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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

FOR THE 11TH JUDICIAL CIRCUIT

WILLIAM A. MCKINNON PRESIDING JUDGE

CASE NO. 2014-CP-32-02548
APPELLATE CASE NO. 2019-000031

ANDRA B. JAMISON, PRO-SE LITIGANT — PETITIONER

VS.

STATE OF SOUTH CAROLINA — RESPONDENT

AMENDED PETITION FOR WRIT CERTIORARI

ATTORNEY GENERAL'S OFFICE
P.O. BOX 11549
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QUESTIONS PRESENTED

1. Did circuit court err for failing to rule on the entire issue that trial counsel committed ineffective assistance of counsel for failure to argue how the State admittedly losing the accused provided blood sample, denied the petitioner a statutory right to a reasonable opportunity to independent blood testing that required a dismissal?

2. Did circuit court err in holding that trial counsel was not ineffectively deficient or prejudicial for not objecting to the arresting officer failing to produce video of the incident site as required by §56-5-2953, and stipulating to Cayce public safety affidavit in that it cures the requirement under §56-5-2953 (b)?

3. Did circuit court err finding that trial counsel was not ineffective for failing to inform petitioner that Trial Judge's daughter was employed by the 11th circuit solicitor's office, and that Trial Judge had an obligation to disclose the relationship, honoring the ethics opinion as he has done in the past?

4. Did circuit err for failing to rule on the issue that trial counsel was ineffective for failing to motion the court to suppress pictures of the crime scene after learning that the fire department washed down the crime scene prior to it being properly documented?

5. Did circuit court err for failing to rule on the fact that 1st appellant counsel Wanda Carter was ineffective for failing to respond to the States claim of harmless error before submitting her final brief?

6. Did circuit court err for failing to rule on the issue of 2nd appellant counsel Jeremy Thompson being ineffective for failing to demonstrate how the State neglected to provide a statutory right to a reasonable opportunity to an independent blood testing was a substantial error, substantive in nature, a structural error that can't be harmless?

7. Did circuit court err in failing to rule on the issue of Trial Judge committed reversible error by failing to disclose the special relationship that his daughter worked in the 11th circuit of Lexington county as a solicitor and did not offer the opportunity to have himself recused as he's done in the past?

8. Did circuit court err by failing to rule on the summary judgement that South Carolina failed its constitutional duty to prove all elements of felony dui/death (§56-5-2945 (a)(2)) beyond a reasonable doubt?

STATEMENT OF THE CASE

Procedural History

Petitioner was in Lexington County for Felony DUI/death (2009-GS-32-5283). On October 12, 2009, the petitioner proceeded to trial by jury on this charge, and at conclusion petitioner was found guilty as charged. The honorable Judge R. Knox McMahon sentenced petitioner to 18 years imprisonment.

Petitioner filed and served a notice to appeal and represented by Wanda Carter chief deputy defender with SC commission on innocent defense who filed an initial brief served on august 19, 2010. The State files an initial return alleging harmless error, Wanda Carter fails to reply to the States return, thus neglecting to address the harmless error issue raised by the State. Final brief filed by the State November 29, 2010. Final brief filed by Wanda Carter December 23, 2010. The petitioner retained attorney Jeremy Thompson, he proposed a consent order of substitution to the court of appeals for the remainder of the appeal May 16, 2011 order of substitution was granted June 9, 2011. Attorney Thompson filed his direct appeal final reply in response to the State's brief October 13, 2011 court of appeals affirmed the conviction February 11, 2012.

The court of appeals ruled that the State denied the petitioner a reasonable opportunity to obtain testing of his own blood sample, and therefore the trial court erred in admitting the results of testing the State performed on its sample of the petitioner's blood see §56-5-2946 (2006) & State versus Lewis 266 SC. 45, 48 finding error to be harmless pursuant to rule 220 (b)(1).

