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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

CARY GLENN RYALS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000570

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BERKELEY) Court of General Sessions
3) Case No. 2015-GS-08-801
4 STATE OF SOUTH CAROLINA)
5 vs.) Transcript of Record
6 CARY GLENN RYALS,)
7 Defendant.)
8) DATE: June 1, 2015

9 B E F O R E:

10 THE HONORABLE KRISTI LEA HARRINGTON

12 A P P E A R A N C E:

13 MASON WEST and KAMILA SZYMCHYNSKA
14 Attorneys for the State

15 FRAMPTON DURBAN
16 Attorney for the Defendant

17 Karen V. Andersen, RMR, CRR
18 Circuit Court Reporter

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1 THE COURT: All right. Ladies and gentlemen, we now
2 will be selecting our first trial for this week.

3 State ready?

4 MR. WEST: Yes, Your Honor.

5 THE COURT: Defense ready?

6 MR DURBAN: We are ready, Your Honor.

7 THE COURT: Ladies and gentlemen, the case we are
8 about to begin is State of South Carolina vs. Cary Glenn
9 Ryals, R-y-a-l-s, defendant. The State alleges that
10 Mr. Ryals is a habitual traffic offender. Mr. Ryals has pled
11 not guilty to this indictment. The State alleges that in
12 Berkeley County, South Carolina, on or about March 1st, 2014,
13 the defendant, Cary Glenn Ryals, did operate a motor vehicle
14 in the state of South Carolina after having been found to be
15 a habitual traffic offender by the South Carolina Department
16 of Motor Vehicles and while the decision of the motor
17 vehicles department prohibiting the defendant from operating
18 a motor vehicle was in effect. This was in violation of
19 56-1-1100 of the South Carolina Code of Laws, 1976 as
20 amended. Mr. Ryals has pled not guilty to this indictment.

21 Is there any member of the jury panel that knows
22 anything about this case other than what I have just read to
23 you? If so, please stand.

24 (No response from the jury.)

25 THE COURT: Thank you. There are none. Mr. Durban,

1 if you will please stand, introduce your client and
2 yourself.

3 MR DURBAN: My name is Frampton Durban. I'm an
4 attorney. I practice in North Charleston, South Carolina.
5 This is my client, Cary Ryals.

6 THE COURT: Is there any member of the jury panel
7 related by blood, marriage, close personal friend, ever have
8 any business, personal or professional dealings, or know
9 Mr. Ryals in any way? If so, please stand.

10 (No response from the jury.)

11 THE COURT: Thank you. There are none. Any member
12 of the jury panel related by blood, marriage, close personal
13 friend, ever have any business, personal or professional
14 matters or been represented by Mr. Durban? If so, please
15 stand.

16 THE COURT: Yes, Mr. Rossington?

17 PROBATION OFFICER: I've had cases with Mr. Durban
18 over the years.

19 THE COURT: Tell me your juror number.

20 PROBATION OFFICER: Juror 163.

21 THE COURT: Anything about that that would affect
22 your ability to be fair and impartial in this case?

23 PROBATION OFFICER: No, ma'am.

24 THE COURT: All right. Thank you.

25 Anyone else?

1 (No response from the jury.)

2 THE COURT: Thank you. There are none.

3 Mr. West, if you would please stand, introduce
4 yourself and any persons who may be assisting you throughout
5 this trial.

6 MR. WEST: Thank you, Your Honor.

7 Good morning, ladies and gentlemen. My name is
8 Mason West. I work for the Ninth Judicial Circuit
9 Solicitor's Office here in Berkeley County. That includes
10 Charleston County as well, as we have one circuit under
11 Scarlet Wilson.

12 Helping me with this trial this week will be Ms.
13 Kamila Szymczynska.

14 THE COURT: Is there any member of the jury panel
15 related by blood, marriage, close personal friend, ever have
16 any business, personal or professional dealings, ever have
17 any matters handled by Mr. West, Ms. Szymczynska, or anyone
18 in the Ninth Circuit Solicitor's Office? If so, please
19 stand.

20 (No response from the jury.)

21 THE COURT: Thank you. There are none.

22 And, ladies and gentlemen, I will give you an
23 opportunity to come forward and speak with me at the end,
24 just like I did during the general qualifications.

25 The list of potential witnesses who may be called to

1 testify in this case are John Ellwood with the Hanahan Police
2 Department; David Kornahrens, with the Hanahan Police
3 Department; and Marie Waring, with the South Carolina
4 Department of Motor Vehicles.

5 Is there any member of the jury panel related by
6 blood, marriage, close personal friend to any of those
7 individuals? Please stand.

8 Yes, Juror number and name?

9 PROSPECTIVE JUROR: 59, Jennifer Ellwood. John
10 Ellwood is my ex-husband.

11 THE COURT: Is there anything about that that would
12 affect your ability -- order.

13 PROBATION OFFICER: Probably not.

14 THE COURT: And I do that same thing too. I say, I
15 hope not, or, I think so. Is there anything about your prior
16 relationship with one of the witnesses who would affect your
17 ability to be fair and impartial in this case?

18 PROSPECTIVE JUROR: Um --

19 THE COURT: I'm going to protect you from the trial
20 of this case. I'm also selecting another jury right after
21 this. And I do not anticipate Mr. Ellwood is listed as a
22 witness. So you do not have to answer any more questions,
23 Ms. Ellwood, about this case. And your juror number, please?

24 PROBATION OFFICER: 59.

25 THE COURT: 59 is protected from the trial of this

1 case. Thank you.

2 Is there anyone else?

3 (No response from the jury.)

4 THE COURT: Thank you. There are none.

5 Is there any member of the jury panel that is
6 employed by or ever been employed by or has some relationship
7 with the Hanahan Police Department or the South Carolina
8 Department of Motor Vehicles? If so, please stand. Previous
9 employment, current employment, anything of that nature,
10 please stand.

11 (No response from the jury.)

12 THE COURT: Thank you. There are none. Any member
13 of the jury panel a certified law enforcement officer in any
14 capacity, not Hanahan Police Department, please stand.

15 (No response from the jury.)

16 THE COURT: Thank you. There are none.

17 Any additional questions, Mr. West?

18 MR. WEST: No, Your Honor.

19 THE COURT: Mr. Durban?

20 MR DURBAN: None for the defendant. Thank you.

21 THE COURT: Ladies and gentlemen, my final question
22 to you, you've heard only what I have read to you in the
23 indictment. Mr. Ryals has pled not guilty to this
24 indictment. But if you feel that you would be unable to
25 listen to the facts from the witness stand, apply the law as

1 I give it to you, and render a verdict based only upon those
2 things free from any outside influence, any personal,
3 political, moral or religious beliefs, for whatever reason,
4 if you feel that this would not be the case for you to sit as
5 a juror, please come forward at this time.

6 (No response from the jury.)

7 THE COURT: Thank you. There are none.

8 Strikes are five and five. Let's pick two
9 alternates.

10 THE CLERK: Ladies and gentlemen of the jury panel,
11 as I call your names, please come forth and bring your
12 personal belongings with you and follow the instruction of
13 our bailiff.

14 If I say, seat the juror, please have a seat in the
15 jury box. If I say, excuse the jury, please return to your
16 original seat.

17 Juror 112, Madeline Lee. What say you for the
18 State?

19 MR. WEST: Please seat the juror.

20 THE CLERK: What says the defense?

21 MR. DURBAN: Please seat the juror.

22 THE CLERK: Seat the juror.

23 Juror 8, Faith Barrineau. What says the State?

24 MR. WEST: Please seat the juror.

25 THE CLERK: What says the defense?

1 MR DURBAN: Please excuse the juror.

2 THE CLERK: Excuse the juror.

3 Juror 122, Cynthia McBride. What say you for the

4 State?

5 MR. WEST: Please seat the juror.

6 THE CLERK: What says defendant?

7 MR DURBAN: Please seat the juror.

8 THE CLERK: Seat the juror.

9 Juror 207, Christopher Wright. What says the State?

10 MR. WEST: Please seat the juror.

11 THE CLERK: What says the defense?

12 MR DURBAN: Seat the juror.

13 THE CLERK: Seat the juror.

14 Juror 134, Kevin Mizzell, Sr. What says the State?

15 MR. WEST: Please excuse the juror.

16 THE CLERK: Excuse the juror.

17 Juror 7, Shannon Armstrong. What says the State?

18 MR. WEST: Please seat the juror.

19 THE CLERK: What says the defendant?

20 MR DURBAN: Please seat the juror.

21 THE CLERK: Seat the juror.

22 Juror 140, Kenneth Owens, Jr. What says the State?

23 MR. WEST: Please seat the juror.

24 THE CLERK: What says the defendant?

25 MR DURBAN: Please excuse the juror.

1 THE CLERK: Excuse the juror.
2 Juror 35, Wade Camlin. What says the State?
3 MR. WEST: Please seat the juror.
4 THE CLERK: What says the Defendant?
5 MR DURBAN: Please seat the juror.
6 THE CLERK: Seat the juror.
7 Juror 130, Jarrett Miller. What says the State?
8 MR. WEST: Please seat the juror?
9 THE CLERK: What says the Defendant?
10 MR DURBAN: Please seat the juror.
11 THE CLERK: Seat the juror.
12 104, Lisa Kaempf. What says the State?
13 MR. WEST: Please seat the juror.
14 THE CLERK: What says the Defendant?
15 MR DURBAN: Please excuse the juror.
16 THE CLERK: Excuse the juror.
17 Juror 58, Elijah Egnor. What says the State?
18 MR. WEST: Please seat the juror.
19 THE CLERK: What says the Defendant?
20 MR DURBAN: Please seat the juror.
21 THE CLERK: Seat the juror.
22 Juror 68, Robert Fuller. What says the State?
23 MR. WEST: Please excuse the juror.
24 THE CLERK: Excuse the juror.
25 Juror 119, Mary Martin. What says the State?

1 MR. WEST: Please seat the juror.
2 THE CLERK: What says the Defendent?
3 MR DURBAN: Please seat the juror.
4 THE CLERK: Seat the juror.
5 Juror 203, Michael Wittchow, Jr. What says the
6 State?
7 MR. WEST: Please seat the juror.
8 THE CLERK: What says the Defendent?
9 MR DURBAN: Please seat the juror.
10 THE CLERK: Seat the juror.
11 Juror 139, Lonnie Osborne. What says the State?
12 MR. WEST: Please seat the juror.
13 THE CLERK: What says the Defendent?
14 MR DURBAN: Please seat the juror.
15 THE CLERK: Seat the juror.
16 Juror 182, Trittney Smith. What says the State?
17 MR. WEST: Please seat the juror.
18 THE CLERK: What says the Defendent?
19 MR DURBAN: Please seat the juror.
20 THE CLERK: Seat the juror.
21 Juror 198, Nicholas Watkins. What says the State?
22 MR. WEST: Please excuse the juror.
23 THE CLERK: Excuse the juror.
24 Juror 66, Amy Hartley, what says the State?
25 MR. WEST: Please seat the juror.

1 THE CLERK: What says the Defendent?
2 MR DURBAN: Please seat the juror.
3 THE CLERK: Seat the juror.
4 Our first alternate, Juror 99, Zeporia Jefferson.
5 What says the State?
6 MR. WEST: Please seat the juror.
7 THE CLERK: What says the Defendent?
8 MR DURBAN: Please excuse the juror.
9 THE CLERK: Excuse the juror.
10 Juror 82, George Guest. What says the State?
11 MR. WEST: Please seat the juror.
12 THE CLERK: What says the Defendent?
13 MR DURBAN: Please seat the juror.
14 THE CLERK: Seat the juror.
15 Alternate two. Juror 165, Rufus Rucker. What says
16 the State?
17 MR. WEST: Please seat the juror.
18 THE CLERK: What says the Defendent?
19 MR DURBAN: Please seat the juror.
20 THE CLERK: Seat the juror.
21 THE COURT: Any motions or matters pertaining to the
22 jury selection from the State.
23 MR. WEST: Nothing from the State, Your Honor.
24 THE COURT: From the Defendant?
25 MR DURBAN: Nothing from the Defense, Your Honor.

1 THE COURT: Ladies and gentlemen, you have been
2 selected as the jury to try this case. We will not begin the
3 jury -- the trial today. We are going to begin tomorrow at
4 10 a.m. So you will be excused for today. But please report
5 back at 10 a.m. The bailiffs are going to take your
6 telephone numbers and give you instructions on how to report
7 in the morning.

8 Please remember I'm going to give you just simple
9 instructions over the evening hours, and, please, these will
10 always be considered by admonition or my instructions, so
11 please pay close instruction. Until you have been discharged
12 from this case, you cannot perform any investigation,
13 research or experiment of any kind either on your own or as a
14 group about this case. Please do not look up in any
15 dictionaries or encyclopedias general information or the
16 meaning of words discussed in this trial. Do not look up
17 anything on the Internet or anywhere else concerning this
18 case, any of the people involved. That includes the
19 witnesses, the defendants, the attorneys involved, as well as
20 the judge. Do not go to the scene where any of the events
21 that are the subject of this trial are alleged to have taken
22 place or use any Internet, maps, or Google Earth, or any
23 other program or device designed to search or view anyplace
24 discussed in this case.

25 You must not have any discussions regarding this

1 case or make any entry on Facebook, MySpace, LinkedIn, or any
2 other Internet social media site. And that includes all
3 forms of communication, oral, written, or electronic. And
4 that includes texting, blogging, tweeting, anything of that
5 nature.

6 Please understand, I am giving these instructions to
7 ensure that fairness is done to the parties in front of you
8 today. Your actions could jeopardize the result of this
9 trial if you violate my instructions. If you become aware of
10 another juror's violations of my instructions, you must
11 report that to me immediately.

12 Ladies and gentlemen, simply put, you must not
13 discuss this case with anyone, and that includes your fellow
14 jurors in any form. That includes face-to-face discussion or
15 any electronic communications. And you may not research this
16 case in any way. What you know about this case must only
17 come from what you hear in the courtroom.

18 Please report back no later than 10 a.m. in the
19 morning. The bailiffs will instruct you, as I said, on how
20 to get into the courtroom and what time you need to be here.
21 Please rise and the jury will be escorted out. Thank you.

22 (Whereupon, the jury leaves open court at 11:53
23 a.m.)

24 THE COURT: Outside the presence of the jury, any
25 motions or matters?

1 MR. WEST: Nothing from the State, Your Honor.

2 MR DURBAN: Nothing from the defense.

3 THE COURT: Ladies and gentlemen, anything before we
4 begin the selection for the next case?

5 (Whereupon, the trial adjourns for the day.)

6 (Whereupon, the trial begins on June 2, 2015.)

7 THE COURT: Mr. West, just place on the record what
8 transpired over the evening hour.

9 MR. WEST: Thank you, Your Honor. As Your Honor
10 knows, we just had a conversation in chambers that the State
11 was -- at least the Solicitor's Office was not in possession
12 of the in-car video of the traffic stop related to this
13 offense until yesterday afternoon. Officer Ellwood with the
14 Hanahan Police Department gave me a telephone call and he
15 said that he has discovered the video for the traffic stop.

16 Prior to that phone call, it was the State's
17 understanding, as well as several of the officers at Hanahan
18 Police Department, that the video was not in evidence. It
19 was not in the case file. We had requested it numerous
20 times, but it was not in the case file.

21 Officer Ellwood could go into more detail about the
22 change in video systems that Hanahan Police Department went
23 in. But he was able to recover a copy of that video
24 yesterday afternoon.

25 As soon as I received that call, I notified Your

1 Honor and defense counsel. I was personally driven by my
2 investigator, Mr. David Young, to the Hanahan Police
3 Department. We retrieved a copy of that video. I personally
4 hand-delivered the video to Mr. Durban's office around four
5 o'clock yesterday afternoon. The video is a little over 20
6 minutes long. Everything in the video was transcribed in the
7 reports that I've been provided in Rule 5, Your Honor. But,
8 certainly, the State understands if Mr. Durban needs time to
9 review the video with his client to review that.

10 THE COURT: Was the request for a video made in Rule
11 5?

12 MR. WEST: It was, Your Honor.

13 THE COURT: Mr. Durban?

14 MR DURBAN: Your Honor, I just need time to review
15 it with my client.

16 THE COURT: All right. So you set that up so he can
17 review it in the interview room.

18 MR. WEST: He has it logged in and ready on his
19 computer to review with his client currently, Your Honor.

20 THE COURT: All right. Let's do it now. Into the
21 interview room.

22 (A recess transpired.)

23 THE COURT: Are there any other matters I can attend
24 to related to this case while we are waiting?

25 MR. WEST: Nothing more, Your Honor.

1 (Whereupon, recess transpired.)

2 (State's Exhibit No. 1, DMV Driving Record of Cary
3 Ryals, was marked for identification.)

4 (State's Exhibit No. 2, Notice of Habitual Traffic
5 Offender Status, was marked for identification.)

6 (State's Exhibit 3, DMV Driving Record of Cary
7 Ryals, was marked for identification.)

8 (State's Exh. 4, In-Car video from Cpl. J. Ellwood,
9 was marked for identification.)

10 THE COURT: Mr. Durban, do you need any additional
11 time?

12 MR DURBAN: No, Your Honor. We are prepared.

13 THE COURT: All right. Anything before we bring in
14 the jury?

15 MR. WEST: Nothing from the State, Your Honor.

16 MR DURBAN: Nothing from the defense.

17 THE COURT: Thank you.

18 Mr. Osborne has been selected as the foreperson.
19 Please make sure they have their notepads. Thank you.

20 (Whereupon, the jury returns to open court at 10:51
21 AM.)

22 THE COURT: Thank you. Please be seated. Ladies
23 and gentlemen, I appreciate your patience. There were
24 matters unrelated to this case that I had to take up outside
25 of your presence. I am your chief administrative judge for

1 the Ninth Circuit. So there may be other matters going on or
2 people coming in and out and it is unrelated to this case.
3 So I appreciate your patience.

4 You have been handed notepads, which means that you
5 may take notes throughout the progress of this trial. I
6 caution jurors, some of us are much better note takers than
7 other. One juror's notes are no more correct or accurate
8 than another juror's notes. You will be allowed to take
9 those notes with you during your deliberation.

10 If during your deliberation, you need to have some
11 testimony played back, we will bring you back into the
12 courtroom, and you may hear that. So don't feel like you
13 have to take down the testimony word for word.

14 Mr. Osborne, you have been selected as the
15 foreperson. And you are the jury spokesperson here in court.
16 So if at any time you need any additional breaks or anything
17 else, if you will please alert your foreperson, and he will
18 alert the bailiffs and we will take care of that matter as
19 soon as possible.

20 You may have noticed when you came in this time, the
21 attorneys and the parties involved in this case and the
22 members of the audience were standing. This is out of
23 respect for your new position as judges of the facts. So
24 please come in, take a seat, because everyone will remain
25 standing until all 14 of you are seated.

1 At this time we must now administer an oath. Please
2 stand.

3 (Whereupon, the jury is sworn.)

4 THE COURT: Was there any member of the panel who
5 could not take the oath? If so, please stand.

6 (No response from the jury.)

7 THE COURT: Thank you. All 14 jurors have complied
8 with the oath.

9 Did every member of the jury panel comply with the
10 Court's instructions over the evening hour? If you did not
11 comply with my instructions, please stand.

12 (No response from the jury.)

13 THE COURT: Thank you. All 14 jurors have indicated
14 that they have complied with the Court's instructions.

15 Ladies and gentlemen, the case that we are about to
16 try is the case of the State vs. Cary Ryals, defendant.
17 Before we begin this trial, I would like to take this
18 opportunity to explain to you what is happening. Most people
19 don't have the opportunity to come to court as you are doing
20 now, and most people get their idea of what happens in the
21 courtroom from watching television or movies or reading
22 books. Most of the time when you are watching television,
23 those shows are full of intense circumstances and riveting
24 drama. And while some of that may be true during this trial,
25 please remember, this trial is not for your entertainment.

1 It is a fundamental part of our democracy, a search for the
2 truth in an effort to make sure justice is done between the
3 parties before you here today. Sometimes that is very slow,
4 repetitive and deliberate, the opposite of what you may have
5 seen on television, seen in movies or read in books.

6 This courtroom is a place of honor. It is dedicated
7 to the protection of citizens rights through what many have
8 called the greatest justice system ever created. The
9 attorneys that appear before you are advocates for the
10 parties they represent. But first and foremost, they are
11 officers of this court. They are sworn to uphold the
12 integrity and the fairness of our judicial system. You
13 should expect them to be professional, competent and ethical
14 in the representation of their client's interest. Please
15 remember that you have just taken an oath, and you are also
16 expected to be professional, reasonable, and ethical. Thank
17 you again for accepting this most important responsibility of
18 jury service and for your contribution to our justice system
19 here today.

20 What I now say is, again, intended to serve as an
21 introduction to the trial of this case. These remarks are
22 not a charge on the law. I will explain the law to you
23 throughout the trial when it becomes applicable and at the
24 end of the trial after you have heard the testimony from the
25 State and the defendant, the witnesses that may be presented,

1 as well as the closing arguments from the State and the
2 defendants. And then I will instruct you on the law
3 applicable to this case. This is the explanation that we may
4 be following.

5 The defendant is charged with an indictment filed in
6 this court with a crime of habitual traffic offender. I will
7 explain the elements of that charge to you later. The
8 indictment, as I indicated to you yesterday, is simply the
9 charge by which this case is brought into court. It is not
10 in any sense evidence of the allegations that it contains.

11 The defendant has pled not guilty to this
12 indictment. The State has the burden of proving each of the
13 elements of the indictment beyond a reasonable doubt. It is
14 your duty, ladies and gentlemen, to decide whether the State
15 has met that burden. Your purpose as jurors is to find and
16 determine the facts. You are the sole judges of the facts in
17 this case. If at any time I make any comment regarding the
18 facts, you must disregard it. You are to determine the facts
19 from the testimony you hear and any other evidence that is
20 introduced in court. It is up to you to determine the
21 inferences which you feel may be properly drawn from the
22 evidence.

23 It is important that you perform your duty of
24 determining the facts diligently and conscientiously, because
25 ordinarily, there is no way to correct an erroneous

1 determination of the facts by a jury.

2 On the other hand, and with equal emphasis, the same
3 law that makes you the judges of facts makes me the judge of
4 the law. The law as given by this Court is the only law you
5 may consider. You must accept it and follow it even though
6 you may disagree with it. I cannot tell you what I think the
7 facts are. And you cannot disagree with me about what the
8 law is or what the law ought to be. Your job is to take the
9 law as I give it to you and apply it to the facts as you find
10 it from the testimony of the witnesses and any other exhibits
11 that may be made part of the record in this case. After
12 doing that, you will render your verdict, a true and just
13 verdict under the solemn oath that you just took.

14 Until I advise you to begin your deliberations,
15 please remember all of my admonitions: Do not discuss this
16 case with anyone; do not read, watch, listen to any news
17 accounts regarding this case should there be any; and do not
18 do any independent investigation.

19 Ladies and gentlemen, when we break for lunch or for
20 the evening hour, you may see some of the attorneys or the
21 parties in the hallway or in the parking lot. If they do not
22 speak to you, they should not speak to you. Please do not
23 think they are being rude. They are following the Court's
24 instructions.

25 If you become aware of another juror's violations,

1 you must report that to me immediately. It is important that
2 you keep an open mind and not decide any issue in this case
3 until all of the evidence has been presented, the parties
4 have made their closing arguments, and I have instructed you
5 on the law applicable to this case. It is your solemn
6 responsibility to determine the guilt or innocence of the
7 defendant. And your verdict must be based solely on the
8 evidence as it is presented to you in this trial and on the
9 law as I instruct you during and at the close of this trial.

10 In just a moment, the solicitor will make what is
11 called an opening statement in which the solicitor will
12 explain to you what the issues in this case are, or at least
13 what the solicitor believes the issues are. The attorney for
14 the defendant may also make an opening statement, although he
15 is not required to do so at this time.

16 The evidence in this case will be presented to you
17 from the testimony of sworn witnesses from the witness stand
18 as well as any exhibits that may be introduced into evidence.
19 From time to time, you may hear one of the attorneys ask to
20 approach the bench, or I might find it necessary to excuse
21 you from the courtroom for a short while. Please do not
22 think that we are trying to hide anything. When I do this,
23 it is necessary sometimes for me to make a comment on the
24 facts in order to issue a ruling on the law. So I might
25 excuse you so that in no way anything that I say or do in the

1 ruling on the law will influence you as to your findings of
2 the facts.

3 In determining what the true facts are, you must
4 decide whether or not the testimony you hear is believable.
5 It is my responsibility to determine and rule as a matter of
6 law whether certain testimony is admitted. But once it is
7 admitted, whether or not you believe it is solely for you to
8 determine.

9 In deciding whether to believe a witness, you have
10 the right to consider the interest of the witness, the bias
11 of the witness, the prejudice of the witness, the opportunity
12 for the witness to have seen and heard the things about which
13 the witness testifies, as well as the way the witness acts on
14 the witness stand. That means you have the right to consider
15 anything in the record that will help you evaluate the
16 testimony of the witnesses. Please pay close attention. Do
17 not let your thoughts wander. So after you've heard all of
18 the testimony, you have heard closing arguments on behalf of
19 counsel, and I have instructed you on the law applicable to
20 this case, you will be in a position to determine what the
21 true facts are, apply those facts to the law, and render a
22 true and just verdict.

23 Please give your attention, Mr. West.

24 MR. WEST: Thank you, Your Honor. May it please the
25 Court.

1 Ladies and gentlemen of the jury, everyone knows we
2 live in a state that requires you to have a valid driver's
3 license in order to drive on our roads. This is a case about
4 a defendant that didn't have a valid driver's license. As
5 basic and simple as a premise as that is, that's what this
6 case boils down to. It's not sexy, not a TV drama, but laws
7 are not made to be broken.

8 So what you are going to hear is from Officer
9 Ellwood of the Hanahan Police Department. He's going to talk
10 about a traffic stop he conducted on this defendant, while he
11 was driving a black Corvette in the town of Hanahan in
12 Berkeley County. He's going to tell you how he asked for a
13 driver's license. And Mr. Ryals was unable to produce a
14 driver's license because it was suspended.

