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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

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VOLUME III of III **PAGES 1000-1188**

INDEX

to me. He proved that. He came back and visited one time in 2015 for less than ten minutes and told me he's going to visit his daughter and she was graduating law school, which I'm proud of her. I have no problem with that. That was beautiful. But he never did do anything before we went to trial. He never sent anyone over like he said he was going to do, and I was just denied effective counsel.

I think I was prejudiced by it definitely because I would have took the plea. And also I was prejudiced by the fact that he never raised any arguments about the probable cause because I was unreasonably seized during that time.

And as far as the other issue, him not exercising any of the due -- and the statutory law, 22-5-200, it specifically states that they're required to get the arrest warrant. Mr. Chambers made the argument about the mutually detached judge, but he never brought out the fact that he had to get the arrest warrant. He never brought out anything about the probable cause, that the State had violated -- that there was no probable cause ever found. He never brought that out at the preliminary hearing. He had an opportunity to

do these things. He had an opportunity to do it at the bond hearing and he chose not to. And that's how he failed. I mean, you can get up there and argue something, but if you don't have any authority with it, from what I read, then it's not but a mere allegation. It's not supported by anything.

THE COURT: Okay.

MR. MCALL: And that's what he done. That's why -- I hope you understand where I'm coming from.

THE COURT: I understand.

MR. MCALL: The whole process was a due process violation. I didn't get treated like everybody else. Other people got an arrest warrant; I didn't. I was held at the county jail for 60-something days before I went to a preliminary hearing. And I never had a person swear out an arrest warrant, swearing under oath that I even committed a crime. And then allow them at the preliminary hearing to testify and them be the mere probable cause -- make them the mere probable cause without going through a mutually detached magistrate and take him out of the equation, Your Honor.

The process does not begin to -- from my understanding, the juris process does not commence until the judge finds probable cause. And that's where I'm arguing that they never did it. It never commenced. You know, I'm arguing that they couldn't arrest me on a uniform ticket and initiate the process, but they did. But they never went through a mutually detached magistrate. They never took me in front of no magistrate. There was no probable cause ever decided.

Based on the totality of the circumstances from the beginning, they never had nothing to take me and arrest me for it. He had something to take my blood for. He had suspicion, you know. Because he says, you know, based on the fact that Mr. McCall spoke this way, you know -- and if that's the way he wants to look at it, I don't have a problem with it because the law said I got to if I drive a vehicle. I didn't have a problem with it. I consented to it.

But to take and lock me up and keep me in jail while you further your investigation, if that ain't a violation of the 4th Amendment, I don't know what is. And that's my argument.

THE COURT: All right.

MR. MCALL: His representation was ineffective, he didn't argue none of these things for me, and I was prejudiced by it.

THE COURT: All right. Thank you, Mr. McCall. I understand what you're arguing.

All right. Now, do you have any other witnesses?

MR. MCALL: No, I don't.

THE COURT: Okay, well let's hear from Mr. Smith's witness, Mr. Chambers, and then we'll go from there.

Mr. McCall, make sure you hit the mute button or we'll get an echo.

MR. MCALL: Yeah. Let me know when you want me back on. You want me to take the mute off again.

THE COURT: Okay. Go ahead and mute.

MR. SMITH: Actually, Judge, I'd like to call Mr. McCall, if I can.

THE COURT: Okay. You have some cross-examination. I should have asked you that.

Go ahead. Mr. McCall, you're still under oath, so Mr. Smith will have an opportunity to cross-examine.

MR. MCALL: Okay.

CROSS-EXAMINATION

BY MR. SMITH:

Q Mr. McCall, so you're saying -- how many times are you saying you met with Randy Chambers during this whole case?

MR. MCALL: Let me also submit this on the record. There's a visit sheet that I'd like to submit into evidence from the jail. It shows the dates on there. I don't have the other one in front of me.

MR. SMITH: I'm going to object to that. That reference is outside of the testimony.

MR. MCALL: That's the dates that he visited, and that's what I'm trying to get across to you. It's a certified copy, Your Honor.

THE COURT: You didn't put that in your case to chief, but I'll let you tell me the dates. You're under oath, so tell me the dates that he went there.

MR. MCALL: Hold on a minute. Let me find them. Let me see if I can find them. Hang on a minute.

Also, Your Honor, about me telling you I had seizures, I had some doctors, and if you had called those doctors --

MR. SMITH: Objection, Your Honor. I have not asked that question.

THE COURT: Mr. McCall, answer the question that has been -- restate the question, Mr. Smith.

MR. SMITH: Yes, Your Honor.

BY MR. SMITH:

Q Mr. McCall, how many times are you saying Mr. Chambers did visit you while he represented you in this case?

A Okay. He represented me. He came three times. I sent it to you. It's in the record there. I'm trying to find it myself. I don't think I -- it's 3/23, and 1/15 is another date that he came. I sent the visit sheet in as an exhibit. Let's see. Let me look again.

All right.

THE COURT: All right. I found it. Mr. Smith, I was in error. The Court does have that.

Tell us the dates, Mr. McCall.

MR. MCALL: Sir?

THE COURT: Tell us the dates.

MR. MCALL: I'm trying to find it. I'm trying to find it. That's why I sent it to you so

you would have it. I think I sent you my only copy, though. You'll have to give me a minute. 3/23/12, 5/15/12, 5/1/15.

BY MR. SMITH:

Q Mr. McCall, did you talk to Mr. Chambers by phone?

A Pardon?

Q Did you talk to Mr. Chambers by phone while he represented you?

A No, never. We never talked on the phone. I tried to call him a couple times, but he wouldn't call me back.

Q But you did correspond by letter, right? You were referring to letters?

A Yeah, I corresponded by letter before.

Q Okay. You testified earlier that you would have taken him a plea offer had you known about it. My question is: You testified extensively today that you believe your arrest was illegal. So you're telling me that -- you've talked for about an hour now that you are upset that you were illegally arrested, and you're telling me that you would have pled guilty to that?

A Yes, sir, had I known about it. Especially being that I was locked up and at the jail they're telling me I killed a man. And then come to find out that the indictment says something different,

yeah, I would have.
Q Okay. You testified just a few minutes ago that you did consent to the blood draw?
A Right, sure I did. I sure did, uh-huh. The blood draw I had no problem with it. I consented to it. He was -- the probable cause, there was never nothing done for me to show him anything that I was under arrest. I never showed any type of impairment.
Q Mr. McCall, you testified today you consented to the blood draw, but that's completely different than your testimony in trial, wasn't it?
A No. No, it is not. I testified I didn't sign implied consent. That's what I testified to. I didn't sign the implied consent. You got the record of that. I promise you that.
Q So you didn't testify at trial that you did not give consent to the blood draw?
A I said I did not sign the implied consent statute. But the girl asked me, she said, he did not consent. He did not fight and reject to a blood draw, and they said, no, he didn't reject it. He went on to give the blood draw.
Q Is it your testimony that you consented to the blood draw?

A I testified that I did not, okay, sign the implied concept statute. The officer done that.
Q I'm asking you, Mr. McCall, today, are you saying today that you consented to the blood draw?
A I took the blood draw. I sure did.
Q And you consented to it.
A My driver's license was at stake. I had to take the blood draw. That's the reason I took the blood draw.
Q Sir, I don't know if you have a copy of the transcript in front of you, but I'm going to refer to page 77 and page 78 of the transcript, and I'm looking at line 24. Mr. Chambers is questioning you and he asked: "Did you give consent" -- I'm quoting, "Did you give consent to anybody to draw blood from you -- from you for the purpose of evidence gathering," close quote. What is your answer?
A What page are you on?
Q Page 77, absolute bottom of the page line 24 and 25.
A Page 77. What line?
Q The last question on the page. Mr. Chambers asked you, did you consent to the blood draw. What's your answer on the first line of the next page?
A Yeah, I thought he was talking about -- he

says I was unable to sign. This is what he was talking about, the implied consent statute. That's what he was what talking about. That's when I said -- not that I didn't consent. I didn't sign the implied consent statute.

I always told them that -- and then through the whole trial, the girl asked him, did Mr. McCall withdraw -- did he not want to take the blood draw? I did take the blood draw because I knew I had to. Under the authority of the law, I had to.

And whatever he asked me here had to be some type of confusion because it says they drew it. Okay, they probably took it for medical reasons. Okay, I guess it was for medical reasons. Do you remember signing this form. And I said, no, sir. Is that your signature at the bottom? I said, no, sir. You said that -- I said, yes, sir. Are you unable to sign, when I went to the hospital at the time. Did you give consent to draw your blood for your purpose of evidence gathering? And I said, no, sir. And I don't remember giving nobody consent at that time for any kind of documentation. I didn't sign a form.

THE COURT: Okay.

MR. SMITH: No more questions for Mr. McCall, Your Honor.

MR. MCALL: Okay, thank you.

Mr. Smith.

MR. SMITH: We call Mr. Chambers.

THE COURT: Mr. Smith, call Mr. Chambers.

MR. SMITH: We call Mr. Randy Chambers.

THE COURT: All right. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do, Your Honor.

THE COURT: State your name for the record.

THE WITNESS: My name is Randall Chambers.

THE COURT: All right. Your witness, Mr. Smith.

WHEREUPON:

RANDALL CHAMBERS,

after having been sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Chambers, can you tell me where you work now?

A Well, I am self-employed as a lawyer,

primarily criminal defense, but I do some family court work also.

Q Okay. For how long have you been practicing in the field of criminal law for?

A About 32 years.

Q Before representing Mr. McCall, did you represent criminal defendants for driving under the influence?

A Lots of defendants charged with that.

Q Okay. Did you represent anybody charged with DUI resulting in great bodily injury?

A Yes.

THE COURT: Mr. McCall, could you mute for me, please? Thank you.

BY MR. SMITH:

Q How did you come to be involved in Mr. McCall's general sessions case involving great bodily injury?

A As I recall, I was appointed in my capacity -- at that time, I can't remember if I was actually working as a contract part-time employee of the public defendant's office. I think I was. Prior to that, we had -- Greenville County had sort of a unique situation where we had what we call contract attorneys that worked independently. But I'm pretty sure, at that time, I was considered a part-time employee of the

public defender's office and I was appointed in that capacity.

Q Okay. Other than this case, have you ever represented Mr. McCall in a general sessions case?

A I may have. I don't specifically recall, but it's certainly possible.

Q What about any criminal case at the magistrate's level?

A Again, it's certainly possible. I don't recall that specifically, but it is certainly -- I mean, I've had lots of people I represented on multiple occasions.

Q Do you recall ever being relieved as Mr. McCall's counsel on another case? I know you're saying you don't remember, but does that ring any bells?

A Yeah, I know that there was some discussion off and on throughout the time that I represented Mr. McCall. I do believe that at one point we were in court and he brought that motion. I don't remember if I was relieved or not, but I can't say that that didn't happen.

Q Okay. Was that in this same case or is that some other case?

A I believe it would have had to be on some other charges. Because if I had been relieved on

these charges, I certainly wouldn't have been represented him at the time of trial.

Because let me just add, if the client doesn't want me to represent them, I'm not fighting to stay on the case. I will assist them in any way possible to get off the case and for them to get another attorney to represent them. I certainly don't want -- sometimes there's just communication issues with clients, and, for whatever reason, they don't want you to represent them. You know, I'm not inclined to want to represent somebody that doesn't want me to represent them.

Q How early in Mr. McCall's case did you begin representing him?

A As soon as I was appointed. We had a general rule of thumb with the public defender's office that if you had a client in jail that you would try, as best you could, to go see them within 72 hours, which I generally complied with. Sometimes my schedule kept me from doing that, but I would go see them as quickly as I could.

So I would say that I had, probably, my initial contact with him within 72 hours or so.

Q Seventy-two hours of his arrest?

A Yeah. And, generally, when we get an

appointed case, we go ahead and send a letter of representation to everybody involved, we filed a discovery request. All the normal things that you do.

Q Okay. What were the facts of Mr. McCall's crimes as you remember them?

A Generally speaking, let me say this, I had a chance to review the transcript that you sent me. For whatever reason, when I tried to get a copy of the file itself, the public defender's office wasn't able to produce it. I don't know if it was because it was signed out by someone else, so I didn't have the benefit of actually reviewing the case file beforehand. It may have even had something to do with the fact that I was relieved after the first day. Dave Erwin took over. So most of what I'm going to tell you is from memory.

Q Okay.

A Generally speaking, this was a case where there was an accident that occurred on 291, South Pleasantburg Drive -- actually North Pleasantburg Drive here in Greenville County. It's what people refer to now as the Cherrydale area. It's a pretty busy area. It's a four-lane road through there with a pretty wide median in the middle.

It's not a raised median. It operates as a turn lane more or less for a lot of the businesses up and down through there.

The victim in this case, I believe, had gone and picked up his daughter at a sporting event or something like that. He was heading home in one direction. Mr. McCall was going in the other direction. Mr. McCall somehow lost control of his vehicle, crossed over into the other lane of traffic and struck the victim's car. The victim received, as Mr. McCall already testified, really serious injuries. I mean, I think, you know, there was, you know, a real chance that he was probably succumb from those injuries, but he did survive. Mr. McCall, as you heard, was also fairly seriously injured in the accident. He was, just on the uniform traffic ticket, charged with felony DUI.

I mean, that's generally the general facts of the case.

Q Do you remember how many times you met with Mr. McCall in person while you representing him?

A You know, I don't. I can't give you the specific number. It seems to me, and I may be speaking in error, but it seems to me that he made bond at one point. Was out for a while and then

got some new charges, went back to jail, and he was in jail for a significant period of time.

You know, so I don't recall the number of times that I met with him. But I can tell you this, as I said, I've been doing this a long time. I did, you know, appointed criminal work from, I would say, 1998 until now and it has been my practice in every case that whenever there is something significant going on in the case, I will meet with the client.

When I receive discovery, for example, I will go and I will meet with the client, go over the discovery, provide them with a copy if they want it. I don't know how many times I met with Mr. McCall, but I can tell you specifically. We went over the discovery, provided him with a copy of it.

As you can tell, Mr. McCall is not the average defendant. He's very hands-on. He prides himself with a great knowledge of the law. I think he even studied to be a paralegal at some point. He's not the kind of person that's going to sit over there without knowing what's going on with the case, not having any of the discovery. I provided that to him. We went through all of that together. I met with him on multiple occasions.

I also meet with clients whenever there's a

plea offer in this case. I can tell you that I know for a fact -- I don't know when it happened. I can tell you I met with Mr. McCall. Went over the plea agreement of 10 years. He turned it down. There was never any point in this case where he indicated to me that he intended to do anything but take this case to trial. He wasn't going to plea. And so I met with him on those occasions.

And then when we knew the trial was coming up, I met with him on the occasions that I needed to to prepare for trial. I don't know how many times that was, but I met with him on multiple occasions. And I can tell you that on the day the trial rolled around, as far as I was concerned, we were prepared to go.

Q Okay. I'm going to take a brief detour here since you brought this up. So the whole time that Mr. McCall was in jail while you were representing him, all of that was not related to this case; is that what you're saying?

A There were other charges. I don't remember what they were. But as he already indicated to you, he had some additional charges that came up. I believe that he was out on bond when that happened. And then he ended up going back to

jail, and, again, he was there for a substantial period of time.

Q You probably don't remember this, but I'll ask you. Do you know how much time Mr. McCall spent in jail only for this charge?

A Yeah, I don't know. I couldn't say. I mean, as far as I'm concerned, any time that he spent in jail was related to this charge because this charge was pending. So even though he may have gotten out on bond, once he's back in, I make the argument that he's entitled to day-for-day credit for all of that.

Q Okay. That would be something you would bring up at sentencing?

A Well, yeah.

Q Okay. Do you know if you talked to Mr. McCall on the phone or email or mail?

A It is certainly -- definitely not email. We may have had some general discussions on the phone. But I would not have talked to him about specifics of the case or case preparation, or anything like that, just because, even though it's supposed to be privileged communication, I don't like -- they record those phone calls. People listen in. I generally discourage that. Don't do

that. Anything discussions that I would have had with him of any substance would have occurred in person either in my office or directly at the jail.

Q And you did have some mail communication?

A You know, I'm sure -- I know that he sent me some letters. Whether I actually responded to those in writing or got back to him in some other way, I don't know. And I don't have those with me. Again, those would be in the file. But I feel fairly certain that he probably wrote me on numerous occasions.

Q Okay. During your meetings with Mr. McCall, were you two able to talk amicably or did you have disagreements any, how did that go?

A Well, early on, I don't -- I remember that we had a lot of problems with each other. I'm not really sure why. But once we settled in and it was clear we were going to trial he was very cooperative and didn't voice any discontent of any kind. He worked with me in getting prepared for the trial.

But yeah, I mean, there were several occasions and that he told me he didn't want me to represent him. I do think there was a motion at one

point. I don't recall the specifics of it. But, yeah, we had problems off and on. I mean, I don't think there were any from my end. He made it clear to me on several occasions that he didn't want me to represent him. But again, leading up to trial, that certainly wasn't the case.

And I remember that because I remember remarking to somebody in my office that I was surprised by that because we had some sort of a contentious relationship, but it seemed like we were getting along. I was actually looking forward to trying this case.

Q Okay. So you thought Mr. McCall had -- sort of you two had worked passed any issues you had?

A Yeah.

Q Okay. You mentioned that Mr. McCall, kind of, had some hands-on approach. Did his opinion of his legal ability hamper your ability to handle his case?

A I don't know that it hampered it. It was something I had to deal with. But he's certainly not the first client that I represented that, to one degree or another, wanted to really, kind of, get involved in the legal aspects of their case.

Q Did you explain to Mr. McCall the nature of the charge?

A Yes. I mean, we went over the discovery. He knew what the allegations were.
Q Okay. Did you make it clear to him that it was going to be a great bodily injury case?
A Yeah, we went over the discovery. We know that the victim survived the crash and he was also present at the preliminary hearing. At least I believe he was. I can't say that for sure. He may have been out on bond and didn't show. I want to be careful with that. I don't really recall if he was at the preliminary hearing or not.
Q Are you referring to the victim being at the hearing or Mr. McCall?
A Mr. McCall. Yeah, I'm pretty sure the victim was not there.
Q Now, did you tell Mr. McCall about the prison time he could be facing if he were convicted?
A I told him the sentence range was between 30 days and 15 years, and there's a fine that goes along with it, possibly.
Q Did you go over the evidence with Mr. McCall? For example, this is the thing that's going to be tough to beat at trial, something like that?
A We talked about -- you know, we talked about -- I mean, we went through all of the evidence, so

he knew what that was. The issues that we talked about specifically were, one -- I told him there was a McNeely issue. At that time, when this case was about to be tried, the State v. McNeely -- the McNeely case, which I think was actually a U.S. Supreme Court case, was a relatively new case where -- you know, that they said in cases like this, there had to be probable cause such to get a warrant in order to get blood evidence. We discussed that a lot.

We discussed the fact that there was no warrant ever obtained in this case, and I was going to address those by way of motions.

And as far as the just general trial strategy from an evidentiary standpoint, we're going to attack, you know, whether or not he was under the influence. That was, to me, the key to the case, that there was no real evidence that he was under the influence of any drugs or alcohol. Of course trying to get the blood results suppressed was part of the strategy on that.

He had discussed with me that he had had some seizure disorders, but I, you know, didn't have any real good evidence of that other than what he had told me. And he had indicated to me, as I recall, that he

didn't really know what happened to him that day, but that he suspected that he might have had a seizure. But he also indicated to me that he had essentially no brakes on that car that he was driving. We had a couple of issues that we were working there.

Obviously, the victim had been injured and suffered great bodily injury. The only thing to really attack was the probable cause -- not the probable cause, but whether or not he was under the influence.

Q So, it was not part of your strategy to attack or seek to prove that the victim had not suffered great bodily injury?

A Well, no. That would have been a waste of time.

Q Did you just -- you mentioned before that Mr. McCall was adamant that he wanted to go to trial. Did you -- do you remember any other -- in any other plea negotiations other than that 10-year offer?

