RECEIVED
Feb 22 2022
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

TERRY MCCALL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000385

APPENDIX

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

TAYLOR Z. SMITH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Suite 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA)
_____)

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Teresa Davis Dwease, *supra* is her best recollection of the testimony given by Ms. Dwease.

Sara Lee M Drawdy
Signature

Sara Lee M. Drawdy (Bar# 1747)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Treadway
Notary Public for South Carolina
My Commission Expires: 7.28.24

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA)
_____)

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Teresa Davis Dwease.

Signature

Jake Erwin (Bar# 79464)
Print Name

Sworn to before me this
9th day of March, 2017.
S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12.30.24

COURT'S
EXHIBIT NO. 4
IDENTIFICATION/EVIDENCE
DKT.# AAD
DATE: 3.14.17
PENGAD 800-631-6989

STATE v. TERRY MCCALL

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary

Witness: Joshua Robinson (State's Witness)

Position: Emergency Care Worker, Greenville County EMS

[Day 2, Page 207]

DIRECT EXAMINATION BY: Stan Overby

CROSS EXAMINATION BY: Defense Counsel, Jake Erwin.

Objections during Testimony: Yes

Evidence introduced: None

Summary of Testimony:

Joshua Robinson was part of the EMS crew that responded to the collision location at SC-291 and Worley Road in Greenville County. Mr. Robinson testified about his training and experience with regards to Emergency Medicine. Mr. Robinson testified that he was an intermediate at the time of the incident, but that he became a paramedic subsequent to the collision. Mr. Robinson testified that he was experienced in emergency medical care. He testified about the necessary training that is required of a person in his position. Mr. Robinson testified that he was working with a "primary" paramedic, Gary Clark. Mr. Robinson testified that they were dispatched to the collision scene in Medic 26 on March 4th, 2012. Mr. Robinson testified that they treated two patients at the scene, Julia Suddeth and the Defendant, Terry McCall. Mr. Robinson testified that he primarily treated Julia Suddeth. Mr. Robinson testified that a third individual drove Medic 26 to Greenville Memorial Hospital once both patients were loaded. Mr. Robinson testified that both he and Gary Clark were in the back Medic 26. Mr.

JKE SLO

Robinson testified that Gary Clark was treating the Defendant Terry McCall. Mr. Robinson testified that Defendant McCall was acting erratically. Mr. Robinson testified that the back of an EMS transport with multiple individuals is very cramped. Mr. Robinson testified there was very little distance or room for the actions of the Defendant and Gary Clark to not be observed. Mr. Robinson testified that he observed Gary Clark entering information in the computer in the back of the ambulance in real time. Mr. Robinson testified that as a matter of course notes are input into the computer as they are perceived and that the reports are time stamped. Mr. Robinson testified that he observed Mr. Clark input information in the computer. Mr. Robinson testified that he is responsible for reviewing the report as well after the report is closed and that he must sign off on the report. Mr. Robinson testified that his experience and training requires him to be familiar with the effects of certain drugs on the human body.

Mr. Robinson was shown state's exhibit # 28 (in evidence without objection, p. 188, line 24-25) which was a patient care report for Terry McCall. Mr. Robinson testified that the Defendant had a measured pupil size of 6.0 in both eyes. Mr. Robinson testified that the measured pupil size of 6.0 would be considered to be "dilated". Mr. Robinson testified that this measurement is typically taken in real time and that this was what Mr. Clark observed about the Defendant's pupil size. Mr. Robinson was asked his opinion of whether this indicated that the Defendant was on a drug. The Defense at this time objected to the question on the grounds that the witness could not provide that opinion. The State attempted to qualify Mr. Robinson as an expert which the Court refused to do. Mr. Robinson was then asked whether dilated pupils were consistent with a particular kind of drug class. This question did not draw an objection. Mr. Robinson then testified that dilated pupils could be consistent with methamphetamine use.

Cross was conducted on Mr. Robinson by defense counsel. To the best of counsel's recollection, the subject matter focused on the witness' lack of familiarity with the Defendant prior to that moment.

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THE SLO

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA)
_____)

Personally appeared before me Stan Overby, who being duly sworn, says that he is an Assistant Solicitor with the 10th Circuit Solicitors Office, formerly with the 13th Circuit Solicitor's Office, and that he was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Overby further states that the within Summary of the Testimony for Joshua Robinson, *supra* is his best recollection of the testimlny given by Mr. Robinson.

Signature

Stan Overby (Bar # 79870)
Print Name

Sworn to before me this
10 day of March, 2017.

Kelly Bradley
Notary Public for South Carolina
My Commission Expires: 12/30/24

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA)
_____)

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he believes that he would have objected to the question asked of Mr. Robinson about "whether dilated pupils were consistent with a particular kind of drug class", however, he does not have exact recall of whether he did object to that question. Mr. Erwin also states that he does not recall anything further about the testimony of Joshua Robinson.

Signature

Jake Erwin (Bar# 74941)
Print Name

Sworn to before me this
7th day of March, 2017.

S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12·30·24

505
COURT'S
EXHIBIT NO. 5
IDENTIFICATION/EVIDENCE
DKT.# AP
DATE: 3-14-17
PENGAD 800-631-6989

STATE v. TERRY MCCALL

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary

Witness: Corporal Tommy Brooks (State's Witness)

Position: MAIT Team Piedmont Region, SCHP

[Day 3, p.344 Line 5]

DIRECT EXAMINATION BY: Stan Overby

CROSS EXAMINATION BY: Defense Counsel, Jake Erwin.

Objections during Testimony: None

Evidence introduced: None introduced during the "gap" in the transcription.

Summary of Testimony (that was not transcribed):

The vast majority of Mr. Brooks' testimony remains intact and the State would rely on the record as created until the above-mentioned gap. Cpl. Brooks additionally testified that the accident was not a result of "driver input", in other words, that the driver of the Ford Explorer, who was established to be the Defendant, straightened the curve on SC-291, and that it resulted in the collision in the opposite lane. Additionally, Cpl. Brooks testified that there were no workable breaks during his vehicle examination and that his theory is that the Defendant was utilizing the parking brake to stop the vehicle.

The portion of the record that was not produced was primarily cross-examination of the witness. Mr. McCall conducted cross-examination of Mr. Brooks. Mr. McCall asked several questions about the brake reservoir in the case. To the best of counsel's recollection, these questions had

JKE SLO

to do with whether it was possible for the brake reservoir to be filled with fluid which subsequently leaked out, thus creating operable brakes. Mr. Brooks testified that the reservoir was dry. The Court had to admonish the witness and the Defendant as the testimony became combative.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)

AFFIDAVIT

Personally appeared before me Stan Overby, who being duly sworn, says that he is an Assistant Solicitor with the 10th Circuit Solicitors Office, formerly with the 13th Circuit Solicitor's Office, and that he was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Overby further states that the within Summary of the Testimony for Corporal Tommy Brooks, *supra* is his best recollection of the testimony given by Corporal Brooks.

Signature

Stan Overby (Bar # 7870)
Print Name

Sworn to before me this
10 day of March, 2017.

Notary Public for South Carolina
My Commission Expires: 7·28·24

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)

AFFIDAVIT

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Corporal Tommy Brooks.

Signature

Jake Erwin (Bar# 74941)
Print Name

Sworn to before me this
9th day of March, 2017.

S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12·30·24

COURT'S
EXHIBIT NO. 6
IDENTIFICATION/EVIDENCE
DKT.# AD
DATE: 3.14.17
PENGAD 800-631-6989

STATE v. TERRY MCCALL

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary

Witness: Robert Suddeth (State's witness)

The Victim in this case.

[Day 3, The final State's witness.**]**

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: None

Evidence introduced: State's Exhibit # 72 (admitted without objection)

Objections: One objection by defense counsel, Jake Erwin.

Summary of Testimony

Mr. Suddeth testified that he was the driver of the red pickup truck and that he was the victim in this case. He identified State's Exhibit # 72 as a fair and accurate aerial view of SC 291 at Worley Rd and the surrounding area. Mr. Suddeth testified that this aerial map would assist him in explaining his testimony. State's Exhibit # 72 was then entered into evidence without objection. Mr. Suddeth testified that he did not recall the accident and that his last memory was from that morning when he was having his morning coffee. He testified that he had made the remark that if he died that day he would have lived a full life. This drew an objection from defense counsel with concerns that the State was about to embark on eliciting potentially inflammatory testimony. The State's attorney assured the Court that this was not where direct examination was designed to go. Testimony continued with no further objections.

Mr. Suddeth identified the location of Furman University and the location of his home on State's Exhibit # 72. He pointed out the route that he would take from Furman to his home when taking

AD JKL

his daughter home from volleyball practice at Furman. *(This route passed through the location where the collision with Mr. McCall.)*

Mr. Suddeth testified about the injuries that he sustained in the accident and the extensive physical therapy that he underwent inpatient, outpatient, and later on his own at his home. He testified that he still has a number of plates and screws in both of his legs and also that are holding his pelvis together.

The defense did not cross examine Mr. Suddeth.

SZD JKE

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)
_____)

AFFIDAVIT

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Robert Suddeth, *supra* is her best recollection of the testimony given by Mr. Suddeth.

Sara Lee M Drawdy
Signature

Sara Lee M. Drawdy (Bar# 1747)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Treadway
Notary Public for South Carolina
My Commission Expires: 7.28.24

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)
_____)

AFFIDAVIT

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Robert Suddeth.

Signature

Jake Erwin (Bar# 79941)
Print Name

Sworn to before me this
9th day of March, 2017.
S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12.30.24

511 COURT'S
EXHIBIT NO. 7
IDENTIFICATION/EVIDENCE
DKT.# [illegible]
DATE: 3-14-17
PENGAD 800-631-6989

STATE v. TERRY MCCALL

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary

Witness: Juliette Martin (Defense witness)

The Defendant's girlfriend

[Day 3]

DIRECT EXAMINATION BY: Terry McCall

CROSS EXAMINATION BY: Stan Overby

Objections during testimony: None

Evidence introduced: None

Summary of Testimony

To the best of counsel's recollection, the direct examination focused on Mr. McCall and Ms. Martin's actions during the time from March 2nd, 2014 to March 4th, 2014. Ms. Martin indicated that the two stayed at the Savannah Suites off of Wade Hampton Boulevard at that time. Ms. Martin testified that Mr. McCall had problems with the brakes of his vehicle. Ms. Martin testified that she and Mr. McCall went to sleep on the night of March 2nd, 2014 and that when she woke up he was no longer in the room. She testified that he took Ativan on the night of March 2nd. She testified she did not see him after that time.

On cross-examination, the State pointed out that Ms. Martin was in jail on March 2nd.

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JKT SLO

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)
)

AFFIDAVIT

Personally appeared before me Stan Overby, who being duly sworn, says that he is an Assistant Solicitor with the 10th Circuit Solicitors Office, formerly with the 13th Circuit Solicitor's Office, and that he was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Overby further states that the within Summary of the Testimony for Juliette Martin, *supra* is his best recollection of the testimony given by Ms. Martin.

Signature

Stan Overby (Bar # 79870)
Print Name

Sworn to before me this
10 day of March, 2017.

Notary Public for South Carolina
My Commission Expires: 7.28.24

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)
)

AFFIDAVIT

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he recalls Ms. Martin being on the stand, but he does not recall anything about the testimony given by Juliette Martin.

Signature

Jake Erwin (Bar# 79941)
Print Name

Sworn to before me this
9th day of March, 2017.

Notary Public for South Carolina
My Commission Expires: 12.30.24

COURT'S
EXHIBIT NO. 8
IDENTIFICATION/EVIDENCE
DKT.# 15-1097
DATE: 3.14.17
PENGAD 800-631-6989

STATE v. TERRY MCCALL

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary

Witness: Terry McCall (Defense witness)

The Defendant in this case.

[Day 3]

DIRECT EXAMINATION BY: Jake Erwin

CROSS EXAMINATION BY: Sara Lee Drawdy

Evidence introduced: None

Objections during testimony: None

Summary of Testimony

To the best of counsel's recollection, Mr. McCall testified that at the time of the collision, he and his girlfriend, Juliette Martin, had been staying in a room at the Savannah Suites on Wade Hampton Blvd. Mr. McCall testified that (either on the day before, or on the day of the collision – counsel cannot recall which day) he drove Ms. Martin in his Ford Explorer to a pharmacy to fill a prescription. He testified that at some point after that Ms. Martin gave him several of her Ativan pills and he took them.

Mr. McCall testified that on the day of the collision, he got up and left the motel while his girlfriend was sleeping. To the best of counsel's recollection, he testified that he was going to wash clothes.

Mr. McCall testified that shortly before the accident happened he got a funny feeling, like he was going to have a seizure. He testified that he has a history of having seizures.

SLD JKE

Mr. McCall testified that the Ford Explorer had a problem with the brakes and that he kept adding brake fluid to the reservoir. Mr. McCall testified that the beer cans that were in his vehicle were ones that he had picked up on the side of the road.

Cross examination was very brief. To the best of Counsel's recollection, Mr. McCall admitted that his girlfriend, Juliette Martin had been asleep for several hours just prior to the time of the collision.

SJS JKE

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)

AFFIDAVIT

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Terry McCall, *supra* is her best recollection of Mr. McCall's testimony.

Sara Lee M Drawdy
Signature

Sara Lee M. Drawdy (Bar# 1747)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Jordan
Notary Public for South Carolina
My Commission Expires: 7.28.24

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
STATE OF SOUTH CAROLINA)

AFFIDAVIT

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Tracy McCall.

Signature

Jake Erwin (Bar# 79941)
Print Name

Sworn to before me this
9th day of March, 2017.
S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12.30.24

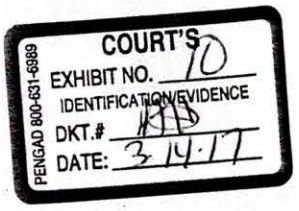
COURTROOM JOURNAL

Courtroom	6
The Honorable	Judge Stilwell
Court Reporter	Caroline Hiskell
Bailiffs	Tom Doherty and Mozella Fryer
Clerk	Joelle Lanfear
Officers	Jimmy Holloway and Randy Fitzgerald
Case Number	2012GS2310242
Case Called	**State** Attorney for State: Sara Lee Drawdy and Stan Overby vs. **Terry Edward McCall** Attorney for Defendant: Randy Chambers (relieved of counsel; Judge appointed Jake Erwin to sit with defendant in an advisory capacity)
Warrant #	F540654
Type of Case	Felony DUI resulting in Great Bodily Injury
Verdict	

Court convened 11:00
Arraignment hearing
Motion to dismiss because the Indictment was just served today
Motion: concerning blood evidence taken at the hospital even though the defendant was not injured severely.
Pre-trial motions
11:56-12:05 Ashley Norman
12:05-12:40 David McAlhaney
1248- 1:00 Don Bannister
1:00 -1:08 Wes Hoitt
1:08- 1:16 Wendy Bell
Defense witness:
1:18- 1:30 Terry McCall
2:30 Court reconvened
Defense motion was denied
Jackson v Denno
2:42- 248 David Andis
Jury selection:
Kara Park; Julie Triplett; Erin Hurst; Brittany Moreland: Mary Jane Clayton: Jeffrey; Brian Fowler; Windi Floyd-Cook; George Jones(Forperson): Wendi Smith; Patricia Moody; Hazel Powell; Amy Macphee; Crystal Cain(alt1) Clayton Frazier (alt2)
Oath administered: 3:45
Opening statement state: 3:45 – 3:52
Opening statement defense 3:52-:4:08
Recess 4:08 – 4:22
State Witnesses:
4:20 -4:28 Mark Allison (exhibit 1 – map of 291)
4:30 –4:33 Greg Certain (exhibits 2-25 photos)
4:32- 4:47 Alan Hall
4:47- 5:05 Dana Suddeth

Defendant's motion to relieve counsel GRANTED
Jake Erwin appointed to sit as advisory counsel

10:20 Court reconvened:
10:20- 10:28 Cpt Sally Clark
10:28 – 10:55 Lt John James
10:55- 11:05 Randy Freeman
11:07 – 11-20 Chris Stache
Recess
11:43- 11:54 Teresa Dewease
11:55 – 12:25 Joshua Robinson
Lunch 12:30
Jury reconvened 2:30
State witnesses continued
2:35- 2:50 Sgt Wes Hiott
2:50 – 3:26 David McAlhaney
3:26 – 3:55 Ashley Norman
3:55 -4:00 Wes Hiott
4:00- 4:04 Don Bannister
4:04- 4:.07 D. Perry
4:07 – 4:12 Mendel Rivers
4:13- 4:19 Amy Stephens
4:19- 4:28 Wendy Bell
4:35 – 4:45 Marybeth McCormick
4: 45- 5:00 Carmen Tucker
5:00 – 5:40 Shanna Sorrells
Jury dismissed
5-14-2014
State Witnesses
Defense Motion to listen to CD: granted
Defendant asked for medicine
Court recessed so defendant could listen to CD
10:07 Court reconvened
10:07- 10: 32 Trooper Nimmons
10:32 –11:35 Tommy Brooks
Recess 11:30-11:43
State Witness:
11:47 – 12:12 Dr. Lance
12:13 – 12:25 Robert Suddeth
Court recessed until 1:30
Defense Witness
1:40- 1:55 Juliette Martin
1:55 –2:25 Terry McCall
Motion for Directed Verdict
Motion for a mistrial
Motion to leave out references to alcohol in the charge
Charge conference
Recess 2:30- 2:35
Defense closing:
2:35 – 2:43
State closing
2:44 – 2:52
Charge on the law
2:52- 3:04
Deliberations began
3:08



Court General Sessions

RECEIPT FOR EXHIBITS

County Greenville
Case No. 2012-GS-23-10242
Plaintiff State
Defendant Terry E McCall
Date trial started 5-12-15

Judge Stilwell
Plf's Attorney Brawley
Def's Attorney Hunters - Erwin
Date ended 5-14-15

State

Plaintiff's Exhibits:

(not rec'd)
1. Map
2. Scene Photo
3. ✓ Photo
4. ✓ Photo
5. ✓ Photo
6. ✓ Photo
7. ✓ Photo
8. ✓ Photo
9. ✓ Photo
10. Photo
11. Photo
12. Photo
13. Photo
14. Photo
15. Photo
16. Photo
17. Photo
18. Photo
19. Photo
20. Photo
21. Photo
22. Photo
23. Photo
24. Photo
25. Photo

Court

Defendant's Exhibits:

1. Uniform Traffic Ticket
2. Brief and Affidavit Simple DP
3. Crime Collection Report
4. Chain of Custody Report
5. Chain of Custody Report
6. Photograph
7. Photograph
8. Photograph
9. Photograph
10. Photograph
11. Photograph
12. Photograph
13. Photograph
14. Photograph
15. Search Image Photo
16. CD - Audio
17.
18.
19.
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22.
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24.
25.

Received from Carolyn Haskell, Court Reporter, for the above ca

5-14-15 (date) By: Kelli Sampson
Clerk of Court's Office

Page 17-3

Court Greenville

RECEIPT FOR EXHIBITS

County General Sessions
Case No. 2012-GS-23-10242
Plaintiff State
Defendant Terry E. McCall
Date trial started 5-12-15

Judge Stilwell
Plff's Attorney Brawley
Def's Attorney Chambers, Emma
Date ended 5-14-15

State's
Plaintiff's Exhibits:

26 Patient Care Report
27 Patient Care Report
28 Patient Care Report
29 Hospital Tox & M
30 GHB Urine Sample - Not admit
31 Photograph - Not admit
32 Photograph
33 Photograph
34 Enlargement of Inked Consent - not admit
35 Photo SCDPS Evidence Bag - not admit
36 Photograph Bag
37 Chain of Custody
38 Handwritten Log
39 Sled Evidence Bag
40 Sled Chain of Comm of Evd
41 Toxicology Report
42 Toxicology Report
43 Audio Recording
44
45
46 Photographs Evidence
47 into
48 evidence
49
50 - 64

State
Defendant's Exhibits:

A Chain of Custody Tom Lowe
B Chain of Custody / Tom Blood
C Consent Form Norman Blood
D Implied Consent Rights
E Patient Chart McCall Report
F Flow Sheet
G Out Patient Report
H Discharge Instructions Receipt
I Photo
11.
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Received from Caroline Heskell, Court Reporter, for the above ca

5-14-15 (date) By: Sally Sanders
Clerk of Court's Office

2 of 3

520

Court General Sessions

RECEIPT FOR EXHIBITS

County Greenville
Case No. 12-GS-23-10242
Plaintiff State
Defendant Terry E. McCall
Date trial started 5-12-15

Judge Stilwell
Pltf's Attorney Drawdy
Def's Attorney Erwin
Date ended 5-15-15

Plaintiff's Exhibits:

STATE
1. Disk
2. diagram Roadways
3. diagram
4. diagram
5. Photograph
6. Photograph
7. Photograph
8. Map - admitted
9. did not get published
10.
11.
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Defendant's Exhibits:

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Received from Barbara Hughes, Court Reporter, for the above ca

5-14-15 (date) By: Sallie Sawyer
Clerk of Court's Office

3 of 3

COURT'S EXHIBIT NO. 11 IDENTIFICATION/EVIDENCE DKT.# AD DATE: 3/14-17
PENGAD 800-631-6989

PRID: [redacted] RPT#: 1203040102

Service: Greenville County EMS
Base: Duncan Chapel
Unit: M-26
Shift: Alpha
Tail/Reg: 03026
EMD: Yes, With Pre-Arrival Instructions - 29B04
Dispatched As: Traffic Accident
Mass Casualty: No
Type of Svc: Scene Unscheduled
Response Code: Delta
Mode to Ref: Lights / Sirens
Moved Via: Stretcher
Position: Supine
Outcome: Treated, Transported

Date: March 4, 2012
Team: ALS
Crew 1: *Primary Caregiver*
*Clark, Gary
EMT-P
Crew 2: *Driver*
*Robinson, Joshua
EMT-I
* designates an ALS Provider
Mode to Rec: No Lights/Sirens
Moved From: Stretcher

COPY

Ref Other Type: *Street < 50 MPH*
Location: 2899 N PLEASANTBURG DR
GREENVILLE, SC 29609-3034
Ref. GPS: 34.886794,-82.390939

Receiving: *Hospital*
Greenville Memorial Medical Campus
Emergency Department
701 Grove Rd
Greenville, SC 29605-4210
864-455-7000
Dest. GPS: 34.821345,-82.413694
Rec. RN: Leanne

Hospital Account #: [redacted]
Last Name: McCall First: TERRY
Middle: E
Address: [redacted]
City: GREENVILLE ST: SC Zip: 29611
County: Greenville
Country: United States
Phone: [redacted]
DOB: 0[redacted] SSN: [redacted]
Age: 52y Sex: M Weight: 160 lb
Height:
Subscriber: No
Race: White, non-Hispanic
DNR Orders: None

Odometer	Times
Ld Miles: 7.2	Received: 17:45:44
	Dispatch: 17:50:37
	EnRoute: 17:50:43
	First Resp: 17:52:55
	At Ref: 18:11:33
	Leave Ref: 18:29:48
	At Rec: 18:48:28
	Available: 19:25:52

Notice of Privacy Practices Given: None
Consent Signed: Yes
PCS / Medical Necessity Signed: No

Billing Information:

Company	Group	ID
Self-Paid		

Scene Information

Description: pt still sitting in his vehicle
Patient Belongings: pt's wallet,left with pt at the hospital
Other Agencies: Fire, Law Fire Number: Parker Law Enforcement Number: SCHP

Chief Complaint (Category: Pain)

MVA,

Secondary Complaint

pain

STATE EXHIBIT

History of Present Illness

this is a 52 year old male who was seatbelted driver of a vehicle involved in a 2 car mva,

Chief Complaint (Category: Pain)

pt was the only person in the vehicle, pt is complaing of left foot toe pain, neck, back chest, shoulders bilateral, left knee pain, and mouth pain from some broken teeth.

Medical History	Current Medications	Allergies
Anxiety Disorder Hypoglycemia Seizures Surgeries R hand, R shoulder L shoulder and facial restructuring	None	Codeine
Obtained From: Patient		

Neurological Exam

Level of Consciousness: Alert

Loss of Consciousness: No

Chemically Paralyzed: No

Neurological Present: Speech Slurring

Mental Present: Oriented-Person, Oriented-Place, Oriented-Time, Within Normal Limits

Glasgow Coma Scale	E	V	M	Tot
Int:	4	5	6	= 15

Pupils	Left	Right
Size:	6mm	6mm
React:	Reactive	Reactive

	Motor	Sensory
LA:	Normal	Normal
RA:	Normal	Normal
LL:	Normal	Normal
RL:	Normal	Normal

COPY

Motor Comments: appropriate

Sensory Comments: appropriate

Airway

Status: Patent

Respiratory

Effort: Normal

Sounds: **L:** Clear **R:** Clear

Cardiovascular

JVD: Not Appreciated **Cap. Refill:** Less than 2 Seconds

Edema: Not Appreciated

Pulses	Left	Right
Carotid:		
Radial:	Normal	Normal
Femoral:		
Dorsalis:	Normal	Normal

Injury Details

Reason for Encounter: Injury/Trauma

Drugs/Alcohol?: Unknown

Impression / Diagnosis

System: Musculoskeletal

Symptoms: Pain

Impression: Not Available

Activity

Time	H.R.	B.P.	MAP	SaO2		Resp	Rhythm	GCS	ECG Method	Glu
	H.R. Method	Method				Resp Effort				
Action	Comment									
19:12	90	130 / P				18	(REG)	4/5/6		

Activity

Time	H.R.	B.P.	MAP	SaO2		Resp	Rhythm	GCS	ECG Method	Glu	
	H.R. Method	Method				Resp Effort					
Action	Comment										
		Palpated Cuff				**Normal**					
	arriving at pt on scene, he was still sitting in his vehicle, pt is alert and oriented to person place time and event, pt is complaining of pain all over, Pt got out of his vehicle on his own, we advised pt to stand beside his truck so we could spinally immobilize him. he said ok and cooperated.										
18:18											
Immob.	Patient immobilized with LBB, CID, Collar, Manual C-Spine Stabilization. Assessment: Cap Refil < 2 seconds,Good pulse, motor, sensation. Authorization: Via Protocol. Pt. Response: Unchanged. pms assessed prior to and after immobilization										
18:20											
	pt supine on LLB, placed onto our stetcher and tranferred to our ambulance.										
18:23											
Initiate IV	Peripheral IV initiated by Gary Clark with 18ga. at LA. Attempts: 1, successful. Authorization: Via Protocol. Pt. Response: Unchanged. aseptic tecnique, INT in place, NS KVO rate										
18:26	90	140 / 80	100	99		16	(REG)	4/5/6		93	
		Manual Cuff				**Normal**					
18:28							**Normal Sinus Rhythm**				
	LIFEPAK 12 Initial Rhythm										
18:40	86	130 / P		99		16	**Normal Sinus Rhythm** (REG)	4/5/6			
		Palpated Cuff				**Normal**					
18:48											
	arriving at GMMC, Pt taken to ER hallway bed 18, verbal report given to RN Leanne.										

Clark, Gary: *Electronically Signed on 03/04/2012 20:15:41 EST*
SC ID: 18099

Robinson, Joshua: *Electronically Signed on 03/04/2012 20:18:10 EST*

ID:

COPY

English Pt. Authorization Signature Form Sect. 1

Greenville County EMS
301 University Ridge
Suite 1100
Greenville, SC 29601
(864) 467-7005

Date: 03-04-12	**Patient:** McCall, TERRY	**Age:** 52 y	**Type:** Scene
RPT#: 1203040102	**Unit:** M-26	**Mode:** Ground	
Referring: 2899 N PLEASANTBURG DR GREENVILLE, SC 29609-3034		**Receiving:** Emergency Department Greenville Memorial Medical Campus 701 Grove Rd Greenville, SC 29605-4210 864-455-7000	

Ambulance Billing Authorization and Privacy Acknowledgment Form

Patient Name: TERRY McCall

I request that payment of authorized Medicare, Medicaid, or any other insurance benefits be made on my behalf to Greenville County EMS ("GCEMS") for any services provided to me by GCEMS now or in the future. I understand that I am financially responsible for the services provided to me by GCEMS, regardless of my insurance coverage, and in some cases, may be responsible for an amount in addition to that which was paid by my insurance. I agree to immediately remit to GCEMS any payments that I receive directly from insurance or any source whatsoever for the services provided to me and I assign all rights to such payments to GCEMS. I authorize GCEMS to appeal payment denials or other adverse decisions on my behalf without further authorization. I authorize and direct any holder of medical information or documentation about me to release such information to GCEMS and its billing agents, and/or the Centers for Medicare and Medicaid Services and its carriers and agents, and/or any other payers or insurers as may be necessary to determine these or other benefits payable for any services provided to me by GCEMS, now or in the future. A copy of this form is as valid as an original.

PRIVACY PRACTICES ACKNOWLEDGMENT: by signing below, I acknowledge that I have received GCEMS' Notice of Privacy Practices.

SECTION I--PATIENT SIGNATURE
The patient must sign here unless the patient is physically or mentally incapable of signing.

525

Jerry McCall

Date: 03/04/2012 18:24:41

Patient Signature or Mark

If the patient signs with an "X" or other mark, it is recommended that someone sign below as a witness.

Signature Unavailable

Witness Signature

If patient is physically or mentally incapable of signing, Section II must be completed.

COPY

Receiving Nurse Signature Form

Greenville County EMS
301 University Ridge
Suite 1100
Greenville, SC 29601
(864) 467-7005

Date: 03-04-12	**Patient:** McCall, TERRY	**Age:** 52 y	**Type:** Scene
RPT#: 1203040102	**Unit:** M-26	**Mode:** Ground	
Referring: 2899 N PLEASANTBURG DR GREENVILLE, SC 29609-3034		**Receiving:** Emergency Department Greenville Memorial Medical Campus 701 Grove Rd Greenville, SC 29605-4210 864-455-7000	

TERRY McCall

The above named patient was received by this nurse on this date from Greenville County Emergency Medical Services. The transporting crew has provided a complete verbal report of the patient complaint and condition upon transfer of care.

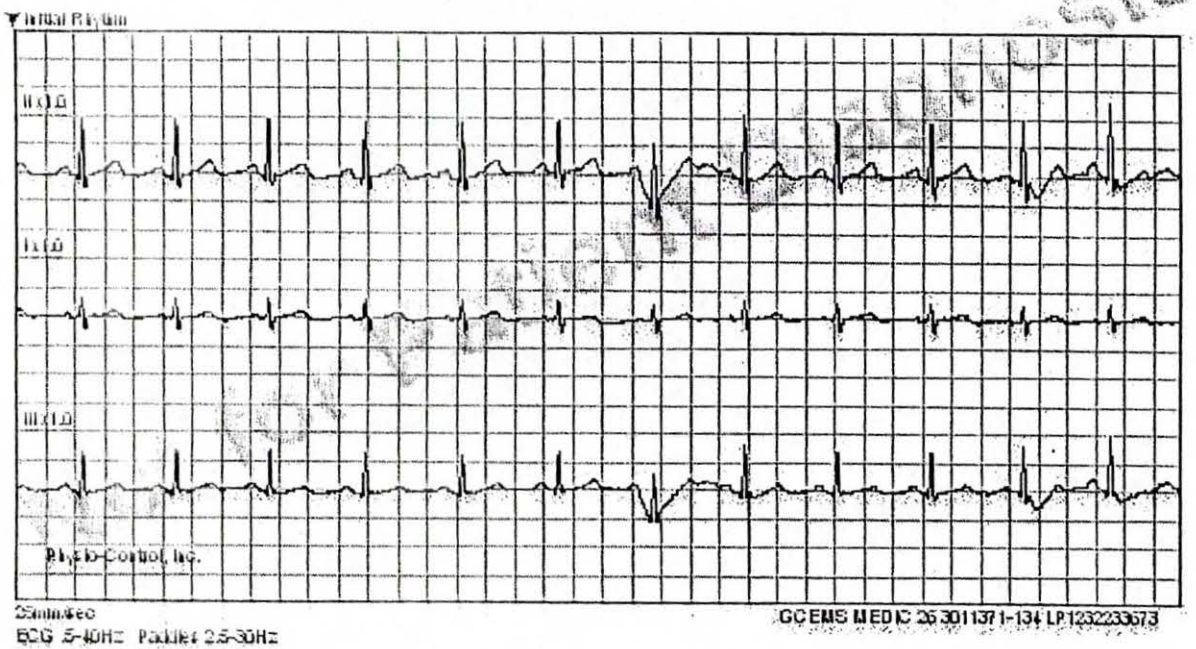
Date: 03/04/2012 18:59:41

COPY

COPY

Not
COPY

Name:		Initial Rhythm	6:28:33 PM
ID:	030412182830		
Patient ID:			
Incident ID:			
Location:			
Age:	Sex:		
3/4/2012			



Copy

WITNESSES

D E Mcalhany

S. C. Highway Patrol RS

3/4/2012

ARREST WARRANT NUMBER

F540654

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Floyd Jones

5/14/15

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23- SLD 010242

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM ~~2012~~ 2013

THE STATE

vs.

TERRY EDWARD MCCALL

Indictment for

0406

FELONY DUI (RESULTING IN GREAT BODILY INJURY)

VIOLATION § 56-05-2945

ENTERED
ACCT LBT

530

RECEIVED

DEC 2 1 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FELONY DUI (RESULTING IN GREAT BODILY INJURY)

At a Court of General Sessions, convened on FEB 19 2013 the Grand Jurors of Greenville County present upon their oath:

That TERRY EDWARD MCCALL did in Greenville County, on or about the 4th day of March 2012, drive a motor vehicle while under the influence of drugs, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: the defendant failed to exercise due care and/or drove an unsafe vehicle on a highway and/or drove too fast for conditions and/or crossed the center median and/or drove into the oncoming lane of travel striking another vehicle, which acts and/or neglect proximately caused great bodily injury to ROBERT LAGRANDE SUDDUTH. This is in violation of §56-5-2945 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.

Sara Lee M Lawson
SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF 532 Greenville)
STATE VS.)
Terry Edward Mccall)
AKA:)
Race: WHITE Sex: M Age: 55)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Greenville, SC 29611-4465)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE 10511 COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2310242
A/W#: F540654
Date of Offense: 3/4/2012
S.C. Code § : 56-05-2945(A)(1)
CDR Code #: 0406

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ ~~PLEADS~~
TO: DUI / Felony driving under the influence, great bodily injury results

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Drawdy, Sara Lee | 1747 SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 15 days/months/~~years~~ or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with **probation** for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$ 100.00
§ 56-5-2995 (DUI Assessment)	$12	$ 12.00
§ 56-1-286 (DUI Breath Test)	$25	$ 25.00
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 7.20
TOTAL		$ 249.20

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: Ret Att.

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul Belch LBH
Court Reporter: Hosbell
Presiding Judge _____
Judge Code: 2138
Sentence Date: 1/24/13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY EDWARD MCCALL,

APPELLANT

APPELLATE CASE NO. 2015-001097

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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ARGUMENT

1.

S.C. Code Ann. § 56-5-2946, South Carolina's implied consent statute, is unconstitutional under the Fourth Amendment because it operates as a *per se* exception to the warrant requirement in violation of Missouri v. McNeely, 569 U.S. 141 (2013). 11

2.

The trial judge erred by denying Appellant's motion to suppress the evidence obtained from the warrantless collection of his blood and urine where law enforcement was required to obtain a warrant before directing hospital personnel to collect a blood and urine sample from Appellant since there were no exigent circumstances to justify the warrantless search, and since Appellant did not consent, and if he did consent, his consent was not freely and voluntarily given. 20

3.

The trial judge abused his discretion by denying Appellant's motion for a continuance where "good cause" existed since the judge granted Appellant's motion to relieve counsel midtrial, even though it was timely filed six weeks before the start of trial, but refused to permit Appellant adequate time to retain other counsel, and where Appellant was prejudiced because he was ultimately forced to proceed *pro se* with stand by counsel who was unfamiliar with his case and the prior proceedings. 27

4.

Appellant's Sixth Amendment right to counsel was violated when the trial judge granted Appellant's motion to relieve counsel without conducting a proper hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1975) or advising Appellant of the dangers and disadvantages of self-representation. 36

CONCLUSION 40

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STATEMENT OF ISSUES ON APPEAL

1.

Whether S.C. Code Ann. § 56-5-2946, South Carolina's implied consent statute, is unconstitutional under the Fourth Amendment because it operates as a *per se* exception to the warrant requirement in violation of Missouri v. McNeely, 569 U.S. 141 (2013)?

2.

Whether the trial judge erred by denying Appellant's motion to suppress the evidence obtained from the warrantless collection of his blood and urine where law enforcement was required to obtain a warrant before directing hospital personnel to collect a blood and urine sample from Appellant since there were no exigent circumstances to justify the warrantless search, and since Appellant did not consent, and if he did consent, his consent was not freely and voluntarily given?

3.

Whether the trial judge abused his discretion by denying Appellant's motion for a continuance where "good cause" existed since the judge granted Appellant's motion to relieve counsel midtrial, even though it was timely filed six weeks before the start of trial, but refused to permit Appellant adequate time to retain other counsel, and where Appellant was prejudiced because he was ultimately forced to proceed *pro se* with stand by counsel who was unfamiliar with his case and the prior proceedings?

4.

Whether Appellant's Sixth Amendment right to counsel was violated when the trial judge granted Appellant's motion to relieve counsel without conducting a proper hearing pursuant to

Faretta v. California, 422 U.S. 806 (1975) or advising Appellant of the dangers and disadvantages of self-representation?

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Appellant on February 19, 2013 for felony DUI resulting in great bodily injury. R. 496-497. His case was called to trial on May 12, 2015 before the Honorable Robin B. Stilwell, and a jury. R. 1. Assistant Solicitors Sara Lee Drawdy and Stan Overby represented the state, and Randy Chambers represented Appellant. R. 1. On the morning of the second day of trial, Judge Stilwell granted Appellant's motion to relieve counsel, but denied his motion for a continuance. R. 129, ll. 6-10. Consequently, Appellant proceeded *pro se*. Jake Erwin was appointed as standby counsel. R. 130, ll. 10-12. On May 14, 2015, the jury found Appellant guilty as indicted. R. 327, l. 24 – 328, l. 6. He was sentenced to fifteen years imprisonment. R. 333, ll. 19-23.

On May 20, 2015, Appellant timely filed a notice of appeal. The Office of Appellate Defense undertook representation of Appellant and requested the trial transcript. Over a year later, the Office of Appellate Defense received an incomplete transcript. At a minimum, the transcript was missing the complete testimony of six witnesses and the partial testimony of two witnesses.

On September 29, 2016, Appellant filed a motion with this Court seeking to remand his case to the trial court to reconstruct the record. By order filed November 4, 2016, this Court granted Appellant's motion and remanded the case.

On March 14, 2017, a hearing was held in Greenville County before Judge Stilwell to reconstruct the record. R. 369. Assistant Solicitors Sara Lee Drawdy, Stan Overby, and Judy Munson represented the state, and Appellate Defender John Strom represented Appellant. R. 369. At the beginning of the hearing, Appellant moved to have the assistant solicitors who represented the state at trial recused because they were witnesses for purposes of the

reconstruction hearing. R. 373, ll. 2-21. However, Judge Stilwell denied the motion. R. 373, l. 22 – 375, l. 1. At the conclusion of the hearing, Judge Stilwell orally ruled the record of Appellant's trial had been sufficiently reconstructed to allow for meaningful appellate review. R. 466, l. 24 – 469, l. 10.

By letter dated August 25, 2017, Appellate Defender John Strom notified this Court that Appellant wished to waive his right to challenge Judge Stilwell's oral ruling that the record of his trial had been sufficiently reconstructed to allow for meaningful appellate review. Enclosed within this letter was an affidavit signed by Appellant McCall confirming his desire not to appeal Judge Stilwell's ruling.

By letter dated September 6, 2017, in response to Appellant's August 25, 2017 letter and accompanying affidavit, this Court directed Appellant to file a motion. On October 11, 2017, undersigned counsel was assigned to represent Appellant after Appellate Defender John Strom left the Office of Appellate Defense. On October 18, 2017, Appellant filed a motion to accept his decision not to appeal the ruling reconstructing the record. By order filed November 16, 2017, this Court granted Appellant's motion.

This appeal from Appellant's conviction and sentence follows.

STATEMENT OF THE FACTS

Facts Presented at Trial

On March 4, 2012, at approximately 5:50 p.m., a traffic collision occurred between Appellant and Robert Suddeth near the intersection of S.C. 291 and Worley Road in Greenville, South Carolina. Prior to the collision, Appellant was traveling northbound on S.C. 291 and Mr. Suddeth was traveling southbound. Appellant, who was driving a Ford Explorer, traveled left of the centerline, crossed the median, and struck Mr. Suddeth's Chevrolet pickup truck head on. R. 105, l. 22 – 106, l. 15. Both men were entrapped in their respective vehicles and had to be removed by the fire department and emergency personnel. R. 154, l. 4 – 155, l. 13; R. 159, ll. 10-18; R. 165, l. 8 – 166, l. 1.

Appellant was transported to Greenville Memorial Hospital at 6:29 p.m. by ambulance. R. 146, l. 20 – 147, l. 12. Before he was transported, Sergeant Wes Hiatt of the South Carolina Highway Patrol spoke to Appellant in the back of the ambulance. Appellant denied he had been drinking and told Hiatt that his brakes failed. Hiatt claimed that during his discussion with Appellant, he noticed Appellant's eyes were "glassy and his pupils were dilated." R. 167, l. 7 – 169, l. 5. However, Hiatt did not smell any alcohol on Appellant's person. After speaking with Appellant, Sergeant Hiatt told Trooper David McAlhaney, the primary investigator, that, while he did not think Appellant had been drinking, he suspected Appellant was "on some kind of drug." R. 169, ll. 6-9. His opinion was based not only on his observation of Appellant in the back of the ambulance, but also based on the nature of the car accident in which Appellant crossed the centerline. R. 171, l. 16 – 172, l. 18.

As the primary investigator, Trooper McAlhaney spent close to two hours at the location of the collision. He interviewed two witnesses who confirmed what McAlhaney suspected

occurred based on his observation of the accident scene and the location of the vehicles. The witnesses maintained Appellant's Ford Explorer crossed the median dividing the northbound and southbound lanes of traffic and struck Mr. Suddeth's Chevrolet pickup truck head on "for no reason that they could see." R. 176, l. 7 – 177, l. 5.

In addition to Sergeant Hiatt and Trooper McAlhaney, there were approximately *eight* other troopers with the highway patrol at the scene to assist in the investigation. R. 165, ll. 5-7. The Major Accident Investigation Team (MAIT) of the Highway Patrol also responded.

After McAlhaney completed his investigation at the accident location, he travelled to the hospital where he interviewed Appellant. Appellant was lying on a stretcher in the hallway of the critical care unit. R. 177, ll. 6-24. Appellant told McAlhaney that there were no calibers on the wheels of his vehicle which hold the brake pads in place. Consequently, Appellant maintained his vehicle did not have any operable brakes at the time of the collision. R. 178, ll. 1-6. He denied drinking any alcohol, but allegedly admitted to taking prescription medication. R. 178, ll. 9-22. McAlhaney claimed Appellant appeared "sleepy" and believed "something wasn't right" because of Appellant's reaction when he was asked a question. Appellant allegedly would "open his eyes real wide" before answering each of McAlhaney's questions. R. 178, ll. 13-18.

Based on Trooper McAlhaney's investigation at the accident location and his observations of Appellant, he decided to arrest Appellant for felony DUI resulting in great bodily injury. R. 179, ll. 14-25. Appellant was arrested at 8:13 p.m. R. 183, ll. 18-20. McAlhaney claimed that after he notified Appellant of his arrest, he advised him of the implied consent statute and told Appellant that, pursuant to the statute, he "must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs or a combination of alcohol and drugs." McAlhaney claimed he read the complete advisement form

as required by the implied consent statute, gave Appellant a copy, and asked him to sign "acknowledging receipt." R. 180, l. 1 – 182, l. 2. According to McAlhaney, Appellant signed the form and agreed to give a blood and urine sample. R. 181, l. 22 – 182, l. 18. McAlhaney then found a nurse to collect the samples. Appellant's urine sample was collected at 8:45 p.m. and his blood sample was collected at 9:05 p.m. R. 184, l. 14 – 185, l. 22.

Appellant's blood sample was later analyzed by a forensic toxicologist at the South Carolina Law Enforcement Division (SLED). It tested positive for methamphetamine and benzodiazepines, including Lorazepam and Klonopin. R. 243, ll. 11-12; R. 248, ll. 6-15. These results were confirmed after an analysis of Appellant's urine sample. R. 249, ll. 2-21.

After a three day trial, the jury ultimately found Appellant guilty of felony DUI resulting in great bodily injury. R. 327, l. 24 – 328, l. 6.

Motion to Relieve Counsel and Motion for a Continuance

Appellant filed a *pro se* motion to relieve counsel on March 27, 2015, approximately six weeks before trial. R. 494. For whatever reason, a hearing on Appellant's motion was never heard and a ruling was never made. On the morning of the second day of trial, Appellant renewed his motion to relieve counsel. Randy Chambers, Appellant's then counsel, informed the trial judge:

> He [Appellant] summoned me back this morning saying that he needed to talk to me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons [are] more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. So *I think he has created a conflict between us.*
>
> He clearly does not want me to continue as his lawyer and it's my understanding that he wants the Court to grant him a continuance and allow him to hire an attorney . . .

R. 122, ll. 6-22 (emphasis added).

Appellant informed the judge that he "filed a motion to relieve Mr. Chambers back in March." R. 122, l. 24 – 123, l. 1. Appellant then orally renewed his motion to relieve counsel arguing that he and Chambers had a conflict that could not be resolved. Appellant emphasized that the trial started without a hearing ever being held on his motion to relieve counsel and he never got "to be heard in relation to it." He strongly asserted that he "was supposed to be heard on the motion first" before the trial began. R. 123, l. 3 – 125, l. 23. Chambers then joined in Appellant's motion stating that he did not believe he could "effectively represent him anymore." R. 125, l. 24 – 126, l. 5.

Appellant again stated that he wished for Chambers to be relieved and moved for a continuance so that he could retain other counsel. The trial judge denied the motion for a continuance asserting Appellant "waited until we have impaneled a jury" and "begun the presentation of evidence." R. 126, l. 17 – 128, l. 25.

When asked by the trial judge, Appellant asserted that he was not willing to assume the risks of proceeding *pro se*. R. 127, l. 23 – 128, l. 6. As far as the possible appointment of stand by counsel, Appellant stated, "I'm going to leave that up to you, Judge." R. 128, l. 7 – 129, l. 5. The judge then ruled: "Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him [Appellant] and answer and address any questions that he may have during this trial?" R. 129, ll. 6-11. A break in the proceedings then occurred.

After the break, the judge stated, "I believe the record speaks for itself with respect to what has transpired. I will state that we conducted a hearing in accordance with [Faretta] v. California and I have made a determination that the waiver of prior counsel has been made

knowingly and intelligently and that the defendant does have a right to proceed pro se." R. 130, ll. 2-8.

The trial judge ultimately appointed Jake Erwin of the Greenville County Public Defender Office as stand by counsel. R. 130, ll. 8-12. In so doing, he stated, "Mr. Erwin's duties with respect to his representation and assistance of Mr. McCall [Appellant] shall be to answer any questions and to assist in any way that you feel is - - each of you feels is necessary. I will also say, Mr. Erwin, to the extent that you feel it is necessary [and] appropriate, I'll allow you to participate in the trial. However, I am not suggesting that you should or that it [is] appropriate that you will. I'm just giving you that leeway. Each of you can make that decision as you go forward in this case." R. 130, ll. 13-22.

Before the trial resumed, Appellant vehemently asserted, "I am not waiving my right to counsel." R. 130, ll. 23-24. He exclaimed, "I didn't ask to represent myself . . . You're forcing me." R. 132, ll. 16-22.

In response to Appellant's assertions, the trial judge stated:

> I've also held a hearing in accordance with State versus Fuller, 523 S.E.2d 168.[1] In this case there has been a request for relief of counsel during the pendency of the case after the jury had been impaneled and after the presentation of a significant and substantial amount of evidence. It is within the discretion of a trial judge to grant the motion for the relief of counsel during the pendency of the proceeding and I've elected to do that based on the totality of the circumstances.
>
> I find specifically that the motion was ill-timed and that the ultimate end of the motion to continue and the motion for relief of counsel is to delay and hinder the administration of justice.
>
> I will tell you the continuance of this case would have a significant prejudicial effect on the state because the state has subpoenaed all of its witnesses which are substantial in amount, over 40 in reading the witness list. Also, the defendant has had the opportunity to witness and view a specific amount of

[1] State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999).

> presentation of the case to include all of its tactical proceedings in opening statements and its order and method of presentation of evidence.

R. 130, l. 25 – 131, l. 23.

The trial then resumed with Appellant *pro se* and Jake Erwin acting as standby counsel. R. 134, ll. 5-24. During the remainder of the trial, Erwin engaged in improper hybrid representation. Both Erwin and Appellant cross examined witnesses, voiced objections, and raised motions. Erwin gave the closing argument. See R. 309, l. 14 – 314, l. 13.

ARGUMENT

1.

S.C. Code Ann. § 56-5-2946, South Carolina's implied consent statute, is unconstitutional under the Fourth Amendment because it operates as a *per se* exception to the warrant requirement in violation of *Missouri v. McNeely*, 569 U.S. 141 (2013).

How the Issue was Presented Below

Appellant moved pretrial to suppress the evidence obtained from an analysis of his blood and urine samples, which were collected without a warrant pursuant to S.C. Code Ann. § 56-5-2946. He argued § 56-5-2946, our state's implied consent statute, is unconstitutional under the United States Supreme Court's holding in Missouri v. McNeely, 569 U.S. 141 (2013), which held "a warrantless search of a person is reasonable only if it falls within a recognized exception" to the warrant requirement. Partly quoting the Court in McNeely, Counsel for Appellant asserted "that in drunk driving investigations, the natural dissipation of alcohol, or we can argue by extrapolating drugs in the blood stream, does not constitute an [exigency] in every case sufficient for conducting a blood test without a warrant." R. 6, l. 15 – 7, l. 11. Counsel argued there was no way to read McNeely and not conclude that a "statute that allows for a warrantless intrusion into the body of a defendant . . . is unconstitutional." R. 7, ll. 12-17.

The state argued in return that McNeely "has no effect on [§ 56-5-2946] in terms of its constitutionality." R. 10, ll. 14-16. The assistant solicitor stressed that in South Carolina all statutes are presumed constitutional and are to "be construed so as to render them valid." R. 15, l. 22 – 16, l. 1. Additionally, the solicitor asserted that implied consent statutes have "withstood constitutional muster" by the United States Supreme Court and that the Court in McNeely even referenced "implied consent statutes as a means by which states can obtain this evidence." R.

15, ll. 17-21. The state filed a Brief in Opposition to Suppression of Blood and Urine Samples and Analysis, which was marked as Court's Exhibit No. 2. See R. 336.

The trial judge ultimately found the statute was constitutional. He ruled:

> With respect to the unconstitutionality of the statute per McNeeley, . . . I believe the responsive case in this instance is [Schmerber]. When you look at McNeeley, I don't think it changes the state of the law with regard to drug samples and illegal search and seizures related to the blood sample in DUI cases. I think it simply clarifies [Schmerber] versus California.[2]
>
> In [Schmerber], there's a portion in the case which suggests if taken to its logical conclusion that because of the dissipation of the half life of alcohol in the system that there's an argument that could be made that you could take a drug sample under any set of circumstances. I think that McNeeley if you read it in its entirety essentially it's clarifying that to say that [Schmerber] does not stand for the proposition that you can pull a blood test under any set of circumstances in a DUI case. What it says is you look at the totality of the circumstances and you may be able to and you may not be able to.
>
> However, such as in the case of McNeeley, an officer can't simply redirect to the hospital because he's gotten a clear indication from the defendant that he won't take a Breathalyzer test, which is what had happened, which is clearly unconstitutional.
>
> However, when you look at [Schmerber], the facts are very similar and the distinguishing fact in [Schmerber] was there actually was an objection to taking the blood and notwithstanding the objection to take the blood, it still allowed that evidence to be admissible.
>
> I also say one additional thing with respect to the illegal search and seizure and the nonconsentual taking of a blood sample. One thing that distinguish[es] this case in the State of South Carolina from the cases that were before the Supreme Court is that there is an implied consent statute. It's a specific statutory mechanism for felony DUI which means you do apply the implied consent to the taking of a blood sample in the event of the felony DUI.
>
> Now, the Supreme Court may look at that and say that is, in keeping with McNeeley and with [Schmerber], unconstitutional but that will be a decision for them to make. I presume it's constitutional at inception and find that there was an implied consent under the statute in the State of South Carolina.

R. 78, l. 20 – 80, l. 15.

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[2] Schmerber v. California, 384 U.S. 757 (1966).

Discussion

S.C. Code Ann. § 56-5-2946, also known as the implied consent statute, states in relevant part:

> (A) Notwithstanding any other provision of law, a person *must* submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945 [felony DUI].
>
> (B) The tests must be administered at the direction of a law enforcement officer. The administration of one test does not preclude the administration of other tests. *The resistance, obstruction, or opposition to testing pursuant to this section is evidence admissible at the trial of the offense which precipitated the requirement for testing.* A person who is tested or gives samples for testing may have a qualified person of his choice conduct additional tests at his expense and must be notified of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial.

(emphasis added).

This statute is unconstitutional because it acts as a *per se* exception to the warrant requirement of the Fourth Amendment.

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. The Fourth Amendment is made applicable to the states by way of the Fourteenth Amendment. See Mapp v. Ohio, 367 U.S. 643 (1961).

A warrantless search of the person is reasonable only if it falls within a recognized exception to the warrant requirement. See United States v. Robinson, 414 U.S. 218, 224 (1973). "One well recognized exception applies when the exigencies of the situation make the needs of law

enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." Kentucky v. King, 563 U.S. 452, 460 (2011) (internal citation and quotation marks omitted). The United States Supreme Court has "recognized that in some circumstances law enforcement officers may conduct a search without a warrant to prevent the imminent destruction of evidence." Missouri v. McNeely, 569 U.S. 141, 149 (2013). In such circumstances, "a warrantless search is potentially reasonable because 'there is a compelling need for official action and no time to secure a warrant.'" Id. (quoting Michigan v. Tyler, 436 U.S. 499, 509 (1978)).

In McNeely, the United States Supreme Court held that "while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case . . . *it does not do so categorically*." 569 U.S. at 156 (emphasis added). The Court concluded that "[w]hether a warrantless blood test of a drunk driving suspect is reasonable must be determined case by case based on the totality of the circumstances." Id.

In McNeely, the defendant was stopped by a Missouri police officer at 2:08 a.m. for speeding and repeatedly crossing the centerline. Id. at 145. The officer noticed several signs that McNeely was intoxicated, including his bloodshot eyes, his slurred speech, and the smell of alcohol on his breath. Id. McNeely appeared unsteady on his feet when he exited his truck and admitted to the officer that he had drank "a couple of beers at a bar." Id. After performing poorly on field sobriety tests and refusing to provide a breathe sample, McNeely was placed under arrest. Id. When McNeely "indicated that he would again refuse to provide a breathe sample," the officer transported McNeely to a nearby hospital to have a blood sample drawn. Id. at 145-146. The officer did not attempt to secure a warrant. Id. at 146.

Once at the hospital, the officer, reading from a standard implied consent form, explained to McNeely that under Missouri state law refusal to submit voluntarily to the test would lead to

the immediate revocation of his driver's license for one year and could be used against him in a future prosecution. Id. McNeely nonetheless refused to consent to a blood test. Id. The officer then directed a "hospital lab technician" to collect a blood sample. Subsequent testing measured McNeely's blood alcohol concentration (BAC) at 0.154 percent. Id.

Applying its holding in Schmerber v. California, 384 U.S. 757 (1966), the Supreme Court looked at the totality of the circumstances to determine whether the officer faced an emergency that justified ordering McNeely's blood to be taken without a warrant. Id. at 149-150. The Court acknowledged that "because an individual's alcohol level gradually declines soon after he stops drinking, a significant delay in testing will negatively affect the probative value of the results." Id. at 152. However, the Court rejected the state's contention that "whenever an officer has probable cause to believe an individual has been driving under the influence of alcohol, exigent circumstances will necessarily exist because BAC evidence is inherently evanescent." Id. at 151-152. The Court also rejected the state's argument that "so long as the officer has probable cause and the blood test is conducted in a reasonable manner, it is categorically reasonable for law enforcement to obtain the blood sample without a warrant." Id.

The Court ultimately declined to adopt a bright line rule and held that "in drunk-driving investigations, the natural dissipation of alcohol in the blood stream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." Id. at 165. The Court exclaimed, "**In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.**" Id. at 152 (emphasis added). Consequently, the Court concluded that "[w]hether a warrantless

blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." McNeely, 569 U.S. at 156.

In reaching this conclusion, the Court stated:

> **[T]he fact that people are accorded less privacy in . . . automobiles because of the compelling governmental need for regulation does not diminish a motorist's privacy interest in preventing an agent of the government from piercing his skin.** As to the nature of a blood test conducted in a medical setting by trained personnel, it is concededly less intrusive than other invasions we have found unreasonable. For that reason, we have held that medically drawn blood tests are reasonable in appropriate circumstances. We have never retreated, however, from our recognition that **any compelled intrusion into the human body implicates significant, constitutionally protected privacy interests.**"

Id. at 159 (internal citations and quotation marks omitted) (emphasis added).

The Court further noted, "The relevant factors in determining whether a warrantless search is reasonable, including the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence, will no doubt vary depending upon the circumstances in the case." McNeely, 569 U.S. at 164. "[T]he metabolization of alcohol in the bloodstream and the ensuing loss of evidence are among the factors that must be considered in deciding whether a warrant is required." McNeely, 569 U.S. at 165.

Numerous jurisdictions have read McNeely as prohibiting all *per se* exceptions to the warrant requirement and, consequently, have held implied consent statutes, like S.C. Code Ann. § 56-5-2946, are unconstitutional. See Weems v. State, 434 S.W.3d 655 (Tex. Ct. App. 2014). Such courts assert this reading of McNeely is supported by the United States Supreme Court's treatment of Aviles v. State, 385 S.W.3d 110 (Tex. Ct. App. 2012). See State v. Wulff, 337 P.3d 575, 580 (Idaho 2014).

In Aviles, the Texas Court of Appeals addressed whether Texas's implied consent statute was an exception to the warrant requirement. A law enforcement officer arrested Aviles with

probable cause for DUI and discovered that Aviles had two prior DUI convictions. Aviles, 385 S.W.3d at 112. After reading Aviles his statutory warning that he could not refuse evidentiary testing, the officer requested Aviles provide a blood or breath sample. Id. Aviles refused. Id. The officer then required Aviles to submit to a blood draw under Texas's implied consent statute. Id. The Texas Court of Appeals affirmed the trial court's admission of Aviles' blood test results based on the implied consent statute. Id. at 113. Its holding that this warrantless blood draw was constitutional was based exclusively on the state's implied consent exception to the warrant requirement. Id.

The United States Supreme Court granted certiorari in Aviles, vacated the judgment of the Texas Court of Appeals, and remanded the case "for further consideration in light of Missouri v. McNeely." Aviles v. Texas, 134 S.Ct. 902 (2014). "While the remand does not state anything further about how McNeely should be interpreted, the [Supreme] Court's remand must indicate that McNeely's holding includes examining the totality of the circumstances in all cases where an officer orders a forced warrantless blood draw." Wulff, 337 P.3d at 581. "[V]acating and remanding Aviles in light of McNeely showed the United States Supreme Court rejected Texas's implied consent statute as a per se exception to the Fourth Amendment." Id.

While the United States Supreme Court has upheld implied consent statutes in Illinois v. Batchelder, 463 U.S. 1112 (1983) and S. Dakota v. Neville, 459 U.S. 553 (1983), these cases dealt with the statutory consequences placed on defendants who refused to comply. Wulff, 337 P.3d at 582. The Supreme Court has never addressed the constitutionality of implied consent as an exception to the Fourth Amendment's warrant requirement. See Id. However, the Supreme Court's language in McNeely, remand of Aviles, and precedent requiring a totality of the

circumstances analysis mean McNeely can only be interpreted as prohibiting all *per se* exceptions to the warrant requirement, including implied consent statutes. See Id.

In State v. Wulff, 337 P.3d 575 (Idaho 2014), the Supreme Court of Idaho held the state's implied consent statute was unconstitutional under the Fourth Amendment pursuant to McNeely. After concluding McNeely prohibits all *per se* exceptions to the warrant requirement, the court held Idaho's implied consent statute operated as a *per se* exception because it did not recognize a driver's right to revoke his implied consent. Id. at 582. The court emphasized that its conclusion that McNeely prohibits all *per se* exceptions to the warrant requirement is consistent with other states that have considered the issue, including Nevada and Kansas. Id. (citing Byars v. State, 336 P.3d 939 (Nev. 2014) and State v. Declerck, 317 P.3d 794, 797 (Kan. 2014)).

The Idaho court further held "irrevocable implied consent operates as a per se rule that cannot fit under the consent exception [to the warrant requirement] because it does not always analyze the voluntariness of that consent. Voluntariness has always been analyzed under the totality of the circumstances approach: 'whether a consent to search was in fact voluntary . . . is a question to be determined from the totality of the circumstances.'" Id. (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973)). Moreover, the Idaho court emphasized that the state has the burden to prove that consent was freely and voluntarily given. Id.

Based on the United States Supreme Court's holding in McNeely, it is undeniable that § 56-5-2946, our state's implied consent statute, is unconstitutional because it operates as a *per se* exception to the warrant requirement. The statute permits a law enforcement officer to collect a breath, urine, and/or blood sample from a defendant *without a warrant* merely if the officer has probable cause to believe the defendant committed felony DUI or if the defendant is under arrest for felony DUI. As such, the statute clearly violates the Supreme Court's mandate in McNeely

that, "In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." McNeely, 569 U.S. at 152.

In light of McNeely, Appellant respectfully requests this Court hold § 56-5-2946 is unconstitutional and suppress the evidence obtained from the warrantless collection of his blood and urine. See Wong Sun v. United States, 371 U.S. 471, 484 (1963) (The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine.).

2.

The trial judge erred by denying Appellant's motion to suppress the evidence obtained from the warrantless collection of his blood and urine where law enforcement was required to obtain a warrant before directing hospital personnel to collect a blood and urine sample from Appellant since there were no exigent circumstances to justify the warrantless search, and since Appellant did not consent, and if he did consent, his consent was not freely and voluntarily given.

How the Issue was Presented Below

In conjunction with his motion to suppress the evidence obtained from the warrantless collection of his blood and urine because S.C. Code Ann. § 56-5-2946, our state's implied consent statute, is unconstitutional, was Appellant's argument that law enforcement did not have exigent circumstances to obtain these samples without a warrant and that Appellant did not voluntarily consent to providing the samples.

The state proffered extensive evidence in support of its contention that even if the trial judge found § 56-5-2946 was unconstitutional, Appellant's blood and urine samples and the results from the analysis of those samples should not be suppressed because law enforcement had exigent circumstances to obtain the samples without a warrant. See R. 20, l. 10 – 68, l. 18. Additionally, while the state initially argued Appellant consented to providing the samples, it later abandoned this argument. R. 20, ll. 3-6.

Because the trial judge found § 56-5-2946 was constitutional and did not violate the warrant requirement of Fourth Amendment under Missouri v. McNeely, 569 U.S. 141 (2013), he did not specifically rule on whether law enforcement had exigent circumstances to collect

Appellant's blood and urine samples without a warrant. Instead, the judge found the samples were legally obtained pursuant to the implied consent statute. See R. 78, l. 20 – 80, l. 15.

Discussion

The trial judge erred by denying Appellant's motion to suppress his blood and urine samples and the results from an analysis of those samples because law enforcement was required to obtain a warrant before directing hospital personnel to collect a blood and urine sample from Appellant since there were no exigent circumstances to justify the warrantless search, and since Appellant did not consent, and if he did consent, his consent was not freely and voluntarily given.

The Fourth Amendment, made applicable to the states by way of the Fourteenth Amendment, guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV; See Mapp v. Ohio, 367 U.S. 643 (1961). "The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State." Schmerber v. California, 384 U.S. 757, 767 (1966). In Schmerber v. California, the United States Supreme Court exclaimed, "Search warrants are ordinarily required for searches of dwellings, and absent an emergency, no less could be required where intrusions into the human body are concerned." 384 U.S. at 770. The Supreme Court explained that the importance of requiring authorization by a "neutral and detached magistrate" before allowing a law enforcement officer to "invade another's body in search of evidence of guilt is indisputable and great." Id. (internal citation and quotation marks omitted).