Attorney Thompson filed a petition for rehearing with the court of appeals on February 15, 2012. The court denied the rehearing. The State filed a petition for writ certiorari in the South Carolina Supreme Court on April 9, 2012. Thompson file his petition for writ certiorari in the supreme court of South Carolina on May 2, 2012. The State filed its return to Thompson's petition for writ certiorari in the Supreme Court on May 14, 2012. Thompson filed his reply to the return of the States petition for a writ certiorari in the South Carolina Supreme Court on June 8, 2012. Thompson filed his return to the States petition for writ certiorari in the South Carolina Supreme Court on July 9, 2012. The South Carolina supreme court denied both petitions on august 23, 2013. Petitioner retained attorney Joel F Stroud October 11, 2013, he filed for PCR on July 10, 2014. Petitioner served pro-se amendments to PCR application because of Stroud's refusal to assist February 16, 2016. Petitioner hired Glenn Walters attorney to replace Stroud and assist in PCR, petitioner served amendments to all parties pro-se February 12, 2018. Glenn Walters filed supplemental submissions and amendments to application PCR March 15, 2018. Petitioner pro-se filed and served all parties to reiterate issues for the supplemental submissions and amendments that were factually incorrect April 2, 2018. Petitioner motioned the court for summary judgment rule 56 (c) SCREP by serving it on all parties filed April 9, 2018. Petitioner filed letter pertaining to the issues being submitted pro-se to all parties April 16, 2018. An evidentiary hearing was heard at Lexington county courthouse April 20, 2018. Application for post-conviction was denied and dismissed august 29, 2018. Attorney Glenn Walters filed a 59 (e) that lacked critical issues and evidence on October 1, 2018. Petitioner filed pro-se motion to amend attorney Walters 59 (e) with pertinent issues and evidence for the record October 26, 2018 sent to all parties, application was denied.

ARGUMENT

Issue 1

Trial counsel was ineffective for failing to argue how the State losing the petitioner's blood sample that denied a statutory right to reasonable opportunity to have testing performed by independent qualified person, required dismissal of the charge §56-5-2946-50.

Trial counsel filed a motion to suppress the State's blood results including any and all testimony, evidence, findings, reports, etc. Regarding the testing of the petitioner's blood once counsel learned that the State lost the blood sample, which denied a statutory right to have an independent blood test by a qualified expert of his own choosing see motion to suppress APP. P.1304, APP. P.93L.6-15 AND APP.P.790 L.13-17

Trial Counsel was ineffective for failing to move to dismiss within the motion to suppress see motion to suppress APP. P.1304 and PCR Transcript at APP. P.1139 L.5-13 counsel should have been more aware when the actions by the State (the loss of petitioner's blood sample), prohibited the defense from placing the State's case to any meaningful adversarial test as commanded by the constitution, no fair trial could be had, and therefore counsel should have moved to dismiss the indictment. Where if denied by the trial court, the results of the appeal on this ground would have been different. See court of appeals ruling APP. P.1309, 1310. Petitioner is unaware of any case law where the accused has been denied a reasonable opportunity to independent blood testing performed by a person of his choice and the substantial error be deemed harmless as in court of appeals ruling in the instant case, but to the contrary this court has consistently found this error to be fatal. See State versus Masters 418 SE 2D 550, town of Fairfax versus Smith 330 SE 2D 290, State versus Pipkin 364 SE 2D 464.

The prejudice is also demonstrated in that it universally commands that in all criminal prosecutions defendants must have a meaningful opportunity to present a complete defense. See Holmes v South Carolina 547 US 319 (2006) by depriving the petitioner the opportunity to have conducted "an independent blood analysis" according to statute (SC code §56-5-2946-50) with the sole excuse that the State admittedly lost the defendants blood vial. See APP. P.93 L.6-15 and APP. P.780 L.13-17. This left but one single solution to wit dismissal of the charges based on US courtrooms being an arena that host adversarial contest under the due process clause of the 5th and 14th amendments. If the defense cannot put forth statutory defense tool, any defense base on an impediment created by the State, there is but a single remedy which any attorney acting competent, should have realized, and that was, to move for dismissal of the indictment. As all rights to a fair trial under the due process clause (by virtue of the lost vial of blood) has been taken away.