A You know, the only one I recall -- again, I'm not looking at any notes or anything -- is that there was a 10-year offer. Miss Drawdy is with us. She could probably address this better than I. But the 10-year offer, I think, was the best offer that we ever got. I communicated that to

him. He declined it.

I mean, listen, I don't want to -- by saying this, I don't want to, in any way, indicate that my clients' cases or not important. If I have a reputation for anything in Greenville County is that I go to trial. I think I probably tried more cases over the years than just about any other lawyer in Greenville County. And I don't say that lightly. I think it's objectively true, so I don't shirk with going to trial.

With that said, if I plead the case, then I'm happy to do that as long as I think it's justice for my client and my client understands what he's doing and he's making an informed decision. I'm always happy for a client to plea. And that's one less case that I have to deal, or what tends to be, especially back then, when I was doing the part-time public defender docket, it was pretty heavy case load. So, you know, the notion that I would, in any way, keep him from pleading guilty is absurd.

Q I'm sorry. If you give me just a moment.

Did you talk with Mr. McCall about how harmful the State's blood evidence would be at trial?

A I mean, I'm sure we talked about all the evidence. I don't remember stressing that one

thing was more harmful than anything else. I mean, obviously, we didn't want those results in. So, yeah, they tended to be prejudicial.

Q I know the transcript shows that you were served with an indictment shortly before trial. To your memory, was that the first -- I think also in there it says that Miss Drawdy mentioned that she had sent a copy to you already. Do you remember when you first saw the indictment or became aware that Mr. McCall had been indicted?

A I don't remember exactly when, but it was just right there before trial. I mean, there wasn't a whole lot of notice on it.

Q When you got it right then, did you go over it with Mr. McCall or show it to him?

A We probably, as far as the -- as far as the indictment itself, it probably that first day of trial right before when I went over to talk to him about the indictment. But I had already planned, as you can see from the record, had a motion to quash.

Q Do you recall Mr. McCall telling you about some witnesses he wanted you to call at trial?

A I can't remember any specifics, but if there were any witnesses he wanted to call, then we

would have taken the measures we needed to to call them.

Q Okay. And, of course, the fact that you were relieved as counsel before even the State's case, you did not call any witnesses, right?

A I did not call any witnesses, no.

Q And I apologize for the fact that Mr. McCall has narrowed down his issues, so I need to skip through some questions that I planned on asking.

Did you feel prepared for trial in Mr. McCall's case?

A Yes.

Q And you just mentioned again that you did move to quash the indictment before trial. Can you tell me a little bit about that? I know it's in the transcript.

A Yeah, it's in the transcript. I mean, just based on the fact that there was -- the officer didn't follow the proper procedure. He didn't obtain a warrant. So, at no point, did he actually establish probable cause, as I indicated, with a neutral and detached magistrate. So they had no reason to -- I mean, the charges against him, at that point, were illegitimate. He did go to a preliminary hearing. It was bound over. I made a motion at the preliminary hearing to

dismiss the charge. That was denied and the case was bound over.

But, I mean, that's just basically -- I mean, what you see in the transcript there, that's what I argued.

MR. MCALL: Okay. Your Honor, I'm referring to page 5 of the transcript.

BY MR. SMITH:

Q Okay. Your argument that the indictment violated the rules of procedure and the constitution, let me ask you, when you said there -- the transcript refers to the rules of civil procedure, did you mean the rules of criminal procedure?

A Listen, and I don't -- if I said that, then, obviously, that I was a misnomer. But the other thing I feel like I need to point out is this: Following this trial, the transcript was destroyed and they had to go back after the fact and try to piece together a transcript. And I know from reading through that that there were a lot of mistakes and things that were said and the way that I said things.

Now, you know, I don't think I would have used the term "civil," but, if I did, it was a mistake, and, obviously, not one that, in any way,

affected the judge's decision in the case. But, you know, I can't say for sure that I said civil. You know, I don't really do any civil work at this point. There was a period of time where I did some, but it could be as simple as I misspoke. I can't say that I didn't. But I don't think that, in any way, affected the outcome or the validity of the motion or anything like that.

Q The Greenville grand jury did true bill the indictment, didn't they?

A Apparently.

Q Okay. And you did move pretrial to suppress the blood evidence against, Mr. McCall, didn't you?

A I did.

Q Okay.

MR. SMITH: And I'll say, Your Honor, that that begins on page 12 of the transcript.

THE COURT: Okay.

MR. SMITH: May I have just a moment, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q Have you had any real disagreements with Mr. McCall on your first day of trial?

A Not the first day. Everything went real

smoothly. I actually thought we had a good day in court.

Q What did you -- what was your advice to Mr. McCall in that second day of trial when he told you that he was thinking he wanted go it alone?

A I didn't have any advice. I just let Judge Stilwell know that he wanted me relieved and the judge heard him on that motion, which is what I would have done on the first day if he had made me aware that he didn't want me to represent him.

And I feel compelled, if I may, to more completely answer this question. This has come up in another context with Mr. McCall. Following the trial of this case, he filed a grievance against me with the Office of Disciplinary Counsel where he alleged, among other things, that the reason that he was -- wanted me relieved from the case and was filing a grievance against me is that, at all times that I met with him and on the day of trial, that I was reeking of alcohol, staggering around the courtroom, grossly intoxicated, all of which was completely fabricated. His complaint was dismissed and I simply responded and denied that any of that happened. Invited them to talk to Judge Stilwell, the prosecutors involved in the case, or anybody else that was there. But I did

have to respond to that. Those were the allegations that were made against me, and that was the reason he gave at that time that he wanted me relieved as counsel. Again, all of which was complete fiction.

Q Do you know, the ODC, did they dismiss that grievance?

A They did. The Office of Disciplinary Counsel did dismiss that.

Q Okay. In the time that you were representing Mr. McCall in this case, did you think the fact that you had had -- maybe had had some disagreements with him in the past in other cases meant that you had some sort of conflict in representing in this case?

A It's not ideal, but I didn't feel like I had a conflict. As long as he was expressing to me that he was happy with me with me representing him then I was fine with that.

Let me say again, I mean, I've been practicing law 32 years now, and most of that has involved me doing court-appointed criminal work. You know, it's just sort of the nature of the business that you're going to get people, for whatever reason, that don't want you to represent them. Sometimes they generally don't like you or they don't like the way you're handling the case, or they're simply trying to,

you know, sort of manipulate the system. It can be any number of reasons.

But in every one of those instances, if the client has said to me, I don't want you to represent me, then they don't have to file a motion. I'll file a motion to be relieved and let them be heard. I don't have any interest in staying on a case with somebody that doesn't want me to represent them.

Q Okay. Was there anything about your past, to the extent that one existed, with Mr. McCall that you felt it impeded your ability to represent him to the best of your ability?

A No.

Q Do you know if your paralegal ever went to visit Mr. McCall?

A That never happened. The whole time that I've been practicing law, I have never had a paralegal go meet with a client, or told a client that I was going to have a paralegal meet with them to do any kind of trial preparation or anything else. You know, I never even had a paralegal that was cleared to go to the jail. There's a whole process -- because they don't have a bar card, there's a whole process they have to go through to even have access to the jail. I've

never done that, nor would I do that.

And let me just add this, by the way. My daughter has actually graduated from law school, but she was not graduated from law school in 2015. I don't know where he got that. I may have mentioned that to him at some point just in our conversations that I had a daughter in law school, but she didn't graduate from law school until 2016.

Q Okay. Did you tell Mr. McCall that you couldn't meet with him in 2015 because your daughter's graduation was more important than his trial?

A Even if I thought something like that, I wouldn't say it. And, again, my daughter didn't graduate from law school in 2015.

MR. SMITH: Your Honor, I think those are all the questions I have for Mr. Chambers.

THE COURT: Okay.

All right. Mr. McCall, do you have any questions for Mr. Chambers? You need to unmute. You're still muted.

MR. MCALL: I'm sorry. I apologize.

CROSS-EXAMINATION

BY MR. MCALL:

Q Mr. Chambers, you said that you had handled many DUIs. How many -- felony DUIs. How many have you

won?
A I really can't answer that question. I don't know.
Q Okay. Would you agree that when the officer met with me at the hospital they took my blood draw, and once the blood draw was taken, can you say what was determined at that point at the hospital that was in my blood?
A No.
Q Why is that?
A Because, at that point, it hadn't been tested.
Q Okay. It had to be sent to SLED; is that correct?
A That's correct.
Q Okay. So would you agree that in pertinent part of South Carolina 365-29-45, felony DUI requires proof that the vehicle was operated by a person who was under the influence of alcohol or drugs or a combination of both alcohol or drugs, would you agree?
A Yes.
Q Okay. So, no proof can be established without the test results; is that true?
A I don't know that I can answer that question.

I mean, I certainly don't think there was probable cause, and that's one of the reasons I made the argument to Judge Stilwell that I did, as well as the argument that I did at the preliminary hearing.

If your questions are directed at whether or not I thought there was probable cause, or that the proper procedure was followed, first of all, no. They should have gotten a warrant. They didn't. I don't believe they established probable cause at that point for an arrest. And that was the reason, if you recall, for my line of questioning to the officer on cross-examination.

Q I understand you was going to probable cause at that time. I'm not going on probable cause. I'm going on based on the totality of the circumstances.

A Would you --

Q You never argued that. You never argued based on the totality of the circumstances, that my client should have never been arrested because there was no test results that confirmed that he was under the influence. All they had was a suspicion or hunch, and you never argued that the ticket showed it was pending. And that was one of my arguments, that I find that you were ineffective because, Mr. Chambers,

you didn't bring that out?

THE COURT: Mr. McCall?

MR. SMITH: Objection. He's testifying.

THE COURT: Hold on.

Mr. McCall, address Mr. Chambers in the form of a question. This is cross-examination. You need to ask -- don't argue to him. Ask him questions.

MR. MCALL: Okay. That's what I was trying to do until he started debating me. Okay, I apologize.

BY MR. MCALL:

Q Okay. Well, I guess my next question is going to be then: What proof did the officer have to establish or base his probable cause on to charge me with felony DUI and jail me? Can you answer that?

A I mean, the only thing I can respond to is the proof that's in the record. Again, the judge decided against me. He did not accept my argument.

I made the argument that I didn't believe there was probable cause or that the proper procedure was followed, and the judge ruled against me.

Q Okay. Would you agree that whenever they locked

me up, placed me in jail when my test results were pending that they only had a hunch -- the officer only had a hunch and he had nothing but reasonable suspension or hunch, and they did have enough to lock me up? I'm asking that question. Would you agree with that?

A Yeah, I think I would agree with that.

MR. SMITH: Objection, Your Honor. It calls for opinion testimony on a legal issue.

THE COURT: Okay. Mr. McCall, he's admitted that he agrees with you that he didn't think there was probable cause for the arrest, so move on to a different area.

MR. MCALL: Okay. I'm moving on, Your Honor. But I was trying to bring out to you to let you know that he didn't argue the totality of the circumstances.

THE COURT: Okay, I've heard you. I've heard you. But it sounds like both of you are in agreement that you didn't think there was probable cause in the case, and then that was brought before the Court. I understand what you're alleging. So move on to the next one.

MR. MCALL: Okay. That's my issue, that he didn't argue that. That's why I'm placing it

on the record.

THE COURT: So noted.

BY MR. MCALL:

Q All right. Mr. Chambers, are you aware of South Carolina code 22-5-200?

A I don't know if I'm aware of it or not. You're going to have to tell me what that is.

Q Okay. It says: "The probable cause determination for arrest without a warrant are still controlled by South Carolina code 22-5-200 which mandates that a person arrested without a warrant should be forthwith carried before a magistrate and a warrant of arrest procured."

Did you bring that to the Court's attention? Did you argue that statute?

A I did not cite that statute, but I made the argument.

Q Okay. Do you think that would have been relevant for you to bring that out? It was statutorily mandated that they should get an arrest warrant. You didn't have any authority is what I'm trying to say. When you made your probable cause argument, you used no authority. You used nothing, other than making a baseless issue.

A It wasn't baseless, and Judge Stilwell is

keenly aware of the procedural rules. And if he needed anything more from me in my argument as far as any kind of law, case law or anything like that, he would have asked for it.

Q Mr. Chambers, I could read it to you if you like.

A That's okay.

Q We can look at this, okay? And I'd like to read it to you so the Court will see it.

MR. MCALL: It's on page 5, Your Honor.

It says -- line 19, he said: "This is a felony DUI, clearly a general sessions offense. The officers at the time went out to work the accident and then went to the hospital and made the determination that he believed there was probable cause to charge my client rather than go through a mutual and detached magistrate, he simply wrote a ticket and then they arrested my client on that basis."

Now, that's all he says. He never went into the fact that, to support his argument, why I should go through -- why I should go through a detached magistrate -- why an officer should have went through there. He used no authority of law to guide the Court with, so, therefore, if he had told the Court about the statute, then the Court

might have been aware that, hey, we do have a control statute that says they got to get a warrant. Mr. McCall should have been -- a warrant taken out on him. And, at that point, there wasn't. That's my argument. Mr. Chambers, he never went in and made that argument.

THE COURT: Okay.

MR. MCALL: He just said they didn't go through a mutually detached magistrate. And to say it that way, that could mean anything. Okay? But he didn't say there was statutory controlling the law.

MR. SMITH: Judge, I object. He's testifying.

MR. MCALL: That's my argument on that part. Now --

MR. SMITH: Your Honor?

THE COURT: Address in the form of a question, Mr. McCall.

MR. SMITH: He has several witnesses. If we need to argue legal points, I would suggest we do it after.

THE COURT: I was going to point that out.

Mr. McCall, I'm going to give you an

opportunity at the end to summarize your arguments. So just finish your questions to Mr. Chambers, and then I'm going to give you an opportunity at the end. We do have some witnesses and it's after 5:00, so we want to get the questioning done right now.

BY MR. MCALL:

Q Mr. Chambers, why didn't you argue the Gerstein rule and the McLaughlin case? Don't you think those cases has some authority for the Court which would have helped me?

A You had a preliminary hearing in this case.

Q But I did not get to go through a judicial magistrate like you're supposed to when you get arrested. In 48 hours, I was supposed to go through a magistrate. I understand about your preliminary. That's not the point. Somebody had to swear under oath that I committed this offense and they didn't, and you never made that argument.

Now, do you think that South Carolina code 22-5-200, if you argued it, would have had a prevailing -- would have been a prevailing argument since it's a statutory requirement -- the legislation intent that we follow it?

A No.

Q So you think South Carolina legislation made this code and it shouldn't be followed?
A I made the argument.
Q Are you saying this code is not to be followed? I'm asking you that.
A I'm not saying that at all. I'm saying that the issue that you're discussing, I raised at trial. The judge ruled against us.
Q Did you raise 22-5-200?
MR. SMITH: Objection, Your Honor. Asked and answered.
MR. MCALL: I'm asking a question.
THE COURT: I'm going to sustain the objection. He's already said he didn't cite the statute. He's already testified to that. So move on to the next question.
MR. MCALL: I didn't hear him say that, Your Honor. I apologize.
THE COURT: Okay. He's already testified that he did not cite the statute, but he made the argument.
BY MR. MCALL:
Q Okay. Did you argue 4th Amendment, Mr. Chambers, that they violated the 4th Amendment? Did you argue that? If the officer didn't go through a mutual

detached magistrate, did you argue that that violated my 4th Amendment right?

A I didn't make that specific argument, no.

Q Did you argue that I was unreasonably seized because they didn't get an arrest warrant?

A I didn't make that specific argument, no.

Q Okay. Why is that, Mr. Chambers?

A Again, I raised the issue in a way that I thought was appropriate. It was litigated at trial and the judge ruled against us.

Q Okay. You do know about the Gerstein case, don't you? Are you familiar with that?

A That applies primarily in federal cases.

Q No, sir, it doesn't. It applies in state cases too. That's why, if you read South Carolina code 22-5-200 -- and I want to show you -- in the Attorney General's opinion, he talks about -- the Attorney General talks about that -- under the subpoena that 22-5-200 is still controlled by the 4th Amendment. Okay?

So, it's not that it's federal cases only. We got a South Carolina statute that says they got to get a warrant.

THE COURT: All right. Mr --

BY MR. MCALL:

Q I'll ask you --

THE COURT: Mr. McCall, I'm going to go through the transcript and I'm going to apply the appropriate law to it. So limit your questions to what Mr. Chambers did and things that are in the trial of the case in your allegations.

MR. MCALL: Okay.

BY MR. MCALL:

Q Mr. Chambers, did you know that once the State -- once the officer didn't get the arrest record, did you know they had a burden -- the State had a burden on them at that time? Did you realize that?

Let me bring that up to you here. Justice O'Connor expressed from the majority, the idea of whether delay is a probable cause determination was greater 48 hours "the calculus changes." And the Court stressed in such a case, the arresting individual 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 the extraordinary circumstances. Nor, the fact that in a particular case that may go 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 feasible, but in no event later than 48 hours.

But my question is: Did you argue to the State that the State had not met its burden because they hadn't gotten the arrest warrant and the burden shifted to them to state why they had not got the arrest warrant? Did you ask them what their emergency was; why they hadn't got the arrest warrant?

A I didn't ask them anything like that. If you're talking about -- at what point -- I need some clarification. At what point would I have been asking that question?

Q Well, I hoped you would ask it during one of your motions. Did you make a motion and argue anything?

A Again, you know the motions that I brought at trial, and those are in the record and we discussed those. One of those was the motion to quash the indictment, and we discussed based on them not following the proper procedure and the lack of probable cause.

Q Okay. But I'm just bringing to your attention that there was a burden that shifted once they didn't get the arrest warrant. That's why I'm asking you, did you make that argument?

A I'm not aware of any burden shifting. I

mean, the solicitor always has the burden to prove your guilt beyond a reasonable doubt.

Q I understand the reasonable doubt part. But I'm talking about as far as the arrest warrant. When they didn't get the arrest warrant, did you make the argument they didn't get it, the burden shifted and the State is to provide why they didn't get it. Okay?

That was my question to you. Did you make that argument or do you think that argument was relevant because we got case law that supports it and the attorney general opinion --

MR. SMITH: Asked and answered.

THE COURT: Yeah.

BY MR. MCALL:

Q -- on October the 12th, 1998 states that. They got to -- and Justice O'Connor stated that as well.

THE COURT: All right.

BY MR. MCALL:

Q -- in the case law.

THE COURT: Mr. McCall, what is your question.

MR. MCALL: I asked him did he argue that.

THE COURT: He said he hasn't. He said the arguments that he made are the ones that are

in the transcript. So we know what he argued. So do you have any further questions about that?

MR. MCALL: Not on that issue I don't, Your Honor.

THE COURT: All right. Let's move on.

MR. MCALL: Okay.

BY MR. MCALL:

Q Did you argue that I was unreasonably seized in violation of the South Carolina constitution, Mr. Chambers?

A I did not make that specific argument, no.

Q Do you think I was unreasonably seized?

A Again, I felt that they did not follow the proper procedure by not obtaining the warrant or in the way they procured the indictment. That's the only way that I can answer that question.

Q Okay. All right. So, Mr. Chambers, we know there was never an arrest warrant procured. At the preliminary hearing, did you ever motion to dismiss the case based on the fact that there wasn't an affiant to testify on the arrest warrant?

A You know, I don't remember exactly what I argued. I know that I argued to dismiss the case at the preliminary hearing, and I'm assuming that I raised all pertinent issues.

Q Okay. I don't recall that. I recall you telling me that we were just going to sit there and let the State provide their evidence.

MR. SMITH: Objection. Mr. McCall is testifying, Your Honor.

THE COURT: Okay. State it in the form of a question.

MR. MCALL: All right.

BY MR. MCALL:

Q Mr. Chambers, did you not tell me that the State was there to provide the evidence at the preliminary?