A warrantless search of the person is reasonable only if it falls within a recognized exception to the warrant requirement. Missouri v. McNeely, 569 U.S. 141, 148 (2013) (citing United States v. Robinson, 414 U.S. 218, 224 (1973)). "One well recognized exception applies when the exigencies

of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." Kentucky v. King, 563 U.S. 452, 460 (2011) (internal citation and quotation marks omitted). The United States Supreme Court has "recognized that in some circumstances law enforcement officers may conduct a search without a warrant to prevent the imminent destruction of evidence." McNeely, 569 U.S. at 149. In such circumstances, "a warrantless search is potentially reasonable because 'there is a compelling need for official action and no time to secure a warrant.'" Id. (quoting Michigan v. Tyler, 436 U.S. 499, 509 (1978)).

In McNeely, the defendant was stopped by a Missouri police officer at 2:08 a.m. for speeding and repeatedly crossing the centerline. Id. at 145. The officer noticed several signs that McNeely was intoxicated, including his bloodshot eyes, his slurred speech, and the smell of alcohol on his breath. Id. McNeely appeared unsteady on his feet when he exited his truck and admitted to the officer that he had drank "a couple of beers at a bar." Id. After performing poorly on field sobriety tests and refusing to provide a breathe sample, McNeely was placed under arrest. Id. When McNeely "indicated that he would again refuse to provide a breathe sample," the officer transported McNeely to a nearby hospital to have a blood sample drawn. Id. at 145-146. The officer did not attempt to secure a warrant. Id. at 146.

Once at the hospital, the officer, reading from a standard implied consent form, explained to McNeely that under Missouri state law refusal to submit voluntarily to the test would lead to the immediate revocation of his driver's license for one year and could be used against him in a future prosecution. Id. McNeely nonetheless refused to consent to a blood test. Id. The officer then directed a "hospital lab technician" to collect a blood sample. Subsequent testing measured McNeely's blood alcohol concentration (BAC) at 0.154 percent. Id.

Applying its holding in Schmerber v. California, 384 U.S. 757 (1966), the Supreme Court looked at the totality of the circumstances to determine whether the officer faced an emergency that justified ordering McNeely's blood to be taken without a warrant. Id. at 149-150. The Court acknowledged that "because an individual's alcohol level gradually declines soon after he stops drinking, a significant delay in testing will negatively affect the probative value of the results." Id. at 152. However, the Court rejected the state's contention that "whenever an officer has probable cause to believe an individual has been driving under the influence of alcohol, exigent circumstances will necessarily exist because BAC evidence is inherently evanescent." Id. at 151-152. The Court also rejected the state's argument that "so long as the officer has probable cause and the blood test is conducted in a reasonable manner, it is categorically reasonable for law enforcement to obtain the blood sample without a warrant." Id.

Specifically, the Court asserted, "[T]he general importance of the government's interest in [combating drunk driving] does not justify departing from the warrant requirement without showing exigent circumstances that make securing a warrant impractical in a particular case." Id. at 160. The Court further exclaimed, "In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." Id. at 152. Finally, the Court concluded that "[w]hether a warrantless blood test of a drunk driving suspect is reasonable must be determined case by case based on the totality of the circumstances." Id. at 152.

Here, after an examination of the totality of the circumstances as required by Schmerber and McNeely, it is readily apparent that no exigency existed to justify the warrantless seizure of Appellant's blood and urine. Law enforcement suspected from very early in the investigation

that Appellant was under the influence of an illegal substance. Sergeant Hiatt testified that before Appellant was transported to the hospital, which took place less than forty minutes after the accident, he spoke to Appellant in the back of an ambulance. Appellant denied he had been drinking and told Hiatt that his brakes failed. Hiatt claimed that, during his discussion with Appellant, he noticed Appellant's eyes were "glassy and his pupils were dilated." R. 167, l. 7 – 169, l. 5. However, he did not smell any alcohol on Appellant's person. After speaking with Appellant, while he did not think Appellant had been drinking, Sergeant Hiatt suspected Appellant was "on some kind of drug." R. 169, ll. 6-9. His opinion was based not only on his observation of Appellant in the back of the ambulance, but also based on the nature of the car accident in which Appellant crossed the centerline and struck another vehicle head on. R. 171, l. 16 – 172, l. 18.

Hiatt further admitted there were approximately *nine* other troopers with the highway patrol, in addition to himself, at the location of the accident. R. 165, ll. 5-7. Any one of these officers could have aided in getting a search warrant from a magistrate based on Hiatt's observations and the nature of the accident. Moreover, Appellant had already been transported to the hospital via ambulance by emergency medical personnel, which eliminated any need to have him transported to the hospital by law enforcement to collect the blood and urine samples. Despite these factors, law enforcement made no effort whatsoever to secure a search warrant. Instead, Trooper McAlhaney relied exclusively on the state's implied consent statute, which authorizes law enforcement to take "breath, blood, and urine" samples without a warrant "if there is probable cause to believe that the person violated or is under arrest for" felony DUI. See S.C. Code Ann. § 56-5-2946 (A).

In short, there was no evidence law enforcement faced an emergency which would have threatened the destruction of evidence, other than the possible dissipation of drugs from Appellant's blood. Under the totality of the circumstances, the police were required to secure a warrant before collecting a blood and urine sample from Appellant. Accordingly, any evidence obtained from the unlawful seizure of Appellant's blood and urine, including the results from the analysis of those samples, should have been suppressed. See Wong Sun v. United States, 371 U.S. 471, 484 (1963) (the exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine).

Moreover, Appellant did not voluntarily consent to providing law enforcement with a blood or urine sample. "Consent is recognized as an exception to the general rule that searches conducted without a warrant are unreasonable." State v. Harris, 277 S.C. 274, 276, 286 S.E.2d 137, 138 (1982) (citing State v. Peters, 271 S.C. 498, 248 S.E.2d 475 (1978)). "However, the state bears the burden of proving the voluntariness of a consent to search from the totality of the surrounding circumstances." Id. (citing State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977)).

Appellant testified pretrial that he did not sign the implied consent advisement form nor did he consent to proving a blood or urine sample. R. 71, l. 17 – 72, l. 1. Moreover, the assistant solicitor withdrew any argument at trial that Appellant voluntarily consented to providing a blood or urine sample. R. 20, ll. 3-6. The trial judge even found that "based on the evidence" it is "very difficult . . . to say that Mr. McCall [Appellant] consented to this [providing a blood and urine sample], that is an expressed consent. I don't think he expressly consented to it. Once that implied consent is read and the officer is essentially saying to him under the law I can take your blood or a sample regardless of whether you want me to or not and he has been placed under

arrest, then it's difficult to make the argument that he consented thereto after the fact." R. 80, ll. 16-25.

Consequently, it is undisputed that Appellant did not consent to providing a blood or urine sample, and that even if he did consent, his consent was not freely and voluntarily given due to the language of the implied consent form which was read to Appellant by Trooper McAlhaney.

Respectfully, this Court should hold the state did not have any exigent circumstances to seize Appellant's blood and urine without a warrant, and that Appellant did not voluntarily consent to providing law enforcement with a blood or urine sample. Accordingly, this Court should suppress any evidence obtained from an analysis of these samples and remand for a new trial. See Wong Sun v. United States, 371 U.S. 471, 484 (1963 (the exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine).

3.

The trial judge abused his discretion by denying Appellant's motion for a continuance where "good cause" existed since the judge granted Appellant's motion to relieve counsel midtrial, even though it was timely filed six weeks before the start of trial, but refused to permit Appellant adequate time to retain other counsel, and where Appellant was prejudiced because he was ultimately forced to proceed *pro se* with stand by counsel who was unfamiliar with his case and the prior proceedings.

How the Issue was Presented Below

Appellant filed a *pro se* motion to relieve counsel on March 27, 2015, approximately six weeks before trial. R. 494. For whatever reason, a hearing on Appellant's motion was never heard and a ruling was never made. On the morning of the second day of trial, Appellant renewed his motion to relieve counsel. Randy Chambers, Appellant's counsel, informed the trial judge:

> He [Appellant] has summoned me back this morning saying that he needed to talk to me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons [are] more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. So *I think he has created a conflict between us.*
>
> He clearly does not want me to continue as his lawyer and it's my understanding that he wants the Court to grant him a continuance and allow him to hire an attorney . . .

R. 122, ll. 6-22 (emphasis added).

Appellant told the judge that he "filed a motion to relieve Mr. Chambers back in March." R. 122, l. 24 – 123, l. 1. Appellant then orally renewed his motion to relieve counsel arguing that he and Chambers had a conflict that could not be resolved. Appellant emphasized that the trial started without a hearing ever being held on his motion to relieve counsel and he never got "to be

heard in relation to it." He strongly asserted that he "was supposed to be heard on the motion first" before the trial began. R. 123, l. 3 – 125, l. 23. Chambers then joined in Appellant's motion stating that he did not believe he could "effectively represent him [Appellant] anymore." R. 125, l. 24 – 126, l. 5.

Appellant again stated that he wished for Chambers to be relieved and moved for a continuance so that he could retain other counsel. The trial judge immediately denied the motion for a continuance asserting Appellant "waited until we have impaneled a jury" and "begun the presentation of evidence." R. 126, l. 17 – 128, l. 25.

When asked by the trial judge, Appellant asserted that he was not willing to assume the risks of proceeding *pro se*. R. 127, l. 23 – 128, l. 6. As far as the possible appointment of stand by counsel, Appellant stated, "I'm going to leave that up to you, Judge." R. 128, l. 7 – 129, l. 5.

When Appellant again requested the trial judge "give us a continuance," the judge ruled, "No, sir, I'm not. I'm making that very clear to you and you don't have to ask me again." R. 128, ll. 19-25.

The trial judge ultimately appointed Jake Erwin of the Greenville County Public Defender Office as stand by counsel. R. 130, ll. 8-12. In so doing, he stated, "Mr. Erwin's duties with respect to his representation and assistance of Mr. McCall [Appellant] shall be present to answer any questions and to assist in any way that you feel is - - each of you feels is necessary. I will also say, Mr. Erwin, to the extent that you feel it is necessary [and] appropriate, I'll allow you to participate in the trial. However, I am not suggesting that you should or that it [is] appropriate that you will. I'm just giving you that leeway. Each of you can make that decision as you go forward in this case." R. 130, ll. 13-22.

Before the trial resumed, Appellant vehemently asserted, "I am not waiving my rights to counsel." R. 130, ll. 23-24. He exclaimed, "I didn't ask to represent myself. You're forcing me." R. 132, ll. 16-22.

In response to Appellant's assertions, the trial judge stated:

> I've also held a hearing in accordance with State versus Fuller, 523 S.E.2d 168. In this case there has been a request for relief of counsel during the pendency of the case after the jury had been impaneled and after the presentation of a significant and substantial amount of evidence. It is within the discretion of a trial judge to grant the motion for the relief of counsel during the pendency of the proceeding and I've elected to do that based on the totality of the circumstances.
>
> I find specifically that the motion was ill-timed and that the ultimate end of the motion to continue and the motion for relief of counsel is to delay and hinder the administration of justice.
>
> I will tell you the continuance of this case would have a significant prejudicial effect on the state because the state has subpoenaed all of its witnesses which are substantial in amount, over 40 in reading the witness list. Also, the defendant has had the opportunity to witness and view a specific amount of presentation of the case to include all of its tactical proceedings in opening statements and its order and method of presentation of evidence.

R. 130, l. 25 – 131, l. 23.

The trial then resumed with Appellant *pro se* and Jake Erwin acting as standby counsel. R. 134, ll. 5-24. During the remainder of the trial, Erwin engaged in improper hybrid representation. Both Erwin and Appellant cross examined witnesses, voiced objections, and raised motions. Erwin even gave the closing argument. R. 309, l. 14 – 314, l. 13.

Discussion

The trial judge abused his discretion by denying Appellant's motion for a continuance where "good cause" existed since the judge waited to grant Appellant's motion to relieve counsel until midtrial, even though it was timely filed six weeks before the start of trial, but refused to permit Appellant adequate time to retain other counsel. Appellant was undisputedly prejudiced

because he was ultimately forced to proceed *pro se* with stand by counsel who was appointed during the middle of trial, was unfamiliar with Appellant's case and the prior proceedings, and engaged in improper hybrid representation.

The Fourteenth Amendment to the United States Constitution guarantees criminal defendants the right to due process of law. U.S. Const. Amend. XIV. "The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases. This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980).

The South Carolina Rules of Criminal Procedure provide that the presiding judge may grant a continuance based upon "a showing of good and sufficient legal cause." Rule 7(c), SCRCrimP. As such, "[t]he granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion." State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001); See State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249-250 (Ct. App. 2006) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law").

"It is axiomatic that determination of [a motion for continuance] must depend upon the particular facts and circumstances of each case." State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012) (quoting State v. Babb, 299 S.C. 451, 454-455, 385 S.E.2d 827, 829 (1989)). While "[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process," the decision must rest upon "the circumstances present

in every case, particularly in the reasons presented to the trial judge at the time the request is denied." Ungar v. Sarafitr, 376 U.S. 575, 589 (1964).

In Winkler v. State, 418 S.C. 643, 795 S.E.2d 686 (2016), our Supreme Court held the trial judge erred in failing to grant Winkler an extension of time in order to investigate evidence of brain damage. After Winkler was convicted of murder and sentenced to death, he filed an application for post-conviction relief (PCR) and was appointed counsel. Id. at 659, 795 S.E.2d at 695. Approximately two months into the representation, counsel suspected Winkler may suffer from brain damage. Id. at 660, 795 S.E.2d at 695. Counsel requested funding to investigate, which was approved, and retained a neuropsychologist. Id. The neuropsychologist recommended neuroimaging and consulting a neurologist or neuropsychiatrist. Id. Counsel, thereafter, requested funding for neuroimaging. Id. The judge approved the request. Id Subsequently, counsel moved to extend the deadlines in the scheduling order by ninety days, explaining the testing and analysis would require approximately ten weeks. Id. at 660-661, 795 S.E.2d at 696. The judge extended the deadline for filing an amended application, but refused to extend the PCR hearing date. Id. at 661, 795 S.E.2d at 696.

Although Winkler obtained the recommended MRI scan, he was unable to obtain the recommended PET scan because of elevated blood glucose levels. Id. Thereafter, counsel began working to treat Winkler's previously undiagnosed and untreated diabetes. Id. Despite Winkler receiving diabetes treatment, weeks later, a physician explained his blood sugar was still too high to perform an accurate study of his brain, and that an additional six to eight weeks of treatment would be required, followed by an additional six to eight weeks for analysis. Id. Counsel filed a second motion to extend the deadlines, requested a continuance of six months to file his final

amended PCR application and adjustments of other dates, including the hearing date. This request was denied. Id. at 662, 795 S.E.2d at 696.

Our Supreme Court explained that the PCR statute, much like the Rules of Criminal Procedure, provided that additional time should be granted "if 'good cause is shown to justify a continuance.'" Id. (quoting S.C. Code Ann. § 17-27-160(c)). The Court found the PCR judge abused his discretion in denying Winkler's second motion for additional time because Winkler presented "good cause" for the continuance. Id. at 663, 795 S.E.2d at 697. The Court emphasized the diligence with which counsel acted at each stage. Id. The Court found no evidence to support the PCR judge's finding that PCR counsel had "ample opportunity" to investigate and develop the evidence related to potential brain damage. Id. In fact, the Court found "it would have been impossible for PCR counsel to obtain PET scans in time to have an expert review them and be prepared to testify at the PCR trial." Id. Thus, Winkler provided "good cause" to justify a continuance. Id. According to the Court, the PCR judge's denial of the continuance request "left PCR counsel in a position from which they could not present evidence to support the claim that trial counsel was ineffective for failing to investigate Winkler's brain damage." Id.

In State v. McMillian, 349 S.C. 17, 24, 561 S.E.2d 602, 605 (2002), our Supreme Court held the trial judge abused his discretion in denying McMillian's motion for continuance in order to obtain the transcript of his first trial, which ended in a hung jury, in order to prepare for his second trial. McMillian requested the transcript timely, but the second trial started prior to his receipt of the transcript. Id. at 19, 561 S.E.2d at 603. He moved for a continuance to obtain the transcript in order to impeach the witnesses against him, but this request was denied. Id. The Court explained that "[t]he only 'neutral' witness for the state during McMillian's second trial

was Dorothy Williams Rumph." Id. at 21, 561 S.E.2d at 604. As such, the Court found "her credibility was essential to McMillian's defense." Id. This fact was reinforced by the fact that the first jury deadlocked, eight to four, after rehearing her testimony. Id. According to the Court, "[t]he crucial nature of Rumph's testimony cannot be overstated." Id. In fact, the Court concluded "the verdict hinged upon her credibility, and that McMillian was hindered in his ability to impeach her" without the transcript from the first trial. Id. at 23, 561 S.E.2d at 605.

In State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989), our Supreme Court held the trial judge erred in failing to grant a continuance. Tanner and Taylor were in a car accident in which two people died. Id. at 461, 385 S.E.2d at 833. At trial, the evidence was conflicting as to whether Tanner or Taylor was the driver, with Tanner's defense being he was not the driver. Id. Although Tanner's counsel was aware that blood, skin, and hair samples were taken from the car in which he and Taylor were occupants, the solicitor informed counsel that the samples were lost or misplaced. Id. at 462, 385 S.E.2d at 834. Ten minutes before the pretrial hearing, SLED brought the samples to court, and defense counsel learned of their availability. Id. Requesting a continuance, Tanner's counsel asked to conduct an independent examination of the samples, or at least to wait for a SLED analysis. Id. Denying the request, the judge ruled the state could not use the samples in its case against Tanner. Id.

The Court held the trial judge abused his discretion in denying the defense's motion for a continuance because the judge failed to consider the potential exculpatory value of the samples. Id. at 463, 385 S.E.2d at 834. In light of Tanner's defense that he was not the driver, the samples were "critical" to the case because "[a] testing of the samples could have supported Tanner's contentions that he was merely a passenger by demonstrating that some of Ms. Taylor's hair or blood was located on the driver's side of the car. Discovering who the samples belonged to and

the samples' exact location in the car may also have aided Tanner's accident reconstruction expert in arriving at his opinion about who was driving." Id. Consequently, the Court held "the eve of trial production of these samples warranted the granting of a continuance so that the defendant could adequately ascertain the samples' full evidentiary harm," and that "[n]o real harm would have befallen the state from this continuance." Id.

The Supreme Court has also held a defendant was entitled to a continuance where his attorneys were incapacitated due to illness. Varn v. Green, 50 S.C. 403, 403, 27 S.E. 862, 862 (1897). One attorney was "confined to his bed and unable to attend court," and the other, "although attending court was unable to articulate above a whisper, and only then with great pain, owing to an attack of grip and sore throat." Id. The trial judge refused to grant the continuance request because the case "had been so long upon the docket." Id. "Considering all the circumstances," the Court held the defendant was entitled to a continuance of the case on account of the illness of his counsel, and that the circuit judge abused his discretion in forcing the case to trial under the circumstances." Id. The Court concluded the judge committed an error of law by allowing his exercise of discretion "be controlled by his custom to require clients to employ other counsel when the counsel engaged were too sick to conduct the cause, and the cause had been long on the docket." Id.

Here, the trial judge abused his discretion by denying Appellant's motion for a continuance where "good cause" existed since the judge granted Appellant's motion to relieve counsel midtrial, even though it was timely filed six weeks before the start of trial, but refused to permit Appellant adequate time to retain other counsel. Appellant was undisputedly prejudiced because he was ultimately forced to proceed *pro se* with stand by counsel who was appointed

during the middle of trial, was unfamiliar with Appellant's case and the prior proceedings, and engaged in improper hybrid representation.

The judge granted Appellant's motion to relieve counsel based on the agreement between Appellant and Counsel Chambers that the two had a conflict and Chamber's confession that, based on the circumstances, he could not "effectively" represent Appellant. R. 125, l. 24 – 126, l. 3. However, the judge erroneously found the motion to relieve counsel was not timely made, which was the basis for his decision to deny Appellant's motion for a continuance. See R. 123, ll. 12-16 and R. 131, ll. 10-13. Appellant timely filed a *pro se* motion to relieve counsel on March 27, 2015, approximately six weeks before trial, but for whatever reason, a hearing on the motion was never held and the motion was never heard. Appellant merely renewed his motion during the trial after it became abundantly clear that Appellant and Chambers had a conflict that could not be resolved and which affected Chambers ability to represent Appellant.

Because the judge granted Appellant's motion to relieve counsel, he likewise should have granted his motion for a continuance. The judge's failure to grant a continuance forced Appellant to proceed *pro se* with stand by counsel who was only appointed on the second day of trial and was unfamiliar with the case or the prior proceedings. The judge's refusal to grant a continuance also violated Appellant's Sixth Amendment right to counsel. Therefore, it is obvious Appellant was severely prejudiced by the judge's abuse of discretion.

Appellant respectfully requests this Court hold the trial judge abused his discretion by refusing to grant a continuance after the judge relieved Appellant's counsel, reverse Appellant's conviction, and remand for a new trial.

4.

Appellant's Sixth Amendment right to counsel was violated when the trial judge granted Appellant's motion to relieve counsel without conducting a proper hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1975) or advising Appellant of the dangers and disadvantages of self-representation.

How the Issue was Presented Below

Appellant filed a *pro se* motion to relieve counsel on March 27, 2015, approximately six weeks before trial. R. 494. For whatever reason, a hearing on Appellant's motion was never heard. On the morning of the second day of trial, Appellant renewed his motion to relieve counsel. Randy Chambers, Appellant's counsel, informed the trial judge:

> He [Appellant] has summoned me back this morning saying that he needed to talk to me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons [are] more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. So *I think he has created a conflict between us*.
>
> He clearly does not want me to continue as his lawyer and it's my understanding that he wants the Court to grant him a continuance and allow him to hire an attorney . . .

R. 122, ll. 6-22 (emphasis added).

Appellant told the judge that he "filed a motion to relieve Mr. Chambers back in March." R. 122, l. 24 – 123, l. 1. Appellant then orally renewed his motion to relieve counsel arguing that he and Chambers had a conflict that could not be resolved. R. 123, l. 3 – 125, l. 23. Chambers joined in Appellant's motion stating that he did not believe he could "effectively represent him anymore." R. 125, l. 24 – 126, l. 5.

Appellant ultimately moved for a continuance so that he could retain other counsel. The trial judge denied the motion for a continuance asserting Appellant "waited until we have impaneled a jury" and "begun the presentation of evidence." R. 126, l. 17 – 128, l. 25.

The following colloquy then took place between the trial judge and Appellant:

> The Court: You understand that you would be proceeding on your own and you assume certain risks because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.
>
> Defendant McCall: I understand that.
>
> The Court: And are you willing to assume those risks, sir?
>
> Defendant McCall: No, I am not.

R. 127, l. 23 – 128, l. 6.

As far as the possible appointment of stand by counsel, Appellant stated, "I'm going to leave that up to you, Judge." R. 128, l. 7 – 129, l. 5. The judge then ruled: "Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him [Appellant] and answer and address any questions that he may have during this trial?" R. 129, ll. 6-11. A break in the proceedings was then taken.

After the break, the judge stated, "I believe the record speaks for itself with respect to what has transpired. I will state that we conducted a hearing in accordance with [Faretta] v. California[3] and I have made a determination that the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se." R. 130, ll. 2-8.

[3] 422 U.S. 806 (1975)

Discussion

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." State v. Cabrera-Pena, 350 S.C. 517, 533, 567 S.E.2d 472, 480 (Ct. App. 2002) (quoting Faretta v. California, 422 U.S. 806, 807 (1975)) (internal quotation marks omitted). However, an accused may waive the right to counsel and proceed *pro se.* Id. "Although a defendant's decision to proceed *pro se* may be to the defendant's own detriment, it 'must be honored out of that respect for the individual which is the lifeblood of the law.'" State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) (quoting Faretta, 422 U.S. at 834.

"The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel." Reed, 332 S.C. at 41, 503 S.E.2d at 750 (citing Faretta, 422 U.S. at 834). "The ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is the defendant's understanding." Id. (citing Graves v. State, 309 S.C. 307, 422 S.E.2d 125 (1992)). "The only relevant inquiry is whether the defendant has made a knowing and intelligent waiver of the right to counsel." Id. (citing Faretta, 422 U.S. at 834).

In State v. Barnes, 407 S.C. 27, 31, 753 S.E.2d 545, 548 (2014), our Supreme Court held Barnes should have been allowed to represent himself where he "demonstrated an understanding of the process of capital *voir dire*, stated his intention to pursue a third-party guilt defense at trial and discussed relevant case law, the burden of proof, and his right to testify." Barnes also demonstrated that he had read relevant case law and showed some understanding of the rules of evidence when questioned by the trial judge. Id. at 33, 753 S.E.2d at 548.

None of the factors in Barnes, which evidenced an intelligent waiver of the right to counsel and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self-representation, exist in the record before this Court.

Here, the trial judge failed to advise Appellant of the dangers and disadvantages of proceeding *pro se*. In total, the judge informed Appellant "that you would assume certain risks because you may not have the knowledge and experience that an attorney can afford you." R. 127, l. 24 – 128, l. 2. This colloquy was insufficient to satisfy the requirements of Faretta. Moreover, the judge wholly failed to inquire into Appellant's background, experience with the criminal justice system, and knowledge of the rules of evidence and relevant case law. Accordingly, the record fails to demonstrate Appellant made a knowing and intelligent waiver of the right to counsel. See Reed, 332 S.C. at 41, 503 S.E.2d at 750.

Accordingly, this Court should hold the trial judge erred by allowing Appellant to waive his right to counsel and proceed *pro se*.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of September, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 20, 2018

Lara M. Caudy

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Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY EDWARD MCCALL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case have been served upon William M. Blitch, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of September, 2018.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of September, 2018.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

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September 20, 2018

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Re: The State v. Terry Edward McCall
Appellate Case No. 2015-001097

Dear Mr. Blitch:

Enclosed are two copies of the Final Brief of Appellant in the above referenced case that I filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Lara M. Caudy
Appellate Defender

LMC/sl

Enclosure

ALAN WILSON
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September 27, 2018

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RE: State v. Terry Edward McCall
Appellate Case Tracking No. **2015-001097**

Dear Ms. Caudy:

I am enclosing copies of the Final Brief of Respondent in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

William M. Blitch, Jr.
Senior Assistant Attorney General
S.C. Bar No. 15608

WMB/aam
Enclosures

cc: Honorable Jenny A. Kitchings (original and 9 enclosed)
Victim Advocacy Division

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APPELLATE DEFENSE

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge
Appellate Case Tracking No. 2015-001097

THE STATE, RESPONDENT,

vs.

TERRY EDWARD MCCALL, APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court properly found section 56-5-2946 of the South Carolina Code is constitutional and the warrantless collection of Appellant's blood and urine samples was proper based on South Carolina's implied consent statute. (Appellant's Issues 1 and 2).

II. The trial court properly denied the motion for a continuance in the middle of trial where the motion was solely for the purpose of delay.

III. The trial court was not required to conduct a Faretta hearing and provide the full Faretta warnings because Appellant did not waive his right to counsel through a request. Instead, the trial court properly found Appellant waived his right to counsel through his conduct or otherwise forfeited his right to counsel.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court properly found section 56-5-2946 of the South Carolina Code is constitutional and the warrantless collection of Appellant's blood and urine samples was proper based on South Carolina's implied consent statute. (Appellant's Issues 1 and 2).

Appellant contends the trial court erred in allowing the evidence from a warrantless blood draw and urine sample provided by Appellant at the hospital after his accident. The trial court properly concluded section 56-5-2946 is constitutional and that implied consent is a valid exception to a warrant. Further, Appellant did consent to both the blood draw and urine sample collection. Finally, exigent circumstances existed allowing for the warrantless blood draw and urine sample collection.

Standard of Review

In considering a challenge to the constitutionality of a statute, the Court "must presume the Acts are constitutional 'unless [their] repugnance to the constitution is clear and beyond a reasonable doubt.'" Doe v. State, 421 S.C. 490, 501, 808 S.E.2d 807, 813 (2017) (quoting Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999)). This general presumption of validity can be overcome only by a clear showing the act violates some provision of the constitution. Id. "Accordingly, our scope of review is limited in cases involving a constitutional challenge to a statute 'because all statutes are presumed constitutional and, if possible, will be construed to render them valid.'" Doe, 421 S.C. at 502, 808 S.E.2d at 813 (quoting Hendrix v. Taylor, 353 S.C. 542, 550, 579 S.E.2d 320, 324 (2003) (internal quotation marks and citation omitted)).

In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due

to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also, State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings."). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

Merits

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991).

"Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement." State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266, (2012) (internal citation and quotation marks omitted). "[W]arrantless searches are allowed when the circumstances made it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement." Kentucky v. King, 563 U.S. 452, 462 (2011). There are several recognized exceptions to the warrant requirement. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981). Exceptions to the Fourth Amendment's warrant requirement include, among other things, consent, Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973), and exigent circumstances, Mincey v. Arizona, 437 U.S. 385, 393–94 (1978). "It is well-established that 'exigent circumstances,' including the need to prevent the destruction of evidence, permit police

officers to conduct and otherwise permissible search without first obtaining a warrant." King, 563 U.S. at 455.

A blood draw is a search and generally a warrant is required. See e.g., Missouri v. McNeely, 569 U.S. 141 (2013); Schmerber v. California, 384 U.S. 757 (1966). Additionally, the collection of a urine sample is a search. See Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 617 (1989). However, some exceptions that apply to the general warrant requirement under the Fourth Amendment will apply to a blood draw, including consent and exigent circumstances. See Schmerber, 384 U.S. at 770.

Implied Consent

South Carolina has implied consent statutes, which should operate to establish consent of an individual suspected of driving under the influence unless revoked. Section 56-5-2946 provides:

> Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945.

S.C. Code Ann. § 56-5-2946 (A) (Supp. 2015). Additionally, section 56-5-2950 provides:

> A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs.

S.C. Code Ann. § 56-5-2950 (A) (Supp. 2015).

Appellant contends the implied consent statutes in South Carolina are unconstitutional based on the United States Supreme Court's decision in McNeely. However, in McNeely, the

United States Supreme Court considered the very narrow question of whether the natural dissipation of alcohol in the bloodstream establishes a *per se* exigency that justifies, **on its own,** an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk driving cases. McNeely, 133 S.Ct. at 1558. The Court did not address the continued viability of implied consent laws, or their application to a warrantless blood draw. Importantly, the Court left open the possibility that exigent circumstances, other than the natural dissipation of alcohol, and other typical exceptions to the warrant requirement, including consent, still apply to allow a warrantless blood draw.

More recently, in Birchfield v. North Dakota, ___ U.S. ___, 136 S.Ct. 2160 (2016), the United States Supreme Court considered the constitutionality of breath tests and blood draws pursuant to the search incident to arrest exception for a warrant. After doing so, the Court also addressed the validity of implied consent statute. While the Court found the search incident to arrest exception would not allow a blood draw to test for alcohol, it did find a breath test pursuant to a search incident to arrest was constitutional.[1]

The United States Supreme Court also considered the validity of the consent exception utilizing implied consent statutes. In North Dakota, unlike South Carolina, the implied consent statute imposed a criminal penalty for refusal to submit to the blood draw. It was a misdemeanor for someone to refuse. Id. at 2185-2186. The United States Supreme Court found "that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense." Id. at 2186.

Significantly, the United States Supreme Court spoke approvingly of implied consent statutes which did not impose criminal penalties for refusal. The Court explained:

[1] It is arguable the urine collection would also be appropriate pursuant to a search incident to arrest because it is significantly less intrusive than a blood draw and much more akin to the breath test found constitutional by the United States Supreme Court.

> It is well established that a search is reasonable when the subject consents, and that sometimes consent to a search need not be express but may be fairly inferred from context. **Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply.** Petitioners do not question the constitutionality of those laws, and **nothing we say here should be read to cast doubt on them.**

Id. at 2185 (emphasis added)(internal citations omitted). As long as 56-5-2946 and 56-5-2950 are construed consistent with Birchfield—allowing a revocation of consent[2] and not imposing criminal penalties—it is a proper implied consent law and will operate as an exception to the warrant requirement. There is no indication the statute operated to prevent voluntary consent in the way the United States Supreme Court found improper in Birchfield. Accordingly, this Court should uphold the implied consent laws of 56-5-2946 and 56-5-2950 in South Carolina, and find when an individual does not revoke consent any blood draw is constitutional without a warrant. Further, in the present case, there is no evidence Appellant sought to revoke consent or otherwise refuse either the urine collection or the blood draw. As a result, this Court should find section 56-5-2946 constitutional as applied to Appellant.

Consent

Even without relying upon implied consent under the statutes, the blood and urine collection in this case was proper because Appellant consented to the procedures. He signed the implied consent form indicating his consent and the nurse who took the samples specifically testified Appellant consented to the collection of urine and blood before she went forward with the procedures.

Trooper McAlhany arrived at the accident scene at approximately 6:12 pm and went to the hotel to arrest Appellant at approximately 8:13 pm. (T.42-43 ; R.36-37). He interviewed

[2] A revocation of consent to a breath test would not be valid as it can be taken without a warrant as a search incident to arrest.

Appellant at the hospital. Appellant indicated he had not been drinking. However, Appellant acknowledged taking some prescription drugs. (T.44; R.38). Trooper McAlhany explained Appellant's implied consent rights and had him sign the implied consent form. (5/12 Court's Exhibit 14; T. 47; R.41; 368). After obtaining Appellant's signature, Trooper McAlhany asked Appellant if he would provide a sample and Appellant responded: "sure, I'll give you a sample." (T.48; R.42). Appellant never indicated he wished to revoke his consent or refused to provide a sample. (T.48; R.42). While Appellant testified he did not sign the implied consent form, he **never** testified he revoked his consent. (T.77-78; R.71-72). The urine sample was ultimately taken at 8:45 pm and the blood sample at 9:05 pm. (T.86; 5/12Court's Exhibits 4-5; R.86; 350-51).

Ashley Norman, a staff nurse at Greenville Memorial emergency room was asked to obtain the samples from Appellant. (5/12Court's Exhibits 3-5; R.349-351). She indicated Appellant voluntarily provided the urine sample and was not forced to provide the sample. (T.30; R.24). She indicted she has never obtained a blood sample from someone who refused to provide the sample. Importantly, she testified she would not obtain a sample from someone who has refused. (T.30; R.24). Most significantly, on cross-examination the following colloquy occurred:

> Q. So, you're only testimony then regarding whether or not he gave his permission of his consent is that he didn't actively resist you when you did what the trooper told you to do and that is go collect the samples?
>
> A. No. In the instances that I have drawn legal samples, **I confirm that before I stick someone that they're okay with that.**
>
> . . . .

> A. I'll tell you how I typically do it is I go in - - a trooper asks for a legal sample, I go in and I introduce myself to the patient and let them know that I'm understanding that you're agreeing to have a legal sample drawn and then they say yes or no. **And I draw if they say yes.**

(T.32-33; R.26-27) (emphasis added). Accordingly, even if the implied consent provided by sections 56-5-2946 and 56-5-2950 are not valid, the collection of Appellant's urine and blood samples was performed with his express consent to both Trooper McAlhany and Ms. Norman.

Exigent Circumstances

Additionally, exigent circumstances clearly indicate the warrantless blood draw and urine sample collection in this case was proper. This case is distinguishable from McNeely and much more similar to the factual circumstances found in Schmerber.

In McNeely, the defendant was stopped around 2:08 am by highway patrol after he was observed speeding and repeatedly crossing the center line. McNeely, 133 S.Ct. at 1556. The officer observed several signs of intoxication, and the defendant admitted he had consumed beer. Id. After the defendant performed poorly on field-sobriety tests and declined a portable breath test, the officer arrested him. Id. at 1556-57. While being transported to the police station for a breath sample, the defendant told the officer he would again refuse to provide a sample. Id. At that point, without securing a warrant, the officer decided to take the defendant to the hospital for a blood test. Id. Reading from a standard implied consent form, the officer explained to the defendant that refusal to submit to the test would lead to revocation of his driver's license and could be used against him in a future prosecution. Id. The defendant still refused, and the officer directed hospital personnel to take a blood sample. Id. The sample was secured at 2:35 am. Id.

The Court ultimately determined that a ***per se*** exigency did not exist under the circumstances of McNeely's case – where the only "exigency" was the natural dissipation of alcohol in the defendant's blood – and instead upheld the "totality of the circumstances" analysis as applied in Schmerber. McNeely, 133 S.Ct. at 1559-61. The Court pointed out, however, that the dissipation of alcohol remains an essential factor to be considered in the totality of the circumstances because "a significant delay in testing will negatively affect the probative value of the results." Id. at 1560-61. In conclusion, the Court stated: "In short, while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, as it did in Schmerber, it does not do so categorically." Id. at 1563.

In Schmerber, the defendant, who was intoxicated, crossed the road and drove into a tree. Schmerber, 384 U.S. at 758-59 & 768-69. Both the defendant and his passenger were injured in the accident and taken to the hospital. Id. at 759 n.2. Within about two hours of the accident, and after law enforcement observed several indicators he was intoxicated, the defendant was arrested at the hospital for driving under the influence of intoxicating liquor. Id. at 768-69. Then, at the direction of a police officer, the defendant's blood was drawn by a physician at the hospital. Id. at 758-59. The defendant **expressly refused** to consent to this blood draw on the advice of his attorney. Id. at 759. The subsequent chemical analysis revealed a blood-alcohol concentration consistent with intoxication, and the results of the analysis were admitted at trial over the defendant's objection. Id.

The Supreme Court stated the Fourth Amendment question squarely presented was "whether the chemical analysis introduced in evidence in this case should have been excluded as the product of an unconstitutional search and seizure." Id. at 766-67. After concluding the blood draw resulted from the seizure of a person and the blood test plainly constituted a search, the

Court held the issues to be determined were whether or not the police were justified in requiring the defendant to submit to the blood test and whether the means and procedures employed in taking his blood met Fourth Amendment standards of reasonableness. Id. at 768. Further, while it was clear there was probable cause for the defendant's arrest, and the blood test would likely produce relevant evidence, the question remained whether the officer was permitted to draw these inferences himself or whether he was required to procure a warrant first. Id. at 770.

The Court ultimately held the officer was not required to first obtain a warrant because he "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.'" Id. (citation omitted). Therefore, the exigency exception applied since there was "no time to seek out a magistrate and secure a warrant" in light of the "special facts" presented: (1) the natural dissipation of alcohol in the defendant's system; (2) the fact time had to be taken to investigate the car accident; and (3) the fact time had to be taken to bring the accused to the hospital. Id. at 770-71. The United States Supreme Court reiterated this analysis in McNeely, explaining: the totality of the circumstances in Schmerber supported an exigency because the defendant was involved in a car accident which had to be investigated; the defendant suffered injuries in the accident and had to be taken to the hospital; and, under these circumstances, the officer might reasonably have believed he was confronted with an emergency and that the delay necessary to obtain a warrant threatened the destruction of evidence due to the natural dissipation of alcohol in the defendant's blood. McNeely, 133 S.Ct. at 1559-60. Accordingly, the Court concluded "the present record shows no violation of Petitioner's right under the Fourth and Fourteenth Amendments to be free of unreasonable searches and seizures." Id.

The facts of this case are significantly more similar to Schmerber than they are to McNeely. This case involved a devastating automobile accident. (5/12 Court's Exhibits 6-13). Trooper McAlhany described it as a "major accident" with a "big debris field" on a busy road. (T.36; R.30). The victim in this case had to be extricated from his vehicle by the fire department because he was trapped. (T.39; R.33). Appellant was also trapped in his vehicle initially, but not as severely as the victim. (T.66; R.60). Appellant was injured in the crash and taken to the hospital. Trooper McAlhany, who as discussed above arrived around 6:12 pm, explained he had very little time on scene of the accident with either the victim or Appellant. (T.40-41; R.34-35).

Trooper McAlhany had some help with the accident and investigation. He indicated he had to conduct interviews with a couple witnesses, which took approximately an hour. (T.41-42; R.35-36). Sergeant Hiatt also went to the scene of the accident. He explained six troopers were originally called but because of how busy they were at the time they had five on scene. (T.65; R.59). He indicated most of the manpower on scene was allocated to traffic direction. (T.66; R.60). Trooper McAlhany made it to the hospital to arrest Appellant and begin the process of obtaining the blood and urine samples at 8:13 pm, with the first sample obtained at 8:45 pm, over two and a half hours after the trooper arrived at the scene of the accident.

Sergeant Bannister testified that after 5:00 pm in order to obtain a search warrant it could take two hours or more. He explained an officer would go to the jail to type up the warrant and affidavit. He testified no online or electronic system exists in South Carolina so you have to call and find a judge and then take the warrant and affidavit to them for review. (T.59; R.53). He explained "ideally" it could take an hour and a half to get a warrant and get to the hospital. He opined it could take two and a half to three hours to get the warrant and the samples. (T.61; R.55).

Another factor in the instant case was the elimination of drugs from the body. As explained by Wendy Bell with the South Carolina Forensic Services Laboratory, alcohol dissipates at a set rate from the body. Different drugs, however, dissipate and different speeds with some drugs lasting days and other very rapidly leaving the body. (T.71; R.65). She testified that some drugs eliminate "quite rapidly and . . . before they can even be taken to the hospital." (T.72; R.66). She testified: "it's very important that we get the blood quickly or we don't see that parent substance" and otherwise it is only the metabolites which may or may not provide the ability to determine when the drug was last used. (T.73; R.79).

As discussed above, Appellant indicated he had not been drinking alcohol, but told Trooper McAlhany he had taken prescription drugs. As a result, a breath test would have been ineffectual at determining intoxication. Without knowing what drugs were involved, some of which have incredibly short dissipation times, it was entirely reasonable for Trooper McAlhany to obtain a urine and blood sample to determine which drugs were in Appellant's system at the time of the crash. Accordingly, this case is very similar to Schmerber[3] in terms of the exigencies involved. As a result, the collection of the blood and urine without a warrant was also appropriate based on the exigent circumstances which existed.

[3] Appellant never testified he revoked his consent or refused to submit to the blood and urine collection, unlike Schmerber who expressly refused.

II. The trial court properly denied the motion for a continuance in the middle of trial where the motion was solely for the purpose of delay.

Appellant maintains the trial court erred in denying his request for a continuance after trial had already started to obtain counsel. The trial court did not err in denying the request when it was made for the purpose of delay, no actual conflict of interest existed between Appellant and his counsel, and the denial was entirely discretionary on the part of the trial court.

Standard of Review

"The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion." State v. Morris, 376 S.C. 189, 208, 656 S.E.2d 359, 369 (2008) (citing State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002)). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012). "Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth." State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) (citing State v. Lytchfield, 230 S.C. 405, 95 S.E.2d 857 (1957)).

Merits

Appellant asserts the trial court erred in denying his motion for a continuance to obtain new counsel. No actual conflict of interest existed between Appellant and his counsel, and none has been alleged. Further, Appellant's actions in relieving counsel and seeking a continuance were merely to delay the trial and impede the administration of justice.

In the instant case, Appellant filed a motion to relieve counsel and proceed *pro se* several months before trial. The motion was never ruled on and did not assert any type of actual conflict of interest. The motion merely indicated he desired to represent himself and would accept counsel as standby counsel. (Motion to Relieve Counsel; R.494). Between March 27, when he

filed his motion, and May 12, when trial began, Appellant took no further steps to either obtain counsel of his choice or to reassert his desire to proceed *pro se*. Significantly, trial started with Appellant represented by appointed counsel without any objection from Appellant. It was only after one day and several rulings went against Appellant that he sought to relieve counsel.

Also significant, it was only in the middle of trial and during his request to relieve counsel, that Appellant first expressed any desire to obtain his own counsel. As stated, his motion was not a motion to relieve counsel to obtain his own. He did not move before trial or even at the beginning of trial to obtain counsel. It was only after the trial court ruled against him on several grounds that he expressed any dissatisfaction with his appointed counsel and sought to obtain counsel of his own. His motion came after pretrial motions, after opening statement by both parties, after hearing the testimony of several State's witnesses, and after the admission of twenty-five State's exhibits. (See e.g., T.2-3; R.2-3).

Additionally, the trial court, who was present to consider the demeanor of the parties and the nature of the request for a continuance, concluded "specifically that the motion was ill-timed and that the ultimate end of a motion to continue and a motion for relief of counsel is to delay and hinder the administration of justice." (T.176; R.131). The trial court did not abuse its wise discretion in denying a motion for a continuance when its sole purpose was a dilatory tactic by Appellant after receiving several unfavorable rulings.

Finally, as the trial court concluded any continuance in the middle of trial would have had a significant prejudicial effect on the State. (T.176; R.131). The State's witnesses were present and ready to testify and the delay to obtain counsel would not have been merely for a day, but would have required new counsel to obtain the file and become prepared to go forward. Further, Appellant was privy to opening statements, pretrial motions, and several witnesses before

seeking the continuance which would have allowed additional time to prepare his response to the State's case. The Appellant should not be able to hamstring a trial by waiting until the middle of trial and seeking to relieve counsel and force a continuance by not being willing to either cooperate with current appointed counsel or going forward pro se. If this Court sanctions the behavior of Appellant and finds a continuance was required, every criminal trial in South Carolina can be halted by a defendant's behavior and refusal to accept any outcome other than a continuance. Accordingly, this Court should find this case does not present the situation of the proverbial hens' teeth and conclude the trial court did not abuse its discretion in denying the mid-trial motion for a continuance by Appellant.

III. The trial court was not required to conduct a Faretta hearing and provide the full Faretta warnings because Appellant did not waive his right to counsel through a request. Instead, the trial court properly found Appellant waived his right to counsel through his conduct or otherwise forfeited his right to counsel.

Appellant contends the trial court erred in failing to conduct a proper hearing in accordance with Faretta v. California, 422 U.S. 806 (1975). The trial court properly considered Appellant's request to relieve counsel; warned him that he could only proceed with Mr. Chambers or go forward *pro se*; warned him of the dangers of proceeding *pro se*; and, when Appellant continued to attempt to delay and hinder the trial, found he should go forward *pro se* with standby counsel.

Standard of Review

The South Carolina Supreme Court recently articulated the standard of review to use when considering whether a proper Faretta hearing took place:

> Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo. Specifically, we review a circuit judge's findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo. In doing so, this Court must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request.

State v. Samuel, 422 S.C. 596, 813 S.E.2d 487, 490 (2018) (internal citations omitted). Additionally, this Court has explained: "A motion to relieve counsel is addressed to the discretion of the [circuit court] and will not be disturbed absent an abuse of discretion." State v. Childers, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007).

Merits

The Sixth Amendment mandates that in all criminal proceedings, the accused shall have the right to the assistance of counsel for his defense. U.S. Const. amend. VI. Furthermore, an indigent defendant is entitled to have an attorney appointed by the court to represent him. Gideon v. Wainwright, 372 U.S. 335, 344 (1963). "The right of an accused to effective assistance of counsel, however, does not extend to the appointment of counsel of choice, or to special rapport or even a meaningful relationship with appointed counsel." State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996) (citing Morris v. Slappy, 461 U.S. 1, 13-14 (1983)).

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975). "Courts have recognized three ways in which a defendant may relinquish his right to counsel: (1) waiver by an affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture." State v. Roberson, 382 S.C. 185, 187, 675 S.E.2d 732, 733 (2009) (citing Boykin, 324 S.C. at 556, 478 S.E.2d at 690).

Faretta and Voluntary Waiver

A defendant may waive the right to counsel. "It is the trial court's responsibility to determine whether there was a knowing and intelligent wavier by the accused." State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009); see also, State v. Dixon, 269 S.C. 107, 236 S.E.2d 419 (1977) ("It is beyond question that an accused person may waive counsel and represent himself. However, it is the responsibility of the trial judge to determine whether there is or is not an intelligent and competent waiver."). "To effectuate a valid waiver, the accused must (1) be advised of the right to counsel and (2) be adequately warned of the dangers of self

representation." Bryant, 383 S.C. at 414, 680 S.E.2d at 13 (citing State v. McLauren, 349 S.C. 488, 493 94, 563 S.E.2d 346, 348 49 (Ct. App. 2002)); see also, Faretta, 422 U.S. at 835.

Faretta requires a defendant "be made aware of the dangers and disadvantages of self representation so that the record will establish he knows what he is doing and his choice is made with eyes open." 422 U.S. at 835. "While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding." Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). Additionally, if a defendant relinquishes his right to counsel by either waiver by conduct or forfeiture, the underlying necessity of the warnings encapsulated in Faretta are not required. See Roberson, 382 S.C. at 188, 675 S.E.2d at 733.

Appellant contends the trial court erred in failing to conduct a proper hearing pursuant to Faretta or advising Appellant of the dangers and disadvantages of self-representation. The colloquy in this case presents a highly unusual set of circumstances and not the normal request of a defendant to proceed *pro se*. The defendant in this case exclusively sought to force a continuance of his trial, which had already begun the day before, instead of being willing to either proceed with appointed counsel, Mr. Chambers, or proceed *pro se*. His colloquy with the trial court does not indicate Appellant's desire to waive his right to counsel by an affirmative, verbal request. While he initially indicated he would rather proceed *pro se* than be represented by counsel, he later indicates repeatedly his desire not to proceed without counsel. (T.167-178). Throughout the entire colloquy he is insistent that he not be represented by Mr. Chambers, but refuses to allow for any alternative except for a continuance seeking to delay trial. (See e.g., T.169, 173; R.124, 128).

As a result, the trial court's decision to have Appellant proceed *pro se* was not based on his voluntary request, but instead based on either his forfeiture of his right to counsel or his waiver of that right by his conduct. The trial court specifically noted: "the ultimate end of a motion to continue and a motion for relief of counsel is to delay and hinder the administration of justice." (T.176; R.131). The trial court later found: "You are in an uncomfortable position as a consequence of your own conduct. . . . As the sole and exclusive consequence of your own conduct." (T.177-178; R.132-33).

Faretta, however, is inapposite to the facts of the instant case when there was no unequivocal request to proceed *pro se*. See, e.g., Robards v. Rees, 789 F.2d 379, 383 (6th Cir.1986) (noting exception to application of Faretta where "prosecution makes an affirmative showing that the defendant's request for self-representation is merely a tactic to secure a delay in the proceeding"); State v. Jones, 546 P.2d 45, 51 (Ariz.Ct.App.1976) (finding Faretta was not controlling where defendant did not request that he be permitted to represent himself but, instead, requested on the day of trial that his present attorney be fired and that a new one be appointed); State v. Shumaker, 914 So.2d 1156, 1162 (La.Ct.App. 2005) (holding defendant's reliance on Faretta, was misplaced and stating "defendant never expressly asked that he be allowed self-representation. He simply indicated that he wanted to fire his counsel. That statement certainly does not reach a clear and unequivocal expression requesting the right to represent oneself as required by Faretta.").

Accordingly, Faretta and its prophylactic warnings were not required. The trial court had no reason to fully explore whether the defendant knew the dangers of self-representation because the defendant was attempting to force the trial court's hand by refusing to cooperate with appointed counsel, thereby creating a conflict, and at the same time refusing to proceed *pro se*.

The trial court should not have been required to participate in Appellant's clear scheme to obtain a delay in the remainder of trial, obtain a mistrial, or obtain a reversal of his conviction based solely on his own choices and behavior. Therefore, the trial court did not err in failing to conduct a proper Faretta hearing or give the appropriate advisements because they were not required under the unique circumstances of this case.

Further, to the extent they were required, the trial court made Appellant well aware of the dangers of self-representation. The trial court indicated: "I will consider relieving Mr. Chambers as your attorney of record, if you want, but you will be required to proceed *pro se* for the remainder of this trial, sir." (T.168; R.123). Appellant responded: "If that's what I got to do, that's what I got to do." (T.169; R.124). The following colloquy then occurs:

> THE COURT: You understand that you have a right to have an attorney represent you?
>
> DEFENDANT MCCALL: Yes, sir.
>
> THE COURT: And you understand that if you decide and determine - - -
>
> DEFENDANT MCCALL: I don't want him to represent me, though.
>
> THE COURT: You understand that if you decide to represent yourself you assume certain risks in doing so, do you understand?
>
> DEFENDANT MCCALL: I do, but I'm not going to stand here and not have an attorney present when I have a constitutional right to have a lawyer.

(T.169; R.124). Later, the trial court again asks: "You understand that you would be proceeding on your own and assume certain risks because you may not have the knowledge and experience that an attorney can afford you in the trial of a case." Appellant responded: "I understand that." (T.172-173; R.127-128). Appellant then again indicated he wanted new counsel and a

continuance to hire new counsel instead of either allowing Mr. Chambers to proceed as counsel or proceeding *pro se*. However, the trial court made certain Appellant was warned of the dangers of proceeding *pro se* and Appellant even acknowledged those risks. Accordingly, to the extent Faretta warnings were even required, the trial court explained the dangers and risks to Appellant, he just refused to cooperate with the trial court and continued making it clear the only option he was willing to accept was a continuance in the middle of trial to get a new attorney.

Waiver by Conduct and Forfeiture

First, it should be noted Appellant has not challenged the trial court's determination his conduct—either by waiver or forfeiture—lead to the removal of appointed counsel and his being required to proceed *pro se*. The trial court specifically noted Appellant's sole purpose in making the motion to relieve counsel and for a continuance was "to delay and hinder the administration of justice." (T.176; R.131). The trial court found and explained Appellant was being required to proceed *pro se* because of his conduct: "You are in an uncomfortable position as a consequence of your own conduct. . . . As the sole and exclusive consequence of your own conduct." (T.177-178; R.133). These rulings have not been challenged by Appellant. As a result, the propriety of the trial court's decision to require Appellant to proceed *pro se* with standby counsel is not properly before the Court. See Dreher v. S.C. Dep't of Health & Envtl. Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) ("[S]hould the appealing party fail to raise all of the grounds upon which a court's decision was based, those unappealed findings—whether correct or not—become the law of the case."); Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will

become the law of the case."); State v. Branham, 392 S.C. 225, 231, 708 S.E.2d 806, 809 (Ct. App. 2011) (finding unappealed alternate ruling the law of the case).

On the merits, the trial court properly relieved counsel and appointed standby counsel to assist with Appellant's defense. Courts have recognized three ways in which a defendant may relinquish his right to counsel: (1) waiver by an affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture. State v. Roberson, 382 S.C. 185, 187, 675 S.E.2d 732, 733 (2009).

A defendant may waive his right to counsel through his conduct. See United States v. Goldberg, 67 F.3d 1092, 1100 (3d Cir.1995). In State v. Cain, this Court held a waiver of the right to counsel may be inferred from a defendant's actions. State v. Cain, 277 S.C. 210, 284 S.E.2d 779 (1981). "Most courts have held that the defendant must first be warned that his misconduct will thereafter be treated as a waiver." State v. Thompson, 355 S.C. 255, 263, 584 S.E.2d 131, 135 (Ct. App. 2003) (citing Boykin, 324 S.C. at 556, 478 S.E.2d at 691).

A defendant can forfeit his right to counsel irrespective of his knowledge of either the consequences of his actions or the dangers of self-representation. See Goldberg, 67 F.3d at 1100. "[B]ecause of the drastic nature of the sanction, forfeiture would appear to require extremely dilatory conduct." Id. at 1101. In United States v. McLeod, 53 F.3d 322 (11th Cir. 1995), the Eleventh Circuit Court of Appeals explained some of the grounds and analogous situations resulting in a defendant forfeiting his right to counsel, including: 1) a defendant's failure to retain counsel within a reasonable time; 2) a defendant who misbehaves in the courtroom; 3) defendant who causes a witness to be unavailable for trial; 4) defendant who escapes from custody during his trial; and 5) a defendant who is abusive toward his attorney may forfeit his right to counsel. Id. at 325.

The trial court in this case was placed between a rock and a hard place by Appellant's decisions and conduct. Throughout the colloquy, Appellant made it abundantly clear to the trial court he was seeking to delay trial and not to proceed. Further, he sought to undermine Mr. Chambers and ultimately attempt to force any conviction to be overturned based on the situation into which he placed his counsel. Mr. Chambers explained to the trial court: "I'll let him state what his reasons more but he made statements that led me to believe that my continuance as an attorney basically **would put me in jeopardy** as far as allegations he planned to make against me. So I think he has **created a conflict** between us." (T.167; R.122) (emphasis added). Appellant told the trial court he had previously filed to relieve Mr. Chambers and then explained to the court: **"I have a conflict from the past with him** and I didn't get to be heard in relation to it and he came in yesterday and started the trial without hearing my motion." (T.170; R.125) (emphasis added). Mr. Chambers agreed with Appellant's motion to relieve him as Appellant's counsel and stated:

> Your Honor, I would join him in the motion to relieve me from this trial and allow him to proceed pro se because based on everything he has just said, **I question whether I can effectively represent him anymore**. I'm certainly prepared and I thought I was doing a pretty good job. I didn't know anything about a motion, the motion that he's talking about now.
>
> It's clear to me at this point that rather than allowing me to effectively represent him through the remainder of this trial, he's trying to build some kind of a record so he can either on appeal or a PCR or something down the road and **try to get any conviction overturned** which will result basically in throwing me under the bus and saying that somehow I didn't do the job I was supposed to do.

(T.170-171; R.125-126) (emphasis added). Appellant responded by again asking the court to relieve Mr. Chambers. (T.171; R.126).

Throughout the colloquy Appellant maintained his desire to relieve Mr. Chambers as counsel. However, in the discussion with the trial court he attempted to present the trial court with no option other than relieve Mr. Chambers and grant a continuance. Even after the trial court noted its decision not to grant a continuance, Appellant continued to insist on the removal of Mr. Chambers and a continuance. The trial court warned Appellant that his only options were to continue with Mr. Chambers or to proceed *pro se*. He stated: "I will consider relieving Mr. Chambers as your attorney of record, if you want, but you will be required to proceed *pro se* for the remainder of this trial, sir." (T.168; R.123). After Appellant again asked to relieve Mr. Chambers, the trial court warned: "Again, I'm going to ask you this as a consequence of relieving Mr. Chambers that you will be required to proceed *pro se*." (T.171; R.126). The trial court attempted to make it clear that the only two options for Appellant were to proceed *pro se* or continue with Mr. Chambers as counsel. Appellant made it abundantly clear he did not intend to cooperate with Mr. Chambers or allow him to effectively represent him. As a result, he forced the trial court's hand through his behavior to requiring him to proceed *pro se* with standby counsel from the public defender's office.[4]

The "adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). Further, "a trial judge has the inherent power to maintain order and decorum in his courtroom." State v. Beckham, 334 S.C. 302, 314, 513 S.E.2d 606, 612 (1999). "A trial judge has the inherent power to preserve order in his court and to see that **justice is not obstructed by any person** or persons." State v. Shelton, 270 S.C. 577, 580, 243 S.E.2d 455, 457 (1978) (emphasis added). "It is the right and duty of the trial judge to see that the trial is

[4] The State notes that the public defender appointed as standby counsel significantly participated in the trial of the case including cross-examining multiple witnesses and conducting closing argument.

conducted in an orderly dignified manner and that proper decorum is maintained in the court room while the trial is under way." State v. Tuckness, 257 S.C. 295, 303, 185 S.E.2d 607, 610 (1971).

Additionally, this Court has stated: "The right to counsel is not so absolute that it requires a trial judge to preside over a trial, exhausting the time of attorneys, jurors, and judicial staff despite an admission by a defendant's attorney that the integrity of the verdict is in doubt due to conduct falling below the accepted standards of the legal profession." State v. Cottrell, 421 S.C. 622, 636, 809 S.E.2d 423, 431 (2017). In the instant case, Mr. Chambers emphasized the fact Appellant was not cooperating with him, he could no longer effectively represent Appellant, and Appellant was seeking to create issues for PCR to result in the overturning of his conviction. As a result, the trial court was not required to sanction Appellant's tactics by either giving into his strong-arming of the court seeking a continuance or requiring Mr. Chambers to continue representation when the final conviction could be in doubt because of Appellant's attempt to create issues.

Accordingly, this Court should find Appellant either waived his right to counsel by his behavior or forfeited his right to counsel. This Court should not sanction Appellant's behavior placing the trial court between a rock and a hard place. The trial court provided the two alternatives to Appellant and he refused to accept either. The trial court found his behavior was hindering the administration of justice and, as the person charged with maintaining the sanctity of the judicial proceeding, the trial judge in this case properly determined Appellant's conduct placed him in the position of having to proceed *pro se*. Therefore, this Court should affirm Appellant's conviction and sentence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 27, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge
Appellate Case Tracking No. 2015-001097

The State, Respondent,

vs.

Terry Edward McCall, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by delivering copies of the same addressed to Lara M. Caudy, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 27th day of September, 2018.

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Terry Edward McCall, Appellant.

Appellate Case No. 2015-001097

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Opinion No. 27943
Heard May 30, 2019 – Filed February 5, 2020

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia, and Solicitor William Walter Wilkins, III, of Greenville, for Respondent.

JUSTICE HEARN: In this appeal from a felony DUI conviction, Appellant Terry McCall contends the warrantless collection of his blood and urine at the direction of law enforcement pursuant to Section 56-5-2946 of the South Carolina Code (2018) violates the Fourth Amendment. We affirm because exigent circumstances existed to support the admission of his blood and urine test results.

FACTUAL BACKGROUND

On the evening of March 4, 2012, in Greenville, McCall's Ford Explorer crossed a center turn lane and veered into oncoming traffic. He struck Robert Suddeth's Chevrolet pickup truck head on as Suddeth and his daughter were returning home from her volleyball practice. The collision left McCall and Suddeth injured, and both had to be extricated from their vehicles by the "jaws of life." Suddeth's daughter suffered only minor physical injuries, but Suddeth's injuries were life-threatening. Fortunately, a firefighter was driving nearby, and after narrowly avoiding the crash, he stopped to help. To reach Suddeth, he climbed into the bed of the pickup truck and entered the cab through the back window where he immediately realized that Suddeth was near death. Law enforcement, emergency personnel, and even the coroner arrived shortly thereafter, as it was uncertain whether Suddeth would survive.

Trooper David McAlhany and Sergeant Wes Hiatt of the South Carolina Highway Patrol were two of the many law enforcement personnel at the scene. Hiatt quickly noticed empty beer cans inside the Ford Explorer. Believing that alcohol may have played a role in the collision, Hiatt questioned McCall while he was strapped onto a stretcher in the back of an ambulance. McCall denied drinking any alcohol and said his brakes had failed. Although McCall's breath did not smell of alcohol, Hiatt believed he was impaired because McCall's eyes were "glassy and his pupils were dilated." Hiatt also informed McAlhany of his suspicion that McCall was under the influence of a substance other than alcohol.

In addition to McAlhany and Hiatt, approximately eight other officers assisted at the scene, most of them primarily responsible for traffic control on this heavily traveled road during evening rush hour. The Major Accident Investigation Team also arrived and began investigating the accident.

The ambulance arrived at the hospital approximately thirty minutes after emergency officials first reached the accident. However, McAlhany—the primary investigator—remained at the scene, interviewing several witnesses as part of his investigation. Approximately two hours after the crash, McAlhany drove to the hospital to interview McCall and found him lying on a stretcher in the hallway of the critical care unit. McCall again contended his brakes failed because there were no calipers on the wheels to hold the brake pads in place, essentially meaning the

truck lacked functional brakes. According to McAlhany, McCall seemed to be impaired, as he appeared "sleepy" and would "open his eyes real wide" when answering questions. McAlhany arrested McCall for felony DUI resulting in great bodily injury at 8:13 p.m.—two hours and twenty-three minutes after the crash. McAlhany informed McCall of his implied consent rights, reading him a form that stated in part:

- You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
- The officer has directed that samples be taken for alcohol and/or drug testing.
- The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
- The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.

According to McAlhany, McCall agreed to a blood and urine test and signed the implied consent form while lying on the stretcher. Further, the nurse administering the tests noted that she would never collect a person's blood if he resisted, and that McCall at no point objected to the tests. However, McCall disputes that he signed the form. Ultimately, the nurse collected McCall's urine sample at 8:45 p.m. and retrieved a blood sample at 9:05 p.m.—three hours and fifteen minutes after the accident. The blood sample tested positive for methamphetamine and benzodiazepines, including Lorazepam and Klonopin, and the urine sample confirmed these results.

Before trial, McCall moved to suppress the blood and urine test results, arguing that law enforcement violated his Fourth Amendment rights by directing blood and urine tests without a warrant. McCall asserted section 56-5-2946 is unconstitutional because it establishes a per se exception to the warrant requirement. Conversely, the State contended the section satisfies the consent exception to the warrant requirement. Alternatively, the State argued that even if section 56-5-2946 is unconstitutional, McCall expressly consented to the tests, and

furthermore, exigent circumstances justified the warrantless search. The trial court denied the motion to suppress, finding exigent circumstances existed and that section 56-5-2946 by itself established consent.

Thereafter, on the morning of the second day of trial, McCall informed the trial court that he had a "conflict" with his attorney, and as a result, it would be best if the court relieved counsel. McCall further sought a continuance to allow him time to hire another lawyer, which the court denied. The court also asked McCall whether he understood the dangers and risks of proceeding pro se, to which he responded affirmatively. After finding that McCall's motions were a dilatory tactic for the purpose of delay, the court relieved his attorney, appointed standby counsel, and required McCall to proceed pro se. At the conclusion of the three-day trial, the jury found McCall guilty, and the court sentenced him to fifteen years' imprisonment. McCall appealed to the court of appeals, and this case was transferred pursuant to Rule 203(d)(1)(A)(ii) and 204(a), SCACR.