15 You are also going to hear from Ms. Wearing from the
16 Department of Motor Vehicles. And she is going to describe
17 to you how this defendant has been declared a habitual
18 traffic offender under our laws in South Carolina. What that
19 means is that this wasn't his first suspension. She's going
20 to produce records that shows that he had been convicted at
21 least three times of driving under suspension, which requires
22 him to be declared a habitual traffic offender under our
23 laws.

24 As basic and simple as it gets, ladies and
25 gentlemen, you are going to hear the testimony from the

1 officers. You are going to hear from the Department of Motor
2 Vehicles. You are even going to see a video of the traffic
3 stop. At the end of this trial, I'm going to ask you to
4 return a verdict of guilty for the defendant for being a
5 habitual traffic offender. Thank you.

6 THE COURT: Mr. Durban.

7 MR DURBAN: Thank you, Your Honor. May it please
8 the Court. Counsel.

9 Jury, I'm Frampton Durban. I'm an attorney. I am
10 pretty pleased to be sitting next to Cary Ryals representing
11 him on this charge, which is a bit of an unusual charge.
12 Solicitor said it's not sexy, but it's an unusual charge.
13 It's a two-level, as the judge is going to instruct you later
14 on during this trial, process. There have to be records
15 indicating that Mr. Ryals meets the definition that's
16 included in the statute, which you will hear from Judge
17 Harrington later in this trial; that he had more than one
18 conviction for different offenses, certain offenses; and that
19 he was then driving a motor vehicle, caught driving a motor
20 vehicle under those suspensions and as a habitual traffic
21 offender. It is a criminal offense. You are in criminal
22 court here today.

23 I just want to reiterate what Judge Harrington began
24 this trial by telling you. Truth is what we are looking for
25 here. We are looking for the truth and the facts. What

1 comes from that witness stand is the only evidence that you
2 are going to hear or see today. Nothing that comes out of my
3 mouth is evidence. Nothing that comes out of Mr. West's
4 mouth is evidence, just what you hear from up there. And you
5 are the sole providers of what those facts -- which of those
6 facts are the truth.

7 So you are going to see a video today of the traffic
8 stop. I ask you, please, just to pay attention to what's
9 going on, to listen to the evidence. Formulate your own
10 decision on whether you believe that Mr. Ryals is guilty of
11 this offense or not. You are going to see the traffic stop
12 that led to his being arrested under this charge. I ask you,
13 please, to watch it carefully.

14 Judge Harrington will charge you on the elements of
15 the offense. We all remember from somewhere back in school
16 seeing the periodic table of elements. The periodic table of
17 elements are the building blocks of all matter. The elements
18 of a crime are the parts that must be proven by the State in
19 order to convict. And each of those elements must be proven,
20 as Judge Harrington already told you, beyond a reasonable
21 doubt.

22 So what I ask you to do is to consider the evidence,
23 to listen to what's going on here, and to make an opinion on
24 the facts. We are asking you to find that Mr. Ryals is not
25 guilty of this offense. Thank you.

Jon Ellwood - Direct by Mr. West

29

1 MR. WEST: Thank you, Your Honor. The State calls
2 Officer Jon Ellwood.

3 JON ELLWOOD,

4 having been duly sworn, testifies as follows:

5 THE CLERK: State your full name and spell
6 your last name for the record.

7 THE WITNESS: My name is Officer Jon Ellwood.
8 Last name is E-L-L-W-O-O-D.

9 DIRECT EXAMINATION

10 BY MR. WEST:

11 Q. Officer Ellwood where do you work?

12 A. I work for the Hanahan Police Department.

13 Q. How long have you worked there?

14 A. Little over four years.

15 Q. What is your rank and title?

16 A. My rank is corporal. I am a patrol assistant
17 supervisor and a canine handler.

18 Q. Were you working on March 4th, 2014, in the same
19 capacity?

20 A. Yes, sir, I was.

21 Q. Excuse me, March the 1st of 2014.

22 A. That as well.

23 Q. Did you ever encounter this defendant on March the
24 1st of 2014?

25 A. Yes, sir, I did.

1 Q. Could you describe for the jury how?

2 A. It was on a traffic stop. The -- I was on patrol in
3 the area of near Tanner Ford. I observed a black-in-color
4 Corvette as he approached the southbound North Rhett. He
5 failed to signal 100 feet prior, actually right as he was
6 making the turn. I continued to follow behind the vehicle.
7 Noticed it was traveling somewhat slow, slower than the
8 posted speed limit.

9 As I was behind the vehicle, I observed the vehicle
10 drifting into the lane a little bit. It actually drifted
11 enough over that the two wheels touched the right fog lane
12 some time. I continued behind the vehicle. Knowing just
13 from my training and experience as a police officer that that
14 type of driving behavior could be consistent with impaired
15 driving. After observing the driving behavior and the
16 violation, I conducted a traffic stop at the intersection.

17 Q. Was that in Berkeley County?

18 A. Yes, sir.

19 Q. Is the person that you stopped during that traffic
20 stop in the courtroom today?

21 A. Yes, sir, he is.

22 Q. Could you please point out the person that you
23 stopped?

24 A. That would be the defendant, Mr. Ryals.

25 Q. What is he wearing?

1 A. White shirt with green stripes.

2 Q. Did you ever call anybody to assist you on the stop?

3 A. Yes, sir, I did.

4 Q. Who was that?

5 A. Officer Kornahrens, also with the Hanahan Police
6 Department.

7 Q. Once you stopped the defendant, did you ever speak
8 with him?

9 A. Yes, sir, I did.

10 Q. Describe your interaction with the defendant at the
11 time of the stop.

12 A. As the vehicle came to a stop, I approached the
13 vehicle, introduced myself and explained the reason why I had
14 conducted the traffic stop. During the course of the traffic
15 stop, I requested Mr. Ryals, who was the driver, to provide
16 me with his driver's license, vehicle insurance and
17 registration. At which point, the passenger in the vehicle
18 actually stated that he was the owner of the vehicle and
19 provided the registration and insurance. Mr. Ryals was not
20 able to provide me with a driver's license. He actually
21 mistakenly handed me someone else's driver's license. I
22 believe it was actually the passenger.

23 Based on the driving behavior, my concern at this
24 point was again possibly driving impaired. I requested he
25 step out of the vehicle and speak with Officer Kornahrens,

1 who has a higher level of education for impaired driving to
2 make sure he wasn't driving impaired.

3 Q. Was defendant ever able to produce a driver's
4 license?

5 A. No, sir, he was not.

6 Q. Did you ever learn what the status of his driver's
7 license was?

8 A. Yes, sir. I was informed it was, through DMV, that
9 it was suspended.

10 Q. Okay. Was your car equipped with an in-car camera?

11 A. Yes, sir.

12 Q. Was that camera operable on March the 1st of 2014?

13 A. Yes, sir.

14 Q. I show the witness what has been pre-marked as
15 State's Exhibit 4. Do you recognize this item?

16 A. Yes, sir, I do.

17 Q. And how?

18 A. This is my signature.

19 Q. And what is that?

20 A. This is the DVD of the video of the traffic stop
21 that is produced from our server that stores our video.

22 Q. Is it a true and accurate depiction of the traffic
23 stop that was conducted on that day?

24 A. Yes, sir, it is.

25 Q. Has anything been altered, modified, changed or

1 deleted on that recording?

2 A. No, sir.

3 MR. WEST: At this time, the State would ask State's
4 No. 4 be admitted into evidence.

5 THE COURT: Any objection?

6 MR DURBAN: No objection, Your Honor.

7 THE COURT: State 4 into evidence without objection.

8 (State's Exhibit 4 was received in evidence.)

9 BY MR. WEST:

10 Q. Officer Ellwood, while this is queuing up, feel free
11 to describe the events that you just testified to as the
12 video is playing.

13 A. Yes, sir.

14 (Video playing.)

15 A. This is as we approached the turn, talked about he
16 signaled as he was starting the turn rather than 100 feet
17 prior to the turn.

18 (Video playing.)

19 A. To the left, you can see my speed behind him is 39
20 miles per hour in a 55 miles per hour zone, where I was
21 talking about driving a little bit slower than you generally
22 find. You can see the vehicle drifting through -- there's
23 another instance of the vehicle kind of drifting inside the
24 lane.

25 (Video playing.)

1 A. This is just while they were letting Officer
2 Kornahrens know why I requested he help me out. I was
3 concerned about possibly impaired driving. There Mr. Ryals
4 is getting out of the driver's seat.

5 (Video playing.)

6 A. This is us basically giving dispatch the driver
7 information, because he didn't have a driver's license for a
8 status check and warrant check, which we do on all traffic
9 stops.

10 Q. Officer Ellwood, was that an accurate depiction of
11 the encounter you had with Mr. Ryals on that day?

12 A. Yes, sir, it was.

13 Q. Now, on that video, you indicated that you were
14 arresting him for driving under suspension. At what point
15 did you decide to charge him as being a habitual traffic
16 offender?

17 A. After we went to the station to do the booking
18 process and write the citation, when we went back, we did a
19 printout. And I saw that he already been deemed as a
20 habitual traffic offender and had several suspensions ending
21 indefinitely. But given the habitual traffic offender, at
22 that point, I charged the habitual rather than just a simple
23 driving under suspension.

24 Q. Did you charge him with anything else on that --

25 A. No, sir.

1 MR. WEST: Thank you. No further questions for this
2 witness at this time.

3 CROSS-EXAMINATION

4 BY MR DURBAN:

5 MR DURBAN: May it please the Court.

6 Q. Officer Ellwood, you did not charge him with driving
7 under suspension, that's what you arrested him for and took
8 him to the station; is that correct?

9 A. Yes, I charged him with habitual traffic offender.

10 Q. And you indicated that you were patrolling in the
11 area of Tanner Hall at the time that you stopped Mr. Ryals?

12 A. Yes, sir.

13 Q. And you are aware that there is a Bi-Lo right close
14 to that intersection there?

15 A. Yes, sir.

16 Q. And that you were actually sitting in the parking
17 lot of the Bi-Lo three or four cars down from where Mr. Ryals
18 was sitting in the Corvette prior to making this traffic
19 stop; is that correct?

20 A. I was working a collision. I'm not sure where the
21 Corvette was at the time.

22 Q. But you were in the parking lot of the Bi-Lo?

23 A. Yes, sir.

24 Q. So you pulled out of the parking lot of the Bi-Lo,
25 that's what the beginning of this DVD is, pulling out of the

1 Bi-Lo parking lot on to Tanner Hall; is that correct?

2 A. Yes, sir.

3 Q. And at that point in time, you activated your camera
4 prior to turning on your blue lights; is that correct?

5 A. Yes.

6 Q. Why did you do that?

7 A. I was patrolling the area. The chief of police had
8 stated that there was a possible intoxicated driver in a
9 black Corvette, which is the reason I was patrolling that
10 area. And when I saw the Corvette, I activated my camera so
11 that I could make my own determination on whether or not
12 there any type of indicators, like I stated before, of
13 impaired driving.

14 Q. And so you pulled out of that Bi-Lo, which is on the
15 left-hand side of the road as you are facing this right-turn
16 lane; is that correct?

17 A. I'm sorry?

18 Q. You had to cross all the lanes of traffic to get to
19 that right-hand-turn lane?

20 A. Yes, sir.

21 Q. All right. And that is a right-turn lane only?

22 A. Yes, sir.

23 Q. It has an arrow on it that shows it's a right-turn
24 lane only?

25 A. Yes, sir.

1 Q. Doesn't have an arrow that shows straight and right?

2 It has a right-turn arrow only?

3 A. I believe so, yes, sir.

4 Q. And so as soon as Mr. Ryals pulled out of the Bi-Lo
5 parking lot in the Corvette, you had your dash cam activated.

6 And you followed him right there to where that turn lane is.

7 And he did turn on his blinker at some point, did he not?

8 A. Yes, sir.

9 Q. Is it actually 100 feet from that Bi-Lo to that
10 turn?

11 A. I'm not sure. I would say it was certainly more
12 than 100 feet. Yes, sir.

13 Q. Close, though?

14 A. I honestly couldn't say. I mean ...

15 Q. Okay. So turn lane that he was in, there are two
16 left-hand turn lanes and there's one right-hand-turn lane?

17 A. I believe so.

18 Q. And he was in the right-hand-turn lane at that
19 point, okay. And I heard you ask him questions about that he
20 was moving close to the line in the lane. He was swerving
21 within the lane, I believe you said, was erratic driving?

22 A. I didn't -- I didn't say erratic.

23 Q. I don't want to put words in your mouth, sir. Did
24 he ever actually cross the traffic lane?

25 A. His -- touched the right fog lane or fog line with

1 the right side tires.

2 Q. You asked Mr. Ryals about that. You told them
3 that's one of the reasons why you stopped him; is that
4 correct?

5 A. Yes, sir.

6 Q. And he told you he was driving an unfamiliar
7 vehicle?

8 A. Uh-huh.

9 Q. And he was trying to shift gears?

10 THE COURT: Is that a yes?

11 THE WITNESS: Yes, I apologize, yes.

12 BY MR. DURBAN:

13 Q. Okay. Now, I saw on the tape, I think the jurors
14 saw as well, that Mr. Ryals handed you a document or handed
15 Officer Kornahrens a document. Officer Kornahrens then said
16 something that we couldn't hear and handed it back to Mr.
17 Ryals. Mr. Ryals handed him another piece of paper. You are
18 saying that there was no driver's license on Mr. Ryals at the
19 time?

20 Q. The only document that he had was a state-issued ID?

21 A. The state ID. And that's where you got his birth
22 date, because you had to call in his birth date and his name?

23 A. I didn't call it in. So I can't say exactly how he
24 got it, if he was provided it or if he took it off the ID.

25 Q. Now, there was two conversations going on here, one

1 between you and the passenger, and one between Officer
2 Kornahrens and Mr. Ryals. I want to make clear. You were
3 talking to the passenger; is that correct?

4 A. I was, yes, sir.

5 Q. All right. And you mentioned at one point in time,
6 I believe it was you, said, you are trembling, why are you
7 trembling. That was to the passenger; that wasn't to Mr.
8 Ryals?

9 A. Yes, sir, I was speaking to the passenger.

10 Q. You were speaking to the passenger?

11 A. Yes, sir.

12 Q. And you said, put your hands up on the car, on the
13 hood of the car; that was for the passenger, not for Mr.
14 Ryals?

15 A. Correct, that was my conversation with the
16 passenger.

17 Q. And it was your understanding that Officer
18 Kornahrens did not find any impairment in Mr. Ryals from his
19 driving?

20 A. Correct.

21 Q. And you did not discover the habitual traffic
22 offender status until you returned to the station with him
23 under arrest for driving suspension?

24 A. Correct.

25 MR. DURBAN: Thank you. I have no further

1 questions.

2 THE COURT: Mr. West.

3 REDIRECT EXAMINATION

4 BY MR. WEST:

5 Q. Officer Ellwood, given your training and experience,
6 do you believe that you had a suspicion of an impaired driver
7 at the time of the traffic stop?

8 A. Yes.

9 Q. Now, later, when you eventually arrested this
10 defendant, did you advise him that you were arresting him as
11 a habitual traffic offender?

12 A. He was advised -- you mean on the traffic stop?

13 Q. When he was actually arrested for being a habitual
14 traffic offender rather than driving under suspension?

15 A. Yes, back at the station, once I completed the
16 booking process and realized that he was a habitual traffic
17 offender status, part of that process is I make sure that he
18 has a copy of the blue ticket. I explain to him that the
19 court date would be sent out, because it would be held in
20 this court. Make sure he has his copy and explain the
21 charges. They have to sign a booking sheet with the charges
22 on it that has all the property listed and that kind of
23 stuff.

24 MR. WEST: Thank you. No further questions for this
25 witness.

1 RECROSS-EXAMINATION

2 BY MR DURBAN:

3 Q. Officer Ellwood, you did inform Mr. Ryals at the
4 scene that you were arresting with him, when you put
5 handcuffs on him, that you were resisting arrest him for
6 driving under suspension?

7 A. Yes, sir, I did.

8 MR DURBAN: Thank you.

9 THE COURT: You may step down. Thank you.

10 THE WITNESS: Thank you.

11 MR. WEST: The State calls Officer David Kornahrens.

12 DAVID KORNAHRENS,

13 having been duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. WEST:

16 THE CLERK: State your full name and spell your last
17 name.

18 THE WITNESS: Officer David Kornahrens,

19 K-o-r-n-a-h-r-e-n-s.

20 Q. Officer Kornahrens, where do you work?

21 A. Hanahan Police Department.

22 Q. How long have you worked there?

23 A. Little over two years.

24 Q. What's your rank and title?

25 A. Patrolman first-class, officer.

1 Q. Were you working in that same capacity on March 1st,
2 2014?

3 A. I was not patrolman first-class. I was Officer
4 Kornahrens.

5 Q. Okay. But you were working at the Hanahan Police
6 Department?

7 A. Correct.

8 Q. Were you ever called out to a traffic stop involving
9 this defendant on that date?

10 A. Yes.

11 Q. Okay. Were you first on scene?

12 A. No.

13 Q. Who else was with you?

14 A. I believe he was PFC Ellwood, or Corporal Ellwood.

15 Q. Describe for the jury your interaction with the
16 defendant.

17 A. State certified in DUI impairment, administering
18 field social test. That's the interaction I had with him,
19 was performing those tests. I recognized the defendant from
20 beforehand, just from previous dealings, but I never received
21 a driver's license from him, so I knew him by sight, who he
22 was.

23 Q. Did you ever find out the status of this defendant's
24 driver's license?

25 A. I believe dispatch advised it was suspended and then

1 they gave us suspension codes, which off the top of my head,
2 I'm not sure what they were.

3 Q. Were you arresting officer in this case?

4 A. No, I was not.

5 Q. Other than your assistance to Officer Ellwood, did
6 you perform any other functions in the investigation of this
7 matter?

8 A. I did not.

9 MR. WEST: Thank you. No further questions for this
10 witness at this time.

11 CROSS-EXAMINATION

12 BY MR. DURBAN:

13 Q. Officer Kornahrens, you were the one who was
14 questioning Mr. Ryals during this stop; is that correct?

15 A. Just related to the impairment.

16 Q. Okay. And you had a chance to observe the vehicle?
17 You saw the vehicle that they were in?

18 A. Side of the road, correct.

19 Q. You approached the vehicle. You actually asked him
20 to get out of the car?

21 A. Correct.

22 Q. Was it a black Corvette?

23 A. It was.

24 Q. You are sure it wasn't a blue Corvette?

25 A. Could be black, Corvette, side of the road stop that

1 the defendant was driving.

2 Q. All right. And you said you know Mr. Ryals by
3 sight. He lives in Hanahan; is that correct?

4 A. Correct.

5 Q. And so you knew him from just being around the town?

6 A. I've been called several times to back up other
7 officers on other calls with Mr. Ryals.

8 Q. Okay. And he did say that he was -- he told you
9 that he was not impaired, that he had a couple of beers?

10 A. I believe so.

11 Q. And you found that he was not impaired?

12 A. He was not appreciably impaired to drive.

13 MR DURBAN: Thank you.

14 MR. WEST: No further questions.

15 THE COURT: You may step down. Thank you.

16 MS. SZYMCZYNSKA: State calls Ms. Marie Wearing.

17 MARIE WEARING,

18 having been duly sworn, testifies as follows:

19 THE CLERK: State your full name for the record and
20 spell your last name.

21 THE WITNESS: Marie Wearing, W-e-a-r-i-n-g.

22 DIRECT EXAMINATION

23 BY MS. SZYMCZYNSKA:

24 Q. Good morning, Ms. Wearing. How are you?

25 A. I'm good.

1 Q. Please tell the jurors where you are currently
2 employed.

3 A. South Carolina Department of Motor Vehicles.

4 Q. How long have you been employed there?

5 A. 25 years.

6 Q. And what are your current duties and
7 responsibilities?

8 A. I'm a supervisor of traffic records for drivers of
9 South Carolina and a custodian of driver's record.

10 Q. And what are those duties?

11 A. I'm the record keeper of the suspension notice that
12 comes to the Department of Motor Vehicles which is stored on
13 a hard drive.

14 Q. And were you -- did your office provide our office
15 with records on this particular defendant, Mr. Cary Ryals?

16 A. Yes.

17 Q. And did you also bring a copy of those records with
18 you today?

19 A. Yes.

20 Q. And how are those records produced?

21 A. It's being generated through citation which is kept
22 on a hard drive through DMV department.

23 MS. SZYMCZYNSKA: Permission to approach, Your
24 Honor.

25 THE COURT: You may.

1 BY MS. SZYMCZYNSKA:

2 Q. I'm going to show you what has been previously
3 marked for identification only as State's Exhibit 1, 2, and
4 3. Do you recognize these records?

5 A. Yes.

6 Q. Are these the records that you brought with you
7 today and that have been previously provided to our office?

8 A. Yes.

9 Q. Okay. And who do these records belong to?

10 A. Cary Glenn Ryals.

11 Q. And how are you able to tell that?

12 A. Just from the information that is stored on his
13 application.

14 Q. And what are these records?

15 A. Certification for court and suspension notice.

16 Q. Have these records been altered or modified in any
17 way that you can tell?

18 A. No.

19 Q. And would these records include defendant's driving
20 status and his driving privileges as well as the history of
21 those driving privileges?

22 A. Yes.

23 MS. SZYMCZYNSKA: Your Honor, at this time, the
24 State would move to admit State's Exhibit 1, 2 and 3 into
25 evidence.

1 MR DURBAN: No objection.

2 THE COURT: They will be admitted.

3 (State's Exhibit 1 is moved into evidence.)

4 (State's Exhibit 2 is moved in evidence.)

5 (State's Exhibit 3 is moved into evidence.)

6 BY MS. SZYMCHYNSKA:

7 Q. Please take a look at the document marked as State's
8 Exhibit No. 2, page 1 and 2. What is that particular
9 exhibit?

10 A. Suspension notice.

11 Q. What date is on the suspension notice, the date it
12 was mailed out?

13 A. May the 20th, 2009.

14 Q. And who is it addressed to?

15 A. Cary Glenn Ryals.

16 Q. And what address was it mailed to?

17 A. [REDACTED] Wedgwood Drive, Hanahan, South Carolina,
18 29406.

19 Q. Okay. And how would you know where to mail any of
20 the DMV notices?

21 A. By information that was stored on the application.

22 Q. And can you look now at State's Exhibit No. 1, page
23 1. What is the current address shown on that?

24 A. It's [REDACTED] Wedgwood Drive, Hanahan, South Carolina,
25 29406.

1 Q. Is there any change in addresses? Was there any
2 other address prior to or post-mailing of that notice or
3 prior to?

4 A. No.

5 Q. Okay. And why was that particular letter, State's
6 Exhibit No. 2, initiated and mailed to Mr. Ryals?

7 A. To inform him that he was a habitual offender. He
8 had accumulated three major suspensions.

9 Q. What are the dates of those suspensions?

10 A. 12/27/2007, driving under suspension; July the 12th,
11 2008, for driving under suspension; and December 7th, 2007,
12 for driving under suspension.

13 Q. And what was this notice advising the defendant of?

14 A. That he had accumulated three or more major
15 suspensions resulting to habitual offender.

16 Q. Was he no longer allowed to drive a vehicle?

17 A. That's correct.

18 Q. What was the effective notice of the habitual status
19 offender?

20 A. June 19th, 2009, until June 19th, 2014.

21 Q. Okay. And there's a 30-day period between May 20th
22 and the effective notice?

23 A. Yes.

24 Q. What is that 30-day period?

25 A. So if feel he like he need to appeal, he could have.

1 Q. Do you show any record where the defendant appealed
2 that notice?

3 A. No.

4 Q. Can you please look at State's Exhibit 3,
5 specifically page 6 through page 7.

6 A. Page 3?

7 MS. SZYMCZYNSKA: Page 6 through page 7. Permission
8 to approach, Your Honor.

9 THE COURT: You may.

10 BY MS. SZYMCZYNSKA:

11 Q. What is the date on that notice?

12 A. May the 20th, 2009.

13 Q. Okay. So that's the same date as the prior notice
14 that you read, the habitual traffic offender notice?

15 A. Yes.

16 Q. Okay. And what is this particular notice for?

17 A. Driving under suspension.

18 Q. Okay. And is that a standard procedure to mail a
19 DUS notice along with a habitual traffic offender notice at
20 the same time?

21 A. Yes, supposed to be separate envelope.

22 Q. And how is that particular notice mailed to
23 defendant? What address does it go to?

24 A. It's [REDACTED] Wedgwood Drive, Hanahan, South Carolina,
25 29406.

1 Q. Okay. And how is that notice mailed, in what kind
2 of manner?

3 A. It's mailed certified.

4 Q. And can you look at the attached notice. I believe
5 that would be also State's Exhibit 3, I believe the next two
6 pages. Was that notice signed for?

7 A. Yes.

8 Q. What date was it signed for?

9 A. June 22nd, 2009.

10 MS. SZYM CZYNSKA: Court's indulgence.

11 BY MS. SZYM CZYNSKA:

12 Q. Ms. Wearing, can you look back at that certified
13 receipt. Can you tell us again what date that was?

14 A. One that was received May 26th, 2009?

15 Q. Yes, the certified receipt. Did you say May? I
16 just want to make sure that is on the record.

17 MS. SZYM CZYNSKA: Court's indulgence.

18 THE COURT: Take your time.

19 BY MS. SZYM CZYNSKA:

20 Q. Going back to the notice that was sent to the
21 defendant on May 20th declaring him habitual traffic
22 offender, you stated for the record the three dates of the
23 DUS dates of arrest. Can you also tell the Court what dates
24 were he convicted of, according to that official notice?

25 A. Violation date, conviction date, first one was May

1 5th, 2009; the second conviction, convicted was August the
2 27th, 2008; and then the third one was January 15th, 2008.

3 Q. Can you also look at State's Exhibit 3, page 12.

4 MS. SZYMCZYNSKA: Your Honor, permission to
5 approach?

6 THE COURT: You may.

7 BY MS. SZYMCZYNSKA:

8 Q. Ms. Wearing, is it a policy of DMV to mail what I
9 consider a prehabitual traffic offender notice advising them
10 of the prestatus of how many convictions they have?