A Well, I would have never said it to you exactly that way. I don't remember precisely exactly what our conversations were because I don't have a great recollection of the preliminary hearing.

What I will say is this: Very often clients misunderstand the nature of a preliminary hearing and believe that they can put up evidence or that they can do things beyond what we can't do.

What I would have indicated to you, which I've indicated to other clients over the years is that, this is a probable cause hearing. The State is going to put up whatever witnesses they deem

necessary. That's typically the lead investigating officer who comes in and testifies. And then, at that point, I can ask questions on cross-examination to try and prove that there is no probable cause. And then after that, we get to make motions. So that's what I would have said to you. Something along those lines.

But I assume I would not have said to you that we were going to merely sit there, make them put up evidence, and do nothing.

Q Okay. Mr. Chambers, are you aware of South Carolina code 22-5-320?

A I don't have a code book in front of me and I don't have them memorized, so you would probably need to tell me what you're talking about.

Q Okay. Would you agree that the only time a magistrate may grant in a preliminary hearing is when there is -- an arrest warrant has been issued? Would you agree with that?

A I wouldn't disagree with it.

Q Okay. And the only thing to be decided at the preliminary is whether or not there's probable cause to support the allegations in the arrest warrant, would you agree with that?

A The general proposition is whether or not there's probable cause, yeah.

Q Okay. Did you argue anything about the essential elements in the arrest warrant?
A I don't remember precisely what I said, but, yeah, I would have argued that they didn't -- you know, if there was no arrest warrant, I wouldn't have made reference to an arrest warrant. And there wasn't an arrest warrant in this case.
Again, there's no transcript for me to review and I don't recall. So that's the best I can answer that question.
Q So what your saying, if there's no arrest warrant, there's no affiant that should have been allowed to testify, is that true?
A Well, there was no affiant. There was an arresting officer. I believe he testified.
Q Okay. Do you think his testimony supported probable cause?
A No.
Q Why didn't you argue that?
A I did.
Q Okay. You got anything to prove that?
A I don't have anything to prove that other than, again, many, many years experience doing preliminary hearings and it is rare that I don't at least make an attempt to have a case dismissed

at the preliminary hearing. And I certainly would have done it in this case because I think there was a real issue regarding whether or not you were under the influence at the time.

Q Let me ask you this: Did you make that argument on a motion for a new trial -- at pretrial?

A What motion?

Q Did you bring that up at pretrial, the procedures that they went through, that there wasn't an affiant and never had sworn out charges on your client?

A I referenced the fact that they never secured a warrant and that they proceeded on a uniform traffic citation, yes.

Q Okay. But you never stated there was no affiant who swore out charges?

A I did not say those specific words, no, sir.

Q Do you think it would have been helpful?

A I don't know.

Q Okay.

All right. Are you familiar with the case of Dunbar, Mr. Chambers? State vs. Dunbar, 603 S.E.2d 615.

A Listen, again, you know, I don't have privity to these case cites that you keep bringing up. I

don't have any of those here in front of me. I wasn't able to prepare. I didn't know you were going to be questioning me about those, so, no, you're going to have to tell me what it is you're talking about.

THE COURT: Mr. McCall?

MR. CHAMBERS: I know there's a --

THE COURT: Hold on. Let me stop you. Mr. McCall, just ask him what he did. I mean, again, I'm going to look at the law thoroughly as I review this case, and you're going to have an opportunity to argue. But just limit your questions to Mr. Chambers as to what he did and why he did it in this case.

MR. MCALL: All right. Your Honor, I don't know if he entered this earlier. I think we did. May the 9th, 2012, the letter from Mr. Chambers that I received. "I'm somewhat confused by your letter. You told me you didn't want me to represent you..."

THE COURT: May 23rd. Exhibit 5 is a witness list. I don't think this is actually -- Yeah, okay, I see it. I see it. May 9, 2012.

MR. MCALL: Yes, sir.

THE COURT: All right. You can ask him

about it.

MR. MCALL: That's entered in as an exhibit, right?

THE COURT: This is M -- it's in the Court's file. I don't think it's been admitted as an exhibit.

MR. MCALL: I'd like to enter it, please.

THE COURT: Any objection? This will be Number 6.

You're muted. Mr. Smith, any objection?

MR. SMITH: Your Honor, I'm going to object.

THE COURT REPORTER: I can't hear him object.

MR. MCALL: I can't hear him.

THE COURT: I can hear him now. Do you object? This will be Number 6.

MR. SMITH: Your Honor, not for this specific exhibit.

THE COURT: So no objection. All right. Go ahead. It will be number 6.

(PETITIONER'S EXH. 6, Letter from Chambers; 5/9/12, was marked and entered into evidence.)

THE COURT: Mr. McCall, you can ask Mr. Chambers about that letter.

MR. MCALL: Okay.

BY MR. MCALL:

Q Mr. Chambers, you do agree that on March 23, 2012 that I told you I didn't want you to represent me, you said okay. Do you agree with that?

A I can't say a specific time or date. As I said, there was at least one occasion, I think probably more, when you indicated that you didn't want me to represent you, and there were other times when you said that you did. As far as specifics about what dates those were, I don't recall.

Q Yeah, I don't recall ever telling you that I did. Mr. Chambers, do you have anything to prove that, that I told you I did?

A No, I don't have anything to prove it. But, again, I would reiterate, sir, I don't have any interest in representing somebody that doesn't want me to do that. I would have gladly gotten out of this case at any point if a judge had wanted to relieve me on the case. There's no reason for me to want to continue to represent you.

Q Did you bring it the Court's attention at the preliminary?
A At the preliminary?
Q Did you bring to the Court's attention at any time before the preliminary when I wrote you the letter, when I told you at the initial hearing and you wrote the letter back. I'm asking you, did you bring this to the Court's attention?
A I don't remember. I don't remember anything about it. As far as the letter goes, I don't have a copy of the letter that you have in front of you. But if I mailed you a letter and my signature is on it then it's my letter.
Q Well, we had a conflict, and I told you I didn't want you to represent me. And you sent me this letter and that's why I'm asking you the question. Did you bring it to the Court's question?
MR. SMITH: Objection; asked and answered.
BY MR. MCALL:
Q You actually didn't, right?
MR. SMITH: Mr. McCall is testifying, and he's just being argumentative.
THE COURT: Yeah, sustained. That's been asked and answered. Move on.

MR. MCALL: Okay.

BY MR. MCALL:

Q All right. Mr. Chambers, according to the records from Greenville County Public Safety, you visited me on 3/23/12, 5/15/12, and 5/1/15. I think that's already been entered in as an exhibit as far as the visitations.

MR. SMITH: Objection.

THE WITNESS: Again, I don't know what dates that I visited. I don't know how often we met. Again, I think there was a while when you were out of jail and we met in my office a few times. I don't even know the few times that we met with one another.

BY MR. MCALL:

Q We never met, Mr. Chambers?

MR. SMITH: Objection to Mr. McCall's testimony.

BY MR. MCALL:

Q Do you have any dates or any proof that we met Mr. Chambers that support the record?

A No.

Q Okay. So you're just making an allegation?

A No, I'm answering your question, sir.

Q Okay. Who was the witness --

MR. SMITH: Objection. He has to offer supporting testimony.

THE COURT: I can't understand what you're saying, Mr. Smith.

MR. SMITH: Can you hear me any better now.

THE COURT: I can hear you.

MR. SMITH: I said, I don't think it's -- it's Mr. McCall's burden to prove his case. There's not a burden on the witness to prove his testimony. If he wants to impeach, Mr. McCall, he can do it some other --

THE COURT: Well, he asked the questions about the dates and Mr. Chambers doesn't remember the dates, so we need to move on to something else.

MR. MCALL: All right.

BY MR. MCALL:

Q Who are the witnesses that you interviewed prior to my trial, Mr. Chambers, and how did you interview them, and what did you discover from these witnesses?

A Again, I don't have my notes from the file, and I don't recollect that. I know that we had some discussions about witnesses --

MR. SMITH: I'm going to --

THE WITNESS: -- and I have no recollection.

MR. SMITH: I'm going to object, again, Your Honor. This is not an issue Mr. McCall said he wants to go forward on today.

MR. MCALL: What did he say?

THE COURT: I think he's asking this question under his second allegation, the due diligence. The due diligence.

So, go ahead. He says he doesn't have any notes and doesn't remember the witnesses. What else would you like to ask him about the witnesses?

MR. MCALL: Okay. Hang on just a minute.

BY MR. MCALL:

Q All right. Did you type up the witness list, Mr. Chambers?

A It would have either been me or my assistant.

Q Okay. Do you recall me giving you the three names for the doctors at the initial visit that I told you I had a seizure, do you remember that?

A I do not recall that.

Q Okay.

MR. SMITH: I just again, Your Honor, I'm going to say that Mr. McCall had Mr. Chambers relieved before the State's case was closed. What relevance can it have to who would have testified later on in the trial when he didn't talked to him? He wasn't even Mr. McCall's attorney during Mr. McCall's case in chief.

THE COURT: Okay.

MR. MCALL: Your Honor, I'm not trying to show that he wasn't my attorney. I'm trying to show that he allowed the ball to drop on me. Okay? And I'm going to get to that point. Okay? And that's why it's very important it's relevant, that this gets to be placed in there, and I get to ask him about this because these witnesses did play a part in his deficiency. Okay? Because he didn't go out and interview them and that's why I want to ask him.

THE COURT: All right. I'll overrule the objection. Stay on this point, though, Mr. McCall.

BY MR. MCALL:

Q Okay. Mr. Chambers, did you interview any other witnesses on the witness list?

A I honestly don't recall.

Q Okay. And why is that?
A Because this was five years ago, and I just don't -- I don't recall. And, again, I made an effort prior to today's hearing to be able to look at case notes and things like that. I was able to secure the file, so I didn't have the advantage of looking at that.

But if I put witnesses on a witness list, then my general practice is I've spoken to them before that. And if there was other witnesses that we believe to be pertinent to the case, I would have contacted those prior to trial.
Q You do recall me telling you I had seizures, correct?
A I remember there was some discussion about you having seizures. I don't remember whether you ever offered any specifics of that, though.
Q Okay.
A But I'm not saying you didn't, of course. I'm just saying I don't recall.
Q It's in the record, and I can show it to you. But you brought it out. Okay? Do you remember bringing it out?
A It could be. Because, again, we did have some discussions of that, so, yeah, certainly.

Q Okay. And so, when you came in the courtroom the day of trial, you asked me, you said, what other witnesses do you have that you want to call? And do you remember you asked me that and you wrote them down on the witness list?

A I wouldn't have asked you that question. You may have volunteered something like that to me. But, again, I don't want to speculate. I don't recall that specifically.

Q Okay. Now, on 5/1/15 when you came to the detention center to see me, okay, had you already reviewed the indictment?

A No, I don't believe I had.

Q Okay.

A Again, I'm not certain of that. I don't remember when I saw the indictment. Because, as you know, they got it very late, just before the trial. So I don't know if I had actually reviewed at that point or not.

MR. MCALL: And, Your Honor, I got a letter here from Walter Wilkins that says on May the 21st of 2019 -- I'd like to enter that in as evidence -- a copy of the referenced indictment was either --

MR. SMITH: Objection.

MR. MCALL: -- given to Mr. Chambers on Thursday, May the 7th --

THE COURT: Hold on.

MR. SMITH: Objection. Mr. McCall was reading from something that is not in evidence.

THE COURT: All right. Sustained. Okay. Go ahead.

MR. MCALL: It's not allowed to get into evidence.

THE COURT: No, sir. No, sir. That's not in evidence.

MR. MCALL: Okay.

BY MR. MCALL:

Q Mr. Chambers, do you know what I was in jail for? Why I was locked up?

A You know, beyond the felony DUI that we're talk about today, I don't recall what the other charges were. I don't.

Q No, I'm talking about the felony DUI.

A Well, yeah, obviously I'm aware of that.

Q Okay. Did you investigate it?

A Yes.

Q Okay. What was the actual charge that you're saying I was fingerprinted, booked in, and held on?

A Well, you know what was the ticket. The

ticket said felony DUI. It didn't indicate whether it was great bodily harm or whether it was felony DUI death.

But I also, you know, had the benefit of looking at the discovery and going over the discovery with you. So based on discovery, I knew the nature of the offense.

Q Mr. Chambers, I don't recall that. But what you say you went over discovery with me, but I don't have any clue of you doing that.

A I don't recall the date, Mr. McCall. But we had numerous discussions about the evidence in this case.

Q Mr. Chambers, you said you only came to see me on 5/1; is that correct? 5/1/15?

A I didn't say that. I told you I don't recall the dates that we met.

Q That is the dates that we met. Okay? And we never did have any discussion.

MR. SMITH: Objection. Mr. McCall, is testifying not asking questions.

THE COURT: Sustained.

BY MR. MCALL:

Q All right. Did you think it would have been reasonable for you to call those doctors and interview

those doctors to find out what you could explore and their defense for me, if I had a seizure that caused the accident or if I didn't?

A If there were any possible witnesses that could have helped with this case, then, yeah, I would have contacted those. I would have talked to them. I would have lined them up as witnesses to come in with whatever evidence was necessary to indicate that you had a seizure. But, again, I don't recollect any specifics like that.

Q So you're saying you interview them?

A I don't recollect that, but I can't say that I didn't.

Q Mr. Chambers, the day of trial, do you recall asking me if I was going to testify?

A No.

Q You don't? Okay.

A Ordinarily -- let me just say this. Whether or not a client is going to testify very often is not anything we decide until the State's case in chief is up. But we would have had a discussion about that prior to that day. And, you know, just generally speaking. But, no, there's no reason for me to ask you that first day, Are you going it testify? First of all, we weren't going to be

offering any testimony that day. So, you know, I don't think that we had precisely that discussion, no.

Q All right. Mr. Chambers, you know the day that I served with the indictment, the first day of the trial, you stated in the transcript -- and I can read it if you'd like -- that I knew that I had seen the indictment before, and I wasn't prepared for it, and I had never went over the indictment. Would you agree with that?

A That is what I said in the record and that's the reason that I made the motion to quash the indictment.

Q Okay.

MR. MCALL: Your Honor, have we read this yet? Your Honor, can I read that?

THE COURT: Just tell me the page and I'll note that.

MR. MCALL: Okay.

THE COURT: I believe it's on page 8 and 9.

MR. MCALL: It might be.

THE COURT: Well, I'm looking at the transcript. I believe it's lines 22 through 25 on page 8 and then the first two lines on page 9.

MR. MCALL: Okay. On page 6? You said page 6?

THE COURT: No, pages 8 and 9.

MR. MCALL: Okay. I got page 6 here to.

THE COURT: Well, there's a lengthy argument. There's a lengthy argument.

MR. MCALL: On page 6 it says that he could have at times reviewed the indictment and have prepared for it, and none of those things were done.

THE COURT: Yes, sir. It's a lengthy argument. I'm going to read the transcript, Mr. McCall.

BY MR. MCALL:

Q All right. Mr. Chambers, my question to you is: Do you think that it would have been reasonable for you to have moved for recess at the least and discussed the indictment with me being I wasn't prepared for it?

A You know, as far as a recess goes, no, not at that point. I mean, you were aware of it that day when they served it on you. That's what I said. My argument was that you weren't aware of it before that day.

Q If I didn't have a chance -- Mr. Chambers, I

didn't have a chance to be prepared for it, you told them that, that I wasn't prepared. That's my question to you: Do you not think that you should have moved for a continuance to discuss the charges with me, went over the charges with me at that time being that I've seen never seen them, and I was in jail -- being held in jail on death results?

A Well, I didn't make that -- I didn't move for one, so apparently not.

Q Okay. I'm asking, don't you think it would have been reasonable?

A I don't think it would have made any difference.

Q And why is that?

A Because you were on notice what you were charged with. I tried to quash the indictment. The judge ruled against me. At that point, I didn't see any reason for a delay in the trial. I did move for a continuance. You know, I leave room for the fact that I could be wrong about that, but that's my answer to your question as best I can give you.

Q Okay. Mr. Chambers, I served you with a motion to relieve counsel and you talked earlier about that I relieved you on some other charges, which is true. I

already told you that I didn't want you to represent me on the first day. We went in front of Judge Garrison and he relieved you on some other charges, and that was on the 25th of March, '15.

MR. SMITH: Objection. Mr. McCall is testifying again.

THE COURT: You need to ask him if he's aware of that.

BY MR. MCALL:

Q Do you remember getting relieved on some other charges, Mr. Chambers?

A You know, honestly, I don't specifically remember that, but I believe -- I believe you when you tell me that happened.

Q Okay. Now, Mr. Chambers, do you have a copy of the certificate of service for the motion that I filed to relieve you on March the 27th, 2015?

A No.

Q Do you have that in front you?

A I don't.

Q Okay. I filed this motion and did you bring it to the Court's attention the first day of trial or before then because I wanted to relieve you?

MR. SMITH: Objection. This is asked and answered.

BY MR. MCALL:

Q I'm asking you, did you bring it to the Court's attention?

THE COURT: No, sir. No, sir. No, sir. We've already been over what he told the Court the first day. It's in the transcript. And he just testified that he doesn't remember it. So I'm going to sustain the objection move on to your next matter. I believe you're down to the last -- I don't know. Well, I think you dealt with all four, but if you have more questions on something else, ask him.

MR. MCALL: I do.

BY MR. MCALL:

Q Do you think it would have been proper for you to bring it to the Court's attention the first day?

A All I know is that, prior to trial, you gave me no indication that you didn't want me to represent you. Had you done so, I would have raised that issue as I've indicated. I know that there were a couple of different occasions and there apparently was a hearing in front of a judge where I was apparently relieved on some charges.

But as far as I know on the first day of this trial, you were happy with me representing you. I

promise you, if I had known that you didn't want me to represent you, the first issue I would have taken up with Judge Stilwell would have been your motion to relieve me as counsel so that you could be heard, which is precisely what I did the second day when you indicated to me that you wanted me to be relieved as your counsel?

Q Mr. Chambers, am I required to relieve you more than one time. By the South Carolina rules of professional conduct, am I required to relieve you more than one time?

A It's up to a judge to relieve me as counsel.

Q So you continue on once you've been relieved once?

A If a judge relieves me as counsel in a case, then I don't continue on.

Q Okay. All right. Mr. Chambers, as to the plea offer, okay, I never received any plea from you. You never provided me any record of that.

MR. SMITH: Objection.

BY MR. MCALL:

Q I'm asking you: Do you have any record of that?

MR. SMITH: Objection. Mr. McCall is testifying.

MR. MCALL: I'm asking him a question.

THE COURT: All right. What is the question?

BY MR. MCALL:

Q What dates did you provide the plea agreement to me?

A I don't recall any dates, Mr. McCall. But I will tell you that I am certain that we discussed the 10-year offer. I specifically remember you turning it down.

And I would add, as I did earlier, I would have liked nothing better for you to have pled guilty and we could have disposed of this case. There's no reason in the world for me to force you to go to trial. I would have loved for you to have taken that 10-year offer. You declined it.

Q Anything on the record of that, Mr. Chambers?

A I don't. No, sir, I do not.

THE COURT: All right.

MR. SMITH: If Mr. McCall wants to impeach the witness -- he can't question the witness -- ask him to prove --

THE COURT: All right. The witness has no burden of proof. An, Mr. McCall, he's already stated he doesn't have his file, so he can't look

at notes, or anything.

All right. We're going to take a short break, and then we're going to resume, and try to formulate your last questions.

And, Mr. Smith, these last two witnesses, are they going to be lengthy? Do we need to recess this hearing and resume it in the morning?

MR. SMITH: Well, I don't know. We need to speak with him about whether they can come later or available tomorrow. I should have questions about the preliminary hearing.

THE COURT: Well, I'm thinking, what we need to do here is, we're going to finish Mr. Chambers. And since we're doing this by Webex or the virtual courtroom, we have some more flexibility. We had a hearing cancel in the morning, so we've got time in the morning to finish it.

Are Miss Drawdy and Mr. Overby available in the morning?