ISSUE

Did the warrantless blood and urine tests pursuant to Section 56-5-2946 of the South Carolina Code (2018) violate McCall's Fourth Amendment right to be free from unreasonable searches?[1]

DISCUSSION

We begin with the core protections afforded by the Fourth Amendment—that individuals be free from unreasonable searches and seizures by their

[1] McCall also asserts the trial court denied McCall's Sixth Amendment right to counsel after relieving his attorney during the trial and refusing to grant him a continuance. We affirm this issue pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Morris*, 376 S.C. 189, 208, 656 S.E.2d 359, 369 (2008) (noting that an appellate court will not reverse the denial of a continuance absent an abuse of discretion); *State v. McMillian*, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) ("Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth.") (citing *State v. Lytchfield,* 230 S.C. 405, 95 S.E.2d 857 (1957)); *Wroten v. State*, 301 S.C. 293, 294–95, 391 S.E.2d 575, 576 (1990) (holding that an appellate court looks to the record as a whole to determine whether the defendant was sufficiently apprised of the dangers of proceeding pro se).

government. U.S. Const. amend. IV. It is well-settled that drawing blood from an individual is a search within the purview of the Fourth Amendment. *Schmerber v. California*, 384 U.S. 757, 767 (1966) (noting that blood tests "plainly constitute searches of 'persons'"). A warrantless search is per se unreasonable unless a recognized exception applies, which the State has the burden to prove. *State v. Gamble,* 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013); *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011). Stated differently, a search without a warrant is reasonable "only if it falls within a specific exception to the warrant requirement." *Riley v. California*, 573 U.S. 373, 382 (2014).

In the last decade, the United States Supreme Court has issued three opinions concerning the constitutionality of warrantless testing following a suspected DUI. *Missouri v. McNeely*, 569 U.S. 141, 156 (2013) (holding whether the warrantless blood testing of a suspected drunk driver qualifies as an exigent circumstance involves a "case-by-case analysis under the totality of the circumstances"); *Birchfield v. North Dakota*, 579 U.S. ___, 136 S. Ct. 2160 (2016) (holding a warrantless breath test, but not a blood test, is valid as a lawful search incident to arrest); *Mitchell v. Wisconsin*, 588 U.S. ___, 139 S. Ct. 2525, 2530–32 (2019) (adopting a general rule that law enforcement may obtain a blood test without a warrant from an unconscious motorist under the exigent circumstances exception). Each case focused on a different exception to the warrant requirement, including the exigent circumstances exception invoked today.

This well-recognized exception to the warrant requirement may be invoked "when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." *McNeely*, 569 U.S. at 148–49 (citing *Kentucky v. King,* 563 U.S. 452, 460 (2011)). Generally, whether exigency exists is also determined by the totality of the circumstances. *Id.* While the exception may apply in numerous settings, *see id.* at 148–49, in the context of a suspected impaired driver, the rationale derives in part from the destruction of evidence—that evidence of impaired driving would dissipate in the bloodstream during the time needed to procure a warrant. Two Supreme Court cases guide our exigency discussion: *Schmerber* and *McNeely*.

In *Schmerber*, the Supreme Court held the specific facts therein permitted the warrantless blood draw over the defendant's objection because the police officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the

circumstances, threatened 'the destruction of evidence[.]'" *Schmerber*, 384 U.S. at 770. Those "specific facts" involved a serious car accident where Schmerber lost control of his vehicle and struck a tree, injuring a passenger and himself. Upon arriving, a police officer smelled alcohol on the defendant's breath and noticed his eyes were "bloodshot, watery, sort of a glassy appearance." *Id.* at 769. Both occupants were transported to the hospital, followed by the officer approximately two hours later. *Id.* There, the officer directed a physician to take a blood sample despite Schmerber's refusal to consent to the test. *Id.* at 758–59.

After being convicted, Schmerber argued that the admission of the blood test results violated his Fourth Amendment rights because he refused to consent. The Supreme Court acknowledged that "[s]earch warrants are ordinarily required for searches of dwellings, and absent an emergency, no less could be required where intrusions into the human body are concerned." *Id.* at 757. After noting that alcohol in the blood begins to dissipate shortly after consumption ends, the Supreme Court held the blood test—in that specific case—did not violate the Fourth Amendment because: 1) time had elapsed to take the defendant to the hospital for treatment, 2) time was spent investigating the accident, and 3) there was no time to secure a warrant from a magistrate. *Id.* at 770–71.

Nearly fifty years later, the Supreme Court revisited the exigency exception involving a drunk driver. In *McNeely*, a police officer stopped the defendant's truck at approximately 2:00 a.m. after observing it exceed the speed limit and cross the center line several times. 569 U.S. at 145. The driver displayed common signs of impairment—alcohol on his breath, bloodshot eyes, and slurred speech. *Id.* The driver admitted he had consumed "a couple of beers" at a bar earlier, and he failed a field sobriety test. The officer requested an onsite portable breath test, but the driver refused. Thereafter, the officer arrested the individual and headed toward the police station to conduct a breath test, but after the defendant indicated he would refuse, the officer drove to the hospital to obtain a blood sample. At the hospital, the officer informed him of the implied consent statute, but the defendant refused to provide a blood sample. *Id.* at 146. The lab technician obtained a blood sample at the officer's direction, which occurred nearly thirty minutes after the traffic stop. *Id.*

The Supreme Court rejected the State of Missouri's argument that the natural dissipation of alcohol in the blood created a per se exigent circumstance, thereby declining to establish a bright-line rule that drawing blood for evidentiary purposes without a warrant is constitutional. *Id.* at 152. Instead, the Supreme Court held that

whether exigent circumstances permit warrantless blood testing is determined on a case-by-case basis under the totality of the circumstances. *Id.* at 156.

We agree with the trial court that exigent circumstances existed, and accordingly, we affirm McCall's conviction. As the court correctly noted, approximately ten police officers responded to a serious accident requiring extensive investigation. At least three officers were diverted to other calls shortly after arriving, as evening rush hour traffic proved particularly busy. While McCall argues that officers had ample time to obtain a warrant, McAlhany rightfully secured the scene and thoroughly investigated the accident before arriving at the hospital two hours later. We also do not believe obtaining a warrant was practical, as McAlhany testified it likely would have taken at least ninety minutes to obtain one after 5 p.m. While *McNeely* makes it clear that the natural dissipation of drugs cannot by itself qualify as an exigency, the seriousness of the accident places this case much higher on the "exigency spectrum." *Mitchell*, 139 S.Ct. at 2533 (noting the car accident in *Schmerber* "heightened" the "degree of urgency common to all drunk-driving cases," thereby placing it higher on the "exigency spectrum"). Finally, unlike the trilogy of cases decided by the Supreme Court, officers quickly believed that McCall was impaired by a substance other than alcohol. While alcohol has a relatively steady dissipation rate, other substances dissipate much faster.[2] Without immediately knowing the substance's identity, officers could not possibly know how long it would remain in McCall's blood, thus increasing the urgency. We recognize any one fact alone may not support exigency; however, we find the trial court thoroughly analyzed the totality of the circumstances, especially given our deferential standard of review. *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) (applying a deferential standard of review of a motion to suppress based on Fourth Amendment grounds). Accordingly, we affirm McCall's conviction. Because we affirm based on exigent circumstances, we need not reach the question concerning whether a warrantless blood draw pursuant to section 56-5-2946 is constitutional.[3]

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[2] A SLED toxicologist testified that the body metabolizes some drugs rapidly, such as cocaine and THC in marijuana, while alcohol dissipates at a steadier rate.

[3] While we leave this question for another day, we do note numerous courts have cast doubt on the constitutionality of similar implied consent statutes. *See Williams v. State*, 771 S.E.2d 373, 377 (Ga. 2015) ("[M]ere compliance with statutory

CONCLUSION

We affirm McCall's conviction because exigent circumstances justified the warrantless blood draw.

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implied consent requirements does not, per se, equate to actual, and therefore voluntary, consent on the part of the suspect so as to be an exception to the constitutional mandate of a warrant."); *State v. Moore*, 318 P.3d 1133, 1137 (Or. 2013), *opinion adhered to as modified on reconsideration*, 322 P.3d 486 (2014) ("Rather, for purposes of this opinion, we assume without deciding that it would be unconstitutional to "deem" defendant to have consented when he drove."); *State v. Yong Shik Won*, 372 P.3d 1065, 1080 (Haw. 2015) ("[I]n order to legitimize submission to a warrantless BAC test under the consent exception, consent may not be predetermined by statute, but rather it must be concluded that, under the totality of the circumstances, consent was in fact freely and voluntarily given."); *Commonwealth v. Myers*, 164 A.3d 1162, 1173 (Pa. 2017) ("In recent years, a multitude of courts in our sister states have interpreted their respective—and similar—implied consent provisions and have concluded that the legislative proclamation that motorists are deemed to have consented to chemical tests is insufficient to establish the voluntariness of consent that is necessary to serve as an exception to the warrant requirement."); *Byars v. State*, 336 P.3d 939, 946 (Nev. 2014) (holding Nevada's implied consent statute that permitted law enforcement to use force to obtain a sample and did not give the individual the right to withdraw consent could not be considered voluntary consent under the consent exception); *State v. Wulff*, 337 P.3d 575, 581 (Idaho 2014) ("[I]rrevocable implied consent operates as a per se rule that cannot fit under the consent exception because it does not always analyze the voluntariness of that consent."); *State v. Butler*, 302 P.3d 609, 613 (Ariz. 2013) (holding the Fourth Amendment requires consent to be voluntary and independent of an implied consent statute); *State v. Modlin*, 867 N.W.2d 609, 621 (Neb. 2015) (holding actual voluntary consent is required for a warrantless blood test to be reasonable and the proper inquiry is the totality of the circumstances, "one of which is the implied consent statute"); *but see People v. Eubanks*, ___ N.E.3d ___, 2019 IL 123525 (Ill. 2019) (holding a statute that authorizes a compelled blood draw when an accident has resulted in death or serious bodily injury is not facially unconstitutional, but may be unconstitutional as applied in unusual cases, in light of the general rule adopted in *Mitchell* that exigent circumstances normally would exist).

AFFIRMED.

KITTREDGE, JAMES and FEW, JJ., concur. BEATTY, C.J., concurring in result only.

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FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Greenville)
Terry Edward McCall #233236)
Full name and prison number (if any) of Applicant)
)
V.)
)
State of South Carolina)
)
) APPLICATION FOR
) POST-CONVICTION RELIEF
) 2020-CP-23- 01497

FILED-CLERK OF COURT PAM WORKMAN GREENVILLE, SC 2020 MAR 10 AM 11:23

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention South Carolina Department of Corrections

2. Name and location of Court which imposed sentence 13th Circuit Court General Sessions
305 East North Street, Greenville, S.C. 29601

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) 2012-GS-23-10242 Felony D.U.I., Great Bodily INjury

(b)

PCR

(c)

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

(a) May 14th, 2015 , Sentenced to (15) years

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty yes Jury Trial found Guilty

(c) after a plea of nolo contendere

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

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Supreme Court

ii.

iii.

(b) the result in each such Court to which you appealed:

i. Conviction Affirmed

ii.

iii.

(c) the date of each such result:

i. Heard May 30, 2019-Filed February 5, 2020

ii.

iii.

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

i. Opinion No 27943

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a)

(b)

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Violation of Attorney Client Privileges Indictment true billed contrary to rules S.C.C.R(3)

(a) Ineffective Assistnace of Counsel, Violation of Procedural

(b) Due Process, Violation of Due Process, Equal Protection

(c) of the Law , Violation of 14th Amendment 12th Amendment

Violation of Notice not proper Court lacked Jurisdiction

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

(a) SEE; Attachments which support each ground

(b) Facts Attachments

(c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

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) was informed to go P.C.R

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes YES

(b) your trial, if any? arraignment/trial Randall Chambers, Esquire Jake Irwin - TRIAL

(c) your sentencing? YEs

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes on Appeal Laura Caudy Appellate Defense

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

_____

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

(a) the name and address of each attorney who represented you:

i. Randall Chambers, 305 East North St. Greenville, S.C. 29601

Jake Erwin, Stan by Counsel Same Address as Mr Chambers

ii. Greenville County Public Defenders office 305 East Noth St. Greenville, S.C. 29601

iii. Terry McCall, Pro Se'

South Carolina Commission on Indigent Defense on Appeal Attorney Laura Caudy 1330 Lady Street, Columbia, S.C. 29202

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

i. Randy Chambers, Preliminary Hearing, 1st day of trial

Jake Erwin , 2nd @ 3rd Day of Trial as stand by Counsel

ii. Laura Caudy represented me on Appeal

Commission on Indigent Defense 1330 Lady St, Columbia, S.C. 29201

iii. _____

_____

Revised 3/2003

PCR

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

That Conviction and Sentence be Vacated

And that driversing privileges be reinstated

Drivers license be re-instated - All expenses paid back by State

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

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Greenville)

I, Terry Edward McCall, 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.

Terry McCall

SWORN to and subscribed before me this 4th day of MAR, 20.

SHAMEKIA T. [illegible] (L.S.)
Notary Public

My Commission Expires: 20 APRIL 2028

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

I, Terry Edward McCall, 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.

Terry McCall
Applicant

SWORN or affirmed to and subscribed before me this 4th day of MAR, 20.

SHAMEKIA T. DARSH
Notary Public

My Commission Expires: 20 APRIL 2028

Revised 3/2003

P.C.R. Attachments to Issues/Grounds

1. Ineffective Randy Chambers for failing to bring to Courts attention at Pre-Trial defendants Motion to relieve Counsel., as he was still counsel until defendant was heard and Motion granted

2. Randy Chambers ineffective for representing defendant after relieved by defendant on othercharges he was appointed on. And remaining on this case for Felony Dui knowing Rules of Profession conduct Rule 1.7 1.0 (g) 1 (b). if conflict arises after representation has been taken, Lawyer ordinary must withdraw, unless has obtaine informed consent to continue in writing. This never occurred. The record is void of any informed consent. See Opinion# 27695 where was releived earlier March 25, 2015

3.Ineffective for failing to request recess or continuance after defendant was first served with indictment and arriand, to discus the allegations against him being this is the first time defendant had ever seen this indictment and the charges and know the subsection that he was charge with for Felony D.U.I. being the ticket only cited Felony D.U.I. no subsection Defendant never had a factual true understanding of the charges against him. And had never discussed a trial stadegy with his attorney. See: Transc. Pg 6. Line 22-24 and Pg. 9 Line 7-12

4. Randy Chambers Ineffective for failing to request the state Re-new its Plea Offer or make a motion concerning the states plea offer expiring the same day it was typed up. No time to except it .

5.Randy Chambers Ineffective for failing to discuss at bond hearing or before that his client was being unlawfully detaind on a Uniform Traffic Ticket without first being heard on a judicial probable cause determination hearing within time of arrest.

6. Randy chambers ineffective for failing to serve me with the indictment after he was served withit by solicitor. And failing to ~~remind~~ object to the Judge that defendant had not been Properly Warned of his Farretta disadvantages and dangers, as Counsel being relieved Chambers still had a duty to protect me and he failed falling below a reasonable standard, He failed to protect me and I was not Properly warned as the case is Barnes as to dangers and disadvantages to be granted Pro Se representation[1].

7. Randy Chambers ineffective for preparing defendants witness list captioning it in the Family Court with incorrect indictment number on it. And failing to interview and subpeona witnesses, And failing to interview states witnesses arresting officer David Mcalhany and witnesses to chain of custody where he filed Rule 6 and requed all parties be present if not affidavit must be submitted. The record is void of affidavit and chanin of custody was not complete as one person was out of the state.

8. Randy Chambers never objected to the Courts failure to state on the record all the allegations in the indictment to the jury. Left out speed as a factor, and speed was never proven at trial.

9. Randy was ineffective for failing to object to Stan Overby, solicitors allegations that ticket alleges same charges on it as the indictment, when ticket never cited subsection and no allegations. only felony dui See. Transc. Pg. 86line 11-15

10. Randy Chambers Ineffective for failing to object to testing results being admitted into evidence as S.C. Code 56-5-2950 (B) specifically states No tests may be administered or samples taken unless , upon activation of the video recording equipment and prior to commencement of testing procedures the person has been given a written copy of and verbally informed that Impied Consent. This never happenend . Even the Judge at thrial stated he did not believe Mr. McCall consented. Because that is not Mr. Mccall's signature on the Impied consent form

* 11. Randy Chambers ineffective for failing to object to Allen Hall's expertise opinions, as he was not qualified as expert witness when questioned by solicitor, Quote; if he had not recieved immediate attention (the victim) what would have happened to him. He answered He would have died. SEE; transc. pg. 152. line 20-25

12. Randy Chambers ineffective for failing to object to Mark Allisions testimony or statement being admited as he testified he did not know he was being video recorded , in the highway patrol vehicle. See Transc. Pg 141, Line 1-3

13. Randy Chambers inefective for failing to object to the Courts reading of the states witness list nemes as the names were nto read correctly. and the names Mahammad Alacare, James Land are not the same names listed on states witness list

14. Randy Chambers inefective for failing to argue that title 56 is in conflict with the rules of criminal rules 3 where indictment must be drafted off an arrest warrant not traffic ticket Therefor unconstitutional and violates procedural due process

14 Randy Chambers was ineffective for failing to inform me of the possibilities of rejection of parole and sentence release conseqences of mandatory supervision supervised furlough release. Had I been again warned of parole rejection I would have pleaed quilty and not went to trial

15 Randy Chambers ineffective for allowing the C.D. into evidence without having it authenticated by the state, Being trooper Andis was unable to appear his wife having a baby.

16 Jake Irwin Inefective for failing to inquire into who informed Sanna Sorrells after the initial recieving of blood and urine for testing that ativan or lorazapam was expected.

17. Jake Irwin ineffective for failing to object to Wedy Bells testimony See. Transc. 268 line 1-4, 13-25, pg. 269, line 1-3 Concerning Brandon Williams took all procedures. It was a two part person process , but we don't know who the second person was in this case. Brandon Willaims was on vacation out of the country violated Rule 6, without supporting a affidavit for his dismissal, failing to appear.

18 Jake Irwin inefective for committing hybird representation during trial without McCall's consent on the record.

19. Jake Irwin ineffective for making closing arguments [illegible] prejudicial to the defendant.

20. Jake Irwin has been ineffective before.

21. Jake Irwin ineffective for failing to oppose oppointment based on conflict of intrest as Randy Chambers rleieved from public defendars office would be a conflict to appoint another attorney in same a office.

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22. Laura Caudy ineffective for NOT arguing my strongest argument Farretta Warning on Direct Appeal which was automatic reversal.

Dated 3-4-2020 S Jerry McCall

S Jerry McCall
In front of notary

Sworn To and subscribed before me this 4th day of MAR month, 20 year

S. T. NASH
Notary Public

20 APRIL 2028
My Commission Expires

Terry McCall #233236
Manning Pre Release / Re Entry
W8 18-B
502 Beckman Drive
Columbia, S.C.
29203

Date 3-19-20

In Re: P.C.R Application Pages 1, 2, for 2020CP2301497 Terry McCall v. State were not mailed to me when your returned filed P.C.R Application they were missing. Please file Amendment and return me a Filed Copy of it Also; forward to Attorney General.

Dear Clerk

Find enclosed Amendment to P.C.R Application, Please File, return copy to me and forward copy to Attorney Generals office.

And mail me Pages (1), & (2) of my Application for P.C.R, being they were not in the last letter dated March 10, 2020 with filed P.C.R. Application

Thank You

Mr Terry McCall

(Return me a copy Please)

638
Terry McCall #233236
Manning PreRelease/ReEntry
W-8 18-B
502 Beckman Drive
Columbia, S.C.
29203

Dated 3-19-20

"AMENDMENT"
To P.C.R
Application

2020 MAR 23 PM 2:16
CLERK OF COURT
RICHLAND COUNTY, SC
ENTERED COMPUTER

RE: 2020CP2301497 Amendment To P.C.R Application; Terry McCall Vs State

Applicant Amends his P.C.R Application As to;

(1) Defendants/Applicant's Attorney Randall Chambers failed to protect his client Terry McCall during a Farretta Hearing; by the Judge still/well as to, warning the Judge @ ~~the~~ objecting to the Judges failure to inquire into the Applicants sufficient background, his age, and physical and Mental Health (2) Whether the accussed was previously involved in criminal trials (3) Whether the accussed Knew the nature and danger of the Charge(s) and of the possible penalties (4) Whether the accussed was represented by counsel before trial and whether that attorney explained to him the dangers of self representation (5) Whether the accussed was Attempting to delay or manipulate the proceedings, (6) Whether the Court Appointed stand by counsel (7) Whether the accussed Knew he would be required to comply with the rules of procedure at trial. (8), Whether the accussed Knew of legal challenges he could raise in defense to the Charge(s) against him (9) Whether the exchange between the accussed and the Court consisted of

Pro forma questions; and (10). whether the accussed's waiver resulted from either coherción or mistreatment State V. Cash 309 S.C. 40, 43. 419 SE2d 811, 813 (Ct App 1992)
Applicant argues his Attorney failed to make sure the Judge adequately warned him of Apprised him of the dangers and disadvantages of self representation.
The record fails to demonstrate the Applicant made an informed choice to proceed Prose" With "eyes open"
therefor he did not make a Knowing and voluntary waiver and the case should be remanded for a new trial
The Judge made a reversabal error, failing to
Warn Applicant and inquire into the many factors listed
1-10 See: Charles Gardner V. State 351 S.C. 487, 2002
570 SE2d 184 No: 25528 Faretta Vs. California
422 US. 806, 95 S.Ct. 2525, 45 LEd 562 (1975)
If the trial Judge fails to address the disadvantages of
Appearing Pro Se, as required by the second prong of Faretta
V. California the Court will look into the record to determine
whether Applicant had sufficent background or was apprised
of his rights some other way, or source, Prince V. State
301 S.C. 422, 392 SE2d 462 (1990) Wrotey V. State
301 S.C. 293, 391 SE2d 575 (1990)
See Also Robert Osbey V. State 425 S.C. 615, (2019) 825 SE2d
48. overruling State V. Roberson 382 S.C. 185, 675 SE2d 732
* State V. Rivera 402 S.C. 225, 247, 741 SE2d 694, 705 (2013)

~~SAFE~~ Also; State V. Steven Barnes 407 S.C. 27 (2014) 753 SE 2d 545 Denying Faretta

Since the Faretta Error mandates reversal and Robert Osbey Vs State 425 S.C. 615 (2019 Cites waiver by Conduct cannot be, therefor the state has no defense other than requesting A new trial as well.

s Jerry McCall

Sworn and subscribed before me this 19th DAY of MAR month 2019 year

Shamekia T. Darsh

Notary Public

20 APRIL 2028

My Commission Expires

Terry McCALL #233236
Manning Pre Release/ReEntry
18-B W-8
502 Beckman Drive
Columbia, S.C.
29203

Dated 3-23-2022

RE: 2ND Amendment TO P.C.R APPLICATION
Case# 2020CP2301497

Dear Clerk of Court,

Find enclosed the 2ND Amendment to my P.C.R APPLICATION. Please clock stamp file, this Amendment, **return ME A filed copy**. Forward a copy to Attorney General please.

Sincerely
Mr. Terry McCALL

I never recieved Pgs 1-2 of my P.C.R Application. Only 3 thru 7 Pages were returned to me. Please send them.

2ND AMENDMENT TO P.C.R Application

2020 CP 2301497

ENTERED COMPUTER

(1) I am arguing that Judge Stillwell Robin violated my rights to a fair trial by, thrusting Counsel, JAKE Erwin upon me, without my request or consent on the record. See: Transcript (Pg. 173, line 25,) Pg 174 line 1-3 Judge ASK, Quote; Do you want me to have a public defender sit with you in this trial, so that you can ask him Questions about legal issues that may arise?

McCall, defendant Answers: I'm going to leave that up to you, Judge! See Transcript Pg 174, line 6-13 The Court: This is what I'm going to do. Mr chambers, I'm going to relieve you as counsel in this case. Would you please ask the Public defender to send someone to the Court room to sit with him and answer and address any Questions that he may have during this trial. (Mr Chambers) Yes, your honor, the Court. So you are relieved of your duties with exception of doing that service for me.

See: Faretta v. California 422 US 806

It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to counsel the power to make binding decisions of trial (1) strategy in many areas. This can only be justified by the defendant's consent. At the outset, to accept counsel as his representative, the record is void of this

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused "personally" the right to make his defense, And see transcript Pg 175 - line 18-19 I'll allow you to participate in the trial, over my stating, I'm not waiving my rights to Counsel, See: Transcript Pg 175, line 23-24

Ever After relieving Randy Chambers whom was Appointed from Public Defenders office due to A Conflict, would not it be INAPPROPRIATE / a Conflict Again, to Again Appoint Counsel from the same office, after relieving Counsel from same office due to Conflict. Is not this Abuse of discretion by Judge still Well. Forcing Counsel on defendant Intentionally Knowing a conflict had just came out of the Public Defenders office with chambers, There is no way Applicant could have gotten a fair trial Especially where stand by Counsel was not Prepard for this trial and had never seen the charges or prepared a trial stradegy.

At one Point Applicant state he can represent me they See Transcript Pg 173 line 7-18 He can not Possibally come up to speed on the case in the next (10) ten minutes.

644 Judge Stilwell advised stand by Counsel JAKE ERWIN that, I'm giving you the leeway that you can participate in this trial. Pursuant to S.C. Constitution There can be no Hybrid representation. The Court thrusting Counsel JAKE ERWIN as standby and giving him leeway to participate in my trial, without my consent, Violated Faretta Prongs.

Therefor, by Randall Chambers failing to object and argue to the Court that he could not force counsel As standby on me without adequately warning me of Faretta Warning fully, using all Probing Questions required. And Randall Chambers failed to object and argue to the Court that the Court could not force/thrust stand by Counsel on me, Without first obtaining my Consent. And not by (me) defendant stating when ask by Court, did he want the Court to appoint stand by Counsel to Ask Questions Answer legal issues. Defendant answered, I'm leaving that up to you Judge. The Judge cannot make such a decision, especially Without Presenting to defendant All Prongs required by Faretta this is Automatic reversal And NO evidentiary hearing is needed to decide this case. The record speaks for its self. Applicant has a genuine issue of Material fact, Error of law,

(2) Randy Chambers was ineffective in Providing Applicant/defendant with States Plea offer, after he Wanted to work out a plea deal and not go to trial.

Randy Chamber was ineffective in failing to contact Solicitor Sarah Drawdy requesting she keep a plea deal on the table; but informed defendant he had to go to trial, there was no plea offer;

During Applicants Appeal he found out that there was a plea offer, which he would have except, had his Attorney tried to work out a plea before it was withdrawn, or served it upon Applicant, It was Typed up 1-3-2013 Plea offer, Withdrawn 1-3-2013 served on Public Defender, Attorney 1-3-2013, And had a deal been worked out, allowing him to plead guilty Kept on the table timely, he would have plead guilty and out come would have been different. But Applicat was prejudiced by counsels ineffectiveness

646

Sworn Subscribed before me

this 23rd of March
DAY month

Year 2020

Shameka T. Dabbit

Notary Public

20 April 2028

my Commission Expires

5 Terry McCall

Terry McCall 233236
Manning Pre Release / ReEntry
W8-18-B
502 Beckman Drive
Columbia, S.C.
29203

Proof of Service

I, the undersigned have properly served the Parties listed below with my 2nd Amendment to P.C.R Application by Placing same in the United States Mail postage Prepaid Affixed and forwarded to the Address below:

Dated 3-23-20

s Terry McCall
Terry McCall 233236
Manning PreRelease/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

Paul B. Wickensimer
Clerk of Court
305 E. North Street
Greenville, S.C.
29601

Terry McCall #233236
Manning PrePelease/ReEntry
W-8 18-B
502 Beckman Drive
Columbia, S.C.
29203

Dated 4-20-2020

In Re: Filing Motion For Leave/Amendment to P.C.R.
Return Filed Copy to me for my records

Dear Clerk,

Find enclosed Motion For Leave,
Amendment to P.C.R.
Clock stamp date filed, serve Attorney General
electronically, send me copy of this service
And return me filed copy for my records

Thanks,
Terry McCall

Copy mailed to
Attorney general
on 4/22/2020

State of South Carolina)
County of Greenville)

In the Court of Common Pleas
Thirteenth Judicial Circuit
CIA# 2020CP2301497

Terry Edward McCall/#233236
Applicant

Vs.

State of South Carolina
Respondent

ENTERED COMPUTER

Motion for Leave To Amend P.C.R.
And
Amendment to P.C.R

2020 APR 27 PM 3:51
CLERK OF COURT
GREENVILLE, SC

Now come the Applicant Pro Se to move this Court to allow him to Amend his P.C.R, Hereby requests leave to do such which in Noway will it prejudice the Respondent, because NO return has been made,

Applicant Amends his 2ND Amendment to P.C.R. Page (3) last Paragraph bottom of page where Alleged Applicant has genuine issue of Material fact, Error of law, How should reflect,
Applicant has no genuine issue of material fact, Error of law, transcript clear no Farreta Warning given, reversable Error for granting new trial. This is the only part changed in 2nd Amendment to P.C.R.

s Terry McCall #233236
Manning Pre Release/Re Entry
502 Beckman Drive
Columbia, S.C. 29203

Greenville S.C.
Dated 4-20-2020

'20 APR 27 PM 3:32
Paul Wickensimer CCC GVL SC

Certificate of Service

I, the undersigned certify that the Motion for Leave to Amend P.C.R, and Amendment to PCR has been served by placing same in United States Postal Mail Postage Prepaid, Affixed, forwarded to the address below for electronic service by Clerk of Court, to Addresses below, + U.S. Mail

Dated 4-20-2020

Jerry McCall #233236
Manning Pre Release Re-Entry
502 Beckman Drive
Columbia, S.C 29203

Paul B. Wickensimer
Clerk of Court
305 E. North St
Greenville, S.C 29601

Attorney General Office
P.O. Box 11549
Columbia, S.C.
29211

Terry McCall #233236
Manning Pre-Release/ReEntry
W-8 18B
502 Beckman Drive
Columbia, S.C. 29203

June 3, 2020

RE: Filing P.C.R. Amendment and forwarding copy to Attorney General Office Taylor Smith. 2020Cp2301497

Dear Clerk of Court,

Find enclosed the P.C.R. Amendment that needs filing and as a courtesy forward a copy to the Attorney Generals Office, Taylor Smith. And return a copy to me for my records please.

Awaiting Reply

s. Terry McCall

Terry McCall , Pro Se'

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A# 2020-CP-23-01497
Terry Edward McCall,)	
S.C.D.C.#233236)	
Applicant,)	**MOTION FOR LEAVE TO AMEND**
)	**APPLICATION FOR POST CONVICTION**
V.)	**RELIEF**
)	**&**
The State,)	**AMENDMENT TO P.C.R APPLICATION**
Applicant,)	

'20 JUN 10 PM4:38
Paul Wickensimer GREENVILLE CO CLERK OF COURT SC

Now comes the above named Applicant, Pro Se', with his Motion for leave to Amend his Application for Post Conviction Relief. And his Amendment to his P.C.R. Application.

The Applicant request to have leave to Amend his Application due to he was granted his Motion to Relieve counsel and proceed as a Pro Se' litigant, and his application needs amending. This amendment will in noway prejudice the Respondent, because the Respondent has not made any return to the Application. And the Applicant believes he has a right to amend.

AMENDMENT TO P.C.R. APPLICATION

The Applicant would like to amend numeral (10) the grounds he bases he is being held in custody unlawfully. & (11) Facts that support grounds. Violation of the Fourth Amendment, pursuant to Gersetein Rule (48) hours. Denied a probable cause determination by a nuetral and a detached magistrate to hear the facts of the case issued on an afficdavit by the officer to be sworn to in order for the magistrate to find probable cause in order to issue and arrest warrant to hold Applicant after (48) hours . This never happened, And Counsel was ineffective where he did nothing about trying to get his client to a magistrate or contact the jail administer on his behalf, informing the jail administrator that his client was being held without and arrest warrant or probable cause, and he should be released. Counsel Randall Chambers visited the jail and was informed of the unlawful detention, but refussed to help me and said there was nothing he was going to do, to help me. This was deficent performance on his part.

The Applicant would explain that he is aware of S.C. Code 56-7-10 for which "all Traffic Offenses, as wll as a number of additional offenses expressly enumerated. The provision further provides that that the service of the uniform traffic ticket shall vest all traffic, recorders, and magistrates court with jurisdiction to hear and dispose of the charge for which the ticket was issued and served.

However 56-7-15 further provides that the U.T.T. established under the provisions of 56-7-10 **may be used by law enforcement officer to arrest a person for an offense committed in the presence of the law enforcement officer,"if the punishment is within the jurisdiction of the magistrate or municipal court(s).**

However, The Fourth Amendment requires a "prompt" determination of probable cause by a **"judicial official"** as a prerequisite to **"any"** extended **pretrial detention,** following a warrantless arrest. Probalble Cause determinations for arrest without warrant are still controlled by 22-5-200's mandate that a person arrested without warrant" should be **"forthwith"** carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate shall direct. SEE: **Office of the Attorney General Opinion dated May 2,2012 SEE:Opinion dated October 12, 1998 by ATTY GEN. Probable Cause Determination not held within (48) hours, violates Gerstein.** Without this determination the Applicant should have been released, and he was not.

The Applicant argues that the procedure and process that the State took after he informed them that he was being held unlawfully and his Attorney, violated due process. As to once he was taken to a bond hearing, issued a request form to fill out for a preliminary hearing, and filled it out. And the Preliminary hearing was held without probable cause to even hold the Applicant to appear at this hearing, violated every part of the Applicants rights to be free. And he should not have been taken before a Magistrate for a Preliminary Hearing where no probable cause determination had been made at the initial arrest to even hold him over (48) hours, Let alone to conduct a Preliminary Hearing and bind over a charge that did not exist. Section 17-23-162 of S.C. Code entitled, " presence of affiant or arresting officer to testify at the preliminary hearing" states, the affiant listed on an arrest warrant or the chief investigating officer for the case must be present to testify at the preliminary hearing

of the "**person arrested pursuant to the "warrant"**. **The** affiant for the purpose of Section 17-23-162 would be the individual with knowledge of the information supporting probable cause in the affidavit. Unfortantely, there has never been an affidavit to be sworn too, no arrest warrant issued, and never a probable cause determination made by a magistrate to hold the Applicant past (48) hours. In reality the Applicant was kidnapped and taken to his preliminary hearing, because he was not suppose to be in the county jail at the time of the preliminary hearing.

And to have held a preliminary hearing without and arrest warrant to bind over a charge for which "**NOT** written on the warrant, violates all procedural due process, and is a gross miscarriage of justice Without the arrest warrant there is no need for a Preliminary hearing. How can S.C. Crim Rule (1) be taken out of the equation. SEE: **Also Dunbar majority quoting State V. Martin, 291 S.C. 110, 113,352 SE2d 471, 472 (1987).said an affidavit is a voluntay ex parte statement reduced in writing and sworn to or affirmed before some person legally authorized to administer an oath or affirmation..** The Riverside case establishes that the 4th Amendment sets (48) hours as the general constitutional parameter to be followed for a probable cause determination.

The Applicant believes the State violated his right to the 4th Amendment which required a "prompt" determination of probable cause by a judicial official as a prerequisite to **"any" extended pretrial detention following a warrantless arrest,** within (48) hours. And to have held him in custody for anytime longer violated his 4th Amendment Rights to the United States Constitution. And also violates, 22-5-200 of the S.C. Code of Laws which forwith is is interputed to mean (24) hours to have a Probable Cause determination according to the Atty Gen. Opinion Dated October 12, 1998, and May 2, 2012.

The Applicant believes the function - the Court was provided to follow and its procedures, and Rules were totally violated. And had Applicants Attorney at the least tried to do something to get his client released, he would not have remained without a probable cause determination, and arrest warrant , and held unlawfully.

This was deficent performance on Randall Chambers part not to do something after knowing his Client was unlawfully detained. He never had a arrest warrant in the case and knew or should have known that they were none. And his Client was not to be held any longer than (48) hours pursuant to Gerstein case, 4th Amendment.

This is my Amendment to the P.C.R.

Sworn to and Subscribed
before me this 2nd day of
June, 20 20
Notary Public
Shamekia T. Dash

20 APRIL 2028
My Commission Expires

s. Terry E. McCall

Terry E. McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

Terry McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

6-14-2020

In Re: Applicants Amendment to P.C.R. which needs filed and as a courtesy forwar a copy to Taylor Smith ,Attorney Generals Office, and return a copy to Apllicant for his records

Dear Clerk of Court,

Find enclosed the Applicants Amendment and Motionto request leave to amend, please forward a copy to the attorney general office Taylor Smith as a courtesy, and return a filed copy to the Applicant for hs records.

Awaiting Reply

s. Terry McCall
Terry MCCalll

Let me Know if you forwarded to Attorney General or Not so I will Know if I got to serve them or not, or if you did.
Thank You

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A #2020-CP-23-01497
Terry Edward MCCall)	
S.C.D.C.#233236)	
Applicant,)	"APPLICANT'S MOTION" FOR
)	
V.)	LEAVE TO AMEND P.C.R.
)	
State)	APPLICATION
Respondent,)	&
	AMENDMENT

ENTERED COMPUT

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.
2020 JUN 18 PM 2:02

Now comes the Applicant , Pro Se' with his Motion for leave to amend his application for P.C.R.. The Applicant does not believe in noway will his amendment prejusice the Respondent at this time, where no return has been made by the State.

Applciant wishes to amend numeral (10) & (11)

(10). INefective Assistance of Counsel, Fruit of the poisonous tree evidence procured from warrant less arrest where no probable casue ever existed should have been suppressed. Tainted Trial

(11). evidence procured from arrest 3-4-12 such as witness statements, defendants statement at jail, to officers, urine testing , blood draw testing etc should have been suppressed where no probable cause was ever determined for the arrest, and where no arrest warrant was ever issued. When this evidence was introduced at trial, the trial was tainted. Because this was basically fruit of the poisonous tree, where there was never no judicial determination of probable cause to exist for the basis of the arrest. therefor the evidnce could not be used at trail. And counsel was ineffective both counsels for allowing this evidnnce to be submitted withoutfirst moving to suppress it , or objecting it introduction at my trail, because it tainted the trial. Had it not been introduced and submitted at trial the outcome of the trial would have ben different. They would not have been a trial. and I would not have been found guilty.

s/ Terry McCall

Terry E. McCall#233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

PROOF OF SERVICE

I the undersigned have properly serve the Applicants Motion for Leave to Amend P.C.R. application / Amendment to P.C.R. by placing the same in the United States of Postal Service postage prepaid affixed and forwarded t the addresses below:

Dated 6-14-2020
Greenville, S.C.

s. Terry McCall

Terrry E. mcCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

Paul B. Wickensimer
Clerk of Court
305 East North Strret
Greenville, S.C. 29601

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.
2020 JUN 18 PM 2:02

Terry Mcall #233236
Manning Reentry/Work Release Center
[redacted] W-8 18B
502 Beckman Drive
Columbia, SC 29203

PER

LEGAL MAIL

COLUMBIA SC 290
15 JUN 2020 PM 2 L

FOREVER
USA

Paul B. Wickensimer
Clerk of Court
305 East North St.
Greenville, S.C. 29601

SCDC
Christmas
Packet

29601-215099

Terry McCall #233236
Manning Pre Release / ReEntry
502 Beckman Drive
Columbia S.C
29203

6-15-20
Dated

Re: Filing P.C.R Amendment Motion for Leave To Amend
2020 CP 23 01497, Terry McCall V. State
Return Copy to me for my records, Forward to
Attorney General, Taylor Smith

Dear Clerk of Court,

Find enclosed Motion for leave To Amend P.C.R. and Amendment, Please file as Courtesy Forward to Attorney General Taylor Smith Being I'm Pro Se'

Thank You,

My McCall, Terry

Return me A filed copy for my records Please

State of South Carolina)
County of Greenville)

Court of Common Pleas
Thirteenth Judicial Circuit

Terry Edward McCall 233236 SCDC#
Applicant,

vs.

State,
Respondent

Motion For Leave To Amend P.C.R. @ Applicants Amendment To P.C.R

ENTERED COMPUTER

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE COUNTY
2020 JUN 18 PM 2:02

Now comes the Applicant Pro Se' requesting to be allowed leave to Amend Numeral 10, 11, of his Application for P.C.R As no return has been made by the State, And the Amendment Will In No way Prejudice respondent.

"Amendment"

(10), Ineffective Counsel on Laura Caudy, Appellant Counsel.

(11), Lara Caudy should have Appealed the Denial of the Judge, not dismissing Quashing indictment. Whereas the State proceeded Ex a fashion to obtain A True Bill indictment and indictment on itself on Violation of S.C Criminal Rules, 1,2,3 whereas first there must be an arrest Warrant, issued upon Probable Cause for Felony D.U.I., And where the officer failed to go thru a Neutral & Detached magistrate, "determining Probable Cause "existed" issuing and Arrest Warrant, the jail should not have even held Applicant past 48 hrs Per Fourth Amendment United States Constitution. Violation of Gerstein Rule, McLaughlin 48 hr Rule,

where Trial Counsel argued, that the officer did not go thru a Magistrate Finding Probable Cause, and arrest Warrant issued. Violated

violated S.C. Criminal Rule (3) where an arrest Warrant must transmitted to solicitors office to obtain a indictment. The indictment is drafted off the Arrest Warrant. Furthermore A Preliminary hearing was held May 12, 15 so there was (No Direct or indictment), And S.C. Rules cannot be ignored this violated Due Process / Procedural Due Process, and Equal Protection of the Rules a Law Fourteenth Amendment. Had Lara Caudy argued this Motion to Quash indictment should have been granted, more than likely, McCall would not be here at this P.C.R level, this was a total miscarriage of justice, [redacted] the things.

Also where the Blood was argued by trial counsel on Motion it should have been suppressed where no search Warrant was obtained in violation of the Fourth Amendment, Fourteenth Amendment opened the door for Lara Caudy to argue on Direct Appeal, that the judge should have suppressed this evidence, in Conjunction with the argument, where no Judicial determination was made by a neutral Detached magistrate issuing an arrest Warrant, Finding Probable cause, The evidence procured from the baseless Arrest, Warrantless arrest without Probable cause could not be used at trial And the Blood used a Urine Tainted the trial, making McCalls Trial Unfair, an Violation of Due Process. But she was deficient and for this reason I was prejudiced where As the Supreme Court may have Vacated my Conviction.

Dated 6-15-20

S Jeny McCall 233236
Manning Pre Release/Reentry
502 Beckman Dr,
Columbia S.C
29203

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC
2020 JUN 18 PM 2:02

Proof of Service

I, the undersigned have properly served the party listed below With the Applicants Amendment To P.C.R., motion for Leave to Amend By placing same in the United States Postal mail service Postage Prepaid Affixed forwarded to the address below.

Dated 6-15-20

S Jeny McCall 233236
Manning Pre-Release/Reentry
502 Beckman Drive
Columbia S.C.
29203

Paul B. Wickensimer
Clerk of Court
305 E. North St
Greile, S.C.
29681

Attorney General office
Taylor Smith
Post office Box 11549
Columbia, S.C.
29211

664 State of South Carolina) In The Court of Common Pleas
County of Greenville) 13th Judicial Circuit
) C/A# 2020-CP-23-01497

Terry Edward McCall #233236)
Applicant) Applicants Amendment To
) FILED CLERK OF COURT PAUL BRADLEY GREENVILLE COUNTY 2020 AUG 26 PM 2
Vs.) P.C.R. Application
)
State of South Carolina) Motion To Amend P.C.R.
Respondent) ENTERED COMPUTER

Now comes Applicant, to move this court to allow him to Amend his P.C.R Application, as he is Pro Se' and the issue will in noway prejudice the Respondent.

The Applicant amends his application as to numeral (10) and numeral (11),

(10) - (1) The Applicants ground is ineffective assistance of counsel:

(11) - (2) The fact that supports this ground is,
Randall Chambers representing Applicant during Pre-trial & before trial after applicant had informed counsel he did not want him to represent him, and had filed a Motion to Release Counsel on 4-22-12, and another Motion to Relieve Counsel on 3-23-15 which were both served on chambers with Certificates of services, & clerk of Court.
Chambers represented conflicting intrests and that the actual conflict of intrest adversely effected his lawyers performance.

(1).

Numeral (10) (3.) Ineffective Assistance of Counsel

Numeral (11) (4.) The Attorney represented me in Violation of S.C. Professional Rules of Conduct Rule 1.16; A-(1), (3)

Numeral (10) (5.) Ineffective Assistance of Counsel

Numeral (11) (6) Violation of S.C. Const. Article (1) section (10) & (14), Fourth Amendment, Violation of S.C. Code 22-5-200 No officer ever swore under oath & Affirmation upon facts in an Affidavit that Applicant even committed a crime; and without this initial process after Warrantless Arrest, in Violation of S.C. Code 22-5-200; the prosecution had not begun, for Felony D.U.I. I do not refute the Uniform Traffic Ticket cannot initiate an arrest. But once 24 hours has passed, without a judicial determination of probable cause by a magistrate; issuing an arrest Warrant; the officers on the scene probable cause determination, is absent Probable cause; and no charge was ever commenced., I was unreasonably seized, after 24 hours.

Dated 8-18-20 S. Jerry E. McCall 233236

Numeral (10) (7) ineffective Counsel by denying me my right to self representation 5-12-15 after he had been discharged from Client by Order dated

Numeral (11) In Violation of S.C. Rules of Professional Conduct Rule 1.16. A (1), (3) to remain discharged from client or withdraw when its known you've been discharged (7)

(8.) Chambers Ineffective Counsel

Numeral (10)

Numeral (11) Argument for failing to object, on from the Court, without the court conducting a proper hearing pursuant to Faretta V. California 422 U.S. 806 (1975) or advising his client of the disadvantages and dangers of self representation, by inquiring into his clients educational background, his knowledge of the Rules of Evidence, of the Court, his understanding of Voir dire process, understanding of relevant case law, burden of Proof etc., that his client had not made a knowingly intelligent Waiver of the right to Counsel.

Dated 8-18-20

s/ Jerry McCall
Manning Pre Release/ Re Entry
502 Beckman Drive
Columbia, S.C. 29203

Proof of Certificate

I, the undersigned have properly served the parties listed below with the Applicants ~~Summary Judgement, Affidavit, Statement of Case~~ Motion To Amend, Application for Post Conviction Relief, by placing the same in the United States Postal Mail Service, postage prepaid, affixed and forwarded to the parties at the addresses below

8-18-2020
Date dropped in Prison mail Box, U.S. mail

s/ Jerry E. McCall
Terry McCall #233236
Manning Pre Release / Re Entry
502 Beckman Drive
Columbia, S.C. 29203

Paul B. Wickensimer
Clerk of Court
305 E. North St.
Greenville, S.C. 29601

Taylor Z. Smith
Assist. Attorney General
Post Office Box 11549
Columbia, S.C. 29211, 1549

Terry McCall #233236
Manning Pre Release/Re Entry
502 Beckman Drive
Columbia, S.C.
29203

8-19-20
Dated

I Am Pro Se

Re: Filing Amendment to P.C.R.
2020-CP-23-01497

Dear Clerk of Court,

Find enclosed motion To Amend P.C.R. And Amendment to P.C.R.

Please file return me a copy.

Forward copy to Attorney General Taylor Smith

Thank You
Mr Terry McCall

State of South Carolina) In the Court of Common Pleas
County of Greenville) 13th Judicial Circuit
CA# 2020-CP-23-01497

Terry Edward McCall #233236
Applicant

vs.

State of South Carolina
Respondent

ENTERED COMPUTER

Applicants Amendment

To P.C.R.
Motion To
Amend

FILED-CLERK OF COURT
PAULA WORKENTHIN
GREENVILLE COUNTY SC
2020 NOV 26 PM 1:49

Now comes the Applicant With his Motion to Amend his P.C.R. Application As pro se litigant, he states this Amendment Will in no way prejudice the respondent, especially where he must get a full bite at the Apple.

Amendment

Numeral (10) Ineffective Counsel

Numeral (10). Applicant argues he never received any Plea Offers from his Attorney Chambers before trial, Counsel never stayed in touch with his client violating Rule 1.4 Communication of Professional Rules of Conduct, Never Kept the Client reasonably informed about the status of the matter, whereby the applicant requested that Chambers serve him with indictment, go over it as to essential elements Allegations made against him once he received it, Prior to trial, but this Never happened, Because Applicant Never Knew what he was faced with, until served day of trial with indictment.

(1)

And the transcript speaks for itself As counsel Chambers states, my client has never seen this indictment has not been prepared for it; And therefor this could have been done more timely;

Chambers failed to promptly comply with reasonable requests for information, and Reasonable communication between the lawyer and the Client is necessary for the client to participate in the representation.

The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to Act in the Clients best intrest and the Clients overall requirments as to the character of representation.

In certain circumstances such as when a lawyer ask a client to consent to representation Affected by a conflict of intrest, the client must give the informed consent.

If a conflict arises After representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of Paragraph Rule 1.16(b)

Dated 8-19-20
Greenville, S.C.

S. Terry McCall 233236
502 Beckman Drive
Columbia, SC. 29203

Proof of Service

I, the undersigned have properly served the Motion To Amend PCR. and Amendment to P.C.R on the parties listed below, by placing same in the United States Postal mail, postage pregaid Affixed and forwarded to the address below

Dated 8-19-20

S Terry McCall
Terry MCCALL 233236
Manning Pre Release / Rec Nity
502 Beckman Drive
Columbia, S.C. 29203

Paul B. Wickensimer
Clerk of Court
305 E. North St.
Gville, S.C. 29601

Taylor Z. Smith
Assist. Attorney General
Post Office Box 11549
Columbia, S.C.
29211-1549

Terry McCall #233236
Manning Pre Release/Re-Entry
W-8 38-B
502 Beckman Drive
Columbia, S.C. 29203

9-13-2020
Dated

2020 SEP 16 AM 11:30

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.

Re: Filing Applicants P.C.R. Amendment Forward Copy To Attorney General Assist, Taylor Z. Smith, Return filed Copy to Applicat.

Dear clerk of Court,

Find enclosed Applicats Amendment To P.C.R. Application that needs filing. Forward Copy To Assist Attorney General Taylor Z. Smith, and Return copy to me for my records.

Thank You

"Awaiting Reply"

s/ Terry McCall

C.C. Filed

State of South Carolina)
County of Greenville)

In The Court of Common Pleas
13th Judicial Circuit
C/A # 2020-CP-23-01497

Terry Edward McCall 233236)
Applicant)

Vs,)

State)
Respondent)

Amendment to P.C.R. Application

FILED CLERK OF COURT
PAUL BRICKENSIMER
GREENVILLE COUNTY SC
2020 SEP 16 AM 11:30

The Applicant moves to Amend his Application and believes it will in Noway prejudice Respondent,

Applicant Amends

(10) Numeral (10) ineffective Assist. of counsel, Sixth Amendment violation, conflict of Intrest; Representation free of Conflict

(11) Numeral (11). Applicant states he had filed a Motion with the Court, solicitor, Attorney, chambers to Relieve Mr. Chambers prior to trial. And had a prior conflict with chambers, + present conflict before trial got started;
Chambers only visited Applicant once before trial for 5 minutes in 3yrs prior to trial; Had no trial strategy, Had not interviewed no witnesses; Never subpeoned Any witnesses,

The trial Judge Knew that a prior conflict existed, Because he said, on Pg 168, Trans. line 15-20 "Quote I recognize you have come before the Court before, and you made a motion for Mr. Chambers to

be relieved and at that time, If I'm not mistaken, you ask that he remain on this case because you were satisfied his services, How would he Know I ask that he remain on case without prior Knowledge or contact the applicant argues the record is void of how the Judge Knew this But its obvious he Knew it, and he had not record or evidence to support I was satisfied with Mr. Chambers services, or that I ask that he remain on this case. I never asked that he remain on my case. There was no evidence to support that either, Furthermore once the Court was served, And All parties were in this case, the Court had a duty, "a constitutional duty" where I timely Motion to relevie Counsel was filed served, on All parties" to conduct an adequate inquiry" and that failure to do so requires reversal; And Chambers was ineffective failing to bring to Courts Attention Also.

the Supreme Court has recorized this right guaranteed by the 6th Amendment includes the right of representation, that is free from Conflicts of intrests. See Alley 191 F3d 869, Citing Wood, 450 U.S. at 271, 101 S.Ct. 1097. when burdened by a conflict of intrest counsel breaches the duty of loyalty, perhaps the most basic of counsels duties, and therefore, fails to provide effective assist of counsel. Citing Strickland V. Washington 466 U.S. 668, 692, (1984) prejudiced is presumed under such circumstance Holloway 435 U.S, at 489, 98 S.Ct. 1173

Dated 9-13-2020

Greenville, S.C.

(Proof Service on Backside) (2)

S. Jerry McCall 233236
Manning C.I.
502 Beckman Drive
Columbia, S.C.
29203

Proof of Service

I, the undersigned state certify that I have served the Applicants Motion To Amend P.C.R Application by placing same in the U.S. Postal Mail service, postage prepaid Affixed, and forwarded to the Addresses below:

Dated 9-13-2020

S Jerry McCall 233236
Manning Pre Release / Reentry
502 Beckman Drive
Columbia, S.C. 29203

Paul B. Wickensimer
Clerk of Court
305 E. North St.
Gville, S.C. 29203

Taylor Z. Smith, A.A.G.
Attorney General Office, S.C.
Post Office Box 11549
Columbia, S.C. 29211-1549

Terry McCall #233236
Manning Pre-Release/Reentry
502 Beckman Drive
Columbia, S.C.
29203

9-15-20
Dated

Re: Filing Amendment to PCR. CA# 2020-CP-23-01497

Dear clerk, file this P.C.R. Amendment, forward copy to Attorney General Taylor Smith as courtesy

Please
Return me a copy for my records, Please

Thank You
Terry McCall

State of South Carolina)
County of Greenville)

Terry Edward McCall #233236
Applicant,

Vs.

State
Respondent

In The Court of Common Pleas
13th Judicial Circuit
C/A# 2020-cp-23-01497

Applicants Amendment
To P.C.R
Application

FILED-CLERK OF COURT
PAUL A. HUDSON
2020 SEP 23 AM 10:56
ENTERED ON COMPUTER

Now comes Applicant to move this Court to Allow him to Amend his Application for P.C.R. This Amendment will in No Way Prejudice the Respondent.

Amendment

Numered (10) Ineffective Assist. of Counsel, ground,

Numered (11) Facts supporting.

Mr. Chambers was Ineffective in where on (Pg. 10) of Transcript line 18-25 Chambers argued on his Motion, that Quote! the officer got to the hospital at some point, he required my Client to first submit to urine test which came back negative for ANY kind of drugs, but then took a ~~Blood~~ Blood test and were asking to suppress the results of that, the first issue we have with that is there was No Probable cause to Ask for that,

Chambers was ineffective making such an argument when the S.C Code 56-5-2950 Implied consent to testing for Alcohol or drugs; Procedures; Interference of D.U.I. (A). A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of the persons breath, blood or Urine, for the purpose of determining the presence of Alcohol, drugs or the Combination of Alcohol & drugs.

By driving the Vehicle in S.C. the officer had probable cause to test me,

Furthermore, S.C. 56-5-2946 Submission to testing for Alcohol or drugs; 56-5-2946(B). In Part. Part States the administration of one test does not preclude the Administration of other tests.

So, for Mr. Chambers to argue that the officer had no Probable cause to ASK for that test the blood test, goes against everything the statute Allows, And to make such an argument defeated by the statute, is Ineffective on his part,

Chambers Actions fell below the reasonable standard, And I was Prejudiced by his actions, deficient performance.

Dated 9-15-20
Greenville, S.C.

S Jerry McFall 233236
Manning Pre Release/Reentry
502 Beckman Drive
Columbia, S.C.

Chambers should have moved for the Blood & Urine to be excluded as evidence, where the State failed to [redacted] Video Record the tests or Samples obtained, pursuant to S.C. Code 56-5-2950

Implied consent to testing for Alcohol or drugs, Procedures; Inferences of D.U.I (B). Specifically states, No tests may be administered or Samples Obtained Unless, upon activation of Video recording equipment. etc.

The state never had no Video recording of the tests or samples obtained, administered, Because the officer never Video recorded it; He failed to comply with the statute.

Had Chambers argued the evidence of Blood & Urine should be excluded from trial because no Video recording of Urine or Samples were done by officer, Instead of arguing the officer had no Probable cause, the out come of my trial & Motion would have been different;

Dated 9-15-20

Greenville, S.C.

S Demyrcall 232236

Manning Prerelease/Restitution

362 Beckman Drive

Columbia, S.C

29203

Terry McCall #233236
Manning ReEntry Work Release
502 Beckman Drive
Columbia, S.C.
29203

10/27/2020

FILED-CLERK OF COURT
GREENVILLE, SC
PAUL B. MCKENSIE
2020 NOV -5 PM 1:34

RE: 2020-CP-23-01497 Terry Edward McCall Vs State

Dear Clerk,

Find enclosed Applicants Amendment to P.C.R Application which needs filing a copy returned to Applicat for his records. As he is Pro Se in this matter

As A courtest forward copy to Attorney General Taylor Smith please.

Return me a copy

Thank You

Terry McCall

State of South Carolina)
County of Greenville)
)
Terry Edward McCall 233236,)
Applicant,)
)
V3.)
)
State,)
Respondent.)

In The Court of Common Pleas (1)
13th Judicial Circuit
CA# 2020-CP-23-01497

Applicants Amended PCR Application

FILED-CLERK OF COURT
PAUL K. WICKENSIMER
GREENVILLE, S.C.
2020 NOV -5 PM 1:34

Now comes the Applicant to move this Court to Allow him to Amend his P.C.R Application, which will in no way prejudice the respondent.

1). The Applicant Amends Numeral (10) Ineffective Assistance of Counsel, 4th Violation Fourth Amendment, 5th Amendment 14th Fourteenth Amendment Violation of S.C. Criminal Rules (2.3), Equal Protection of the Law.

2). the Applicant Amends Numeral (11) Counsel Ineffective for failing to move to have the case or ticket F540654 dismissed where the B.A results, "Blood test, Urine sample, was pending," And the officer had nothing to detain the Applicant on, "No Probable cause." This is why he did not seek A judicial determination by the magistrate to obtain an arrest warrant pursuant to S.C. Code 22-5-200 because he knew he had no direct evidence or proof that the Applicant was in fact DUI At this point until the test results came back.

And this was a violation of Fourth (4th) Amendment, 5th Fifth Amendment, 14 Fourteenth Amendment, where as up until Preliminary hearing where the case should have been dismissed, where no Arrest Warrant was obtained, when the case was bound over to General Sessions the 5th Amendment, Fourteenth Amendment Ruled in, took over, Because Due Process, Procedural Due Process, and the S.C. Criminal Rules (1,2,3) were Violated, along with Equal protection of the law; Applicant had a right to be treat equally as others in Preliminary hearings, as being able to challenge the Validity, essential Elements of the Warrant; or be released case dismissed; (No Evidence) And when the arresting officer testified to his evidence to Arrest, without going thru the magistrate for Judicial determination to see if the magistrate confirmed probable cause violated the above listed Amendment violations, and the case should have been dismissed, Chambers failed to request it be dismissed. The test results from Sled Anal report revealed All negative results, Therefor, the Applicant should have been released. But he was held why the state again furthered there investigation, from the time of Arrest up to Pre-Trial Matters, Chambers was Ineffective because he did nothing to get me released during this time up until Pretrial matters. All evidence during this time should have been excluded from trial.

And these are the actions Applicant is holding Chambers accountable for."

Date 10/27/2020

S Terry McCall
Terry McCall 233236
Manning Re Entry Work Release
502 Beckman Drive
Columbia, S. C.
29203

Proof of Service

I the undersigned certify that I have served parties listed below with Applicants Amendment To P.C.R. by placing same in United States Postal Mail Service Postage Prepaid Affixed Forwarded To Adresses below:
Dated 10/27/2020

S Terry McCall
Terry McCall 233236
Manning Re Entry Work Release
502 Beckman Drive
Columbia, SC 29203

Office of Attorney General, Taylor Smith
Post Office Box 11549
Columbia, S.C. 29211

Paul B. Wickensimer, Clerk of Court
305 E. North St
Greer, S. C. 29651

Terry McCall #233236
Morning Re Entry Work Release
302 Beckman Drive
Columbia, S.C.
29203

Dated 10/28/2020

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
2020 NOV -5 PM 1:36

RE: Filing P.C.R Amendment, Return filed copy,
As courtesy forward copy to Attorney General
Assistant, Taylor Smith
2020-CP-23-0149 Terry Edward McCall V. State

Dear Clerk

Find enclosed Pro Se Applicants P.C.R Amendment, Please file, return copy to me for my records,
Electronically forward copy to A.A.G. Taylor-Smith

Thank You:

State of South Carolina) In The Court of Common Pleas
County of Greenville) 13th Judicial Circuit
) C/A # 2020-CP-23-01497 (7)
)
Terry Edward McCall 233236)
Applicant,)
) Applicants Amendment To
V.)
) P.C.R. Application
State)
Respondent,)

FILED/CLERK OF COURT
PAULA WICKER
GREENVILLE
2020 NOV -5 P 1:36

Now comes the Applicant to move this Court to allow him to Amend his Application for P.C.R. which in Noway will prejudice the Respondent

The Applicant Amends Numeral (10) Ineffective Assistance of Counsel, Fourth Amendment Violation, Fourteenth Amendment & Fifth Amendment Violation, Procedural Due Process & Due Process Violation, Violation of S.C. Const. Article ___ Section ___, Violation of S.C. Code 22-5-200 Violation of S.C. Criminal Rules 1, 2, 3 - Violation of Faretta Warning, failure To Inform Client of A Plea, in that where died it was expired: ~~Violation of 2~~ / Conflict of Interest, Violation of 17-23-162

the Applicant Amends Numeral (11),
the Applicant was unreasonably SEIZED after 48 hours, Without probable cause determination @ No Arrest Warrant Counsel failed to request case dismissed where there was No evidence of DUI Positive test results.
The Applicant argues his Attorney was ineffective for not informing the Court or objecting to the Courts failure to properly inform his client of the disadvantages & dangers of Proceeding

without Counsel; pursuant to Faretta, which enabled Applicant IN Not making a Knowingly & intelligent Waiver to Counsel, Had Counsel intervened and defended his client, the Judge Could have corrected his error, but Counsel failed and therefor his client was prejudiced by making A waiver, without being properly warned, & without Knowingly & intelligently doing so.

Applicant argues his Counsel was ineffective not informing him of Dec. Plea, the only Plea he received was January Plea, that was expired on same day written, Applicant argues if Chambers had provided him with December Plea agreement he would have excepted it and Plead guilty, he would have plead guilty instead of going to TRIAL He's aware the prosecution has the discretion to cancel the plea agreement or trial court has the discretion to refuse to accept it. But there is a reasonable probability Neither the prosecution Nor the trial court would have prevented the offer from being accepted or Implemented

see: Missouri V. Frye 566 U.S. 134 (2012)
Hill V. Lockhart 474 U.S. 52

The Applicant argues had Counsel informed him of the January Plea, or tried to get it extended, corrected before it expired, informed him of it before it expired,

he would have Plead guilty instead of going to trial. accepted plea
the Prosecution had the discretion to cancel the plea agreement or trial court had the discretion to refuse to accept it, But there is a reasonable probability neither the Prosecution nor the trial court would have prevented the offer from being accepted or implemented

the Applicat argues that probable cause may be decided as a matter of law, only when the "evidence" yields but one conclusion, and in this case, the state had No evidence to hold Applicat on After 48 hours No Any evidence, to bind over the case to General Session,

the Court abuse its discretion in binding the case over to General Sessions Without Arrest Warrant, or direct evidence, of A D.U.I Felony, Because Sbd testing results were negative on April, 2012 results report Applicant should have been released And Counsel was ineffective for not moving to have the case dismissed, And Applicant was Prejudiced to the reasonable seizure, loss of job, home, etc. (the officer whom testified at Preliminary Hearing was not Affiant and testified to facts not supported by Arrest Warrant, Nor was Defendant arrested or detained Pursuant to arrest warrant, in violation of S.C. Code 17-23-162

Dated 10/28/2020

S. Terry E. McCall

Terry E. McCall #333236
502 Beckman Drive
Columbia, S.C.
29203

Proof of Service

I, the undersigned have properly served the Applicants P.C.R Amendment by placing same in the United States Postal Mail Service postage prepaid, Affixed & forwarded to the Addresses below:

Dated 10/28/2020

s/ Terry McCall

Terry McCall 233236
Manning Reentry Work Release
502 Beckman Drive
Columbia, S.C.
29203

Paul B. Wickensimer
Clerk of Court
305 E. North St
Greenville, S.C.
29601

Attorney General Office of S.C.
To: Taylor Smith
Post office Box 11549
Columbia, S.C.
29211-1549

Dated 11-22-2020

Terry McGill #233236
Manning Reentry/Work Release
502 Beckonan Drive
Columbia, S.C.
29203

In Re: Filing Applicants Amendment To P.C.R
Returning him a copy for his records
serving Attorney General Asst. Taylor Smith
electronically. 2020-CP-23-01497

Dear Clerk of Court,

Please find enclosed the Applicants Amendment to P.C.R application, which needs filing and served on A.A.G. office Taylor Smith electronically immediately as hearing is Scheduled Nov. 30, 2020

Return me A filed copy,

s Terry McGill

C. C. Filed

State of South Carolina)
County of Greenville)

Terry Edward McColl, 233236
Applicant,)

vs.)