11 A. Yes.

12 Q. The defendant in this case, was he mailed such
13 notice?

14 A. Yes.

15 Q. What date was that notice mailed on?

16 A. October the 10th, 2008.

17 Q. Okay. And does that notice, indeed, advise him of
18 his current status at that point?

19 A. That's correct.

20 Q. And what does it specifically advise him of?

21 A. That he already had two major suspensions. If he
22 got one more, he will be a habitual offender.

23 Q. So not only had he received a prenotice, he then
24 would have received the actual notice and would have had 30
25 days to appeal?

1 A. That's correct.

2 MS. SZYMCZYNSKA: No further questions at this time.

3 CROSS-EXAMINATION

4 BY MR DURBAN:

5 Q. Ms. Wearing, do you know whether any of these
6 suspensions that you have referred to that you've told the
7 jury about, if any of those suspensions were for failing to
8 file proof of financial responsibility?

9 A. No.

10 Q. So you don't know that? That's not part of your
11 records?

12 A. No, that was for DUI driving suspension.

13 MR. DURBAN: Okay. Thank you. I have nothing
14 further.

15 THE COURT: Ms. Szymczynska, any further questions?

16 MS. SZYMCZYNSKA: No further questions from the
17 State.

18 THE COURT: You may step down. Thank you.

19 Call your next witness.

20 MS. SZYMCZYNSKA: Your Honor, the State rests.

21 THE COURT: Ladies and gentlemen, that indicates to
22 the Court there's a matter of law that I must take up outside
23 of your presence. Do not begin your deliberations. Do not
24 discuss this case amongst yourselves. You may leave your
25 notepads right where they are or take them with you. Please

1 rise for the jury.

2 (Whereupon, the jury leaves open court at 11:54 AM.)

3 THE COURT: Thank you. Any motions or matters?

4 MR DURBAN: Your Honor, just for the record, we
5 would make at this point in time a motion for directed
6 verdict. I'm concerned about the traffic stop. I don't know
7 whether the traffic stop was actually legal or not. And to
8 me, I don't think there was probable cause to stop him in the
9 original case. And if he hadn't been stopped, they wouldn't
10 have found any of this that was in his background.

11 Should he have been driving? No, he shouldn't have.
12 But police can't arrest somebody on the speculation they've
13 done something wrong. They have to have a reason to do so.
14 And after reviewing the tape, Your Honor, I just don't think
15 it's there. So we ask for directed verdict.

16 THE COURT: Mr. West.

17 MR. WEST: Your Honor, the State feels we met our
18 burden in this case. As you know, all evidence is to be
19 viewed in light most favorable to the party not moving. At
20 this time, the State has produced sufficient evidence to meet
21 all the elements of habitual traffic offender. We've
22 produced witness from the Department of Motor Vehicles that
23 has provided the respective notices to this defendant. We
24 have provided evidence of the prior convictions of this
25 defendant for driving under suspension, which meet the

1 elements of the crime. We've also established that he was
2 the operator of a motor vehicle on the highways of this
3 state.

4 And in regards to the stop, what the State needs to
5 produce is a reasonable and articulable suspicion for the
6 stop. Officer Ellwood certainly has met that burden by
7 testifying to the lack of a turning signal prior to 100 feet,
8 the weaving within the lane, the slowness of the driver. And
9 through his training and experience, he believed that this
10 driver was impaired at the time, giving the reason for the
11 stop, which later revealed this defendant to be a habitual
12 traffic offender.

13 Also, such arguments go into the burden that the
14 State has met in this case. And we feel the case should go
15 to the jury and you should deny the motion for directed
16 verdict.

17 THE COURT: Mr. Durban.

18 MR. DURBAN: I have nothing further, Your Honor.
19 Thank you.

20 THE COURT: Ruling on the motion for directed
21 verdict, per Rule 19 of the South Carolina Rules of Criminal
22 Procedure, this Court must view the evidence and all
23 reasonable inferences in the light most favorable to the
24 nonmoving party, which is the State. I'm concerned only with
25 the existence or nonexistence of the evidence.

1 Mr. Ryals is charged with violating the Habitual
2 Offenders Act State must first prove beyond a reasonable
3 doubt that the defendant was operating a motor vehicle in
4 this state. Operating a motor vehicle does not necessarily
5 mean driving a vehicle. Driving means that the vehicle is
6 actually in motion. However, in order to be operating a
7 motor vehicle, there does not need to be any motion.
8 Operating includes starting the engine or using any
9 mechanical or electrical part of the vehicle which will set
10 the vehicle in motion.

11 The State must also prove beyond a reasonable doubt
12 that at the time Mr. Ryals was operating the motor vehicle,
13 the Department of Public Safety had found the defendant to be
14 a habitual traffic offender and had revoked Mr. Ryals's
15 license to drive based upon that finding.

16 Viewed in the light most favorable to the nonmoving
17 parties, the defendant's motion for directed verdict is
18 denied.

19 Anything further? Anything further?

20 MR DURBAN: Your Honor, Mr. Ryals is asking again to
21 be able to address the Court.

22 THE COURT: All right. And what does he wish to
23 address the Court --

24 THE DEFENDANT: I just want -- do you want me to
25 stand up or sit?

1 MR. DURBAN: I've explained this to him, and I will
2 again. He has another driving under suspension charge that
3 was brought against him in 2010 in Colleton County. That was
4 nolle prossed by the solicitor. And for someone reason, he
5 believes that's relevant.

6 THE DEFENDANT: I was charged with driving under
7 suspension. At the time, I went to court --

8 THE COURT: Mr. Ryals, you have an attorney. And I
9 don't know all the facts and particulars of that case. But
10 what I do know is that the testimony that I have heard, that
11 I just ruled on, and so I do not -- if your attorney had said
12 the same thing to me, I would have held him in contempt,
13 because I've already ruled. But out of courtesy to you, I'm
14 going to one more time explain what the ruling was.

15 It only requires that you are driving a vehicle.
16 Driving does not mean that they were on the road. It just
17 means that you had the ability to operate.

18 This Department of Public Safety has sent a notice
19 that you were unable to drive. You did not have the
20 privilege to drive. What happened in 2010 in a different
21 county, a different location, and with different officers is
22 not before me here today. What is before me here today is
23 what you did in Hanahan in Berkeley County. I have ruled
24 that the State has met their burden.

25 Please rise. Please place him under oath.

1 (Whereupon, the defendant is sworn.)

2 THE COURT: At this time, I'm going to explain to
3 you certain of your rights. If you do not understand
4 anything that I say, please let me know. And if you need me
5 to explain anything further, please let me know. Do you
6 understand?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: We've reached the stage of the trial
9 where you may present your defense. You have a right to
10 claim the protections given to you by the Fifth Amendment to
11 the Constitution of the United States. This amendment states
12 in part that no person shall be compelled in any criminal
13 case to be a witness against himself. This means that you
14 cannot be required to testify in this case. You do have the
15 right to testify on your own behalf. However, no one can
16 make you testify. This is a personal right and no one can
17 waive this right except for you.

18 If you decide to testify, you will be subject to the
19 same rules that govern other witnesses and you may be
20 examined and cross-examined on any relevant issue in this
21 case. In addition, if you have any convictions involving
22 dishonesty or false statements or for crimes punishable by
23 imprisonment for more than one year, and I determine that the
24 probative value of admitting this evidence outweighs its
25 prejudicial effect to you, the solicitor will be able to

1 introduce your record to attack your credibility.

2 Mr. West, are there impeachment convictions?

3 MR. WEST: I do believe there's several, Your Honor.

4 There's actually a litany to go through. Most recently, he
5 was convicted of assault and battery of a high and aggravated
6 nature in our office here in Berkeley County. He's currently
7 on probation for that offense.

8 THE COURT: So that would carry imprisonment more
9 than one year?

10 MR. WEST: That's correct. He is actually on a
11 sentence of ten years suspended to five years probation.
12 Financial transaction card fraud..

13 THE COURT: So that would be a crime involving
14 dishonesty?

15 MR. WEST: That's correct, Your Honor, as well as
16 obtaining money or goods under false pretenses in 2009.

17 THE COURT: That would also involve dishonesty.

18 MR. WEST: Fraudulent check, 2008. There are
19 several counts of that, six to my counting, Your Honor;
20 several driving under suspension convictions, obviously, that
21 had already been testified to.

22 THE COURT: Mr. Durban, you advised your client that
23 these potentially could be used for impeachment?

24 MR. DURBAN: I did, Your Honor.

25 MR. WEST: And --

1 THE COURT: If he decides to testify, this decision
2 on your part must be freely, voluntarily and intelligently
3 made, with knowledge of the protections given to you by the
4 Fifth Amendment and the consequences of your decision to
5 testify. If you decide not to testify, I will instruct the
6 jurors that they cannot give the fact that you did not
7 testify any consideration whatsoever and that there is to be
8 absolutely no prejudice to you because you did not testify.

9 It is left entirely up to you whether or not you
10 testify. You may talk with your attorney, your friends, your
11 family members, or anyone else. But the ultimate decision is
12 left entirely up to you.

13 Do you understand what I've explained to you?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you need me to explain anything in
16 further detail?

17 THE DEFENDANT: No.

18 THE COURT: Have you discussed this matter with your
19 lawyer.

20 THE DEFENDANT: No.

21 THE COURT: You have not discussed with your lawyer
22 whether or not you will testify?

23 THE DEFENDANT: We haven't discussed it.

24 THE COURT: I'm sorry. I can't hear you.

25 THE DEFENDANT: We haven't really discussed it, no.

1 MR DURBAN: We did discuss it, Your Honor. We
2 discussed it before the trial. We discussed it this
3 morning.

4 THE COURT: How long do you think, Mr. Durban, you
5 will need to go over this with your client?

6 MR DURBAN: 15 minutes.

7 THE COURT: All right. We will take 15 minutes. Do
8 you have any other witnesses?

9 MR DURBAN: No, Your Honor.

10 THE COURT: All right. And so when we return,
11 depending on Mr. Ryals's decision, we will then go straight
12 into closing.

13 All right. Thank you. We are at ease for 15
14 minutes.

15 (A recess transpired.)

16 THE COURT: Mr. Ryals, I understand that you will be
17 testifying?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And you understand -- we went over your
20 prior convictions -- and the State will be able to use those
21 for impeachment?

22 THE DEFENDANT: My past, yes, ma'am.

23 THE COURT: All right. And I'm going to authorize
24 Mr. Hamilton to take off your leg irons in front of the jury.
25 Do I need to have any cause for concern?

1 THE DEFENDANT: I will comply with everything,
2 ma'am. I wish I was dressed better than I am presently.

3 THE COURT: All right. Let's bring in the jury.

4 (Whereupon, the jury returns to open court at 12:31
5 PM.)

6 THE COURT: Mr. Durban, please call your first
7 witness.

8 MR DURBAN: Thank you, Your Honor. We call Cary
9 Ryals to the stand.

10 CARY GLENN RYALS,

11 having been duly sworn, testifies as follows:

12 THE CLERK: State your full name and spell your last
13 name for the record.

14 THE WITNESS: It's Cary Ryals, R-y-a-l-s.

15 DIRECT EXAMINATION

16 BY MR DURBAN:

17 Q. And, Cary, where were you employed before you were
18 charged with this offense?

19 A. I was employed at the State Port Authority, port of
20 Charleston for 17 years. I'm still employed there. They're
21 holding my employment.

22 Q. And your position with the Ports Authority?

23 A. I was a checker for the ILA.

24 Q. Okay. Now, you lived in Hanahan for how long?

25 A. All my life.

1 Q. You grew up in Hanahan?

2 A. Graduated high school there, yes, sir.

3 Q. And you are part of that community in Hanahan?

4 A. A big part, yes, sir.

5 Q. What have you done for your community?

6 A. Last year, I donated \$1,500 to the cheerleading
7 squad because some of the children didn't have money to go to
8 camp. That was set over a football game.

9 I also sponsored money to the booster club. And I
10 helped raise \$5,000 for a burn child that lives in Berkeley
11 County.

12 Q. And other than working on the waterfront, do you
13 have any other employment that you pursue?

14 A. Yes, sir, I do. I also sell cars on the side. I
15 have a wholesale license.

16 Q. You purchase cars and then you sell them?

17 A. Yes, sir.

18 Q. All right. And you are a graduate of Hanahan
19 High?

20 A. Correct.

21 Q. And you followed up with some education after that?

22 A. College, yes, sir.

23 Q. Okay. Mr. Ryals, on March the 1st of 2014, were you
24 driving a black Corvette in Hanahan?

25 A. No, sir.

1 Q. What kind of vehicle were you driving?

2 A. I was driving a blue Corvette.

3 Q. A blue Corvette?

4 A. Exactly.

5 Q. On March the 1st of 2014, sir, were you aware that
6 your driver's license was under suspension?

7 A. No, I wasn't.

8 Q. And what led you to believe that your license was
9 not under suspension?

10 A. I had been pulled over prior to the incident. I had
11 been pulled over after 2010. I've been charged with driving
12 under suspension in 2010 and they dismissed that charge.

13 Q. Okay.

14 A. And I had been pulled over after 2010, which wasn't
15 much less than probably four or five months prior to this
16 one. Said I was charged with driving under suspension, but
17 then came back and said I was not charged with under
18 suspension.

19 Q. So according to the records of the DMV that are now
20 into evidence, your suspension for being a habitual traffic
21 offender started in 2009 and spanned until 2014?

22 A. Correct.

23 Q. In June of 2014, it would have expired?

24 A. Yes, sir.

25 Q. And so that suspension at this point has expired?

1 A. That's what the documentation from the South
2 Carolina Department of Motor Vehicles says.

3 Q. And you were not aware that you were under
4 suspension at the time you got stopped on March the 1st of
5 2014?

6 A. No, sir, I wasn't.

7 Q. You did not receive the notice from the Department
8 of Motor Vehicles saying that you were being declared a
9 habitual offender?

10 A. No, sir. The signatures on the documents for the
11 certified mail are not mine. You can see.

12 Q. You did not sign any of those signature cards for
13 the certified mail?

14 A. No, sir. If I was notified, I would have definitely
15 appealed to the Highway Department.

16 Q. Mr. Ryals, I know Mr. West is going to ask you some
17 questions.

18 A. I understand.

19 Q. And you've had some problems in the past when you
20 were a younger man?

21 A. I have. I have. But I maintained a 17-year career
22 now. I've done a lot for my community. I'm not somebody
23 that steals or does anything like that from anybody. And
24 this -- I'm sorry to bring -- I would like to enter this into
25 evidence, if I could, because it shows 2010 if I was

1 notified -- I mean, if I knew this 2010 that I was under
2 suspension, and this would have -- should have been a driving
3 under suspension. That would have stopped me right here and
4 I wouldn't have gone any further. I would have appealed the
5 Highway Department and went from there. Once this was
6 cleared through the Highway Department, I kept on driving. I
7 had no idea.

8 Q. So you felt because that driving under suspension
9 charge was dropped, that you were not driving under
10 suspension on March the 1st of 2014?

11 A. Correct. And I've been pulled over since then and
12 been given my driver's license back.

13 Q. All right. Do you have anything else you would like
14 to tell the jury?

15 A. No, just want to leave this in evidence.

16 MR. WEST: Objection, relevance and foundation.

17 THE COURT: Sustained.

18 MR DUBAN: Thank you.

19 BY MR. DUBAN:

20 Q. Anything else you would like to tell the jury,
21 Mr. Ryals?

22 A. Just like to say that if I knew I was under
23 suspension, that I would appealed the Highway Department at
24 that time. I drive numerous vehicles. I have a wholesale
25 license. I drive a different vehicle a lot. I wasn't aware

1 at that time. The 'vette in question was something I was
2 trying to sell. Bought that Corvette. He got an automobile
3 accident. Vehicle he shouldn't have bought, and I was trying
4 to help him get rid of it. As far as for Hanahan saying it
5 was a drunk driver in a black Corvette, that's just a reason
6 for them to pull me over for nothing. It was a blue
7 Corvette. I was parked four doors down. Like I said, on
8 that piece of paper right there, I was pulled in Colleton
9 County. If I had known in any way that I was driving under
10 suspension -- and even after the fact, I was pulled over in
11 Savannah, going from Savannah with a car, I had three drivers
12 behind me, all three of us pulled over on the side of the
13 road. They gave me back my license and let me go.

14 That being said, not trying to disregard the law, if
15 I had known about it, like I said, the Highway Department
16 gives you a chance to appeal it, I would definitely appeal
17 it. Thank you.

18 MR. DURBAN: Thank you, sir. No further
19 questions.

20 THE COURT: Thank you.

21 Mr. West.

22 CROSS-EXAMINATION

23 BY MR. WEST:

24 Q. Mr. Ryals, you said some interesting things during
25 your direct. I want to address some of them. One of the

1 things you said, you are not a person that steals or
2 anything. In 2007, isn't it correct that you have seven
3 counts of a fraudulent check?

4 A. Correct.

5 Q. In 2009, you have a conviction for financial
6 transaction card fraud and obtaining money or property under
7 false pretenses?

8 A. That's correct.

9 Q. In 2013, in Berkeley County, you were convicted of
10 assault and battery of a high and aggravated nature for
11 stabbing somebody?

12 A. It wasn't a stabbing. That was proved in court.
13 And I pled that just to get my TWIC card back. The boy in
14 question wanted \$125,000 in restitution, wanted to sue me.
15 He got none. There was no stabbing whatsoever.

16 Q. But you were convicted and you admitted your guilt
17 in this courtroom?

18 A. I pled to a lesser charge so I could get my TWIC
19 card back.

20 Q. Some other things you said were, you've been pulled
21 over since, and that every time, it seems all of the charges
22 go away. But you have another pending HTO in Charleston,
23 don't you?

24 A. Yes, I do. And, Judge -- excuse me. I went in
25 front of the judge before that. And he said, if this matter

1 was straightened up before I got to the courtroom, he would
2 dismiss the charge for driving without a license and give me
3 time served.

4 And I also had just been brought back in front of
5 him again. And he said he would not charge me with driving
6 DUS until this matter was cleared.

7 Q. I want to get into the basics of what an HTO statute
8 really is, HTO being habitual traffic offender. You do not
9 contest that you were driving a Corvette on March 1st, 2014;
10 do you not?

11 A. No.

12 Q. So you were the driver in Hanahan in Berkeley County
13 on that date?

14 A. Video clearly shows that.

15 Q. And you are not contesting that Officer Ellwood
16 eventually arrested you for being a habitual traffic
17 offender?

18 A. To me, if I had known habitual traffic offender,
19 like I said, I would have appealed it a long time ago.

20 Q. Okay.

21 A. Also, I would like to state, if I could, he saw me
22 in the parking lot. He knows who I am. He saw me place beer
23 from the grocery store up, I put it in the back of the
24 vehicle. I thought that once he saw me again, he was going
25 to pull me over and charge me with something else. I've had

1 run-ins with him in the past.

2 Q. Would those run-ins include knowing that you are not
3 supposed to be driving a vehicle?

4 A. No, not at all.

5 Q. So the three convictions that you have for driving
6 under suspension that make up this habitual traffic offender
7 are just completely false, and the officers here aren't
8 supposed to know about it?

9 A. Apparently, he didn't know I was driving under
10 suspension. Apparently, he says he was pulling me over for a
11 DUI.

12 Q. Let's get to your driving records in the Department
13 of Motor Vehicles. Do you contest that you have, in fact,
14 been convicted on the date of May the 5th, 2009, for driving
15 under suspension?

16 A. I can't recall.

17 Q. You can't recall? Okay. Why don't you take a look
18 at State's Exhibit No. 2. And I want you to read the three
19 conviction dates for driving under suspension on State's
20 Exhibit No. 2.

21 A. I have seen that in Mr. Durban's paperwork and also
22 looked at it and another piece of paper that shows there was
23 no conviction for one of these.

24 Q. So your testimony today is that Ms. Marie Wearing
25 and the Department of Motor Vehicles of South Carolina are

1 liars?

2 A. Not saying they are liars. A lot of paperwork gets
3 mixed up as far as habitual traffic offender sending
4 information to me. And shows there clearly in the paperwork
5 I just give you, they misjudged saying I was not driving
6 under suspension in 2010. But you are saying I was driving
7 under suspension in 2009. Highway Department says, it wasn't
8 in 2010, or as they called it over the radio in 2014, '13,
9 that, again, I was not driving under suspension. So I'm not
10 sure which it is.

11 Q. I want to go through your driving record.

12 A. I understand my past it's not good on it.

13 Q. Well, your past is what makes up this charge which
14 makes you a habitual offender. Do you understand that?

15 A. Okay.

16 Q. Okay. So at the time of this stop, were you in
17 legal possession of a valid driver's license in South
18 Carolina?

19 A. I had a driver's license and an ID on me. He stated
20 I only gave him ID. I gave him a driver's license too. And
21 I never received it back.

22 Q. So if the records, which have been certified and
23 testified to in court, say that you did not have a valid
24 driver's license and that they were suspended at the time of
25 this stop, the suspension and after this stop again, you want

1 this jury of reasonable people to believe everything is a
2 lie?

3 A. I'm not saying that. How would you say they accuse
4 me of 2010? They accuse me 2009, but not accuse me in 2010.
5 Doesn't make sense.

6 Q. Let's walk through your driving record right here.
7 Because when you go to get a driver's license, obviously,
8 they are going to keep records of it, right?

9 A. Correct.

10 Q. And if you go to get an ID in the state of South
11 Carolina, they are going to keep a record of that as well,
12 correct?

13 A. Correct.

14 Q. So if I were to say that you did not go in for a
15 driver's license, but instead tried to renew just your state
16 identification card, at least one, two, three, four, five,
17 six, seven, eight, nine times, would you believe that this
18 record accurately reflects your ability to not get a driver's
19 license, but instead just get the ID card?

20 A. Not at all. I had two driver's license. And the
21 reason why I keep going back for those, because when you go
22 in and out of weapon station, not only you have to have a
23 license, an ID in front, you have to have one in your vehicle
24 too. So when you come back to retrieve them, a lot of times
25 I forget to retrieve them when I leave a whole day's work.

1 Weapon station goes on a code yellow. You have to have
2 multiple IDs.

3 Q. But, again, let's go back to your record, which is a
4 document that has been testified and certified to in court.
5 You believe that the driving under suspension conviction 9/7
6 of 2011 is false?

7 A. Correct.

8 Q. That's false?

9 A. Well, I have one in 2010.

10 Q. Well, I believe you have a lot of them. I'm not
11 contesting just that one.

12 A. Mason, I'm only time contesting that one. They are
13 saying it's false too. I don't understand what is false and
14 what's not right. I know I spent a lot of money at the
15 dealership for wholesale license, almost seven grand. I
16 don't understand. I've been pulled over numerous times. I
17 haven't had a problem. Had a problem this time. Sometimes
18 it pops up. Sometimes it don't. Once again, if I didn't
19 know that, being the person I am, I would have definitely
20 appealed the Highway Department.

21 Q. But you didn't?

22 A. I didn't know. If I had known that, I would have
23 appealed the Highway Department.

24 Q. Okay. So, again, the 9/7/2007 conviction for
25 driving under suspension, you don't agree with. You don't

1 agree with the May 5th, 2009, driving under suspension; is
2 that correct?

3 A. I agree that I had my license back in 2008 or '09,
4 whenever it was. And like I said, once again, you know, how
5 do you explain the other one?

6 Q. Operating a vehicle with improper brakes conviction
7 August 27th of 2008?

8 A. That's one I questioned Mr. Durban about. And I
9 went to the Highway Department to question the Highway
10 Department about that, and also accident I've had, I've
11 already had to file FR8 form, I believe it is, or F822 form.
12 That neither one of those -- I don't drive a vehicle with bad
13 brakes for one. For two, I haven't had an accident since I
14 was probably out of high school.

15 Q. Driving under suspension conviction from August
16 27th, 2008, do you refute that as well?

17 A. I'm not sure which time.

18 Q. Not sure?

19 A. I haven't had had a chance to look over that.

20 Q. You said you haven't been in an accident; however,
21 your DMV records say you failed to report an accident on
22 August the 3rd of 2007.

23 A. That's -- I'm not aware that.

24 Q. You want the jury to believe that over what's been
25 certified to here in court?

1 A. I'm asking what's a certified true copy what I have
2 over there too. It's saying in 2010, I did not have a
3 driver's license. It says that my driver's license was not
4 charged with driving under suspension. Then again, I would
5 not know anything about that. And I haven't been pulled over
6 since then, besides the time in Savannah.

7 Q. Well, driving under suspension January the 15th of
8 2008, you refute that one as well?

9 A. I'm not sure, Mason. You make it look as bad as you
10 like, like I said, this one here, if those convictions are
11 convictions, then why isn't 2010 a conviction? That's what's
12 puzzling to me. It's a certified true copy as well as what
13 you have in your hand.

14 Q. Okay. But we are here in Berkeley County.

15 A. Okay. All counties coexist with the state highway,
16 South Carolina Highway Department, which that's why I was
17 released on the driving suspension charge in that charge,
18 because they hadn't agreed with the Highway Department.

19 Q. All these other convictions on here, you are
20 refuting are gone with them?

21 A. I'm not sure where and what you are looking at. I
22 haven't looked over that.

23 Q. You were provided this information?

24 A. Mason, yes. Mason has my -- all that stuff.

25 Q. Well, please refer to me as Mr. West.

1 A. I mean, I meant' to say Durban, not you. Excuse me,
2 Mr. West.

3 Q. So, again, just to reiterate, this was your address,
4 [REDACTED] Wedgwood Drive, Hanahan, Berkeley County?

5 A. That's the mailing address we had that I mail stuff
6 there because I have -- the house is held up in estate, my
7 grandmother's estate. Four houses in Hanahan total. And
8 once again, Mr. West, trying to ask why in 2010 the Highway
9 Department denies -- says I'm not a habitual traffic
10 offender, or I'm not driving under suspension, that's a
11 certified true copy, same as your attesting to me that is a
12 certified true copy you have of my convictions. That's one
13 showing I'm not.

14 Q. Do you agree with me that there can be multiple
15 reasons why something has been or would be dismissed in
16 court?

17 A. Do you agree with me about the paperwork that I'm
18 handing you? Do you agree with me showing it's a certified
19 true copy? I was in the charged with driving under
20 suspension, nor was I charged with driving for habitual
21 offender. Which if that's true what you are saying, then it
22 would definitely be true in 2010, a year or so later, that I
23 would be charged with habitual offender.

