

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

R. Ferrell Cothran, Circuit Court Judge

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Jul 01 2020

S.C. SUPREME COURT

RODNEY GALIMORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001338

APPENDIX

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
Plaintiff’s Exhibit #2 (MAIT file); Defendant’s Exhibits #1 – 6 (Photographs).**

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February 24, 2012

PROOF OF SERVICE

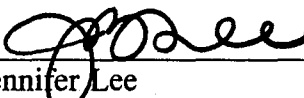
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Rodney L. Galimore, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Petition for Rehearing

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February 24, 2012

The South Carolina Court of Appeals

The State,

Respondent,

v.

Rodney L. Galimore,

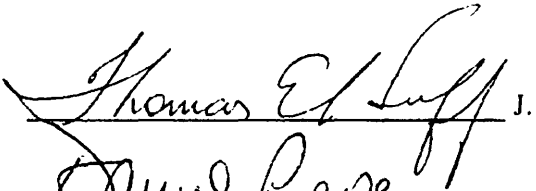
Appellant.

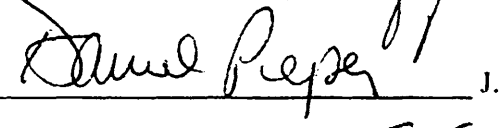
The Honorable John C. Hayes, III
Beaufort County
Trial Court Case No.
2007-GS-07-01584
2007-GS-07-01616
2007-GS-07-01617
2008-GS-07-02690

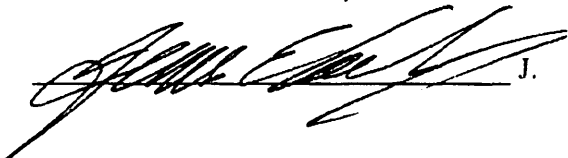
ORDER DENYING PETITION FOR REHEARING

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

It is, therefore, ordered that the Petition for Rehearing be denied.







Columbia, South Carolina

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FILED

20 April 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN 19 2012

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. Supreme Court

John C. Hayes, III, Circuit Court Judge

Opinion No. 4934 (S.C. Ct. App. filed January 25, 2012)

The State of South Carolina, ... Respondent,

v.

Rodney L. Galimore, ... Petitioner.

Petition for a Writ of Certiorari

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Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Petitioner Rodney L. Galimore (“Galimore”) hereby petitions this Court to issue a writ of certiorari to review the decision of the Court of Appeals captioned *State v. Galimore*, Op. No. 4934 (S.C. Ct. App. filed January 25, 2012) (Shearouse Adv. Sh. No. 3 at 77). For the reasons stated herein, this Court should grant this petition and issue a writ of certiorari to review and reverse the Court of Appeals’ opinion.

Certification Regarding Rehearing

The undersigned hereby certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals on April 20, 2012. {App. p. 261}. Further, Petitioner’s suggestion for rehearing *en banc* was distributed, but it was likewise denied. {*Id.*}.

Questions Presented for Review

1. Did the Court of Appeals err by relying on testimony that contradicted the physical evidence introduced at trial to affirm the trial court’s decision to deny Galimore’s motion for direct verdict on the felony DUI charge?
2. Did the Court of Appeals err when it failed to find the trial court committed an abuse of discretion by improperly shifting the burden of proof to Galimore on the State’s motion for a continuance?

Argument

I. The Court of Appeals erred by using testimony that contradicted the physical evidence introduced at trial to affirm the trial court's decision to deny Galimore's motion for direct verdict on the felony DUI charge.

The Court of Appeals' opinion conflicts with prior decisions of this Court. The opinion relied on testimony contradictory to the physical evidence admitted at trial. The reliance on such testimony contradicts this Court's established precedent. Therefore, this Court should grant certiorari to review and reverse the Court of Appeals' opinion.

In the opinion, the Court of Appeals found sufficient evidence existed to send the issue of whether Galimore violated Section 56-5-1810 of the South Carolina Code to the jury. *Galimore*, Op. No. 4934 at 77, 79-80. The Panel relied solely on the testimony of Trooper Nick Sprouse. *Id.* at 80. However, Trooper Sprouse's testimony contradicts the physical evidence admitted at trial. Therefore, the Court of Appeals' opinion used incompetent evidence to affirm the trial court's denial of Galimore's motion for directed verdict. Further, use of this incompetent evidence renders the opinion in direct conflict with this Court's prior precedent.

This Court holds that testimony contradictory or inconsistent with the physical evidence lacks probative value. *Lail v. S.C. State Highway Dept.*, 244 S.C. 237, 136 S.E.2d 306 (1964). The Court of Appeals is in accord, yet failed to follow this established rule. *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 580, 629 S.E.2d 375, 377 (Ct. App. 2006) (applying this rule to hold that unsupported testimony cannot be used to overcome the physical evidence). Such testimony does not create issues of fact suitable for resolution by the jury. *Legette*, 368 S.C. at 581, 629 S.E.2d at 378.

In this matter, the physical evidence only supports one conclusion—the accident occurred in the decedent’s lane of travel immediately upon Galimore exiting the parking lot. That conclusion alone cannot support a violation of section 56-5-1810. Galimore consistently maintained the fact that the accident occurred in decedent’s lane is insufficient to support a charge under section 56-5-1810.

In fact, Trooper Sprouse’s testimony supports Galimore’s position. As noted by the Court of Appeals, Trooper Sprouse admitted that Galimore “never established the correct lane.” *Galimore*, Op. No. 4934 at 81. This finding established that Galimore could not have driven in the wrong lane because he never had the opportunity to establish his correct lane. The evidence unequivocally proved that the accident occurred immediately upon Galimore exiting the parking lot. {R.131; App. p. 134}. Because the accident occurred immediately upon leaving the lot, Galimore could not have had time to establish decedent’s lane as his lane of travel as found by the Court of Appeals. The evidence introduced at trial supports this conclusion.

The evidence shows Galimore entered the parking lot and gathered sand and debris on his tires from the lot. {R.84-86; App. pp. 87-89}. The sand and debris tracks left by his car follow directly to the impact point with the motorcycle. {R.77, 85; App. p. 80, 88}. Impact occurred immediately because (1) the decedent’s motorcycle never hit the breaks prior to impact {R.128; App. p. 131} and (2) impact occurred on the driver’s side front tire (the precise point where impact would occur on a car exiting a parking lot to complete a left turn) {R.77, 90-91; App. p. 80, 93-94}. Lastly, the evidence definitively proves the impact point of the vehicles was the same as

the final resting place of the cars and that the final resting place of Galimore's car was in the decedent's lane. {R.77; App. p. 80}.

This evidence established the following absolutes: (1) Galimore never had the opportunity to establish his lane of travel, and (2) he never had time to establish decedent's lane as his lane of travel, either. Both facts lead to the inescapable fact that Galimore was executing a legal left turn out of the parking lot at the time of the accident. While the accident occurred in decedent's lane, Galimore was not driving in decedent's lane as testified by Trooper Sprouse. He was utilizing that lane incident to completing his left turn out of the parking lot. Stated differently, he did not establish decedent's lane as his lane of travel. Therefore, Trooper Sprouse's testimony conflicts with the physical evidence and cannot be used to support the denial of Galimore's directed verdict motion. The Court of Appeals erred in using this testimony to support the denial of Galimore's directed verdict motion. Thus, the opinion is in conflict with this Court's precedent, and certiorari is warranted.

In addition, the Court of Appeals' interpretation of section 56-5-1810 would effectively repeal section 56-5-2120 of the South Carolina Code and render that section without effect. An interpretation of section 56-5-1810 that renders section 56-5-2120 meaningless contradicts time honored principles of statutory interpretation. As a result, the opinion conflicts with the precedent of this Court. This Court should grant certiorari.

"Statutes in apparent conflict should be construed, if possible, to allow both to stand and give effect to each." *James v. South Carolina Dept. of Transp.*, 393 S.C. 440, 445, 711 S.E.2d 919, 922 (Ct. App. 2011) (quoting *Adoptive Parents v.*

Biological Parents, 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994)). The goal in construing statutes is to harmonize conflicting statutes whenever possible and prevent an interpretation that would lead to a result that is plainly absurd. *Florence County v. Moore*, 344, S.C. 596, 601, 545 S.E.2d 507, 509 (2001). “When two statutes can be reconciled, the court must construe the statutes in such a way that both remain functional.” *Richardson v. City of Columbia*, 340 S.C. 515, 520, 532 S.E.2d 10, 13 (Ct. App. 2000).

Section 56-5-2120 governs left turns and specifically authorizes the act of crossing the improper lane while executing a left turn. However, if the Court of Appeals’ opinion is left as written, every left turn would be per se illegal from the time the turn is initiated, through the time the vehicle crosses the right lane, and until the vehicle completely establishes the left lane. Such a position renders section 56-5-2120 without effect.

Further, the legislature drafted section 56-5-1810 to be inapplicable to vehicles making left turns. The Court of Appeals failed to recognize that section 56-5-1810 was not intended to apply to vehicles making left turns. The statute exempts its application “when preparing for a left turn at an intersection or into a private road or driveway.” S.C. Code Ann. § 56-5-1810(b). Further, the statute “shall not be construed as prohibiting the crossing of the center line in making a left turn or from an alley, private road or driveway.” S.C. Code Ann. § 56-5-1810(c).

This is precisely what Galimore was doing at the time of the accident—he was making a left turn (as part of a completion of his complete turn-around) out of a private road, alley, or driveway. Such a reading of Section 56-5-1810 dovetails with the fact

that the State had other charges specifically applicable to a person who improperly executes a left turn or improperly exits a parking lot. *See, e.g.*, S.C. Code Ann. § 56-5-2350 (governing vehicle entering roadway). The State could have, and, in fact, should have, charged Galimore with a violation of an applicable statute to support the felony DUI charge. The fact is the State failed to do so. Instead, the State charged a violation that is inapplicable to the facts of this matter. There is no reason to expand the application of section 56-5-1810 when other remedies are already available to the State. This Court should grant certiorari and reverse the Court of Appeals' opinion.

While the evidence may be sufficient to support a charge such as failure to yield, failure to keep proper lookout, or a violation of the vehicle entering a roadway statute, the fact of the matter is the State only charged a violation of section 56-5-1810. Thus, as that violation was the only charge included in the indictment, the State was required to prove the elements of that charge, and that charge alone, in order to obtain a felony DUI conviction. *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001) (holding a defendant is entitled to a directed verdict when the State fails to produce evidence of the charge included in the indictment). The State, the trial court, and the Court of Appeals erred by finding evidence of an uncharged offense was sufficient to allow the section 56-5-1810 charge to go to the jury. The Court of Appeals ignored this fact in rendering the opinion. Thus, because the evidence cannot establish a violation of section 56-5-1810, the Court of Appeals erred by affirming the trial court's denial of Galimore's motion for directed verdict on the felony DUI charge. The Court of Appeals should have reversed the trial court and entered a verdict of acquittal on this charge.

Moreover, the Court of Appeals' opinion contradicts established precedent addressing application of section 56-5-1810. The opinion failed to address Galimore's argument that section 56-5-1810 applies only to vehicles already established as traveling on the roadway. This section has been applied in *State v. Nathari*, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1998), and *State v. Parker*, 271 S.C. 159, 245 S.E.2d 904 (1978). In both cases, the appellate court found that the State proved a violation of section 56-5-1810 because *direct* evidence established that the driver established in the correct lane of travel and then crossed the center-line into the wrong lane.

In *Nathari*, the Court of Appeals found the charge was proper because “[d]irect testimony from three witnesses place Nathari driving outside the right lane numerous times.” *Nathari*, 303 S.C. at 199, 399 S.E.2d at 604. The witnesses observed Nathari “weaving back and forth across the road.” *Id.* at 192, 399 S.E.2d at 600. Therefore, the direct evidence supported a finding that Nathari had established his lane of travel and then crossed the center line in contravention of section 56-5-1810. That is not the case in this matter. Here, the evidence was that Galimore never established his lane of travel and never had time to establish decedent's lane as his lane of travel. Trooper Spouse did not testify that Galimore was observed driving outside his lane of travel or was observed crossing the center line of the road. Therefore, under *Nathari*, the Court of Appeals should have found that the State failed to establish a violation of section 56-5-1810. This Court should grant certiorari to bring this matter in line with this precedent.

Likewise in *Parker*, this Court found arrest was proper under section 56-5-1810 because the arresting officer witnessed Parker driving across the center-line after

observing Parker drive down the roadway for some period, including a period in the correct lane. *Parker*, 271 S.C. at 161-62, 245 S.E.2d at 905. These cases prove that section 56-5-1810 applies only to vehicles that have previously established the correct lane and/or have been travelling on the roadway for some time. The Court of Appeals' opinion conflicts with both *Nathari* and *Parker*. Therefore, this Court should grant certiorari and reverse the Court of Appeals' opinion.

Simply put, Galimore did not commit the offense charged by the State. It was incumbent on the State to charge a provable offense, but the State failed to do so. Felony DUI is not a strict-liability offense, and Galimore cannot be convicted when the evidence proved he did not drive on the wrong side of the road in violation of section 56-5-1810. Thus, certiorari is warranted to correct the errors of the Court of Appeals' opinion.

II. The Court of Appeals erred by allowing the trial court to shift the burden of proof to Galimore on the State's motion for a continuance.

The Court of Appeals found the trial court did not abuse its discretion in granting the State's motion for continuance. However, this holding overlooked the fact that the trial court improperly shifted the burden to prove the entitlement for a continuance away from the moving party, the State. Instead of requiring the State to carry its burden to prove why a continuance was warranted, the trial court required Galimore to prove why the State was not entitled to a continuance. This decision to grant the State a continuance as a matter of right rather than requiring the State to carry its burden that a continuance was warranted constituted an abuse of discretion.

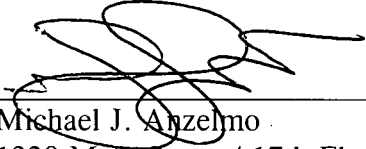
The requirement that the party requesting the continuance has the burden to prove good cause exists to warrant the continuance is axiomatic in South Carolina. *Heyward v. Middleton*, 65 S.C. 493, 43 S.E. 956, 957 (1903) (holding that the “burden was on the [moving party] to show good cause for the continuance”). Thus, the trial court’s failure to require the State to carry its burden for the continuance, but instead shift that burden to Galimore, constituted an abuse of discretion. The Court of Appeals erred in allowing such a shift of the burden to Galimore. This Court cannot allow the burden to shift to the non-moving party in such instances. Thus, certiorari is warranted to find the trial court committed an abuse of discretion by shifting of the burden of proof on the State’s motion to Galimore.

Conclusion

Based on the foregoing, the Panel should grant rehearing or rehearing *en banc* to issue a new opinion acquitting Galimore.

{*Signature Page Follows*}

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June 19, 2012

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June 19, 2012

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

SEP 18 2012

Appeal from Beaufort County
The Honorable John C. Hayes, III, Circuit Court Judge

S.C. Supreme Court

Opinion No. 4934 (S.C. Ct. App. filed Jan. 25, 2012)
Appellate Case No. 2012-212134

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RODNEY L. GALIMORE,

PETITIONER.

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ISSUES PRESENTED

- I. The Court of Appeals properly affirmed the denial of Petitioner's directed verdict motion where there was evidence in the record supporting that Petitioner failed to drive on the right side of the roadway in violation of S.C. Code § 56-5-1810.**
- II. The Court of Appeals properly affirmed the trial judge's grant of a continuance to the State since the trial judge did not abuse his discretion and Petitioner failed to establish any prejudice from the continuance.**

STATEMENT OF THE CASE

Petitioner was indicted in September 2007 in Beaufort County for reckless homicide, driving under suspension (“DUS”), child endangerment, and felony driving under the influence (“DUI”), death resulting. (R. p. 205-10). On November 18, 2008, Petitioner made a pre-trial motion to quash the felony DUI indictment for failure to state an offense. (R. p. 2-3). The Honorable Perry M. Buckner granted the motion and quashed the indictment, concluding that the State did not specify the “act forbidden by law.” (R. p. 17-19). Judge Buckner indicated that the State would be permitted to re-submit a corrected indictment to the grand jury and he continued the trial with respect to the other three charges. (R. p. 18-19).

Thereafter, on November 20, 2008, Petitioner was re-indicted for felony DUI, death resulting. (R. p. 211-12). The new indictment alleged that Petitioner violated the law by failing to drive on the right side of the roadway. (See R. p. 211). Petitioner proceeded to trial on December 8-10, 2008, before the Honorable John C. Hayes, III. (R. p. 21). The jury found Petitioner guilty on all four charges, and Judge Hayes sentenced him to twenty-five (25) years for felony DUI, ten (10) years, concurrent, for reckless homicide, ten (10) years, consecutive, for child endangerment, and six (6) months, concurrent, for DUS. (R. p. 203, lines 6-22; p. 204, lines 1-11).

A notice of appeal was timely served and filed. On January 25, 2012, the Court of Appeals affirmed Petitioner’s convictions. See State v. Galimore, 396 S.C. 471, 721 S.E.2d 475 (Ct. App. 2012). A Petition for Rehearing and Suggestion for Rehearing *En Banc* was submitted, but the same was denied on April 20, 2012. A Petition for Writ of Certiorari was timely submitted in this Court, and this Return follows.

ARGUMENT

I. The Court of Appeals properly affirmed the denial of Petitioner's directed verdict motion where there was evidence in the record supporting that Petitioner failed to drive on the right side of the roadway in violation of S.C. Code § 56-5-1810.

Petitioner first argues that the Court of Appeals relied upon “incompetent evidence” in affirming the denial of his directed verdict motion, since Trooper Sprouse’s testimony, he contends, was in conflict with the physical evidence admitted at trial. (See Petition for Writ of Certiorari, p. 2). Petitioner asserts that the physical evidence “only supports one conclusion” that the accident occurred in the victim’s lane of travel “immediately upon [Petitioner] exiting the parking lot.” (See Petition for Writ of Certiorari, p. 3). To the contrary, evidence presented at trial reflects that, after making a U-turn in a parking lot, Petitioner made a left turn into the oncoming traffic lane and continued to drive straight ahead in that lane rather than proceeding to the right-hand lane. (See R. p. 32; p. 69-91; p. 121-37; p. 150; p. 193-99). Indeed, no evidence in the Record on Appeal supports Petitioner’s contention that the collision occurred “immediately” upon his exiting the parking lot, and the pictures discussed at trial illustrating the scene, and illustrating Petitioner’s tire tracks up to the collision point, were not made a part of the Record on Appeal. (See R. p. 73-77; p. 84-88). See Hamilton v. Greyhound Lines East, 281 S.C. 442, 316 S.E.2d 368 (1984) (“The appealing party has the burden of furnishing a sufficient record from which this court can make an intelligent review.”) (citation omitted); Rule 210 (b), SCACR (“Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.”). Importantly, the trial judge, prior to making his ruling on Petitioner’s directed verdict motion, was privy to the photographs

admitted at trial; he also had the opportunity to view a demonstrative animation illustrating the time period for which Petitioner was driving in the wrong lane. (See R. p. 73-77; p. 84-88; p. 196-200). Inasmuch as the trial judge denied Petitioner's directed verdict motion after having viewed the photographs and the animation, the appellate court must now presume that these exhibits provided, at a minimum, sufficient support for the State's theory of the case to create a question of fact for the jury. See Horton v. Greyhound Corporation, 241 S.C. 430, 438, 128 S.E.2d 776, 781 (1962) ("On appeal, the presumption is that the case was decided correctly in the trial court. . . . The trial judge heard and observed the witnesses examined with respect to exhibits which were themselves material evidence and which are not before us. Accordingly, he had a better view of the situation than we are afforded. We should be slow to conclude that he erred in his appraisal of the evidence, when material portions of it have been omitted from the record on appeal."); Ehlke v. Namec Const. Co., Inc., 298 S.C. 477, 481, 381 S.E.2d 508, 510 (Ct. App. 1989) (recognizing that there is a presumption in favor of the correctness of an appealed order and the burden of showing error by the trial judge is on the appellant) (citation omitted); see also State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 363 (2006) ("On appeal from the denial of a directed verdict, we must view the evidence in the light most favorable to the State.").

Petitioner also argues that the evidence reflected that he was making a proper left turn at the time of the accident and that the State failed to show that he broke the law in any respect. Again, Respondent submits that the State's evidence reflected that Petitioner did violate the law by making a left turn into the oncoming traffic lane and continuing to drive straight ahead in that lane rather than proceeding to the right-hand lane. (See R. p. (See R. p. 32; p. 69-91; p. 121-37; p. 150; p. 193-99). This violated S.C. Code § 56-5-

1810 because this statute requires, in pertinent part, that “[u]pon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway.” S.C. Code § 56-5-1810(a).

Specifically, Trooper Sprouse testified that when he arrived at the scene a few minutes after the collision, he found Appellant’s vehicle positioned in the oncoming traffic lane. (R. p. 73-76). The vehicle was immobile due to the damage from the collision, and the position of the tires indicated that the large SUV had not moved or been pushed as a result of the collision with the victim’s motorcycle. (R. p. 76-77; p. 127; p. 137; see also p. 193-94). Notably, the vehicle was not even headed toward the right-hand lane, instead it was angled toward the left side of the highway. (R. p. 32, lines 20-22; p. 73, lines 2-9; p. 197, lines 13-20). Trooper Sprouse determined, from the evidence gathered that night, that Petitioner had been making a U-turn, but instead of attempting to return to his proper lane after turning around, he continued to drive straight ahead in the oncoming traffic lane. (R. p. 73-76; p. 84-92; p. 107-135; p. 121, lines 18-23; p. 127, lines 20-24; p. 150; see also p. 193-97). The officer agreed that a U-turn is not unlawful in itself; however, he testified that Petitioner’s conduct in failing to establish his proper lane, and in driving left-of-center in the oncoming traffic lane, was illegal. (R. p. 73-77; p. 84-88; p. 120-122; p. 130, line 22 – p. 131, line 6; p. 125-35; p. 150, lines 5-18; p. 196-200). See S.C. Code Ann. § 56-5-1810(a). As mentioned previously, photographs reflecting the accident scene and showing Petitioner’s tire tracks were introduced to corroborate Trooper Sprouse’s testimony. (See R. p. 73-77; p. 84-88).

The above evidence clearly supports that Petitioner did, in fact, break the law by improperly driving in the wrong lane of travel prior to the collision. This conclusion is buttressed by Petitioner’s own statement on the scene that the accident was not his fault

since “she was in his lane.” (R. p. 70, lines 22-23). Petitioner’s statement demonstrated that, presumably due to his impaired condition, he mistakenly believed that he had been driving in the proper lane and that the victim was in the wrong lane.