Issue 2

Trial counsel was ineffective, deficient and prejudicial for not objecting to the arresting officer's failure to produce video of the incident site as required by §56-5-2953 and stipulating to Cayce public safety affidavit in that it cured the requirement under §56-5-2953(b)

Trial counsel was ineffective for not objecting to the arresting officer's failure to produce video of the incident site as required by §56-5-2953 and stipulating to the Cayce public safety affidavit in that cures the requirement under §56-5-2953(b) see APP. P.48 L.9-P.49 L.6. The video requirements of §56-5-2953 are mandatory not optional based on SC supreme court's decision in city of Rock Hill v Suchenski (646 SC 2d879) our appellate courts have strictly construed sec §56-5-2953 and found that a law enforcement agency's failure to comply with these provisions are fatal to the prosecution of a dui case. See Suchenski (holding that dismissal of the charge is an appropriate remedy provided by sec §56-5-2953 a violation of sub sec (a) is not mitigated by sub sec (b) exceptions). Cayce's failure to equip the arresting officer's car does not negate application of the statutory exceptions in sub sec (b). The failure to equip the arresting officer's vehicle with a video camera defeats the intent of legislature and violates the statutory created obligation to video tape dui arrest. Accordingly, Cayce should not be allowed to evade it's duty by relying on an inaccurate account of §56-5-2953 (b) APP. P.48 L.22-P.49 L.3. The solicitor stands on the affidavit admitted cured any requirement under the statute because the officer's car was not equipped with video at the time of incident, which was not supported by law. To construe the affidavit as proposed by Cayce and/or the solicitor would permit law enforcement agency to successfully [circumvent the statue video requirements] ad infinitum by just not requesting video equipment from the Dept. Of Public Safety.

At best legislature gave a grace period to have patrol vehicles equipped with video cameras. Failure by Cayce to comply a decade after enactment of §56-5-2953 unreasonable and constitutes a violation of the statute that warrants a dismissal.

Trial counsel acted as a 2nd prosecutor and prejudice the instant case by stipulating to the Cayce public safety affidavit. See affidavit APP. P.1307, 1308 that proves to be deficient on its face. See city of Greer v humble §402 SC 609 where humbles dismissal was reinstated due to his dui charge affidavit in his case are absent any of the statute created exceptions of §56-5-2953 (b) that would excuse the arresting officer from compliance or mitigate sub sec (a) of the statute. The arresting officer in the instant case (Michael Stone) did not give a valid reason on record or affidavit for failing to video tape the incident site for instance: by offering documentation, that despite concerted efforts to request video cameras from dept. of public safety and the dept. did not or could not comply. Legislature intended for the production of this direct evidence and applied strict sanctions for not complying with statute. The petitioner has shown trial counsel's ineffectiveness for failing to object to the States deficiencies concerning §56-5-2953(production of the crime scene videos) and its prejudice see APP. P.1169 L.17 - P.1170 L.12.

Had trial counsel challenged the sufficiency of the affidavit in that it cures any requirement under §56-5-2953 (b) as published by the solicitor which is unlawful. The outcome would have been different. At the very least, the issue would have been preserved for appeal.

Issue 3

Trial attorney Theo Williams was ineffective for failing to inform the petitioner that the Trial Judge's daughter was employed by the 11th circuit solicitor's office, and Trial Judge had a duty to inform all parties as he has done in the past.

Consistent with an attorney's obligation to provide effective assistance of counsel to his client. Trial counsel failed here, by "omitting either intentionally or inadvertently to recognize admonish the fact to his client that the presiding judge maintained a special relationship (his daughter) was a member of the solicitors office which would be prosecuting the instant case," and Trial Judge had a duty to disclose this matter. Trial attorney Williams was well aware of the appearance of impropriety. Please take notice of testimony concerning State of SC v Rodney C. Bryan July 14, 2008 trial attorney Theo Williams for defendant see APP. P.1119 L.15-P.1120 L.18, APP. P. 1224 L.2-15. Also APP.P. 1232 L.16-P.1233 L.22