24 Q. So the Wedgwood Drive address is not your address?

25 A. That is -- I do have mail going there, yes, I do.

1 Q. Was that the address on your license?

2 A. That's obvious. Probably. I went through several.

3 Q. So all of these notices, all of them, would have
4 been mailed to this address, but you've never received or
5 seen any of them?

6 A. If you see the signatures on it, it's not my
7 signatures.

8 Q. Okay.

9 A. There's one that shows -- says Cary Ryals, that's
10 not the way I spell my name. There's handwriting in here
11 that would show how I spell my name.

12 Q. On State's Exhibit No. 3, the signature C-a-r-y,
13 R-y-a-l-s, on 5/22 of 2009 --

14 A. Compare that to any of my writing, Mr. West. That's
15 my handwriting right there, along with the checks that you
16 brought up too. That's something that I had to go through a
17 bank, have a credit union make sure that wasn't mine. I paid
18 several of those checks that you brought up. And that was
19 like a charge you were making me look like I was a bad
20 person. I paid those checks because I didn't want them
21 against my credit. Judge Coleman found out later it was 16
22 checks. Told me don't pay any more.

23 Q. Sounds like you've got a lot of conspiracies working
24 against you.

25 A. I do, Mr. West.

1 Q. Department of Motor Vehicles, Officer Ellwood,
2 Officer Kornahrens, Solicitor's Office in Berkeley County,
3 Colleton County, Charleston County.

4 A. Mr. Ellwood already said on film that I was trouble.
5 He said that to the passenger riding the car. He's had it
6 out for me.

7 Q. So just to sum all of this up, when the jury looks
8 at these papers that have been admitted into evidence, it's
9 your testimony that some of it is true. Some of it is false.
10 Some of it is a big conspiracy against you. But what you
11 want them to believe is that you weren't a habitual traffic
12 offender?

13 A. What you want them to believe is I am a habitual
14 traffic offender.

15 Q. But what I want them to believe, don't you think
16 this is evidence we are producing here in court?

17 A. I've proved evidence too. After the fact that in
18 2009, that's your statement, and 2010, I'm shown not
19 conviction driving under suspension or habitual traffic
20 offender. So is that the Highway Department's fault or is it
21 my fault, or is it the State's fault? You are saying because
22 it was in Colleton County, resolved in South Carolina.
23 Colleton County is in South Carolina. It all resolves South
24 Carolina Department of Motor Vehicles.

25 Q. All right. So --

1 A. If I had known, if I was aware, I would have
2 appealed.

3 Q. Did you appeal any of your other prior
4 suspensions?

5 A. I hadn't seen it necessary. When I was under
6 suspension when I was guilty, I had a driver driving me
7 around. I had a company truck at work. I had somebody drive
8 me to and from work, which I maintained that job for 17
9 years. I still have it if these charges weren't on me. It
10 could affect my TWIC card. That's something I don't want
11 against me. If I had known, I would have carried it that
12 far. I mean, that's the chance of losing my TWIC card.
13 Sure, I would have appealed. Sure, I would have went to the
14 Highway Department. Sure, I would have figured it out.
15 Showed me not being suspended, not a habitual traffic
16 offender. Went to court for it. They dropped it based on
17 the records from the Highway Department. It's a certified
18 true copy.

19 Q. You keep going back to those records. But what I
20 want to point out is that if the jury were to believe these
21 records, wouldn't you agree with me that they show that you
22 have three prior convictions for driving under suspension and
23 that you were the driver of a vehicle in Hanahan and Berkeley
24 County on March the 1st of 2014, which is a date within those
25 records that show that your driver's license was still

1 suspended? Would you agree with that? Yes or no?

2 A. Would you agree with that? That's the only thing I
3 can say. Would you agree with that? Would you agree with
4 the Highway Department releasing me 2010? Same thing you are
5 coming to me about same thing, I'm asking you. But mine was
6 after the fact. After the fact was 2009. I've been stopped
7 since then, no habitual traffic offender, no driving under
8 suspension.

9 Q. So you just like getting stopped by police, huh?

10 A. No, I don't. Neither does anybody.

11 MR. WEST: No further questions of this witness.

12 REDIRECT EXAMINATION

13 BY MR DURBAN:

14 Q. Mr. Ryals, I want to clarify one thing for the jury.
15 Mr. West asked you a bunch of questions about that Colleton
16 County case. Is it true that in 2010, you were charged with
17 driving under suspension in Colleton County, South Carolina?

18 A. Correct.

19 Q. And that charge was dismissed?

20 A. Correct, based on the facts of the Highway
21 Department.

22 Q. And the reason why you've considered that relevant
23 for the jury to hear, is that that's what led you to believe
24 that you were no longer under suspension?

25 A. Correct.

1 Q. Because that driving under suspension had been
2 dismissed in Colleton County?

3 A. As it would be anybody, I would believe.

4 Q. So you did not intend to drive with a suspended
5 license on March --

6 A. Like I say, Mr. Durban, I was stopped coming from a
7 sale in Savannah. A wholesaler came and we bought three
8 cars. I came to Savannah and got pulled. I was the first
9 one, lead car. He went around both cars and pulled me,
10 checked all three of our licenses, everything, left.

11 Q. And I believe on the DVD, you explained that to
12 Officer Kornahrens.

13 A. I was trying to, correct. I was trying to.

14 MR DURBAN: Thank you. I have nothing further.

15 THE COURT: Mr. West.

16 REDIRECT EXAMINATION

17 BY MR. WEST:

18 Q. That Colleton County incident you keep bringing up
19 happened in 2010?

20 A. Correct.

21 Q. Okay. Yet, the records here show that you have a
22 conviction in 2011 for driving under suspension, correct?

23 A. I'm not aware of a conviction in 2011.

24 MR. WEST: No further questions.

25 THE COURT: You may step down. Thank you. Call

1 your next witness.

2 MR DURBAN: Defense rests, Your Honor.

3 THE COURT: Any motions or matter? Any rebuttal?

4 MR. WEST: Nothing further, Your Honor.

5 THE COURT: Ladies and gentlemen, that indicates to
6 the Court that you have heard all of the testimony that you
7 will hear in this case, and received into evidence all of the
8 exhibits that will be made part of the record in this case.
9 There's a matter of law that I must take up outside of your
10 presence. You may leave your notepads right where they are
11 or take them with you. We will receive you back in the
12 courtroom shortly. Please do not begin your deliberations.

13 Please rise for the jury.

14 (Whereupon, the jury leaves open court at 12:55 PM.)

15 THE COURT: Thank you. Any motions or matters?

16 MR. WEST: Nothing from the State, Your Honor.

17 MR DURBAN: Your Honor, we would just renew our
18 directed verdict motion.

19 THE COURT: Any additional grounds I should
20 consider, Mr. Durban?

21 MR DURBAN: No, Your Honor, just for the record.

22 THE COURT: Anything further?

23 MR. WEST: We would rely on our previous evidence.

24 THE COURT: I haven't heard anything that would make
25 me change my initial ruling. Please come view the verdict

1 form.

2 THE COURT: 30 minutes.

3 (Whereupon, recess transpired.)

4 THE COURT: Anything before we bring in the jury,
5 from the State?

6 MR. WEST: No. We will waive first closing on the
7 law.

8 THE COURT: Okay. Great.

9 MR DURBAN: We have nothing for the defense, Your
10 Honor.

11 THE COURT: Thank you. You've agreed on the
12 exhibits? They are ready?

13 (Whereupon, the jury returns to open court at 01:34
14 PM.)

15 THE COURT: Ladies and gentlemen, we've reached the
16 stage of the trial where you will hear closing arguments. At
17 this point, the defendant will go first and the State will
18 have the opportunity for the last close. After that, I will
19 instruct you on the law applicable to this case. And then
20 you will retire to consider your verdict.

21 Ladies and gentlemen, the exhibits that have been
22 made part of the record in this case will go back with you in
23 your deliberation room. Please give your strict attention to
24 Mr. Durban.

25 MR DURBAN: Thank you, Your Honor. May it please

1 the Court, ladies and gentlemen of the jury.

2 First of all, I want to express my appreciation to
3 you for listening as well as you listened, for paying
4 attention to everything that went on. You now heard all of
5 the evidence in this case. Nothing that I say from this
6 point forward, nothing that Mr. West says from this point
7 forward is evidence. This is in the nature of the summation
8 of what, from my perspective on behalf of Cary Ryals, you've
9 already heard.

10 Judge Harrington is going to instruct you on the law
11 that is applicable to the charge that is brought against
12 Mr. Ryals. That law, the South Carolina habitual offender
13 statute, provides that if someone has a certain number of
14 offenses within the certain period of time, the Department of
15 Motor Vehicles can declare them to be a habitual offender.
16 If they have been declared to be a habitual offender, that is
17 going to suspend their driver's license for a period of time.

18 It is during that period of time that Mr. Ryals was
19 stopped on March the 1st of 2014. There is no question about
20 that. He admitted it. Police officers that were there saw
21 it as well. The question that I have, though, is whether
22 Mr. Ryals had actual knowledge that his driver's license was
23 suspended at the time that he was stopped on March 1st.

24 You heard on the DVD where he discussed with the
25 officer who stopped him originally that he had been to

1 Savannah and picked up several cars, that he had been stopped
2 recently down there. You heard him testify that he was
3 charged in 2010 with a driving under suspension that was
4 dismissed in Colleton County. And you heard him testify to
5 you in good faith that it was his belief, his personal
6 belief, that his driver's license wasn't suspended. Was that
7 wrong? It was a mistake. There's no question about that.

8 But one of the fundamental aspects of any criminal
9 offense in South Carolina is intent to commit the act for
10 which he is charged. The act for which he is charged is
11 getting behind the wheel of a motor vehicle when his driver's
12 license was suspended. I would submit to you, ladies and
13 gentlemen, that Mr. Ryals did not have the intent to drive
14 with a suspended license, that he had a reason to believe, a
15 reasonable reason to believe that his license was not
16 suspended at the time that he was stopped.

17 The facts are in your hands. Your decision on the
18 facts is going to stand. The judge is going to charge you on
19 the law. And it's up to each of you to make a clear,
20 conscious decision about whether Mr. Ryals committed a
21 criminal act on the basis of a mistake.

22 I'm going to ask you to return a verdict of not
23 guilty. Thank you.

24 THE COURT: Mr. West.

25 MR. WEST: Thank you, Your Honor. May it please the

1 Court.

2 Ladies and gentlemen, I too want to thank you for
3 your attention during this trial and for your particular
4 attention to certain matters throughout the duration of the
5 testimony. What we have here is a strategy by the defense to
6 attack one part of the crime of habitual traffic offender.
7 It's actually not even in the statute. When you look and
8 hear the charges here in habitual traffic offender, you are
9 not going to hear anything about actual knowledge or should
10 have known or anything like that. What you are going to hear
11 is that the defendant was driving a motor vehicle after
12 accumulating the offenses we have listed.

13 So that is simply a defense strategy to sort of spin
14 the ball in a different direction. But what else you have to
15 pay attention to is whether you believe the defendant when he
16 testified. One of the things that really came up during the
17 testimony of the defendant was the fact that there was this
18 2010 dismissal in Colleton County. You didn't hear from any
19 officers as to what, reason why, or anything to that matter.
20 Because it simply is not relevant, number one. And number
21 two, there could be 1,000 reasons. Maybe the officer was
22 fired. We don't know. I mean, if the officer is fired, they
23 are not going to go forward with that charge. That simply
24 doesn't matter for this case.

25 The biggest piece of evidence that you are going to

1 have that this defendant did know that he was driving under
2 suspension at the time of this offense was after the 2010
3 release from Colleton County. There's a separate driving
4 under suspension charge that was not appealed. So what you
5 are going to see through the evidence that was produced by
6 the Department of Motor Vehicles is another conviction. But
7 what you are going to see is a number of convictions.

8 So the defendant wants you to believe that all of
9 these convictions produced by the Department of Motor
10 Vehicles are simply farcical. He wants you to believe they
11 never happened. They didn't accumulate to be the status of a
12 habitual traffic offender. But that's simply not the case.

13 Ladies and gentlemen, all I ask you to do is use
14 your common sense. Be reasonable. Look at the evidence
15 through the eyes of a reasonable person. And understand that
16 these are records certified by the Department of Motor
17 Vehicles. You are going to have the prior convictions. You
18 can look at all of the convictions that are on his driving
19 record. And what you are going to see is that they do
20 accumulate. And what they do accumulate to is his status as
21 a habitual traffic offender.

22 Not only is that record of convictions going to be
23 on the DMV records that you have, but the suspensions are
24 also noticed on the letter sent by the DMV.

25 Ms. Szymczynska, my co-counsel in this case, she

1 went diligently and thoroughly through all of the Department
2 of Motor Vehicle records. She went through the letters that
3 were sent. She even pointed out to you the prehabituall
4 traffic offender notice that was sent to Mr. Ryals's address.
5 So not only was he noticed that he was a habitual traffic
6 offender after he became a habitual traffic offender, but
7 before he became a habitual traffic offender, because he was
8 on the verge, with all of the other driving under
9 suspensions. The Department of Motor Vehicles sent him a
10 letter that said, hey, Mr. Ryals, you have convictions that
11 is putting you right on the edge of being a habitual traffic
12 offender. And they sent a letter to that effect. That
13 letter is also in evidence.

14 One of the things you are also going to see is that
15 these letters are mailed certified. So there's a signature
16 on it. Now, Mr. Ryals wants you to believe that the
17 signature that spells his name, Cary Ryals, two days after
18 the habitual traffic offender notice is sent, is not his
19 signature. Is that reasonable, ladies and gentlemen? Is it
20 reasonable to believe that a person with all of these
21 convictions, all of these letters are sent to his house, no
22 appeals have ever been had for any of these convictions, is
23 it reasonable to believe that he didn't know anything about
24 this?

25 Why would he bring it up first to the officer at the

1 scene of the traffic stop? Because he knew he was had. He
2 knew exactly what was going on. He knew he didn't have a
3 license, because all he could produce was a state ID. And
4 what you are going to see also is what -- one of the things I
5 tried to point out during cross-examination, if you look at
6 the department of motor vehicle records, he goes to renew his
7 state ID at least nine times. So those nine times are not
8 him going to get a new license. He's not paying the fee to
9 get his driver's license back. He's not taking the courses
10 that are required to get your driver's license back. He's
11 simply having an ID, an ID that does not allow him to drive
12 in South Carolina, because that ID is not what's required
13 under our laws.

14 So those are certain red herrings that the defense
15 wants you to look at. But the evidence produced by the State
16 certainly meets the burden of establishing that this
17 defendant was a habitual traffic offender.

18 Now, I don't want to end there, because one of the
19 things that you are going to hear from the judge is that the
20 State bears the burden of proof. The State bears the burden
21 to prove each and every element of habitual traffic offender
22 beyond a reasonable doubt. So I want to walk you actually
23 through the statute. And I have a copy of the statute. The
24 judge is going to read it to you. And I don't want to
25 belabor the point, but, again, the State bears the burden

1 here, so I do feel like this is appropriate for you to
2 understand.

3 That under Section 56-1-1020, which is the habitual
4 traffic offender definition under our laws: Habitual traffic
5 offender shall mean any person whose record is maintained by
6 the Department of Motor Vehicles -- which Ms. Marie Wearing
7 does. That's her job. She maintains the records, brings
8 them here. She testified to them. Shows that he has
9 accumulated the convictions for separate and distinct
10 offenses committed during a three-year period.

11 So, you can look at the convictions on the
12 Department of Motor Vehicle records that have been produced.
13 You will have those back in evidence. You will see that he
14 has convictions of driving under suspension within a
15 three-year period to make him a habitual traffic offender.

16 That's about as plain and simple a statute as we get
17 in South Carolina law. There's nothing really complicated
18 about that statute other than the fact that the defense wants
19 you to believe there's some sort of knowledge requirement or
20 something like that in this.

21 But what we do have here is a situation where
22 certainly the State has proved knowledge by the abundance of
23 evidence. The totality of the circumstances certainly
24 suggests the defendant knew he was a habitual traffic
25 offender.

1 South Carolina law is written in a way where the
2 code sections are divided into parts. The first part of this
3 habitual traffic offender statute is 56-1-1010. So the
4 habitual traffic offender statute, the definition of what a
5 habitual traffic offender I just read to you was is
6 56-1-1020. Immediately before that is 56-1-1010. And
7 56-1-1010 really encompasses the whole reason we are here.
8 The whole reason we are here is, as stated in 56-1-1010: It
9 is hereby declared to be the policy of this state to provide
10 maximum safety for all persons who use the public highways of
11 this state and to deny the privilege of operating motor
12 vehicles on such highways to persons who, by their conduct,
13 in record have demonstrated their indifference to the safety
14 and welfare of others and their disrespect for the laws of
15 the state.

16 That's just part of the statute that immediately
17 precedes the definition of habitual traffic offender. But
18 what is this about? This is about the fact that Mr. Ryals
19 has an indifference towards the law. He disrespected the
20 law. The law is the law. It is written in a way that is
21 meant not to be broken. Yet, Mr. Ryals completely
22 disrespected that.

23 This isn't, again, the sexiest of cases. This isn't
24 a TV courtroom drama. But what it is is important, because
25 the law is written not to be broken. It is written for a

1 reason. And Mr. Ryals has deliberately disrespected that law
2 in this case. And not only in this case in particular, but
3 he has shown a pattern of disrespect through the numerous
4 convictions that he has that accumulated to him being a
5 habitual traffic offender.

6 That's what the State is asking you to do, is just
7 evaluate the evidence as a whole, look at the totality of the
8 circumstances, use your common sense. Understand that the
9 evidence is there. And the evidence proves that Cary Ryals
10 is guilty of being a habitual traffic offender. Thank you.

11 THE COURT: Ladies and gentlemen, I remind you that
12 during this trial, you and I have had certain duties to
13 perform. As the trial judge, it is my responsibility to
14 preside over the trial of this case. And I have the duty to
15 rule on the admissibility of the evidence offered during this
16 trial. You are to consider only the competent evidence
17 before you. You are to consider only the testimony that has
18 been presented from the witness stand, as well as the
19 exhibits that have been made part of the record in this case.

20 I have the additional duty to charge you the law
21 applicable to this case. As the presiding judge, I am the
22 sole judge of the law in this case. It is your duty as
23 jurors to accept the law and apply the law exactly as I state
24 it to you now. If you have any idea as to what the law is or
25 what the law ought to be, and it does not agree with what I'm

1 about to tell you, you must abandon your own ideas, because
2 you are sworn to accept the law and apply the law exactly as
3 I state it to you now.

4 In every case tried in this court before a jury, the
5 jury becomes the sole and exclusive judges of facts. The
6 trial judge may not make any comment regarding the facts in
7 this case. You are not to infer from anything that I have
8 said or done throughout the progress of this trial that I
9 have any opinion about the facts in this case. The law does
10 not allow me to have an opinion about the facts in this case.

11 The indictment in this case charges Mr. Ryals with
12 one count of violating the Habitual Traffic Offender Act. I
13 remind you, the fact that Mr. Ryals was arrested, charged,
14 and indicted in this case, is not evidence and cannot be
15 considered by you as evidence of his guilt. An indictment is
16 simply the formal document which contains the charge made
17 against the defendant. It is the formal document by which
18 this case is brought into court.

19 Mr. Ryals has pled not guilty to this indictment. A
20 person charged with committing a criminal offense in South
21 Carolina is never required to prove himself innocent. It is
22 an important rule of law that the defendant in a criminal
23 trial, no matter what the seriousness of the charge may be,
24 will always be presumed to be innocent of the crime for which
25 the defendant was indicted, unless guilt has been proven by

1 evidence satisfying you of that guilt beyond a reasonable
2 doubt.

3 The presumption does not end when you begin your
4 deliberations, but it accompanies the defendant throughout
5 the trial until you reach a verdict of guilt based upon the
6 evidence satisfying you beyond a reasonable doubt by the
7 standard of guilt.

8 The presumption of innocence is not just a legal
9 theory. It is not just a legal phrase. It is a substantial
10 right to which every defendant is entitled, until you, the
11 jury, are satisfied from the evidence of the defendant's
12 guilt beyond a reasonable doubt.

13 The State has the burden of proving the defendant
14 guilty beyond a reasonable doubt. Some of you may have
15 served as jurors before in civil cases where you were told
16 that it is only necessary to prove that a fact is more likely
17 true than not true, such as by a greater weight or
18 preponderance of the evidence.

19 In criminal cases, the proof is more powerful than
20 that. Proof beyond a reasonable doubt is proof that leaves
21 you firmly convinced of the defendant's guilt. There are
22 very few things in this world that we do know with absolute
23 certainty. And in criminal cases, the law does not require
24 the burden of proof that overcomes every possible doubt.

25 If, based upon your consideration of the evidence,

1 you are firmly convinced that Mr. Ryals is guilty of the
2 crime charged, you must find him guilty. If, on the other
3 hand, you think there's a real possibility that Mr. Ryals is
4 not guilty, you must give him the benefit of the doubt and
5 find him not guilty.

6 There are two types of evidence generally presented
7 throughout a trial, direct evidence and circumstantial
8 evidence. Direct evidence directly proves the existence of a
9 fact and does not require deduction. Circumstantial evidence
10 is proof of a chain of facts and circumstances indicating the
11 existence after fact.

12 Crimes may be proven by circumstantial evidence.
13 The law makes absolutely no distinction between the weight or
14 value to be given either direct or circumstantial evidence.
15 However, to the extent the State relies on circumstantial
16 evidence, all of the circumstances must be consistent with
17 each other, and when taken together, point conclusively to
18 the guilt of the defendant beyond a reasonable doubt. If
19 these circumstances merely portray the defendant's behavior
20 as suspicious, the proof has failed.

21 The State has the burden of proving the defendant
22 guilty beyond a reasonable doubt. This burden rests with the
23 State regardless of whether the State relies on direct
24 evidence, circumstantial evidence, or a combination of the
25 two.

1 Necessarily, you must determine the credibility of
2 the witnesses who have testified in this case. Credibility
3 simply means believability. It becomes your duty as jurors
4 to analyze the facts and determine which evidence convinces
5 you of its truth. In determining the believability of the
6 witnesses who have testified in this case, you may believe
7 one witness over several witnesses or several witnesses over
8 one witness. You may believe part of the testimony of one
9 witness and reject the remaining part of the testimony of
10 that same witness. You may believe the testimony of a
11 witness in its entirety or reject the testimony of a witness
12 in its entirety. You may consider whether the witness has
13 exhibited to you any interest, bias, prejudice, or other
14 motive in this case. And you may consider the manner and
15 appearance of the witness while he or she was testifying.

16 In order to establish criminal liability, criminal
17 intent is required. For example, the mental state required
18 to be proven by the State for a particular crime might be
19 purpose, intent, knowledge, recklessness, or criminal
20 negligence. Criminal intent must be proven by the State
21 beyond a reasonable doubt. It is always a matter that must
22 be determined by the jury from the circumstances surrounding
23 the situation. There is no way to prove intent to
24 mathematical certainty, so the law says that criminal intent
25 may be inferred from the circumstances shown to have existed.

1 This is how you, the jury, make a determination of whether or
2 not the element requiring intent was present.

3 It is not necessary to establish intent by direct
4 and positive evidence, but intent may be established by
5 taking the acts and the facts and circumstances of the case
6 into consideration. Criminal intent is a mental state. It
7 is a conscious wrongdoing. It is up to you to determine what
8 the defendant intended to do based upon the circumstances
9 shown to have existed.

10 You have heard evidence that Mr. Ryals was convicted
11 of a crime other than the one for which he is now on trial.
12 This evidence may be considered by you, if you conclude it is
13 true, only in deciding whether the defendant's testimony is
14 believable, and for no other purpose. You must not consider
15 the defendant's prior record as any evidence of the
16 defendant's guilt of the charge we are trying here today.

17 Mr. Ryals is charged with violating the Habitual
18 Offenders Act. The State must prove beyond a reasonable
19 doubt that the defendant was operating a motor vehicle in
20 this state. Operating a motor vehicle does not necessarily
21 mean driving the vehicle. Driving means that the vehicle is
22 actually in motion. However, in order to be operating a
23 motor vehicle, there does not need to be any motion.
24 Operating includes starting the engine or using any
25 mechanical or electrical part of the vehicle which will set

1 the vehicle in motion.

2 The State must also prove beyond a reasonable doubt
3 that at the time Mr. Ryals was operating the motor vehicle,
4 the Department of Motor Vehicles had found Mr. Ryals to be a
5 habitual offender, and had revoked Mr. Ryals's license to
6 drive based upon that finding.

7 Ladies and gentlemen, I am now going to go over the
8 verdict form with you.

9 Mr. Osborne, it is your responsibility to complete
10 this verdict form. There is no significance in the way that
11 I read the verdict form. It's simply something has to go on
12 the paper first.

13 In the court of general sessions, for the Ninth
14 Judicial Circuit, Case NO. 2015-GS-08-801, the State of South
15 Carolina vs. Cary Glenn Ryals, defendant, verdict form: We,
16 the jury, find the defendant, Cary Ryals, not guilty of
17 violating the Habitual Traffic Offender Act; or, we, the
18 jury, find the defendant, Cary Ryals, guilty of violating the
19 Habitual Traffic Offender Act.

20 Once you have reached a unanimous decision,
21 Mr. Foreman, meaning all 12 of you agree, you will sign the
22 verdict form and date it. And indicate to the bailiff by
23 knocking on the door that you have reached a unanimous
24 decision.

25 To my two alternates, you have completed your

1 service to this case. You will be kept in a separate room
2 until told otherwise.

3 To my first 12, is there any member of the jury, the
4 first 12, who feels they will be unable to continue and
5 complete deliberations; if so, please stand.

6 (No response from the jury.)

7 THE COURT: Thank you. The first 12 have indicated
8 they are able to complete their deliberations.

9 This is the last time I will say this to you. Do
10 not begin your deliberations. Do not discuss this case among
11 yourselves. We will be gathering the verdict form, as well
12 as the exhibits to come back to you. And once that is
13 accomplished, the bailiff will indicate to you that you may
14 begin deliberations.

15 To the two alternates, do not discuss this case with
16 each other or with anyone. And I will be in to excuse you in
17 just a few moments.

18 Please rise.

19 Please take all your belongings with you.

20 (Whereupon, the jury leaves open court at 01:58 PM.)