Petitioner also argues that the Court of Appeals’ interpretation of § 56-5-1810 would “effectively repeal section 56-5-2120 of the South Carolina Code and render that section without effect.”¹ (See Petition for Writ of Certiorari, p. 4). The State submits that this is simply not the case. If a person makes a left turn into the incoming traffic lane and continues to drive in that lane rather than proceeding over to the right-hand lane, he is guilty of violating § 56-5-1810. This does not contradict § 56-5-2120, which allows a person to *cross* the improper lane while executing a left turn. Moreover, contrary to Petitioner’s assertions, the fact that Petitioner could have been charged with violating other distinct statutes is of no consequence since the only issue on appeal is whether sufficient evidence supported the trial judge’s denial of Petitioner’s motion for directed verdict on this charge. (See Petition for Writ of Certiorari, p. 6).

Furthermore, Petitioner’s argument that the Court of Appeals’ opinion contradicts “established precedent” addressing the application of S.C. Code § 56-5-1810 is without merit.² (See Petition for Writ of Certiorari, p. 7-8). State v. Nathari and State v. Parker

¹ This argument was not raised to the trial court or in the Final Brief of Appellant. See State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011) (“Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review.”); State v. Spears, 393 S.C. 466, 486, 713 S.E.2d 324, 334 (Ct. App. 2011) (“We decline to address this argument as it was raised for the first time during oral argument and was not addressed in Spears’s appellate brief.”) (citation omitted); Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct.App.1989) (“An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant’s brief.”) (citations omitted); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (“The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.”) (citation omitted).

² The State would point out that, although Petitioner now argues that the Court of Appeals’ opinion “failed to address [Petitioner’s] argument that section 56-5-1810 applies only to vehicles already established as

do not hold, or even suggest, that § 56-5-1810 only applies to vehicles already established as traveling on the roadway. See State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1990); State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978). In Nathari, the Court of Appeals simply held that evidence supported a jury charge regarding S.C. Code § 56-5-1810 where witness testimony established that the defendant was driving outside of the right lane numerous times. Nathari, 303 S.C. at 199, 399 S.E.2d at 604. In Parker, this Court held that a law enforcement officer had probable cause to stop and arrest the defendant because he personally observed the defendant drive across the middle of a two-lane road, which was a violation of S.C. Code § 56-5-1810. Contrary to Petitioner's argument, neither of these cases "prove that section 56-5-1810 applies only to vehicles that have previously established the correct lane and/or have been traveling on the roadway for some time" (see Petition for Writ of Certiorari, p. 8), since neither of these cases come anywhere close to addressing the issue. See Hutto v. State Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that a 'case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.'") (citation omitted).

For all of the reasons set forth above, the Court of Appeals properly affirmed the trial court's denial of Petitioner's directed verdict motion regarding the charge of felony DUI. (See R. p. 201, lines 14-23). See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002) (on appeal from the denial of a motion for a directed verdict, the appellate court may reverse the trial court only if there is no evidence to support the trial

traveling on the roadway" (Petition for Writ of Certiorari, p. 7), this argument was not raised to the trial court or in the Final Brief of Appellant. In that vein, State v. Nathari and State v. Parker were not cited in the Final Brief of Appellant and were only raised at oral argument and/or in the Petition for Rehearing. (See cases cited in Footnote 1 above).

court's ruling). It was for the jury to decide, using the testimony of officers who personally observed the accident scene, in conjunction with the photographs reflecting the scene, to determine whether Petitioner was simply making a valid left turn or whether, after making a left turn, Petitioner continued to drive on the wrong side of the road in violation of § 56-5-1810. See State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010) (directed verdict is properly denied where the State presents substantial circumstantial evidence of the defendant's guilt).

II. The Court of Appeals properly affirmed the trial judge's grant of a continuance to the State since the trial judge did not abuse his discretion and Petitioner failed to establish any prejudice from the continuance.

Appellant argues that the trial judge committed an abuse of discretion in granting a continuance to the State because he improperly shifted the burden of proof to Petitioner. This argument was not made to the trial court or raised in the Final Brief of Appellant, and the case of Heyward v. Middleton, 65 S.C. 493, 43 S.E. 956 (1903), now cited in the Petition for Certiorari, was not brought to the Court of Appeals' attention until after final briefs were submitted. Therefore, no issue regarding a shifting of the burden of proof is preserved for review. See State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011) ("Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review."); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.") (citation omitted).

In any event, the Court of Appeals correctly determined that the trial judge acted within his discretion when he granted a continuance to the State. After granting Petitioner's motion to quash the first felony DUI indictment,³ the trial judge noted that because the jury had not yet been sworn, double jeopardy had not attached. (R. p. 18, lines 1-2). Therefore, the judge ruled, it was permissible for the State to cure the problem by re-submitting a more specific indictment to the grand jury at a future grand jury term. (R. p. 18-19). After the solicitor indicated her desire to continue the remaining charges in light of the court's ruling, Petitioner's counsel stated that he objected "simply because this case dates back to August 17, 2007." (R. p. 18, lines 5-12). He also stated that the indictment had been true-billed in September of 2007. (R. p. 18, line 13). The trial judge pointed out that Petitioner could have raised the sufficiency of the indictment issue at any time since the issuance of the indictment. (R. p. 18-19). The judge overruled Petitioner's objection and continued the trial of the other charges. (R. p. 19, lines 13-24). Trial was ultimately held a mere three weeks later. (See R. p. 21).

A motion for continuance is addressed to the sound discretion of the trial court; a judge's ruling on such a motion will not be reversed absent a clear showing of abuse of discretion. State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989). In Petitioner's case, the trial court properly pointed out that double jeopardy had not yet attached; that the State could re-submit an indictment regarding felony DUI; and that Petitioner could have moved to quash the first indictment at any time since September 2007. See State v. Baum, 355 S.C. 209, 214, 584 S.E.2d 419, 422 (Ct. App. 2003)

³ The trial court found that the first felony DUI indictment should have been more specific in that it should have alleged with particularity the "act forbidden by law" committed by Appellant that caused the collision. (R. p. 16-18). See S.C. Code Ann. § 56-5-2945(A); see State v. Grampus, 288 S.C. 395, 397, 343 S.E.2d 26, 27 (1986).

(generally, double jeopardy attaches once the jury is impaneled and sworn). Notably, there was no reason to believe that the solicitor deliberately improperly drafted the first DUI indictment; instead, it was clear the solicitor honestly believed that the first indictment was sufficient.⁴ (See R. p. 6-11). Furthermore, it was in the interest of judicial economy and conservation of resources to try the new felony DUI indictment along with the other three charges, since they all arose out of the same set of facts. See, e.g., State v. Grace, 350 S.C. 19, 24, 564 S.E.2d 331, 333 (Ct. App. 2002) (pointing out that judicial economy is fostered when related or interconnected charges are tried together) (citations omitted).

In any event, Petitioner failed to assert any prejudice he would suffer from a continuance on the three remaining charges, particularly where the cases were continued only three weeks. (See R. p. 18-19; see also p. 22, lines 21-22). See State v. Williams, 321 S.C. 455, 458, 469 S.E.2d 49, 51-52 (1996) (when there is no showing of prejudice, the trial judge's determination regarding a continuance motion is not an abuse of discretion); State v. Wyatt, 317 S.C. 370, 372-73, 453 S.E.2d 890, 891-92 (1995) (error without prejudice does not warrant reversal). Accordingly, the trial judge did not abuse his discretion by granting a continuance so that all four related charges could be tried together.

⁴ Indeed, an indictment is generally sufficient if it tracks the language of the statute. See, e.g., State v. Shoemaker, 276 S.C. 86, 88, 275 S.E.2d 878, 879 (1981) ("An indictment phrased substantially in the language of the statute which creates and defines the offense is ordinarily sufficient."); State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007) (an indictment generally passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime).

CONCLUSION

For the reasons discussed above, Respondent submits that this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent asks permission under the rules to fully brief the issues.

Respectfully submitted,

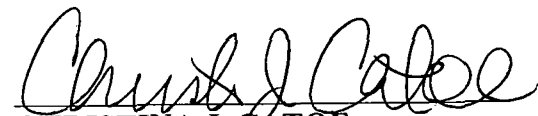
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ATTORNEYS FOR RESPONDENT

September 18, 2012

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Beaufort County
The Honorable John C. Hayes, III, Circuit Court Judge

Opinion No. 4934 (S.C. Ct. App. filed Jan. 25, 2012)
Appellate Case No. 2012-212134

RECEIVED

SEP 18 2012

RESPONDENT,

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA,

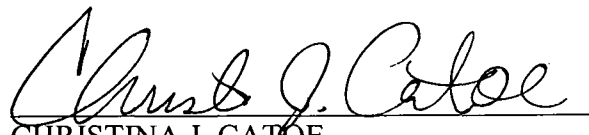
v.

RODNEY L. GALIMORE,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the **Return to Petition for Writ of Certiorari** in the above-referenced case has been served upon **Robert M. Dudek**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, and **Michael J. Anzelmo**, Nelson Mullins Riley & Scarborough, LLP, 1320 Main Street, 17th Floor, Columbia, SC 29201, this **18th day of September, 2012**.



CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

The Supreme Court of South Carolina

The State, Respondent,

v.

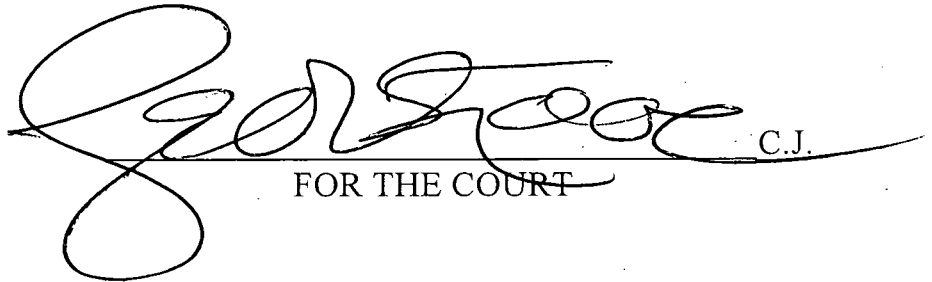
Rodney L. Galimore, Petitioner.

Appellate Case No. 2012-212134

Lower Court Case No's 2007GS0701617; 01584; 01616
2008GS0702690

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' opinion in *State v. Galimore*, 396 S.C. 471, 721 S.E.2d 475 (Ct. App. 2012). The petition is denied.



C.J.
FOR THE COURT

Columbia, South Carolina

November 7, 2013

cc:

The Honorable Jenny Abbott Kitchings

Robert Michael Dudek

Michael J. Anzelmo

Christina J. Catoe

The Honorable Jerri Ann Roseneau



CLOSING LETTER SENT
ON 11-8-13

Attorney initials 11-20-13-om

Assistant initials (CM)

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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November 14, 2013

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Galimore, Rodney L.
Lower Court Case No. 2008GS0702690, 2007GS0701617,
2007GS0701584, 2007GS0701616
Appellate Case No. 2008-111706

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire ✓
Michael J. Anzelmo, Esquire
Christina J. Catoe, Esquire

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORTRODNEY L. GALIMORE#332336

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

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 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.

Lieber Correctional Institution

1. Place of detention PO. BOX 205, Ridgville sc. 29472
2. Name and location of Court which imposed sentence Beaufort County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-07-1584 & 2007-GS-07-1616
 - (b) 2008-GS-08-2690 & 2007-GS-07-1617
 - (c) 2007-GS-07-1615- Quashed 11/18/2008,
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12/10/2008, 10 years & 10 years concurrent
 - (b) 12/10/2008 25 years & 6 months,

- (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?
YES _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina court of appeals _____
- ii. South Carolina Petition For Rehearing _____
- iii. South Carolina Supreme Court _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. Denied _____
- iii. Denied _____
- (c) the date of each such result:
- i. 1/25/2012 _____
- ii. 4/20/2012 _____
- iii. 11/07/2013 _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 4934 (S.C. Ct App filed January 25, 2012 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL (SEE ATTACHED) FACTS.
- (b) _____
- (c) _____

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

- (a) FACTS TO SUPPORT GROUNDS ARE ATTACHED TO FORM
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? 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? _____

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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

GROUND FOR RELIEF WITH SUPPORTING FACTS.

[10 & 11]

INEFFECTIVE ASSISTANCE OF COUNSEL

10. (A) Applicant was denied the effective assistance of counsel at the guilt-or-innocence phase of his trial in violation of South Carolina law and the sixth and fourteenth Amendments to the United States Constitution.

11. (A) Trial counsel's representation at the guilt-or-innocence phase of the proceeding was deficient in the following respects:

(1) counsel failed to object to the reading of the charge of 56-5-1810 when the exceptions were not read to the jury and were material to the case.

This failure also made it impossible to raise on appeal.

10. (B) Applicant was denied the effective assistance of counsel and a fundamentally fair trial when counsel failed to object to admission of pathologist reports and findings with no chain of custody.

11. (B) Trial counsel's representation at the guilt-or-innocence phase of the proceeding was deficient in the following respects:

(2) Counsel failed to object to pathologist reports when he alone stated that he sent reports out of state to labs to have findings and did not refer anything to S.L.E.D. for proper chain of custody.

this failure made it impossible to raise on appeal.

INEFFECTIVE ASSISTANCE OF COUNSEL,

10 (C) Applicant was denied the effective assistance of counsel at the guilt-or-innocence phase of his trial. In violation of South Carolina law. and the sixth and fourteenth Amendment to the United States constitution when the solicitor's office presented false, inaccurate and misleading evidence through a video animation by the S.C. M.A.I.T. who when called to investigate declined.

11 (c) The investigating officer testified that he called the M.A.I team and they declined. After numerous request from the public defender for a report they went to the scene. And after 13 months with out any physical evidence they generate a video animation. The officer testified that he recorded rate of speed by skid mark on ground from motorcycle. but when asked again he states dose this all the time and if it were any faster then it would look different and also states that m.a.i. team has found out rate of speed m.a.i. team states that they got that from him. at this point the report is not authentic under rule 901, and should have not have been allowed to go to jury. This failure also made it impossible to raise on appeal.

GROUND'S FOR RELIEF WITH SUPPORTING FACTS.(10 & 11)INEFFECTIVE ASSISTANCE OF COUNSEL

10. (D) Applicant was denied the effective assistance of Counsel at the guilt -or- innocence phase of his trial in violation of South Carolina law and the sixth and fourteenth amendments to the United States Constitution.

11. (D) Trial counsel's representation at the guilt-or-innocence phase of the proceeding was deficient in the following respect:

Counsel failed to object to photographs that showed applicant was never left of center but was making a u-turn at point of impact. Officer testify that i never reached my lane and it happened in front of the driveway as he pointed out in the photographs. That show the sand trail from driveway to vehicle.

Counsel also should have known that §56-5-1810 makes a exception for making a left turn into or out of a privet road, driveway, or alley. Witch is what I was doing at time of impact.

This offense was only added to make indictment true and correct. This failure also made it impossible to raise on appeal.

10. (E) Applicant was denied the effective assistance of counsel at the guilt-or-innocence phase of his trial in violation of South Carolina law and sixth and fourteenth amendments to the United States Constitution.

11. (E) Trial counsel representation at the guilt-or-innocence phase the proceeding was deficient in the following respects

Counsel failed to object to the destruction of evidence of blood that officer testified that is to be kept for court

GROUND'S FOR RELIEF WITH SUPPORTING FACTS.(10 & 11)INEFFECTIVE ASSISTANCE OF COUNSEL

10. (F) Applicant was denied the effective assistance of counsel in violation of South Carolina law and the six and fourteenth Amendments to the United States Constitution.

11. (F) Appellant counsel was ineffective when he failed to make photographs a mater of record. one of the claims was applicant was making a u-turn at point of impact photograph show place of vehicle and sand trail.

10. (G) Applicant was denied the effective assistance of counsel in violation of South Carolina law and the six and fourteenth Amendments to the United States constitution.

11. (G) Trial counsel representation at the guilt-or-innocence phase of the proceeding was deficient in the following respects:

Counsel failed to have an expert to testify at trial.

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- 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?
YES

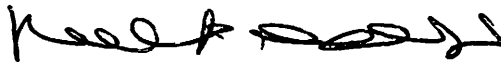
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. APPLICANT MADE A PROPER U-TURN
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. SOUTH CAROLINA COURT OF APPEALS.
- ii. SOUTH CAROLINA PETITION FOR REHEARING.
- iii. SOUTH CAROLINA SUPREME COURT.
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Counsel failed to object.
- (b) _____
- (c) _____
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? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Geen Hood 1905 Duke Street, Beaufort S.C. 29901.
- ii. Robert M. Dudek 1330 LADY STREET South Carolina 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL, SENTENCING.
- ii. APPEAL, WRIT OF CERTIORARI.
- iii. _____
19. State clearly the relief you seek in filing this application:
- NEW TRIAL OR SET ASIDE.
20. Are you now under sentence from any other court that you have not challenged?
- NO

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

I, RODNEY L. GALIMORE #332336, 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:

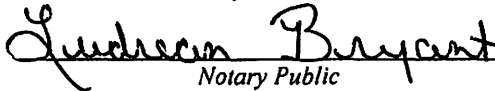
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

10th day of December, 2013.



Notary Public

My Commission Expires: May 26, 2020

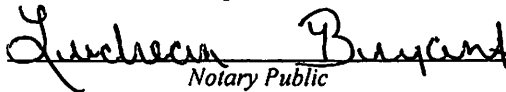
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RODNEY L. GALIMOER #332336, 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.


Applicant

SWORN or affirmed to and subscribed before me this
10th day of December, 2013.


Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2013-CP-07-3163
	)	
Rodney Galimore, #332336,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 13, 2012 and amended on December 26, 2013 and January 24, 2014 would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the September 2007 term of the Beaufort County Grand Jury for reckless homicide (2007-GS-07-1616), driving under the influence resulting in death (DUI) (2007-GS-07-2690), driving under suspension- third offense (2007-GS-07-617), and child endangerment (2007-GS-07-1584). The Applicant was represented by Gene Hood, Esquire.

On December 8-10, 2008, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable John C. Hayes to confinement for a period of twenty-five (25) years for DUI resulting in death, six (6) months for driving under suspension, and ten (10) years for reckless homicide and child endangerment. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Galimore, No. 4934 (S.C. Ct. App. January 25, 2012). The Applicant filed a Petition for Rehearing which was denied on April 20, 2012. The South Carolina Supreme Court denied the Applicant's Petition for Writ of Certiorari on November 7, 2013. The Remittitur was issued on November 14, 2013.

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

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to the reading of the charge of 56-5-1810 when the exceptions were not read to the jury and were material to the case.
 - b. Counsel failed to object to admissibility of pathologist reports and findings without the chain of custody.
 - c. Counsel failed to object to pathologist reports when he alone stated that he sent reports out of state to labs to have findings and did not refer anything to SLED for proper chain of custody.
 - d. Counsel failed to object to misleading evidence presented by the Solicitor's Office through a video animation by the S.C. M.A.I.T.
 - e. Counsel failed to object to photographs that showed applicant was never left of center, but was making a U-turn at the point of impact.
 - f. Counsel failed to object to the destruction of evidence of blood that officer testified is to be kept for court.
 - g. Counsel failed to make photographs a matter of record.
 - h. Counsel failed to have an expert to testify at trial.
 - i. Counsel failed to object to the indictment of felony DUI which had the charge of 56-18-10.
 - j. Counsel failed to address the fact that the statute was not observed.
 - k. Counsel failed to object to the charge of 56-5-1810, left of corner.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that

the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 10, 20 15.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

2013-CP-07-3163

RODNEY GALIMORE, #332336

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

Tristan M. Shaffer
Axelrod & Associates P.A.
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 10th day of February


Anne R. Henley, Legal Assistant
For Respondent

RODNEY L. GALIMORE,
APPLICANT,
VERSUS
STATE OF SOUTH CAROLINA,
RESPONDENT.

POST CONVICTION RELIEF
HEARING TRANSCRIPT

THE POST CONVICTION RELIEF HEARING IN THE ABOVE MATTER WAS HELD BEFORE THE HONORABLE R. FERRELL COTHRAN, JR. ON THE 6TH DAY OF AUGUST, 2018, COMMENCING AT THE HOUR OF 10:21 A.M., AT THE BEAUFORT COUNTY COURTHOUSE, 102 RIBAUT ROAD, BEAUFORT, SOUTH CAROLINA.

REPORTED BY: KAREN E. HOLLEY, CVR-M

LEGAL EAGLE

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Greenville, South Carolina 29606

864-587-7050 or 864-467-1373

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APPEARANCES:

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 1000 ASSEMBLY STREET
 COLUMBIA, SOUTH CAROLINA 29201
 ATTORNEY FOR APPLICANT,

TRISTAN M. SHAFFER, ESQUIRE
 225 COLUMBIA AVENUE
 CHAPIN, SOUTH CAROLINA 29036
 ATTORNEY FOR RESPONDENT.

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 MR. SAVILLE:

2 May it please The Court, Your Honor?

3 JUDGE COTHRAN:

4 Yes, sir.

5 MR. SAVILLE:

6 Your Honor, this is Rodney Galimore versus The State of
7 South Carolina, Docket Number 2013-CP-07-3163.

8 Mr. Galimore was indicted in September of 2007 in
9 Beaufort County for reckless homicide, felony DUI,
10 driving under suspension third offense, and child
11 endangerment. He was represented at trial by Mr. Gene
12 Hood. On December 8th, 2008, he proceeded to trial and
13 was found guilty as indicted. He was sentenced by The
14 Honorable John C. Hayes to confinement for 25 years for
15 felony DUI resulting in death, six months for driving
16 under suspension, and ten years each for reckless
17 homicide and child endangerment. The convictions are
18 to be served concurrently on the felony DUI and all the
19 other sentences while the ten and ten for reckless
20 homicide and child endangerment are consecutive. Mr.
21 Galimore filed a timely Notice of Appeal perfected by
22 Mr. Robert Dudek. The convictions and sentences were
23 affirmed by the Court of Appeals. He filed a petition
24 for rehearing, which was denied on April 12th, 2012.
25 South Carolina Supreme Court denied his petition for

1 Writ of Certiorari on November 7th, 2013. The
2 Remittitur was issued on November 14th, 2013. Mr.
3 Galimore filed his application on December 13th, 2012,
4 amended on December 26th, 2013, again in January 2014,
5 and I understand has made subsequent amendments. Mr.
6 Galimore is represented by Mr. Tristan Shaffer. And at
7 this time, the State would just request Mr. Shaffer
8 enumerate on which allegations Applicant plans on
9 proceeding today. Thank you.