The State,)
Respondent,)

In The Court of Common Pleas
13th Judicial Circuit
CIA # 2020-CP-23-04497

Applicants Amendment To
P.C.R Application

FILED-CLERK OF COURT
2020 DEC 10 PM 2:32

Now comes the Applicant to move this Court to allow him to Amend his Application for P.C.R; which in Noway will prejudice the Respondent the Applicat Amends Numeral (10) Ineffective Counsel, Numeral (11), to reflect that, Violation of 22-5-320 Violation of 17-23-162

The Applicat has argued the Officer Violated S.C Code 22-5-200, failing to obtain a Arrest Warrant after A warrantless Arrest, within 48 hours, which his lawyer Chambers, was Ineffective for failing to challenge usong the Authority;

As well as Chambers should have argued the State violated S.C Code 22-5-320 By granting a holding a preliminary hearing without an arrest Warrant; this is a statutory requirement and the state Violated it, And Chambers should have argued this Pre-trial, or filed a motion at Bond Reduction Hearing; Without the Warrant the Court cannot hold or grant a preliminary hearing;

Dated 11-22-20
Greenville, S.C,

s Terry McColl 233236
Manning Reentry Work Release
502 Beckman Drive
Columbia, S.C
29203

. . Continued Next Page

The Applicant Argues the State Violated S.C Code 17-23-162 by allowing the arresting officer David McAlhaney to testify at the Preliminary Hearing, where he was not listed as An Affiant And testified to facts o circumstances that were not in arrest warrant or pertaining to the (Reason) Applicant arrested pursuant to the warrant.

And this Violated statutory Law, legislators intent.

And therefor Mr Chambers was ineffective for not arguing this at the Preliminary Hearing, And his representation fell below a reasonable standard, thereby prejudice me, Inwhere the Court allowed the officer to testify, [redacted] binding the case over to General Sessions.

Chambers should have knew this statute was Violated. And argued it.

Dated 11-22-20

Greenville, S.C.

S. Jerry McCall 233236
Manning Reentry / Work Release
502 Beckman Drive
Columbia, S.C
29203

(2)

Proof of Service

I, the undersigned have properly served the Appellants Amendment to P.C.R. by placing same in the U.S. mail/ Prison mail box, 11-22-20 pursuant to 22-5-320, 17-23-162 Postage prepaid, Affixed and forwarded to the Addressees listed below:

Dated 11-22-2020
Dropped in Prison
Mail Box

s Jerry McCall
Jerry McCall/233236
Manning Reentry/Work Release
502 Beckman Drive
Columbia, S.C.
29203

Paul B. Nickensinker
Clerk of Court
305 E. North St.
Greer, S.C.
29601

Assist. Attorney General
Attorney General office
Post office Box 11549
Columbia, S.C.
29211-1549

Terry McCall #233236
Manning Reentry Work Release
502 Beckman Drive
Columbia, S.C.
29201

Dated 11-22-2020

2020 DEC 10 PM 2:31

FILED-CLERK OF COURT
PAUL B. [illegible]

RE: Last Amendment dropped in Mail 11-22-2020
Case # 2020-CP-23-01497 Terry McCall v. STATE
Hearing Date Nov. 30, 2020, AT 2:30

Dear AAG Taylor Smith,

I hope you will understand our mail-room office here at Manning has been in transition of training someone else, Unfortunately the mail room has been closed several days, And we have been unable to mail out documents. However, I did place my Last Amendment in the drop Box here at Prison 11-22-2020; which will go out 11-23-2020 hopefully. I hope this does not delay the hearing, I want this Amendment heard, If it does, Well I will except your continuance, And look forward to the next time But I really want to be heard, with all Amendments.

Sorry, Malcolm

Mr Terry McCall

C. C. filed

Terry McCall 233236
Manning Reentry/Work Release
502 Beckman Drive
Columbia S. C.
29203

12-8-2020
Dated

RE: Terry McCall V. State Cap 2020-CP-23-01497

Dear Clerk of Court,

Please file the Applicants P.C.R Amendment, Return copy to him for his records, Electronically forward copy to A.A.G Taylor Smith Send me proof it was sent, Please, Your help is Appreciated in this matter

S/ Terry McCall

State of South Carolina)
County of Greenville)

Terry Edward McCall, 233236
Applicant,

Vs.

STATE,
Respondent,

In The Court of Common Pleas
Thirteenth Judicial Circuit
CA# 2020-CP-23-01497

Applicants Amendment To
his Application for P.C.R.

FILED-CLERK OF COURT
2020 DEC 10 PM 2:41

Now comes Applicant to move the Court, to Allow him to Amend his Application for P.C.R. this Amendment Will In No Way Prejudice Respondent,

1) Applicant Amends Numeral (10) Ineffective Assistance of Counsel,
2) Applicant Amends numeral (11), sufficiency, legality of Process by which Court took to Indict him, without arrest warrant.
3) Violation of S.C. Rules Professional Conduct,
4) Sixth Amendment Violation / Plea Offer Dec, 12, Never Given
5) Farretta Waiving Violation
5) No Probable Cause; No Affiant. Prelim Hearing Same,
7) Unreasonable Seizure: NO Probable cause
8) Fourth Amendment Violation, Fourteenth Amendment Violation, Procedural Due Process Violation,
9) Indictment obtained in Violation of Procedural Due Process; corrupt means,

the Applicant reserves the right to Amend his PCR Application, before hearing, if needed

Dated 12-8-2020

s/ Terry McCall

Terry McCall #233236
Manning ReEntry/Work Release
502 Beckman Drive
Columbia, S.C 29203

Proof of Service

I, the undersigned have properly served the parties listed below with the Applicants P.C.R. Amendment dated 12-8-2020 by placing same in the United States Postal Service, postage prepaid, affixed and forwarded to the addresses below:

Dated 12-8-2020

s/ Terry McCall

Terry McCall 233236
Manning ReEntry/Work Release
502 Beckman Drive
Columbia, S.C. 29203

Paul B. Wickensimer
Clerk of Court
305 E. North St.
Greenville, S.C. 2960l

Attorney Generals Office of S.C.
AAG Taylor Smith
Post Office Box 11549
Columbia, S.C.
29211-1549

Terry Edward McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

5-15-2020

In Re: Filing a Notice of Motion and **Motion to Releive Counsel**

Dear Clerk of Court,

Find enclosed the Notice of Motion and Motion to Releive Counsel, which needs filing and a copy returned to me for my records. And as a Courtesy you can forward a copy to the Attorney Generals Office.

Awainting Reply

S. Terry Edward McCall
Terry Edward McCall

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A # 2020-CP-23-01497
TERRY EDWARD McCALL)	
S.C.D.C.#233236)	
Applicant,)	
)	**"NOTICE OF MOTION"AND,**
Vs.)	
)	**MOTION TO RELEIVE COUNSEL**
STATE OF SOUTH CAROLINA)	
Respondent,)	

To: The Court

Now comes the above named Applicant, Terry Edward McCall, Pro Se' with his Notice of Motion, and, Motion to Releive Counsel, for the following basis.

(1). The Applicant has a United States Constitutional right to self representation. See: **Faretta V. California 422 U.S. 806 (1975).**

(2). The Applicant alleges he has no Sixth Amendment Right to Counsel in a P.C.R. matter. See: **Pennsylvania V. Finley 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed. 2d 539 (1987).**

(3). The Applicant beleives he knows his case well enough to represent himself, and request the Court allow him to releive counsel and proceed as a Pro Se' Applicant, at this time. The Applicant's present counsel is Sarah Henry and he wishes to releive her as well,based on a Conflict of Intrest. Whereas Sarah Henry represents clients for the Public Defenders Office, Where his trial counsel is from as Attorney for this same office.

WHEREFOR, the Applicant prays the Court issues its Order releiving Sarah Henry as Counsel, and allow Applicant to represent himself in this present matter, which is just and proper unto the Court.

Greenville, S.C.
Dated 5-15-2020

s. Terry Edward McCall
Terry Edward McCall #233236
502 Beckman Drive
Columbia, S.C. 29203

CERTIFICATE OF SERVICE

'20 MAY 13 PM 12:02
Paul Wickensimer CCC GVL SC

I, the undersighned have properly serve the parties listed below with the Notice of Motion and Motion to releive counsel, by placing the same in the United States Postal Service , postage prepaid, affixed and forwarded to the addresses below:

Dated 5-15-2020

s. Terry Edward McCall

Terry Edward McCall #233236
502 Beckman Drive
Columbia, S.C. 29203

Paul B. Wickensimer,
Clerk of Court
305 E. North Street
Greenville, S.C. 29601

Sarah Henry Law
406 Pettigru St.
Greenville, S.C. 29601

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2301497

Terry Edward Mccall		South Carolina State Of	

ENTERED COMPUTER

2021 JAN 25 AM 10:28 GREENVILLE COUNTY SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Based upon this Court's review of the Applicants motion to relieve current counsel Sarah Henry, I find that the Applicant does in fact have a right to represent himself if he so desires. Applicant has set forth in his motion filed the reason for his request and I will grant the motion. Sarah Henry is afforded 10 days to object to the relief granted and if need be a hearing will be scheduled by the court.

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

~~5/19/2020~~

702

Circuit Court Judge | 2763 Judge Code | 5/26/20 Date

5-26-2020 For Clerk of Court Office Use Only 5-26-2020

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Sarah Morrison Henry 406 Pettigru Street Greenville, SC 29601

Taylor Zane Smith PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

SC Attorney General
RECEIVED
MAY 12 2020
Referred to T.Smith/MR
Answered

5-7-2020

Terry E. McCall #233236
Manning Pre-Release/ ReEntry
502 Beckman Drive
Columbia, S.C. 29203

In Re: Take Notice no attorney has been appointed to me in this present matter and i have a right to file this Notice of Motion and Motion for temporary Interlocutory Injunction at this time. 2020 CP 230 1497 . Terry Edward McCall Vs. The State

Dear Clerk of Court,

Take Notice, that "No Attorney has been appointed to me at this present time". And I have a right to have this Notice of Motion and Motion for Temporary Interlocutory Injuction filed and a copy "returned to me for my records.

Also as a courtesy would you be so kind to forward a copy to the Attorney Generals Office,

Please file this because this is NOT Hybird representation until I have ben notified that counsel has been appointed, and I have NOT received any notices that this has taken place.
Again , thank you for being so kind,

Sincerely,
s/ Terry E. McCall
Terry E. McCall

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	)	**THIRTEENTH JUDICIAL CIRCUIT**
	)	**C/A # 2020-CP-230-1497**
TERRY EDWARD McCALL	)	
s.c.d.c.#233236	)	
Applicant,	)	
	)	**"NOTICE OF MOTION" AND**
Vs.	)	**MOTION FOR A TEMPORARY**
	)	**INTERLOCUTORY INJUNCTION**
THE STATE	)	
Respondent,	)	

Comes now, the Applicant, Terry Edward McCall, Pro Se' and files this, his Notice of Motion, and Motion for Temporary Interlocutory Injunction against the Respondent, and alleges:

1). This is an action for a Temporary Interlocutory Injunction, pursuant to the South Carolina Rule 65 of the S.C.R.C.P.

2). The Applicant is currently an inmate with the South Carolina Department of Correction, Manning Work Release Program.

3). The basis for which this Notice of Motion and Motion for a Temporary Interlocutory Injunction is requested is due to the **Corona Virus Pandemic**, which is not only effecting society as a whole. But has now rapidly started invading the prison systems around the world and here at Manning, where I am currently housed. For which some S.C.D.C. employess/staff, and inmates have already contracted this deadly virus. Which has already lead to death(s). of these individuals.

4). The Applicant alleges that under normal times, prior to this Covid 19 Pandemic. Once the Applicant files a P.C.R Application, and the State makes its return. The evidentiary hearing could take between (7) seven months up to **several years.**

5). The Applicant contends that this is "not normal times", right now. The amount of time the Applicant could have to wait for a hearing. Could result in an " Irreparable Injury", to the Applicant, such as his "death", before a hearing could be scheduled and held in this matter. And there should be end time limits, to when a human life is at stake.

6). The Applicant is unaware of any other adequate legal remedy that exist at this time that he can address this issue.

PRAYER FOR RELIEF

WHEREFOR, the Applicant prays for an Order as follows:
1). Declarying that the Applicant be released on Bail, or in the alternative, house arrest, pending a scheduled hearing in this present matter.

2). Grant unto the Applicant such other and further relief as this Court may deem just and proper.

Greenville, S.C.
Dated 5-7-2020

Respectfully Submitted,

s/ Terry Edward McCall

Terry Edward McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

CERTIFICATE OF SERVICE

I, the undersigned have properly served the parties listed below with the Notice of Motion, and Motion for a Temporary Interlocutory Injunction, by placing the same in the United States Postal Service, postatge prepaid, affixed and addressed to the following addresses below:

Dated 5-7-2020

s/ Terry Edward McCall

Terry Edward McCall #233236
Manning Pre-Relase/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

Paul B. Wickensimer
Clerk of Court
305 E. North Street
Greenville, S.C.
29601

Office of the Attorney General
Alan Wilson,
Post Office Box 11549
Columbia,S.C. 29211

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THRITEENTH JUDICIAL CIRCUIT
)	C/A #2020-CP-23-01497
Terry Edward McCall)	
S.C.D.C.#233236)	
Applicant,)	**"NOTICE OF MOTION" AND**
)	**MOTION FOR A PRELIMINARY**
V.)	**INJUNCTION**
)	
The State)	
Respondent,)	

To: The Court,

Comes now, the Applicant, Terry Edward McCall, Pro Se and files this, his Notice of Motion, and Motion for a Preliminary Injunction against the Respondent, and alleges:

1). This is an action for a Preliminary Injunction pursuant to the South Carolina Rule (65) of the S.C.R.C.P..

2). The Applicant is currently an inmate with the South Carolina Department of Corrections, Manning Work Release Program.

3). The basis for which he brings this Notice of Motion and Motion for a Preliminary Injunction is the threat that he is faced with in S.C.D.C."COVID-19"/"Corna Virus" **while waiting for a evidentiary hearing and the States Return in a P.C.R. matter**

4). The Applicant believes under normal times, a Applicant could have to wait from six months to one year or longer, before heard in Court for his Applicaton for Post Conviction Relief.

5). Unfortuantely, these are not normal times right now. And this deadly virus has no respect for human life. Inmates have already been dying throughout the penal system. And S.C.D.C has positive case(s) as well, and related deaths from this disease. Therefor the Applicant believes his request for release either on Bond, or Supervision, would be an appropriate request at this juncture in these proceedings whereas he can show the Court the Following:

The Applicant Will Show The Court Respondent Violated His Fourth Amendment Right

6). The Applicant alleges that the Respondent violated his Fourth Amendment Right, when he was arrested without and arrest warrant. And denied a judicial probable cause determination by a magistrate, in order to determine if probable cause existed to detain the Applicant over (48) hours , See: Gerstein V. Pugh 429 U.S. 103 (1975), County of Riverside V. McLaughlin,500 U.S. 44 (1991), S.C. Code 22-5-200 Mandates 24 Hour Rule for a Probable Cause Determination. The Applicant has never had and arrest warrant even issued or served on him to have kept him in the jail over the (48) hours that he should have been afforded his release, once he was denied or where probable cause was never decided to hold him over (48) hours. Therefor, where no probable cause existed, the Applicant should have been released immediately, because to continue to hold him violates his United States Constitutional Right to the Fourth and Fourteenth Amendment.

The Applicant argues that without the prompt judicial probable cause determination at the Magistrate level when he was initally arrested, the remaining process was a violation of procedural due process. Because without and arrest warrant there can be no preliminary hearing to bind over a charge not written on affidavit and no arrest warrant to show probable cause existed to even bring the "invisiable" charge to the Court for a preliminary hearing. This is what happened though, the Court bound over a charge which never existed, and violated procedural due process, and the Applicants rights to be treated equally as others arrested.

The Applicant urges the Court to understand that there was never a direct indictment in this case either. Because he had a preliminary hearing May 12, 12 and at that time is when the Court bound the Uniform Traffic Ticket for Felony D.U. I. over to General Sessons, and Not and arrest warrant. This violated S.C. Criminal Rules (3) where as and arrest warrant must be transmitted to the Solicitors Office to be processed into and indictment, and not a Uniform Traffic Ticket. The Uniform Traffic Ticket only has authority in Magistrate Court, not General Sessions. Furthermore, S.C. Code 22-5-200 mandates that a person arrested without a warrant ....

should be carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate shall direct. The arrest warrant serves as the notice charging document for the officer. The arrest warrant serves informational and administative purposes . It protects the police officer from prosecution under S.C. Code 17-13-50 which provides that it is a criminal offense for arresting officer not to inform the arrested person of the grounds of the arrest. It constitutes the charging paper in a magistrate or municipal court and informs the defendant of the charges against him. **The Applicant shows the Court that through the Attorney Generals own opinion dated October 12, 1998, discussion is made on probable cause determination and release in 48 hours withut this determination.** The Applicant believes this alone is more than the reason to release the Applicant on bail due to Corna Virus threat he is faced with at this time. The Applicant ask the Court to consider all the factors and violattions he has addressed to be included with its decision, in granting this Injunction.

7). The Applicant alleges that his Sixth Amendment right to Counsel was violated when the trial Judge granted his Motion to relieve counsel without conduction a proper hearing pursuant to **Faretta V. California 422 U.S. 806 (1975) or advising him of the Dangers and Disadvantages of Self Representation.**

The Applicant Shows He Will Suffer "Irreparable Harm" If Not Granted The Preliminary Injunction

8) The Applicant believes the time waiting for a evidentiary hearing could cause the death of him And where a human life is at stake, and where the Courts are either closed or not holding any hearings for Post Conviction Relief, denying the Applicant the right to redress the Court at this time. Other alternatives should be used to prevent such a risk of death. Especially where this Pandemic has never been dealt with before by the Court or Society as a whole. And where there the Court can issue and Order for Bail, and release if it sees fit.

The Applicant Will Show The Harm He Faces Is Greater Than The Harm Respondent Will Face If Granted The Injunction

9). The Applicant alleges the harm he faces is much greater than that, the Respondent will face if granted the Injunction. Whereas the Applicant is faced with the loss of his life at this time. As for the Respondent, he is only faced with loss of victory. But the Respondents Clients is Society which seeks "Only Justice", and by granting the Injunction will in noway deprive the Respondent of his oppertunity to prevail. So there is noway that Respondent can be prejudiced by granting this Injunction. The Applicant believes both sides will benifit from this Injunction, where as if the Applicant loses his life back here with this deadly virus, then justice was never served, and this is not the oath taken by Respondent to make sure justice is served, and no case is prosecuted without probable cause.

The Preliminary Injunction Will Serve The Public Intrest

10).The Applicant believes that the Public's intrest will be served if he is Granted the Preliminary Injunction. whereas another life could , and will be saved from this deadly corona virus. Which could be prevented by this Court of Justice for all. And by granting this Injunction assures the Applicant his right and time to be heard when notified. The bed space can be provided to someone with a more serious crime and for whom has been legally prosecuted formally and Constitutionally Correct.

11.) The Applicant is unaware of any other adequate legal remedy that exist at this time that he can address this issue.

PRAYER FOR RELIEF

WHEREFOR, the Applicant prays for and Order as follows:
1). Declarying that the Applicant be released on Bail or in the alternative Supervised release, House Arrest, being his is 60 yrs. old with underlying health conditions which make him vulnerable to this deadly virus, which is a death sentence where he cannot social distance himself or get proper medical treatment.,Granting the Injunction is appropriate where bail has been given for Applicants

before, where no Pandemic even existed or was a threat to life. This is a time where exigent circumstances exist where a life could be destroyed/taken due to a failure to grant the Injunction. And this Injunction should be granted to save Applicants life, so he can be heard on this matter for Post Conviction relief, when ordered. **This is a Novel Issue that has never been addressed before.**

2). Grant unto the Applicant such other and further relief as this Court deems just and proper.

Greenville, S.C.
Dated 6-8-2020

Respectfully Submitted,
s. Terry McCall

Terry McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

PROOF OF SERVICE

I,the undersighned have properly served the parties listed below with the Notice of Motion and Motion for a Preliminary Injunction by placing same in the United States Postal Service, postage prepaid , affixed and forward to the addresses below.

Date 6-8-2020

s. Terry McCall

Terry MCCall #233236
Manning PRe-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

The Attorney Generals Office
To: Taylor Zane Smith
P.O. Box 11549
Columbia, S.C.
29211-1549

Paul B. Wickensimer,
Clerk of Court
305 E. North St.
Greenville, S.C. 29601

Terry McCall # 233236
Manning Pre Release/Reentry
W-8 18-B
502 Beckman Drive
Columbia, S.C.
29203

6-12-2020
Dated

ENTERED COMPUTER

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.
2020 JUN 17 PM 4:03

RE: Placing This Partial Trial Transcript with the Motion/Petition for A Preliminary Injunction
C/A# 2020-CP-23-01497, Terry Edward McCall V. State

Dear Clerk of Court,

Please Attach this Partial Transcript With the Motion for A Preliminary Injunction, filed by me in Common Pleas Court C/A# 2020-CP-23-01497 recently, I need this Attached to this Motion for A Preliminary Injunction, to support my Argument, that I never had A Probable Cause determination made for my Arrest, to detain me in excess of 48 hours; Any evidence obtained within this arrest used at trial, should have been excluded, Because no Probable Cause was determined by A magistrate 3-4-12 to determine Probable Cause ever existed, for the officers actions to be justified therefor, the witness statements, Blood, Urine, should have been excluded suppressed At the begining And no trial held, Because no Arrest warrant was ever procured for this to be charged As A Felony D.U.I great Bodily Injury a

Thank You,

Please Grant me Injunction Release Me My Terry McCall

See ¶ 50 to support Affidavit McAlhaney

STATE OF SOUTH CAROLINA	:	COURT OF GENERAL SESSION
	:	2012-GS-23-10242
State of South Carolina	:	
--	:	TRANSCRIPT RECORD
vs	:	
Terry Edward McCall	:	

May 12, 2015 - Day 1
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

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

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Randy Chambers, Esquire
Jake Erwin, Esquire
Terry McCall, Pro se

¶ 41 time (4) no conversation/ very minimal

Caroline Hiskell
Thirteenth Circuit Court Reporter

It only took 15-20 minutes to take witnesses statements. So Time could be untimely

¶ 29 (30) illline collection/ chain of custody

41, 42, 43, 50

154-162 get copied

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Take your seats, ladies and gentlemen, good morning, I hope everyone is doing well today.

Let's go ahead and call to the bar the State of South Carolina versus Terry Edward McCall. This comes before the Court pursuant to charges of driving under the influence, felony DUI with great bodily injury.

Ms. Solicitor, I'd be happy to hear from you.

MS. DRAWDY: At this time we would ask that you arraign the defendant on his indictment. I have copy that can be handed to him.

THE COURT: Have you served the defendant with this?

MS. DRAWDY: I'm serving it now. His counsel has been provided with copies previously.

THE COURT: Let the record reflect that the defendant has been served with a copy of the indictment.

Mr. Chambers, do you waive a formal arraignment, sir?

MR. CHAMBERS: Your Honor, I do waive formal arraignment but I do have a motion to make at the appropriate time.

THE COURT: I understand and I certainly wouldn't preclude you from making any motions relative to the sufficiency or appropriate necessity of the indictment. As you know it's going to take me five minute to go through a formal arraignment and a lot of that is entirely academic in being we have arrived at the point of trial.

MR. CHAMBERS: That's true, Your Honor.

THE COURT: It's my understanding that there are motions that each side has to put into the record and therefore I'll defer to counsel and I will hear you on those motions.

MR. CHAMBERS: The first motion that I have, your Honor, is with the indictment itself. We believe that the solicitor proceeded in a fashion that is contrary to the rules, and as such we ask that that indictment that was just served on my client be quashed and that this case be dismissed with prejudice.

1st Motion Indictment

This is a felony DUI, clearly a general sessions offense. The officer at the time he went out and worked the accident and then went to the hospital and made a determination that he believed there was probable cause to charge my client. Rather than go through a neutral and detached magistrate, he simply wrote a traffic ticket and then they arrested my client on that basis.

We believe that is illegal and certainly contrary to the rules and certainly should not have been done that way.

The Rule 1 of the South Carolina Rules of Civil procedure even talk about the fact that warrant, not a ticket but a warrant, is supposed to be transmitted to the Solicitor's Office. That was never done in this case. So his arrest at the outset we believe is unconstitutional and should not have taken place and was not pursuant to an arrest warrant.

Now, obviously the solicitor was free at any point if the wanted to to pursue a direct indictment and I supposed it's their position is what they just done, but at no point prior to trial was my client ever served. They're serving him now on the day of trial and, of course, this indictment references the traffic ticket that we believe to be contrary to the rules.

For all those reasons we would ask the Court to quash that indictment and just dismiss these charges with prejudice because my client has been sitting in jail for over a year now. These things could have been done in a much more timely fashion. He could have had the time to review that indictment and to have been prepared for it. None of those things were done.

It's our position that serving it now is

trying to make up for a mistake that they made and they not be, at this late date, allowed to do that. That's our position, Your Honor.

THE COURT: Okay, good enough. Solicitor.

MS. DRAWDY: Your Honor, to begin with this individual Mr. McCall has not been in jail on this charge for over a year. He has been in and out of jail in Greenville and Pickens County for the past three years since his arrest and the time that he bonded out on this charge. So he has not been sitting in jail on this charge.

Section 56-7-10 specifically authorizes any traffic offense to be placed on a uniform traffic ticket which is what the officer did in this case. It is authorized. Rule 1 does not change that.

Furthermore, the True Bill by the grand jury they saw the same evidence they would have seen had it been on a warrant. The same evidence was presented to them and they have found probable cause. So it is common practice and has been and I'm sure Your Honor is aware throughout the State for felony DUI charges to be initiated on a uniformed traffic ticket. It's simply not a procedural problem in this case and certainly not a due process right.

THE COURT: Is the charge on the ticket the

very same charge that is on the indictment that was True Billed to the grand jury?

MR. OVERBY: I have a copy I can pass up to the Court. It has a code section and it only says felony DUI and we would assert that because this is great bodily injury that is the least charge that could be charged. So we have not upgraded it.

THE COURT: I understand.

MR. OVERBY: I'll pass that up as a Court's Exhibit.

(Indictment marked as Court's Exhibit No. 1 for identification.)

THE COURT: Mr. Chambers, you may respond.

MR. CHAMBERS: Your Honor, it is our position this is more than just a mere traffic ticket. It certainly carries more than 30 days. In fact, it carries up to 15 years in prison. And you can see obviously a warrant that had gone through a neutral magistrate would have some description of what they were actually alleging, and the officer here has simply written in felony DUI. It doesn't have any description about the facts.

I would just reiterate our position that the arrest in this case itself was illegal. It shouldn't have been done based on the warrant. It's late service and arraignment on this indictment is too little too late and

we would again as that the Court to quash the indictment and dismiss the case.

THE COURT: When was the indictment handed down?

MR. OVERBY: Your Honor, it was True Billed in February 2013.

THE COURT: Was Mr. Chambers given a copy of that indictment?

MR. OVERBY: Not at that time. It is not our practice to do that. It's a matter of public record in the Clerk's Office. He did ask for a copy of it last week and we did provide it to him promptly.

THE COURT: I'm going to respectfully deny the motion. I do not think that is failed for the charges to initiate upon a uniformed traffic citation. I do find that subsequently, of course, it was True Billed by the grand jury and then keeping with appropriate procedure.

It is somewhat unusually that it would have been served at this later day, however, the substance of the charges were known from inception. That it was a felony DUI which suggests by definition that someone had been hurt as a consequence of operating a motor vehicle, allegedly, in an altered or impaired state.

I don't see and there has been no

5-1-15 Visited jail No Indictment Served yet

Randy should have objected and argued. Felony DUI suggest more than someone hurt suggest death in y/r subsequent that were never listed

articulation of prejudice that visits upon the defendant as a consequence of the ticket or as a consequence of the indictment having been served today.

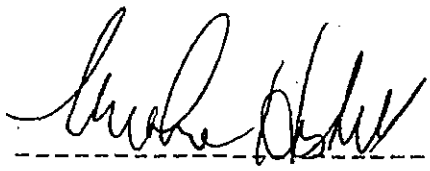
I don't see how there was anything that was not disclosed relative to the charges relative to the trial that was coming forward today, therefore, on all those basis I respectfully deny the motion.

MR. CHAMBERS: Your Honor, the other motions I have pretrial involves blood evidence that the solicitor, I believe, intends to admit. In this particular case, my client as well as Mr. Suddeth who was unfortunately injured in this wreck were both extricated from their automobile by emergency personnel, transported to the hospital for treatment. My client was somewhat ambulatory and was able to talk to the officer when he got there. It was certainly not a medical necessity for taking any kind of blood test rather than a breath test, but when the officer got to the hospital at some point, he required my client to first submit to a urine test which came back negative for any kind of drugs, but then took a blood test and we're asking to suppress the results of that.

The first issue that we have with that is my client -- first of all there was no probable cause to ask for that. At the time this accident in the making of this

I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Court of General Sessioons, Greenville County, this 12th day of May, 2015.

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



Caroline Hiskell

6-14-2020
Dated

Terry McCall #233236
Manning Pre Release/Re Entry
W-8 18B
502 Beckman Dr.
Columbia, S.C.
29203

ENTERED COMPUTER

2020 JUN 17 PM 4:03
FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

RE: Placing Partial Trial Transcript with the Motion for Preliminary Injunction
2020-CP-23-01497 Terry Edward McCall V. State

Dear Clerk of Court

Find enclosed the Partial Transcript that needs incorporated with the Motion for A Preliminary Injunction, that I mailed to your office:

Please Provide me with the Administrative Judges Name Address, And a P.C.R Court Calender for this Year, 2020

See Pg 50 to support Affidavit McElhaney

STATE OF SOUTH CAROLINA	:	COURT OF GENERAL SESSION
	:	2012-GS-23-10242
State of South Carolina	:	
	:	TRANSCRIPT RECORD
vs	:	
	:	
Terry Edward McCall	:	
	:	
	:	

May 12, 2015 - Day 1
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

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

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Randy Chambers, Esquire
Jake Erwin, Esquire
Terry McCall, Pro se

Pg 41 line (V) NO conversation very minimal

Caroline Hiskell
Thirteenth Circuit Court Reporter

It only took 15-20 minutes to take witnesses statements, so Time could be untimely.

Pg 29 (30) ULTIMO correction chain of custody

41, 42, 50

154-162 get copied

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Now, obviously the solicitor was free at any point if the wanted to to pursue a direct indictment and I supposed it's their position is what they just done, but at no point prior to trial was my client ever served. They're serving him now on the day of trial and, of course, this indictment references the traffic ticket that we believe to be contrary to the rules.

For all those reasons we would ask the Court to quash that indictment and just dismiss these charges with prejudice because my client has been sitting in jail for over a year now. These things could have been done in a much more timely fashion. He could have had the time to review that indictment and to have been prepared for it. None of those things were done.

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trying to make up for a mistake that they made and they not be, at this late date, allowed to do that. That's our position, Your Honor.

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It is somewhat unusually that it would have been served at this later day, however, the substance of the charges were known from inception. That it was a felony DUI which suggests by definition that someone had been hurt as a consequence of operating a motor vehicle, allegedly, in an altered or impaired state.

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articulation of prejudice that visits upon the defendant as a consequence of the ticket or as a consequence of the indictment having been served today.

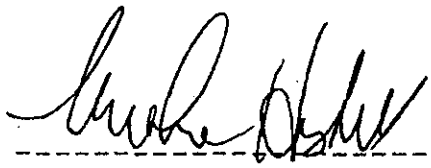
I don't see how there was anything that was not disclosed relative to the charges relative to the trial that was coming forward today, therefore, on all those basis I respectfully deny the motion.

MR. CHAMBERS: Your Honor, the other motions I have pretrial involves blood evidence that the solicitor, I believe, intends to admit. In this particular case, my client as well as Mr. Suddeth who was unfortunately injured in this wreck were both extricated from their automobile by emergency personnel, transported to the hospital for treatment. My client was somewhat ambulatory and was able to talk to the officer when he got there. It was certainly not a medical necessity for taking any kind of blood test rather than a breath test, but when the officer got to the hospital at some point, he required my client to first submit to a urine test which came back negative for any kind of drugs, but then took a blood test and we're asking to suppress the results of that.

The first issue that we have with that is my client -- first of all there was no probable cause to ask for that. At the time this accident in the making of this

I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Court of General Sessioons, Greenville County, this 12th day of May, 2015.

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



Caroline Hiskell

Terry McCall #233236
Manning pre-Release/ReEntry
W-8 18-B
502 Beckman Drive
Columbia, S.C. 29203

Dated 4-24-20

SC Attorney General
RECEIVED
MAY 01 2020
Referred to PCR/MR
Answered

Re: Motion for Summary Judgement by Applicant in P.C.R.
Application Case No:2020CP2301497, Terry Edward McCall
Vs. State

Dear Attorney General, Alan Wilson,

Find enclosed the Motion for Summary Judgement, Affidavit, Statement of the case, Trial Transcript, [redacted]. Which has been filed with the Greenville County Clerk of Common Pleas Court.

Take Notice that United States Supreme Court held that there is No Constitutional Right to counsel in a P.C.R. pleading(s). And counsel will not be needed in this proceeding for Summary Judgement. The record is very clear Judge Robin Stilwell, erred in failing to give me the proper required Faretta warning before relieving counsel, and counsel was ineffective for failing to object to this error of law . Therfor this Summary Judgement is appropriate remedy. Especially where the record cannot be disputed. And with Covid 19 running rapidly in the penal system I would hope your desire is to see justice served, even when a prosecutor is required to agree with the remedy sought, causing the case to be remanded for new trial. Please take into consideration I am in here "Unlawfully" and to oppose this Motion for Summary Judgement would place a greater monetary burden upon the State which at this time , does not need. Your help in this matter is appreciated gracefully.

Sincerely,
s. Terry McCall
Terry McCall

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A # 2020CP2301497
Terry Edward McCall)	
s.c.d.c.#233236)	
Applicant)	
)	**AFFIDAVIT OF TERRY EDWARD McCALL**
V.)	
)	
State of South Carolina)	
Respondent)	

COMES NOW+Terry Edward McCall, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 years, and the statements made in this affidavit are based on my personal knowledge.

2. On May 13, 2015 In Greenville County Courthouse, Judge Robin Stilwell held a Faretta hearing while hearing my motion to relieve counsel.

3. During this hearing Judge Stilwell failed to properly inform me of the disadvantages and dangers of proceeding pro se, which prejudice me. Had he,I would have not relieved counsel

4. This was a mandatory requirement pursuant to Faretta V. California 422 U.S. 806 (1975). Which is reversabale error

5. Attached to this Affidavit is a true copy of my transcript at trial, which is certified accurate, Pleadings, Statement of Case, [redacted] Etc.

FURTHER AFFIANT SAYETH NOT.

Terry Edward McCall

Sworn and Subscribed before me
this 21st day of APRIL, 2020

SHAMEKIA T. DASH
Notary Public

20 APRIL 2028
My Commission Expires

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Applicant on February 19, 2013 for felony DUI resulting in great bodily injury. The case was called for trial on May 12, 2015 before the Honorable Robin B. Stilwell, and a jury. Assistant Solicitors Sara Lee Drawdy and Stan Overby represented the state, and Randy Chambers represented Applicant. On the morning of the second day of trial, Judge Stilwell granted Applicant's motion to relieve counsel, but denied his motion for a continuance.

Consequently, Applicant proceeded pro se'. Jake Erwin was appointed as standby counsel. Tr. 175, ll. 10-12 On May 14, 2015, the jury found the Applicant guilty as indicted. Tr. 382, l. 24-383, l. 6. He was sentenced to fifteen years imprisonment. Tr. 288, ll. 19-23.

On May 20, 2015, Applicant timely filed notice of appeal. The Office of Appellate Defense undertook representation of Applicant and requested the trial transcript. Over a year later, the Office of Appellated Defense received an incomplete transcript. At a minimum, the transcript was missing the complete testimony of six witnesses and the partial testimony of two witnesses.

On September 29, 2016 Applicant filed a motion with this Court seeking to remand his case to the trial court to reconstruct the record. By order filed November 4, 2016 this Court granted Applicant's motion and remanded the case.

On March 14, a hearing was held in Greenville County before Judge Stilwell to reconstruct the record. Assistant Solicitor's Sara Lee Drwdy, Stan Overby, and Judy Munson represented the state, and Appellate Defender John Strom represented Applicant. At the beginning of the hearing, Applicant moved to have the assistant solicitor's who represented the state at trial recussed because they were witnesses for purposes of the reconstruction hearing. However Judge Stilwell denied the motion. At the conclusion of hearing, Judge Stilwell orally ruled the record of Applicant's trial had been sufficiently reconstructed to allow for meaningful appellate review.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A # 2020CP2301497
Terry Edward McCall)	
scdc#233236)	
Applicant)	"APPLICANTS MOTION FOR"
)	
V.)	SUMMARY JUDGEMENT
)	
State of South Carolina)	
Respondent)	

To: Attorney General, Respondent

Pursuant to S.C.R.C.P. Rule (56) and S.C. Code of Laws 17-27- 70 (c) in conjunction with Aice v. State 305 S.C. 448, 409 SE2d 392 (1991). The P.C.R. Court **may grant a Motion for Summary Judgement** to **either party**. Where there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law. The Applicant hereby moves this Court to issue a judgement granting him summary relief. Motion is based on trial transcript, affidavit, pleadings,

ARGUMENT

1. The Applicant alleges his Sixth Amendment Right to Counsel was violated when the trial Court granted his motion to relieve counsel without conducting a proper hearing pursuant to **Faretta** V. **California** 422 U.S. 806 (1975) **or** advising Applicant of the disadvantages and dangers of self representation, **And** trial counsel was ineffective for failing to object to such constitutional **depriviations.**

and/or

2.The Applicant alleges his Sixth Amendment Right to self representation was violated when the Court thrust standby counsel upon the Applicant without his request or consent for such representation. After the Court ask him would he assume the riske to standby counsel, and he Applicant responded, no I will not! See: Faretta , And Trial Counsel was ineffective for failing to object to such depriviations of the constitution. SEE also: Osbey V. State 425S.C. 615, 825 SE2d 48 without conducting a proper hearing pursuant to Faretta violated the Applicants Constitutional rights; SEE: Farretta.

How The Issue Was Presented Below

Applicant filed a **pro se'** motion to relieve counsel on March 27, 2015, approximately **six weeks before trial.** For whatever reason, ahearing on Applicant's motion was never heard. On the second morning day of trial, Applicant renewed his motion to relieve counsel. Randy Chambers, Applicant's trial counsel, informed the trial judge:

> He (Applicant) has summoned me back this morning saying the he needed to talk with me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons (are) more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. **So I think he has created a conflict between us.**
>
> He clearly does not want me to continue as his lawyer and it's my understanding that he wants the Court to grant him a continuance and allow him to hire an attorney...
>
> Tr. 167,l. 6-22 (emphasis added).

Applicant told the judge that he filed a motion to relieve Mr Chambers back in March.TR. 167, l. 24-168.l.1. Applicant then orally renewed his motion to relieve counsel arguing that he and Chambers had a conflict that could not be resolved. Tr. 168, l. 3-170, l. 23. Chambers joined in Applicant's motion stating that he did not believe he could effectively represent him anymore. Tr. 170, l. 24-171, l. 5.

Applicant ultimately move for a continuance so that he could retain other counsel. The trial judge denied the motion for a continuance asserting A Applicant waited until we have impaneled a jury and begun the presentation of evidence. Tr.171, l. 17-173, l.25.

The following colloquy then took place between the trial judge and Applicant:

The Court: You understand that you would be proceeding on your own and you assume certain risks because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.

Defendant McCall: I understand that.

The Court: And are you willing to assume those risks, sir!

Defendant McCall: No, I am not

Tr. 172, l.23-173, l. 6.

As far as the possible appointment of stand--by counsel, Applicant stated, I'm going to leave that up to you, Judge. Tr. 173, l.7-174, l. 5. The judge them ruled: Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him (Applicant) and answer and address any questions that he may have during this trial. Tr. 174, ll. 6-11. A break in the proceedings was then taken. After the break, the judge stated, "I believe the record speaks for itsself with respect to what has transpired. I will state that we conducted a hearing in accordance with **(Faretta) v. California** and I have made a determination tht the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se. Tr. 175,ll, 2-8.

LAW--ANALYISIS
Discussion

The Sixth and Fourteenth Amendments of our Constitution quarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validity convicted and punished by imprisonment. "State V. Cabrera-Pena, 350 S.C. 517,533, 567 S.E.2d 472, 480 (Ct. App. 2002) (quoting Fareta V.California, 422 U.S. 806 (1975) (internal quotation marks omitted). However, an accused may waive the right to counsel and proceed pro se ID. " Although a defendant's decision to proceed pro se may be to the defendant's own detriment, it " "must be honored out of that respect for the individual which is the lifeblood of the law. State V. Reed 332 S.C. 35, 41, 503 SE2d 747, 750 (1989) quoting Faretta, 422 U.S. at 834.

"The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self representation, and makes a knowing and intelligent waiver of the right to counsel." Reed, 332 S.C. at 41, 503 SE2d at 750 (citing Faretta, 422 U.S. at 834). The ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is the defendants understanding." Id. Citing Graves V.State, 309 S.C. 307, 422 SE2d 125 (1992). The only relevant inquiry is whether the defendant has made a knowing and intelligent waiver of the right to counsel." Id. (citing Faretta, 422 U.S. at 834).

In **STATE V.BARNES**, 402 S.C. 27, 31, 753 SE2d 545, 548 (2014) Our own Supreme Court held Barnes should been allowed to represent himself where he "demonstrated an understanding of the process of capital vior dire, stated his intention to pursue a third party quilt defense at trial, and discussed relevant case law, the burden of proof, and his right to testify." Barnes also demonstrated that he had read relevant case law and showed some understanding of the rules of evidence, when questioned by the Judge. Id. at 33, 753 SE2d at 548.

None of these factors in Barnes, which evidenced an intelligent waiver of the right to counsel and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self-representation exist in the record below, before this Court. In short, the Judge informed the Applicant, "that you would assume certain risks because you may not have the knowledge and experience that an attorney can afford you. See Tr. 172, l. 24-173, l. 2. This colloquy was insufficent to satisfy the requirements of Faretta. Moreover the judge wholly failed to inquire into the Applicants background, experence with the criminal justice system, and knowledge of the rules of evidence and relevant case law. Accordinly, the record fails to demonstrate Applicant made a knowing and intelligent waiver of the right to counsel. See REED, 332 S.C. at41, 503 SE2d at 750.

The Applicant believes that he has produced sufficent evidence, to support that his Constitutional Rights were violated. The Applicant believes no purpose would be served to hold an "evidentiary hearing". IN STATE V. DIAL 838 S.C. 501, (Jan29, 2020) The record did not reflect whether the Magistrates Court obtained a valid waiver of defendants right to counsel before proceeding to trial on assault charges and therefor remand was warranted for an evidentiary hearing to determine

whether defendant knowingly and intelligently waived his right to counsel where record did not contain transcripts of defendants pre-trial appearances. In the case at hand, the transcripts are before the Court, and Applicant believes no purpose would be serve in holding an evidentiary hearing. .

The Applicant believes if the State/Respondent wanted to allege Faretta did not apply, and raise an issue of conduct, the case of OSBEY V. STATE 425 S.C. 615, 825 SE2d 48 supports for "any waiver" to be valid there must be a knowingly and intelligent understanding of the dangers and disadvantages of self representation, without such required ingredients the Applicant has been unlawfully incarcerated.

The Applicant believes Summary Judgement is appropriate in this case. And would request the Court to issue sanctions should the Respondent make any frivolous return, why relief should not be granted in Summary Judgement. Because it would only be to hinder or delay the administration of justice. And Civil Remidies and Procedures (F.C.P.S.A.) and S.C. Rules of Professional Conduct prohibits, such fraud, misrepresentation

The Applicant would ask the Court to grant his Motion for Summary Judgement, issue an Order reversing his sentence and Conviction, remand him back for a new trial, finding counsel ineffective for failing to protect his client during Faretta hearing, since he was still counsel until relieved, and issue sanctions if Respondent frivolusly reply's. and or anythihg else the Court see's fit, and appropriate.

CONCLUSION

WHEREFOR, the Applicant prays gracefully that the Court grants him Sumary Judgement issue an Order/Judgement reversing his sentence and conviction, find trial counsel Randy Chambers ineffective, and grant him a New Trial, remanding him back to the lower Court with all haste. Issue Sanctions if Respondent makes any frivolous return as the Court deems just and proper. And take into consideration that COVID 19 is running rapidly within the penal system also.

Columbia, S.C.
Dated 4-24-20

Respectfully Submitted
s Jerry Edward McCall
Jerry Edward McCall #233236
Manning Pre-Release/Re-Entry
502 Beckman Drive
Columbia, S.C. 2920 3

CERTIFICATE OF SERVICE

I, the undersighned have properly served the following Summary Judgement, Affidavit , Statement of The Case, Trial Transcript, [redacted], Certificate of Service, Cover sheet, by placing same in the United States Postal Service Postage Prepaid, Affixed and Forwarded to the addresses below:

Dated 4-24-20

s. Terry E McCall

Terry E. McCall 233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

Office of the Attorney General
Post Office Box 11549
Columbia, S.C. 29211

Paul B. Wickinsimer
Clerk of Court
305 East North Street
Greenville, S,C.
29601

The Supreme Court of South Carolina
Danial Shearouse, Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	C/A# 2020CP2301497
Terry Edward McCall	)	
S.C.D.C.#233236	)	
Applicant,	)	**"APPLICANT'S AMENDMENT"**
	)	
Vs.	)	**TO SUMMARY JUDGEMENT**
	)	
State of South Carolina	)	**REQUEST FOR LEAVE TO**
Respondent,	)	
		AMEND

2020 NOV 27 AM 9:22
Clerk of Court
Greenville, SC

To: The Court,

Now comes the Applicant named above Pro Se' with his Amendment to his Summary Judgement , and request the Court for Leave to amend.

The Applicant amends his Summary Judgement with Numeral (3). and states the following basis.

(3). The Applicant argues he did not have a determination of probable cause by a judicial official as a prerequisite to any extended pretrial detention following his warrantless arrest on 3-4-12.
And alleges that the Fourth Amendment of the United States Constitution Requires this probable cause determination. As well as probable cause determination for arrest without arrest warrant is still controlled by S.C. Code of Laws 22-5-200, **mandates that a person arrested without a warrant should be forthwith carried before a magistrate and a warrant of arrest procued and disposed of as the magistrate shall direct. The Riverside case and Gerstein case establishes that the Fourth Amendment sets a 48 hours as the general constitutional parameter to be followed For a probable cause determination.**

The Applicant never had and arrest warrant issued or served on him in his case. Nor did a magistrate determine probable cause to detain him after (48) hours. The Applicant alleges he is still being held unlawfully where the magistrate for probable cause was taken out of the equation, violation of procedural due process.

And to deny Summary Judgement in this case where counsel never argued this at trial and moved to have the case dismissed based on applicant never received a probable cause determination in (48) hours was ineffective on his part.

And to deny Summary Judgement where the record is clear , that respondent cannot produce and arrest warrant , nor can they show where applicant received in (48) hours a determination of probable cause by a nutruel and detached magistrate, is grounds for granting Applicant Summary Judgement, and releif requested.

WHEREFOR, the Applicant prays the Court grants him Summary Judgement, as the Court deems proper.

Dated 5-19-2020
Greenville,S.C.

s. Terry McCall

Terry MCCall #233236
Manning PreRelease/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

CERTIFICATE OF SERVICE

2020 MAY 27 AM 8:22
Paul McKensimer CLERK SC

I , the undersighned have properly served the parties listed below with the Amended Summary Judgement 2020CP2301497 case by placing it in the United States Postal Service postage prepaid, affixed and forwarded to the addresses below.

Dated 5-19-2020

s. Terry Edward McCall

Terry Edward McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

Office of Attorney General
Post Office Box 11549
Columbia,S.C. 29211

Paul B. Wickensimer
CLerk of Court
305 E. North St.
Greenville,S.C. 29601

The Supreme Court of South Carolina
Daneil Sharouse, Clerk of Court,
Post Office Box 1130
Columbia,S.C. 29211

Terry Edward McCall #233236
Manning Pre-Release/ReEnty
W-8 18-B
502 Beckman Drive
Columbia, S.C. 29203

Dated 6-24-2020

RE: Filing the **Motion for Summary Judgement/Affidavit, Statement of the Case, Exhibits, Certificate of Service, etc.** **Return filed copy back to me for my records , Please**

Dear Clerk of Court,

Find enclosed the Applicant's Summary Judgement and Affidavit, Statement of the Case, Exhibits, and Certificate of Service which needs filed clock -stamped and a copy returned for his records.

And as a Courtesy forward a copy to the Attorney Generals Office, Attorney, Taylor Zane Smith, P.O. Box 11549 Columbia,S.C. 29211-1549.

Sincerely,
s. Terry McCall
Terry McCall, Pro Se'

Please Take Notice that the Court has Granted my Motion to Relieve Counsel Sarah Henry. This can be filed as Pro Se' Litigant. Thank You Kindly .

The Summary Judgement Supersedes Any other summary Judgement Not Filed.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A #2020CP2301497
Terry Edward McCall)	
S.C.D.C.#233236)	
Applicant,)	
)	**AFFIDAVIT OF TERRY EDWARD McCALL**
V.)	
)	
State of South Carolina)	ENTERED COMPUTER
Respondent,)	

FILED
2020 JUN 29 AM 9:16
PAUL WICKENSIMER
CLERK OF COURT
GREENVILLE CO. SC

NOW COMES Terry Edward McCall, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 years, and the statemnets made in this affidavit are based on my personal knowledge.

2. On 3-4-2012 I was arrested by Highway Patrol David McAlhany for Felony D.U.I. and provided a Uniform Traffic Ticket #F-540654.

3. At no time after my initial arrest when taken to the Greenville County Detention Center, Was I never taken before a neutral and detached magistrate for a determination of probable cause in order to detain me over (48) hours, and issue and arrest warrant. This was a violation of Gerstein V. Pugh 420 U.S. 103 (1975). Riverside V. McLaughlin 500 U.S. 44 (1991),Faretta V. California 422 U.S. 806 (1975)

4. At no time when I appeared at my Preliminary Hearing May 12, 2012 was there ever and arrest warrant introduced as the charging document with the facts and grounds for arrest provided to the Court to bind over to the Court of General Sessions, in violation of my Due Process Rights. And never was there and arrest warrant issued and served on the Applicant at this juncture of the proceedings. But the charge was still bound over to General Sessions, That is the Uniform Traffic Ticket which is for magistrate court only.

5. The Grand Jury Indicted the Applicant for Felony D.U. I. great bodily injury off of the Uniform Traffic ticket and not and arrest warrant as required by the S.C.Criminal Rules. This again was a violation of Due Process, and to be treated equally.

6. On May 13, 2015 in Greenville County Courthouse, Judge Robin Stilwell held a **Faretta hearing** when hearing Applicants Motion to relieve counsel.

7. During this hearing Judge Stilwell failed to advise the Applicant of the disadvantages and dangers of proceeding pro se', and did not inquire into the Applicants education background, experience with the S.C. Rules of Criminal Procedure, S.C. Rules of evidence, Vior Dire, and his experence in the Courtroom. Therefor the Applicant did not make an intelligent and knowingly waiver of counsel.

8. These two violations are mandatory reversals, and cannot be avoided given to the Applicant. Because they are both violations of the United States Constitution, Which could vacate the Conviction and Sentence, or Reverse and remand Applicant to the lower Court for a New Trial.

SEE: Faretta V. California 422 U.S. 806 (1975).
Gerstein V. Pugh 420 U.S. 103 (1975).
Riverside V. McLaughlin 500 500 U.S. 44 (1991)

9. Attached to this Affidavit is a true copy of the trial transcript, partial transcript, Summary Judgement, Statement of the Case, Uniform Traffic Ticket, Indictment, Preliminary Hearing Letter from Court, etc.

FURTHER AFFIANT SAYETH NOT.

Sworn to and Subscribed before me
this 3rd day of JUNE, 2020.

s/ Terry Edward McCall
Terry Edward McCall

Notary Public Shamekia T. Hart

My Commisson Expires
20 April 2028

STATEMENT OF THE CASE

On 3-4-2012 the Applicant was arrested for Felony D.U.I. on a Uniform Traffic ticket #F540654, and was taken to the Greenville County Detention Center where his bond was set at 50,000 dollars. The Applicant was never provided his Fourth Amendment right to a prompt determination of probable cause by a judicial official as a prerequisite to any extended pretrial detention following a warrantless arrest. No arrest warrant was ever issued by a magistrate to detain the Applicant over (48) Hours as in the case of **Gerstein V. Pugh Et Al. 420 U. S. 103 (1975).** The Applicant was later taken to a Preliminary Hearing held May 12, 2012. And the Court's ruling was to bind the charge over to General Sessions, for Grand Jury action. The Grand Jury indicted the Applicant on February 19, 2013, for Felony D.U.I., great bodily injury. The case was called for trial on May 12, 2015 before the Honorable Robin Silwell, and a jury.

Assistant Solicitors Sara Lee Drawdy and Stan Overby represented the State, and Randall Chambers represented the Applicant. On the morning of the second day of trial, Judge Stilwell granted Applicants Motion to Relieve Counsel, but denied his Motion for a Continuance. Consequently, Applicant proceeded pro se", Jake Erwin was appointed as standby counsel Tr. 175, 11. 10-12 On May 14, 2015, the jury found the Applicant guilty as indicted. Tr. 382, 1. 24-383, 1.6. Applicant was sentenced to (15) fifteen years imprisonment. Tr. 288, 11. 19-23.

On May 20, 2015 Applicant timely filed Notice of Appeal. The Office of Appellate Defense undertook representation of Applicant and requested the trial transcript. Over a year later, the Office of Appellate defense recieved an incomplete transcript. At a minimum, the transcript was missing the complete testimony of six witnesses and the partial testimony of two witnesses. On September 29, 2016 Applicant filed a Motion with this Court seeking to remand his case to the trial Court to reconstruct the record. By Order filed on November 4, 2016 the Court granted Applicants Motion and remanded the case.

On March 14, 2017 a hearing was held in Greenville County before Judge Stilwell to reconstruct the record. Assistant Solicitors Sara Lee Drawdy, Stan Overby, and Judy Munson represented the State.

and Appellate Defender John Strom represented Applicant. At the begining of the hearing, Applicant moved to have the Assistant solicitor who represented the State at trial recussed because they were witnesses for purposes of the reconstruction hearing, Judge Stilwell orally ruled the record of Applicant"s trial had been sufficiently reconstructed to allow for meaningful appellate review.

Terry Edward McCall

The End

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THRITEENTH JUDICIAL CIRCUIT
)	C/A # 2020CP2301497
Terry Edward McCall)	
S.C.D.C.#233236)	
Applicant,)	
)	"APPLICANTS MOTION FOR"
V.)	
)	"SUMMARY JUDGEMENT"
State of South Carolina)	
Respondent,)	

FILED-CLERK OF COURT
PAUL BRYAN WICKENSIMER
GREENVILLE CO. SC
2020 JUN 29 PM 2:40

To: The Court,

Pursuant to S.C.R.C.P. Rule (56) and S.C. Code of Laws 17-27-70 (c) in conjunction with Aice V. State 305 S.C. 448, 409 SE2d 392 (1991). The P.C.R. Court **may grant a Motion for Summary Judgement to either party. Where** there is no genuine issue of material fact and the mov[illegible]g party is entitled to judgement as a matter of law. The Applicant hereby moves this Court to issue a judgement granting him Summary Relief. Motion is based on trial transcript, Affidavit, Pleadings, Uniform traffic ticket, Indictment.

ARGUMENT

The Applicant alleges his Fourth Amendment Right was violated when he was denied a judicial hearing of probable cause to be decided by a neutral and detached magistrate as a condition for any significant pretrail restraint of liberty, as a prerequisite to any further detention after (48) hours pursuant to **Gerstein V. Pugh 420 U.S. 103 (1975).** . The Applicant alleges he was initally arrested on a Blue Uniform Traffic ticket # F-540654 which did summon him before a Magistrate. But never did the Magistrate decide if there was probable cause to warrant further detention, nor did the Magistrate issue and arrest warrant finding probable casue . The Magistrate was taken out of the equation for determing a probable cause hearing, and this violated the Applicants Fourth Amendment Rights, And this also violated the States S.C. Code of Law section 22-5-200 , which requires that "(w)hen an arrest is made by a deputy sheriff without a warrant pursuant to 23-13-60 the person so arrested should be **forthwith** carried before a magistrate and a warrant of

arrest procured and disposed of as the Magistrate shall direct. The issuance of an arrest warrant after arrest serves informational and administrative purposes. It protects the Police officer from prosecution under 17-13-50 which provides that it is a criminal offense for an arresting officer not to inform the arrested person of the grounds for arrest. It constitutes the charging paper in a magistrate of municipal court and informs the defendant of the charges against him.

A prosecutor "shall not institute or cause to be instituted criminal charges when he/she knows it is obvious that the charges are not supported by probable cause. When Solicitor, Sara Lee Drawdy continued to go forward at a preliminary hearing held May 12, 2012 with the charge of Felony D.U.I., knowing that no Magistrate had made a probable cause determination as to issuing an arrest warrant for further detention after (48) hours pursuant to Gerstein, and knowing that no probable cause had been determined to pursue the charge any further. Can only be said as having Malice toward the Applicant to prosecute him further without probale cause, or arrest warrant which is needed to bind the charge over to General Sessions. This type conduct by Sara Lee Drawdy to ignore the Rules of the Court and the United States Constitiution should not be allowed, nor should any conviction prosecuted in this manner be allowed to stand.

The Applicant alleges that his Attorney Randall Chambers was totally ineffective for failing to object and argue that his client, Applicant had been deprived of his right to due process where he was held over (48) hours in violation of Gerstein case. And not released as he should have been where no arrest warrant was ever procured to detain him further than (48) hours. Also he was ineffective for failing to file a Motion to have Applicant released explaining to the Court that no warrant was issued to detain his client any further than (48) hours, Or attempted to contact the Administrator of the Jail and explained to him that his client was being unlawfully detained and arrest warrant should be issued by a Magistrate or the Jail must release his client immediately. This never happened and this was deficent on his part. Furthermore Randall Chambers could have argued at the "Bond Hearing" or "preliminary hearing" that (48) hours had past and the State was in violation of Gerstein, but he choose not too. This again was ineffective on his part to defend me properly and protect me.

The Applicant argues that when there never was a probable cause determination made by the arresting officer in his case, and never and arrest warrant issued upon affidavit finding probable cause existed to detain Applicant longer than (48) hours this was a violation of his Fourth Amendment rights, pursuant to Gerstein V. Pugh 420 U.S. 103 (1975), County of Riverside V. McLaughlin 500 U.S. 44 (1991) .

The Applicant alleges that a policemans on the scene assessment of probable cause provides legal jusification for arresting a person suspected of a crime, and for a **Brief** period of detention to take the administrative steps incident to arrest. Beyond this detention however the Fourth Amendment requires a Judicial determination of probable cause as prerequisite to **"any"** extended restraint on liberty **/ detention fore than (48) hours.**

In this case at hand because there was never a judicial determination made by a magistrate, and no arrest warrant issued, and served on the Applicant for Felony D.U.I. , the actions taken by the arresting officer were absent probable cause. And the Applicant should have never been held past the adminstrative steps incident to his arrest. And to have issued a original $50,000 dollar Bond for the charge of Felony D.U.I. written on a Uniform Traffic Ticket and continue to hold the Applicant because he could not make bail, violated his rights to be treated equally as others where never and arrest warrant has been issued, they were let go without having to post any amount of bail. The Applicant argues that #50,000 dollars is more than can be placed on a Uniform Traffic ticket, only #500.00 dollars seems to be the max.

The Applicant argues this whole process that took place with him was a gross miscarriage of justice, violation of Procedural due process, Due Process, Equal Protection of the laws violations, and could have been prevented had his counsel just contacted the jail administrator, filed a Motion with the Court to have his client released, where no probable casue existed, and no arrest warrant was ever procured to detain his client any further than (48) hours. But Randall Chambers failed to do anything to help get his client released, and he had oppertunity after oppertunity even at the bond reduction hearing, and at the preliminary hearing and he failed.

No probable cause ever existed. And as to the State holding a preliminary hearing without and arrest warrant. The only thing to be decided at a preliminary hearing is; Whether or not there is probable cause to support the allegations contained in the arrest warrant. The magistrate may do one of the two things. (1). dismiss the warrant for lack of probable cause or (2). send the matter to the County of general Sessions for handling . State V. White 243 S.C. 238, 133 Se2d 320

In the case at hand there never was and arrest warrant issued no probable cause determined by a magistrate, to even hold the applicant past 48 hours. So how could the State proceed with a preliminary hearing, without and arrest warrant. And how can probable cause be determined at this preliminary hearing and found and the invisable charge bound over. And where is due process of the Court without and arrest warrant first of all.

This type procedure violates everything due process stand for. The Applicant believes the only remedy for this type violation of procedural due process is to vacate the conviction and immediately set the applicant free, because to continue to hold him unlawfully increases the burden for the State.

The Applicant would like to ask the Court to read S.C.A.G. opinion 1972 W L 25429 Aug. 15, 1972 WHich he cites at the top of the page concerning preliminary hearings.

The Applciant would ask the Court to read the S.C.A.G. opinion 1974 W L 27597 which talks about all arrest warrants are to be forwarded to the Solicitors Office in (24) hours after the Preliminary Hearing. This never happened, again in violataion of the S.C. Crim. Rules 1, 2, 3,

The Applicant argues that any evidence procured from the unlawful arrest where no probable cause ever was determined, should have been excluded from the trial. Because it was the fruit of the poisonous tree doctrine, and tainted the whole trial, And trial counsel was ineffective for failig to move to suppress this evidence at trial or before trial.

The Applicant cites Robert M. Bayly V. State 397 S.C. 290 (2012) 724 SE2d 182, and State V. James Ervin Ramsey 77 SE2d 429 (2013) The Applicant alleges that Section 56-7-10 eliminates the need for an arrest warrant and authorizes the use of a umiform traffic ticket to notify an accused and commence judicial proceedings in the magistrate court . The Court found that it is not the sevice of the uniform traffic ticket that confers subject matter jurisdiction to the magistrate but, rather, the General Assembly's purposleful idenification of "certain offeses" for which the magistrate is authorized to hear and dispose of .Felony D.U,I. is not one of the magistrate Court traffic violations punishable in magistrate court.

The Applicant alleges that the issuance of a uniform traffic ticket merely summons the accused person to appear before a magistrate, where he may submit any contention relative to the preservation of his rights. Use of a uniform traffic ticket is authorized for offenses " commtted" in the presenceof a law enforcement officer if the punishment is within the jusrisdiction of magistrates court and municipal courts. The jurisdiction of magistrates court is limited to those offeses subject to fines or forfeitures not exceeding "five hundred" dollars, imprisonment not exceeding (30) thirty days or both. S.C. Code of Laws 22-3-550(A)(Supp.2011). Thus , a uniform traffic ticket may be issued for any offense that is both committed in the presence of a law enforcement officer and subject to a maximum penalty of no more than (30) thirty days imprisonment and a five hundred dollar fine. This was a Felony D.U.I punishment and fine greater than magistrate Court.

The Applicant argues that service of the uniform traffic ticket for Felony D.U.I. could not have commenced proceedings in magistrate Court if the officer did not see the offense being committed. The officer stated, arresting officer that is, that he came up to the scene later after the accident happened , and did not see the accident occurr

The Applicant argues that where evidence such as blood draw, unine draw and testing, statements from witnesses and Applicant were procured from arrest, where no probable cause ever existed, should have been excluded from the trial. ANd without it excluded, the trial was tainted, with fruit of the posionous tree . Therefor Counsel was ineffective for failing to argue this. Where evidence had been procuered growing out of arrest, where no probable cause ever was determined by a magistrate or arrest warrant issued violated the Applicant right to due process and a fair trial. In short there should never had been a trial. 5. No probable cause ever existed.