21 THE COURT: Any motions or matters regarding the
22 charge from the State?

23 MR. WEST: Nothing from the State, Your Honor.

24 MR DURBAN: Nothing from the Defense.

25 THE COURT: All right. Thank you.

1 Anything further?

2 MR. WEST: Nothing from the State, Your Honor.

3 MR DURBAN: Nothing from the Defendant.

4 (Whereupon, the jury deliberates at 02:00 PM.)

5 (Back on the record at 02:22 PM).

6 THE COURT: Please be seated. We have a note: Can
7 we get a copy of the Habitual Traffic Offender Act or a
8 transcript of the judge's instructions that describe what the
9 State has to prove?

10 MR. WEST: I have no objection to the charge going
11 back, Your Honor.

12 MR DURBAN: I have no objection to the charge.

13 THE COURT: All right. I have to make 12 copies and
14 send it back. It's typically just easier. My intention was
15 to bring the jury back and read what -- read the charge, not
16 the entire charge, but the statute. Any objection?

17 MR. WEST: I have no objection to reading the
18 statute.

19 MR DURBAN: No.

20 THE COURT: If they need anything past that, then we
21 will send the rest back.

22 MR DURBAN: My client is not here.

23 THE COURT: I just realized that.

24 MR. WEST: For clarification, you said you are just
25 reading Section 1020, the statute?

1 THE COURT: 56-1-1100.

2 MR. WEST: 1100, okay.

3 (Whereupon, the defendant is present.)

4 THE COURT: Anything before we bring in the jury?

5 MR. WEST: Nothing from the State, Your Honor.

6 MR. DURBAN: No, Your Honor. Thank you.

7 THE COURT: Let's bring in the jury.

8 (Whereupon, the jury returns to open court at 02:25
9 PM.)

10 THE COURT: Thank you, Mr. Foreman. You've
11 indicated that the jury needs a copy of my charge. I
12 typically do not give a copy of my charge. What I have
13 determined from reading your note is that you wish for
14 further clarification on the offense of habitual traffic
15 offender. I'm going to read section 56-1-1100.

16 Mr. Ryals is charged with violating the Habitual
17 Offenders Act. The State must first prove beyond a
18 reasonable doubt that the defendant was operating a motor
19 vehicle in this state. Operating a motor vehicle does not
20 necessarily mean driving the vehicle. Driving means that the
21 vehicle is actually in motion. However, in order to be
22 operating a motor vehicle, there does not need to be any
23 motion. Operating includes starting the engine or using any
24 mechanical or electrical part of the vehicle which will set
25 the vehicle in motion.

1 The State must also prove beyond a reasonable doubt
2 that at the time Mr. Ryals was operating the motor vehicle,
3 the Department of Motor Vehicles had found Mr. Ryals to be a
4 habitual offender and had revoked Mr. Ryals's license to
5 drive based upon that finding.

6 Did that answer your question, Mr. Foreman?

7 THE FOREPERSON: Yes, Your Honor.

8 THE COURT: All right. Please return and continue
9 your deliberating.

10 Please rise for the jury.

11 (Whereupon, the jury leaves open court at 02:27 PM.)

12 THE COURT: Thank you. Anything further required
13 from the State?

14 MR. WEST: Nothing from the State.

15 MR DURBAN: Nothing from the Defense.

16 (Whereupon, the jury deliberates At 02:28 PM.)

17 (Back on the record at 03:05 PM.)

18 THE COURT: We have a verdict. We are waiting on
19 your client, of course. Anything before we bring in the
20 jury?

21 MR. WEST: Nothing from the State.

22 MR DURBAN: Nothing from the Defense. Thank you,
23 Your Honor.

24 (Whereupon, the defendant is present.)

25 THE COURT: All right. Let's bring in the jury.

1 (Whereupon, the jury returns to open court at 03:06
2 PM.)

3 THE COURT: Mr. Foreman, I understand you have
4 reached a verdict. If you will please fold the verdict form
5 and hand it to the bailiff.

6 THE FOREPERSON: Yes, Your Honor.

7 THE COURT: Thank you.

8 Mr. Ryals, please stand.

9 THE CLERK: State of South Carolina, County of
10 Berkeley, vs. Cary Glenn Ryals, Indictment No.
11 2015-GS-08-801, we, the jury, find the defendant, Cary Ryals,
12 guilty of violating the Habitual Traffic Offender Act, signed
13 by the foreman, Mr. Osborne.

14 Mr. Foreperson and ladies and gentlemen of the jury,
15 if this is your verdict, please signify by raising your right
16 hand.

17 (Whereupon, all jurors raise their hand.)

18 THE CLERK: Thank you.

19 THE COURT: Anything further required of the jury
20 from the State?

21 MR. WEST: Nothing from the State, Your Honor.

22 MR. DURBAN: Nothing from the Defense.

23 THE COURT: Thank you.

24 Ladies and gentlemen, this completes your service to
25 this case. It also completes your service for the week. If

1 you will please go back to your jury room, I will be there in
2 just a few moments. Thank you.

3 (Whereupon, the jury leaves open court at 03:09 PM.)

4 THE COURT: Any motions or matters?

5 MR. WEST: Nothing from the State.

6 THE COURT: Are you ready for sentencing?

7 MR. WEST: I have this sheet prepared, Your Honor.

8 THE COURT: Any motions or matters?

9 MR DURBAN: No, Your Honor. We would like to be
10 heard before sentencing. I would like to be heard before
11 sentencing.

12 THE COURT: What are you trying to tell me?

13 MR DURBAN: Well, Mr. Ryals had some things he
14 wanted me to raise for the Court, just to let you know a
15 little bit about him.

16 THE COURT: So this has to do with the sentencing?
17 There's no -- you are not making any post-trial matters or
18 any motions of that nature?

19 MR DURBAN: No, Your Honor.

20 THE COURT: All right. So we need to have probation
21 here. I understand he's on probation. Let me go release the
22 jury. And get your thoughts together. I will be right back.
23 Thank you.

24 (A recess transpired.)

25 THE COURT: Mr. West.

1 MR. WEST: Thank you, Your Honor. The State takes
2 the position right now that Mr. Ryals has violated his
3 probation several times. He's had several magistrate
4 convictions as well while being on probationary, including
5 this conviction for habitual traffic offender, which is
6 five-year offense. He was placed on probation for assault
7 and battery of a high and aggravated nature where he was
8 given a sentence of 10 years suspended to 5 years probation.
9 I understand Agent Powell will address the probationary
10 matter.

11 THE COURT: Do you have a packet for me, Agent
12 Powell? Thank you.

13 All right. Agent, what are you recommending?

14 PROBATION OFFICER: The State recommends
15 revocation.

16 THE COURT: In full?

17 PROBATION OFFICER: Yes, ma'am, or determined by the
18 Court.

19 THE COURT: Is this the only -- is this the basis of
20 the revocation?

21 PROBATION OFFICER: Yes, ma'am.

22 THE COURT: Anything further, Mr. West?

23 MR. WEST: Just so Your Honor is aware, we do have
24 several other pending charges in our office still.

25 THE COURT: Tell me what's pending.

1 MR. WEST: We have two harassment and second degree
2 charges; intimidation of a witness; breach of trust, which is
3 a property crime enhancement. In Charleston there is a
4 pending --

5 THE COURT: What are you planning on doing with
6 those cases?

7 MR. WEST: I have spoken briefly after the jury's
8 verdict with Mr. Durban, wanting to know if he could speak
9 with Mr. Ryals about a possible plea agreement with the rest
10 of the charges to run with the sentence Your Honor comes down
11 with today. I did notify the victim associated in the
12 harassment and intimidation of a witness charges that we
13 would be going forward on this charge today. If there was a
14 conviction, there would possibly be a sentence that we would
15 come down with that.

16 He also has a Colleton County charge pending, as
17 well as the Charleston County charge pending as well. So,
18 Your Honor, it's just a continual --

19 THE COURT: So at this point, there's no resolution?

20 MR. WEST: There is no resolution to the State's
21 file at this time.

22 THE COURT: Okay. Anything else I need to know,
23 Mr. West?

24 MR. WEST: Judge, you've heard a lot of his prior
25 record. But I believe the most serious of charges was that

1 assault and battery of a high and aggravated nature. The
2 continual disrespect for the traffic laws I think is
3 important. That goes back all the way through the '90s up
4 through the 2000s. So the DMV records that were produced at
5 trial only show ten-year period. But prior to that, there's
6 several, several violations. And as you know, this habitual
7 traffic offender statute does give the Court the ability to
8 sentence up to five years. Given the status on probation,
9 his repeated violations, the State would be asking for a
10 sentence commensurate with what the Court feels is
11 appropriate to this charge and the others.

12 THE COURT: All right. Happy to hear from you.

13 MR DURBAN: Thank you, Your Honor. Mr. Ryals has
14 had a past. There's no question about that. He's gotten in
15 trouble before. I've spoken with him at length in
16 preparation for today. He's making every effort to try to
17 see if he could get some help somewhere to straighten his
18 life out. He has found an alternative program called STRONG
19 that has provisionally accepted him into that program. It's
20 designed to try to take former alcoholics, drug addicts, and
21 any convict and try to straighten their life out. He is very
22 interested in doing that.

23 He is a 17-year-old veteran working on the
24 waterfront here. That job is in jeopardy as well because of
25 this. He realizes that there are a lot of things that we

1 need to do with the Solicitor's Office that are still pending
2 charges on that.

3 He has been in jail for just about a year. He's
4 been in jail since July of last year. And we would just ask
5 Your Honor just to be fair and give him some leniency. He
6 does have some more serious charges that are pending.

7 THE COURT: How many days has he been in custody?

8 MR DURBAN: Since July. I'm not sure.

9 MR DURBAN: Slightly less than a year.

10 THE COURT: Unfortunately, I can't put credit for
11 slightly less than a year on the sentencing sheet.

12 MR DURBAN: I understand that.

13 MR. WEST: Your Honor, he is currently held on bench
14 warrant. Ms. Szymczynska is checking on when he was
15 incarcerated on that bench warrant.

16 THE COURT: All right. Anything further, Mr. Ryals?
17 Do you wish to address the Court?

18 THE DEFENDANT: You know, a lot of things going on
19 that needs to come out as far as truth in other cases. Like
20 I said, I worked at the waterfront for 17 years. That job
21 provides a lot for my family and my little son. He's nine
22 years old. I pay for his education in private school, as
23 well as I do a lot for the community. I have. I raised
24 \$5,000 for that burn girl. Most of that is my own money.
25 That was the girl that got burned in a fire in Goose Creek.

1 I also, like I said, five girls couldn't go to
2 cheerleading camp last year. I raised quite a bit money last
3 year, beginning of last year.

4 Any time I could see -- like, started years ago, I
5 mean, three years ago, I started a fund, we got a container
6 check, got from 6,000 to 16-. I took \$1,000 of my own money
7 and raised over 700 bikes for children without bicycles for
8 Christmas. I did that. I started that. I was on the news
9 for it.

10 A lot of things I want to get behind me. I want to
11 just resume work. These other things stem from my
12 girlfriend. There was violence involved between me and her.
13 I think that she wouldn't even going to show up for court.
14 Everything I have is in the house that we reside together.
15 I've been incarcerated ever since.

16 Habitual offender, like I said, I couldn't state
17 anymore. I have too much. I have more dealing with cars
18 than probably anything else. And I sure wouldn't want to
19 jeopardize my driver's license. I was found guilty. That's
20 it. Nothing I can do to change it. I wish you could see
21 that I could attend my job. And I only have nine more years
22 until early retirement. That means a lot for me. I'm sure
23 not retiring in nine years, but that's what they offer.

24 And with the ABHAN charge, as Mr. West stated, said
25 I cut somebody with a knife. That's not true. Those facts

1 were stated later. The boy won a lot of money from me from
2 where I work at. Hanahan have problem with people that do
3 good, they come down on. I see somebody doing good, I kind
4 of praise them. That charge cost me \$12,000 to get my TWIC
5 card back. I just got it back end of -- right before all
6 this started. Resumed back to work just a few days before
7 all of this happened.

8 Work is willing to hold off for me. Thank God I
9 work for the union. I've lost seniority. I won't be able to
10 gain back. As soon as I make my hours back, I will go right
11 back where I came from.

12 I have had problems in the past with officers that I
13 went to school with from Berkeley County, from Hanahan. When
14 I resided at the Folly Beach, I didn't have any of these
15 problems. And I think that's where I would like to go back
16 to resume my job.

17 And wish that the probation -- I've been to
18 probation every time I was supposed to go. I never was late.
19 I called them. If anything was, you know, out of the way,
20 and told them everything that was going on. He told me that
21 I don't have to show every month. I show once every three
22 months. My agent's Mercer, not Mr. Powell.

23 THE COURT: You are not his agent, Mr. Powell?

24 PROBATION OFFICER: No, ma'am.

25 THE DEFENDANT: I've always been in compliance with

1 that and want that behind me.

2 The only reason I pled to an ABHAN charge was to
3 regain my TWIC card back. It wasn't a felony at the time.

4 THE COURT: You understand that you are on probation
5 and you pled, regardless of the reason that you were on
6 probation for that charge.

7 THE DEFENDANT: Yeah, I pled to that.

8 THE COURT: Is that a yes?

9 THE DEFENDANT: Yeah. I'm sorry. Come again?

10 THE COURT: You understand you were on probation?

11 THE DEFENDANT: Yeah, I'm on probation, yes,
12 ma'am.

13 THE COURT: And what were the terms of the
14 probation?

15 PROBATION OFFICER: Not to be convicted of any new
16 charges; random alcohol and drug counseling; and payment of
17 fine of 133.90.

18 THE COURT: And the terms were?

19 PROBATION OFFICER: They were 10 years suspended
20 upon five years.

21 THE COURT: And who sentenced him?

22 PROBATION OFFICER: Judge Jefferson did.

23 THE DEFENDANT: Judge Dennis.

24 PROBATION OFFICER: Judge Jefferson.

25 THE COURT: And so that was an ABHAN, so he received

1 the maximum?

2 PROBATION OFFICER: That is correct. He was
3 sentenced on January the 28th, 2013.

4 THE DEFENDANT: It happened 2009, ma'am. I haven't
5 been in trouble since.

6 THE COURT: All right. Mr. Ryals, anything further?
7 Mr. Durban?

8 MR DURBAN: Nothing from me.

9 THE COURT: Order of the court on 2015-GS-08-801,
10 that you be committed to the State Department of Corrections
11 for a term of five years. I will give you credits for the
12 time that you have served. If somebody can give me the
13 accurate account, I will be more than happy to put that on
14 the sentencing sheet. I find that you have willfully and
15 substantially violated the terms and conditions of your
16 probationary sentence. Revoke in full. Give you credit for
17 the time that you have served.

18 Good luck to you, sir. I will order ATU.

19 MR. WEST: Your Honor, he's been in since October
20 24th, 2014.

21 THE COURT: October 24th, 2014.

22 (Whereupon, the proceedings are concluded.)

23

24

25

1 CERTIFICATE OF REPORTER

2

3 I, Karen V. Andersen, Registered Merit Reporter,
4 Certified Realtime Reporter, and Notary Public for the State
5 of South Carolina at Large, do hereby certify that the
6 foregoing transcript is a true, accurate and complete
7 Transcript of Record of the proceedings.

8 I further certify that I am neither related to nor
9 counsel for any party to the cause pending or interested in
10 the events thereof.

11 Witness my hand, I have hereunto affixed my official
12 seal this 29th day of March, 2016, at Charleston, Charleston
13 County, South Carolina.

14

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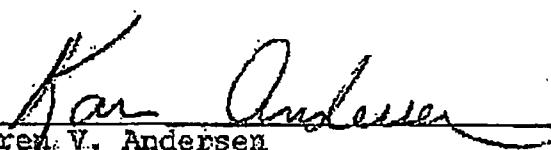
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Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA

County of Berkeley

IN THE COURT OF COMMON PLEAS

Cary H. Ryals #364293

Full name and prison number (if any) of Applicant

2016-CP-08-216

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Kershaw Corr Inst. 4848 Goldmine Hwy. Kershaw S.C. 29067
2. Name and location of Court which imposed sentence Berkeley County Court of General Sessions 300 Catfish Ave. Milledgeville Ga. 30461
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) 2015-GS-08-00801

2016 JUN 28 PM 3:55
CLERK OF COURT
BERKELEY COUNTY

154

5.

The date upon which sentence was imposed and the terms of the sentence:

(a)

6/3/15

(b)

(c)

6.

Check whether a finding of guilty was made:

(a)

after a plea of guilty

N/A

(b)

after a plea of not guilty

N/A

(c)

after a plea of nolo contendere

N/A

7.

Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8.

If you answered Ayes@ to (7), list:

(a)

the name of each Court to which you appealed:

i.

ii.

iii.

(b)

the result in each such Court to which you appealed:

i.

ii.

iii.

(c)

the date of each such result:

i.

ii.

iii.

(d)

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

i.

ii.

iii.

9.

If you answered Ano@ to (7), state your reasons for not so appealing:

(a)

Trial Counsel Hampton Durlam Jr. Never advised me of my right to an appeal. Never spoke to me before Trial or Never prepared me for my Jury Trial (even as he said to me he would come to the Ct. and directly after trial he never did also would not answer my calls. To advise me of my Mother Rights

- (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
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to investigate my past Record
- (b) Failure to challenge the jurisdiction of the sentence
- (c) Failure to object to the improper attire
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ 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. _____
 - 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?

NO

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (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? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Prison Law Firm, L.L.P. - Attorney Emory Durlan Jr.
3400 West Montague Ave. North Charleston, S.C. 29418
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Habitual Traffic Offender Accused of 3 Driving Under
Supervision
 ii. _____
 iii. _____

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

Overturn decision or reduce sentence to the Min;
attest or to overcome decision from such Misrepresentation that
unavailable. Vacate Sentence.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Berkely)

VERIFICATION

I, Cary Ryals, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Cary Ryals

SWORN to and subscribed before me this 21st
 day of January, 2016.

Catherine A. Chmielewski (L.S.)
 Notary Public

My Commission Expires: My Commission Expires December 22, 2018

2016 JAN 28 PM 3:57
 CLERK OF COURT
 BERKELEY COUNTY, SC

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

I, Cary Ryals, 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.

Cary Ryals
Applicant

SWORN or affirmed to and subscribed before me this
21st day of January, 2016.

Catherine A. Ameron
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

JAN 28 2016
CLERK OF COURT
SOUTH CAROLINA

2016 JAN 28 PM 3:57

GREEN
LAW FIRM, LLC

Wetters & Green, P.A. Service & Company, P.C. 11000 Highway 101, Suite 100, Berkeley, SC 29461
Charleston, SC 29401 (843) 763-1100 Fax: (843) 763-1101

January 27, 2016

Berkeley County Clerk of Court
300 B California Avenue
P O Box 219
Moncks Corner, SC 29461

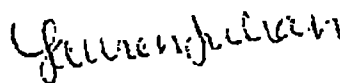
RE: Robin Morrow v. Oscar Garcia and Milagros Hernandez

Dear Sir or Madam:

Enclosed please find the Motion to Strike Pleadings and for Sanctions and Costs for the above-referenced matter and (1) copy of the same, along with our firm check in the amount of \$25.00 (Twenty-Five and no 00/100). Upon filing, please return the copy to me in the envelope provided herein.

If you have any questions, please contact me at (843) 266-6865.

Sincerely,



Lauren Julian
Litigation Paralegal

Charleston

Columbia

RE: Cary Ryals
Indictment/Case #
2015-SS-08-00801

MARY P. BROWN
Clerk OF COURT
GENERAL Sessions Court

Date: 10-22-15

FREEDOM OF INFORMATION Request
SCFOIA 30-4-10, et seq.

Clerk of Court,

I am requesting under the South Carolina Freedom of Information Act, Section 30-4-10, et seq. The information of what kind of appeal or motion is in on the above reference matter. This is my second SCFOIA request as your office may know that the SCFOIA requires a response time within 15 business days. If access to this request will take longer than this amount of time, please contact me in writing about when I might expect my request. Also when returning my request on what kind of appeal or motion is in on my indictment, please inform me who has this motion or appeal in on my indictment. This information will contribute significantly on my understanding of the criminal justice system. Your time in concerning my request is greatly appreciated. If this request is denied, please cite each specific exemption you feel justifies the refusal to release the information and please notify me of the appeal procedures to me under the law.

With my kindest regards

Sincerely,

Cary Ryals

10-22-15

Respond to: Cary Ryals #364293
Kershaw Corr. Inst. MA8
4848 Goldmine Hwy
Kershaw, S.C. 29067

364293
LEGAL
MAIL
ONT.V

Mary P. Brown 46213 GE RE: Sentence Sheet
Clerk of Court cc: Cary Ryals

7/11/15
C.L.A.
Berkley
Cary

Court of General Sessions

I'm Writing in regards to my sentence that I was given By the Honorable Judge Herrington. My date was June 3, 2015. I was represented by Frampton Durkin Jr. Which I no longer have ties with. At the time I was sentenced Judge Herrington had given me my time credited I had in the Det. Cent. Which was 12 months and 2 weeks I had done. Upon me being taken out of Court by the Baliff. My lawyer said that he would be right over to see me at the Det Cent. He never showed to explain anything to me or give me any sentence sheet. I have found out I do not have any time credited. It's not the first time I have had problems with Frampton Durkin Jr. I tried to relieve Frampton when I found out he had scheduled a Jury trial which I never ask for. He also misled your court along with Judge Herrington telling her I had already relieved three lawyers before him. Making Judge Herrington not feel the need to relieve him as I requested. That now is not here or there. I can only be right as I been given. I hope in some way I will get threw this. I am asking the Court to please see fit to give me a copy of my sentence sheet along with my time credited that I was allowed by Honorable Judge Herrington. Thank you for your time in regards.

Cary Ryals SCOT# 364293
Kirkland RE Center A1-17
4344 Broad River Rd.
Columbia, S.C.
29210

With my kindest regards

please Don't Refer me Back to Frampton Durkin Jr. I do not wish to have any more dealings with him!
Thanks

Sincerely Cary Ryals

please see fit to do so at your earliest convenience.
Thank you!

I am Filing this request under the Freedom of Information Act.
F.O.I.A. Thank you in regards

Cary Ryals SCDC #364293

A1-17

Mailroom

Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

Return Service Requested

RECEIVED

JUL 06 2015

LEGAL
MAIL
ONLY

KIRKLAND CORRECTIONAL INSTITUTION
MAILROOM

Berkely County Clerk
Mary P. Brown
300 California Ave
Moncks Corner, S.C.
29461

COLUMBIA SC 292

JUL 06 2015



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PAID FROM ZIP CODE 29210

of General Session

29461403674



THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM. THEREFORE, THE
DEPARTMENT DOES NOT ASSUME ANY LIABILITY FOR
ITS CONTENTS.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	CASE NO: 2016-CP-08-0216
CARY RYALS,	)	
	)	
Applicant,	)	
	)	AMENDED APPLICATION FOR
vs.	)	POST CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

MAY 2, 2017
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

2017 JUL 26 PM 2:32

RDD

The Applicant, Cary Ryals, now having the benefit of appointed counsel, alleges the following:

1. Cary Ryals is detained at Kershaw Correctional Institution under Inmate Number: 364293.
2. He was convicted and sentenced in Berkeley County for Habitual Traffic Offender (HTO) on June 1, 2015, under Indictment Number: 2015-GS-08-0801.
3. The Honorable Kristi Lea Harrington sentenced the Applicant to five (5) years for Habitual Traffic Offender.
4. Following this conviction, the Court conducted a probation violation hearing and ruled that the HTO conviction was a violation of probation requiring a full revocation (10 years) to be served concurrently (Indictment Number: 2012-GS-08-2275).
5. He was represented by Frampton Durban on these charges (Applicant's attorney).
6. The Applicant did not appeal his conviction or sentence.
7. The Applicant filed an *in forma pauperis* application for post conviction relief on January 28, 2016.
8. The undersigned counsel, Rodney D. Davis, was appointed to represent the Applicant on April 4, 2016.
9. The State filed a Return on or about June 13, 2016.

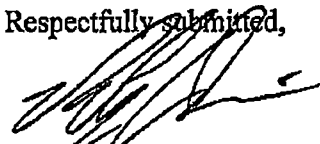
RDD

RDD

10. Having the advice of counsel, the Applicant wishes to amend his Application to include the revocation of his probation, as listed above.

Wherefore, based on this Amended Application, the Applicant requests that a hearing on the merits scheduled.

Respectfully submitted,



Rodney D. Davis
Attorney for Applicant
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowcountryLawOffice.com
(843) 323-4353

July 24, 2017



Lowcountry Law Office

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

July 25, 2017

Clerk of Court, Berkeley County
Common Pleas Division
300-B California Avenue
Moncks Corner, SC 29461-1707

Re: Cary Ryals v. State of South Carolina; Case #: 2016-CP-08-0216

Dear Madam:

For filing, I have enclosed an Amended Application for Post-Conviction Relief, plus one (1) copy with regard to the above-referenced matter. I would appreciate it if you could please return a clocked copy of same to me in the enclosed, self-addressed, stamped envelope.

Should you need anything further or if I can be of any assistance, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Sincerely,

Michelle Moore Trimble

Michelle Moore Trimble
Paralegal to Rodney D. Davis

~~Enclosure(s) As stated above~~
mmmt

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Cary G. Ryals, #364293,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2016-CP-08-216

RETURN

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2016 JUN 14 AM 11:21

FILED

In response to the post-conviction relief application filed on January 28, 2016, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. The Applicant was indicted by the May 2015 term of the Berkeley County Grand Jury for one (1) count of Habitual Traffic Offender (2015-GS-08-801). Frampton, Durlan, Jr., Esquire, represented him. On June 1, 2015, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant to confinement for five (5) years. The Applicant did not appeal his conviction or sentence.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to investigate my past record"

me
w/e

- b. "Failure to challenge the jurisdiction of the sentence"
- c. "Failure to object to the improper attire"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

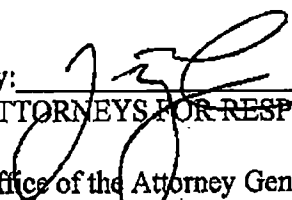
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 13, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

2016-CP-08-0216

CARY G. RYALS, #364293)

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(s) by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, South Carolina 29405

DATED this 13th day of June, 2016.