As a matter of fact, in testimony before the judicial merit selection commission public hearings "held on 11-15-2011 judge McMahon himself at APP. P.1322 L.2-P.1329 L.14 thought this circumstance important enough (the relationship), and essentially used his personal situation as an example of protocol which should be followed when like circumstances arise. Judge McMahon has written the advisory committee on more than one occasion; in 2008 he was referred to opinion number #11-1999 see APP.P.1322 L.6-25 of the judicial merit selection commission public hearings, and on July 15, 2011 the advisory committee issue an opinion in response to McMahon's request opinion #8-2011 see public hearings APP. P.1326 L.2-18 the committee has consistently opined that judge McMahon may preside in criminal matters where his daughter is employed by the 11th circuit solicitor's office as long as the judge discloses the relationship & disqualifies if any party objects. Opinion 11-1999 and 8-2011 at APP. P.1322 and P.1326 the legal forensics by judge McMahon is deeply rooted in a defendant's constitutional right to obtain a fair trial in front of an impartial judge and jury, where due process requires such a relationship at a minimum, to be formally disclosed on record even when there is only a potential appearance of impropriety. Base on this assessment counsel's failure to convey this known fact to the petitioner prior to trial preventing the objectionable opportunity for the record amounts to ineffective assistance of counsel greatly because Trial Judge not only notified the bar, he instituted procedure and policy to prevent the appearance of impropriety see judicial merit selection commission public hearing 11/15/2011 at APP. P.1322 L.2- P. 1323 L.16

Trial Judge McMahon has also personally disclosed during trial in the 11th circuit Lexington county to all parties including Theo Williams for defendant; during State of SC v Rodney C. Bryan (July 14, 2008 trial date) see above also APP. P.1197 L.6-P.1198 L.2. Armed with this, attorney Williams failed to disclose the prejudicial bias and/or appearance of impropriety known to all parties but me the petitioner. A State and federal constitutional violation see PCR transcript at APP. P.1199 L.10-20.

Prejudice also lies in that, if the petitioner had an impartial judge, he may have ruled correctly in suppressing the States blood at the suppression hearing of Felony DUI trial see APP. P.144 L.20-23 trial counsel has appeared before judge McMahon when he has given the opportunity for recusal leaving no doubt that he knew of the potential appearance of impropriety that judge McMahon's daughter worked for the solicitor's office. I as petitioner state that the above circumstance was a known fact by trial counsel and judge McMahon himself resolving any doubt that all parties except the petitioner was aware of the bias and/or appearance of impropriety. Yet counsel failed to disclose this objectionable opportunity to the petitioner. The duty was owed to the petitioner, and trial counsel was aware as shown above.

Had trial attorney Theo Williams made it known to the petitioner that judge McMahon's daughter worked for the

11th circuit Lexington county solicitor's office and the judge had a duty and/or policy in place with procedures to disclose and recuse himself if any party objects surely, the petitioner would have had judge McMahon recused.

Issue 4

Trial counsel was ineffective for failing to motion the court to suppress pictures of the crime scene after learning that the fire dept. washed down the crime scene prior to it being properly documented.

Trial counsel was ineffective for failing to motion the court to suppress pictures of the crime scene after learning that the fire dept. Washed down the crime scene, disturbing evidence rendering the crime scene unreliable, then officials reconstructed the scene, took pictures of the said evidence, and entered into evidence. Testimony from trial attorney Ben Stitely at PCR hearing shows that he and co-counsel were clearly aware of the fact that evidence was moved before the scene was properly marked with orange spray paint including the victim's body see APP. P.1201 L.6-16 and APP. P.400 L.16-P.401 L.2. Crime scene investigator Reese explains that he had circled some areas before the fire dept. Sprayed everything down (crime scene) APP. P.400 L.16-18. When it was necessary to paint the entire scene to have an accurate depiction of the evidence for the M.A.I.T. team

Trial counsel prejudiced the petitioner by failing to motion the court to suppress the crime scene pictures and evidence due to items (evidence) being manipulated by the fire dept. Spraying down the scene and movement of said evidence. APP. P.422 L.3-11 and APP. P.1203 L.1-20 and APP. P.1209 L.10-13.