ARGUMENT

The Applicant alleges his Sixth Amendment Right to Counsel was violated when the trial Court granted his Motion to relieve counsel without conducting a proper hearing pursuant to **Faretta V. California 422 U.S. 806 (1975)** or advising Applicant of the disadvantages and dangers of self representation. Trial counsel, Randall Chambers was ineffective for failing to object to such Constitutional Depriviations. **See: also Osbey V. State 425 S.C. 615, 825 Se2d 48 even waiver by conduct requires a proper hearing pusuant to Faretta.**

How The Issue Was Presented Below

Applicant filed a **pro se'** motion to relieve counsel on March 27, 2015, approximately **six weeks before trial.** For whatever reason, ahearing on Applicant's motion was never heard. On the second, morning day of trial, Applicant renewed his motion to relieve counsel. Randy Chambers, Applicant's trial counsel, informed the trial judge:

> He (Applicant) has summoned me back this morning saying the he needed to talk with me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons (are) more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. **So I think he has created a conflict between us.**
>
> He clearly does not want me to continue as his lawyer and it's my understanding that he wants the Court to grant him a continuance and allow him to hire an attorney...
>
> Tr. 167,l. 6-22 (emphasis added).

Applicant told the judge that he filed a motion to relieve Mr Chambers back in March.TR. 167, l. 24-168.l.1. Applicant then orally renewed his motion to relieve counsel arguing that he and Chambers had a conflict that could not be resolved. Tr. 168, l. 3-170, l. 23. Chambers joined in Applicant's motion stating that he did not believe he could effectively represent him anymore. Tr. 170, l. 24-171, l. 5.

Applicant ultimately move for a continuance so that he could retain other counsel. The trial judge denied the motion for a continuance asserting A Applicant waited until we have impaneled a jury and begun the presentation of evidence. Tr.171, l. 17-173, l.25.

The following colloquy then took place between the trial judge and Applicant:

The Court: You understand that you would be proceeding on your own and you assume certain risks because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.

Defendant McCall: I understand that.

The Court: And are you willing to assume those risks, sir!

Defendant McCall: No, I am not

Tr. 172, l.23-173, l. 6.

As far as the possible appointment of stand-by counsel, Applicant stated, I'm going to leave that up to you, Judge. Tr. 173, l.7-174, l. 5. The judge them ruled: Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him (Applicant) and answer and address any questions that he may have during this trial. Tr. 174, ll. 6-11. A break in the proceedings was then taken. After the break, the judge stated, "I believe the record speaks for itsself with respect to what has transpired. I will state that we conducted a hearing in accordance with **(Faretta) v. California** and I have made a determination tht the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se. Tr. 175,ll, 2-8.

LAW--ANALYISIS
Discussion

The Sixth and Fourteenth Amendments of our Constitution quarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validity convicted and punished by imprisonment. "State V. Cabrera-Pena, 350 S.C. 517,533, 567 S.E.2d 472, 480 (Ct. App. 2002) (quoting Fareta V.California, 422 U.S. 806 (1975) (internal quotation marks omitted). However, an accused may waive the right to counsel and proceed pro se ID. " Although a defendant's decision to proceed pro se may be to the defendant's own detriment, it " "must be honored out of that respect for the individual which is the lifeblood of the law. State V. Reed 332 S.C. 35, 41, 503 SE2d 747, 750 (1989) quoting Faretta, 422 U.S. at 834.

"The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self representation, and makes a knowing and intelligent waiver of the right to counsel." Reed, 332 S.C. at 41, 503 SE2d at 750 (citing Faretta, 422 U.S. at 834). The ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is the defendants understanding." Id. Citing Graves V.State, 309 S.C. 307, 422 SE2d 125 (1992). The only relevant inquiry is whether the defendant has made a knowing and intelligent waiver of the right to counsel." Id. (citing Faretta, 422 U.S. at 834).

In **STATE V.BARNES, 402 S.C. 27, 31, 753 SE2d 545, 548 (2014)** Our own Supreme Court held Barnes should been allowed to represent himself where he "demonstrated an understanding of the process of **capital vior dire, stated his intention to pursue a third party quilt defense at trial, and discussed relevant case law, the burden of proof, and his right to testify." Barnes also** demonstrated **that** he had **read relevant case law and showed some understanding of the rules of evidence,** when questioned by the Judge. Id. at 33, 753 SE2d at 548.

None of these **factors in Barnes,** which evidenced an intelligent waiver of the right to counsel and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self-representation exist in the record below, before this Court. In short, the Judge informed the Applicant, "that you would assume certain risks because you may not have the knowledge and experience that an attorney can afford you. See Tr. 172, l. 24-173, l. 2. This colloquy was insufficent to satisfy the requirements of Faretta. Moreover the judge wholly failed to inquire into the Applicants background, experence with the criminal justice system, and knowledge of the rules of evidence and relevant case law. Accordinly, the record fails to demonstrate Applicant made a knowing and intelligent waiver of the right to counsel. **See REED, 332 S.C. at41, 503 SE2d at 750.**

The Applicant believes that he has produced sufficent evidence, to support that his Constitutional Rights were violated. The Applicant believes **no purpose would be served to hold an "evidentiary hearing". IN STATE V. DIAL 838 S.C. 501, (Jan29, 2020) The record did not reflect** whether the Magistrates Court obtained a valid waiver of defendants right to counsel before proceeding to trial on assault charges and therefor remand was warranted for an evidentiary hearing to determine

whether defendant knowingly and intelligently waived his right to cousel where the record did not contain transcripts of defendants pre-trial appearances. The case at hand, the transcripts are before the Court. And the Applicant believes no purpose would be served in holding a evidentiary hearing.

The Applicant believes where the trial counsel failed to protect him, when failing to request the Jail Administrator release his client where there had not been a probable cause determination made by a Magistrate to detain him any longer than (48) hours pursuant to Gersein, violation of the United States Constitution. And where counsel failed to file a Motion to the Court to have the charge dismissed based on, his client had not had a probable cause determination made against him, and no arrest warrant had been issued and served upon him to detain him longer than (48) hours, was ineffective on counsel, Randall Chambers part. And the Applicant was prejudiced by this deficent performance, by being held unlawfully without probable cause, and arrest warrant until today.

The Applicant believes that trial counsel was also ineffective when he failed to object to to the trial Judges failure to advise the Applicant of the type of disadvantages and dangers he faced as proceeding pro se' , as to inquiring into the Applicants Court proceeding experience such as what he knew about the S.C.Crim Rules, Rules of Evidence, Applicants education background, etc. When counsel failed to do such, the Applicant was prejusdiced by this failure. Had trial counsel had the Court to explain the required pro forma questions and inquired into them to the Applicant, then the Applicant would have not relieved his trial counsel, and the outcome could have been different possibally. Because the Applicant did not have the legal educaton and experence needed to conduct his on trial, as his counsel did. The Court erred and trial counsel erred not advising the Court that his client had not made and knowingly and intelligentlwaiver of counsel.

The Applicant believes Summary Judgement is appropriate in this case. And would caution the Court that if the Respondent makes any frivolous return, that the Civil Remidies and Procedures (F.C.P.S.A.) and S.C. Rules of Professional Conduct prohibits,such fraud, and misrepresentation.

The Applicant ask the Court to grant his Motion for Summary Judgement, issue an Order reversing his sentence or vacating his sentence, and reverse or vacate his conviction, and remand him back to the lower Court or Release him immediately where there was no arrest warrant to ever hold him beyond (48) hours.

CONCLUSION

WHEREFOR, the Applicant **gracfully prays** that the Court grants him Summary Judgement, and issue and Order reversing or vacating his sentence and conviction, releasing him immediately, or at the least remanding him back to the lower Court. And issue sanctions if Respondent makes any frivolous return. The Applicant would ask the Court to keep in mind that he is faced with and irreparable injury and no other remidye of law is availible to him at this time as to being held unlawfully in prison where the Corona Virus is rapidly spreading, and the prison has noway of social distancing its inmates, and have no proper P.P.E. equipment availible for the Applicant to protect himself from this deadly virus. The Applicant prays the Court takes into the consideration of the threat he is faced with, from this covid 19, and issue its Order as see's fit.

Dated 6-24-2020
Greenville,S.C.

S. Terry E McCall

Terry E. McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

CERTIFICATE OF SERVICE

I, the undersighned have properly served the following Prelim Letter, Summary Judgement, Affidavit , Statement of The Case, Indictment Trial Transcript, Ticket, Certificate of Service, Cover sheet, by placing same in the United States Postal Service Postage Prepaid, Affixed and Forwarded to the addresses below:

Dated 6-24-2020

s. Terry E. McCall

Terry E. McCall 233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

Office of the Attorney General
Post Office Box 11549
Columbia, S.C. 29211

Paul B. Wickinsimer
Clerk of Court
305 East North Street
Greenville, S,C.
29601

The Supreme Court of South Carolina
Danial Shearouse, Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

Greenville County

Department of Public Safety
Records Management Services Division

Jinny Moran, Captain
County Records Manager
(864) 467-5211
jmoran@greenvillecounty.org
www.greenvillecounty.org

July 26, 2018

RE: Terry Edward McCall
DOB: [redacted]
SSN: [redacted]

Ticket # **F540654**

To Whom It May Concern:

This letter is to verify that Terry Edward McCall was incarcerated in the Greenville County Detention Center on the following dates for the above ticket number:

03/04/2012 – 06/09/2012
04/08/2014 – 04/17/2014 (Bondsman Off Bond)
02/28/2015 – 05/15/2015 (Bondsman Off Bond)

The above dates are for that ticket number only and should NOT be used in the calculation of any jail time credits due to his arrest on other charges during some of the time frames.

Please feel free to contact me at 864-467-2340 if you have any questions or need additional information.

Sincerely,

BGregory

B. Gregory, Accounting Specialist

cc: Terry Edward McCall

GREENVILLE COUNTY
DETENTION CENTER
RECORDS DIVISION
CERTIFIED COPY
02·20·20 BG
Current Date

Rev. 9/10 SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY 5005

UNIFORM TRAFFIC TICKET

3-7-12

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
Terry	Edward	McCall

STREET AND NO. [redacted] CITY Greenville STATE SC ZIP CODE 29611

STATE LICENSED: SC | DRIVER'S LICENSE NO. [redacted] | CDL: ☐ YES ☒ NO | BUS LIC CLASS: D

VEH. LIC. NO. [redacted] | STATE: SC | MAKE OF VEH: Ford | YEAR: 99 | COMM VEH: ☐ | AUTO: ☒ | MTRCYCL: ☐ | COMB: ☐ | HAZ. MT: ☐ | MOPED: ☐ | MTRCYCL: ☐ | OTHER: ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: Traffic Court | STREET AND NO: 280 Wade Hampton

DATE OF TRIAL: 3 21 20 12 | TIME OF TRIAL: 9:00 | CITY: Taylors | STATE: SC | ZIP CODE: 29687

VIOLATION - COURT APPEARANCE REQUIRED: (YES) NO: Felony DUI | VIOLATION SECTION NO: 56-5-2945

OWNER OF VEHICLE: Terry McCall | DATE OF ARREST: 3 4 20 12

ADDRESS OF OWNER: Greenville SC | DATE OF VIOLATION: 3 4 20 12

BAIL DEPOSITED: Jail | NAME OF ARRESTING OFFICER: DC McAlhany | RANK: PFC

DESCRIPTION OF ACCUSED: RACE W | SEX M | [redacted] | HT 5'10 | WT 215 | EYES BRO | COUNTY: Greenville | NUMBER: 23

DATE BAIL REC'D: 20 | BY: | BADGE: 818 | TROOP: 3

CASE BEFORE: MAGISTRATE ☐ MUN COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE:

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION: NOLLE PROSSED ☐ FORFEITED BOND ☐ GUILTY ☐ PLED NOLO CONTENDERE ☐

TRIAL BY: TRIAL JUDGE ☐ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ | DATE OF TRIAL IF ANY: 20

JAIL	SUSPEND	FINE	AMT COLLECTED	AMT SUSPENDED

COMMITTED TO: | Vehicle Searched: N | Arrest at Request of Defendant: Y

CERTIFIED CORRECT: | DATE: 20

DOCKET NO: F 540654

DAY: S M T W T F S = X

TIME OF VIOLATION MILITARY TIME: 1750 | WEATHER: C

I U D S O: 1 2 3 4 5 | HWY NO: 291

MILES: 2 | N X E S W: 1 2 3 4 | CITY: Greenville | CODE: 1

Lat: ° ' "

Long: ° ' "

OFFENSE CODE: 99 | BLA LEVEL: Pending

DRIVER'S RECORD COPY

County of Greenville

Donna Bearden
Preliminary Hearing Coordinator

January 8, 2020

Terry McCall #233236
Manning Correctional
502 Beckman Drive
Columbia SC 29203

Dear Mr. McCall:

I am in receipt of your letter dated December 13, 2019.

You state you are inquiring about a probable cause determination hearing. My records show that hearing was held May 12, 2012. The judge's ruling was to bind the case over for grand jury action. Please note this was not your trial. Only a probable cause hearing.

The remainder of your letter pertains to prolonged detention without a warrant. You were served a uniform traffic ticket on the charge of Felony Driving Under the Influence with Great Bodily Injury with a $25,000 bond.

The only involvement I have in this case was to schedule the preliminary hearing. I will not be able to answer other questions mentioned in your letter.

I hope this information will be helpful to you.

Donna Bearden
Preliminary Hearing Coordinator
Greenville County Courthouse

763

WITNESSES

D E Mcalhany

S. C. Highway Patrol RS

3/4/2012

ARREST WARRANT NUMBER
F540654

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty
5/14/15

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-
SLD

0[illegible]2

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2012 2013

THE STATE

vs.

TERRY EDWARD MCCALL

Indictment for

0406

FELONY DUI (RESULTING IN GREAT BODILY INJURY)

VIOLATION § 56-05-2945

ENTERED
ACCT

RECEIVED

DEC 2 1 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FELONY DUI (RESULTING IN GREAT BODILY INJURY)

At a Court of General Sessions, convened on FEB 19 2013 the Grand Jurors of Greenville County present upon their oath:

That TERRY EDWARD MCCALL did in Greenville County, on or about the 4th day of March 2012, drive a motor vehicle while under the influence of drugs, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: the defendant failed to exercise due care and/or drove an unsafe vehicle on a highway and/or drove too fast for conditions and/or crossed the center median and/or drove into the oncoming lane of travel striking another vehicle, which acts and/or neglect proximately caused great bodily injury to ROBERT LAGRANDE SUDDUTH. This is in violation of §56-5-2945 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.

Sara Lee M Rawls
SOLICITOR

Greenville County
13th Judicial Circuit
Public Index

Switch View

State of South Carolina vs Terry Edward Mccall

Case Number:	F540654	Court Agency:	Greenville General Sessions	Filed Date:	03/08/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Garrett, Charles R.	Disposition Judge:	Stilwell, Robin B.
Disposition:	Trial Guilty				
Disposition Date:	05/14/2015	Date Received:	03/07/2012	Arrest Date:	03/04/2012
Law Enf. Case:	SCHP	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2012GS2310242	Waiver Date:	
Probation Case:					

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Chambers, R.					Defendant Attorney		04/02/2012
Drawdy, SaraLee Meador	305 E. North St. Ste. 325 Greenville SC 296012185				Solicitor		07/30/2014
Hiskell, C					Court Reporter		05/14/2015
Kellett, Michael Travis - Roche Surety	P O Box 5511 Bail Out Bonding Greenville SC 29611		M		Bond Entity		03/03/2015
Mcalhany, D E					Officer		03/08/2012
Mccall, Terry Edward	[redacted] Greenville SC 29611-4465	White	M	1959	Defendant		05/15/2015

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Mccall, Terry Edward	0406-DUI / Felony driving under the influence, great bodily injury results	0406-DUI / Felony driving under the influence, great bodily injury results	05/14/2015

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	15 years						

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents

See pg 50 to support Affidavit McMahaney

STATE OF SOUTH CAROLINA	:	COURT OF GENERAL SESSION
	:	2012-GS-23-10242
State of South Carolina	:	
--	:	TRANSCRIPT RECORD
vs	:	
Terry Edward McCall	:	
	:	

May 12, 2015 - Day 1
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

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

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Randy Chambers, Esquire
Jake Erwin, Esquire
Terry McCall, Pro se

pg 41 line (V) no conversation very minimal

Caroline Hiskell
Thirteenth Circuit Court Reporter

It only took 15-20 minutes to take witnesses statements. So Time could be untimely

pg 29 (30) ultime collection chain of custody

41, 42, 43, 50

154-162 get copied

State versus McCall

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Take your seats, ladies and gentlemen, good morning, I hope everyone is doing well today.

Let's go ahead and call to the bar the State of South Carolina versus Terry Edward McCall. This comes before the Court pursuant to charges of driving under the influence, felony DUI with great bodily injury.

Ms. Solicitor, I'd be happy to hear from you.

MS. DRAWDY: At this time we would ask that you arraign the defendant on his indictment. I have copy that can be handed to him.

THE COURT: Have you served the defendant with this?

MS. DRAWDY: I'm serving it now. His counsel has been provided with copies previously.

THE COURT: Let the record reflect that the defendant has been served with a copy of the indictment.

Mr. Chambers, do you waive a formal arraignment, sir?

MR. CHAMBERS: Your Honor, I do waive formal arraignment but I do have a motion to make at the appropriate time.

THE COURT: I understand and I certainly wouldn't preclude you from making any motions relative to the sufficiency or appropriate necessity of the indictment. As you know it's going to take me five minute to go through a formal arraignment and a lot of that is entirely academic in being we have arrived at the point of trial.

MR. CHAMBERS: That's true, Your Honor.

THE COURT: It's my understanding that there are motions that each side has to put into the record and therefore I'll defer to counsel and I will hear you on those motions.

MR. CHAMBERS: The first motion that I have, your Honor, is with the indictment itself. We believe that the solicitor proceeded in a fashion that is contrary to the rules, and as such we ask that that indictment that was just served on my client be quashed and that this case be dismissed with prejudice.

1st Motion Indictment

This is a felony DUI, clearly a general sessions offense. The officer at the time he went out and worked the accident and then went to the hospital and made a determination that he believed there was probable cause to charge my client. Rather than go through a neutral and detached magistrate, he simply wrote a traffic ticket and then they arrested my client on that basis.

We believe that is illegal and certainly contrary to the rules and certainly should not have been done that way.

The Rule 1 of the South Carolina Rules of Civil procedure even talk about the fact that warrant, not a ticket but a warrant, is supposed to be transmitted to the Solicitor's Office. That was never done in this case. So his arrest at the outset we believe is unconstitutional and should not have taken place and was not pursuant to an arrest warrant.

Now, obviously the solicitor was free at any point if the wanted to to pursue a direct indictment and I supposed it's their position is what they just done, but at no point prior to trial was my client ever served. They're serving him now on the day of trial and, of course, this indictment references the traffic ticket that we believe to be contrary to the rules.

For all those reasons we would ask the Court to quash that indictment and just dismiss these charges with prejudice because my client has been sitting in jail for over a year now. These things could have been done in a much more timely fashion. He could have had the time to review that indictment and to have been prepared for it. None of those things were done.

It's our position that serving it now is

trying to make up for a mistake that they made and they not be, at this late date, allowed to do that. That's our position, Your Honor.

THE COURT: Okay, good enough. Solicitor.

MS. DRAWDY: Your Honor, to begin with this individual Mr. McCall has not been in jail on this charge for over a year. He has been in and out of jail in Greenville and Pickens County for the past three years since his arrest and the time that he bonded out on this charge. So he has not been sitting in jail on this charge.

Section 56-7-10 specifically authorizes any traffic offense to be placed on a uniform traffic ticket which is what the officer did in this case. It is authorized. Rule 1 does not change that.

Furthermore, the True Bill by the grand jury they saw the same evidence they would have seen had it been on a warrant. The same evidence was presented to them and they have found probable cause. So it is common practice and has been and I'm sure Your Honor is aware throughout the State for felony DUI charges to be initiated on a uniformed traffic ticket. It's simply not a procedural problem in this case and certainly not a due process right.

THE COURT: Is the charge on the ticket the

very same charge that is on the indictment that was True Billed to the grand jury?

MR. OVERBY: I have a copy I can pass up to the Court. It has a code section and it only says felony DUI and we would assert that because this is great bodily injury that is the least charge that could be charged. So we have not upgraded it.

THE COURT: I understand.

MR. OVERBY: I'll pass that up as a Court's Exhibit.

(Indictment marked as Court's Exhibit No. 1 for identification.)

THE COURT: Mr. Chambers, you may respond.

MR. CHAMBERS: Your Honor, it is our position this is more than just a mere traffic ticket. It certainly carries more than 30 days. In fact, it carries up to 15 years in prison. And you can see obviously a warrant that had gone through a neutral magistrate would have some description of what they were actually alleging, and the officer here has simply written in felony DUI. It doesn't have any description about the facts.

I would just reiterate our position that the arrest in this case itself was illegal. It shouldn't have been done based on the warrant. It's late service and arraignment on this indictment is too little too late and

we would again as that the Court to quash the indictment and dismiss the case.

THE COURT: When was the indictment handed down?

MR. OVERBY: Your Honor, it was True Billed in February 2013.

THE COURT: Was Mr. Chambers given a copy of that indictment?

MR. OVERBY: Not at that time. It is not our practice to do that. It's a matter of public record in the Clerk's Office. He did ask for a copy of it last week and we did provide it to him promptly.

THE COURT: I'm going to respectfully deny the motion. I do not think that is failed for the charges to initiate upon a uniformed traffic citation. I do find that subsequently, of course, it was True Billed by the grand jury and then keeping with appropriate procedure.

It is somewhat unusually that it would have been served at this later day, however, the substance of the charges were known from inception. That it was a felony DUI which suggests by definition that someone had been hurt as a consequence of operating a motor vehicle, allegedly, in an altered or impaired state.

I don't see and there has been no

5-1-15 Visited Jail No Indictment served yet

Randy should have objected and argued. Felony DUI suggest more than someone must suggest death in the subject car which was never listed

articulation of prejudice that visits upon the defendant as a consequence of the ticket or as a consequence of the indictment having been served today.

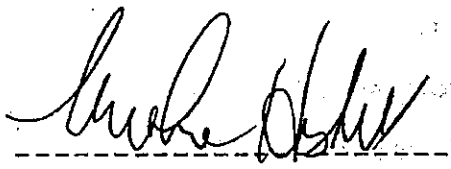
I don't see how there was anything that was not disclosed relative to the charges relative to the trial that was coming forward today, therefore, on all those basis I respectfully deny the motion.

MR. CHAMBERS: Your Honor, the other motions I have pretrial involves blood evidence that the solicitor, I believe, intends to admit. In this particular case, my client as well as Mr. Suddeth who was unfortunately injured in this wreck were both extricated from their automobile by emergency personnel, transported to the hospital for treatment. My client was somewhat ambulatory and was able to talk to the officer when he got there. It was certainly not a medical necessity for taking any kind of blood test rather than a breath test, but when the officer got to the hospital at some point, he required my client to first submit to a urine test which came back negative for any kind of drugs, but then took a blood test and we're asking to suppress the results of that.

The first issue that we have with that is my client -- first of all there was no probable cause to ask for that. At the time this accident in the making of this

I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Court of General Sessioons, Greenville County, this 12th day of May, 2015.

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



Caroline Hiskell

STATE OF SOUTH CAROLINA	GENERAL SESSION 2012-GS-23-10242
--	TRANSCRIPT RECORD
vs	
Terry McCall	

May 13, 2015 - Day 2
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

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

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Jake Erwin Esquire
Randy Chambers, Esquire
Attorney for the Defendant

Caroline Hiskell
Thirteenth Circuit Court Reporter

I N D E X

WITNESSES	DIR	CR	RED	REC
Sally Clark	180			
James Jones	184			
Ryan Freeman	200	206		
Wes Hiatt	208	215		
David MacAlhaney	218	236		
Ashley Norman	240	247	247	
Dan Bannister	252			
Luke Perry	255			
Sgt Rivers	257			
Amy Stevens	261			
Wendy Bell	266	268		
Marybeth McCormick	269			
Carmen Tucker	273			
Shanna Sorrells	282	297	299	

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Thank you. Caroline, let me know when you're record.

We're back on the record and Mr. Chambers, I believe you indicated Mr. McCall has a motion.

MR. CHAMBERS: I'll repeat what I said earlier and then I'll turn it over to Mr. McCall. He has summoned me back this morning saying that he needed to talk to me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. So I think he has created a conflict between us.

He clearly does not want to me to continue as his lawyer and it's my understanding that the wants the Court to grant him a continuance and allow him to hire an attorney and with that I will let him say what he has to say.

THE COURT: Alright, Mr. McCall.

DEFENDANT MCCALL: Yes, Your Honor, I filed a motion to relieve Mr. Chambers back in March and I have

relieved him on some other charges and yesterday we got the indictment, it's the first time I have ever received it. I felt like we weren't prepared enough and I want to retain me someone else as counsel.

I don't know if it may be my feeling but I talk to my parents and they feel it may be in my best interest to hire someone else because there's a conflict between us that my dad feels like I'm not going to represented in the best defense.

I feel I need to get someone -- to retain a lawyer.

THE COURT: Mr. McCall, I'm going to have to deny your motion.

DEFENDANT MCCALL: I can't hire a lawyer?

THE COURT: It's too late for you to be making that decision. I recognize you have come before the Court before and you have made a motion for Mr. Chambers to be relieved and at that time, if I'm not mistaken, you ask that he remain on this case because you were satisfied his services.

I don't know what type of impasse that has become between the two of you. I will consider relieving Mr. Chambers as your attorney of record, if you want, but you will be required to proceed pro se for the remainder of this trial, sir.

DEFENDANT MCCALL: If that's what I got to do, that's what I got to do.

THE COURT: Would you like Mr. Chambers to continue to stay as stand by counsel?

DEFENDANT MCCALL: No, sir.

THE COURT: You understand that you have a right to have an attorney represent you?

DEFENDANT MCCALL: Yes, sir.

THE COURT: And you understand that if you decide and determine ---

DEFENDANT MCCALL: I don't want him to represent me, though.

THE COURT: You understand that if you decide to represent yourself you assume certain risks in doing so, do you understand?

DEFENDANT MCCALL: I do, but I'm not going to stand here and not have an attorney present when I have a constitutional right to have a lawyer. I'm asking you to let me hire an attorney.

THE COURT: Yes, sir. You have an attorney.

DEFENDANT MCCALL: He was appointed and I'm asking for me to be able to hire my own lawyer. I had a conflict yesterday come in and you allowed an indictment to come that I never seen before. I can't believe you allowed that. And indictment that I wasn't prepared and

all the other evidence that he's never reviewed. Come on, man. This is uncalled for. This is making a mockery of the court.

THE COURT: I understand that you take exception to my ruling and I respect that. My question is you clear that you take exception to the ruling I made, but that's not a reflection of the work that your attorney did in trying to exclude it and have the case dismissed.

DEFENDANT MCCALL: He never did.

THE COURT: He certainly did.

DEFENDANT MCCALL: Tried to dismiss what?

THE COURT: This case based on an inefficient and ineffective indictment. He made a compelling argument. He made all the appropriate legal arguments. I just happen to rule against you. That's not a reflection on his abilities as an attorney.

DEFENDANT MCCALL: That's not what I'm upset about. It's not your ruling why I'm upset, it's the fact I have a conflict from the past with him and I didn't get to be heard in relation to it and he came in yesterday and started the trial without hearing my motion. And the rules on the motion was denied -- violated. I was supposed to be heard on the motion first.

MR. CHAMBERS: Your Honor, I would join him in the motion to relieve me from this trial and allow him

to proceed pro se because based on everything he has just said, I question whether I can effectively represent him anymore. I'm certainly prepared and I thought I was doing a pretty good job. I didn't know anything about a motion, the motion that he's talking about now.

It's clear to me at this point that rather than allowing me to effectively represent him through the remainder of this trial, he's trying to build some kind of a record so he can either on appeal or a PCR or something down the road and try to get any conviction overturned which will result basically in throwing me under the bus and saying that somehow I didn't do the job I was supposed to do.

So if he wants to proceed pro se, I certainly would join him in that motion. I have other places I could be and things I could be doing.

THE COURT: Okay. Mr. McCall, I'll give you the last word, sir. Any more arguments you would like to make?

DEFENDANT MCCALL: I would just like for him to be relieved.

THE COURT: Again, I'm going to ask you this as a consequence of relieving Mr. Chambers that you will be required to proceed pro se.

DEFENDANT MCCALL: I hear what you're saying.

You're forcing me to go forward.

THE COURT: I most definitely am.

DEFENDANT MCCALL: Alright.

THE COURT: You have waited until we have impaneled a jury. You have waited until we have begun the presentation of evidence.

DEFENDANT MCCALL: I told him yesterday that I didn't want him to represent me.

MR. CHAMBERS: You did not.

DEFENDANT MCCALL: Yes, I did. We had a conflict in there yesterday morning, Randy. And I said are you throwing me under the bus and you said, that's what you think I am.

MR. CHAMBERS: Actually you said I don't want you to throw me to the wolves and I said that was insulting and I don't want to talk about it any more and you said sorry. You told me you were just scared because you were on trial for your life and you never gave me any indication that you didn't want me to represent you but that's fine. Certainly, I would like to be relieved.

DEFENDANT MCCALL: I did. I did. I felt like I was being thrown under the bus.

THE COURT: Okay. I understand that. I want you to answer my questions. You understand that you would be proceeding on your own and you assume certain risks

State versus McCall

THE COURT: Take you seats please.

Okay. We are back on the record. I believe the record speaks for itself with respect to what has transpired. I will state that we conducted a hearing in accordance with Foretto(ph) versus California and I have made a determination that the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se. Also to protect his stated interest and in order to protect his procedural rights and his constitutional rights, I have appointed Mr. Jake Erwin of the Greenville County bar as stand by counsel to assist him in the conduct of the case.

Mr. Erwin's duties with respect to his representation and assistance of Mr. McCall shall be present to answer any questions and to assist in any way that you feel is -- each of you feels is necessary.

I will also say, Mr. Erwin, to the extent that you feel it is necessary to appropriate, I'll allow you to participate in the trial. However, I am not suggesting that you should or that it appropriate that you will. I'm just giving you that leeway. Each of you can make that decision as you go forward in this case.

DEFENDANT MCCALL: Your Honor, I would like to say something. I am not waiving my rights to counsel.

THE COURT: Yes, sir. I've also held a

2
Now the Judge Allowed counsel to participate in my Trial.

hearing in accordance with State versus Fuller, 523 SE 2nd 168. In this case there has been a request for relief of counsel during the pendency the case after the jury had been impaneled and after the presentation of a significant and substantial amount of evidence. It is within the discretion of a trial judge to grant the motion for the relief of counsel during the pendency of the proceeding and I've elected to do that based on the totality of the circumstances.

I find specifically that the motion was ill-timed and that the ultimate end of a motion to continue and a motion for relief of counsel is to delay and hinder the administration of justice.

DEFENDANT MCCALL: I disagree, Your Honor.

THE COURT: I will tell you the continuance of this case would have a significant prejudicial effect on the state because the State had subpoenaed all of its witnesses which are substantial amount, over 40 in reading the witness list. Also, the defendant has had the opportunity to witness and view a specific amount of presentation of the case to include all of its tactical proceedings in opening statements and it's order and method of presentation of evidence.

In this case, I will tell you without reservation and unequivocally that my only interest is to

because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.

DEFENDANT MCCALL: I understand that.

THE COURT: And you are willing to assume those risks, sir?

DEFENDANT MCCALL: No, I am not.

THE COURT: Do you want me to appoint a public defender to sit with you?

DEFENDANT MCCALL: Out of the public defender's office.

THE COURT: To assist you in the trial of the case. Now, he's not going to try your case. He will assist you in answering any questions that you have because he can't possibly come up to speed in the case in the next 10 minutes.

DEFENDANT MCCALL: He can represent me then.

THE COURT: I'm telling you that he can't possibly represent you in the this period of time.

DEFENDANT MCCALL: Give us a continuance. You're not going to give us a continuance in the presence of this indictment that I just got served with yesterday?

THE COURT: No, sir, I'm not. I'm making that very clear to you and you don't have to ask me again.

DEFENDANT MCCALL: I'm asking you again.

THE COURT: The answer is no again. Do you

want me to have a public defender sit with you in this trial so that you can ask him questions about legal issues that may arise? see: Faretta V. California pg 14 - line 29 defendant never wished to proceed with standby counsel, And I left it up to the judge to—

DEFENDANT MCCALL: I'm going to leave that up to you, Judge.

THE COURT: This is what I'm going to do. Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him and answer and address any questions that he may have during this trial?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: So you are relieved of your duties with exception of doing that service for me.

DEFENDANT MCCALL: He's taking all the evidence with him. He's leaving me with nothing.

THE COURT: You can exchange that with whatever lawyer necessary.

MR. CHAMBERS: Yes, sir, Your Honor.

THE COURT: Mr. McCall, what I'd like you to do is you can go back to the cell and we'll be adjourned until someone comes back to assist you in that regard.

If you would let the jury know that we have some legal mattes that we are taking up.

(Court was adjourned.)

THE BAILIFF: All rise.

because if we do we end up staying all hours of the night. So as long as we have Friday, then we can show up again and then you can deliberate on Friday morning after charge and argument and then into the afternoon as late as you need to.

I'm just thinking out loud right now, but I wanted you to know what my expectations are. Those are all subject to change. Based on what I'm hearing that's my expectation as I sit here right now.

Y'all are welcomed to adjourned for the evening. Please don't discuss the case and I'll see y'all back here tomorrow morning.

(Jury exits courtroom.)

Do you have anything to put on the record this afternoon?

MS. DRAWDY: Nothing from the State.

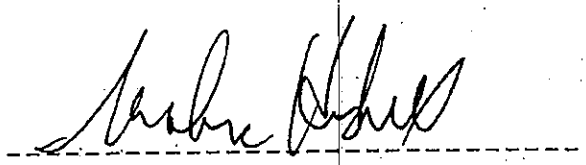
MR. ERWIN: Nothing from the defense.

THE COURT: Okay. If y'all would start back here tomorrow morning at 9:30.

(Court adjourned for the evening.)

I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Court of General Sessioons, Greenville County, this 13th day of May, 2015.

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



Caroline Hiskell

Manning Pre-Release/ReEntry
W-8 18-B
502 Beckman Drive
Columbia,S.C. 29203

Paul B. Nickensimer
Clerk of Court
305 East North Street
Greenville, S.C. 29601

8-18-2020

Terry McCall #233236
Manning PreRelease/Tent Annex
W-8 38-B
502 Beckman Drive
Columbia, S.C.
29203

Filing Motion for Summary Judgement @
In Re: Filing Amendment to P.C.R Application
As A Courtesy Please serve Taylor Smith
With Attorney General Office

Dear Clerk,

Find my Amendment to P.C.R Application, Please file, forward copy to Attorney General Asst. Taylor Z. Smith, @ Motion for Summary Judgement
Return Copy to me for my records being I'm a Pro Se litigant.

Thank You Kindly
mr Terry McCall

Send Judge Kinlaw a Copy of Both also

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THRITEENTH JUDICIAL CIRCUIT
)	C/A # 2020CP2301497
Terry Edward McCall)	
S.C.D.C.#233236)	
Applicant,)	
)	"APPLICANTS MOTION FOR"
V.)	
)	"SUMMARY JUDGEMENT"
State of South Carolina)	
Respondent,)	

FILED-CLERK OF COURT
PAGE B. WICKENSIMER
GREENVILLE CO. SC
2020 AUG 26 PM 1:42

To: The Court,

Pursuant to S.C.R.C.P. Rule (56) and S.C. Code of Laws 17-27-70 (c) in conjunction with Aice V. State 305 S.C. 448, 409 SE2d 392 (1991). The P.C.R. Court **may grant a Motion for Summary Judgement to either party. Where** there is no genuine issue of material fact and the movong party is entitled to judgement as a motter of law. The Applicant hereby moves this Court to issue a judgement granting him Summary Relief. Motion is based on trial transcript, Affidavit, Pleadings, Uniform traffic ticket, Indictment.

ARGUMENT

The Applicant alleges his Fourth Amendment Right was violated when he was denied a judicial hearing of probable cause to be decided by a neutral and detached magistrate as a condition for any significant pretrail restraint of liberty, as a prerequisite to any further detention after (48) hours pursuant to **Gerstein V. Pugh 420 U.S. 103 (1975).** . The Applicant alleges he was initally arrested on a Blue Uniform Traffic ticket # F-540654 which did summon him before a Magistrate. But never did the Magistrate decide if there was probable cause to warrant further detention, nor did the Magistrate issue and arrest warrant finding probable casue . The Magistrate was taken out of the equationfor determing a probable cause hearing, and this violated the Applicants Fourth Amendment Rights, And this also violated the States S.C. Code of Law section 22-5-200 , which requires that "(w)hen an arrest is made by a deputy sheriff without a warrant pursuant to 23-13-60 the person so arrested should be **forthwith** carried before a magistrate and a warrant of

arrest procured and disposed of as the Magistrate shall direct. The issuance of an arrest warrant after arrest serves informational and administrative purposes. It protects the Police officer from prosecution under 17-13-50 which provides that it is a criminal offense for an arresting officer not to inform the arrested person of the grounds for arrest. It constitutes the charging paper in a magistrate of municipal court and informs the defendant of the charges against him.

A prosecutor "shall not institute or cause to be instituted criminal charges when he/she knows it is obvious that the charges are not supported by probable cause. When Solicitor,Sara Lee Drawdy continued to go forward at a preliminary hearing held May 12, 2012 with the charge of Felony D.U.I., knowing that no Magistrate had made a probable cause determination as to issuing an arrest warrant for further detention after (48) hours pursuant to Gerstein, and knowing that no probable cause had been determined to pursue the charge any further. Can only be said as having Malice toward the Applicant to prosecute him further without probale cause, or arrest warrant which is needed to bind the charge over to General Sessions. This type conduct be Sara Lee Drawdy to ignore the Rules of the Court and the United States Constitiution should not be allowed, nor should any conviction prosecuted in this manner be allowed to stand.

The Applicant alleges that his Attorney Randall Chambers was totally ineffective for failing to object and argue that his client, Applicant had been deprived of his right to due process where he was held over (48) hours in violation of Gerstein case. And not released as he should have been where no arrest warrant was ever procured to detain him further than (48) hours. Also he was ineffective for failing to file a Motion to have Applicant released explaining to the Court that no warrant was issued to detain his client any further than (48) hours, Or attempted to contact the Administrator of the Jail and explained to him that his client was being unlawfully detained and arrest warrant should be issued by a Magistrate or the Jail must release his client immediately. This never happened and this was deficent on his part. Furthermore Randall Chambers could have argued at the preliminary hearing that (48) hours had past and the State was in violation of Gerstein, but he choose not too. This again was ineffective on his part to defend me properly and protect me.

"Bond Hearing" or

The Applicant argues that when there never was a probable cause determination made by the arresting officer in his case, and never and arrest warrant issued upon affidavit finding probable cause existed to detain Applicant longer than (48) hours this was a violation of his Fourth Amendment rights, pursuant to Gerstein V. Pugh 420 U.S. 103 (1975), County of Riverside V. McLaughlin 500 U.S. 44 (1991) .

The Applicant alleges that a policemans on the scene assessment of probable cause provides legal jusification for arresting a person suspected of a crime, and for a Brief period of detention to take the administrative steps incident to arrest. Beyond this detention however the Fourth Amendment requires a Judicial determination of probable cause as prerequisite to "any" extended restraint on liberty / detention fore than (48) hours.

In this case at hand because there was never a judicial determination made by a magistrate, and no arrest warrant issued, and served on the Applicant for Felony D.U.I. , the actions taken by the arresting officer were absent probable cause. And the Applicant should have never been held past the adminstrative steps incident to his arrest. And to have issued a original $50,000 dollar Bond for the charge of Felony D.U.I. written on a Uniform Traffic Ticket and continue to hold the Applicant because he could not make bail, violated his rights to be treated equally as others where never and arrest warrant has been issued, they were let go without having to post any amount of bail. The Applicant argues that #50,000 dollars is more than can be placed on a Uniform Traffic ticket, only #500.00 dollars seems to be the max.

The Applicant argues this whole process that took place with him was a gross miscarriage of justice, violation of Procedural due process, Due Process, Equal Protection of the laws violations, and could have been prevented had his counsel just contacted the jail administrator, filed a Motion with the Court to have his client released, where no probable casue existed, and no arrest warrant was ever procured to detain his client any further than (48) hours. But Randall Chambers failed to do anything to help get his client released, and he had oppertunity after oppertunity even at the bond reduction hearing, and at the preliminary hearing and he failed.

No probable cause ever existed. And as to the State holding a preliminary hearing without and arrest warrant. The only thing to be decided at a preliminary hearing is; Whether or not there is probable cause to support the allegations contained in the arrest warrant. The magistrate may do one of the two things. (1). dismiss the warrant for lack of probable cause or (2). send the matter to the County of general Sessions for handling . State V. White 243 S.C. 238, 133 Se2d 320

In the case at hand there never was and arrest warrant issued no probable cause determined by a magistrate, to even hold the applicant past 48 hours. So how could the State proceed with a preliminary hearing, without and arrest warrant. And how can probable cause be determined at this preliminary hearing and found and the invisable charge bound over. And where is due process of the Court without and arrest warrant first of all.

This type procedure violates everything due process stand for. The Applicant believes the only remedy for this type violation of procedural due process is to vacate the conviction and immediately set the applicant free, because to continue to hold him unlawfully increases the burden for the State.

The Applicant would like to ask the Court to read S.C.A.G. opinion 1972 W L 25429 Aug. 15, 1972 WHich he cites at the top of the page concerning preliminary hearings.

The Applciant would ask the Court to read the S.C.A.G. opinion 1974 W L 27597 which talks about all arrest warrants are to be forwarded to the Solicitors Office in (24) hours after the Preliminary Hearing. This never happened, again in violataion of the S.C. Crim. Rules 1, 2, 3,

The Applicant argues that any evidence procured from the unlawful arrest where no probable cause ever was determined, should have been excluded from the trial. Because it was the fruit of the poisonous tree doctrine, and tainted the whole trial, And trial counsel was ineffective for failig to move to suppress this evidence at trial or before trial.

The Applicant cites Robert M. Bayly V. State 397 S.C. 290 (2012) 724 SE2d 182, and State V. James Ervin Ramsey 77 SE2d 429 (2013) The Applicant alleges that Section 56-7-10 eliminates the need for an arrest warrant and authorizes the use of a uniform traffic ticket to notify an accused and commence judicial proceedings in the magistrate court . The Court found that it is not the sevice of the uniform traffic ticket that confers subject matter jurisdiction to the magistrate but, rather, the General Assembly's purposleful idenification of "certain offeses" for which the magistrate is authorized to hear and dispose of .Felony D.U.I. is not one of the magistrate Court traffic violations punishable in magistrate court.

The Applicant alleges that the issuance of a uniform traffic ticket merely summons the accused person to appear before a magistrate, where he may submit any contention relative to the preservation of his rights. Use of a uniform traffic ticket is authorized for offenses " commtted" in the presenceof a law enforcement ofier if the punishment is within the jusrisdiction of magistrates court and municipal courts. The jurisdiction of magistrates court is limited to those offeses subject to fines or forfeitures not exceeding "five hundred" dollars, imprisonment not exceeding (30) thirty days or both. S.C. Code of Laws 22-3-550(A)(Supp.2011). Thus , a uniform traffic ticket may be issued for any offense that is both committed in the presence of a law enforcement officer and subject to a maximum penalty of no more than (30) thirty days imprisonment and a five hundred dollar fine.

This was a Felony D.U.I punishment and fine greater than magistrae Court.

The Applicant argues that service of the uniform traffic ticket for Felony D.U.I. could not have commenced proceedings in magistrate Court if the offier did not see the offense being committed. The officer stated, arresting officer that is," that he came up to the scene later after the accident happened , and did not see the accident occur.

The Applicant argues that where evidence such as blood draw, unine draw and testing, statements from witnesses and Applicant were procured from arrest, where no probable cause ever existed, should have been excluded from the trial. ANd without it excluded, the trial was tainted, with fruit of the posionous tree . Therefor Counsel was ineffective for failing to argue this. Where evidence had been procuered growing out of arrest, where no probable cause ever was determined by a magistrate or arest warrant issued violated the Applicant right to due process and a fair trial. In short there should never had been a trial. No probable cause ever existed

ARGUMENT

The Applicant alleges his Sixth Amendment Right to Counsel was violated when the trial Court granted his Motion to relieve counsel without conducting a proper hearing pursuant to **Faretta V. California 422 U.S. 806 (1975)** or advising Applicant of the disadvantages and dangers of self representation. Trial counsel, Randall Chambers was ineffective for failing to object to such Constitutional Depriviations. **See: also Osbey V. State 425 S.C. 615, 825 Se2d 48 even waiver by conduct requires a proper hearing pusuant to Faretta.**

How The Issue Was Presented Below

Applicant filed a **pro se'** motion to relieve counsel on March 27, 2015, approximately **six weeks before trial.** For whatever reason, ahearing on Applicant's motion was never heard. On the second, morning day of trial, Applicant renewed his motion to relieve counsel. Randy Chambers, Applicant's trial counsel, informed the trial judge:

> He (Applicant) has summoned me back this morning saying the he needed to talk with me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons (are) more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. **So I think he has created a conflict between us.**
>
> He clearly does not want me to continue as his lawyer and it's my understanding that he wants the Court to grant him a continuance and allow him to hire an attorney...
>
> Tr. 167,l. 6-22 (emphasis added).

Applicant told the judge that he filed a motion to relieve Mr Chambers back in March.TR. 167, l. 24-168.l.1. Applicant then orally renewed his motion to relieve counsel arguing that he and Chambers had a conflict that could not be resolved. Tr. 168, l. 3-170, l. 23. Chambers joined in Applicant's motion stating that he did not believe he could effectively represent him anymore. Tr. 170, l. 24-171, l. 5.

Applicant ultimately move for a continuance so that he could retain other counsel. The trial judge denied the motion for a continuance asserting A Applicant waited until we have impaneled a jury and begun the presentation of evidence. Tr.171, l. 17-173, l.25.

The following colloquy then took place between the trial judge and Applicant:

The Court: You understand that you would be proceeding on your own and you assume certain risks because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.

Defendant McCall: I understand that.

The Court: And are you willing to assume those risks, sir!

Defendant McCall: No, I am not

Tr. 172, l.23-173, l. 6.

As far as the possible appointment of stand--by counsel, Applicant stated, I'm going to leave that up to you, Judge. Tr. 173, l.7-174, l. 5. The judge them ruled: Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him (Applicant) and answer and address any questions that he may have during this trial. Tr. 174, ll. 6-11. A break in the proceedings was then taken. After the break, the judge stated, "I believe the record speaks for itsself with respect to what has transpired. I will state that we conducted a hearing in accordance with **(Faretta) v. California** and I have made a determination tht the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se. Tr. 175,ll, 2-8.

LAW--ANALYISIS
Discussion

The Sixth and Fourteenth Amendments of our Constitution quarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validity convicted and punished by imprisonment. "State V. Cabrera-Pena, 350 S.C. 517,533, 567 S.E.2d 472, 480 (Ct. App. 2002) (quoting Fareta V.California, 422 U.S. 806 (1975) (internal quotation marks omitted). However, an accused may waive the right to counsel and proceed pro se ID. " Although a defendant's decision to proceed pro se may be to the defendant's own detriment, it " "must be honored out of that respect for the individual which is the lifeblood of the law. State V. Reed 332 S.C. 35, 41, 503 SE2d 747, 750 (1989) quoting Faretta, 422 U.S. at 834.

"The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self representation, and makes a knowing and intelligent waiver of the right to counsel." Reed, 332 S.C. at 41, 503 SE2d at 750 (citing Faretta, 422 U.S. at 834). The ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is the defendants understanding." Id. Citing Graves V.State, 309 S.C. 307, 422 SE2d 125 (1992). The only relevant inquiry is whether the defendant has made a knowing and intelligent waiver of the right to counsel." Id. (citing Faretta, 422 U.S. at 834).

In **STATE V.BARNES, 402 S.C. 27, 31, 753 SE2d 545, 548 (2014)** Our own Supreme Court held Barnes should been allowed to represent himself where he "demonstrated an understanding of the process of capital vior dire, stated his intention to pursue a **third party quilt defense at trial**, and **discussed relevant case law, the burden of proof, and his right to testify." Barnes also** demonstrated that he had **read relevant case law and showed some understanding of the rules of evidence**, when questioned by the Judge. Id. at 33, 753 SE2d at 548.

None of these **factors in Barnes**, which evidenced an intelligentwaiver of the right to counsel and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self-representation exist in the record below, before this Court. In short, the Judge informed the Applicant, "that you would assume certain risks because you may not have the knowledge and experience that an attorney can afford you. See Tr. 172, l. 24-173, l. 2. This colloquy was insufficent to satisfy the requirements of Faretta. Moreover the judge wholly failed to inquire into the Applicants background, experence with the criminal justice system, and knowledge of the rules of evidence and relevant case law. Accordinly, the record fails to demonstrate Applicant made a knowing and intelligent waiver of the right to counsel. **See REED, 332 S.C. at41, 503 SE2d at 750.**

The Applicant believes that he has produced sufficent evidence, to support that his Constitutional Rights were violated. The Applicant believes **no purpose would be served to hold an "evidentiary hearing". IN STATE V. DIAL 838 S.C. 501, (Jan29, 2020) The record did not reflect** whether the Magistrates Court obtained a valid waiver of defendants right to counsel before proceeding to trial on assault charges and therefor remand was warranted for an evidentiary hearing to determine

whether defendant knowingly and intelligently waived his right to cousel where the record did not contain transcripts of defendants pre-trial appearances. The case at hand, the transcripts are before the Court. And the Applicant believes no purpose would be served in holding a evidentiary hearing.

The Applicant believes where the trial counsel failed to protect him, when failing to request the Jail Administrator release his client where there had not been a probable cause determination made by a Magistrate to detain him any longer thann(48) hours pursuant to Gersein, violation of the United States Constitution. And where counsel failed to file a Motion to the Court to have the charge dismissed based on, his client had not had a probable cause determination made against him, and no arrest warrant had been issued and served upon him to detain him longer than (48) hours, was ineffective on counsel, Randall Chambers part. And the Applicant was prejudiced by this deficent performance, by being held unlawfully without probable cause, and arrest warrant until today.

The Applicant believes that trial counsel was also ineffective when he failed to object to to the trial Judges failure to advise the Applicant of the type of disadvantages and dangers he faced as proceeding pro se' , as to inquiring into the Applicants Court proceeding experience such as what he knew about the S.C.Crim Rules, Rules of Evidence, Applicants education background, etc. When counsel failed to do such, the Applicant was prejusdiced by this failure. Had trial counsel had the Court to explain the required pro forma questions and inquired into them to the Applicant, then the Applicant would have not relieved his trial counsel, and the outcome could have been different possibally. Because the Applicant did not have the legal educaton and experence needed to conduct his on trial, as his counsel did. The Court erred and trial counsel erred not advising the Court that his client had not made and knowingly and intelligent waiver of counsel.

The Applicant believes Summary Judgement is appropriate in this case. And would caution the Court that if the Respondent makes any frivolous return, that the Civil Remidies and Procedures (F.C.P.S.A.) and S.C. Rules of Professional Conduct prohibits,such fraud, and misrepresentation.

The Applicant ask the Court to grant his Motion for Summary Judgement, issue an Order reversing his sentence or vacating his sentence, and reverse or vacate his conviction, and remand him back to the lower Court or Release him immediately where there was no arrest warrant to ever hold him beyond (48) hours.

CONCLUSION

WHEREFOR, the Applicant **gracfully prays** that the Court grants him Summary Judgement, and issue and Order reversing or vacating his sentaace and conviction, releasing him immediately, or at the least remanding him back to the lower Court. And issue sanctions if Respondent makes any frivolous return. The Applicant would ask the Court to keep in mind that he is faced with and irreparable injury and no other remidye of law is availible to him at this time as to being held unlawfully in prison with where the Corona Virus is rapidly spreading, and the prison has noway of social distancing its inmates, and have no proper P.P.E. equipment availible for the Applicant to protect himself from this deadly virus. The Applicant prays the Court takes into the consideration of the threat he is faced with, from this covid 19, and issue its Order as see's fit.

Dated _____

Greenville,S.C.

S._____

Terry E. McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

STATEMENT OF THE CASE

On 3-4-2012 the Applicant was arrested for Felony D.U.I. on a Uniform Traffic ticket #F540654, and was taken to the Greenville County Detention Center where his bond was set at 50,000 dollars. The Applicant was never provided his Fourth Amendment right to a prompt determination of probable cause by a judicial official as a prerequisite to any extended pretrial detention following a warrantless arrest. No arrest warrant was ever issued by a magistrate to detain the Applicant over (48) Hours as in the case of **Gerstein V. Pugh Et. Al. 420 U. S. 103 (1975).** The Applicant was later taken to a Preliminary Hearing held May 12, 2012. And the Court's ruling was to bind the charge over to General Sessions, for Grand Jury action. The Grand Jury indicted the Applicant on February 19, 2013, for Felony D.U.I., great bodily injury. The case was called for trial on May 12, 2015 before the Honorable Robin Silwell, and a jury.

Assistant Solicitors Sara Lee Drawdy and Stan Overby represented the State, and Randall Chambers represented the Applicant. On the morning of the second day of trial, Judge Stilwell granted Applicants Motion to Relieve Counsel, but denied his Motion for a Continuance. Consequently, Applicant proceeded pro se", Jake Erwin was appointed as standby counsel Tr. 175, 11. 10-12 On May 14, 2015, the jury found the Applicant guilty as indicted. Tr. 382, 1. 24-383, 1.6. Applicant was sentenced to (15) fifteen years imprisonment. Tr. 288, 11. 19-23.

On May 20, 2015 Applicant timely filed Notice of Appeal. The Office of Appellate Defense undertook representation of Applicant and requested the trial transcript. Over a year later, the Office of Appellate defense recieved an incomplete transcript. At a minimum, the transcript was missing the complete testimony of six witnesses and the partial testimony of two witnesses. On September 29, 2016 Applicant filed a Motion with this Court seeking to remand his case to the trial Court to reconstruct the record. By Order filed on November 4, 2016 the Court granted Applicants Motion and remanded the case.

On March 14, 2017 a hearing was held in Greenville County before Judge Stilwell to reconstruct the record. Assistant Solicitors Sara Lee Drawdy, Stan Overby, and Judy Munson represented the State.

and Appellate Defender John Strom represented Applicant. At the begining of the hearing, Applicant moved to have the Assistant solicitor who represented the State at trial recussed because they were witnesses for purposes of the reconstruction hearing, Judge Stilwell orally ruled the record of Applicant"s trial had been sufficiently reconstructed to allow for meaningful appellate review.

Terry Edward McCall

The End

803

Terry

Manning Reentry/Work Release Center

Attn: ~~Work Program Finance~~ W8-38-B

502 Beckman Drive

Columbia, SC 29203

Paul B. Wickensimer

Clerk of Court

305 East North St

Greenville, S.C.

29601

FOREVER

USA

FEB 18 2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A #2020CP2301497
Terry Edward McCall)	
S.C.D.C.#233236)	
Applicant,)	
)	**AFFIDAVIT OF TERRY EDWARD McCALL**
V.)	
)	
State of South Carolina)	
Respondent,)	

NOW COMES Terry Edward McCall, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 years, and the statemnets made in this affidavit are based on my personal knowledge.

2. On 3-4-2012 I was arrested by Highway Patrol David McAlhany for Felony D.U.I. and provided a Uniform Traffic Ticket #F-540654.

3. At no time after my initial arrest when taken to the Greenville County Detention Center, Was I never taken before a neutral and detached magistrate for a determination of probable cause in order to detain me over (48) hours, and issue and arrest warrant. This was a violation of Gerstein V. Pugh 420 U.S. 103 (1975).

4. At no time when I appeared at my Preliminary Hearing May 12, 2012 was there ever and arrest warrant introduced as the charging document with the facts and grounds for arrest provided to the Court to bind over to the Court of General Sessions, in violation of my Due Process Rights. And never was there and arrest warrant issued and served on the Applicant at this juncture of the proceedings. But the charge was still bound over to General Sessions, That is the Uniform Traffic Ticket which is for magistrate court only.

5. The Grand Jury Indicted the Applicant for Felony D.U. I. great bodily injury off of the Uniform Traffic ticket and not and arrest warrant as required by the S.C.Criminal Rules. This again was a violation of Due Process, and to be treated equally.

6. On May 13, 2015 in Greenville County Courthouse, Judge Robin Stilwell held a **Faretta hearing** when hearing Applicants Motion to relieve counsel.

7. During this hearing Judge Stilwell failed to advise the Applicant of the disadvantages and dangers of proceeding pro se', and did not inquire into the Applicants education background, experience with the S.C. Rules of Criminal Procedure, S.C. Rules of evidence, Vior Dire, and his experence in the Courtroom. Therefor the Applicant did not make an intelligent and knowingly waiver of counsel.

8. These two violations are **mandatory**, and cannot be avoided given to the Applicant. Because they are both violations of the United States Constitution, Which could vacate the Conviction and Sentence, or Reverse and remand Applicant to the lower Court for a New Trial.

SEE: Faretta V. California 422 U.S. 806 (1975).
Gerstein V. Pugh 420 U.S. 103 (1975).
Riverside V. McLaughlin 500 U.S. 44 (1991)

9. Attached to this Affidavit is a true copy of the trial transcript, partial transcript, Summary Judgement, Statement of the Case, Uniform Traffic Ticket, Indictment, Preliminary Hearing Letter from Court, etc.

FURTHER AFFIANT SAYETH NOT.

Sworn to and Subscribed before me
this 17th day of AUG, 2020.

s. Terry Edward McCall

Notary Public SHAMEKIA T. DASH

My Commisson Expires
20 APRIL 2028

Terry Edward McCall #233236
Manning Pre-Release/ReEntry
W-8 18-B
502 Beckman Drive
Columbia, S.C. 29203

Dated 6-25-20

In Re: Applicants Motion for Summary Judgement/Affidavit
2020CP2301497 Terry Edward McCall V. State

Dear Attorney General, Taylor Zane Smith,

Find enclosed my Motion for Summary Judgement/Affidavit, which has been filed with the Greenville County Clerk of Court Common Pleas, and with the South Carolina Supreme Court.

I hope you can get this case on the docket within the next term of Court, being I am 60 yrs old and this Corona Virus Pandemic is running rapidly through the penal system, even here at the South Carolina Department of Corrections also. And if this case cannot be placed on the next term of Court, A.S.A.P. please.

Thank You Very Much,
Sincerely,

s. Terry McCall
Terry E. McCall

This Summary Judgement "Superseades" Any other Motion for Summary Judgement, being it was not filed With Clerk of Court, As stated. This one hopefully has been. Since Counsel is relieved now, Send me A schedule for P.C.R. Hearings on Greenville County

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A #2020CP2301497
Terry Edward McCall)	
S.C.D.C.#233236)	
Applicant,)	
)	**AFFIDAVIT OF TERRY EDWARD McCALL**
V.)	
)	
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FURTHER AFFIANT SAYETH NOT.

s. Terry Edward McCall
Terry Edward McCall

Sworn to and Subscribed before me
this 3rd day of JUNE, 2020.
Shametia T. DASH
Notary Public
20
My Commisson Expires
20 April 2028

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Terry Edward McCall

The End

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THRITEENTH JUDICIAL CIRCUIT
)	C/A # 2020CP2301497
Terry Edward McCall)	
S.C.D.C.#233236)	
Applicant,)	
)	**"APPLICANTS MOTION FOR"**
V.)	
)	**"SUMMARY JUDGEMENT"**
State of South Carolina)	
Respondent,)	

To: The Court,

Pursuant to S.C.R.C.P. Rule (56) and S.C. Code of Laws 17-27-70 (c) in conjunction with Aice V. State 305 S.C. 448, 409 SE2d 392 (1991). The P.C.R. Court **may grant a Motion for Summary Judgement to either party. Where** there is no genuine issue of material fact and the **moving** party is entitled to judgement as a matter of law. The Applicant hereby moves this Court to issue a judgement granting him Summary Relief. Motion is based on trial transcript, Affidavit, Pleadings, Uniform traffic ticket, Indictment.

ARGUMENT

The Applicant alleges his Fourth Amendment Right was violated when he was denied a judicial hearing of probable cause to be decided by a neutral and detached magistrate as a condition for any significant pretrail restraint of liberty, as a prerequisite to any further detention after (48) hours pursuant to **Gerstein V. Pugh 420 U.S. 103 (1975).** . The Applicant alleges he was initally arrested on a Blue Uniform Traffic ticket # F-540654 which did summon him before a Magistrate. But never did the Magistrate decide if there was probable cause to warrant further detention, nor did the Magistrate issue and arrest warrant finding probable casue . The Magistrate was taken out of the equation for determing a probable cause hearing, and this violated the Applicants Fourth Amendment Rights, And this also violated the States S.C. Code of Law section 22-5-200 , which requires that "(w)hen an arrest is made by a deputy sheriff without a warrant pursuant to 23-13-60 the person so arrested should be **forthwith** carried before a magistrate and a warrant of

arrest procured and disposed of as the Magistrate shall direct. The issuance of an arrest warrant after arrest serves informational and administrative purposes. It protects the Police officer from prosecution under 17-13-50 which provides that it is a criminal offense for an arresting officer not to inform the arrested person of the grounds for arrest. It constitutes the charging paper in a magistrate of municipal court and **informs the defendant of the charges against him.**

A prosecutor **"shall not institute or cause to be instituted criminal charges when he/she knows it is obvious that the charges are not supported by probable cause.** When Solicitor,Sara Lee Drawdy continued to go forward at a preliminary hearing held May 12, 2012 with the charge of Felony D.U.I., knowing that no Magistrate had made a probable cause determination as to issuing an arrest warrant for further detention after (48) hours pursuant to Gerstein, and knowing that no probable cause had been determined to pursue the charge any further. Can only be said as having Malice toward the Applicant to prosecute him further without probale cause, or arrest warrant which is needed to bind the charge over to General Sessions. This type conduct be Sara Lee Drawdy to ignore the Rules of the Court and the United States Constitiution should not be allowed, nor should any conviction prosecuted in this manner be allowed to stand.

The Applicant alleges that his Attorney Randall Chambers was totally ineffective for failing to object and argue that his client, Applicant had been deprived of his right to due process where he was held over (48) hours in violation of Gerstein case. And not released as he should have been where no arrest warrant was ever procured to detain him further than (48) hours. Also he was ineffective for failing to file a Motion to have Applicant released explaining to the Court that no warrant was issued to detain his client any further than (48) hours, Or attempted to contact the Administrator of the Jail and explained to him that his client was being unlawfully detained and arrest warrant should be issued by a Magistrate or the Jail must release his client immediately. This never happened and this was deficent on his part. Furthermore Randall Chambers could have argued at the **"Bond Hearing or "preliminary hearing"** that (48) hours had past and the State was in violation of Gerstein, but he choose not too. This again was ineffective on his part to defend me properly and protect me.

The Applicant argues that when there never was a probable cause determination made by the arresting officer in his case, and never and arrest warrant issued upon affidavit finding probable cause existed to detain Applicant longer than (48) hours this was a violation of his Fourth Amendment rights, pursuant to Gerstein V. Pugh 420 U.S. 103 (1975), County of Riverside V. McLaughlin 500 U.S. 44 (1991) .

The Applicant alleges that a policemans on the scene assessment of probable cause provides legal jusification for arresting a person suspected of a crime, and for a **Brief** period of detention to take the administrative steps incident to arrest. Beyond this detention however the Fourth Amendment requires a Judicial determination of probable cause as prerequisite to **"any"** extended restraint on liberty **/ detention fore than (48) hours.**

In this case at hand because there was never a judicial determination made by a magistrate, and no arrest warrant issued, and served on the Applicant for Felony D.U.I. , the actions taken by the arresting officer were absent probable cause. And the Applicant should have never been held past the adminstrative steps incident to his arrest. And to have issued a original $50,000 dollar Bond for the charge of Felony D.U.I. written on a Uniform Traffic Ticket and continue to hold the Applicant because he could not make bail, violated his rights to be treated equally as others where never and arrest warrant has been issued, they were let go without having to post any amount of bail. The Applicant argues that #50,000 dollars is more than can be placed on a Uniform Traffic ticket, only #500.00 dollars seems to be the max.

The Applicant argues this whole process that took place with him was a gross miscarriage of justice, violation of Procedural due process, Due Process, Equal Protection of the laws violations, and could have been prevented had his counsel just contacted the jail administrator, filed a Motion with the Court to have his client released, where no probable casue existed, and no arrest warrant was ever procured to detain his client any further than (48) hours. But Randall Chambers failed to do anything to help get his client released, and he had oppertunity after oppertunity even at the bond reduction hearing, and at the preliminary hearing and he failed.