Brianna Arnone
 Brianna Arnone, Legal Assistant
 For Respondent

FILED
 2016 JUN 14 AM 11:21
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC



ALAN WILSON
ATTORNEY GENERAL

June 13, 2016

The Honorable Mary P. Brown
Clerk of Court, Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: Cary G. Ryals, #364293 v. State of South Carolina
2016-CP-08-0216

Dear Ms. Brown:

Enclosed please find the original Return of the Respondent, in the above-captioned case, Cary G. Ryals v. State, for filing in your office. We are also sending you copies of the following documents to accompany our Return:

- 1) PCR application
- 2) Clerk Records-Berkeley
- 3) SCDC Records
- 4) Trial transcript

Sincerely,

J. Rutledge Johnson
Assistant Deputy Attorney General

JRJ:bea
Enclosures

cc: Rodney D. Davis, Esquire

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY NINTH JUDICIAL CIRCUIT
2016-CP-08-216

GLENN RYALS,)
APPLICANT,)
VS.)
DECEMBER 4, 2017
MONCK'S CORNER, SC
THE STATE OF SOUTH)
CAROLINA,)
RESPONDENT.)

B E F O R E:

HONORABLE MICHAEL G. NETTLES

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

JULIE COLEMAN, ESQUIRE
Attorney for the Respondent

RODNEY DAVIS, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

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POST-CONVICTION RELIEF HEARING 3

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6-SLED letter 35 35

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1 (The following proceedings were held
2 December 4, 2017, Berkeley County, South Carolina,
3 @ 4:20 p.m.)

4 MS. COLEMAN: This is Cary G. Ryals
5 versus the State of South Carolina, docket number
6 2016-CP-08-216. Applicant is incarcerated with the
7 South Carolina Department of Corrections pursuant
8 to Berkeley County Clerk of Court orders of
9 commitment. Applicant was indicted by the May 2015
10 term of the Berkeley County grand jury for a
11 habitual traffic offender charge. Frampton Durban,
12 Jr., Esq. represented him on the charge. Assistant
13 solicitor Mason West prosecuted the case. On
14 June 1st, 2015, applicant proceeded to a jury trial
15 and was found guilty as indicted. The Honorable
16 Kristi Harrington sentenced applicant to a
17 five-year term of imprisonment and revoked in full
18 the probation that he was serving on a prior
19 offense for assault and battery of a high and
20 aggravated nature. Applicant did not appeal his
21 conviction, his sentence or his probation
22 revocation.

23 THE COURT: How much was revoked on the
24 probation revocation?

25 MR. DAVIS: Full revocation, Your

1 Honor.

2 THE COURT: Which was?

3 MR. DAVIS: Ten years.

4 THE COURT: To run concurrent?

5 MR. DAVIS: Yes, Your Honor.

6 MS. COLEMAN: Applicant filed a timely
7 application for post-conviction relief on
8 January 30th, 2017, alleging that he was being held
9 in custody unlawfully based on the following
10 allegations: Ineffective assistance of counsel for
11 failure to investigate my past record, failure to
12 challenge the jurisdiction of the sentence and
13 failure to object to the improper attire. The
14 State filed its return on June 13th, 2016.
15 Applicant filed an amended application on
16 July 26th, 2017, to include a challenge to his
17 probation revocation. And he is present today and
18 represented by Mr. Rodney Davis. I will note
19 before we begin Mr. Durban who represented him at
20 trial has been disbarred or temporarily suspended
21 from the practice. We have been unable to contact
22 him or subpoena him for the hearing today so he
23 will be unavailable to testify.

24 THE COURT: We will stand on the
25 record?

1 MS. COLEMAN: Yes. I tried to call the
2 solicitor, former solicitor, Mason West as well.
3 But he had a trial today, couldn't make it, but I
4 would ask you to rely on the transcript and use
5 that as the basis for your ruling. Thank you.

6 MR. DAVIS: Judge, just to follow up on
7 that if I may. I have got a copy, I have given a
8 copy to the attorney general of the order of
9 suspension from the Supreme Court. I will make it
10 a court exhibit.

11 (COURT'S EXH. 1 was marked for
12 identification.)

13 THE COURT: Very good. You are
14 recognized. If you could set forth and delineate
15 each of your allegations with regards to
16 ineffectiveness and post-conviction relief in
17 general.

18 MR. DAVIS: Yes, sir. I will need to
19 go slow for my benefit and yours as well. This is
20 quite convoluted, but the gist of it is going to be
21 this, Your Honor. We would attempt to show that
22 Mr. Durban was inadequately prepared for this
23 trial, inadequately advised him leading up to the
24 trial.

25 As far as the evidence against him, the

1 weight of that evidence, there was a plea that was
2 rejected and then little to no effort during the
3 trial to defend him on these charges. A little
4 more specifically, we intend to show that no
5 investigation was done of the three underlying
6 offenses that gave rise to the habitual traffic
7 offender, what was relied upon by the DMV witness
8 at trial.

9 MS. COLEMAN: Your Honor, I object to
10 those. And this is an unusual situation because
11 it's HTO which would rely on the former
12 convictions, but these were several years ago.
13 They were outside the scope of the statute of
14 limitations. It was not raised in his PRC
15 application. And because he did not appeal these
16 or challenge them at the time the State submits
17 that it is too late to challenge them now on his
18 PCR.

19 THE COURT: What do you have to say
20 about that?

21 MR. DAVIS: We would argue it is
22 appropriate for him. Now we are looking at the
23 conduct of his original counsel and to be able to
24 have my client testify and provide some court
25 documentation that there is some legitimate

1 concerns about the basis of the prior convictions
2 which have to be present as elements of the
3 offense, that this is absolutely appropriate. And
4 let me jump ahead to the last one. The final thing
5 we are going to argue to you, this is a third and
6 final, is Mr. Durban filed notice with the
7 solicitor's office, but never perfected the appeal.
8 So Your Honor would have the ability to hear our
9 factual complaints now about Mr. Durban. We hope
10 to convince you of a successful PCR.

11 THE COURT: What is the State's
12 position with regard to his right to perfect his
13 appeal?

14 MS. COLEMAN: That was not raised to my
15 knowledge in the PCR application so I would oppose
16 that as an amendment today. But if Your Honor
17 should allow the amendment and if the evidence
18 shows that the appeal was never perfected through
19 fault of counsel, if he had advised him of his
20 rights to appeal and Mr. Ryals had requested an
21 appeal, I would be willing to consent to that if
22 that's what the testimony shows.

23 THE COURT: Given the nature of this
24 and if there are some legitimate concerns with
25 regards to the predicate offenses and I certainly

1 sympathize with the applicant if his lawyer got sat
2 down for inappropriate conduct, I think that's
3 appropriate. So I am going to allow for amendment
4 of the pleading to allow for appeal if that is
5 indeed correct that there was a notice of intent
6 that was filed with the court. You agree with
7 that, Ms. Coleman?

8 MS. COLEMAN: Yes, Your Honor.

9 MR. DAVIS: Judge, let me be clear. It
10 was served on the solicitor, never filed with this
11 clerk nor appellate court.

12 THE COURT: Isn't this right, Ms.
13 Coleman, generally as far as if there's any
14 indication there is some desire to appeal that as a
15 general rule it is best allow them to do that on
16 post-conviction relief?

17 MS. COLEMAN: We agree with that.

18 THE COURT: I'm going to ask that you
19 prepare an order to that effect stating that I
20 allowed the amendment over your objection, but
21 there was a notice of intent to appeal that was
22 filed with the solicitor, but inappropriately filed
23 -- not filed with the clerk of court which sort of
24 goes towards what the applicant's whole idea is
25 that their lawyer was incompetent and/or

1 ineffective. So I would ask that you prepare an
2 order to that effect.

3 MS. COLEMAN: Yes, Your Honor.

4 THE COURT: And I would think it would
5 be most appropriate to hold the post-conviction
6 relief in abeyance until after the appeal.

7 MS. COLEMAN: Actually I believe
8 there's case law saying that we cannot do that.

9 THE COURT: We cannot?

10 MS. COLEMAN: Which seems unusual.

11 THE COURT: I am not aware of that.

12 MS. COLEMAN: Because that would be a
13 partial ruling and it has to either all be granted
14 or granted in part and denied in part.

15 THE COURT: I think you might be right
16 now that you mention that. We will proceed
17 forward. Which is probably going to be an issue
18 for appeal maybe. We will see.

19 MR. DAVIS: Judge, may I check my
20 electronics? It died on me. This is where my --
21 Judge, may I address you from here?

22 THE COURT: Yes.

23 MR. DAVIS: Judge, I wanted to make
24 sure I have indicated to you the summary quickly
25 before we get started. Your Honor, first witness

1 would be Mr. Ryals.

2 CARY RYALS

3 having been duly sworn, testifies as follows:

4 THE CLERK: State your full name for
5 the record and spell your last name.

6 THE WITNESS: Cary Glen Ryals.

7 THE COURT: Have a seat in the witness
8 chair. Speak loudly and clearly and slowly in
9 order that we can hear everything that you have to
10 say.

11 DIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q. Cary, can you tell the judge how old
14 you are?

15 A. I'm 49.

16 Q. And how far did you go in school?

17 A. Twelfth grade.

18 Q. Did you get your diploma?

19 A. Yes.

20 Q. Now, we are here complaining about your
21 conviction and sentence on what two charges?

22 A. Habitual traffic offender and my
23 revocation of my probation.

24 Q. Your Honor, would it be all right if I
25 have a seat? I mean no disrespect to the Court.

1 THE COURT: No.

2 BY MR. DAVIS:

3 Q. Who -- what attorney was with you when
4 you were convicted and had probation revoked?

5 A. Frampton Durban, Jr.

6 Q. Now, let's back up just a second
7 though. Explain to the judge when you went to
8 court for the habitual traffic offender, HTO, were
9 you out on bond or were you locked up?

10 A. I was locked up.

11 Q. For what?

12 A. For not showing up for roll call date.

13 Q. On this charge or some prior charge?

14 A. On a charge just already found not
15 guilty on.

16 Q. For this charge or a prior charge?

17 A. Prior charge.

18 Q. Was Mr. Durban your attorney for that
19 case?

20 A. No, he was not.

21 Q. Did you ever get notice of your court
22 date that you missed?

23 A. Never.

24 Q. Was there, in fact, a bench warrant?

25 A. Correct.

1 Q. So when was it that you made contact
2 with Mr. Durban and hired him?

3 A. That was in the latter part of -- about
4 two and-a-half weeks in December of 2014.

5 Q. Specifically, what did you hire him
6 for?

7 A. I confronted Mr. Durban about what his
8 price would be to lift two bench warrants for me I
9 had for failure to show up for roll call.

10 Q. Did you discuss with him about getting
11 him hired for the assault and battery of a high and
12 aggravated nature you were on probation for?

13 A. No.

14 Q. You talk to him about hiring him for
15 the habitual traffic offender?

16 A. No, not at all.

17 Q. Do you recall how much you paid him to
18 hire him to remove the bench warrants?

19 A. I asked him how much it would cost and
20 he said it was \$500 per bench warrant, but if I
21 could pay him pretty much in full today he would
22 charge me \$900.

23 Q. And then did you hire him for that
24 purpose?

25 A. I did.

1 Q. Did you attempt -- did you receive
2 information from him that he attempted to have the
3 solicitor remove the bench warrant?

4 A. After I paid Mr. Durban I know it was
5 around Christmastime and the holidays were
6 approaching, I figured it wouldn't be until after
7 the first of the year so I kind of put my hopes up
8 before Christmas I did want to get out. I was so
9 adamant about the situation because I had a prior
10 attorney that I consulted with from the Coleman Law
11 firm which was Ryan Oxford. I had gave him an
12 amount of money. He was working on the case and
13 actually I lost contact with him in between that
14 and being locked up due to the fact that I had a
15 phone conversation with him. After I finally got
16 ahold of him --

17 Q. Mr. Ryals, my question was after you
18 hired Mr. Durban did he provide you any information
19 on whether the solicitor was in agreement to remove
20 the bench warrants or not?

21 A. No.

22 Q. Next question. Did you have a
23 conversation with him about going to a judge about
24 your bench warrants?

25 A. I did.

1 Q. What was your understanding when you
2 brought up that issue with Mr. Durban?

3 A. Mr. Durban told me if I confront the
4 judge about the bench warrants they are going to
5 revoke your bond and I thought that was pretty
6 outlandish since my bond was already revoked.

7 Q. So did y'all move forward for a court
8 hearing about the bench warrants with Mr. Durban or
9 not?

10 A. He spoke of it and then it's like he
11 disappeared. I didn't hear from him again.

12 Q. At some point did you have a
13 conversation with him about a possible offer or
14 possible guilty plea on habitual traffic offender?

15 A. Nothing. He wasn't retained for that.
16 Didn't have anything to do with that. I only found
17 that out on I think it was three or four days
18 before he took me into court that I actually got my
19 file back from him and it was no longer a part of
20 him. I signed an agreement with him to refund my
21 money which I have that agreement and that he would
22 not be representing me and I turned around and a
23 couple days later I got called into court and I
24 thought maybe he was --

25 Q. Pause right there. Hold on. You had a

1 meeting with Mr. Durban in which he gave you his
2 file -- your file?

3 A. I would like to say I had that meeting,
4 it was between four months of me trying to contact
5 with him. He finally shows up. We have that
6 meeting and I was done with him at that time. When
7 somebody tells you that they are going to lift the
8 bench warrant and they come and say we are not
9 going in front of the judge because your bond was
10 revoked and it was already revoked, I couldn't
11 understand that.

12 Q. The meeting in which you got the file
13 was May of 2015?

14 A. Correct, it was towards the end of the
15 month.

16 Q. What did you indicate to him that you
17 wanted him to do now that we are May of 2015, six
18 months after you first met him? Did you do
19 anything as far as you wanted him to represent you?

20 A. Not represent me anymore because what
21 he had told me and then him hanging the phone up on
22 me or the paralegal did and I thought that was, you
23 know, not right behavior for an attorney and I
24 didn't want his representation anymore.

25 Q. In response to that he gave you --

1 handed you, you got not a copy, but your file; is
2 that correct?

3 A. Correct.

4 Q. May I approach witness with his notes?

5 THE COURT: Yes.

6 Q. You indicated also that he not only
7 told you but put in writing that he would refund
8 your fee to you; is that correct?

9 A. Correct. He had a file -- I didn't
10 really see the file until after he left and it had
11 actually had some e-mails between the prosecutor
12 and himself of offering me six years for all these
13 charges that are on this paper here which I never
14 even spoke to him of anything, nor did the
15 solicitor have any idea about any of my charges.

16 Q. Let's pause there so the judge will
17 understand. Once you received the file -- stay
18 with me on this. Once you received the file did
19 you notice Mr. Durban had indicated he represented
20 you on more than just the bench warrants to the
21 State?

22 A. No, not especially, just this piece of
23 paper he had -- I'm not sure who Ms. Brophy is,
24 saying he is representing me on all these charges
25 which --

1 Q. My question was did he notify them he
2 represented you on more than the bench warrants?

3 A. Not that I was aware.

4 Q. Did he tell someone he represented you
5 on more than the just the bench warrants?

6 A. His secretary did, Christina something.

7 Q. What other charges?

8 A. Harassment, intimidation of a witness
9 and breach of trust which I already went through
10 with another paid attorney.

11 Q. That was not part of your agreement
12 with him in December of '14?

13 A. Not at all.

14 Q. So you realize he's notifying them he
15 represents you from other charges, correct?

16 A. Yes, after I saw this.

17 Q. In the file he gave you was there any
18 discovery materials, police reports, your driving
19 record, anything like that in what he gave you?

20 A. Only this sentence in a few e-mails.

21 Q. It's in reviewing that that you first
22 find out that the State had made an offer to you;
23 is that correct?

24 A. Correct. It was four or five pages of
25 e-mails which I was never aware of. I was kind of

1 upset about the situation because I couldn't see
2 how the prosecutor offered something not knowing
3 anything about my case.

4 Q. Then the very next day did you appear
5 in court?

6 A. I think it was a few days after.

7 Q. You appear in court for what purpose?

8 A. I didn't know. I was in dead sleep.

9 Q. When you got to court what was the
10 purpose of the hearing?

11 A. I walked in and I didn't know what was
12 going on at first. I thought he was going to go
13 ahead and get my bench warrant lifted and I turned
14 around and they were selecting the jury.

15 Q. Sir, on May 29th, 2015, May 29th, 2015,
16 did you or did you not appear before Judge
17 Harrington?

18 A. I'm not quite sure if it was. I think
19 -- I thought it was in June. Maybe I'm wrong.

20 Q. I'm not talking about your trial, sir.
21 Did you have an appearance before a judge before
22 your trial, the Friday before your trial?

23 A. Yes. Yes, I did.

24 Q. What was the purpose of that hearing?

25 A. I wasn't sure.

1 Q. When you entered the courtroom what was
2 discussed at that hearing?

3 A. They was talking about selecting a jury
4 trial that I can remember.

5 THE COURT: Why don't you ask him what
6 you think it is.

7 BY MR. DAVIS:

8 Q. Thank you, Judge. Did Judge Harrington
9 deny to relieve Mr. Durban in a court hearing just
10 before trial?

11 A. She did. I thought that was in June.
12 I do remember that.

13 Q. You started trial on June 1st, 2015?

14 A. Yes.

15 Q. So it was prior to the day of your
16 trial?

17 A. I remember asking her if I could get
18 another lawyer and she denied me.

19 Q. So then trial began on June 1st, 2015?

20 A. Correct.

21 Q. Prior to that trial how often had you
22 and Mr. Durban met to discuss your trial?

23 A. When he came and got the money and then
24 again on the 28th. He had said many times he was
25 coming. I never saw him.

1 Q. The 28th is when he gave you a copy of
2 your file, correct?

3 A. Yes.

4 Q. You saw him in court for the hearing
5 with Judge Harrington to have him relieved?

6 A. Correct.

7 Q. Did you talk to him before or after
8 that hearing at all?

9 A. None. Never saw him again.

10 Q. Now, on June the 1st when you were
11 brought to court, were you brought -- were you
12 provided plain clothes by your attorney or were you
13 brought to court in jail clothes?

14 A. Just like I am right now, but they were
15 green.

16 Q. From the detention center just next
17 door?

18 A. They said Hill Finklea Detention Center
19 on the back of them.

20 Q. Why did you think you were coming to
21 court on June 1st, 2015?

22 A. I had no clue. Honestly maybe I
23 thought I was going to be relieving him, not to
24 what I was aware of to what happened that day.

25 Q. Once you came into the courtroom on

1 that day, June 1st, 2015, what process started?

2 A. He said we are selecting a jury trial
3 and asked me to start looking over. I told him
4 again I did not want to go forward, tried to raise
5 my hand a few times to tell Kristi Harrington I did
6 not want to go forward. She said if I said that
7 again I would be in contempt.

8 Q. Judge, I refer you to the very
9 beginning of the trial transcript to that. The
10 trial did not conclude that first day. It went
11 into a second day, didn't it?

12 A. I am sorry?

13 Q. The trial did not conclude that day.
14 It went into a second day, correct?

15 A. Yes, it was jury selection the first
16 day.

17 Q. When you came to court on the second --
18 the night before did he come to the county jail to
19 speak with you about the next day's events?

20 A. No, he did not.

21 Q. Did he provide you any clothing to wear
22 during the second day of trial?

23 A. No, he did not.

24 Q. After -- in any of the meetings you had
25 with Mr. Durban was there any discussion about your

1 current probation sentence?

2 A. Never, never.

3 Q. Was there any break following the
4 jury's verdict for him to discuss with you about
5 sentencing on an habitual traffic offender?

6 A. None.

7 Q. Was there any conversation about what
8 that conviction might do to your probation case?

9 A. None. He was actually -- after I was
10 convicted probation stood up and said that I was
11 revoked. I never had any problem with the
12 probation at all until then.

13 Q. This conviction --

14 A. Only thing.

15 Q. One at a time so she can take it down.
16 This conviction was the only violation they relied
17 on?

18 A. I did exactly what they asked me to do
19 every time. As a matter of fact, I only see them
20 every three months.

21 Q. Probation department?

22 A. Yes. Paid my money, did what I was
23 supposed to do. I actually took that probation on
24 my own because I couldn't wait any longer. I was
25 offered that because they was going to put me back

1 on the docket and transfer that back to
2 magistrate's court and I told the judge I couldn't,
3 I had to go back to work. Homeland Security
4 wouldn't allow me to have a TWIC card with
5 something charged like that.

6 Q. After the sentencing and the revocation
7 of your probation were you taken back to the county
8 jail?

9 A. Correct.

10 Q. Did Mr. Durban come to see you?

11 A. I never saw him again. I actually
12 called his office a couple of times and got
13 nothing.

14 Q. Just to complete the picture as to Mr.
15 Durban and him working for you or not, in May of
16 the next year, almost a year later, did you file
17 with the court asking that he be relieved at that
18 point?

19 A. I did. I wrote -- was trying to do my
20 own thing, trying to find out what my rights were.
21 After I got to SCDC I got into the law library and
22 tried to study a little bit. The law is so wide
23 open.

24 Q. After you filed did you ultimately then
25 in June of 2016 get an order that relieved him as

1 your attorney?

2 A. I did. The court wrote me back and
3 said they cannot release any information to me, my
4 Rule 5, none of that stuff because -- no Brady
5 material because he was still my attorney.

6 Q. And, Your Honor, the court exhibit
7 where Mr. Durban was suspended from practice is
8 June 24th of 2016.

9 A. I never was notified about that until I
10 filed a lawsuit against him actually.

11 Q. Now, as far as the basis for your
12 habitual traffic offender prior to trial and prior
13 to a witness from Department of Motor Vehicles
14 testifying were you aware what three offenses the
15 State was relying upon to show that you were a
16 habitual traffic offender? Did you know?

17 A. I didn't know. Never even seen my
18 record.

19 Q. Can you tell the judge when you first
20 saw your driving record?

21 A. I had -- when I was convicted, I think
22 two days after I was convicted I contacted an
23 attorney that I knew was handling something else
24 for work for me. I was employed at the Port of
25 Charleston 17 years at the time. Veronica Smalls

1 actually came straight from vacation to see me.
2 She asked me what was about these offenses and I
3 said Veronica, I don't know anything about what I
4 see here. I said I don't know what they based it
5 on. And she brought me a copy of my record.

6 Q. So it was a few days after you talked
7 to her. Do you recall approximately when you saw
8 your actual driving record?

9 A. Actually she had it with her.

10 Q. Where were you at the time?

11 A. Berkeley County Jail.

12 Q. After receiving a copy of your record
13 including the three offenses the State was relying
14 upon, this is a yes or no question, have you done
15 investigation on your own about the basis of those
16 three tickets?

17 A. Yes, I have a lot of it.

18 Q. Before we get into those predicate
19 offenses, at trial -- strike that. As part of the
20 record that you already have, rather than have my
21 client testify, I will argue at the appropriate
22 time since the State is relying on the record in a
23 moment. After reviewing your record post
24 conviction are you aware of a failure to pay a
25 traffic ticket in Orangeburg that is a basis of one

1 of your driving under suspensions?

2 MS. COLEMAN: Your Honor, I will renew
3 my objection at this point. I can't recall if you
4 actually ruled on my objection or not, but my
5 position is that he should not be allowed to attack
6 the validity of his prior convictions which
7 supported the HTO.

8 THE COURT: Given the unusual set of
9 circumstances I'm going to allow it.

10 MS. COLEMAN: Thank you.

11 BY MR. DAVIS:

12 Q. As to the Orangeburg failure to pay
13 ticket is that a charge you are disputing?

14 A. I am at this time.

15 Q. And, in fact, have you filed -- can you
16 tell the judge what motion you filed with the
17 magistrate in Orangeburg?

18 A. I wasn't aware of the Orangeburg ticket
19 or quite a few other ones on there and once I found
20 out that was my driving record I wrote Orangeburg
21 County about it and how they got the disposition.
22 They said that someone appeared there back in 2008
23 or seven I believe, somebody appeared at that court
24 date and was charged \$180. I knew myself that I
25 have never been to Orangeburg County court. I

1 disputed it. I wrote the judge, I gave him some
2 information. The judge wrote me back and said if I
3 would file a motion to reconsider the ruling he
4 would bring me forth.

5 Q. What judge?

6 A. Judge Chief Magistrate Derrick Dash.

7 Q. Have you been transported by the
8 Department of Corrections to that location?

9 A. I have.

10 Q. Let me finish the question. Have you
11 been transported recently from the Department of
12 Corrections to that magistrate's office to have a
13 hearing on that matter?

14 A. I have.

15 Q. Is that matter concluded or is it still
16 pending at this time?

17 A. He's leaving it open at this time.

18 Q. Once you received the copy of your
19 driving record did -- were you also made aware that
20 one of the bases for each of your driving under
21 suspensions was a failure to pay property taxes on
22 a Ford Expedition?

23 A. Correct, among many others.

24 Q. Can you tell the judge as to that
25 situation factually what occurred with the property

1 taxes on the vehicle?

2 A. I got into that vehicle, at the time it
3 was a little excessive for what I should have got
4 into. Mother of my child became -- she was
5 pregnant at the time. She had wrecked her car. I
6 had to get rid of that vehicle. But when I bought
7 the vehicle there was some stipulations to which I
8 put a rather large down payment and I had that
9 paper. If I was not in handcuffs or incarcerated I
10 could have had it with me today, but I don't so we
11 can't really go there, but there was some
12 stipulations that they would pay the property tax
13 and the sales tax. And when the property tax bill
14 came to me I forwarded it to the auto mall and
15 where it was supposed to be taken care of. I
16 received a receipt from there.

17 Shortly after that situation I believe
18 they closed the whole dealership for he was
19 arrested for tax evasion and something else
20 involving what he was doing wrong there. I'm not
21 sure. I found that out by the paper.

22 Q. Finally, there is the -- once you
23 received a copy of your driving record there is an
24 accident report that makes an indefinite suspension
25 that is one of the bases of your driving under

1 suspension. You were aware of that once you got
2 your record?

3 A. Just once I got my record.

4 Q. Do you recall the date of that
5 accident?

6 A. 8-3-2007.

7 Q. And --

8 A. Very familiar with it.

9 Q. And do you agree or dispute that you
10 were in an accident on 8-3-2007?

11 A. I was never involved in an accident on
12 8-3-2007.

13 Q. However, there are, in fact, four
14 tickets in your name from an 8-3-2007 incident,
15 correct?

16 A. Correct.

17 Q. And through your investigation you have
18 contacted North Charleston Municipal Court about
19 those tickets, correct?

