

ATTACHMENT 1

Second State Habeas, 06-578

Findings of Fact and Conclusions of Law

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
)SS	
COUNTY OF MEADE)	FOURTH JUDICIAL CIRCUIT
OAKLEY ENGESSER,)	
)	Civ. 06-578
Petitioner,)	
)	
vs.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
BOB DOOLEY, Warden of the)	
South Dakota State)	
Penitentiary,)	
)	
Respondent.)	

Pending before the Court is Petitioner's Writ of Habeas Corpus. This matter came on for hearing on the 6th day of July, 2007; the Petitioner appearing personally and by and through his attorney, Rena M. Hymans; the Respondent not appearing personally, but by and through its legal counsel, Meade County Deputy State's Attorney, Wendy Kloepfner; and the Court having considered all the evidence presented including the previous criminal file, Meade County Criminal File No. #01-55; the South Dakota Supreme Court Opinion of State v. Engesser, 2003 SD 47; the opinion of the Circuit Court in the first habeas action, Meade County Civil File No. #03-408; the opinion of the Honorable Karen E. Schreier, Engesser v. Dooley, 2005 WL 1278473 (DSD 2005); and the decision of the Eighth Circuit of Appeals, Engesser v. Dooley, 457 F.3d 731 (8th Cir. 2006); and having considered the arguments of both parties, and good cause appearing, the Court enters the following:

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SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

FINDINGS OF FACT

1. The Court finds that the Petitioner, Oakley Engesser, is in the custody of the Warden of the South Dakota State Penitentiary at Mike Durfee State Prison in Springfield, South Dakota, pursuant to the Judgment of Conviction entered in Meade County Criminal File No. 01-55.

2. The Court finds that the Petitioner was convicted of one count of Vehicular Homicide and two counts of Vehicular Battery in Meade County Criminal File No. 01-55, after a jury trial in that matter, and was sentenced to a term of twenty-five (25) years.

3. The Court finds that Timothy Rensch was Petitioner's trial attorney in the original criminal trial as well as on his direct appeal to the South Dakota Supreme Court.

4. The Court finds that Matthew Kinney represented the Petitioner in his initial habeas action in 2003, Meade County Civil File No. 03-408.

5. The Court finds that on July 30, 2000, Engesser and Dorothy Finley were involved in a motor vehicle accident on Interstate I-90 in Meade County, South Dakota. Finley died in the accident.

6. Earlier on the same day, Eric Eckholm's vehicle had stalled on the side of the road. Eckholm and his then girlfriend Charlotte Fowler got a ride to Rapid City to retrieve

Fowler's vehicle. Eckholm and Fowler returned to Eckholm's vehicle to retrieve Eckholm's tools.

7. The Court finds that Eckholm's vehicle was parked on the shoulder of Interstate I-90 facing east. Fowler's vehicle was facing east and parked on the shoulder directly in front of Eckholm's vehicle.

8. Both Eckholm and Fowler heard tires screeching and saw Finley's Corvette spinning out of control traveling east on the Interstate. Eckholm was standing at the rear of his vehicle retrieving tools when the Corvette skidded past him. Fowler was seated in her car and heard and saw the Corvette go by.

9. The Corvette had spun around and was traveling backwards down the Interstate. The Corvette came within a few feet of striking Eckholm and within a few feet of the Eckholm and Fowler vehicles.

10. The Court finds the Corvette was traveling at a high rate of speed and struck the back of another vehicle that was also traveling east on the Interstate.

11. The Court finds that eyewitness Eric Eckholm testified, at this habeas hearing, that Dorothy Finley was the driver of the subject motor vehicle in this vehicular homicide case, and that Petitioner, Oakley Engesser was the passenger. The Court finds that Eckholm saw Engesser being ejected on impact through the passenger side window and that Eckholm saw

Engesser lying in the median several car lengths from the Corvette.

12. The Court finds that eyewitness Charlotte Fowler saw the crash, saw a leg with a boot of a person ejected from the red Corvette, saw the location of Engesser in the median several car lengths from the Corvette and saw Finley driving the Corvette earlier in the day. The Court finds the passenger window in the Corvette was completely shattered out of the vehicle.

13. The Court finds the testimony of Eckholm and Fowler to be consistent with the physical evidence after the accident, that is, the passenger window being shattered and Engesser being ejected into the median and Finley remaining in the vehicle.

14. The Court finds that after the accident, four South Dakota Highway Patrol Troopers were at the scene. Trooper Edward Fox was placed in charge of the investigation.

15. Eckholm was interviewed by Trooper Fox and gave a written statement. Eckholm testified that Trooper Fox, at no time, asked him who was driving the vehicle. Fowler was interviewed by Fox but was too upset to give a written statement although Fowler thought Trooper Fox wrote out a statement for her. Both Eckholm and Fowler testified that after the night of the accident, neither was contacted by law enforcement, the State's Attorney or defense counsel concerning their

observations of the accident.

16. The Court finds that in April or May 2001 prior to the criminal jury trial, the State of South Dakota through Meade County State's Attorney disclosed the existence of two potential witnesses to Mr. Rensch, those witnesses being Eric Eckholm and Charlotte Fowler.

17. The Court finds that neither Mr. Rensch nor his investigators ever interviewed Eric Eckholm or Charlotte Fowler.

18. The Court finds that the investigative report filed by Trooper Fox indicated that there were no eyewitnesses as to whether Engesser or Finley was the driver of the Corvette. The Court finds that Attorney Rensch relied on the report of Trooper Fox and failed to interview Eckholm and Fowler as potential witnesses.

19. The Court finds that the testimony presented at the jury trial was that there were no eyewitnesses to the accident, and no witness could place Dorothy Finley or Oakley Engesser as the driver of the subject vehicle. The Court finds that the habeas testimony of Eckholm and Fowler directly contradicts the evidence presented by the State at trial.

20. The Court finds that the South Dakota Highway Patrol and others investigating the accident at the scene never marked the location of Oakley Engesser's body in relationship to the accident scene.

21. The Court finds that no photographs were taken of the position of Dorothy Finley within the subject motor vehicle at the scene of the accident.

22. The Court finds that the injuries that Oakley Engesser sustained in the subject motor vehicle collision were never photographed by the South Dakota Highway Patrol or any other law enforcement agency investigating this accident.

23. Trooper Fox based his opinion, at least in part, that Engesser was the driver on statements from witnesses that after the accident Engesser was six (6) to ten (10) feet from the driver's door of the Corvette which was open. The Court finds this testimony was directly contradicted by both Eckholm and Fowler who saw Engesser many car lengths from the Corvette.

24. The Court finds that the only individual at the jury trial to testify that Engesser was the driver of the Corvette was Trooper Fox, who at the time of the accident had less than three (3) years experience with the South Dakota Highway Patrol, was the least experienced trooper on scene, and was not certified to complete accident reconstructions. The Court further finds that Trooper Fox has maintained his records of the accident reconstruction and the State is not prejudiced by allowing Engesser to proceed with this second habeas petition and the State is not prejudiced in prosecuting Engesser at a new trial.

25. The Court finds that following oral arguments by Timothy Rensch before the South Dakota Supreme Court and publicity concerning the same, Eric Eckholm contacted Timothy Rensch and disclosed that he witnessed Dorothy Finley driving the Corvette at the time of the collision.

26. The Court finds that Attorney Matthew Kinney was surprised when Eric Eckholm's name was mentioned by the State at the first habeas hearing as being a potential eye witness. Kinney testified he knew the witness may have been important but Kinney never moved for a continuance.

27. The Court finds that Attorney Matthew Kinney did not interview Eric Eckholm.

28. The Court finds that Engesser, who suffers from a brain injury incurred as a result of the accident, was not aware of Eckholm as a potential witness until Eckholm was mentioned by the State at the first habeas proceeding.

29. The Court finds Eric Eckholm and Charlotte Fowler testified in court regarding their observations of the accident for the first time at the second habeas proceeding which was seven (7) years after the accident.

30. The Court finds that witness Eric Eckholm appeared to be a credible witness without identifiable bias.

31. The Court finds that witness Charlotte Fowler appears to be a credible witness without identifiable bias.

That based on the foregoing Findings of Fact the Court enters the following:

CONCLUSIONS OF LAW

1. This Court has proper jurisdiction over the parties and the matter and SDCL Chapter 21-27 governs this habeas action.

2. That the Court concludes the conduct of habeas counsel, Matthew Kinney, in failing to identify eyewitnesses Eric Eckholm and Charlotte Fowler in the prior habeas trial establishes reasonable cause pursuant to SDCL §21-27-16.1 to allow Engesser to proceed with his habeas petition. That ineffective assistance of habeas counsel is sufficient grounds to overcome the procedural bar of SDCL 21-27-16.1. Jackson v. Weber, 2001 SD 30, ¶10, 637 N.W.2d 19, 22.

3. That “[a]n attorney must make a reasonable investigation in preparing a case or make a reasonable decision not to conduct a particular investigation.” Lien v. Class, 1998 SD 7, ¶17, 574 N.W.2d 601, 608 quoting Foster v. Lockhart, 9 F.3d 722, 726 (8th Cir. 1993).

4. That trial counsel Timothy Rensch’s decision not to investigate Eckholm and Fowler was unreasonable as both witnesses were clearly in the best position to view the collision and give testimony regarding their observations.

5. That the legal services provided by Timothy Rensch in the original jury trial were deficient as trial counsel failed to fully investigate two eyewitnesses disclosed early on in discovery.

6. That when determining prejudice there are three factors to be considered by the Court: 1) the credibility of all witnesses, including the likely impeachment of the uncalled defense witnesses; 2) the interplay of the uncalled witnesses with the actual defense witnesses called; and 3) the strength of the evidence actually presented by the prosecution. Siers v. Class, 1998 SD 77, ¶25, 581 N.W.2d, 491, 497-98. That eyewitness testimony of Eckholm and Fowler would likely alter the outcome of the original jury trial, i.e., the conduct of Timothy Rensch caused prejudice to Petitioner, Oakley Engesser.

7. That witnesses Eckholm and Fowler will likely be considered credible and not subject to substantial impeachment at trial.

8. That no witnesses were called on behalf of Engesser at his original jury trial and therefore these witnesses would provide a credible defense to Engesser.

9. That the strength of the evidence presented by the prosecution at the jury trial was weak as indicated above in the findings. The Court concludes the eyewitness testimony of Eckholm and Fowler would have likely altered the outcome of the

original jury trial.

10. The conduct of Engesser's trial counsel in failing to interview and present testimony of Eckholm and Fowler at trial caused prejudice to Engesser.

11. The Court concludes as a matter of law that Engesser was not afforded effective assistance of counsel at trial. The Court concludes Engesser has been deprived of his basic constitutional right to a fair trial. Jackson v. Weber, 2001 SD 30, 637 N.W.2d 19.

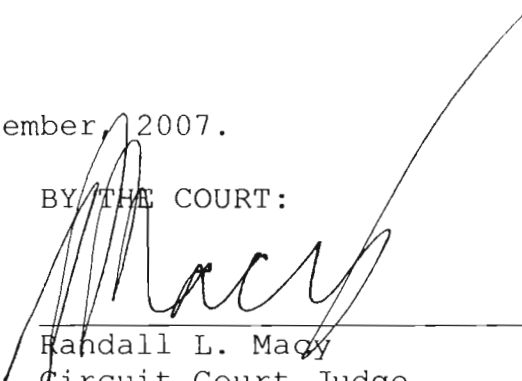
12. The Court further concludes State is not prejudiced by being required to proceed with a new trial. SDCL §21-27-3.2.

That Findings of Fact may be deemed Conclusions of Law and vice versa.

This Court's Memorandum Decision is incorporated herein by reference.

Dated this 26th day of September, 2007.

BY THE COURT:

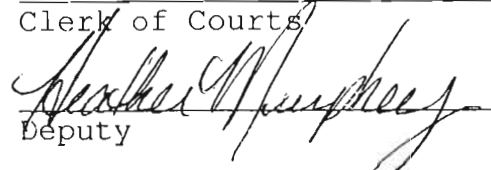


Randall L. Macy
Circuit Court Judge

ATTEST:

LANE KEIL

Clerk of Courts



Deputy

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4TH CIRCUIT CLERK OF COURT

By _____