10 JUDGE COTHRAN:

11 Okay.

12 MR. SHAFFER:

13 And, Your Honor, in addition to ones that have been
14 amended and are in writing, there were two more that I
15 had sent to the Attorney General's office back in
16 January of this year. At the time, Julie Coleman was
17 handling the case, and she actually said she did not
18 object to the amendments. Those -- those two
19 amendments, and they're somewhat covered already, but
20 -- at least one of them is covered, but those two
21 amendments, which I thought had actually gotten filed,
22 but apparently what had gotten filed is actually a pro
23 se document containing those amendments, but the two
24 amendments were the Applicant was denied his Sixth
25 Amendment right -- Sixth and Fourteenth Amendment right

1 to due process when trial counsel failed to retain an
2 accident reconstruction expert, Martin Schussel, to
3 testify at trial. Now, obviously, as we discussed in
4 chambers, Mr. Schussel is actually -- had been
5 retained, he just was not actually retained for trial
6 and did not get called at the trial. The next
7 amendment would be that Applicant was denied his Sixth
8 Amendment right to counsel and his Fourteenth Amendment
9 right to be free from unreasonable search and seizure,
10 Fourteenth Amendment right to due process when trial
11 counsel failed to move to suppress evidence that was
12 obtained as a result of a warrant for his blood draw.
13 And that would be the Fourth Amendment claim that we
14 talked about back there, Your Honor. That wasn't
15 objected to on the record. So we would move to orally
16 amend those based off of the previous email where the
17 State had received a copy back in January.

18 JUDGE COTHRAN:

19 Okay. Have you got a position?

20 MR. SAVILLE:

21 Your Honor, the State does not have a problem with the
22 amendment. It's my understanding that pursuant to
23 discussions in chambers, we are leaving the record open
24 in this case to take a later deposition. Your Honor,
25 the State may request an opportunity to brief the blood

1 issue at the conclusion of this hearing, which will, of
2 course, be within Your Honor's discretion.

3 JUDGE COTHRAN:

4 Okay.

5 MR. SHAFFER:

6 And that's my understanding of it, as well, Your Honor.

7 JUDGE COTHRAN:

8 All right. Then y'all may proceed.

9 MR. SHAFFER:

10 Applicant would call Rodney Galimore.

11 JUDGE COTHRAN:

12 Okay, please come around, sir. Place your left hand on
13 the Bible and raise your right.

14 CLERK OF COURT:

15 Raise your right hand, please.

16 MR. GALIMORE:

17 I think he said left.

18 CLERK OF COURT:

19 Place your left hand on the Bible, raise your right
20 hand.

21 MR. GALIMORE:

22 Oh, I'm sorry.

23 CLERK OF COURT:

24 That's okay. Do you solemnly swear or affirm that the
25 testimony you give to The Court in this trial shall be

1 the truth, so help you God?

2 MR. GALIMORE:

3 Yes, I do.

4 CLERK OF COURT:

5 Would you please state your name?

6 MR. GALIMORE:

7 Rodney L. Galimore.

8 CLERK OF COURT:

9 And could you spell your last name?

10 MR. GALIMORE:

11 G-a-l-i-m-o-r-e.

12 CLERK OF COURT:

13 Thank you.

14 DIRECT EXAMINATION BY MR. SHAFFER:

15 Q. Mr. Galimore, --

16 A. Yes, sir.

17 Q. -- you're currently serving a sentence in the
18 Department of Corrections, correct?

19 A. Yes, sir.

20 Q. Okay. What is that sentence?

21 A. Excuse me?

22 Q. What is that sentence?

23 A. Twenty-five years for felony DUI, ten years for
24 reckless homicide, six months for driving under
25 suspension, and ten years for child endangerment.

1 Q. Okay. Now, going back, who represented you on those
2 charges?

3 A. Gene Hood.

4 Q. Okay. And was he appointed?

5 A. Yes, sir, he was an appointed attorney.

6 Q. He was your public defender, right?

7 A. Public defender, yes, sir.

8 Q. Okay. Now, you have filed a application for post-
9 conviction relief?

10 A. Yes, sir.

11 Q. Okay. In that application, you made several
12 allegations, and I'm going to go to the one -- first
13 one related to a accident reconstruction expert.

14 A. Yes, sir.

15 Q. Okay. Well, actually, let me back up a little bit.
16 Give us a little bit of a background of what the State
17 claimed you did at trial.

18 A. Well, it was the State's contention that I made a legal
19 U-turn, but somehow crossed the center lane without
20 reaching the center lane. So it was kind of confusing.

21 Q. Okay. And their -- they, essentially, argued that you
22 were intoxicated at the time, right?

23 A. Yes, sir; yes, sir.

24 Q. Now, the basis of your -- the basis of the illegal act
25 that they indicted you for is what?

1 A. Was -- the illegal act that I was indicted for was
2 crossing the center lane.

3 Q. Okay. Now, in this case, there was a animation done by
4 MAIT, correct?

5 A. By a MAIT team, yes, sir.

6 Q. Okay. Do you know when that animation was actually
7 done?

8 A. That animation, from what I was told, it was done 16
9 months after the incident and it was in around October
10 of 2018, and they didn't have -- the only information
11 that they had was a few handwritten notes from the
12 officer.

13 Q. And we're going to -- we're going to go back to the
14 animation later, and we'll discuss that later, okay,
15 but what I'm -- what I'm asking about, so there was a
16 animation that was done much later, right?

17 A. Yeah.

18 Q. And that was shown to the jury, right?

19 A. Yes, sir.

20 Q. Okay. Did your attorney object to that?

21 A. I don't -- no, he didn't.

22 Q. Okay. Did you have any expert testify at trial related
23 to that animation?

24 A. No, sir.

25 Q. No defense expert?

1 A. No defense expert.

2 Q. Do you know if one was hired?

3 A. I found out -- he had told me -- Gene Hood told me he
4 contacted an expert, but I found out --

5 MR. SAVILLE:

6 Objection, Your Honor, hearsay.

7 A. -- I found out after I was sentenced.

8 JUDGE COTHRAN:

9 I'll sustain that.

10 MR. SHAFFER:

11 And, Your Honor, I'm actually not admitting that for
12 the truth of the matter; what I'm doing is basically
13 going to ask him if he had any discussions with Mr.
14 Hood related to trial strategy about not calling an
15 expert.

16 JUDGE COTHRAN:

17 Okay. Ask him that.

18 EXAMINATION RESUMING BY MR. SHAFFER:

19 Q. Okay. Did you have any discussions with Mr. Hood
20 related to his strategy for not calling an expert?

21 A. Mr. Hood informed me that he discussed the trial -- the
22 accident with -- with an expert, and his opinion with
23 the expert's -- the expert told him that he could not
24 give any information that was different from what the
25 police had come up with, so he was going to give

1 testimony --

2 Q. Okay.

3 A. -- that was going to be the same thing that the police
4 had -- were going to give testimony to.

5 Q. Okay. So, no expert was called at your trial?

6 A. No expert was called.

7 Q. Okay. Later on -- well, before trial, do you know who
8 that expert was?

9 A. No.

10 Q. Did you ever look at the notes from that expert before
11 trial?

12 A. Not before the trial.

13 Q. Okay.

14 MR. SHAFFER:

15 Your Honor, I'm going to show the witness what has been
16 marked as Plaintiff's Exhibit One, and I believe that
17 we're going to admit that. I don't think there's any
18 objection from the State.

19 MR. SAVILLE:

20 No objection, Your Honor.

21 JUDGE COTHRAN:

22 All right. It's in without objection. What is it?
23 (Plaintiff's Exhibit Number One is marked.)

24 MR. SHAFFER:

25 And this is the notes from the expert, which will

1 testify in just a few minutes, as soon as he gets here,
2 Your Honor.

3 EXAMINATION RESUMING BY MR. SHAFFER:

4 Q. Now, Mr. Gali --

5 JUDGE COTHRAN:

6 Let her mark -- if it's in, let her mark it.

7 MR. SHAFFER:

8 Oh, it has been.

9 JUDGE COTHRAN:

10 It's been marked?

11 MR. SHAFFER:

12 Yes, Your Honor. It's Plaintiff's Exhibit One, or
13 Applicant's Exhibit One.

14 EXAMINATION RESUMING BY MR. SHAFFER:

15 Q. Mr. Galimore, --

16 A. Yes, sir.

17 Q. -- Applicant's Exhibit One, which has been admitted
18 already, what does that appear to be?

19 A. This is a copy of the report that came from the -- the
20 independent expert from Gene Hood.

21 Q. Okay. And when did you first see that document?

22 A. At Lieber Correctional Institution.

23 Q. That was after your conviction?

24 A. Yes, sir.

25 Q. Okay.

1 MR. SHAFFER:

2 And, Your Honor, we'll go more into this a little bit
3 later once the expert is here.

4 EXAMINATION RESUMING BY MR. SHAFFER:

5 Q. Mr. Galimore, after -- after viewing that Plaintiff's
6 Exhibit One, did that cause you to put in -- or did
7 that -- at that point, did you want to make an
8 allegation of ineffective assistance of counsel against
9 your attorney?

10 A. Yes; yes, sir.

11 Q. And why was that?

12 A. Well, because after I reviewed those notes, I had
13 realized that it was brought to my attention -- reading
14 those notes brought to my attention that that was not
15 the same outlook that Mr. Hood had referred to me about
16 the expert. The expert gave a different view from the
17 officers -- from the MAIT team.

18 Q. Okay. So you thought the expert's opinion would have
19 been favorable to you?

20 A. Absolutely. The expert's opinion actually -- is
21 actually favorable.

22 Q. Okay. Now, you've made other allegations about
23 ineffective assistance of counsel?

24 A. Yes, sir.

25 Q. Okay. You made -- and I'm going to talk to you now

1 about the allegation you made about the Fourth
2 Amendment violation, --

3 A. Uh-huh.

4 Q. -- okay.

5 A. Blood draw.

6 Q. The blood draw. Okay?

7 A. Yes, sir.

8 Q. Related to the blood draw, did -- prior to the trial,
9 did Mr. Hood ever tell you -- or did you have any
10 discussions with Mr. Hood related to making an
11 objection under the Fourth Amendment to the blood draw?

12 A. The discussion that was discussed was -- it was in --
13 it was within their parameters to -- to retrieve the
14 evidence.

15 Q. Okay.

16 A. That's what I was told. I was told that it was -- it
17 was the officer's duty to -- to get the blood from --
18 from me.

19 Q. Okay. Did you ever have any discussions specifically
20 about the Fourth Amendment with Mr. Hood?

21 A. Absolutely. I -- I actually discussed that with the
22 officer in the hospital. I brought it to Mr. Hood's
23 attention, and it's just where I've been standing ever
24 since.

25 Q. Okay. Mr. Hood did not object to that, correct?

1 A. No, he didn't.

2 Q. Okay. Do you specifically know any reason why he would
3 not have objected to it?

4 A. No, I couldn't tell you. Like I said, I had -- I had
5 discussed it with the police officer, and he said South
6 Carolina law states they can -- they don't need a
7 warrant. Mr. Hood says they did it all -- that's what
8 they do all the time, so there was -- there -- he just
9 never objected to it because the way I understood it,
10 that was just the way they did business.

11 Q. Okay. Prior to trial, you -- you said you'd brought
12 this issue up with Mr. Hood?

13 A. Yes, sir.

14 Q. You asked him to object under the Fourth Amendment?

15 MR. SAVILLE:

16 Objection, Your Honor, it's leading.

17 EXAMINATION RESUMING BY MR. SHAFFER:

18 All right.

19 A. No.

20 Q. Did you --

21 JUDGE COTHRAN:

22 Go ahead.

23 EXAMINATION RESUMING BY MR. SHAFFER:

24 Q. Did you have any position -- did you have any position
25 on how you wanted them to proceed during your Fourth

1 Amendment discussion with Mr. Hood?

2 A. No, what -- what the discussion me and Mr. Hood had was
3 because there was multiple officers brought in, so I
4 didn't know it was a Fourth Amendment violation, I
5 thought it was more of an assault and battery kind of
6 situation because of the way they restrained me and did
7 the -- the blood draw. But, you know, it was never
8 discussed as far as being a Fourth Amendment to me, it
9 was -- I found out after I got to Lieber when I -- when
10 I got to the law library that it is a Fourth Amendment
11 violation.

12 Q. Okay. Did you ever consent to have them draw your
13 blood?

14 A. No, that was -- that was discussed at the hospital.
15 That was discussed the whole time throughout, and what
16 was told to me was I don't have to give consent, so
17 it's not -- not an issue.

18 Q. Did they physically restrain you --

19 A. Yes, sir.

20 Q. -- to get the blood?

21 A. Yes, sir.

22 And they also called dispatch to -- to have officers
23 dispatched to assist, and the dispatch informed them
24 that that wasn't something that they did.

25 Q. Now, you were originally called to trial before

1 December, in November; do you recall that?

2 A. Yes, sir, I was called to trial in November.

3 Q. Okay. Why were you called to trial twice?

4 A. Because the -- the original trial was scheduled for the
5 -- for the -- for the same charges, and what had
6 transpired was the indictment for failing the DUI
7 failed to state an act or omission, and I -- I brought
8 it to Mr. Hood's attention that in the State v Grampus
9 case, they need to -- to have an act or omission in the
10 indictment. And, essentially, Judge Butner decided
11 that that was true and he quashed the indictment as per
12 State v Grampus and instructed the Solicitor to correct
13 the indictment under the terms of State v Grampus which
14 was a left of center lane violation.

15 Q. Okay. So they amended the indictment and -- after that
16 initial date that you were supposed to go to trial in
17 November?

18 A. They actually sought a new indictment.

19 Q. So they sought a new indictment for you and reindicted
20 you under --

21 A. Reindicted me under the same felony DUI, but they
22 inserted the left of center lane violation, --

23 Q. Okay.

24 A. -- which was the same violation in State v Grampus,
25 which was -- which was the left of center lane, which

1 was not what took place.

2 Q. Now, fast forward to your actual trial, which was a
3 month later, right?

4 A. Yes, sir.

5 Q. Now, they -- they had charged the jury in the law of
6 left of center, correct?

7 A. Yeah, the -- well, the Judge charged the jury in -- in
8 the left of the center lane, but he omitted the last
9 four words -- well, the last three words, except as
10 follows, and that was the part that he omitted and in
11 that -- in that left of center lane, makes an exception
12 for coming out of a driveway, alleyway or private road,
13 and he instructed them that there are some exceptions,
14 but they don't apply.

15 Q. All right.

16 A. But, you know, the State's contention was I pulled out
17 of a driveway and, you know, proceeded in an incorrect
18 lane from pulling out of a driveway. So, you know, --

19 Q. Did --

20 A. -- he did not give those facts to the jury.

21 Q. Okay. He didn't give the exceptions to the jury. Did
22 -- did Mr. Hood actually object to that?

23 A. No, Mr. Hood did not object to that.

24 Q. Okay. Prior to the actual jury charge, there was a
25 charge conference where

1 A. Yes, sir.

2 Q. -- they discussed it?

3 A. Yes, sir.

4 Q. Okay.

5 A. And the Judge had asked Mr. Hood and Mrs. Tanner to
6 review the jury charge, and they both agreed that it
7 was sufficient as read -- as wrote.

8 Q. Okay. Now, going back, there -- there also is a
9 allegation related to the videotaping. Was there any
10 videotaping on the scene --

11 A. Right.

12 Q. -- of the -- after the accident, was there any
13 videotaping by officers admitted to the jury?

14 A. No, and actually I -- I asked Mr. Hood about it, and he
15 asked Trooper Sprouse about videotaping, and Trooper
16 Sprouse stated that it was not protocol, it was not --
17 you know, he just stated it was not protocol for him to
18 videotape the -- the arrest.

19 MR. SAVILLE:

20 Your Honor, I'll object to hearsay just for the record.

21 WITNESS:

22 It's in the transcript.

23 MR. SHAFFER:

24 Yeah, I think it is.

25 WITNESS:

1 It's in the transcript.

2 MR. SAVILLE:

3 I'm sorry, I didn't understand it was from the
4 transcript.

5 WITNESS:

6 That's from the transcript. Trooper Sprouse stated
7 when he was asked by Gene Hood about his camera, he
8 stated his camera was working, his car was equipped
9 with a camera, but it's not protocol for him to
10 videotape that. So, it's in the transcript.

11 MR. SAVILLE:

12 Okay.

13 WITNESS:

14 And he -- and Hood asked if he submitted an affidavit
15 as to any of this, and there was none submitted.

16 MR. SHAFFER:

17 And you --

18 MR. SAVILLE:

19 Your Honor, I apologize, I -- I apologize. I hadn't
20 found any mention of a question about affidavit in the
21 transcript.

22 MR. SHAFFER:

23 I'm actually not sure of that either. I don't think
24 that there was one actually admitted at any point, but,
25 Your Honor --

1 JUDGE COTHRAN:

2 what --

3 MR. SHAFFER:

4 Your Honor --

5 JUDGE COTHRAN:

6 what wasn't admitted?

7 MR. SHAFFER:

8 I -- I don't think they would have presented the
9 affidavit saying that the videotape was not -- a
10 videotape affidavit saying that for whatever reason
11 they were not able to obtain the videotape of the
12 incident.

13 WITNESS:

14 Your Honor, I believe Trooper Sprouse stated that he
15 had regretted to inform me -- he stated that he regrets
16 to inform Mr. Galimore that he was not going to be on
17 the videotape at this time. And it was a mention of
18 the affidavit and if you could give me a second, I bet
19 I could find it.

20 MR. SHAFFER:

21 And specifically -- and Your Honor, I may point the
22 Court's direction to that a little bit later, but right
23 now I'm going to go forward.

24 JUDGE COTHRAN:

25 Okay.

1 EXAMINATION RESUMING BY MR. SHAFFER:

2 Q. Now Mr. Galimore, --

3 A. Yes, sir.

4 Q. -- Trooper Sprouse was actually at the scene with you
5 --

6 A. Yes, sir.

7 Q. -- correct?

8 A. Uh-huh.

9 Q. He questioned you, right?

10 A. Yes, sir.

11 Q. So he questioned you at the scene. So he arrived there
12 and you were still there, correct?

13 A. Yes, sir.

14 Q. Was he the first -- first officer to arrive?

15 A. No, no, there was a Beaufort City officer, I believe,
16 who was the first officer on the scene.

17 Q. Now were there any other videotapes from any of the
18 officers?

19 A. Nothing was admitted to Mr. Hood.

20 Q. Okay. Now Mr. Galimore, --

21 A. Yes, sir.

22 Q. -- were there any other allegations that we haven't
23 specifically mentioned? I'm not asking about
24 allegations that are not contained in the original
25 application or the amendment, I'm asking if there's any

1 other allegations that -- that were contained in there
2 that we haven't discussed?

3 A. It's 125 page for the blood draw, but -- I'm sorry.

4 Q. Oh, I apologize then.

5 A. Do we need to discuss the blood draw, the videotape in
6 the transcript, page 125, starts at line 20?

7 Q. Yeah, we already discussed it's a blood draw.

8 But outside of those, are there any other additional
9 allegations that you had made related to this claim --

10 A. I'm sorry, was there any what?

11 Q. That we haven't -- that we haven't discussed, and I'm
12 not talking about facts, okay, because we'll get facts
13 through other witnesses, but are there any additional
14 allegations of ineffective assistance of counsel that
15 you would like -- like heard?

16 A. The -- well, he never -- he never -- Mr. Hood never
17 objected to the autopsy, because the autopsy was done
18 per the family.

19 Q. Okay. And --

20 A. And all evidence was handled through them and then
21 surrendered from them to the -- to the -- to the State
22 from them, so there's no chain of custody, and the
23 State of South Carolina says that you really can't do
24 that.

25 Q. Okay. Then the autopsy chain of custody was --

1 A. Well, there's -- there's the autopsy, there's the --
2 the -- when you have that situation, you have blood
3 and urine samples that are taken --

4 Q. Yes --

5 A. -- for a drug sampling, --

6 Q. And so --

7 A. -- and none of that was handled through SLED or any
8 state agency.

9 Q. But he never objected to the chain on those; is that --

10 A. No, sir, --

11 Q. -- correct?

12 A. -- he never objected to the chain of custody on that.

13 Q. Okay. And this is to do with the deceased?

14 A. This was to do with the deceased, yes.

15 Q. Okay. And I apologize, I think that that was in your
16 original application --

17 A. Yes, sir, yes, sir.

18 Q. -- and -- so outside of that, were there any additional
19 allegations that -- that you thought that he should
20 raise that were not?

21 A. We all -- we asked for the blood testing results, and
22 the -- the agent who handles that stated on the stand
23 that there was no -- there was no blood, it was
24 destroyed after six months, so there was no way to do
25 anything with that, and they didn't have anything from

1 that, so I felt that he should have objected to the
2 destruction of that evidence.

3 Q. And if given the chance, he would have wanted it
4 independently tested; is that --

5 A. Absolutely.

6 Q. -- fair to say?

7 A. Absolutely. Yes, sir.

8 Q. Okay. And if that blood is still in existence today,
9 you would have wanted it tested, correct?

10 A. Yes, sir.

11 Q. Okay.

12 JUDGE COTHRAN:

13 Is that his blood draw or the deceased blood?

14 MR. SHAFFER:

15 I think that's his --

16 WITNESS:

17 That's that --

18 MR. SHAFFER:

19 -- blood draw.

20 WITNESS:

21 Yeah.

22 MR. SHAFFER:

23 Yes, Your Honor.

24 JUDGE COTHRAN:

25 Huh?

1 MR. SHAFFER:

2 That's his blood draw.

3 JUDGE COTHRAN:

4 Okay.

5 MR. SHAFFER:

6 And they actually should have it. I think that
7 probably SLED does not have it, but probably the
8 Department of Public Safety keeps a cooler of that
9 stuff, so they should have it. I mean, they -- their
10 policy is to keep it.

11 JUDGE COTHRAN:

12 Really?

13 MR. SHAFFER:

14 Yeah, they -- they keep it forever from my
15 understanding. They have a big cooler up in Blythewood
16 that keeps samples.

17 JUDGE COTHRAN:

18 Okay.

19 MR. SHAFFER:

20 I was going to establish that during another witness,
21 Your Honor.

22 JUDGE COTHRAN:

23 Okay.

24 EXAMINATION RESUMING BY MR. SHAFFER:

25 Q. Now, Mr. Galimore, are there any other arguments that

1 you would like raised here today that haven't been
2 raised?

3 A. There's -- there's one other argument that -- that's --
4 that's through my appellate attorney, and there was
5 trial exhibits, Thirteen -- Twelve, Thirteen, Fourteen,
6 those are photographs, and it shows the vehicle that is
7 right in front of the store, and the reason why that's
8 relevant is because the State's argument is it was
9 traveling. And that was an issue on appeal, and the
10 State's response to that was is they were not made a
11 matter of record. And I've tried to, through various
12 courts, tried to get those and I just have not -- and I
13 felt that the appellate attorney should have made those
14 photographs a matter of record so they could have been
15 under review then or now.