20 A. There was a way that I did so, that's
21 correct.

22 Q. And did they send you court records
23 about those four tickets?

24 A. Actually I stumbled across that kind of
25 in a weird way because I was writing all agencies

1 around me. I took this as far as administrative
2 law court and administrative law court officer
3 motor vehicle hearing officer Esther Hannon has
4 spoke with the Department of Motor Vehicles and
5 they advised her that they are not responsible to
6 report such accidents, citations, violations, that
7 I would have to find out myself even though I was
8 claiming to be a victim of identity theft. After I
9 wrote --

10 Q. Mr. Ryals, my question is -- Mr. Ryals,
11 from North Charleston Municipal Court did you
12 obtain records from them?

13 A. I did.

14 Q. To the four tickets dealing with the
15 August 3rd, 2007, accident?

16 A. I did.

17 Q. And based on these orders were the
18 charges dismissed?

19 A. Correct.

20 Q. And were your records expunged?

21 A. Correct.

22 Q. We will ask these four expungement of
23 records because of dismissal on operating
24 uninsured, driving under suspension first, careless
25 operation and failure to render aid be admitted.

1 MS. COLEMAN: I may have an objection
2 to that. If I may confer with him briefly.

3 THE COURT: Yes.

4 (Discussion off the record.)

5 MS. COLEMAN: No objection.

6 THE COURT: They're in evidence.

7 (APPLICANT'S 1-4 marked and admitted in
8 evidence.)

9 BY MR. DAVIS:

10 Q. As to -- once you received your driving
11 record did you realize that there was a driving
12 under suspension and improper brakes charges from
13 July 12th, 2008?

14 A. Actually Veronica brought that to my
15 attention. That was the first thing we kind of
16 attacked.

17 Q. That's Ms. Smalls who brought you your
18 driving record?

19 A. Correct.

20 Q. Not Mr. Durban?

21 A. No, not Mr. Durban.

22 Q. Now, as to the July 12th, 2008, driving
23 under suspension, improper brakes, do you have a
24 dispute on whether that was you or not?

25 A. I very much do.

1 Q. In disputing that did you make an
2 attempt to get an arrest record from South Carolina
3 Law Enforcement Division?

4 A. I did.

5 Q. What was their response to you?

6 A. They said they had no arrest for that
7 charge of driving under suspension second.

8 Q. Did you -- this is what you testified
9 to a moment ago -- did you ask other local law
10 enforcement agencies for proof of an arrest from
11 that date?

12 A. I believe I wrote everybody I could
13 possibly find.

14 Q. Did anyone return proof of arrest for
15 driving under suspension more than first?

16 A. None. That's where the North
17 Charleston thing popped up with the accident. I
18 was like -- didn't even know about that.

19 MR. DAVIS: It may only be matters on
20 the record beyond that. If I can just have one
21 moment.

22 (Brief pause.)

23 MR. DAVIS: Your Honor, may I approach
24 the witness.

25 THE COURT: Yes.

1 BY MR. DAVIS:

2 Q. Do you recognize what this is?

3 A. Yes.

4 Q. Tell the judge what this document is?

5 A. That's Veronica Smalls stating that she
6 was going to try to find out the July 12th, 2008,
7 conviction.

8 Q. The one you were just testifying about?

9 A. She said she had never seen me in any
10 kind of vehicle with bad brakes. That's what she
11 said.

12 Q. Mr. Ryals, I'm going to talk to you
13 about the letter, okay? This is a letter about the
14 July 12th, 2008, DUS and operating with improper
15 brakes?

16 A. Correct.

17 Q. A letter from the attorney you had
18 hired following this conviction, correct?

19 A. Correct.

20 Q. In it does she indicate in writing that
21 SLED has no records of arrest?

22 A. Yes. She gave me the SLED report too.
23 I have that and I think you do as well.

24 Q. Your Honor, we would ask this be
25 admitted into evidence.

1 MS. COLEMAN: I object for relevance.
2 It has nothing with Mr. Durban's representation and
3 is irrelevant.

4 THE COURT: I believe it probably has
5 to do with whether or not he looked into all this
6 stuff.

7 MR. DAVIS: We would ask that be
8 admitted, Your Honor.

9 THE COURT: It's in evidence over
10 objection.

11 (APPLICANT'S EXH. 5 marked and admitted
12 in evidence.)

13 BY MR. DAVIS:

14 Q. In addition to Ms. Smalls' letter to
15 you, did she provide any documentation from South
16 Carolina Law Enforcement Division? Identify this
17 for the judge.

18 A. Yes.

19 Q. What is it?

20 A. It's SLED's response saying they have
21 no arrests beside 2008. Even after she did that
22 actually went back to them again just to try to put
23 two nails in the coffin so to speak. I
24 corresponded with I believe that was Agent Berry if
25 I am not correct. I am correct.

1 MR. DAVIS: Judge, on the same basis we
2 would ask this letter from SLED be admitted.

3 THE COURT: It's into evidence.

4 (APPLICANT'S EXH. 6 marked and admitted
5 in evidence.)

6 MR. DAVIS: Mr. Ryals, thank you. As
7 for right now that's all the questions I have.
8 Answer any questions the attorney general has.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MS. COLEMAN:

12 Q. Mr. Ryals, you claim that you should
13 have been wearing different clothes for the trial;
14 is that right?

15 A. Yes.

16 Q. Did you bring that to your attorney's
17 attention?

18 A. There was nothing I could really say at
19 the time. It was proceeding.

20 Q. Did you -- and you brought this up at
21 your trial, right?

22 A. Yes.

23 Q. You said it on the record. That's on
24 page 64 line 1 and 2 just for your reference. You
25 mention to the judge you wish you had better

1 clothes on, right?

2 A. Correct.

3 Q. But that was after the State had
4 already rested their case, right?

5 A. I'm not sure.

6 THE COURT: What clothes was he
7 wearing?

8 Q. I think he testifies he was wearing his
9 prison jumpsuit.

10 A. I had the detention center, Hill
11 Finklea Detention Center stamped all over the back
12 of me. I had shackles and handcuffs on.

13 Q. So why didn't you say anything to the
14 judge before that?

15 A. I didn't really know what rights were.
16 I was in shock of the whole thing to be honest with
17 you.

18 Q. You admitted that you were driving the
19 car on the date that you were arrested?

20 A. Correct, it was on video.

21 Q. And you also admitted that your mail
22 was going to [REDACTED] Wedgewood Drive, Hanahan, South
23 Carolina, right?

24 A. I believe. I'm not sure.

25 THE COURT: Ms. Coleman, do you know

1 how many -- I practiced law for 20 years and been
2 on the bench for 12. I have never as a lawyer or a
3 judge allowed someone to be tried in prison garb.
4 Is there a law that says or is there a case that
5 addresses this issue?

6 MS. COLEMAN: Not that I know of, Your
7 Honor. I haven't been able to find anything. And
8 my argument --

9 THE COURT: Have you ever done that?
10 Have you seen that?

11 MS. COLEMAN: I have not, no. I have
12 never seen that circumstance, but my argument
13 again, that would be that the evidence against him
14 was overwhelming so there would be no prejudice
15 based on that fact.

16 THE COURT: Based on what they
17 presented it is not overwhelming.

18 MS. COLEMAN: Again I would ask Your
19 Honor to refer to the transcript. And I will go
20 through some of that based on the prior records and
21 some of the records that he is attacking today I
22 guess are called into question. There are still
23 other offenses that would support those convictions
24 on that date.

25 THE COURT: Those are just --

1 MS. COLEMAN: A part of the conviction.

2 THE COURT: You contend there are
3 enough valid infractions to substantiate a
4 conviction.

5 MS. COLEMAN: I will go through those
6 now with Mr. Ryals and the convictions that the
7 State alleged at trial that they were relying upon
8 for this HTO offense.

9 BY MS. COLEMAN:

10 Q. And you admitted on your
11 cross-examination at trial that you were convicted
12 on May 5th, 2009 of driving under suspension; is
13 that right?

14 A. I'm not sure.

15 Q. And you were convicted on August 27th,
16 2008, for driving under suspension; is that right?

17 A. I'm not sure. All these I have been
18 fighting right now so the whole thing is confusing.

19 Q. And the third one you were convicted on
20 January 15th, 2008, for driving under suspension;
21 is that correct?

22 A. That's -- yeah.

23 Q. And you also testified at trial? You
24 gave your side of the story, right?

25 A. I didn't have much of a story to give.

1 The only thing -- I didn't have anything to go on.
2 The only piece of evidence that I had myself while
3 I was locked up, I had an investigator go to my
4 vehicle and dig out in 2010 I had a driving under
5 suspension. I got pulled over in Colleton County
6 and I went to trial for that and the judge threw it
7 out based on all the stuff that we had just, the
8 whole mix of my driving record and --

9 Q. And you testified to all that at trial,
10 right?

11 A. That's the only piece I really had to
12 show anything to the jury in my defense of what
13 happened prior.

14 Q. So you got to say all that at the
15 trial. But there's no question that you were
16 driving the car that day and that you had at least
17 some offenses, prior convictions before this,
18 correct?

19 A. I had a driver's license that day. I
20 gave the officer my driver's license that day when
21 I got pulled over.

22 Q. You didn't have just an ID, a state
23 issued ID?

24 A. I gave him -- it's on video. I gave
25 him my -- I gave him -- he asked for my driver's

1 license. I handed him a driver's license, then he
2 came back and I had a wallet. He said what is
3 that? I gave that to him. It was my ID. I work
4 at the Port of Charleston. I have a lot of
5 clearance to go in and out and some of them they
6 want -- you got to have a driver's license and you
7 got to show them another form of ID, especially the
8 weapons station.

9 Q. So if the officer testified at trial
10 that the driver's license that you handed him
11 belonged to the passenger of the car that would be
12 a lie?

13 A. He said that at trial, but actually it
14 was his driver's license and he took mine at first.
15 That officer knows who I am. Officer Elwood knows
16 who I am. He took my driver's license. I asked
17 him to give it back to me. He wouldn't give it
18 back to him.

19 Q. As far as your probation revocation,
20 you understood that one of the conditions of your
21 probationary term was not to comit any new
22 offenses, right?

23 A. And I complied pretty good. I thought
24 I was complying then. I did everything the
25 probation officer asked me to, did everything the

1 State asked me to and I actually -- I took that on
2 my own because I knew I didn't have any problem
3 with any drug test or any other thing they
4 qualified for.

5 Q. But you did commit a new offense,
6 right?

7 A. Apparently I was unaware of. I surely
8 wouldn't have drove off in front of the police
9 officer parked two doors down if I knew I was
10 driving under suspension. He was in the parking
11 lot right beside me.

12 MS. COLEMAN: Nothing further for this
13 witness. Thank you.

14 THE COURT: Any redirect?

15 MR. DAVIS: No, sir.

16 THE COURT: You may step down. You may
17 call your next witness.

18 MR. DAVIS: Judge, I don't have any
19 other witnesses, but if I could point out some
20 points in the record.

21 THE COURT: So you rest with regard to
22 witnesses?

23 MR. DAVIS: Yes, Your Honor.

24 THE COURT: Let's hear from the State.

25 MS. COLEMAN: The State as I explained

1 earlier has no witnesses today, but would ask Your
2 Honor to take this under advisement and review the
3 transcript as your record for the ruling here and
4 again I have an argument to present after Mr. Davis
5 goes.

6 THE COURT: Let's hear what Mr. Davis
7 has to say.

8 MR. DAVIS: Judge, without Mr. Durban
9 here rather than have my client reference different
10 portions of the transcript, it does speak for
11 itself. We would point out some prejudicial
12 conduct at the trial. Page 42 when the officer
13 that arrested my client is testifying he indicates
14 he knew him from previous dealings. I knew him by
15 sight. We would argue no objection there would be
16 prejudicial suggesting that there is a either prior
17 charge or uncharged conduct that the jury could
18 have used for improper purposes. We also, Your
19 Honor, would argue -- give me one moment, Your
20 Honor. On page 73 during cross-examination by the
21 State my client is asked to go through his record
22 similar to what the attorney general briefly did
23 here, but in more detail at trial.

24 And so for example, the question is
25 asked at line 20 of page 73, you said you haven't

1 been in an accident, however, your DMV records say
2 you failed to report an accident on August 3rd,
3 2007. My client indicated at that time under oath
4 I'm not aware of that. We would point that out for
5 two reasons. No. 1, to show he was never provided
6 a copy of his driving record by his attorney to
7 assist to work collaboratively towards where we are
8 right now; and No. 2, to back up the point that he
9 disputes that he was ever in an accident which we
10 now have a record of dismissal and expungement of
11 charges relating to that date.

12 We would also argue that in the State's
13 characterization of the prior ABHAN which was
14 revoked in full, just so the Court will know, he
15 either has finished or is very close to finishing
16 the five-year sentence on the habitual traffic
17 offender.

18 THE APPLICANT: I already finished it
19 in June.

20 MR. DAVIS: So the charge that is
21 holding him incarcerated is the probation
22 revocation. The sole cause of that was this
23 conviction and that's why I amended to include
24 both. The State argued that the prior assault and
25 battery involved a stabbing which was inaccurate

1 and not objected to by Mr. Durban. Also, during
2 cross-examination the State sought to question Mr.
3 Ryals about the pending habitual traffic offender
4 down in Colleton which he testified about briefly.
5 There was no objection from Mr. Durban about a
6 pending similar charge in another county which we
7 would argue would be prejudicial to the jury. Your
8 Honor, I believe there is one other matter I would
9 like to put on the record before --

10 (Attorney confers with client.)

11 THE COURT: Mr. Davis, this is a right
12 convoluted matter and I am going to be required to
13 read the entire record. And I think and I am glad
14 to sit and listen to arguments from both sides.
15 One of the things that I'm going to give you this
16 information, you all can proceed forward how you
17 would like, but what I'm going to ask that you do
18 while I'm reading the transcript is submit a
19 proposed order and support it with any
20 documentation from the transcript that's been put
21 in the record here today. And I know it's been a
22 long day for you, but I would indeed be glad to
23 hear anything that you have to say here today.
24 Bear in mind we are going to have that luxury. Why
25 don't you kind of summarize what your position is

1 and I'm going to hear from Ms. Coleman and just
2 bear in mind we are going to have that luxury. So
3 if you forget something don't worry about it.

4 MR. DAVIS: Thank you, Judge. I will
5 go back to the very beginning. We would argue that
6 you have testimony that Mr. Durban was hired for a
7 specific purpose, to remove bench warrants. Yet it
8 snowballed into he's walking into a trial for
9 habitual traffic offender in jail clothes. There
10 was no preparation for that trial. No discussion
11 about the trial. No discussion of defenses. No
12 conveying of a prior offer from the State. All
13 that shows ineffective assistance of counsel in
14 being ready to go to trial.

15 More specifically, while in trial the
16 predicate -- three predicate convictions that were
17 relied upon, and I do want to focus on that for a
18 second. The general attorney points out, well,
19 Judge, there may be other matters in his record
20 that would have qualified anyway. But that's not
21 what was presented to that jury. The State can
22 present everything they wanted to prove he was a
23 habitual traffic offender. They relied on three.
24 They didn't rely on any others that might be found.
25 If he is successful, he can fight that on another

1 day.

2 We are constrained by the record. They
3 relied on three. We have now shown there's
4 legitimate dispute to at least two of the three
5 that Mr. Ryals to be very blunt did prior to my
6 coming onto the case. A lot of -- almost the
7 entirety of that was him cast suspicion on at least
8 two of those predicate offenses. That shows --

9 THE COURT: The only thing that seems
10 kind of odd is first of all, we had a lawyer who
11 has been disbarred No. 1. Then for him to go to a
12 dealership who was supposed to pay his taxes, he
13 had been put out of business and then there has
14 been identity theft. Either that's terrible,
15 terrible luck or not exactly right. I don't know.
16 But you understand what I am saying?

17 MR. DAVIS: I do.

18 THE COURT: He has had some misfortune,
19 I do give him that.

20 MR. DAVIS: And so we would argue all
21 of those would go to a successful claim on a PCR
22 action. Pause that. We certainly then also have
23 the fact that Mr. Durban basically wrote a letter
24 to the State saying he was going to appeal and then
25 didn't follow through on. And we would argue that

1 if you are not convinced that we have persuaded you
2 on PCR appeal, we hope then and I believe the State
3 concedes that since that was not perfected we would
4 at least have a fall-back action on a belated
5 appeal.

6 THE COURT: I think the State is in
7 agreement. So both orders will indicate there's an
8 agreement in that regard.

9 MR. DAVIS: That's a summary of our
10 position, Your Honor.

11 THE COURT: Yes.

12 MS. COLEMAN: Your Honor, I will say
13 that the transcript on this one is fairly short. I
14 think the trial is like 112 pages so it shouldn't
15 take you long to review it. But again because our
16 witness is not here to testify today we ask that
17 you grant some deference to him in that regard.
18 And I will say again just for the record we
19 attempted to subpoena Mr. Durban. We have been
20 unable to get in touch with him at all. We are not
21 sure where he is residing; I am not sure if he is
22 working somewhere now. But he has been suspended
23 from the practice of law so we could not get in
24 touch with him.

25 Strickland v. Washington requires the

1 Court to presume that counsel was effective and
2 adequate in his representation and just because he
3 is not here today to tell his side of the story --

4 THE COURT: He has been disbarred.

5 MS. COLEMAN: Right. But, of course,
6 those are separate charges that have nothing to do
7 with this case and I don't think it's fair for this
8 court to assume that maybe he had committed the
9 same offenses in this charge or in this case.

10 THE COURT: You kind of feel that pain
11 that Mr. Ryals felt when you were trying to get in
12 touch with him for this hearing?

13 MS. COLEMAN: Yes, I suppose so. My
14 argument there is, of course, by reading the
15 transcript I think Mr. Durban did an excellent job.
16 I think he did everything and more that he was
17 supposed to have done. And, of course, I can't
18 guess what his strategy was, but it appears from
19 the way that he laid out the case he challenged the
20 validity of the traffic stop to begin with. He
21 made a motion, a directed verdict motion on the
22 basis that the traffic stop was invalid because the
23 police officer pulled Mr. Ryals over on the
24 suspicion that he was an impaired driver. Of
25 course it turned out he was not an impaired driver.

1 He also challenged the mens rea of the offense
2 which, of course, is not an element to this crime.
3 There's no knowingly to violate of this statute.
4 All the State had to prove was that he had the
5 prior offenses necessary to support.

6 THE COURT: Would that help your cause
7 or not, the fact that he challenged the mens rea?

8 MS. COLEMAN: I believe it helps it
9 because he raised it to the trial court and the
10 trial judge made a ruling on that issue based on
11 the directed verdict. And he presented it to the
12 jury as well in his closing argument. He says that
13 he didn't know that he had the prior offenses, he
14 didn't know he was committing the crime which, of
15 course, is his argument, but all the statute says
16 he has to -- the find jury must find --

17 THE COURT: That would seem to indicate
18 he didn't understand what the law is.

19 MS. COLEMAN: My position is that's all
20 he had to work with. I don't know how else he
21 would attack the State's case in a situation where
22 there's clearly they have got all the evidence they
23 need to show, he has the prior convictions and he
24 was caught driving a car with a suspended license.
25 The evidence also showed that he did not present a

1 driver's license to the police officer when he was
2 pulled over for this offense. Of course he
3 testified otherwise, but the police officer said he
4 did not have a license. He had a state issued ID
5 which I think clearly goes to show Mr. Ryals knew
6 that his license was suspended.

7 So regardless of that I believe that
8 was Mr. Durban -- probably one of the only
9 arguments he could make to the jury on that
10 offense. Again, the evidence is overwhelming
11 against him so even if there were any failures to
12 object or anything that might be seen as deficient,
13 there can be no prejudice because the evidence was
14 so strong against him. That nothing he could have
15 done would have changed the outcome of the trial.
16 The record, his DMV record still supports the
17 convictions and even though he may have called some
18 of those into question today, those all still
19 stand. None of them have been vacated. They have
20 not been -- they are still valid and nothing he has
21 presented today changes those and I would be happy
22 to go back through and prepare a list of those.

23 THE COURT: I think that might be good
24 to do in your order.

25 MS. COLEMAN: Sure. In my proposed

1 order I will include those. The prior convictions
2 which supported the HTO offense, and there is
3 testimony in the record about these as well, but
4 they were mailed -- the notice of the offenses were
5 all mailed to his address. He was given notice of
6 them. It explained that he had 30 days to appeal
7 each of these convictions and he never appealed it.
8 He never challenged any of these except until now.
9 Now he is claiming that he should have -- they're
10 not valid and they should be dismissed even though
11 he had the opportunity to deal with that years ago
12 when they first happened.

13 And I don't believe that's ineffective
14 assistance of trial counsel for failing to attack
15 those in an untimely manner too. Again, those
16 should have been attacked when they were within the
17 30 days that he had to appeal after they originally
18 happened.

19 And finally, as far as the probation
20 violation goes, I think probation was clearly
21 violated. One of the terms that they reiterated on
22 the record there of his probation was not to comit
23 any new offenses. This was obviously a new
24 conviction which would require a violation of
25 probation.

1 THE COURT: New arrest or new
2 conviction? Well, there was a conviction.

3 MS. COLEMAN: A new conviction. During
4 the sentencing is when they discuss all this. This
5 was clearly a violation of his probation. They
6 were -- I believe the judge probably was -- well,
7 it was within her discretion at least to revoke his
8 probation. But no mitigation on trial counsel's
9 behalf could have prevented that because he got a
10 new conviction. Again, we will submit proposed
11 orders, but thank you.

12 THE COURT: Mr. Ryals, stay in touch
13 with your lawyer and you will receive an order.

14 (These proceedings were concluded at
15 5:51 p.m., December 4, 2017, Berkeley County, South
16 Carolina.)
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2
3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomate
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of April, 2018 at
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

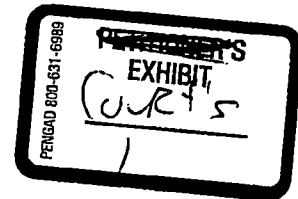
15 _____
16 Ruth C. Weese
17 Registered Diplomate
18 Reporter
19
20
21
22
23
24
25

2016-06-24-01

The Supreme Court of South Carolina

In the Matter of Frampton Durban, Jr.,
Respondent.

Appellate Case No. 2016-001336 and
2016-001348



ORDER

The Office of Disciplinary Counsel asks this Court to place respondent on interim suspension pursuant to Rule 17 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver to protect the interests of respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Peyre Thomas Lumpkin, Esquire, Receiver, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre Thomas Lumpkin, Esquire, Receiver, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

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Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

Within fifteen days of the date of this order, respondent shall serve and file the affidavit required by Rule 30, RLDE. Should respondent fail to timely file the required affidavit, he may be held in civil and/or criminal contempt of this Court as provided by Rule 30, RLDE.

s/Costa M. Pleicones
Costa M. Pleicones
Chief Justice of South Carolina

Columbia, South Carolina
June 24, 2016

STATE OF SOUTH CAROLINA)
COUNTY/MUNICIPALITY OF North Charleston)

IN THE MAGISTRATE/MUNICIPAL COURT
ORDER FOR DESTRUCTION OF ARREST RECORDS

189

THE STATE OF SOUTH CAROLINA)

v.)

Cary Glenn Ryals
[REDACTED] Wedgewood Dr
Hanahan, SC, 29406

Race W Sex M Age _____
DOB [REDACTED] 1968 SSN [REDACTED]

SID # _____

Defendant

Charges were disposed of in the court indicated below:

☐ Magistrate ☒ Municipal

AKA

I, M Victor Revelise, North Charleston Court Judge, find that the below charge(s) under the jurisdiction of this Court was ended by dismissal, *nolle prossed*, or the defendant was found not guilty on 11/18/2008 (date), and the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed pursuant to §17-22-950 and/or sealed pursuant to §17-1-40 at no cost to the accused.

Warrant/Ticket/Courtesy
Summons No. 1101031

Date of
Arrest 8/3/2007

Place of
Arrest Charleston County, S.C.

Arrest Charge Operating Uninsured Vehicle 56-10-520

Warrant/Ticket/Courtesy
Summons No. _____

Date of
Arrest _____

Place of
Arrest _____ County, S.C.

Arrest Charge _____

The charge(s) covered by this order **was not** dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, conditional discharge, or any other statutorily authorized diversion program operated by a solicitor's office. The dismissal did not occur at a preliminary hearing and the accused does not have charges pending in summary court and a court of general sessions that arise out of the same course of events.

I find that §17-22-950 has been complied with as follows (check one):

☒ The defendant was fingerprinted.

☐ The defendant was not fingerprinted. The defendant has made application to the summary court for expungement pursuant to §17-22-950(B).

IT IS ORDERED that all records relating to such arrest or issuance of ticket or courtesy summons and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency, except for the following: arrest and booking record, associated bench warrants, mug shots, and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); pursuant to §17-1-40 (C)(1); this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order. Criminal charges must be removed from all Internet-based public records no later than thirty days from the disposition date.

McGauran #123/

Herbert Hoefler

Arresting Officer/Prosecutor/Affiant (Circle One)
(To Verify Accuracy of Disposition)

Name of Defense Counsel and SC Bar # (if represented)

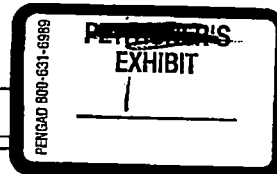
Samuel M Coleman for M Victor Revelise(Retired)

Printed/Typed Judge Name

Judge Signature and Judge Code

Signed this _____ day of JUL 29 2018, 20 _____

For SLED internal use only: Expunged by SLED by: _____ Date: _____



190

STATE OF SOUTH CAROLINA

COUNTY/MUNICIPALITY OF North Charleston

IN THE MAGISTRATE/MUNICIPAL COURT

ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA

v.

Cary Glenn Ryals
[REDACTED] Wedgewood Dr
Hanahan, SC, 29406

Defendant

AKA

Race W Sex M Age _____
 DOB [REDACTED]/1968 SSN [REDACTED]
 SID # _____

Charges were disposed of in the court indicated below:

☐ Magistrate ☒ Municipal

I, M Victor Revelise, North Charleston Court Judge, find that the below charge(s) under the jurisdiction of this Court was ended by dismissal, *nolle prosequere*, or the defendant was found not guilty on 11/18/2008 (date), and the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed pursuant to §17-22-950 and/or sealed pursuant to §17-1-40 at no cost to the accused.