No probable cause ever existed. And as to the State holding a preliminary hearing without and arrest warrant. The only thing to be decided at a preliminary hearing is; Whether or not there is probable cause to support the allegations contained in the arrest warrant. The magistrate may do one of the two things. (1). dismiss the warrant for lack of probable cause or (2). send the matter to the County of general Sessions for handling . State V. White 243 S.C. 238, 133 Se2d 320

In the case at hand there never was and arrest warrant issued no probable cause determined by a magistrate, to even hold the applicant past 48 hours. So how could the State proceed with a preliminary hearing, without and arrest warrant. And how can probable cause be determined at this preliminary hearing and found and the invisable charge bound over. And where is due process of the Court without and arrest warrant first of all.

This type procedure violates everything due process stand for. The Applicant believes the only remedy for this type violation of procedural due process is to vacate the conviction and immediately set the applicant free, because to continue to hold him unlawfully increases the burden for the State.

The Applicant would like to ask the Court to read S.C.A.G. opinion 1972 W L 25429 Aug. 15, 1972 WHich he cites at the top of the page concerning preliminary hearings.

The Applciant would ask the Court to read the S.C.A.G. opinion 1974 W L 27597 which talks about all arrest warrants are to be forwarded to the Solicitors Office in (24) hours after the Preliminary Hearing. This never happened, again in violataion of the S.C. Crim. Rules 1, 2, 3,

The Applicant argues that any evidence procured from the unlawful arrest where no probable cause ever was determined, should have been excluded from the trial. Because it was the fruit of the poisonous tree doctrine, and tainted the whole trial, And trial counsel was ineffective for failig to move to suppress this evidence at trial or before trial.

The Applicant cites Robert M. Bayly V. State 397 S.C. 290 (2012) 724 SE2d 182, and State V. James Ervin Ramsey 77 SE2d 429 (2013) The Applicant alleges that Section 56-7-10 eliminates the need for an arrest warrant and authorizes the use of a umiform traffic ticket to notify an accused and commence judicial proceedings in the magistrate court . The Court found that it is not the sevice of the uniform traffic ticket that confers subject matter jurisdiction to the magistrate but, rather, the General Assembly's purposleful idenification of "certain offeses" for which the magistrate is authorized to hear and dispose of .Felony D.U,I. is not one of the magistrate Court traffic violations punishable in magistrate court.

The Applicant alleges that the issuance of a uniform traffic ticket merely summons the accused person to appear before a magistrate, where he may submit any contention relative to the preservation of his rights. Use of a uniform traffic ticket is authorized for offenses " commtted" in the presenceof a law enforcement ofier if the punishment is within the jusrisdiction of magistrates court and municipal courts. The jurisdiction of magistrates court is limited to those offeses subject to fines or forfeitures not exceeding "five hundred" dollars, imprisonment not exceeding (30) thirty days or both. S.C. Code of Laws 22-3-550(A)(Supp.2011). Thus , a uniform traffic ticket may be issued for any offense thats both committed in the presence of a law enforcement officer and subject to a maximum penalty of no more than (30) thirty days imprisonment and a five hundred dollar fine.

THis was a Felony D.U.I punishment and fine greater than magistrae Court.

The Applicant argues that service of the uniform traffic ticket for Felony D.U.I. could not have commenced proceedings in magistrate Court if the offier did not see the offense being committed. The officer stated, arresting officer that is," that he came up to the scene later after the accident happened , and did not see the accident occur.

The Applicant argues that where evidence such as blood draw, unine draw and testing, statements from witnesses and Applicant were procured from arrest, where no probable cause ever existed, should have been excluded from the trial. ANd without it excluded, the trial was tainted, with fruit of the posionous tree . Therefor Counsel was ineffective for failing to argue this. Where evidence had been procuered growing out of arrest, where no probable cause ever was determined by a magistrate or arest warrant issued violated the Applicant right to due process and a fair trial. In short there should never had been a trial. 5. No probable cause ever exised.

ARGUMENT

The Applicant alleges his Sixth Amendment Right to Counsel was violated when the trial Court granted his Motion to relieve counsel without conducting a proper hearing pursuant to **Faretta V. California 422 U.S. 806 (1975)** or advising Applicant of the disadvantages and dangers of self representation. Trial counsel, Randall Chambers was ineffective for failing to object to such Constitutional Depriviations. **See: also Osbey V. State 425 S.C. 615, 825 Se2d 48 even waiver by conduct requires a proper hearing pusuant to Faretta.**

How The Issue Was Presented Below

Applicant filed a **pro se'** motion to relieve counsel on March 27, 2015, approximately **six weeks before trial.** For whatever reason, ahearing on Applicant's motion was never heard. On the second, morning day of trial, Applicant renewed his motion to relieve counsel. Randy Chambers, Applicant's trial counsel, informed the trial judge:

> He (Applicant) has summoned me back this morning saying the he needed to talk with me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons (are) more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. **So I think he has created a conflict between us.**
>
> He clearly does not want me to continue as his lawyer and it's my understanding that he wants the Court to grant him a continuance and allow him to hire an attorney...
>
> Tr. 167,l. 6-22 (emphasis added).

Applicant told the judge that he filed a motion to relieve Mr Chambers back in March.TR. 167, l. 24-168.l.1. Applicant then orally renewed his motion to relieve counsel arguing that he and Chambers had a conflict that could not be resolved. Tr. 168, l. 3-170, l. 23. Chambers joined in Applicant's motion stating that he did not believe he could effectively represent him anymore. Tr. 170, l. 24-171, l. 5.

Applicant ultimately move for a continuance so that he could retain other counsel. The trial judge denied the motion for a continuance asserting A Applicant waited until we have impaneled a jury and begun the presentation of evidence. Tr.171, l. 17-173, l.25.

The following colloquy then took place between the trial judge and Applicant:

The Court: You understand that you would be proceeding on your own and you assume certain risks because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.

Defendant McCall: I understand that.

The Court: And are you willing to assume those risks, sir!

Defendant McCall: No, I am not

Tr. 172, l.23-173, l. 6.

As far as the possible appointment of stand--by counsel, Applicant stated, I'm going to leave that up to you, Judge. Tr. 173, l.7-174, l. 5. The judge them ruled: Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him (Applicant) and answer and address any questions that he may have during this trial. Tr. 174, ll. 6-11. A break in the proceedings was then taken. After the break, the judge stated, "I believe the record speaks for itsself with respect to what has transpired. I will state that we conducted a hearing in accordance with **(Faretta) v. California** and I have made a determination tht the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se. Tr. 175,ll, 2-8.

LAW--ANALYISIS
Discussion

The Sixth and Fourteenth Amendments of our Constitution quarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validity convicted and punished by imprisonment. "State V. Cabrera-Pena, 350 S.C. 517,533, 567 S.E.2d 472, 480 (Ct. App. 2002) (quoting Fareta V.California, 422 U.S. 806 (1975) (internal quotation marks omitted). However, an accused may waive the right to counsel and proceed pro se ID. " Although a defendant's decision to proceed pro se may be to the defendant's own detriment, it " "must be honored out of that respect for the individual which is the lifeblood of the law. State V. Reed 332 S.C. 35, 41, 503 SE2d 747, 750 (1989) quoting Faretta, 422 U.S. at 834.

"The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self representation, and makes a knowing and intelligent waiver of the right to counsel." Reed, 332 S.C. at 41, 503 SE2d at 750 (citing Faretta, 422 U.S. at 834). The ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is the defendants understanding." Id. Citing Graves V.State, 309 S.C. 307, 422 SE2d 125 (1992). The only relevant inquiry is whether the defendant has made a knowing and intelligent waiver of the right to counsel." Id. (citing Faretta, 422 U.S. at 834).

In **STATE V.BARNES, 402 S.C. 27, 31, 753 SE2d 545, 548 (2014)** Our own Supreme Court held Barnes should been allowed to represent himself where he "demonstrated an understanding of the process of **capital vior dire,** stated his intention to pursue a **third party quilt defense at trial,** and **discussed relevant case law, the burden of proof, and his right to testify." Barnes also** demonstrated **that** he had **read relevant case law and showed some understanding of the rules of evidence,** when questioned by the Judge. Id. at 33, 753 SE2d at 548.

None of these **factors in Barnes,** which evidenced an intelligent waiver of the right to counsel and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self-representation exist in the record below, before this Court. In short, the Judge informed the Applicant, "that you would assume certain risks because you may not have the knowledge and experience that an attorney can afford you. See Tr. 172, l. 24-173, l. 2. This colloquy was insufficent to satisfy the requirements of Faretta. Moreover the judge wholly failed to inquire into the Applicants background, experence with the criminal justice system, and knowledge of the rules of evidence and relevant case law. Accordinly, the record fails to demonstrate Applicant made a knowing and intelligent waiver of the right to counsel. **See REED, 332 S.C. at41, 503 SE2d at 750.**

The Applicant believes that he has produced sufficent evidence, to support that his Constitutional Rights were violated. The Applicant believes **no purpose would be served to hold an "evidentiary hearing". IN STATE V. DIAL 838 S.C. 501, (Jan29, 2020) The record did not reflect** whether the Magistrates Court obtained a valid waiver of defendants right to counsel before proceeding to trial on assault charges and therefor remand was warranted for an evidentiary hearing to determine

whether defendant knowingly and intelligently waived his right to cousel where the **record did not contain transcripts** of defendants pre-trial appearances. **The case at hand, the transcripts are before the Court.** And the Applicant believes **no purpose would be served in holding a evidentiary hearing.**

The Applicant believes where the trial counsel failed to protect him, when failing to request the Jail Administrator release his client where there had not been a probable cause determination made by a Magistrate to detain him any longer than (48) hours pursuant to Gersein, violation of the United States Constitution. And where counsel failed to file a Motion to the Court to have the charge dismissed based on, his client had not had a probable cause determination made against him, and no arrest warrant had been issued and served upon him to detain him longer than (48) hours, was ineffective on counsel, Randall Chambers part. And the Applicant was prejudiced by this deficent performance, by being held unlawfully without probable cause, and arrest warrant until today.

The Applicant believes that trial counsel was also ineffective when he failed to object to to the trial Judges failure to advise the Applicant of the type of disadvantages and dangers he faced as proceeding pro se' , as to inquiring into the Applicants Court proceeding experience such as what he knew about the S.C.Crim Rules, Rules of Evidence, Applicants education background, etc. When counsel failed to do such, the Applicant was prejusdiced by this failure. Had trial counsel had the Court to explain the required pro forma questions and inquired into them to the Applicant, then the Applicant would have not relieved his trial counsel, and the outcome could have been different possibally. Because the Applicant did not have the legal educaton and experence needed to conduct his on trial, as his counsel did. The Court erred and trial counsel erred not advising the Court that his client had not made and knowingly and intelligent waiver of counsel.

The Applicant believes Summary Judgement is appropriate in this case. And would caution the Court that if the Respondent makes any frivolous return, that the Civil Remidies and Procedures (F.C.P.S.A.) and S.C. Rules of Professional Conduct **prohibits,such fraud, and misrepresentation.**

The Applicant ask the Court to grant his Motion for Summary Judgement, issue an Order reversing his sentence or vacating his sentence, and reverse or vacate his conviction, and remand him back to the lower Court or Release him immediately where there was no arrest warrant to ever hold him beyond (48) hours, pursuant to **Gerstein V. Pugh 420 U.S.103 (1975), Riverside V. McLaughlin 500 U.S.44 (1991)**

CONCLUSION

WHEREFOR, the Applicant **gracfully prays** that the Court grants him Summary Judgement, and issue and Order reversing or vacating his sentence and conviction, releasing him immediately, or at the least remanding him back to the lower Court. And issue sanctions if Respondent makes any frivolous return. The Applicant would ask the Court to keep in mind that he is faced with and irreparable injury and no other remidye of law is availible to him at this time as to being held unlawfully in prison with where the Corona Virus is rapidly spreading, and the prison has noway of social distancing its inmates, and have no proper P.P.E. equipment availible for the Applicant to protect himself from this deadly virus. The Applicant prays the Court takes into the consideration of the threat he is faced with, from this covid 19, and issue its Order as see's fit.

Dated 6-25-20
Greenville,S.C.

S. Terry E McCall

Terry E. McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia,S.C. 29203

CERTIFICATE OF SERVICE

I, the undersighned have properly served the following Summary Judgement, Affidavit , Statement of The Case, [redacted], Certificate of Service, Cover sheet, by placing same in the United States Postal Service Postage Prepaid, Affixed and Forwarded to the addresses below:

Dated 6-25-20
Mailed in Prison Mail Box

s. Terry E. McCall

Terry E. McCall 233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

Office of the Attorney General
Post Office Box 11549
Columbia, S.C. 29211

Paul B. Wickinsimer
Clerk of Court
305 East North Street
Greenville, S,C.
29601

Terry McCall #233236
Manning Pre Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

Dated 9-21-2020

Re: Filing and returning copy to me for my records, and forward copy to Attorney General Taylor Smith.

Dear Clerk of Court,

Find enclosed the Motion for Bail that needs filing and a copy returned to me for my records.
And a copy forwarded to Attorney general, Asst. Taylor Smith.

s. Terry McCall

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C/A #2020-CP-23-01497
TERRY EDWARD McCALL scdc#233236 Applicant,	)	
V.	)	" MOTION FOR BAIL "
STATE Respondent,	)	

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
2020 SEP 30 AM 9:20

Now comes the Applicant, Terry Edward McCall Pro Se', to moves this Court for an Order for release on bail. The Applicant contends the basis for this Motion for Bail is in part to the State's failure to provide an adequate remedy to allow the Applicant his constitutional right to redress the merits of his unlawful conviction, during the Corona Virus Pandemic. Which is a violation of Article (7) Amendment(1) of the Federal Constitution.

The Applicant beleives the State has the obligation to protect him from this deadly virus while incarcerated in S.C.D.C.. As well as to ensure the Applicant his Constitutional Right to appear and allow him to redress the merits of his P.C.R. application. The Applicant argues that he has been scheduled twice to be heard. Once in August, 6th, 2020, and agian September 6th, 2020 at which both times have been cancelled due to Corna Virus Pandemic.

The Applicant contends that bail is appropriate at this time. Where the Applicant is face with the loss of his life awaiting a hearing, while incarcerated in S.C.D.C. where the Corona Virus is rapidly spreading. Even though S.C.D.C. has taken precautionary steps to protect inmates in state custody, these steps have no guarantee, in preventing the spread of this deadly disease.

COURTS AUTHORITY TO GRANT BAIL

The South Carolina Legislature has provided this Court with a very broad range of authority in Post Conviction Relief proccedings, in regards to making supplemental orders: Pursuant to S.C. Code § 17-27-80. This Court may make (word omitted) any supplemental orders as to rearraingment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper (words omitted).

After reviewing this statute, it is clear the legislations intent was to provide the Court with flexibility to fully address the many issues which are presented by the Applicant. Regardless of the steps taken to challenge his unlawful conviction. In so much as all the rules and statutes applicable in Civil proceedings are also available to the Applicant in this action, Rule 65 S.C.R.C.P. and statute 17-27-80 should be allowed to be used by the Applicant.

Wherefor the Applicant prays that this Court will take into the consideration that the Applicant has been rescheduled for hearing twice. And there is a real good possibility that Applicant will prevail at his hearing. And request this Court to grant him a Bail until he can be heard by the Court due to this deadly situation of him being infected with this Corona Virus, if he remains in state custody. The Applicant believes his previous bail would be appropriate twenty five thousand dollors, if a P.R. Bond cannot be granted, as the Court deems just and proppper.

Dated 9-21-2020
Greenville, S.C.

s/ Terry Edward McCall

Terry Edward McCall #233236
Manning Pre-Release/ReEntry
502 Beckman Drive
Columbia, S.C. 29203

PROOF OF SERVICE

I the Undersigned have properly served the parties listed below with the Motion for Bail by placing the same in the United States Postal Mail Service, postage prepaid affixed and forwarded to the addresses below:

Dated 9-21-2020

s. Terry McCall

Terry Edward McCall #233236
Manning Pre Release/ReEntry
502 Beckman Drive
Columbia, S,C. 29203

Paul B. Wickensimer
Clerk of Court
305 E. North St.
Greenville, S.C.
29601

Attorney General office
Taylor Z. Smith
Post Office Box 11549
Columbia, S,C. 29211-1549

Judge Kinlaw
Greenville County Courthouse
305 E. North St.
Greenville, S.C.
29601

12-8-2020
Dated

Terry McCall #233236
Maning ReEntry Work Release
502 Beckman Drive
Columbia, S.C. 29203

RE: Reply to Respondents Return for Applicant's Motion forBail

Dear Clerk of Court, Judge Kinlaw,

Find enclosed the Applicant's Reply to respondents Return To Applicants Motion for Bail. Please file and return me a copy. Place before the JudgeKinlaw for his review.

Return me a copy for my records filed.

Awaiting Reply

s. Terry McCall

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	C/A#2020-CP-23-01497
TERRY EDWARD Mccall#233236)	
Applicant,)	
)	"APPLICANT'S REPLY TO
V.)	RESPONDENT'S RETURN TO
)	APPLICANT'S MOTION FOR
STATE OF SOUTH CAROLINA,)	BAIL
Respondent,)	
)	

FILED
GREENVILLE CO. S.C.
2020 OCT 10 PM 2:3

Now comes the Applicant, Pro Se' making Reply to Respondent's Return to Applicant's Motion for Bail filed September 30, 2020 with Greenville County Clerk of Court.

The Applicant would like to bring to the Courts attention, that he is not applying for bail for and Appeal bond and is not in the Appeal Court, but is applying for bail in the Court of Common Pleas pursuant to the Post Conviction Relief Act statute 17-27-80.

The Applicant argues that in his initial Motion for bail he had been continued for Court twice, without being heard due to Covid19. As of November 30, 2020 the Applicant contends that he was continued again and not heard due to technical reasons that the Court could not get the VIA web page by video up and running to have the hearing for P.C.R. for the Applicant, so his case was continued once again.

The Applicant argues that he should be granted bail where he is being held without probable cause, " no arrest warrant" violation of procedural due process when there was no affiant in the case and testimony provided at preliminary hearing by arresting officer was not supported by probable cause, And where no arrest warrant was issued, the Court could not even grant or hold a preliminary hearing. And for the reasons above, as well as the Applicant is faced with lossing his life due to Covid19 Bail should be granted, so he can reamain outside the walls of prison until his P.C.R. eveidentiary hearing can be held. The Applicant contends he had filed a Motion for continuance but withdrew it. So this should not even be considered as a anyireason for denying bail.

The Applicant argues that the Respondent has not used any appropriate authority for the Court to deny bail. And pursuant to S.C. Code 17-27-80 This Court may make (words omitted) any supplemental orders as to rearraingment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper (words omited).

The Applicant argues that the Respondent has no legal basis in there Return to deny Bail for the Applicant and the statute is plain and clear, that the Court can grant bail. And has no stipulations therefor the Court has flexibility to fully address the many issues which are presented by the Applicant. The Court should consider the Applicants age 61 years old, his declining health, the risk he is faced with being infected with Covid19 and the loss of his life, while being held unlawfully. If the Respndent had probable cause in this case by way of arrest warrant, an affiant, they would have surely mentioned it. But they know there was none and the process they took to get indictment unsupported by arrest warrant, and going thru preliminary hearing without arrest warrant, was a total miscaraige of justice. And they know they never was No direct Indictment because there was a preliminary hearing held on May 12,12, Without arrest warrant the indictment is unsupported and cannot stand.

Wherefor the Applicant makes this Reply and praying that the Court should grant bail and release Applicant where he will more than likely prevail on his P.C.R. application claim The record speaks for its self. The Respondent is to seek justice not to continue to hold me without probable cause, where its clear there was no probable cause to have prosecuted this case. The Applicant prays the Conrt grants bail immediately ; and releases him.

s. Terry McCall

Dated 12-8-2020
Greenville, S.C.

Terry McCall #233236
Manning ReEntry/Work release
502 Beckman Drive
Columbia, S.C . 29203

PROOF OF SERVICE

I the undersigned below have properly served the parties listed below with the Applicant's REPLY to Respondnets Return to Applicants Motion for Bail.by placing the same in the United States Postal Service postages prepaid, affixed and forwarded to the adresses below.

Dated 12-8-2020

s. Terry McCall

Terry McCall #233236
Manning ReEntry workRelease
502 Beckman Drive
Columbia, S.C. 29203

Alex Kiniaw Jr, Judge
305 E. North St, Suite 213
Greenville, S.C. 29601

Paul B. Wickensimer
Clerk of Court
305 E. Norht St.
greenville, S.C. 29601

Attorney Generals Office
AAG Taylor Smith
Post Office Box 11549
Columbia, S.C. 29211-1549

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	))	IN THE COURT OF COMMON PLEAS IN THE THIRTEENTH JUDICIAL CIRCUIT
Terry Edward McCall, #233236, Applicant,	)	Case No.: 2020-CP-23-1497
v.	)	**RETURN TO APPLICATION, RETURN TO MOTION FOR TEMPORARY INJUNCTION, RETURN TO MOTION FOR SUMMARY JUDGMENT, MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

The State (Respondent), making its return to the amended application for post-conviction relief filed by Terry Edward McCall (Applicant)[1] on March 10, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its February of 2015 term, the Greenville County Grand Jury indicted Applicant for felony DUI resulting in great bodily injury (2012-GS-23-10242). Applicant was represented by Randall Lee Chambers, Esquire. Assistant Solicitors Sara Lee Meador Drawdy and Stanford Lee Overby, Jr., of the Thirteenth Circuit Solicitor's Office prosecuted the case. On May 12, 2015, through March 14, 2015, Applicant proceeded to a jury trial with the Honorable Robin B. Stilwell presiding.

At the start of the second day of trial, Applicant moved to relieve Chambers as his attorney and to continue the trial so that he could hire another attorney to represent him at trial. Trial Tran. 167-68. Chambers joined in Applicant's motion to relieve him as counsel. Trial Tran. 170-71.

[1] Applicant filed his application for post-conviction relief as a pro se litigant, was represented by Sarah Morrison Henry, Esquire, upon her appointment, and is now proceeding as a pro se litigant since the Honorable Alex Kinlaw, Jr., granted Applicant's pro se motion to relieve Henry.

Judge Stilwell granted Applicant's motion to relieve Chambers but denied his motion to continue. Trial Tran. 168. Judge Stilwell ordered that someone from the Public Defender's Office be sent to serve as Applicant's standby counsel during trial, but that Applicant would be a pro se defendant for the remainder of trial. Trial Tran. 174. Jake Erwin, Esquire, was appointed as Applicant's standby counsel. Trial Tran. 175.

At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Stilwell sentenced Applicant to imprisonment for a term of fifteen years, with credit for time served since applicant was first ticketed, and recommended that Applicant participate in the addiction treatment unit at the South Carolina Department of Corrections.

Applicant filed a notice of appeal. Appellate Defender John H. Strom of South Carolina Commission on Indigent Defense represented Applicant initially on appeal. Then-Assistant Attorney General William M. Blitch, Jr., of the South Carolina Attorney General's Office represented Respondent on appeal. On September 29, 2016, Strom moved to hold the appeal in abeyance and remand for the reconstruction of the record, without object from Respondent, because portions of the transcript were unavailable after records were stolen from the court reporter. The South Carolina Court of Appeals granted Strom's motion and remanded the case to the circuit court for reconstruction of the record. State v. McCall, S.C. Ct. App. Order filed November 4, 2016. Appellate Defender Lara M. Caudy of the South Carolina Commission on Indigent then began representing Applicant, beginning on October 11, 2017. On October 18, 2017, Caudy filed a motion, without any objection from Respondent, for the Court of Appeals to accept Judge Stilwell's oral ruling that the record of Applicant's trial was sufficiently reconstructed to allow for meaningful appellate review. The Court of Appeals granted Caudy's motion and

accepted Judge Stilwell's ruling that the record was sufficiently reconstructed. State v. McCall, S.C. Ct. App. filed November 16, 2017.

Caudy then argued on appeal that (1) South Carolina's implied consent statute violates the Fourth Amendment by operating as a per se exception to the warrant requirement in violation of Missouri v. McNeely, 569 U.S. 141 (2013), (2) Judge Stilwell erred in denying Chambers' motion to suppress evidence obtained from a warrantless collection of Applicant's blood and urine because no exigent circumstances existed justifying a warrantless search and because Applicant did not freely and voluntarily consent to the search, (3) Judge Stilwell abused his discretion in denying Applicant's motion for a continuance while also granting Applicant's motion to relieve counsel during trial, and (4) Judge Stilwell violated Applicant's Sixth Amendment right to counsel by granting Applicant's motion to relieve counsel without properly warning Applicant of the dangers of self-representation in accordance with Faretta v. California, 422 U.S. 806 (1975).

The Court of Appeals transferred to the South Carolina Court of Appeals because the principal issue of the appeal was the constitutionality of South Carolina's implied consent statute. State v. McCall, S.C. Ct. App. filed February 22, 2019. The Supreme Court affirmed Applicant's convictions, finding Judge Stilwell did not err in overruling Chambers' objection to the admission of the evidence because exigent circumstances existed that justified the warrantless search. State v. McCall, 429 S.C. 404, 412-13, 839 S.E.2d 91, 95 (2020). The Supreme Court also affirmed as to Caudy's arguments that Judge Stilwell violated Applicant's Sixth Amendment right to counsel by relieving Chambers during the course of trial and refusing to grant a continuance to Applicant thereafter. Id. at 409, 839 S.E.2d at 93, fn.1 (citing the following authorities: "State v. Morris, 376 S.C. 189, 208, 656 S.E.2d 359, 369 (2008) (noting that an appellate court will not reverse the denial of a continuance absent an abuse of discretion); State v. McMillian,

349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) ('Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth.') (citing State v. Lytchfield, 230 S.C. 405, 95 S.E.2d 857 (1957)); Wroten v. State, 301 S.C. 293, 294-95, 391 S.E.2d 575, 576 (1990) (holding that an appellate court looks to the record as a whole to determine whether the defendant was sufficiently apprised of the dangers of proceeding pro se)."). The remittitur was issued on February 21, 2020.

II. Current Application

In his application for post-conviction relief, filed on March 10, 2020, Applicant claims he is entitled to post-conviction relief based on multiple grounds, which Respondent interprets as follows:

1. Chambers was constitutionally ineffective for:
    a. Failing to seek a ruling before trial regarding Applicant's pro se motion to relieve counsel;
    b. Failing to move to be relieved as counsel in Applicant's underlying criminal case after being relieved as Applicant's counsel in other criminal matters;
    c. Failing to request a recess or move for a continuance when Applicant was served with an indictment at trial so that he and Applicant could discuss the indictment;
    d. Failing to request that the State renew its plea offer or to make some motion concerning the plea offer when the offer expired on the same day it was extended to Applicant;
    e. Failing to raise the issue at Applicant's bond hearing or before that Applicant was being unlawfully detained because a probable cause hearing was not conducted "within time of arrest";
    f. Failing to serve Applicant with the indictment after he was served with it by the State;
    g. Failing to object that Applicant was not properly warned of the dangers of self-representation when Applicant moved to have Chambers relieved as counsel during trial;
    h. Improperly captioning the witness list with a Family Court hearing and an incorrect indictment number;
    i. Failing to interview and call witnesses at trial;
    j. Failing to question the State's witnesses about the chain of custody at trial;
    k. Failing to object to Judge Stilwell's failure to inform the jury of all the allegations found in the indictment;
    l. Failing to object when the State alleged the traffic citation issued to Applicant contained the same charges as the indictment;

m. Failing to object to the admission of testing results on the basis that Applicant did not give his implied consent to the collection of the samples;
n. Failing to object to improper opinion testimony from Allen Hall that the victim would have died had he not received immediate medical attention;
o. Failing to object to Mark Allison's testimony that he did not know he was being recorded in the highway patrol vehicle;
p. Failing to object to Judge Stilwell's mispronunciation of names while reading the State's witness list to the jury;
q. Failing to argue that Title 56 of the South Carolina Code of Laws conflicts with Rule 3 of the South Carolina Rules of Criminal Procedure an "indictment must be drafted off an arrest warrant not traffic ticket";
r. Failing to inform Applicant of the possibilities that he might be denied parole and subjected to supervision requirements after being released from prison when Applicant would have pleaded guilty rather than proceeding to trial had he known of those possibilities ahead of time; and
s. Failing to object to the admission of a CD into evidence without challenging its authenticity;

2. Erwin was constitutionally ineffective for:
    a. Failing to inquire who informed someone that medications were expected after the blood and urine samples were taken from Applicant;
    b. Failing to object to a witness's testimony of Wedy Bells concerning the procedures followed when the process required two people;
    c. Committing hybrid representation by representing Applicant without Applicant's consenting on the record;
    d. Making closing arguments that were prejudicial to Applicant;
    e. Affording the constitutionally ineffective assistance of counsel in previous cases; and
    f. Failing to object to his appointment as standby counsel when he and Chambers were appointed to represent Applicant and when Chambers had just been relieved; and
3. Caudy was constitutionally ineffective for:
    a. Failing to argue on appeal the strongest issue, that Applicant was not properly warned of the dangers of self-representation in accordance with Faretta.

Applicant prayed therein that the Court would grant post-conviction relief and vacate his conviction and sentence, reinstate his driving privileges, reinstate his driver's license, and order the State to repay him for all of his expenses.

On March 23, 2020, Applicant filed a document titled "Amendment to P.C.R. Applicant," which the undersigned accepts as an amendment to the application for post-conviction relief and to which the undersigned will refer hereafter as the first amended application. Therein, Applicant

claims he is entitled to relief because (1) Chambers was constitutionally ineffective for failing to ensure that Judge Stilwell adequately warned Applicant of the dangers of self-representation before relieving Chambers as counsel during trial in accordance with Faretta. Applicant prays that the Court would grant post-conviction relief and award him a new trial.

On April 1, 2020, Applicant filed a document titled "2nd Amendment to P.C.R. Application," which the undersigned accepts as an amendment to the application for post-conviction relief and to which the undersigned will refer hereafter as the second amended application. Therein, Applicant claims he is entitled to post-conviction relief because (1) Judge Stilwell erred in appointing Erwin as Applicant's standby counsel at trial without Applicant's consent because Erwin had a conflict of interest due to his being appointed from the same office as Chambers immediately after Chambers was relieved as counsel, Erwin was not prepared to assist Applicant, and Applicant was not properly advised of the dangers of self-representation in accordance with Faretta and (2) Chambers was constitutionally ineffective for failing to inform Applicant of the State's plea offer when Applicant wanted to secure a plea deal and plead guilty rather than proceeding to trial.

On April 27, 2020, Applicant filed a document titled "Motion for Leave To Amend P.C.R. and Amendment to PCR," which the undersigned accepts as an amendment to the application for post-conviction relief and to which the undersigned will refer hereafter as the third amended application.[2] Applicant asserted therein that he wanted to amend his application so as to make it clear that his position is that there is no genuine issue of material fact in regards to his claim that

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Judge Stilwell did not adequately inform him of the dangers of self-representation in accordance with Faretta, which entitles him to a new trial as a matter of law.

On May 1, 2020, Respondent received from Applicant an undated letter and a document titled "Applicants Motion for Summary Judgement," which was accompanied by an affidavit of Applicant and a portion of the transcript from Applicant's trial.[3, 4] Applicant moved therein for summary judgment in accordance with Rule 56, SCRCP, Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), and South Carolina Code Section 17-27-70(c), arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Applicant claimed therein that he is entitled to post-conviction relief because (1) his Sixth Amendment right to counsel was violated when Judge Stilwell granted Applicant's pro se motion to relieve Chambers without conducting a hearing pursuant to Faretta or advising Applicant of the dangers of self-representation, (2) Chambers was constitutionally ineffective for failing to object when Judge Stilwell relieved Chambers as Applicant's attorney without conducting a Faretta hearing or advising Applicant of the dangers of self-representation, (3) his Sixth Amendment right to self-representation was violated when Judge Stilwell "thrust standby counsel" upon Applicant without Applicant's request or consent, and (4) Chambers was constitutionally ineffective for failing to object when Judge Stilwell appointed Erwin as Applicant's standby counsel. Applicant prays that the Court would grant his motion for summary judgment, reverse his conviction and sentence, remand his case for a new trial, find Chambers was constitutionally ineffective for failing to protect

[3] To the best of the undersigned's knowledge, this document has not been filed with the Greenville County Clerk of Court.

[4] Applicant filed this document after Henry was appointed to represent him but before Judge Kinlaw relieved Henry, meaning that the filing was subject to being stricken at the time due to the prohibition against hybrid representation.

Applicant during the Faretta hearing at trial, sanction Respondent "if Respondeet frivolusly reply's", and any further relief deemed appropriate by the Court.

On May 27, 2020, Applicant filed a document titled "Applicant's Amendment to Summary Judgement Request for Leave to Amend," which the undersigned assumes is meant to be an amendment to the motion for summary judgment that Applicant served on Respondent but did not file with the Greenville County Clerk of Court. Applicant alleges therein that he has an additional ground upon which he is entitled to summary judgment, which is that Chambers was constitutionally ineffective for failing to ensure that Applicant received a probable cause determination within forty-eight hours of his warrantless arrest, as required by the Fourth Amendment of the United States Constitution. Applicant prayed therein that the Court would grant his motion for summary judgment.

On June 10, 2020, Applicant filed a document titled "Motion for Leave to Amend Application for Post-Conviction Relief & Amendment to P.C.R. Application," which the undersigned accepts as an amended application and to which the undersigned will refer hereafter as the fourth amended application. Applicant claims therein that he is entitled to post-conviction relief because Chambers was constitutionally ineffective for failing to ensure that Applicant was afforded a probable cause hearing within forty-eight hours of his warrantless arrest

Attached to this return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction; the records from Applicant's direct appeal, including the parties' motions, the courts' orders, the parties' final briefs, the record on appeal, and the dispositive opinion; Applicant's records from the South Carolina Department of Corrections; and the application for post-conviction relief application and the amendments thereto,

and Applicant's motion for summary judgment and the amendment thereto. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Applicant's Motion for Temporary Injunction

On June 10, 2020, Applicant filed a document titled "'Notice of Motion' and Motion for a Preliminary Injunction," which the undersigned interprets as a motion for a temporary injunction. Applicant relies upon Rule 65, SCRCP, in his motion. This Court should deny the motion for the following reasons.

First, this Court should deny Applicant's motion for a temporary injunction because this Court does not have the authority to grant a bond to an applicant for post-conviction relief. "'The primary purpose of bail in a criminal case is to relieve the accused of imprisonment, and the state of the burden of keeping him, pending the trial (or pending appeal), and at the same time, to put the accused as much under the power of the court as if he were in the custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him.'" State v. Gibbs, 353 S.C. 226, 229, 577 S.E.2d 454, 456 (2003) (citation omitted). Because Applicant was convicted and his conviction was affirmed by the South Carolina Court of Appeals, he is no longer an "accused"; instead, he has been found to be guilty and sentenced accordingly. The purpose of bail, as explained by the South Carolina Supreme Court, is to allow for one who has been convicted to seek a stay of his sentence before his conviction has become final through appeal. The remittitur in Applicant's direct appeal was issued on February 21, 2020, meaning that the finality has been achieved. Applicant is no longer situated so as to lay claim to bail.

Second, this Court should deny Applicant's motion for a temporary injunction because this Court does not have the authority to grant Applicant a bond because that authority is reserved to

the appellate courts of South Carolina only as to Applicant. When a defendant has been sentenced to imprisonment for a period in excess of ten years, he "may only be admitted to bail by an appellate court." Rule 246, SCACR. At the conclusion of trial, Judge Stilwell sentenced Applicant to imprisonment for fifteen years. Because Applicant's sentence of imprisonment exceeds ten years, only an appellate court has the authority to admit Applicant to bail.

Third, this Court should deny Applicant's motion for a temporary injunction because Applicant has not shown that he is entitled to that particular relief. "The sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation." County Council of Charleston v. Felkel, 244 S.C. 480, 487-88, 137 S.E.2d 577, 578 (1964) (citations omitted). Applicant alleges he must be admitted to bail at this time, while his PCR action is still pending before the circuit court, due to his fear of the possibility that he may be infected with COVID-19 while imprisoned; however, the South Carolina Department of Corrections has taken steps to protect those in the State's custody. See SOUTH CAROLINA DEP'T OF CORR., South Carolina Department of Corrections (SCDC) COVID-19 Action Plan (2016), http://public.doc.state.sc.us/agency-news-public/homeAction.do?method=view&id=464.

In conclusion, this Court should deny Applicant's motion for a temporary injunction because that relief is not available to applicants when their PCR actions are pending in the circuit court, the circuit court does not have the authority to grant that relief to Applicant because he was sentenced to imprisonment for fifteen years, and because Applicant has failed to show that the relief is required to preserve the status quo.

IV. Respondent's Motion for Summary Dismissal

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an

application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

First, this application for post-conviction relief should be dismissed summarily without an evidentiary hearing because, as a matter of law, Applicant is not entitled to post-conviction relief when he moved to relieve his defense attorney during the course of trial and proceed with the remainder of trial as a pro se defendant. There is no controlling case law in which a defense attorney has been found to have been ineffective based upon his former client's decision that he client had no choice but to represent himself at trial due to the adequacy of the performance of the attorney; instead, authorities, such as Strickland v. Washington, 466 U.S. 668 (1984), and Hill v. Lockhart, 474 U.S. 52 (1985), allow an applicant to seek post-conviction relief if he maintains that his attorney's deficiency forced him to plead guilty rather than facing trial. An applicant's decision to move to relieve his counsel and proceed as a pro se defendant precludes that applicant from maintaining an application for post-conviction relief based upon a claim that he received the ineffective assistance of counsel. United States v. Lawrence, 161 F.3d 250 (4th Cir. 1998) ("[t]he Sixth Amendment does not require a court to grant advisory counsel to a criminal

defendant who chooses to exercise his right to self-representation by proceeding pro se"), United States v. Mikolajczyk, 137 F.3d 237 (5th Cir. 1998) (holding that, as the defendant "had no right to standby counsel, it seems unlikely that standby counsel's failure to assist could be a violation of his Sixth Amendment rights"), and United States v. Bova, 350 F.3d 224 (1st Cir. 2003) (nothing that the defendant did not have the right both to "represent himself and to enjoy the benefit of standby appointed counsel"),

In this matter, Applicant is alleging in various ways that he is entitled to relief because Chambers counsel was constitutionally ineffective. By moving to have trial counsel relieved, Applicant took upon himself the responsibility of prosecuting his own defense and thereby accept responsibility for any failures along the way. As the aforementioned authorities indicate, Applicant should not be allowed to take the reins into his own hand if he was unhappy with his lawyer's representation and then seek a new trial based upon the alleged deficiencies of that representation; instead, post-conviction relief is available only to an applicant claiming he received the ineffective assistance of counsel if he was truly forced to plead guilty due to his attorney's deficiencies or if there is a reasonable likelihood he would have been acquitted rather than convicted at trial in the absence of those deficiencies.

Applicant is also alleging that he is entitled to post-conviction relief because Erwin, Applicant's standby counsel, was constitutionally ineffective in various ways. An applicant cannot maintain an application for post-conviction relief based upon an alleged deficiency in the performance of standby counsel because a defendant who has standby counsel is representing himself and cannot blame an attorney who is not representing him of a constitutional inadequacy. See Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) ("[T]here is no right to 'hybrid representation' that is partially pro se and partially by counsel . . . .).

Because Applicant is not allowed to seek post-conviction relief based upon claims of the constitutionally ineffective assistance of his attorney and of his standby counsel, this Court should dismiss the application.

Second, most of Applicant's claims are barred by the doctrine of res judicata. Res judicata prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (S.C. Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (S.C. Ct. App. 1993). Res judicata also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (approving of PCR court's finding that claims raised or that could have been raised in a prior federal habeas corpus proceeding were barred by res judicata). On direct appeal, Applicant's appellate attorney challenged Judge Stilwell's rulings as to the admission of samples collected from Applicant and his granting of Applicant's motion to relieve Chambers and appointing Erwin as standby counsel. The South Carolina Supreme Court affirmed Applicant's convictions as to those issues, addressing them on the merits. All of the claims that Applicant puts forth now that assert or are based upon the assumptions that those rulings of Judge Stilwell or in the conduct of the attorneys in not challenging those rulings are now barred by the doctrine of res judicata.

Third, Applicant's claim that he is entitled to post-conviction relief because he did not have a probable cause hearing within forty-eight hours of his arrest should be dismissed summarily because, even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law. Probable cause is "a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. Law v. South Carolina Dept. of Corr., 368 S.C. 424, 441,

629 S.E.2d 642, 651 (2006) (citing Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990)). Neither an arrest warrant nor any other judicial determination of probable cause is constitutionally required when an accused was not subjected to a significant period of pretrial detention. City of Goose Greek v. Brady, 288 S.C. 20, 21, 339 S.E.2d 509, 510 (1986) (per curiam) (citing Gerstein v. Pugh, 420 U.S. 103 (1975) (holding "that the Fourth Amendment requires a judicial determination of probable cause as a perquisite to extended restraint of liberty following arrest."). Since the Fourth Amendment requires the probable cause determination, "substantive due process, with its scare and open-ended guideposts can afford [an accused claiming he was denied the Fourth Amendment protection when not given a post-arrest probable cause hearing] no relief. Albright v. Oliver, 510 U.S. 266, 275 (1994) (quotation omitted). Constitutional guarantees, like the right to a speedy trial, can protect an accused without constant need to appeal to the Fourth Amendment to ensure that the accused "will not be detained indefinitely before an 'ultimate determination . . . of innocence is placed in the hands of the judge and the jury.'" Taylor v. Waters, 81 F.3d 429, 436-37 (4th Cir. 1996) (citations omitted).

In this case, Applicant cannot show that he was prejudiced by trial counsel's alleged failure to request a probable cause hearing. It is unclear from Applicant's pleadings whether a probable cause determination was made at some judicial proceeding that was not formally referred to as a "probable cause hearing," such as at a preliminary hearing or a bond hearing. At any rate, even if the facts pleaded by Applicant are true, he is unable to show any resulting prejudice because the warrantless sampling of his blood and urine collected after his arrest were properly admitted at trial, as found by the Supreme Court on direct appeal. No harm was suffered by Applicant due to trial counsel's alleged failure when Applicant was properly indicted by the Greenville County Grand Jury after his arrest, Applicant had the opportunity to avail himself of his remaining

constitutional protections at trial, and the jury found Applicant guilty as indicted following a trial. Applicant's claim that he was denied his right to a probable cause hearing should be denied because the procedures of the indictment process and trial provided suitable constitutional protections for Applicant and because he is unable to establish that he suffered prejudice that would require his conviction to be vacated.

V. Response to Applicant's Motion for Summary Judgment

Applicant has moved for summary judgment. The undersigned submits that there are no genuine issue of material facts as to the claims raised by Applicant; however, it is Respondent who is entitled to judgment as a matter of law and not Applicant. Respondent denies that Applicant has demonstrated that he is entitled to summary judgment and incorporates herein the argument in the immediately preceding section in support. Every reason for which Respondent is entitled to judgment as a matter of law is a reason for which Applicant is not entitled to judgment as a matter of law.

VI. Denial of All Other Allegations

Each and every allegation contained within the application, the amendments thereto, and Applicant's motions that is not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the

matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

VIII. Conclusion

WHEREFORE, Respondent requests that this Court deny Applicant's motion for a temporary injunction, deny Applicant's motion for summary judgment, grant Respondent's motion for summary dismissal and, if the Court denies Applicant's motion for summary dismissal, allow the parties to proceed to an evidentiary hearing in order to address the claims raised by Applicant.

Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

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June 16, 2020

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS IN THE THIRTEENTH JUDICIAL CIRCUIT
Terry Edward McCall, #233236, Applicant,	)	Case No.: 2020-CP-23-1497
v.	)	**AMENDED RETURN TO APPLICATION, RETURN TO MOTION FOR TEMPORARY INJUNCTION, RETURN TO MOTION FOR SUMMARY JUDGMENT, MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

The State (Respondent), making its return to the amended application for post-conviction relief filed by Terry Edward McCall (Applicant)[1] on March 10, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its February of 2015 term, the Greenville County Grand Jury indicted Applicant for felony DUI resulting in great bodily injury (2012-GS-23-10242). Applicant was represented by Randall Lee Chambers, Esquire. Assistant Solicitors Sara Lee Meador Drawdy and Stanford Lee Overby, Jr., of the Thirteenth Circuit Solicitor's Office prosecuted the case. On May 12, 2015, through March 14, 2015, Applicant proceeded to a jury trial with the Honorable Robin B. Stilwell presiding.

At the start of the second day of trial, Applicant moved to relieve Chambers as his attorney and to continue the trial so that he could hire another attorney to represent him at trial. Trial Tran. 167-68. Chambers joined in Applicant's motion to relieve him as counsel. Trial Tran. 170-71.

[1] Applicant filed his application for post-conviction relief as a pro se litigant, was represented by Sarah Morrison Henry, Esquire, upon her appointment, and is now proceeding as a pro se litigant since the Honorable Alex Kinlaw, Jr., granted Applicant's pro se motion to relieve Henry.

Judge Stilwell granted Applicant's motion to relieve Chambers but denied his motion to continue. Trial Tran. 168. Judge Stilwell ordered that someone from the Public Defender's Office be sent to serve as Applicant's standby counsel during trial, but that Applicant would be a pro se defendant for the remainder of trial. Trial Tran. 174. Jake Erwin, Esquire, was appointed as Applicant's standby counsel. Trial Tran. 175.

At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Stilwell sentenced Applicant to imprisonment for a term of fifteen years, with credit for time served since applicant was first ticketed, and recommended that Applicant participate in the addiction treatment unit at the South Carolina Department of Corrections.

Applicant filed a notice of appeal. Appellate Defender John H. Strom of South Carolina Commission on Indigent Defense represented Applicant initially on appeal. Then-Assistant Attorney General William M. Blitch, Jr., of the South Carolina Attorney General's Office represented Respondent on appeal. On September 29, 2016, Strom moved to hold the appeal in abeyance and remand for the reconstruction of the record, without object from Respondent, because portions of the transcript were unavailable after records were stolen from the court reporter. The South Carolina Court of Appeals granted Strom's motion and remanded the case to the circuit court for reconstruction of the record. State v. McCall, S.C. Ct. App. Order filed November 4, 2016. Appellate Defender Lara M. Caudy of the South Carolina Commission on Indigent then began representing Applicant, beginning on October 11, 2017. On October 18, 2017, Caudy filed a motion, without any objection from Respondent, for the Court of Appeals to accept Judge Stilwell's oral ruling that the record of Applicant's trial was sufficiently reconstructed to allow for meaningful appellate review. The Court of Appeals granted Caudy's motion and

accepted Judge Stilwell's ruling that the record was sufficiently reconstructed. State v. McCall, S.C. Ct. App. filed November 16, 2017.

Caudy then argued on appeal that (1) South Carolina's implied consent statute violates the Fourth Amendment by operating as a per se exception to the warrant requirement in violation of Missouri v. McNeely, 569 U.S. 141 (2013), (2) Judge Stilwell erred in denying Chambers' motion to suppress evidence obtained from a warrantless collection of Applicant's blood and urine because no exigent circumstances existed justifying a warrantless search and because Applicant did not freely and voluntarily consent to the search, (3) Judge Stilwell abused his discretion in denying Applicant's motion for a continuance while also granting Applicant's motion to relieve counsel during trial, and (4) Judge Stilwell violated Applicant's Sixth Amendment right to counsel by granting Applicant's motion to relieve counsel without properly warning Applicant of the dangers of self-representation in accordance with Faretta v. California, 422 U.S. 806 (1975).

The Court of Appeals transferred to the South Carolina Court of Appeals because the principal issue of the appeal was the constitutionality of South Carolina's implied consent statute. State v. McCall, S.C. Ct. App. filed February 22, 2019. The Supreme Court affirmed Applicant's convictions, finding Judge Stilwell did not err in overruling Chambers' objection to the admission of the evidence because exigent circumstances existed that justified the warrantless search. State v. McCall, 429 S.C. 404, 412-13, 839 S.E.2d 91, 95 (2020). The Supreme Court also affirmed as to Caudy's arguments that Judge Stilwell violated Applicant's Sixth Amendment right to counsel by relieving Chambers during the course of trial and refusing to grant a continuance to Applicant thereafter. Id. at 409, 839 S.E.2d at 93, fn.1 (citing the following authorities: "State v. Morris, 376 S.C. 189, 208, 656 S.E.2d 359, 369 (2008) (noting that an appellate court will not reverse the denial of a continuance absent an abuse of discretion); State v. McMillian,

349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) ('Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth.') (citing State v. Lytchfield, 230 S.C. 405, 95 S.E.2d 857 (1957)); Wroten v. State, 301 S.C. 293, 294-95, 391 S.E.2d 575, 576 (1990) (holding that an appellate court looks to the record as a whole to determine whether the defendant was sufficiently apprised of the dangers of proceeding pro se)."). The remittitur was issued on February 21, 2020.

II. Current Application

In his application for post-conviction relief, filed on March 10, 2020, Applicant claims he is entitled to post-conviction relief based on multiple grounds, which Respondent interprets as follows:

1. Chambers was constitutionally ineffective for:
    a. Failing to seek a ruling before trial regarding Applicant's pro se motion to relieve counsel;
    b. Failing to move to be relieved as counsel in Applicant's underlying criminal case after being relieved as Applicant's counsel in other criminal matters;
    c. Failing to request a recess or move for a continuance when Applicant was served with an indictment at trial so that he and Applicant could discuss the indictment;
    d. Failing to request that the State renew its plea offer or to make some motion concerning the plea offer when the offer expired on the same day it was extended to Applicant;
    e. Failing to raise the issue at Applicant's bond hearing or before that Applicant was being unlawfully detained because a probable cause hearing was not conducted "within time of arrest";
    f. Failing to serve Applicant with the indictment after he was served with it by the State;
    g. Failing to object that Applicant was not properly warned of the dangers of self-representation when Applicant moved to have Chambers relieved as counsel during trial;
    h. Improperly captioning the witness list with a Family Court hearing and an incorrect indictment number;
    i. Failing to interview and call witnesses at trial;
    j. Failing to question the State's witnesses about the chain of custody at trial;
    k. Failing to object to Judge Stilwell's failure to inform the jury of all the allegations found in the indictment;
    l. Failing to object when the State alleged the traffic citation issued to Applicant contained the same charges as the indictment;

m. Failing to object to the admission of testing results on the basis that Applicant did not give his implied consent to the collection of the samples;
n. Failing to object to improper opinion testimony from Allen Hall that the victim would have died had he not received immediate medical attention;
o. Failing to object to Mark Allison's testimony that he did not know he was being recorded in the highway patrol vehicle;
p. Failing to object to Judge Stilwell's mispronunciation of names while reading the State's witness list to the jury;
q. Failing to argue that Title 56 of the South Carolina Code of Laws conflicts with Rule 3 of the South Carolina Rules of Criminal Procedure an "indictment must be drafted off an arrest warrant not traffic ticket";
r. Failing to inform Applicant of the possibilities that he might be denied parole and subjected to supervision requirements after being released from prison when Applicant would have pleaded guilty rather than proceeding to trial had he known of those possibilities ahead of time; and
s. Failing to object to the admission of a CD into evidence without challenging its authenticity;

2. Erwin was constitutionally ineffective for:
   a. Failing to inquire who informed someone that medications were expected after the blood and urine samples were taken from Applicant;
   b. Failing to object to a witness's testimony of Wedy Bells concerning the procedures followed when the process required two people;
   c. Committing hybrid representation by representing Applicant without Applicant's consenting on the record;
   d. Making closing arguments that were prejudicial to Applicant;
   e. Affording the constitutionally ineffective assistance of counsel in previous cases; and
   f. Failing to object to his appointment as standby counsel when he and Chambers were appointed to represent Applicant and when Chambers had just been relieved; and
3. Caudy was constitutionally ineffective for:
   a. Failing to argue on appeal the strongest issue, that Applicant was not properly warned of the dangers of self-representation in accordance with Faretta.

Applicant prayed therein that the Court would grant post-conviction relief and vacate his conviction and sentence, reinstate his driving privileges, reinstate his driver's license, and order the State to repay him for all of his expenses.

On March 23, 2020, Applicant filed a document titled "Amendment to P.C.R. Applicant," which the undersigned accepts as an amendment to the application for post-conviction relief and to which the undersigned will refer hereafter as the first amended application. Therein, Applicant

claims he is entitled to relief because (1) Chambers was constitutionally ineffective for failing to ensure that Judge Stilwell adequately warned Applicant of the dangers of self-representation before relieving Chambers as counsel during trial in accordance with Faretta. Applicant prays that the Court would grant post-conviction relief and award him a new trial.

On April 1, 2020, Applicant filed a document titled "2nd Amendment to P.C.R. Application," which the undersigned accepts as an amendment to the application for post-conviction relief and to which the undersigned will refer hereafter as the second amended application. Therein, Applicant claims he is entitled to post-conviction relief because (1) Judge Stilwell erred in appointing Erwin as Applicant's standby counsel at trial without Applicant's consent because Erwin had a conflict of interest due to his being appointed from the same office as Chambers immediately after Chambers was relieved as counsel, Erwin was not prepared to assist Applicant, and Applicant was not properly advised of the dangers of self-representation in accordance with Faretta and (2) Chambers was constitutionally ineffective for failing to inform Applicant of the State's plea offer when Applicant wanted to secure a plea deal and plead guilty rather than proceeding to trial.

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On May 1, 2020, Respondent received from Applicant an undated letter and a document titled "Applicants Motion for Summary Judgement," which was accompanied by an affidavit of Applicant and a portion of the transcript from Applicant's trial.[3, 4] Applicant moved therein for summary judgment in accordance with Rule 56, SCRCP, Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), and South Carolina Code Section 17-27-70(c), arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Applicant claimed therein that he is entitled to post-conviction relief because (1) his Sixth Amendment right to counsel was violated when Judge Stilwell granted Applicant's pro se motion to relieve Chambers without conducting a hearing pursuant to Faretta or advising Applicant of the dangers of self-representation, (2) Chambers was constitutionally ineffective for failing to object when Judge Stilwell relieved Chambers as Applicant's attorney without conducting a Faretta hearing or advising Applicant of the dangers of self-representation, (3) his Sixth Amendment right to self-representation was violated when Judge Stilwell "thrust standby counsel" upon Applicant without Applicant's request or consent, and (4) Chambers was constitutionally ineffective for failing to object when Judge Stilwell appointed Erwin as Applicant's standby counsel. Applicant prays that the Court would grant his motion for summary judgment, reverse his conviction and sentence, remand his case for a new trial, find Chambers was constitutionally ineffective for failing to protect

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Applicant during the Faretta hearing at trial, sanction Respondent "if Respondeet frivolusly reply's", and any further relief deemed appropriate by the Court.

On May 27, 2020, Applicant filed a document titled "Applicant's Amendment to Summary Judgement Request for Leave to Amend," which the undersigned assumes is meant to be an amendment to the motion for summary judgment that Applicant served on Respondent but did not file with the Greenville County Clerk of Court. Applicant alleges therein that he has an additional ground upon which he is entitled to summary judgment, which is that Chambers was constitutionally ineffective for failing to ensure that Applicant received a probable cause determination within forty-eight hours of his warrantless arrest, as required by the Fourth Amendment of the United States Constitution. Applicant prayed therein that the Court would grant his motion for summary judgment.

On June 10, 2020, Applicant filed a document titled "Motion for Leave to Amend Application for Post-Conviction Relief & Amendment to P.C.R. Application," which the undersigned accepts as an amended application and to which the undersigned will refer hereafter as the fourth amended application. Applicant claims therein that he is entitled to post-conviction relief because Chambers was constitutionally ineffective for failing to ensure that Applicant was afforded a probable cause hearing within forty-eight hours of his warrantless arrest.

On June 18, 2020, Applicant filed two amended applications for post-conviction relief, arguing therein that Caudy was constitutionally ineffective for not arguing that the trial court erred by not quashing the indictment, that evidence produced from the arrest of Applicant should have been suppressed because no probable cause supported the arrest.

On August 26, 2020, Applicant filed two amended applications for post-conviction relief, claiming (1) Chambers was constitutionally ineffective for representing Applicant despite having

a conflict of interest by virtue of being aware that Applicant wanted to relieve him as counsel, (2) Chambers was constitutionally ineffective for violating the Rules of Professional Conduct with respect to his representation of Applicant, (3) Applicant's Fourth Amendment rights were violated because he was unreasonably seized when a magistrate judge did not determine within twenty-four hours of Applicant's arrest that probable cause supported the arrest, (4) Chambers was constitutionally ineffective for denying Applicant's right to self-representation after being discharged from representation of Applicant by court order, (5) Chambers was constitutionally ineffective for failing to object to the trial court's order relieving Chambers as counsel, (6) Chambers did not communicate to Applicant all plea offers extended by the State, and (7) Chambers was constitutionally ineffective for failing to communicate with Applicant to such an extent that Applicant did not know what he was facing until served with the indictment on the day of trial.

Applicant filed an amended application on September 16, 2020, claiming therein that Chambers was constitutionally ineffective for representing Applicant while having a conflict of interest.

Applicant filed an amended application on September 23, 2020, arguing Chambers was ineffective in his argument while moving for the suppression of the results of Applicant's blood and/or urine tests.

On December 10, 2020, Applicant filed an amended application for post-conviction relief, raising claims he had raised in earlier filings.

Applicant filed two amendments to his application for post-conviction relief on November 5, 2020, claiming therein that: (1) Chambers was constitutionally ineffective for failing to communicate to Applicant all plea offers extended by the State, (2) Chambers was constitutionally

ineffective for not objecting to Judge Stilwell's order reliving Chambers as counsel, (3) Applicant was unreasonably seized when a magistrate did not find that probable cause supported the arrest of Applicant within forty-eight hours thereof, (4) Chambers was constitutionally ineffective for not moving for the dismissal of the case before the positive blood test came back from SLED.

Respondent incorporates the attachments to its original return to this amended return. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Applicant's Motion for Temporary Injunction

On June 10, 2020, Applicant filed a document titled "'Notice of Motion' and Motion for a Preliminary Injunction," which the undersigned interprets as a motion for a temporary injunction. Applicant relies upon Rule 65, SCRCP, in his motion. This Court should deny the motion for the following reasons.

First, this Court should deny Applicant's motion for a temporary injunction because this Court does not have the authority to grant a bond to an applicant for post-conviction relief. "'The primary purpose of bail in a criminal case is to relieve the accused of imprisonment, and the state of the burden of keeping him, pending the trial (or pending appeal), and at the same time, to put the accused as much under the power of the court as if he were in the custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him.'" State v. Gibbs, 353 S.C. 226, 229, 577 S.E.2d 454, 456 (2003) (citation omitted). Because Applicant was convicted and his conviction was affirmed by the South Carolina Court of Appeals, he is no longer an "accused"; instead, he has been found to be guilty and sentenced accordingly. The purpose of bail, as explained by the South Carolina Supreme Court, is to allow for one who has been convicted to seek a stay of his sentence before his conviction has become final through appeal. The remittitur in Applicant's direct appeal was issued on February

21, 2020, meaning that the finality has been achieved. Applicant is no longer situated so as to lay claim to bail.

Second, this Court should deny Applicant's motion for a temporary injunction because this Court does not have the authority to grant Applicant a bond because that authority is reserved to the appellate courts of South Carolina only as to Applicant. When a defendant has been sentenced to imprisonment for a period in excess of ten years, he "may only be admitted to bail by an appellate court." Rule 246, SCACR. At the conclusion of trial, Judge Stilwell sentenced Applicant to imprisonment for fifteen years. Because Applicant's sentence of imprisonment exceeds ten years, only an appellate court has the authority to admit Applicant to bail.

Third, this Court should deny Applicant's motion for a temporary injunction because Applicant has not shown that he is entitled to that particular relief. "The sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation." County Council of Charleston v. Felkel, 244 S.C. 480, 487-88, 137 S.E.2d 577, 578 (1964) (citations omitted). Applicant alleges he must be admitted to bail at this time, while his PCR action is still pending before the circuit court, due to his fear of the possibility that he may be infected with COVID-19 while imprisoned; however, the South Carolina Department of Corrections has taken steps to protect those in the State's custody. See SOUTH CAROLINA DEP'T OF CORR., South Carolina Department of Corrections (SCDC) COVID-19 Action Plan (2016), http://public.doc.state.sc.us/agency-news-public/homeAction.do?method=view&id=464.

In conclusion, this Court should deny Applicant's motion for a temporary injunction because that relief is not available to applicants when their PCR actions are pending in the circuit court, the circuit court does not have the authority to grant that relief to Applicant because he was

sentenced to imprisonment for fifteen years, and because Applicant has failed to show that the relief is required to preserve the status quo.

IV. Respondent's Motion for Summary Dismissal

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

First, any of the claims regarding Chambers' representation of Applicant and events occurring at any point before Erwin began representing Applicant should be dismissed summarily without an evidentiary hearing because, as a matter of law, Applicant is not entitled to post-conviction relief when he moved to relieve his defense attorney during the course of trial and proceed with the remainder of trial as a pro se defendant. There is no controlling case law in which a defense attorney has been found to have been ineffective based upon his former client's decision that he client had no choice but to represent himself at trial due to the adequacy of the performance of the attorney; instead, authorities, such as Strickland v. Washington, 466 U.S. 668 (1984), and Hill v. Lockhart, 474 U.S. 52 (1985), allow an applicant to seek post-conviction relief if he

maintains that his attorney's deficiency forced him to plead guilty rather than facing trial. An applicant's decision to move to relieve his counsel and proceed as a pro se defendant precludes that applicant from maintaining an application for post-conviction relief based upon a claim that he received the ineffective assistance of counsel. United States v. Lawrence, 161 F.3d 250 (4th Cir. 1998) ("[t]he Sixth Amendment does not require a court to grant advisory counsel to a criminal defendant who chooses to exercise his right to self-representation by proceeding pro se"), United States v. Mikolajczyk, 137 F.3d 237 (5th Cir. 1998) (holding that, as the defendant "had no right to standby counsel, it seems unlikely that standby counsel's failure to assist could be a violation of his Sixth Amendment rights"), and United States v. Bova, 350 F.3d 224 (1st Cir. 2003) (nothing that the defendant did not have the right both to "represent himself and to enjoy the benefit of standby appointed counsel"),

In this matter, Applicant is alleging in various ways that he is entitled to relief because Chambers counsel was constitutionally ineffective. By moving to have trial counsel relieved, Applicant took upon himself for a time the responsibility of prosecuting his own defense and thereby accept responsibility for any failures along the way. As the aforementioned authorities indicate, Applicant should not be allowed to take the reins into his own hand if he was unhappy with his lawyer's representation and then seek a new trial based upon the alleged deficiencies of that representation; instead, post-conviction relief is available only to an applicant claiming he received the ineffective assistance of counsel if he was truly forced to plead guilty due to his attorney's deficiencies or if there is a reasonable likelihood he would have been acquitted rather than convicted at trial in the absence of those deficiencies.

Applicant is also alleging that he is entitled to post-conviction relief because Erwin, Applicant's standby counsel, was constitutionally ineffective in various ways. An applicant cannot

maintain an application for post-conviction relief based upon an alleged deficiency in the performance of standby counsel because a defendant who has standby counsel is representing himself and cannot blame an attorney who is not representing him of a constitutional inadequacy. See Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) ("[T]here is no right to 'hybrid representation' that is partially pro se and partially by counsel . . . .). Although Erwin began acting as Applicant's attorney before the end of trial, he was initially acting as standby counsel only. For any event occurring before Erwin began representing Applicant as counsel rather than merely as standby counsel, Applicant's relevant claims should be dismissed.

Second, most of Applicant's claims are barred by the doctrine of res judicata. Res judicata prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (S.C. Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (S.C. Ct. App. 1993). Res judicata also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (approving of PCR court's finding that claims raised or that could have been raised in a prior federal habeas corpus proceeding were barred by res judicata). On direct appeal, Applicant's appellate attorney challenged Judge Stilwell's rulings as to the admission of samples collected from Applicant and his granting of Applicant's motion to relieve Chambers and appointing Erwin as standby counsel. The South Carolina Supreme Court affirmed Applicant's convictions as to those issues, addressing them on the merits. All of the claims that Applicant puts forth now that assert or are based upon the assumptions that those rulings of Judge Stilwell or in the conduct of the attorneys in not challenging those rulings are now barred by the doctrine of res judicata.