16 Q. Okay.

17 MR. SAVILLE:

18 And, Your Honor, just as a matter of housekeeping, we
19 would object under relevance because there has not been
20 an allegation raised until now against appellate
21 counsel.

22 MR. SHAFFER:

23 And I'm not -- I'm not raising an allegation related to
24 appellate counsel.

25 JUDGE COTHRAN:

1 okay.

2 EXAMINATION RESUMING BY MR. SHAFFER:

3 Q. Now going back, and I'm going to ask you a couple more
4 questions related to -- I -- going back, there's a
5 couple more questions related to the -- having the
6 expert come testify.

7 A. Uh-huh.

8 Q. Now, had the expert testified, do you believe -- well,
9 what benefit would that have been?

10 A. Well, the way I understand it from the expert's
11 testimony, his opinion, from the way I understand it,
12 is the officer's research is not -- is not -- is not
13 the way things were done -- things should be done.
14 They don't have enough information to generate the
15 results that they came up with.

16 Q. Okay. So there was an animation shown to the jury,
17 right?

18 A. Yes, sir.

19 Q. And do you think that you could have challenged the
20 animation?

21 A. Well, clearly the animation should have been
22 challenged.

23 MR. SAVILLE:

24 Objection, Your Honor, that calls for a legal opinion.

25 MR. SHAFFER:

1 All right.

2 EXAMINATION RESUMING BY MR. SHAFFER:

3 Q. Would you want -- if he had the expert there who said
4 that the animation is not correct, would you have
5 wanted him to --

6 A. Yes, sir.

7 Q. -- challenge it?

8 A. Yes, sir.

9 Q. Okay.

10 A. Well, just to state, I'm quite sure you have a copy of
11 the animation?

12 Q. Yes.

13 A. And the animation shows the vehicle crossing the center
14 line, but the vehicle never reached -- never left a
15 single lane. So, if you were to show the animation,
16 what was shown to the jury, was a vehicle traveling
17 across two lanes. The vehicle never left from -- from
18 the store; it just entered a lane. But the animation
19 was generated because of the indictment because of the
20 charge of left of center. So all of that came out at
21 the same time.

22 Q. Sir, you would have wanted him to challenge the --

23 A. Absolutely.

24 Q. -- using the expert challenge, the animation?

25 A. Absolutely. I mean, his -- his notes even state that

1 that's flawed.

2 Q. Okay.

3 MR. SHAFFER:

4 No further questions at this time.

5 JUDGE COTHRAN:

6 Okay.

7 MR. SAVILLE:

8 No questions for this witness, Your Honor.

9 JUDGE COTHRAN:

10 I've got one.

11 EXAMINATION BY JUDGE COTHRAN:

12 Q. You said the vehicle never crossed the center line?

13 A. No, sir.

14 Q. Which vehicle are you talking about?

15 A. The -- my vehicle.

16 JUDGE COTHRAN:

17 Okay.

18 MR. SHAFFER:

19 Your Honor, during the next witness I was actually
20 going to show the video from the MAIT team, which I was
21 going to admit as evidence -- admit through -- I was
22 actually going to do it through Trooper Sprouse, but
23 maybe would you consent to the MAIT file being
24 admissible?

25 MR. SAVILLE:

1 I will.

2 MR. SHAFFER:

3 Okay. I'm going to have the MAIT file and then I'll
4 admit that, and if The Court would like, I can put it
5 -- maybe put it on the TV, if not, I can give the Court
6 a disc to watch the animation so you have some context
7 of --

8 JUDGE COTHRAN:

9 Okay.

10 WITNESS:

11 Can I just say something?

12 JUDGE COTHRAN:

13 You may have to ask one of these men.

14 WITNESS:

15 Can I say something?

16 MR. SHAFFER:

17 If -- I believe that you may be able to comment related
18 to the Judge's question.

19 WITNESS:

20 Not this -- not really, it's about that left of the
21 center lane.

22 MR. SHAFFER:

23 Well, we'll -- we'll get it out through another
24 witness, okay? We'll talk about it in a second.

25 JUDGE COTHRAN:

1 This video is the one that was shown at trial?

2 MR. SHAFFER:

3 That's correct, Your Honor.

4 JUDGE COTHRAN:

5 Okay.

6 MR. SHAFFER:

7 And I have it on a disc. I can play it for the Court.

8 I may be able to figure out how to use this.

9 JUDGE COTHRAN:

10 Okay.

11 MR. SHAFFER:

12 Or right here, sir.

13 JUDGE COTHRAN:

14 Is it your contention that the defense counsel hired an
15 expert?

16 MR. SHAFFER:

17 Yes, that's correct.

18 JUDGE COTHRAN:

19 Is there a funding order in the file that an expert was
20 paid?

21 MR. SHAFFER:

22 I didn't know if he -- if there is or not, but he'll
23 come testify and say that he was hired and consulted
24 with Mr. Hood and that he had done these notes back in
25 2008.

1 JUDGE COTHRAN:

2 Okay.

3 MR. SHAFFER:

4 And, Your Honor, I think one of the problems is, is
5 that we were unable to obtain Mr. Hood's file in this
6 situation.

7 MR. SAVILLE:

8 That's true, Your Honor.

9 JUDGE COTHRAN:

10 There should have been an order in the Clerk of Court
11 or somewhere, the funding order shows.

12 MR. SHAFFER:

13 And, Your Honor, I would imagine that there probably is
14 an ex parte order in there. If not, I imagine he paid
15 for it out of the public defender's account, but he
16 probably sought reimbursement for it, I would imagine.

17 JUDGE COTHRAN:

18 Okay.

19 MR. SAVILLE:

20 Your Honor, I believe when Ms. Tanner, the solicitor in
21 the case, takes the stand, she may actually also have
22 some relevant testimony to whether she believes an
23 expert was actually hired.

24 JUDGE COTHRAN:

25 Okay.

1 (Clerk of Court is trying to contact technician.)

2 MR. SHAFFER:

3 And, Your Honor, we have to take a break anyway for the
4 next witness who is supposed to be here in about five
5 minutes, so I think we're going to put this up on the
6 board, if you wouldn't mind us...

7 JUDGE COTHRAN:

8 Okay.

9 MR. SAVILLE:

10 Your Honor, I don't know if you have another
11 preference, but I mean if you'd like, we could take the
12 laptop up, I have it pulled up on my laptop right now,
13 if you'd like us to approach the bench with it?

14 JUDGE COTHRAN:

15 I can do it any way y'all want to.

16 MR. SAVILLE:

17 If Mr. Shaffer doesn't have a problem with that.

18 MR. SHAFFER:

19 That's fine.

20 (Setting up laptop.)

21 MR. SHAFFER:

22 Your Honor, may I have about five minutes, could we be
23 at break? I believe that the witness showed up.

24 JUDGE COTHRAN:

25 Okay.

1 (Off the record at 11:00 a.m.)

2 (On the record at 11:08 a.m.)

3 CLERK OF COURT:

4 Place your hand on the Bible, raise your right hand.

5 (Witness complies.)

6 CLERK OF COURT:

7 Do you solemnly swear or affirm that the testimony you
8 give to the Court in this trial shall be the truth, so
9 help you God?

10 WITNESS:

11 I do.

12 CLERK OF COURT:

13 Could you state your name please?

14 WITNESS:

15 Martin Schussel.

16 CLERK OF COURT:

17 And spell your last name?

18 WITNESS:

19 S-c-h-u-s-s-e-l.

20 CLERK OF COURT:

21 Thank you.

22 DIRECT EXAMINATION BY MR. SHAFFER:

23 Q. All right, Mr. Schussel, tell us a little bit about
24 your background.

25 A. All right. I have a Bachelor's and Master's degree in

1 mechanical engineering from Carnegie Mellon University.
2 In mechanical engineering, you study the laws of
3 physics, chemistry, metallurgy. You also study what's
4 called strength of materials, which is how materials
5 perform under loads and things. We study aerodynamics,
6 thermodynamics. It's a very broad discipline.

7 Mechanical engineers work in a whole bunch of fields
8 from designing airplanes to missile systems to cars to
9 refrigerators, heating systems. The discipline is very
10 broad and applies to a lot of different areas and so it
11 can be applied to accident reconstruction. The early
12 part of my career I worked for Martin Marietta
13 Corporation as a propulsion engineer designing rocket
14 motors for missile systems, and then later used the
15 soft -- my software skills to apply software
16 engineering to what's called computer-aided design,
17 computer-aided manufacturing where those are tools that
18 engineers use to design products. And then later did
19 some work that was purely software engineering, ran
20 departments. Then went back into mechanical
21 engineering working in accident reconstruction; about
22 16 years ago, I guess, I started working in accident
23 reconstruction and I've been doing that ever since.

24 Q. okay. So from -- for the last 16 years, you've worked
25 in accident reconstruction as one of the areas you're

1 an expert in?

2 A. It's the primary area that I'm an --

3 Q. Okay.

4 A. -- expert in.

5 Q. Okay. How many accident reconstructions have you done?

6 A. I don't keep track of it that way. I've testified, I
7 think, in deposition 57 times and in court cases in
8 court 20 times.

9 Q. Okay. Have you ever been qualified as an expert in
10 accident reconstruction by any of the -- any of the
11 courts in the State of South Carolina?

12 A. Yes.

13 Q. Has that been many times?

14 A. I don't have an exact number, but it's probably in the
15 order of 15 times.

16 Q. Have you ever been -- has a judge ever ruled that you
17 weren't an expert in accident reconstruction?

18 A. No.

19 Q. Okay.

20 MR. SHAFFER:

21 At this time, I'd like to have him declared an expert
22 in the field of accident reconstruction.

23 MR. SAVILLE:

24 No objection, Your Honor.

25 JUDGE COTHRAN:

1 Okay. The Court so finds.

2 EXAMINATION RESUMING BY MR. SHAFFER:

3 Q. All right, Mr. Schussel, tell me, when did you first
4 get involved in Mr. Galimore's case?

5 A. I don't remember exact timing, but I believe that a
6 call came into our office from Mr. Hood who asked us to
7 look at materials from the MAIT team, I believe, and I
8 can actually look it up, I think. So probably in
9 November of 2008 was the first time I became involved.

10 Q. So November of 2008. It would have been before the
11 trial in this case, to your understanding, correct?

12 A. It's my understanding, yes, it --

13 Q. Okay.

14 A. -- was before trial.

15 Q. And the first person who contacted you was Mr. Hood?

16 A. Correct.

17 Q. Okay. Did he actually retain you to look at these
18 documents?

19 A. We don't do a formal retention process, we don't take a
20 retainer from our clients, but he asked me to look at
21 the materials from the MAIT team and to tell him what I
22 thought of those materials and, in particular, I think
23 he was interested in the animation that had been done
24 and whether that was appropriate or not.

25 Q. Okay. Now, you didn't have a formal retainer

1 agreement, but were you paid to do this?

2 A. Yes.

3 Q. Okay. I'm going to show you Plaintiff's Exhibit One,
4 which has already been admitted into evidence. What
5 does that appear to be?

6 A. Those are notes that I retained in my file. I'll try
7 to give a little bit of history. For this particular
8 case, I did some work to evaluate the materials that
9 were sent to us. I evaluated them. I wrote up some
10 notes on them. I don't remember if I was asked
11 specifically to write up the notes, but I often do, and
12 then I would have discussed these notes with Mr. Hood.
13 And then at that point, I believe -- I don't remember
14 the precise wording or whether we actually had a
15 discussion to this effect, but at some point we sent
16 the file back to Mr. Hood. We have a process that we
17 go through after a period of time of inactivity to find
18 out whether people want us to retain materials or if
19 they want them. He requested the materials back, so we
20 sent the materials back to him. So the only thing that
21 I retained in our file was electronically I had these
22 notes that I took at the time.

23 Q. Okay. Now, those notes that you took at the time,
24 would that have been after you reviewed the MAIT
25 materials back in 2008?

1 A. Or concurrent with --

2 Q. Or at --

3 A. -- reviewing the materials.

4 Q. -- the same time?

5 A. Yes.

6 Q. Okay. Would you have discussed the contents of those
7 notes, or generally the contents, of what you found
8 with Mr. Hood?

9 A. I assume so. I don't recollect that particular
10 conversation. It's been ten years, and I don't have a
11 specific recollection of it, but I wouldn't have
12 written up the notes unless I intended to talk to him
13 about it. And I may have even sent him a copy of these
14 notes. Again, I don't recollect that.

15 Q. Okay. Now, several years after you were -- sent the
16 file back to Mr. Hood, at that point you were actually
17 contacted by Mr. Galimore, correct?

18 A. He called at least twice is my recollection. I don't
19 remember the exact timeframe in which that occurred.

20 Q. And at some point, I actually retained you in addition
21 to that, correct?

22 A. Correct.

23 Q. And since that time, I provided you a copy of what the
24 State represents -- or what I was told was the MAIT
25 file, correct?

1 A. It took a couple of rounds of trying to get all the
2 materials, but yes. Eventually I had what I believe is
3 probably the complete file.

4 Q. Okay. And you have had a chance to review that file
5 since then, correct?

6 A. I have, yes.

7 MR. SHAFFER:

8 Your Honor, we're having a little bit of technical
9 difficulties here, so I may have to actually approach
10 with a laptop.

11 JUDGE COTHRAN:

12 Okay.

13 MR. SHAFFER:

14 And, Your Honor, this disc, I believe, is going to be
15 admitted by a stipulation at this point as the MAIT --
16 as the MAIT file that I received.

17 JUDGE COTHRAN:

18 Okay.

19 MR. SHAFFER:

20 Okay. This is animation from this disc.

21 MR. SAVILLE:

22 Your Honor, may I approach Mr. Shaffer so that I can
23 see what's being shown?

24 JUDGE COTHRAN:

25 Yes.

1 MR. SHAFFER:

2 Now, what I'm showing right now is a computer file of
3 the disc, which will be admitted as Plaintiff's Exhibit
4 Two in just a moment, Your Honor, once I take it out.

5 EXAMINATION RESUMING BY MR. SHAFFER:

6 Q. Does this appear to be the -- the MAIT file that I sent
7 you electronically?

8 A. Right. Like I say, I got -- got it in several
9 different pieces, so the animation wasn't there the
10 first time, all the photographs were not there the
11 second time.

12 Q. Okay. Now, these appear to be the animations, correct,
13 that you reviewed?

14 A. That was one of the views, is --

15 Q. Okay.

16 A. -- were the animations, yes.

17 Q. Tell me what your -- before we go into this, I'm going
18 to ask you what accident reconstruction is, if you
19 wouldn't mind explaining it to the Court?

20 A. Sure. Accident reconstruction is the use of scientific
21 principles to understand what happened in an accident,
22 analyze it, determine speeds, motions of the vehicles,
23 where people are coming from, where they were headed
24 to, what the directions were, what the speeds were, and
25 then the interactions of the vehicles so that you can

1 say, using scientific principles, what actually
2 happened in the accident. We often, most times, get to
3 examine the vehicles themselves so we can look at the
4 damage. I talked earlier about strength of materials,
5 we use the damage to the vehicles to help determine how
6 the two vehicles came together, the speeds with which
7 the vehicles came together. We look for tire marks in
8 the roadway that change direction to indicate a point
9 of impact. We also look for gouges in the roadway. We
10 look for physical evidence that might be in the roadway
11 after an accident to try to determine a point of
12 impact. So it's a fairly broad field. It covers a lot
13 of different aspects, and it's never the same in any
14 two cases. You have different evidence, different
15 situations, but in general, you're trying to figure out
16 what happened and how it happened.

17 Q. Okay. Now, you have viewed the -- all of the
18 animations; there's four views, I believe.

19 A. Four views of the same animation, it appears, --

20 Q. Okay.

21 A. -- yes.

22 Q. What is your opinion of those animations?

23 A. Well, in general, an animation, in order to be
24 effective, is supposed to accurately represent exactly
25 what happened in the accident. Not just what might

1 have happened, but a precise analysis of the
2 information to determine this is what actually happened
3 in the accident. From what I look at, the file, and
4 it's not just looking at the animation, but instead
5 it's looking at all the evidence that was gathered and
6 is available, but there's not enough information to do
7 an accurate animation, and the reason is there's too
8 many unknowns. We don't know the speed of the
9 motorcycle leading up to the accident. We don't know
10 the motions of the motorcycle driver or the actions of
11 the motorcycle driver. Did they slow down? Did they
12 swerve? When did they see something ahead of them? We
13 don't -- for Mr. Galimore, we don't know how tightly he
14 made his turn. We don't know the speed in which he
15 made the turn. We don't know if he sped up or slowed
16 down during that turn. But instead, what I read from
17 the testimony at trial and from the facts that were
18 available in the MAIT file, they made assumptions about
19 a lot of different things to produce an animation that
20 showed one way in which this accident might have
21 happened. For instance, one of the -- what I see as a
22 flaw in the animation is the fact that Mr. Galimore's
23 vehicle is moving along at a steady speed, and that at
24 impact it instantaneously stops at the point of impact.
25 That's not something that happens to a vehicle in an

1 accident. It doesn't happen that way. So the -- and
2 there's -- it looks like there was a steady speed
3 assumed for both vehicles. In fact, the officer said
4 that at trial in their -- in their testimony. And also
5 they chose a speed for Mr. Galimore's vehicle that was
6 in the tightest turn that his vehicle is capable of
7 making. No one measured the tire marks that appear in
8 some of the photographs, the dirt marks on the roadway,
9 to determine what the motion was of the vehicle. So
10 they took an animated, a very tight turn, the tightest
11 turn that that vehicle can make at the maximum speed
12 that that vehicle can make that turn. So they did an
13 analysis of it, but based on assumptions; assumptions
14 that he had the tightest circle, and that he was doing
15 the maximum accelerations. So none of that do we know.
16 In other words, they admitted as well that they don't
17 know that information. So in these kind of
18 circumstances, we don't do animation, we don't present
19 it to a jury because it doesn't really represent what
20 happened in the accident; it just represents something
21 that you can take some numbers and plug them into an
22 animation program and it will show you some action of
23 the vehicle, but it isn't -- there's no way to know
24 that that's actually what happened in the accident.

25 Q. Okay. And so will you classify this animation as

1 accident reconstruction?

2 A. No, I think it's an illustration of what might have
3 happened, but it's not based on the laws of physics,
4 basically, because, in fact, it shows the vehicle
5 stopping instantaneously and, secondly, it's not based
6 on a bunch of known information and then validation or
7 correlation of that information with other evidence
8 that would be at the scene that night.

9 Q. Okay. So can we -- can you say definitively, based off
10 of that -- based off of the evidence that they did
11 have, are you able to definitively say where the point
12 of impact would have occurred in the roadway?

13 A. No.

14 Q. Okay.

15 A. There's -- I didn't see any physical evidence that
16 would tell me precisely where the impact took place.
17 The left front wheel of Mr. Galimore's vehicle was
18 turned sharply to the left because what looks like a
19 broken tie rod, his -- the position of his vehicle in
20 the roadway likely occurred after impact with some
21 motion still left in his vehicle and caused a move to
22 the left based on the tie rod being broken. And we
23 don't have any physical evidence; there didn't appear
24 to be any skid marks or gouge marks in the road from
25 the motorcycle, so we don't know where the motorcycle

1 was at the time of impact either. So we don't have a
2 precise point in the roadway for either vehicle.

3 Q. Okay. And you mentioned that there were tire marks
4 from the -- tire marks and dirt from Mr. Galimore's
5 vehicle. Were those calculated into the animation?

6 A. Not as far as I can tell. There were --

7 Q. Okay.

8 A. -- there were no measurements taken in the officer's
9 notes for those tire marks, so the motion that was
10 animated, like I said, was just the tightest circle
11 that was possible. It wasn't taking those tire marks
12 and trying to show what the motion was of the vehicle
13 from those tire marks. And there's not enough
14 landmarks or other things from the photos that were
15 taken, partly because it was so dark out that -- when
16 you take photos at night, you don't get good
17 definition; you can't see precisely what's around, so
18 you couldn't go back and take those photos and try to
19 determine what those tire marks showed.

20 Q. Okay. And you're talking about going back, this
21 animation wasn't done or the -- well, the animation was
22 done some time after the actual accident, correct?

23 A. Approximately a year after.

24 Q. Okay. So, did MAIT take the measurements that they
25 used in the animation, did it appear that they took

1 those the night of the accident or the day after the
2 accident, or was it a year later?

3 A. No, it was definitely a year later. They -- they took
4 photographs, and you can look at the photographs and
5 tell what the date was, but they've also got in their
6 report when they went to the scene, and I believe that
7 it was in October, a year after the accident.

8 Q. Okay. So, the measurements that they used were a year
9 later, correct?

10 A. They took the measurements that the officer took to get
11 the final rest position for both vehicles and for Ms.
12 Deon, so they used the measurements and they used some
13 known locations, they found a nail in the roadway,
14 which was probably the nail that was used to do the
15 measurements that night. There's a technique that they
16 describe, it's a valid technique, for taking
17 measurements, and so what they recreated was a final
18 rest position for Mr. Galimore's vehicle and for the
19 motorcycle, but they didn't have anything else; they
20 didn't know where the tire marks were, they didn't know
21 where they went through the dirt, they didn't know how
22 far they went out in the roadway before they came back,
23 there's none of that information that they took
24 measurements of or that they used, they just used these
25 tight radius circle and apparently a straight path for

1 the motorcycle. They didn't say precisely what they
2 used, but that's what the animation appears to show.
3 So, no evasive action, no breaking on the part of the
4 motorcycle.

5 Q. Now, are you able -- based off of the measurements that
6 they did have, would you be able to determine if that
7 motorcycle did take that straight down the middle path
8 or -- I mean, is that just an assumption?

9 A. The officers made an assumption because they don't have
10 any other information.

11 Q. Okay.

12 A. And they took that straight path from the final rest
13 position of Mr. Galimore's vehicle, assuming either
14 that he was stopped or that he stopped instantaneously
15 at impact. Again, I don't -- I can't -- I can only
16 look at their result because they weren't questioned in
17 that detail to be able to know exactly what they did,
18 but it appears to be a straight path for the motorcycle
19 and intersecting with the final rest position for
20 Mr. Galimore's vehicle.

21 Q. Okay. So, you mentioned that there was a broken tie
22 rod on Mr. Galimore's vehicle. Would that account for
23 a vehicle stopping instantaneously or can you make that
24 determination?

25 A. No, that would -- it would cause his vehicle to change

1 direction because the tire is still going to have grip
2 on the road, but it's going to be turned as far as it
3 can turn. And then you're going to have that sort of
4 averaged out with the other tire, which appeared to be
5 straight, and so you'll get some motion of the front of
6 the vehicle to the left that's going to occur if there
7 was motion after the impact.