Warrant/Ticket/Courtesy Summons No. 1101033 Date of Arrest 8/3/2007 Place of Arrest Charleston County, S.C.

Arrest Charge DUS 1st 56-1-460

Warrant/Ticket/Courtesy Summons No. _____ Date of Arrest _____ Place of Arrest _____ County, S.C.

Arrest Charge _____

The charge(s) covered by this order **was not** dismissed or *nolle prosequere* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, conditional discharge, or any other statutorily authorized diversion program operated by a solicitor's office. The dismissal did not occur at a preliminary hearing and the accused does not have charges pending in summary court and a court of general sessions that arise out of the same course of events.

I find that §17-22-950 has been complied with as follows (check one):

☒ The defendant was fingerprinted.☐ The defendant was not fingerprinted. The defendant has made application to the summary court for expungement pursuant to §17-22-950(B).

IT IS ORDERED that all records relating to such arrest or issuance of ticket or courtesy summons and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency, except for the following: arrest and booking record, associated bench warrants, mug shots, and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); pursuant to §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order. Criminal charges must be removed from all Internet-based public records no later than thirty days from the disposition date.

McGauran #123/

Herbert Hoefer

Arresting Officer/Prosecutor/Affiant (Circle One)
 (To Verify Accuracy of Disposition)

Name of Defense Counsel and SC Bar # (if represented)

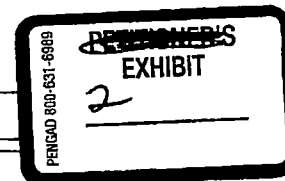
Samuel M Coleman for M Victor Revelise(Retired)

Printed/Typed Judge Name

Judge Signature and Judge Code

Signed this _____ day of JUL 29 2016, 20

For SLED internal use only: Expunged by SLED by: _____ Date: _____



STATE OF SOUTH CAROLINA)
COUNTY/MUNICIPALITY OF North Charleston)

IN THE MAGISTRATE/MUNICIPAL COURT
ORDER FOR DESTRUCTION OF ARREST RECORDS

191

THE STATE OF SOUTH CAROLINA)

v.)

Cary Glenn Ryals
[REDACTED] Wedgewood Dr
Hanahan, SC, 29406

Race W Sex M Age _____

DOB [REDACTED]/1968 SSN [REDACTED]

SID # _____

Defendant

Charges were disposed of in the court indicated below:

☐ Magistrate ☒ Municipal

AKA _____

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Warrant/Ticket/Courtesy
Summons No. 1101034

Date of
Arrest 8/3/2007

Place of
Arrest Charleston County, S.C.

Arrest Charge Careless Operation 11-4

Warrant/Ticket/Courtesy
Summons No. _____

Date of
Arrest _____

Place of
Arrest _____ County, S.C.

Arrest Charge _____

The charge(s) covered by this order **was not** dismissed or *nolle prosequi* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, conditional discharge, or any other statutorily authorized diversion program operated by a solicitor's office. The dismissal did not occur at a preliminary hearing and the accused does not have charges pending in summary court and a court of general sessions that arise out of the same course of events.

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McGaurvan #123/

Herbert Hoefler

Arresting Officer/Prosecutor/Affiant (Circle One)
(To Verify Accuracy of Disposition)

Name of Defense Counsel and SC Bar # (if represented)

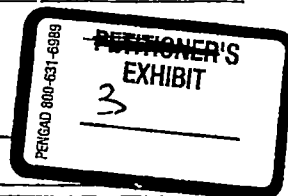
Samuel M Coleman for M Victor Revelise(Retired)

Printed/Typed Judge Name

Judge Signature and Judge Code

Signed this _____ day of JUL 29 2016, 20

For SLED internal use only: Expunged by SLED by: _____ Date: _____



192

STATE OF SOUTH CAROLINA

COUNTY/MUNICIPALITY OF North CharlestonIN THE MAGISTRATE/MUNICIPAL COURT
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA

v.

Cary Glenn Ryals
[REDACTED] Wedgewood Dr
Hanahan, SC, 29406Race W Sex M Age _____
DOB [REDACTED]/1968 SSN [REDACTED]

SID # _____

Defendant

Charges were disposed of in the court indicated below:

☐ Magistrate ☒ Municipal

AKA _____

I, M Victor Revelise, North Charleston Court Judge, find that the below charge(s) under the jurisdiction of this Court was ended by dismissal, *nolle prossed*, or the defendant was found not guilty on 11/18/2008 (date), and the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed pursuant to §17-22-950 and/or sealed pursuant to §17-1-40 at no cost to the accused.

Warrant/Ticket/Courtesy
Summons No. 1101035Date of
Arrest 8/3/2007Place of
Arrest Charleston County, S.C.Arrest Charge Failure to Render Aid/Give Info 56-5-1230Warrant/Ticket/Courtesy
Summons No. _____Date of
Arrest _____Place of
Arrest _____ County, S.C.

Arrest Charge _____

The charge(s) covered by this order **was not** dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, conditional discharge, or any other statutorily authorized diversion program operated by a solicitor's office. The dismissal did not occur at a preliminary hearing and the accused does not have charges pending in summary court and a court of general sessions that arise out of the same course of events.

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McGaurvan #123/

Herbert Hofer

Arresting Officer/Prosecutor/Affiant (Circle One)
(To Verify Accuracy of Disposition)

Name of Defense Counsel and SC Bar # (if represented)

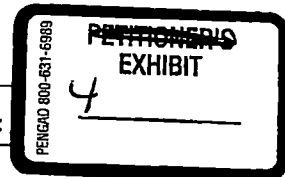
Samuel M Coleman for M Victor Revelise(Retired)

Printed/Typed Judge Name

Judge Signature and Judge Code

Signed this _____ day of JUL 29 2008, 20

For SLED internal use only: Expunged by SLED by: _____ Date: _____



FAMILY LEGAL SERVICES, LLC

Veronica G. Small, Attorney

Mailing Address: P. O. Box 80637
Charleston, South Carolina 29416
843-556-8838 (ph); 843-763-5347(fax)
e-mail: vsmall@FamilyLegalServicesLLC.com

August 18, 2015

Mr. Cary Ryals #364293
Kershaw Corr. Inst. PB22
4848 Goldmine Hwy
Kershaw, SC 29067

Re: Freedom of Information Response

Dear Mr. Ryals:

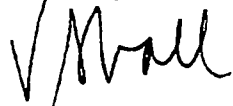
I promised when I saw you last, that I would make a freedom of information request on your behalf regarding the July 12, 2008 arrest for DUS and Operating w/Improper Brakes.

I am enclosing the information received from SLED. It appears that they have no record of your arrest on July 12, 2008 and therefore, no conviction. It may be that you were not booked or fingerprinted (I doubt that). However, the relationship between SLED and the DMV is not always clear.

I am sending you this information for your records. You may want to have some one at the prison (there are always inmates who are good at this stuff) help you with a Post Conviction Motion to get your conviction reversed.

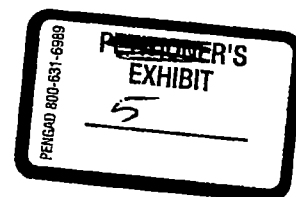
Good luck.

Sincerely,



Veronica G. Small
VGS/sgv

Enclosure



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

July 8, 2015

Veronica G. Small, Esquire
Family Legal Services, LLC
PO Box 80637
Charleston, SC 29416

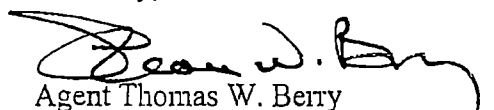
RE: Freedom of Information Act Request #2015-0441
Cary Glenn Ryals
Date of Offenses: July 12, 2008 Ticket/Citation: T8638EM
Charges: DUS / Operating w/Improper Brakes

Dear Ms. Small:

Your letter was received by the State Law Enforcement Division ("SLED") on June 19, 2015, and forwarded to our Records Department to determine if the requested documents are in the possession of SLED. This correspondence is to inform you that according to our Records Department, Mr. Ryals does not have an arrest for July 12, 2008, and they are not in possession of any photograph(s) of Mr. Ryals.

If you have any questions, please feel free to contact me at (803) 896-7136 or via email at tberry@sled.sc.gov

Sincerely,


Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp



CALEA
OFFICIAL AGENCY



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Cary G. Ryals, #364293,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2016-CP-08-216

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT TO
WHITE V. STATE¹**

2018 MAR -9 PM 4:07
MARY R. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 28, 2016. Respondent submitted its return on June 13, 2016. An evidentiary hearing into the matter was convened on December 4, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and was represented by Rodney Davis, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Before this Court were the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the State's Return, and the application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Cary G. Ryals ("Applicant") is currently incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. Applicant was indicted by the May 2015 term of the Berkeley County Grand Jury for Habitual Traffic Offender (2015-GS-08-801). Frampton

¹ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

Durban, Jr., Esquire, represented him. Assistant Solicitor Mason West, Esquire, prosecuted the case. On June 1, 2015, Applicant proceeded to a jury trial, at which he was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced Applicant to a five year term of imprisonment, and revoked in full the probation he was serving on a prior offense of assault and battery of a high and aggravated nature. Applicant did not appeal his conviction, his sentence, or his probation revocation.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to investigate my past record"
 - b. "Failure to challenge the jurisdiction of the sentence"
 - c. "Failure to object to the improper attire"

Applicant filed an amended application on July 26, 2017, to include a challenge to his probation revocation. At the evidentiary hearing, Applicant orally amended his application to include an allegation that Applicant was denied his right to a direct appeal. This Court allowed the amendment over Respondent's objection.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Trial Counsel Frampton Durban, Jr., was unavailable and did not testify.

Applicant testified that he is 49 years old and has a high school diploma. He stated he was currently serving time on a Habitual Traffic Offender (HTO) charge and probation revocation. He testified he was locked up on another charge when he hired Trial Counsel and asked him to get rid of some bench warrants for failure to appear on other charges. Applicant testified that Trial Counsel was not retained for the HTO offense, and he found out three or four

days before his trial that Trial Counsel would not be representing him. He stated that he told Trial Counsel in May of 2015 that he did not want him to represent him anymore, so Trial Counsel gave him his file. Applicant stated that Trial Counsel's secretary told him that Trial Counsel represented him on other charges, not on the HTO charge, but when he got the file, he found emails from the Solicitor with a plea offer that Trial Counsel had never relayed to him.

Applicant testified he made a motion to relieve Trial Counsel and Judge Harrington denied his motion. He stated he went to trial on June 1, 2015, and he met with Trial Counsel twice before then. He testified that he was brought to court for his trial in jail clothes, and he did not know he was going to trial that day. He stated he told Trial Counsel he did not want to go forward that day. Applicant stated Trial Counsel did not provide clothing for him to wear for trial. He stated there was no discussion of his probation, and they did not discuss sentencing of the consequences of his probation revocation. He stated he had not violated probation in any other way than being convicted of the HTO charge.

Applicant testified that he got an order in June 2016 relieving Trial Counsel from his representation. He stated that Trial Counsel was suspended from the South Carolina Bar on June 24, 2016. Applicant testified that he never saw his driving record and he did not know what his record was. He stated he asked for a copy and saw it when he was in the Berkeley County jail. He stated that the HTO was based on three prior convictions, and they were not valid.² Applicant testified the first charge from Orangeburg County is being challenged now and is still pending in Magistrate's Court. He stated the second charge was based on a car accident from August 3, 2007 that resulted in the suspension of his driver's license, but he was never actually involved in an accident on that date. He stated this accident was one of the four parts of his conviction from

² This Court allowed Applicant to testify about the alleged deficiencies in his prior convictions over Respondent's objection that any attack on the charges was untimely and Applicant had waived his right to appeal the convictions by failing to appeal them.

August 27, 2008 for driving under suspension on July 12, 2008. Applicant stated that, after investigating, he realized that SLED had no record of his arrest from that offense.

Applicant testified that he hired Veronica Smalls, an attorney, after his trial to look into his record. A letter from Ms. Smalls was introduced into evidence.³ Another letter from SLED was introduced into evidence, as well.

The State presented no witnesses at the evidentiary hearing, due to the unavailability of Trial Counsel, and relied on the transcript and the record before the Court in support of their argument.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

³ The letter was admitted over Respondent's objection to relevance to this action, as Smalls did not represent Applicant at trial or on direct appeal.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Trial Counsel was ineffective in his representation surrounding his trial. This Court finds Trial Counsel was not ineffective in any regard. Although Trial Counsel was unavailable to testify at the evidentiary hearing, it is clear from the record before the court that Trial Counsel's actions were reasonable given the circumstances of this case. Strickland requires this Court to presume Trial Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). This Court finds Applicant has not done so. Applicant has failed to meet his burden of proving that Trial Counsel was deficient on any ground.

This Court also notes that, while evidence was presented that Trial Counsel was suspended from the practice of law after this trial, Applicant has failed to prove that his suspension was in any way related to his trial or that the suspension affected this trial. Trial Counsel is presumed competent under Strickland, and this Court finds no reason to find Trial Counsel's action in this trial were ineffective simply because he was later suspended from the practice of law. Each individual allegation is addressed as follows:

Failure to investigate Applicant's prior record

Applicant alleges Trial Counsel was ineffective for failing to investigate his prior record and challenge the convictions for driving under suspension that formed the basis of his habitual traffic offender conviction. This allegation is meritless as any investigation into the prior convictions would have been fruitless, Applicant did challenge the prior convictions while testifying at trial, and Applicant can show no prejudice because the prior convictions are valid.

At trial, the State introduced testimony of Marie Waring of the South Carolina Department of Motor Vehicles, as well as Applicant's DMV driving record. This evidence represented that Applicant had at least three prior convictions for driving under suspension. The first conviction was from May 5, 2009, the second from August 27, 2008, and the third from January 15, 2008. The State also introduced a letter to Applicant from the DMV putting him on notice of his Habitual Traffic Offender status because he had accumulated three major suspensions from those dates. The letter was sent on May 20, 2009, and notified Applicant that he was no longer allowed to drive a vehicle, but he had thirty days to appeal this notice. Tr. 48. Applicant did not file an appeal or dispute the notice of habitual traffic offender status. The record before the Court indicates that Applicant signed a domestic return receipt indicating that he received the letter on May 22, 2009. State's Ex. #3, Tr. 76. The State also introduced a letter

sent on October 10, 2008, notifying Applicant that he had two major suspensions, and if he got another he would be under habitual traffic offender status. Tr. 51.

Applicant disputed the accuracy of this evidence at trial. When he took the stand, Applicant explained to the Solicitor on cross-examination and to the jury that he never received notice that his license was suspended or he was on habitual traffic offender status, and that, although the address the notice was sent to was his proper mailing address, the signature on the domestic return receipt was not really his signature because it was not his handwriting and it was not how he spelled his name. Tr. 76. He testified that he did not appeal or challenge the notice of habitual traffic offender status because he never received it, and if he had he would have appealed. Tr. 78. However, he testified that had received other prior suspension notices in the past and he did not appeal them because he did not believe it was necessary to appeal them. Tr. 78, line 3-5.

At the evidentiary hearing, Applicant raised the same objections to his prior convictions. Applicant introduced two letters as evidence that SLED had no record of his arrest or conviction for driving under suspension from August 27, 2008. He testified again that the mailing address the DMV notice was sent to was his proper mailing address, but he never received it or knew about it. He stated his signature on the document indicating he had received the notice was forged by someone else and he had not actually signed it. Applicant further testified that the car accident which led to the suspension of his license causing the May 9, 2009 conviction for driving under suspension never happened. He stated he was never involved in a car accident on that date, so his license never should have been suspended.

This Court finds Applicant's testimony at trial and at the evidentiary hearing on these issues to be not credible. Applicant has offered no proof for his claims other than his word that

someone forged his signature and he was never really in a car accident where his DMV records indicated he was. Applicant introduced at the PCR hearing records of prior traffic tickets that had been dismissed, but these tickets are unrelated to the convictions he challenges. Applicant's argument that SLED had no record of his arrest or conviction from August 27, 2008, has no bearing on this proceeding. Applicant's conviction is based on his driving record from the South Carolina Department of Motor Vehicles, not from his record at SLED. Applicant's DMV driving record accurately shows his valid prior convictions on the dates in question, and the convictions fully support his current HTO conviction. This Court finds Applicant has failed to present any credible evidence that his prior convictions were invalid.

This Court notes that, even if Applicant's allegations were true about how he was never involved in a car accident which resulted in the suspension of his license, this would not have affected his conviction for driving under suspension. Regardless of whether his license should or should not have been suspended, the record clearly shows Applicant was aware that his license was suspended and Applicant drove a motor vehicle anyway, and was then arrested and convicted of driving under suspension. The circumstances surrounding why his license were suspended have no bearing on the fact that he still drove a motor vehicle with a suspended license. This Court finds any challenge to the May 5, 2009 conviction on this ground would be meritless.

Regardless, even if Applicant had presented credible evidence that his prior convictions were invalid, Applicant waived his right to challenge the convictions by failing to file an appeal after he was given notice. Applicant did not appeal the convictions either through the DMV or through any form of post-conviction relief action. The convictions he now challenges occurred nearly ten years ago, and his records indicate he was aware of the convictions. Applicant waived

his right to challenge these convictions by choosing not to timely appeal them. Applicant cannot use this post-conviction relief action to attempt to vacate convictions from nearly ten years ago. Accordingly, any investigation Trial Counsel could have done would have been fruitless and would not have changed the outcome of the trial, because the prior convictions still stand.

Although Applicant alleges Trial Counsel was ineffective for failing to investigate his prior record, he has failed to present any credible evidence that Trial Counsel did not investigate his record and was not aware of the prior convictions or the circumstances around them. Furthermore, Applicant testified at trial about his complaints regarding his prior convictions. The jury was presented with the information he wanted them to know about why he believed the prior convictions were invalid, and they still found him guilty. This Court finds that even if Trial Counsel had argued what Applicant wanted him to argue about his prior convictions; the result of the trial would have been no different.

This Court accordingly finds Trial Counsel was not deficient for failing to investigate or challenge Applicant's prior convictions, and Applicant has failed to prove that the outcome of the trial would have been different if he had. Neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to challenge jurisdiction

Applicant alleges the trial court did not have subject matter jurisdiction over his charges. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class

over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, this allegation is denied and dismissed with prejudice.

Failure to object to improper attire

Applicant alleges Trial Counsel was ineffective for failing to object to the trial proceeding when Applicant was wearing his prison clothing and was not provided with civilian attire to wear for trial. Applicant claims he was unaware that he was being brought to trial when he appeared in court the day of his trial was unable to make arrangements for court-appropriate attire. This Court finds that, although Trial Counsel may have been deficient on this ground, Applicant can show no prejudice resulting from Trial Counsel's failure to object or request a continuance based on his lack of clothing.

This exact issue was addressed by the South Carolina Supreme Court in Humbert v. State, 345 S.C. 332, 337-38, 548 S.E.2d 862, 865 (2001). In Humbert, the applicant proceeded to trial in his prison jumpsuit, and he was advised to turn the jumpsuit inside-out so that the prison emblem was not visible to the jury. Defense counsel did not request the trial judge continue the case until he could obtain proper clothing. Defense counsel died two years prior to the PCR evidentiary hearing and was unavailable to testify. In that case, the PCR court found defense counsel may have been deficient, but the applicant had not met his burden of proving prejudice. The Supreme Court agreed, holding that the record supported the PCR judge's finding counsel was deficient by allowing the trial to proceed while petitioner was dressed in prison clothing. Humbert, at 337, 548 S.E.2d at 865. The court found it "generally improper for a defendant to

appear for a jury trial dressed in readily identifiable prison clothing." Id. However, the court found there was no reasonable probability the outcome of his trial would have been different had Humbert not been dressed in his prison jumpsuit because of the overwhelming evidence of his guilt. Humbert, at 338, 548 S.E.2d at 865.

This Court finds Applicant's case nearly identical to Humbert and must apply its findings now. Although Trial Counsel may have been deficient in failing to request a continuance to object to the trial proceeding until Applicant could change into civilian attire, this Court finds Applicant can establish no prejudice based on the overwhelming evidence against him. As discussed below, Applicant does not dispute that he was driving a motor vehicle on the day in question. Although Trial Counsel challenged the validity of this traffic stop leading to this habitual traffic offender charge for driving under suspension, the evidence presented clearly shows the justification for the valid traffic stop and that Applicant was driving a motor vehicle with a suspended driver's license. Applicant had three prior convictions for driving under suspension, which were all admitted into evidence, and though Applicant challenged their accuracy and validity both at trial and at the PCR hearing, the prior convictions remain intact and accurate, and form a valid basis for his HTO offense.

The evidence against Applicant for this offense was clear and overwhelming. Accordingly, this Court finds Applicant can show no resulting prejudice from Trial Counsel's failure to object to the trial proceeding with Applicant in prison attire. Therefore, the second prong of the Strickland test is not met, and this allegation must be denied and dismissed with prejudice.

Failure to challenge probation revocation

Applicant alleges Trial Counsel was ineffective for failing to challenge his probation revocation after he was convicted of the habitual traffic offender charge. This allegation is meritless. The record is clear that a term of his probation was to not be convicted of any new charges. Tr. 110. Applicant's conviction for this offense, as well as multiple magistrate convictions during his probationary term and several other pending charges in the Solicitor's Office at the time of trial, formed the basis for the full revocation of his probation. Tr. 104. Trial Counsel offered mitigation on Applicant behalf, and Applicant informed the trial court during sentencing that he had no other probation violations. Tr. 106-109.

This Court finds Trial Counsel was not deficient for failing to challenge the probation revocation because there is nothing more he could have said or done to challenge it. Furthermore, Applicant raised his objections and all the reasons he believed he should not have been revoked to the trial court at sentencing, so there is no prejudice. The trial judge heard all the information Applicant believed was necessary and she revoked his probation in full, which was within her discretion. This Court finds Applicant has failed to meet either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001); cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a

different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

The evidence presented at trial clearly indicates that Applicant had three prior convictions for driving under suspension—one from May 5, 2009, one from August 27, 2008, and another from January 15, 2008. Although Applicant attempted at trial and at the evidentiary hearing to call those prior convictions into question, the convictions still stand and have not been vacated. Accordingly, they form a valid basis for the HTO conviction in question. Applicant does not dispute that he was driving a motor vehicle on the day he was arrested for this charge. Although Trial Counsel challenged the validity of this traffic stop leading to this habitual traffic offender charge for driving under suspension, the evidence presented clearly shows the justification for the valid traffic stop and that Applicant was driving a motor vehicle with a suspended driver's license. All elements of the crime were clearly met, and although Trial Counsel raised arguments to challenge the evidence and the traffic stop, the evidence presented overwhelmingly supported the jury's guilty verdict.

As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial, and these allegations are denied and dismissed with prejudice.

FAILURE TO PERFECT AN APPEAL

Applicant alleges Trial Counsel was ineffective for failing to file and perfect a direct appeal of his HTO conviction after his trial. The record before the Court indicates that Applicant asked Trial Counsel to appeal the conviction, and Trial Counsel filed a notice of intent to appeal

with the Solicitor's Office. However, the notice of appeal was never filed with the Clerk of Court. It appears from the record that Trial Counsel intended to perfect the appeal, but for some reason, the appeal was never perfected. This Court finds Applicant did not knowingly and voluntarily waive his right to appellate review of his conviction, and grants him a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974) (holding that where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court may grant a belated review of direct appeal issues).

VI. CONCLUSION

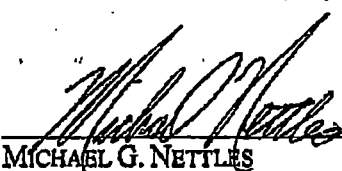
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1 day of March, 2018.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

EMW/0232530/2014-03-00468
WITNESSES

Hanahan Police Department

AGENCY CASE NUMBER

201405934

ARREST WARRANT NUMBER

46213GE

DATE OF ARREST

03/01/2014

ACTION OF GRAND JURY

True Bill

Sarah Davis
Foreperson of Grand Jury

5-8-15
Date:

VERDICT

Guilty

J. J. J.
Foreperson of Petit Jury

6-2-15
Date:

DOCKET NO. 2015-GS-08-00801

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

MAY TERM 2015

THE STATE

VS.

CARY GLENN RYALS
W/M DOB: [REDACTED]

Indictment for

HABITUAL TRAFFIC OFFENDER

SC Code: § 56-01-1100
CDR Code: 0057

FILED
2015 MAY 12 PM 1:25
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

FILED

JFH

JFH

STATE OF SOUTH CAROLINA

INDICTMENT

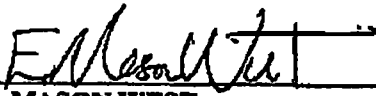
COUNTY OF BERKELEY

At a Court of General Sessions, convened on May 12, 2015, the Grand Jurors of Berkeley County present upon their oath:

HABITUAL TRAFFIC OFFENDER

That in Berkeley County, South Carolina, on or about March 1, 2014, the Defendant, Cary Glenn Ryals, did operate a motor vehicle in the State of South Carolina after having been found to be an habitual traffic offender by the South Carolina Department of Motor Vehicles and while the decision of the Department of Motor Vehicles prohibiting the defendant from operating a motor vehicle was in effect. This is in violation of Section 56-1-1100 of the 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.


E. MASON WEST
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

CARY GLENN RYALS

AKA: Cary Ryals, Cary G Ryals

Race: White Sex: M Age: 47

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Hanahan, SC 29406-2349

DL# [REDACTED] SID# SC00530988

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

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

TO: Habitual Traffic Offender

In violation of § 56-01-1100 of the S.C. Code of Laws, bearing CDR Code # 0057

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-49(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

E. Mason West, Assistant Solicitor 100788 SC Bar #

Defendant

Attorney for Defendant 1809 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$ 100.00; provided that upon the service of 5 days/months/years and or payment of \$ 100.00 plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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. 10/24/14☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ 100.00 plus 20% fee: \$ 20.0010 day/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2095 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/en \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.92TOTAL \$ 153.92Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Karen AndersenPresiding Judge: [Signature]Judge Code: 6251Sentence Date: 6/2/10

KWM