Third, Applicant's claim that he is entitled to post-conviction relief because he did not have a probable cause hearing within forty-eight hours of his arrest should be dismissed summarily because, even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law. Probable cause is "a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. Law v. South Carolina Dept. of Corr., 368 S.C. 424, 441, 629 S.E.2d 642, 651 (2006) (citing Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990)). Neither an arrest warrant nor any other judicial determination of probable cause is constitutionally required when an accused was not subjected to a significant period of pretrial detention. City of Goose Greek v. Brady, 288 S.C. 20, 21, 339 S.E.2d 509, 510 (1986) (per curiam) (citing Gerstein v. Pugh, 420 U.S. 103 (1975) (holding "that the Fourth Amendment requires a judicial determination of probable cause as a perquisite to extended restraint of liberty following arrest."). Since the Fourth Amendment requires the probable cause determination, "substantive due process, with its scare and open-ended guideposts can afford [an accused claiming he was denied the Fourth Amendment protection when not given a post-arrest probable cause hearing] no relief. Albright v. Oliver, 510 U.S. 266, 275 (1994) (quotation omitted). Constitutional guarantees, like the right to a speedy trial, can protect an accused without constant need to appeal to the Fourth Amendment to ensure that the accused "will not be detained indefinitely before an 'ultimate determination . . . of innocence is placed in the hands of the judge and the jury.'" Taylor v. Waters, 81 F.3d 429, 436-37 (4th Cir. 1996) (citations omitted).

In this case, Applicant cannot show that he was prejudiced by trial counsel's alleged failure to request a probable cause hearing. It is unclear from Applicant's pleadings whether a probable cause determination was made at some judicial proceeding that was not formally referred to as a

"probable cause hearing," such as at a preliminary hearing or a bond hearing. At any rate, even if the facts pleaded by Applicant are true, he is unable to show any resulting prejudice because the warrantless sampling of his blood and urine collected after his arrest were properly admitted at trial, as found by the Supreme Court on direct appeal. No harm was suffered by Applicant due to trial counsel's alleged failure when Applicant was properly indicted by the Greenville County Grand Jury after his arrest, Applicant had the opportunity to avail himself of his remaining constitutional protections at trial, and the jury found Applicant guilty as indicted following a trial. Applicant's claim that he was denied his right to a probable cause hearing should be denied because the procedures of the indictment process and trial provided suitable constitutional protections for Applicant and because he is unable to establish that he suffered prejudice that would require his conviction to be vacated.

Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). An applicant can allege constitutional violations in a PCR action unless he could have raised the issue on direct appeal. Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (affirming the PCR court's denial of relief because the applicant could have argued on direct appeal that the trial court erred in admonishing applicant's defense attorney and that the State improperly commented on the applicant's failure to call his wife as a witness at trial); S.C. Code Ann. § 17-27-20(b) (1976)); but see Fortune v. State, 428 S.C. 545, 837 S.E.2d 37, 44 (2019) (instructing that, in some instances, an applicant may argue a claim for post-conviction relief based on constitutional violations other than a violation of his Sixth Amendment right to counsel due to the ineffective assistance of counsel; recognizing Fortune was entitled to a new trial because the State made improper statements during its closing arguments at trial).

To the extent that the Court does not dismiss one or more of Applicant's claims summarily, Respondent would show as follows. Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Strickland v. Washington, 466 U.S. 668 (1984). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first

determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . . ." Jones, at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland, at 616, 524 S.E.2d at 836. Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, Applicant must show that, but for appellate counsel's errors, there is a

reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court's

finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

The Rules of Professional Conduct have nothing to say regarding the constitutionality of a defendant's criminal conviction, as they are meant to define proper ethical conduct among members of the legal profession. Langford v. State, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993).

Respondent submits that Applicant likely cannot show that he is entitled to post-conviction relief on these claims in light of the strong deference given to defense attorneys in post-conviction relief actions and the reasons that many of the claims should be dismissed summarily, but requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Response to Applicant's Motion for Summary Judgment

Applicant has moved for summary judgment. The undersigned submits that there are no genuine issue of material facts as to the claims raised by Applicant; however, it is Respondent who is entitled to judgment as a matter of law and not Applicant. Respondent denies that Applicant has demonstrated that he is entitled to summary judgment and incorporates herein the argument in the immediately preceding section in support. Every reason for which Respondent is entitled to judgment as a matter of law is a reason for which Applicant is not entitled to judgment as a matter of law.

VI. Denial of All Other Allegations

Each and every allegation contained within the application, the amendments thereto, and Applicant's motions that is not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

VIII. Conclusion

WHEREFORE, Respondent requests that this Court deny Applicant's motion for a temporary injunction, deny Applicant's motion for summary judgment, grant Respondent's motion for summary dismissal for all applicable claims and allow the parties to proceed to an evidentiary hearing in order to address the claims raised by Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: s/Taylor Zane Smith
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Telephone: (803) 734-3737

December 11, 2020

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Terry Edward McCall, #233236 Applicant, vs State of South Carolina, Respondent,	IN THE COURT OF COMMON PLEAS **2020-CP-23-1497** CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Amended Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Terry Edward McCall, #233236 (W8-0038-B)
Manning Correctional Institution
502 Beckman Drive
Columbia, SC 29203

DATED this the 11th day of December, 2020.

Hannah Bradham, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Terry Edward McCall, #233236, Applicant, v. State of South Carolina, Respondent.	2020-CP-23-1497 **RETURN TO APPLICANT'S MOTION FOR BAIL**

FILED-CLERK OF COURT
PAUL K. [illegible]
2020 NOV -5 PM 1:39

Terry Edward McCall ("Applicant") filed a motion for bail on September 30, 2020. In making this return to that motion, the State ("Respondent") would respectfully show this Court as follows.

First, this Court should deny Applicant's motion because bail is not intended to be granted to an applicant for post-conviction relief in Applicant's position. "'The primary purpose of bail in a criminal case is to relieve the accused of imprisonment, and the state of the burden of keeping him, pending the trial (or pending appeal), and at the same time, to put the accused as much under the power of the court as if he were in the custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him.'" State v. Gibbs, 353 S.C. 226, 229, 577 S.E.2d 454, 456 (2003) (citation omitted). Because Applicant was convicted and his conviction was affirmed by the South Carolina Court of Appeals, he is no longer an "accused." He has been found to be guilty and has been sentenced accordingly. The remittitur in Applicant's direct appeal was issued on February 21, 2020; finality has been achieved. Applicant is no longer situated so as to lay claim to bail.

Second, this Court should deny Applicant's motion because this Court does not have the authority to grant Applicant a bond because, due to the nature of Applicant's sentence, that authority is reserved to the appellate courts of South Carolina only. When a defendant has been sentenced to imprisonment for a period in excess of ten years, he "may only be admitted to bail by an appellate court." Rule 246, SCACR. At the conclusion of trial, Judge Stilwell sentenced Applicant to imprisonment for fifteen years. Because Applicant's sentence of imprisonment exceeds ten years, only an appellate court has the authority to admit Applicant to bail.

WHEREFORE, Respondent requests that the Court deny Applicant's motion.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: s/Taylor Zane Smith
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

October 19, 2020

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

2020-CP-23-1497

Terry Edward McCall, #233236

Applicant,

vs

State of South Carolina,

Respondent,

FILED-OFFICE OF THE CLERK
PAUL A. ... GREENVILLE, SC
2020 NOV -2 PM 1:39

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return, Motion for a More Definite Statement, and Motion for Partial Summary Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Terry Edward McCall, #233236 (W8-0038-B)
Manning Correctional Institution
502 Beckman Drive
Columbia, SC 29203

DATED this the 19th day of October, 2020.

Jennifer Jennison, Administrative Coordinator
For Respondent

Terry McCall #233236
Manning ReEntry/Work Release
502 Beckman Drive
Columbia, S.C. 29203

11-16-2020

ENTERED COMPUTER

RE: Filing Exhibits for P.C.R. Hearing November 30th, 2020
Terry Edward McCall V. State Case#2020-CP-23-01497

Dear Clerk of Court Paul B. Wickensimer,

Find enclosed my Exhibits which needs to be filed and placed in the file for Case#2020-CP-23-01497 A hearing has been set for November 30th, 2020 in this case and it is by VIA Virtual hearing. And I was not informed on how I was to get the exhibits in this way so I wanted to make sure they are with the case file, and the Judge gets them.

Please let me know that you did recieve them and they have been placed in the file.

Thank You Very Much,
Sincerely Yours,
s. Terry McCall
Terry McCall

Awaiting Reply

I'm Sorry our mail room postage machine is broken. So I had to send each set of (5) exhibits in different envelopes

APPLICANT'S EXHIBITS FOR P.C.R.NOVEMBER 30,202

CASE NO:2020-CP-23-01497

Terry Edward McCall
Applicant,

V.

State
Respondent,

Dated 11-16-2020

A. May 12, 2015 Transcript

B. May 13, 2015 Transcript

C. Notice of Representation

D. Uniform Traffic Ticket

E. Toxicoligy Report from SLED April, 20, 2012

F. Toxicoligy Report from SLED June 4, 2012

G. Attorney General Opinion dated October 12, 1998

H. Commitment form dated 3-5-2012

I. Charges Public Inquiry

J. Bond Form

K. Discharge Form

L. Preliminary Hearing Letter Dated Jan. 8, 2020 Donna Dearden

M. Public Defender Office Letter Dated May 9, 2012

N. Greenville County Letter Dated April 12, 2019 Visit Dates

O. Solicitor Letter dated May 21, 2019 Indictment Emailed May 7, 2015

P. Indictment

Q. Arrest Record

R. Greenville Couuty Picture with Charges Listed ou it

S. Motion To Releive Counsel

T. Judge Garrison Order

U. Potential Defense Witness List , Unsigned

V. Potential Defense Witness List, Signed

W. Dr. Troy Mitchell, M.D. Notes/Dr. David turner Medical Notes

X. Affidavit of David McAlhany

Y. Plea Offer Dated 12-11-2012

Z. Plea Offer Dated 1-2-2013

PROOF OF SERVICE

I Terry McCall the undersigned have properly served the parties listed below with the Applicants P.C.R. Exhibits by placing same in the United States Postal Service Postage prepaid, Affixed and forwarded to the address below:

Dated 11-16-2020

s. Terry McCall

Terry McCall #233236
Manning ReEntry Work Release
502 Beckman Drive
Columbia, S.C. 29203

Paul B. Wickensimer
Clerk of Caourt
Greenville County Courthouse
305 East North Street
Greenville, S.C. 29601

Court's Exhibit A

See Pg 50 to support Affidavit of Attorney

ENTERED COMPUTER

STATE OF SOUTH CAROLINA	:	COURT OF GENERAL SESSION
	:	2012-GS-23-10242
State of South Carolina	:	
	:	TRANSCRIPT RECORD
vs	:	
	:	
Terry Edward McCall	:	
	:	
	:	

May 12, 2015 - Day 1
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

APPEARANCES:

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Randy Chambers, Esquire
Jake Erwin, Esquire
Terry McCall, Pro se

Time (4)
Pg 41 10
Canvass Stilwell
Very minimal

Caroline Hiskell
Thirteenth Circuit Court Reporter

If only took 15-20 minutes to take witnesses statements. So Time could be untimely.

Pg 29 (30) Wine Collection
Chain of custody

41, 42, 50

154-162 - got copied

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Take your seats, ladies and gentlemen, good morning, I hope everyone is doing well today.

Let's go ahead and call to the bar the State of South Carolina versus Terry Edward McCall. This comes before the Court pursuant to charges of driving under the influence, felony DUI with great bodily injury.

Ms. Solicitor, I'd be happy to hear from you.

MS. DRAWDY: At this time we would ask that you arraign the defendant on his indictment. I have copy that can be handed to him.

THE COURT: Have you served the defendant with this?

MS. DRAWDY: I'm serving it now. His counsel has been provided with copies previously.

THE COURT: Let the record reflect that the defendant has been served with a copy of the indictment.

Mr. Chambers, do you waive a formal arraignment, sir?

MR. CHAMBERS: Your Honor, I do waive formal arraignment but I do have a motion to make at the appropriate time.

State versus McCall

THE COURT: I understand and I certainly wouldn't preclude you from making any motions relative to the sufficiency or appropriate necessity of the indictment. As you know it's going to take me five minute to go through a formal arraignment and a lot of that is entirely academic in being we have arrived at the point of trial.

MR. CHAMBERS: That's true, Your Honor.

THE COURT: It's my understanding that there are motions that each side has to put into the record and therefore I'll defer to counsel and I will hear you on those motions.

MR. CHAMBERS: The first motion that I have, your Honor, is with the indictment itself. We believe that the solicitor proceeded in a fashion that is contrary to the rules, and as such we ask that that indictment that was just served on my client be quashed and that this case be dismissed with prejudice.

This is a felony DUI, clearly a general sessions offense. The officer at the time he went out and worked the accident and then went to the hospital and made a determination that he believed there was probable cause to charge my client. Rather than go through a neutral and detached magistrate, he simply wrote a traffic ticket and then they arrested my client on that basis.

1st Motion Indictment

We believe that is illegal and certainly contrary to the rules and certainly should not have been done that way.

The Rule 1 of the South Carolina Rules of Civil procedure even talk about the fact that warrant, not a ticket but a warrant, is supposed to be transmitted to the Solicitor's Office. That was never done in this case. So his arrest at the outset we believe is unconstitutional and should not have taken place and was not pursuant to an arrest warrant.

Now, obviously the solicitor was free at any point if the wanted to to pursue a direct indictment and I supposed it's their position is what they just done, but at no point prior to trial was my client ever served. They're serving him now on the day of trial and, of course, this indictment references the traffic ticket that we believe to be contrary to the rules.

For all those reasons we would ask the Court to quash that indictment and just dismiss those charges with prejudice because my client has been sitting in jail for over a year now. These things could have been done in a much more timely fashion. He could have had the time to review that indictment and to have been prepared for it. None of those things were done.

It's our position that serving it now is

trying to make up for a mistake that they made and they not be, at this late date, allowed to do that. That's our position, Your Honor.

THE COURT: Okay, good enough. Solicitor.

MS. DRAWDY: Your Honor, to begin with this individual Mr. McCall has not been in jail on this charge for over a year. He has been in and out of jail in Greenville and Pickens County for the past three years since his arrest and the time that he bonded out on this charge. So he has not been sitting in jail on this charge.

Section 56-7-10 specifically authorizes any traffic offense to be placed on a uniform traffic ticket which is what the officer did in this case. It is authorized. Rule 1 does not change that.

Furthermore, the True Bill by the grand jury they saw the same evidence they would have seen had it been on a warrant. The same evidence was presented to them and they have found probable cause. So it is common practice and has been and I'm sure Your Honor is aware throughout the State for felony DUI charges to be initiated on a uniformed traffic ticket. It's simply not a procedural problem in this case and certainly not a due process right.

THE COURT: Is the charge on the ticket the

very same charge that is on the indictment that was True Billed to the grand jury?

MR. OVERBY: I have a copy I can pass up to the Court. It has a code section and it only says felony DUI and we would assert that because this is great bodily injury that is the least charge that could be charged. So we have not upgraded it.

THE COURT: I understand.

MR. OVERBY: I'll pass that up as a Court's Exhibit.

(Indictment marked as Court's Exhibit No. 1 for identification.)

THE COURT: Mr. Chambers, you may respond.

MR. CHAMBERS: Your Honor, it is our position this is more than just a mere traffic ticket. It certainly carries more than 30 days. In fact, it carries up to 15 years in prison. And you can see obviously a warrant that had gone through a neutral magistrate would have some description of what they were actually alleging, and the officer here has simply written in felony DUI. It doesn't have any description about the facts.

I would just reiterate our position that the arrest in this case itself was illegal. It shouldn't have been done based on the warrant. It's late service and arraignment on this indictment is too little too late and

we would again as that the Court to quash the indictment and dismiss the case.

THE COURT: When was the indictment handed down?

MR. OVERBY: Your Honor, it was True Billed in February 2013.

THE COURT: Was Mr. Chambers given a copy of that indictment?

MR. OVERBY: Not at that time. It is not our practice to do that. It's a matter of public record in the Clerk's Office. He did ask for a copy of it last week and we did provide it to him promptly.

THE COURT: I'm going to respectfully deny the motion. I do not think that is failed for the charges to initiate upon a uniformed traffic citation. I do find that subsequently, of course, it was True Billed by the grand jury and then keeping with appropriate procedure.

It is somewhat unusually that it would have been served at this later day, however, the substance of the charges were known from inception. That it was a felony DUI which suggests by definition that someone had been hurt as a consequence of operating a motor vehicle, allegedly, in an altered or impaired state.

I don't see and there has been no

5-1-15 visited Jail No Indictment served ya

Randy should have objected and argued. Felony DUI suggest more than someone had suggested there in the subject matter which was never listed.

articulation of prejudice that visits upon the defendant as a consequence of the ticket or as a consequence of the indictment having been served today.

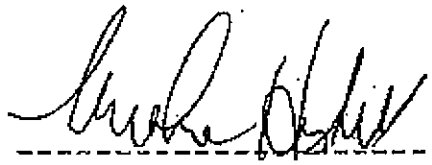
I don't see how there was anything that was not disclosed relative to the charges relative to the trial that was coming forward today, therefore, on all those basis I respectfully deny the motion.

MR. CHAMBERS: Your Honor, the other motions I have pretrial involves blood evidence that the solicitor, I believe, intends to admit. In this particular case, my client as well as Mr. Suddeth who was unfortunately injured in this wreck were both extricated from their automobile by emergency personnel, transported to the hospital for treatment. My client was somewhat ambulatory and was able to talk to the officer when he got there. It was certainly not a medical necessity for taking any kind of blood test rather than a breath test, but when the officer got to the hospital at some point, he required my client to first submit to a urine test which came back negative for any kind of drugs, but then took a blood test and we're asking to suppress the results of that.

The first issue that we have with that is my client -- first of all there was no probable cause to ask for that. At the time this accident in the making of this

I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Court of General Sessioons, Greenville County, this 12th day of May, 2015.

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



Caroline Hiskell

STATE OF SOUTH CAROLINA	GENERAL SESSION
	2012-GS-23-10242
--	TRANSCRIPT RECORD
vs	
Terry McCall	

May 13, 2015 - Day 2
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

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

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Jake Erwin Esquire
Randy Chambers, Esquire
Attorney for the Defendant

Caroline Hiskell
Thirteenth Circuit Court Reporter

I N D E X

WITNESSES	DIR	CR	RED	REC
Sally Clark	180			
James Jones	184			
Ryan Freeman	200	206		
Wes Hiatt	208	215		
David MacAlhaney	218	236		
Ashley Norman	240	247	247	
Dan Bannister	252			
Luke Perry	255			
Sgt Rivers	257			
Amy Stevens	261			
Wendy Bell	266	268		
Marybeth McCormick	269			
Carmen Tucker	273			
Shanna Sorrells	282	297	299	

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Thank you. Caroline, let me know when you're record.

We're back on the record and Mr. Chambers, I believe you indicated Mr. McCall has a motion.

MR. CHAMBERS: I'll repeat what I said earlier and then I'll turn it over to Mr. McCall. He has summoned me back this morning saying that he needed to talk to me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. So I think he has created a conflict between us.

He clearly does not want to me to continue as his lawyer and it's my understanding that the wants the Court to grant him a continuance and allow him to hire an attorney and with that I will let him say what he has to say.

THE COURT: Alright, Mr. McCall.

DEFENDANT MCCALL: Yes, Your Honor, I filed a motion to relieve Mr. Chambers back in March and I have

relieved him on some other charges and yesterday we got the indictment, it's the first time I have ever received it. I felt like we weren't prepared enough and I want to retain me someone else as counsel.

I don't know if it may be my feeling but I talk to my parents and they feel it may be in my best interest to hire someone else because there's a conflict between us that my dad feels like I'm not going to represented in the best defense.

I feel I need to get someone -- to retain a lawyer.

THE COURT: Mr. McCall, I'm going to have to deny your motion.

DEFENDANT MCCALL: I can't hire a lawyer?

THE COURT: It's too late for you to be making that decision. I recognize you have come before the Court before and you have made a motion for Mr. Chambers to be relieved and at that time, if I'm not mistaken, you ask that he remain on this case because you were satisfied his services.

I don't know what type of impasse that has become between the two of you. I will consider relieving Mr. Chambers as your attorney of record, if you want, but you will be required to proceed pro se for the remainder of this trial, sir.

DEFENDANT MCCALL: If that's what I got to do, that's what I got to do.

THE COURT: Would you like Mr. Chambers to continue to stay as stand by counsel?

DEFENDANT MCCALL: No, sir.

THE COURT: You understand that you have a right to have an attorney represent you?

DEFENDANT MCCALL: Yes, sir.

THE COURT: And you understand that if you decide and determine ---

DEFENDANT MCCALL: I don't want him to represent me, though.

THE COURT: You understand that if you decide to represent yourself you assume certain risks in doing so, do you understand?

DEFENDANT MCCALL: I do, but I'm not going to stand here and not have an attorney present when I have a constitutional right to have a lawyer. I'm asking you to let me hire an attorney.

THE COURT: Yes, sir. You have an attorney.

DEFENDANT MCCALL: He was appointed and I'm asking for me to be able to hire my own lawyer. I had a conflict yesterday come in and you allowed an indictment to coma that I never seen before. I can't believe you allowed that. And indictment that I wasn't prepared and

all the other evidence that he's never reviewed. Come on, man. This is uncalled for. This is making a mockery of the court.

THE COURT: I understand that you take exception to my ruling and I respect that. My question is you clear that you take exception to the ruling I made, but that's not a reflection of the work that your attorney did in trying to exclude it and have the case dismissed.

DEFENDANT MCCALL: He never did.

THE COURT: He certainly did.

DEFENDANT MCCALL: Tried to dismiss what?

THE COURT: This case based on an inefficient and ineffective indictment. He made a compelling argument. He made all the appropriate legal arguments. I just happen to rule against you. That's not a reflection on his abilities as an attorney.

DEFENDANT MCCALL: That's not what I'm upset about. It's not your ruling why I'm upset, it's the fact I have a conflict from the past with him and I didn't get to be heard in relation to it and he came in yesterday and started the trial without hearing my motion. And the rules on the motion was denied -- violated. I was supposed to be heard on the motion first.

MR. CHAMBERS: Your Honor, I would join him in the motion to relieve me from this trial and allow him

to proceed pro se because based on everything he has just said, I question whether I can effectively represent him anymore. I'm certainly prepared and I thought I was doing a pretty good job. I didn't know anything about a motion, the motion that he's talking about now.

It's clear to me at this point that rather than allowing me to effectively represent him through the remainder of this trial, he's trying to build some kind of a record so he can either on appeal or a PCR or something down the road and try to get any conviction overturned which will result basically in throwing me under the bus and saying that somehow I didn't do the job I was supposed to do.

So if he wants to proceed pro se, I certainly would join him in that motion. I have other places I could be and things I could be doing.

THE COURT: Okay. Mr. McCall, I'll give you the last word, sir. Any more arguments you would like to make?

DEFENDANT MCCALL: I would just like for him to be relieved.

THE COURT: Again, I'm going to ask you this as a consequence of relieving Mr. Chambers that you will be required to proceed pro se.

DEFENDANT MCCALL: I hear what you're saying.

You're forcing me to go forward.

THE COURT: I most definitely am.

DEFENDANT MCCALL: Alright.

THE COURT: You have waited until we have impaneled a jury. You have waited until we have begun the presentation of evidence.

DEFENDANT MCCALL: I told him yesterday that I didn't want him to represent me.

MR. CHAMBERS: You did not.

DEFENDANT MCCALL: Yes, I did. We had a conflict in there yesterday morning, Randy. And I said are you throwing me under the bus and you said, that's what you think I am.

MR. CHAMBERS: Actually you said I don't want you to throw me to the wolves and I said that was insulting and I don't want to talk about it any more and you said sorry. You told me you were just scared because you were on trial for your life and you never gave me any indication that you didn't want me to represent you but that's fine. Certainly, I would like to be relieved.

DEFENDANT MCCALL: I did. I did. I felt like I was being thrown under the bus.

THE COURT: Okay. I understand that. I want you to answer my questions. You understand that you would be proceeding on your own and you assume certain risks

because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.

DEFENDANT MCCALL: I understand that.

THE COURT: And you are willing to assume those risks, sir?

DEFENDANT MCCALL: No, I am not.

THE COURT: Do you want me to appoint a public defender to sit with you?

DEFENDANT MCCALL: Out of the public defender's office.

THE COURT: To assist you in the trial of the case. Now, he's not going to try your case. He will assist you in answering any questions that you have because he can't possibly come up to speed in the case in the next 10 minutes.

DEFENDANT MCCALL: He can represent me then.

THE COURT: I'm telling you that he can't possibly represent you in the this period of time.

DEFENDANT MCCALL: Give us a continuance. You're not going to give us a continuance in the presence of this indictment that I just got served with yesterday?

THE COURT: No, sir, I'm not. I'm making that very clear to you and you don't have to ask me again.

DEFENDANT MCCALL: I'm asking you again.

THE COURT: The answer is no again. Do you

State versus McCall

want me to have a public defender sit with you in this trial so that you can ask him questions about legal issues that may arise?

DEFENDANT MCCALL: I'm going to leave that up to you, Judge.

THE COURT: This is what I'm going to do. Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him and answer and address any questions that he may have during this trial?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: So you are relieved of your duties with exception of doing that service for me.

DEFENDANT MCCALL: He's taking all the evidence with him. He's leaving me with nothing.

THE COURT: You can exchange that with whatever lawyer necessary.

MR. CHAMBERS: Yes, sir, Your Honor.

THE COURT: Mr. McCall, what I'd like you to do is you can go back to the cell and we'll be adjourned until someone comes back to assist you in that regard.

If you would let the jury know that we have some legal matters that we are taking up.

(Court was adjourned.)

THE BAILIFF: All rise.

THE COURT: Take you seats please.

Okay. We are back on the record. I believe the record speaks for itself with respect to what has transpired. I will state that we conducted a hearing in accordance with Foretto(ph) versus California and I have made a determination that the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se. Also to protect his stated interest and in order to protect his procedural rights and his constitutional rights, I have appointed Mr. Jake Erwin of the Greenville County bar as stand by counsel to assist him in the conduct of the case.

Mr. Erwin's duties with respect to his representation and assistance of Mr. McCall shall be present to answer any questions and to assist in any way that you feel is -- each of you feels is necessary.

I will also say, Mr. Erwin, to the extent that you feel it is necessary to appropriate, I'll allow you to participate in the trial. However, I am not suggesting that you should or that it appropriate that you will. I'm just giving you that leeway. Each of you can make that decision as you go forward in this case.

DEFENDANT MCCALL: Your Honor, I would like to say something. I am not waiving my rights to counsel.

THE COURT: Yes, sir. I've also held a

2
Now the Judge allowed counsel to participate in TRIAL.

hearing in accordance with State versus Fuller, 523 SE 2nd 168. In this case there has been a request for relief of counsel during the pendency the case after the jury had been impaneled and after the presentation of a significant and substantial amount of evidence. It is within the discretion of a trial judge to grant the motion for the relief of counsel during the pendency of the proceeding and I've elected to do that based on the totality of the circumstances.

I find specifically that the motion was ill-timed and that the ultimate end of a motion to continue and a motion for relief of counsel is to delay and hinder the administration of justice.

DEFENDANT MCCALL: I disagree, Your Honor.

THE COURT: I will tell you the continuance of this case would have a significant prejudicial effect on the state because the State had subpoenaed all of its witnesses which are substantial amount, over 40 in reading the witness list. Also, the defendant has had the opportunity to witness and view a specific amount of presentation of the case to include all of its tactical proceedings in opening statements and it's order and method of presentation of evidence.

In this case, I will tell you without reservation and unequivocally that my only interest is to

because if we do we end up staying all hours of the night. So as long as we have Friday, then we can show up again and then you can deliberate on Friday morning after charge and argument and then into the afternoon as late as you need to.

I'm just thinking out loud right now, but I wanted you to know what my expectations are. Those are all subject to change. Based on what I'm hearing that's my expectation as I sit here right now.

Y'all are welcomed to adjourned for the evening. Please don't discuss the case and I'll see y'all back here tomorrow morning.

(Jury exits courtroom.)

Do you have anything to put on the record this afternoon?

MS. DRAWDY: Nothing from the State.

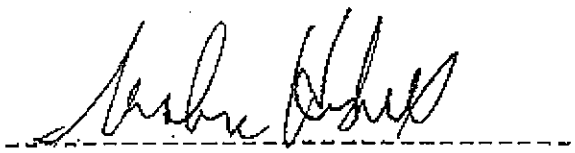
MR. ERWIN: Nothing from the defense.

THE COURT: Okay. If y'all would start back here tomorrow morning at 9:30.

(Court adjourned for the evening.)

I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Court of General Sessioons, Greenville County, this 13th day of May, 2015.

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



Caroline Hiskell

Exhibit C

OFFICE OF THE PUBLIC DEFENDER

COPY

13th JUDICIAL CIRCUIT
Greenville County Courthouse
305 East North Street (Rm 123)
GREENVILLE, SOUTH CAROLINA 29601

John I. Mauldin
Public Defender

TEL (864) 467-8522
FAX (864) 467-8521

NOTICE OF REPRESENTATION

To: Solicitor W. Walter Wilkins

From: John I. Mauldin, Chief Public Defender

Re: *State v. Terry E. McCall*

Date: March 7, 2012

Please be advised that the Greenville County Public Defender Office has been duly appointed to represent Mr. McCall in the following matters:

Charge(s)	Warrant No(s).
DUI/Fel driving under influence, w/injury	FS40654

Randy Chambers is the Public Defender representing this client.

Our appointment to represent Mr. McCall invokes Rule 4.2 of the Rules of Professional Conduct, which provides:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a party that the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Kindly notify our office as soon as the case is assigned to an Assistant Solicitor.

899

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY 5005
UNIFORM TRAFFIC TICKET 3-7-12

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
Terry	Edward	McCall

STREET AND NO. [redacted] CITY Bville STATE SC ZIP CODE 29611

STATE LICENSED [redacted] COM. ☐ YES ☒ NO HAZ. MAT. CLASS D

[redacted] STATE SC MAKE OF VEH. Ford YEAR 99 COMM. VEH. HAZ. MAT. AUTO MOPED M'CYCL. M'DRIVEN VEH. AUTHOR

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Walker Court STREET AND NO. 280 Wade Hampton

DATE OF TRIAL 3 12 12 TIME OF TRIAL 1500 CITY Taylors STATE SC ZIP CODE 29687

VIOLATION - COURT APPEARANCE REQUIRED (YES OR NO) Felony DUI VIOLATION SECTION NO 56-5-2945

OWNER OF VEHICLE Terry McCall DATE OF ARREST 3 4 12

ADDRESS OF OWNER Bville SC DATE OF VIOLATION 3 4 12

BAIL DISPOSITION Jail NAME OF ARRESTING OFFICER DC McAlhany AUX. 1601

DESCRIPTION OF ACCUSED: RACE W SEX M HT 5'10" WT 195 EYES BRO [redacted] COUNTY Bville NUMBER 23

DATE BAIL RECD BY BADGE 818 TROOP 3

CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

DOCKET NO. DAY M T W T F S S

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE TIME OF VIOLATION MILITARY TIME 750 WEATHER C

DEFENDANT DID NOT APPEAR ☐ APPEARED ☐ LOCALITY NO 291

DISPOSITION: NOLLE PROSSED ☐ FORFEITED BOND ☐ GUILTY ☐ PLEAD NOLO CONTENDERE ☐ MILES 2 N E S W

CITY Bville CODE 1

TRIAL BY: TRIAL JUDGE ☐ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY

JAIL	SUSPEND	FINE	AMT COLLECTED	AMT SUSPENDED

COMMITTED TO: WHERE SENTENCED N ARREST IN PRESENCE OF OFFICER Y

CERTIFIED CORRECT DATE

Lat

Long

OFFENSE CODE 99 BAC LEVEL pending

F 540654

DRIVER'S RECORD COPY

Exhibit D

F

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

D.E. McAlhany
S.C. Highway Patrol Troop #3
211 Century Dr. / Suite 210 C Century Plaza
Greenville, SC 29607

TOXICOLOGY DEPARTMENT
June 04, 2012
SLED No: L12-02821
Your Case No: 1223HP30981
Incident Date: 03/04/2012

[S] Terry E. McCall
[V] Robert Legrand Sudduth

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology)** - labeled "MCCALL, TERRY EDWARD"

Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)

Analyte	Result	Units	Threshold
Lorazepam	0.02	mg/L	
Synonyms: Ativan®			
7-Aminoclonazepam	0.01	mg/L	
Synonyms: Clonazepam metabolite			

SLED No :L12-02821

6/4/12

Item: 2 **Sample Type: Urine** - labeled "MCCALL, TERRY EDWARD"

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Methamphetamine	Positive		
Synonyms: Desoxyn®, Methedrine®			
Amphetamine	Positive		
Synonyms: Adderall®, Benzedrine®, Dexedrine®, metabolite of Methamphetamine			
Phenylpropanolamine	Positive		
Synonyms: Metabolite of Ephedrine/Pseudoephedrine/Amphetamine			

Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)

Analyte	Result	Units	Threshold
Lorazepam	Positive		
Synonyms: Ativan®			
Clonazepam	Positive		
Synonyms: Klonopin®			
7-Aminoclonazepam	Positive		
Synonyms: Clonazepam metabolite			

Shana B. Sorrells
Forensic Toxicologist

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department, (803) 896-7385.

902

G

6581 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 12, 1998

Robert L. McCurdy, Staff Attorney
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Mr. McCurdy:

You have referenced S. C. Code Ann. Sec. 22-5-510, as last amended by Act. No. 425 of 1998. Such Act requires that a person charged with a bailable offense must have a bond hearing within twenty-four hours of arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility. You have enclosed an Informal Opinion of this Office, dated July 10, 1995, which references Gerstein v. Pugh, 420 U.S. 103 (1975) and Riverside v. McLaughlin, 500 U.S. 44 (1991) as providing a forty-eight hour rule within which an arrested defendant must be formally charged. As you note, the United States Supreme Court held in Riverside that any excess of forty-eight hours creates a presumption of an unreasonable delay. By way of background, you state the following:

> [t]he question has arisen as to whether the twenty-four hour requirement provided by Act. No. 425 supersedes the forty-eight hour cushion provided by Gerstein and Riverside. The opinion of your office referenced above enumerated several factors which may give cause to the delay in a defendant's formal charging. Practically speaking, most delays are attributable to law enforcement. However, a literal reading of Code § 22-5-510, as amended, seemingly eliminates the forty-eight hours referenced above and requires that a defendant appear before a judicial officer for charging, bond hearing, or release within twenty-four hours of detainment. Does law enforcement have the authority to detain an individual for forty-eight hours without a formal charge? Who is responsible for assuring defendants spend only twenty-four hours incarcerated if not formally charged?

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S. C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Research Note.

Law/Analysis

S. C. Code Ann. Sec. 22-5-510, as amended, now provides as follows:

(A) Magistrates may admit to bail a person charged with an offense, the punishment of which is not death or imprisonment for life; provided, however, with respect to violent offenses as defined by the General Assembly pursuant to Section 15, Article I of the Constitution of South Carolina, magistrates may deny bail giving due weight to the evidence and to the nature and circumstances of the event. 'Violent offenses' as used in this section means the offenses contained in Section 16-1-60. If a person under lawful arrest on a charge not bailable is brought before a magistrate, the magistrate shall commit the person to jail. If the offense charged is bailable, the magistrate shall take recognizance with sufficient surety, if it is offered, in default whereof the person must be incarcerated.

(B) **A person charged with a bailable offense must have a bond hearing within twenty-four hours of his arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility.** (emphasis added).

Thus, the question you have presented here is how this newly-enacted statute now affects the constitutional rule expressed by the Supreme Court in Riverside. Thus, a brief review of the Riverside case is in order.

As noted in the July 10, 1995 Informal Opinion, in Riverside, the United States Supreme Court clarified its earlier decision in Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) which had held that the 4th Amendment requires a "prompt" determination of probable cause by a judicial official as a prerequisite to any extended pretrial detention following a warrantless arrest. Riverside rejected the idea that there must be such a judicial determination immediately following completion of administrative procedures after arrest. Said the Court:

> [i]nherent in Gerstein's invitation to the States to experiment and adapt was the recognition that the Fourth Amendment

> does not compel an immediate determination of probable cause upon completing the administrative steps incident to arrest. Plainly, if a probable cause hearing is constitutionally compelled the moment a suspect is finished being "booked," there is no room whatsoever for "flexibility and experimentation by the States." ... Incorporating probable cause determinations "into the procedure for setting bail or fixing other conditions of pretrial release" -- which Gerstein explicitly contemplated ... -- would be impossible. Waiting even a few hours so that a bail hearing or arraignment could take place at the same time as the probable cause determination would amount to a constitutional violation. Clearly, Gerstein is not that inflexible. (emphasis added).

114 L.Ed.2d at 61. Pursuant to this rule, a particular prisoner who was delayed in receiving a probable cause determination by as much as 48 hours, was required to prove that his or her determination "was delayed unreasonably" in that particular instance.

> Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake. In evaluating whether the delay in a particular case is unreasonable, however, courts must allow a substantial degree of flexibility. Courts cannot ignore the often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest, or other practical realities.

Burden Shifts

Supra.

Finally, Justice O'Connor expressed for the majority the idea that where the delay in a probable cause determination is greater than 48 hours, "the calculus changes." The Court stressed that

> [i]n such a case, the arresting individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a

> bona fide emergency or other extraordinary circumstance. The fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends. A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest.

Supra.

The Riverside case represents an interpretation by the United States Supreme Court of the Fourth Amendment to the federal Constitution. In other words, the Court in Riverside was simply setting a constitutionally minimum standard under the Fourth Amendment. The Court also made it clear, however, that individual states and counties possessed considerable flexibility in establishing standards greater than those imposed by the federal Constitution. As the Court indicated,

> [[e]veryone agrees that the police should make every attempt to minimize the time a presumptively innocent individual spends in jail. One way to do so is to provide a judicial determination of probable cause immediately upon completing the administrative steps incident to arrest -- i.e., as soon as the suspect has been booked, photographed, and fingerprinted. As Justice Scalia explains, several States, laudably, have adopted this approach. The Constitution does not compel so rigid a schedule, however.

Justice Scalia stated:

> [w]ith one exception, no federal court considering the question has regarded 24 hours as an inadequate amount of time to complete arrest procedures, and with the same exception every court actually setting a limit for a probable-cause determination based on those procedures has selected 24 hours.... [citations omitted]. Federal courts have reached a similar conclusion in applying Federal Rule of Criminal Procedure 5(a), which requires presentment before a federal magistrate "without unnecessary delay." See, e.g., Thomas, The Poisoned Fruit of Pretrial Detention, 61 N.Y.U.L.Rev. 413, 450, n. 238 (1986) (citing cases). And state courts have similarly applied a 24-hour limit under state statutes requiring presentment

> without "unreasonable delay." New York, for example, has concluded that no more than 24 hours is necessary from arrest to arraignment, People ex rel. Maxian v. Brown, 164 App.Div. 2d, at 62-64, 561 N.Y.S.2d, at 421-422. Twenty-nine States have statutes similar to New York's, which require either presentment or arraignment "without unnecessary delay" or "forthwith"; eight States explicitly require presentment or arraignment within 24 hours; and only seven States have statutes explicitly permitting a period longer than 24 hours. Brandes, supra, at 478, n. 230. Since the States requiring a probable-cause hearing within 24 hours include both New York and Alaska, it is unlikely that circumstances of population or geography demand a longer period. Twenty-four hours is consistent with the American Law Institute's Model Code. ALI, Model Code of Pre-Arraignment Procedure § 310.1 (1975). And while the American Bar Association in its proposed rules of criminal procedure initially required that presentment simply be made "without unnecessary delay," it has recently concluded that no more than six hours should be required, except at night.... Finally, the conclusions of these commissions and judges, both state and federal, are supported by commentators who have examined the question.... [citations omitted].

500 U.S. at 69-70. Continuing, Justice Scalia observed that

> The Court claims that the Court of Appeals "concluded that it takes 36 hours to process arrested persons in Riverside County." Ante, at 1670. The court concluded no such thing. It concluded that 36 hours (the time limit imposed by the District Court) was "ample" time to complete the arrest, 888 F.2d 1276, 1278 (CA9 1989), and that the county had provided no evidence to demonstrate the contrary. The District Court, in turn, had not made any evidentiary finding to the effect that 36 hours was necessary, but for unexplained reasons said that it "declines to adopt the 24 hour standard [generally applied by other courts], but adopts a 36 hour limit, except in exigent circumstances." McLaughlin v. County of Riverside, No. CV87-5597 RG (CD Cal., Apr. 19, 1989). 2 App. 332. Before this Court, moreover, the county has acknowledged that "nearly 90 percent of all cases ... can be

completed in 24 hours or less," Briefs for District Attorney, County of Riverside, as Amicus Curiae 16, and the examples given to explain the other 10 percent are entirely unpersuasive (heavy traffic on the Southern California freeways; the need to wait for arrestees who are properly detainable because they are visibly under the influence of drugs to come out of that influence before they can be questioned about other crimes; the need to take blood and urine samples promptly in drug cases) with one exception: awaiting completion of investigations and filing of investigation reports by various state and federal agencies. Id., at 16-17. We have long held, of course, that delaying a probable-cause determination for the latter reason--effecting what Judge Posner has aptly called "imprisonment on suspicion, while the police look for evidence to confirm their suspicion," Llaguno v. Mingey, 763 F.2d 1560, 1568 (CA7 1985)--is improper. See Gerstein, 420 U.S., at 120, n. 21, 95 S.Ct., at 866, n. 21, citing Mallory v. United States, 354 U.S. 449, 456, 77 S.Ct. 1356, 1360, 1 L.Ed.2d 1479 (1957).

Drug Screen Were Negative No Affidavit on my Breath No reliable Testimony No Warrant

Id., at 68, n.3.

Thus, the South Carolina General Assembly is free to adopt a standard which is more restrictive than the Fourth Amendment forty-eight hour minimum articulated by the Court in Riverside. Indeed, the Riverside majority stressed, as the Court had in Gerstein v. Pugh, supra, that "'flexibility and experimentation by the States?'" is desirable in the area of probable cause determinations, and that each State should determine a policy which would "'accord with [the] State's pretrial procedure viewed as a whole.'" In the words of the Riverside Court, "individual States may choose to comply in different ways." Id. at 53. And, as Justice Scalia demonstrated in his dissent, the twenty-four hour rule is in accord with the law and practice in many, if not most jurisdictions.

Section 22-5-510 now requires that "[a] person charged with a **bailable offense** must have a bond hearing within twenty-four hours of his arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility." (emphasis added). Such provision does not expressly mention, nor does it address the requirement for determination by a judicial officer of probable cause to arrest an individual who has been arrested without a warrant. Thus, it is not apparent from the express language of the provision whether the General Assembly intended that probable cause determinations (as opposed to bond adjudications) absolutely must be held as a matter of state law within twenty-four hours.

Reference must also be made to another statute, § 22-5-200, which requires that "[w]hen an arrest is made by a deputy sheriff without a warrant pursuant to § 23-13-60 the person so arrested should be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate shall direct." (emphasis added). As we recognized in an Opinion, dated April 8, 1980,

> [t]he term forthwith for the purposes of Section 22-5-200 has been held to provide that the individual be taken before a magistrate within a reasonable time. 1962 Ops. Attorney General No. 1314B, p. 77; Westbrook v. Hutchinson, 195 S.C. 101. While the definition of a reasonable period of time may not be given with any precision, it may be said that the rule does not prohibit delay, but rather prohibits only unnecessary delays. For example, the unavailability of a committing Magistrate, the extent of the delay before the arrested person is taken before a Magistrate, and the police justification, if any, for the delay may be considered in determining the length of delay in procuring a warrant. 6A C.J.S. Arrest, Section 64 at 147, 148.

Thus, the issue is whether § 22-5-200 has been repealed or somehow altered by § 22-5-510. It is well recognized that statutes dealing with the same subject matter must be reconciled, if possible so as to render both operative. Bell v. South Carolina State Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Different statutes in pari materia, though enacted at different times, and not referencing to each other, must be construed together as one system and as explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). Moreover, it is presumed that the Legislature is familiar with prior legislation dealing with the same subject when it enacts a particular statute. Bell, supra.

It should be noted that the General Assembly could have dealt with the specific topic of probable cause determinations for persons arrested without warrant at the same time as requiring that a bond hearing be held for "all bailable offenses" if it so desired, knowing the existence of § 22-5-200's requirement that a warrant be sought "forthwith" where an individual is arrested without a warrant. In short, the Legislature could have easily stated that the term "forthwith" must be within twenty-four hours, or some even lesser period of time. The Legislature obviously was aware when it enacted new § 22-5-510 that a law enforcement officer may arrest without a warrant for a misdemeanor committed in his presence as well for a felony based upon probable cause. Op. Atty. Gen., April 8, 1980, supra. Yet, the amendment to § 22-5-510 dealt with "bailable offenses" which, of course, includes both felonies and misdemeanors, as well offenses

where an arrest warrant is issued even prior to or contemporaneous with arrest, but does not include capital offenses, those offenses subject to life imprisonment and may not include "violent offenses" as defined therein. Such a distinction probably indicates that the General Assembly intended only to deal with requiring a bond hearing within twenty-four hours of arrest for "bailable offenses" and nothing more; in other words, the Legislature probably desired to leave the question of probable cause determinations for arrest without warrant to be governed by § 22-5-200 and the constitutional requirement set forth in the Riverside case. Otherwise, the Legislature would have specifically provided for probable cause determinations rather than doing so by implication.

The Alaska Court of Appeals has analyzed the clear distinction between the probable cause determination before a judicial officer required by Gerstein and McLaughlin and a "first appearance" before a judicial officer following arrest. In Riney v. State, 935 P.2d 828 (Aka. 1997) the Court stated:

> [i]t is important to understand that the hearing required under the Fourth Amendment by Gerstein and McLaughlin is not the same thing as an "arraignment" or an "initial appearance". Under Gerstein, judicial review of a warrantless arrest is designed to accommodate the same Fourth Amendment interests as the judicial review of probable cause that precedes the issuance of an arrest warrant:
>
> > Maximum protection of individual rights could be assured by requiring a magistrate's review of the factual justification prior to any arrest, but such a requirement would constitute an intolerable handicap for legitimate law enforcement. Thus, while this Court has expressed a preference of the use of arrest warrants when feasible, it has never invalidated an arrest supported by the probable solely because the officers failed to secure a warrant ...,
>
> The Court recognized that many states might find it "desirable" to accomplish this Fourth Amendment "probable cause determination" during the suspect's first appearance before a judicial officer .... However, the probable cause determination required by Gerstein is conceptually different from the procedures that generally occur at a suspect's first appearance - rendering the charges, apprising suspects of their

> basic procedural rights, setting bail, and making arrangements for suspects to obtain counsel. The Gerstein decision does not require any of these "first appearance" procedures. By the same token, the speedy accomplishment of these "first appearance" procedures is no substitute for what Gerstein does require -- "a fair and reliable determination of probable cause ... by a judicial officer either before or promptly after arrest". 420 U.S. at 125, 95 S.Ct. at 868-69, 43 L.Ed.2d at 71-72.

It is my understanding that, as a practical matter, many magistrates rely upon the arrest warrant to serve as the basis, or even the "charging document" for the bond hearing. But see, State v. Walker, 232 S.C. 290, 101 S.E.2d 826 (1958) [grand jury may indict whether or not arrest warrant has been issued]. Typically, I am advised, where an individual is arrested without a warrant, the magistrate will shortly thereafter issue a warrant, most often based upon information provided by the arresting officer. Many times, the arrestee will then be served with the warrant at the bond hearing or even earlier. See, Op. Atty. Gen. April 8, 1980, supra. Thus, it is my understanding that a judicial determination on the arrest warrant and the bond hearing will occur virtually simultaneously, in many instances. This is consistent with the idea expressed by the Court in Riverside and in other cases that "[a] probable cause hearing may be combined with the arrestee's bond hearing." Stone v. Holzberger, 807 F.Supp. 1325, 1341 (S.D. Ohio, West. Div. 1992), citing Gerstein v. Pugh, supra.

However, we are not able, based upon the statutory language, to advise that § 22-5-510 absolutely requires in every instance that there must be a probable cause determination made by a judicial officer within twenty-four hours of arrest. Indeed, Riverside emphasizes that such a hard and fast rule is not constitutionally required. Moreover, there is no indication that the 24 hour period specified in § 22-5-510 relates to anything other than the determination of bail, and, therefore, we must construe that provision literally. Section 22-5-510 thus must be interpreted according to the express language contained therein and together with § 22-5-200, which requires that probable cause be determined by a magistrate "forthwith" following arrest. Courts have distinguished between bond hearings and probable cause determinations. See, e.g. Commonwealth v. Chistolini, 422 Mass. 854, 665 N.E.2d 994, n.4 [right to a prompt bail hearing in independent of determination of probable cause]; Bullock v. Dioguardi, 847 F.Supp. 553 (N.D. Ill., East. Div. 1993) [probable cause determination made long after bond hearing held]. Accordingly, a probable cause determination for those arrested without warrant within twenty-four hours of arrest is not absolutely required by statute. Certainly, however, such a probable cause assessment by a judicial officer can permissibly be made within 24 hours of arrest simultaneously with the setting of bail where it is determines that such is feasible. In other words, nothing prohibits a probable cause determination for an

arrest without warrant within 24 hours of arrest, but, in my judgment, § 22-5-510 does not strictly require such determinations.[1] The time frame in South Carolina for such determinations is set by § 22-5-200's requirement that such be done "forthwith" and by the federal requirements enunciated in Riverside.

You have also asked who is responsible for assuring that a defendant be brought before a judicial officer for formal charging, whether such be done within 48 hours as generally mandated by Riverside, or even earlier, as discussed herein. Reference is again made to the Opinion of April 8, 1980, construing § 22-5-200, wherein it was stated:

> [i]f no warrant is procured by the arresting officer and no justification for such a delay is offered by the arresting officer, then the jail administrator may not release the prisoner but rather shall take the prisoner before a Magistrate forthwith. That is to say, that once the jail administrator learns that a warrant has not been procured and cannot establish a reason for the delay in procuring the warrant, then the jailer's only alternative is to then immediately take the prisoner before a Magistrate to seek the prisoner's arrest or release, as the Magistrate might determine.

Thus, it appears that this Office has previously determined that the responsibility for insuring that an arrestee without a warrant be taken before a magistrate for a prompt probable cause determination rests primarily with jail officials. Indeed, there is case law which has found jail officials liable where the prisoner was not provided a speedy probable cause determination within the requirements of the Riverside case. For example, in Blumel v. Mylender, 954 F.Supp. 1547 (M.D. Fla. Tampa Division 1997), the Court concluded that the operator of a private prison owed a duty to the arrestee to exercise reasonable care constitute to confine the arrestee and was liable for determining the arrestee for 30 days without a probable cause determination. The Court rejected the defendant's

> attempts to disavow that it has any duty to release inmates without direction from an "authority." ... [T]his interpretation of their duty would disembowel the rights of a warrantless detainee as recognized in Gerstein, et al. The defendants are the custodians of the plaintiff and similarly situated individu-

Attorney owed me a duty also

[1] Of course, we express no comment as to policy considerations underlying § 22-5-510. Our conclusion herein is limited to the legal questions posed.

> als. As such, they are charged with the responsibility to ensure that such persons are brought before a judicial officer within the first forty-eight (48) hours of arrest for a determination of probable cause, in compliance with the Fourth and Fourteenth Amendments, Gerstein, McLaughlin, and Fla.R.Crim.P. 3.133. Absent such a timely determination, such persons must be released--even on the jailer's own initiative--to be in compliance with the well-established law of the land. Bernard v. City of Palo Alto, 699 F.2d 1023, 1027 (9th Cir.1983) (rejecting the county jailkeeper's argument that it should not be held liable for an inmate's delayed probable cause hearing, reasoning that "[t]he County is responsible for operating the jail and has custody over arrestees.... [and] [b]y virtue of its power to release arrestees unconstitutionally detained, the County is in a position to protect the fourth amendment rights of arrestees"); see also Wayland v. City of Springdale, 933 F.2d 668, 670 (8th Cir.1991) (emphasizing that the custodian of the plaintiff, the police, "[c]ertainly could not have held [the plaintiff] indefinitely waiting for an arraignment sometime in the future").

954 F.Supp. at 1557. Thus, the principal responsibility for insuring that a prisoner arrested without a warrant is brought promptly before a judicial officer for a probable cause determination rests with jail officials.

Conclusion

1. I do not read § 22-5-510 as relating to anything other than the Legislature's recent requirement of a speedy bond hearing and release on bond. This provision, as recently amended, literally relates to bail and thus, does not address the issue of probable cause determinations. Courts recognize a clear distinction between the probable cause determination for an arrest without a warrant and the bond hearing. Probable cause determinations for arrest without warrant are still controlled by § 22-5-200's mandate that a person arrested without a warrant "... should be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate should direct." We have consistently read the "forthwith" requirement as being within a reasonable period of time. The Riverside case establishes that the 4th Amendment sets 48 hours as the general constitutional parameter to be followed for a probable cause determination.

2. Even though I do not read § 22-5-510 as absolutely requiring in every instance that there be a probable cause determination within 24 hours of arrest by a judicial officer with respect to persons arrested without warrant, certainly nothing prohibits such from being done, whenever possible. We understand that many magistrates do so, issuing the arrest warrant and conducting the bond hearing promptly and virtually simultaneously with each other. The Riverside case, which generally sets the constitutional requirement for a probable cause determination with respect to arrest -- technically, distinct from the bond determination -- should obviously be followed and adhered to.

3. The primary responsibility for insuring that an individual arrested without warrant receives a prompt probable cause determination before a judicial officer rests with jail officials as the custodian of the prisoner.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/pb

REVIEWED AND APPROVED BY:

Zeb C. Williams, III
Deputy Attorney General

H

COMMITMENT

☐ Original Commitment
☐ Additional Charge(s)

TO: Director Greenville County Detention Center

Date: 3/5/2012

You are hereby commanded by this Court to hold in your custody.

Terry Edward Mccall
(Defendant's name)

DOB: [redacted] Race: W Sex:M

[redacted]
Greenville, SC 29611-4465
(Address)

Bonding Company:

Case number	Charge	Trial Court	Bond Type	Amount
F540614	DUI / Felony driving under the influence, great bodily injury results	Greenville General Sessions	Cash Bond Surety Bond	$50,000.0 $50,000.0

Placed on Hld

POSTED BY:
DATE: 3/5/12 TIME: 1603

That you are commanded by this Court to continue custody of the named person until the person in custody is ordered to be released by a Judicial Officer.

Judge _____ Greenville County, SC

GREENVILLE COUNTY
DETENTION RECORDS
20 McGEE STREET
GREENVILLE, SC 29601

JAGM051 Charges Public Inquiry (GCDC)

Inmate 0121 MCCALL, TERRY EDWARD NOT SENT
Sex M Race W DOB [redacted] Booked 03/04/2012 Cell ISC04 NxtScr
Time 23:04

Opt	#	Charge	Warrant#	ORI Case#	H/L	C	DE	Indict #
—	1	S280 DRIVING UNDER INF >	F540654	SPO 12000SPO	H	1		

CJg HUDSON > TJg GARRETT > Arr 23:04 03/04/2012 RR
(UNPD) Cash Bond of 50000.00 or Surety Bond of 50000.00 Set on 03/05/2012

			Est
CJg	> TJg	> Arr	RR
			Est
CJg	> TJg	> Arr	RR
			Est

9=Detainer 10=Court's Disp 11=OldDisp 15=EstRelDt 25=Rec Bottom of data
Command ===>
F1=Ext. Help F2=Desc F3=Exit F5=Refresh F7=Backwards F9=Find F12=Popup
No changes will be allowed on this screen!

I Exhibit

5 Exhibit

STATE OF SOUTH CAROLINA	)	CHECKLIST
COUNTY/CITY OF GREENVILLE	)	
	)	TRIAL COURT:
Terry Edward Mccall	)	☒ GENERAL SESSIONS COURT
Name of Defendant	)	☐ MAGISTRATE COURT
	)	☐ MUNICIPAL COURT

CASE NUMBER/CHARGE:
F540654 DUI / Felony driving under the influence, great bodily injury results

CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for **ALL GENERAL SESSIONS** and for **ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE.** The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must be provided a completed copy of this form.**

☒ **BAIL PROCEEDING/☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)**

1. Form used at bail proceeding
   - a. Bond Form I (personal recognizance)
   - b. Bond Form II (surety, cash, percentage)
   - c. None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
   - a. Warrant for arrest will be issued for violation of any condition of bail bond order.
   - b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
   - c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than $5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than $1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
   - a. Orally
   - b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
   - a. Charges against defendant and nature of the charges.
   - b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
   - c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before **The Greenville County Public Defender's Office located at the Greenville County Courthouse, 305 E. North Street, Greenville, SC 29601 for indigency screening.** Defendant is responsible for a statutory fee of $40.00 for indigency screening.
6. ___ In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. ✓ If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

March 5, 2012
Bond Hearing Date

JUDGE'S SIGNATURE

SCCA/507(Rev.7/2009)
BC23201

15.

STATE OF SOUTH CAROLINA)
) IN THE SUMMARY COURT
County of Greenville)
) DISCHARGE

State of South Carolina

vs.

Terry Edward Mccall #0121
DEFENDANT(S)

DISCHARGE

By James E. Hudson, Judge in and for the County and state aforesaid,

To the Sheriff and Keeper of the Common Jail in the said County:

The Defendant, Terry Edward Mccall, having been committed to your custody for the charge of:

Case number	Charge	Trial Court	Bond Type	Amount
F540654	DUI / Felony driving under the influence, great bodily injury results	Greenville General Sessions	Cash Bond Surety Bond	$25,000.00 $25,000.00

POSTED BY: KH 1251
DATE: 6/9/12 TIME: 0140

NOT TO OPERATE ANY MOTOR VEHICLE PER OFB DATED 6-8-12

has posted bond of type
Surety Bond in the amount of $25,000.00 by Kellett, Michael Travis - Roche Surety at P O Box 5511, Bail Out Bonding, Greenville, SC, 29611

and having given bond as required by the Court, you are hereby authorized and required to discharge the said Defendant from your custody. Provided that said Defendant is not held by you upon commitment for some other offense.

GIVEN UNDER MY HAND AND SEAL THIS DAY June 09, 2012

(Seal)
(Judge)
Greenville County, SC

GREENVILLE COUNTY
DETENTION RECORDS
20 McGEE STREET
GREENVILLE, SC 29601

Exhibit

County of Greenville

Donna Bearden
Preliminary Hearing Coordinator

January 8, 2020

Terry McCall #233236
Manning Correctional
502 Beckman Drive
Columbia SC 29203

Dear Mr. McCall:

I am in receipt of your letter dated December 13, 2019.

You state you are inquiring about a probable cause determination hearing. My records show that hearing was held May 12, 2012. The judge's ruling was to bind the case over for grand jury action. Please note this was not your trial. Only a probable cause hearing.

The remainder of your letter pertains to prolonged detention without a warrant. You were served a uniform traffic ticket on the charge of Felony Driving Under the Influence with Great Bodily Injury with a $25,000 bond.

The only involvement I have in this case was to schedule the preliminary hearing. I will not be able to answer other questions mentioned in your letter.

I hope this information will be helpful to you.

Donna Bearden
Preliminary Hearing Coordinator
Greenville County Courthouse

M

OFFICE OF THE PUBLIC DEFENDER

COPY

13th JUDICIAL CIRCUIT
Greenville County Courthouse
305 East North Street (Rm 123)
GREENVILLE, SOUTH CAROLINA 29601

John I. Mauldin
Public Defender

TEL (864) 467-8522
FAX (864) 467-8521

May 9, 2012

Terry E. McCall
20 McGee Street
Greenville County Detention Center
Greenville, SC 29601

Re: ***State v. Terry E. McCall***
Warrant/Ticket No(s).: F540654

Dear Mr. McCall:

I have received your recent correspondence dated May 3, 2012. I am somewhat confused by your letter given that during our initial meeting on March 23, 2012 you told me you did not want me to represent you.

Please let me know if you want me to represent you. If you do, I will come visit you at the jail so we can discuss your case and decide how we want to proceed. If you do not want me to represent you, I will close my file.

I look forward to hearing from you soon.

Very truly yours,

GREENVILLE COUNTY PUBLIC DEFENDER

By: Randy Chambers [illegible]
Randy Chambers, Esq.
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Greenville County

Department of Public Safety
Records Management Services Division

Jinny Moran, Captain
County Records Manager
(864) 467-5211
jmoran@greenvillecounty.org
www.greenvillecounty.org

Terry Edward McCall, #233236
Livesay Correctional Institution, B – 13
PO Box 580
Una, SC 29378

April 12, 2019

Dear Mr. McCall,

Your letter dated 04/09/19 was given to me for processing. Per your request, the dates your attorney, Randall Chambers, visited you between 3/04/12 and 05/15/15 follow:

- 03/23/2012
- 05/15/2012
- 05/01/2015

Let us know if there are any other dates you'd like us to check.

Sincerely,

B Gregory

B. Gregory, Accounting Specialist

GREENVILLE COUNTY
DETENTION CENTER
RECORDS DIVISION
CERTIFIED COPY
02-20-20
Current Date

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. WALTER WILKINS

May 21, 2019

Terry McCall - # 233236
Livesay Correctional Institution B-13
Una, SC 29378

Re: Indictment No. 2012-GS-23-10242

Dear Mr. McCall:

Our office is in receipt of your correspondence dated 04-29-19.

A copy of the above referenced indictment was emailed to your attorney, Mr. Randall Chambers, on Thursday, May 7, 2015.

Sincerely yours,

Sara L. M. Drawdy

Sara L. Drawdy
Assistant Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FELONY DUI (RESULTING IN GREAT BODILY INJURY)

At a Court of General Sessions, convened on FEB 19 2013 the Grand Jurors of Greenville County present upon their oath:

That TERRY EDWARD MCCALL did in Greenville County, on or about the 4th day of March 2012, drive a motor vehicle while under the influence of drugs, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: the defendant failed to exercise due care and/or drove an unsafe vehicle on a highway and/or drove too fast for conditions and/or crossed the center median and/or drove into the oncoming lane of travel striking another vehicle, which acts and/or neglect proximately caused great bodily injury to ROBERT LAGRANDE SUDDUTH. This is in violation of §56-5-2945 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.

Sara Lee McCarthy
SOLICITOR

Q

<$2500
COURT DISP-CONVICTED;30 DAYS
OP $677.50
ATN-3923000083858

MCCALL, TERRY EDWARD 03/04/2012
SCSHPD300 SC NEWRY DEPT DIST 3
CASE-052543
ATN-23070C008492
WARR-F540654
CIT-56-5-2945(A)(2)-FELONY

ARREST CHARGE -FELONY DRIVING UNDER INFLUENCE,DEATH RESULTS
OFFENSE DATE-03/04/2012
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

CIT-56-5-2945(A)(1)-FELONY
DOC-22GS2310242
WARR-F540654

COURT CHARGE 01-FELONY DRIVING UNDER INFLUENCE(BODILY INJURY)
COURT DISP-CONVICTED;15 years
COURT DATE-05/14/2015
ATN-23070300B492

MCCALL, TERRY EDWARD 03/07/2014
SC0230200 GREENVILLE PD
CASE-052543
ATN-23070D048153
WARR-2014A2329670568
CIT-16-13-30(A)-MISDEMEANOR

ARREST CHARGE -PETTY LARCENY
<$2000
OFFENSE DATE-03/07/2014
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

WARR-2014A2329670368
CIT-16-13-30(A)-MISDEMEANOR

ARREST CHARGE -PETTY LARCENY
<$2000
OFFENSE DATE-03/07/2014

MCCALL, TERRY EDWARD 04/30/2014
SC0230000 GREENVILLE CNTY SO
CASE-052543
ATN-23070C048358
WARR-2014A2330203137
CIT-16-13-0030(A)-FELONY

ARREST CHARGE -GRIT LARCENY $2000 OR LESS ENHANCEMENT1 6-1-37
OFFENSE DATE-04/30/2014
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

MCCALL, TERRY EDWARD 05/31/2014
SC0230200 GREENVILLE PD
CASE-052543
ATN-23080D019115
WARR-2014A2320601814
CIT-16-13-180(A)(1)-FELONY

ARREST CHARGE -BREAKING INTO AUTO/BANKS WHERE FUEL STORED
OFFENSE DATE-05/31/2014
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

Adult conviction

MCCALL, TERRY EDWARD 06/08/2014
SC0230200 GREENVILLE PD
CASE-052543
ATN-23080D019058
WARR-2014A2320602165
CIT-16-13-110(B)(1)-MISDEMEANOR

ARREST CHARGE -SHOPLIFTING
<$2000
OFFENSE DATE-06/08/2014
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

R,

MCCALL, TERRY EDWARD

Pack #:	052543
Photo #:	32008237
Jail ID #:	0121
Arrest Date:	03-04-2012
Photo Date:	03-05-2012
DOB:	[redacted]
POB:	SOUTH CAROLINA

PHYSICAL DESCRIPTION:
General Appearance
Physical Appearance

Sex:	MALE
Race:	WHITE
Height:	508
Weight:	160
Hair Color:	BLACK
Hair Length:	RECEDING/BALDING
Facial Hair:	GOATEE W/MUSTACHE
Eye Color:	BLUE
Eye Characteristics:	NORMAL
Glasses:	
Build:	MEDIUM
Complexion:	CLEAR
Skin Tone:	WHITE/FAIR
Teeth:	

Aliases:

Last	First	Middle	AKA

Scars/Marks/Tattoos:

Type	Location	Description

Charges:

Category	Description
	FELONY DRIVING UNDER INFLUENCE DEATH RESULTS

State of South Carolina
County of Greenville

State

V.