LAW CLERK: No, it's canceled in the afternoon tomorrow.

THE COURT: Oh, it's canceled in the afternoon?

LAW CLERK: Yes, at 2:30.

THE COURT: So it would resume tomorrow afternoon. My law clerk just told me.

Miss Drawdy and Mr. Overby, could you connect?

Mr. Overby, could you be available at two o'clock tomorrow?

MR. OVERBY: I believe so, Your Honor. I have a hearing in the morning. I'm not sure what the status of that hearing is, to be honest with you. But I can be available in the afternoon.

THE COURT: Okay. All right, very good.

Miss Drawdy, can you hear me?

MS. DRAWDY: Yes, sir. I can hear you. I have a CLE tomorrow afternoon, but I am available in the morning.

THE COURT: Okay. What time does your CLE start?

MS. DRAWDY: Just a second. Let me go to my calendar. And I don't know that I really have anything to offer here, but I'll be glad to answer any questions.

MS. DRAWDY: It's at one o'clock. It's going to 3:00.

THE COURT: My law clerk -- 9:30 is available. Could you do it at 9:30, Mr. Overby?

MS. DRAWDY: Yes, sir.

MR. OVERBY: I believe so. I can probably get somebody in my office to do a fairly simple plea. I can probably get somebody in my office to handle it.

THE COURT: All right. Well, let's do this. Let's take a short break and then we will finish Mr. Chambers and we'll recess the hearing and we'll resume at 9:30 in the morning.

So Mr. Overby and Miss Drawdy, you all will be dismissed for this evening and just reconnect because I don't want you sitting here. I'd rather us have too much time than not have enough and it's six o'clock now. And, certainly, I want Mr. McCall to have the opportunity to ask all his questions and I want you to be able to fully answer the questions that are answered. Mr. Smith may have some questions as well that he wants to ask Mr. Chambers in redirect, so I don't know how long this is going to take.

But you all will be dismissed tonight. Just reconnect in the morning at 9:30.

MS. DRAWDY: Thank you, Your Honor.

MR. OVERBY: Thank you, Your Honor.

MR. MCALL: Your Honor, I don't know if I can get anybody here that can go back on the

computer for me court or whatever.

THE COURT: Can you talk to --

MR. MCALL: I don't have many more questions but a few as far as the plea offer.

THE COURT: Well, I don't know what Mr. Smith -- Mr. Smith may want to ask him some questions and we got two other witnesses, and this is going way beyond the time that's allotted for it. So we'll work it out with the Department of the Corrections. We'll work it out with them. Okay.

So we're going to take a short break right now, and then you can finish up.

(A break was taken from 5:55 p.m. to 6:06 p.m.)

THE COURT: Let's go back on the record.

All right. Mr. McCall, finish your questioning.

MR. MCALL: Sir?

THE COURT: Finish your questioning.

BY MR. MCALL:

Q Mr. Chambers, when did you inform me of the plea deal?

A I don't recall the specific date. I specifically recall we talked about, and I think we talked about it on more than one occasion. You

declined it and indicated you wanted to go to trial.

Q Do you have any evidence to support that?

A It's my recollection, sir. I don't have anything that supports that.

MR. MCALL: I don't think so, Your Honor.

THE COURT: That question has been asked and answered.

BY MR. MCALL:

Q Do you know the date that the plea offers were made?

A I don't recall. I would have to look at the written plea offer. Generally how that happens is the solicitor usually talks to me about it first and sends me something in writing. Sometimes they just send me something in writing. Either way, I did indicate to that to my client.

I would say again, I mean, there is -- I would have liked for you to take this. There was no reason for me to force you to go to trial without us talking.

Q Okay. One of the plea offers expired on the same day that it was given.

A I do not recall that. That would be unusual.

It could be that there was a typo or -- because I never had a solicitor give me an offer that expired on the day they gave it to me. But I don't have it in front of me, so I don't know what it says.

Q Did you do anything to extend that plea offer?

A You usually do that -- I had discussions with the solicitor. If there is a reason -- I may say to the solicitor, hey, I've talked to my client, he's mulling things over, can I have extra time, that sort of thing. But I don't specifically recall anything like that in this case.

Q Okay.

MR. MCALL: That's all my questions to the plea, Your Honor. It's getting late.

THE COURT: Mr. Smith, any redirect?

MR. SMITH: Just a few, Your Honor. We covered some. Let me keep it very brief.

REDIRECT EXAMINATION

BY MR. SMITH:

Q So you didn't have a indictment, but you understand Mr. McCall is going to trial for DUI?

A It either would have been great bodily injury or resulting in death. Those are the only two things that are referred to the particular

statute. Again, based on the discovery, we knew that it was great bodily injury.

Q Okay.

A Listen, this may not be responsive. I do want to make sure -- I don't think the proper procedure was followed. I didn't think that they obtained a warrant right up front and they didn't. That was the reason for my motion at trial.

MR. SMITH: I don't think I have any other questions.

THE COURT: Okay. All right, thank you, Mr. Chambers.

MR. CHAMBERS: Am I excused, Your Honor?

THE COURT: Yes, have a good evening.

MR. CHAMBERS: You do the same.

THE COURT: All right. Mr. McCall, is Ms. Branch sitting in there with you?

MR. MCALL: No, sir. I'll go look for her next door.

THE COURT: Mr. Smith, do you have an email or need to confirm with them that he needs to be available in the morning the 9:30?

MR. SMITH: I can.

MR. MCALL: They can come back from the work release yard. They have no problem with

that.

THE COURT: Okay. I want to make sure that he's available.

MR. MCALL: I have a phone number for the manager, Judge, Miss Branch. We also have -- I think I have her email address too.

THE COURT: Okay. Well, I just don't want him to be out-of-pocket. I don't know what their procedure is. I think everybody else is on board, and we'll resume this in the morning and you can call your last two witnesses, and then I'm going to give each side time to make a supporting statement to me about their positions.

MR. MCALL: My only concern, Judge, would be, I'm not -- Miss Branch may not be the same person on duty and that's the only phone number and email address I have.

MR. MCALL: She said she would be here tomorrow. I talked to her. I can make a phone call tomorrow so she will be here.

THE COURT: You make sure you tell them you need to be available in the morning.

We will close the record for the evening. We'll resume in the morning.

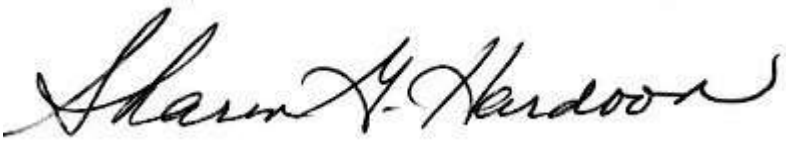
(The hearing was concluded.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions for Greenville County, Greenville, South Carolina.

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

July 22, 2021



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Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

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 6, 2021
Greenville, South Carolina
Volume II of II

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

INDEX

THE COURT: Okay. We are ready.

I see Mr. McCall was successful in getting the folks down there to have him have access to the computer, so that's good.

All right. You have Miss Drawdy?

MR. SMITH: I do, Your Honor. She's with us today.

THE COURT: All right. Let's go back on the record. And, Mr. Smith, you can call your next witness.

MR. SMITH: Okay. I just want to call Sara Lee Drawdy. And I'll say too that, at some poin5 while I'm questioning her, I'm going to introduce an exhibit. I only received it this morning from the Clerk of Court. They did send it over on short notice because I didn't ask for it until, I think, really early this morning. I have not shared a copy of this with Mr. McCall since I just got it today, and I wanted to wait to see how best to handle that. It's a -- we can get to it when we get to it. With you I can do that, but I'm not sure how I can share it with Mr. McCall. I don't know that I have the ability to share my screen.

THE COURT: Mr. Smith, I have two

documents that the clerk has handed up to me, one of which appears to be an order dated March 25, 2015 in which Judge Hill relieved --

MR. MCCALL: I didn't get it.

THE COURT: Okay. Mr. McCall, this appears to be an order from the court from Judge Garrison Hill, March 25, 2015 that relieved Mr. Chambers from representing you. It has a bunch of warrant numbers, and I don't know what charges those are. But it was filed on March 25, 2015. Is that the order that you were referring to yesterday?

You need to unmute. I can't hear you.

MR. MCCALL: Can you hear me now?

THE COURT: Yes, sir.

MR. MCCALL: Can you hear me now?

THE COURT: Yes, sir, I can hear you.

MR. MCCALL: Okay. Yes, that is the order I was talking about yesterday.

THE COURT: Okay. Do you have any objection to the State putting that order in as evidence?

MR. MCCALL: No, I don't have any objection to it, Your Honor.

THE COURT: Okay. So that would be

State's number 1.

(STATE EXH. 1, Order; Judge Hill, 3/25/15, was marked and entered into evidence.)

THE COURT: Mr. McCall, the other document that Mr. Smith has handed up is a motion dated April 22, 2012 in which it's handwritten. It's got a signature at the bottom that is yours, or purports to be yours in which you are asking that Mr. Chambers be relieved as your counsel dated April 22, 2012.

MR. MCCALL: Yeah, I had another motion from yesterday, I think, also. The one from March that was filed.

THE COURT: Okay.

MR. MCCALL: So there was one in March filed too. That one was filed also.

THE COURT: Okay. The only one that's been handed up. There's a letter from the Clerk of Court May 3, 2012 acknowledging the receipt of your motion.

MR. MCCALL: I can barely hear you, Judge.

THE COURT: Okay. I said there's a letter from the Clerk of Court dated May the 3rd, 2012 acknowledging the receipt of your motion.

MR. MCCALL: Yes, sir. I have a copy of that also.

THE COURT: Do you have any objection to those documents being placed into the record?

MR. MCCALL: No, sir. I don't have any objection.

THE COURT: Okay. So that would be State's Number 2.

(STATE EXH. 2, Motion from McCall; 4/22/12 and letter from Clerk of Court; 5/3/12 acknowledging receipt of motion, was marked and entered into evidence.)

THE COURT: So Mr. Smith are those the only two exhibits that you're seeking to admit?

MR. SMITH: They are, Judge. Number 1 would be the order and Number 2 the motion?

THE COURT: Yes, sir.

MR. SMITH: If I need to do this so that Mr. McCall can see them while we're discussing them, I can email a copy of them to Miss Branch there at SCDC or I could hold them up to the camera to show him. I don't really have any other way to give them to him today other than that.

THE COURT: Okay. Why don't you try holding it up to the camera and see if Mr. McCall

can see it. I doubt he'll be able to read it. If these are the same documents that he was talking about, which it appears that they are, he should be familiar with what's in them. But you can hold it up to the camera, so he can look at the documents that you're referring to.

MR. SMITH: Okay. Thank you, Judge. So I'm calling Miss Drawdy now.

THE COURT: Okay.

All right. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: State your name for the record.

THE WITNESS: Sara Lee M. Drawdy.

THE COURT: All right. Mr. Smith, your witness.

MR. SMITH: Okay.

WHEREUPON:

SARA LEE DRAWDY,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Miss Drawdy, how much of your professional career

has been spent in the field of criminal law?
A Probably about 28 years. I was with the Solicitor's Office in Greenville County for 26 years. I left there in September of 2019.
Q Okay. How did you come to be involved in Mr. McCall's general sessions case?
A I was assigned to prosecute the case probably about two weeks after he was arrested on the charge.
Q Did you extend any formal plea offers to Mr. McCall?
A Yes, I did. And I am at a disadvantage in some ways, as was Randy Chambers, in not being able to review records since I am no longer in the 13th Circuit. So in terms of dates, I can't tell you exactly when that was done. I was privy to the hearing yesterday and the offer of 10 years does sound right to me as what I did offer.

And there were a number of discussions that I had with Mr. Chambers about maybe renewing that offer from the actual deadline on it, but he did have discussions with Mr. McCall and he was not interested in the offer at all. That was relayed to me by Mr. Chambers.
Q Okay. Do you know if the offer expired on the

same day it was issued? Does that sound familiar to you?

A It may have been. We had an automated system with hard deadlines for people accepting offers. There were some discussions. When Mr. McCall came to plea court, he was not incarcerated the entire time between the time of his arrest on this charge and the trial. He was out on bond on this charge.

Although beginning -- and I am going to refer to a document to tell you this. I, too, received a complaint to the bar from Mr. McCall that I responded to. And in the course of responded to that, I did produce for myself a time line of the case, and there are some things that I did retain in my personal records for that reason that I do have access to. One of them shows him coming in and out of jail at the Greenville County jail.

He was arrested on March the 4th, 2012 on the felony DUI charge and posted bond and was later released on June 9, 2012. He was in and out of jail when he was arrested for other charges, but they were not really extended periods of time. In between those times, he did come to court a number of times, and I did see him meet with Randy Chambers when he came to court.

His last arrest that precipitated his bondsman going off bond -- I'm going to a document to refresh my memory. Let's see. He was arrested in Pickens County a number of times as well. It was -- it occurred in December of 2014. He was arrested in Greenville County on charges of burglary 2nd degree, petty larceny, auto breaking, possession of drug paraphernalia, possession of methamphetamine or cocaine base, and false information to law enforcement.

And, at that time, his bondsman made a motion to be taken off bond. He was taken into custody. This was in December of 2014. And he remained in jail until his trial commenced -- well, he remained in jail during his trial, but his trial on these charges commenced on May 12, 2015, about five months later.

Q Okay. So the indication you got from Mr. Chambers was that Mr. McCall had no interest in a plea deal?

A That's exactly right. He had -- I did see him go into a conference room outside the courtroom with Mr. McCall immediately following discussions that Randy and I had about my offer. And Mr. Chambers came back out of that conference room and told me that Mr. McCall was not interested in pleading guilty under any

circumstances.
Q Okay. Now, I am going to refer to what has been admitted without objection as State's Exhibit 2. I did send this to you earlier today, didn't I?
A Yes, you did, and I have -- I can pull it up. Okay. That's his motion. Yes, I can pull that up.
Q Okay.
A I have not had time to review it, but I do have it. I can look at it now.
Q Okay. And so if we're looking at the motion, I will refer you to -- it's the second page of the document because the first page is his letter, but it's actually the first page of the motion itself.
A Okay.
Q Does that sound right to you?
A Yeah. It's where it has the caption of the case at the top.
Q Okay. And it is, however, the motion to relieve counsel, right?
A Yes.
Q Okay. What is the case or case number given at the top of the motion?
A Well, he gives a ticket number of F-540654. And, if I'm not mistaken, that is the uniform

traffic ticket on which the charges were brought for the felony DUI.

Q All right. Now, I'll refer you to what has been admitted as State's Exhibit 1. This is before -- we can agree I sent this to you earlier this morning?

A Yes, and I have reviewed it. I do have it in front of me now.

Q And that's an order substituting counsel, right?

A Yes, it is.

Q And it's the case of State v. Terry Edward McCall. If you look over at the case or warrant numbers given at the top of that order, do you see the same ticket number for the felony DUI?

A No. And it also does not have the indictment number for the felony DUI. This orders covers a group of other pending charges which Mr. Chambers had been appointed to represent Mr. McCall. It does not include any reference whatsoever. Either it does not have the ticket number and it does not have the indictment number for the felony DUI. This order only covers the other pending charges at that time. And I believe the order is dated March 25, 2015.

Q And it was issued by Judge Hill?

A Yes.

Q Okay. So I'm just going to ask, the order indicates that Mr. McCall wanted to relieve Mr. Chambers as counsel in this case, right?
A Yes.
Q Okay.
A And that order memorializes part of the ruling from the bench at a hearing that occurred the day before. Well, let me see. No, it occurred on February 24, 2015, I believe.
Q Were you present at that hearing?
A Yes, I was.
Q Okay.
A And as was Mr. McCall and his counsel, Randy Chambers.
Q Okay. Why does the motion give the ticket number for felony DUI, but the subsequent resulting order substituting counsel not list that ticket number at the top?
A All right. That is because what transpired at the hearing itself, Mr. McCall informed the Court that he wished to keep -- he wanted the Court to keep Randy off his charges except the felony DUI. That he wanted to keep Randy Chambers as his defense counsel on the felony DUI, but he wished to proceed as a pro se litigant on the

other pending charges. And Judge Hill allowed him the latitude of making that request even though it had not been included in his original motion. Judge Hill did everything he could to accommodate Mr. McCall's wishes. It was a very lengthy hearing. Judge Hill cautioned him about the dangers of proceeding without counsel.

And Mr. McCall assured him he knew what he was doing, that he had experience, that he had taken some courses as a paralegal, and that he just felt like he wanted Randy to focus on the felony DUI, and he could deal with his other charges himself. But he did want to be able to consult Randy about those charges and Judge Hill ordered from the bench that he could -- that Mr. Chambers would be of counsel to give him advice on those charges. That was essentially the ruling from the bench.

And then the order was produced in order to allow the jail and other parties to realize that Mr. Chambers was no longer his attorney of record on the other charges. Not the felony DUI, but all of Mr. McCall's pending charges in Greenville County.

Q Okay. Did Mr. McCall give a reason for his wanting to be represented by Mr. Chambers on the felony DUI?

A All right. I don't have this written down, but if I recall, he discussed the fact that -- I believe he said that Mr. Chambers -- and he did refer to him as Randy quite often, as I do. I apologize for that informality that has slipped out a couple of times.

But he was familiar with Mr. Chambers, and Mr. Chambers, he said, had represented him on charges in the past. And that he felt like he really wanted the benefit of Mr. Chambers's representation, that he was comfortable with him proceeding with representing him on the felony DUI and that's what he wanted Mr. Chambers to focus on. That was what he said.

Q Okay. After this hearing until the day of trial, did Mr. Chambers say anything to you indicating that Mr. McCall wanted to relieve him again -- or relieve him in the felony DUI case?

A No, he did not. We did receive Mr. McCall's motion that is in State's Exhibit 2. It was filed in the clerk's office. A copy was served on my office and I saw that Mr. Chambers, I believe, had also been served, but I think that, as is my practice, any time I received something like that I did forward it to him.

And it was -- the topic did not come up again

until the day of trial just prior to jury selection, that we did have discussions with Mr. Chambers, Mr. Overby and I about this motion. And Mr. Chambers and I do have contemporaneous notes about this in the materials that I prepared closer in time to these incidents. That Mr. Chambers told us that Mr. McCall had decided that he was comfortable with Mr. Chambers continuing to represent him, to act as his counsel, and to try the case for him.

So that was discussed amongst us. It was not brought up to the judge. And that is -- that was the -- but we did have discussions about that at the time.

MR. SMITH: Okay. Those are all my questions. Thank you.

THE COURT: All right. Mr. McCall, do you have any cross-examination questions that you would like to ask Miss Drawdy.

MR. MCCALL: Yes, sir. I would like to ask a couple.

THE COURT: Okay, go ahead.

CROSS-EXAMINATION

BY MR. MCCALL:

Q Miss Drawdy, on what occasion and what date and time did Mr. Chambers discuss this with you concerning

the motion?
A It was discussed on the morning of your trial. On May -- I believe it was May 12th of 2015.
Q Okay. Do you have any record of that? Do you have anything to --
A I don't record conversations, Mr. McCall.
Q Okay. So you said earlier that you seen me go in the room back there with Mr. Chambers out of your sight and you said that Mr. Chambers told you what I said. So, basically, you got hearsay information, is what you got. You didn't hear me say that to him, did you?
A I will not agree that that was hearsay. He was your legal representative, Mr. McCall, at the time, and authorized to transmit your wishes to me. I am prohibited from having direct discussions with you about any matter that you were represented by counsel. I appropriately relied on what Mr. Chambers told me as your duly appointed counsel.
Q Okay. What I'm asking you, you didn't hear me tell him that, did you?
A No, sir, I did not. I'm not entitled to be in the room when you have private conversations

with your counsel.
Q And there was no recording of that?
A No, sir.
Q Okay. And as far as the order that Judge Hill gave down, you said there was no felony DUI listed on the order; is that correct?
A There was no -- the felony DUI was not referenced in the order that relieved Mr. Chambers of representing you.
Q Okay. When was you at this hearing? I didn't see you at this hearing?
A I was seated at the prosecution table.
Q At the prosecution table. Do you have --
A Yes.
Q Do you have a transcript of those proceedings?
A I do not personally have one that I can produce for you at this time, but it does exist and there is an official record of it.
Q So you're making bare allegations today? You got nothing to support those, right?
MR. SMITH: Objection, Your Honor. It's not witnesses job to prove her testimony is true. The burden is on Mr. McCall.
THE COURT: Okay. I'm going to sustain the objection. Rephrase your question.