8 Q. Okay. With the animation, does it appear that the
9 animation assumed that the point of -- the final
10 resting place was the point of impact of Mr. Galimore's
11 vehicle?

12 A. I looked at it a bunch of times to try to determine
13 that because, as I said, it matters because it
14 essentially violates the laws of physics for that to
15 occur. And so as best I could tell from the animation,
16 and all I have is the frames, and I moved it frame by
17 frame as best I could to see what happened, and it
18 appears that they stopped Mr. Galimore's vehicle at the
19 point of impact -- or at the time of impact.

20 Q. Okay.

21 A. And that means at the point of impact.

22 MR. SHAFFER:

23 And, Your Honor, there are four different views.
24 Obviously, you haven't seen them all. We've seen them
25 all. Would you like to see the other views or would

1 you like to just take this into evidence and --

2 JUDGE COTHRAN:

3 I can just take it into evidence and watch it.

4 MR. SHAFFER:

5 okay.

6 EXAMINATION RESUMING BY MR. SHAFFER:

7 Q. Had you been called to testify at the trial of this
8 case, would you have testified consistently with your
9 testimony here?

10 A. If I had all the evidence, I would --

11 MR. SAVILLE:

12 Objection, Your Honor, that calls for speculation.

13 MR. SHAFFER:

14 well, I think he can speculate.

15 JUDGE COTHRAN:

16 I'll allow that question to be answered.

17 WITNESS CONTINUES:

18 A. I don't know that I had all the evidence, as I said.

19 Q. Uh-huh.

20 A. Even with you requesting the evidence, I know I didn't
21 have it the first time, didn't have it the second time,
22 I finally had it the third time. And I was going based
23 on testimony at trial for some of the photographs that
24 I didn't have access to until Friday night of this
25 week. So, assuming I had the same information, I

1 likely would have testified the same way based on my
2 notes. I think the only thing that's clearer to me
3 now, based on the testimony of the officers at trial
4 that I wouldn't have had unless I attended the trial
5 and was there for their testimony, was the fact that
6 they didn't know the speeds, that they didn't try to
7 determine alternative scenarios, that they animated one
8 orientation and one set of positions of the vehicles.

9 Q. All right.

10 A. So I don't know that I would have testified in exactly
11 the same way because I don't know I had exact same
12 information, but given what I had in the way of
13 information, I expect it would have been similar
14 testimony.

15 Q. Would you have, given the information you had at the
16 time and -- or based off your notes, do you think you
17 had enough information to render opinion about the
18 reliability of the animation?

19 A. I believe I would have, yes.

20 Q. All right. And what would your opinion have been at
21 that time based off of the information in your notes?

22 A. That it's not an accurate representation of what
23 actually happened in the accident because there's too
24 many unknowns, too many variables that the officers in
25 doing the animation had to make assumptions about

1 rather than having physical evidence to say this is
2 precisely what happened.

3 Q. Okay.

4 MR. SHAFFER:

5 Court's indulgence.

6 EXAMINATION RESUMING BY MR. SHAFFER:

7 Q. Now, in your notes, which are Plaintiff's Exhibit One,
8 if you wouldn't mind, read the last sentence of the
9 section above MAIT Notes.

10 A. The MAIT officers should not be allowed to testify at
11 trial since they have no independent knowledge of the
12 facts of the case and did no analysis for the materials
13 to determine their validity.

14 Q. Okay. So, the MAIT officers -- by that, do you mean
15 that the MAIT officers were relying on Sprouse's
16 information?

17 A. And they basically indicated that, that they had taken
18 his view of what happened in the accident, and that's
19 essentially what they tried to animate. And their
20 measurement of the scene was to give them information
21 that they could use to prepare the animation to
22 represent that.

23 Q. Okay.

24 MR. SAVILLE:

25 Objection, Your Honor, I think that mischaracterizes

1 what they testified to. They testified to using
2 Trooper Sprouse's measurements. I think it's unfair to
3 characterize it as just his view of the accident.

4 MR. SHAFFER:

5 But -- and that --

6 JUDGE COTHRAN:

7 Okay. I --

8 MR. SHAFFER:

9 I'll ask a little bit different question.

10 JUDGE COTHRAN:

11 I don't know that --

12 EXAMINATION RESUMING BY MR. SHAFFER:

13 Q. Did they -- did they have any calculation about the
14 dirt tracks?

15 A. No.

16 Q. Did -- to your knowledge, from your review of the case,
17 does it appear that Sprouse had took any measurements
18 of that path?

19 A. There were no measurements on the notes that were
20 presented that had information about final rest
21 position of the vehicles.

22 Q. Okay. Is it your opinion -- well, do you have a
23 opinion about the methodology used to create the
24 animation?

25 A. Just the fact, as I said, that what you try to do in an

1 animation is to represent what actually happened.
2 You're supposed to be illustrating something that the
3 analysis has told you is what happened in the accident.
4 And in this case, they didn't know precisely what
5 happened in the accident, and it was just illustrative
6 of a particular scenario that sort of you could say
7 that that was one of the possible scenarios for what
8 happened in the accident based on the evidence that was
9 there at final rest.

10 Q. Okay. Do you think that the -- the method that they
11 used was reliable to determine what actually happened,
12 the speculation that they put in there?

13 A. I don't believe so, no. As I indicated, animation is
14 only done in circumstances where you have all of the
15 facts that you can put together. In fact, we don't, as
16 a general practice, produce an animation for our
17 clients, and a week ago I went and did an inspection at
18 a client and they asked me to do an animation and I
19 told them there's not enough information here to do an
20 animation, there's too many unknowns. And so we, as
21 general practice, don't do it and the times that we
22 have been faced with an animation for the other side in
23 cases, in almost every case we've been able to prove
24 that they're unreliable because it takes so much
25 information, such precise information, to actually

1 represent what actually happened rather than just try
2 to illustrate one possible scenario that it's not an
3 effective method in accident reconstruction.

4 Q. Okay.

5 MR. SHAFFER:

6 No further questions.

7 JUDGE COTHRAN:

8 okay.

9 CROSS EXAMINATION BY MR. SAVILLE:

10 Q. Good morning, sir; how are you doing?

11 A. Fine.

12 Q. Now, Mr. Schuster (typed as said) your report that you
13 purportedly sent to Mr. Hood that -- or alleges that
14 the MAIT officers should not be allowed to testify at
15 trials since they have no independent knowledge of the
16 facts of the case; is that correct?

17 A. I would assume that I sent it to him. I don't
18 recollect. It's ten years ago. I do have an invoice
19 and it shows that I returned the materials to him, and
20 those notes would have been part of the materials that
21 were in my file, so I believe he got the materials,
22 whether he got it ahead of time before our discussion
23 or afterwards when I sent back the materials a couple
24 of days later, I'm not sure.

25 Q. Yes, sir. Now, did you have independent knowledge of

1 the facts of this case?

2 A. No, other than what was in the MAIT report and the
3 officer's report.

4 Q. Okay. But it's your position that the MAIT officers
5 should not have been able to testify at trial because
6 they don't have independent knowledge of the facts of
7 this case?

8 A. About the -- they shouldn't have been able to testify
9 that this is how the action took place or represented
10 that with an animation, correct.

11 Q. Okay. So it is -- it is your testimony that you would
12 not have been -- you should not have been able to
13 testify about how the accident took place either?

14 A. Correct. I did not have enough information to be able
15 to reconstruct the accident, and that was part of what
16 I told Mr. Hood at the time, that I could comment on
17 what had been done and what might be done with the
18 animation, but that I couldn't give an independent
19 accident reconstruction because there was too many
20 unknowns.

21 Q. I understand. Mr. Schuster (sic), I always feel -- I
22 always feel rude asking, but how much are you being
23 paid for your services by Mr. Shaffer?

24 A. I get paid \$200 an hour for all the work I do in
25 accident reconstruction.

1 Q. Okay. Is that for public defenders as well?

2 A. It's the same for everyone, yes.

3 Q. Now, at any time, have you visited the scene where the
4 accident occurred?

5 A. No, I have not.

6 Q. And did you tell Mr. Shaffer a few minutes ago that you
7 did not have all the evidence at the time of trial that
8 you had today?

9 A. I don't know if I did or not, since I returned all the
10 materials. I looked at -- as I said, I got some
11 photographs at 10:00 on Friday of this week, and I
12 didn't recognize some of those photos as having seen
13 them before, but it's been ten years.

14 Q. Sure.

15 A. So, I can't be sure that I had exactly the same
16 materials or all the materials.

17 Q. Understandable. Had you worked with Mr. Hood before?

18 A. No, I don't believe so.

19 Q. And it's your testimony that you believe that the
20 collision with -- the GMC Jimmy SUV's collision with
21 the Honda motorcycle would -- could have shifted the
22 GMC Jimmy over into the Honda motorcycle's lane?

23 A. I don't know. I tried to look to see if there was
24 evidence in the roadway that would give an independent
25 view of where the impact took place, but the

1 photographs taken at night were not good enough to show
2 where the impact took place. Even the final rest
3 position for the GMC Jimmy, I couldn't see evidence
4 that said that's where the impact took place, --

5 Q. Okay.

6 A. -- so, I can't tell.

7 Q. And you did testify that perhaps it could have shifted
8 to the left because the tie rod was shifted on the --

9 A. The tie rod was broken, which let the wheel turn to the
10 left and that would have caused the vehicle to move to
11 the left.

12 Q. Okay. And it was your recollection from viewing the
13 photos that all the other tires were basically
14 straight?

15 A. Correct.

16 Q. Mr. Schuster (sic), have you had the opportunity to
17 read the trial transcript?

18 A. I read sections of them that Mr. Shaffer sent to me
19 that were for the officers' testimony at trial, the
20 MAIT team, and, I'm sorry, the MAIT team and Officer
21 Rouse (sic).

22 Q. Okay. So you haven't had the misfortune to read the
23 entire trial transcripts?

24 A. No, I did not.

25 Q. Now, would it surprise you to learn that Mr. Hood

1 actually brought out, I think, generally the same
2 issues that you raised here today?

3 A. I have no idea.

4 Q. Are you familiar with other instances in which
5 animations of vehicular accidents have been admitted as
6 demonstrative evidence?

7 A. I haven't worked on one in which that was the case.

8 Q. And do you recall from your review of the transcript
9 that Mr. Hood did, in fact, object to the video?

10 A. I don't remember precisely. I read it, but I read them
11 very quickly because I only got them on Friday as well.

12 Q. Sure. And it might have been a part that you weren't
13 -- you weren't sent?

14 A. Right. It's not part that I was of -- that was of
15 interest to me in trying to understand the animation
16 and what went into the animation.

17 Q. Sure. And there was mention about a nail in the road
18 at the scene of the accident. Now, that's a nail that
19 the South Carolina Highway Patrol actually places in
20 the road to mark what they call a zero point in the
21 accident scene; is that correct?

22 A. It's a reference point, yes.

23 Q. It's a reference point, okay. And that is a
24 recognized, valid technique as to --

25 A. Yes, measuring -- using tapes and measuring

1 perpendicular and parallel to lines is an accepted
2 technique. It's not as accurate as measuring the total
3 station, which the MAIT team did later, but it gives
4 information that's useful in trying to reconstruct an
5 accident.

6 Q. Okay, sure. And do you recall from your review of
7 portions of the trial transcript that that nail was
8 still there when the MAIT team responded?

9 A. Correct, they found it.

10 Q. Now, in the event that a Honda motorcycle was to
11 collide with a GMC Jimmy, which vehicle would you
12 expect to be moved more?

13 A. It depends on the relative speeds that -- the weight
14 difference between the vehicles is such that you would
15 expect the GMC Jimmy to have less of a motion based on
16 the impact, but the problem is the way vehicles come
17 together affects that.

18 Q. Sure.

19 A. And we don't know how the two vehicles came together.
20 So, without having more precise information, like I
21 said, better pictures of the damage, being able to
22 examine it, we don't -- we can't really know how they
23 came together, and we don't know the speeds with which
24 they came together, and therefore I can't answer the
25 question precisely.

1 Q. Okay. Understandable. And through your review of the
2 trial transcript, do you recall that there was no
3 evidence to suggest that the motorcycle was going
4 faster than 45 miles per hour?

5 A. Right. But that was all part of the testimony that
6 said we don't know how fast it's going, so we'll just
7 assume it was going the speed limit, which means there
8 is no basis for that speed.

9 Q. Sure. So you -- you would agree that issue was brought
10 up and discussed at trial?

11 A. Right. But what wasn't there was the implication that
12 if the speed's wrong, that the animation is wrong. And
13 once you take any one of the things that was unknown
14 and change it, it changes the way the timing of things,
15 changes the way the vehicles come together, and so that
16 part wasn't discussed. That's what I think was wrong
17 with -- with presenting the animation without an
18 explanation for what the foibles are of an animation.

19 Q. Okay.

20 A. It can mislead the jury to thinking that's the way that
21 it actually took place when, in fact, it's just one of
22 many ways the accident might have taken place.

23 Q. And so you may not have received portions of the
24 transcript in which Mr. Hood cross-examines the State's
25 witnesses about the uncertainty of the speed and

1 includes in his closing argument that we're not sure
2 how fast the vehicles were going?

3 A. No, I did. That was part of the testimony that I think
4 I read.

5 Q. Okay.

6 A. And he got them to say that they didn't know what their
7 actual speeds were. What he didn't do, unfortunately,
8 was to say what effect does that have on the animation.

9 Q. And you testified that you have done quite a bit of
10 accident reconstructions?

11 A. Correct.

12 Q. Are you aware that the officer who measured this crime
13 scene and then provided the measurements to MAIT is now
14 an accident reconstructionist for SLED?

15 A. I didn't know he was working for SLED, but I knew he
16 now has training in accident reconstruction that he
17 didn't have at the time that he measured the scene.

18 Q. And how do you know that he did not have training in
19 accident reconstruction at that time?

20 A. I believe he described in trial testimony what his
21 background was, and he didn't mention accident
22 reconstruction at all at the time of the accident. But
23 he did mention the fact that he had taken additional
24 training since -- since that time.

25 Q. Sure.

1 MR. SAVILLE:

2 I beg the Court's indulgence. I'm almost finished.

3 EXAMINATION RESUMING BY MR. SAVILLE:

4 Q. Mr. Schuster (sic), is this report that Mr. Shaffer has
5 entered into evidence, this -- was this the only report
6 you provided to Mr. Hood, as far as you know?

7 A. I believe so. It's -- because it's been ten years,
8 it's the only thing I retained and because it related
9 to my evaluation analysis of materials, I believe, and
10 the timing -- I do have an invoice that tells how much
11 time I spent, and it's consistent with that amount of
12 time.

13 Q. Yes, sir.

14 MR. SAVILLE:

15 No further questions. Thank you.

16 MR. SHAFFER:

17 Your Honor, this will be re-direct questions.

18 RE-DIRECT EXAMINATION BY MR. SHAFFER:

19 Q. Your testimony was that you didn't have enough
20 information -- on cross, you said you -- you wouldn't
21 have had enough information to say what exactly
22 happened. Would anybody?

23 A. I don't believe there was enough information taken at
24 the time of the accident.

25 Q. Okay.

1 A. There could have been additional things done that would
2 have -- might have made it possible; measuring and the
3 dirt marks in the road would have helped dramatically,
4 taking photographs during the daytime to see if there
5 were any tire marks there at the scene, if there was
6 any other debris at the scene, examining the two
7 vehicles in much more detail. We normally photograph
8 and measure vehicles to be able to get the interaction
9 of the two vehicles. So, it's possible that if there
10 was enough additional information that might have been
11 available, and it was taken at the time, then it might
12 have been possible to reconstruct it, but not with the
13 information that was done just the night of the
14 accident.

15 Q. Okay. And related to the tire marks and that nail that
16 was driven in the road, there were no measurements to
17 determine how far away from that nail those tire marks
18 were, right?

19 A. Correct. The only things that were measured, to my
20 recollection, was the final rest positions for the
21 vehicle and -- for Ms. Deon, and maybe a helmet.

22 Q. Is it fair to say that you've -- you've had a
23 opportunity to review the testimony of Sprouse, Rizado
24 (sounds like) and Ash?

25 A. Yes.

1 Q. Those are the -- the three officers you had a chance to
2 review their trial testimony?

3 A. Correct.

4 Q. And those were -- well, the record will reflect that
5 those were called -- called in the case in chief.
6 You said that the cross-examination that you reviewed
7 didn't say what effect it would have had in the
8 animation, the speed variables and things like that. I
9 think that that was your testimony on cross?

10 A. Correct.

11 Q. Do you -- are you able to determine here what effect it
12 would have had on the animation if the speed would have
13 been different?

14 A. Oh, I can tell you in general terms. I can't tell you
15 precisely because different from what, we don't know
16 what actually happened. But anytime you change any one
17 of those variables we talked about, speed, the
18 tightness of the turn, the positions of the vehicles at
19 various points in time, it changes the timing of
20 everything; everything is different. And so you can
21 make it come out that an impact still took place when
22 you change those things by changing other parameters,
23 but you don't get the same accident, and you don't get
24 another accident that you know precisely represents
25 what happened. So, when there's a bunch of unknowns,

1 you can't ever know exactly what happened. But what it
2 would do for anyone -- let me -- one thing being
3 different is changing the timing and the way the
4 vehicles came together in that particular animation.

5 Q. Okay.

6 A. It doesn't mean they wouldn't have shown it coming
7 together again, but they would have had to change the
8 way the animation was done because it took very precise
9 parameters to get the accident to take place that way
10 that they show.

11 Q. And if -- is it possible that some of those unknowns
12 may have contributed to where the point of impact took
13 place in the animation?

14 A. Sure.

15 Q. Okay.

16 A. But they -- they dictated where it took place. In
17 other words, they had to tell the animator, Mr. Rizado,
18 make the impact take place here, and then he backed up
19 the motorcycle in a straight line from that point, and
20 he backed up the car in a tight circle with the
21 tightest turning radius to make it come out that way.
22 So they essentially said ahead of time, here's where it
23 happened and now make the animation show that.

24 Q. And based off the information that you viewed, is there
25 any way to definitively say that one point where the

1 point of impact took place, is there any way to
2 definitively say where that took place?

3 A. No, not from what I can tell based on the evidence that
4 I have reviewed.

5 Q. Okay.

6 MR. SHAFFER:

7 And, Your Honor, at this time, I'm going to go ahead
8 and place into evidence Plaintiff's Exhibit Two, which
9 is the MAIT file in this case.

10 (Plaintiff's Exhibit Number Two is marked.)

11 MR. SAVILLE:

12 Sure. No objection, Your Honor.

13 JUDGE COTHRAN:

14 All right, it's entered without objection.

15 MR. SAVILLE:

16 May I approach, Your Honor, so I may see a specific
17 document?

18 JUDGE COTHRAN:

19 Sure.

20 MR. SAVILLE:

21 Oh, you're just --

22 MR. SHAFFER:

23 Yeah, I was just going to put --

24 MR. SAVILLE:

25 I'm sorry, I thought you were showing it to the

1 Witness.

2 MR. SHAFFER:

3 Oh, no.

4 Your Honor, that -- that document was sent to me by
5 MAIT, or we ended up getting a discovery order and
6 there was some lost information or they couldn't figure
7 it out where it came from, and it -- but it was sent by
8 the Solicitor's Office here as the MAIT file.

9 JUDGE COTHRAN:

10 Okay.

11 MR. SHAFFER:

12 No further questions.

13 JUDGE COTHRAN:

14 Okay. You can step down.

15 MR. SAVILLE:

16 No further questions, Your Honor.

17 JUDGE COTHRAN:

18 All right. Do you have any other witnesses?

19 MR. SHAFFER:

20 Your Honor, the Applicant rests.

21 JUDGE COTHRAN:

22 Okay.

23 MR. SAVILLE:

24 Your Honor, the State would call Ms. Angela McCall-
25 Tanner.

1 JUDGE COTHRAN:

2 okay.

3 CLERK OF COURT:

4 Place your hand on the Bible, raise your right hand.

5 (Witness complies.)

6 CLERK OF COURT:

7 Do you solemnly swear or affirm that the testimony you
8 give to the Court in this trial shall be the truth so
9 help you God?

10 WITNESS:

11 I do.

12 CLERK OF COURT:

13 And could you state your name please?

14 WITNESS:

15 Angela McCall-Tanner.

16 CLERK OF COURT:

17 And spell your last name?

18 WITNESS:

19 M-c-C-a-l-l hyphen T-a-n-n-e-r.

20 DIRECT EXAMINATION BY MR. SAVILLE:

21 Q. Good morning, Judge McCall-Tanner, how are you doing?

22 A. Good morning.

23 Q. Thank you for being here. Now, what was your
24 occupation during the time of this trial?

25 A. In 2008, I was the Deputy Solicitor for the Fourteenth

1 Circuit.

2 Q. Okay. And did you prosecute this case?

3 A. I did.

4 Q. Can you walk us through the facts of this case as
5 alleged by the state?

6 A. Let's see, some time in 2017, I don't remember the
7 exact incident date, there was a child's birthday
8 party, lay witnesses testified that the Defendant, Mr.
9 Galimore, showed up at the birthday party intoxicated.
10 He became angry with his ex-girlfriend, I believe, who
11 was at the party, pistol-whipped her, got into his
12 vehicle taking two children with him. Partygoers
13 called law enforcement. So the Beaufort County
14 Sheriff's Office was already looking for him for the
15 assault and battery high and aggravated offense, but
16 before they could find him, unfortunately, he had
17 gotten into this collision with the victim, Mary Deon,
18 who was driving her motorcycle home from her second job
19 of the day, coming down 46. The indications were they
20 were traveling in the same lane of travel. Mr.
21 Galimore's vehicle was ahead of Ms. Deon's motorcycle.
22 There is an intersection on 46 called Gibbet Road.
23 Right past Gibbet Road, there's a little country store;
24 I think it's called The Country Store. There is a
25 sandy, for lack of a better word, parking area where

1 people can pull in. It's not very large, but it's a
2 sandy area. Of course, as it's prone to do in Beaufort
3 County, it had rained recently. Mr. Galimore pulled
4 off the right-hand side of the road into that sandy
5 area. He then made, basically, a 180 turn, but he got
6 back in head-on into the lane he left. So now he's
7 head on with the motorcycle, Ms. Deon. They crash in
8 that lane. Pretty much he hits the -- she hits the
9 front driver's panel, according to the autopsy.

10 MR. SHAFFER:

11 Your Honor, at this point, I would object unless she's
12 just stating what the State's position is. I mean,
13 obviously, she's not an accident reconstruction person.
14 She probably has no personal -- she's not -- probably
15 not qualified -- I'm guessing she's not qualified to
16 actually do accident reconstruction. I mean, if she's
17 stating what the State's position is, it's one thing;
18 if she's actually testifying to what actually happened,
19 I would object and say that that's outside her scope of
20 expertise.