The scene reconstruction expert witness Steven Breland confirmed as much during the trial for the purposes of accuracy, admitting that if you are wrong on your assumption of evidence that throws off the conclusion. See APP. P.661 L.5-13. The State should not have been able to use any evidence from the scene due to it being unreliable; after the fire dept. washed everything down before it was properly documented (see APP. P.400 L.16-22). Expert witness Steven Breland testified that there were a lot of scuff marks up and down the road and curve. He also testified to the traffic after the wreck before M.A.I.T. team got there could have caused scuff marks that the state depended on. See APP. P.652 L.23-P.654 L.2. The complete scene should have been properly marked before the fire dept. Sprayed down everything and causing undue prejudice; also rendering the scuff marks found the next day by the M.A.I.T. team unreliable especially when there's no scientific proof that the scuff marks came from the bike or van involved even though the technology existed. See APP. P.655 L.12-23

Issue 5

1st appellant counsel Wanda Carter was ineffective for failing to respond to the States' claim of harmless error before submitting her final brief.

Wanda Carter 1st appellant counsel was ineffective for failing to respond to the States claim that "even assuming the Trial Judge erred in admitting the results of the blood alcohol concentration analysis any error was harmless in light of the absolutely overwhelming evidence establishing the appellant's guilt". See final brief by Wanda Carter see APP. P.824-839, also see the State's final brief APP. P.840-865.

Appellant counsel Wanda Carter prejudice the case neglecting to file a reply to the State's return failing to object to the harmless error issue raised by the State. The failure was harmful to the appeal by limiting the issues to those with in the final brief minus the fatal harmless error issue. By not answering the State's harmless error claim allowed the issue to go uncontested which later proved to be the determining factor of the appeals ruling. See appeals court ruling APP.P.1309,1310 thus preventing any further chance of mentioning the error throughout the remainder of the appeal process. See APP. P.1175 L.21-P.1176 L.3. The erroneous admission of the State's blood test results of the petitioner's sample could never be harmless due to there being absolutely no competent evidence admitted on record that the petitioner drove a vehicle under the influence of alcohol or drugs. After the Court of Appeals found that the Trial Judge erred and the State had failed to comply with statute §56-5-2946-50 regarding a reasonable opportunity to independent blood testing mandating suppression of <u>all</u> testimony, evidence finding, report etc. Regarding testing petitioner's blood. See suppression motion APP. P.1304

Wanda Carter deputy chief appellant defender should have known that in the criminal prosecution for a violation of sec §56-5-2945, the alcohol concentration at the time of test as shown by <u>chemical analysis</u> was the <u>only</u> way provided by the State to determine conclusively whether or not the accused was under the influence of alcohol or drugs see §56-5-2950 (g), (g)1, (g) 3. The denial of reasonable opportunity to independent blood testing is harmful requiring reversal see State v. Masters 418 SE 2D 552 and Town of Fairfax v. Smith 330 SE 2D 290.

Had appellant counsel (Ms. Carter) filed a reply brief showing that the statute §56-5-2950 (g) calls for a chemical analysis to determine if the accused (petitioner) was under the influence of alcohol (.08 or above), and without a chemical analysis the State fails to meet its burden beyond a reasonable doubt according to statute. Had Ms. Carter taken on the above-mentioned affairs the outcome would have been different.

Note: Wanda Carter did not testify to refute any of the accusations at PCR hearing.

Issue 6

2nd appellant attorney Jeremy Thompson was ineffective for failing to demonstrate how the State neglected to provide a statutory right to a reasonable opportunity to an independent blood testing was a substantial error, substantive in nature, a structural error that cannot be harmless.

Appellant counsel Jeremy Thompson was ineffective for failing to demonstrate how the State's unrefuted loss of the petitioner's blood sample created a denial of statutory right to a reasonable opportunity to an independent blood testing was a substantial error, substantive in nature, more appropriately deemed structural as opposed to merely a harmless error see direct appeal unpublished opinion see 2012-up-058 (APP. P.1309,1310)

In reviewing the appeals court conclusion in the instant case:

1) the appellant court openly conceded that the State denied the petitioner a reasonable opportunity to obtain testing of his own blood sample, a substantial right afforded by statute see §56-5-2946, §56-5-2950
2) the trial court erred in admitting the results of testing the State performed on its sample of the petitioner's blood.
Jeremy Thompson established prejudice by failing to acknowledge the following:

The 1st error addressed in the court appeals ruling ("the State denied Jamison a reasonable opportunity to obtain testing of his own blood sample") which remains to be a structural error because it affects "the framework" upon which the trial can proceed fairly, rather than an error at trial. Instead, it happened prior to trial see APP. P.486 L.4-P.487 L.9 and that such a deprivation deprived the petitioner of the very configuration accorded by statute to promote fairness. Without which a trial proceeding could not function as a trial guaranteed under State and/or US constitutional due process, as a method or mode for properly assessing the guilt of the accused. See Arizona v Fulminante 499 US 279. Jeremy Thompson should have shown in his petition for rehearing (appeals ct. Opinion no. #2012-up-058) coupled with the above mention that a denial of a reasonable opportunity to independent blood testing see APP. P.1176 L.14-P.1177 L.24 remains to be a constitutional violation of the 5th and 14th amendments. (State v Lewis 266 SC 45) see APP. P.1254 L.11-P.1255 L.5. The error is also substantive according to §56-5-2946-50, and had fatally crippled the petitioner's case by the deprivation of the only defense provided by statute, see APP. P.1254 L.11-1255 L. 5. Only then did the 2nd error addressed in the court of appeals ruling ("trial court erred in admitting the results of testing the State performed on its sample of Jamison's blood SC code and §56-5-2946") go unchallenged. Clearly eliminating any concept of adversarial process see Chapman v California 386 US 18, 22 (1967) also see Arizona v Fulminante 499 US 308-310 (structural error as opposed to trial error when it involves fundamental framework which allows criminal trials to fairly assess guilt). State and/or Federal constitutional due process requires that a defendant must have a meaningful opportunity to present a complete defense. See Holmes v South Carolina 547 US 319 (2006). After completely examining the appeals court ruling (appeal Opinion no #2012-up-058) (the State denying petitioner reasonable opportunity to have independent blood testing stemming from losing Jamison's blood sample). Thompson should have realized that the violation is/and was harmful and grounds for any competent attorney to ask for a reversal or at least a rehearing. See court of appeals ruling #2012-UP-058 see APP.P.1309,1310 the petitioner is unable to find any case law supporting the State denying the accused a reasonable opportunity to independent blood testing, and erroneously admitting the results of their sample to gain a conviction for felony dui/death and find the fatal error harmless. To the contrary, there is case law that Jeremy was aware of that demands dismissal of the charge. See APP. P. 1254 L. 11-P.1255 L.5 Town of Fairfax v. Smith 330 SE 2D 290, State v Masters 418 SE 2D 552 further demonstrating prejudice.

Issue 7

Trial Judge Royce Knox McMahon committed constitutional and/or reversible error when he failed to disclose the special relationship that his daughter worked in the Lexington County 11th Circuit as an assistant solicitor and neglected to offer the opportunity to have himself recused, as he had done before.

Judge Knotts McMahon testified before the judicial merit selection commission public hearings Nov. 15, 2011 that he wrote the advisory committee on standards of judicial conduct for an opinion regarding his daughter's employment with the 11th circuit Solicitor's office. He received a response dated Feb. 8, 2008 referring him to opinion no.#11-1999 see APP. P.1322 L.6-15 where a magistrate had asked a question concerning the fact that his daughter-in-law was an assistant solicitor in the county in which he had magistrate court. The advisory committee concluded a magistrate may preside over criminal matters in the same county where his daughter-in-law was an assistant solicitor in the county in which he had magistrate court. The advisory committee concluded that a magistrate may preside over criminal matters in the same county where his daughter-in-law is assistant solicitor as long as he discloses the relationship and disqualifies himself if any party objects. See transcript judicial merit selection commission public hearings Nov. 15, 2011 at APP. P. 1322 L.2-25

The petitioner (defendant at trial) maintained a constitutional right to obtain a fair trial in front of an impartial judge and jury where due process requires that such a relationship at a minimum, to be formally disclosed on record even when there is only a potential appearance of impropriety. Mr. McMahon explains how the opinion #11-1999 didn't even envision that there was a potential appearance of impropriety, but however, he did... so he disclosed that to the defense bar so they could review that with their clients. See the judicial merit selection commission public hearings Nov. 15, 2011 at APP. P.1323 L.10-16

Judge McMahon's sworn Statement that was included in the transcript of public hearings merit selection commission (Nov. 15, 2011) exhibit #27 question #6 pg.1-2 at APP. PG.1341 and 1342. His philosophy on recusal was that he would not recuse himself from hearing matters in which his daughter had no involvement in the case. However, he would disclose to each criminal defendant that he has a daughter employed with the 11th circuit solicitor's office and allow the defendant to speak with his attorney and decide whether the defendant wants to have him disqualify himself based on that disclosure. Moreover, that if the defendant or Solicitor's office objects he would withdraw from the case see exhibit #27 question #6 pg.1-2 at APP. PG.1341 and 1342.