BY MR. MCCALL:
Q So there was no transcript provided to you, right?
A No, I did get a copy of the transcript when I responded to the ODC. I do not have access -- ready access to it right now.
And, Mr. McCall, I am an officer of the Court and I am under oath.
Q Okay, I understand that. Let me ask you this: When you prosecuted this case, did you not know that there was no probable cause?
MR. SMITH: Objection, Your Honor. That falls outside the scope of the questions I asked Miss Drawdy.
THE COURT: It's cross-examination. I'm going to overrule the objection.
MR. MCCALL: Okay, Your Honor.
BY MR. MCCALL:
Q What order are you talking about on February 24, 2014? What is that?
A I did not talk about an order dated that date. I don't believe. Unless this was -- I believe the order was dated March 25, 2015.
Q What was you referencing --
A There was a hearing on February 24.

Q What hearing was that?
A That was a hearing at which you appeared before Judge Garrison Hill.
Q Judge Garrison Hill on February 24th?
A I believe so.
Q Okay.
MR. MCCALL: All right. I got no further questions for her.
THE COURT: Okay. Any redirect?
MR. SMITH: No more questions, Your Honor.
THE COURT: Okay. Thank you, Miss Drawdy. You are now excused.
THE WITNESS: Thank you, Judge. Thank you very much.
THE COURT: All right. Mr. Smith, do you have any further witnesses?
MR. SMITH: Judge, that's the State's case.
THE COURT: All right.
Okay. At this point, what I would like each side to do is give me a summation of your arguments. Now, since Mr. McCall has the burden of proof, I'm going to give him the last word.
So Mr. Smith, you summarize the State's

position and then I'm going to turn it over to Mr. McCall and let him make his argument.

Mr. Smith.

MR. SMITH: Okay. Judge, there's a bad echo. I don't know if you can hear me.

THE COURT: I can. I can. As long as Mr. McCall is muted while you're talking, I think we solved that problem. And then you mute when Mr. McCall talks, and I don't think we'll have an echo. So go ahead.

MR. SMITH: Okay. I'll take the four claims Mr. McCall has raised. I'll try to go in order to keep it neat and tidy.

The first issue would be the probable cause issue. So I'll say at the outset that the magistrate found that there was probable cause for the arrest. I think also on this point, Mr. McCall should be prohibited from arguing that anything Mr. Chambers did with respect to this was constitutionally ineffective. The Supreme Court cases explaining when post-conviction relief is available, and the South Carolina appellate cases dealing with this explain that PCR is available to defendants who have gone through trial with an attorney and have been prejudiced by some

deficiency in the attorney's conduct during trial.

Alternatively, a defendant who has pleaded guilty because of some error on his attorney's part that essentially removed the possibility that he would prevail at trial has to plead guilty and throw himself on the mercy of Court. PCR can be available to those defendants too if they can prove deficiency in their attorney's conduct and that that deficiency was so bad it left them with no option but to plead guilty.

I'm aware of no cases in which a defendant can decide to be pro se and handle his own trial because he's not satisfied with his attorney's job.

It's the State's position that since Mr. McCall relieved Mr. Chambers during trial essentially waived his ability to come back later and argue for PCR relief. I think the cases in this -- the only way, at that point, he can avail himself of PCR would have been if he had pled guilty at that point instead of deciding to jump in the saddle himself.

So I just think, at the outset, that would prevent him from being entitled to PCR for

anything Mr. Chambers did.

So, with that being said, the next point I would argue is that there was probable cause for the arrest of McCall. All of what I'm about to say, Your Honor, comes from the transcripts, of course, that will be there too, but the highway patrol trooper who responded to the 911 call, Trooper McElhaney, showed up at the scene. He worked to preserve the integrity of the crash. And the facts I'm citing to were found in pages about 34 through about 46 of the transcript.

At the scene, Trooper McElhaney worked to preserve the scene. He was not really able to question Mr. McCall or the victim at the time because of his investigation which was happening during a rush hour, and because both Mr. McCall and the victim were injured and had to be transported to the hospital.

Once Mr. -- Trooper McElhaney completed his crash site investigation and went to the hospital, he was not able to talk to the victim because the victim was in such a bad state that he wasn't able to get with him, so he talked to Mr. McCall.

While he was talking to Mr. McCall at the

hospital, he saw that Mr. McCall was injured but could hear and could speak. He asked Mr. McCall if he had been drinking because the trooper had noticed cans in Mr. McCall's car. Mr. McCall said he did not drink. Mr. McCall did admit to taking prescription drugs and the officer did not smell alcohol on Mr. McCall. The officer believed that Mr. McCall's responses weren't normal. Considering the damage to the car and the Mr. McCall sustained, he thought that Mr. McCall speech was not true and plain. Mr. McCall's eyes were dilated. Another officer, I believe, said his eyes looked wild. He thought that Mr. McCall's explanation for the crash, that he had faulty brakes, didn't add up. Because faulty breaks would not explain why Mr. McCall hit someone head on in an oncoming lane of traffic.

And so taking all that into the consideration, the officer decided that he believed that there was probable cause to arrest Mr. McCall for driving while under the influence of some kind of drug. So that's the position for -- the argument for probable cause there.

At trial, Judge Stilwell did find that there was probable cause for the officer to take a

blood sample from Mr. McCall without a warrant. The Supreme Court affirmed the conviction and found the exigent circumstances justified the warrantless blood draw, and the Supreme Court went through, essentially, all of those facts that I just mentioned to say exigent circumstances did exist for the warrantless blood draw.

Now, section 56-5-2950 is the implied consent statute. The implied consent statute allows for the taking of blood for chemical testing if someone who's been driving is arrested for an offense alleged to have been committed while driving a motor vehicle under the influence.

So, essentially, the officer -- part of his act of drawing the broad was arresting Mr. McCall. So I think the fact that the Supreme Court confirmed the warrantless blood draw under exigent circumstances would, by implication, mean that the arrest had to be legitimate.

And I'll note there's another case I'll point to. State v. Manning, and the citation to that is 400 SC 257. That's a 2012 Supreme Court case in South Carolina. I'm sorry, Court of Appeals case. In that case, the Court of Appeals found that the officer had probable cause to

arrest Manning because the accident occurred in the early morning hours. The crash was so violent that the car drifted some distance off the road. The officers smelled alcohol in and around the vehicle. Saw a beer bottle in the crash debris. Knew Manning was the driver and could see the injuries Manning had sustained were consistent with him being in an accident. I think that case is similar to the case here. So that's my argument that there was probable cause here.

But the fact that no warrant was issued by a magistrate judge for arrest does not render the arrest illegitimate. Section 56-7-10 states -- of the South Carolina Code states that a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses. And it essentially says the traffic ticket is the charging document.

The ticket the officer issued in this case charged Mr. McCall with felony DUI, which is a traffic offense. It's codified in section 56-5-2945. That's in the Department of Motor Vehicles chapter dealing with regulation of traffic.

So, he's charged with a traffic offense

and charged by way of an uniform traffic ticket, which is expressly allowed under state statute.

I'll point to another case, State v. Ramsey. The citation of that is 409 SC 206. That's a 2014 case. And in that case, the South Carolina Supreme Court held that the statute provides an exception to the warrant requirement by substituting the ticket for an arrest warrant.

And I'll point out that even after all of this, the grand jury still indicted Mr. McCall, and the magistrate judge found that there was probable cause for the arrest.

Mr. McCall has been talking about a Gerstein hearing. I'll cite to another case I believe that's relevant to that. That case is City of Goose Creek vs. Brady. The citation is day 288 SC 20. That's a 1986 case where this South Carolina Supreme Court said, neither an arrest warrant nor any other judicial determination of probable cause is constitutionally required when an accused was not subjected to a significant theory at the pretrial detention. And they specifically cite to the Gerstein case in the City of Goose Creek.

And so Mr. McCall was not subject to a lengthy pretrial detention in this case because of the felony DUI. I think the record shows he was in and out because he kept committing other offenses, so that's the case on point there.

Okay. Now, I'll address Mr. McCall's second issue, that Mr. Chambers was ineffective or did not have due diligence. I'll reiterate here again that it's the State's position that Mr. McCall should be prohibited from making this argument because he relieved Mr. Chambers and bench trialed out on his own behalf. It's not that he had to plead guilty and throw himself on the mercy of the Court. He wanted to go to trial on his own, which should prohibit him from arguing previous attorneys had been ineffective.

But I don't think Mr. McCall has met his burden in this case. He's made statements that have shown to be false by testimony of Miss Drawdy and Mr. Chambers. I think that the Court should make credibility finding there. He has not produced evidence and witnesses to prove his case. And post-conviction relief, the burden on is Mr. McCall to make his case, although he would have it otherwise and have the witnesses prove

what they're saying. The burden is on him and he has failed to meet it.

I'll point to another factor for the Court things Mr. McCall says that Mr. Chambers did not argue are in the transcript. For example, Mr. Chambers did argue these legal issues in court as a matter of fact, and the transcript says he does argue the constitutionality or that Mr. McCall's constitutional rights were violated here.

As to the third issue of conflict of interest, Mr. McCall's allegations don't even go to a conflict of interest. I think at best they're an argument that Mr. Chambers should of allowed him to be heard on his motion to be relieved. But the evidence in this case shows that Mr. McCall only initially wanted Mr. Chambers relieved in his other cases. That confirms Mr. Chambers's testimony too that after the initial unpleasantness that he and Mr. McCall got along up until the second day of trial. He believed that they were on the same page together. And Mr. Chambers testified had he had any indication from Mr. McCall that he was not ready to go to trial -- I'm sorry -- indication from

Mr. McCall that he was not ready to go to trial while represented by Mr. Chambers, he would have brought that to the attention of the Court.

And also Mr. McCall has not shown that Mr. Chambers's ability to represent him was defeated in any way by the fact that they had previously -- he had previously had him relieved on those other pending charges.

As to the fourth issue about plea offers, I think the record shows that Mr. Chambers extended the only plea offer to Mr. McCall, a ten-year plea offer, that Mr. McCall rejected that offer and assisted on going to trial. Mr. Chambers had no authority to force the State to revise that offer. And even if he had, the record shows that Mr. McCall would not have taken it. He wanted to go to trial.

There's a credibility issue here about their discussions. You know, Miss Drawdy has even confirmed that there's the appearance here that Mr. Chambers was meeting with Mr. McCall to discuss those issues.

And I'll also add, Your Honor, that Mr. McCall's fixation upon this probable cause issue allows his testimony that he wanted to plead

guilty and would have taken a guilty plea offer. If he really is bothered by this probable cause and false arrest issue as he claims, then it just lacks credibility if he would have been motivated to plead guilty.

And also on this point, I would reference the Court to State's two exhibits, the motion and order, which is supported by Miss Drawdy's testimony that Mr. McCall only wanted to relieve Mr. Chambers on those other cases. He was ready to go on this felony DUI charge.

Your Honor, that's my argument. If you would like me to address any points, I'll be happy to do so.

THE COURT: Okay. Well, I think I've gotten down all of your cases and that's all I'll need at this point from you.

Let me hear from Mr. McCall.

MR. MCCALL: Can you hear me, Judge?

THE COURT: Yes, sir.

MR. MCCALL: All right. All I can say is, I'm not arguing that Mr. Chambers -- that I took over the reigns of Mr. Chambers's job. I'm not arguing anything after that. I'm arguing that due to the fact that when he was representing me

in the pretrial issues, not the trial issues other than the pretrial stuff, that there was a likelihood that I would have been acquitted rather than convicted at trial had it not been for these deficiencies. That's my argument on that part of it. Okay?

I know he said I didn't have the opportunity to come because there was no case law on it, but I do have an opportunity. Even in his own terms, he states that if I made the argument, if there's reasonable likelihood -- you got me -- that I would have been acquitted rather than convicted at trial, that's the only way. Absent the deficiencies, that's the only way I could bring my claim. And that is how I'm bringing it. Okay?

Based on the totality of the circumstances for the probable cause, I made the argument that there was no evidence. I broke my teeth out. I hit my face. All the officer had was, he said I didn't look right. My speech wasn't plain to some degree. And he said, if I remember right, I think his eyes were somewhat dilated. Now, he didn't know for sure. They had to send off for the test results. They took the

blood and they sent off for it. So they never had anything concrete, like they would if I took a breathalyzer that can show that I'm impaired or I'm no impaired, and then they can lock you or let you go. At this stage, they didn't have anything. All they had was a hunch.

So they locked me up based on that and they furthered their investigation. That's what I was arguing on the totality of the circumstances. That -- also under 22-5-200 of the South Carolina Code, I argued under probable cause that I was never taken before the Judge. And under that statute, it was required that under a warrantless arrest that the officer take you before a magistrate and seek an arrest warrant. And that was never done. And they were statutorily obligated to do that. I rest of that issue is that I was unreasonably seized because he didn't do that.

I was there for 67 -- actually, 90-something -- 96 days, I was incarcerated at the detention center before I got out. He said I wasn't in jail for any extended time, but I was.

As far as Mr. Chambers, he didn't argue anything about that, and I think he was

ineffective on that part because he should have argued it. His argument on probable cause was never brought up. He never argued anything about probable cause. All he ever said was, they never took me to a mutual and detached magistrate. So that was all he said. It baseless, had no authority to support it, and I don't recall any constitutional law. He stated on his testimony that he did not cite anything to do with Gerstein. He didn't know anything about it. It was used for federal only. He said, I basically did the best I knew how.

Now, as far as we going up to the magistrate and the officer swearing out -- under oath that he's swearing out that I committed this offense, that never occurred. And Mr. Chambers never made an argument about that, that there was no alcohol the in my case.

We went over to the preliminary hearing and we get to the preliminary and Mr. Chambers says he made a motion to dismiss, but he never said what was -- on the basis of what. He never stated that yesterday in his testimony. He just said, I made a motion to dismiss, but he never stated what the basis was, and there was never any

record to support that. And there was no affiant at that hearing. There must be an affiant. He said he understood he could not even grant or hold a preliminary hearing without an arrest warrant, and there had to be an arrest warrant to hold a preliminary hearing. And he knew about that, but he didn't make no argument to that. Therefore, that was my argument that he was ineffective because he should have moved and had the case dismissed somewhere between the time I came in to the jail all the way up to the preliminary hearing, which was 60-something days. He had plenty of time to do that and he didn't do it.

We go on and we going to the next issue as far as him exploring any of my witnesses. I think that would be into the he failed to reach out in due diligence and skill and judgment. He waiting until trial in the courtroom to explore any of my witnesses. His deficiency was typing up the witness list. It's shown that he had it typed up for Family Court. He didn't have it with the correct indictment number. He had a totally different indictment number and had it going to the wrong court. And he states plainly that he did not contact any witnesses.

My argument wasn't that the witnesses' would have supported anything. It was the fact -- because I know I don't have the witnesses with me. But the point is that he didn't even -- he had a duty to reach out, at least, to explore what they could tell him and see if it would have helped our defense and he didn't even do that. I mean, that was the least thing he could have done. And he said, no, he didn't contact no witnesses.

He never came to the jail. He never went over the discovery with me. He cannot show where he even served me with discovery because he don't have his file. He had nothing to show on the record yesterday that there was anything that he had done that he could prove that he done other than making bare allegations.

As far as him, when I made the statement that he explored (sic) me as to my testimony, it's evident that he wrote the names down of my family members who he asked to be in the courtroom, who I was going to call, he wrote them down. So it's evident that -- you can see there that it wasn't typed in his office like the other was. He wrote them down in the courtroom and he started exploring witnesses then, but he had plenty of

time to do that before the trial. So that's my argument, that he didn't exercise due diligence and skill and judgment in my case, and violated my 6th amendment right.

My next issue is the conflict of interest, that Mr. Chambers knew -- he stated on the record that he knew from the beginning -- I told him I didn't want him to represent me, and he did say that I told him that and he has -- there's a record of that as far as the letter. He never said anything -- I asked him, did he go in front of the judge, bring it to the judge's attention. He said, no, he didn't. I asked him why, and he said he didn't feel like he had to. He thought that me and him had an agreement worked out. Well, that was untrue. There was never anything to support that. He didn't have any waiver that would waive the conflict. He didn't show any way about he went about exercising hisself to follow up with the South Carolina rules of professional conduct that says he has to come forward. He has a duty to bring it the Court's attention and to make sure that the conflict a cleared up. Mr. Chambers never done that.

So as we go on, he was appointed to some

other charges, and I did ask that he be relieved because we had a problem on those charges with the particulars that he didn't want to file. So I asked him would he be relieved, and the Court relieved him. As far as the Court stating that he was to continue on as my -- as counsel. I was going to allow him to continue on, I didn't. I never stated it and there's no record of that.

I told them that he could remain on that case if he wanted to as stand-by counsel. And that's what the order said, that he was to remain on it.

Now, as far as Mr. Chambers and my conflict, under rules of professional conduct, he knowed not to continue representing me when we had a conflict we just had got out of. The rules of professional conduct said he is not to continue to put himself in that situation, but he allowed hisself to continue on knowing we had a problem. He even stated on the record several times yesterday, yes, we did have a problem, Mr. McCall and I. I'll agree we did disagree, but I thought he had got over that, and that was his thoughts but he had nothing to support that. I never stated that we got over anything.

My thing is that -- and I've argued all the way through this since. We had a conflict at the beginning. It's evident that I got him off of the other case. I wanted him off this case. I couldn't get him to get the motion to be heard that I filed in March 23rd. I couldn't get him to get it heard -- on March 27th, I'm sorry -- to get it heard the first day of trial. He didn't have it heard. He knew about it. He says he knows he got served with it. And also the solicitor stated a while ago that she even served him with it.

So all parties knew there was a motion filed to relieve him, but nobody came forward and said, hey, Judge, we got a motion Mr. McCall filed, and we need to be heard on this before we start this trial because he's asking for Mr. Chambers to be relieved. So it's already been proven that they all knew about it and it was served. But he continued on with the conflict.

And so that's why it came in the second day, I said, hey, you got to get off my case. I filed a motion. I can't -- I want to know why you haven't gotten it heard. And I thought, not never have gone through a trial, that he would have to be heard that day. I didn't know that it would

continue on to the second day. So that's my argument for the conflict of interest that he violated my 6th amendment right to be conflict free.

So, had he relieved himself, the outcome of my trial would have definitely been different because I could have got me someone else to call my witnesses. I could have done so much more and been prepared for the indictment. There's so much more that could have happened in my case that Mr. Chambers denied me of that because he continued on in the conflict and didn't get me heard.

Now based on the fact that we had a plea offer, I never seen a plea offer and he's never provided me with a plea offer. He states that he spoke with me about it, but he didn't. And there's no record of that. That's his allegations. I asked him where he sent it to. How did he serve me with it. He says, I don't know have anything, Mr. McCall, and I didn't serve you with it. Okay?

According to the South Carolina rules professional conduct, I think he has a duty to serve me with that. I mean, I'm the one that's

faced with the trial. It's not him and the solicitor. Them talking about Mr. McCall's got a plea, I want you to take it back there to him, you know, and ask him does he want to take this plea. Out of her appearance, she didn't see anything, but she testified that he told me that that's untrue. And he's also testified that he didn't have any proof to show that he give me a plea offer. And I proved to him that I was locked up for death results. He didn't investigate that part of it. And had he investigated it, surely -- and talked to me about the indictment -- when I told you that he didn't even move for a recess to explain the indictment to me once I got served, that's how the ball got dropped on me all at one time. I didn't know I was on trial for. I knew I was in jail for death results. That's what the SLED report -- arrest report shows, that's what the picture shows, that's what I was fingerprinted for, that's what the officers are telling me I'm in there for.