21 JUDGE COTHRAN:

22 Okay.

23 MR. SAVILLE:

24 Your Honor, the question was could you walk us through
25 the facts as alleged by the state.

1 MR. SHAFFER:

2 If it's just allegations, I'll withdraw.

3 JUDGE COTHRAN:

4 All right. Thank you.

5 A. Well, so, the collision was there, the autopsy -- the
6 pathologist testified that because of her injuries, Ms.
7 Deon died on the scene within less than a minute of the
8 impact. Not only lay witnesses who testified to Mr.
9 Galimore's inebriated state, but also the trooper who
10 arrived on the scene. He was arrested and charged,
11 obviously, with felony DUI death, reckless homicide.
12 Because of the two children who were in the vehicle
13 were with him during the crash, he was charged with
14 endangerment of children and, of course, he had the DUS
15 history; I think it was DUS 3rd by the time we went to
16 Court. I can't remember if he was charged with a
17 pistol charge, but one of the children indicated that
18 Daddy had hid his gun back behind the ice machine
19 that's at The Country Store; that was photographed and
20 retrieved as well. That was what was used in the AB
21 hand to pistol-whip the girlfriend.

22 Q. And also a child -- the child indicated that they were
23 not wearing seatbelts, correct?

24 A. Yeah, I believe they were kind of laying down in the
25 backseat.

1 Q. And do you recall, in addition to the eventual blood
2 alcohol content results, a bottle of SKYY Vodka was
3 recovered from the GMC Jimmy?

4 A. That's correct. It was actually collected, sent to
5 SLED, and they tested it to make sure it was Vodka, and
6 it was Vodka; or at least it was alcohol consistent
7 with Vodka.

8 Q. Was it -- was it a full bottle, as you recall?

9 A. No.

10 Q. Now, Ms. Tanner, as the Solicitor, were you able to
11 review some photographs from the scene of the accident?

12 A. Yes, sir. We had photographs from not only the
13 Trooper, Trooper Sprouse, who was on scene who was the
14 main case officer, but also deputies. Again, like I
15 said, they were out looking for Mr. Galimore and they
16 arrived shortly thereafter. I think they got there
17 before the Trooper, so there were a collection of
18 photographs taken by the Sheriff's Office as well as
19 the Highway Patrol.

20 MR. SAVILLE:

21 May I approach the Witness, Your Honor, with a
22 photograph for her to identify?

23 MR. SHAFFER:

24 Your Honor, I believe that he's using the -- the
25 photographs that are within the emails that were

1 provided to me last week and which were referenced by
2 the expert as being provided to him on Friday. But I
3 believe that all of these are there. Is that correct?
4 I mean, are you -- you're not doing any additional
5 photos other than the ones you sent me?

6 MR. SAVILLE:

7 No, I do not plan to.

8 MR. SHAFFER:

9 Okay. If you want to, you can stipulate to the
10 admissibility of all of them because --

11 MR. SAVILLE:

12 Okay.

13 MR. SHAFFER:

14 -- the expert has seen them and everything.

15 MR. SAVILLE:

16 Okay. Thank you very much.

17 JUDGE COTHRAN:

18 Go ahead.

19 EXAMINATION RESUMING BY MR. SAVILLE:

20 Q. Ms. Tanner, could you just kind of walk us through that
21 photograph, and I know it's kind of dark in the photo,
22 but...

23 A. Yes. This is a photograph from the scene that night.
24 This is The Country Store that I mentioned. This is
25 the ice machine where Mr. Galimore placed his gun.

1 This is Mr. Galimore's vehicle. And as you can see,
2 this is the sandy lot area that Mr. Galimore had
3 actually been traveling this direction from the right
4 of the photograph to the left. He pulled off into this
5 area here, made his U-turn, 180, whatever you want to
6 call it, and got back. I think I sent you some other
7 photographs from the file that you can see his muddy
8 tire prints that turned from the parking area into Ms.
9 Deon's oncoming lane. You see where the car is rested.
10 The muddy tire prints --

11 MR. SHAFFER:

12 Objection, Your Honor. Once again, this is outside her
13 scope of expertise. I don't think that she can testify
14 to whether or not those are actually his tire prints.
15 I also don't think she can testify as to what actually
16 is shown in the pictures as it relates to the position
17 of the car and which way he was actually traveling.

18 A. Well, then let me say that the photographs will
19 indicate -- you can look at the photograph and see the
20 sandy tire print trailing behind his tire. The
21 photograph shows that the sandy tire print leads up to
22 his back tires and that sandy print never crossed back
23 over the double yellow line to get into the lane he
24 should have been in.

25 Q. And, Ms. Tanner, could you indicate where his vehicle

1 was placed on this photograph?

2 A. This is his vehicle on the right side of the
3 photograph. And the motorcycle is over here about the
4 mid photograph.

5 Q. Does the photograph indicate that any of his tires are
6 actually in the correct lane of travel?

7 A. No, they're -- none of his tires are in the collect --
8 correct lane of traffic for the direction he was
9 traveling.

10 Q. Okay.

11 MR. SAVILLE:

12 Thank you very much. The State would submit this as
13 State's Exhibit Number One in this case.

14 (Defendant's Exhibit Number One is marked.)

15 JUDGE COTHRAN:

16 The Exhibit is in without objection.

17 MR. SHAFFER:

18 And, Your Honor, again, I'm -- I'm actually going to
19 actually, for the sake of making this a little bit
20 easier, I'm just going to approach, and I believe he's
21 going to number them, and then I'll know which one he's
22 seeing without him having to walk back and forth every
23 time.

24 JUDGE COTHRAN:

25 Okay.

1 MR. SHAFFER:

2 Is that okay?

3 MR. SAVILLE:

4 Sure.

5 MR. SHAFFER:

6 And I'm just going to stand up there and watch. Do you
7 want to go ahead and mark them all or --

8 MR. SAVILLE:

9 Sure.

10 MR. SHAFFER:

11 -- whatever you want to do?

12 MR. SAVILLE:

13 Sure. We'd submit this as the State's Number Two.

14 (Defendant's Exhibit Number Two is marked.)

15 MR. SAVILLE:

16 And the State's Number Three.

17 (Defendant's Exhibit Number Three is marked.)

18 MR. SHAFFER:

19 And we're not objecting to any of these.

20 JUDGE COTHRAN:

21 Okay.

22 MR. SAVILLE:

23 State's Number Four, please.

24 (Defendant's Exhibit Number Four is marked.)

25 MR. SAVILLE:

1 State's Five.

2 (Defendant's Exhibit Number Five is marked.)

3 MR. SAVILLE:

4 And State's Six.

5 (Defendant's Exhibit Number Six is marked.)

6 MR. SAVILLE:

7 Thank you.

8 JUDGE COTHRAN:

9 So they're State's Two through what?

10 MR. SAVILLE:

11 Two through Six, Your Honor.

12 JUDGE COTHRAN:

13 All right, Two through Six are in without objection.

14 EXAMINATION RESUMING BY MR. SAVILLE:

15 Q. Now, Ms. Tanner, I'm showing you the State's Number
16 Two; do you recognize this photograph from the trial?

17 A. Yes, I do.

18 Q. Could you describe what's going on in this picture?

19 A. In this photograph, this shows the Defendant's vehicle,
20 this is his right, front tire. This is the yellow
21 middle -- the yellow lines from the middle of the road.
22 He -- his vehicle is facing oncoming traffic. The
23 orange paint was put there by Trooper Sprouse the night
24 of the collision.

25 Q. And I'm also going to show you the State's Number Three

1 here; could you describe what that photograph depicts?

2 A. A little further down, this is the right rear vehicle's
3 tire. Again, it's on the wrong side of the double
4 yellow lines. Again, marked with orange paint by
5 Trooper Sprouse the night of the collision.

6 Q. And this is the State's Number Four; if you could,
7 please describe what that photograph depicts?

8 A. Yes. This would be taken as if you were standing in
9 that sandy area I talked about in front of the store.
10 You're looking at the left, rear tire of Mr. Galimore's
11 vehicle. Again, you can see the double yellow lines
12 and his -- his vehicle is on the wrong side of the
13 road.

14 Q. And in the -- in the State's Two through Four that I
15 just handed you, Ms. Tanner, is it -- is it -- could
16 you characterize how the wheels who do not have the
17 broken tie rod are pointing?

18 A. Traveling straight.

19 Q. Ms. Tanner, I'm going to hand you the State's Number
20 Five. If you could, please, just indicate what's
21 depicted in that photograph?

22 A. This would be taken from the direction that the
23 vehicles were originally traveling in. The Country
24 Store is on the right. You can see the -- the sandy
25 lot area is kind of in the center. You can see Ms.

1 Deon's motorcycle, the white sheet where her body is
2 located and, again, the Defendant's vehicle with the
3 damage to the front left and where -- where it stopped.

4 Q. And the last one I'm going to make you look at,
5 Ms. Tanner, is State's Number Six. If you could,
6 please, depict what's in this photograph -- I mean,
7 describe what's in this photograph?

8 A. This is coming from the opposite direction and now The
9 Country Store is on your left. Ms. Deon's body is
10 under the sheet here, her motorcycle is here. In the
11 middle of the photograph, Mr. Galimore's vehicle, you
12 can see the tag glowing in the light. Again, head on
13 into Ms. Deon's lane of travel on the wrong side of the
14 double yellow lines.

15 Q. And depicted in the six photograph I've shown you, is
16 any part -- is any tire of the GMC Jimmy in the correct
17 lane of traffic?

18 A. None; all four tires were in the wrong lane.

19 MR. SHAFFER:

20 Thank you. I'll go back to my -- to my table.

21 EXAMINATION RESUMING BY MR. SAVILLE:

22 Q. Now, Ms. Tanner, had you -- had you tried a case or any
23 cases against Mr. Hood before this trial?

24 A. Yes; many cases with Mr. Hood, and his office.

25 Q. What was -- what was your rapport like with Mr. Hood?

1 A. I started in Beaufort County as a baby lawyer in 1999.
2 Mr. -- with the Solicitor's Office, and Mr. Hood was
3 already the Chief Public Defender in Beaufort County.
4 That was back before the State combined it under the
5 system similar to the Solicitors. It was a private --
6 I believe a Board ran the Public Defender's Office
7 then, and he was in charge. He was a formidable
8 opponent in the courtroom. You always knew you were
9 going to have to do your work, but he was a gentleman
10 and a professional in every case I ever dealt with him.

11 Q. Yes, ma'am. Did you -- were there any -- did any
12 discussions with him lead you to believe that he had
13 retained an expert in this case?

14 MR. SHAFFER:

15 Objection, Your Honor. Basically, it's a statement
16 that calls for hearsay. I don't see why --

17 MR. SAVILLE:

18 well, you're -- I can probably -- I can probably
19 rephrase

20 JUDGE COTHRAN:

21 Okay.

22 MR. SAVILLE:

23 -- that question.

24 EXAMINATION RESUMING BY MR. SAVILLE:

25 Q. Did you think Mr. Hood had retained an expert in this

1 case?

2 A. I was never provided any --

3 MR. SHAFFER:

4 Objection, relevance.

5 JUDGE COTHRAN:

6 I'll allow it.

7 A. I was never provided any information or reports from
8 another expert. Certainly I've -- I'm a packrat, I
9 have my file here, I have my letters and faxes I sent
10 to him regarding discovery, but I never received
11 anything from him that he intended to use it, but I
12 don't know that if he intended he would have had to
13 have told me until the eleventh hour. But no, I don't
14 recall anything other than a vague conversation with
15 Mr. Hood that, you know, he was having difficulties
16 maybe finding someone --

17 MR. SHAFFER:

18 Objection, Your Honor, hearsay.

19 JUDGE COTHRAN:

20 I'll overrule it. Go ahead.

21 MR. SHAFFER:

22 Your Honor, I would actually like -- if the Court's
23 going to allow the State to introduce evidence about
24 what Mr. Hood said, I -- I also had a conversation with
25 Mr. Hood about this very topic, and I would like to at

1 least put on the record what he said to me about this
2 topic.

3 JUDGE COTHRAN:

4 Okay.

5 EXAMINATION RESUMING BY MR. SAVILLE:

6 Q. Now, Ms. Tanner, we've spoken and we've all seen the
7 animation in this case, and Applicant alleges that
8 Mr. Hood was ineffective for not objecting and
9 challenging this animation. Is it your recollection
10 from the trial that he actually did object to the
11 admission of the animation?

12 A. I recall that Mr. Hood jumped up and down and
13 strenuously objected to my introducing the animation.
14 I used the animation as a demonstrable aid to assist
15 the trier of fact understanding the testimony. It's
16 hard to sit up here on the stand and go, with your
17 hands, well, you made a left, you made a right. It was
18 a demonstrable aid that I used. Yes, he absolutely 100
19 percent fought me on that. It was a new technology
20 that was being used in the State, so -- but it was
21 allowed in the trial. But, yeah, he absolutely
22 objected and tried to fight me on it.

23 MR. SAVILLE:

24 And for the Court's reference, that's -- that really
25 begins at page 213, line 9, of the transcript when he

1 formally objects.

2 EXAMINATION RESUMING BY MR. SAVILLE:

3 Q. And do you recall that one of the bases of his
4 objections was that they did not have the relevant
5 measurements to make the video?

6 A. I know that was part of his argument.

7 If I can clarify the involvement of the MAIT team,
8 Trooper Sprouse conducted the investigation the night
9 of the incident. He conducted all of the measurements.
10 He put the nail in the ground as they are prone to do.
11 He -- he handled all of the measuring, the spray
12 painting, and all of that. The investigation was
13 complete that night. Months later, I attended a CLE
14 where members of the MAIT team gave a presentation and
15 were talking about this animation technology. I
16 contacted them, knowing this trial was coming up, and
17 asked if this was a case that possibly they could do
18 one for me as a -- as a trial aid, and that's how MAIT
19 got called down; it was my request that they come down.
20 So, they met with the Trooper who conducted the
21 investigation, they used his measurements, they used
22 his notes, they went out to the scene, he went with
23 them so he could answer any questions they had. So
24 their only purpose was --

25 MR. SHAFFER:

1 Objection, Your Honor. Some of this stuff I think is
2 in the transcript. I don't think it needs to be
3 rehashed, plus we're going to have testimony from this
4 -- Trooper Sprouse. I don't know if this is relevant,
5 the solicitor's recollection of recanting what people
6 did whenever she had no personal knowledge. So, I
7 guess my objection is she doesn't have any personal
8 knowledge to testify about what she's testifying to
9 right now.

10 MR. SAVILLE:

11 I would -- I would agree with Mr. Shaffer that it's in
12 the transcripts, this is touched on in the transcript,
13 but I think it's very much relevant to why Mr. Hood may
14 have been objecting to the video, how the video came to
15 be brought to Mr. Hood's attention.

16 JUDGE COTHRAN:

17 Okay. I'll allow it. Go ahead.

18 A. I'll just finish up, that, again, --

19 Q. Yes, you may continue.

20 A. -- they came down at my request. I stayed in contact
21 with all of them to talk about the progress of the
22 animation and whether or not it was going to be
23 possible. So I had personal knowledge that they all
24 met out at the scene again, had to shut the road down
25 in order to do it.

1 Q. And did Mr. Hood -- at trial, did Mr. Hood forget to
2 ask questions about the investigation of this accident?

3 MR. SHAFFER:

4 Objection, Your Honor. Speculation as to whether or
5 not he forgot. I think that that's -- it's asking her
6 to speculate.

7 JUDGE COTHRAN:

8 Okay. You -- I'll sustain that on forgot. You can ask
9 her whether he asked questions, but not whether he
10 forgot to ask questions.

11 MR. SAVILLE:

12 Yes, Your Honor.

13 EXAMINATION RESUMING BY MR. SAVILLE:

14 Q. Do you recall that Mr. Hood cross-examined Nick Sprouse
15 about the measurements of the accident?

16 A. Yes.

17 Q. And do you recall that that cross-examination lasted
18 over 50 pages of transcript?

19 A. I recall that Mr. Hood was always thorough in his
20 cross-examinations, including in this case.

21 Q. And do you recall that throughout the trial he brought
22 up the fact that we don't know how fast the vehicles
23 are going?

24 A. Oh yeah.

25 Q. And do you recall that throughout the trial Mr. Hood

1 raised the issue of what he saw of a questionable
2 nature of the tire tracks documented?

3 A. Yes.

4 Q. And did he cross-examine multiple members of the MAIT
5 team?

6 A. He cross-examined every witness I put on the stand, as
7 I recall.

8 Q. And do you recall him cross-examining about the alleged
9 inability to tell how far the Jimmy had traveled before
10 impact?

11 A. I don't specifically remember the question. I just --
12 I know that he -- I think his cross may have taken
13 longer than my direct of those witnesses.

14 Q. Did Mr. Hood have -- did he have the last closing
15 argument in this case?

16 A. I don't remember. I think he did. I'd have to look
17 back at the transcript. It's been awhile.

18 Q. How would you characterize the evidence in this case,
19 Ms. Tanner?

20 A. I know there's a lot of talk about this animation, and
21 it was a new technology at the time, but this was a
22 fairly low-tech evidence type case. For me, the
23 strongest evidence that I -- I felt I put up as a
24 prosecutor was that photograph that showed the muddy
25 tire track that led up to Mr. Galimore's tire that

1 never crossed back into the appropriate lane.
2 Certainly the lay witnesses who testified about how
3 inebriated he was before he got into the vehicle
4 shortly before the crash, and again, we did have his
5 blood from that night that showed he was twice the
6 legal limit.

7 Q. And speaking of the -- of the blood issue, Judge
8 Tanner, Applicant had alleged that Counsel was
9 ineffective for failing to object on Fourth Amendment
10 grounds to the -- to the blood draw. Now, this case
11 was tried in 2008, correct?

12 A. Correct.

13 Q. And at that time, was it common practice for blood to
14 be drawn without -- without consent in a felony DUI
15 case?

16 A. Yes. The incident actually occurred in 2007, and at
17 that time, the law in South Carolina --

18 MR. SHAFFER:

19 Objection, Your Honor. Obviously, you're going to be
20 the Judge of the law, I don't think her opinion in the
21 law is proper here.

22 JUDGE COTHRAN:

23 All right. I'll let her state what she thinks the law
24 is. I'll -- I'll -- go ahead.

25 A. Our understanding in 2007 and 2008, that pursuant to

1 the felony DUI statute that it was the Defendant shall
2 give a sample in cases involving great bodily injury or
3 theft. But there was no consent required, there was no
4 -- there was never a hint that we needed any sort of
5 search warrant. It was pursuant to the statute that
6 they would give that blood sample.

7 Q. And notwithstanding that fact, was there testimony in
8 trial that Mr. Galimore actually did consent?

9 A. I don't remember.

10 Q. Sure. I can -- I can actually point you to it.

11 A. Okay.

12 Q. On page 123 of the -- I forget you don't have a
13 transcript, --

14 A. I don't have --

15 Q. -- Ms. Tanner. I apologize. On page 123, line 21,
16 Trooper Sprouse actually did testify, he fought. I
17 believe a nurse was kicked during the process, and
18 eventually he just gave up and gave consent for the
19 blood. This was nothing against his rights whatsoever.

20 MR. SHAFFER:

21 Your Honor, I have --

22 JUDGE COTHRAN:

23 I don't know how much valid consent that is. The
24 record will speak for itself.

25 MR. SAVILLE:

1 Or perhaps he felt bad about kicking the nurse.

2 EXAMINATION RESUMING BY MR. SAVILLE:

3 But, so -- so, regardless of the consent, it was
4 standard practice in South Carolina to draw blood
5 pursuant to a felony DUI. And they already knew that
6 this -- the victim of this accident was deceased,
7 correct?

8 A. Correct. She was deceased on the scene.

9 Q. Okay. In fact, an implied consent form was entered
10 into evidence in this case?

11 A. Correct.

12 Q. Now, Mr. -- Mr. Galimore has raised some issues
13 regarding a chain of custody with the blood. Was a
14 chain of custody form admitted into evidence in this
15 case?

16 A. I believe it was. We had the full chain of custody
17 form that was introduced as well as every witness --
18 I'm sorry, every person on that chain of custody
19 actually testified at trial. And the nurse who drew
20 the blood to everyone who touched it and transported it
21 between the hospital, the Highway Patrol, evidence
22 room, and on up to SLED who conducted the testing on
23 the blood itself.

24 MR. SAVILLE:

25 Your Honor, may I approach the witness?

1 JUDGE COTHRAN:

2 Yes.

3 EXAMINATION RESUMING BY MR. SAVILLE:

4 Q. Ms. Tanner, have you seen this form before?

5 A. Yes.

6 Q. Could you identify what it is?

7 A. This is the chain of custody for the blood sample that
8 was taken from the Defendant and eventually analyzed by
9 SLED.

10 Q. Are there any apparent missing links in the chain of
11 custody on the space?

12 A. No.

13 MR. SAVILLE:

14 Your Honor, I would submit this into evidence as the
15 State's Number Seven.

16 JUDGE COTHRAN:

17 Any objection?

18 MR. SHAFFER:

19 No objections.

20 JUDGE COTHRAN:

21 Okay.

22 (Defendant's Exhibit Number Seven is marked.)

23 MR. SAVILLE:

24 May I approach briefly, Your Honor?

25 JUDGE COTHRAN:

1 Yes.

2 EXAMINATION RESUMING BY MR. SAVILLE:

3 Q. Ms. Tanner, have you seen this form before?

4 A. Yes.

5 Q. Could you identify what it indicates to be?

6 A. This is the report from SLED after they performed a
7 toxicology testing on this blood sample from Mr.
8 Galimore and it's their results.

9 Q. And what was the result of that report?

10 A. The result was that he had a blood alcohol of .153.

11 Q. Okay. Thank you very much.

12 MR. SAVILLE:

13 The State would enter this as State's Number Eight.

14 MR. SHAFFER:

15 No objection.

16 JUDGE COTHRAN:

17 Okay.

18 (Defendant's Exhibit Number Eight is marked.)

19 MR. SAVILLE:

20 Thank you.

21 EXAMINATION RESUMING BY MR. SAVILLE:

22 Q. Now, Ms. Tanner, an autopsy was performed on the victim
23 of this accident. Do you recall what the blood alcohol
24 content was in the victim?

25 A. Zero.

1 Q. Were there any other drugs that tested positive in the
2 victim?

3 A. She was negative for everything.

4 Q. Now, there is testimony here today that Mr. Galimore's
5 kids were present at the scene and they were obviously
6 -- that was part of the charge. Did you consider
7 calling the kids as witnesses?