Terry Edward McCall, Pro Se
Defendant

In The Court of General Sessions
Thirteenth Judicial Circuit
Warrant/Ticket # F540654 Felony DUI, GBI, Autobreaking, Petit Larceny, Unknown W/N,

Motion To Relieve Counsel

FILED
2015 MAR 27 PM 12:03
CLERK OF COURT
GREENVILLE, S.C.

Now comes the above named Pro Se' defendant to move this Court for and Order to relieve counsel.

The above named defendant was arrested and charged with Felony DUI, great bodily injury on 3-4-12 by a Uniform Traffic Ticket. The defendant request to relieve his counsel on All charges and represent himself. The defendant has a United States Constitutional Right to represent himself and request the Court allow him to proceed Pro Se'. The defendant was granted his Pro Se' representation on his charges previously incarcerated on. Somehow the Court has failed to identify all warrant numbers and or Indictment numbers. Therefor causing a great deal of conflict for the defendant, and depriving him his right to go forward.

Wherefor defendant Prays the Court makes its Order to relieve counsel or as it deems just and Proper; The defendant will except attorney as stand by if so Ordered as has been in Previous order for other charges

Greenville, S.C.
Date 3-23-15

Terry Edward McCall, Pro Se'
G.C.D.C. 20 McGee St.
Greenville, S.C. 29601

Certificate of Service

I, Terry E. McCall have Properly served the parties listed below with a Motion To Relieve Counsel by Placing same in U.S. Postal Service Postage Prepaid, Affixed and mailed to Addresses below:

Clerk of Court
305 East North St.
Gville, S.C. 29601

Greenville Solicitors Office
305 East North St. Suite 325
Gville, S.C. 29601

Public Defender Office
Randy Chambers
305 East North St.
Gville, S.C. 29601

Dated 3-23-15

Terry E. McCall, Pro Se'
G.C.D.C. 20 McGee Street
Gville, S.C. 29601

14-4171

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF Greenville	)	
	)	Warrant #s 2014A2330203037; 2014A2320601816;
THE STATE	)	2014A2330210898; 2014A2330210900;
	)	2014A2330210918; 2014A2330210899;
-VS-	)	75694GO; and 75695GO
	)	**ORDER SUBSTITUTING COUNSEL**
TERRY EDWARD MCCALL,	)	
Defendant	)	PRESENT COUNSEL: Randall Lee Chambers
	)	
	)	NEW COUNSEL: Terry Edward McCall, Pro Se

This matter comes before me on a motion of the defendant for an order relieving present counsel in the above referenced case and to permit the Defendant to proceed, pro se, with Randall Lee Chambers serving as "stand-by" counsel.

It has been shown unto this Court that the Defendant understands his right to counsel and that he has a right to proceed by representing himself, pro se.

Therefore, it is hereby ordered that present counsel be relieved in and that the Defendant be permitted to proceed by representing himself, pro se in the above captioned matters, with Randall Chambers serving as "stand-by" counsel.

It is further ordered that the discovery previously provided by the Solicitor's office to present counsel be transferred by present counsel to Mr. McCall.

Furthermore, it is hereby ordered that the State may set this case for trial on or after May 11, 2015.

So ordered this 25 day of March, 2015.

ENTERED
COMPUTER

~~Honorable~~ B. Garrison Hill

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
STATE,	)	
	)	**POTENTIAL DEFENSE WITNESSES**
VS.	)	
	)	Indictment No.: 2012-GS-23-015242
Terry Edward McCall,	)	
Defendant,	)	
	)	

1. Mohammad Alikhail, M.D.
2. Troy Mitchell, M.D.
3. James Lamm, M.D.
4. Bill McCall
5. Connie McCall
6. Ann McCall
7.

Respectfully submitted,

Randall Lee Chambers, Attorney for Defendant

Greenville, South Carolina
May 12, 2015

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
STATE,	)	**POTENTIAL DEFENSE WITNESSES**
VS.	)	
Terry Edward McCall, Defendant,	)	Indictment No.: 2012-GS-23-015242

1. Mohammad Alikhail, M.D.
2. Troy Mitchell, M.D.
3. James Lamm, M.D.
4. ANN McCALL
5. BILL McCALL
6. CONNIE McCALL
7. Tracy McCall 1:18 – 1:30

Respectfully submitted,

Randall Lee Chambers, Attorney for Defendant

Greenville, South Carolina
May 12, 2015

ENTERED COMPUTER

BON SECOURS HEALTH SYSTEM

ST. FRANCIS HOSPITAL
DOWNTOWN
ONE ST FRANCIS DRIVE
GREENVILLE, SC 29601

MCCALL,TERRY EDWARD
MRN: [redacted]
DOB: [redacted], Sex: M
Arrival:9/9/2008, D/C:9/9/2008

ABSTRACT OF HEALTH INFORMATION

Patient Demographics

Patient Name	Sex	DOB	Address	Phone
McCall, Terry Edward	Male	[redacted]	[redacted] GREENVILLE SC 29611	[redacted]

Diagnoses

Seizure

ED Provider Notes

ED Provider Notes signed by Troy M. Mitchell, MD at 09/09/08 1556

Author:	Troy M. Mitchell, MD	Service:	(none)	Author Type:	Physician
Filed:	09/09/08 1556	Note Time:	09/09/08 1547		

HPI Comments: Patient reports 20 + year history of seizure like episodes. He has had extensive neurologic evaluation over the years and placed every type of seizure medication. His workups have all been normal with no causative explanation. He has not been on seizure medication for several years. His last episode was last week and prior to that at least a year ago.

Seizure

The history is provided by the patient and relative. This is a recurrent problem. The current episode started 1 - 2 hours ago. The problem has been resolved since onset. The total number of seizures was 1. The most recent episode lasted 30 to 120 seconds. Associated symptoms include eye deviation, loss of consciousness and bit tongue. Characteristics: possible LOC. The episode was witnessed. There was the sensation of an aura (felt nauseated and felt neck tremble). The patient was not sleepy after the seizure. The seizures did not continue in the ED. The seizure(s) had no focality. Possible Causes: unknown. There has been no fever. There were no medications administered prior to arrival.

Laceration

Past Medical History

Diagnosis	Date
• Seizures	

Past Surgical History

Procedure	Date
• Hx orthopaedic	

No family history on file.

History

Social History

- **Marital Status:** Single
  - Spouse Name: N/A
  - Number of Children: N/A
- Years of Education: N/A

ED Provider Notes (continued)

Occupational History
- Not on file.

Social History Main Topics
- Tobacco Use: Quit
  quit 20 years ago.
- Alcohol Use: No
- Drug Use:
- Sexually Active:

Other Topics | Concern
- Not on file

Social History Narrative
- No narrative on file

ALLERGIES: Review of patient's allergies indicates no known allergies.

Review of Systems
HENT:
Tip of tongue sore from small bite
Neurological: Positive for seizures and loss of consciousness.
All other systems reviewed and are negative.

Filed Vitals:

	09/09/2008 3:11 PM
BP:	126/79
Pulse:	89
Temp:	98.4 °F (36.9 °C)
Resp:	21
Height:	5' 10" (1.778 m)
Weight:	205 lb (92.987 kg)
SpO2:	96%

Physical Exam
Nursing note and vitals reviewed.
Constitutional: He is oriented. He appears well-developed and well-nourished. No distress.
HENT:
Head: Normocephalic.
Small superficial laceration at tip of tongue. Oropharynx dry.
Eyes: Conjunctivae and extraocular motions are normal. Pupils are equal, round, and reactive to light.
Neck: Normal range of motion. Neck supple. No thyromegaly present.
Cardiovascular: Normal rate, regular rhythm, normal heart sounds and intact distal pulses. Exam reveals no gallop and no friction rub.
No murmur heard.
Pulmonary/Chest: Effort normal and breath sounds normal. No respiratory distress. He has no wheezes. He has no rales.
Abdominal: Bowel sounds are normal. Soft.
Musculoskeletal: Normal range of motion.

932

ANMED HEALTH
ANDERSON, S.C.
MEDICAL RECORD

382098

MCCALL, TERRY
DAVID TURNER M.D.
[redacted]
10/19/2007
10/21/2007

EMERGENCY DEPARTMENT

DATE: 10/19/2007

CHIEF COMPLAINT: Addendum.

DATE OF BIRTH: [redacted]

HISTORY OF PRESENT ILLNESS: Please see the original dictated chart for full details.

EMERGENCY DEPARTMENT COURSE: As the patient was being prepared to be discharged from the ED he then suffered an apparent generalized seizure witnessed by myself. This was brief and generalized with tongue bite. He did have a brief postictal state as well. He was given Ativan 1 mg IV. He was then taken to CT where head CT was normal as read by Dr. Paul Brill.

At this point the patient is awake, he is alert, he is not postictal. Given his recurrent seizure I did consult Dr. Mohammad Alikhail who will admit him to the hospital.

DIAGNOSIS: Recurrent seizure.

DISPOSITION: As per HPI. The patient will be admitted by Dr. Mohammad Alikhail.

DAVID TURNER M.D.

932 :74564

Time Dictated: 1900
Time Transcribed: 0747

Authenticated by David S. Turner, MD On 11/09/2007 09:44:46 PM

X

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Terry Edward McCall, Plaintiff, vs David E. McAlhany, Defendants.	C. A. No. 2:15-cv-01011-TLW-MGB **AFFIDAVIT OF DAVID MCALHANY**

COMES NOW David McAlhaney, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 years, and the statements made in this affidavit are based on my personal knowledge.

2. On March 4, 2012, I was employed as a Highway Patrol Trooper by the South Carolina Department of Public Safety.

3. In this capacity, I was called to investigate an automobile collision that occurred in Greenville County on March 4, 2012. This collision involved Terry McCall, the Plaintiff in this lawsuit.

4. I met and interviewed McCall both at the scene of the collision and at the hospital, where McCall was transported from the scene.

5. In addition, while at the scene, I observed the severely injured occupants of the automobile that McCall had struck.

6. My investigation led me to determine that McCall had committed the traffic offense of driving under the influence causing great bodily injury in

violation of S.C. Code § 56-5-2945. I issued a Uniform Traffic Ticket to McCall on March 4, 2012 for this traffic offense and provided McCall with a date, time, and court location. Due to the nature of the offense, the court or the solicitor's office took over the case, along with all scheduling of hearings.

7. Thus, my only involvement with McCall included issuing the Uniform Traffic Ticket, transporting McCall to the county jail, and, much later, testifying as a witness during his criminal trial, which ended in McCall's conviction. I had no involvement with the scheduling of any hearings with any court.

8. Attached to this affidavit is a true and accurate copy of the Uniform Traffic Ticket that I issued to McCall.

FURTHER AFFIANT SAYETH NOT.

David McAlhany

Sworn to and subscribed before
me on this the 27 day of September, 2016.

NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires: February 4, 2026

13th Circuit Public Defender
DEC 14 2012
Initials: 23

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

12/11/2012

RANDY CHAMBERS
305 E. NORTH STREET STE 123
GREENVILLE, SC 29601

RE: Plea Offer for State v. Terry Edward Mccall

Dear Randy Chambers :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

Warrant Number:	*Charge:*
P540654	DUI / Felony driving under the influence, great bodily injury results

The State will make the following sentence recommendations/negotiation:

10 years and a $5,000 fine.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/2/2013 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Sara Drawdy
Assistant Solicitor

936

13th Circuit Public Defender

JAN 0 2 2013

Initials: ____

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

1/2/2013

RANDY CHAMBERS
305 E. NORTH STREET STE 123
GREENVILLE, SC 29601

RE: Plea Offer for State v. Terry Edward Mccall

Dear Randy Chambers :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

Warrant Number:	*Charge:*
F540654	DUI / Felony driving under the influence, great bodily injury results

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Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/2/2013 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Sara Drawdy
Assistant Solicitor

STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF GREENVILLE

Terry McCall,

Petitioner,

vs. Transcript of Record
2020-CP-23-01497

State of South Carolina,

Respondent.

January 5, 2021
Greenville, South Carolina

B E F O R E:

The HONORABLE R. SCOTT SPROUSE

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

Terry McCall, Pro Se
Taylor Smith, Representing the State of South Carolina

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

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Randall Chambers		
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THE COURT: All right. Let's go on the record. This is the petition from Terry Edward McCall. This is case number 2020-CP-23-1497. Mr. McCall is appearing self-represented.

Mr. McCall, do you have an attorney? I can't hear you.

MR. MCALL: Can you hear me now?

THE COURT: I can hear you. Do you have an attorney?

MR. MCALL: No, sir, I don't.

THE COURT: And are you seeking to go forward today and represent yourself?

MR. MCALL: Yes, sir, I am.

THE COURT: Okay.

MR. SMITH: Judge Sprouse, may I just be heard real quick on that?

THE COURT: Yes.

MR. SMITH: We did have someone appointed to represent Mr. McCall quickly after he filed his application. And he filed a motion to have her relieved as counsel, and Judge Kinlaw granted that, I think in a form 4, but we did not have an hearing on that. I just wanted to ask that Your Honor makes sure that Mr. McCall understands

the dangers of self-representation. We didn't do any of this on the record, so I wanted to make sure that's clear before we do anything else, that he's assuming that risk by not having an attorney.

THE COURT: Let me see if I can find that order. When was that order signed? Do you remember when Judge Kinlaw signed it? I'm looking for it.

MR. SMITH: I don't, Judge. But I can pull it up here. It is a form 4 order. It was issued, Your Honor, May 16th of this year.

THE COURT: The clerk is looking for it.

All right. Let me just say, Mr. McCall, you understand this is your opportunity to have your case heard and you will have the responsibility of presenting your case just as if you had an attorney. You understand that?

MR. MCALL: Yes, sir, I do.

THE COURT: You're held to the same legal standards that an attorney would be held to. Do you understand that?

MR. MCALL: Yes, sir, I do.

THE COURT: Attorney can be of assistance to you, an attorney can explain the law, an attorney can help you plot strategy. It's always

a dangerous thing, inherently dangerous for someone to try to represent themselves in court. Do you understand that?

MR. MCALL: Yes, sir, I do.

THE COURT: All right. And you want to go forward today?

MR. MCALL: I do, uh-huh.

THE COURT: Are you under the influence of any alcohol, drugs, or anything that might affect your judgment?

MR. MCALL: No, sir, I'm not.

THE COURT: Are you being treated by a doctor for mental illness?

MR. MCALL: No, sir.

THE COURT: Is there anything that would make it to where you couldn't understand the proceedings today?

MR. MCALL: No, sir.

THE COURT: Can you read and write?

MR. MCALL: I do, uh-huh.

THE COURT: Okay. How far did you go in school?

MR. MCALL: I graduated high school, two years of tech.

THE COURT: All right. Well, I find that

Mr. McCall is able to represent himself. I will allow him to proceed since that's his wish today.

So, why don't we do this -- I have Mr. McCall's amended petition.

Mr. McCall, do you have other witnesses that you are going to call besides yourself?

MR. MCALL: No, sir. What I was going to tell you, Judge, I had several amendments that I placed on that application due to the fact that I didn't have a law library available at the time. A lot of those amendments, I'm not going to be heard on today, Okay?

THE COURT: All right.

MR. MCALL: I got, like, four issues I'm going to be heard on.

THE COURT: Okay. That was going to be my next question, for you to tell me what the issues that you're bringing before the Court today are.

MR. MCALL: Okay. I got a probable cause issue.

THE COURT: Okay. All right.

MR. MCALL: And I have -- and that pertains to several things, okay?

And then I've got the issue of the -- Chambers failed to exercise due diligence in violation of my Sixth Amendment right. We have conflict of interest, and I didn't get informed of a plea offer.

THE COURT: Okay. So those four things.

MR. MCALL: Yeah, I think that pretty much covers it. I think that's pretty much covers it there.

THE COURT: All right. Before we start with the testimony, Mr. Smith, is that your -- do you have anything you'd like to put on the record after he's outlined the four issues?

MR. SMITH: Yes, Judge. I'll also need to -- Mr. McCall filed a lot of amendments and raised some issues that, by my count, we would have something like 20 or 30 issues going today. If he can narrow it down to those four, that's fine with me. I just have a couple questions to make sure what he means by these four issues. It may be the case that I can cut loose one or more of my witnesses. And also, I'd like to --

THE COURT REPORTER: Your Honor, I can't hear.

THE COURT: You're getting an echo.

Mr. McCall, I think Mr. Smith is concerned there may be other issues that you've alleged in other petitions that he has a witness that would pertain to that issue and he wants to release that witness since that witness would not be necessary.

MR. MCALL: Yeah, I don't have a problem with him releasing Lara Caudy and Jake Erwin. I don't have a problem with that.

THE COURT: Okay. But you understand --

MR. MCALL: I'm not going to challenge anything with her or Mr. Erwin, okay?

THE COURT: Okay.

MR. MCALL: All this stuff is pertaining to pretrial stuff. You got me?

THE COURT: Okay.

MR. MCALL: Up to the time I relieved Mr. Chambers.

THE COURT: Now, Mr. McCall, you understand that if you waive these issues, you can't ever bring those issues back up again. This is your opportunity.

MR. MCALL: Yes, sir. Yes, sir.

THE COURT: Okay.

All right. Does that answer your concerns, Mr. Smith?

MR. SMITH: It does. If Mr. McCall is dropping any claims against Miss Caudy or Mr. Erwin, I don't think there's any reason for me to keep them on as witnesses at this point.

Now, I will say, if he has issues, too, about Judge Stilwell, maybe he thinks that Mr. Erwin can testify to something that happened off the record. But if Mr. McCall is saying he only has complaints about things that Mr. Chambers did or didn't do, then I feel pretty comfortable in saying we no longer need their testimony as it pertains to these issues here today.

THE COURT: Okay. Are you going to release those witnesses?

MR. SMITH: Yes, sir.

MR. MCALL: Yes, sir. I don't have a problem with it.

THE COURT: All right. Well, Mr. Erwin and Miss Caudy will be released as witnesses then.

MR. SMITH: I guess another issue that's come up. Mr. McCall has had multiple issues in this case.

THE COURT: I can't really hear you.

You're echoing, Mr. Smith. You're getting feedback.

MR. SMITH: I don't think it's on my end.

THE COURT REPORTER: It's Mr. McCall's.

THE COURT: Hold on. Hold on. Mr. McCall, mute your monitor real quick. Let me see if that works.

MR. MCALL: All right.

THE COURT: Now, go ahead, Mr. Smith.

MR. SMITH: Is that any better?

THE COURT: That's better. That's better. Okay.

MR. SMITH: If Mr. McCall needs to jump in, I'd be happy to pause. I think that's where the feedback was.

Mr. McCall's filed multiple motions in this case. Normally, his case would probably not go on the roster until probably mid-year 2021, but due to some of the motions he's filed, Judge Kinlaw asked us to fast-track this case so that Your Honor could hear Mr. McCall on his motions. So if we could deal with those before we really get into the meat of his case.

I know I forwarded all of them that I have to you in the packet. I sent a copy of that

packet to Mr. McCall.

THE COURT: Okay.

MR. SMITH: But I think that includes a motion for a temporary injunction and Mr. McCall's motion for bail. And the State has responded to both of those. I think we responded to the motion for temporary injunction in the State's return to his application, and I have a stand-alone return to his motion for bail since he filed that after his application was filed.

And if he wants to be heard on that. We have some argument in response to his motion there and, and I'd be happy to argue it orally today too.

THE COURT: Okay.

MR. MCALL: Your Honor, as to the motion for bail, I'd like to be heard on that, if I could. On the injunction, I would waive the injunction at this time.

THE COURT: Okay.

MR. SMITH: Because I think the bail would pretty much cover what I was getting to in the injunction. Basically, it was the COVID-19 that I'm facing here at the prison.

THE COURT: Let me hear your motion for

bail before we get started on the case in chief.

MR. MCALL: Let me see if I can find it here, Your Honor. Your Honor, I was asking to -- to allow me bail because, at the time, this COVID began running rampant here in the prison. When I moved for the bail, I moved for it under the Title 17-27-80, and it states in there that the Court is entitled to make certain issues as far as -- it says, respondent not used in any inappropriate authority, but pursuant to -- supplemental orders as to arrangement, retrial, custody, and bail, discharge, correction of a sentence, or other matters that may be necessary are proper, and that's under 17-27-80. They argue the fact that they was using the appellate court statutes to say that I was not authorized to move for bail, but they're using stuff -- I'm not in the appeals court. I'm in the PCR court.

And from what I read 17-27-80 applies to bail. It says that the Court may issue supplemental orders as to arrangement, retrial, custody, bail, discharge or correction.

I was moving for a bail because at the time I didn't know if I was going to get a hearing and I'm still trying to, because we're just now

getting locked down again on this yard because of COVID-19. Outside these walls here, it's running rampantly again.

And, my life -- I'm 61 years old, soon to be 62. My health is not the greatest. I need to be out -- to where I can get out of here so I can be heard, as well as be free from this COVID-19. That's what my fear is. That's why I moved for bail because I feel like -- you know, that I needed to get out of here, because I had a good claim. I think my claim is good, especially to probable cause issues and the fact that I never got a plea. That's the reason I moved for bail.

And I would ask the Court -- I don't know if you looked over the motion that I filed, but that was reason I filed it, due to COVID-19.

THE COURT: But you filed your motion prior to this hearing being fast-tracked by Judge Kinlaw. Is that not correct?

MR. MCALL: That is, uh-huh.

THE COURT: Thank you, Mr. McCall. Let me hear from you, Mr. Smith.

MR. SMITH: Judge, let me start by going to the statute that Mr. McCall cites, 17-27-80. It does discuss --

THE COURT REPORTER: Mute.
THE COURT: Hold on. Mr. McCall, mute.
MR. MCALL: Okay, I'm sorry.
THE COURT: There you go. All right.
MR. SMITH: The statute he's citing to reads as follows: Quote, "If the Court finds in favor of the applicant, it shall enter an order with respect to the conviction and the sentence in the former proceedings, and enter any supplementary orders as to... bail."

So what he's citing to is a statute that applies only to people who have already been granted post-conviction relief, or where there's a post-hearing supplementary order.

And I'll say on the second basis, I've cited two additional grounds in my return to his motion. First, that the bail is essentially to -- deals with people who are in a position accused. And I cite the case of State v. Gibbs, 353 S.C 266. In that case, the Supreme Court explains the purpose of bail, but Mr. McCall has been convicted and his conviction been affirmed. He's no longer an accused. He's a prisoner. He has -- there's a finality to his conviction that removes him from the category of someone who can

be granted bail.

And, secondly, the Court doesn't have the authority to grant bail to him, not only because he has not yet been granted post-conviction relief by the terms of that statute he cited, but because the appellate court Rule 246 says that when a defendant has been sentenced for imprisonment for a period in excess of 10 years, he can only be granted by an appellate court.

Judge Stilwell sentenced Mr. McCall to prison for 15 years, so by the terms of appellate court Rule 246, I don't think Your Honor has the authority to grant him bail. I think the appellate court rule reserves for the appellate courts only.

So there are two good reasons. Number 1, I don't think Your Honor has the authority to do that. And even if it did, Mr. McCall is not the sort of person that bail was designed for.

That's the State's position. I would ask you to deny his motion.

THE COURT: I understand, Mr. McCall, your situation, but you have not been granted a new trial at this point. I'm going to deny your motion for bail. This is something you can

revisit in such event as you are granted a new trial. But like Mr. Smith said, there's a proper procedure that you have to go through to seek bail, and that's an appellate function and not a trial court function.

So I'm going to deny your motion at this time, but this will be without prejudice to any future motion for bail in the event your petition is granted.

MR. MCALL: Okay. Okay, I appreciate that, Judge.

THE COURT: All right. Is anything further before we proceed?

MR. MCALL: No, huh-uh.

THE COURT: All right.

MR. MCALL: I did have a summary judgment I filed. Or we're just hearing the whole claim now?

THE COURT: We're ready to proceed on the merits of your case.

MR. MCALL: Okay.

THE COURT: Mr. McCall, raise your right hand.

MR. MCALL: Yes, sir.

THE COURT: Do you swear to tell the

truth, the whole truth and nothing but the truth, so help you God.

MR. MCALL: Yes, sir, I do.

THE COURT: All right. You can proceed.

MR. MCALL: All right, Your Honor. I'd like to say that this was an accident that occurred on 3/4/12. And, Your Honor, this was a very serious impact accident in which the victim and myself both had to be mechanically removed from the vehicle. My injuries were that I hit my head, my face with such force that I knocked several of my teeth and chipping others. I busted my lip. My mouth was all tore up. My chest was injured, my foot, my toes, and my right hand was lacerated. I was traumatized from this accident and I was lying on stretcher when Officer McElhaney came to the hospital and seen me.

I'd like to move to the probable cause that Mr. McElhaney had for when he came to the jail to interview me in his reason for placing me under arrest. Okay?

I'd like to say, when he got to the hospital, I was lying on a stretcher and he said

that -- let me get to that part there.

I'm going to go to page 44 of the transcript. This is not the one you sent me, Mr. Smith. This is the one the appellate court sent me, so I don't know if it's the same page for you, but it's on May the 12th.

MR. SMITH: What was that page number again.

MR. MCALL: I'm on 44 for McElhany, David McElhany, the officer.

MR. SMITH: Okay. And it looks like you're citing the page number from the original -- that's the pagination from the original transcript, the first one.

MR. MCALL: Right. Yeah, this is the original. Yeah.

MR. SMITH: Okay.

MR. MCALL: These pages here weren't reconstructed. It was the 14th, there was a reconstruction on.

THE COURT: Hold on. Let me stop you. Is that different than what's been submitted to the Court?

MR. MCALL: No, no. This is no different. This is the same thing. The day of the 14th was

the only date that they reconstructed anything on. And I'm not arguing anything on that.

THE COURT: Okay.

MR. MCALL: I'm arguing the 12th and the 13th day. The 14th, the third day of trial, I'm not even going to there.

THE COURT: All right. And this is page 44?

MR. MCALL: Page 44, yes, sir.

THE COURT: All right. Go ahead.

MR. MCALL: Now, Your Honor, I did enter some exhibits. I mailed them out. I don't know if you guys got them, but I mailed them. I've got some exhibits that I'm going to go through.

THE COURT: Yes, I have those.

MR. MCALL: Okay. I won't be using all those, okay?

THE COURT: Okay.

MR. MCALL: All right. I'm going to page 44 and I'm going to go down to line 3.

MR. SMITH: Judge, can I jump in here for one moment. I know Mr. McCall referred to some exhibits. He gave me those exhibits. I'm assuming that we have a copy of what he's referring to there. I don't necessarily have a

blanket agreement that all of those should be admitted into evidence. I'd like to sure on a case-by-case basis.

THE COURT: All right. Well, just -- you can't state your objection. Let him go through each one individually and then if you have an objection to it, you can state it and then we'll hear each one as it comes up.

Okay. Go ahead, Mr. McCall.

MR. MCALL: All right. On page 44, line 3 it says: "Talk to me about what happened when you were at the hospital."

And Officer McElhany says: "Well, when I got to the hospital, I asked front desk about the two individuals involved in the wreck and she directed me back to the ER. Mr. Suddeth was the trauma bay. Mr. McCall was in critical care. The Trauma is kind of -- you can't really talk about -- talk to anybody in the trauma bay, so I immediately went to the critical care section where I find Mr. McCall."

"What did you notice about Mr. McCall on your arrival?" That's the question asked of him.

He answered: He says, "I notice, of course, he had some injuries from the wreck. He

was lying on the stretcher, I think in the hallway of the critical care section. He was coherent. He could talk. He could speak. I asked him about the accident, and he advised me that his vehicle went across the roadway and he had no brakes. He told me he had no calipers on the wheels so he had no brakes. I asked him if he had anything to drink, any alcohol to drink as I did observe cans in the vehicle. He told me that he didn't drink. He didn't have anything to drink. Then I asked him if he had taken any kind of drugs and he told me that he had taken some prescription drugs."

Now, I'm going to turn to -- now on the next page, 45, I'm going to go down to line 21. I'm going to skip a little bit around, okay? He says: "Now, you stated that the defendant told you he did not drink. Did you observe an odor of alcohol on him?"

The answer was: "No."

He says: "What did you observe about Mr. McCall?"

I'm going to go to page 46, start off with line 1: "I observed that he wasn't responding to me in the way that I feel was as normal in accordance with the amount of damage and

injuries that he had in the wreck. His speech wasn't totally true and plain. If I remember correctly, his eyes were dilated to some degree. That alone, with his actions and his admission to taking prescription drugs, I felt it necessary to go further with the investigation."

The question was: "When you say 'necessary to go further,' you mean place him under arrest?"

He says: "Yes, sir. Placed him under arrest and advised him of his implied consent."

Now, that was the State asking him about that. Now, I'm going to go over here to Mr. Chambers comes over here with his probable cause to him, and I'm going to go to page 51 and start off by line 1.

"All right. He wasn't walking up around when you got there?"

He says: "No, sir."

"He did not get up during the time that you were talking to him, did he?"

He says: "No, sir."

"He remained supine on the stretcher while you talked to him the entire time?"

He said: "Yes, sir."

"You indicated that there was no evidence whatsoever that he had been using alcohol."

"That's correct."

"And you said he did have injuries."

He said: "He did."

"Were you aware among the injuries is that he hit his head with such force that he had lost several of his teeth?"

He said: "It seems like I do recall a tooth missing."

"And was that evident to you when you were talking to him?"

He said: "Yes, sir."

Now, I'm going to move on to page 79, okay? This is where they're on cross, okay? I'm going to stay on page 78. Let me say something there. I had line 19 through 25. They're asking me, he says -- he said: "They weren't helping you at the hospital?"

And I answered. I say: "Well, the lady was, but I needed something for my mouth." My mouth was killing me. My teeth had been broken out and talking to someone makes it hurt. Okay?

Now, I'm going to move on to page 79, line 1: "I did tell them that I had taken

something the night before, but I didn't take it while I was driving. I would never do that."

"Do you remember telling EMS that you had taken Ativan?"

I said: "Yes, I do. I told them I had taken it the night before, but not while I was drinking. I tried to be as honest as I could."

"So you did tell the truth that you had taken prescription drugs?"

I said: "Yes, sir." Okay, I did tell the trooper that I had taken it the night before.

Now, I'm going to go over to, I think, Mr. Chambers' questioning on probable cause next, okay? And that's on page 87. I'm wrong. I'm wrong. This is when the Court -- let's see. Let me make sure. Yes, this is Mr. Chambers. Wait a minute. No, I'm wrong. Let me go back here.

Okay. This was, what I had told you earlier was Mr. Chambers. I had it wrong. What I told you earlier about the probable cause, with the broken out some teeth and stuff.

Let's go to page 52, line 7, this is what Mr. Chambers said. He said: "So you're saying your probable cause for arrest..." This is a little different for probable cause, Your Honor,

than what he told the State. I'm going to bring that out in a little bit.

"So you're saying the probable cause for arrest for failure to -- at least as to the impairment issue is, he didn't seem right and he told you he took prescription medicine, right."

He said: "Well, totally. It's still to be from my investigation of the scene."

Chambers said: "Well, please articulate it to me. And I'm really only interested in the impairment issue because we'll concede to there was great bodily injury in this accident. So as far as the impairment goes, what was your probable cause?"

And this is what he says his probable cause is. "My probable cause for impairment, liked I said, his actions didn't seem right, and it wasn't actions consistent with his injuries -- what his injuries appeared to be. As to his admission to taking prescription drugs, as well as the way the accident happened, when he informed me he had no calipers, I do not know a little bit -- I know a little bit about cars and brakes, and if you don't have calipers in them, of course you have no brakes. That in no way, shape, or fashion

indicates going to the opposite side of the roadway and hitting another vehicle. So with all that collected, I come to the conclusion that there was sufficient evidence to take a blood draw."

"And you say he didn't act right, but you say he was lying on a stretcher this entire time. Is it true? And he had several head traumas, is it true? And he was missing teeth."

He said: "Yes, sir."

"And he had been in an horrific accident."

He said: "Yes, sir."

"So what you had just articulated is the extent of your probable cause?"

He said: "Yes, sir."

"So after that short discussion with him, you said, well, I'm placing you under arrest and that's when you found a nurse and do a blood draw; is that correct?"

And he said: "Correct."

Now, what I'd like to bring to your attention, Your Honor, is this was a real terrible accident. I'm not going to say that it wasn't. It was a terrible accident. And at the time -- I

do want to enter this notice of representation of Mr. Chambers when he started representing me. I have a notice of representation when he started -- it has March the 7th, 2012. That's going to be one of the exhibits. All right? The traffic ticket is going to be another one.

THE COURT: Do we have -- hold on one second, Mr. McCall.

Do we have those two exhibits that he just mentioned? They're not in this.

THE CLERK: Is it on the motion for summary judgment?

THE COURT: Let me see it.

THE CLERK: That's the order.

THE COURT: Okay, very good. Very good.

Okay.

All right. I found the traffic ticket F540654. It's marked Exhibit D in the materials that were submitted. Is that the exhibit?

MR. MCALL: Yes, sir. Uh-huh.

THE COURT: All right, so this.

And then you want -- let me see. A notice of representation by Mr. Chambers.

MR. MCALL: Yes, sir.

THE COURT: Okay. I see that. And

that's marked Exhibit C.

MR. MCALL: Yes, sir.

THE COURT: For purposes of this hearing, do you want that as your Exhibit Number 1?

MR. MCALL: That's fine.

THE COURT: All right. Exhibit Number 1.

Mr. Smith, do you have any objection to either one of these exhibits? Mr. Smith, can you hear me?

MR. SMITH: Yes, Judge. I have no objection to those.

THE COURT: I couldn't hear you. Do you have any objection?

MR. SMITH: No objection to those.

THE COURT: All right. So Exhibits Number 1 and Number 2 will be admitted without objection.

(PETITIONER EXH. 1, Notice of Representation; Chambers, was marked and entered into evidence.)

(PETITIONER EXH. 2, Traffic ticket, was marked and entered into evidence.)

THE COURT: Go ahead, Mr. McCall.

MR. MCALL: Okay. Your Honor, those are in the record.

Now, could I call Mr. Chambers, please?

THE COURT: He's listed as a witness.

MR. MCALL: He is. Okay.

THE COURT: For an orderly sense, Mr. Smith has him called as a witness, and you're going to get the opportunity to question him. I'm just trying to think of the easiest way to do this because Mr. Smith has got him as his witness right now.

Let's finish with your testimony and then we'll go forward from there, if you don't have any other witnesses.

MR. MCALL: I'm not going to be able to do all of my testimony without him being placed on standby so I can cross him.

THE COURT: Okay, okay.

All right. Do you have anything else you would like to tell me at this point? I will let you suspend your testimony. Do you have any other witnesses?

MR. MCALL: No, huh-uh.

What I was trying to tell you, Your Honor, based on the totality of the circumstances in this case, okay, because I told him I had taken prescription medication, a mere consumption is not

proof of under the influence. Okay? And the fact is that I never showed any kind of results. There was no kind of testing done for field sobriety tests. I didn't fail any of those. I was laying on the stretcher when he talked to me with my teeth broken out. You know, from an objective standpoint there was no reason for him to arrest me. I'm not going to sit here and say he didn't have reason to draw my blood because he may have been suspicious. But even from the beer cans, he said in the trial transcript that -- and I can go back and read it to you. I'm sure Mr. Taylor has read it to you -- that the beer cans is not a problem, because he said, now he's seen that I hadn't drank anything. He knew he didn't smell anything on my breath, so he was going to make a blood draw and draw my blood. I gave consent for that, Your Honor.

That's the part -- when he made the arrest based on the totality of the circumstances, he had nothing to arrest me for.

Furthermore, because on the ticket, if you look at it, it says on there that the test results was pending. So he had nothing but a suspension or a hunch at that time. He didn't

have nothing other than that. You know, all he could have done was release me and then further his investigation, but he didn't. He locked me up, and I'll go into the details of that later.

So at that time, all he had was, I was lying on stretcher. He said my speech wasn't plain and true. Okay? I'm sure with anybody with a mouth busted out like mine was, I still got teeth that are missing. I haven't gotten partials in, but I got six teeth out. I wasn't supposed to be speaking, true and plain. You know? I'm going to make my argument on this when I get done with Mr. Chambers. Okay? That's the totality of the circumstances I'm trying to get across to you.

THE COURT: All right. So that's probable cause. You have three others --

MR. MCALL: I have some more issues with probable cause. You got me? And I need to be able to talk to Mr. Chambers before I can --

THE COURT: All right. Do you have anything else that you'd like to testify to?

MR. MCALL: Well, you said testify to, you mean like?

THE COURT: Now, like I said before, Mr. McCall, you have the burden of proof in this

case. Now, you've made four allegations against Mr. Chambers.

MR. MCALL: Yes, sir.

THE COURT: And you have the burden of proving that, and so I'm willing to hear anything you got to present that's relevant to proving your case. Now, you will have an opportunity to cross-examine Mr. Chambers, and I'll also give you an opportunity to reply to any evidence that the State presents. But, at this point, on your three remaining allegations, you got a due diligence allegation, a conflict of interest allegation, and a failure to notify of the plea offer allegation. Do you have any testimony you'd like to present on those four -- those other allegations?

MR. MCALL: Yeah, I do. As far as me, I'm not finished at all, by no means. I thought that I had the opportunity to call Mr. Chambers first when I filed the application. That's why I was asking you. I just present my arguments without putting him up, or I got to present it all to you and then I put him up.

THE COURT: Well, this is your opportunity to tell me what you allege he did that was ineffective assistance of counsel.

MR. MCALL: Right.

THE COURT: And then, again, I'm going to consider all the evidence in the case. You're going to get an opportunity to question Mr. Chambers.

MR. MCALL: Okay.

THE COURT: At this time, you're the witness right now. You're the witness-in-chief in your case. Tell me what you allege he did not do properly in your case.

MR. MCALL: Okay.

All right. He did not question -- he did not bring up anything about the totality of the circumstances. Okay?

THE COURT: Okay.

MR. MCALL: That's what my argument is. Mr. Chambers didn't make no argument to that. He never said anything about it. And I feel like had he made a motion to have the charges dismissed, based on the fact that I wasn't -- also didn't have probable cause at the time to arrest me because there was nothing there for them to arrest me on other than a hunch, he had no evidence of anything that proved that I was under the influence, and that's my argument on the totality

of the circumstances. Okay?

THE COURT: Okay.

MR. MCALL: I'm going to go to the next issue then.

Now, I want to bring up this case. Can I bring this case up. Is that all right?

THE COURT: Yes, sir.

MR. MCALL: All right. I want to make sure.

I have heard from -- I think this is the Attorney General's opinion here. If I can find you the date on it. This is the Attorney General's opinion from July 14th, 2014. It talks about what the service of a uniform ticket is down at the bottom last couple lines. It says: "The arresting officer has" -- "If the arresting officer has a reasonable suspicion that the motorist is under the influence of drugs, we also believe it would be appropriate to delay the service of the uniform ticket until completion of the drug screen." Okay?

That's what didn't happen in my case. You got me? They issued a ticket and it wasn't completed. They locked me up and furthered the investigation in violation of the 4th Amendment.

And also by unreasonably seizing me at the time. And also by the South Carolina Constitution. He violated that, Your Honor.

Now -- and I also have here the evidence at the time. They had came back with a blood screen later. This was after the fact. Okay? I'll bring that out in a little bit.

Now, Mr. Chambers never argued anything about part of the probable cause was they had to do judicial determination. I never had a drug screen hearing by a judge I had a bond hearing, but the judge never did find probable cause. Nobody ever swore under oath that I had committed a crime, that this offense was ever committed. The officer took me to the county jail, he dropped me off with a blue ticket and he left me there.

And the probable cause determination for arrest without a warrant is still controlled by South Carolina Code 22-5-200 which mandates, "A person is arrested without a warrant should be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate shall direct. If an arrest has been made without a warrant, the arresting officer should take the person to magistrate or municipal

judge without unnecessary delay so that the judge may investigate the circumstances of the arrest, and, if proper, issue an arrest warrant. The issuance of the arrest warrant serves as informational and administrative purposes. It protects the police officer from prosecution under 17-13-50 which provides that it is a criminal offense for an arresting officer not to inform the arrested person of the grounds of the arrest if the constitution charging paper in magistrate or municipal court and informs the defendant the charges against him."

Now, Your Honor, I'm not saying that they weren't authorized to initiate the arrest on the blue ticket. I'm not saying that. But what I'm saying is, when he got me to the jail, by statutory law, he was to take -- and get an arrest warrant, and he didn't do that. It violated the statute in that manner. It says also at 22-5-200, it's mandated that a person arrested without a warrant be forthwith carried before the magistrate and a warrant of arrest procured disposed of as the magistrate shall direct.

And Mr. McAlhany didn't do that, Your Honor. He dropped me off and Mr. Chambers never

argued any of this. Had Mr. Chambers brought this out and argued the fact they had to go and get an arrest warrant -- now, he did argue the fact of -- I think somewhat about they didn't go through a mutual and detached motion, well, Mr. Chambers never used any authority of law. He never used anything to support his argument. And he never brought up the probable cause issue. He never said anything about that. He stayed away from that. That's the legislation intent, Your Honor, through 22-5-200, is for them to get a warrant. Okay?

And I'd like to go on to and say that if something is mandatory, the State violated my South Carolina constitutional rights and my 4th Amendment rights by unreasonably seizing me. And had Mr. Chambers -- had they got the arrest warrant, then the judge could have granted him probable cause and they may have denied the probable cause, but I didn't get that chance. I didn't get a chance to be heard before a judicial officer, and never was there a determination made or an arrest warrant issued.

There was a commitment form and a discharge form, which I have, and I'd like to have

those into evidence. I don't know what number I have on that, I'm sorry. But they cite the traffic ticket on there. They don't have anything -- there's not no warrant listed on here.

THE COURT: Now, I have a discharge filed, it looks like --

MR. MCALL: And a commitment order. The commitment was on 3/5.

THE COURT: Okay. The discharge is 6/9/12, it looks like.

MR. MCALL: What's that?

THE COURT: 6/9/12. It looks like a surety bond was posted.

MR. MCALL: Well, this is -- okay.

Now, where these are and what you have filed, Mr. McCall -- I'll just tell you what it has. There that discharge dated 6/9/12 signed by a magistrate from Greenville County. I can't read his handwriting, so I don't know the name.

MR. MCALL: I see what you're saying. Okay.

THE COURT: That magistrate. There's also a letter from the preliminary hearing coordinator from the Greenville County courthouse. There is a letter from Mr. Chambers to you dated

May 9, 2012. There is a letter from the records management division from the Greenville County, Department of Public Safety by Mr. Gregory, accounting specialist. And there is a letter from Miss Drawdy from the solicitor's office May 21, 2019 with a copy of the indictment and it look like excerpts from a criminal history. And then there's a printout, it looks like, from the --

MR. MCALL: It might not have got put in there.

THE COURT: That's all I have there.

MR. MCALL: Okay. Do I get to send this in to you, or how do I do this?

THE COURT: Well, tell me again what it is.

MR. MCALL: What it is that I'm trying to show you, when I was committed into the Greenville County Detention Center, there never was a judicial determination made, no warrant issued, and that on this commitment order it shows the ticket number. That's what I'm trying to get you to see with the name of charges on there. And the cash bond or surety bond was $50,000.

THE COURT: Okay. And what's the date on that?

MR. MCALL: This date is 3/5/12.

THE COURT: Okay.

All right. Mr. Smith, have you seen that?

MR. SMITH: I'm still looking. I'm not real sure what he's referring to. To be honest with you, Judge, the problem is, Mr. McCall has sent me things that it's kind of hard to -- and I'm working on my computer screen here.

THE COURT: Well, and Mr. McCall, the discharged that's in the court's file is a 25,000 surety.

MR. MCALL: That's it.

THE COURT: And it has F540654. It has the ticket number on it with the charge.

MR. MCALL: Okay.

THE COURT: And it's a different date than what you're referencing, but this is a discharge that has the information that you're seeking to put in.

MR. MCALL: Okay. That will be fine then.

THE COURT: All right. You want that marked as Exhibit 3?

MR. MCALL: Please.

THE COURT: All right. Any objection, Mr. Smith?

MR. SMITH: No objection, Your Honor, but I don't really see how that's relevant. That's the discharging order. I'm not going to object to that.

(PETITIONER EXH. 3, Discharging order, was marked and entered into evidence.)

THE COURT: Go ahead, Mr. McCall.

MR. MCALL: Now, Your Honor, I want to go here to -- the attorney general's opinion I have was October 12th of 1998. Let me go into this first. I'm going to the fact that I never got a Gerstein hearing. That's what my hearing is now. I'm going to go to Gerstein vs. Pugh. 420 U.S. 103 is the cite on that. I don't know if you're familiar with it, but I'm going to go ahead and read it to you in pertinent part here: "To permit the 4th Amendment's protection against unfounded invasions of liberty and privacy, the Court has required that the existence of probable cause be decided by a mutual and detached magistrate whenever possible." Okay?

And under this magistrate compromise -- I'm reading down further, jumping in different

spots for you, "The policeman on the scene assessment of probable cause provides legal justification for arresting a person suspected of a crime and for a brief period of detention to take administrative steps to the arrest. But once the suspect is in custody, however the reason that justifies the suspicion with the magistrate neutral judgment evaporates. There is no longer any danger that the suspect would escape or commit further crimes while the police submit their evidence to a magistrate. And while the State's reasoning for taking summary action subsides, the suspect's need for a mutual determination for probable cause increases significantly. The consequence of a prolonged detention may be more serious than the interference associated by the arrest. And finally, it may impair the suspect's job, interrupt his source of income, and impair his family relationship.

That's what happened in my situation, Your Honor. I lost my job. I lost my residence. I lost everything. I didn't -- the officer, he made the probable cause determination and he didn't go through the magistrate, and there's never been a magistrate to decide probable cause

in my case. And for that reason, I was unreasonably seized during the time. After 48 hours -- and Gerstein speaks about they got 48 hours to get an arrest warrant or to release me, and that didn't happen in that case.

Also, in the case of McLaughlin, they talk about it over here -- I think McLaughlin -- Riverside vs. McLaughlin, the cite is 500 U.S. 44, and they talk about -- Gerstein talks about the probable cause hearing. It's a requirement mandated by the 4th Amendment. And Gerstein just sets out the standard for the hours that they are to do it, because I don't think Gerstein makes it specific. But McLaughlin, the County of Riverside vs. McLaughlin made it 48 hours that they had to do that.

And in this Attorney General opinion that I've got, they speak about that, that it's still controlling by South Carolina statute 22-5-200.

THE COURT: All right. Well, Mr. McCall, I'm giving you leeway here. I'm going to look at the case law. I don't need you to read the cases to me.

Just tell me what you allege Mr. Chambers should have done.

MR. MCALL: Well, he should have went through and he should have went and argued the fact that the officer didn't get an arrest warrant and he violated probable cause. He should have went in there and argued the statutes. He should have argued that my arrest -- it wasn't the fact that Mr. Chambers didn't try to argue something about a mutually detached magistrate, but he never brought out anything about probable cause. He never stated about the fact that my arrest from the start was based on the totality of the circumstances was unlawful because they had nothing to hold me for at that time.

You know, and then when I get to the jail, they didn't take me through the proper procedures. They violated procedural due process and just put me in jail and just held me there on a blue ticket, but it's unlawful to do that.

THE COURT: Okay.

MR. MCALL: A blue ticket, you can't hold someone in jail on a blue ticket. That's my argument on that.

THE COURT: All right.

MR. MCALL: But I was unreasonably seized, Your Honor. They violated my procedural

due process.

Now, I'll get to the part here about the preliminary hearing, and this is to do with probable cause. Okay?

When I get to the preliminary hearing, and you say you got the letter from Donna Bearden. It was dated January the 8th, 2020. I'll have to get that.

THE COURT: All right. Yes, sir. That's from the Greenville County on January 8th of 2020.

MR. MCALL: Yeah.

MR. SMITH: I'm sorry. I missed what was that?

THE COURT: This is the letter from Donna Bearden from Greenville County informing Mr. McCall that a hearing was held May 12th, 2012 and that the case of bound over for grand jury action.

MR. SMITH: Is there an exhibit letter on that.

THE COURT: Okay. I see it. It's up at the top, Exhibit L.

MR. SMITH: L.

THE COURT: This would be Exhibit Number

4 for purposes of this hearing.

MR. SMITH: Okay.

THE COURT: Did you find it, Mr. Smith?

MR. SMITH: Yes, Judge. No objection to the admission of that letter.

(PETITIONER EXH. 4, Letter from GC, Bearden; 5/12/12, was marked and entered into evidence.)

THE COURT: Okay. Go ahead, Mr. McCall.

MR. MCALL: Now, I'm not saying I didn't go to a preliminary hearing. I got a preliminary hearing. Okay? Both of them. My argument is that no one ever sworn a -- no affiant ever swore an oath that I committed an offense, and no probable cause was ever found.

Now, when we get to this preliminary hearing under statute 17-23-162 it says that the presence of an affidavit or arresting officer is to testify at the preliminary hearing, and it's the affiant of the solicitor on the arrest warrant or the chief investigating officer must be present to testify at the preliminary hearing or the person arrested for the warrant.

Now, my thing is that there was never an affiant in the case and they violated the

statutory law by allowing the officer to come in there and testify that I committed this offense when I never went through a mutual and detached magistrate for him to determine probable cause.

The officer, he placed himself -- they took the magistrate out of the equation is what I'm trying to say, Your Honor. And the officer was allowed to go all the way up to the preliminary hearing and testify. If he had been the affiant, there's no problem. If he went and swore out a warrant on me and said that I committed this offense and the judge found probable cause to detain me further and charge me with it, then I wouldn't have an argument here. But he came in at the preliminary hearing. Mr. Chambers, Mr. Chambers never said anything about it. Mr. Chambers said -- I asked him, I said, there's no arrest warrant. I want to argue about the evidence of the arrest warrant. I want to see the arrest warrant. I want to see if the warrant is based on a legal muster or what. And he's like, well, we can't argue anything. He said, the State is here to present your evidence. I said, well, I understand that, but we do have some type of argument. We can base it -- move for

a dismissal based on the fact there was no probable cause, but the fact that he's testifying as an affiant when he's not an affiant.

And that's pretty much my argument about the preliminary hearing, Your Honor. I was denied procedural due process. They came in here at took out the magistrate for probable cause. They never had probable cause. They took me all the way up to a preliminary hearing on a blue ticket, and then they bound it over. To me, that violated South Carolina criminal rules 1, 2 and 3, because at the time that they bound it over, they sent an arrest warrant up within 24 hours to solicitor's office, and the solicitor office processed the indictment off of it. That never occurred.

Mr. Chambers did argue to some effect about they did not -- that they violated South Carolina rules, but he said that the civil rules -- that's what he said on the record. Okay? But my argument is, he didn't argue anything about procedural due process being violated. He didn't say anything about he was moving to have the case dismissed based on the fact that the officer couldn't testify at that point. They didn't have anything to hold me for even at the preliminary

because the results hadn't came back. The only result that did come back -- I think there was -- they got one back and it was all negative at the time, at the preliminary. They did a second test, which it came back, I think, in June. The first one came back, I believe it was, in April. And so they didn't have anything to even bind it over on because there was no probable cause. They had no proof that I was under the influence at all. And that's my argument with Mr. Chambers, that he did nothing to try to defend me. That's the part that I'm arguing.

THE COURT: Okay.

MR. MCALL: That's the procedural due process violation; I was unreasonably seized, I was held without probable cause, and he didn't argue that.

THE COURT: Okay. Tell me about the conflict of interest and the failure to notify you of the plea offer allegations.

MR. MCALL: Hold on just one second. I mixed my stuff up here.

All right. It's a little bit -- Your Honor, about this conflict Mr. Chambers had, when Mr. Chambers started representing me, I told him

on 3/23 that I didn't want him to represent me. He says that in his letter. I told him -- he came to visit me and I told him, I said, I don't want you to represent me. We talked a little bit about some stuff and he didn't seem interested in my case. He didn't say -- I told him, I'd like to know what I'm charged with. And he said, I can't really tell you based on the ticket. The ticket has no subsection on it. It just has felony DUI. So there's two types of felony DUIs and there's no subsection listed on the ticket. So they're saying -- on the bond sheet they're saying great bodily injury. Well, anyway, I told him that I didn't want him to represent me. Okay?

At that point in time, we go on and I filed a motion to relieve Mr. Chambers. And, at that time, I didn't get heard on a motion. Okay? Now, that was on 4/2, I believe it was, I filed that motion. Let me get this straight here. Hold on a minute. Let me see this one second. Let me put this back down. I don't want to mix up my questions for him. This is --

Now, Mr. Chambers started representing me on some other charges. I got rearrested and had some more charges that came down, and Mr. Chambers

was assigned to them. He was only appointed once, but he was assigned to these charges as well. We had a little conflict about him not wanting to file protections. At that time, I filed a motion to relieve Mr. Chambers. Now, I relieved Mr. Chambers on March 25th and Judge Garrison relieved him.

Now, I didn't know that I had to relieve him any more than one time. I'm unaware of any rules under the South Carolina Rules of Professional Conduct which says that you have to relieve an attorney multiple times. I tried to find any rules that said I had to. But, anyway, Mr. Chambers went on and continued to represent me. Okay?

And I filed another motion right before court on 3/23/15, and it said -- no, it was filed on March 27th. I'm sorry. It was dated 3/23. On March 27th I filed it and I asked Mr. Chambers to be relieved. Now, I served Mr. Chambers with this just like I did the last motion that he came to court on. I served him, the solicitor, and the clerk was court, and it was filed.

Now, Mr. Chambers, when he got into court, he acted like he didn't know anything about

it. Well, he didn't know anything about it and him refuting the fact that he wasn't served was two different things. I did serve him properly, and I thought that I would be heard on that motion the first day of trial.

The trial started. My motion wasn't heard. And the next morning, he came around to see me in the little jail part where they hold you and he says, we're fixing to go in. I said, no, we're not. At that time is when I asked him to be relieved. I said, I filed a motion for you to be relieved and I already served you with it. You knew about it. And he said that -- we got into it a little bit about a conflict that we had about the way he was representing me and the indictment. I was only served with the indictment the day of trial. He hadn't prepared me for it. I'll go into those issues when I cross-examine him, if you don't mind.

But the part about the motion is that I didn't get heard on that motion that day, so I was denied my right to be heard and that's where Mr. Chambers failed at. He should have got me heard on the motion. He served with it. He knew about it and he didn't do that.

THE COURT: Okay.

MR. MCALL: The thing was, Mr. Chambers came to see me right before trial on 5/1/15, and he told me that -- his daughter is going to graduation for law school. Mr. McCall, he said, my daughter is graduating law school and I won't be able to see you long. I'll be here two, three minutes and I'm gone. This is the weekend and I'm going to her graduation. He says, I don't have any time to sit and go over no discovery -- or no discovery or trial strategy. I don't have anything -- I can't do anything with you right now, but I'll do my best to send my paralegal over to see you and try to get some information from you and the witnesses that you want to call, and things of that nature. I said, well, okay. Whatever. He said, my daughter's graduation is more important than your trial right now. I said, if, if that's how you feel. He left, and I never seen him anymore until the day of trial. And that's the part that I'm thinking that he didn't have any interest in my case. He didn't want to talk to me about it. He never sent anybody over to talk to me. I want to go into that whenever I bring it out to Mr. Chamber's. I'll go into it a

little deeper with him.

But you was asking me about the part of -- that's one of the parts about he didn't exercise any due diligent to have my motion heard. Okay? And the fact -- on the other part of the due diligence is that he had some documents and stuff that they're defective.

Can I bring those out? I need to tell you about it now.

THE COURT: This is under -- you're back under due diligence?

MR. MCALL: Yes, sir.

THE COURT: All right. Again, tell me anything that you're alleging that he did not do properly.

MR. MCALL: Okay.

THE COURT: In these four things.

MR. MCALL: Okay.

Okay. My potential witness list, okay, he has two witness lists here and I'd like to introduce them into the record. One of them has no signature on it and the other one he signed.

THE COURT: Okay.

MR. SMITH: Your Honor, I object to that on the basis of relevance. Relevance with the

witness list doesn't have anything to do with the issues that Mr. McCall is wanting today.

MR. MCALL: It's his signature on this witness list. This is the ones he gave me, the ones he provided to me in my discovery.

THE COURT: Well, they look they're -- what has been submitted to the Court, they look like they're identical except one is signed and one has an extra --

MR. MCALL: There's an extra name on there. My name is on there.

THE COURT: Right.

MR. MCALL: The reason for that is -- and he also typed these up for the family court, Your Honor. He didn't type them up for general sessions. He typed them up for family court.

THE COURT: Okay.

MR. MCALL: He got the numbers incorrect.

THE COURT: I'll overrule the objection. I'll mark this as Applicant's Number 5.

All right. Go ahead.

MR. SMITH: What's the exhibit?

THE COURT: This is the witness list that Mr. Chambers submitted to the Court on May 12,

2015 with his signature.

(PETITIONER EXH. 5, Witness list with signature, was marked and entered into evidence.)

MR. MCALL: What happened was, Your Honor, I asked him -- I asked Mr. Chambers to type my witnesses for me. Like I say, he was going to -- he said he would send his paralegal over to get my witnesses' names and stuff. I send him these three documents that he has typed up. I send him that in a letter and told him, I says, here's these names for these witnesses. You got me? Because I told him that day that I would give them to him and I done what I said I'd do, even though we started out with conflict and I didn't want him to represent me, and I never had wanted him to represent me. Anyway, I done what I said I would do.

He comes in the courtroom and he asked me, who was the witnesses I was going to call, and I told him, I said, Mr. Chambers, I said, my mom and dad and my sister. I'd like them to be called because my wreck was caused by a seizure. I had seizure all my life. And I said, that's my defense, that I had a seizure. He said, well, let me write these names down and I'll see if I can

get ahold of them. He wrote them down on the first witness list. And then he came back, like I say, he started exploring if I was going to testify in my trial. Well, he waited until the day of trial to start exploring all these witnesses. And my argument is that he failed to exercise due diligence and judgment is skewed by not calling and asking me and talking to me about my witnesses before trial. I got a case on that, Your Honor. Do you want me to state it to you now?

THE COURT: Just give me the name of the case and the cite and that will be sufficient.

MR. MCALL: All right. U.S. vs. Dennis Porterfield, and the cite is 624 F.2d 122.

THE COURT: Okay.

MR. MCALL: I also have the argument that Mr. Chambers -- whenever we got to trial the State served me with the indictment, and that's in May 12, 2015. That's on page 4 about line 15.

THE COURT: Okay, I see it.

MR. MCALL: Okay. It says, if you see the defendant, I'm serving him now. His counsel has been provided with copies previously. Let the record reflect that the defendant has been served

a copy of the indictment. Mr. Chambers, do you waive formal arrangement? He did waive that.

Okay. Now, I'd like to go over here and let's see. We can go down and read from page 5, 14, line 14. It says, "The first motion that I have, Your Honor, is with the indictment itself. We believe the solicitor proceeded in a fashion that is contrary to the rules. As such, we ask that the indictment that was just served on my client be quashed and that this case be dismissed with prejudice. This is a felony DUI offense, clearly a general session offense. The officer at the time, he went out and worked the accident, and then went to the hospital and made a determination he believed there was probable cause to charge my client rather than go through a mutual detached judge magistrate, he simply wrote a traffic ticket and then arrested my client on that basis. We believe that is illegal and certainly contrary to the rules and should not have been done that way."

Now, the Rule 1 of South Carolina Rules of Civil procedure, which should have been criminal procedure, even talked about the fact that the warrant, not a ticket, but a warrant should have been transmitted to the solicitor's

office and that was never done in this case. So his arrest, at the outset, we believe is unconstitutional and should not have taken place because it was not pursuant to an arrest warrant.

Now, obviously, the solicitor was free to if they wanted to pursue an indictment, and I suppose it's their position since that's what was done. But at no point prior to trial was my client served. They're serving him now at the trial, and, of course, this indictment references the traffic ticket, which would be contrary to the rules. And for all those reasons we ask the Court to quash the indictment and just dismiss these charges with prejudice because my client has been sitting in jail over a year. These sanctions could have been done in a more timely fashion. He could have had time to review the indictment and have time to have been prepared for it. None of these things happened.

Okay. Now, what I'd like to say, Mr. Chambers, he should have moved for a continuance at that point or a recess. He didn't even stop to talk to me about the indictment. He didn't prepare me for it. He just allowed me to go through and -- not knowing what I was faced

with, Your Honor. And I don't know if he's aware of it, but at the time I was at the jail, I was being told that I was in jail on death results. And I can get to that.

I have some exhibits there for you. I don't know which one it is, but you will see my picture of me at the jail and you'll also see the SLED report that states that I was arrested for felony DUI, death results.

And my argument is that, Mr. Chambers, he never -- and this is to do with the failure to exercise due diligence. He never reached out to see what I was in jail for. He never interviewed me until the day of trial about my witnesses. He didn't know anything about what was going on in my case. He didn't talk to me about discovery. He never prepared any kind of strategy with me in defense. He never talked to me about the strength of the State's case, and I just think that it was inappropriate.

MR. SMITH: Objection.

MR. MCALL: It was a violation of my 6th Amendment rights. You there?

MR. SMITH: Your Honor, I'm objecting to this line of testimony. Again, I don't it has any

relevance to the four issues Mr. McCall wants to argue today.

THE COURT: All right. Mr. McCall, tie this back in. You got one more area that you haven't talked about yet, which is the plea offer that you say wasn't communicated to you. Tell me about that.

MR. MCALL: Okay.

Your Honor, I never received a plea offer from Mr. Chambers. The only time that Mr. Chambers ever said anything to me was in 2015. He says, I want you to know -- and this was in the courtroom. He says that the State did offer a plea on 1/2/13, a plea offer. He said, but it was for 10 years and it expired the day of the plea. He said, I'm sorry, I didn't get a chance to get with you on it, he says.

And I did not find this plea offer for 2000 -- let's see. 12/11/2012 there was a plea offer he never gave me. I never seen it until they sent me his discovery the other day when I asked for it. I asked them to send me a copy of the file so I could see it. They sent it to me. This was the first I ever seen it.

Now, if I had known about this plea, I

would have took the plea. I would have never went to trial. See, I was thinking I'm in jail going to court for killing a man not knowing anything different. When the indictment was served, he's telling me right there on the record that Mr. McCall has never seen it. He don't know anything about the charges. So I had no clue what I was on notice for, particularly statute felony DUI. It was doesn't have a subsection A(1), or A(2), or great bodily injury, or death results. So he didn't give me notice of which one of those charges I was on notice for. So I didn't know. He's never went over the discovery with me or nothing. So definitely I would have taken the plea if he would have provided the plea to me.

I didn't see Mr. Chambers -- I met with Mr. Chambers two times, and that was in 2012 for my initial hearing and for a bond reduction. I didn't see him again. And these plea bargains came out months after that, and I never got them.

I know the State is not obligated to keep a plea; but, however, I never was offered the plea. I think there's probability that if the State would allow me to loud guilty, the judge would have accepted the plea because they did

bring it out at the end of the trial. She said something about it, judge. There was a plea, she said, yes, it was 10 years, which I never knew anything about. Had I known it, I sure would have took it. And that's my argument on that, that Mr. Chambers was ineffective because he should have told me about the plea and should have give it to me.

THE COURT: Okay.

MR. MCALL: He corresponded with me. He failed on me. He had no interest in my case. Like I told you, he came in there and said, based on the fact that me and him started on a bad note, I relieved him on the other charges. I had additional charges.

At that point in time, my conflict had already started. Then I bring him for another motion to relieve him before trial that he was already served. He didn't get me heard. The conflict just kept on and on. And under the South Carolina rules of professional conduct, I don't see why I have to keep relieving him on a numerous basis. I thought once I relieved him, it was over with. I never signed a waiver telling him that I waived our conflict. He went all the

through up to the preliminary hearing, all the way through there knowing it, and he never done anything about it to try to correct it, or bring it before the Court's attention.

Had he told me about the pleas, I definitely would have took it.

THE COURT: Okay.

MR. MCALL: And he said the other expired. We're already on trial. There's nothing we can do. We're going to trial. He didn't try to even get it extended. I know several cases on that. I have Missouri vs. Frye, 566 U.S. 134. I got Bell vs. State, 410 S.C. 436, and a Woods vs. State, 48 N.E.3d 374.

THE COURT: All right. Thank you, Mr. McCall.

MR. MCALL: And that's pretty much my argument, Your Honor. He didn't reach out and do anything for me. He just continued on while we had the conflict. And I think based on that conflict is where he decided that he had no interest in helping me.

I remember him saying at one time when I relieved him, when the judge relieved him, he said, you're on your own now. That was his words