And Mr. Chambers has never went over no discovery with me. He's never done anything to help defend me, to make me know what I was on trial for. He stated he didn't discuss -- it's in the transcript.

It states that he never discussed the indictment with me and he didn't even move for a continuance.

So had he discussed some of this with me, yes, I would took any plea had he offered me a plea, but I didn't get a plea and I didn't know anything about it.

And he didn't -- like I told you, he did say in the courtroom, he said that -- you mentioned that the State did make a plea on the January 2012 -- I think the January the 1st if I'm not mistaken, he says but it's expired and we're on trial today. He said, so that's over with. He said, it expired. And I said -- I asked him yesterday, did he do anything to extend that plea. He said, no, he didn't.

So my argument is, I never got a plea. If I had gotten a decent plea offer, and we discussed the charges with me and told me, hey, yes, this is what's what, and came and seen me and discussed things with me, I could have let him know that, hey, I'm in here for death results, and you're saying now they got me charged with this, I would have took the plea. And that's my argument on that.

Now, as far as Mr. Chambers I feel like

his representation fell below a reasonable standard according Strickland vs. Washington, and that I was prejudiced by his failures in several ways by being unreasonably seized when I was held in jail -- when I locked up without probable cause and arrested and while they furthered the investigation in violation of the 4th amendment.

I also argue that his conflict of interest prejudiced me on the 6th amendment. I think I made this pretty clear to you, Judge. But I'm just asking that the Court see that his representation did fall below the reasonable standard. If it hadn't been for that, I would have been be acquitted on my charges because I could have went a different route than what I had to take based on him not providing adequate counsel to me and representation.

And I will just ask this Court, if they would, find Mr. Chambers ineffective and issue an order vacating my conviction and release me as soon as they can.

I think that's all I got, Your Honor.

THE COURT: Thank you, Mr. McCall.

MR. MCCALL: Yes, sir.

THE COURT: Well, gentlemen, what I'm

going to do is take this under advisement. I want to read the transcript and look at the appropriate law and also the exhibits that have been filed and consider the testimony that's been presented. I want to thank both of you for your well-prepared presentations. You presented some interesting legal issues in this case, and I'm going to take the time necessary to make the appropriate decision.

So thank you, and we'll now close the record.

MR. MCCALL: Can I ask you a question?

THE COURT: Yes, sir.

MR. MCCALL: How long do you think you'll be before you make an order?

THE COURT: I don't know. I don't know. I need to read through everything. I want to make sure I have all the information that I need.

MR. MCCALL: I appreciate it, Judge.

THE COURT: But I'll have my law clerk -- Mr. McCall, you do not have email access, so when I reach a decision, I'm going to have my law clerk send a letter to both of you informing you of the decision.

MR. SMITH: Yes, Your Honor. May I make

one more point for the record?

THE COURT: Yes, sir.

MR. SMITH: I'll say again, before this hearing began, we sent out a packet to you. I believe it's everything that's been filed in this case. I'm just stating this for the record. I also sent a copy of everything in a packet to Mr. McCall that included all of the written documents in Mr. McCall's case, including the briefs, and the dispositive opinion, and I think the record on appeal. I'll say, too, that if you notice in there a portion of the trial transcript was missing and had to be reconstructed on appeal, so sort of the middle portion of the trial is reproduced -- it's a reconstructed transcript. So just to clear that up for you in case that's a little confusing.

THE COURT: Okay.

MR. SMITH: And I just wanted to say that for the record, that those are in front of you.

THE COURT: Okay. I'm going to look at what's been submitted. And I have -- while I still got both of you, Mr. McCall has several exhibits that have been admitted, six different exhibits, and the State has two. So there's eight

total exhibits that have been admitted.

So, again, I'll have my law clerk contact you by letter when I have reached a decision. So we'll close the record.

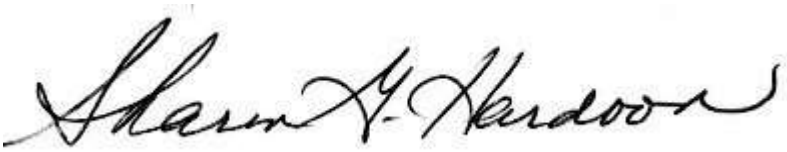
(The hearing was concluded.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions for Greenville County, South Carolina.

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

January 20, 2022



_____
Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

CP

Court ~~CP~~ PCR

RECEIPT FOR EXHIBITS

County Greenville
Case No. 2020-CP-23-1497
Plaintiff Terry E. McCall
Defendant State
Date trial started 1/5/21

Judge P. Scott Sprouse
Plf's Attorney Pro Se
Def's Attorney Taylor Smith
Date ended 1/6/21

Plaintiff's Exhibits:
1. Ntc of Rep; 3/7/12
2. Ticket; 3/2/12 ✓
3. Discharge; 6/9/12 ✓
4. Ltr 11/5/2020 - to McCall ✓
5. Witness list ✓
6. Ltr 5/9/12 to McCall
7.
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~~Defendant's Exhibits:~~ State
1. Order; 3/25/15
2. Motion; 4/24/12 Relieve Counsel
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Received from Sharon Nadeau Court Reporter, for the above ca

1-6-2021 (date) By: Jan White
Clerk of Court's Office

1129#1

C Exhibit

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	F540654

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.

PLAINTIFF'S EXHIBIT
1
Udall 1/5/21

Court 3

#2

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY 5005
UNIFORM TRAFFIC TICKET 3-7-12

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME Terry MIDDLE NAME Edward LAST NAME McCALL

STREET AND NO [redacted] CITY Buffalo STATE SC ZIP CODE 29611

STATE LICENSED SC DRIVER'S LICENSE NO [redacted] CDL ☐ YES ☒ NO VEH. LIC. CLASS D

VEH. LIC. NO [redacted] STATE SC MAKE OF VEH Ford YEAR 99 COMM VEH. ☐ HAZ. MT ☐ AUTO ☐ MOPED INTERCITY ☐ MOTORCYCL COACH ☐ OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Traffic Court STREET AND NO 2801 Wade Hampton

DATE OF TRIAL 3 21 12 TIME OF TRIAL 1:30 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 14 12

ADDRESS OF OWNER Buffalo SC DATE OF VIOLATION 3 14 12

BAIL DEPOSITED Jail LAW OFFICER DC McAlhany BADGE 818 BANK 160

DESCRIPTION OF ACCUSED [redacted] COUNTY Buffalo NUMBER 25

DATE BAIL FORFEITED 20 BADGE 818 TROOP 5

CASE BEFORE MAGISTRATE ☐ MUN COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐ DOCKET NO

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE TIME OF VIOLATION MILITARY TIME 1750 WEATHER C

DEFENDANT DID NOT APPEAR ☐ APPEARED ☐ HWY NO 291

DISPOSITION NOLLE PROSSED ☐ FORFEITED BOND ☐ GUILTY PLEA HOLD CONTENDERE ☒ MILES 2 N ☒ E S W

TRIAL BY TRIAL JUDGE ☐ JURY ☐ CITY Buffalo CODE 1

VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY Lat ° ' "

JAIL SUSPEND FINE AMT COLLECTED AMT SUSPENDED Long ° ' "

COMMITTED TO Vehicle Impounded N Arrest as Result of Collision Y OFFENSE CODE 99 BAC LEVEL Pending

CERTIFIED CORRECT DATE F 540654

DRIVER'S RECORD COPY

PLAINTIFF'S EXHIBIT 2 McCall 11/5/14

Exhibit 2

1130

1131 #3

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: #0121
DATE: 6/9/12 TIME: 0140

PLAINTIFF'S EXHIBIT 3 Mccall 11-5-13

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

1132

Exhibit

#4

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

PLAINTIFF'S EXHIBIT 4 McCall 1/5/21

V.

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. ANN McCALL
5. BILL McCALL
6. & CONNIE McCALL
7. & Terry McCall 1:18 - 1:30

Respectfully submitted,

Randall Lee Chambers, Attorney for Defendant

Greenville, South Carolina
May 12, 2015

PLAINTIFF'S EXHIBIT 5 McCall 4/5/21

#6

OFFICE OF THE PUBLIC DEFENDER

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 (VLM

Randy Chambers, Esq.
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

PLAINTIFF'S EXHIBIT 6 McCall 1/15/13

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.

[redacted]

ENTERED
COMPUTER

~~Honorable D.~~ Garrison Hill

TERRY E. McCall
G.C.D.C.
20 McGee Street
Greenville, S.C. 29601

4-22-2012

"I'm returning Motion that was marked back for "Unknown reason"

In Re: Scheduling a Hearing "Date" for Motion To Relieve Counsel. File Motion To Relieve Counsel and return Copy clock, stamped dated Independent Motion Enclosed ⊙

Dear Clerk of Court,

Enclosed is a Motion To Relieve Counsel. A Hearing Notice has already been filed with your OFFICE. I'm returning the Motion after your OFFICE returned it for "Unknown reason."

Schedule me a hearing date and let me know the date. So I can file transportation Motion, for and Order to Transport on the Scheduled date.

Return filed copy for My record

Awaiting Reply.

Sincerely,
Terry E. McCall

C.C. filed

[redacted]

- see attached reply

State of South Carolina
County of Greenville

In The Court of General Sessions
Thirteenth Judicial Circuit
Warrant/Ticket # F-540654

The State

Vs.

Terry Edward McCall, Pro Se'
Defendant

Motion To Relieve Counsel

Now comes defendant, Pro Se' to move this Honorable Court on a Motion to Relieve Counsel. The defendant prays the Court makes it order to Relieve Counsel, Randall Chambers And set him aside as Co-Counsel.

The defendant request he be allowed to handle his own arguments, and defense in Preparing his case for trial. The defendant believes he knows more about the case and can prepare arguments and give more time to the preparation of the case than Attorney, Randall Chambers. The defendant has prepared two seperate P.C.R Applications and Prevailed due to his proper research. The defendant has been certified as a Paralegal and studied law for (6) years, therefore defendant request to be lead counsel and Keep Attorney, Randall Chambers as Co-Counsel.

Wherefore defendant prays the Court grants his Motion and makes its Order to relieve Counsel, and direct Randall Chambers as Co-Counsel or As the Court deems just and Proper.

Dated 4/23/12
Greenville, S.C.

Terry Edward McCall, Pro Se'
G.C.D.C. 20 McGee St.
Greer, S.C. 29651

Certificate of Service

I hereby certify that I, Terry Edward McCall have Properly served the Greenville County Courthouse, Clerk of Court With a Motion To Relieve Counsel/ Motion To Proceed In Forma Pauperis by placing Same in United States Postal Service, Postage Prepaid, affixed and mailed to address below;

Greenville County Courthouse
Clerk of Court
305 East North st.
Gville, S.C. 29601

Dated 4/22/12
Greenville, S.C.

s/ Terry Edward McCall
TERRY Edward McCall
G.C.D.C.
20 McGee st.
Gville, S.C. 29601

Witnessed by:

Dated 4-22-12

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.	)	Case No. 2020-CP-23-1497 **ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed on March 10, 2020, by Terry Edward McCall ("Applicant"). The State ("Respondent") filed its return on June 23, 2020, moving for the summary dismissal of the application. An evidentiary hearing in this matter was held before the undersigned on January 5-6, 2021, with the parties appearing by WebEx due to the ongoing COVID19 pandemic. Applicant appeared by WebEx from Manning Correctional Institution and proceeded with the hearing as a pro se litigant. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf and called Randall Lee Chambers ("trial counsel"), Esquire, as a witness. Respondent called Sara Lee Meadow Drawdy, Esquire, as a witness. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief and denies the application for post-conviction relief with prejudice.

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections. 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 trial counsel. Then-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 trial counsel as his attorney and to continue the trial so that he could hire another attorney to represent him at trial. Trial Tran. 167-68. Trial counsel joined in Applicant's motion to relieve him as counsel. Trial Tran. 170-71. Judge Stilwell granted Applicant's motion to relieve trial counsel 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, but Erwin took on a more active role as Applicant's trial continued. 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.

Erwin filed a timely notice of appeal. Appellate Defender John H. Strom of South Carolina Commission on Indigent Defense represented Applicant on appeal initially. 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 Defense 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 trial counsel's 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 Supreme Court 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 trial counsel's 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, n.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.

CURRENT PROCEEDING

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 are as follows:

1. Trial counsel 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;

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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 trial counsel 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 Wendy 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

RY

f. Failing to object to his appointment as standby counsel when he and trial counsel were appointed to represent Applicant and when trial counsel 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 is an amended to the application. Therein, Applicant claims he is entitled to relief because (1) trial counsel was constitutionally ineffective for failing to ensure that Judge Stilwell adequately warned Applicant of the dangers of self-representation before relieving trial counsel 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 is an 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 trial counsel immediately after trial counsel 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) trial counsel 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 is an amended application. 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 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. 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 trial counsel without conducting a hearing pursuant to Faretta or advising Applicant of the dangers of self-representation, (2) trial counsel was constitutionally ineffective for failing to object when Judge Stilwell relieved trial counsel 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) trial counsel 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 that trial counsel was constitutionally ineffective for failing to protect Applicant during the Faretta hearing at trial, sanction Respondent, and grant any further relief deemed appropriate by the Court.

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On May 27, 2020, Applicant filed a document titled "Applicant's Amendment to Summary Judgement Request for Leave to Amend," which appears 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 trial counsel 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 is an amended application. Applicant claims therein that he is entitled to post-conviction relief because trial counsel 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) trial counsel 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) trial counsel 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

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within twenty-four hours of Applicant's arrest that probable cause supported the arrest, (4) trial counsel was constitutionally ineffective for denying Applicant's right to self-representation after being discharged from representation of Applicant by court order, (5) trial counsel was constitutionally ineffective for failing to object to the trial court's order relieving trial counsel as counsel, (6) trial counsel did not communicate to Applicant all plea offers extended by the State, and (7) trial counsel 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 trial counsel was constitutionally ineffective for representing Applicant while having a conflict of interest.

Applicant filed an amended application on September 23, 2020, arguing trial counsel 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) trial counsel was constitutionally ineffective for failing to communicate to Applicant all plea offers extended by the State, (2) trial counsel was constitutionally ineffective for not objecting to Judge Stilwell's order relieving trial counsel 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) trial counsel was

constitutionally ineffective for not moving for the dismissal of the case before the positive blood test came back from SLED. RSS

At the start of the evidentiary hearing on ~~November~~ January 5, 2021, Respondent requested that Applicant put on the record the claims upon which he intended to move forward. Applicant stated that he would argue that he was entitled to post-conviction relief based upon four claims only: (1) that his due process rights were violated because a probable cause hearing was not held within forty-eight hours of his arrest; (2) that trial counsel was constitutionally ineffective for failing to exercise due diligence in his representation of Applicant; (3) that trial counsel had a conflict of interest while representing Applicant in the underlying criminal case; and (4) that the State extended a plea offer of which trial counsel did not inform him. Applicant also stated that, though he had filed multiple motions, he wanted to be heard only on his motion for bail, and desired to withdraw all others. This Court finds that Applicant abandoned and waived all claims except for the four specifically identified above and that Applicant abandoned all motions except for his motion for bail.[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Greenville County Clerk of Court regarding Applicant's conviction and sentence; the records from Applicant's direct appeal, including but not limited to the parties' motions, the court orders, the parties' final briefs, the record on appeal, and the dispositive opinion; Applicant's records from the South Carolina Department of Corrections; the parties' filings in this matter; and the exhibits admitted into evidence at the evidentiary hearing. Set forth below are the relevant

[1] Once Applicant waived all claims but these four, Caudy and Erwin were released as witnesses with Applicant's explicit consent.

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findings of facts and conclusions of law with regards to each of the claims Applicant advanced at the evidentiary hearing and to the parties' motions, as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Summary of the testimony presented at the evidentiary hearing.

At the evidentiary hearing before this Court, Applicant testified on his own behalf. He testified that the underlying case began when he was involved in a traffic accident on March 4, 2012. He testified that both he and the other vehicle's occupant were injured and were removed from their respective vehicles mechanically. He testified that he injured his head in the crash and that his teeth had to be removed because they were chipped. He testified that he also injured his hand and arm in the crash.

Applicant testified that there was no reason for the arresting officer to arrest Applicant, but stopped short of saying that the officer did not have a reason to have Applicant's blood drawn. Applicant testified that he consented to having his blood drawn. He testified that the blood test results were obtained without the requisite level of suspicion. He testified that his telling the arresting officer that he had taken prescription medications did not constitute proof that Applicant was driving while under the influence. He testified that there was no reason at all for the officer to have arrested him. He testified that trial counsel did not argue at trial that the arrest was illegal under a totality of the circumstances. He testified that he believes trial counsel would have been successfully if trial counsel had moved to dismiss the charge on the basis that there was not probable cause for his arrest. He cited an opinion of the Attorney General's Office, dated July 14, 2014, and argued that it is appropriate for law enforcement officers to delay in ticketing a defendant until the completion of a drug test, but testified that, in his case, the drug screen was not completed until after he had already been taken into custody. He also cited South Carolina Code Section 22-5-200.

Applicant testified that trial counsel did not exercise due diligence in his representation of Applicant because trial counsel did not make a probable cause argument at trial. He testified that no law enforcement officer submitted a sworn statement to a magistrate in order to seek an arrest warrant. He testified that, had trial counsel made this argument, his charges would have been dropped because the arresting officers did not follow proper procedure. He testified that no warrant was issued for his arrest and that there never was a judicial determination regarding his arrest. He testified that he wanted trial counsel to make this argument and that trial counsel never questioned the lack of probable cause.

Applicant testified that there was no affiant and South Carolina Code Section 17-23-162 was violated when the law enforcement officer testified at the preliminary hearing because the magistrate was taken out of the process and the testifying officer was not an affiant. He testified that trial counsel did not challenge the viability of the arrest warrant and that he was denied procedural due process thereby. He testified that he was taken to a preliminary hearing on a "blue ticket," which violated state law. He testified that there was no evidence at the time of his arrest that he was under the influence and that trial counsel did not defend him against this issue. He cited Gerstein v. Pugh, 420 U.S. 103 (1975), and County of Riverside v. McLaughlin, 500 U.S. 44 (1991), and argued that there has never been a judicial determination by a magistrate judge as to whether there was probable cause for his arrest within forty-eight hours thereof. He testified that he was held in jail for sixty days before a preliminary hearing was held in the underlying case.

Applicant testified that trial counsel did not know what witnesses Applicant wanted called at trial. He testified that he wanted to call his family members as witnesses but that trial counsel did not have them listed as witnesses on the witness list before trial. He testified that he asked trial counsel if the family members would testify. He testified that trial counsel did not investigate the

witnesses until the day of trial. He testified that the witness list that trial counsel submitted to Judge Stilwell and the State was captioned as if it was for a case in the Family Court. He testified that trial counsel also cited the Rules of Civil Procedure rather than the Rules of Criminal Procedure when arguing on Applicant's behalf at trial.

Applicant testified that he was not served with the indictment until the beginning of trial. He testified that trial counsel should have moved for a continuance or asked for a recess so that trial counsel and Applicant could discuss the indictment. He testified that trial counsel did not do this. He testified that, while he was in jail, he was told that he was in jail for felony DUI with death resulting. He testified that he did not know why he was in jail until the day of trial. He testified that he did not know the extent of the victim's injuries until trial.