8 A. I did. I believe I spoke to the family members. I
9 don't remember specifically what those conversations
10 were, but ultimately a decision was made not to call
11 them.

12 Q. Do you recall why you didn't?

13 A. I don't recall specifically. I know that the children
14 were laying down in the backseat. They didn't observe
15 the actual crash. They could have testified, I guess,
16 what occurred at the party, but I had -- I had two
17 adult witnesses who testified for that. I just -- I
18 didn't feel -- didn't feel it was necessary to put the
19 children through that. I had adult witnesses who could
20 testify to the same thing.

21 Q. I'm nearing the end, Ms. Tanner, I promise.

22 Now, what would you say the general theme was of Mr.
23 Hood's closing argument?

24 A. I -- it was hard -- hard to say for sure. I know the
25 Defendant was constantly arguing that she was in his

1 lane. She was in his lane. He yelled it that night to
2 the witnesses who were the on scene, and that carried
3 through. That was -- that was it. There wasn't a
4 whole lot -- Mr. Hood didn't have a whole lot to work
5 with on this one.

6 Q. Sure. Do you recall that he raised the fact in closing
7 that perhaps Mr. Galimore made a proper U-turn?

8 A. I think he tried to argue that. He certainly made a U-
9 turn.

10 Q. And do you recall that in his closing argument he
11 disputed the validity of the tire tracks?

12 A. Specifically, I don't remember. I know he asked
13 questions of all the witnesses. And he argued that you
14 weren't seeing what you were actually seeing in that
15 photograph.

16 Q. Ms. Tanner, Applicant raised an allegation about the
17 jury charge on the statute for driving left of lane,
18 and I believe he -- Applicant objects to the fact that
19 the exceptions were not read for driving left of lane.
20 Do you recall anything about that?

21 A. I don't recall anything specific, but if the Judge
22 didn't read the exceptions then I'm sure because there
23 was no evidence that they applied. The indictment, I
24 do recall specifically the -- and I had to -- we had to
25 continue the case for a month the first time I had it

1 set for trial because Mr. Hood made a motion that my
2 indictment was incomplete, so I had to present a new
3 one. And the language was that the -- that was added
4 was the Defendant failed to drive on the right side of
5 the roadway pursuant to 56-5-1810. Not that he
6 necessarily went left, but he was on the wrong side of
7 the road. But I don't specifically remember the jury
8 charge arguments that we had.

9 Q. Sure. Is there anything else that you would like to
10 tell the Court about your experience in this case?

11 A. Again, it was a low-tech trial. It wasn't one of those
12 where either of us had a lot of expert witnesses who
13 were going to testify that were going to make any
14 difference. The photographs of the tire tracks of the
15 Defendant's vehicle, his intoxication, it was one of
16 those cases where, as a prosecutor, I was surprised it
17 was going to trial because I felt like the evidence was
18 so strong for the State in this one, but certainly Mr.
19 Hood was always one to put up a very strong battle no
20 matter what the evidence was. And he did that in this
21 case as well.

22 MR. SAVILLE:

23 No further questions. Thank you.

24 CROSS EXAMINATION BY MR. SHAFFER:

25 Q. In 2007 and 2008, you were a solicitor, correct?

1 A. Yes.

2 Q. Okay. And while you were a solicitor during that time
3 period, you would occasionally get forced blood draws
4 from people, correct?

5 A. I would get the results from them, yes.

6 Q. Would you ever move to compel someone to provide a DNA
7 sample?

8 A. I tried several criminal sexual conduct with minors
9 cases, and in those cases, if there was DNA evidence, I
10 would have a Schmerber hearing, yes.

11 Q. Okay. And Schmerber was in existence during that time
12 period, correct?

13 A. Yes.

14 Q. And Schmerber was the law during that time period,
15 correct?

16 A. Yes.

17 Q. And that's based off of constitutional law, right?

18 A. Uh-huh.

19 Q. Fourth Amendment law, correct?

20 A. Yes.

21 Q. Fourth Amendment law controls over State law, correct?

22 A. Yeah.

23 Q. And during that time period, you're saying that the
24 standard practice was that the implied consent statute
25 would authorize you to do a blood draw without a

1 warrant?

2 A. In felony DUI cases, yes.

3 Q. Okay. So in the implied consent law, that's not
4 something created by created by the U.S. -- United
5 States Supreme Court, right?

6 A. It was a South Carolina statute.

7 Q. Okay. So, somehow this South Carolina statute would
8 give you permission to go around the Fourth Amendment?

9 A. That's what we all believe at the time.

10 Q. Okay.

11 MR. SHAFFER:

12 Court's indulgence.

13 EXAMINATION RESUMING BY MR. SHAFFER:

14 Q. Are you familiar with State versus Mullins, 1997
15 opinion about implied consent?

16 A. Not specifically, no.

17 Q. Okay. So, during that time period, you might not have
18 been familiar with that either, correct?

19 A. I -- I couldn't recall it by name. If someone had put
20 it in front of me, I might have been more familiar with
21 it.

22 Q. Do you recall a South Carolina Supreme Court's case
23 saying that once a person refuses to give blood under
24 the implied consent law, you still have to seek a
25 warrant?

1 A. When are you talking about?

2 Q. State versus Mullins in 1997, were you familiar that
3 there was case law that said that?

4 A. No.

5 Q. Okay.

6 MR. SHAFFER:

7 And just for The Court's -- I'm talking about 331 SC
8 501; it's a 1997 case, State versus Mullins.

9 JUDGE COTHRAN:

10 That wasn't a felony DUI case, though, was it?

11 MR. SHAFFER:

12 I believe it was. I believe the -- it involved -- it
13 didn't address the Fourth Amendment issue, it addressed
14 it more so related to warrants issued by -- warrants
15 for blood issued by coroners during that time period
16 saying that you couldn't -- once he refused, you would
17 have to seek a warrant, but you couldn't seek a warrant
18 from the coroner, that that wouldn't be -- that's not
19 good enough -- a warrant from the coroner wasn't good
20 enough, essentially.

21 JUDGE COTHRAN:

22 Okay.

23 MR. SHAFFER:

24 So, even though it doesn't specifically reference the
25 Fourth Amendment, I believe that essentially it's still

1 saying that the implied consent law in and of itself is
2 not enough to -- to get you around the requirement for
3 a warrant.

4 EXAMINATION RESUMING BY MR. SHAFFER:

5 Q. You said that there was a birthday party. What time
6 did that birthday party happen?

7 A. Can I look back through my notes?

8 Q. Yeah.

9 (Witness reviews documents.)

10 A. It looks like law enforcement responded at 2204, which
11 doing military math makes that 10 --

12 Q. 10:04?

13 A. 2204 is when they were dispatched.

14 Q. So the kids' birthday party was at ten o'clock at
15 night?

16 A. That's when things started falling apart and Mr.
17 Galimore was intoxicated and pistol-whipped his
18 girlfriend.

19 Q. Was that -- you said --

20 A. I don't know what time the party started, but it was
21 apparently one of those that was a cookout. The adults
22 continued on. I know that when they first arrived at
23 -- he had first arrived at the party, the girlfriend
24 noticed he had a gun, took him to his residence to try
25 and get him to leave it there, maybe try to take a

1 shower, take a nap, but he wanted to return to the
2 party, so he went back apparently and still had his gun
3 with him. So there was a lot -- it was an all-day
4 event, I believe.

5 Q. I was just wondering because the timeframe of the
6 accident.

7 A. I know that the call about the AB -- again, they were
8 dispatched at 2204.

9 Q. Okay. So they were dispatched at 2204. Tell me
10 something; back in 2007 around the time that this
11 happened, Beaufort County had magistrates, obviously?

12 A. Sure.

13 Q. And those magistrates, some of them, were on call,
14 right, at night?

15 A. I don't -- I don't know back then. I would assume
16 though, yes, someone was on call.

17 Q. You would assume that there was probably a magistrate
18 on call to issue warrants, right?

19 A. I would assume, but I don't know that for sure.

20 Q. Okay.

21 A. It was a much smaller office back then as well.

22 Q. When you were a solicitor, did you ever see a search
23 warrant that was signed at night?

24 A. I'm sure I did, I just don't specifically recall.

25 Q. Okay. Would it be fair to say that law enforcement

1 would have the ability to seek a search warrant at
2 night back then?

3 A. I believe so, but I am not 100 percent sure because I
4 didn't have -- I didn't do that. I wasn't involved in
5 it.

6 Q. Okay. And just for clarification, you're not an
7 accident reconstruction expert, correct?

8 A. No.

9 Q. Okay.

10 A. I have attended some training for felony DUI in
11 accident reconstruction, but I have not been certified
12 as an accident reconstructionist.

13 Q. Okay. Do you feel confident -- comfortable putting
14 yourself out there as an accident reconstruction
15 expert?

16 A. Expert, no. But am I comfortable with the material and
17 interpreting it? Yes.

18 Q. Okay. Are you comfortable with -- are you holding
19 yourself out to be able to say that the animation was
20 good or the animation was bad in this case?

21 A. I am saying that I -- I exhibited it to the jury as a
22 demonstrative aid of the evidence that was given to me
23 and I was comfortable that it demonstrated the evidence
24 that was provided, yes.

25 Q. Was that relying on what Sprouse and the other troopers

1 told you or is that your own knowledge and training?

2 A. It's relying on the actual experts who conducted that
3 investigation, yes.

4 Q. Okay. You weren't relying on your own -- your own
5 expertise?

6 A. No.

7 MR. SHAFFER:

8 Court's indulgence.

9 EXAMINATION RESUMING BY MR. SHAFFER:

10 Q. Is it the State's position that the animation
11 accurately depicts the point of impact?

12 A. I would say that the animation was based upon the
13 measurements taken by the Trooper who conducted the
14 investigation who was present on the scene that night,
15 so, yes.

16 Q. All right.

17 A. It's based on his investigation.

18 Q. So, the State's position is the animation accurately
19 depicts the point of impact?

20 A. I don't -- I mean, the animation doesn't have a
21 latitude longitude, so the point of impact, I don't
22 know. Does it depict how the collision occurred and
23 whereabouts on the roadway? Yes. Now, whether or not
24 it's a specific latitude longitude, I don't know. I
25 don't know that anybody --

1 Q. And I'm not asking about latitude and longitude, I'm
2 saying does -- is it the State's position that the
3 animation accurately depicts where in the roadway the
4 two cars collided at?

5 A. You mean in Ms. Deon's lane of travel? Yes.

6 Q. I mean, does it accurately depict where the two
7 vehicles collided?

8 A. Yes, --

9 MR. SAVILLE:

10 Your Honor, --

11 A. -- in her lane of travel.

12 MR. SAVILLE:

13 Sorry, I object; it's asked and answered.

14 MR. SHAFFER:

15 I think that --

16 JUDGE COTHRAN:

17 I mean, you've asked it twice and she's answered it
18 twice, you know.

19 MR. SHAFFER:

20 I'm good with that answer as long as it's -- no further
21 questions.

22 JUDGE COTHRAN:

23 Anything from the State?

24 MR. SAVILLE:

25 Very briefly.

1 RE-DIRECT EXAMINATION BY MR. SAVILLE:

2 Q. Ms. Tanner, is it your recollect -- you don't recall
3 State versus Mullins?

4 A. No, not specifically, I'm not very good at that.

5 Q. Okay. Would you be interested to know it's actually a
6 -- it's actually a fascinating case involving a Mr.
7 Jack Swerling, where the Court was examining whether
8 the coroner has the authority to take blood from a live
9 person to determine the cause of death and manner of
10 death in a motor vehicle accident; so, as to say, to
11 take blood from the person who is eventually dying from
12 the motor -- from the motor accident?

13 A. I would say that had nothing to do with this case.

14 Q. And it's talking about the coroner taking the blood
15 from the person.

16 A. Yeah, I'll read it later today, but I'm not familiar
17 with it right now.

18 Q. Is there anything that was brought up on cross that you
19 would like to further address?

20 A. I mean, again, the hang up about the -- the animation,
21 again, it was a demonstrable aid.

22 MR. SHAFFER:

23 Your Honor, at this point, it's -- that question is
24 probably improper; it calls for a narrative.

25 JUDGE COTHRAN:

1 Yeah, you've got to ask her a particular question.

2 MR. SAVILLE:

3 I'm sorry, Your Honor?

4 JUDGE COTHRAN:

5 You've got to ask her a question.

6 MR. SAVILLE:

7 Okay, sure.

8 JUDGE COTHRAN:

9 And by -- you know, you don't have a jury here, I
10 understand.

11 MR. SAVILLE:

12 Yes, Your Honor.

13 JUDGE COTHRAN:

14 Let me ask you a question.

15 WITNESS:

16 Yes, sir.

17 EXAMINATION BY JUDGE COTHRAN:

18 Q. The photograph that you've talked about that showed the
19 muddy tire print that led up -- was that photograph
20 presented at trial?

21 A. Yes, sir.

22 Q. Okay.

23 A. And actually we blew it up on a big, giant smart screen
24 in front of the jury, so they got a good look at it.

25 Q. So, that photo -- but that photograph has not been

1 introduced today?

2 A. I didn't see it. I can view photographs again and tell
3 you, but --

4 MR. SHAFFER:

5 It's One, Your Honor.

6 JUDGE COTHRAN:

7 Huh?

8 MR. SHAFFER:

9 It's State's One, I believe. I believe that's State's
10 One.

11 JUDGE COTHRAN:

12 State One doesn't show that. Well, I can't see it.
13

14 A. There's one very specific one that you could see.

15 MR. SHAFFER:

16 Do you want to go ahead and introduce it?

17 A. No, it's not in these.

18 Q. Okay.

19 JUDGE COTHRAN:

20 Those are my questions. I couldn't tell --

21 A. No, it's not in those. It's a very clear tire -- and
22 it -- it comes right up to the back tire of the
23 Defendant's vehicle. It's a muddy tire print that goes
24 from the parking lot.

25 MR. SHAFFER:

1 And, Your Honor, there -- there actually is one the
2 expert -- in addition to seeing all those, my expert
3 had viewed that on Friday. I can get a copy to the
4 Court if the State wants to introduce it.

5 JUDGE COTHRAN:

6 I mean, there was just testimony about it. It seems
7 that -- that that's probably the most important
8 photograph that I've heard about, I just didn't have
9 it, and I just wondered if the jury ever saw it.

10 WITNESS:

11 I still have my disc. Do you want it?

12 MR. SHAFFER:

13 And I can -- I can pull it up.

14 JUDGE COTHRAN:

15 I just, you know --

16 MR. SAVILLE:

17 I apologize, Your Honor, I'm not sure how that got --

18 JUDGE COTHRAN:

19 That seemed to be the most important photograph in the
20 whole thing, and I never got it, so I didn't know
21 whether the jury got it.

22 WITNESS:

23 Oh, yeah, they got it.

24 EXAMINATION BY MR. SAVILLE:

25 Q. Ms. Tanner, do you have the photographs with you?

1 A. I have a disc if you want to use it.

2 Q. Sure.

3 A. I can find it. I think there's 70 some photographs.

4 We can scroll down to it. It's at the -- it's near the
5 bottom.

6 Q. Was it in the emails that were sent to me? We might
7 not need the disc, if I can just --

8 A. It's in the 50s.

9 (The photograph is being looked for.)

10 EXAMINATION RESUMING BY MR. SAVILLE:

11 Q. Ms. Tanner, could you identify what we're looking at in
12 this picture? I understand it's kind of a dark --

13 A. Yeah, that's the photograph that if you're standing in
14 the parking area, you can see the muddy, sandy tire
15 track that starts here, circles back to Mr. Galimore's
16 tire, which, again, is on the wrong side of the double
17 yellow lines.

18 MR. SAVILLE:

19 Your Honor, would you like me to bring this up --

20 JUDGE COTHRAN:

21 Yeah.

22 MR. SAVILLE:

23 -- for a closer inspection?

24 JUDGE COTHRAN:

25 That was presented to the jury?

1 WITNESS:

2 Yes, sir.

3 JUDGE COTHRAN:

4 okay.

5 MR. SHAFFER:

6 And, Your Honor, just for the record, that was actually
7 sent to me last week, and we forwarded that on to the
8 -- Mr. Schussel, which was one of the photos he
9 references, photos I got on Friday.

10 JUDGE COTHRAN:

11 okay.

12 MR. SAVILLE:

13 Your Honor, I have no further questions of this
14 witness.

15 JUDGE COTHRAN:

16 okay.

17 RE-CROSS EXAMINATION BY MR. SHAFFER:

18 Q. It's my understanding that you said that those tire
19 marks indicate that he's pulling out of the driveway,
20 correct?

21 A. It wasn't a driveway. It was just a -- a lot. It was
22 a sandy -- it's a lot.

23 Q. It's a parking lot?

24 A. There was no curb, it just went from road to sand.

25 Q. It was a privately-owned lot?

1 A. It's called The Country Store. I've never been in it.
2 I think it's a little family-owned country store, so
3 that's all I can tell you about it. I don't know a
4 whole lot about it.

5 MR. SHAFFER:

6 No further questions.

7 MR. SAVILLE:

8 Witness may be excused with no objection from the
9 State, Your Honor.

10 JUDGE COTHRAN:

11 I'm sorry, what did you say?

12 MR. SAVILLE:

13 I said witness can be excused with no objection from
14 the State.

15 WITNESS:

16 Thank you.

17 JUDGE COTHRAN:

18 I'm sorry, I didn't hear it. Do you have any
19 objection?

20 MR. SHAFFER:

21 No, no objection.

22 JUDGE COTHRAN:

23 Thank you.

24 WITNESS:

25 Thank you.

1 JUDGE COTHRAN:

2 Anything else?

3 MR. SAVILLE:

4 Your Honor, I would like to hand up some very brief
5 case law. This is just one PCR case in South Carolina
6 from 1991, actually.

7 JUDGE COTHRAN:

8 Okay.

9 MR. SAVILLE:

10 This is a case, it's Frazier versus The State of South
11 Carolina, and it was actually involving the failure to
12 call an expert witness. And, I apologize, Your Honor,
13 --

14 JUDGE COTHRAN:

15 Okay.

16 MR. SAVILLE:

17 And the Court actually found the trial counsel was not
18 ineffective for failing to call an expert witness as
19 trial counsel was -- trial counsel vigorously, the
20 Court said, cross-examined the State's expert witness
21 in this case. And I really cannot think of a case more
22 analogous than what we saw in the Rodney Galimore case
23 with Mr. Hood. I believe in this case, this was --
24 this was textbook Gene Hood in this case, extensive
25 cross-examination, extensive challenging of everything

1 that the expert witness came to talk about today, Mr.
2 Hood was able to bring out in his own way on cross-
3 examination and closing argument in really the way that
4 only Mr. Hood could. And I think the record speaks for
5 itself that Mr. Hood diligently represented Mr.
6 Galimore at this trial and he was a smart enough man
7 not to pay \$200 an hour for something that he could
8 have done better himself. And for these reasons, the
9 State would request an opportunity to get a deposition
10 from someone involved with MAIT or accident
11 reconstruction to answer Mr. Galimore's expert witness,
12 in the event that Your Honor is not inclined to deny
13 the relief at this point in time. Thank you.

14 JUDGE COTHRAN:

15 Okay. From my understanding --

16 MR. SHAFFER:

17 And, Your Honor, I -- I was going to briefly respond.
18 The only thing I was going to say is that there's a
19 massive difference between someone cross-examining
20 somebody on something and actually having someone
21 explain what -- what actually occurred. Also, he's not
22 able to effectively challenge the admissibility of the
23 -- the animation with that expert. He can't -- he
24 didn't say, hey, this isn't reliable. He wasn't able
25 to actually prove that to the Judge or have any sort of

1 input with the Judge about that. You know, the -- the
2 issues that he brought out were you didn't know this
3 and you didn't know that, is a very -- very big
4 difference to say, well, you didn't know what speed she
5 was traveling, correct, and you didn't know what
6 turning radius versus completing the dots and
7 completing the picture and say this is what happens
8 when you don't know it is that this isn't how we do
9 things. All they saw was a animation. They didn't
10 have anyone other than Mr. Hood pointing out individual
11 data points, connect the dots, and say that that's not
12 the way animation should work.

13 JUDGE COTHRAN:

14 Thank you. I will read this record, read the
15 transcript, and let y'all know something.

16 MR. SAVILLE:

17 Thank you, Your Honor.

18 MR. SHAFFER:

19 And, Your Honor, I think we're going to do a
20 deposition?

21 JUDGE COTHRAN:

22 You can do the deposition, right.

23 MR. SHAFFER:

24 Okay. I think the State wanted us to do one.

25 MR. SAVILLE:

1 Yes, Your Honor, we plan on deposing soon.

2 JUDGE COTHRAN:

3 So, how long is it going to take y'all to do that?

4 MR. SAVILLE:

5 Your Honor, I would like to have the transcript of this
6 hearing before -- prior to the deposition. So is it
7 usually like 30 days or so for a transcript?

8 MR. SHAFFER:

9 I somewhat would object to that just because of the
10 fact that's not the sort of -- I mean, if he -- if he
11 wants it, I mean, obviously, he'll go get the
12 transcript, it's just, you know, I didn't have -- well,
13 I guess it's fair game. Go ahead. That's fine.

14 JUDGE COTHRAN:

15 Okay.

16 MR. SHAFFER:

17 And, Your Honor, there is one point that I wanted to
18 make. Actually, the ineffective assistance of
19 appellate counsel, my client indicates that it was
20 brought out during the -- during his initial
21 application. The way he brought it out was I -- I
22 actually just failed to actually realize that it was
23 actually ineffective assistance of appellate counsel
24 the way it's read, and it wasn't really on my radar,
25 but that being said, my client did actually put that in

1 the record on his initial application.

2 JUDGE COTHRAN:

3 Okay. All right. Thank y'all.

4 MR. SAVILLE:

5 Thank you, Your Honor.

6 (The hearing was concluded at 1:00 p.m.)

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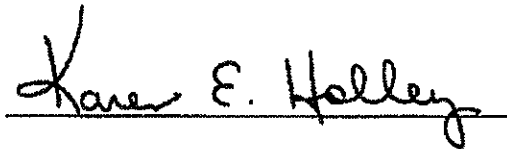
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Certificate of Reporter

I, Karen E. Holley, a Notary Public in and for the state of South Carolina, do hereby certify that the foregoing 117 pages represents a true and accurate transcript of the hearing that was held on the 6th day of August, 2018.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.



Karen E. Holley, CVR-M

Notary Public for S.C.