Prejudice is exhibited by judge McMahon's failure to adhere to his own philosophy mentioned above and exercise the policy and procedure that he put in place designed to protect the petitioner's due process concerns see judicial merit selection commission at APP. P.1323 L.1-9 and giving the option to the parties whether/or not to have him recused. Especially when judge McMahon has offered the opportunity to have himself disqualified as the ethics opinion commands, and as he has done in the past; see testimony concerning State v. Rodney C. Bryan 2008 (Judge Knox McMahon presiding and Theo Williams as attorney for defendant) at APP. P.1119 L.15-P.1120 L.18, APP P. 1224 L. 2-15 also APP. P. 1232 L.16 - P 1233 L.22.

Had the judge given me (the petitioner) the opportunity to have him recused as he professed in his sworn Statement (exhibit #27 Nov. 15, 2011 judicial merit selection commission transcript public hearings) and also in the matter of State v Rodney C. Bryan 2008, see APP. P.1119 L.15-19. The petitioner most definitely would have had him disqualify himself. An impartial judge may have ruled correctly, where the state negligently lost the petitioner's blood sample thus denying him due process of the law and a reasonable opportunity to independent blood testing requiring dismissal. See Town of Fairfax v. Smith 330 se 2d 290.

Issue 8

The circuit court erred by failing to rule on the summary judgment that South Carolina failed it's constitutional duty to prove all elements of felony dui/death beyond reasonable doubt.

As a matter of law due to the fact that the State has failed its constitutional duty to prove all elements of felony dui/death beyond a reasonable doubt. See judge's charge APP. P.791 L.11-P.792 L.6 summary judgment rule 56 (c) SCRCP should have been granted at P.C.R. There was no genuine issue as to any material fact to the element that the accused (Jamison) drove a vehicle under the influence of alcohol, drugs or both see APP. P.792 L.9-25. There was no competent evidence legally admitted capable of producing an alcohol concentration of .08 at the time of test as required by statute. See §56-5-2950 2008 subsection G (1) G (2) G (3)

The court of appeals ruled that the State denied Andra B. Jamison a reasonable opportunity to independent blood testing, due to the State admittedly losing the blood sample intended for the accused to test see in camera exam by solicitor of nurse's manager Marzol APP. P.92 L.18-P.93 L.15, Mobley's closing argument see APP. P.780 L.13-17

The court of appeals then concluded it was error to admit the results of the findings of the test performed on the State's sample of the accused (Jamison's) blood. See court of appeals ruling State v Jamison opinion no. 2012-UP-058 at APP. P.1309, 1310.

The results must be suppressed and inadmissible where denial of a statutory right to independent blood testing requires dismissal of the charge see SC supreme court opinion town of Fairfax vs smith cited as 285 SC 458. Suppression of the States blood test results dismantles the indictment, where no other evidence existed that rose to the States obligatory burden of proof beyond reasonable doubt that the petitioner drove a vehicle while under the influence of alcohol and/or drugs. See appeals court ruling State v Jamison opinion NO. 2012-UP-058 APP. P.1309, 1310 nor did the court of appeals suggest such.

Due process requires the State to prove every element of the criminal offense. See State vs. Brown 360 SC 581 citing in re Winship 397 US 358, 364 (1970) there was no genuine issue as to any material fact to the element that the petitioner drove a vehicle while under the influence of alcohol, drugs, or both alcohol and drugs, as per statute §56-5-2950 G(1) G(2) G(3). There the petitioner was entitled to a judgment as a matter of law. The case should have been dismissed.

CONCLUSION

For the reasons stated, Petitioner ask this court to grant the petition for Writ of Certiorari.

Respectfully submitted,

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