Applicant testified that he did not want trial counsel to represent him. He testified that he and trial counsel started off on a bad note because trial counsel was relieved as counsel in another case. He testified that trial counsel did not seem interested in his case and that they had a dispute because trial counsel was unwilling to file a bill of particulars as Applicant requested. He testified that trial counsel told him that trial counsel could not tell Applicant what Applicant was charged with because the ticket did not reference a specific subsection in the criminal statute for felony DUI. He testified that he filed a motion to have trial counsel relieved on April 22. He testified that a circuit court judge relieved trial counsel as his counsel back in 2015 and that he did not know that he was required to have trial counsel relieved multiple times. He testified that trial counsel continue to represent him despite trial counsel's having been relieved. He testified that he filed a second motion to relieve counsel before trial back in March of 2015. He testified that he served trial counsel with that motion properly but that he was not heard on that motion. He testified that he told trial counsel on the second day of trial that he wanted trial counsel relieved. He testified

that it had gotten to the point that he refused to come out of his holding cell on that second day of trial. He testified that he believes trial counsel should have ensured that Applicant was heard on the motion. He testified that trial counsel did not waive the conflict of interest in representing Applicant while having been relieved as Applicant's counsel in another case.

Applicant testified that trial counsel met with him on May 1, 2015, in order to prepare for trial, and that trial counsel told him that the meeting would have to be short because trial counsel was going to trial counsel's daughter's law school graduation. He testified that trial counsel told him that his daughter's graduation was more important than Applicant's trial. He testified that trial counsel told him that he would send his paralegal to meet with Applicant instead. He testified that trial counsel did not come back to jail to meet with him or see him again until the first day of trial. He testified that Applicant met with him only twice while his case was pending.

Applicant testified that the only time that trial counsel told Applicant about the existence of a plea offer was at trial, at which point it was too late for him to accept it. He testified that trial counsel did not make him aware of any plea offer before that time. He testified that he would have accepted the plea offer had he known of it and he believes that the sentencing court would have accepted the offer had Applicant been given the opportunity to accept it. He testified that he thought that the State may have re-offered the ten-year offer if trial counsel had asked.

Respondent cross-examined Applicant. Applicant testified that he met with trial counsel only on three occasions and that he was unable to talk with trial counsel by phone because trial counsel would not call him back. Those meetings occurred on March 20, 2012, May 15, 2012, and on May 20, 2015. He affirmed that he and trial counsel did correspond by mail. When questioned about the veracity of his testimony that he would have accepted the plea offer had he known of it in light of his extensive testimony about the illegitimacy of his arrest, Applicant testified that he

would have taken the plea deal anyway. Applicant affirmed that he consented to the blood draw but denied that he had testified at trial that he did not give his consent to the blood draw.

Trial counsel testified before this Court at the evidentiary hearing. Trial counsel testified that he is self-employed primarily and has been practicing in the field of criminal law for about thirty-two years. He testified that he has represented many clients in DUI cases, including cases involving great bodily injury. He testified that he thinks he became involved in Applicant's case when he was appointed as a contract public defender in Greenville County. He testified that he was working as a contact public defender on a part-time basis. He testified that the rule at the public defender's office was that attorneys had to meet with their clients in jail within seventy-two hours of the clients' arrest.

Trial counsel testified that he could not remember if he represented Applicant in other criminal cases but said that it was possible that he had done so. He testified that he may have been relieved as counsel in Applicant's other criminal defense cases. He testified that he does not want to continue representing clients who do not want his representation. He testified that, early on, problems arose between he and Applicant, but that ~~there~~ their issues went away and they were able to work together to prepare for trial once the case was RSS on the trial track. He testified that he was looking forward to trying the case and he believed that he and Applicant were getting along. He testified that he did not have any disagreement while representing Applicant that would have impeded his ability to represent Applicant to the best of his ability.

Trial counsel testified that, on the first day of Applicant's trial, there were no disagreements between ~~he and~~ RSS and him. Applicant. He testified that he would have alerted Judge Stilwell if there had been any issues and tried to withdraw. He testified that Applicant filed a grievance against him with the Office of Disciplinary Counsel in which Applicant alleged that trial counsel was grossly

intoxicated before and during trial. He testified that the claim was dismissed and that the allegation was absurd.

Trial counsel testified as to the facts of Applicant's underlying crime. He testified that the collision occurred in a busy area of town. There was a wide median in the middle of the road, which most people used as a "turn lane." He testified that the victim was driving home with his daughter when Applicant's vehicle crossed over into oncoming traffic and hit the victim's car head on. The victim's injuries were severe and he almost died. Afterwards, Applicant was charged with felony DUI.

Trial counsel testified that he does not remember the number of meetings that he had with Applicant. He testified that Applicant was bonded out and that he went back to jail after picking up more criminal charges while out on bond. He testified that Applicant was in jail for more criminal charges than just the felony DUI in the underlying criminal case and that the entirety of Applicant's pre-trial time in jail was not due to the underlying case. He testified that his practice was to meet with clients when significant events take place. He testified that he went over the discovery with Applicant and provided a copy of the discovery to Applicant. He remembered Applicant was being smart and involved in his case. He testified that Applicant prided himself on his own knowledge of the law. He testified that Applicant told him that Applicant had previously studied to be a paralegal. He testified that he and Applicant met to discuss the ten-year plea offer extended by the State, and that Applicant rejected the offer because he wanted to go to trial, even though trial counsel believed that it would have been in Applicant's best interest to have accepted the offer. When asked if the ten-year plea offer expired on the same day on which it was offered, he testified that it would have been unusual for that to be the case and speculated that any letter indicating as much probably contained a typo.

Trial counsel testified that he and Applicant did trial preparation together. He testified that he explained the nature of the charges to Applicant and that Applicant knew what the allegations were. He testified that he and Applicant knew that it would be a case involving great bodily injury since the victim survived the crash. He testified that Applicant was aware of the possible sentences he could receive and the consequences of being found guilty.

Trial counsel testified that he and Applicant did not discuss the case over the phone, but testified that they did so in person and by mail. He testified that he does not like to discuss cases with clients who are in jail because their phone calls are recorded.

Trial counsel testified that he and Applicant discussed the need for the State to have probable cause to be able to get a warrant to get blood samples from Applicant. He testified that he addressed the issue through pre-trial motions. He testified that his trial strategy was to argue that Applicant was not under the influence at the time of the crash. He testified that Applicant told him that he suffered from some seizure disorder, but he testified that he had no evidence of that independent of Applicant's assertions. He testified that he would have discussed the seizures with Applicant's physicians if he thought that it would have made any different to the trial. He testified that he believed that Applicant may have had a seizure and that they had to address the fact that Applicant's car did not have functioning brakes. He testified that the evidence left him with no option other than to argue that Applicant was not under the influence during the time of the crash. He felt that it would have been a waste of time to argue that the victim did not suffer great bodily injury.

Trial counsel testified that Applicant was adamant that he go to trial. He testified that the only plea negotiation that he can recall is when the State offered a ten-year plea deal. He testified that that was the best offer that they received, but Applicant turned it down.

Trial counsel testified that the State served him with the indictment shortly before trial, but that he had discussed it with Applicant before the first day of trial. He testified that he planned to move to quash the indictment due to lack of notice. He testified that the server had tried to serve the indictment on Applicant personally earlier than the first day of trial, but that Applicant had refused to accept service at that time because Applicant preferred that the indictment be served on trial counsel instead. He testified that Applicant was aware of the indictment at the time of the attempted service. He testified that Applicant was aware before trial that he would be tried for either felony DUI resulting in death or felony DUI resulting in great bodily injury, depending upon whether the victim lived or died.

Trial counsel did not remember whether he discussed with Applicant what witnesses to call, but said he would have called a particular witness if Applicant had asked him to do so. He testified that he was relieved as counsel at Applicant's request before he had the chance to call anyone as a witness. He did feel prepared for trial. He was not able to remember which witnesses he interviewed as part of his pre-trial preparation. He did testify, though, that his general practice is to only include on the witness list names of people with whom he has already spoken. He denied that he asked Applicant on the day of trial if there were any other witnesses that Applicant wanted included on the witness list, but testified that Applicant may have volunteered that information to him.

Trial counsel testified that, if he referred to the Rules of Civil Procedure rather than the Rules of Criminal Procedure while arguing in pre-trial motions, the mistake was an innocent one and everyone would have understood what he actually meant. He testified that he would not have actually confused the Rules of Civil Procedure with the Rules of Criminal Procedure because he

does not represent clients in civil matters. He testified that that did not affect the outcome of the pre-trial hearings.

Trial counsel testified that the indictment was true-billed by the Greenville County Grand Jury. Trial counsel admittedly did not remember many details about Applicant's preliminary hearing, but he remembered that the arresting officer testified as a witness at that hearing. He testified that he remembered arguing at that hearing that the arrest was not supported by probable cause. He testified that criminal ~~defense~~ defendants frequently misunderstand the nature of a preliminary hearing, believing falsely that defense attorneys can introduce evidence and do other things that they are just not allowed to do. He testified that the leading law enforcement officer usually testifies and that he is allowed to question the officer and argue that there was no probable cause. He denied that he told Applicant that the defense would do nothing at the preliminary hearing but would merely allow the State to put up any evidence that it wanted.

Trial counsel denied that he met with Applicant at the jail and told Applicant that the meeting had to be brief because trial counsel was attending his daughter's law school graduation. Trial counsel testified that he has never had a paralegal meet with a client in jail and thinks it would be very difficult or impossible to do that anyway. He testified that his daughter did not even graduate from law school in that year and he would never tell a client that trial counsel's daughter's graduation was more important than that client's trial.

In response to questioning from Applicant, trial counsel testified that he made a probable cause argument at trial but that Judge Stilwell ruled against his arguments. He testified that he framed all of his arguments at trial in the way he thought most appropriate, but was unsuccessful. He testified that he would not have cited Gerstein at trial because Applicant had a preliminary hearing and he thought that the case applied in federal cases mostly.

Respondent called Drawdy as a witness at the hearing. She testified that she has been practicing law for twenty-eight years, with twenty-six of those years being spent in Greenville County. She testified that she previously worked at the Thirteenth Circuit Solicitor's Office, and was assigned the prosecution of Applicant about two weeks after he was arrested in the underlying criminal case. She testified that it may have been possible that the letter communicating the details of the plea offer to trial counsel gave an expiration date that was the same as the date of the letter's issuance, but explained that such a thing would have been due to the fact that the letter was generated by an automated system at the Thirteenth Circuit Solicitor's Office. She testified that she thinks she remembers extending the offer of a ten-year sentencing recommendation if Applicant were to plead guilty and that she and trial counsel discussed renewing the offer even after the deadline for acceptance had passed.

She testified that Applicant's stay in jail from the time of his arrest was not due entirely to the charges at issue in the underlying criminal case and that his stay was not continuous from the time of his arrest until the time of trial. She testified as to the periods of time in which he was in jail and was out of jail. By her testimony, Applicant was held in the Greenville County Detention Center for a total of 352 days from the time of his arrest until trial, if you add up all of the different stays.

She testified that trial counsel was initially appointed to represent Applicant on multiple criminal charges, but was relieved—at Applicant's request—on all of those charges except for the one in the underlying case: felony DUI. She testified that the court order relieving counsel memorialized an oral ruling issued from the bench during a hearing on Applicant's initial motion to relieve counsel. She testified that she was present for that hearing, which she testified took place on February 24, 2015. She testified that, at that hearing, Applicant said that he wanted to have trial

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counsel relieved as counsel on every pending charge except for the one of felony DUI. She testified that, although Applicant did not specifically include that limitation in the motion that he filed, Judge Hill, who presided over that hearing, allowed Applicant to make that request orally at the hearing. She testified that Applicant told Judge Hill at that hearing that trial counsel had previously represented him in criminal cases and that he wanted trial counsel to continue representing him in the felony DUI case because he believe such representation would be beneficial to him and he felt comfortable with trial counsel. She testified that Judge Hill issued a written order after that hearing because he wanted those at the detention center to know that Applicant was pro se on some of his cases so that he would have access to legal resources and the like. She testified that the case number for Applicant's felony DUI charge was listed at the top of Applicant's motion to relieve counsel but is not listed at the top of Judge Hill's subsequent order relieving trial counsel.

She testified that she was under the impression that Applicant "waffled" back and forth as to whether he was happy with trial counsel's representation. She testified that trial counsel did not bring up the matter of being relieved again until trial. She testified that she was served with Applicant's second motion to relieve trial counsel. She and trial counsel discussed the motion on the first day of trial, and trial counsel told her that Applicant had decided to proceed with trial counsel's representation. She testified that trial counsel said that he and Applicant wanted to try the case and that they did not bring the matter up with Judge Stilwell.

She testified that she saw trial counsel and Applicant talk with one another on multiple occasions. She does not know what the two talked about, but trial counsel approached her after one of those meetings to say that Applicant had rejected the ten-year plea offer and that Applicant would never plead guilty.

She testified that a preliminary hearing was held early on in this case and that a magistrate judge found at that hearing that there had been probable cause for the arrest of Applicant. She also testified that, according to South Carolina Code Section 56-7-10, a traffic ticket is an appropriate charging document for felony DUI, which is a traffic offense.

On cross-examination, Drawdy testified that she learned of Applicant's motion to relieve counsel on the morning of trial.

Applicant's motion for bail is denied.

On September 30, 2020, Applicant filed a motion for bail. Respondent filed its return to the motion on November 5, 2020. Applicant argued before this Court, in reliance upon South Carolina Code Section 17-27-80, that he is entitled to bail due to the COVID-19 pandemic.

This Court denies Applicant's motion because bail is not meant for an applicant 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 in this case. Applicant is no longer situated so as to lay claim to bail.

Furthermore, this Court denies 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 Applicant's 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.

Applicant's motion is denied without prejudice to Applicant's ability to raise the issue again if he is granted post-conviction relief.

Applicant has failed to prove that he is entitled to post-conviction relief based upon his claim that his due process rights were violated when a probable cause hearing was not held within forty-eight hours of his arrest.

Applicant argues that his arrest was not supported by probable cause and that he was unreasonably seized when he was arrested because no warrant had been issued for his arrest.

As an initial matter, this Court finds that Applicant's claim is not properly before this Court. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). 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 an application for post-conviction relief unless the applicant 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). The arguments that Applicant makes now about probable cause could have been raised on direct appeal. Applicant's appellate attorney raised four issues on appeal, which included a challenge to the constitutionality of the implied consent statute and challenging Judge Stilwell's denial of trial counsel's motion to suppress the State's blood evidence. A challenge to the existence of probable cause could have been lodged on appeal. Applicant has shown no reason that he should be allowed to raise this direct appeal issue now and is prohibited from doing so.

Even if Applicant's claim is properly before this Court, however, the claim fails on the merits. 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)

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(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).

The evidence before this Court shows that a neutral and detached magistrate found that Applicant's arrest was supported by probable cause. Although Applicant testified that a magistrate judge never made a probable cause finding, that testimony is not credible. Trial counsel and Drawdy testified credibly that a preliminary hearing was held early on in Applicant's criminal case and that there was a probable cause finding made at that time. Trial counsel's credible testimony was that the arresting officer testified at that hearing, a point which was confirmed by Applicant's own testimony, and that the magistrate judge rejected trial counsel's probable cause arguments at that hearing. Applicant has also failed to prove that he was subjected to a significant period of pre-trial detention. Furthermore, Judge Stilwell appropriately denied trial counsel's pre-trial motion to quash the indictment and dismiss the case in part because Applicant was indicted by the grand jury. Trial Tran. 9; see Law, at 436, 629 S.E.2d at 649.

This Court finds that Applicant had adequate notice of the charge against him. The ticket he received instructed him that he was being charged with felony DUI. Trial counsel credibly

testified that he reviewed the charge with Applicant and that they knew that they would be tried under the subsection of the felony DUI statute dealing with great bodily injury because the victim unexpectedly survived his injuries. Applicant's testimony that he had no idea what he was going to be tried for is not credible.

This Court finds that Applicant's claim that the arrest was not supported by probable cause is not properly before this Court and, even if it is, it fails on the merits. This claim is denied and dismissed with prejudice.

Applicant has failed to prove that trial counsel was constitutionally ineffective for failing to exercise due diligence in his representation of Applicant.

Applicant argues that trial counsel was constitutionally ineffective for not arguing at trial that Applicant's due process rights were violated on the basis that the arrest was not supported by probable cause and for not adequately preparing for trial. Applicant's argument about the alleged unpreparedness on trial counsel's part is apparently based upon Applicant's testimony that: trial counsel did not review or discuss the discovery with Applicant, did not review possibly defenses with Applicant, and did not call witnesses as requested by Applicant.

As an initial matter, this Court finds that Applicant waived his ability to maintain an application for post-conviction relief based upon a claim that trial counsel was constitutionally ineffective because trial counsel was relieved at trial at Applicant's request, after which point Applicant proceeded—at least for a time—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 had no choice but to represent himself at trial due to the inadequacy 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 the applicant 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. Bova, 350 F.3d 224 (1st Cir. 2003) (noting that the defendant did not have the right both to "represent himself and to enjoy the benefit of standby appointed 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").

Applicant is alleging in various ways that he is entitled to relief because trial 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 is not allowed to take the reins into his own hands if he was unhappy with trial counsel'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 and 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.

Notwithstanding this Court's finding that Applicant is barred from arguing that trial counsel was constitutionally ineffective after having trial counsel relieved and continuing with trial as a pro se defendant, Applicant's claim fails on the merits, too. This Court finds that there were

multiple findings of probable cause in the underlying criminal case. First, Drawdy and trial counsel both agreed that a preliminary hearing was held not long after Applicant's arrest, at which the magistrate judge made a finding that the arrest was supported by probable cause, over trial counsel's arguments and objections. Their testimonies are more credible than Applicant's, which seems to be that no such finding was made. Second, the Greenville County Grand Jury indicted Applicant for felony DUI resulting in great bodily harm. Applicant's own testimony shows that he was served with the indictment at the start of trial, and there is reason to think, based on trial counsel's testimony, that Applicant would have been served with the indictment earlier if he had not refused to accept service thereof. Drawdy argued to Judge Stilwell that probable cause supported the arrest because the Greenville County Grand Jury considered the same evidence available to the arresting officer and found probable cause. Trial Tran. 7. Judge Stilwell appropriately denied trial counsel's motion to quash the indictment and dismiss the case in part because Applicant was indicted by the grand jury. Trial Tran. 9; see Law, at 436, 629 S.E.2d at 649.

Having found fatal errors in Applicant's claim that trial counsel was constitutionally ineffective, this Court will now consider the particulars of Applicant's allegations regarding trial counsel's representation. 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. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). 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.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to trial counsel's arguments before Judge Stilwell about probable cause. Despite Applicant's allegations to the contrary, trial counsel did argue to Judge Stilwell that the arrest was not supported by probable cause. Trial counsel took the position in a pre-trial hearing that the arrest of Applicant was illegal. Trial Tran. 8. Although he did so in the context of moving for the suppression of the State's blood evidence, trial counsel did argue that the arresting officer did not have probable cause to believe that Applicant was driving under the influence. Trial counsel argued that the evidence showed that Applicant's car veered into oncoming traffic and struck the victim's vehicle due to faulty brakes on Applicant's vehicle. Trial Tran. 10-11. Trial counsel pointed out that Applicant had a medical condition that caused him to suffer from seizures and that Applicant informed people at the scene of the crash that he believed that a seizure was coming. Trial Tran. 11. He also noted that the arresting officer did not smell alcohol on Applicant's breath and was aware that Applicant had suffered an injury to the head during the crash. Trial Tran. 11. Trial counsel argued that the arresting officer believed Applicant was under the influence only due to his perception of Applicant's demeanor and the way that Applicant spoke. Trial Tran. 11. Assistant Solicitor Overby argued in response at trial that the arresting officer had probable cause to ticket Applicant because the officer inspected the accident scene, observed when he arrived at the hospital that the victim's condition was critical, noticed that Applicant's behavior indicated some level of intoxication, and took into consideration that Applicant admitted to taking prescription drugs. Trial Tran. 14. During a pre-trial hearing on the admissibility of the State's blood evidence, trial counsel cross-examined the arresting officer, who

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supported his position that he had probable cause to arrest Applicant by testifying: that Applicant's faulty-brake-pad explanation for the crash did not make sense because faulty brake pads would explain being a driver's being unable to brake, not a driver's veering into oncoming traffic; that Applicant was not responding to his questions normally; that Applicant's speech was not "true and plain"; and that Applicant's pupils were dilated. Trial Tran. 46, 52-53.

This Court finds that Applicant has failed to prove that he would have been acquitted but for the alleged deficiency in trial counsel's argument to Judge Stilwell. Dr. Tracy Lance testified at trial and was qualified as an expert in the practice of medicine, emergency medicine, and the pharmacological properties of prescription drugs and illegal drugs without objection from Applicant, who as a pro se defendant at the time. Trial Tran. 345-48. Dr. Lance treated Applicant at the hospital on the night of the crash. Trial Tran. 348. Applicant did not complain of a head injury or seizures to Dr. Lance, but told Dr. Lance that the crash was caused by Applicant's low blood sugar levels and noted that he had taken a prescription drug. Trial Tran. 349-51. Dr. Lance observed that Applicant's speech was slow. Trial Tran. 352. Dr. Lance ordered urine and blood tests for Applicant to ensure that Applicant would not be given any medications during his stay in the hospital that would interact with any other drugs in his system. Trial Tran. 355-56. The tests did not reveal a medically significant amount of alcohol in Applicant's system, but they did produce positive results for amphetamines, benzodiazepines, cocaine, marijuana, and opioids. Trial Tran. 356-57. Dr. Lance testified as to the effects that those drugs would have had on Applicant. Trial Tran. 357-58. Dr. Lance testified that the blood tests revealed that Applicant's blood sugar level was normal and that he did not see any trauma to Applicant's head or observe any evidence that Applicant was concussed or had recently had a seizure. Trial Tran. 352-54. Even without the State's blood evidence, the evidence of guilt that the State had independent of

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Applicant's arrest, which included the investigation of the crash site, the testimony about the victim's injuries, Applicant's post-arrest statements to law enforcement officers, first responders, and medical personnel, and the blood evidence gathered by the hospital in the course of its treatment of Applicant, it is highly probable that Applicant would still have been convicted.

Applicant also claimed that trial counsel was constitutionally ineffective because trial counsel allegedly did not review or discuss the discovery with Applicant, did not review possibly defenses with Applicant, and did not call witnesses as requested by Applicant. This Court finds that Applicant has failed to prove any deficiency in trial counsel's performance with respect to this claim. Trial counsel testified credibly that he reviewed the discovery with Applicant, discussed potential defenses and trial strategies with Applicant, and spoke with any witness that he felt would have had information helpful to the defense. Trial counsel was unable to say exactly which potential witnesses he interviewed in preparation for trial, but he also testified that he likely would have spoken with any witness that he had on the witness list. Applicant's testimony that trial counsel did not go over the discovery with him, did not speak to any witnesses, and did not discuss strategies with him is not credible. The lack of credibility in Applicant's testimony is further shown by his testifying before this Court that he consented to the blood draw and his denying that he testified differently at trial; the record shows that Applicant testified at trial that he did not consent to the blood draw. Trial Tran. 77. Applicant has failed to prove that any mistake trial counsel made with the proposed witness was anything other than an innocent one that had no effect on the outcome of trial. Furthermore, trial counsel was relieved at Applicant's request before the State's case-in-chief ended, so it is not clear which witnesses trial counsel would and would not have called had he continued to represent Applicant throughout trial.

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This Court finds that Applicant has failed to prove any prejudice resulting from trial counsel's alleged failure to be prepared for trial. Applicant alleges that trial counsel did not interview or call as witnesses at trial those whom Applicant wanted interviewed or called, but he has not presented any evidence to this Court as to the identity of those alleged witnesses or what benefit would have accrued to the defense had they been interviewed or called at trial. 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). Applicant has presented no evidence whatsoever that there is any witness with testimony that would have been favorable to him who was not interviewed by trial counsel or called as a witness at trial. Applicant has not even speculated as to what even one of these witnesses would have had to offer. Due to his failure to make any evidentiary showing as to the prejudice prong, his claim fails.

Applicant claimed that trial counsel was constitutionally ineffective for not objecting to the magistrate judge's finding of probable cause on the basis that the arresting officer did not submit an affidavit at the preliminary hearing. This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective in this regard. Trial counsel credibly testified that the arresting officer testified at the preliminary hearing and that he was able to challenge the State's case at that hearing to some extent and to argue against the finding of probable cause. Applicant, whose testimony on this issue was not credible, argued that trial counsel should have objected because South Carolina Code Section 17-23-162 requires that the arresting officer present an affidavit at the preliminary hearing. The statute provides that "[t]he 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." S.C. Code Ann. § 17-23-162. Trial counsel's testimony shows that that statute was not violated at Applicant's preliminary hearing

and that there would have been on reason for him to cite the statute in his argument at the preliminary hearing. This Court finds that Applicant has failed to prove any prejudice resulting from trial counsel's conduct at the preliminary hearing. Applicant's contention that the case would have been dismissed had trial counsel done so is absurd.

This Court finds that Applicant's claims that trial counsel was constitutionally ineffective are barred because trial counsel was relieved at Applicant's request, after which point Applicant proceeded with trial as a pro se defendant, at least for a time. Since he decided to proceed pro se rather than to plead guilty, he is not allowed to now maintain a collateral attack on his conviction. Notwithstanding that bar to his claims, Applicant has failed to prove that trial counsel's representation of him was deficient as compared to prevailing professional norms and has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different absent some deficiency in trial counsel's performance. This Court therefore denies the application for post-conviction relief with respect to these claims with prejudice.

Applicant has failed to prove that he is entitled to post-conviction relief because of any conflict of interest on trial counsel's part.

Applicant argues that he is entitled to post-conviction relief because trial counsel initially represented him on other criminal charges, trial counsel was eventually relieved as counsel with regard to those other charges, and that trial counsel therefore had a conflict of interest by continuing to represent Applicant in the underlying case despite having been relieved in the others. Applicant alleges that he did not want trial counsel to continue representing him and wanted trial counsel to be standby counsel only.

This Court finds that Applicant has presented no evidence that trial counsel had a conflict of interest. A conflict of interest occurs:

> [W]hen a defense attorney places himself in a situation inherently conducive to divided loyalties . . . . If a defense attorney owes duties to a party whose interests

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> are adverse to those of the defendant, than an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (citing Zuck v. State of Alabama, 588 F.2d 436 (5th Cir. 1979)). The mere possibility that trial counsel had a conflict of interest is insufficient to impugn Applicant's conviction. State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005) (citing Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993)). The Supreme Court has instructed that:

> In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance . . . . [A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief.... But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.

Id. at 437-37, 315 S.E.2d at 810-11 (citing Cuyler v. Sullivan, 446 U.S. 335 (1980)). Even if Applicant's testimony about his unhappiness with trial counsel's representation of him is true, he has not presented evidence of a conflict of interest because he has not presented evidence that trial counsel owed duties to another so as to conflict with his duties to Applicant.

Even if this Court analyzes the claim by treating it as a claim that trial counsel improperly continued to represent Applicant despite his being aware that Applicant wanted him relieved as counsel, the claim still fails. Applicant testified that he was represented by Applicant on multiple charges and that he sought to have Applicant relieved, that he believed that Judge Hill relieved trial counsel was his attorney, that trial counsel's continued representation of him after that point was against Applicant's wishes, and that Applicant made it known to trial counsel that he did not want the representation to continue. But that testimony was not credible. Based upon the credible testimonies of Drawdy's and trial counsel's testimonies, this Court finds as follows: trial counsel was initially appointed to represent Applicant on multiple charges, trial counsel was relieved as

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counsel on all charges except for the underlying charge of felony DUI resulting from great bodily injury, trial counsel was relieved in those cases at Applicant's request but was kept as counsel in the underlying case at Applicant's request, Applicant and trial counsel were able to work together to prepared for trial and had an amiable relationship, Applicant's behavior and his acceptance of trial counsel's help led trial counsel to believe that Applicant was satisfied with trial counsel's representation of him, and Applicant's sudden insistence on the second day of trial that trial counsel be relieved caught trial counsel unawares. The fact that trial counsel joined in Applicant's motion to have him relieved on the second day of trial corroborates trial counsel's testimony that he would have brought the matter to the attention of the courts if he had had reason to believe that Applicant wanted to have him relieved. The fact that Applicant's initial motion to relieve trial counsel lists the underlying case number but the subsequent order relieving trial counsel on every case except the underlying one did not reference this case corroborates Drawdy's testimony on this issue. Applicant has failed to show that trial counsel's ability to represent Applicant adequately was impaired by the fact that trial counsel was relieved in the other cases.

This Court finds that Applicant has failed to prove that trial counsel had a conflict of interest and denies the application with prejudice with respect to this claim.

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Applicant has failed to prove that the State extended any formal plea offers of which Applicant was not informed by trial counsel.

Applicant argues that he is entitled to post-conviction relief because the State extended a formal plea offer of which trial counsel did not inform him. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." Bell v. State, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (S.C. Ct. App. 2014) (quoting Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). A defense attorney "has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Id. (quoting Missouri v. Frye, 566 U.S. 134 (2012)). Applicant testified before this Court that trial counsel informed him of the existence of a ten-year plea offer from the State only after the offer expired and that, had he known of the offer before it expired, he would have accepted it and pleaded guilty. Applicant also argued that he would have accepted any plea offer rather than proceeding to trial. Trial counsel testified that he informed Applicant of the ten-year plea offer made by the State and that Applicant rejected it. Trial counsel testified that Applicant was set on going to trial throughout the representation. Drawdy testified that she did extend a ten-year plea offer and that trial counsel informed her that Applicant rejected it. She testified that she personally saw that trial counsel and Applicant were meeting and talking and that trial counsel informed her after that that Applicant rejected the plea offer. This Court finds that Applicant has failed to prove that there was any plea offer made that trial counsel did not inform him of. Trial counsel's credible testimony, along with the confirming testimony from Drawdy, proves that trial counsel informed Applicant of the ten-year plea offer and that Applicant rejected while insisting that he wanted to go to trial. Furthermore, Applicant's fixation on the alleged illegitimacy of his arrest and the State's blood test belies his ~~incredible~~ RSS testimony that he wanted to plead guilty and would have taken the plea offer if he had known of it before it

expired. This Court finds, therefore, that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to the communication to Applicant of formal plea offers extended by the State.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that he would have pleaded guilty. The evidence from trial counsel's testimony and from Drawdy's testimony shows that Applicant insisted on going to trial and gives no indication that Applicant was amenable to pleading guilty.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not communicating to Applicant any formal plea offer extended by the State. This claim is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, he must serve and file a Notice of Appeal.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 22 day of February, 2021.

R. Scott Sprouse
Presiding Judge

Walhalla, South Carolina

Copy mailed to Attorney General/Applicant on 3/3/2021.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Terry Edward McCall#233236	)	Case No:2020-CP-23-1497
Applicant,	)	
	)	
V.	)	MOTION FOR ORDER TO ALTER,
	)	AMEND, CORRECT, Rule 59(e)
State of South Carolina,	)	
Respondent,	)	

Now comess, the above named Applicant, Terry Edward McCall, Pro Se' to move this Court for an Order to Alter, Amend, Correct the Order of Dismissal Dated 2-22-21, signed by Circuit Court Judge, R. Scott Sprouse

The Applicant moves this Court to Amend, Alter, Correct the Order of Dismissal in the the following areas of the Order.

1. On Page 11of40 in the second paragraph under totality of circumstances. Applicant testified that counsel was ineffective for failing to argue that under the totality of the circumstances the offier did not have probable cause to make an arrest and charge applicant with Felony DUI, where the drug analysis that was taken at the hospital had to be sent out to Sled for testing, to confirm the blood results were negative or positive, and where the Officer had written on the Ticket BAC Level was **Pending**, the officer only had a Hunch the Applicant was in violation of S.C. Code 56-5-2945 at the time he placed the Applicant under arrest. Had trial counsel argued this prior to trial or at trial the case could have been dismissed, and Applicant released. The Drug Screen was not completed until almost 90days after the arrest on 3-4-12.

2. The Applicant argued that trial counsel never used any legal authority or case law to support any argument he made as to the Motion to Quash the Indictment as to the Neutral and detached magistrate. Trial Counsel only made bare allegations with no support.

3. Trial Counsel waa ineffective for failing to argue that S.C. Code

22-5-200, mandates that after a warrantless arrest, the officer is required to take the person so arrested before the magistrate to here the circumstances of the case and issue an arrest warrant as the Court shall direct or dispose of the case. Had trial counsel argued this the case could have been idsmissed or the outcome would have been different for the Applicant, but trial counsel failed.

4. Trial Counselfailed to argue the Fourth Amendment Violation, that Applicant had been unreasonabally seized after 48 hours not receiving and arrest warrant. Consel failed to argue violation of 14 Amendment as well, procedural Due Process violation

5. The Order fails to state the Full Argument/Issue that Trail Counsel did not exercise Due Diligence, Skill, Judgement in his representation of Applicant. Where he waited until day of trial to explore and interview his client as to the Witness of family members that he intended to call, which were hand written on the Potential Witness List day of trial. The Applicant cited United States V. Porterfield 624 F2d 122 (1980)

6. The Order on Pg 12 of 40 second paragraph failed to include the S.C. Code 22-5-320 argument that Applicant made when he stated that the Court could not grant or hold a preliminary hearing without and arrest warrant. and had trial counsel argued this this case could have been dismissed or the outcome would have been different. Because this was a statutory violation by the State to hold and grant a preliminary hearing on a blue ticket, which was violation of state law.

7. Pg 13 of 40 Applicant contends that he did start off on a bed note with trial counsel and submitted evidence that of a exhibit letter tht he told counsel he did not want him to represent him. And Applicant argues the record needs to reflect that trial counsel was only represneting Applicant for Felony DUI up until the new charges in 2014 came about

8. Applicant testified that trial counsel only met and discussed the Felony DUI case with him twice and once on the 2014 criminal matters.

9. On page 14 of 40 thes dates need to be corrected . Those meetings occured on March 20, 2012, should be March 23, 2012 , and May 20, 2012, should be corrected to reflect May 1st, 2015 .

10. Pg 15 of 40 first line Applicant affirmed that he consneted to blood draw but denied that he testified at trial that he did not give consent to blood draw was incorrect statement. And must be corrected to state, Applicant said he did not sign the Imlpied Consent Form and that is what he testified too at the hearing.

11. Pg 19 of 40 Line Four, trial counsel testified he remembered arguing at the hearing that the arrest was not supported by probable cause, is error. What he said was he argued that the case should be dismissed, and he didn't remember many details about the Applicant's Preliminary Hearing. That was what was said and the record should be corrected.

The Applicant argues that the Order does not make any findings of fact and conclusions of law on the following issues either.
The Applicant argued that Trial Counsel was ineffective for failing to exercise due diligence, skill and judgement when he waited until day of trial to explore the Applicant as to his witnesses that he wanted to call, such as family members written in on the witness list day of trial. There was no findings of fact or conclusions of law on this issue either.

there was no findings of fact or conclusions of law on Conflict of Interest and,
There was no findings of fact or conclusions of law on the Fourth Amendment violation, 14th Amendment violation, S.C. Code 22-5-200, S.C. Code 22-5-320, S.C. Code 17-23-162 No Affiant at Preliminary hearing, procedural due pricess violation or S.C. Code of criminal laws Rule 1,2,3, or the, S.C. Const article (1) Section (10) has not been mentioned in this order. That Applicant was unreasonabally seized after 48 hours without an arrest warrant.The Applicant moves the Court to Alter Amend the Judgement.

Greenville, S.C.
Dated 3-10-21

s. Terry Edward McCall

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

PROOF OF SERVICE

I, the undersigned Terry McCall have properly served the Motion to Alter, Amend, Correct Rule 59 (e) on the parties listed below by placing the same in the United States Postal Mail Service, Postage prepaid, affixed and forwarded to the addresses below:

Dated 3-10-21

s. Terry McCall

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

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

Taylor Z. Smith, AAG
S.C. Attorney Generals Office
P.O. Box 11549
Columbia, S.C. 29211

R. Scott Sprouse, Judge
The Circuit Court of the tenth Judicial Circuit
Oconee County Courthouse
Post Office Box 1277
Walalla, S.C. 29691

Randall Chambers, Attorney

Dear Clerk of Court, 3-22-21

(Rule 59e)

Find enclosed the Additional ~~Motion~~ Complaint, that needs forwarded to Judge Scott Sprouse, A.A.G. McSmith, and Filed with the Clerk of Court, And a copy returned To me for my records.

Additional argument, Issues to my Motion To Alter, Amend, Rule 59e I filed

Please file this forward copies to the parties listed, return me a filed copy.

S Jay McCall

Send me Electronic evidence this was forwarded Please, Im Pro Se'

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

Dated 3-22-21

Add To: Motion To After Amend, Rule (59e)

2021 MAR 30 AM 11:02
FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

Re: 2020-CP-23-01497 Terry McCall Vs. State, Motion To After Amend Judgement Additional Issues that need corrected by Judge Scott Sprouse Order for Denial.

Dear Judge Scott Sprouse, Attorney General, Assistant, Mr. Smith, Clerk of Court,

Please forward copy of this letter to After Amend Order to the Judge Sprouse A.A.G Mr. Smith, and file copy, return ok a filed copy,

Judge Sprouse, AAG Smith,

On Page 10-of-40 1st Paragraph The Order Alleges Applicant made claim on record (1) that his due Process ~~rights~~ rights were violated because # probable cause hearing was not held within 48 hours,

This Applicant made claims that Applicants Fourth Amendment right, Procedural Due Process, Due Process, 14 Amendment right, S.C. Const. Article 1 Section 10, was violated,

The Applicant made several "arguments, each additional to Probable cause, more than one, which were; the Applicant was denied a probable cause hearing within 48 hrs, and was unreasonably seized because of this violation, After 48 hours

the Applicant Argued there was Never an officer who sworn under oath by Affidavit to Judge that Applicant ever committed a crime, And the Court could not grant or hold a Preliminary hearing Without an arrest Warrant; Violation of 22-5-320, No Affiant testified at the Preliminary Hearing on Violation of 17-23-162 S.C. code only the officer and the Solicitor Was allowed to determine probable cause At prelim and the Court circumvented the Warrantless Arrest, Judicial determination of Probable Cause; for Arrest for that of the Preliminary Hearing, and over judge, to seperate, Powers of Functions

The Numeral (1) claim Applicant made does Not cite ever argument or bases, Any Findings of Fact, conclusions of Law and must be Amended, Altered to Correct this error,

This is an Additional Compliant to Add to the Rule 59e filed with the Court,

S. Jean McCall
Manager Work Release/Rehab
502 Beckman Drive
Columbia, S.C. 29203

Dated 3-22-21
Greenville, S.C

Proof of Service

I, the undersigned, have properly served the parties listed below, with Additional Argument / Issue concerning Motion To Affect Previous Order of Denial of D.L.R. application, by placing same in the United States Postal Service Postage Prepaid Affixed, forwarded to Addresses AAG Mr. Smith, Judge Scott, Spruce electronically by clerk of court, And by mail / Clerks Office

Dated 3-22-21

S/ Terry mccall
Terry mccall/233236
Manning Work Release/Restitution
502 Bookman Drive
Columbia S.C
29203

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

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Terry E. McCall, SCDC #233236, Applicant, vs. State of South Carolina, Respondent.	C/A No.: 2020-CP-23-1497 **ORDER DENYING APPLICANT'S MOTION FOR RECONSIDERATION**

ENTERED COMPUTER

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discovery any material fact or principle of law that has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Applicant's Motion, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure is DENIED.[1]

AND, IT IS SO ORDERED.

R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Walhalla, South Carolina
March 15, 2021

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE
2021 MAR 19 AM 11:23

[1] The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

Copy mailed to
Attorney General / T. McCall
on 3 19 2021