfully submitted,

ALAN WILSON
Attorney General

CHELSEY F. MARTO
Assistant Attorney General
S.C. Bar No. 104191

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

By: Cheryl F. Marto
Attorneys for Petitioner

Other counsel of record:
Susannah C. Ross
330 East Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Respondent

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Post-Conviction Relief Court Judge

Case No. 2018-CP-42-02769

Ranata Jones, ... Respondent,
v.
State of South Carolina, ... Petitioner.

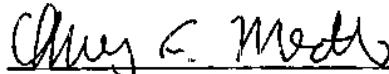
FILED
2020 FEB 28 AM 9:44
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

PROOF OF SERVICE

I, Chelsey F. Marto, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Susannah C. Ross, Esquire
330 East Coffee St.
Greenville, SC 29601

I further certify that all parties required by Rule to be served have been served this 25th day of February, 2020.


CHELSEY F. MARTO
S.C. Bar. No. 104191
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

252

WITNESSES

1. SENTENCE MADE

2. REPORT END

3. CARD PULLED

SCHP 4 INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

5102P0625738

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

FEB 24 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

17-GS-42-0979

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2017

TERM

vs.

Ranata Jones

Indictment for

Driving Under the Influence

SC Code: 56-5-2930

CDR Code: 3359

Class MIS/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2017 FEB 28 AM 10:35

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

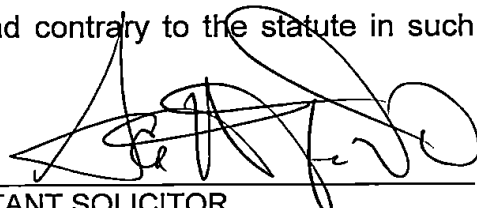
FEB 23 2017

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

DUI/DRIVING UNDER INFLUENCE

That Ranata Jones, did in Spartanburg County on or about November 19, 2016,
drive a vehicle while under the influence of alcohol, drugs and/or a combination of
alcohol, drugs or substances which cause impairment to the extent that the defendant's
ability to drive was materially and appreciably impaired, also the defendant has two prior
conviction for Driving Under the Influence (DUI) or Driving With An Unlawful Alcohol
Concentration (DUAC), all in violation of §56-5-2930, *THE CODE OF LAWS OF*
SOUTH CAROLINA, (1976, as amended).

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


ASSISTANT SOLICITOR

COUNTY OF
STATE

SPARTANBURG

VS.

Ranata D Jones

AKA:

Race: Sex: F Age: 37

DOB: SS#: [REDACTED]

Address: 1027 UNIT 1 GRANT CIRCLE

City, State, Zip: SPT6 SC 29307

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: DUI / Driving under the Influence, less than .10, 3rd Offense

INDICTMENT/CASE#: 2017GS4200979

A/W#: 5102P0625738

Date of Offense: 11/19/2016

S.C. Code §: 56-05-2930(A)

CDR Code #: 3359

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-2930(A) of the S.C. Code of Laws, bearing CDR Code # 3359

☒ 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: *[Signature]* 102782 *[Signature]* Ranata Jones *[Signature]* 74718
MILLER, ANDREW P. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ _____; provided that upon the service of 90 days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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 (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 \$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 61.6 (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

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

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

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

3% to County (if paid in installments) \$7.86

TOTAL \$269.86

Clerk of Court/ Deputy Clerk *[Signature]*Court Reporter: *[Signature]*

SCCA/217 (07/2016)

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:

[Signature] ATTORNEY RANDY VICTOR
IMPACT PANEL☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.Presiding Judge *[Signature]*

Judge Code: 258

Sentence Date: 9 AUG 2017

Form 6-438
Rev. 08/2014

UNIFORM TRAFFIC TICKET
STATE OF SOUTH CAROLINA
VERSUS

11/23/16

CITY/COUNTY OF: _____

FIRST NAME: Kanata MIDDLE NAME: D. LAST NAME: Jones

STREET: 15 Pine Ridge Rd

CITY: Spartanburg SC STATE: SC ZIP CODE: 29302

DL STATE: SC CLASS: D CDL: ☐ YES ☒ NO

RACE: B SEX: F HGT: 56 WGT: 165 HAIR: BLK EYES: BLU

VEH. LIC. NO.: MA1997 STATE: SC MAKE OF VEH: Toyota YEAR: 09 MOTOR VEH: ☒ AUTO ☐ BICYCLE ☐ COMB. COMM. VEH.

HAZ. MT. ☐ MOPED ☐ MTRCYCL ☐ PEDESTRIAN ☐ OTHER ☐

VEHICLE OWNER FIRST NAME: Kanata MIDDLE NAME: D. LAST NAME: Jones

OWNER STREET: 15 Pine Ridge Rd CITY: Spartanburg STATE: SC ZIP CODE: 29302

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: General Session Magistrate STREET: 15 Pine Ridge Rd

DATE OF TRIAL: 11/29/16 TIME OF TRIAL: 10:00 AM CITY: Spartanburg STATE: SC ZIP CODE: 29302

VIOLATION SECTION NO.: 36-52930 VIOLATION - COURT APPEARANCE REQUIRED YES/NO: NO

DATE OF VIOLATION: 11/17/16 TIME OF VIOL: 0350 SC POINTS: 0 B.A. LEVEL: Referred

VIOLATION LOCATION: US 67 km CITY: 47

LAT: 3457076 LONG: 82040350 CITY: 1

NAME AND RANK OF ARRESTING OFFICER: LICHEL Eider SOCCA OFFICER NUMBER: 3220-0119

BAIL DEPOSITED: TA.1 DATE OF ARREST: 11/19/16 BOND AMOUNT REQUESTED: 0

DATE BAIL REC'D: _____ BY: _____

CASE BEFORE: ☒ MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT

NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE: _____

TRIAL BY: TRIAL JUDGE ☐ JURY ☐ DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION DATE: _____ DISPOSITION: ☒ NOLLE PROSSED ☐ GUILTY ☐ PLED: NOLO CONTENDERE ☐

FORFEITED BOND ☐ NOT GUILTY ☐

CHARGE CONVICTED OF: _____ SAME AS ORIGINAL ☐ SC POINTS: _____

JAIL ☐ SUSPEND ☐ FINE ☐ AMT. COLLECTED ☐ AMT. SUSPENDED ☐ COMMITTED TO: _____

CERTIFIED CORRECT ☐ DATE: _____

Vehicle Searched: NO

Arrest as Result of Collision: NO

TRIAL COURT COPY TICKET# **5102P0625738**

Computer

TD

RECEIVED
NOV 26 2016
BY: _____

CERTIFIED COPY
M. Dore Blakely
CLERK OF COURT
SPARTANBURG COUNTY
BY: _____
ED: 11/28/16