Commission expires: 4/11/2027













DWZ-3026

SC v Rodney Galimore

Examination of Provided Materials

Officer Notes:

Page 4, Collision Summary – Says that Mr. Galimore never established his vehicle in the correct lane. The photographs show dirt tire marks out of the parking lot, but do not show the tire marks leading to the tires of Mr. Galimore's vehicle. These tire marks could have come from any vehicle leaving the parking lot of the convenience store. Unless the officer can establish that these tire marks came from Mr. Galimore's vehicle, there is no way to establish that he never established himself in the proper lane of travel.

Page 5, Diagram of Collision Scene – Indicates that the accident took place at the point of final rest of Mr. Galimore's vehicle. There was no indication in the photographs as to where the impact took place. It might have occurred in the other travel lane with Mr. Galimore's vehicle rolling forward into the left lane. The left front tie rod in Mr. Galimore's vehicle was broken in the accident and the left front tire is angled to the left. There should have been a scuff mark at the point of impact from the motorcycle striking the left front tire. It is possible that the officers never looked for such a scuff mark because they assumed the impact took place at the final rest position.

Page 20, Diagram of accident scene – There is an undated and unsigned diagram of the accident scene. It shows dirt tracks from the parking lot to Mr. Galimore's rear tires. The photographs show the dirt tracks leading up to the vehicle, but the photographs do not show the dirt tracks leading all the way to the vehicle. Need to establish who made the diagram, when the diagram was made, why the diagram was made, the accuracy of the information presented.

MAIT Report

Page 4, Methodology – Indicates that they used only the accident report, examination of scene, photographs and a video of the scene to do their analysis. It is clear from the recorded statements of the MAIT officers that they relied heavily on the descriptions from the trooper and officer who responded to the accident as to what happened. There was no analysis performed by MAIT to determine what happened, to question whether what was presented to MAIT was accurate or consistent, to form the basis of the animation. There were no measurements taken by the officers of the dirt tracks, therefore the path of the vehicle shown in the animation is pure speculation and should not be allowed in evidence. Only the scene diagram showing the final positions has any value based on actual measurements.

The MAIT officers should not be allowed to testify at trial since they have no independent knowledge of the facts of the case and did no analysis of the materials to determine their validity.

MAIT Notes

They inspected the scene on October 14, 2008, more than a year after the accident.

There is an ARPro sheet indicating a speed of 18.5 mph that appears to be based on the information from Expert Autostats for vehicle dimensions. Since no one measured the actual dirt tracks, this is a meaningless calculation and only provides a maximum speed the vehicle could have sustained in the tightest circle it could follow.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
 JUN 13 PM 2:53)
 JERRI ANN ROSENBAU)
 BEAUFORT COUNTY, S.C.) 2013-CP-07-3163
 CLERK OF COURT)
 Rodney Galimore, #332336,)
)
 Applicant,)
)
 v.) ORDER OF DISMISSAL
)
 State of South Carolina,)
)
 Respondent.)
 _____)

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the September 2007 term of the Beaufort County Grand Jury for reckless homicide (2007-GS-07-1616), driving under the influence resulting in death (DUI) (2007-GS-07-2690), driving under suspension- third offense (2007-GS-07-617), and child endangerment (2007-GS-07-1584). The Applicant was represented by Gene Hood, Esquire.

On December 8-10, 2008, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable John C. Hayes to confinement for a period of twenty-five (25) years for DUI resulting in death, six (6) months for driving under suspension, and ten (10) years for reckless homicide and child endangerment. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were

affirmed by the Court of Appeals. State v. Galimore, No. 4934 (S.C. Ct. App. January 25, 2012).

The Applicant filed a Petition for Rehearing which was denied on April 20, 2012. The South Carolina Supreme Court denied the Applicant's Petition for Writ of Certiorari on November 7, 2013. The Remittitur was issued on November 14, 2013.

Allegations Raised

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to the reading of the charge of 56-5-1810 when the exceptions were not read to the jury and were material to the case.
 - b. Counsel failed to object to admissibility of pathologist reports and findings without the chain of custody.
 - c. Counsel failed to object to pathologist reports when he alone stated that he sent reports out of state to labs to have findings and did not refer anything to SLED for proper chain of custody.
 - d. Counsel failed to object to misleading evidence presented by the Solicitor's Office through a video animation by the S.C. M.A.I.T.
 - e. Counsel failed to object to photographs that showed applicant was never left of center, but was making a U-turn at the point of impact.
 - f. Counsel failed to object to the destruction of evidence of blood that officer testified is to be kept for court.
 - g. Counsel failed to make photographs a matter of record.
 - h. Counsel failed to have an expert to testify at trial.
 - i. Counsel failed to object to the indictment of felony DUI which had the charge of 56-18-10.
 - j. Counsel failed to address the fact that the statute was not observed.
 - k. Counsel failed to object to the charge of 56-5-1810, left of center.

Applicant amended his application to including allegations that counsel was ineffective for failing to present an accident reconstruction expert at trial to rebut the State's expert and for failing to challenge the blood draw on constitutional grounds.

Statement of Facts

Lay witnesses testified that Applicant arrived at a child's birthday party intoxicated the day of the incident. Applicant became angry with his ex-girlfriend and hit her with a pistol he

brought with him to the party. Applicant proceeded to take two children, get in his vehicle, and leave the party. At this point, adult witnesses called law enforcement. The Beaufort County Sheriff's Office was already looking for Applicant, but he had already gotten in the collision with the victim. The victim was driving her motorcycle home from her second job. The victim and the Applicant collided in the same lane of travel. Applicant's vehicle was ahead of the victim's motorcycle in the same lane. Applicant pulled off the road into a sandy area next to a store, then proceeded to make a U-turn directly back into oncoming traffic. Applicant collided with the victim's motorcycle head-on going the wrong direction in traffic. The victim was pronounced deceased on the scene. Lay witnesses from the party and the State Trooper testified as to Applicant's inebriated state.

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, Gene G. Hood. Each allegation is addressed fully below.

QSCJ
The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove

that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “‘reasonably competent attorney.’ ” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors,

the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U.S. at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate “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.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even

under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Counsel was ineffective for failing to call an expert witness in rebuttal

Applicant alleges Counsel was ineffective for failing to call an expert in the field of accident reconstruction at trial. Applicant alleges that had this expert be called at trial, the jury

would have likely returned a verdict of not guilty. Applicant has failed to present evidence that would show a reasonable probability that, but for Counsel's failure to call an expert witness, the result of his trial would have been different.

At the evidentiary hearing, Applicant called the expert witness retained by trial counsel to testify as to his findings related to his work on the accident reconstruction. Mr. Schussel (accident reconstruction expert) testified as to what information he provided to counsel prior to trial and what he would have testified to concerning the animation used by the State. Mr. Schussel stated that he would have testified that the animation was not appropriate for showing what actually happened in the accident, because there was not enough data available. Mr. Schussel testified that the animation was one possible depiction of how the accident occurred, but may not have portrayed what actually happened. Mr. Schussel stated that he would have testified at trial that the methods used to create the animation were unreliable and that it was not accurate. Angela McCall-Tanner (former solicitor) testified that counsel fought the introduction of the animation hard at trial. Tanner testified that she remembered counsel objecting to the introduction of the animation and her recollection was reflected in the record. Tanner testified that she recalled counsel objecting because the proper measurements were not made to create a proper animation. Tanner testified the counsel did extensive cross-examination of every State witness related to the accident reconstruction and animation. Tanner also testified that she did not believe the animation was critical to the trial, but rather that a photograph showing tracks from Applicant's car leading into the wrong lane was the most damaging.

 This Court finds that counsel thoroughly brought out the potential weaknesses of the State's accident reconstruction through a thorough cross-examination of the State's witnesses. Counsel was able to bring out the same weaknesses expressed by Mr. Schussel through the cross-

examination of the State's own witnesses. This Court recognizes that there are potentially a number of different trial strategies that do not include the calling of an expert that would be well within the bounds of professional competence. Therefore, in accordance with the standard set forth above, this Court finds that Applicant has failed to meet his burden and this allegation is summarily dismissed.

Counsel was ineffective for failing to challenge Applicant's blood draw on constitutional grounds

Applicant alleges that counsel was deficient for failing to challenge Applicant's blood being drawn after the accident without his consent, alleging it violated his fourth amendment rights. This Court finds that counsel was not deficient and that Applicant has failed to meet his burden of proof.

Applicant testified that he had discussions with counsel about his fourth amendment concerns related to the drawing of his blood without his consent. Applicant testified that counsel told him that there was nothing to challenge because the officers acted appropriately in taking his blood. Applicant testified that counsel told him that the officers did not need a warrant to draw his blood under these circumstances. Applicant testified that he did not consent to the blood draw and that he was physically restrained.

Tanner testified that it was common practice to draw blood of persons arrested for felony DUI with or without their consent, without a warrant. Tanner testified that the felony DUI statute states that the defendant *shall* give a sample. Tanner testified that an implied consent form was filled out and entered into evidence in this case. Tanner also testified that a chain of custody report was entered for Applicant's blood and that every person in the chain testified at the trial.

This Court finds that counsel was not deficient for failing to challenge the draw of Applicant's blood without a warrant on constitutional grounds. This Court finds that the felony DUI statute authorizes law enforcement to take a sample of defendant's blood without his consent and that an implied consent form was entered in this case. This Court finds that Applicant has failed to meet his burden in relation to this allegation and it is therefore summarily dismissed.

Counsel was ineffective for failing to object to the Judge's jury instructions

Applicant alleges that counsel was deficient for failing to object to the trial judge's jury instructions where the judge failed to mention the exceptions to the law of "left of center lane." This Court finds that Applicant has failed to meet his burden in relation to this allegation and it is therefore summarily dismissed.

Applicant testified that the trial judge did not include the exceptions to the law of "left of center lane" when he was charging the jury. Applicant testified that one of those exceptions was when one is pulling out of a driveway and that the State's whole case was that Applicant was pulling out of a driveway when the accident occurred. Tanner testified that if the trial judge did not charge the exceptions it was due to their being no evidence presented to warrant the charge. Tanner testified that the State did not believe that Applicant was pulling out of a driveway when the accident occurred, but rather, he was pulling out of a sandy area next to a store. The State did not contend that the area where Applicant entered the roadway was a driveway.

 This Court finds that Applicant has failed to show that counsel was deficient for failing to object to the jury charge. Therefore, this Court finds that Applicant has failed to meet his burden in relation to this allegation and it is summarily dismissed.

Counsel was deficient for failing to challenge the chain of custody of the blood

Applicant alleges that counsel was deficient for failing to challenge the chain of custody of the blood drawn from the deceased. This Court finds that Applicant has failed to meet his burden in regards to this allegation and it is therefore summarily dismissed.

Applicant testified that counsel did not challenge the blood drawn from the deceased and that the autopsy was done by the family before being handed over to the State. Tanner testified that blood was taken from the victim and that there was no trace of alcohol or drugs in the test. Tanner also testified that full record of the chain of custody was entered into evidence and that every person in the chain testified at the trial.

This Court finds that counsel was not deficient and that there was not legitimate reason to challenge the chain of custody of the blood sample. This Court finds that Applicant has failed to meet his burden in regards to this allegation and that it is summarily dismissed.

Other Allegations

This Court finds that Applicant failed to present evidence on any other allegations at the evidentiary hearing and therefore deems them waived.



CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings.

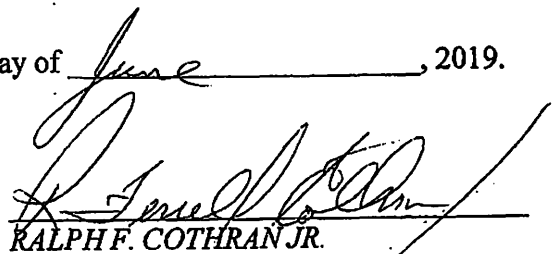
Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 5 day of June, 2019.


 RALPH F. COTHAN JR.
 Presiding Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Rodney Galimore,	)	Docket No.: 2013-CP-07- ~~1950~~
	)	3163
Applicant,	)	
	)	MOTION TO RECONSIDER
	)	
v.	)	
	)	
The State,	)	
	)	
	)	
Respondent.	)	
	)	

2019 JUL -8 PM 2:23
 JERRI ANN JOSEPH, CLERK
 BEAUFORT COUNTY, S.C.

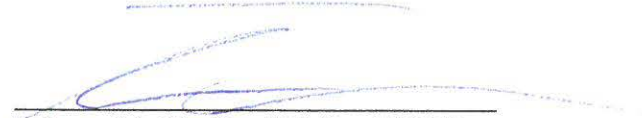
Pursuant to Rule 59(e), SCRPC, Applicant hereby respectfully requests that the court reconsider its Order of Dismissal in this case. To support this Motion, Applicant would show the following:

- 1) The Order of Dismissal in this case was filed on June 13, 2019 and received by Applicant's Counsel on June 23, 2019.
- 2) Applicant respectfully submits that this Court's ruling is incorrect because it failed to properly note differences that Mr. Schussel's testimony concerning the animation and reconstruction was broader and pointed out more defects in the animation than Trial Counsel's limited cross examination.
- 3) Applicant respectfully submits that this Court's reliance on the Solicitor's perception of Trial Counsel's performance is misplaced. Although present for the trial, her adversarial position her testimony concerning defense counsel's performance is of limited evidentiary value. *See* Rules 105, 602, 701, and 702, SCRE.
- 4) Applicant respectfully submits that this Court's ruling is incorrect because it failed to properly distinguish the between different evidentiary value place on argument as opposed

to testimony especially when Trial Counsel told the jury “[A]ll the testimony [would] come from the witness stand...and you have to use that testimony in arriving at your decision.”

- 5) Applicant respectfully submits that this Court’s finding of trial strategy concerning not calling an expert is not based on any evidence in the record.
- 6) Applicant respectfully submits that this Court’s finding that Trial Counsel was not deficient for failure to challenge the blood draw is based on an error of law.
- 7) Applicant submits that this Court’s finding concerning the “left of center” jury instruction should be reconsidered.
- 8) Applicant submits that this Court’s finding concerning the chain of custody should be reconsidered. *See Stevens v. Allen*, 336 S.C. 439, 520 S.E.2d 625 (1999).
- 9) Applicant submits that the “Other Allegations” section of the order is deficient.

Based on the foregoing, as well as the arguments and issues previously raised in this case, Applicant respectfully requests that this Court reconsider the Order of Dismissal and grant the Application for Post-Conviction relief.



Tristan M. Shaffer (SC Bar 77565)
P.O. Box 1027
Chapin, SC 29036
(803) 941-7514
tristan@shafferlawsc.com

July 2, 2019

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT

Rodney Galimore,

Applicant,

vs.

The State of South Carolina,

Respondent.

ORDER
 C/A NO. 2013-CP-07-1950

2019 JUL 12 PM 12:58
 BEAUFORT COUNTY S.C.
 CLERK OF COURT
 3263

This matter is before the Court pursuant to Rule 59 (e) SCRCF. The Applicant seeks an Order of this Court amending or altering its previous Order.

Pursuant to Rule 59 (e) SCRCF, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Applicant, this Court has determined that its original Order is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: July 10, 2019

R. Ferrell Cothran, Jr.
 Judge, Third Judicial Circuit

WITNESSES

Sprouse - SCHP

DOCKET NO. 2007GS0701584

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2007

ARREST WARRANT NUMBER

Z586886

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

ite:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

12/10/2008

THE STATE

vs.

Rodney Gallimore

CODE

Indictment for

**Child / Child endangerment, commit certain
vehicular offense**

SC Code: 56-05-2947

CDR Code:2395

Certified A True Copy

Elizabeth M. Smith, Clerk of Court
Beaufort County, SC

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2007GS0701584

At a Court of General Sessions, convened on September 20, 2007, the Grand Jurors of Beaufort County present upon their oath:

Child / Child endangerment, commit certain vehicular offense

That in Beaufort County, South Carolina, on or about August 11, 2007, the Defendant, Rodney L. Galimore, did drive a vehicle while under the influence, in violation of Section 56-05-2945, Code of Laws of South Carolina (1976, as amended). That while driving said vehicle and committing a violation of Section 56-05-2945, Code of Laws of South Carolina (1976, as amended), Rodney L. Galimore did have one or more passengers under the age of sixteen in the vehicle; all in violation of Section 56-5-2947, Code of Laws of South Carolina (1976, as amended).

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



Solicitor

WITNESSES

Sprouse - SCHP

DOCKET NO. 2007GS0701616

The State of South Carolina

County of Beaufort

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

Defendant

COURT OF GENERAL SESSIONS

September Term 2007

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

J345724

THE STATE

vs.

Rodney Galimore

COPY

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
ate:

VERDICT

Indictment for

**Homicide / Reckless Homicide, death results
within one Year, caused by injury from vehicle**

Defendant

Witness:

SC Code: 56-05-2910
CDR Code:0135

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date: *12/10/2008*

INDICT

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

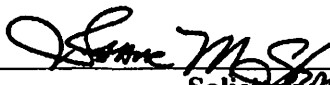
INDICTMENT
2007GS0701616

At a Court of General Sessions, convened on September 20, 2007, the Grand Jurors of Beaufort County present upon their oath:

Homicide / Reckless Homicide, death results within one year

That in Beaufort County, South Carolina, on or about August 11, 2007, the Defendant, Rodney L. Galimore, did drive a vehicle in reckless disregard of the safety of others, and that the Defendant's reckless driving caused injury to Merry C. Deon who died as a proximate result of this injury in Beaufort County on August 11, 2007; in violation of Section 56-5-2910, South Carolina Code of Laws 1976 (as amended).

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


Solicitor

WITNESSES

Sprouse - SCHP

ARREST WARRANT NUMBER

J345723

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: SEP 2 2008

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 12/10/2008

INDICT

DOCKET NO. 2007GS0701617

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

Rodney Galimore

COPY

Indictment for

**DUS / Driving under suspension, license not
suspended for DUI**

SC Code: 56-01-0460(A)(1)(c)
CDR Code: 0175

Certified - A True Copy

[Signature]
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

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

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

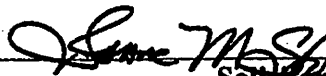
INDICTMENT
2007GS0701617

At a Court of General Sessions, convened on September 20, 2007, the Grand Jurors of Beaufort County present upon their oath:

DUS / Driving under suspension, license not suspended for DU

That in Beaufort County, South Carolina, on or about August 11, 2007, the Defendant, Rodney Galimore, did drive a motor vehicle on a public highway of this State when his license to drive was canceled, suspended, or revoked, such being his 3rd or subsequent offense within a period of five years including and immediately preceding the foregoing date; all in violation of Section 56-1-460, Code of Laws of South Carolina (1976, as amended)

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


Solicitor General

WITNESSES

Sprouse - SCHP

ARREST WARRANT NUMBER

J332752

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

NOV 20 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-07-02690

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2008

THE STATE
vs.

RODNEY GALIMORE

Indictment for
FELONY DRIVING UNDER
THE INFLUENCE (DEATH RESULTS)

SC Code: 56-5-2945(A)(2)
CDR Code: 0395

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

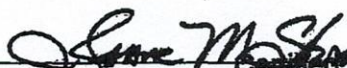
INDICTMENT
2008-GS-07-02690

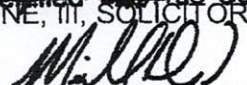
At a Court of General Sessions, convened on November 20, 2008 the Grand Jurors of Beaufort County present upon their oath:

FELONY DRIVING UNDER INFLUENCE (DEATH RESULTS)

That in Beaufort County on or about August 11, 2007, while driving a vehicle under the influence of alcohol, drugs, or both alcohol and drugs, the Defendant, Rodney Galimore, did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle, to wit: defendant failed to drive on the right side of the roadway pursuant to § 56-5-1810 and such act and/or neglect proximately caused the death of Merry Deon; in violation of § 56-5-2945, 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.


ISAAC MCDUFFIE STONE, III, SOLICITOR


Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-07-1584

VS.
RODNEY GAUMORE

A/W#: 2586886

AKA:
Race: Sex: Age:
DOB: SS#: _____

Date of Offense _____
S.C. Code §: 56-5-2947
CDR Code #: 2395

Address:
City, State, Zip:
DL# SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Child Endangerment

in violation of _____ of the S.C. Code of Laws, bearing CDR Code # _____

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor _____ 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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject
to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference. ☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 12/10/08

☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$3.9 \$ _____
§90.11 TP (SCCA Surcharge) \$5 \$ 5
TOTAL \$ 133.9

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 \$ _____

\$ _____

Other:

Beginning

paid to Public Defender Fund

☐ Appointed PD or appointed other counsel, §35.13 TP

☐ Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

WANDA NELSON

Certified - A True Copy

Kristy Taylor
Jerri Ann Roseaneu - Clerk of Court
Beaufort County, SC - Kristy Taylor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

BEAUFORT

VS.

RODNEY GALIMORE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

RECKLESS HOMICIDE

in violation of of the S.C. Code of Laws, bearing CDR Code #

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

ATTEST:

Solicitor

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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject

to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by

reference. ☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/10/08☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPSObtain 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:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$3.50	\$3.50
§90.11 TP (SCCJA Surcharge)	\$5	\$5
TOTAL		\$133.50

☐ Appointed PD or appointed other counsel, §35.13 TP☐ Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

WANDA NELSON

Certified - A True Copy

Kristy Taylor

Jerri Ann Roseau - Clerk of Court

Beaufort County, SC - Kristy Taylor

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2007-GS-07-1617AW#: J345723Date of Offense: [REDACTED]S.C. Code §: 56-1-460(A)(1)(2)CDR Code #: 0175

RODNEY vs. GALIMORE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: DUS 3rd +

in violation of _____ of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

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 6 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject
to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference. ☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/10/09

☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.9
§90-11 TP (SCCJA Surcharge)	\$5	\$ 5
TOTAL		\$ 133.9

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:

☐ Appointed PD or appointed other counsel, §35.13 TP☐ Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

NANITA NELSON

Certified - A True Copy

Kristy Taylor
Jenl Ann Rosebeau - Clerk of Court
Beaufort County, SC - Kristy Taylor

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-07-2690

RODNEY vs. GAUMORE

A/W#: J332752

AKA:

Date of Offense: 8-11-2007

Race:

Sex:

Age:

S.C. Code §: 56-5-2945(A)(2)

DOB:

SS#:

CDR Code #: 0395

Address:

City, State, Zip:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: DUI - death results

in violation of _____ of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subjectto 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPSObtain 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:

*Fine:

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

\$

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

\$100

\$100

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

\$100

\$100

\$56-5-2995 (DUI Assessment)

\$12

\$12

\$35.13 (Public Def/Prob)

\$500

\$

\$73.3, 1B TP (Law Enforce. Funding)

\$25

\$25

\$33.7, 1B TP (Drug Court Surcharge)

\$100

\$

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

\$50

\$

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$7.26

\$90.11 TP (SCCJA Surcharge) (g)

\$5

\$5

TOTAL

\$247.26

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/Deputy Clerk

Court Reporter: