

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI FROM COA
APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Hon. Donald Hocker, Circuit Court Judge

Appellate Case No. 2022-000571

RECEIVED
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S.C. SUPREME COURT

State of South Carolina..... Respondent,

vs.

Adam Rowell Petitioner.

APPENDIX
VOLUME IV

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1 trying to cut him out of that vehicle. Twenty to 30 minutes
2 inside the vehicle. And what was his testimony when he got
3 up here on the stand, folks? Smelled alcohol coming from
4 his breath. That was his testimony. How close were you?
5 Mr. Downtin talked to him. Mr. Downtin right there. He
6 talked to him. How close were you? Were you this close?
7 Closer. This close? Closer. This close? Closer. Right
8 in his face holding his head up trying to save his life.
9 Derrick Oliver in the vehicle with the Defendant, Adam
10 Rowell. Alcohol coming from his breath. Larry Kidd wasn't
11 in the vehicle. There was only one person in the vehicle
12 with Adam Rowell and that was Derrick Oliver. They
13 eventually cut him out of that car, put him on a stretcher,
14 put him in an ambulance to drive him up the road to where
15 the chopper was going to take him to Greenville. Larry
16 Kidd, what was his testimony? Walked in the ambulance, the
17 smell about knocked you out. You could smell it as plain as
18 day in that EMS vehicle. Derrick Oliver, any doubt in your
19 mind that you smelled alcohol? No doubt, quote. He
20 testified to it on the stand, folks. No doubt. No doubt.
21 Page 61, EMS report. The one they fill out immediately
22 once they get done treating a patient. You heard Larry
23 Kidd. He's the one that filled this report out. But he --
24 Derrick Oliver and Larry Kidd get together and they fill it
25 out. You'll have this report. Patient's name, Adam Rowell,

1 up at the top. Alcohol, drugs. What does it say? Smell of
2 alcohol on breath, 11/15/2014. Filled out immediately after
3 saving that man's life while it was still fresh on their
4 mind. It's in black and white, folks.

5 While we're on the EMS personnel you also heard from
6 another EMS personnel, Tiera Boyter. What was her
7 testimony? She didn't smell any alcohol. I think she's
8 actually sitting back here. She didn't smell any alcohol.
9 But what was her job? What were her duties out there? They
10 were the last EMS personnel to be there. She wasn't in the
11 car with Adam Rowell. She wasn't holding his head up. She
12 wasn't doing any of that. She was the last one there in
13 terms of EMS personnel. Lowenna Prestel, you heard from
14 her. They tended to Matthew Sanders and took him to Self.
15 Their job was to take Jeremy Cockrell, to pull him out of
16 that truck, leg impaled in the brake. Pull him out of the
17 truck and take him to the morgue. I'm not denying that Ms.
18 Boyter helped with the Defendant in this case. You all
19 heard that. She definitely did. But what did she do after
20 the fact? What did she do after the fact? She went to
21 Greenville Memorial Hospital. She met with the Defendant's
22 father. His father took her back there to see this man who
23 was in a coma. She became emotionally involved in the case.
24 She became friends with the Defendant's sister on Facebook.
25 They kept up. They're still friends today. She became

1 emotionally involved in this case.

2 Now, folks, I don't want to make light of the
3 situation, but I've been married for three years now and I'm
4 over the honeymoon stage and my wife blames me for selective
5 hearing. Maybe some of you guys been blamed for this as
6 well. When your wife says, hey, after the game can you
7 unload the dishwasher, all I'm hearing is after the game.
8 There's also a thing called selective memory. Tiera Boyter
9 said that she didn't smell any alcohol. But in this
10 particular case she's got selective memory. She suppressed
11 those memories because she became emotionally invested in
12 this case.

13 Who else did you hear from, folks. You heard from the
14 MAIT team. Stand up group of folks that work with the
15 Highway Patrol. Accident reconstruction folks. Extensive
16 training in how vehicles when they collide what they do.
17 They talk about angles. I heard the word vector. I haven't
18 heard that since high school. A bunch of stuff that's stuff
19 I don't know about. You heard from all of them. You heard
20 from Kelly Anderson, you heard from Corporal Duncan, you
21 heard from T.J. Brooks, you heard from Chris Bratcher. All
22 these individuals responded in some capacity. Kelly
23 Anderson and Al Duncan responded that night. They both live
24 here in Greenwood and they got there about an hour and a
25 half after the wreck. Kelly Anderson was the first one to

1 arrive. And they started taking pictures. They started
2 taking pictures. They took pictures of a Red Stripe bottle
3 located in Defendant's car. They took pictures of the
4 aftermath of the vehicle after he'd been cut out. They took
5 lots of pictures. Tons of them. They took pictures of
6 extensive damage to the red truck. Front end damage. They
7 took pictures of where the collision occurred in the red
8 truck's lane of travel. Where that big blob of black stuff
9 is, all the fluid leaking out of the vehicle. Took pictures
10 of that. They took them from all different angles, folks.
11 They took pictures front end damage of the vehicle looking
12 back the way towards the Hot Spot. And they took pictures
13 even further behind the Hot Spot -- or right behind the red
14 truck towards the -- moving towards the Hot Spot.

15 And what's clear as day in these pictures, folks? What
16 is that? What's the testimony that you heard? What did Ms.
17 Anderson, what did Sergeant Duncan, what as their testimony?
18 That when they got there and started taking pictures they
19 started going an assessment. They saw where the vehicle was
20 rusted. They took pictures and there was brake marks
21 clearly in the victim's lane of travel. Clearly in the
22 victim's lane of travel. Jeremy Cockrell was driving that
23 vehicle and he saw what was coming towards him and he hit
24 the brakes trying to stop. The evidence is undeniable.
25 It's undeniable. He's in his lane of travel trying to stop.

1 What was the MAIT team's assessment? What was their
2 final findings? The red truck as driving down the road. I
3 guess they had seen something that didn't right -- didn't
4 sit right, didn't look right. Hit the brakes. Try to come
5 to a stop. Try to avoid whatever it was and ultimately a
6 collision happened. Area of impact clearly in the victim's
7 lane of travel.

8 Matt Sims is the Defense expert, former MAIT guy
9 himself. He said the same exact thing. The area of impact
10 was in the red truck's lane. It's not contradicted. He
11 testified to the exact same thing. So what does that tell
12 us? That tells us that this man right here, Adam Rowell,
13 crossed the left of center in that road -- in that stretch
14 of road and hit the truck that killed Jeremy Cockrell and
15 fractured Matthew Sanders femur. He crossed left of center.
16 It's his fault. And there's no question about it, not from
17 MAIT, not from Duncan, not from Anderson, not from Bratcher,
18 not from Brooks, and not from Matt Sims. It's as plan as
19 day, folks. Plan as day.

20 And that testimony about where that lane -- where this
21 wreck occurred, where this collision occurred is
22 substantiated by Matthew Sanders. You heard from Matthew
23 Sanders. He was the other victim in this case that was
24 riding passenger with Jeremy Cockrell. And what was his
25 testimony? That he was in a relationship with Jeremy

1 Cockrell. They'd known each other for several months, and
2 they were coming from Abbeville. They were at his teacher's
3 house, Mr. Raines. Mr. Raines was giving him some advice
4 about getting a job and growing up and starting to be a man.
5 And then they were heading to Jeremy's cousin's, Brandy's
6 house. And Matthew said it was towards Anderson. But this
7 man, he's never had a driver's license. He testified to
8 that. He's got no sense of direction. Brandy lives towards
9 Saluda. So they get on 72. They drive back to Greenwood,
10 take 225 and are heading to Brandy's house. I asked Matthew
11 Sanders, when's the last time you -- did you all have
12 anything to drink that day? No, didn't have anything to
13 drink. When's the last time you all smoked marijuana? The
14 week before. Neither of them were under the influence of
15 anything. And they were having a discussion. You heard
16 about that. And he didn't really want to go into that, and
17 that's private. I understand why he didn't want to go into
18 that. But his testimony was -- they were coming around that
19 curve and 30 yards out he saw the truck and it was in their
20 lane and he grabbed the handlebar and he curled up in the
21 fetal position and he screamed, the impact happened and
22 Jeremy Cockrell was dead and he watched him gasp his last
23 breath. That's what happened, folks. That's what happened.
24 I've already gone through all of the EMS people said.
25 What MAIT testified to. But what happened after that? You

1 heard about a chopper. The LifeFlight that had to show up,
2 because Adam Rowell, his life was in danger. EMS personnel
3 saved him. They called a chopper. The chopper got on the
4 ground. While they were waiting on firefighters and EMS
5 personnel to cut him out of that vehicle Angela Waite showed
6 up with the helicopter. She was driving the helicopter but
7 she was the nurse on the chopper. They gave him some drugs.
8 They intubated him. Got his breathing tube in there to make
9 sure that he would be able to breath and they took him to
10 Greenville. And you heard that he was given blood on the
11 LifeFlight chopper, 540 milliliters of blood. This is 500
12 milliliters. Not 24 ounces. A 16.9 fluid ounces, 500
13 milliliters of blood. This is what was given to him before
14 he got to Greenville. Once he got to Greenville what did
15 they do? They took him into the trauma center. And you
16 heard testimony about what the trauma center is like. Even
17 Dr. Valentine, the Defense's expert, said it's controlled
18 chaos. When you're trying to save somebody's like that it's
19 nuts. But everybody's got a job. Every nurse has a job.
20 Everybody's got a job. And while Dr. Snow is saving this
21 man's life everybody else, all the nurses, all the emergency
22 personnel are doing something to ensure that that man lives.
23 And standard procedure, standard protocol, you've heard,
24 folks, that when an individual gets to the hospital they
25 immediately draw blood and send it to the lab to see what

1 the heck is going on in his system. Why do they do that?
2 So they don't give him something that kills him. Standard
3 procedure. And you heard that Nurse Baker got this blood
4 about nine o'clock, 20:54, 8:54. Maybe her clock's a little
5 bit off. The blood was sent to the lab. You heard from
6 Robert Smith, the lab technician that received it. Entered
7 it into the computer system and began running the test, and
8 that test came back 219. 219 plasma. You'll have this
9 document. It looks like a bunch of computer gibberish if
10 you ask me. State's 69. But on the second to the last
11 page, you guys will have a chance to look at it. The test
12 that was done. Ethanol test right here and the result, 219.
13 And you heard the conversation factor. This is plasma
14 alcohol, remember. So it's not a 22. It's really an 18.6.
15 You can round up to a 19, or you can keep it as an 18. 18
16 percent alcohol. The legal inference you're going to hear
17 about, .08.

18 MR. GARRETT: Objection, Your Honor.

19 THE COURT: Okay.

20 MR. GARRETT: Can we approach?

21 THE COURT: Let me -- Mr. Foreman, ladies and gentlemen
22 of the jury, let me deal with this legal issue. Go back to
23 the jury room, hopefully for just a couple of minutes.
24 Again, don't begin any deliberations yet, and we'll get you
25 back out shortly.

1 (Whereupon, the jury exited the courtroom at 10:24
2 a.m.)

3 THE COURT: Mr. Garrett.

4 MR. GARRETT: Your Honor, that's exactly what we were
5 talking about. I have no problem with him talking about the
6 inference in the SLED, but he's using the inference that
7 you're going to charge in the draw that -- the case clearly
8 says that we can't use.

9 THE COURT: Yeah.

10 MR. GARRETT: And that's exactly what we were trying to
11 prevent.

12 THE COURT: Right.

13 MR. GARRETT: But now that jury's been tainted with
14 that.

15 THE COURT: You want to put anything on the record,
16 Solicitor?

17 MR. BLACK: Judge, I think the instructions that you're
18 going to charge are that they are -- I said -- I said the
19 legal inference is --

20 THE COURT: Right.

21 MR. BLACK: -- .08.

22 THE COURT: Right. But I think it was in connection
23 with the -- your discussion about the hospital draw result.

24 MR. BLACK: Right. And I just said that you will hear
25 -- you will hear an inference level -- a legal inference

1 level.

2 THE COURT: Well, I think the best way to handle this
3 is for me to remind them once again when they're brought out
4 that -- concerning the law that I instruct them, if it
5 conflicts with whatever the lawyers say. And quite
6 honestly, I think it may would help if when we bring them
7 out that -- well, I was going to suggest that, Solicitor,
8 you may clarify yourself or correct yourself. I don't know
9 if that necessarily will help, but I think it might if there
10 could be some -- I mean, you're -- you're not moving for a
11 mistrial are you, Mr. Garrett? You're just wanting some --
12 the best cleanup that we can make?

13 MR. GARRETT: There has to be a demarcation, Judge,
14 under our law between that -- was it Huntsman case?

15 THE COURT: Hunter.

16 MR. GARRETT: Hunter case and this one. And our
17 concern was it was going to be confusing --

18 THE COURT: Right.

19 MR. GARRETT: -- if everybody's doing what they're
20 supposed to be doing. But if people are purposefully
21 putting them together. And if we don't get that
22 straightened out, Judge, I don't think it's a fair trial.

23 THE COURT: Right.

24 MR. HENDERSON: And about the only way to straighten it
25 out, Your Honor, would be just to remove the inference from

1 the charge and prohibit the Solicitor from talking about it
2 at all.

3 THE COURT: No, I'm not going to remove the inference.
4 What I want to do is make sure that there is no prejudice
5 resulting in this case by what Solicitor Black had argued.

6 I think the best way to handle it is I will reaffirm
7 the fact that they are to consider my law and not anybody
8 else's law. And I think it may help if you tell them that
9 you need to correct yourself as far as an inference level
10 and hopefully you can do that. I think if it comes from you
11 that you misspoke, I think that would -- I think that would
12 help to some fashion.

13 MR. GARRETT: If that's the best we can do, that's the
14 best we can do.

15 MR. BLACK: I'll -- Judge, I guess I can -- I can just
16 read straight from your jury charge if you'd rather me do
17 that.

18 THE COURT: No, I don't -- I don't think you need to do
19 that. I think you just need to tell them that you made a
20 mistake. That there's not any inference level with respect
21 to this blood test result that I've just been arguing to you
22 about.

23 MR. BLACK: Yes, sir.

24 THE COURT: And then move on. And I think that would
25 be the best way to handle it.

1 MR. BLACK: And, Judge, before we have them back out
2 here, I can talk about that with respect to the .096 which
3 is the SLED draw? The inference level?

4 THE COURT: Right. I am charging the inference level
5 as it relates to the SLED draw. That's right.

6 MR. BLACK: Yes.

7 THE COURT: Let's bring them out.

8 (Whereupon, the jury entered the courtroom at 10:29
9 a.m.)

10 THE COURT: Let the record reflect the jury is back
11 out. Ladies and gentlemen, let me just remind you once
12 again that the only law that you are to consider in this
13 case is the law that I will be giving you after the closing
14 arguments are made. And if there's -- again, if there's
15 anything that is stated to you with respect to the law by
16 these attorneys and it does not agree with what the laws as
17 I instruct it to me then you disregard what they say and you
18 follow the law as I give it to you. Okay?

19 Solicitor, are you ready to proceed, sir?

20 MR. BLACK: Yes, sir. Thank you, Your Honor. And like
21 the Judge stated, folks, if I say something that doesn't
22 match up what the Judge says, the Judge is right. And the
23 same applies for Mr. Garrett. And just to clarify, we're
24 talking about an inference level. That does not apply to
25 the 219 which is really an 18. That does not apply here.

1 But it does apply on the second draw. And you heard that
2 the Defendant in this case, Mr. Rowell, as soon as he got
3 there he was stuck, taken into emergency surgery. Brunson
4 Smith, Highway Patrolman, drove immediately up there to
5 Greenville Memorial and you heard that he was in the waiting
6 room while the Defendant, Mr. Rowell, was in surgery. And
7 once surgery was complete he went back there with Nurse
8 Leslie Childers. Ms. Childers drew the Defendant's blood,
9 12:56. You heard about the whole process about how he takes
10 that blood, he puts it -- puts it in a box. He seals it up.
11 He drives that box immediately to Troop 2 here in Greenwood,
12 places it in evidence, turns it over, and ultimately that
13 box goes down to SLED to be tested. And what was the result
14 of that test? .096. That test -- that blood was drawn at
15 1:00 a.m. in the morning, four hours -- about four hours
16 after the Defendant got to the hospital after he'd been
17 given additional fluids and that result still comes back a
18 .096. And the instrument that was used on that test was the
19 gas chromatography and you heard that test is -- that's the
20 gold standard, because that measures ethanol exactly. And
21 with the result of that draw the inference level comes into
22 play. The second draw.

23 Now, you heard testimony from the toxicologists. From
24 two toxicologists that work for SLED, and you heard from Dr.
25 Valentine who's a toxicologist and expert in his own right.

1 And what did you guys hear about that? You heard that if an
2 individual is a .08 they're impaired to drive. If they're a
3 .10 they're too impaired to drive. If they're a .18 they're
4 too impaired to drive. To operate a motor vehicle in this
5 state. That's what the testimony was, folks.

6 He arrived at the hospital about nine o'clock. 9:00 to
7 10:00, 10:00 to 11:00, 11:00 to 12:00, 12:00 to 1:00. About
8 four hours. And you heard that a normal person -- a normal
9 human being is metabolizing alcohol like they should be,
10 during that four hours it should be .06, and 19 minus six is
11 13, 18 minus six is 12. The results come back to a .09.
12 Why is that? Why is it coming back to a .09? Remember
13 folks, he'd been given fluids. Additional fluids. It all
14 makes sense. All this follows. It all makes sense.

15 Folks, you guys heard from Dr. John Reddic and you
16 heard from Dr. Jimmie Valentine. And you heard that --
17 talking about the first draw, you heard that the machine
18 that's used for this particular type of draw is an enzyme
19 based machine. And the Defense put up an expert witness, a
20 Mr. Jimmy Valentine. And Mr. Valentine talked about his
21 research in this area and what he's seen personally in this
22 particular area as relating to this machine testing ethanol.
23 I don't know if you all remember all of that. But he talked
24 about false positives. And I want to discuss that just
25 briefly for a minute. Part of the Defense's case was

1 putting up Mr. Valentine and he said that in this case there
2 was a false positive. But if you remember what he said, he
3 said that in these particular cases there can be false
4 positives. Even Dr. Reddic, who the State put up who is the
5 clinical director of the lab at Greenville Hospital System
6 said that there can be false positives. And he has been at
7 Greenville for about three years and how many has he seen in
8 the course of his career? He's seen one. They're rare.
9 They're rare, folks. And what was the one instance that he
10 talked about that he had seen? It was a little kid that
11 should have read a zero and they were at 30 milliliters per
12 deciliter, which is really a .03. It's actually less than
13 that. It's .02. .02 false positive. What did that result
14 come back? 18. 18.

15 When Dr. Valentine was up on the stand asked him,
16 what's the highest one you've ever seen Dr Valentine.
17 You've been doing this a long time. You're getting paid
18 \$10,500 for your testimony this week. You've done a lot of
19 research. You've written a lot of articles. What's the
20 highest one you've ever seen. .09 was the highest he'd ever
21 seen as a false positive. 18 minus nine is .09. The
22 highest one that Dr. Jimmie Valentine had ever seen, .09.
23 They can happen. Sure they can happen. But the highest
24 one, .09, and that result was an 18. 18 or 19, depending on
25 if you round it up or not. What do you have to have to have

1 that false positive? You've got to have lactate acid and
2 you've got to have lactate dehydrogenase in order to make a
3 determination. There's no lactate dehydrogenase that was
4 measured on that report. Nothing in the records of that.
5 Dr. Valentine testified to that. Dr. Reddic testified to
6 that. But we don't know what he had in his system, the
7 lactate dehydrogenase. What we do have is how much lactic
8 acid he had in his body. And what's a normal level of
9 lactic acid? .5 to 1.6 is normal -- a normal level. At
10 22:10, 10:10 p.m. that night his lactic acid was a 3.3. Two
11 or three times the -- two or three times elevation of what
12 it should be. And if you remember what Dr. Valentine said,
13 when there are false positives from all the tests that were
14 sent to the labs where they ran these tests it was 25. 25
15 times the normal elevation. He was only one or two. Folks,
16 I submit to you that that test was accurate. There wasn't a
17 false positive on that test and all the evidence after that
18 suggests the same thing.

19 Who else did you hear from in this case? You heard
20 from Adam Rowell. What was his testimony? His testimony
21 was that he went and bought a Red Stripe after he got off
22 work on a Friday night. It was early Saturday morning after
23 he got off work. He consumed one of those Red Stripes and
24 saved -- saved one of them for the next day that he had for
25 his lunch about three o'clock when he ate his spaghetti

1 meal. And you heard testimony that once he finishes the Red
2 Stripe he puts it in a book bag. He doesn't throw it in the
3 garbage can because his mom's religious. That's what he
4 testified to. But he takes his Red Stripe in the house
5 where his mom lives and consumes the Red Stripe in the house
6 and his mom's still religious. But he doesn't throw it in
7 the garbage can. He puts it in a bag. Drinks it in the
8 house, mom's religious, but doesn't throw it in the garbage
9 can because mom's religious. That was his testimony. He
10 admits to drinking alcohol that day. Having a Red Stripe at
11 dinner. His testimony was that he was trying to go to
12 Outback or O'Charley's, a restaurant here in town, I forget
13 which one it was, to celebrate some birthdays. After
14 driving around to and from town all day, goes back to the
15 house to get a gift card to give his dad after being at
16 Walmart and then heading to this family dinner. Driving
17 225. The road that he travels every day. A road that he's
18 traveled his entire life. The roads that we travel every
19 day. How familiar are we with those roads? We know every
20 detail of those roads between Abbeville and Iva. It's the
21 road I travel every day. Every detail. Mr. Rowell's
22 testimony was he crossed over 25, passed the Hot Spot and
23 was heading up towards the fairground. And at a certain
24 point that evening while he was on that road he saw that red
25 truck in his lane. At that point Mr. Rowell made a

1 decision, and he said that his decision was to hit the gas
2 and try to pass the red truck in his lane. In the red
3 truck's lane. Folks, you're going to have this CAD report,
4 this CDR. It's the black box of his particular vehicle.
5 And you've heard testimony about these numbers and what they
6 mean. And you get to judge the credibility of the
7 witnesses. That's the job that you guys get to do. What
8 does it say. Eight seconds before impact the brakes are
9 off. Seven seconds before impact he taps the brakes.
10 They're briefly on. And at that point his testimony was
11 that he saw the red truck in his lane, so he made the
12 decision to go in the red truck's lane and pass the red
13 truck in his lane seven seconds before the wreck. How fast
14 was he going? Sixty-six, 65, 66, 67, 66 five seconds before
15 he wrecked. So at seven seconds he was probably going
16 between 60 and 65.

17 Folks, I submit to you that if you're going 60 miles an
18 hour you can travel 200 yards over seven seconds. You can
19 travel 200 yards in seven seconds. I submit to you you can.
20 200 yards is two football fields. Two football fields. And
21 you can see at night where there's no lights and a curve in
22 the road 200 yards out what lane another vehicle was
23 traveling? And that vehicle is also driving. You're going
24 like this. So I submit to you that it's more like 300
25 yards. Three football fields out, seven seconds. And you

1 see the red truck is in your lane at dark with no lights and
2 there's a curve in the road? You get to be the judge of the
3 witnesses, folks. You judge the credibility of the
4 witnesses. So at seven seconds he taps his brakes, then
5 hits the gas to try to pass the red truck in his lane where
6 there's a guardrail, a road that he's familiar with that he
7 drives every day, his whole life. There's a guardrail on
8 the red side -- on the side of the road where the red truck
9 is and he's going to pass him in that lane. The guardrail
10 is right here. Folks, seven seconds out. That's that road
11 looking back up towards the Hot Spot. It looks like there's
12 a Highway Patrol. This is the MAIT team vehicle pulled over
13 to the side of the road. I'll give you that. I'll give you
14 it's not ideal to pull over. It's not an ideal spot. But
15 there is plenty of room to pull over. Plenty of room to
16 pull over, and there's no guardrails inhibiting any of this.
17 Not one guardrail. But Mr. Rowell is going to pass him on
18 the right side of the road where there's a guardrail seven
19 seconds out from the time of the wreck. That was his
20 testimony, folks. It doesn't add up. It does not add up.
21 There is plenty of room to pull over on the left side of the
22 road. Not ideal. Not ideal. But folks come on. Seven
23 seconds, he saw it in his lane and he tapped the brakes. I
24 submit to you you can go 200 yards in seven seconds going 65
25 miles an hour. Two football fields.

1 The last words uttered in this trial were by Mr.
2 Rowell. His words, took me a while to piece together what
3 took place. He was in a comma for two weeks after that.
4 Took me a while to piece together what took place. Not my
5 words. Not my words.

6 Folks, we all make choices. Life's full of choices.
7 And every choice has a consequence. Every single one of
8 them. From the minute choices that we make in our every day
9 lives to the choices that cost people their lives. November
10 the 15th, 2014 a man made a choice. He made a choice folks.
11 That choice was to get behind his 2005 Chevrolet truck after
12 he'd been drinking. He made a choice to get in that truck,
13 to drive that vehicle. Cost one man his life. Cost another
14 man a broken leg. Life's all about choices. All those
15 choices, folks, have consequences. They all do. In a few
16 minutes, after all the attorneys get done talking, you're
17 going to go back in this room and you're going to
18 deliberate. Your job is the finder of the facts and
19 determine what happened in this case.

20 Folks, the facts could not be any more clear. If you
21 are firmly convinced that Adam Rowell is guilty, you've got
22 to find him guilty. And I submit to you the evidence shows
23 nothing to the contrary. Thank you.

24 THE COURT: Thank you, Solicitor. Let's take about a
25 five minute break before we start Defense closing. Okay?

1 Mr. Foreman, ladies and gentlemen of the jury, we'll take a
2 short break and then Defense will make their closing
3 argument. Again, don't start any discussion about this
4 case.

5 (Whereupon, the jury exited the courtroom at 10:51
6 a.m.)

7 THE COURT: Let's take a short little break.

8 (Whereupon, a recess was held from 10:51 a.m. to 11:03
9 a.m.)

10 MR. GARRETT: Judge, can we be heard on one issue
11 before the jury comes out?

12 THE COURT: Sure. Mr. Garrett, or Mr. Henderson, you
13 got a point?

14 MR. HENDERSON: Yes, sir, Your Honor. I know you
15 mentioned in chambers the other day that you will honor the
16 ruling in State vs. Beatty from December of last year. And
17 the whole idea behind State vs. Beatty is that the side that
18 goes in the middle, in this case the Defense, gets to
19 respond to the best argument that the government has on a
20 particular issue. Again, it cuts off sandbagging. In the
21 government's argument here there's no mention of several
22 different things, when they're required to open fully on the
23 law and the facts. There was no mention of Ms. Samantha
24 Byrd. There's no mention of Walmart videos or the receipt
25 entered at Walmart. There's no mention of Justin

1 Pennington. If they don't want to open fully on that, fine,
2 but they should be prohibited from rebutting Mr. Garrett's
3 argument on that, because keep in mind, we have a right to
4 respond to their best argument on any particular matter, and
5 they have a right to reply to our best argument on any
6 particular matter --

7 THE COURT: What do you mean by best argument, Mr.
8 Henderson?

9 MR. HENDERSON: That's the whole idea of cutting off
10 sandbagging.

11 THE COURT: Right.

12 MR. HENDERSON: Intellectually, if you cut off
13 sandbagging each side gets to put up their best argument.
14 The party that goes first gets to put their best argument,
15 because they've got to open fully on the law and the facts.
16 The party that goes in the middle gets to put up their best
17 argument. They get to open fully on the law and the facts,
18 and then the party that goes last in this case, if there's
19 any reply, they get to respond to new matters raised by the
20 party that went second.

21 THE COURT: Right.

22 MR. HENDERSON: So in a sense, if they get -- if the
23 State stands up and addresses Ms. Byrd, the Walmart videos
24 and the receipt, Mr. Pennington, we're not getting a chance
25 to respond to their best argument in the middle. In a sense

1 they're getting to sandbag us on those particular items.
2 And again, Beatty - that's what Beatty's designed for is to
3 cut off sandbagging. So again, if they want to stand back
4 up and address these issues, fine, or if not, we'd ask that
5 you instruct them that they cannot reply to those particular
6 points in any rebuttal.

7 THE COURT: What says the State?

8 MR. BLACK: Judge, that's not my understanding of this
9 at all. I don't see how the -- in my first argument I think
10 you can anticipate what a defense might be, but you can't
11 anticipate every defense that, you know, the Defense might
12 have. The purpose of the law is to allow the State to
13 address anything that the Defense brings up. Not respond to
14 new matters. But if the Defense wants to bring up Justin
15 Pennington and Ms. Byrd then at that point I have every
16 right, under my interpretation of Beatty to rebut anything
17 that they say.

18 THE COURT: All right. Let me take a look at Beatty
19 again.

20 Well, certainly the Beatty case did address this notion
21 of sandbagging, but I think it was related to the State,
22 using the word that the opinion uses, perfunctory opening
23 statement and then really making their argument in full
24 after the Defense. I think that was the situation it was
25 addressing. I would have to consider the State's closing

1 argument that Solicitor Black just made to be more than just
2 a perfunctory closing argument. And I don't think that
3 necessarily we should -- I should hold either side to being
4 able to address every single bit of evidence, every single
5 witness. This was a six-day trial full of a lot of
6 information. So I don't think if the State elected to
7 address the receipt and Pennington and whoever else, I don't
8 think that necessarily would be volative of what State vs.
9 Beatty is telling us to do. So I'm going to deny your
10 request for me to limit the State in responding if it so
11 chooses to. And I don't know what it's going to plan to do.
12 But you're -- certainly your position is well noted for the
13 record. Mr. Garrett, are you ready, sir?

14 MR. GARRETT: I am, sir.

15 MR. HENDERSON: Yeah, because depending on what the
16 State might say in reply we might be asking for rebuttal.

17 THE COURT: You can certainly ask for it and I'll give
18 it every consideration that I can possibly give it.

19 Bring the jury out, please.

20 (Whereupon, the jury entered the courtroom at 11:11
21 a.m.)

22 THE COURT: Let the record reflect the jury is back in
23 the courtroom. Mr. Garrett, you ready, sir?

24 MR. GARRETT: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 CLOSING ARGUMENT

2 BY MR. GARRETT: Mr. Foreman, ladies and gentlemen of
3 the jury, this has probably been one of the longest trials
4 that I've had to participate in and I hope that our work
5 here has gone -- has been accepted by you as hard work by
6 all sides in this case. It's a very, very -- I told you at
7 the very beginning this is a very, very difficult case.
8 Thank God for the right to a trial by jury. In some
9 countries you don't have the right to have a trial by jury,
10 and in our society we have the right to be tried by a jury
11 of our peers. Now, His Honor is going to read that to you,
12 in a case where somebody's been charged with a criminal
13 offense, the person has a right to plead not guilty to that
14 charge or they can plead guilty. In this case Adam
15 absolutely pled not guilty to these charges from the very
16 beginning. Now, what does that force the State to do? It
17 forces the State to prove their case beyond all and any
18 reasonable doubt.

19 Now, reasonable doubt has been defined in many ways,
20 and His Honor will take time to define it for you. I'm
21 going to try to talk to you about what it is, because I want
22 you all to see this case through the eyes of reasonable
23 doubt. As a young lawyer once I was told that it's kind of
24 like this. A person has got this robe of righteousness
25 placed upon him. In other words, they're protected.

1 They're completely innocent. So let's suppose we begin our
2 case, and right here is where we plead not guilty. Suppose
3 we start right here. You all see that row down through
4 there? As we walk that row we go through the indictment
5 process. We go all the way through the beginning of the
6 trial, and then all the way through the trial and get down
7 to this wall. This wall here, that wall is what I call the
8 bricks of reasonable doubt. In order for the State to prove
9 their case they have to penetrate that wall to prove their
10 case beyond a reasonable doubt. That is their burden. Not
11 because I said so. Because His Honor is going to instruct
12 you that a reasonable doubt is the type of doubt that might
13 cause you to hesitate to act in your most important affairs.
14 A reasonable doubt is the kind of doubt that you just have a
15 -- you have hesitation. He's also going to tell you that
16 jury trials have to be unanimous. What does that mean?
17 Well, all 12 of you are down there in your own minds as to
18 whether or not the State has convinced you beyond a
19 reasonable doubt as to the guilt of the Defendant, Mr.
20 Rowell. Each of you have your own decision to make. See,
21 the Defendant, he didn't have any burden of proof. I told
22 you all at the beginning of this case he wasn't hiding
23 behind not testifying. He got up here, was subject to
24 cross-examination just like everybody else. He has no
25 burden.

1 I want to put a little chart up here. You'll also hear
2 that the reasonable doubt is the doubt that leaves you
3 firmly convinced. Suppose the person is not guilty. That's
4 one way to look at it. Highly unlikely he's guilty. Less
5 than likely he's guilty. Probably not guilty. Unlikely
6 guilty. Possibly not guilty. May not be guilty. Don't
7 know if he's guilty or not. Perhaps guilty. Suspicion he
8 may be guilty. Possible guilty. Probably guilty. Guilty
9 likely. Guilt highly likely. All those are not guilty,
10 because they're still bricks that haven't been pulled down.
11 We only get to guilty if you're definitely guilty beyond a
12 reasonable doubt. That's the standard to try to help you
13 understand that.

14 Now, let's talk about some other issues of law, if we
15 can. And I'm going to try to just paraphrase a few things
16 for you that His Honor, I believe, will tell you about DUI.
17 I think he's going to tell you that in South Carolina it's
18 against the law to operate a motor vehicle while under the
19 influence of alcohol, or drugs, or a combination thereof.
20 He's also going to say that you have to drive a motor
21 vehicle somewhere in the state. Forget that part. There's
22 no question, Adam was driving a motor vehicle. The fight
23 here is whether or not he was under the influence or not.
24 That's the fight. They've got to prove that beyond all and
25 any reasonable doubt. There's also no question that Mr.

1 Jeremy Cockrell is deceased, and there's no question that
2 the other young man had serious bodily injury. So don't
3 waste any time on those issues. Let's get down to the meat
4 of this case. At the beginning of this case I told you all
5 about the -- I tried to tell you about the Walmart thing.
6 The State didn't want me to tell you about the Walmart
7 thing. We're absolutely lucky to have that, because had we
8 not had that there's no way in the world I'd been able to
9 prove -- it's almost like an alibi. There's no way in the
10 world I'd been able to prove that he was okay walking and
11 talking just 20 minutes before this accident. And what is
12 that? That is a reasonable doubt. Because you can't walk
13 and talk -- and everyone of their experts said you can't
14 walk, talk, carry yourself if you have a high blood level
15 like they said he had. Besides, it wasn't even his blood,
16 but we're going to talk about that in a minute. I want to
17 talk about the Judge's charges to you to start with.

18 Now, you folks -- His Honor is the judge of the law and
19 what he says about the law, you all listen to him. If I say
20 anything about the law that he doesn't say, you all remember
21 to listen to him over me. We all try to say what the law is
22 and there's different ways of saying it. But he's the final
23 arbitrator of the law. Just like he's the final arbitrator
24 of the law, you folks are the final arbitrators of the facts
25 in this case. You make the decision about the facts. His

1 Honor doesn't do that, this prosecutor here doesn't do that,
2 I don't do that, Adam doesn't do that. Now, how do we look
3 at the facts? You should judge the facts as you would judge
4 your own facts in your own -- in your own situation, in your
5 own life, and you should judge these facts with common sense
6 and with fairness in mind.

7 Now, let's move forward. It's also your duty to
8 determine the effect, value, and weight of evidence
9 presented during this trial. The weight and the value of
10 the evidence. What kind of evidence do we have in this
11 case. Testimonial evidence, we have direct evidence and
12 circumstantial evidence. And I want to tell you about
13 testimonial evidence. You can believe part of what a
14 witness says, all of what a witness says, none of what a
15 witness says, or any weight or any combination. One witness
16 against many, many against one. That's your choice. And
17 I'm going to talk to you how we think from the Defense side
18 you should think about some of this evidence. The
19 credibility of the witnesses, the credibility of the
20 evidence is your decision. Was people biased or prejudiced
21 in some way to help one side or the other.

22 Now, at the very beginning of this case it appeared to
23 me that the State was going to try to hide a few things from
24 you. The State wasn't going to tell you about that Walmart
25 deal. State wasn't going to tell you about Mr. Pennington.

1 Judge the facts as you would have your facts judged. If the
2 State's trying to prove it's case beyond all and any
3 reasonable doubt why aren't they putting up evidence. Why
4 are they trying to keep that from you. Why do I have to go
5 up and put up evidence. I've got no burden in this case.
6 Defense has no burden, yet we were forced to find witness.
7 Eyewitnesses. And in this case we also found out that one
8 of the officers mislead the Court. Credibility? Misleading
9 the Court. Let's talk about this case from the very
10 beginning. What made the State think that this was Adam's
11 fault. Okay? Mr. Derrick Oliver said that when he got in
12 the car EMS -- and let me say this right now right here at
13 the beginning. I love every one of these EMS workers.
14 Highway Patrolman. All these people that saved Adam's life.
15 They're my friends. They're people I work with every day.
16 My nephew is a police officer over in Clinton. My
17 son-in-law is with NOAH. On the officer enforcement side of
18 NOAH. It's a national organization. So I don't want you
19 all for a second to think just because I'm talking about
20 this case that I'm talking about them and I'm being
21 negative. But look, you all got to do the judging. I don't
22 do the judging. My job is to bring you the evidence.

23 Now, let's talk about what happened here. We're there
24 at the scene. It's seven o'clock, 7:20. Okay? Of all of
25 the experts, if it's 6:38 this driving is going on right

1 here -- it's just by the grace of God that we found this,
2 because we had no alibi. We had no other way to show
3 exactly where he was and what he was doing. We had some
4 receipts, and I'm going to talk to you about that in a
5 minute. But just think, if you have a wreck and there's a
6 small of alcohol about your breath, if you can't show that
7 you've been out driving and doing right things instead of
8 wrong things how you going to prove your innocence, or how
9 you going to try to make your case for innocence. Here's
10 Adam walking. Here's Adam walking. Now, did he perform a
11 field sobriety test? No. Did he know he was going to have
12 to, you know, be subject to these examinations later on?
13 No. This right here is at or about seven o'clock. This
14 wreck happened at 7:20. How do we know that? Because we
15 got a CAD that says he left from here, he drove to his home
16 in Sherwood, down there by the House of Colors off of Scotch
17 Cross. And I submit to you, ladies and gentlemen, if he was
18 a 22, or more than that, he wouldn't have been able to drive
19 out of the parking lot. What is that? That's what I call
20 reasonable doubt. Reasonable doubt. They can't explain --
21 when their own experts say if a person's 9 they wouldn't be
22 able to do that without falling into somebody, how's he able
23 to do it? Well, the conclusion is that he's not a 9.

24 Now, you know, 20 minutes before he drives home. And
25 there's been no testimony by any law enforcement officer or

1 any call-ins that there's somebody driving a blue truck
2 driving erratically. He goes home. There's actually a
3 picture of the Hunters Headquarters -- Hunters Headquarters
4 certificate that he talked about. When you all go back and
5 you look at this piece of evidence you can see the Hunters
6 Headquarters certificate that he got. Hunters Headquarters,
7 of course, was closed at that time, but he was going to give
8 that to his daddy. He had \$20 to give to his grandmother.
9 And so, I mean, that's where he went. He went back home to
10 do that, and then he was headed back this route in order to
11 do what? In order to see his folks. Have a party at either
12 O'CHARLEY's or the Outback. So what happened? This
13 accident occurred. I'm going to talk about how the accident
14 occurred in just a few minutes. I don't what to talk about
15 that yet, but I want to pick it up from where law
16 enforcement decided. They became one way in this case and
17 their entire focus was against Adam. They did not give him
18 the benefit of the doubt in any part of this investigation.
19 So what happened. And maybe as I talk about the facts
20 and circumstances in this case remember what was said on the
21 stand. If I misspeak - if I misspeak or I don't say it
22 exactly as it was, remember what you heard from the stand.
23 Derrick Oliver, EMS on the scene with Mr. Kidd said as he
24 was trying to extricate him he had a smell of alcohol about
25 his breath. That's interesting, and he may have, because by

1 Adam's testimony he did, in fact, have a 24 ounce Red Stripe
2 at or about three o'clock. So he would still have that in
3 his gastric system during that time. It hadn't eliminated
4 yet. The alcohol part, but the stuff is in your gut. So
5 when he took that big hit it's probably likely that some of
6 that came up into his esophagus, and so he might have had a
7 smell of alcoholic beverage, but that doesn't mean that he
8 was highly intoxicated or even intoxicated at all. As Dr.
9 Valentine testified, the smell of alcohol doesn't show how
10 much you have in your system. There's been no studies to
11 show that. Adam couldn't talk. He was unconscious on and
12 off saying help me. So what happens? Oliver's working with
13 him. Smells it. He notes it. They get him out.

14 Now, if you recall, Mr. Oliver doesn't remember
15 triaging him in the back of the ambulance. Mr. Oliver
16 remembers going from the car directly to the helicopter.
17 That's not what happened. As we now know he got into the
18 back of the ambulance. And why is Tiera Boyter's testimony
19 so important? Because she bagged him. Now they're wanting
20 to say, well, she didn't smell it because she's invested in
21 the case. Well, that's interesting. After she bagged him
22 guess who else bagged him? The nurse on the helicopter, and
23 we've got her notes, and it's going to be in evidence. This
24 is the transport, State's Exhibit No. 7. She got in here
25 and she testified. She didn't smell any alcohol. Now,

1 who's biased and who is not biased. She clearly doesn't
2 have any reason to say yeah or nay, but nowhere in her
3 report -- and she's bagging him. And you all heard what Dr.
4 Valentine said about bagging. How can somebody be so bad
5 off and it not be in this report. I submit to you because
6 she didn't smell it. I submit to you that the nurse
7 allegedly drew the blood didn't smell any alcohol. There's
8 been no testimony that the nurse that drew the blood
9 allegedly smelled any alcohol. Dr. Snow got up here and
10 testified. These are medical doctors. He's a surgeon. Did
11 you all see him say Adam smelled of alcohol? No. He didn't
12 say that. Why don't you think he said it? Because he
13 didn't smell it. These nurses and people that are nurses --
14 my wife's a nurse. She tells me if it's not wrote down in
15 the paperwork it didn't happen. And that's why it's not
16 wrote down in the paperwork because it didn't happen.
17 Reasonable doubt. Reasonable doubt.

18 Now, let's get back to how these bottles all came
19 about. I told you all at the beginning of this case that
20 there's something bothering me about this case. I really
21 wanted them -- I really wanted them to give me the time
22 stamps on each of those photographs and each of those videos
23 so I could put them all together and figure this thing out
24 and it was hundreds of -- hundreds of photographs. And I
25 just want to hand that one back to you, Defense No. 2.

1 Right over here where that Hunter's Headquarters is, there's
2 no beer on top of them glasses in that picture. And if
3 you'll recall, this is one of those pictures that's got that
4 stamp on it that was wrong as to time. There's some blood
5 here. We don't know whether that was Mr. Oliver's blood or
6 whether it was Adam's blood when they were trying to stick
7 him while he was still in the vehicle and they were
8 unsuccessful. The most important thing is that beer bottle
9 wasn't there. And then you'll find one in the same location
10 where the beer bottles there, and then the beer bottle is on
11 top of the glasses right there. And now the beer bottle is
12 over here.

13 Let me tell you what the Defense's belief is. The
14 Defense believes that at some point in time somebody went
15 into that case in the backseat and dropped one of those on
16 the -- on the seat. Hold on just a minute. I'm going to
17 show you the -- it's actually a computer bag is what was
18 testified to. Here's the computer bag in that section right
19 there. You all will be able to see it closer up. If I knew
20 how to operate this machine I might could make it closer up.
21 The point is, in some of these pictures you're going to see
22 this thing closed and some of them you're going to see it
23 open. And again, if they would have gave me time stamps I
24 would know when it got open and when it didn't.

25 Now, Adam's testimony is is that Adam put this thing in

1 there. Okay? He put these two Red Stripes in this bag,
2 zipped it up, and that's what he had in it. Later on they
3 come in and they try to say, well, there's another bottle in
4 the bag. Let's assign that to him. Let's talk about that
5 for just a minute. It's not against the law, and I believe
6 His Honor will instruct you, that if you have a closed
7 container, which this clearly is -- if you've got a closed
8 container of beer in your car it's not against the law. So
9 why are they trying to show you this? Well, there's all
10 kind of beer in that car. It's not against the law to have
11 beer in your car. It's only against the law if you got beer
12 in your car that's open and it's not empty. If it's empty
13 it's not against the law. So those two Red Stripes empty in
14 his bag was not illegal. He had a right to have them in his
15 car. Now, how did that officer decide that there was
16 multiple containers of Red Stripe, how did he tell that
17 Judge up there? This is what we believe happened. We
18 believe after the wreck they started -- I think he said
19 peeking. I believe that's what the officer's word he used.
20 I peeked in there. I think that's what he said. In that
21 bag when he peeked in there he saw a Red Stripe. He
22 actually saw two Red Stripes. Somebody had to pull it out,
23 or either -- lets assume for a minute that he didn't --
24 let's assume for a minute that he didn't do it. Let's
25 suppose somebody else did it. I don't know if he did. I

1 know he didn't put any Jack Daniels in it or any of that
2 stuff as was alluded to by the State, you know, and none of
3 that -- none of that kind of thing went on. But what
4 happened was he saw two of them. When he was making out his
5 warrant he told the Judge that there was multiple containers
6 of Red Stripe in the car. In fact, there was not. There
7 were two in the bag. Somehow they got out. Somehow they
8 got -- they weren't even on the chair, and then they got on
9 the chair and then they got flipped over twice. So the
10 State's trying to make you believe that Adam had those --
11 had one container out of open beer. Hold on a minute.
12 Let's think about that for a minute. What did he tell the
13 Judge to get the warrant? Told the Judge he had multiple
14 containers of -- open containers of Red Stripe. How many do
15 you know go down the road drinking several bottles out of --
16 several bottles of Red Stripe? There would only be one in
17 the car out, right? It doesn't make any sense. So the
18 other had to be in the back. So, you know, at the end of
19 the day -- at the end of the day, you know, there's a
20 reasonable doubt as to whether or not that open container
21 was even in the vehicle loose. And I'll show you something
22 else. Did you all see all the busted glass on that thing?
23 Again, I told you a while ago to use your commonsense.
24 How did that -- how did that bottle survive all of that.
25 Pristine looking bottle. How come that bottle didn't get

1 hit at 100 miles an hour. An impact that it went through
2 100 miles an hour. How did it get back there? How did it
3 not break when everything around it broke. Commonsense
4 suggests somebody put it there. Why, I don't know. To
5 build a case. To look at only one side of the case.
6 There's beer in there. Strike one out. He had to be
7 drinking it. Yet he had just come -- he had just come and
8 he was doing fine.

9 Then they got pictures of all kind of stuff. Open
10 beer, closed beers. I'll show you that picture of that one.
11 That one's kind of interesting, because that's a piece of
12 the truck that somebody's done dropped over into the
13 toolbox. So obviously stuff is coming in and out of that
14 toolbox. That toolbox was thrown off of the truck. That
15 toolbox had stuff all in it, and it's not against the law to
16 have stuff right there in your toolbox. His Honor is going
17 to tell you about the law on that. They keep wanting to
18 show you an open container, and I just have no clue where
19 that open container was. I asked every officer that went up
20 there to talk about this trying to figure it out. There's
21 picture of that and there's apparently a box, or some beer
22 in that box right there. But all that's closed beer. I'll
23 tell you, you know, from a position representing Adam, I
24 would rather have a closed beer than an open on any day.
25 Because a closed beer you don't have in your system. But

1 let's go back to Adam's circumstances. What had Adam done.
2 And Adam was able to recreate this. He was in a comma for
3 two weeks. So he had to go back and look at all of his
4 records. He had to go back and talk to his family about
5 what happened that day. He was out for a while. He had to
6 -- it took him months to learn how to walk. \$500,000 worth
7 of medical bills just trying to learn to walk again. Now,
8 that night he worked at Velox, got off at or about 12:00.
9 Stopped by and bought two 24 ounce Red Stripes and some
10 Grizzly. Apparently he likes to chew or whatever you do --
11 whatever you do with that stuff. He goes home. He goes to
12 his room where he's got kind of a little apartment room, and
13 he brings his bag of Red Stripes in and he drinks one of
14 them and he has, as I recall, a Salisbury steak dinner
15 frozen, like most bachelors do. Goes to bed. Sleeps to,
16 say, 10:30. Gets up, speaks to his folks. That first beer
17 is gone. That's no longer in his system, because at that
18 point in time he's normal. So he had normally eliminated
19 whatever was in his system. What did he do the rest of the
20 day. Well, we know at some point in time he went to Walmart
21 earlier where we didn't get a photograph. And the State
22 didn't talk to talk about Samantha Byrd because around 2:00,
23 2:38 talked to Samantha Byrd. I want you to notice, the
24 Defense that gave you the evidence that he had something to
25 drink. We got nothing to hide here. So you'll have in your

1 evidence the time that he bought those Red Stripes that
2 morning at 12:05, and that's No. 19. It's there. You're
3 going to have it back there with you. And here's where he's
4 at Walmart at 2:38. I know that's real small, but as I
5 understand it that's about 2:38 is the time -- 14 -- 26:07.
6 Okay. So 2:26:07 is when he's checking out and these are
7 the things that he bought. Now, the important thing is here
8 is that he talked to Samantha Byrd. When you all go back,
9 that's Defendant's No. 15. We gave you that. He leaves
10 there and goes home. Continues to do the things he was
11 normally doing. He was cleaning things up. He went ahead
12 and got some spaghetti out of the -- well, I guess the
13 refrigerator. Leftovers. And had a spaghetti and a piece
14 of garlic toast and leftover stuff, but also he drank that
15 other beer. So at 3:00 we got him drinking that last beer.
16 Suppose he was drinking it 3:00, 4:00. If he has a wreck at
17 or about 7:20 some of that may still be in his stomach but
18 not enough to make him impaired. There might have been some
19 smell. So I'm not saying that Derrick Oliver didn't get a
20 smell, or that Kidd didn't get a smell. But it was also
21 very little because Tiera Boyter, who is bagging him, and
22 also the nurse, she didn't smell anything on him. The nurse
23 that drew the blood didn't smell anything on him. Dr. Snow
24 didn't smell anything on him. So if it was something there,
25 it was what we said it was. Although he doesn't have any

1 burden of proof.

2 I'm going to show you this bag. You know, I asked
3 these folks, the Highway Patrolman, if you want to come and
4 you want to bring alcohol evidence into the courtroom
5 there's a method for doing it. Why don't you think they did
6 it? Why didn't they bring it here for you guys to look at?
7 Why didn't they let us see it. Why -- you know, why do they
8 want you to see it there but they don't want you to see it
9 in person. Why didn't they seal it. At some point look
10 what that bag looked like.

11 Now, I don't see that bottle of beer in this one. They
12 can't have it both ways. They're taking a picture of it and
13 saying it's there, and then here where did it go? Where did
14 it go? Was this the part that -- was it thrown on the grown
15 and they stuck it in the bag? Is that the one that got put
16 into the bag? The empty bag? There's now beer in the bag.
17 There's a reason why you don't have any records of the
18 alcohol, for that very reason. So let's move on.

19 After Adam had his -- had his lunch he went on over to
20 Ninety Six for a little while. Went over to see his friend,
21 to see if his friend was there at his parents -- at his
22 in-law's property about potentially going hunting. He had
23 been successful with a deer earlier that week. I think
24 Wednesday on that week the evidence will show. But then he
25 went and got \$20 at the ATM there at Ninety Six at the

1 Shell.

2 Beg the Court's indulgence just a moment.

3 THE COURT: Sure, take your time.

4 MR. GARRETT: While they're looking for that we'll keep
5 going. But we're going to show you a receipt where he got
6 that at or about 5:45, 5:55. And it's hard to tell. And
7 they actually found that on the site. So they found that in
8 the vehicle. So we know that he went by and he got that \$20
9 that he said he was going to use to either buy his dad
10 something or his grandparents' something. So he left there,
11 and then that's when we get him here at Walmart about 6:30.
12 6:30 or so. So when you're looking at the evidence back
13 there, if you don't mind look at 20, and that's what it
14 looks like right there. That is something that they found.
15 The government found in his vehicle to show where he was at
16 that time. That's Defendant's Exhibit No. 20. And then
17 we've got the evidence of him going here at 6:38 driving,
18 and then that is at about 7:00. So we reconstructed his day
19 almost -- almost to the letter. And what is that? That's
20 reasonable doubt. That's reasonable doubt about what
21 happened.

22 Now, we brought in our MAIT expert and he trained most
23 of these other experts. He's kind of like the godfather of
24 these guys. He knows what he's talking about. And if
25 you'll remember Kelly Anderson said -- and again, I'm not

1 picking on Kelly. But Kelly made a decision very early on
2 in his case that Gene was -- I mean, that Adam was at fault
3 and they didn't look at the other side of the equation.
4 They only did a 50 percent investigation. They didn't look
5 at the wreck from the wreck scene all the way back to where
6 the fairgrounds were. They only looked at the scene from
7 the point of the impact, or the slides, back in that
8 direction. So they only saw one half of it. They didn't
9 put it altogether.

10 Now, all I can tell you is this. Is that I've seen two
11 animations. I've seen them change -- I've seen every one of
12 them changes their speeds, and nobody's gotten anything what
13 I call proof beyond a reasonable doubt about the speeds,
14 because when experts -- and His Honor is going to tell you,
15 you can believe one expert over another, one over another,
16 don't believe any part of what an expert says. Just like
17 you judge credibility. But in this case, because only half
18 of it was done, it's almost impossible to give Adam a fair
19 shot because they didn't go back and look at the red truck.

20 Now, let's talk about -- let's talk about credibility
21 and believability a minute. Why would Ms. Anderson, Kelly
22 Anderson, head of the MAIT, a responsible person, along with
23 Brunson, why wouldn't they want you all to hear from Mr.
24 Pennington? If they're trying to get to the truth of what
25 happened and they're being open and honest and they're

1 really trying to figure it all out why wouldn't they have
2 brought him in here. Why did it require the Defense to go
3 get him and put him up? They had his statement. His
4 telephonic statement. They had it. And what did he say he
5 saw? I guess he's somehow emotionally connected to this
6 case. You reckon? The man worked at Walmart. Sitting
7 right here. And according to Matt Sims, our expert, he was
8 about 500 yards from the point of impact. He was sitting
9 right here. He said there was a car in front of him, but he
10 was sitting right here.

11 Now, Adam testified that he saw the man come in his
12 lane twice. Mr. Pennington only saw it once. If you think
13 about it, if you've got this -- if you're coming around this
14 curve and you've got this median to work with -- there's a
15 median. You'll see it in some of these pictures. This
16 median tightens up. But you're coming in here on the right
17 side and you can tighten up. If you see somebody on your
18 side of the road you got to make a decision. What are you
19 going to do. Sometimes people -- I don't know if you all
20 have noticed it lately, but I've noticed it a lot when I'm
21 riding. People are reading their text messages or whatever
22 they're -- they're in my lane. I've been seeing a lot of
23 that lately. I also had somebody hit me on Mathis Road the
24 other day. I mean, literally, I thought I got hit. They
25 pulled away at the last second. They were reading their --

1 they were reading their mail. I don't know what Mr. Sanders
2 and Mr. Cockrell were doing in that car. That vehicle. He
3 said that they were complaining. You know, I've been
4 married 40 years and if my wife says I'm complaining, or
5 she's complaining, we're generally arguing about something.
6 I don't know why he got over on the -- into his lane --
7 Adam's lane twice. But I know being in there a second time
8 puts you in a worst position than the first time, because if
9 you're already trying to set up for what he's going to do
10 from the first time he goes over, and then you're about to
11 make another change, and then he stays in his lane, or gets
12 back into his lane, what are you going to do. There's
13 something in our law called sudden merges. It goes to the
14 proximate cause of the accident. Mr. Cockrell, based on
15 what Mr. Pennington said, was in Adam's lane. Whether Adam
16 decided to go to the right or to the left makes no
17 difference in the sense that he was in his lawful lane of
18 travel, and if this red truck has come over into his lawful
19 lane of travel, that's the emergency -- that's what's the
20 probably cause for this wreck. It's not Mr. Rowell trying
21 to figure out what this guy's doing. So, you know, and
22 you're talking about cars meeting. We're talking a second
23 and a half. Two and half seconds at most based upon Mr.
24 Sims' view of how long it took for these two to contact.
25 2.6 seconds. There's some evidence -- and again, Mr. Sims

1 is very clear about it, because he never got to look at the
2 truck. But there's an impact on that guardrail that's
3 consistent with the right-hand side -- the driver's side of
4 that truck. Again, trying to figure out why was Mr.
5 Cockrell left of center two times. Why was he there? And
6 why wouldn't the State want you to hear from Mr. Pennington?
7 Because here he's testifying, I look back up and Cockrell
8 was in his lane. Cockrell was in Adam's lane. And then
9 when Kelly Anderson -- we're here at a trial with this man's
10 life hanging in the balance. We've got Kelly Anderson,
11 Highway Patrol, saying what? Well, we just didn't believe
12 him. It wasn't possible for that to happen. And what? And
13 so, we didn't investigate it. We didn't investigate it.
14 Find facts - facts found for yourselves. They didn't
15 investigate it because why? Because it didn't fit? Why
16 didn't they investigate the mechanical -- why didn't they do
17 a mechanical on the red truck. Why didn't they check the
18 four tires out on the red truck. Why did they check only
19 three of the four tires on the blue truck. Why didn't they
20 go up here and come back this way and look for those yaw
21 marks where if somebody is crossing the center line, if they
22 crossed in a fast way, they would have been able to see it.
23 You remember what they said about that? I talked to Duncan
24 about that, and I asked Mr. Duncan about that and he said,
25 well, those kinds of yaws would have been dissipating almost

1 immediately. But they were there that night. They could
2 have -- they could have went on up the road, looked at that
3 road and saw whether or not there was any proof Mr. Cockrell
4 came by. When did they know that there was an eyewitness?
5 That night they knew that there was an eyewitness because
6 Mr. Fallaw is the one that Mr. Pennington told -- and Mr.
7 Pennington went to school with Adam, Mr. Cockrell, and Mr.
8 Fallaw. He was there that night on the scene. He went up
9 here to the Hot Spot and came back and he was there with
10 them. Told Fallaw call me. Call me. When you all get into
11 a position I want to tell you about what I saw. Five days
12 later on the 20th is when they finally got up with him on an
13 eyewitness. But by then they'd already made up their mind.
14 There wasn't two sides of the story like you're getting here
15 today, ladies and gentlemen. There was only one side of the
16 story. And I told you at the beginning of this case there's
17 two sides to this story. You've heard the witnesses. You
18 close your eyes. You sit there and you go on and you close
19 your eyes. You look at that wall. You close your eyes and
20 think about at night driving. You know what you're doing.
21 Now, if you come over one time, yeah, and you're trying to
22 get -- trying to make a decision, and then he goes again,
23 what do you do. You're either going left or right. You got
24 to make the decision. He made the decision to go left. But
25 it wasn't his fault he had to make that decision. It was

1 the proximate cause of this accident was that that man was
2 in his lane of traffic by Pennington's testimony. And that
3 is, ladies and gentlemen, what you call reasonable doubt,
4 again. That is if you believe Mr. Pennington. I don't
5 think they're going to say that he had any type of
6 relationship, was vested. And I know that nurse wasn't
7 vested. We're trying to say that he either smelled or
8 didn't smell, the doctor and the nurse that drew the blood
9 and that kind of thing.

10 Now I want to move on from there. I want to talk to
11 you a little bit about these tests. If this test were
12 valid, if this was of his sample only, I wouldn't have very
13 much to talk to you about. It's just that simple. But this
14 test is not of his blood. It is of other's blood. They
15 have a right to take blood, and they have a right to test
16 the sample. But if they test your blood along with somebody
17 else's blood then how is it a fair test. You remember what
18 I said a while ago about judging? To be fair. Would you
19 want to be judged by somebody else's blood. In a case where
20 you can spend the rest of your life in jail, you want to be
21 judged by somebody else's blood? There's a fairness thing
22 here. Let's talk about the fairness.

23 Now, this hospital test, the plasma test, the one that
24 is for medical purposes only. I want to kind of summarize
25 some of the problems with that test. He wants to make --

1 the State wants to make a point, well, there was just a
2 little bit of somebody else's blood in there. Am I going to
3 be judged on somebody else's blood? I don't want to be
4 judged on somebody else's blood, and that ain't fair. Oh,
5 it's just a little bit of blood. It's just a little bit. I
6 don't know if I want to be judged by somebody's else's
7 blood. I don't know if you would either. Now, let's get
8 down to it. I don't know if this is his blood or not.
9 We've got some of the craziest things I've ever seen going
10 on here. Let's talk about this for just a minute.

11 Out to the left is a timeline based on all these
12 records that we have in evidence. And up to the right is
13 the various things that we're relying upon in the evidence.
14 And I want you all to look at this. When you go back I
15 can't let you have this document. But I want you to look at
16 some of these things to look at what I'm saying. They said
17 that he -- the blood got collected at 20:54. 8:54 p.m. You
18 all heard that testimony. At first the nurse said, well --
19 the flight nurse said, well, I saw -- I saw that nurse take
20 it from the arm. You all remember that? Well, we find out
21 that it wasn't from the arm. Prove beyond a reasonable
22 doubt. They're in trauma. They're not worried about that
23 blood draw or tying it to whoever it is. They're in a
24 hurry. Proof beyond a reasonable doubt.

25 Listen to me for a minute. Clock slop? Clock slop?

1 It's okay to judge a person based on clock slop? I don't
2 think so. Let's look at the next one. Adam arrives at the
3 GH trauma, LifeFlight records. They say they got there at
4 20:59, or 8:59. How is it possible that they took the blood
5 before he arrived? How is it possible? It's not possible.
6 Clock slop? Adam arrived in the GH trauma bay, GHS records,
7 at 9:00. Patient arrives. 21:08. 9:08, labs draw with
8 central line by Dr. Snow. GHS records.. Labs draw with
9 central line time 21:08 by Dr. Snow. And that's the --
10 that's the blood draw. Now, clock slop that many minutes
11 back? I mean, it took a while for them to get him in, get
12 him set up in trauma, assess him, then call for the labs and
13 then pull the labs. By that time he'd already had a central
14 line put in. Clock slop that many minutes? I don't know.
15 The nurse says she wrote it down on the hospital records
16 when she drew it. Come to find out she didn't draw it. So
17 who's blood did they look at? Somebody else's blood that
18 they drew at that time? It's impossible. It's not only --
19 it's impossible for a man to walk like he walked, as he did,
20 and have a 21 reading. It's impossible. It makes no sense.
21 The only way it can be making any sense is they don't have
22 the right person.

23 Let's look on some more here. Blood specimen finally
24 got at the lab. Collected at 20:54. And I -- I want to
25 apologize. I might have picked on that gentleman that was

1 there at the -- the thing about the number of vials that he
2 had and that kind of thing. But to be honest with you, it's
3 that important in this case. And it's frustrating to hear
4 one vial, three vials, and then finally four vials. It was
5 frustrating to hear that, because it was important for us to
6 find out exactly what got checked. And that was why I was
7 asking those questions. Just like I was trying to ask about
8 those pictures. What time did you all take those pictures.
9 You see, the truth will set you free, if you can find it.
10 But you've got to find it sometimes. Especially when the
11 State don't want to see it. You got to help them see it.

12 Where is the blood specimen for 30 minutes from 20:54
13 until 21:24? I submit to you that nobody, nobody knows who
14 had the blood. The nurse said her regular practice -- if
15 you recall her testimony, and rely upon what she said on the
16 stand. Their regular practice was to get it on up there
17 quick because it was stat. Did they get it up quick? No.
18 Thirty minutes ain't quick. Whose blood is this? Let's
19 think of something else. She said, I usually take it up
20 there because if it's stat, but she said I don't recall
21 taking it up. It could have been a tech. Well, I hadn't
22 seen that tech in here telling us what kind of blood they
23 took up there. And if you'll remember, Adam's name is not
24 on here at the time. You all remember that? Adam's name is
25 not on this blood yet. They don't -- they don't put it on

1 -- put it to Adam until this clerk puts it in the record as
2 being Adam's.

3 And the other thing -- so let's just talk about the
4 reasonable doubts. Let's talk about the bricks of
5 reasonable doubt on the specimen used, then I want to talk
6 about the machine itself. The blood was drawn before Adam
7 arrived at GHS according to their own records. Judge as you
8 would want to be judged. Hospital blood test showed
9 elevated alcohol level. The hospital test. Rowell had
10 elevated lactic acid in his system based upon their records.
11 Rowell had a lacerated liver, that is a source of LDH.
12 Acetone as found in his system. It's interesting -- not in
13 this record. Acetone diabetic medicine, or diabetic parts
14 are found not in this test but in the other test we'll talk
15 about in a minute. And Benadryl is not found in this test.
16 According to Dr. Valentine there was a high probability of a
17 false alcohol positive here. And I just want to say about,
18 you know, Dr. Valentine, you know, basically dealt with
19 pediatrics. That's what he said. His basic study for the
20 most part has been with pediatrics. So he spent the
21 greatest part of his time working with children. So you
22 wouldn't expect to see any alcohol false positive in babies.
23 And as you heard the other doctor from the Greenville
24 Hospital System say he's only saw it one time. But if
25 you'll recall, his testimony was Adam had a perfect storm

1 going on. The other part of it is by that time other
2 peoples' blood had already contaminated Adam's blood. So
3 are we really judging Adam on Adam's blood or -- if it was
4 his sample, we know his sample has been contaminated by
5 other people. If you all remember, I talked to Dr.
6 Valentine about this. If I were to be judged, I want to be
7 judged on my blood. I asked him was there any way that DNA
8 typed that blood that was sampled to be able to see what
9 alcohol he allegedly had in his blood and there's not been a
10 test yet for that. So if there's not a test for that then
11 these results we can't rely upon because they're not his
12 blood. And there's also no test to show whether there was
13 dilution or whether they actually tested his blood. These
14 results are all over the -- are all over the map.

15 Now I want to go to the SLED blood draw. You recall
16 he's unconscious. This is about 1:00. If the accident
17 happened about 7:00 or a little before 7:00, or a little
18 after 7:00. 8:00, 9:00, 10:00, 11:00, 12:00, 1:00, that's
19 almost six hours. Six hours later from the time he was
20 driving. SLED comes in, a warrant based on multiple Red
21 Stripes open in the car. And so, they read him Miranda
22 warnings although he's unconscious. They execute a search
23 warrant on him and they have Nurse Childers draw his blood.
24 Now, instead of getting venous blood like these tests are
25 set up, she got arterial blood. And the reason that's an

1 issue is that the results are always higher. Adam had
2 received 13 units of various donors' blood by this time.
3 Other peoples' blood in his body. His blood wasn't tested.
4 His in combination with 13 other people was tested. And
5 approximately 220 percent of his blood volume had been
6 replaced by the time. If you look at 60 percent in blood
7 products and 161.7 percent from other fluids, salines and
8 PlasmaLite. And I asked the doctor how -- why wouldn't he
9 just blow up? I mean, if he had all this in his system. He
10 said, well, we're replacing it. We're putting new in. And
11 that stuff is coming out through catheters. The doctor said
12 he had a back system on him. They were backing the blood
13 out from the surgeries. They kept him open for days until
14 they finally got him cleaned up on the inside. As you
15 heard, the peritoneal sac was open and they found blood.
16 And they found various amounts of blood in the peritoneal
17 sac. But the doc was real clear. I can't say how much
18 blood he lost in his pelvic area or how much he lost in his
19 broken legs and that type of thing. Broken knee.

20 Now, the next thing is -- and nobody's refuted this.
21 The State had an opportunity once we got through with Dr.
22 Valentine to put up a witness. They -- that gold standard
23 machine we were talking about on his sample said that he had
24 4.9 percent Benadryl in his system. That gold standard
25 machine couldn't be right because one more point he'd be

1 dead. How did that machine -- you know, you remember when
2 Dr. Valentine was up here and he was showing you all those
3 charts and how he showed you the 21 chart and the next how
4 all of a sudden there was a blip or something that appeared
5 on one chart that didn't appear on the other? You remember
6 him doing that? Well, what he was trying to tell you is
7 this -- there's something going on here that's just not
8 correct. It's just not correct. The medical records show
9 that Adam was not given any Benadryl. Then we find acetone
10 in this blood draw. Using the gas tester we found acetone.
11 And Adam's not a diabetic and wasn't receiving any diabetic
12 medicine. And those graphs of the same specimen show
13 different results from vial five showed that vial 27 didn't
14 show. So again, these are his summaries. I'm just trying
15 to remind you of the reasonable doubts about -- reasonable
16 doubts here about why you shouldn't use this piece of
17 evidence and find it credible. It's not Adam's blood. His
18 Honor is going to tell you, you have a right to judge the
19 credibility of all the evidence of the witnesses, of the
20 evidence itself. Judge as you would be judged on matters of
21 fact.

22 Now, another thing that's pretty interesting to me is
23 guess what else they took in this draw. Guess what else
24 what they took in this draw. They took his urine. They
25 took his urine. And again, instead of checking on his urine

1 to see how it related to the blood they didn't do it. They
2 didn't do a test on his urine, yet he gave it up. They took
3 it from him while he was laying there. They had it. They
4 didn't test it. Why didn't they test it. What were they
5 trying to hide. What happens if that urine sample would
6 have been different from the blood sample. Again, I found
7 in this case for whatever reason when things don't help them
8 you don't hear about it unless I figure it out and I find it
9 for you. You're not hearing the whole case. I don't know
10 what that urine showed, but I know they hadn't produced it.

11 The South Carolina Highway Patrol advised that they
12 were sending it down for testing the day before and they
13 said it was at 19:29. You know, we asked those questions
14 about when the Highway Patrol said that they sent down a
15 sample. Well, when Ms. Brown got the sample I got her to
16 look at it, and it's here. The SLED documents say that the
17 report that they got sent said that the blood draw that was
18 to be -- that was drawn was drawn at the date and time,
19 11/15/14. You'll see it. South Carolina Highway Patrol
20 advised that the tested sample was collected 11/15/2014 at
21 19:29. Now, we know that's not possible because that would
22 be 7:29. That is unless that blood we found on the seat was
23 actually somebody trying to get a blood sample from him
24 right there on the spot. I asked Mr. Oliver about it. Mr.
25 Oliver said that he thought he might have gotten cut, and

1 that they were unable to get a line in or they were unable
2 to get -- but that would have been where his right arm would
3 have been where that blood is in those two places there.
4 But again, I don't know why their report would say that
5 unless it was accurate. I don't see any clock slop in that.
6 And I don't want to be judged by clock slop. Specimen
7 analyzed by SLED not attributable Adam's own bodily fluid.

8 We believe that His Honor will talk to you about
9 alcohol inferences. It's important that you listen closely
10 to his statement of law to you. I believe that he's going
11 to tell you that based upon certain readings from the SLED
12 test only. You see, the hospital test doesn't even meet
13 legal muster. Okay? SLED test is a different test. It's a
14 different test because the law allows it to be a different
15 test. But he's going to tell you that you may infer, and I
16 underline the word may, that if a person has a .08 or more
17 that that person would be inferred to be under the
18 influence. That doesn't mean that they are. It just says
19 that that is a piece of evidence along with all the other
20 evidence. But before you make decision on may, I want you
21 to weigh the credibility of that before you make that
22 decision about the credibility of that finding that they're
23 going to try to put in.

24 Now, I want to talk to you a little bit about Mr.
25 Cockrell had marijuana in his system. And SLED says that

1 they couldn't determine how much marijuana he had in his
2 system in relationship to whether or not he'd be under the
3 influence. They're quick to do that with Adam -- with
4 somebody else's blood, but they're not willing to give an
5 opinion in this case on Mr. Cockrell.

6 Now, let's talk about Mr. -- the credibility of Mr.
7 Sanders. Mr. Sanders says that he was wearing his seatbelt
8 and the records Mr. Sims looked at clearly indicated that he
9 wasn't. Mr. Sanders says that he and Mr. Cockrell were
10 having complaining or something going on in the car, and he
11 said -- and this is important. This is important, because
12 he said that he saw Mr. Rowell completely in his lane of
13 travel. That's important. Because if you look at the
14 animations they don't show where Adam is trying now to cut
15 back to the right. You see, the evidence in the case,
16 instead of showing those cars hitting like this straight on,
17 about half and half. In fact, Adam's car had already
18 started a turn to the right to get back into his lane as was
19 testified to by Mr. Sims. Two points I wan to make on that.
20 That's State's Exhibit No. 25. If you'll see, those aren't
21 straight down the line like this, or following the line like
22 this. They are more like going in that direction where the
23 blue truck showed up. No question that they hit and then
24 turned around. But according to Mr. Sims those marks were
25 made by Adam's truck. So Adam had already started going

1 back to the right. Now, why is that important? If you all
2 will look back here you can see that Adam was trying to
3 figure out which way this guy was going to go because he's
4 got a median, and as you go look in that evidence you'll see
5 that there's a median back there. So he hadn't completely
6 committed until right back before that as to which way he
7 was going to go. And that was based upon the second being
8 in his lane of travel. It's important because that might
9 actually had been true what Mr. Sims said. That he was
10 completely in our lane. And if you'll look at the
11 renditions by the State they've got him coming over slowly.
12 They've got him just coming in slowly and impacting almost
13 -- you know, so he's coming over slowly when, in fact, he
14 had already gotten over there and trying to figure out what
15 this guy was going to do and he was watching him.

16 Now, again, but for Mr. Cockrell being in his lane he
17 wouldn't have necessarily needed to defend himself. And Mr.
18 Cockrell did have marijuana in his system. And, you know,
19 when I asked Mr. Sanders about whether or not he had told
20 anybody about his using marijuana on the 14th, using a gram
21 a day until the 14th before this accident, he said, well, I
22 didn't sign it. My signature ain't on it. I'll let you
23 make up your mind on credibility and believability whether
24 or not that was his stuff that I was asking about.

25 Again, credibility and believability, if on any of

1 these points, any of those bricks in the wall, you believe
2 that the State hasn't met its burden of proofing the case
3 beyond all and any reasonable doubt, then it's equally your
4 sworn responsibility to find him not guilty. And I want to
5 talk to you -- because I may not get to talk to you again.
6 I'm going to have to go sit down and be quiet. I know you
7 all are tired. This has been the longest trial I've ever
8 tried and I've tried a lot of them.

9 When you're thinking about reasonable doubt each and
10 every one of you have your own set of -- you brought to this
11 group your commonsense, your common knowledge and I want you
12 to be fair and I want you to use it. And the State has to
13 prove it's case beyond all and any reasonable doubt. Not to
14 just one of you, or two of you, three of you. It's got to
15 prove it to all 12 of you beyond a reasonable doubt. So in
16 other words, if even one of you is not convinced that all
17 those bricks have been knocked down it's your sworn duty to
18 find him not guilty. Not because Billy Garrett says so.
19 Because His Honor is going to tell you that's the law.
20 Thank you.

21 THE COURT: Thank you, Mr. Garrett. Solicitor, you
22 have some rebuttal?

23 MR. BLACK: Yes, sir, Your Honor. Are we going to go
24 ahead and do that?

25 THE COURT: Yeah.

1 REBUTTAL CLOSING ARGUMENT

2 BY MR. BLACK: Folks, it's Mr. Garrett's contention
3 that on that second blood draw that Adam Rowell's blood
4 wasn't tested. It wasn't his blood. That's they're
5 contention. They've made no bones about it. No if, and/or
6 buts about it. There's no doubt about it however Mr. Rowell
7 received additional blood. You heard testimony to that.
8 There's no doubt about that as well. But Mr. Rowell's blood
9 doesn't just go away. Mr. Rowell's blood is still there.
10 It's still being tested. It's still being drawn by the
11 nurse four hours after arriving to the hospital, and his
12 blood is still sent down to SLED. Yes, his blood has been
13 diluted. I'm not going to deny that. That's commonsense,
14 folks. But his blood is still being tested. And as the
15 testimony has indicated from the doctors, from the
16 toxicologist, that if somebody is at a .19 they should be
17 metabolizing alcohol at .06 during that four hour window,
18 and 19 minus six is 13. And that draw came back at .09. It
19 should have been a 13. His blood was diluted, absolutely.
20 But his blood was still being tested. His blood was still
21 in his body. He still had blood in his body. Folks, to
22 believe what the Defense is trying to tell you is to believe
23 that there's some grand conspiracy. That everybody was in
24 on it. Highway Patrol was in on it. Hospital was in on it.
25 The lab at Greenville Hospital was in on it. Everybody as

1 in on it. Everybody was in on it. Those Highway Patrolman,
2 they showed up and they started dropping beer bottles left
3 and right because we got to make sure -- got to plant this
4 here to make sure that we can show that he was driving under
5 the influence. Are you kidding me? You got to be kidding
6 me. Those guys, EMS, Highway Patrol, firefighters, law
7 enforcement, they all showed up at that scene not trying to
8 plant evidence. They showed up at that scene trying to save
9 this man's life. And because a beer bottle wasn't in the
10 exact same spot as maybe another picture would have been.
11 Are you kidding me right now? Firefighters worked profusely
12 to cut that roof off so they could extract him from the
13 vehicle, throwing stuff wherever it's got to be trying to
14 save that man's life. Planting evidence. Come on. Come
15 on. It's a grand conspiracy when they get to the hospital.
16 The times aren't right, folks. The times aren't right.
17 Even their own paid expert that got up here for \$10,500 this
18 week said yeah, there's clock slop. I've seen it before.
19 Does everybody sync their watch up? Does everybody have the
20 same exact time? Nurse Baker, the one that wrote it on the
21 vial that got sent to the lab. Is her watch off a little
22 bit? I don't know that. But it's definitely a possibility.
23 Some people like to set them fast, some people set them
24 slow. It's a grand conspiracy. A grand conspiracy.
25 Another issue that they want to bring up is State's

1 hiding evidence. State's hiding evidence. Folks, what they
2 don't want to tell you is we didn't have that video until
3 Sunday of last week. We didn't have that video --

4 MR. GARRETT: Objection, Your Honor.

5 THE COURT: Well, try not to testify, Solicitor. Okay?

6 MR. BLACK: Yes, sir. We'll let you -- we'll watch the
7 video. We're not trying to hide anything. You want to
8 watch the video of Mr. Rowell at Walmart? We'll watch it.
9 Of course technology doesn't want to work for me right now.

10 While Ms. Merrill is working on getting that up, I'll
11 head up a couple other points before I sit down. But we can
12 watch that video. It's not a problem. I'm not trying to
13 hid anything.

14 Justin Pennington. We didn't call Justin Pennington.
15 He's absolutely right. We didn't call him. We're not
16 trying to hide anything. Mr. Pennington got up here and
17 testified. He testified that he's sitting here at Scotch
18 Cross Road, sees the blue truck go by real fast. Saw the
19 red truck serving. Then he testified that the red truck
20 swerved in the blue truck's lane and it happened in the blue
21 truck's lane. The wreck -- collision happened in the blue
22 truck's lane. That's what he testified to. But folks, what
23 do we know? We know that what he saw, what he said is
24 absolutely not true. The wreck did not happen in the blue
25 truck's lane. I submit to you this is 500 feet. You've

1 heard testimony. What's 500 feet? 166 yards. A football
2 field and a half. And the red truck is not just sitting
3 there in the middle of the road. The red truck is further
4 up this highway towards the fairgrounds, folks, and he can
5 unequivocally see the red truck's in the blue truck's lane?
6 Folks, Mr. Garrett said that each of you bring with you your
7 commonsense and your life experiences. And we've all driven
8 at night. This is Greenwood, South Carolina. Kind of off
9 the beaten path. Everybody has driven a back road at night.
10 You can use your commonsense and your life experience in
11 making inferences and drawing from that. How far can you
12 see at night when you're driving down the road? I submit to
13 you when you're driving down the road and your lights are
14 just on normal you can't see 60 yards in front of you. Now,
15 when they're on brights you can see a little bit further,
16 absolutely. But when you've just got your regular lights on
17 you can't see 50 or 60 yards in front of you. And Mr.
18 Pennington is sitting right here at this light -- or at this
19 road right here and can see 166 yards where the wreck
20 happened and on past that.

21 Folks, I few up sitting in the west end zone at Clemson
22 games. The football field is 100 yards. And when they're
23 on the other side of the field I'm watching the big screen
24 because I can't see what's going on. And that's only 100
25 yards. Maybe 120 yards from where I'm sitting. Folks, use

1 your life experiences. Perception, distance. The red truck
2 is coming from up here. That's 250 to 300 yards away. Two
3 and a half to three football fields. Mr. Pennington, nice
4 guy, but he was wrong. And you heard Kelly Anderson. You
5 heard her testimony. They considered everything. She took
6 his statement. She did her job. She did her investigation.
7 But from what he said to the physical evidence that's been
8 put on display it's impossible how Pennington described it.
9 Absolutely impossible.

10 Folks, I think we might have this video. Let's see if
11 we can play this video again for you. I know we've played
12 it previously. I'm not trying to hide anything. I'll play
13 it a couple of times for you.

14 (Whereupon, the video was published for the jury.)

15 MR. BLACK: This is Mr. Rowell, the second individual
16 is what's been testified to. Comes on screen. That's 15
17 seconds right there, folks. We'll back it up in slow
18 motion. Folks, I submit to you he is all over that aisle.
19 All over that aisle. Hugging the right side right now -- or
20 the left side right now, back to the middle. Right now when
21 he comes on screen he's on the right-hand side of that
22 aisle. 6:56 p.m.

23 Go back to Dr. Valentine's testimony for a brief
24 moment. You saw his PowerPoint. You saw his news article.
25 Lactate dehydrogenase can cause false positives. Not that

1 it always will. Not always, not maybe, but can. But what
2 did he testify to? Lactate dehydrogenase. Do we have any
3 of that in this case? There's been nothing in the medical
4 record about that at all. What we do have, lactic acid. He
5 was a 3.3 at 22:10. 22:10, 10:10, he was a 3.3. Standard
6 is .5 to 1.6. He's two or three times normal than what he
7 should be. But that's not unusual. Anybody that's
8 exercised and had excess lactate acid in their body. When
9 do the studies go array? 25 mm of sodium lactate. That's
10 when there's false positives in these tests. Not when it's
11 a three, not when it's a two, not when it's a five, not when
12 it's a 20, but when the lactate acid is 25. Here it was
13 only a three. To say that the machine definitely yielded a
14 false positive? You can't make that. You can't make that
15 determination at all. Not at all.

16 I want to talk a little bit about Jeremy Cockrell.
17 Found marijuana in his system. No denying that. But what's
18 the testimony? What did you hear? Mr. Sanders testified
19 they smoked a week before. And the toxicologist said that
20 they can't determine whether a person is under the influence
21 of that whether or not -- unless they have the parent of
22 that drug, and they didn't have the parent of that drug. So
23 yes, we know it was in his system. We don't know if he was
24 under the influence of it or not. But what we do know and
25 what's undisputed is the wreck happened in their lane of

1 travel. Mr. Garrett even said it himself. He said the only
2 thing in dispute in this case is the alcohol. The area of
3 impact where those two trucks collided pushed that pressure
4 down, the force down to create those gouge marks, clear as
5 day in the red truck's lane. So what do you have to do?
6 You have to judge the credibility of the witnesses. And in
7 this case Mr. Rowell testified -- he testified that at seven
8 seconds out when he tapped the breaks the red truck was in
9 his lane. And he had to make a split decision. And that
10 split decision was instead of hitting the brakes, instead of
11 pulling off to the side of the road, his side of the road on
12 the right side where there was plenty of room to pull over,
13 he decides to make his vehicle, drive it in the other lane
14 to avoid hitting them. Is that rational? Is that
15 reasonable? Folks, I submit to you that he couldn't even
16 tell first of all where in the world they were coming from
17 and if they were in his lane or not. Seven seconds outside.
18 Seven seconds from point of impact. At least 250. Or at
19 least 166 to 200 yards. Two football fields. And it was
20 dark and there's no lights out there. He didn't have a
21 clue. He did not have a clue. Could not tell. But he's
22 going to take his vehicle and drive it in the red truck's
23 lane where there is a guardrail over there, a road that he
24 is familiar with traveling his entire life. No way. No
25 way. No way. Not a chance. That's not rational. It's not

1 reasonable. He crossed the center line. He drifted over,
2 just like he was drifting while he was walking in Walmart.
3 He's behind the wheel and he drifts over, just like his
4 walking. He crashed in that car and he killed Jeremy
5 Cockrell and he injured Matthew Sanders. Two of those
6 people testified. One of them couldn't. And Matthew
7 Sanders' testimony was that yes, they were fighting. They
8 were having a discussion. But they were clearly in their
9 lane of travel. And he never loss consciousness. Not one
10 time. He was in a comma for two weeks and had to piece it
11 back together. Took him a while to piece it all back
12 together.

13 Folks, the evidence in this case could not be any more
14 clear. The EMS personnel, they ain't got a dog in this
15 fight. They smelled it on him and they put it in their
16 report. He got to the hospital and was a 219, which is an
17 18 or 19 percent. The laboratory at Greenville Memorial.
18 Greenville Memorial. He was stuck again four hours later.
19 Yeah, he had diluted -- his blood was diluted, but his blood
20 was still in there. His blood was -- his blood was drawn.
21 His blood was taken into evidence, it was taken down to SLED
22 and it was tested .09. It's a grand conspiracy. Highway
23 Patrol's in on it. The hospital's in on it. Everybody's in
24 on it.

25 Folks, the Judge is going to read to you the law and

1 its about 15 pages, and I know you're sick and tired of
2 hearing us lawyers talk. You've been here a long -- you've
3 been here for more than a week. But he's going to read to
4 you that proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the Defendant's guilt. There
6 are very few things in this world that we know with absolute
7 certainty. And in criminal cases the law does not require
8 proof that overcomes every possible doubt. That's what he's
9 going to read you. And he's going to give you a copy of
10 these jury instructions. You're going to take them back
11 there with you. And the Defense wants to get up here and
12 tell you that proof beyond a reasonable doubt is definitely
13 guilty beyond a reasonable doubt. No way. No chance.
14 Because the law does not require the State to prove it
15 definitely guilty. It doesn't require the State to prove it
16 definitely guilty. Because there are few things in this
17 world that we know definitely, absolutely certainty, 100
18 percent, and the law does not require us to do that. This
19 is wrong. This is wrong. Proof beyond a reasonable doubt
20 is proof that leaves you firmly convinced of the Defendant's
21 guilt. There are very few things in this world that we know
22 with absolute certainty, and in criminal cases the law does
23 not require proof that overcomes every possible doubt. The
24 evidence is there, folks. It's there. There's one verdict
25 in this case. Find him guilty.

1 THE COURT: Mr. Foreman, ladies and gentlemen of the
2 jury, what we're going to do, we're going to take another
3 short break before I charge you on the law. Now, we're in
4 lunchtime. I don't want to release you to go eat lunch, so
5 we're going to provide lunch for you. I'm going to have you
6 go back to the jury room. Again, don't bring any
7 discussions about this case, and we're going to have an
8 order form. I think we're going to Howard's? Is that
9 correct, Madam Clerk? And get you -- you can pick what you
10 want off the -- off the sheet, and then we'll bring you back
11 out. Go and get our order in while I'm charging you on the
12 law. Now, there will still be maybe a little bit of time
13 before lunch actually gets here and you will have already
14 started your deliberations. But we want to go ahead and
15 feed you. So if you go back to the jury room, and I'm going
16 to get the Clerk to go back in there with Mr. Willingham and
17 hand you the order forms. You be working on that, we'll
18 collect them up. And then once we do that we'll get you
19 back out for the charge on the law. Okay? So if you'll go
20 back to the jury room.

21 (Whereupon, the jury exited the courtroom at 12:46
22 p.m.)

23 THE COURT: We'll be at ease for a few minutes.

24 MR. HENDERSON: Judge, before we break we've got
25 something we want to bring to the Court's attention.

1 THE COURT: Well, we'll do that when I come back out
2 before we bring the jury out.

3 MR. HENDERSON: I think we need to do it right now,
4 Your Honor, because I think we're entitled to a rebuttal.
5 They actually raised a matter -- a grand conspiracy that we
6 never argued during closing at all. The first time -- grand
7 incompetence maybe, but not grand conspiracy. That's the
8 first time that's come up and I think Mr. Garrett's entitled
9 to respond to rebut that particular issue only.

10 THE COURT: Well, even though Mr. Garrett did not use
11 those -- use that phrase, I think that was a part of the
12 argument and I'm going to deny your request.

13 MR. HENDERSON: Just so the record is preserved.

14 THE COURT: Thank you. Be at ease for a few minutes.

15 (Whereupon, a recess was held from 12:46 p.m. to 1:00
16 p.m.)

17 THE COURT: We're back on the record. Let me just read
18 for the lawyers the two -- well, I added one other little
19 thing about no sympathy, and I'll read that to you. But
20 that addition to the container part, any evidence of
21 containers may still be considered by the jury in
22 determining whether Defendant committed the crime charged.
23 Now, that was added. And then I just added a one sentence.
24 Your verdict cannot be based on sympathy, passion, emotion
25 or any other consideration not in evidence in this case. So

1 with those two additions which you have your copy is
2 complete. Okay?

3 And secondly, I don't want to beat a dead horse, but we
4 looked again at the defense of necessity and I'm satisfied
5 that under the facts of this case the Defense would not be
6 entitled to a charge, and we came across several cases that
7 would support that position of the Court.

8 Let's bring the jury out for the final charge.

9 MR. HENDERSON: I just want to make sure that we're
10 preserved on all our objections.

11 THE COURT: You are. You are. You're more than
12 covered, Mr. Henderson.

13 (Whereupon, the jury entered the courtroom at 1:00
14 p.m.)

15 THE COURT: Let the record reflect that the jury is
16 back and seated. Ladies and gentlemen of the jury, I now
17 will charge you on the law that is applicable to this case.
18 You must consider the charge as a whole and not focus on
19 some portions to the exclusion of other portions. Once
20 again, the indictments charge the defendant with two counts
21 of felony driving under the influence. I remind you once
22 again that the fact the defendant was arrested, charged and
23 indicted in this case, is not evidence in this case and
24 cannot be considered by you as evidence of guilt in this
25 case, nor does it create any presumption or inference of

1 guilt. These documents are simply the formal written
2 instruments which contain the charges made against the
3 defendant. These are the formal documents by which this
4 case is brought into this court. Now, each indictment, even
5 though they are the same offense, they are separate and
6 distinct. You must decide each indictment separately on the
7 evidence and the law applicable to it uninfluenced by your
8 decision as to any other indictment. The defendant may be
9 convicted or acquitted on any or all of the offenses
10 charged. You will be asked to write a separate verdict of
11 guilty or not guilty for each indictment. There is a
12 verdict form I have, Mr. Foreman, that I will show you at
13 the conclusion of my charge.

14 Once again, the defendant has pled not guilty to these
15 indictments, and that plea of not guilty puts the burden on
16 the state to prove the defendant guilty. A person charged
17 with committing a criminal offense in South Carolina is
18 never required to prove himself innocent.

19 I charge you that it is an important rule of the law
20 that the defendant in a criminal trial, no matter what the
21 seriousness of the charge may be, will always be presumed
22 innocent of the crime for which the indictment was issued
23 unless guilt has been proven by evidence satisfying you of
24 that guilt beyond a reasonable doubt. This presumption of
25 innocence does not end when you begin your deliberations,

1 but it accompanies the defendant throughout the trial unless
2 you reach a verdict of guilt based on evidence satisfying
3 you of that guilt beyond a reasonable doubt.

4 This presumption of innocence is like a robe of
5 righteousness placed about the shoulders of the defendant
6 which remains with the defendant unless it has been stripped
7 from the defendant by evidence satisfying you of the
8 defendant's guilt beyond a reasonable doubt. The
9 presumption of innocence is not mere legal theory. It is
10 not just a legal phrase that we use in a courtroom. It is a
11 substantial right to which every defendant is entitled
12 unless you, the jury, are satisfied from the evidence of the
13 defendant's guilt beyond a reasonable doubt.

14 Now, concerning reasonable doubt. Some of you, first
15 of all, may have served as jurors in civil cases, where you
16 were told that it is only necessary to prove that a fact is
17 more likely true than not true, such as by the greater
18 weight or preponderance of the evidence. But, in criminal
19 cases, the state's proof must be more powerful than that.
20 Again, it must be beyond a reasonable doubt.

21 Proof beyond a reasonable doubt is proof that leaves
22 you firmly convinced of the defendant's guilt. I think the
23 Solicitor, during his rebuttal argument, read from a portion
24 of the charge. I give the lawyers a copy of the charge so
25 they know what I am going to say in advance. He read, which

1 is true, there are very few things in this world that we
2 know with absolute certainty, and in criminal cases the law
3 does not require proof that overcomes every possible doubt.
4 If, based on your consideration of the evidence, you are
5 firmly convinced that the defendant is guilty of the crime
6 charged, you must find the defendant guilty. If on the
7 other hand, you think there is a real possibility that the
8 defendant is not guilty, you must give the defendant the
9 benefit of the doubt and find him not guilty.

10 As I explained to you at the beginning of this case,
11 which seems like many days ago. It was on Monday. That you
12 and I have certain duties to perform. As the trial judge,
13 it has been my responsibility to preside over the trial of
14 this case, and I've also had the duty to rule on the
15 admissibility of the evidence offered during this trial.
16 You are to consider only the competent evidence before you.
17 If there was any testimony ordered stricken from the record
18 in this case during this trial then you must disregard that
19 testimony. You are to consider only the testimony which has
20 been presented from this witness stand, any exhibits which
21 have been made a part of the record in this case, and there
22 are numerous ones, and any stipulations of counsel.

23 I have the additional duty to charge you the law
24 applicable to this case, as I am doing now. As the
25 presiding judge, I am the sole judge of the law in this

1 case, and it is your duty as jurors to accept and apply the
2 law as I now state it to you. If you already have any idea
3 as to what the law is or what the law ought to be and it
4 does not agree with what I now tell you the law is, you must
5 abandon your idea because you are sworn to accept the law
6 and apply the law exactly as I state it to you.

7 In every case tried in this court before a jury, the
8 jury becomes the sole and exclusive judge of the facts in a
9 case, and I also told you that on Monday. A trial judge
10 cannot intimate, state, comment on, or make any statement to
11 a trial jury about the facts in a case. Since you, the
12 jury, are the sole judge of the facts in this case, you are
13 not to infer from what I have said during the progress of
14 this trial in ruling upon the admissibility of evidence, or
15 otherwise, or anything that I say now during the course of
16 this instruction to you, that I have any opinion about the
17 facts in this case. The law does not allow me to have an
18 opinion about the facts in this case. This is a matter
19 solely for you, the jury, to determine. As jurors, it is
20 your duty to determine the effect, value and weight of the
21 evidence presented during this trial.

22 Now, Mr. Foreman, ladies and gentlemen of the jury,
23 there are two types of evidence which are generally
24 presented during a trial, that being direct evidence and
25 circumstantial evidence. Direct evidence directly proves

1 the existence of a fact and does not require deduction.
2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact.
4 Crimes may be proven by circumstantial evidence. The law
5 makes no distinction between the weight or value to be given
6 to either direct or circumstantial evidence, however, to the
7 extent the state relies on circumstantial evidence, all of
8 the circumstances must be consistent with each other, and
9 when taken together, point conclusively to the guilt of the
10 accused beyond a reasonable doubt. If these circumstances
11 merely portray the defendant's behavior as suspicious, the
12 proof has failed.

13 Again, the state has the burden of proving the
14 defendant guilty beyond a reasonable doubt. This burden
15 rests with the state regardless of whether the state relies
16 on direct evidence, circumstantial evidence, or some
17 combination of the two. Necessarily, you must determine the
18 credibility of witnesses who have testified in this case and
19 the evidence presented. Credibility simply means
20 believability. It becomes your duty as jurors to analyze
21 and to evaluate the witnesses and the evidence and determine
22 the credibility of the witnesses and the evidence.
23 In determining the credibility of witnesses who have
24 testified in this case, you may believe one witness over
25 several witnesses or several witnesses over one witness.

1 You may believe a part of the testimony of a witness and
2 reject the remaining part of the testimony of that same
3 witness. You may believe the testimony of a witness in its
4 entirety or reject the testimony of a witness in its
5 entirety. You may consider whether any witness has
6 exhibited to you any interest, bias, prejudice, or other
7 motive in this case. You may also consider the appearance
8 and manner of a witness while on the witness stand.

9 Now, during the course of this trial we've had some
10 expert witnesses testify. After the first or -- when the
11 first expert testified I gave you a little summary about
12 that. I'm going to go into a little more detail about that.
13 The rules of evidence ordinarily do not permit witnesses to
14 testify to opinions or conclusions. An exception to this
15 rule exists for witnesses we call "expert witnesses". A
16 witness who, by education and experience, has become expert
17 in some art, science, profession, or calling may state an
18 opinion as to relevant and material matter, in which the
19 witness claims to be an expert, and may also state the
20 reasons for the opinion given.

21 You should consider any expert opinion received in
22 evidence in this case and, like any other evidence, give it
23 the weight you think it deserves. If you decide that the
24 opinion of an expert witness is not based on sufficient
25 education and experience, or if you conclude that the

1 reasons given in support of the opinion are not sound, or
2 that the opinion is outweighed by other evidence, you may
3 disregard the opinion entirely. An expert witness'
4 testimony is to be given no greater weight than that of
5 other witnesses simply because the witness is an expert.
6 Further, you are not required to accept an expert's opinion,
7 even though it is not contradicted.

8 Let me talk to you about intent. In order to establish
9 criminal liability, criminal intent is required. For
10 example, the mental state required to be proven by the state
11 for a particular crime might be purpose, intent, knowledge,
12 recklessness, or criminal negligence. Criminal intent must
13 be proven by the state beyond a reasonable doubt. Criminal
14 intent is always a matter that must be determined by the
15 jury from the circumstances surrounding the situation. There
16 is no way to prove intent to a mathematical certainty.
17 There is no way medical science can dissect a person's brain
18 and determine what the person had in mind, so the law says
19 that criminal intent may be inferred from the circumstances
20 shown to have existed. This is how you make a determination
21 of whether or not the element requiring intent was present.
22 It is not necessary to establish intent by direct and
23 positive evidence, but intent may be established by
24 inference in the same way as any other fact by taking into
25 consideration the acts of the parties and all the facts and

1 circumstances of the case.

2 Criminal intent is defined as a mental state, a
3 conscious wrongdoing. It is up to you to determine what the
4 defendant intended to do based on the circumstances shown to
5 have existed. Criminal intent can arise from action or a
6 failure to act. It may arise from negligence, recklessness,
7 or an indifference to duty or to consequences that is
8 considered by the law to be the equivalent of criminal
9 intent.

10 Now, let me discuss with you the elements of felony
11 driving under the influence. This will be related to Jeremy
12 Cockrell, but the same elements have to apply to the other
13 person in the car, and I'll explain a little bit more about
14 that in a minute. Once again, the defendant is charged with
15 felony driving under the influence. The state must first
16 prove beyond a reasonable doubt that the defendant drove a
17 vehicle while under the influence of alcohol and/or drugs.
18 Driving a motor vehicle means that the vehicle was in
19 motion. This may be proved by direct or circumstantial
20 evidence.

21 A movement of the vehicle might occur without any
22 affirmative act by a driver or, in fact, by any person. If
23 a vehicle is moved by some power beyond the control of the
24 defendant, or by accident, this would not be driving.
25 The state must prove beyond a reasonable doubt that the

1 defendant was sufficiently under the influence to impair his
2 ability to drive with reasonable care, with due regard for
3 others and himself, or as a reasonably prudent person would
4 drive. It is not necessary to show that the defendant was
5 in a helpless condition, passed out, or even intoxicated.
6 On the other hand, the fact that the defendant, at some time
7 prior to this incident, drank an alcoholic beverage or took
8 a drug does not prove that the defendant was driving under
9 the influence.

10 Next, the state must prove beyond a reasonable doubt
11 that while driving under the influence the defendant did an
12 act forbidden by law or neglected a duty imposed by law.
13 The state alleges the defendant crossed the center lane of
14 travel. Finally, the state must prove beyond a reasonable
15 doubt that the act or neglect of the defendant proximately
16 caused the death of Jeremy Cockrell. Proximate cause is the
17 direct cause; it is the immediate cause; it is the efficient
18 cause; it is that cause without which the death of the
19 victim would not have resulted.

20 There must be a chain of causation from the time of the
21 injury inflicted by the defendant until the time of the
22 victim's death. Proximate cause does not necessarily mean
23 the that it occurred immediately prior to death. The
24 defendant's act may be regarded as the proximate cause if it
25 is a contributing cause of injury or death of the victim.

1 The fact that other causes also contribute to the injury or
2 the death of the victim does not relieve the defendant from
3 responsibility. The defendant's act need not be the sole
4 cause of the injury or death, but must be a proximate cause
5 contributing to the injury or the death of the victim.

6 Now, with respect to Matthew Sanders everything I've
7 just read to you about felony driving under the influence
8 applies here. The same elements apply. As to the second
9 indictment for felony driving under the influence, the state
10 must prove beyond a reasonable doubt all aforementioned
11 factors and that the act or neglect of the defendant
12 proximately caused great bodily injury to Matthew Sanders.
13 Great bodily injury" means bodily injury which creates a
14 substantial risk of death or which causes serious, permanent
15 disfigurement, or protracted loss or impairment of the
16 function of any bodily member or organ

17 Now, related to the test results of the SLED test, the
18 amount of alcohol in the defendant's blood at the time of
19 the alleged violation, as shown by chemical analysis of the
20 defendant's bodily fluids, may be considered by you in
21 deciding whether the defendant was under the influence.
22 If the alcohol concentration was eight one-hundredths of one
23 percent (.08) or more, it may be inferred that the defendant
24 was under the influence. This inference is simply an
25 evidentiary fact to be considered by you, along with the

1 other evidence in the case, and you may give it the weight
2 you decide it should receive.

3 Now, let me explain to you further, it is not against
4 the law for a person, while driving a motor vehicle in the
5 State of South Carolina, to have an unopened container of an
6 alcoholic beverage in his or her vehicle. It is not against
7 the law for a person, while driving a motor vehicle in the
8 State of South Carolina, to have a completely empty
9 container of an alcoholic beverage in his vehicle. Any
10 evidence of containers may still be considered by you, the
11 jury, in determining whether defendant committed the crime
12 charged.

13 Now, as to each indictment, there are two possible
14 verdicts for each charge, either guilty or not guilty. The
15 fact that on the verdict form, which I'll show you in just a
16 minute, lists guilty first above not guilty is of no
17 significance whatsoever. Your verdict as to each indictment
18 must be unanimous among the twelve of you. Your verdict,
19 Mr. Foreman and ladies and gentlemen of the jury can not be
20 based on sympathy, passion, emotion or any other
21 consideration not in evidence in this case.

22 Mr. Foreman, when a verdict is reached as to each
23 indictment, just knock on the door and ill you inform one of
24 our bailiffs that you have reached a verdict as to each
25 indictment in this case.

1 Now, I think one of the lawyers told you that I do give
2 a copy of what I've just read to the jury to take back with
3 you and use in whatever fashion you feel is appropriate
4 while you deliberate this case. Let me come down and show
5 you the verdict form. It's very simple. Mr. Foreman, this
6 shows the name of the case, the two indictment numbers, and
7 as to the first indictment that relates to Jeremy Cockrell
8 you state whether your verdict is guilty or not guilty.
9 Whatever your verdict is you'll place your initials on the
10 line next to your verdict, and likewise as to the other
11 indictment related to Matthew Sanders. Place your initials
12 next to the verdict you reach. You'll sign it and put
13 today's date.

14 Now, I'm going to send all 14 of you back to the jury
15 room. Do not begin your deliberations yet. I need to talk
16 to the lawyers first to make sure that I do not need to
17 bring you out and charge anything further. If I don't, and
18 when the bailiffs bring back all of the exhibits, the
19 verdict form, and a copy of my charge, that will be your cue
20 for two things to happen. First of all, I need the two
21 alternates to come out. I know you've sat through this
22 whole trial and you cannot participate in these
23 deliberations, and I want to talk with you a little bit when
24 you come out. But that will be your cue for the two
25 alternates to exit the jury room and for your deliberations

1 to begin. Go back to the jury room. Don't start any
2 discussions yet, and hopefully we won't need to bring you
3 back out.

4 (Whereupon, the jury exited the courtroom at 1:20 p.m.)

5 THE COURT: Other than what's been noted on the record
6 does the State have any exceptions or objections to the
7 charge?

8 MR. BLACK: No, sir, Your Honor.

9 THE COURT: Other than what's noted on the record,
10 Defense have any?

11 MR. HENDERSON: Your Honor, we do have one thing, and
12 its about five minutes into your charge where you were going
13 into beyond a reasonable doubt. While you're sitting there
14 reading you actually look up and tell the jury this is the
15 exact same stuff that the Solicitor just read you. I mean,
16 that's kind of a direct bolstering of -- I mean, that --

17 THE COURT: Mr. Henderson, I just alluded to the fact
18 that you've already heard this one time and I'm going to
19 read it to you again.

20 MR. HENDERSON: Again, it just -- we just didn't like
21 it. I mean, it's almost like you're bolstering -- picking
22 one side over the other.

23 THE COURT: All right. Bring the jury back out.

24 (Whereupon, the jury entered the courtroom at 1:22
25 p.m.)

1 THE COURT: Let the record reflect the jury is back in
2 the courtroom. Ladies and gentlemen, kind of towards the
3 first part of my charge I alluded to the fact that the
4 Solicitor had read a small portion of what I was about to
5 read to you and it was -- I made that comment to you not to
6 bolster in any sense whatsoever that the fact that that
7 happened. I was just telling you you've already heard this.
8 You're going to hear it again. And don't place any other
9 significance to the fact that I prefaced that part of the
10 charge by telling you that the Solicitor had read that
11 portion. I was just wanting to let you know you've heard
12 this one. You're going to hear it again from me. Okay?

13 Now, when that said, if you'll go back to the jury
14 room. We will bring you the exhibits in just a few minutes.
15 And I want both alternates to go back there. Don't start
16 your discussion yet until the exhibits and the verdict form
17 and the charge are brought to you. Okay? And that should
18 be just a minute. All right?

19 (Whereupon, the jury exited the courtroom at 1:23 p.m.)

20 THE COURT: Okay. If the lawyers will get with the
21 court reporter to make sure all of the exhibits are
22 together. We're off the record.

23 THE COURT: I just want to make an observation, and
24 this is really directed toward both sides in this case.
25 This has been an extremely difficult case. A lot of emotion

1 which I understand that completely and I appreciate that.
2 But I want you to understand that practicing law is
3 extremely difficult. It may appear to be glamorous at
4 times. It may appear that lawyers are all rich. And while
5 that may be true at times, it is extremely difficult. And I
6 have to commend these five lawyers for the work that they've
7 done in this case. They have brought civility, they brought
8 professionalism, and an ordinate amount of preparation and
9 time, and they brought passion in this case. Now, has it
10 gotten contentious at times? Sure. Has the Judge gotten
11 cranky at times? Sure. But at the end of the day these
12 five lawyers, regardless of the outcome of this case, and
13 none of us know the outcome, but they need to be thanked for
14 the work that they've done, and I appreciate them very much.
15 All give of them. Okay?

16 Got the exhibits?

17 THE BAILIFF: Yes, sir.

18 (Whereupon, the jury began deliberations at 1:31 p.m.)

19 (Whereupon, there was a jury note sent out from the
20 jury at 2:38 p.m.)

21 (Whereupon, the Court went on the record with the
22 defense by telephone on speaker.)

23 THE COURT: With respect to the jury's question, "What
24 time is the video from WalMart taken?" The lawyers have
25 stipulated to send back to the jury the following

1 information written on their note which is marked as a
2 Court's exhibit. Starting time for the parking lot video is
3 06:38:14. Starting time for the inside video is 6:56:30.

4 Is that your agreement, Solicitor?

5 MR. BLACK: It is.

6 THE COURT: Is that your agreement, Mr. Henderson?

7 MR. HENDERSON: It is our agreement, but these are p.m.
8 times.

9 THE COURT: All right. I'm going to put p.m. after each
10 one. That's how we'll do it.

11 MR. GARRETT: Our client is here with us, Judge, and
12 he's heard the conversation.

13 THE COURT: Very good. Thank you. Make a copy.

14 (Whereupon, the note was returned to the jury room and
15 deliberations resumed at 2:40 p.m. At 3:00 p.m. there was a
16 knock and the jury indicated they had a verdict.)

17 VERDICT

18 THE COURT: Okay. It's my understanding that the jury
19 has reached a verdict which we'll bring them out in just a
20 second. We've got a lot of people in the courtroom. Again,
21 I realize this is a very emotional case. If anybody in the
22 courtroom believes that you may have a difficult time
23 controlling your emotions when the verdict is announced then
24 I would respectfully request that you exit the courtroom at
25 this time, because I can't -- can't have any emotional

1 outbursts. All right. Seeing known, let's bring the jury
2 out, please.

3 (Whereupon, the jury entered the courtroom at 3:08
4 p.m.)

5 THE COURT: All right. Let the record reflect the jury
6 is back in the courtroom. Mr. Foreman, without telling me
7 what the verdict is it's my understanding that you have
8 reached a verdict as to both indictments?

9 Mr. Foreman: Yes.

10 THE COURT: And the verdict that you reached on both
11 indictments, was that and is that unanimous among the 12 of
12 you?

13 MR. FOREMAN: Yes, it was.

14 THE COURT: All right. If you will hand the paperwork
15 to Mr. Willingham. Madam Clerk, if you will publish the
16 verdict, please.

17 MADAM CLERK: State of South Carolina, County of
18 Greenwood, in the Court of General Sessions, Eighth Judicial
19 Circuit, indictment numbers 2015-GS-24-0535 and
20 2015-GS-24-0536, State of South Carolina versus Adam Rowell,
21 as to indictment number 2015-GS-24-535 which charges the
22 Defendant with felony driving under the influence resulting
23 in death of Jeremy Cockrell, we the jury find the Defendant
24 guilty. As to indictment number 2015-GS-24-536 which
25 charges the Defendant with felony driving under the

1 influence resulting in great bodily injury of Matthew
2 Sanders, we the jury find the Defendant guilty. Signed
3 Foreperson George Gordon, February 20th, 2017.

4 Juror Number 62, Charles Gordon, please stand. Is this
5 your verdict?

6 MR. FOREMAN: Yes, it is.

7 MADAM CLERK: Is this still your verdict?

8 MR. FOREMAN: Yes, it is.

9 MADAM CLERK: You can sit down. Number four, Shunessa
10 Anty, is this your verdict?

11 JUROR NO. 4: Yes.

12 MADAM CLERK: Is this still your verdict?

13 JUROR NO. 4: Yes.

14 MADAM CLERK: You may have a seat. Number 22, Timothy
15 Cadden. Is this your verdict?

16 JUROR NO. 22: Yes.

17 MADAM CLERK: Is this still your verdict?

18 JUROR NO. 22: Yes, ma'am.

19 MADAM CLERK: You may sit down. Number 133, Robert
20 Ridge. Is this still your verdict?

21 JUROR NO. 133: Yes.

22 MADAM CLERK: You may sit down. Number 20, Alessandro
23 Butler. Is this your verdict?

24 JUROR NO. 20: Yes.

25 MADAM CLERK: Is this still your verdict?

1 JUROR NO. 20: Yes.

2 MADAM CLERK: Number 58, Jennie Gambrell. Is this your
3 verdict?

4 JUROR NO. 58: Yes.

5 MADAM CLERK: Is this still your verdict?

6 JUROR NO. 58: Yes.

7 MADAM CLERK: No. 173, George Williams. Is this your
8 verdict?

9 JUROR NO. 173: Yes.

10 MADAM CLERK: Is this still your verdict?

11 JUROR NO. 173: Yes, it is.

12 MADAM CLERK: No. 42, Jason Dodson. Is this your
13 verdict?

14 JUROR NO. 173: Yes.

15 MADAM CLERK: Is this still your verdict?

16 JUROR NO. 173: Yes.

17 MADAM CLERK: Number 164, Anxaviar Waldrop. Is this
18 your verdict?

19 JUROR NO. 164: Yes, ma'am.

20 MADAM CLERK: Is this still your verdict?

21 JUROR NO. 164: Yes, ma'am.

22 MADAM CLERK: Number 108, Lawrence McGee. Is this your
23 verdict?

24 JUROR NO. 108: Yes, ma'am.

25 MADAM CLERK: Is this still your verdict?

1 JUROR NO. 108: Yes, ma'am.

2 MADAM CLERK: No. 155, Michelle Stevens. Is this your
3 verdict?

4 JUROR NO. 155: Yes.

5 MADAM CLERK: Is this still your verdict?

6 JUROR NO. 155: Yes.

7 MADAM CLERK: And Number 9, Cassandra Barr. Is this
8 your verdict?

9 JUROR NO. 9: Yes.

10 MADAM CLERK: is this still your verdict?

11 JUROR NO. 9: Yes.

12 MADAM CLERK: Thank you.

13 THE COURT: Thank you, Madam Clerk. You can have a
14 seat.

15 Mr. Foreman, ladies and gentlemen of the jury, let me
16 take this opportunity to thank you for your jury service.
17 It's been a long hard trial. I think even Mr. Garrett
18 alluded to the fact that as long as he's been practicing
19 it's been the longest trial for him. Certainly since I've
20 been on the bench it's been the longest trial for me. So
21 it's been a -- it's been a tough -- tough task at hand. But
22 what is important to me -- your verdict means nothing to me.
23 What is important to me is the fact that a jury performs its
24 duties conscientiously, efficiently. You know, we told you
25 at the very beginning you got to pay attention because

1 you're not allowed to take notes, and I've looked at you
2 numerous times and every time I've looked at you you were
3 always being very attentive to the proceedings and what was
4 going on at the time. So once again, I thank you for your
5 service. Even though it's an extremely difficult task for
6 you, I hope that you found it to be somewhat educational and
7 be something that maybe down the road you'd like to
8 participate in again.

9 You are free now to discuss this with anyone if you
10 care to. Sometimes the lawyers like to talk to you to get
11 kind of an idea about things in the case and things that
12 they can improve on or not. So you're free to talk with
13 them. The sentencing will take place in short course today.
14 You're welcome to sit in for the sentencing. If you do,
15 we'll just need for you to -- the bailiffs will direct you.
16 You can go out and just come around and you can sit -- sit
17 in the back somewhere if you care to. You don't have to.
18 Checks for your service will be mailed out sometime this
19 week. So probably maybe by the end of the week you'll get
20 your checks. If you need a work excuse they have that
21 there, too. Thank you. Thank you again for your jury
22 service. You're free to go or free to remain with us if you
23 like.

24 (Whereupon, the jury was released at 3:15 p.m.)

25 MR. GARRETT: May we approach?

1 THE COURT: Does the Defense wish 10 days to file any
2 appropriate post-trial motions?

3 MR. GARRETT: We do, Your Honor.

4 THE COURT: Okay. You got it. You got 10 days. I'm
5 going to take a little short recess.

6 MR. GARRETT: May we approach the bench, Judge?

7 THE COURT: Yeah. You want to just come back in --
8 come back in the office?

9 MR. GARRETT: Yeah, that'll be fine.

10 (Whereupon, a recess was held.)

11 THE COURT: We are back on the record. Had a
12 discussion with the lawyers in chambers. The Defense has
13 made a request for me to order the Probation Department and
14 do a pre-sentence investigation and report. I'm not going
15 to do that. But what I am going to do is that certainly,
16 and I don't have to tell the lawyers this, but any time the
17 Court undergoes a sentencing proceeding the State has an
18 opportunity to submit anything and certainly the Defense as
19 the right to submit anything in mitigation. I will be here
20 next week, so I'm going to defer sentencing until next
21 Monday morning. I realize and understand that especially on
22 this side of the courtroom you're wanting to finality to
23 this, and I understand that. But I want to give the lawyers
24 -- and this applies to both sides, but I realize the Defense
25 made the request. So I'm going to give both sides an

1 opportunity to put together whatever they can put together
2 to assist me in handing down hopefully the right and just
3 sentence or whatever that may be. So I'm not going to order
4 a pre-sentence report. But I will defer sentencing for a
5 week. And I'll be back in Greenwood next week so we'll
6 schedule it Monday morning at 10:00 unless for some reason
7 that time creates a conflict for the lawyers' schedule. And
8 if it does then certainly I can -- I can be flexible in
9 scheduling that. So that's what we're going to do.

10 This matter is concluded. Thank you very much.

11 MR. GARRETT: Thank you, Your Honor.

12 TRIAL DAY 8: 02/27/2017

13 SENTENCE

14 (Whereupon, the sentencing began at 10:15 a.m. Court's
15 Exhibits 26-29 were marked for identification.)

16 THE COURT: We are on the record this morning. This is
17 the sentencing phase of the matter of the State of South
18 Carolina v Adam Rowell, Mr. Rowell having been found guilty
19 by a jury a week ago today. Mr. Garrett, Mr. Henderson, and
20 Mr. Rowell, if y'all will come up to the forebench, please.
21 How we will handle this, I'll hear from the State first with
22 regard to sentencing. Anybody that you have, Solicitor
23 Black, that you would like to have speak on behalf of the
24 State I'll be glad to hear from them. Once I've heard from
25 the State I will turn it over to the Defense. Same thing.

1 I'll be glad to hear from anybody that you have on the issue
2 of sentencing. Solicitor Black, I'll turn it over to you,
3 sir.

4 MR. BLACK: Yes, sir. Thank you, Your Honor. Your
5 Honor, we're here on the case of Mr. Adam Rowell who was
6 tried and convicted a week ago today. Your Honor, this is
7 the event that happened on November 15, 2014 at 7:20 p.m.
8 We tried the case. It took 7 days. Ultimately a jury
9 rendered a verdict of guilty on two counts of felony DUI.

10 Your Honor, there's a couple of things that stood out to
11 me during the course of the trial. First of all, Judge, I
12 think that kind of the elephant in the room is that Mr.
13 Rowell is a former cop. As a former cop, Judge, I think
14 we're all -- all of us in a position of being in the public
15 eye. Cops, police officers, solicitors, even judges, we're
16 all in the public eye, Judge. We're all held to a higher
17 standard. Mr. Rowell, I'm sure with his job, he made
18 arrests for DUI. I'm sure he pulled people over for driving
19 intoxicated. I'm sure that he wrote tickets for open
20 container. And while he did not have that job in November
21 2014, he had lost that job for a DUI related offense, it's
22 hard to wrap my mind around what he's seen in his
23 profession, his job, and just blatantly ignore what he sees
24 and turn around and do it himself. So that's kind of the
25 first point, Judge.

1 The second point is the lack of empathy coming from Mr.
2 Rowell that was noticeable throughout the course of the
3 trial. You know, this family is here and I can see it in
4 their eyes, Judge. They literally went through hell and
5 back in 2014 and then in sitting through a seven day trial.
6 It was undisputed that the area of impact in this wreck
7 occurred in the victim's lane. In this particular case, Mr.
8 Rowell took the stand and at no point was their no empathy
9 at all in his emotion, in his face, whatsoever. That was
10 also quite concerning for the State.

11 The last thing, Judge, is the history of Mr. Rowell.
12 Mr. Rowell does not have a criminal record. He's got no
13 convictions on his record at all, but I've passed forward
14 kind of a packet that I believe Your Honor reviewed before
15 coming out here. I want to go through some of those right
16 now. October --

17 MR. GARRETT: For the record, any non-convictions where
18 he's pled not guilty and requested a trial by jury it is the
19 position of the defense that is improper for the Court to
20 consider during sentencing. For the record, Your Honor.

21 THE COURT: Thank you very much.

22 MR. BLACK: Your Honor, the first incident occurred on
23 October 24, 2012 at 2:43 in the morning. Mr. Rowell was
24 driving his vehicle in the town of Ninety Six and was
25 driving erratically and he was pulled over by a Ninety Six

1 police officer. At this time Mr. Rowell was working for the
2 City of Greenwood. He informed the officers that he was
3 working for the City of Greenwood. The officer pulled him
4 out of the car and asked him to conduct some field sobriety
5 tests. He failed those field sobriety tests, but he wasn't
6 arrested, Judge. Ninety Six Police Department called his
7 father. His father came out there and picked him up, took
8 him home, and the Greenwood City Police Department handled
9 this situation internally.

10 Judge, he met with Captain Morgan with the city. I
11 believe he also met with other individuals with the city and
12 he admitted that he had had too much to drink that night.
13 He admitted to consuming twelve beers that night. He also
14 admitted to having open containers, open liquor bottles in
15 his vehicle at 2:43 in the morning when he was driving
16 through Ninety Six. They disciplined him, Judge, but he
17 kept his job. One would think after a situation like that
18 it would be a wakeup call.

19 You know, Judge, everybody in this room has had family,
20 they've had friends, close friends, that have had DUI's.
21 I'm sure Your Honor has had friends and family, you've
22 represented people that have had DUI's. Oftentimes these
23 people, when a situation like this occurs, it serves as a
24 wakeup call and they either turn their life around or they
25 take another road. In this case, Mr. Rowell was given a

1 chance, Judge. He was given a golden ticket. Didn't get
2 arrested. Didn't get charged, and he kept his job. He
3 admitted to his superiors at Greenwood City Police
4 Department that he had consumed too much to drink. Admitted
5 to drinking twelve beers.

6 Judge, then fast forward to the June 8, 2013 incident,
7 less than a year later. He was arrested by the Highway
8 Patrol here in the City of Greenwood. He hasn't been
9 convicted of this crime. I think this charge is still
10 pending, but in this case officer smelled alcohol on him.
11 Got him out of the car. Same situation. Open containers in
12 the vehicle. He performed the field sobriety test and he
13 failed quite miserably, Judge, in my opinion. Your Honor,
14 you've had a chance to review that video. I passed it
15 forward. But that case is still pending, Judge.

16 At this point, Mr. Rowell lost his job as a city
17 officer. I believe he resigned the next day. That was June
18 8, 2013. Judge, he still didn't learn his lesson. He
19 picked up another open container ticket. There was no DUI
20 related to this, but this was May 17. It's hard to make
21 out. An open container charge. I talked to the officer
22 that made the arrest and he doesn't have an incident report,
23 Your Honor, but he told me that if he remembers correctly
24 that it was a bottle of wine that he had in his car. That
25 was in May 2014.

1 And then just a couple of months later, Judge, the
2 incident that happened on 225 at 7:20 p.m. November 15,
3 2014. Judge, there's no winners here today. There's no
4 winners. There's a family over here that's losing a son, a
5 grandson, a best friend, a loved one. He's going to prison.
6 And there's a family over here that's lost a loved one as
7 well. There's no winners, Judge.

8 Judge, this has been a difficult case. This really
9 has. But like Mr. Downtin said in his opening statement on
10 that Tuesday morning, he said this case was about a
11 decision. About a decision that Adam Rowell made on
12 November 15, 2014 to be inebriated, to get behind the wheel
13 of a car, and to drive his vehicle. If he hadn't made that
14 decision, Judge, Jeremy Cockrell would still be here and
15 Matthew Sanders would not have lost a loved one. Judge,
16 like I said in my closing, life is about choices.
17 Oftentimes -- oftentimes, Judge, we learn from the choices
18 that we make in the past and we turn from those, but Mr.
19 Rowell didn't do that. He continually made bad choices to
20 get on the road and to drive while intoxicated. And it was
21 a ticking time bomb, Judge. This was eventually going to
22 happen because he did it over and over and over again.

23 Judge, I think in Mr. Rowell's letter of reprimand,
24 Captain Morgan with the city put it best. He said, "Adam,
25 your conduct by an officer of the City of Greenwood Police

1 Department cannot and will not be tolerated. Your
2 irresponsible actions could've led to you being arrested,
3 seriously injured, and/or possibly hurting an innocent
4 citizen, which would have been detrimental to you as well as
5 the reputation of the Greenwood City Police Department."
6 Judge, he received this warning two years in advance of this
7 and he kept doing it. I can't explain it, Judge. I really
8 can't.

9 Judge, I'm not asking for a number, but I am asking
10 that a message be sent. I'm asking that you send a message
11 with this sentence, because drunk driving, continual
12 repeated drunk driving, cannot be tolerated. Because people
13 die, Judge. People's lives they're changed. And it can't
14 be accepted.

15 Judge, I think that's all that I have. I believe
16 several members of the family want to address you if this is
17 the appropriate time.

18 THE COURT: I'll be glad to hear from them. I'll need
19 to have you sworn in, whoever in the family would like to
20 address the Court.

21 MS. STROUP: Your Honor, we're going to read the letters
22 for them, if that's okay.

23 THE COURT: You're going to read the letter, so they're
24 not going to speak. Okay. That's fine. I'll be glad to
25 hear from you.

1 MS. STROUP: Your Honor, never in my wildest dreams
2 would I have ever imagined that I would be in the place
3 where I am today. A place where no parent should ever be.
4 A place where I have to put the one person more important to
5 me than anyone else in the world in the ground and walk
6 away. What compounds my grief and heartache is the
7 senselessness of the whole situation. You can't imagine all
8 the what ifs, if only, that have gone through my mind in the
9 last 20 months of my life. If only Adam Rowell had not
10 chosen to drink and drive. If only Jeremy had not chosen
11 that route. If he had been five minutes earlier, or later,
12 I could still have my son. I do this sometimes until the
13 point I want to scream. But at my house there is no longer
14 anyone to scream to.

15 Jeremy was my only child. I don't have another child
16 to help get me through all the lonely hours that I face. At
17 the time of Jeremy's death it had been almost two years to
18 the day that I lost his dad. His dad was diagnosed with a
19 brain tumor and was gone within a month. Jeremy and I were
20 dealing with the loss of my husband, his father. I don't
21 think I could've made it without Jeremy when all of that
22 happened. A loss that I thought was the worst thing that
23 could ever happen to me. Little did I know what was to
24 come. Now, the only thing that I can do for Jeremy is to
25 make sure that his life is not dismissed as unimportant or

1 less important than Adam Rowell's. He was my everything.
2 He wasn't perfect, but he was a soul that loved life. He
3 was always there for me. If I didn't see him every day we
4 at least talked on the phone. I can't do that anymore. I
5 can't hear his voice or touch his face.

6 Adam's decision to drink and drive and having a .29
7 blood alcohol level set into motion circumstances that we
8 will have to live with. Jeremy does not have that choice.
9 At least Adam gets to live. Adam celebrated Thanksgiving,
10 Christmas, birthdays, and holidays with his family since
11 November 15, 2014. I have spent mine alone, because getting
12 together with extended family was too painful. This was not
13 Adam's first DUI, and if he is not held accountable for his
14 actions it may not be his last. So many young people today
15 think that no matter what they do someone will get them out
16 of it.

17 Jeremy was loved by his family just as Adam is by his.
18 Jeremy was an awesome son, grandson, nephew, cousin, and
19 friend to many people. He had a great sense of humor and a
20 heart of gold, and would do anything he could for anyone.
21 He loved his music, especially country and gospel. His dad
22 taught him to play the guitar and he loved to sing. He was
23 good at it. He practiced each chord that his dad taught him
24 until he had it perfect. He sang in church and loved doing
25 karioke at different places.

1 I wasn't there for Jeremy in his last moments, but I am
2 here today, and I plead for justice in this case. I beg of
3 you not to let his death be a total waste. He was somebody.
4 He was loved. He was needed. He was mine and all that I
5 had left of his father. I know that sending Adam to prison
6 doesn't bring Jeremy back, but not sending Adam to prison
7 for a significant amount of time says Jeremy's life didn't
8 count as much as Adam's. To me, my son is just as
9 important. To our family and what's left it does. To his
10 friends it does. Please send the message to those who
11 choose to drink and drive that there are consequences for
12 their actions. How many lives could be saved if everyone
13 knew that there would be a mandatory number of years to be
14 served for taking the life of another driving under the
15 influence. Sincerely, Rhonda Cockrell, mother of Jeremy
16 Cockrell. There was one other letter I'm just going to hand
17 up.

18 THE COURT: Okay.

19 MS. PARRISH: Judge, are you going to read that first or
20 do you want me to read this one?

21 THE COURT: Oh, you're going to read one? Go ahead.

22 MS. PARRISH: This is from Jeremy's Aunt Joyce. First
23 of all, Judge, I'd like to say that I have two sons myself
24 and I pray I never have to be in the position of either of
25 these families. For my sister, she lost her whole world

1 when her son was killed that night. An accident is just
2 that, an accident, but when you make the decision to drink
3 and drive, no matter how many times you've done it before
4 and you're lucky enough to make it home. Because we all
5 know that you don't get caught every time. You decide to
6 take that chance, not knowing what the outcome might be.
7 It's like playing Russian roulette. Evidently, when you're
8 stopped and charged for drinking and driving if the penalty
9 is not harsh enough you don't see any reason to stop. But
10 when you continue the same habits until the end results is
11 what happened here then you made the wrong decision too many
12 times.

13 As bad as I feel for the family involved here I have to
14 feel worse for my sister. Adam Rowell needs to pay for his
15 very wrong decision and I hope, Judge, that you will give my
16 nephew justice and my sister some peace so that she can move
17 on with her life. Thank you. Joyce.

18 THE COURT: Thank you. This letter that I'm going to
19 read now, not out loud, is from a Brandi Cockrell.

20 (Whereupon, there was a brief pause in the proceeding.)
21 Anything further, Solicitor?

22 MR. BLACK: No, sir.

23 THE COURT: Mr. Garrett and Mr. Henderson, I'll be glad
24 to hear from you and anybody on Mr. Rowell's behalf.

25 MR. GARRETT: Thank you, Your Honor. Judge, as we began

1 this case this has been a horrible, horrible case from the
2 defense and I'm sure for this family. Our condolences have
3 always been for this family. This young lady experienced
4 the loss of her only son. I experienced the same thing so I
5 can't help but grieve with her. There's nothing that any of
6 us can do to fix that hurt. It is there, and it is there
7 for life. For the rest of our lives we'll have that, so I'm
8 not unmindful of where she's coming from.

9 Adam was born September 15, 1988 to his mother and
10 father here in south Greenwood, twenty-eight years old
11 today. He attended Marshall Road Church of God from birth
12 to age 18. His father was a reverend there. His
13 grandfather was a reverend there at the Marshall Road Church
14 of God. I happened to meet his family very early on. His
15 dad and I worked together in a grocery store. I lived in
16 Augusta Fields, right behind where this happened, or right
17 in front of where this happened. So I knew the family and
18 knew them throughout my life. They're good Ninety Six
19 folks. They live in the Ninety Six area and they all grew
20 up together. Adam grew up with Mr. Cockrell and also the
21 other witness that was there.

22 Judge, he never had any problems in school from the
23 time he was a baby he attended Noah's Ark preschool ages
24 three to five right here in Greenwood. He attended
25 Greenwood Christian School grades one through four. He

1 attended Ninety Six Elementary School grade 5. He played
2 the local parks. He played football and baseball and soccer
3 during his elementary school years. He was a Cub Scout
4 during elementary years. He attended Edgewood Middle School
5 here grades six to eight. Played parks and rec football in
6 grades five through seven. He played JV and Varsity
7 football at Ninety Six High School, so he was one of their
8 regulars and they would come out and see him on Friday
9 nights. He played soccer at Ninety Six school his junior
10 and senior years. So all throughout his entire schooling
11 and what not there was never a problem. Never a suspension.
12 Never a bad word. People have told me they've never even
13 heard him say a cuss word.

14 He was always the best kind of student and child. He
15 was named Who's Who of American High School Students in 2002
16 and 2003. He was nominated in '04 and '05. He graduated in
17 '06. He attended Northside Baptist Church from 2006 to
18 2014. That was a new church here in Greenwood where a lot
19 of young people were going and he went to that church. Then
20 he went into the Citadel. He went through four years of the
21 Citadel. He graduated in 2010. He received Gold Star
22 Senior year for maintaining a 3.7 or higher GPA. He was on
23 the President's list at the Citadel. He was awarded the
24 Dean's List twice at the Citadel. Since getting out attends
25 Safe Harbor Worship Center and his pastor is here with us

1 today. Judge, he has worked all of his life. Kind of like
2 his dad and I did at the grocery store, he has worked at
3 Velux, which is one of our local companies here, well liked.
4 Well respected. I talked to his manager. As he was in high
5 school he worked there at Velux and when he was in college,
6 when he was off of college he worked at Velux.

7 When he graduated he graduated with a criminal justice
8 degree in arts and then he went into the training -- police
9 training where he learned how to drive, Your Honor.
10 Obviously not DUI, but he learned how to drive, you know,
11 offensively as opposed to defensively. And I know the jury
12 has found otherwise, but I'm just telling the Court to give
13 the Court some idea where we were going with that. Judge,
14 he's worked all the way through. When he got out he was in
15 the hospital. He worked -- after he left the police station
16 he resigned. After he left there he worked for about a year
17 at Velux as a temporary. They hadn't got him all the way up
18 to being a regular until September. In other words, he had
19 to work as a temp, but in September that year he became full
20 time. Then, of course, this accident happened and he was
21 out three or four months. He was out from mid February --
22 mid '15 through -- excuse me. He got out December 15th. He
23 as in the hospital for a month and got out December 15 and
24 basically was incapacitated until March of that year.
25 Judge, he's horribly medically injured. He's got over a

1 half million dollars of medical bills that he's trying to
2 pay or pay some towards. He had two broken ribs, a broken
3 neck, a broken back, both of his arms were broken, both of
4 his legs were broken, one in two places, he had one foot
5 that was broken, both of his ankles were broken, his
6 collarbone was broken, and he was in the hospital, like I
7 said, for a month. For two of those weeks he didn't -- he
8 was completely comatose. Judge, I will say that -- and it
9 was held against him because he had to kind of piece
10 together what happened that day, but that had something to
11 do with it. The fact that he was completely out of it for
12 two weeks. So he was trying to go back and put this all
13 together, and it's been very difficult for him to put all
14 together what has happened. But from his perspective, what
15 happened is what happened in his mind, and he's clear with
16 that now. He understands what this jury has done. This
17 jury has convicted him. He had a right to a trial by a jury
18 and the jury has spoken, so he understands that. So he
19 stands here, you know, in a situation where he knows in his
20 mind what happened.

21 Judge, we have been unable to find him drinking
22 anything other than what he's testified to, and we have
23 looked diligently to try to find any other evidence that he
24 drank. I can assure this Court, having tried cases as many
25 years as I have, when you've got a case like this and you

1 can substantially find the evidence you need you plead
2 guilty and you take the best deal you can get. So I just
3 hope that the Court, after seeing seven days of trial, will
4 not hold it against him that he tried his case and he asked
5 to jury to make it's decision. Not to hold it against him.

6 Judge, I would hate to wear your robe in this case.
7 What we have here is a young man who, other than these other
8 bouts of alcohol to start with, has had a perfect, perfect
9 background, perfect history. Alcohol -- the jury has found
10 him guilty of it and they based it upon that twenty-
11 something blow -- or blood. 22.9, you know, it is what it
12 is. I mean, so it's a very serious charge, obviously if we
13 were to look at that then he's got a problem with alcohol.
14 That's an addiction. If you take the other side of it, then
15 obviously he's got a problem with alcohol, if one looks at
16 it. So maybe there should have been some type of alcohol
17 training or something like that. But when we go back and we
18 look at his records at work every time he was ever tested
19 they never once found any alcohol in his system. Never
20 found any drugs in his system. I

21 t's just hard for the family to fathom how he could
22 possibly be that. That night he was supposed to be over
23 there meeting his family and the phone was ringing in the
24 vehicle because they were asking him where he was at,
25 because he was late. It's hard to believe he would've came

1 to his family's meeting drunk. Especially with the preacher
2 being there at the family meeting, and his wife, celebrating
3 his dad and his grandmother's birthday. But, again, I'm not
4 questioning what the jury did. The jury has made it's
5 decision, and we live and die by what the jury says.

6 I just ask the Court to fashion a sentence that makes
7 him responsible for his actions, that gives closure to this
8 fine family and respect to the young man that passed, but
9 leave light at the end of the tunnel for this family. Leave
10 light at the end of the tunnel for this young man that he's
11 able, at the end of the day, to be a productive member of
12 society. To be able to look at his family, look at these
13 folks, look at his community, and try to redeem himself.
14 I've seen cases where people after they have come out they
15 spend their lives trying to do the right thing and trying to
16 preach to others about the dangers of driving under the
17 influence.

18 There's some reason that he's here today. That may be
19 his calling. That may be the thing that he's supposed to
20 do. I don't know. I just ask the Court that if you're
21 going to have to give him time, I know you are, consider at
22 least that he's not been a problem in the two years at least
23 he's basically stayed at home, worked, stayed at home. He's
24 got a perfect work record. That at the end of the day let
25 him come out and maybe do some type of home monitoring for a

1 period of time and then another period of time of probation.
2 Judge, you know, if you want to permanently restrict him
3 from driving as a condition, you know, for the loss of this
4 life, you know it would be okay with us if you took his
5 license away for the rest of his life. They do that in some
6 countries. I know they do it in Germany as a penalty.

7 Judge, he was paying his student loans back. He was
8 always on time. He's just been a prodigal son and done all
9 these good things. This just doesn't fit him. So I'd ask
10 you to consider that he can be a productive member of
11 society. He can pay back his bills. He can -- and as I
12 understand it the insurance is doing something, but he's
13 always been of the opinion that I'll do what I can for the
14 family as well. Judge, he's sorry. He's different since
15 this wreck. I knew him as a child. I knew him as he grew
16 up. His affect is different. I don't know how to explain
17 it, but his personal affect is different than it used to be.
18 Solicitor may have taken that as not being empathetic. It's
19 not that at all. His affect is just different since having
20 this wreck. It's hard to explain, but his family knows what
21 I'm talking about. His pastor knows what I'm talking about.
22 So I just ask you to fashion a sentence that gives him a
23 chance to spend some positive time with his family in the
24 future and to redeem himself. Thank you.

25 THE COURT: Thank you, Mr. Garrett. Anybody want to

1 speak on his behalf?

2 I'll need to have you sworn in, sir.

3 DERRICK CUTTER, having first been
4 duly sworn, testified as follows:

5 THE COURT: State your name, sir.

6 MR. CUTTER: My name is Derrick Cutter. I am the pastor
7 at Safe Harbor Worship Center in Columbia, South Carolina.

8 THE COURT: I'll be glad to hear from you reverend.

9 MR. CUTTER: Your Honor, thank you for this opportunity.
10 I've been a pastor at this local church I'm at now for
11 almost 17 years. I've been in ministry almost 30, and I've
12 been asked to do this several times in my ministry in the
13 four churches that I've pastored and I've always declined,
14 because I didn't really know the life of the person that
15 they were asking me to talk about. But this one I do. I've
16 known him most of his life. Had the opportunity to pastor
17 his family since his grandfather retired from the church
18 that he was pastoring and I just want this Court to know
19 that Adam is a very compassionate guy. He's a very loving
20 person. He keeps most of his feelings to himself. I know,
21 because I've been his pastor now for several years, that he
22 would've done none of this in front of his family. He
23 would've done none of this to embarrass them or anything.
24 In my personal experience with him I saw him a little while
25 after the wreck when he was able to talk. Being his

1 spiritual confidant I saw him tore all to pieces. His body
2 broken up. About every bone in his body broken. Adam
3 expressed to me one thing that hurt him most and that was
4 the death of somebody involved in this accident. He was, in
5 my opinion, very remorseful. I've pastored a church a long
6 time and there's nothing like the death of a child. I know
7 that very seriously. But we're asking the Court today,
8 because I believe Adam can be a very good part of the
9 community, for his family. I know he would be a great
10 asset. So we're just asking for you today that you would
11 give him the consideration of being a great part of this
12 community and this family and again, I know as his pastor
13 he's been very remorseful over this. That's what I wanted
14 you to understand today, Judge. Thank you very much.

15 THE COURT: Thank you very much. Mr. Garrett, anything
16 further from your side?

17 MR. GARRETT: That's all.

18 THE COURT: Solicitor, anything in brief response?

19 MR. BLACK: No, sir, Your Honor.

20 THE COURT: I'm going to take about a ten minute break.
21 Everybody be at ease.

22 (Whereupon, there was a short recess.)

23 THE COURT: We're back on the record. Let me just make
24 some observations before I hand down sentencing. I think
25 Solicitor Black correctly stated that there are no winners,

1 and that certainly is the case. Tragedy on both sides.
2 I've said this before that it would be my wish, but it's an
3 impossible wish, but I've said it before that it's my wish
4 in this position to just wave a magic wand and make
5 everything back to where it was. Where there was not a
6 death involved, a serious injury, and the decision to drive
7 while having consumed alcohol. But, of course, we all
8 realize that's not possible.

9 The felony DUI cases that I have been involved in all
10 seem to be similar in this respect. The Defendant typically
11 is a good person, generally does not have a prior record,
12 comes from a good family, they just for some reason fit into
13 that mold. I noticed that I have numerous highway
14 patrolmen. If I were to poll you guys and ladies, probably
15 the felony DUI cases you've been involved in typically
16 involve good people from good families. I don't know why
17 that is, but that just seems to be the unique feature that I
18 see on a routine basis when I have this type of cases.

19 I certainly recognize that during the course of these
20 seven days there was a lot of dispute concerning whether or
21 not Mr. Rowell was under the influence. I recognize that
22 and I appreciate it, but once the jury returned its verdict
23 that, Mr. Rowell, you were guilty of both counts of these
24 felony DUIs then I accept as a matter of fact, one hundred
25 percent, that you were impaired that night.

1 The fact that you do not have a prior record,
2 certainly, is in your favor. The fact that you have pending
3 charges has not been considered by me other than to just
4 wonder why you would put yourself in a situation that at
5 least you had been involved before as far as being around
6 drinking and driving. Your admission to your chief when you
7 were employed as a city police officer. Your admission that
8 you had consumed some alcohol and drove. But the fact that
9 you don't have a prior record certainly is in your favor.
10 But at the end of the day, Mr. Rowell, I have a death that
11 was caused by you. I have a serious injury that was caused
12 by you. I've got a good friend who repeatedly says that we
13 all can choose the sins that we commit, but we can never
14 ever choose the consequences of those sins. That's
15 basically what happened, Mr. Rowell. You chose your sin to
16 drink and drive that night, but you did not have the
17 opportunity to choose the consequences of what happened.

18 Mr. Rowell, the sentences on these two felony DUI
19 charges will run concurrent with each other. I do recognize
20 that the felony DUI involving a death is deemed a violent
21 offense and that is applicable with the statutory mandate as
22 far as how much time you have to serve your sentence. I've
23 certainly factored that in my decision. While you are in
24 the Department of Corrections I want you to participate in
25 the ATU Program. The sentence of the Court, Mr. Rowell,

1 that on the felony DUI involving a death you be committed to
2 the State Department of Corrections for a period of thirteen
3 years and pay a fine of \$10,100, which is a mandatory
4 minimum fine. That will run concurrent with the other
5 sentence of eight years in the Department of Corrections and
6 payment of a mandatory fine of \$5,100.

7 Good luck to you. We'll be in recess.

8 MR. GARRETT: Your Honor, can I ask one thing? Because
9 he is a former police officer, can I ask the Court to give
10 him that security. There is special security for people who
11 are prior police officers for their safety. We would ask
12 that because he is a prior police officer that be taken into
13 consideration in his housing and what not.

14 THE COURT: Let me give that some thought, Mr. Garrett,
15 without telling you right now. I'll let you know that
16 decision.

17 MR. GARRETT: Thank you, Your Honor.

18 (Whereupon, the sentencing hearing concluded at 11:07 a.m.)

19 (END OF REQUESTED TRANSCRIPT OF RECORD.)

20

21

22

23

24

25

1 Certificate of Reporter

2 I, the undersigned, Tara T. Scott, CVR, Official Court
3 Reporter for the Eighth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenwood County, South Carolina, on the
9 13th-18th, 20th, and 27th days of February, 2017.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.
12
13
14
15

16 Tara T. Scott

17 Tara T. Scott, CVR
18 Circuit Court Reporter
19 March 3, 2018
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenwood

VS.

Adam Martyn Rowell

AKA:

Race: CAUCASIAN Sex: M Age: 28

DOB: 09-15-1988 SS#: [REDACTED]

Address: 171 [REDACTED] Lane

City, State, Zip: Greenwood, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUI / Felony driving under the influence, death results

in violation of § 56-05-2945 (A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *Michael Black* 10/11/19

Black, Micah

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 4 13 X X X years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ 10,100; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$ 10,100
§ 14-1-211(A)(1) (Conv. Surcharge)	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$ 100
§ 56-5-2995 (DUI Assessment)	\$ 12
§ 56-1-286 (DUI Breath Test)	\$ 25
Proviso 61.6 (Public Def/Probation)	\$ 500
§ 14-1-212 (Law Enforce. Funding)	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$ 150
§ 50-21-114 (BUI Breath Test Fee)	\$ 50
§ 56-5-2942(J) (Vehicle Assessment)	\$ 40/ea
3% to County (if paid in installments)	\$ 636.59

TOTAL

\$21,856.09

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 15GS24-0535

A/W#: 2014A2410201428

Date of Offense: 11/15/2014

S.C. Code § : 56-05-2945

CDR Code #: 0395

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

15-65-24-536

§ 24-13-40 to be calculated and applied

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

ATU

ATTEST A TRUE COPY

CHASTITY COPELAND

COOP AND GS

GREENWOOD COUNTY

☐ Appointed PD or appointed other counsel
 Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2167

Sentence Date: 2/27/17

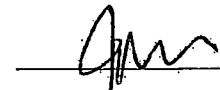
WITNESSES

K. B. Smith
S C Highway Patrol

WARRANT NUMBER

2014A2410201428

Truc Bill



Foreman of the Grand Jury

Date: 3/27/15

VERDICT



Foreman

ATTEST A TRUE COPY
CHASTITY DOPELAND
COCP AND CS
S.C.
GREENWOOD COUNTY

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015

Indictment # 15GS24- 0535

THE STATE

vs.

Adam Martyn Rowell

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

CDR: 0395

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of

Greenwood County present upon their oath:

That Adam Martyn Rowell, on or about November 15, 2014, in Greenwood County, who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: that the said defendant drove with reckless disregard for the safety of others; and/or failed to change the course of travel to avoid causing the accident; and/or failed to slow down to avoid causing the accident; and/or failed to keep a proper lookout; and/or failed to maintain his vehicle under proper control, which act and/or acts of neglect proximately caused the death of one Jeremy Cockrell, in violation of Section 56-5-2945 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Mical Black

Assistant Solicitor

ATTEST: TRUE COPY
CHASTITY COPELAND
CLERK AND CL.
GREENWOOD COUNTY
S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
 STATE VS.
Adam Martyn Rowell

AKA:

Race: CAUCASIAN Sex: M Age: 28DOB: 09-15-1986 SS#: 2-123456789Address: 171 [REDACTED] LaneCity, State, Zip: Greenwood, SCDL#: 123456789 SID#: 123456789*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: DUI / Felony driving under the influence, great bodily injury results

INDICTMENT/CASE#: 15GS24-0536A/W#: 2014A2410201429Date of Offense: 11/15/2014S.C. Code § : 56-05-2945CDR Code #: 0406

SENTENCE SHEET

in violation of § 56-05-2945 (A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: 10/11/19

Black, Micah

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay fine of \$ 5,100; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$ 5,100\$ 5482.50\$ 100\$ 100\$ 12\$ 25\$ 500\$ 25\$ 150\$ 50\$ 40/ea\$ 325.34

TOTAL

\$ 11,169.84

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

☒ CONVICTED OF or ☐ PLEADS(30 days - 15 years)15-GS-24-535 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel.
 Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

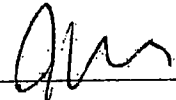
WITNESSES

K. B. Smith
S C Highway Patrol

WARRANT NUMBER

2014A2410201429

True Bill



Foreman of the Grand Jury

Date:

3/27/15

VERDICT

Foreman

ATTEST A TRUE COPY
OF THE
CHASTITY COPELAND
COFF AND GS
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015

Indictment # 15GS24-0536

THE STATE

vs.

Adam Martyn Rowell

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

CDR: 0406

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF GREENWOOD

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Adam Martyn Rowell, on or about November 15, 2014, in Greenwood County, who, under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: drove with reckless disregard for the safety of others, and/or failed to change the course of travel to avoid causing the accident, and/or failed to slow down to avoid causing the accident, and/or failed to keep a proper lookout, and/or failed to maintain his vehicle under proper control, which act of neglect proximately caused great bodily injury to another person, Matthew Sanders, in violation of the provisions of Section 56-5-2945 of the South Carolina Code of Laws, 1975, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Michael Black

Assistant Solicitor

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CLERK AND GS
GREENWOOD COUNTY
S.C.

WITNESSES

K. B. Smith
S C Highway Patrol

WARRANT NUMBER

2014A2410201430

True Bill

Date: 3/27/15 Foreman of the Grand Jury

VERDICT

Foreman

ATTEST A TRUE COPY
OF THE ABOVE
AFFIDAVIT
AND
RETURNED TO
THE
CLERK OF
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015
Indictment # 15GS24- 0537

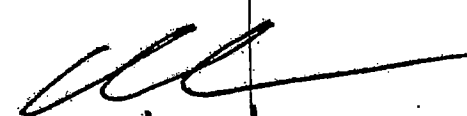
THE STATE

vs.
Adam Martyn Rowell

INDICTMENT FOR

**OPEN CONTAINER OF ALCOHOL
IN MOTOR VEHICLE
§ 61-04-0110**

CDR: 0660

Dismissed
Per Court

2/20/17

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

OPEN CONTAINER OF ALCOHOL
IN MOTOR VEHICLE

§ 61-04-0110

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Adam Martyn Rowell, on or about November 15, 2014, in Greenwood County, willfully and unlawfully have in possession, except in the trunk or luggage compartment, beer or wine in an open container in a motor vehicle of any kind while located upon the public highways or highway rights of this State in violation of Section 61-4-110 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Mical Mack

Assistant Solicitor

ATTEST A TRUE COPY
Chastity Coffland
CHASTITY COFFLAND
CLERK AND DE
GREENWOOD COUNTY

S. C.

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)
STATE OF SOUTH CAROLINA)
v.)
ADAM MARTYN ROWELL,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR NEW TRIAL

Indictment Nos. 2015-GS-24-0535/0536

17 MAR -7 A9 36

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

**TO: THE HONORABLE DONALD B. HOCKER, PRESIDING CIRCUIT
COURT JUDGE; ASSISTANT SOLICITOR MICAH E. BLACK; and ASSISTANT
SOLICITOR M. WADE DOWTIN:**

YOU WILL PLEASE TAKE NOTICE that the undersigned, on behalf of the Defendant, will move before the Honorable Donald B. Hocker, Presiding Circuit Court Judge, at a place and time to be determined by the Court, and then and there make application to the Court for a new trial pursuant to Code Section 17-23-110 ("Circuit courts may grant new trials.") and SCRCrimP 29(a) (post-trial motions generally) and such other and further relief as the Court deems just, equitable, and proper.

Incorporated herein are the Defendant's pre-trial motions, the Defendant's motions and objections during trial, the Defendant's directed verdict motion after the State's case in chief, the Defendant's directed verdict motion after the Defendant's case in chief, the State's response to the Defendant's directed verdict motions, and the Court's rulings on the Defendant's objections and motions.

The grounds for this motion are as follows:

I. Juror Challenges

The trial court erred in refusing to allow the Defendant to have ten (10) peremptory juror challenges pursuant to Code Section 14-7-1110. This statute reads in pertinent part: "Any person who is arraigned for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery is entitled to peremptory challenges not exceeding ten[.]" The charge of felony DUI with death resulting is a form of murder and/or manslaughter, just with a more specific name, and carries up to twenty-five (25) years in prison. However, defendants charged with crimes that carry no more than ten (10) years potential incarceration, such as grand larceny, are entitled to ten (10) strikes.

II. Photographs of Purported Alcohol Containers

The trial court erred in allowing the State to introduce photographs of purported alcohol containers taken at the scene of the accident, when the State failed to keep as evidence any of these containers and when the State failed to test the liquid contents of these containers. This failure to preserve evidence violated S.C. Department of Public Safety policy. The State's witnesses couldn't identify where at least one (1) of the photographs was taken. The Defendant couldn't cross-examine photographs of these containers.

III. Search Warrant

The trial court erred when it failed to dismiss the Defendant's charges when the chief investigating officer, Trooper Keith Brunson Smith, admitted he gave false sworn testimony to a magistrate about the purported alcohol containers found in the Defendant's vehicle in order to

obtain a search warrant. Trooper Smith also admitted that he gave false sworn testimony about the same subject at the Defendant's preliminary hearing. Trooper Smith admitted at trial there was only one (1) empty Red Stripe container in the vehicle. Trooper Smith's false statements and their impact prejudiced the Defendant.

IV. First Blood Draw - Speculation

The trial court erred by failing to direct a verdict of not guilty regarding the Defendant's first blood draw. Hospital nurse Amanda Baker testified that she couldn't remember if she obtained a blood sample from the Defendant at 8:54 p.m. while the Defendant was in the trauma ward. However, during in camera testimony, Life Flight nurse Angie Waite testified that she saw hospital nurse Baker draw blood from Defendant. During her testimony before the jury, Life Flight nurse Waite's testimony varied slightly in that she "thought" she saw hospital nurse Baker drawing blood from Defendant. (This was after the State's investigator spoke to her while she was under oath. See Paragraph X, *infra*.) Hospital nurse Baker testified medical records show labs were drawn from the Defendant's central line at 9:08 p.m., and it was possible she took the vials from Dr. Bradley M. Snow and labeled them. Medical records do not show that hospital nurse Baker treated the Defendant in the trauma ward, although lab records identify her, through her badge number, as the person who collected the blood at 8:54 p.m. It should be noted that the Defendant's name was not listed on any of the vials which purportedly contained his blood.

Every witness involved in the medical treatment of the Defendant testified his situation was critical and urgent. If blood was drawn from a person at 8:54 p.m. in the trauma ward, that

person, by necessity, would have already been in the trauma ward for at least several minutes. If one subtracts five (5) minutes, thereby making it 8:49 p.m., it is undisputed that the Defendant was in the Life Flight helicopter at 8:49 p.m. Life Flight records indicate that the helicopter carrying the Defendant landed at the hospital's helicopter pad at 8:55 p.m., and the Defendant arrived in the trauma ward bay at 8:59 p.m. Hospital records indicate that the Defendant arrived in the trauma ward at 9:00 p.m., and his vital signs were taken at 9:04 p.m. Hospital records indicate that the surgeon, Dr. Bradley M. Snow, obtained the Defendant's blood for labs through a central line at 9:08 p.m. The Defendant wasn't inside the hospital, much less in the trauma ward, at 8:54 p.m. The jury was allowed to speculate that the first blood draw was obtained from the Defendant.

V. First Blood Draw - Chain of Custody

The trial court erred by failing to suppress the results of the first blood draw because the State failed to establish a sufficient chain of custody. Hospital nurse Amanda Baker testified that she couldn't remember if she obtained a blood sample from the Defendant at 8:54 p.m. while the Defendant was in the trauma ward, and that it's possible she merely labeled the vials after Dr. Snow drew the blood from a central line at 9:08 p.m. Vials from the 8:54 p.m. blood draw arrived at the hospital lab at 9:24 p.m. Nurse Baker didn't know who carried the blood purportedly drawn from the Defendant to the lab. All witnesses testified that blood drawn from a trauma ward patient should have been delivered immediately to the lab.

Lab employee Robert Smith testified that he didn't recall who delivered the blood sample to him. Testimony was that the trauma ward and the lab are on separate floors of the

hospital. However, the State provided no evidence as to the location of this blood sample for a period of thirty (30) minutes, when all testimony was that it was imperative to deliver a blood sample from the trauma ward to the lab in a prompt manner, and it's uncontroverted that the Defendant's medical situation was critical and urgent. Also, from the time the blood sample was drawn in the trauma ward and delivered to the lab, there was contradicting testimony that the blood was contained in one (1) vial, three (3) vials, and four (4) vials.

VI. First Blood Draw - Contamination

The trial court erred by failing to direct a verdict of not guilty regarding the Defendant's first blood draw. The uncontradicted evidence is that the blood drawn from the Defendant during the first blood draw (if in fact this blood actually came from the Defendant) contained 540 cc's of blood units administered by Life Flight crew members. The blood tested at 8:54 p.m. (if in fact it was the Defendant's blood) wasn't the Defendant's blood as it existed prior to the accident.

VII. Second Blood Draw - Contamination and Lack of Reliability

The trial court erred by failing to direct a verdict of not guilty regarding the Defendant's second blood draw, which was obtained after the Defendant's surgery. The Defendant's surgeon, Dr. Bradley M. Snow, testified that fifty-two percent (52%) of the Defendant's blood volume was replaced during surgery. Dr. Snow's calculation does not include any blood products given to the Defendant prior to surgery. The Defendant's expert, Dr. Jimmie L. Valentine, testified that, in total, sixty percent (60%) of the Defendant's blood volume had been replaced by blood products, and fluids constituting one hundred sixty-one and seven-tenths

percent (161.7%) of the Defendant's blood volume had been replaced by the time of the second blood draw.

The SLED blood test results indicated the presence of a toxic level of Benadryl, as well as acetone (systematically named propanone). Acetone is found in diabetics. No testimony indicated the Defendant was diabetic, and no evidence indicated the Defendant took or was administered Benadryl prior to the accident or at the hospital. The results of the first blood draw taken at 8:54 p.m. (assuming that the first blood sample in fact came from the Defendant) didn't indicate the presence of Benadryl or acetone.

The State presented no witness or evidence to establish the reliability of the test results, to a reasonable degree of medical certainty, when the sample was taken after, by state witness Dr. Snow's testimony, at least fifty-two percent (52%) of the Defendant's blood had been replaced, and the results showed Benadryl and acetone, which are inconsistent results given Defendant's medical records. Instead, the court required the Defendant to disprove the reliability of the results through his own expert. Dr. Valentine testified there was no reliable way to confirm that the blood tested by SLED was the Defendant's blood as it existed at the time of the accident. The State did not contradict Dr. Valentine's testimony. Nevertheless, the court found the test results were reliable because Dr. Valentine testified the testing instrument itself was in proper working order.

The trial court erred when it determined that the instrument used by SLED to test the blood was reliable, and ignored the uncontradicted evidence that the test result was unreliable because blood tested in the SLED instrument was not reliably associated with the Defendant's

blood as it existed at the time of the accident. A properly working instrument alone is not sufficient to create a reliable test result if the sample tested is flawed or contaminated.

VIII. Both Blood Draws -- Lack of Scientific Reliability

The Defendant's expert, Dr. Jimmie L. Valentine, testified that no scientific test, within a reasonable degree of medical certainty, is available to determine the amount of alcohol and drugs in the Defendant's blood versus the amount of alcohol and drugs in the blood that was transfused into the Defendant's body, or to what extent new blood transfused into the Defendant's body would reduce the amount of alcohol and drugs (if any) already in the Defendant's blood. By the Court allowing this evidence, the jury could only speculate as to the amount of the alcohol and drugs in the first blood sample (which may not have been drawn from the Defendant anyway) and in the second blood sample, which belonged to the Defendant and which the Defendant would be legally responsible for.

Furthermore, the State presented no evidence of either blood draw's reliability to a reasonable degree of medical certainty.

IX. Burden Shifting

The State presented no evidence to support the reliability of the second blood draw obtained from the Defendant. None of the State's listed witnesses was qualified to testify about the reliability. Instead, the Defendant had no choice but to present the in camera testimony of Dr. Jimmie L. Valentine about the unreliability of the test results associated with the second blood draw. Once the Court ruled that the test results were admissible, the jury was allowed to hear this evidence over the Defendant's objection.

X. Mistrial - Prosecutorial Misconduct

The trial court erred when it failed to grant the Defendant a mistrial when it was learned that the State's chief investigator, Chris Wilkie, purposefully and intentionally talked to at least two (2) witnesses (hospital nurse Amanda Baker and hospital lab employee Robert Smith) about their testimony while both of these witnesses were under oath and supposedly sequestered. Ms. Baker's and Mr. Wilkie's testimony changed after they spoke with Mr. Wilkie.

XI. Inference Charge

The trial court erred when it charged the inference contained in Code Section 56-5-2950 to the jury regarding the test results from the second blood draw. The court was correct in not charging an inference level regarding the test results from the first blood draw, because such test was not taken pursuant to the implied consent statute, but was instead taken for medical purposes. Moreover, the second blood draw was not taken pursuant to the implied consent statute. The State took implied consent out of the equation when it obtained a search warrant to draw blood from the Defendant.

Because there were two (2) blood draws, the Defendant was prejudiced and the jury was confused when the court told the jury that it could make a statutory inference pursuant to Code Section 56-5-2950 on one blood draw but not make an inference on the other blood draw. The jury was left to speculate about why it couldn't make an inference on the first blood draw versus being able to make an inference on the second blood draw, when both blood draws exceeded 0.08%. This inference charge was also a charge on the facts.

Even though the second blood draw was not an implied consent test, there's a reason why the Legislature placed time limits in Code Section 56-5-2950 for the State to obtain blood samples from a defendant. The second blood sample was drawn from the Defendant about 5.5 hours after the accident. Because of the length of time between the accident and the second blood draw, the Defendant's blood as it existed at the time of the accident was contaminated because of the blood and fluids transfused into the Defendant's body prior to and during surgery.

XII. Chain of Custody Charge

The trial court erred when it failed to give the jury a chain of custody charge as requested by the Defendant.

XIII. Necessity Charge

The trial court erred when it failed to charge the jury with the defense of necessity. The State's theory of the case was that the Defendant was in the decedent's lane of traffic at the time of the accident. The Defendant admitted this. Regardless of the place of impact, the only independent witness to the accident, Justin Lee Pennington, testified that he saw the decedent's vehicle cross into the Defendant's lane of traffic. The Defendant testified that he drove into the decedent's lane of traffic because the decedent was in the Defendant's lane. In the light most favorable to the Defendant, the Defendant's unlawful conduct of driving in the wrong lane of traffic was necessitated by the decedent's unlawful conduct of driving in the wrong lane of traffic.

XIV. State's Reply Closing Argument - Conspiracy

The trial court erred by not allowing the Defendant a sur-rebuttal to the State's reply argument. In its reply argument, the State argued that the Defendant blamed this prosecution on a grand conspiracy to frame him. The Defendant argued no such thing. The Defendant argued grand incompetence by the State during its investigation (such as failures to properly document evidence and failures to establish the reliability of the blood test results), not a grand conspiracy to frame the Defendant. The State admitted to misleading a magistrate to get a search warrant, but the Defendant made no claim that the lying chief investigative officer and the medical personnel who treated the Defendant conspired in any way at all against the Defendant. In fact, multiple medical personnel testified that they didn't smell any alcohol on the Defendant, or either didn't testify one way or the other about smelling alcohol on the Defendant, including an EMS worker, nurse Waites, nurser Baker, and Dr. Snow.

XV. Juror #164

After trial, the Defendant learned that juror #164, Anxavier Waldrup, who was seated on the jury, had pending felony charges for possession with intent to distribute marijuana and unlawful neglect of a child, and a pending misdemeanor charge for purchasing a controlled substance within proximity of a school. These pending charges weren't listed on the Public Index for Greenwood County on sccourts.org at the time of jury selection. The State is held to know if it has pending charges against a potential juror, even if the Defendant and/or the public doesn't know.

The trial court asked the jury panel, "Any member of the jury panel or immediate family member or friend ever been arrested or charged with a criminal offense by local, federal, or state law enforcement agency?" Juror #164 failed to respond. The Defendant would not have seated this juror, because the decedent and his passenger in fact had marijuana in their systems at the time of the accident, and the decedent's passenger admitted to smoking marijuana with the decedent multiple times prior to the accident. Furthermore, the Defendant wouldn't have run the risk of this juror believing that he could help his own cause with the solicitor's office by convicting the Defendant.

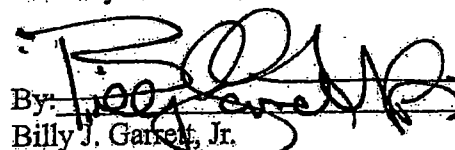
XVI. Combination of Errors

Due to the combination of errors that prejudiced the Defendant's defense as set forth above, the Defendant is entitled to a new trial.

WHEREFORE, the Defendant prays for a new trial.

THE GARRETT LAW FIRM, P.C.

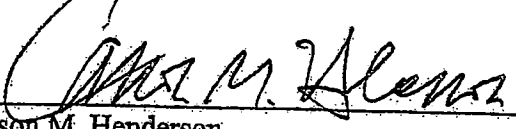
Attorney for the Defendant

By: 

Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

THE HENDERSON LAW FIRM, P.C.

Attorney for the Defendant

By: 

Carson M. Henderson

109-B Oak Avenue

Greenwood, S.C. 29646

Phone: (864) 229-8000

Fax: (864) 229-8001

HAWTHORNE MERRILL LAW, LLC

Attorney for the Defendant

By: 

Jane Hawthorne Merrill

410 Main Street

Greenwood, S.C. 29646

Phone: (864) 229-1010

Fax: (800) 547-6540

Greenwood, South Carolina

March 7, 2017

COPY

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

17 MAR -7 A9:36

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)
STATE OF SOUTH CAROLINA)
v.)
ADAM MARTYN ROWELL,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

CERTIFICATE OF DELIVERY
Indictment No(s). 2015-GS-24-0535/0536

The undersigned does hereby certify that on the 7th day of March, 2017, he served the below-referenced documents, by mailing via first class regular United States mail in Greenwood, South Carolina, and/or hand delivering the same in Greenwood, South Carolina, to the person(s) listed below at the address(es) listed below:

FIRST-CLASS UNITED STATES MAIL

Hon. Donald B. Hocker
Circuit Court Judge
P.O. Box 972
Laurens, S.C. 29360

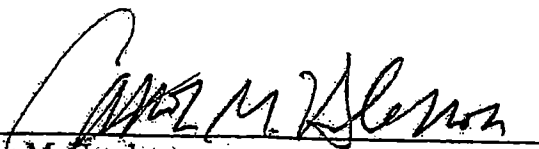
HAND DELIVERED VIA CLERK'S BOX

Micah E. Black, Esquire
M. Wade Downtin, Esquire
Eighth Circuit Solicitor's Office
P.O. Box 516
Greenwood, S.C. 29648-0516

1. Defendant's Notice of Motion and Motion for New Trial
2. Certificate of Delivery

[Handwritten mark]

THE HENDERSON LAW FIRM, P.C.
Attorney for the Defendant

By: 

Carson M. Henderson

109-B Oak Avenue

Greenwood, S.C. 29646

Phone: (864) (864) 229-8000

Fax: (864) 229-8001

Greenwood, South Carolina

March 7, 2017

17 MAR 29 PM 3:00

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA	)	
	)	SUPPLEMENT #1 TO DEFENDANT'S
v.	)	MOTION FOR NEW TRIAL
	)	
ADAM MARTYN ROWELL,	)	Indictment Nos. 2015-GS-24-0535/0536
	)	
Defendant.	)	
	)	

TO: THE HONORABLE DONALD B. HOCKER, PRESIDING CIRCUIT COURT JUDGE; ASSISTANT SOLICITOR MICAH E. BLACK; and ASSISTANT SOLICITOR M. WADE DOWTIN:

I. Juror #164

Jury #164, Anxavioar Jemorris Waldrup, was discussed in the Defendant's initial Notice of Motion and Motion for New Trial. The Defendant has learned post-trial that, upon information and belief, Mr. Waldrup previously served as a confidential informant for the Greenwood Police Department. The Defendant worked as a police officer for the Greenwood Police Department prior to the events which led to his recent conviction.

The Defendant has served a Subpoena in a Criminal Case on the Greenwood Police Department and the Greenwood County Sheriff's Office for any confidential informant files maintained on Mr. Waldrup. See EXHIBIT A attached. The Defendant asks the Court to require the Eighth Circuit Solicitor's Office to make a good faith search to determine whether Mr. Waldrup has ever served as a confidential informant for any law enforcement agency in the Eighth Judicial Circuit.

WHEREFORE, the Defendant prays for a new trial.

THE GARRETT LAW FIRM, P.C.

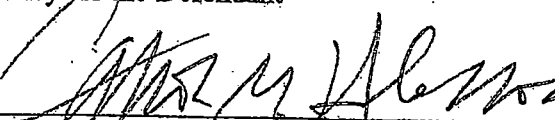
Attorney for the Defendant

By: 

Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

THE HENDERSON LAW FIRM, P.C.

Attorney for the Defendant

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HAWTHORNE MERRILL LAW, LLC

Attorney for the Defendant

By: 

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Phone: (864) 229-1010
Fax: (800) 547-6540

Greenwood, South Carolina

March 29, 2017

EXHIBIT A

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY GREENWOOD
STATE OF SOUTH CAROLINA V. ADAM MARTYN ROWELL	CASE NO. 2014A2410201428
	SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO: GREENWOOD POLICE DEPARTMENT ATTENTION RECORDS CUSTODIAN	
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE THE HENDERSON LAW FIRM, P.C. 109-B OAK AVENUE GREENWOOD, S.C. 29646	COURTROOM
	DATE AND TIME FRIDAY, APRIL 7, 2017, AT NOON
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S)	
UNREDACTED COPIES OF ALL DOCUMENTS CONTAINED IN THE CONFIDENTIAL INFORMANT FILE FOR FOR ANXAVIAR JEMORRIS WALDRUP (BLACK MALE; DATE OF BIRTH 10/30/93; SSN 248-93-9610), INCLUDING BUT NOT LIMITED TO: 1. THE NAMES OF ALL PEOPLE WHO HAVE BEEN INVESTIGATED AND/OR ARRESTED BASED UPON INFORMATION PROVIDED BY MR. WALDRUP IN HAS CAPACITY AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT, AND UNREDACTED COPIES OF THE COMPLETE CASE FILES IN THESE MATTERS. 2. UNREDACTED COPIES OF ALL DOCUMENTS SHOWING HOW MUCH EXPENSE MONEY WAS PAID TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT. 3. UNREDACTED COPIES OF THE RESULTS OF ALL DRUG SCREEN URINALYSIS, STRESS ANALYSIS, POLYGRAPH, AND/OR OTHER TESTS ADMINISTERED TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT. 4. UNREDACTED COPIES OF ALL TELEPHONE CALLS INVOLVING MR. WALDRUP RECORDED BY THE GREENWOOD POLICE DEPARTMENT (OR ANY OTHER LAW ENFORCEMENT AGENCY) WHILE MR. WALDRUP WAS SERVING AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT.	

SCCA 253 (JULY 1, 1993)

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		ATTACHED TRUE COPY CHASTITY COPELAND S.C. JUDGE GREENWOOD COUNTY
CLERK OF COURT	(BY) DEPUTY CLERK DATE MONDAY, MARCH 27, 2017	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☐ SOLICITOR ☒ DEFENDANT	ATTORNEY'S NAME AND ADDRESS CARSON M. HENDERSON 109-B OAK AVENUE GREENWOOD, S.C. 29646 864-229-8000	

SUBPOENA IN A CRIMINAL CASE

COPY

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY GREENWOOD
STATE OF SOUTH CAROLINA V. ADAM MARTYN ROWELL	CASE NO. 2014A2410201428
	SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO: GREENWOOD COUNTY SHERIFF'S OFFICE ATTENTION RECORDS CUSTODIAN	
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE THE HENDERSON LAW FIRM, P.C. 109-B OAK AVENUE GREENWOOD, S.C. 29646	COURTROOM
	DATE AND TIME FRIDAY, APRIL 7, 2017, AT NOON
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S)	
UNREDACTED COPIES OF ALL DOCUMENTS CONTAINED IN THE CONFIDENTIAL INFORMANT FILE FOR FOR ANXAVIAR JEMORRIS WALDRUP (BLACK MALE; DATE OF BIRTH 10/30/93; SSN 248-93-9610), INCLUDING BUT NOT LIMITED TO: 1. THE NAMES OF ALL PEOPLE WHO HAVE BEEN INVESTIGATED AND/OR ARRESTED BASED UPON INFORMATION PROVIDED BY MR. WALDRUP IN HAS CAPACITY AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE, AND UNREDACTED COPIES OF THE COMPLETE CASE FILES IN THESE MATTERS. 2. UNREDACTED COPIES OF ALL DOCUMENTS SHOWING HOW MUCH EXPENSE MONEY WAS PAID TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE. 3. UNREDACTED COPIES OF THE RESULTS OF ALL DRUG SCREEN URINALYSIS, STRESS ANALYSIS, POLYGRAPH, AND/OR OTHER TESTS ADMINISTERED TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE. 4. UNREDACTED COPIES OF ALL TELEPHONE CALLS INVOLVING MR. WALDRUP RECORDED BY THE GREENWOOD COUNTY SHERIFF'S OFFICE (OR ANY OTHER LAW ENFORCEMENT AGENCY) WHILE MR. WALDRUP WAS SERVING AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE.	

SCCA 253 (JULY 1, 1993)

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		TEST A TRUE COPY CHASITY COPELAND CLERK OF COURT GREENWOOD COUNTY S.C.
CLERK OF COURT	DATE	
(BY) DEPUTY CLERK	MONDAY, MARCH 27, 2017	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:	ATTORNEY'S NAME AND ADDRESS CARSON M. HENDERSON 109-B OAK AVENUE GREENWOOD, S.C. 29646 864-229-8000	
☐ SOLICITOR ☒ DEFENDANT		

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

STATE OF SOUTH CAROLINA)

v.)

ADAM MARTYN ROWELL,)

Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS

EIGHTH JUDICIAL CIRCUIT

CERTIFICATE OF DELIVERY

Indictment No(s). 2015-GS-24-0535/0536

17 MAR 29 P 3:27

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

The undersigned does hereby certify that on the 29th day of March, 2017, he served the below-referenced documents, by mailing via first class regular United States mail in Greenwood, South Carolina, and/or hand delivering the same in Greenwood, South Carolina, to the person(s) listed below at the address(es) listed below:

FIRST-CLASS UNITED STATES MAIL

Hon. Donald B. Hocker

Circuit Court Judge

P.O. Box 972

Laurens, S.C. 29360

HAND DELIVERED VIA CLERK'S BOX

Micah E. Black, Esquire

M. Wade Downtin, Esquire

Eighth Circuit Solicitor's Office

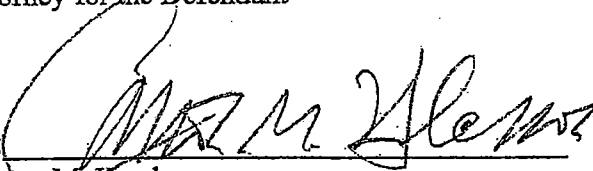
P.O. Box 516

Greenwood, S.C. 29648-0516

1. Supplement #1 to Defendant's Motion for New Trial
2. Certificate of Delivery

THE HENDERSON LAW FIRM, P.C.

Attorney for the Defendant

By: 

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Greenwood, S.C. 29646

Phone: (864) (864) 229-8000

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Greenwood, South Carolina

March 29, 2017

State of South Carolina)	In the Court of General Sessions
County of Greenwood)	Eighth Judicial Circuit
	2015-GS-24-0535
	2015-GS-24-0536
State of South Carolina,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Adam Martyn Rowell,	)
	)
Defendant.	)
	)
	)

Transcript of Record

November 27, 2017
Laurens, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge

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

Micah E. Black, Assistant Solicitor
M. Wade Downtin, Assistant Solicitor
Attorney for Plaintiff

Carson M. Henderson, Esquire
Billy J. Garrett, Jr., Esquire
Jane H. Merrill, Esquire
C. Rauch Wise, Esquire
Attorney for Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

D-1	Time Line		

4

D-2	Medical Records		

4

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 2:26 p.m.)

(Whereupon, Defendant's Exhibits 1 and 2 were premarked for identification before the commencement of the proceeding.)

THE COURT: All right. We're on the record this afternoon. This in the *State of South Carolina v. Adam Rowell* matter. It's a Greenwood County case, motion -- or, I guess, a motion and then a supplemental motion for new trial having previously been -- been filed by the defense. And -- all right. Who's going to argue for the defendant?

MR. HENDERSON: I will, Your Honor.

THE COURT: Okay. And then, who's going to argue for the state?

MR. BLACK: Probably me, Your Honor.

THE COURT: Okay. All right. What -- what I want to do -- and I've -- I've gone through -- prior to today, I've gone through your motion and your supplemental motion. I've gone back through all my trial notes. I think, basically, there are maybe two new issues: the juror issue and then -- and I'm just going to refer to it as the "Greenville Hospital" issue. Everything else is basically what was raised during the course of the trial. Is that correct, Mr. Henderson?

MR. HENDERSON: That is correct, Your Honor.

1 THE COURT: Okay.

2 MR. HENDERSON: We may have another issue that we just
3 want to call the Court's attention ---

4 THE COURT: Okay.

5 MR. HENDERSON: --- to.

6 THE COURT: What I'd like to do is I -- I don't really
7 necessarily want to plow new ground -- I mean, old ground,
8 as it relates to the issues raised during the trial.
9 Certainly, I mean, you -- you can -- you can touch on them.
10 But try to keep it in a, you know -- a -- a summary
11 fashion.

12 And then, on these -- the new issues, then I'll -- you
13 know, I'll hear from you on -- on -- on those. But I just
14 -- I don't -- I don't want to spend a whole lot of time on
15 the issues that we had already thoroughly discussed during
16 those seven days of -- of -- of trial. So with -- with
17 that said, I'll -- I'll turn it over to you, Mr. Henderson.

18 MR. HENDERSON: Thank you, Your Honor. And -- and
19 again, if something is not addressed here today, by no
20 means are we abandoning ---

21 THE COURT: Sure.

22 MR. HENDERSON: --- that argument. We -- we just want
23 to make that clear for ---

24 THE COURT: Certainly.

25 MR. HENDERSON: --- the record. Your Honor, prior to

1 you coming in here, I handed up two documents to madam
2 court reporter to be marked. The first one would be a -- a
3 document, three pages, titled "State v. Rowell Time Chart"
4 that I handed up to His Honor. And also, what's been
5 marked as Defense No. 2, it's going to be 99 pages of
6 medical records.

7 And these are the records from the Greenville Hospital
8 System that Your Honor was so helpful in us getting
9 posttrial. And again, they have been thoroughly redacted,
10 so we have no idea what this person's name or any other
11 identifying information is.

12 And we're going to have a third document. I'm waiting
13 for it to be e-mailed to me. And it's going to be a letter
14 dated today from our expert, Dr. Jimmy Valentine. We'd
15 just like to be able to supplement the record with it. I'm
16 having trouble getting on the Internet here. And I'm --
17 I'm ---

18 THE COURT: Okay.

19 MR. HENDERSON: --- otherwise, I would read the letter
20 into the record and provide it to His Honor. But I can't
21 get on for ---

22 THE COURT: That's fine.

23 MR. HENDERSON: --- whatever reason.

24 Your Honor, I'll start with the Greenville Hospital
25 System records, because -- and -- and again, we're very

1 thankful for you and -- and your assistance in helping us
2 get these records -- and again, posttrial before we ever
3 realized this was an issue. Now, looking back on it, some
4 things that were testified to at trial, kind of make some
5 sense now, now that we have these medical records from this
6 unidentified person.

7 And from talking to the hospital's counsel, Your
8 Honor, you know -- again, he can't go into great HIPAA-
9 related details -- but he told us that -- in some e-mail
10 that this is -- this patient is a white male in his 20s.
11 He did tell us that. And again, that's very similar to
12 Adam, white male in his 20s, when all this was going --
13 when all this was occurring on November the 15th of 2014.

14 Your Honor, I want to look at this flow chart, this
15 time chart that we made. And -- and -- you -- and you'll
16 see at the bottom right, I had made one addition. I
17 crossed out the number 92 and -- and put in the number 50.
18 What that is, those are pages.

19 So I know we've plowed a lot of ground on Adam's side
20 of the equation. I didn't put page of records. But on
21 this other patient's records, I did put the page numbers.
22 And again, I think that'd just be easier for the Court to
23 review or any reviewing court to review.

24 And I'm going to -- and -- and again, all this ties
25 back in to so many of the arguments that we raised at trial

1 and raised in the written motions and now have been further
2 confirmed, we think, by the production of these records by
3 this unnamed person.

4 THE COURT: Let me just stop you just a second. I
5 know that the general thinking on -- on your side of the --
6 the room was that -- was that this other person was -- was
7 in the same trauma area as -- as the defendant and that,
8 somehow or another, blood samples, blood specimens, got
9 switched. In other words, they -- they took John Doe's
10 blood and labeled it Adam Rowell. I think that was --
11 that's been kind of the general line of thought, correct?

12 MR. HENDERSON: Your Honor, I think that is a -- a
13 substantial possibility ---

14 THE COURT: Right.

15 MR. HENDERSON: --- absolutely.

16 THE COURT: All right. Can you point out in these
17 records where that would be supportive of you -- your --
18 your line of thinking.

19 MR. HENDERSON: Absolutely. I'll -- I'll just cut
20 right there. Page 55, Your Honor.

21 THE COURT: Okay.

22 MR. HENDERSON: All right. You recall that during the
23 trial, that the nurse there at the Greenville Hospital
24 says, "Hey, everybody that comes into the hospital, before
25 we draw blood, before we do anything, we assign them a

1 number. We assign them -- you know, put on bracelets. We
2 do all this is a security precaution," and understandable
3 why they would do that.

4 And I think that was the testimony. Now, if quoting
5 anything wrong -- but -- but, you know, all of us have put
6 our minds together here at defense table, and that's our
7 recollection of the testimony: that we do that immediately
8 when somebody comes in the hospital,

9 And you notice, going back and looking at Mr. Rowell's
10 records, there's nothing in his medical records that talks
11 about when he got an armband or when his blood sample was
12 labeled, anything along those lines. And -- and again, it
13 wasn't there, so we weren't missing it.

14 But lo and behold, we get this other patient's medical
15 records. And if you look at page 55, at about halfway down
16 here on November 15th of '14 at 2258, or 10:58 p.m., this
17 other patient, at that time his specimen is only being
18 labeled; his armband is getting labeled.

19 He's not getting identified until 10:55. And why is
20 that important? His blood was drawn at 9:05, Your Honor,
21 an hour and 50 minutes after the fact, before they ever put
22 an identification with this other patient.

23 And again, this lady from the hospital, this nurse
24 from the hospital, testified to say, "Hey, when somebody
25 comes in here, immediately we do this, before we ever start

1 drawing blood. And again, it -- it's -- it's for -- I -- I
2 say the word "security." It's not really security, but you
3 understand what I'm talking about, because you want to make
4 sure that the proper samples go with the right people.

5 So -- so again, we're seeing in this other guy's
6 records that they marked when he was finally armbanded and
7 when his samples were labeled. There are no corresponding
8 records like that in Mr. Rowell's records at all. And I --
9 I -- I think I've pored over these medical records, and Mr.
10 Garrett has, and Ms. Merrill has. Such does not exist.

11 And -- and again, we were -- we didn't know to look
12 for something that wasn't there. And now that we're seeing
13 these other records, it -- it -- it's made a big
14 difference.

15 And -- and -- and something else I want to call the
16 Court's attention to: If -- if you look in Mr. Rowell's
17 records, the records were greatly detailed about when the
18 sample that purportedly came from Mr. Rowell made it to the
19 hospital lab to be tested. And -- and again, it -- that
20 was at 9:24 p.m., is when Mr. Rowell's sample, or what was
21 purported to be his sample, arrived at the lab to be
22 tested.

23 But we're looking at these other -- this other
24 patient's records. And again, the lawyer that was real
25 gracious, he told us he was sending us the complete file.

1 I have no reason to doubt that he didn't send us the
2 complete file, Your Honor. I don't think anybody has a
3 reason to doubt that. But if you look through this other
4 patient's file, there is no evidence that a sample,
5 allegedly taken from this other patient, ever got to a lab.

6 All we're seeing is that a sample got drawn. And now
7 we're seeing some results. And again, we don't know -- we
8 know what time the -- the -- the sample was taken. Well, I
9 say -- what the records indicate, that they were taken at
10 9:05 p.m. from this other gentleman. And then, all of a
11 sudden, we're seeing some records indicating an alcohol
12 result. But there's no evidence about where it went to,
13 that sample went to or where -- or whether that sample ever
14 made it to the lab. Have no idea.

15 And -- and -- and again -- and -- and going back to
16 the time chart, you know, that's one reason I -- I thought
17 it was real helpful, at least to me, to kind of do side by
18 side, you know, just walk down minute by minute what is
19 going on. I mean, we know that Dr. Snow was involved in
20 both of these patients.

21 And then, if you're looking at this other patient,
22 they're talking about he arrived at 8:53 p.m. You can see
23 that on the right-hand column. And they're talking about
24 -- and -- and going down the right-hand column, this other
25 patient, they -- they greeted him at 8:56.

1 And then, you get down to nine o'clock, they're
2 talking about the patient arriving in the hospital. The
3 EMS records talk about the patient arrived at the hospital
4 at nine o'clock. You know, he was placed -- and -- and
5 they actually ordered, it looks like, alcohol plasma
6 toxicology studies at nine o'clock.

7 So again, you've got at least a seven-minute window of
8 when this -- this other patient arrived at the hospital.
9 And again, the -- these aren't our numbers. We're just
10 going through and compiling the numbers from the hospital
11 records.

12 At 9:02 Dr. Snow requested this other patient's -- you
13 know, that they take a blood draw from him. And the blood
14 draw that they took from this other patient, Your Honor,
15 was in the arm. They actually tried it twice, it looks
16 like, one in the left wrist and -- and -- and one in the
17 left A.C. And it's my understanding that stands for
18 antecubital, a-n-t-e-c-u-b-i-t-a-l.

19 Actually, they took two draws from this other guy.
20 And again, they're using I.V.s. They're actually sticking
21 into him. And again, if they stick into somebody, that
22 means they're using alcohol preps, all the stuff that would
23 not be used in the central line that was entered into Adam.

24 And again, Your Honor, when -- why we think that's
25 important, you know, one of the nurses was adamant, you

1 know, under her testimony at first that Mr. Rowell -- that
2 we -- I -- that that nurse watched him have blood drawn
3 from his left arm.

4 THE COURT: Let me stop you just ---

5 MR. HENDERSON: Yeah.

6 THE COURT: --- another minute, Mr. Henderson. What
7 proof do you have that -- and I'm going to refer to him as
8 "John Doe" ---

9 MR. HENDERSON: Right.

10 THE COURT: --- that John Doe and Adam Rowell were
11 right next to each other or at least in close proximity to
12 each other in the trauma unit to where it would make it,
13 not likely or more likely, but lend some credence to your
14 argument that there may have been some switching, as
15 opposed to Adam Rowell being in that corner of the trauma
16 unit -- and I don't know what size this room is or area is
17 ---

18 MR. HENDERSON: Right.

19 THE COURT: --- and John Doe being way over here to
20 where maybe it would make it less likely that there was
21 some mixup? What -- what proof do we have that they were
22 right next to each other or in very close proximity?

23 MR. HENDERSON: Your Honor, just the fact that they
24 were both in the trauma ward ---

25 THE COURT: Right.

1 MR. HENDERSON: --- at the same time. And -- and --
2 and go to any of these hospitals. Trauma wards are not
3 humongous places.

4 THE COURT: Right.

5 MR. HENDERSON: I mean, for obvious reasons, I mean,
6 we -- we -- we're glad they're there when there's trauma.
7 But thank goodness, there's not a lot of trauma going on at
8 any given ---

9 THE COURT: But we don't ---

10 MR. HENDERSON: --- time.

11 THE COURT: --- have -- we don't have proof of the
12 size. I mean ---

13 MR. HENDERSON: Right. We -- we -- we haven't scaled
14 ---

15 THE COURT: We -- we ---

16 MR. HENDERSON: --- it off ---

17 THE COURT: --- don't know if it's a -- you know, a --
18 a small area, large area, or where the -- the two gentlemen
19 were -- were located. We just don't have any evidence to
20 that.

21 MR. HENDERSON: We -- we -- we know that ---

22 MR. BLACK: Judge, I'll -- I'll jump in, if you don't
23 mind, just so that it's clear for the record. According to
24 the records from the events category on Rowell's chart, he
25 was in Trauma Bay 1. And I guess we'll call him "John

1 Doe." He was in Trauma Bay 2.

2 And I guess, just from my understanding, they're --
3 they're two different areas. They're -- I guess they're
4 near each other. They're in the E.R. there in the trauma
5 bay. But one's over here, and the other one's over here.

6 THE COURT: Okay. All right. Okay.

7 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

8 MR. HENDERSON: And -- and -- and -- and, Your Honor,
9 again, Dr. Snow was involved in both of these patients. We
10 know so they're close. I mean, they're -- they're
11 numerically next to one another. Now, physically, you
12 know, obviously, there's going to be some space.

13 But it's my understanding, from listening to the
14 testimony at trial, that there was a charge nurse up there
15 supervising all of this: you know, calling out names or
16 calling out numbers or times. So when -- it should be
17 small enough and close enough that there was one person
18 that could account for all of this activity that could
19 observe everything.

20 And -- and -- and -- and, Your Honor, you know, I
21 think that's kind of where we stand on these new records.
22 You know, Dr. Valentine, he's looked at these records.
23 He's written a letter. And like I said, I just can't
24 access it ---

25 THE COURT: That's fine.

1 MR. HENDERSON: --- right now. But -- but I think I
2 have summarized the same issues ---

3 THE COURT: Okay.

4 MR. HENDERSON: --- that he is going to address in the
5 letter, except he can just offer it from a professional
6 opinion. And then, we're just offering it as mere lawyer's
7 ---

8 THE COURT: Sure.

9 MR. HENDERSON: --- argument.

10 THE COURT: Sure.

11 MR. HENDERSON: But -- if I may have one minute as it
12 relates to this particular ---

13 THE COURT: Sure.

14 MR. HENDERSON: --- the Greenville ---

15 THE COURT: Take your time.

16 MR. HENDERSON: --- hospital.

17 THE COURT: Take your time.

18 (Off the record briefly.)

19 MR. HENDERSON: Okay. And -- and -- and, Your Honor,
20 what the letter would say is -- Dr. Valentine's letter --
21 and again, some of the stuff that I issued -- that -- that
22 I just discussed, that there is no evidence or times of
23 when this other gentleman's draw ever got to the lab -- I
24 think that's one of the key things -- and that the timing
25 here are just eerily running parallel.

1 THE COURT: Right.

2 MR. HENDERSON: I mean, just so -- and -- and -- and
3 again, you've got two gentlemen that -- you know,
4 approximately the same age, approximately the same race --
5 you know, same gender.

6 THE COURT: Okay. All right. Let me ask you this,
7 Mr. Henderson. And we've kind of ---

8 MR. HENDERSON: Right.

9 THE COURT: --- talked about this a little bit when we
10 were in Abbeville. It's my understanding that you and Mr.
11 Garrett and Ms. Merrill -- of course, Mr. Wise wasn't
12 involved at the time -- didn't find out about John Doe
13 until after the trial, correct?

14 MR. HENDERSON: Absolutely.

15 THE COURT: And -- and that information came from Mr.
16 Rowell's some family members. And they indicated -- you
17 correct me if I'm not stating what you've already told me
18 -- that they remember being in the emergency room and that
19 this John Doe's family was in there and there were some
20 discussions about, "Well, you know, we got Adam Rowell, we
21 got John Doe, and they're back there in the trauma unit
22 together."

23 MR. HENDERSON: Right. Right. And it just kind of
24 came in passing in conversation ---

25 THE COURT: Right.

1 MR. HENDERSON: --- after the verdict ---

2 THE COURT: Right.

3 MR. HENDERSON: --- Your Honor.

4 THE COURT: Okay. All right. So how -- how do you
5 get over the -- the -- let -- let's say you have some merit
6 to what you're arguing here. How do you get over the
7 hurdle that -- that this information, John Doe and swapping
8 of -- or -- and mishandling of blood samples, that couldn't
9 have been discovered under an after, you know, discovered-
10 evidence ground for a new trial? How -- how -- how -- how
11 does the defense get past that?

12 MR. HENDERSON: Your Honor, and as we've discussed
13 amongst ourselves in theory, everything is discoverable
14 ahead of trial. But again, there's only so much time.
15 There's only so much effort. There's only so much thinking
16 outside the box that you can do. Again, well prepared for
17 this trial, I think His Honor would say that; spent
18 countless hours with Dr. Valentine on piecing together
19 these medical records.

20 And -- and again, the records just stink to high
21 heaven -- Mr. Rowell's -- I mean, the time. And again,
22 that kind of goes back to the written motion that we made
23 about both blood samples.

24 THE COURT: Right. May -- maybe I -- my question was
25 -- was not very well stated. If -- if you had found that

1 out from the -- Mr. Rowell's family before trial, y'all
2 would have attacked this issue just like you've been
3 attacking it now.

4 MR. HENDERSON: Oh, absolutely, we ---

5 THE COURT: Right.

6 MR. HENDERSON: --- we would have. But ---

7 THE COURT: So -- so my point being is that it
8 could've been used at -- at -- at -- at trial if counsel
9 had found out about it.

10 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

11 MR. HENDERSON: Well -- well, Your Honor ---

12 THE COURT: It's not -- and I'm not putting any fault
13 on -- on your ---

14 MR. HENDERSON: No.

15 THE COURT: --- part whatsoever.

16 MR. HENDERSON: And -- and again, there's no need to
17 go look for this until all the confusion that came up at
18 ---

19 THE COURT: Right.

20 MR. HENDERSON: --- trial. Because looking at Mr.
21 Rowell's records, just at his records, not knowing about
22 John Doe out here ---

23 THE COURT: Right.

24 MR. HENDERSON: --- we're looking at this stuff.
25 They're saying, Hey, they took his first blood draw at

1 8:54, except he's not even at the hospital. You know, then
2 -- then it comes to trial that -- that nurse saying, "Oh,
3 we watched them take it out of his arm." That's not what
4 happened at all. It got taken out of this central line and
5 -- and -- and then, you know, we thought for medical
6 purposes.

7 It -- it honestly surprised us that with -- with the
8 -- with the changes that had been made to Adam's blood and
9 -- and the bodily fluids, really, we were still in shock
10 that that even got into evidence. But -- but again, that's
11 -- that's part of our grounds for a new trial and,
12 obviously, would be an appellate issue if -- if you decline
13 the motion.

14 But again, you know, if we had even an inkling that
15 there was something -- that there was a John Doe sitting
16 out here, oh, you better bet we would have attacked this.

17 THE COURT: Sure.

18 MR. HENDERSON: Dr. Valentine says he would have loved
19 to have had this material to -- to point out to the jury.
20 But again, we had no reason to think about that. And in
21 hindsight, you know, all the confusion about the vials --
22 you know, that the government's -- the investigator went
23 back and straightened out all the testimony about the
24 vials: you know, one vial, three vials, four vials.

25 And the reason there may be so many vials going on

1 here, Your Honor, we've got multiple people. And who knows
2 what they took from John Doe because we don't have those
3 records. They're not in the file. All we know is that
4 there was blood drawn from John Doe at 9:05 and a central
5 line inserted into Adam at 9:08 that a vial of blood was
6 drawn from.

7 You know, if we had any idea, in hindsight, a lot of
8 this stuff makes sense now. But we'd had no idea about it
9 until we actually got our hands on these records.

10 And you see the difficulties that we had getting the
11 records. But -- but it -- for the life of me, if we'd had
12 any idea about this prior to trial, oh, absolutely. We
13 would've been all over it and -- and would've asked the
14 Court's help to get those records pretrial. But -- but
15 these records, posttrial now, they're putting a lot of
16 stuff into context for us.

17 And -- and -- and one other issue I wanted to raise,
18 Your Honor, is I've been in some talk with the SLED counsel
19 -- chief counsel down at SLED. And he still doesn't have
20 an answer for me. I've asked him to see if they actually
21 have any of Mr. Rowell's blood sample still in existence.
22 I don't know if they save it. I'm not exactly sure of what
23 their procedure is.

24 But we've asked him that -- that if there is still any
25 of that sample, on our own dime, we're going to have the

1 DNA of that blood tested. Because after all these other
2 records have come to light, John Doe, we're not convinced
3 that the blood that actually made it down to SLED came from
4 Mr. Rowell. You know, and -- and the only way we could
5 ever know that is to have that -- have that blood DNA-
6 tested.

7 And I'm hoping they still have the samples. The
8 lawyer has been on vacation for a while. And we've been
9 communicating. But he assures me that he's looking into
10 it.

11 And if they have it, I'm hoping he'll be gracious
12 enough to -- to -- to make it helpful for us to get the
13 blood -- you know, that blood tested. Because Adam's
14 easily found to be tested. I mean, he -- he's not going
15 anywhere for a while. So we're looking into that as well.

16 And again, that's something that has come to light
17 only after looking at these records.

18 THE COURT: Okay. All right.

19 MR. HENDERSON: It just didn't -- didn't ---

20 THE COURT: Okay. Let me hear from the state as it
21 relates to the -- John Doe and the hospital records and
22 then what Mr. Henderson has already mentioned about trying
23 to see if SLED still maintains the -- or has maintained the
24 -- the blood sample.

25 MR. BLACK: Yes.

1 THE COURT: Solicitor?

2 MR. BLACK: Yes, sir. Thank you, Your Honor. Just, I
3 guess, to point out: The time line that I think the
4 defense, they ---

5 THE COURT: Right.

6 MR. BLACK: --- they gave you is -- I think that's
7 Defense 1. The -- I just wanted to point out that
8 according to the chart, the greet time for Adam Rowell --
9 and they obviously have this in their record -- is 2044 on
10 November the 15th, 2014. And that would be 8:44 p.m.

11 So they conveniently left that out on the chart. But
12 it's clearly marked in the medical records, which they
13 have. So to get up here and argue that Mr. Rowell hadn't
14 been there yet is ---

15 THE COURT: So 8:44 indicates what, Solicitor?

16 MR. BLACK: 8:44, according to the medical chart of
17 Mr. Rowell -- obviously, it wasn't admitted into evidence.
18 But the ---

19 THE COURT: Right.

20 MR. BLACK: --- the time of greet, that's kind of when
21 the nurses first greet the patient. That's when he
22 arrived. And that's not listed on the sheet that you have,
23 Your Honor.

24 So the -- the -- the chart, I -- I believe the -- the
25 first draw, I believe, is 8:54. So he had been there for

1 ten minutes. So to get up here and argue that Mr. Rowell
2 hadn't been at the hospital yet is disingenuous and -- and,
3 quite frankly, just not true. So I just wanted to make
4 that clear before we ---

5 THE COURT: Okay.

6 MR. BLACK: --- before we started.

7 MR. HENDERSON: Your ---

8 MR. BLACK: There was -- there was talk a little bit
9 about, you know, timing and how this whole thing -- how
10 there was more information that -- that took place over
11 trial before -- and more information came out during the
12 course of trial, which that's kind of -- that's how it
13 always -- that's how it always is, Your Honor.

14 But it did take about 2 1/2 years, from my
15 calculation, before we -- we -- we went to trial. And so
16 there was plenty of time, plenty of opportunity for them to
17 look into these records and try to figure out which way to
18 approach it.

19 They're talking about two middle-aged white guys at
20 the Greenville Hospital. I believe it was a -- a -- I -- I
21 forget what -- the day it was. But I just don't think
22 that's unusual, two -- two middle-aged white guys coming
23 into Greenville Memorial Hospital ten minutes apart.
24 That's not super unusual, so I don't think that's a -- a
25 smoking gun by any stretch of the imagination.

1 Just going back on the -- on the timing issue, Your
2 Honor: There -- there was testimony at trial. I remember
3 specifically the nurses talked about, you know, "Our clocks
4 aren't synchronized. Our watches aren't synchronized."

5 And even their expert -- I forget his name; I think
6 Dr. Valentine was his name -- talked about clocks and how
7 that's not unusual to look in the records and see the
8 timing just off a little bit, just based on how -- how the
9 nurses have their watch. Because when they're entering
10 records in, they look at their watch. And it's not always
11 the exact time that everybody always has.

12 Judge, even if we were to assume that the blood was
13 switched -- and -- and you -- I've passed the case law up
14 to you previously when we were in Abbeville. But just
15 citing the cases, just for the record, *State v. Mercer*, 381
16 S.C. 149; *State v. Spann*, 334 S.C. 618. I believe I handed
17 you the *Harris* case, *State v. Harris*, 391 S.C. 539.

18 You're well aware of the standard for a -- a motion
19 for a new trial. Basically, to obtain a new trial after-
20 discovered evidence, the party must show that this evidence
21 would probably change the result if a new trial were at
22 hand.

23 So let's assume that there -- let's assume that the
24 worst happened and their blood -- John Doe and Mr. Rowell's
25 blood got switched, right? Well, the -- the records are --

1 and Mr. Shaw, who's the hospital's attorney, indicated to
2 us that his blood draw was higher than Mr. Rowell's. I
3 believe his plasma alcohol came back a 219, which comes
4 back to about a 0.19. This gentleman's a 36-something,
5 which like a 30.

6 So even -- even if we were to assume that that's true,
7 even if we were to assume that the blood did get switched,
8 it doesn't change the results at all. And that's kind of
9 the first prong in looking at whether or not to grant a new
10 trial based on this after-discovered evidence.

11 And -- and that's making a huge assumption, Judge.
12 There -- there's no evidence in any of these records that
13 it happened. If you go back and look at the records, the
14 only common denominator in this whole -- whole deal was Dr.
15 Snow. You've got a completely separate set of nurses
16 handling Mr. Rowell, compared to this John Doe individual.
17 The only person that saw both of these is Dr. Snow, who's
18 the attending physician at the E.R.

19 So it would have to be -- it -- I mean, it would have
20 to be, obviously, gross negligence from the hospital.
21 Because they don't know who these people are. But -- but
22 even if -- even if that were the case, it doesn't change
23 the results, because he's still four or five times over the
24 legal limit, even higher than what Mr. Rowell's blood was.

25 The other prong to those, Judge, are -- has not been

1 discovered since trial, could not have been discovered
2 before trial by the exercise of due diligence. And that
3 just kind of goes back to my previous point that they
4 could've looking into this previously. And obviously, they
5 failed to do so, even though they had 2 1/2 years to
6 prepare for trial.

7 The other factors -- is material to the issue of guilt
8 or innocence and is not merely cumulative or impeaching.
9 So just looking at the standard, looking at the records, it
10 -- there's just -- it just doesn't support it, Judge. It
11 doesn't rise to the level to grant a new trial. It -- he'd
12 still be four or five times over the legal limit ---

13 THE COURT: Okay.

14 MR. BLACK: --- even if their blood was switched.

15 THE COURT: All right.

16 MR. BLACK: And that's ---

17 THE COURT: All right.

18 MR. BLACK: --- making a huge assumption.

19 THE COURT: Okay. Very good. Thank you. Mr.
20 Henderson ---

21 MR. HENDERSON: Very ---

22 THE COURT: --- next -- next -- next argument let's --
23 let's touch on is the -- the juror issue. Is that still a
24 -- a -- still an issue? I know we've talked about it. I
25 think, Solicitor Black, you had indicated that you had

1 checked with law enforcement. Defense maintained, at least
2 initially, that Juror 164 was formerly a -- a -- a C.I. for
3 the -- for law enforcement. And you checked into that and
4 had indicated that there was no record of that or ---

5 MR. BLACK: I -- I ---

6 THE COURT: --- you ---

7 MR. BLACK: --- did, Your Honor. I checked with both
8 the county -- Chad Cox with Greenwood County and I checked
9 with Mickey McAllister, who's the captain over at the city.
10 They looked through their files. There's no record at all
11 that he was ever a C.I. There's no indication that he's
12 ever been a C.I. So that was -- that just wasn't true.

13 There was another issue -- and I'll just go ahead and
14 address it while I'm talking to Your Honor -- that Mr.
15 Xavier Waldrop -- I think he was Juror 164. He had been --
16 he got charged with possession with intent to distribute
17 marijuana in January, as well as unlawful neglect of a
18 child. And I think there was -- there was another charge
19 too. It was ---

20 (Whereupon, Mr. Black and Mr. Downtin conferred.)

21 MR. BLACK: --- proximity -- it was proximity charge
22 to a school or park ---

23 THE COURT: They were all pending, though, at the time
24 ---

25 MR. BLACK: They -- they were ---

1 THE COURT: --- of ---

2 MR. BLACK: --- were pending, in fact, Your Honor. So
3 he got arrested at the end of January.

4 THE COURT: Okay.

5 MR. BLACK: It was from Ware Shoals. The case didn't
6 get transmitted to us till the Wednesday during trial. And
7 it got assigned to Wade, because he's our drug prosecutor,
8 primarily. And obviously, we're -- Wednesday of trial, we
9 had no idea. We're not checking to see which cases we're
10 ---

11 THE COURT: Right.

12 MR. BLACK: --- getting assigned to. So we had no
13 idea. It was 40 -- about 40 grams of marijuana, so anybody
14 could assume that he wasn't going to be -- I mean, I guess
15 -- he didn't have a record, so I would assume that he
16 thought it was just a possession-of-marijuana charge. And
17 I'm sure he just got a blue ticket.

18 He got charged with unlawful neglect of a child
19 because his kid was in a -- he had a kid -- 2-year-old in
20 the backseat that had a seat belt on; didn't -- wasn't in a
21 car seat. So that was the reason for that charge.

22 THE COURT: Okay.

23 MR. BLACK: So I -- we didn't -- we didn't know. And
24 quite frankly, we probably would've struck him if we knew
25 that he had pending charges.

1 THE COURT: Okay.

2 MR. BLACK: So ---

3 THE COURT: All right. Mr. Henderson, is that still
4 -- still an issue on the table for you guys?

5 MR. HENDERSON: Your Honor, as it relates to this
6 juror -- and -- and again, nothing has been produced to us
7 indicating that he was a confidential informant. And
8 because he does have a lawyer, Ms. Nelson with the public
9 defender's office, we ethically thought that we can't
10 directly contact him. Even on unrelated matter, we don't
11 think we're -- it's -- it's proper to contact him. But
12 we've contacted Ms. Nelson, and she's made it very clear to
13 us, he has no interest in talking to us.

14 THE COURT: Right.

15 MR. HENDERSON: So -- so -- and again -- and like I
16 said, I don't think we can make him.

17 THE COURT: Right.

18 MR. HENDERSON: I'm -- I'm not even sure you can make
19 him come in here and talk to us about ---

20 THE COURT: I ---

21 MR. HENDERSON: --- that.

22 THE COURT: --- I -- I don't ---

23 MR. HENDERSON: You know ---

24 THE COURT: --- think I -- I have ---

25 MR. HENDERSON: --- you know ---

1 THE COURT: --- powers greater than the constitution.

2 MR. HENDERSON: Right. And -- and -- and --- and so
3 -- so in -- to a certain degree, we don't have any evidence
4 that ---

5 THE COURT: Okay.

6 MR. HENDERSON: --- he was a confidential informant.
7 But again, we -- we still are not abandoning this issue of
8 -- of putting somebody with an arrest record on the jury.

9 THE COURT: Okay.

10 MR. HENDERSON: Because, you know, we went back and
11 had Ms. Scott read the question that she asked and -- you
12 know, "Have any of you ever been arrested?" I went back
13 and looked. He did not stand up.

14 THE COURT: Okay.

15 MR. HENDERSON: And -- and clearly, he had been
16 arrested. He'd been booked. He'd been taken downtown, as
17 they say.

18 We wouldn't have put him on the jury either. We
19 would've -- because again, marijuana was an issue in this
20 case, from the decedents. And plus, always thinking like
21 some other creative defense lawyer, that -- that, Hey, if
22 he's sitting out here on the jury, I'm worried that he
23 might be, you -- you know, helping himself out by sticking
24 it to my client, sitting on the jury. Wouldn't ---

25 THE COURT: Was ---

1 MR. HENDERSON: --- have put him on there at all. So

2 ---

3 THE COURT: Was -- was that one of the voir dire
4 questions? Certainly, the standard is convictions. But
5 was that -- and I -- I certainly don't recall. But was
6 that a voir dire question: Has anybody been arrested ---

7 MR. BLACK: I ---

8 THE COURT: --- for whatever?

9 MR. BLACK: I don't remember. But -- I do know that
10 Mr. Henderson usually puts it in his stuff. So I wouldn't
11 be surprised that if it was.

12 MR. HENDERSON: Right. So we asked Ms. Scott to go
13 back and actually pull or what -- what your question was
14 and who came forward. And the question asked arrested --
15 who's been arrested and also convicted. You know, you went
16 through the whole litany. And I'm -- and -- and this
17 gentleman did not come forward.

18 THE COURT: Okay.

19 MR. HENDERSON: And -- and -- and again, Your Honor,
20 we believe, because the state, you know, arrested him, --
21 actually, an underling of the solicitor's office -- and all
22 these law enforcement agencies are underlings of the
23 solicitor's office. You know, it -- it would be our
24 position that -- that the law enforcement agencies -- that
25 the solicitor has actual knowledge of what its underlings

1 are doing, I mean, just from an agency theory.

2 And -- and again, we -- there would've been no chance
3 that we would've put this guy on our jury knowing that. .
4 And again, I hear the state saying that there's no chance
5 they would've put him on there either. But -- but again, I
6 mean, I -- I think both sides can make plausible arguments
7 that, Wait, we wouldn't have put this guy on the jury.

8 But again, we're not held to the standard of having to
9 know that he's been arrested. It's not imputed to us. It
10 is imputed to the state.

11 THE COURT: Okay.

12 MR. HENDERSON: So -- so -- so again, it's not -- it's
13 not really completely apples and oranges.

14 And again, you know, I -- I hear Mr. -- the -- the
15 state talking about, you know, after-discovered evidence.
16 And -- and again, I think a lot of this evidence -- again,
17 we did discover it after trial. But our whole motion's not
18 just on after-discovered evidence.

19 THE COURT: Oh, I understand that. You got -- you
20 raised, you know, arguments that you had made during the
21 course of the trial.

22 MR. HENDERSON: Right. And -- and -- and again, going
23 back to what the state said about this meet-and-greet time
24 with Mr. Rowell -- and -- and again, the LifeFlight people
25 were adamant at trial, based upon their records, that when

1 -- when this first blood draw was purportedly taken from
2 Mr. Rowell, they were in air. I mean, you just -- I mean,
3 you -- just looking at their records, I mean, all -- all of
4 -- all these -- all these numbers are just off. I mean,
5 they're off for Mr. Rowell. They're off for John Doe.

6 Not sure what's going on in -- in the emergency room.
7 Glad they're saving lives, don't get me wrong. But -- but
8 not -- not sure what else is going -- going on in there,
9 Your Honor.

10 You know, and I -- I think that -- and I don't think
11 the solicitor had any comment to the -- to the -- to our
12 SLED issue -- and again, I'm still waiting to hear back
13 from the lawyer from SLED. Because again, I don't even
14 know whether or not they have any of that sample left.

15 You know, if -- if this had been an issue quicker, you
16 know, obviously, we could've had that -- the Greenville
17 Hospital samples tested. But again, they talk about how
18 quickly those get destroyed. You know, before we ever --
19 you know, Mr. Rowell's still in the hospital before we ever
20 get involved.

21 Those -- that's gone. I mean, there's just nothing
22 there to test at all. And that would be the best evidence
23 of what -- what happened that night, would -- would be his
24 samples and John Doe's samples. But they're gone.

25 THE COURT: Okay.

1 MR. HENDERSON: They're gone immediately.

2 THE COURT: Other than the Juror 164 issue and John
3 Doe issue, are the other -- and I believe I'm correct in
4 saying this -- I believe the other grounds for a motion for
5 new trial are issues that actually came up during the
6 course of the trial. There's nothing -- none of the other
7 issues are new that I can tell.

8 (Whereupon, Mr. Henderson, Mr. Garrett, and Mr. Wise
9 conferred.)

10 MR. HENDERSON: And -- and again, Your Honor, we --
11 it's our belief that these hospital records, now that we've
12 got them, make some of the other, what we believe, trial
13 errors more substantive. I mean, again ---

14 THE COURT: Oh, I -- I understand that. But the
15 actual issue itself, all these other grounds for your
16 motion for new trial are issues that were raised at trial.
17 I understand that you believe that John Doe now sheds some
18 additional light on those issues in your favor. I
19 understand that.

20 But the actual issue itself -- I just wanted to make
21 sure that there's nothing brand new that you're raising.

22 MR. HENDERSON: I'll let ---

23 MR. GARRETT: May I ---

24 MR. HENDERSON: --- Mr. Garrett address ---

25 MR. GARRETT: --- may -- may -- may I ---

1 THE COURT: Well, I'll ---

2 MR. GARRETT: --- I speak ---

3 THE COURT: --- let you ---

4 MR. GARRETT: --- just -- just briefly, Your Honor?

5 Your Honor, the cumulative effect of the at-trial
6 arguments -- and -- and I -- and I specifically go to the
7 state's going back and correcting -- while I was trying to
8 cross-examine the witnesses, try to figure out whether one
9 vial/two vials/three vials/four vials -- I -- I -- I know
10 you probably -- maybe remember that. But there were
11 different testimony that we got in-camera. And then all of
12 a sudden, we get out and we start asking questions and it
13 had changed.

14 And I asked the question, "Why did it change?"

15 And they said, "Well, he told me." And they pointed
16 to a solicitor's agent. And the solicitor's agent had went
17 back there and told them that they needed to get their
18 story straight and get to one vial instead of four.

19 Now, Judge, the four vials might've been very well the
20 evidence that we have uncovered now that might've been one
21 of those other vials that wasn't his blood at all. And --
22 and so that -- the failure of -- of -- the Court didn't
23 give us a -- a -- a new trial based on that mistake by the
24 state.

25 And, you know, if you got them knowing -- or by

1 imputation of law knowing that there is a juror on there
2 that one of these prosecutors has already been assigned to,
3 we know that they -- actually, the other cases, Judge, they
4 falsified information to get a -- an arrest warrant. And a
5 -- another warrant is -- was admitted at trial. These are
6 prosecutorial-misconduct-type of arguments that denied us
7 fundamental due process in this case.

8 And then, if you go back to that problem that we were
9 trying to figure out this blood during trial, I was trying
10 my best to get fair cross-examination so I could figure out
11 exactly what was going on with this blood. It didn't make
12 any sense. Now it makes sense.

13 THE COURT: Okay.

14 MR. GARRETT: But at the time, it didn't.

15 THE COURT: Okay. All right.

16 (Whereupon, Mr. Henderson and Mr. Wise conferred.)

17 THE COURT: Let -- let him finish and then I'll turn
18 it back over to you, Solicitor.

19 MR. GARRETT: And also, Your Honor, the -- the -- the
20 juror would've known that the case would've been handled by
21 this same solicitor's office. So we -- you know, we can't
22 impute what's in his mind.

23 And I can't say what the private talkings in the jury
24 are. None of us can. That's sacred. But it gives him a
25 -- a -- an incentive to help the solicitor.

1 THE COURT: How -- how would this -- how -- how would
2 the -- if it's a pretty new charge, how would the -- Juror
3 164 know that Solicitor Downtin was assigned to the case, if
4 he just got it on Wednesday during trial? I mean, I'm --
5 I'm just asking the question.

6 MR. GARRETT: I -- I'm not sure. We know ---

7 THE COURT: Yeah.

8 MR. GARRETT: --- that they do assign them. But what
9 we also know is -- is that that is the prosecutorial office
10 that's going to prosecute that case. In other words, they
11 didn't have ---

12 THE COURT: Right.

13 MR. GARRETT: --- a prosecutor come in from another
14 ---

15 THE COURT: You ---

16 MR. GARRETT: --- county to ---

17 THE COURT: Okay.

18 MR. GARRETT: --- prosecute this case. The same ones
19 who were prosecuting ---

20 THE COURT: Right.

21 MR. GARRETT: --- this case is going to prosecute or
22 not prosecute his case.

23 MR. BLACK: And, Judge, just to address the issues:
24 To be clear, so the case got transferred in from Ware
25 Shoals to the clerk's office, which is the process. It got

1 transmitted on that Wednesday of trial. Then the clerk's
2 office, they send it to our office to be assigned out.
3 After trial it got assigned to Wade, not knowing the whole
4 situation.

5 So it wasn't even during the trial that the case got
6 assigned to Wade. So to make it seem like he knew that
7 Wade was the prosecutor that was going to handle the case
8 is obviously ---

9 THE COURT: All right.

10 MR. HENDERSON: Your Honor, we don't care which
11 solicitor it was assigned to, ultimately. This young man
12 was told on his bond paperwork that this being handled in
13 General Sessions court by the solicitor's office.

14 THE COURT: I -- I -- I think the argument is not
15 necessarily that Juror 164 knew that Solicitor Downtin would
16 be prosecuting; he just knew that the Eighth Circuit
17 Solicitor's Office ---

18 MR. GARRETT: Right.

19 THE COURT: --- would be ---

20 MR. GARRETT: And, Judge ---

21 THE COURT: --- prosecuting ---

22 MR. GARRETT: --- I don't mean to in any way impugn
23 Mr. Downtin. I'm not ---

24 THE COURT: Right.

25 MR. GARRETT: --- suggesting, even for a second, that

1 -- that he ---

2 THE COURT: Right.

3 MR. GARRETT: --- had anything to do with that. But
4 ---

5 THE COURT: Right.

6 MR. GARRETT: --- from the juror's perspective, the
7 same problem that we've got, where he won't talk to us ---

8 THE COURT: Okay.

9 MR. GARRETT: --- I mean, we don't know what was in
10 his mind. So it's the appearance, Judge. And then, when
11 you -- you take ---

12 THE COURT: Right.

13 MR. GARRETT: --- it cumulative of all these
14 appearances and it -- it just doesn't -- it doesn't feel
15 like due process was ---

16 THE COURT: Right.

17 MR. GARRETT: --- was fully granted here.

18 MR. BLACK: And then, Judge, just kind of to talk
19 about the argument that Investigator Wilkie went back there
20 and talked to the nurse and the lab tech and the doctor,
21 telling them what to testify to, that didn't happen either,
22 Judge. I know that was talked about just now. But that
23 didn't happen.

24 We were out -- they tried to figure out what's going
25 on. They were just asking questions. He was off the

1 stand. And the -- he was trying to ask the lab tech what
2 happened. And obviously, Mr. Garrett had an opportunity,
3 twice actually, to cross-examine him. And he -- and he
4 did.

5 We were just trying to figure out how the whole
6 process works. Because if -- I, -- I know it was eight/ten
7 months ago when this whole trial happened. But what they
8 testified to is, depending on the situation, sometimes
9 there's one vial; sometimes there's two or three vials.
10 And then when it comes into the lab, sometimes it gets spun
11 out into different vials. So they were just trying to
12 figure out how this whole thing went down.

13 Talking about -- also, they talked about falsifying
14 the arrest warrants. That -- that wasn't the case. The
15 issue was a -- a beer can, I think, in the -- in the
16 affidavit that the -- that the trooper had. He said -- he
17 said there were beer cans in the vehicle. I think there
18 ended up being one.

19 And Mr. Garrett obviously had an opportunity to cross-
20 examine him about that. The trooper said, "Yes, there's
21 one, according to these pictures," when he was shown the
22 pictures; that there was one beer can in the -- in the
23 vehicle. And so that's where they're getting this
24 falsified -- falsifying the -- the affidavit on the -- on
25 the warrant.

1 Judge, I was afraid this whole thing was going to turn
2 into this. But basically, we're just relitigating the
3 case. And if you -- all of this, all of what we're talking
4 about, was talked about in my closing argument and Mr.
5 Garrett's closing argument. It's all weight issue.

6 And the jury looked at all the evidence and they said,
7 "All right. Are we going to go with the evidence or are we
8 going to believe this conspiracy?" And they made their
9 decision. And so ---

10 THE COURT: All right.

11 MR. BLACK: --- Judge, with all that, I think you
12 should deny the motion. And I think that we should -- we
13 should move forward.

14 THE COURT: Okay. Thank you. Mr. Henderson, anything
15 further on your side?

16 MR. HENDERSON: Your Honor, we just incorporate again
17 all the motions ---

18 THE COURT: Sure.

19 MR. HENDERSON: --- and everything else we made at
20 trial, our two written motions, and all the arguments we've
21 made here today. And we would like to be able to
22 supplement the record with Dr. Valentine's letter when I
23 ---

24 THE COURT: I'm -- I'm going to do that. I'm going to
25 take this under advisement to give you an opportunity to

1 get that and just -- I don't ---

2 MR. HENDERSON: I'll e-mail ---

3 THE COURT: --- know how ---

4 MR. HENDERSON: --- it to everybody. And ---

5 THE COURT: Yeah. Just ---

6 MR. HENDERSON: --- that's no ---

7 THE COURT: --- e-mail it. And it can be -- we -- we
8 can have it marked so the record's protected. So I'll --
9 I'll take everything under advisement and appreciate
10 everyone's hard work.

11 MR. HENDERSON: And I ---

12 MR. BLACK: And, Judge, just for the record, could we
13 have the time of greet for Mr. Rowell be placed on the
14 record at 8:44? I know it's -- we've talked about it. But
15 it's not on that sheet that's been ---

16 THE COURT: Okay.

17 MR. BLACK: --- admitted.

18 THE COURT: All right. Any objection to that, Mr.
19 Henderson?

20 MR. HENDERSON: Can I see the ---

21 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

22 MR. HENDERSON: Right. And -- and again -- if I may?

23 THE COURT: Sure.

24 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

25 MR. HENDERSON: Right. Your -- Your Honor, we're --

1 we're not going to concede that because the LifeFlight
2 records, which they were very adamant about, which are in
3 -- in evidence, indicate that he didn't get there till
4 after this blood draw. This isn't in the record ---

5 THE COURT: Well ---

6 MR. HENDERSON: --- at all.

7 THE COURT: --- I -- I -- you know, if the -- if the
8 state wants to have something marked as part of this motion
9 for new trial, just get it marked solicitor. And -- and so
10 you don't -- you don't have to consent to that.

11 MR. HENDERSON: Oh, I agree. They can mark what they
12 want. We agree. We're just not ---

13 THE COURT: Sure.

14 MR. HENDERSON: --- going to consent to it ---

15 THE COURT: That -- That's fine.

16 MR. HENDERSON: --- right this ---

17 MR. BLACK: Can we ---

18 THE COURT: That's fine.

19 MR. BLACK: Can we e-mail it to Your Honor? Can we e-
20 mail it to Valerie?

21 THE COURT: Huh?

22 MR. BLACK: Can we e-mail it, Your Honor? I ---

23 THE COURT: Yeah. Just e-mail it -- e-mail it to us,
24 and e-mail it to everybody, and we'll make sure that's
25 marked as an exhibit too.

1 MR. BLACK: Thank you, Your Honor.

2 THE COURT: Okay. Anything further before we adjourn
3 this hearing? From the state?

4 MR. BLACK: No, sir.

5 THE COURT: From the defense?

6 MR. HENDERSON: No, sir, Your Honor.

7 THE COURT: Okay. Thank you very much. Again, thank
8 you for your hard work on both sides.

9 MR. GARRETT: Thank you, Your Honor.

10 (Whereupon, the proceeding was adjourned at 3:09 p.m.)

11 --- END OF TRANSCRIPT OF RECORD ---

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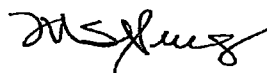
24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR GREENWOOD COUNTY, SOUTH CAROLINA, ON THE
27TH DAY OF NOVEMBER, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 18, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

State of South Carolina)

vs.)

Adam Rowell)
_____)

Court of General Sessions

Case Number 2015-GS-24-0535
2015-GS-24-0536

**ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL**

THIS MATTER CAME FOR HEARING before the undersigned on Monday, November 27, 2017 in Laurens, South Carolina by Defendant's Motion for New Trial. Present for the Defendant were Mr. Billy Garrett, Mr. Carson Henderson, Ms. Jane Merrill, and Mr. Rauch Wise. Representing the State were Solicitors Wade Dowtin and Micah Black.

The Defendant was tried for two counts of Felony Driving under the Influence during the week of February 13, 2017. He was found guilty on both counts and convicted on February 20, 2017. Subsequently, Defendant filed a Motion for New Trial and, later, a Supplemental Motion for the same.

Law & Analysis

"All the circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law of the United States." S.C. Code § 17-23-110.

Defendant's Motion for New Trial is respectfully denied, based on the reasons herein:

I. Defendant's Arguments I-III, V-XIV

The majority of Defendant's arguments are issues that were argued during trial. These arguments are again denied, and the Court incorporates by reference its rulings and bases for those rulings in the record at trial.

#1
103A

II. Defendant's Claims that the Hospital May Have Switched His Blood with another Patient's Sample

There is no credible evidence to support any suggestion that Defendant's first or second blood draw was swapped with another patient's blood, or that the blood samples used in Defendant's case did not come from the Defendant. The argument is far too speculative to warrant the granting of a new trial.

Furthermore, though not in the Motion, Defense Counsel represented to the Court that additional discovery was needed because, at the end of the first trial, members of the Defendant's family indicated that there was another patient in the trauma ward whose blood could have been labeled as the Defendant's. The fact that another white male appearing to be in his twenties also had blood drawn in the same area of the hospital as Defendant around the same time as Defendant could have been discovered before trial. This is not changed merely because that particular detail escaped Defendant's family members' memories until after the close of trial, making these claims improperly based on the "after discovered evidence" evidence rule. S.C. Crim. P. 29(b).

III. Defendant's Claims that Juror 164 Served as a Confidential Informant for Law Enforcement

At hearing, Defendant admitted that he could provide no credible evidence that Juror 164 served as a confidential informant for Greenwood City Police Department or the Greenwood Sheriff's Office. On that basis, this ground in support of the Motion for a New Trial is denied.

#2
DBA

IV. Juror 164's Nondisclosure of January 21, 2017 Arrest for Possession with Intent to Distribute Marijuana, Unlawful Neglect of a Child, and Purchasing a Controlled Substance within Proximity of a School

A juror's concealment of facts can be grounds for a new trial; the Court's inquiry is a "fact-intensive determination that must be made on a case-by-case basis" to decide whether the concealment was intentional or unintentional. *State v. Sparkman*, 358 S.C. 491, 596 S.E.2d 375 (2004). Where a juror's concealment is found to be unintentional, the Court ends its inquiry, and no new trial is granted. *Id.* Where a juror's concealment is found to be intentional, a new trial is warranted when the concealed information would have supported either a challenge for cause or would have been a material factor in the use of the parties' peremptory challenges. *State v. Woods*, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001); and *State v. Guillebeaux*, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (2004) (requiring a finding in addition to the concealment being intentional.).

The test for whether a juror's concealment is intentional is two-fold: (1) the question is reasonably comprehensible to the average juror, and (2) the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. *Supra Woods*, 345 S.C. at 588, 550 S.E.2d at 284.

A juror's concealment is unintentional where: (1) the question is ambiguous or incomprehensible to the average juror, or (2) the subject of the question is so far removed in time that failure to respond is reasonable. *Supra Sparkman*, 358 S.C. at 496, 596 S.E.2d at 377.

In this case, the question to which Juror 164 failed to respond was, "Question One-- any member of the jury panel, any immediate family member or close personal friend ever been arrested and charged with any criminal offense through any state, local, or federal law enforcement agency." This was the first of ten (10) questions asked, and the panel was asked at the end of that litany of questions to come speak to the Court privately if any panel member needed to respond.

On its face, the question at issue is reasonably comprehensible to the average juror. However, in practice, the question was the first of ten that the jury panel had to remember; consider; and, if needed, privately answer to the Court.¹ The manner in which the question was asked, and the amount of time between when the question was posed and when it was meant to be answered could be confusing to the average juror. For this reason, the Court finds that the Juror 164's concealment was unintentional.

However, even if the Court found that Juror 164's concealment was intentional, and that the intentionally concealed information would have provided a basis for either a challenge for cause or for a peremptory challenge by either party, the Court would not find that a new trial is warranted.

"Concealment" is the "act of preventing disclosure" and "the act of removing from sight or notice; hiding." Concealment, *Black's Law Dictionary* (10th ed. 2014). The vast majority of case law about jurors' failures to disclose information discusses the concealment of relationships, especially between potential jurors and witnesses. See, e.g., *supra Guillebeaux*, (where the information concealed was a social relationship with a witness); *State v. Galbreath*, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004) (where the seated juror did not answer in *voir dire* that he knew the victim's mother and brother-in-law).

Here, though, Juror 164 is alleged to have "concealed" an arrest. An arrest record—unlike personal, private relationships—is public information. Juror 164 failed to answer a question, but he did not prevent Defendant or the State from seeking and seeing his arrest record. Juror 164 could not "remove from sight or notice" this public information—the fact that he had been arrested the month prior—such that the attorneys could not have possibly known about it.

The Motion and Supplemental Motion for New Trial are denied.

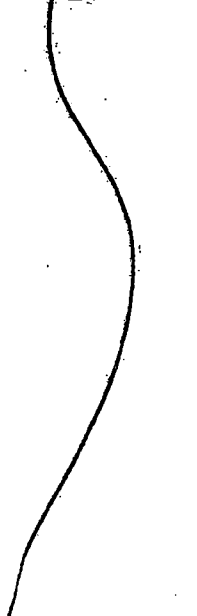
¹ A practice the Court has since modified considerably.

So Ordered.

Laurens, SC
December 27, 2017


Donald B. Hocker
Circuit Court Judge



#5



Carson Henderson <carson@carsonhendersonlawfirm.com>

Rowell Medical record

23 messages

Micah Black <mblack@greenwoodsc.gov>

Mon, Nov 27, 2017 at 5:13 PM

To: "Hocker, Donald B. Law Clerk (Catherine Thomas)" <dhookerlc@sccourts.org>, "Hocker, Donald B." <dhookerj@sccourts.org>, Carson Henderson <carson@carsonhendersonlawfirm.com>, Billy Garrett <billygarrettjr@yahoo.com>, mnevers@sccourts.org

Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>

Judge Hocker,

Attached is the medical record that I would like to have marked as a state's exhibit. I have highlighted the greet time noted at 20:44.

Thank you,

Micah Black

Find Greenwood County on social media:



NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

**Rowell medical record.pdf**

2280K

Hocker, Donald B. Law Clerk (Valerie Fulton) <dhookerlc@sccourts.org>

Tue, Nov 28, 2017 at 8:16 AM

To: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhookerj@sccourts.org>, Carson Henderson <carson@carsonhendersonlawfirm.com>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>

Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>

Got it printed. Still waiting on Defense Exhibit—letter from Dr. Valentine?

Thanks,

Valerie

From: Micah Black [mailto:mblack@greenwoodsc.gov]**Sent:** Monday, November 27, 2017 5:13 PM

<https://mail.google.com/mail/u/0?ik=c6b08a67f0&view=pt&search=all&permthid=thread-f%3A1585259096730745143&simpl=msg-f%3A1585259096...> 1/20

10/23/2018

Henderson Law Firm Mail - Rowell Medical record

To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhookerlc@sccourts.org>; Hocker, Donald B. <dhookerj@sccourts.org>; Carson Henderson <carson@carsonhendersonlawfirm.com>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>
Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>
Subject: Rowell Medical record

[Quoted text hidden]

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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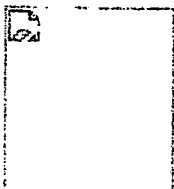
Carson Henderson <carson@carsonhendersonlawfirm.com>

Tue, Nov 28, 2017 at 9:01 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhookerlc@sccourts.org>  
Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhookerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, " <rauchwise@gmail.com>" <rauchwise@gmail.com>

Attached is the letter from Dr. Valentine. Please have Maryann mark this as Defendant's Exhibit #3.

[Quoted text hidden]



Carson M. Henderson  
The Henderson Law Firm, P.C.

864-649-0384 (office)

109-B Oak Avenue  
Greenwood S.C. 29646

[www.carsonhendersonlawfirm.com](http://www.carsonhendersonlawfirm.com)



2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf  
126K

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Carson Henderson <carson@carsonhendersonlawfirm.com>

Wed, Dec 6, 2017 at 11:39 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhookerlc@sccourts.org>  
Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhookerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, " <rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Judge Hocker,

After our hearing in Laurens last week, defense counsel have reflected upon some of the issues raised by the State. At trial, the State knew it had problems with the time of Mr. Rowell's first blood draw, the number of vials taken from Mr. Rowell during the first blood draw, and the body part location of the first blood draw from Mr. Rowell. As these inconsistencies were known to the State prior to trial, or at least should have been known, we would argue that the State has the burden of clarifying these issues, and the State probably had an obligation to inform defense counsel before trial of these inconsistencies. The State still hasn't clarified these issues, and the Court appears to be placing the burden on the defense to establish the lack of reliability of the information. We believe until the State meets its obligation to clarify these issues, we have no burden. Only after defense counsel learned of these problems, and received information post trial of possible confusion as to the identity of Mr. Rowell, did we know to even look at a possible second person being in the hospital trauma ward at the same time as Mr. Rowell.



Please have Maryann mark this email as Defendant's Exhibit #4.

Thank you for considering this.

Carson

[Quoted text hidden]

---

**Hocker, Donald B. Law Clerk (Valerie Fulton)** <dhockerlc@sccourts.org>

Wed, Dec 6, 2017 at 11:59 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Downtin <wdowntin@greenwoodsc.gov>, "rauchwise@gmail.com" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Thank you for your email. Judge Hocker will go ahead and mark the exhibit, as he remains in possession of the other exhibits.

Additionally, Judge Hocker has some concern about Juror 164's nondisclosure of his arrest. He asks that you please brief this issue. The briefs do not need to be particularly elaborate and can be submitted in email form.

Knowing that the holidays are fast-approaching, please have the briefs to Judge Hocker by January 15, 2018.

Thank you,

Valerie

**From:** Carson Henderson [mailto:carson@carsonhendersonlawfirm.com]

**Sent:** Wednesday, December 6, 2017 11:39 AM

**To:** Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

**Cc:** Micah Black <mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; Wade Downtin <wdowntin@greenwoodsc.gov>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

**Subject:** Re: Rowell Medical record

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After our hearing in Laurens last week, defense counsel have reflected upon some of the issues raised by the State. At trial, the State knew it had problems with the time of Mr. Rowell's first blood draw, the number of vials taken from Mr. Rowell during the first blood draw, and the body part location of the first blood draw from Mr. Rowell. As these inconsistencies were known to the State prior to trial, or at least should have been known, we would argue that the State has the burden of clarifying these issues, and the State probably had an obligation to inform defense counsel before trial of these inconsistencies. The State still hasn't clarified these issues, and the Court appears to be placing the burden on the defense to establish the lack of reliability of the information. We believe until the State meets its obligation to clarify these issues, we have no burden. Only after defense counsel learned of these problems, and received information post trial of possible confusion as to the identity of Mr. Rowell, did we know to even look at a possible second person being in the hospital trauma ward at the same time as Mr. Rowell.

10/23/2018

Henderson Law Firm Mail - Rowell Medical record

Please have Maryann mark this email as Defendant's Exhibit #4.

Thank you for considering this.

Carson

On Tue, Nov 28, 2017 at 9:01 AM, Carson Henderson <carson@carsonhendersonlawfirm.com> wrote:

Attached is the letter from Dr. Valentine. Please have Maryann mark this as Defendant's Exhibit #3.

On Tue, Nov 28, 2017 at 8:16 AM, Hocker, Donald B. Law Clerk (Valerie Fulton) <dhookerlc@sccourts.org> wrote:

Got it printed. Still waiting on Defense Exhibit—letter from Dr. Valentine?

Thanks,

Valerie

**From:** Micah Black [mailto:mblack@greenwoodsc.gov]

**Sent:** Monday, November 27, 2017 5:13 PM

**To:** Hocker, Donald B. Law Clerk (Valerie Fulton) <dhookerlc@sccourts.org>; Hocker, Donald B. <dhookerj@sccourts.org>; Carson Henderson <carson@carsonhendersonlawfirm.com>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>

**Cc:** Wade Downtin <wdowntin@greenwoodsc.gov>

**Subject:** Rowell Medical record

Judge Hocker,

Attached is the medical record that I would like to have marked as a state's exhibit. I have highlighted the greet time noted at 20:44.

Thank you,

Micah Black

Find Greenwood County on social media:

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 <http://www.greenwoodsc.gov/websiteData/socialmediaicons/twitter.png>

NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

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109-B Oak Avenue

Greenwood S.C. 29646

www.carsonhendersonlawfirm.com

Carson Henderson <carson@carsonhendersonlawfirm.com>

Thu, Dec 7, 2017 at 7:56 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>

Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, " <rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

<https://mail.google.com/mail/u/0/?ik=c6b08a67f0&view=pt&search=all&permthid=thread-f%3A1585259096730745143&simpl=msg-f%3A1585259096...> 5/20

Please have Maryann mark this email as Defendant's Exhibit #5. Please let us know if Judge Hocker requires additional information. The defense has ordered the relevant portions of the voir dire transcript from court reporter Tara Scott, who assures us that she will expedite the request. Once we receive the transcript, we will email it to everybody.

Also, the clerk's file for the juror, Anxaviar Jemorris Waldrup, indicates that Solicitor Dowtin was the prosecutor handling this case at Mr. Waldrup's initial appearance on March 10, 2017. At Mr. Waldrup's second appearance on May 5, 2017, the clerk's file indicates that Solicitor Tunstall was handling the case. Mr. Waldrup was subsequently arrested again, and the clerk's file indicates that Solicitor Tunstall is handling these charges.

CASE #1:

When allegations arise concerning a juror's failure to reveal information in response to voir dire questions, courts look to whether the concealment was intentional and consider the nature of the information concealed. *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001). A new trial is warranted if the court finds: (1) the juror intentionally concealed the information; and (2) "the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *Id.* However, a determination that a juror did not intentionally conceal the information ends the court's inquiry. *State v. Sparkman*, 358 S.C. 491, 497, 596 S.E.2d 375, 377-78 (2004).

State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004)

-The defense asks that the Court conduct a hearing with the juror. Janna Nelson with the PD's office is representing Mr. Waldrup.

CASE #2A:

After conducting a lengthy inquiry, the trial court found that the alleged connection between Juror # 7 and Respondent would have been a material factor in the State's exercise of its peremptory challenges. The court did not view Juror # 7's connection with Respondent and his family as a basis for a challenge for cause. However, the court ruled that the connection would have been a legitimate basis for the State's exercise of its peremptory strikes, and that the State would have struck Juror # 7 had she disclosed the connection. Therefore, the trial court excused Juror # 7 from the jury and replaced her with the alternate juror. The State then called its remaining witnesses, and the jury ultimately convicted Respondent of armed **245 robbery and possession of a firearm during the commission of a violent crime.

State v. Coaxum, 410 S.C. 320, 326, 764 S.E.2d 242, 244-45 (2014)

CASE #2B:

"[T]rial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information." *Kelly*, 331 S.C. at 145, 502 S.E.2d at 106. Should jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been excused by the court, challenged for cause by counsel, or stricken through the exercise of a peremptory challenge. *State v. Gullede*, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982). 91011 In the event of such juror misconduct, the trial court must inquire into whether the withheld information affects the jury's impartiality. *Kelly*, 331 S.C. at 141, 502 S.E.2d at 104. However, the court should not grant a mistrial based on a juror's concealment of information "unless absolutely necessary." *Id.* at 142, 502 S.E.2d at 104. "Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial." *Id.* (citing *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989)); see also *State v. Williams*, 321 S.C. 455, 459-60, 469 S.E.2d 49, 52 (1996) *328 (affirming the trial court's decision to seat an alternate juror midtrial after another juror's impartiality came into question); *State v. McDaniel*, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) (same).

State v. Coaxum, 410 S.C. 320, 327-28, 764 S.E.2d 242, 245 (2014)

CASE #3:

We agree that the juror's lack of response in this case must rise to the level of "intentionally concealed information." Considering the facts available to us, especially the telling statements found in Anderson's first affidavit, we find *576 Anderson did not truthfully respond to the trial court about his 1996 automobile repossession. Concomitantly, in the interest of justice, in circumstances where:

(1) it is discovered a juror did not disclose a truthful answer in response to voir dire;

(2) the juror's disqualification is discovered following trial;
 (3) a truthful response could have supported a challenge for cause or could have been a material factor in the use of a peremptory challenge; and
 (4) the Gray criteria have been satisfied,
 the proper remedy for the injured party is a de novo trial. *Gray v. Bryant*, 298 S.C. 285, 379 S.E.2d 894 (1989); see also *Shafer v. Schuster*, 882 S.W.2d 310 (Mo.Ct.App.1994), cited in Annotation, 66 C.J.S. New Trial § 25 (1998) (in the case of a juror's intentional nondisclosure in response to voir dire, bias and prejudice are inferred, and a new trial is required).

Long v. Norris & Assocs., Ltd., 342 S.C. 561, 575-76, 538 S.E.2d 5, 13 (Ct. App. 2000)

-Both the State and the defense agreed they would have struck the juror.

CASE #4:

In the case of *Photostat Corporation v. Ball*, 338 F.2d 783 (CA 10 1964) it was held reversible error to fail to grant a new trial where jurors did not respond to voir dire questions:

Necessarily, it is expected and required that jurors in their answers shall be completely truthful and that they shall disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason. It therefore becomes imperative that the answers be truthful and complete. False or misleading answers may result in the seating of a juror who might have been discharged by the Court, challenged for cause by counsel or stricken through the exercise of peremptory challenge. *Ball*, supra, at 786.

State v. Gullledge, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982)

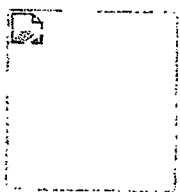
CASE #5:

If the voir dire questioning is sufficiently specific to elicit the information which is not disclosed, or as to which a false answer is later shown to have been given, the defendant has established a prima facie case of concealment or deception. (See. e.g., *Moore v. Preventive Medicine Medical Group, Inc.* (1986) 178 Cal.App.3d 728, 742, 223 Cal.Rptr. 859; *People v. Jackson* (1985) 168 Cal.App.3d 700, 705-706, 214 Cal.Rptr. 346.) Here, juror R. knew appellant was charged with killing her husband, and that the evidence involved an alcoholic husband and a battered wife. She was asked during voir dire if she had ever experienced domestic violence, and whether she had ever seen or experienced domestic, and specifically spousal, violence or alcoholism within her family. The line of questioning by counsel and the court was sufficiently clear to alert her to provide information about her own *930 prior experiences. In her declaration she does not state that she misunderstood or was confused by the questions during voir dire. Nor does she state that she failed to inform the court of her abusive first husband during voir dire because of oversight or forgetfulness. Her affidavit thus establishes misconduct. (*Weathers v. Kaiser Foundation Hospitals*, supra, 5 Cal.3d at pp. 102-106, 95 Cal.Rptr. 516, 485 P.2d 1132; *People v. Castaldia*, supra, 51 Cal.2d at p. 572, 335 P.2d 104; *People v. Diaz*, supra, 152 Cal.App.3d at p. 934, 200 Cal.Rptr. 77.)

People v. Blackwell, 191 Cal. App. 3d 925, 929-30, 236 Cal. Rptr. 803, 805 (Ct. App. 1987)

-This case says that once the lie is established, there is a prima facie case of prejudice that the State must overcome.

[Quoted text hidden]



Carson M. Henderson
The Henderson Law Firm, P.C.

864-649-0384 (office)

109-B Oak Avenue
Greenwood S.C. 29646

www.carsonhendersonlawfirm.com

Carson Henderson <carson@carsonhendersonlawfirm.com>

Thu, Dec 7, 2017 at 8:22 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>

Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, " <rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Attached are Mr. Waldrup's four (4) roll call Records of Appearance. Please have Maryann mark these four (4) pages as Defendant's Exhibit #6.

[Quoted text hidden]



2017-12-07 Anxaviar Jemorris Waldrup roll call Records of Appearance.pdf
2244K

Wade Dowtin <wdowtin@greenwoodsc.gov>

Thu, Dec 7, 2017 at 10:46 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>, Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, " <rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Judge Hocker,

Micah and I will get our argument to you as soon as possible. With that said, I just wanted to mention a couple of things. According to the warrants, Juror #164 was arrested on January 20, 2017 in Ware Shoals for PWID Marijuana, a Proximity charge, and an Unlawful Neglect charge. Looking at the arrest warrants from Ware Shoals, the Clerk's stamp on the warrants show her office received the case on Thursday, February 16, 2017. It also appears that our office received the warrant from the clerk on that date. According to our records, the case was created in our system and assigned to me on February 24, 2017. The record also shows that the case was assigned to Tee on March 28, 2017 by Demetri Andrews. I am attaching a copy of the record with this email. I am also attaching a copy of the warrants showing the Clerk's stamp on when they received the warrants from Ware Shoals. We would request that these items be marked as State's Exhibits. The Adam Rowell trial began Monday, February 13, 2017.

I had no clue who juror #164 was until after defense counsel filed their motion regarding juror #164. Defense counsel attached juror #164 March 10, 2017 Initial Appearance form to their email. I may have been assigned the case at this point, but I did not see the juror at his appearance because I was on vacation. I can provide documentation of that if I need to. At some point I looked juror #164 name up in our system and noticed I had been assigned his case. Because of the pending motion for a new trial, I thought it would be best for someone else in our office to handle his case. I discussed this with Demetri, and he agreed. He then reassigned the case to Tee. I just wanted to be abundantly clear that I did not discuss juror #164 case with him, and based on the information above, there is no way I could have. I understand defense counsel has a job to do, but unless they are going to allege some type of prosecutorial misconduct on my part, then all of this information about who was assigned the case and the defendant's appearance dates is irrelevant. Micah and I will have our argument to you ASAP. He is in Abbeville General Sessions right now.

Thanks,

Wade



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[Quoted text hidden]

M. Wade Dowtin
Assistant Solicitor

10/23/2018

Henderson Law Firm Mail - Rowell Medical record

8th Judicial Circuit
PO Box 516
Greenwood, SC 29648-0516
(864) 942-8800 office
(864) 992-8250 cell
wdowtin@greenwoodsc.gov

Find Greenwood County on social media:



[Quoted text hidden]



Anxavier Waldrup documents.pdf
815K

Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

Thu, Dec 7, 2017 at 11:37 AM

To: Wade Dowtin <wdowtin@greenwoodsc.gov>, Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

As a point of clarification, Judge Hocker is not interested in whether or not the Solicitor's office should have known or disclosed Juror #164's arrest; rather, Judge Hocker is concerned about Juror 164's failure to respond during voir dire when the jury panel was asked if any members had been arrested and charged.

Thank you,

Valerie

From: Wade Dowtin [mailto:wdowtin@greenwoodsc.gov]

Sent: Thursday, December 7, 2017 10:46 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Micah Black <mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

[Quoted text hidden]

[Quoted text hidden]

Micah Black <mblack@greenwoodsc.gov>

Mon, Dec 11, 2017 at 5:22 PM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, rauchwise@gmail.com, "Jane H. Merrill" <jane@hmlawsc.com>

Judge Hocker,

After reviewing the issue, it appears Carson has cited most of the relevant case law on this issue. When a juror conceals information during voir dire a motion for a new trial should be granted only when the concealment is intentional. If it is an unintentional concealment, the inquiry should end and the motion should be immediately denied. However, if it is determined to be an intentional concealment, the inquiry continues. Only if the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's preemptory challenges should the motion for a new trial be granted.

First, there is no evidence to suggest that juror #164 intentionally concealed information regarding his arrest. From talking to Tara Scott, the question concerning whether anyone had been arrested previously was read in a series of questions that then elicited the panel to approach the bench if any applied to them. I know that I personally have trouble remembering lists or a series of items even right after they are told to me (i.e. I still make a grocery list even if it's only for a few items). I would contend that the general population struggles with the same concept. Quite simply, there is no evidence to suggest juror #164 intentionally concealed the information that was asked in voir dire and to assume so at this point would be pure speculation and conjecture. The only way to know for certain is for the Court to order him to appear and directly inquire with the juror to determine if the information was intentionally concealed.

If the court determines the concealment is unintentional, the inquiry should end, and the motion should be denied. If it is determined that the concealment was intentional, the moving party must show the juror should have been struck for cause or the concealment would have been a material factor in the use of the party's preemptory challenge. A person having pending charges is not a reason to strike for cause. I have personally asked several times for jurors to be stricken for cause when they had pending charges and have always been denied. Juror #164 would not have been struck for cause simply because he had pending charges.

Therefore, the defense is arguing that in this case the concealed information (not informing the court of his previous arrest) would have been a material factor in the use of a preemptory challenge by the defense. "Material" means "[o]f such a nature that knowledge of the item would affect a person's decision-making; significant; essential." *Black's Law Dictionary* 1066 (9th ed.2009). In *State v Phillip Miller* 398 S.C. 47, a "juror failed to disclose that, just ten months earlier, she participated in a criminal trial in which a man who had stabbed her mother was successfully prosecuted by the same solicitor's office that was prosecuting *Miller*. This information would have been significant to *Miller*, and therefore a material factor, in deciding how to use his preemptory challenges. Accordingly, we find the trial court committed an error of law."

The situation we have here in Rowell is completely different from the *Phillip Miller* case. In *Miller*, the juror personally knew the solicitor from recently participating in a trial where the juror's mother was stabbed and endured a jury trial. Here, juror #164 was arrested for essentially having a "dime bag" of marijuana and not properly restraining his child as required by 56-05-6410. Juror #164 has never had close relationship with anyone in our office, never been a victim in a case prosecuted by our office, and has never worked or volunteered in our office. He has no relationship outside of the fact that our office is prosecuting his cases where he is the defendant.

Of course the defense is going to "arm chair quarterback" and insist they would have struck Juror #164 had they known about his pending charges, but I seriously doubt the defense would have utilized a strike on a juror with these charges because they are not significant and completely unrelated to the charges of Felony DUI with death (alcohol). In all the other cases where this same issue arises, it concerns jurors knowing people (familial or a business relationship) testifying at trial. In other words, the common denominator in these cases are that jurors knew parties involved in the case, and the jurors did not properly disclose that information to the court. That is not the case here. Here, the character of the concealed information is that juror #164 had been arrested before. Not that he knew anyone associated at all with the Rowell Felony DUI trial. The fact that juror #164 failed to stand up when asked if he, a family member, or a close friend had ever been arrested before, in and of itself, is not significant enough to warrant a new trial even if it is determined that Juror #164 intentionally concealed this information.

Finally, in every trial I have ever participated, the final voir dire question is whether or not a juror can be fair and impartial. The judge always tells the jury panel he is looking for fair and impartial jurors. That is the ultimate question. Juror #164 never stood and stated he could not be fair and impartial. There is no evidence in this case to show otherwise.

In sum, a motion for a new trial should be granted only when the concealment is intentional. If it is an unintentional concealment (which is likely the case here), the inquiry should end, and the motion should be immediately denied. However, if it is determined to be an intentional concealment, the inquiry continues. Only if the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's preemptory challenges should the motion for a new trial be granted.

At this point, we think it is appropriate for the Court inquire upon Juror #164 this week to determine whether or not the concealment was intentional. He is represented by Janna Nelson, and I imagine at the Courts request, he could be available this week to answer any questions you might have. Our position is that this motion for a new trial has dragged on for quite some time now, and to be fair to the victim, this motion be ruled on as soon as possible.

Thank you,

Micah

From: Hocker, Donald B. Law Clerk (Valerie Fulton) [mailto:dhockerlc@sccourts.org]

Sent: Thursday, December 07, 2017 11:37 AM

To: Wade Downtin <wdowntin@greenwoodsc.gov>; Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: Micah Black <mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

Subject: RE: Rowell Medical record

As a point of clarification, Judge Hocker is not interested in whether or not the Solicitor's office should have known or disclosed Juror #164's arrest; rather, Judge Hocker is concerned about Juror 164's failure to respond during voir dire when the jury panel was asked if any members had been arrested and charged.

Thank you,

Valerie

From: Wade Downtin [mailto:wdowntin@greenwoodsc.gov]

Sent: Thursday, December 7, 2017 10:46 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Micah Black <mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

Subject: Re: Rowell Medical record

Judge Hocker,

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Thanks,

Wade

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864-649-0384 (office)

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10/23/2018

Henderson Law Firm Mail - Rowell Medical record

Greenwood S.C. 29646

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--


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--
M. Wade Downtin

Assistant Solicitor

8th Judicial Circuit

PO Box 516

Greenwood, SC 29648-0516

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wdowntin@greenwoodsc.gov

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[Quoted text hidden]

Carson Henderson <carson@carsonhendersonlawfirm.com>

Tue, Dec 12, 2017 at 8:09 AM

To: Micah Black <mblack@greenwoodsc.gov>

Cc: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

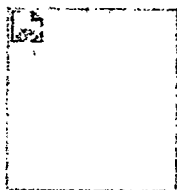
Judge,

We're still waiting on the transcript from Tara Scott. As the defense recollects, the Court's questions about arrests and convictions were straight forward and easy to comprehend. The juror was arrested on or about January 21, 2017, and he bonded out on or about January 24, 2017. Voir dire was on Monday, February 13, 2017, less than three (3) weeks after the juror was released from jail after being arrested. As previously stated to the Court, the defense would not have seated a juror who had pending criminal charges being prosecuted by the same solicitor's office prosecuting Mr. Rowell. If the juror had disclosed this information, the Court may have stricken the juror for cause. The defense believes that a hearing should be conducted so that the juror can be questioned under oath.

Furthermore, Billy will be out of town for the remainder of the week beginning tomorrow. Also, the defense would want Mr. Rowell to be present for any hearing.

Thanks for your consideration.

[Quoted text hidden]



*Carson M. Henderson
The Henderson Law Firm, P.C.*

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www.carsonhendersonlawfirm.com

Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

Tue, Dec 12, 2017 at 11:21 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>, Micah Black <mblack@greenwoodsc.gov>

Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Good morning,

Thank you to both sides for briefing this issue for Judge Hocker. He has already spoken to Tara about the exact wording of the question; the juror did not respond. This has been taken under advisement, and we will get an Order out to everyone as soon as possible.

Thank you,

Valerie

From: Carson Henderson [mailto:carson@carsonhendersonlawfirm.com]
Sent: Tuesday, December 12, 2017 8:09 AM
To: Micah Black <mblack@greenwoodsc.gov>
Cc: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Wade Downtin <wdowntin@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

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[Quoted text hidden]

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:28 PM

----- Forwarded message -----

From: Micah Black <mblack@greenwoodsc.gov>
Date: Mon, Nov 27, 2017, 5:14 PM
Subject: Rowell Medical record
To: Hocker, Donald B. Law Clerk (Catherine Thomas) <dhockerlc@sccourts.org>, Hocker, Donald B. <dhockerj@sccourts.org>, Carson Henderson <carson@carsonhendersonlawfirm.com>, Billy Garrett <billygarrettjr@yahoo.com>, <mnevers@sccourts.org>
Cc: Wade Downtin <wdowntin@greenwoodsc.gov>

[Quoted text hidden]



Rowell medical record.pdf
2280K

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:29 PM

----- Forwarded message -----

From: Carson Henderson <carson@carsonhendersonlawfirm.com>
Date: Tue, Nov 28, 2017, 9:01 AM
Subject: Re: Rowell Medical record
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

[Quoted text hidden]

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2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf
126K

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:29 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>
Date: Wed, Dec 6, 2017, 11:39 AM
Subject: Re: Rowell Medical record
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>
[Quoted text hidden]
[Quoted text hidden]

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:30 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>
Date: Thu, Dec 7, 2017, 7:56 AM
Subject: Re: Rowell Medical record
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>
Cc: Micah Black <mblack@greenwoodsc.gov>, Hocker, Donald B. <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, Nevers, Maryann S. <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, <rauchwise@gmail.com> <rauchwise@gmail.com>, Jane H. Merrill <jane@hmlawsc.com>

[Quoted text hidden]

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:30 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>
Date: Thu, Dec 7, 2017, 8:22 AM
Subject: Re: Rowell Medical record
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>
Cc: Micah Black <mblack@greenwoodsc.gov>, Hocker, Donald B. <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, Nevers, Maryann S. <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, <rauchwise@gmail.com> <rauchwise@gmail.com>, Jane H. Merrill <jane@hmlawsc.com>

[Quoted text hidden]



2017-12-07 Anxaviar Jemorris Waldrup roll call Records of Appearance.pdf
2244K

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:31 PM

----- Forwarded message -----

From: **Micah Black** <mblack@greenwoodsc.gov>
Date: Mon, Dec 11, 2017, 5:24 PM
Subject: RE: Rowell Medical record

10/23/2018

Henderson Law Firm Mail - Rowell Medical record

[Quoted text hidden]

[Quoted text hidden]

4 attachments

~WRD000.jpg
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image001.jpg
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image002.jpg
1K

image003.jpg
1K

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:32 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>

Date: Tue, Dec 12, 2017, 8:09 AM

Subject: Re: Rowell Medical record

[Quoted text hidden]

[Quoted text hidden]

4 attachments

Image001.jpg
1K

image003.jpg
1K

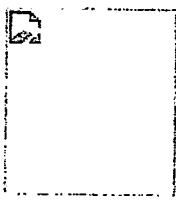
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1K

image002.jpg
1K

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:35 PM

[Quoted text hidden]



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 **Rowell medical record.pdf**
2280K

Carson Henderson <carson@carsonhendersonlawfirm.com>
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:36 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>
Date: Sat, Sep 1, 2018 at 2:29 PM
Subject: Fwd: Rowell Medical record
To: <rauchwise@gmail.com> <rauchwise@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

 **2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf**
126K

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To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:36 PM

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Date: Sat, Sep 1, 2018 at 2:29 PM
Subject: Fwd: Rowell Medical record
To: <rauchwise@gmail.com> <rauchwise@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

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To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:36 PM

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Date: Sat, Sep 1, 2018 at 2:30 PM

Subject: Fwd: Rowell Medical record

To: <rauchwise@gmail.com> <rauchwise@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

From: Micah Black [mailto:mblack@greenwoodsc.gov]

Sent: Monday, November 27, 2017 5:13 PM

To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Hocker, Donald B. <dhockerj@sccourts.org>; Carson Henderson <carson@carsonhendersonlawfirm.com>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>

Cc: Wade Downtin <wdowntin@greenwoodsc.gov>

Subject: Rowell Medical record

Judge Hocker,

Attached is the medical record that I would like to have marked as a state's exhibit. I have highlighted the greet time noted at 20:44.

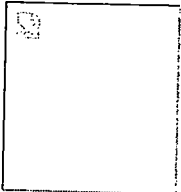
Thank you,

Micah Black

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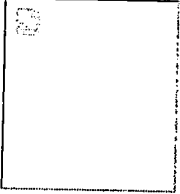


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Greenwood S.C. 29646

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 2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf  
125.9kB

**GMMC  
PRIMARY**

Patient, Tr20142744  
DOB: 1/1/1901 113  
Wt/Ht:  
MedRec: 980338480  
AccNum: 08021722564

Patient Data

Complaint: Accident — automobile  
Triage Time: Sat Nov 15, 2014 20:49  
Urgency: 1-Critical  
Bed: ED CC  
Initial Vital Signs: 11/15/2014 21:04  
BP:  
P:132  
O2 sat:

ED Attending: Snow, MD, Bradley M.  
Primary RN:

R:18  
T:  
Pain:

**PRESENTING PROBLEM** (20:49 ASW)  
Presenting problems: Trauma — Major.

**TRIAGE** (Sat Nov 15, 2014 20:49 ASW)

PATIENT NAME: Patient, Tr20142744, AGE: 113, DOB: Tue Jan 01, 1901, TIME OF CREB: Sat Nov 15, 2014 20:49, RACE: Unknown, Africa past 21 days?: Unable to answer — acute injury/illness, Poss. Flu Exposure?: Unable to answer — acute injury/illness, Homicidal/Suicidal?: Unable to answer — acute illness/injury, Need Isolation?: Does not need Isolation, MEDICAL RECORD NUMBER: 980338480, ACCOUNT NUMBER: 08021722564, PERSON ID: 980338480.  
ADMISSION: URGENCY: 1-Critical, ADMISSION SOURCE: Greenville County — scene of accident, TRANSPORT: LifeNet, DEPT: Emergency, BED: ETC-W.  
COMPLAINT: Accident — automobile.  
PROVIDERS: TRIAGE NURSE: Amanda Westhart, RN.

**ADMIN**

PATIENT DATA CHANGE: A08 63506\_32473\_TA2 by Interface, Gender: I, Payment: 18.

(22:09)

Gender: (none), Payment: (none), Triage Source: (none), Attending: Bradley M. Snow, MD.

(22:06 ALB)

BEDBOARD ENTRY: Request Date/Time: Nov 15, 2014 22:12, Bed Type: ICU, Update admission: (none), Diagnosis: MVC, etoh intoxication, BLE fxs, LmHumer, DRO: \*None Known, Special Code: Trauma, Admitting Doctor: Snow, Other Drips: \*None, Equipment: \*None, Tubes: \*None, Mode of Travel: Stretcher, Going to prior to room: \*To room, Comments: pt is ready to move., Admit Room: (none), Bed Status: (none). (22:12 BRA)

**KNOWN ALLERGIES**

No recorded allergies

**VITAL SIGNS**

VITAL SIGNS: Pulse: 132, Resp: 18, Time: 11/15/2014 21:04. (21:04 ASW)  
BP: 113/71, Time: 11/15/2014 21:04. (21:04 ASW)  
Pulse: 144, Resp: 19, Time: 11/15/2014 21:09. (21:09 ASW)  
BP: 139/100, Time: 11/15/2014 21:10. (21:10 ASW)  
Pulse: 134, Resp: 19, O2 sat: 99, Time: 11/15/2014 21:56. (21:56 ASW)  
BP: 132/87, Time: 11/15/2014 21:59. (21:59 ASW)  
BP: 148/132, Time: 11/15/2014 22:01. (22:01 ASW)  
Pulse: 135, Resp: 21, O2 sat: 100, Time: 11/15/2014 22:06. (22:06 ASW)  
Pulse: 136, Resp: 19, O2 sat: 100, Time: 11/15/2014 22:11. (22:11 ASW)  
BP: 161/141, Time: 11/15/2014 22:15. (22:15 ASW)  
Pulse: 135, Resp: 25, O2 sat: 94, Time: 11/15/2014 22:21. (22:21 ASW)  
BP: 90/45, Time: 11/15/2014 22:21. (22:21 ASW)  
BP: 85/63, Time: 11/15/2014 22:24. (22:24 ASW)  
BP: 71/35, Pulse: 141, Time: 11/15/2014 22:29. (22:29 ASW)  
BP: 131/43, Pulse: 132, O2 sat: 99, Time: 11/15/2014 21:20. (21:20 ASW)  
BP: 146/84, Pulse: 139, Time: 11/15/2014 21:30. (21:30 ASW)  
BP: 141/125, Pulse: 138, Resp: 18, O2 sat: 100, Time: 11/15/2014 21:40. (21:40 ASW)

Prepared: Sun Nov 16, 2014 00:24 by Interface Page: 1 of 3

**GMMC  
PRIMARY**

Patient, Tr20142744  
DOB: 1/1/1901 113  
Wt/Ht:  
MedRec: 980338480  
AccNum: 08021722564

BP: 132/97, Pulse: 139, Resp: 18, O2 sat: 100, Time: 11/15/2014 21:50, (21:50 ASW)

**CURRENT MEDICATIONS**

No recorded medications

**HPI TRAUMA FLOWSHEET** (21:22 SPM)

**PHYSICIANS NOTES:** The individual medication events and other treatment modalities or diagnostic procedures listed here represent verbal orders by the trauma physician/ED Attending to a Registered Nurse during stabilization and treatment of a trauma patient. Each medication line represents the drug, dose and route. The drug was immediately administered after the verbal order was given, so the time represents when the drug was given, with the order occurring immediately prior to the delivery of the medications. I agree and co-sign these medication and procedure orders as the medications and procedures I ordered during the care of this patient., Level 1 alert.

**DIAGNOSIS** (Sun Nov 16, 2014 00:22 NWE)

**FINAL:** PRIMARY: see physician record.

**ORDERS**

**CATH CENTRAL VENOUS:** Status: Active. (22:06 ASW)

**CATH FOLEY W/BAG TRAY 16F:** Status: Active. (22:06 ASW)

**INS NON-TUNNELED CV 5 YRS >:** Status: Active. (22:06 ASW)

**Critical Care EPoint:** Status: Active. (22:15 ASW)

**PRESCRIPTION**

No recorded prescriptions

**NURSING ASSESSMENT: TRAUMA FLOWSHEET**

**PREHOSPITAL RECORD:** Attending: Snow, Arrived at: PTA, Chief Resident: Le, Arrived at: PTA, Resident: McGrath, Arrived at: PTA, Resident2: Jacobs, Arrived at: PTA, Nurse Recorder: Amanda Westhart, RN, Arrived at: PTA, Nurse Bedside: Joe Saitz, RN; Themp Drummond, RN; Nancy Whaley, RN, Arrived at: PTA, NST: Bill Evans, NST, Arrived at: PTA, RT: Marc S., RT, Arrived at: PTA, Patient arrived at: 2100, Trauma alert called at: 2040, Level 1, Transport by helicopter, Name: Life Flight, Injury from MVC, Descriptor: driver, Descriptor: extrication, Time prolonged, Name: hypotensive en route, receiving blood en route, C-collar, Intubation, RSI drugs. (22:16 ASW)

**HISTORY AND ROS:** RTS PTA 8, Unknown allergies, Unknown medications, Unknown past medical history, past surgeries unknown, Unknown social history, Unknown tetanus, Last meal unknown. (20:30 ASW)

**PRIMARY SURVEY:** Airway patent, Airway Oral ET, Rate: 18, assisted, Time vent, O2Sat, pattern Hzcap 99, Time o2sat 2105, Pattern, Apneic, Trachea, Midline, Chest wall movement, WNL, Breath sounds, Present on the right, Present on the left, Notes patient intubated en route, Heart rate: 132, Time 2102, EKG rhythm: sinus tach, Initial BP: 113/71, Time 2103, Color, WNL, Skin, cool, dry, Pulses, Radial present, Cap refill, 3 seconds or less, Time 2102, Eyes, None (1), Verbal, None (1), Motor, Flaccid (1), LOC, yes, Patient temp: 98.3, Axillary, Time 2159, Warming blankets, Warmed IVF. (21:52 ASW)

**SECONDARY ASSESSMENT:** Deferred to MD, Sec H. (20:30 ASW)

**PROCEDURES:** Patient intubated orally, Intubation placement confirmed, Patient intubated time: PTA, Patient intubated size: 7.5, Patient intubated site: oral, Patient intubated by: EMS, Peripheral IV Site 1, Peripheral IV Site 1 time: PTA, Peripheral IV Site 1 size: 18, Peripheral IV Site 1 site: right wrist, Peripheral IV Site 1 by: EMS, Labs drawn with central line, time: 2108, by: Snow, Monitor, time: 2102, by: Bill Evans, NST, NIBP, time: 2102, by: Bill Evans, NST, Pulse Ox, time: 2102, by: Bill Evans, NST, ABG drawn, ABG drawn time: 2206, ABG drawn size: 23, ABG drawn site: left radial, ABG drawn by: Ashley, RT, Foley, Foley time: 2202, Foley size: 16, Foley by: Le, FAST questionable, time: 2203, by: Le, Central line, Central line time: 2108, Central line size: cordis, Central line site: left subclavian,

**GMMC  
PRIMARY**

Patient, Tr20142744  
DOB: 1/1/1901 113  
Wt/Ht:  
MedRec: 980338480  
AccelNurs: 08021722564

Central line by: Snow, Head CT, Neck CT, Chest CT, Abdomen CT, Pelvis CT, time: 2128 to CT,  
CXR, Cxr: 2105, Pelvic X-ray, Pxr: 2109. (22:05 ASW)

**CRITICAL CARE TIME:** Patient is a critical care patient with trauma activation, Facility critical  
care time 75 minutes. (22:15 ASW)

**MEDICATIONS:** Time: 2220, manufacturer: Sanofi Pasteur, lot number: C4695AA, expiration  
date: 11Feb17, Site: right delt, Given by: Nancy Whaley, RN, Time: 2220, Medication: Ancef, Dose: 2  
gm, Route: IV, Site: right wrist, Given by: Nancy Whaley, RN, Time: 2134, Medication: Fentanyl, Dose:  
50 mcg, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, Time: 2134, Medication: Versed, Dose: 2  
mg, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, Time: 2136, Medication: Propofol, Dose: 10  
mcg/kg/min, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, Time: 2145, Medication: Fentanyl,  
Dose: 50 mcg, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, IV fluids, Type: NS, Bag#: 1, Time  
started: 2100, Time ended: 2130, Amount: 1000 ml, Warned: yes, Type: NS, Bag#: 2, Time started: 2130,  
Time ended: 2200, Amount: 1000 ml, Warned: yes, Type: LR, Bag#: 3, Time started: 2210, Amount: 1000  
ml, Warned: no. (22:15 ASW)

**DISPOSITION:** Patient admitted to, OR, Service TTS, Physician Snow. (22:30 ASW)

**VALUABLES/BELONGINGS:** At time of arrival, watch and ring locked up along with phone in  
camo otterbox by Ellison, patient liaison. (22:15 ASW)

**NURSING PROCEDURE: NURSE NOTES**

**TIME:** Time: 2100, Patient arrives, one unit of blood and one bag FFP infusing per Life Flight.

Patient had Succinylcholine, Norcuron, and Versed between 2017 and 2022 prior to intubation en  
route. See Trauma flowsheet. (21:00 ASW)

Time: 2138, Propofol has been titrated up to 50 mcg/kg/min. Will continue to monitor and adjust as  
needed to get through CT scan, as patient is fighting the vent. (21:35 ASW)

Time: 2153, Propofol decreased to 20 mcg/kg/minute as BP is decreased to 97/73. (21:53  
ASW)

Time: 2200, Back to trauma bay from CT. Propofol has been stopped at this time. Will continue to  
titrate as needed. All doctors at bedside continuing to evaluate patient. ICU is working on making a  
bed for the patient. (22:00 ASW)

Time: 2207, Propofol turned back on by Dr. Snow at 20 mcg/kg/min. (22:07 ASW)

Time: 2220, Propofol again turned off by Dr. Snow. Patient's BP is declining. Will administer  
more blood and take patient to the OR. (22:20 ASW)

Time: 2230, Patient transported to the OR, trauma team at bedside. One unit of O Negative given  
to OR staff from our fridge for them to transfuse as we await massive transfusion protocol blood  
products. Bedside report given to nursing and anesthesia. Dr. Snow remained at bedside and  
aware of all changes in patient's status throughout the entire span of his care in the ER.  
(22:30 ASW)

Time: 2216, Patient taken off backboard by Dr. Le. (22:16 ASW)

**DISPOSITION** (Sun Nov 16, 2014 00:22 NWB)

**PATIENT:** Disposition Type: Admit, Disposition: Admit to OR, Condition: Stable, Patient left the  
department.

**EVENTS**

**TRANSFER:** Triage to Emergency ETC Waiting Room. (Sat Nov 15, 2014 20:35 ASW)

Emergency ETC Waiting Room to Trauma Bay 01. (20:49 ASW)

Emergency Trauma Bay 01 to Awaiting ICU Bed (Hold Bed). (22:12 ERA)

Emergency Trauma Bay 01 to Critical Care H15. (Sun Nov 16, 2014 00:01 ALR)

Emergency Critical Care H15 to H23. (Sun Nov 16, 2014 00:12 STR)

Removed from Emergency Critical Care H23. (Sun Nov 16, 2014 00:22 NWB)

**Key:**

ALR=Rechester, MD, Angel L. ASW=Westbart, RN, Amanda BRA=Atkins, EUC, Betsy NWB=Whaley, RN, Nancy  
SPM=McGrath, MD, RES, Sean STR=Galloway, RN, Sabrina

Time of report 02/26/2016 1133

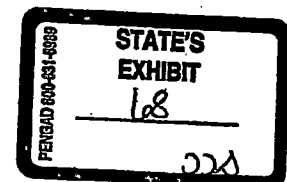
ROWELL, ADAM MARTIN (980338480)

Hospital ID G08

| S29603(I)                        |          | Collect D/T 11/15/2014 2054                        |           | Receive D/T 11/15/2014 2124                               |                         |
|----------------------------------|----------|----------------------------------------------------|-----------|-----------------------------------------------------------|-------------------------|
| HIS # 68213483-0                 |          | Phleb Tech 27174                                   |           | Order account #: 080021722564                             |                         |
| Order physician: SNOW, BRADLEY M |          |                                                    |           | Order location: GMTB                                      |                         |
|                                  |          |                                                    |           | Collection # 1                                            |                         |
| Date                             | Time     | Activity                                           | Batch Loc | Test Codes                                                | SPOT Rack Slot Batch ID |
| 11/15/2014                       | 21:00:35 | ORD RCVD/MOD                                       |           | ED ALCP, CREAT, GLU, HPNOD, K, PT, PTT, SAVE              |                         |
| 11/15/2014                       | 21:01:20 | CONT created                                       |           | ALCP, CREAT, GLU, K                                       | 170002, 4               |
|                                  |          | CID L263094712                                     |           |                                                           |                         |
| 11/15/2014                       | 21:24:43 | CONT updated                                       | 12524     | ALCP, CREAT, GLU, K                                       | GSPA 170002, 4          |
|                                  |          | CID L263094712                                     |           |                                                           |                         |
| 11/15/2014                       | 21:24:43 | CONT RCVD                                          | 12524 L2  | ALCP, CREAT, GLU, HPNOD, K, PT, PTT, SAVE                 |                         |
|                                  |          | CID L263094712, L263094713, L263094714, L263094715 |           |                                                           |                         |
| 11/15/2014                       | 21:24:43 | ORD RCVD/MOD                                       | 12524 L2  | ALCP, CREAT, GLU, HPNOD, K, PT, PTT, SAVE                 |                         |
| 11/15/2014                       | 21:40:12 | CONT updated                                       | 0029      | ALCP, CREAT, GFRA, GFRN, GLU, K                           | 170002, 4               |
|                                  |          | CID L263094712                                     |           |                                                           |                         |
| 11/15/2014                       | 21:40:12 | CONT resulted                                      | IXPROC    | ALCP, CREAT, GFRA, GFRN, GLU, KCBM1                       | 170002, 4               |
|                                  |          | CID L263094712                                     |           |                                                           |                         |
| 11/15/2014                       | 21:40:12 | ORD RCVD/MOD                                       | 0029-A    | GMH ALCP, CREAT, GFRA, GFRN, GLU, HPNOD, K, PT, PTT, SAVE |                         |
| 11/15/2014                       | 21:40:12 | RES ENT/MOD                                        | 0029-A    | GMH ALCP                                                  |                         |
| 11/15/2014                       | 23:10:00 | CONT tracked                                       | 0088      | ALCP, CREAT, GFRA, GFRN, GLU, KAPSU                       | 170002, 4               |
|                                  |          | CID L263094712                                     |           |                                                           |                         |
| 11/15/2014                       | 23:14:12 | CONT tracked                                       |           | ALCP, CREAT, GFRA, GFRN, GLU, KAPSU                       | 170002, 4               |
|                                  |          | CID L263094712                                     |           |                                                           |                         |

\*\*\* END OF REPORT \*\*\*

Hospital Data Management system audit trail





# Transport



| Patient Info     |                 |
|------------------|-----------------|
| Record Number:   | 369-14-3819A    |
| Patient Name     | Rowell, Adam    |
| Patient Form     | Adult           |
| Patient Gender   | Male            |
| Patient Weight   | 125.0 kg        |
| Patient Age      | 35 Years (est.) |
| Patient DOB      |                 |
| Patient Race     | Caucasian       |
| Barriers to Care | Unconscious     |

| Transport Info   |                         |
|------------------|-------------------------|
| Transport Date   | 2014-11-15              |
| Mission Type     | Scene Call - Trauma     |
| Unit             | AnMed - N407SM          |
| Call Type        | Emergency Rotor - Scene |
| Base             | ANMED                   |
| Controlling MD   | Davies                  |
| Rec. Hosp. MR #: | TR20142744              |
| Transport Team   |                         |
| RN               | Waite, Angela           |
| PM               | Kelly, Alfred           |

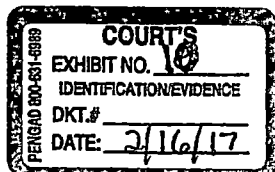
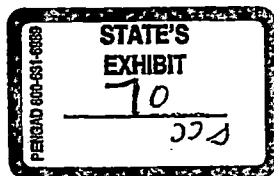
| Sending and Receiving |                          |                    |                              |
|-----------------------|--------------------------|--------------------|------------------------------|
| Sending LZ            | Scene - Greenwood County | Receiving LZ       | Greenville Memorial          |
| Sending Facility      | Scene - Greenwood County | Receiving Facility | Greenville Memorial          |
| Sending MD            |                          | Receiving MD       | GHS Trauma Services          |
| Sending Unit          | Scene Call               | Receiving Unit     | Emergency Department - Adult |

| Reason for Transport (medical necessity determination) |                                                                             |
|--------------------------------------------------------|-----------------------------------------------------------------------------|
| Sending                                                | Patient was located at the scene of incident/accident                       |
| Receiving                                              | Specialty Services Required: Trauma Facility                                |
| Transport                                              | Transport by another method to the appropriate facility would take too long |
| Complicating Issues                                    | Patient required advanced procedures not available to ground EMS            |
| CAMTS                                                  | MVC in which another person in the same vehicle died                        |

| Transport Details               |                                                                                                                                                                                                                              |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Patient Consent                 | Implied: Patient mental status depressed (GCS<12)                                                                                                                                                                            |
| Trauma Alert Activated          | Yes. Airway Assist (Not O2), Airway Assistance/Intubation, Altered Mental Status, Amnesia or LOC, BP < 90, Closed Long Bone Fracture, Fracture 2 or More Long Bones, GCS < 12, Multiple Fracture Sites, Paramedic Discretion |
| EMS local protocol utilized     | N/A                                                                                                                                                                                                                          |
| Level of Care PTA/Place of Exam | ALS / Greenwood County EMS unit located at the scene of the accident                                                                                                                                                         |
| Outcome of PTA Aid              | Unchanged                                                                                                                                                                                                                    |

| COBRA/EMTALA                                                                                                                                                                                                                                                                                             |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| The patient's care is medically necessary and has been certified by a physician involved with chosen receiving hospital as an EMTALA/COBRA request. PLEASE NOTE: This emergency patient transport was performed with the authorization of the physician. The authorization has been properly documented. |  |

| Procedures        |   |
|-------------------|---|
| Airway Management | 1 |



Confidential

|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

| Impressions Detail |                                      |
|--------------------|--------------------------------------|
| Rank               | Detail                               |
| 1                  | Impression is Motor Vehicle Accident |
| 2                  | Impression is Multi-Trauma           |

### Patient Medical

|                              |                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Chief Complaint              | Multi-Trauma due to MVC<br>Organ System: Global. Anatomic Location: General/Global. Duration: 60 Minutes                                                                                                                                                                                                                                                                                              |
| Primary Symptom              | Change in responsiveness                                                                                                                                                                                                                                                                                                                                                                              |
| Other Symptoms               | Bleeding,Breathing Problem,Change in responsiveness,Fracture,Weakness,Wound                                                                                                                                                                                                                                                                                                                           |
| Incident                     | Incident occurred HWY 25 S, Greenwood SC. County of Incident: Greenwood SC. Motor vehicle incident. Patient was a Driver off in a Auto which Struck. a A Fixture Head-On Patient was In Driver's Seat. Patient was restrained by Unknown. There was significant intrusion. Damage to vehicle was: DOA Same Vehicle,Damage,Dash Deformity. Patient was unconscious upon arrival. Extrication required. |
| Medication Allergies         | Unknown                                                                                                                                                                                                                                                                                                                                                                                               |
| Environment & Food Allergies | Other.<br>Comment: Unknown                                                                                                                                                                                                                                                                                                                                                                            |
| Medical History              | Unknown                                                                                                                                                                                                                                                                                                                                                                                               |
| Surgical History             | Other.<br>Comment: Unknown                                                                                                                                                                                                                                                                                                                                                                            |
| Infection History            | Other (Specified in Comments).<br>Comment: Unknown                                                                                                                                                                                                                                                                                                                                                    |

### Transport

| Dispatch Times  |                 |
|-----------------|-----------------|
| Time of Call    | 11/15 19:38 EST |
| Time Dispatch   | 11/15 19:39 EST |
| Time Enroute    | 11/15 19:46 EST |
| Arrive Scene    | 11/15 20:09 EST |
| Depart Scene    | 11/15 20:31 EST |
| Arrive Facility | 11/15 20:55 EST |
| Depart Facility | 11/15 21:50 EST |

| Clinical Times      |                 |
|---------------------|-----------------|
| Incident Time       | 11/15 19:38 EST |
| Rendezvous          | 11/15 20:12 EST |
| Depart with Patient | 11/15 20:26 EST |
| Accepting Unit      | 11/15 20:59 EST |
| Signover            | 11/15 21:00 EST |

|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

## History of Present Illness/Injury

Requested to the scene by Greenwood County EMS in reference to an MVC with entrapment / fatality / multi-patients.

On arrival at patient's side, full report received from EMS. The pt was an approx 35 year old 125kg male patient which was involved in a 2 vehicle, head on MVC. Patient was the driver per EMS. Patient required 45 minutes extrication per EMS. EMS also advises that there was one DOA in patient vehicle.

Pt was placed on a spine board with cervical collar with head secured PTA by EMS. IV access had been obtained. EMS reports patient was in and out of consciousness during extrication. On flight crew arrival, patient was unresponsive with ventilations being assisted by EMS at a rate of 12. EMS was unable to get a good ventilation of patient despite re-positioning of the head. EMS SpO2 while assisting ventilations 88%. Glasgow of 4, RTS 6.

On Scene Delay:

Patient required RSI

Packing patient for transport due to weather considerations

Patient re-accessed after all medications to confirm desired effect.

Patient re-accessed during blood and blood product administration

## Incident Information

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scene      | Incident occurred HWY 25 S, Greenwood SC. County of Incident: Greenwood SC. Motor vehicle incident. Patient was a Driver off/in a Auto which Struck. a A Fixture Head-On Patient was In Driver's Seat. Patient was restrained by Unknown. There was significant intrusion. Damage to vehicle was: DOA Same Vehicle, Damage, Dash Deformity. Patient was unconscious upon arrival. Extrication required.                                                                                                                                                                                                                                                                                                                       |
| Regulatory | First responder was Greenwood County EMS. Second responder was Greenwood Fire Department. Number of patients at scene: Multiple. This is a mass casualty incident. Other Service Agencies: EMS Mutual Aid, Fire Dept., Law Enforcement. Injury took place at Street or Highway. Intent of injury was Unintentional. Mechanism of injury was Blunt. Injury was caused by: Motor vehicle traffic accidents MOTR VEH RE-ENTRANT COLL W/MV-INJR MV DRIVER Trauma Alert Activated: Trauma Alert Activated: Airway Assist (Not O2), Airway Assistance/Intubation, Altered Mental Status, Amnesia or LOC, BP < 90, Closed Long Bone Fracture, Fracture 2 or More Long Bones, GCS < 12, Multiple Fracture Sites, Paramedic Discretion |
| Procedures | Procedures: Backboard, CID, Cervical Collar, Cervical Immobilization, IV, Splinting. Interventions: Medications, Ventilator.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

| Transport Information |                               |                       |                    |
|-----------------------|-------------------------------|-----------------------|--------------------|
| Altitude              | 1500                          | Transport Position    | Supine             |
| Transport Loading     | Hot Loaded                    | Cabin Pressure        | 1500               |
| Transport Device      | Aircraft stretcher, Backboard | Signed Over to        | Amanda Westhart RN |
|                       |                               | Condition at Signover | Unchanged          |
| NVG Utilized          | Yes                           |                       |                    |

No safety briefing given. Ear protection supplied to patient. Safety straps used to secure patient for transport. Stretcher and/or Isolette secured for transport.

| Fluid I/O |       |         |       |
|-----------|-------|---------|-------|
| Fluid     | PTA   | Enroute | Total |
| IVF       | 1,500 | 500     | 2,000 |
| Blood     | 0     | 540     | 540   |
| Urine     |       |         |       |
| Emesis/NG |       |         |       |
| EBL       |       |         |       |

### Prior To Arrival Procedures (PTA)

|                     |                                                                                                                                                          |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Intravenous Therapy | 18G Right Hand IV initiated by EMS Provider. Dressing: Dressing clean, Dressing intact, No edema noted, Veniguard Used. Bolus of 1000 ml NS. Bolus Only. |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|

### Crew Physical Exams

|           |                                                                                                                                                                                     |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Neuro     | Patient Mentation: Unconscious, Unresponsive. Recall: Positive Loss of consciousness. Pupils equal round and reactive to light [3mm]. Movement: No movement. Reflexes: Gag present. |
| Skin      | Appearance: Bruising. Peripheral Temperature: Cool. Central Temperature: Cool. Moisture: Dry. Capillary Refill: Less than 2 seconds. Turgor: Supple. Texture: Dry.                  |
| HEENT     | Head: Cranium intact, Normocephalic. Eyes: Left pupil round and reactive, Right pupil round and reactive. Ears: Normal. Nose: Epistaxis. Throat: Other [blood in throat].           |
| Neck      | Immobilization: Backboard, C-Collar, CID, Fully immobilized, Head Blocks, Head Taped, Straps. Trachea deviation: None. Trachea mid-line.                                            |
| Chest     | Breathing: Shallow. Breath Sounds: Clear to auscultation. Symmetry: Normal                                                                                                          |
| Cardiac   | Regular rate and rhythm, no murmurs, gallop or rub.                                                                                                                                 |
| Abdominal | No visible trauma, nondistended, soft, normal active bowel sounds throughout.                                                                                                       |
| Pelvis    | Instability located Left Pelvis, Right Pelvis.                                                                                                                                      |

|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

### Physical Exams (cont.)

|             |                                                                                                                                                                                           |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GU          | Not examined: Due to packaging.                                                                                                                                                           |
| Back        | Not examined: Due to packaging.                                                                                                                                                           |
| Extremities | Closed Fracture located Arm [Closed fractures bilateral humerus ], Leg [Multiple closed fractures bilateral tib/fibs, possible left knee fracture, possible closed left femur fracture ]. |

### Procedures

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Airway Management | 20:14:00 EST Nov 15, 2014 Assessment reveals: Failure to Oxygenate, Failure to Protect Airway, Failure to Ventilate, Per Protocol, Respiratory distress. Pre Pulse Ox: 88. 15 lpm. Patient prepared for Oral intubation. RSI delivered per program protocol. Procedure performed by Alfred Kelly [PM]. Visualization: 1 - Able to visualize glottis fully using Macintosh 4. ET Tube - Cuffed 7.5 placed. Depth 23 cm at Teeth. Placement verified with: Appropriate Breath Sounds, Colorimetric EtCO2 detector, Direct Visualization, EtCO2 Sensor, Receiving MD, Verification of ETT after movement. Secured via ET Tube Holder. Adjuncts: Sellick Maneuver. Post Pulse Ox: 94%<br>Complications: None. |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### Blood

|               |                     |                   |                     |           |                   |
|---------------|---------------------|-------------------|---------------------|-----------|-------------------|
| Start Time    | 11/15 20:40 EST     | Stop Time         | 11/16 21:10 EST     | Locale    | Transport Time    |
| Product       | Packed Red Cells    | Source            | Transporting Agency | Type      | O negative        |
| Blood Bank ID | 10500               | Donor             | W043914007844       | Exp. Date | 2014-12-07        |
| Consent       | Implied             | Documented        | No                  |           |                   |
| Indications   | Severe Hypotension  | Patient Temp      | 96.7f               | Given By  | Angela Waite [RN] |
| Coombs Test   | Coombs Negative     | Crew Verification | Angela Waite [RN]   |           |                   |
| Pump Used     | No                  | Warmer Used       | No                  | Volume    | 360 mL            |
| Complications | None                |                   |                     |           |                   |
| Start Time    | 11/15 20:42 EST     | Stop Time         | 11/16 20:50 EST     | Locale    | Transport Time    |
| Product       | Fresh Frozen Plasma | Source            | Transporting Agency | Type      | A positive        |
| Blood Bank ID | 10500               | Donor             | W043914008186       | Exp. Date | 2014-12-08        |
| Consent       | Implied             | Documented        | No                  |           |                   |
| Indications   | Severe Hypotension  | Patient Temp      | 96.7f               | Given By  | Angela Waite [RN] |
| Coombs Test   | Coombs Negative     | Crew Verification | Angela Waite [RN]   |           |                   |
| Pump Used     | No                  | Warmer Used       | No                  | Volume    | 180 mL            |

### Scores

| Time            | Total                  | Glasgow Scores                     | RTS Scores                               | Sedated/Paralyzed | Comments |
|-----------------|------------------------|------------------------------------|------------------------------------------|-------------------|----------|
| 11/15 20:12 EST | Glasgow = 4<br>RTS = 6 | Eyes = 2, Verbal = 1,<br>Motor = 1 | Cardio = 3,<br>Resp = 2,<br>Coded = 3.72 | No/<br>No         |          |
| 11/15 20:59 EST | Glasgow = 3<br>RTS =   | Eyes = 1, Verbal = 1,<br>Motor = 1 | Cardio = 4,<br>Resp = , Coded =          | Yes/<br>Yes       |          |

|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

## Vital Signs

| Primary              |                                   |                                   |                                   |                                   |                                   |                                   |  |
|----------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|--|
| Time                 | 11/15/2014 20:31 EST              | 11/15/2014 20:36 EST              | 11/15/2014 20:41 EST              | 11/15/2014 20:46 EST              | 11/15/2014 20:51 EST              | 11/15/2014 20:55 EST              |  |
| Pulse                | 134 (Regular)                     | 131 (Regular)                     | 130 (Regular)                     | 129 (Regular)                     | 130 (Regular)                     | 132 (Regular)                     |  |
| Monitor              | Sinus tachycardia                 | Sinus tachycardia                 | Sinus tachycardia                 | Sinus tachycardia                 | Sinus tachycardia                 | Sinus tachycardia                 |  |
| BP                   | 61/45 (Right Arm, Automated Cuff) | 74/42 (Right Arm, Automated Cuff) | 76/40 (Right Arm, Automated Cuff) | 80/44 (Right Arm, Automated Cuff) | 84/46 (Right Arm, Automated Cuff) | 94/50 (Right Arm, Automated Cuff) |  |
| Mean BP              | 50 mmHg                           | 53 mmHg                           | 52 mmHg                           | 55 mmHg                           | 59 mmHg                           | 65 mmHg                           |  |
| Pulse Ox             | 94%                               | 94%                               | 93%                               | 93%                               | 94%                               | 94%                               |  |
| Pulse Ox site        | Finger                            | Finger                            | Finger                            | Finger                            | Finger                            | Finger                            |  |
| Resp.                | 12                                | 12                                | 12                                | 12                                | 12                                | 12                                |  |
| Pain                 | 0                                 | 0                                 | 0                                 | 0                                 | 0                                 | 0                                 |  |
| ETCO2                | 32 mmHg                           | 34 mmHg                           | 35 mmHg                           | 35 mmHg                           | 34 mmHg                           | 34 mmHg                           |  |
| Skin Color           | Pale                              | Pale                              | Pale                              | Pale                              | Pale                              | Pale                              |  |
| Cap refill           | 2 secs.                           | 2 secs.                           | 2 secs.                           | 2 secs.                           | 2 secs.                           | 2 secs.                           |  |
| Temp                 | 96.7                              |                                   |                                   |                                   | 96.7                              | 96.7                              |  |
| Temp Method          | Temporal                          |                                   |                                   |                                   | Temporal                          | Temporal                          |  |
| Env Temp             | 74                                | 76                                | 76                                | 76                                | 80                                | 80                                |  |
| R pupil size         | 2 mm                              | 2 mm                              | 2 mm                              | 2 mm                              | 2 mm                              | 2 mm                              |  |
| R pupil response     | Non-reactive                      | Non-reactive                      | Non-reactive                      | Non-reactive                      | Non-reactive                      | Non-reactive                      |  |
| L pupil size         | 2 mm                              | 2 mm                              | 2 mm                              | 2 mm                              | 2 mm                              | 2 mm                              |  |
| L pupil response     | Non-reactive                      | Non-reactive                      | Non-reactive                      | Non-reactive                      | Non-reactive                      | Non-reactive                      |  |
| Responsiveness       | Unresponsive                      | Unresponsive                      | Unresponsive                      | Unresponsive                      | Unresponsive                      | Unresponsive                      |  |
| Respiration          | Mechanically Ventilated           | Mechanically Ventilated           | Mechanically Ventilated           | Mechanically Ventilated           | Mechanically Ventilated           | Mechanically Ventilated           |  |
| 11/15/2014 20:31 EST | Unable to access pain             |                                   |                                   |                                   |                                   |                                   |  |
| 11/15/2014 20:36 EST | Unable to access pain             |                                   |                                   |                                   |                                   |                                   |  |

## Medications

|                              |                                                                                                                                                                                                                                                                                                        |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nov 15, 2014<br>20:14:00 EST | Medication: 180 mg of Lidocaine given as IV Drip Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Given prior to intubation. Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.           |
| Nov 15, 2014<br>20:15:00 EST | Medication: 36 mg of Etomidate given as IV Drip Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Given prior to intubation. Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.            |
| Nov 15, 2014<br>20:17:00 EST | Medication: 180 mg of Succinylcholine given as Single Dose Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Given prior to intubation. Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration. |
| Nov 15, 2014<br>20:21:00 EST | Medication: 5 mg of Versed given as Single Dose Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.                                       |





|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

### Medications (cont.)

|                              |                                                                                                                                                                                                                                                                       |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nov 15, 2014<br>20:23:00 EST | Medication: 12 mg of Vecuronium given as Single Dose Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration. |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### Oxygen Therapy

|                              |                                                                                                                                                                                                    |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nov 15, 2014<br>20:20:00 EST | Performed by: Alfred Kelly [PM]. Locale: Prior to Arrival. Delivery device: Bag valve mask. Indication(s): Per Protocol. Flow Rate: 15 lpm. Comments: Post intubation, patient ventilated via BVM. |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### Event Log

| Time            | Details                                                                                                                                  |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------|
| 11/15 20:12 EST | IV Site Checked Patient contact, IV site intact and flowing well.                                                                        |
| 11/15 20:13 EST | Patient Condition Update Exam completed with decision to RSI patient due to altered LOC and failure to maintain airway                   |
| 11/15 20:20 EST | Initial ETT/Trach Check Initial ET confirmation                                                                                          |
| 11/15 20:22 EST | Medical Decision Making Patient re-positioned on LSB                                                                                     |
| 11/15 20:24 EST | Moved to Cot Patient placed into Life Blanket due to outside temps, moved to flight cot                                                  |
| 11/15 20:25 EST | ETT rechecked after patient movement ET checked after movement                                                                           |
| 11/15 20:26 EST | Loaded/Unloaded from/to vehicle. Patient moved to aircraft and secured.                                                                  |
| 11/15 20:32 EST | Trauma Alert Report called to GHS                                                                                                        |
| 11/15 20:55 EST | ETT rechecked after patient movement ET confirmed after movement                                                                         |
| 11/15 20:55 EST | Loaded/Unloaded from/to vehicle. Patient moved from aircraft to ED stretcher and moved to ED, still in Life Blanket due to ambient temps |
| 11/15 20:59 EST | Other: Patient placed into Trauma Bay 1. Report given to receiving team. Present Rt confirms tube placement.                             |

### Chronological

| Time            | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/15 19:38 EST | Incident Time                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 11/15 20:12 EST | Rendezvous                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 11/15 20:12 EST | GCS: 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 11/15 20:12 EST | Event Log: IV Site Checked. Patient contact, IV site intact and flowing well..                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 11/15 20:13 EST | Event Log: Patient Condition Update. Exam completed with decision to RSI patient due to altered LOC and failure to maintain airway.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 11/15 20:14 EST | 20:14:00 EST Nov 15, 2014 Assessment reveals: Failure to Oxygenate, Failure to Protect Airway, Failure to Ventilate, Per Protocol, Respiratory distress. Pre Pulse Ox: 88. 15 lpm. Patient prepared for Oral intubation. RSI delivered per program protocol. Procedure performed by Alfred Kelly [PM]. Visualization: 1 - Able to visualize glottis fully using Macintosh 4. ET Tube - Cuffed 7.5 placed. Depth 23 cm at Teeth. Placement verified with: Appropriate Breath Sounds, Colorimetric EtCO2 detector, Direct Visualization, EtCO2 Sensor, Receiving MD, Verification of ETT after movement. Secured via ET Tube Holder. Adjuncts: Sellick Maneuver. Post Pulse Ox: 94% Complications: None. |
| 11/15 20:14 EST | Lidocaine 180 mg<br>For desired effect, Re-accessed after administration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |



|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

### Chronological (cont.)

| Time            | Details                                                                                                                                               |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/15 20:15 EST | Etomidate 36 mg<br>For desired effect, Re-accessed after administration                                                                               |
| 11/15 20:17 EST | Succinylcholine 180 mg<br>For desired effect, Re-accessed after administration                                                                        |
| 11/15 20:20 EST | Event Log: Initial ETT/Trach Check. Initial ET confirmation.                                                                                          |
| 11/15 20:20 EST | Bag valve mask. Indication(s): Per Protocol.                                                                                                          |
| 11/15 20:21 EST | Versed 5 mg<br>For desired effect, Re-accessed after administration                                                                                   |
| 11/15 20:22 EST | Event Log: Medical Decision Making. Patient re-positioned on LSB.                                                                                     |
| 11/15 20:23 EST | Vecuronium 12 mg<br>For desired effect, Re-accessed after administration                                                                              |
| 11/15 20:24 EST | Event Log: Moved to Cot. Patient placed into Life Blanket due to outside temps, moved to flight cot.                                                  |
| 11/15 20:25 EST | Event Log: ETT rechecked after patient movement. ET checked after movement.                                                                           |
| 11/15 20:26 EST | Depart with Patient                                                                                                                                   |
| 11/15 20:26 EST | Event Log: Loaded/Unloaded from/to vehicle.. Patient moved to aircraft and secured..                                                                  |
| 11/15 20:31 EST | 61/ 45 134 12 94% 32 mm Hg<br>Unable to access pain                                                                                                   |
| 11/15 20:32 EST | Event Log: Trauma Alert. Report called to GHS.                                                                                                        |
| 11/15 20:36 EST | 74/ 42 131 12 94% 34 mm Hg<br>Unable to access pain                                                                                                   |
| 11/15 20:40 EST | O negative                                                                                                                                            |
| 11/15 20:41 EST | 76/ 40 130 12 93% 35 mm Hg                                                                                                                            |
| 11/15 20:42 EST | A positive                                                                                                                                            |
| 11/15 20:46 EST | 80/ 44 129 12 93% 35 mm Hg                                                                                                                            |
| 11/15 20:51 EST | 84/ 46 130 12 94% 34 mm Hg                                                                                                                            |
| 11/15 20:55 EST | Event Log: Loaded/Unloaded from/to vehicle.. Patient moved from aircraft to ED stretcher and moved to ED, still in Life Blanket due to ambient temps. |
| 11/15 20:55 EST | Event Log: ETT rechecked after patient movement. ET confirmed after movement.                                                                         |
| 11/15 20:55 EST | 94/ 50 132 12 94% 34 mm Hg                                                                                                                            |
| 11/15 20:59 EST | Accepting Unit                                                                                                                                        |
| 11/15 20:59 EST | GCS: 3                                                                                                                                                |
| 11/15 20:59 EST | Event Log: Other.. Patient placed into Trauma Bay 1. Report given to receiving team. Present Rt confirms tube placement..                             |
| 11/15 21:00 EST | Signover                                                                                                                                              |





|                |                       |
|----------------|-----------------------|
| Record Number  | 369-14-3819A          |
| Transport Type | Trauma : Multi-System |

|      |             |
|------|-------------|
| Name | Adam Rowell |
|------|-------------|

| Intercept Documentation                                     |                                                 |
|-------------------------------------------------------------|-------------------------------------------------|
| Was the patient brought to the aircraft by Ground Ambulance | Yes                                             |
| EMS Agency: Greenwood County 911                            | Intercept Location: LZ located at accident site |
| Was the patient taken from the aircraft by Ground Ambulance | No                                              |
| EMS Agency:                                                 | Intercept Location:                             |

### Signatures

Alfred Kelly [PM] as [Digital Signature]  
 \_\_\_\_\_  
 Kelly, Alfred [PM]

11/16/14 00:44 AM  
 \_\_\_\_\_  
 Date & Time

Angela Waite [RN] as [Digital Signature]  
 \_\_\_\_\_  
 Waite, Angela [RN]

11/16/14 00:44 AM  
 \_\_\_\_\_  
 Date & Time

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION**  
**FORENSIC SERVICES LABORATORY REPORT**

**NIKKI R. HALEY**  
*Governor*



**MARK A. KEEL**  
*Chief*

K.B. Smith  
S.C. Highway Patrol Troop #2  
1801 ByPass 25 SE  
Greenwood, SC 29646

**TOXICOLOGY DEPARTMENT**  
March 05, 2015  
SLED No: L14-14573  
Your Case No: 1411015  
Incident Date: 11/15/2014

[V-Deceased] Jeremy Dean  
Cockrell  
[S] Adam Martyn Rowell  
[V] Matthew Ryan Sanders

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief  
South Carolina Law Enforcement Division

**PARTIAL REPORT**

**ITEMS OF EVIDENCE**

**Item: 3**      **Sample Type: Blood (Toxicology) - labeled "Adam M. Rowell"**

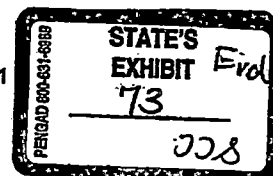
**Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)**

| Analyte | Result          | Units    | Threshold |
|---------|-----------------|----------|-----------|
| Ethanol | 0.096<br>±0.009 | % (g/dL) | 0.010     |

The above range is calculated at 99.7% confidence.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



3/5/15

*This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.*

*Jennifer Brown*

Jennifer M. G. Brown  
Forensic Toxicologist

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department , (803) 896-7385.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions  
Hon. Donald Hocker, Circuit Court Judge

Case No. 2015-GS-24-0535, 2015-GS-24-0536

State of South Carolina ..... Respondent,

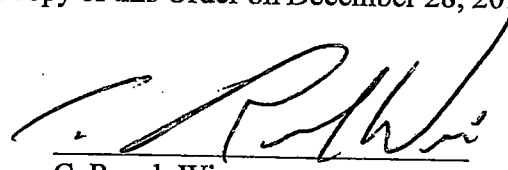
vs.

Adam Rowell ..... Appellant.

NOTICE OF APPEAL

Notice is hereby given that Adam Rowell appeals the ruling of the Hon. Donald Hocker at the trial that ended on February 20, 2017, and his denial by Order dated December 27, 2017 of a timely filed Motion for New Trial. Appellant received a copy of this Order on December 28, 2017

January 3<sup>rd</sup>, 2018



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions  
Hon. Donald Hocker, Circuit Court Judge

Appellate Case No. 2018-000022

State of South Carolina ..... Respondent,

vs.

Adam Rowell ..... Appellant.

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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| Question II: Did the trial court err in admitting into evidence the 8:54 pm blood draw when the testimony established that Adam M. Rowell had approximately 50% of the blood in his body replaced with either blood products or saline solution and the State produced no evidence that the blood products transfusion and saline solution did not impact the reliability of the test administered? .....                                    | 1, 16 |
| Question III: Did the trial court err in admitting the test results from the SLED blood draw when the blood draw was conducted after more than 150% of the blood volume of Adam Martyn Rowell had been replaced and the test results contained a level of Benadryl which was near lethal and therefore brought into question the accuracy of the entire test? .....                                                                          | 1, 17 |
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### **Statement of Issues Presented**

Question I: Did the trial court err in admitting the blood test results from the 8:54 pm blood draw when the hospital records establish that Adam Martyn Rowell did not arrive at the emergency room until 9:00 pm, the records do not establish whether the blood was drawn from his arm or a line, the blood is unaccounted for for a 30 minute period, and a person who allegedly received the blood from the nurse did not testify?

Question II: Did the trial court err in admitting into evidence the 8:54 pm blood draw when the testimony established that Adam M. Rowell had approximately 50% of the blood in his body replaced with either blood products or saline solution, and the State produced no evidence that the blood products transfusion and saline solution did not impact the reliability of the test administered?

Question III: Did the trial court err in admitting the test results from the SLED blood draw when the blood draw was conducted after more than 150% of the blood volume of Adam Martyn Rowell had been replaced and the test results contained a level of Benadryl which was near lethal, and therefore, brought into question the accuracy of the entire test?

Question IV: Did the trial court err in failing to conduct an evidentiary hearing as to a juror who failed to disclose that he had been arrested and had a pending criminal charge being prosecuted by the office of the Solicitor for the 8<sup>th</sup> judicial circuit when such a question was asked during jury voir dire?

## Statement of the Case

### *Procedural History*

Adam Martyn Rowell was formally arrested on December 16, 2014, upon his release from the hospital and charged with one count of felony driving under the influence resulting in death and one count of felony driving under the influence resulting in great bodily injury.<sup>1</sup> He was indicted on March 27, 2015. He was tried before the Honorable Donald R. Hocker and a jury on February 13 to 27, 2017. The jury convicted him of the two charges. Judge Hocker sentenced him to 13 years in prison and a fine of \$10,100 on the felony driving under the influence resulting in death. He was sentenced to 8 years and a fine of \$5,100 on the felony driving under the influence resulting in great bodily injury. The two charges are to run concurrent with each other. Rec. on App. at 1343, 118 to 1344, 16.

Mr. Rowell filed a Motion for a New Trial on March 7, 2017, and a Supplemental Motion on March 29, 2017. A post-trial hearing on the Motion was held on November 27, 2017. Judge Hocker denied the post-trial motion by an Order dated December 27, 2017. The Notice of Appeal was filed on January 3, 2018.

### *Factual History*

Adam Martyn Rowell was involved in a serious automobile accident on November 15, 2014. The accident resulted in the death of Jeremey Cockrell and serious injuries to Matthew Sanders. Mr. Rowell also received massive injuries resulting in transfusions of blood, blood products and saline solutions. He was airlifted to Greenville Memorial Hospital where he remained until December 16,

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<sup>1</sup> The trial judge made a finding that Mr. Rowell was arrested at the time of the reading of the Miranda right on November 16, 2014. Rec. on App. at 1207, 121 to 1208, 13.

2014. Rec. on App. at 1175, ll 15-18.

The exact cause of the crash was in dispute, but the record established the collision occurred in the lane of traffic of Mr. Cockrell. The theory of the State was that Mr. Rowell crossed the center line and collided with the truck being driven by Mr. Cockrell. Rec. on App. at 491, ll 6-17. Mr. Rowell presented the testimony of Justin Pennington, an eye witness, that the truck driven by Mr. Cockrell had crossed the center line toward Mr. Rowell, and Mr. Rowell then veered left to avoid the collision. Rec. on App. at 1014, ll 1-15.

The testimony from Mr. Rowell was that he had spent the day running errands for his family. He had anticipated going to a family dinner that night. He had spent the afternoon making trips between the residence of his parents and Walmart. He was seen at Walmart about 2 pm by a friend who testified he was sober and gave no indications of being under the influence. He was seen again at Walmart at about 7 pm on a store video. He again gave no appearance of being intoxicated. Mr. Rowell stated that at the time of the collision he was heading to dinner to celebrate the birthday of his grandmother.

He further testified that he observed the truck being driven by Mr. Cockrell cross the center line and appear to be coming at him. He then swerved left to avoid the collision, but Mr. Cockrell then turned back to the right. They collided in Mr. Cockrell's lane of traffic.

The injuries to Mr. Rowell were so severe that he had to be airlifted to Greenville Memorial Hospital. Rec. on App. at 525, ll 13-24. The hospital records show that blood was taken from Mr. Rowell at 8:54 pm. Rec. on App. at 662, ll 20-24. The records also show that Mr. Rowell's Life Flight helicopter arrived at the hospital at 8:59 pm. Rec. on App. at 1454 (State's Exhibit 70). At a post-trial hearing, the State produced an exhibit that showed Mr. Rowell arrived at the hospital at

8:44 pm, some 15 minutes before the flight records show he arrived. Rec. On App. at 1399 at 23, ll 6-23. Angela Waites, the flight nurse, testified the helicopter departed the accident scene at 8:31 pm and the flight took 24 minutes. This would have put him at Greenville Memorial Hospital some 11 minutes after the State's exhibit showed he arrived. Before arriving at Greenville Memorial Hospital, Mr. Rowell had received 2,540 milliliters of fluids and blood products. This would have been approximately half of the amount of blood in Mr. Rowell. Rec. on App. at 353, ll 7-22.

Angela Waites, the flight nurse, testified she observed Amanda Baker, an emergency room nurse, draw the blood from Mr. Rowell. Rec. on App. at 579, ll 21-24. She testified it was taken from the right arm. Rec. on App. at 583, ll 10-12. Ms. Baker did not remember taking blood from Mr. Rowell. Rec. on App. at 588, ll 21-23. Ms. Baker stated the hospital documents stated the blood was taken from a central line and not the arm. Rec. on App. at 591, ll 16-24. The central line was put in by Dr. Bradley Snow after Mr. Rowell arrived at the emergency room. Rec. on App. at 592, ll 14-15; 593, ll 15-19.

The blood sample taken in the emergency room was sent to the lab, but, according to the hospital records, did not arrive there for approximately 30 minutes from the time it was taken. Rec. on App. at 597, ll 14-20. The lab technician listed as receiving the blood was Bill Evans. Rec. on App. at 671, ll 18 to 672, ll 19. The tubes for the blood drawn in the emergency room with their labels were destroyed after about a week. Rec. on App. at 558, ll 10-17. The analysis from the Greenville Memorial Hospital showed a plasma blood alcohol level of .219. Rec. on App. at 549, ll 14-19.

After Mr. Rowell had his surgery, during which many more liters of blood were given to him, the State obtained a search warrant for a blood sample and urine sample. Rec. on App. at 155, ll 13-25. Trooper Brunson Smith, who served the search warrant, also read the implied consent forms to

Mr. Rowell. Rec. on App. at 154, ll 9-24. Mr. Rowell was unconscious at the time of the reading of the implied consent forms and the search warrant. A blood and urine sample were taken at 1:05 a.m. on November 16, 2014. This was approximately five and a half hours after the wreck. The urine was never tested. Rec. on App. at 796, ll 2-8. The result of this test showed a blood alcohol level of .096. Rec. on App. at 902, ll 11- 12. Also found in the blood was diphenhydramine, commonly known as Benadryl, at a level of 4.9 micrograms per milliliter. Rec. on App. at 1112, ll 20-25. This was on the high end of a toxic dose and .1 away from a lethal dose. Rec. on App. at 1114, ll 18-25; 1115, ll 10-25. The SLED lab report also contained a level of acetone which would indicate the person was a diabetic. Rec. on App. at 1107, ll 3-25. The record does not contain any evidence that Mr. Rowell was diabetic. Mr. Rowell testified he was not diabetic nor does he take Benadryl. Rec. on App. at 1159, ll 6-13.

## Argument

### Question I

**Did the trial court err in admitting the blood test results from the 8:54 pm blood draw when the hospital records establish that Adam Martyn Rowell did not arrive at the emergency room until 9:00 pm, the records do not establish whether the blood was drawn from his arm or a line, the blood is unaccounted for for a 30 minute period, and a person who allegedly received the blood from the nurse did not testify?**<sup>2</sup>

The trial court erred in admitting the blood alcohol test result. This case should be controlled by *Benton v. Pellum*, 232 S.C. 26, 100 S.E.2d 26 (1957). The first glaring error in this case is the fact that the hospital records show that the blood was allegedly taken from Mr. Rowell before he arrived at the emergency room. The records show he arrived at the emergency room at 9:00 pm. Rec. at 1454 (State's Exhibit 70). The blood was taken at 8:54 pm. Rec. on App. at 662, ll 20-24. There is disagreement as to who drew the blood. The Life Flight nurse testified the blood was drawn from the right arm of Mr. Rowell by emergency room nurse Amanda Baker. Rec. on App. at 583, ll 10-12. Ms. Baker did not recall drawing the blood. She testified the blood was drawn from a central line and was drawn by Dr. Snow. Rec. on App. at 665, l 18 to 666, l 11.<sup>3</sup>

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<sup>2</sup> The record refers to blood being drawn at three separate times. The trial judge stated he was admitting the 8:54 pm blood draw. The hospital records refer to a 9:08 pm blood draw. It is not known what happened to the 9:08 pm blood draw. The last blood draw was drawn at 1:05 am. Rec. on App. at 157, l 11-13. This is referred to as the "SLED" blood draw as it was analyzed by SLED.

<sup>3</sup> The time required to install a central line is not set forth in the record. Obviously, it would take a few minutes. Thus, if Mr. Rowell arrived at the emergency room at 9 pm, the blood could not have been drawn until several minutes after 9 pm. Obviously, he did not have a central line placed in him on the flight to Greenville Memorial Hospital.

The reliability of this blood draw is further brought into question when the State produced a document that showed Mr. Rowell arrived at Greenville Memorial Hospital at 8:44 pm. This was some 15 minutes before the evidence the State produced, State's exhibit 70, showed he arrived. Angela Waite, the flight nurse and a State's witness, testified she left the accident scene at 20:31 and the flight took 24 minutes. Rec. on App. at 525, ll 22 - 24. Whether Mr. Rowell arrived at the hospital at 8:44 pm or 8:59 pm might not matter in making decision to save his life. However, the time matters a great deal when the State is attempting to show the blood sent to the lab to be analyzed was actually taken from Mr. Rowell. Obviously, if the blood was taken from a patient that arrived at 8:44 pm, the blood was not taken from Mr. Rowell, regardless of whose name is on the tube of blood.

Emergency room nurse Amanda Baker testified that according to the documents, she did not draw the blood but received it from Dr. Snow. Rec. on App. at 593, ll 15-19. Dr. Snow, however, while describing the general procedure as to drawing of blood in the emergency room, never testified he drew the blood or even how the blood was drawn. Rec. on App. at 341, ll 14 to 342, ll 12. Angela Waites, the flight nurse, testified she observed Baker draw the blood from Mr. Rowell. Rec. on App. at 579, ll 21-24. She testified it was taken from the right arm. Rec. on App. at 583, ll 10-12. Ms. Baker did not remember taking blood from Mr. Rowell. Rec. on App. at 588, ll 21-23.

To further complicate this chain of custody, the testimony says it was given to a technician named Bill Evans. Emergency room nurse Baker testified on direct as follows:

Q. (By Mr. Garrett) But it sat down there – once you take it where does it go?

A. (Ms. Baker) It goes into the tube, into the – into the bag, and then the tech takes it up there. And then they have to hand it to a person at the lab window.

Q. And you do not recall doing that in this case?

A. No.

Q. Or giving it to a tech?

A. No, sir.

Q. Do you know what the name of the tech would be?

A. The only one listed is Bill Evans. He's the only tech present, according to this documentation, the day that -

Q. So there was a person named Bill Evans who had possession of the blood?

A. Un-huh

Q. Affirmative. That was yes?

A. Yes

Rec. on App. at 671, 113 to 672, 17.

Mr. Evans did not testify. The State never attempted to explain his absence or his unavailability. The blood took over 30 minutes to go up one floor. The State never attempted to explain why this blood drawn in an emergency room was not immediately sent to the lab one floor up.

Our Supreme Court has said, "[T]he party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed." *Id.* at 33, 100 S.E.2d at 537. The chain in this case is fatal from the very beginning. The blood was taken from a person before Mr. Rowell was admitted to the emergency room. The blood was even taken before the helicopter carrying Mr. Rowell touched down at Greenville Memorial Hospital according to the flight records. The hospital records have Mr. Rowell being admitted over 10 minutes before he arrived at the hospital. This is a factual impossibility. The only attempt to explain this impossibility was the testimony of Dr. John Reddic, who referred to it as "clock slop." Rec. on App. at 744, 111-16. The problem with the theory of the State is no one involved in drawing the blood testified it is their standard practice to look at their watch for a time when drawing blood. The



testimony was Amanda Westhart was the nurse recording the events, including the times. Rec. on App. at 580, l 24 to 581, l 3; 654, l 18. Even though she was named as a possible witness, Ms. Westhart never testified. Rec. on App. 37, l 8. As a result, the record does not show what source she used to record the times. Nothing in this record suggests that Ms. Westhart used a watch or that any source of time she used was not in keeping with the clock in the laboratory. To conclude there was "clock slop" in this case is complete speculation. "Clock slop" can never be a basis for admitting a blood sample when the medical record times make it factually impossible for the blood that was analyzed to be the blood of the person it purports to be.

In addition, the tech who received the blood was supposed to immediately walk the blood to the lab on the second floor. Rec. on App. at 668, ll 5-12. The blood was handed to a tech named Bill Evans who never testified nor was there any attempt to explain why it took 30 minutes to walk up one floor. Ms. Baker testified she normally labels the blood. Rec. on App. at 590, ll 12-14. But the testimony also shows that at times the blood is not labeled and the lab has to call the emergency room to get the information. As Mr. Robert Smith testified, "In some cases there are times when they don't put collection information, and in that instance I would call to the ER to get the collection information." Rec. on App. at 698, ll 4-8. As no one from Greenville Memorial Hospital had a recollection about the collection process in this case, whether the blood was labeled or the lab had to call the ER to get the information is unknown. And if the sample sent to the lab was the sample of the person admitted at 8:44 pm and drawn at 8:54 pm, then that person was not Mr. Rowell. The State is required to prove the proper labeling and handling of the blood drawn. As the labels were destroyed, the State is unable to disprove the lab technician called and obtained information from the ER and that the information obtained was incorrect. Under the times established in this case,

this fact is more than a mere possibility. In fact, it is the only explanation that explains the very serious time differences.

While the testimony was that the tubes the blood is placed in are self-sealing, Mr. Smith testified he would not be able to tell if the tubes had been tampered with. As he stated, "There would be no way I would know if it was tampered with before it got to me." Rec. on App. at 688, ll 23-24. He later stated the obvious and said if the cap was missing off the tube and it had spilled, he would not test it.

Mr. Smith further testified that he did not know from whom he received the blood. Rec. on App. at 602, ll 3-9. He admitted he has no knowledge as to how he received the blood. Rec. on App. at 597, 121 to 598, 13. This information may have been available to the State had they checked the scanning records of when a person entered the laboratory. Rec. on App. at 602, ll 5-9. When a person has control of an item that is not sealed, that person must testify to preserve the chain of custody. This Court has acknowledged that an incorrect date may not be a basis for holding a chain of custody is not valid. In doing so the Court said, "Although a discrepancy existed as to the dates Dailey received the evidence, no evidence was presented to indicate the drugs were not within the control of identifiable people during the entire time." *State v. Johnson*, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995). Here, the record establishes that the blood vial, apparently not sealed, was in the control of an unidentified person who brought it to the lab.

Many of these unanswered questions as to whether Mr. Rowell's blood was actually tested could have been answered if the original vial and labels had been retained. They were destroyed a week or so after the blood was tested. Rec. on App. at 558, ll 10-17. Had the label been preserved, then the lower court would have known if the tube had been labeled or if the lab had to call to obtain

the information. The Court would have known if the lab copied the information correctly when they put it in their computer. Some of the unanswered questions in this chain could have been answered. But if the blood tested is that of the person who arrived at 8:44 pm, then the unanswered question is - whose blood was it?

To further add to the confusion in this matter, the record also reflects that a blood sample was taken at 9:08 pm. Rec. on App. at 683, ll 20-23. The laboratory personnel never reported they received two blood samples from Mr. Rowell. The trial judge admitted to the confusion when he stated, "If there was another blood draw - I mean, I can't control that." Rec. on App. at 686, ll 13-14. He concluded that the 8:54 pm blood draw was the one being admitted. But as noted, this blood draw was even before Mr. Rowell had arrived at the emergency room and had the central line installed.

As to the obligation to establish a valid chain of custody, the South Carolina Supreme Court has said, "DSS has the burden to establish a chain of custody for the blood samples 'as far as practicable.'" *S.C. Dep't of Soc. Servs. v. Cochran*, 356 S.C. 413, 418, 589 S.E.2d 753, 755 (2003). This includes the obligation to establish the item tested is in fact the blood of the person it is being introduced against. The State has failed in their burden in this case. What is left to speculation, among other things, is not only whether the blood tested is the 8:54 pm blood draw or the 9:08 pm blood draw, but whose blood is it? Was the 8:54 pm blood draw related to the patient who arrived at 8:44? The trial judge found it was the 8:54 pm blood draw being introduced but acknowledged that there was apparently a 9:08 pm blood draw for which there is no record.

The State attempted to explain the lack of clear evidence as to the chain of custody by saying the emergency room was "controlled chaos." Rec. on App. at 685, l 8. But because there is

"controlled chaos" is not a reason to sustain a bad chain of custody. As a practical matter, the emergency room is not concerned with a chain of custody. If a problem arose because of the "controlled chaos" then the labeling on the tube would be available to double check in case of a question. Once the emergency is over, the hospital has no interest in keeping the tubes and labels and they are discarded. While discarding the tube and label a week or so later would seldom, if ever, have an impact on the medical treatment rendered, it is of great importance to verify the blood tested is the blood of Mr. Rowell. This is true when the criminal case arises and memories have faded to the extent they have in this case.

Suppose in a case involving a SLED blood draw the SLED officers and technicians testified to the following:

1. The SLED agent testified that blood was drawn at a time that was before the defendant arrived at the hospital with no explanation as to why that time was used.
2. Another SLED agent testified that a document shows the blood was actually drawn some 14 minutes later again with no explanation as to why that time was used.
3. The SLED agent did not testify that the blood was placed in a sealed tamper proof container.
4. The blood sample when taken to SLED headquarters was given to a named individual.
5. The SLED technician who tested the blood did not know from whom they received the blood nor was there any document saying that the named individual at SLED headquarters actually received the blood and gave it to the technician for testing. The named individual did not testify.
6. SLED could not account for the whereabouts of the blood tube for 30 minutes.
7. The SLED technician testified they could not say the blood had not been tampered with.

The technician did not testify they received the blood in a tamper proof container.

8. SLED destroyed the package in which the blood was received destroying the name on the label on the blood tube and all other vital information.

Under those circumstances a Court would not admit the SLED blood draw because too many questions remain unanswered and the State had failed to prove the blood tested was actually the blood of the defendant. This Court would not accept "clock slop" or "controlled chaos" as reason to excuse a proper chain of custody. The process would simply not be reliable enough to permit the introduction of the blood alcohol test evidence in court. The fact that these problems exist with a non-SLED blood draw should not be a basis for admitting the blood evidence in this case. The Court should look at the reliability of the entire process and not the entity making the blood draw. We do not have one standard for the admissibility of the evidence for SLED and another for all others. If it is unreliable for SLED, it is unreliable for all others.

The Supreme Court of Alabama has held that a chain of custody similar to the above would not be sufficient to establish a proper chain of custody. The case involved the chain of custody for a drug sale which had been handled by experienced law enforcement officers. The Court said:

In the instant case, there were clearly missing links in the State's chain of custody. There is no evidence, either direct or circumstantial, reflecting what Larimer did with the substance he purchased from Lee or reflecting how Larimer handled and safeguarded the substance while it was in his possession before it was delivered to Gulledge. There was no evidence reflecting that the substance was ever sealed in an evidence envelope or safeguarded in any way by Larimer. There is no evidence, either direct or circumstantial, reflecting what Gulledge did with the substance while it was in his possession or how Gulledge handled or safeguarded the substance while it was in his possession. There is no evidence reflecting that the substance was ever sealed in an evidence envelope or safeguarded in any way by Gulledge. Moreover, Cannon did not state that the substance was in

a sealed condition when she received it. Her testimony reflected only that she sealed the envelope the evidence was in after she completed her testing. To reiterate, there is no testimony reflecting where the substance was kept or how it was kept before it was presented to Cannon. Nor was there any evidence that when the substance was received at the lab it was packaged so as to be tamper-resistant.

*Lee v. State*, 748 So. 2d 904, 912 (Ala. Crim. App. 1999), overruled on other grounds by *Pruitt v. State*, 954 So. 2d 611 (Ala. Crim. App. 2006)

*Birge v. State*, 973 So. 2d 1085, 1092 (Ala. Crim. App. 2007)(“In order to establish a proper chain, the State must show to a ‘reasonable probability that the object is in the same condition as, and not substantially different from, its condition at the commencement of the chain.’ Because the proponent of the item of demonstrative evidence has the burden of showing this reasonable probability, we require that the proof be shown on the record with regard to the various elements discussed below.”)(internal citations omitted).

Our Supreme Court has said, “The party offering evidence is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final analysis.” *State v. Cribb*, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992) Similarly, the Illinois Supreme Court has said, “There is no dispute that the State has a burden of showing a continuous chain of possession over the contraband in order to establish the proper foundation for admitting it into evidence.” *People v. Witanowski*, 104 Ill. App. 3d 918, 925, 433 N.E.2d 334, 340 (1982). Here the state has not shown a continuous chain of custody of the blood allegedly drawn at 8:54 pm. As noted earlier, the blood is unaccounted for for a 30 minute period. The individual who initially received the blood, Bill Evans, did not testify. We do not know if the blood was sealed to prevent tampering when received by Mr. Evans or if Mr. Evans took the

blood out of any package before it arrived at the lab. We do not even know if Mr. Evans delivered the blood to the lab. The State simply failed to establish a continuous chain of custody. *People v. Gibson*, 287 Ill. App. 3d 878, 882, 679 N.E.2d 419, 422 (1997) held, "A chain of custody requires proof of delivery, presence and safekeeping." Such facts are not established in this case.

This case should be also controlled by *Cribb*. In *Cribb* the case involved a non-legal blood draw at a hospital just as this case. In holding the proper chain of custody had not been established, the Court noted the following facts:

Two nurses attended Cribb upon his admission to the emergency room. One of the nurses testified that the other nurse administered an intravenous solution (IV) to Cribb and that it was customary for blood to be drawn by the person administering the IV. The nurse who administered the IV did not recall drawing blood from Cribb, but assumed that she drew his blood when she started the IV because that was her standard procedure. The lab technician did not know who drew Cribb's blood or how it was transferred to the lab. Neither Cribb's medical records nor the label on the blood sample discloses the person(s) who drew the sample and transported it to the lab. *Id.* at 518, 522, 426 S.E.2d at 309.

Many of the facts found to be flawed in *Cribb* exist here. There is confusion as to who drew the blood. There is confusion as to when the blood was drawn. There is confusion as to whether the blood could even belong to Mr. Rowell. The lab technician who tested the blood did not know from whom he received the blood. He could not even testify the blood had not been tampered with. He could not testify with assurance that the blood was labeled or if he had to call the ER to get the information. All these factors make the alcohol blood test result in this case unreliable.

This Court should hold that a proper chain of custody has not been established and the trial court erred in admitting the blood alcohol test result from the 8:54 pm blood draw.

## Question II

**Did the trial court err in admitting into evidence the 8:54 pm blood draw when the testimony established that Adam Martyn Rowell had approximately 50% of the blood in his body replaced with either blood products or saline solution and the State produced no evidence that the blood products transfusion and saline solution did not impact the reliability of the test administered?**

In addition to the chain of custody problems discussed above, and as will be discussed again as to the SLED blood draw, at the time of the 8:54 pm alleged blood draw, Mr. Rowell had received fluids from either saline solution and blood products equal to 2540 milliliters. Rec. on App. at 522, 123 to 523, 11. What effect this had on Mr. Rowell's blood alcohol level is not known as the State produced no testimony as to how it would affect the reading. There was no testimony it would have no effect. Would the saline solution drive alcohol out of the body tissues and raise the level? Or would it dilute the blood and lower the level? Was there any alcohol in the blood products given Mr. Rowell and if so, how would it have impacted the reading? Would his reduced metabolism because of the drugs he was given impact the rate at which alcohol is removed from his system? Rec. on App. at 519, 18 to 520, 15. The State, who has the burden of proving the reliability of the test they elected to introduce, answered none of these questions. The State had to have been aware of all these problems before the trial. They elected to leave these questions unanswered.

Courts have taken judicial notice of the reliability of certain tests when that reliability is clearly established. In taking judicial notice of the HGN test one court noted, "We do so considering the great weight of scientific support in the literature and in light of its adoption in most other jurisdictions that have addressed the issue." *Schultz v. State*, 106 Md. App. 145, 173, 664 A.2d 60,



74 (1995). *See also State v. Dille*, 258 N.W.2d 565, 567 (Minn. 1977) (“The proponent of a chemical or scientific test must establish that the test itself is reliable and that its administration in the particular instance conformed to the procedure necessary to ensure reliability.”) Here there is no great weight of scientific support that establishes the reliability of blood tests when approximately 50% of a person’s blood was replaced with blood products and saline solution. The State had the burden of establishing the reliability of the test under the circumstances of the facts of this case. The State has failed to do this and the results of the 8:54 pm blood draw should have been suppressed.

### Question III

**Did the trial court err in admitting the test results from the SLED blood draw when the blood draw was conducted after more than 150% of the blood volume of Adam Martyn Rowell had been replaced and the test results contained a level of Benadryl which was near lethal and therefore brought into question the accuracy of the entire test?**

After Mr. Rowell had had more than 150% of his blood volume replaced by blood products and saline solutions, the State obtained a search warrant to obtain a blood sample from Mr. Rowell. This was done at 1:05 am. Rec. on App. at 157, 112-13. This sample does not present the chain of custody issues presented above. The sample does, however, present two different problems that call into question the admissibility of the test result.

“When a clock strikes 13 it calls into question all that has gone before.”<sup>4</sup> This old saying has great application to the facts of this case. The result of the second blood test lists a level of Benadryl at 4.9. The testimony at trial was this is a near lethal level of Benadryl. A level of 5.0 is

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<sup>4</sup> This is an old folk saying. See [https://en.wikipedia.org/wiki/Thirteenth\\_stroke\\_of\\_the\\_clock](https://en.wikipedia.org/wiki/Thirteenth_stroke_of_the_clock) (Visited August 19, 2018)

considered lethal. Rec. on App. at 809, 120 to 810, 1123-24. Other published literature supports this fact. See, Steven B. Karch, KARCH'S PATHOLOGY OF DRUG ABUSE, 4<sup>th</sup> ed. CRC Press at 669 (reporting a lethal dose of Benadryl at 5.1 mg.L). Dr. Jimmie Valentine, testifying for the defense and uncontradicted by an expert for the state, stated such a level combined with the alleged alcohol level would make a person comatose. He stated:

Q. (Mr. Garrett) As a medical chemist, Doctor, any way possible that a person could have 18-100th of one percent alcohol and a 4.9 Benadryl in his system and be able to do anything other than be in a comatose state?

A. (Dr. Valentine) No, sir. There's not.

Q. He'd be comatose, wouldn't he?

A. I'm sorry I didn't hear you.

Q. So, its not possible?

A. It's not possible. Yes sir.

Rec. on App. at 1115, 121 to 1116, 16.

Dr. Valentine further opined that as Mr. Rowell had received no Benadryl in the Greenville Memorial Hospital, his Benadryl level some five and a half hours earlier would have been approximately 6, a lethal dose. Rec. on App. at 1117, 11-12; 1115, 113 - 9. In addition to Benadryl, Mr. Rowell also had acetone, which would indicate a person is diabetic, and "not very well controlled." Rec. on App. at 1107, 113 - 25. The record contains no information Mr. Rowell is diabetic. Mr. Rowell denied being a diabetic. Rec. on App. at 1159, 116 - 9.

As the record establishes the impossibility of Mr. Rowell having both a 4.9 level of Benadryl and a .18 level of alcohol, the lower court erred in admitting the blood into evidence. The two numbers cannot exist in a person together. The test from SLED was completed on March 5, 2015. Rec on App. at 1463 (State's exhibit 73). The State had known, or should have known, since that date of the high Benadryl level. They knew, or should have known, of the acetone level. The State took no steps to explain or contradict the opinion of Dr. Valentine as to the near lethal dose of

Benadryl.

During an in camera hearing before either of the SLED toxicologists testified, Mr. Rowell, through his expert Dr. Valentine, brought to the attention of the State and the Court the fact that Mr. Rowell had a near lethal level of Benadryl in his system. Rec. on App. at 809, ll 11-24; 810, ll 15-24. The State, while in camera, did discuss this issue with forensic toxicologist Jennifer Brown. She admitted the level was 4.9. Rec. on App. at 847, ll 9-15. The State never attempted to discuss this issue further with Ms. Brown or the other toxicologist. They never attempted to explain how Mr. Rowell could have a near lethal level of Benadryl in his system. The State was hardly caught by surprise when Dr. Valentine testified before the jury as to the near lethal level of Benadryl found in Mr. Rowell. The failure of the State to even attempt to explain this impossibility calls into question the entire test. This is not a credibility issue for the jury. Witnesses for the State and the defendant agreed the level was 4.9. There is no dispute this is a near lethal amount of Benadryl.

After knowing that Dr. Valentine had testified as to 4.9 being a near lethal dose of Benadryl, the State elected to only cross examine Dr. Valentine very briefly as to the Benadryl. Rec. on App. at 1142, ll 1-9. Even then there was no cross-examination about the near lethal level of Benadryl. The cross-examination was limited to the fact that some people use Benadryl to help them sleep. Again, the State did not contest the conclusion of Dr. Valentine that the Benadryl level was near lethal. The reported level was after Mr. Rowell had been under medical care for over 5 hours after the accident. The medical records do not show he was administered any Benadryl while under medical care. Rec. on App. at 1115, ll 3-9.

In addition to the above problem, the record in this case establishes that Mr. Rowell had been given blood products and saline solutions equal to approximately 160% of the blood in his body.

Rec. on App. at 1093, ll 1-25. The State presented no expert that said a blood test taken after such a massive transfusion has any reliability. In fact, when the issue was discussed in camera, the following exchange between the judge and the state occurred concerning the testimony of the toxicologist, the State's expert:

THE COURT: Now, I mean, if she hasn't reviewed any of the records and if she doesn't have any medical training, I don't think that she's going to be able to testify on this issue of, you know, are the results good or bad based upon transfused blood.

MR. BLACK: No, sir.

Rec. on App. at 798, ll 4-9.

Dr. Valentine, testifying for the Defense, opined it would not be reliable. Rec. on App. at 1096, ll 1-9. 1096, l 15 to 1098, l 13. "The proponent of a scientific test has the burden of demonstrating its reliability." *State v. Moore*, 458 N.W.2d 90, 97 (Minn. 1990). The State in this case never attempted to establish that a blood alcohol test from such a person has any reliability. Mr. Henderson pointed this out to the trial court when he said, "[I]t's burden-shifting that the Court's making us prove that it's not reliable instead of the State proving that it is reliable." Rec. on App. at 828, ll 7-10.

There is a dearth of cases involving the testing of blood after such massive transfusions. The reason is, as Dr. Valentine testified:

A. (By Dr. Valentine) Well, you can take anything and analyze it. We talked about that earlier. The machine doesn't care where the sample comes from. It's going to analyze it and give you a number. And they did that in this case. They analyzed the specimen and got a number. Whether that number is reliable? I don't see how you can put any reliability in the number at all because we had such an exchange of volume of fluid here.

Rec. on App. at 1096, ll 19-25.

He further testified:

Q. (By Mr. Garrett) So have there been any studies on it to try to determine how to come to a conclusion?

A. (By Dr. Valentine) No, Sir. There's been no scientific studies. And if you stop and think about it, you just can't do this ethically, because when you've got a person that's near death you can't start drawing blood samples from them to test for alcohol. You know, you'd have to do a whole bunch of them and you can't do that. It's unethical.  
Rec. on App. at 1097, 120 to 1098, 12.

If there are any reported cases involving the reliability of a blood test taken after massive blood transfusions, this writer has not found them. In one case the court simply noted in a footnote "The degree of the appellant's intoxication was in dispute from witnesses at the lounge. A blood-alcohol sample was taken at the hospital. However, due to a blood transfusion, the test results were deemed inaccurate." *State v. Bingham*, 910 S.W.2d 448, 451 (Tenn. Crim. App. 1995), n.1, overruled on other grounds by *State v. Hooper*, 29 S.W.3d 1 (Tenn. 2000). In that case the Court made no reference to amount of blood transfusions. See also *State v. Fortner*, 451 S.W.3d 746, 753 (Mo. Ct. App. 2014) ("Once Defendant voluntarily agreed to provide a blood sample for this purpose, Officer Grimes was entitled to obtain the blood sample and have it tested. This is true even though the blood sample had been previously drawn for 'medical purposes.' Moreover, due to the blood transfusion that Defendant received, this was the only blood sample available for testing.")

The possibility of blood transfusions has been held to be an exigent circumstance to permit the taking of a blood sample without a warrant. A South Dakota Court in finding exigent circumstances said, "As the court found, Sheriff Thaler believed he needed to obtain the blood draw before Fischer was airlifted because the officers did not know how medical procedures, such as possible blood transfusions or intravenous fluids could affect Fischer's BAC; there was a possibility that intravenous fluid could compromise the integrity of the BAC testing." *State v. Fischer*, 875

N.W.2d 40, 47 (2016). If science knew the impact of blood transfusions on an alcohol blood test, the possibility of blood transfusion would not create an exigent circumstance. As no case holds that a blood test after massive blood transfusions and saline solutions being placed in the body of a person is reliable, the State has failed in this case to establish the reliability of the SLED blood draw which was done after approximately 160% of the blood volume had been replaced.

The only testimony as to the test not being reliable came from the expert for Mr. Rowell. The State produced no testimony as to the reliability of the SLED blood draw taken in this case. While the State may argue that the credibility of Mr. Valentine was up to the jury, if the jury found Dr. Valentine not credible, that does not end the inquiry. The State has the affirmative duty to present testimony that their test, under the circumstances of this case, is reliable. They did not. An alleged finding by the jury as to the lack of credibility of Dr. Valentine hardly establishes the reliability of the test, an obligation the State has. Interestingly, the toxicologist for the state was asked about her opinion as to whether the test of a person who had received massive blood transfusions would be valid. She was asked:

Q. (By Mr. Garrett) But if you're trying to test alcohol in somebody's blood and its already been pumped out and other stuff has been put in there, the blood's been put in there, it's not a valid result is it?

A. (By Ms. Brown) I mean, my results are filed for what I received.  
Rec. on App. at 891, ll 7 - 11.

For the SLED blood draw in this case to be admissible, the answer should have been a simple, "The result is valid." While she may have obtained a reading on what she received, that is not the criteria for admissibility. For the foregoing reason, this Court should hold the SLED blood draw was improperly admitted into evidence, reverse the conviction of Adam Martyn Rowell and remand for a new trial.

#### Question IV

**Did the trial court err in failing to conduct an evidentiary hearing as to a juror who failed to disclose that he had been arrested and had a pending criminal charge being prosecuted by the office of the Solicitor for the 8<sup>th</sup> judicial circuit when such a question was asked during jury voir dire?**

A judicial system that depends upon jurors also depends upon honest answers from honest jurors. This is basic to our system of justice. For when a juror lies in their response to a voir dire question we seldom will know what motivates the false answer. "Where a trial judge grants counsel's request that the judge ask a particular question on voir dire, counsel is entitled to a truthful answer to the question." *State v. Gullledge*, 277 S.C. 368, 370, 287 S.E.2d 488, 490 (1982). And this truthful answer must be so whether the response be with an affirmative answer or through a failure to respond. As one court has said, "The defendant places much importance on the fact that there were no 'false statements' actually made by the juror, but the distinction between a juror's coming forth with untruthful information and his failing to respond honestly to a direct question is not a valid one." *State v. McFerron*, 52 Or. App. 325, 330, 628 P.2d 440, 443 (1981)

In this case the record establishes that juror 164 gave a dishonest answer when he failed to disclose that he had pending criminal charges against him. The charges were being prosecuted by the office of the Solicitor for the 8<sup>th</sup> judicial circuit. He had been charged in January, before this trial started in February, with possession with intent to distribute marijuana, possession with intent to distribute marijuana within proximity to a school and unlawful conduct toward a child. Post trial

hearing at 28, ll 15-22.<sup>5</sup>

Near the end of the voir dire the trial judge advised the jury panel that he was about to ask a series of questions. He urged the jury panel to keep a good memory of the questions as he would speak with them privately after the questions were asked. The first question was:

Question One, any member of the jury panel or any member of your immediate family members or close personal friend ever been arrested and charged with any criminal offense through whatever state, local or federal law enforcement agency.

Rec. on App. at 56, ll 16-20

After all the questions were asked, numerous jurors came forward in response to the questions asked. Of the ones that came forward, 12 were in response to Question One. They included jurors with pending charges or convictions. Rec. on App. at 56, ll 16 to 74, ll 18. Juror 164 did not come forward. His act of omission made the response not truthful. At the end of voir dire the trial judge made this statement to the jury panel, "What happens sometimes is that jurors are not honest and have really a real issue about serving on a jury, and we don't find out about it until after the fact." Rec. on App. at 74, ll 24 to 75, ll 2. Juror 164 again did not come forward after the statement.

In an email exchange after the hearing, defense counsel requested a hearing with the juror to determine why he did not respond. Rec. on App. at 1428-1449. The trial court declined to conduct a hearing with the juror. In ruling on this issue, the Court correctly stated the proper standard of reviewing a false answer by a juror. The court noted the "[I]nquiry is a 'fact-intensive determination

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<sup>5</sup> The State at the hearing suggested that Juror 164 did not report his arrest because he simply got a blue ticket. Rec. on App. at 1405, ll 13-17. A charge of possession with intent to distribute marijuana and a proximity charge cannot be issued on a blue ticket. See S. C. Code § 56-7-10.



that must be made on a case-by-case basis' to decide whether the concealment was intentional or unintentional. . . . Where a juror's concealment is found to be unintentional, the Court ends its inquiry, and no new trial is granted." Rec on App. at 1425 (Order dated December 27, 2017 at 3). (Internal citations omitted).

The Court correctly found that the question asked on its face was unambiguous and easily comprehended by the average juror. Rec on App. at 1426 (Order dated December 27, 2017 at 4). The Court then concluded that "The manner in which the question was asked, and the amount of time between the question posed and when it was meant to be answered could be confusing to the average juror." Rec on App. at 1426 (Order at 4). This conclusion is not supported by the record.

As noted earlier, twelve jurors had no difficulty remembering and responding to the question. No evidence in this record supports the conclusion that the question was confusing to the average juror. Without hearing from Juror 164, the Court then concluded, "[T]he Juror 164's concealment was unintentional." Rec on App. at 1426 ( Order at 4). This conclusion is a credibility ruling that can only be resolved with testimony from Juror 164. The trial court refused to conduct such a hearing. Based upon this record, there are no facts upon which the trial court could determine that Juror 164's concealment was unintentional.

The South Carolina Supreme Court has established the basis upon which a new trial should be granted based upon juror misconduct in failing to properly respond to voir dire questions. The Court said "A party seeking a new trial based upon the disqualification of a juror must show: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to verdict; and (3) the moving party was not negligent in failing to learn of the disqualification before verdict." *Gray v. Bryant*, 298 S.C. 285, 288, 379 S.E.2d 894, 896 (1989). In that case a juror failed to acknowledge

that she was a patient of the medical doctor being sued for malpractice. A new trial was ordered.

Mr. Rowell acknowledges that the granting of a new trial based on false answers in voir dire is within the discretion of the trial judge. When a decision of a trial judge is not based upon a consideration of the relevant facts, an abuse of discretion occurs. In reversing a sentence, the Minnesota Supreme Court said " We conclude that the district court's failure to consider all of the available facts relating to Schmit's sexual assault of A.M.H. before determining Schmit's sentence was an abuse of discretion." *State v. Schmit*, 601 N.W.2d 896, 899 (Minn. 1999). The Utah Supreme Court has said, "Failure to consider pertinent facts makes it impossible for the trial court to exercise a fully informed discretion." *Kallas v. Kallas*, 614 P.2d 641, 646 (Utah 1980). Obviously making factual conclusions that are contrary to the actual facts is an abuse of discretion.

In an attempt to justify not granting a new trial, the trial judge argued that the fact of the arrest of Juror 164 was not concealed. The trial court argued, "Juror 164 failed to answer a question, but he did not prevent Defendant or State from seeking and seeing his arrest record." Rec on App. at 1426 (Order at 4). As the arrest record was a public record, the trial court has argued Mr. Rowell was not entitled to expect truthful answers from jurors during voir dire. This is not and should not be the law in South Carolina. As this Court has said, "It is the duty of every potential juror to make true and full disclosures during voir dire because counsel is entitled to rely on the answers in determining whether to exercise a peremptory strike." *Long v. Norris & Associates, LTD*, 342 S.C. 561, 573, 538 S.E.2d 5, 11 (Ct. App. 2000).

In *Long*, the Plaintiff contended that the Defendant could have obtained the truthful information that the juror lied about had they conducted a simple background check. In rejecting this argument this Court said, "This Court declines to expand the duty of parties and attorneys to include

investigation of prospective jurors.” *Id.* at 571, 538 S.E.2d at 11. This is especially true when a truthful answer would have revealed what the investigation would have shown. Under the trial court’s requirement, a lawyer would have to check the criminal history on each juror for each county, each state and the federal records. The trial judge abused his discretion in making such a requirement.

In *State v. Woods*, 338 S.C. 561, 527 S.E.2d 128 (Ct. App. 2000), *aff’d*, 345 S.C. 583, 550 S.E.2d 282 (2001), this Court held the failure of a juror to disclose that she worked part time as a volunteer in the solicitor’s office was a ground for granting a new trial. The Court noted the following facts that were learned at the post trial hearing.

At a post-trial hearing conducted on Woods’ motion, the juror in question testified she had served “off and on for about a good three years” as a volunteer in the victim’s advocate program administered by the solicitor’s office, the last time being in 1998, the year of Woods’ trial. Regarding her failure to answer the trial court’s question about any business association or social acquaintance with any of the counsel connected with the case, the juror testified she did not “realize that [the question] would mean advocate because the attorneys themselves I really don’t have [very] much to do with them.” Regarding her failure to answer the trial court’s question about being either a contributor or supporter of any organization that protected victims’ rights, the juror testified she did not recall the question being asked and, even if she did hear the question, “it just didn’t synchronize [sic].”

*Id.* at 563, 527 S.E.2d at 129

In reversing the case because the juror gave an improper response, this Court said, “Here, as in *Gulledge*, the juror did not justify her failure to disclose particular information that was specifically sought by a voir dire question addressed to all jurors. The juror, when she testified, stated she did not recall being asked any question on voir dire about having contributed to or supported a victims’ rights organization. She did not claim the question was not asked. The record clearly shows

it was." *Id.* at 564, 527 S.E.2d at 129-30. Because the trial judge in this case declined to conduct a hearing we do not know the basis for Juror 164 not truthfully answering the question.

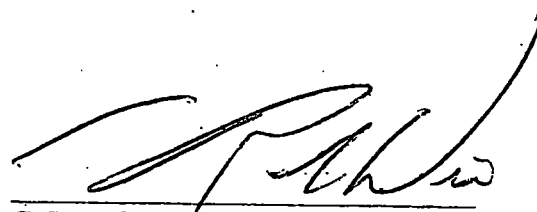
Without any testimony the trial judge first found the failure to disclose was unintentional. Under *Wood*, this fact is not relevant. A claim one did not hear the question is not controlling when the question was in fact asked. No question exists about the question being asked in this case. Numerous jurors had no problem understanding and remembering the question. Trial counsel stated on the record they would have excused any juror that had a charge pending that was being prosecuted by the same Solicitor's Office that was prosecuting this case. Rec. on App at 1407, 118 to 1408 11 (Post-Trial hearing). That position seems logical. The trial court erred in failing to grant a new trial because of false statement of Juror 164.

This Court should reverse the conviction of Adam Martyn. Rowell based upon the untruthful answer of Juror 164 during the voir dire process. A remand for a hearing as to Juror 164 would serve no purpose as memories will have faded. In addition, there is no dispute that the relevant question was asked.

## CONCLUSION

For the foregoing reasons, this conviction and sentence of Adam Martyn Rowell should be reversed and this matter remand for a new trial with instructions that the blood alcohol test result be excluded.

Dec 5<sup>th</sup>, 2018



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In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions  
Hon. Donald Hocker, Circuit Court Judge

Appellate Case No. 2018-000022

State of South Carolina ..... Respondent,

vs.

Adam Rowell ..... Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

Dec 5<sup>th</sup>, 2018



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In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
The Honorable Donald B. Hocker, Circuit Court Judge

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THE STATE,

Respondent,

v.

ADAM MARTYN ROWELL,

Appellant.

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STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY  
The Honorable Donald B. Hocker, Circuit Court Judge

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## STATEMENT OF ISSUES ON APPEAL

### I.

Whether the trial judge properly admitted blood Sample A into evidence where the State completed the chain of custody as far as practicable and where any weakness in the chain of custody was a factor to be considered as to the weight of the evidence and not its admissibility? Furthermore, whether any error in admitting the results of Sample A was harmless because Sample A was cumulative to other evidence presented against Appellant?

### II.

Whether the trial judge properly admitted blood Sample A into evidence where Appellant's expert admitted that he did not have any proof that the State's results were unreliable and where Appellant's expert otherwise conceded the reliability of the State's testing methods?

### III.

Whether the trial judge properly admitted blood Sample B into evidence where Appellant's expert admitted that he did not have any proof that the State's results were unreliable and where he even admitted the State's testing method was the "gold standard" for testing for alcohol concentration?

### IV.

Whether Appellant waived any request for an evidentiary hearing regarding Juror 164's failure to disclose his prior arrest and thereby failed to preserve this issue for appeal where Appellant failed to secure Juror 164 for Appellant's post-trial hearing such that evidence could be presented? And where if we assume that this issue was properly preserved for appeal, the trial judge did not abuse his broad discretion in refusing to grant Appellant a new trial because the initial method of questioning the jury panel used by the trial judge during *voir dire* was confusing to the average juror, and therefore there was no probative evidence that Juror 164's failure to disclose his arrest was intentional?

## STATEMENT OF THE CASE

In March 2015, the Greenwood County Grand Jury indicted Appellant for one count of felony driving under the influence resulting in death and one count of felony driving under the influence resulting in great bodily injury. On February 13-20, 2017, a jury trial was held in the Greenwood County Court of General Sessions with the Honorable Donald B. Hocker, presiding. Appellant was represented by Billy Garrett, Esq., Carson Henderson, Esq., and Jane Merrill, Esq. Respondent (the State) was represented by Assistant Solicitors Micah Black and Wade Dowtin of the Eighth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of both counts of felony driving under the influence. Following the verdict, the trial judge delayed sentencing for one week. On February 27, 2017, the matter was reconvened and the trial judge sentenced Appellant to a term of thirteen years' imprisonment for one count of felony driving under the influence where death results. The trial judge also sentenced Appellant to eight years' imprisonment for one count of felony driving under the influence where great bodily injury results. Both sentences ran concurrently with each other resulting in an aggregate sentence of thirteen years' imprisonment for Appellant. Appellant timely served and filed two post-trial motions to the trial judge regarding after discovered evidence and non-disclosure of an arrest by a juror and on November 27, 2017 the trial court held a hearing on those motions. At the conclusion of the hearing, the trial judge took Appellant's arguments under advisement and subsequently issued a written order denying Appellant's motions on December 27, 2017. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

## STATEMENT OF FACTS

On November 15, 2014, Appellant was involved in a head-on collision with a vehicle driven by Jeremy Cockrell on highway 225 in Greenwood County. (R. 106, 123). The wreck occurred at approximately 7:20 PM. (R. 116-17). The two cars involved in the collision were a darker colored pickup truck driven by Appellant and red pickup truck driven by Cockrell. (R. 123, 136). When EMS arrived at the scene of the wreck at 7:23 PM, Cockrell was deceased, but his passenger, Matthew Sanders was still conscious and had serious injuries to his left leg. (R. 281, 296, 313). Sanders suffered a broken femur and had surgery the following day to place a rod inside his leg. (R. 192-93, 255, 257). Appellant was conscious when first responders arrived, but his body was trapped behind the steering wheel. (R. 290-91).

Paramedic Derrick Oliver climbed into Appellant's vehicle to stabilize Appellant and remove him from the vehicle. Once inside the vehicle, Oliver could smell the odor of alcohol coming from Appellant's breath. (R. 292). Around the same time, Trooper Brunson Smith of the South Carolina Highway Patrol approached the driver's side of Appellant's vehicle and could smell the odor of an alcoholic beverage. (R. 138). Smith also observed a bottle of beer with liquid still inside of it in the backseat of Appellant's vehicle. (R. 139). First responders cut the door and roof off of Appellant's vehicle in order to remove him from the car. (R. 295). After Appellant was removed from his vehicle, he was placed inside an ambulance. Once inside the ambulance, Paramedic Larry Kidd also smelled the odor of alcohol emanating from Appellant. (R. 316-17). Appellant was eventually airlifted to Greenville Memorial Hospital at 8:32 PM. (R. 143).

Appellant's flight to Greenville Hospital lasted approximately twenty four minutes. (R. 525, 1454). During the flight, approximately 2,540 milliliters of blood and blood products were

transfused into Appellant's body. (R. 523, 1454). When Appellant arrived at Greenville Hospital a blood sample (Sample A) was taken by Nurse Amanda Baker at approximately 8:54 PM. (R. 544, 662, 1453). Sample A was received by the hospital laboratory at 9:24 PM. (R. 671, 1453). An analysis of Sample A was completed 9:40 PM which yielded a blood alcohol level of .1897. (R. 738). After Appellant's initial blood draw, he received an additional 9,510 milliliters of blood and blood products during his emergency surgery. (R. 367). Appellant's surgery ended at 11:40 PM. (R. 369-70). By the end of Appellant's surgery approximately one third to one half of Appellant's overall blood volume had been replaced with blood or blood products that were transfused into Appellant's body. (R. 374-76). Following Appellant's surgery, Nurse Leslie Childers drew a second sample (Sample B) of Appellant's blood at 12:56 AM and transferred it to Trooper Smith at 1:05 AM. (R. 157, 775-76). Sample B was transported to SLED where it was analyzed and found to contain a blood alcohol level of .096. (R. 902).

At trial, Kelly Anderson of the South Carolina Highway Patrol testified regarding the MAIT team's investigation of the scene of the wreck. Anderson determined that Appellant's vehicle crossed the center line and hit Cockrell's vehicle in its lane of travel. (R. 414). The MAIT team also determined that Appellant's vehicle was traveling at approximately 69 miles per hour prior to impact while Cockrell's vehicle was traveling at 41 miles per hour. (R. 475-76). At the conclusion of the State's case, Appellant called eight witnesses in his defense, including himself. In addition to challenging the admissibility of Sample A and Sample B on chain of custody grounds, Appellant challenged the accuracy of the results of the two samples. Appellant called Dr. Jimmie Valentine as an expert in the field of toxicology, pharmacology, and chemistry. (R. 1042). Valentine challenged the results of sample A by theorizing there may have been a false positive result because of the level of lactic acid that could have been inside

Appellant's body. (R. 1069-83). The trial judge declined to suppress the results of Sample A and found that the State had established the chain of custody as far as practicable and any weaknesses that were in the chain would go to the weight of the evidence rather than the admissibility. (R. 638-39).

Valentine admitted that there was nothing wrong with the testing methodology used by SLED for Sample B and he actually praised SLED for using good testing methods, even going as far as calling them "the gold standard to run by". (R. 813; 1067, lines 13-14; 1105). Valentine's only reservation with the results of Sample B was the presence of Benadryl in the sample. (R. 813). Valentine speculated that Appellant may have received tainted blood from one of the transfusions which would account for the presence of Benadryl. (R. 817). On cross examination, Valentine admitted that a normal person who had a blood alcohol concentration of .18 but did not receive blood transfusions would be expected to have a blood alcohol level of .13 if a sample were taken four hours later rather than the .09 level that Appellant had. (R. 816-18, 1130-31). The trial judge declined to suppress the results of Sample B, because Appellant's expert did not question the reliability of the methods used by SLED, but rather only questioned the results. (R. 825). At the conclusion of trial, Appellant was convicted of both counts.



## STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

"In criminal cases, the appellate court sits to review errors of law only' and is 'bound by the trial court's factual findings unless they are clearly erroneous.'" State v. Coaxum, 410 S.C. 320, 326, 764 S.E.2d 242, 245 (2014) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). "In order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998).

## ARGUMENT

### I.

**The trial judge properly admitted blood Sample A into evidence when the State completed the chain of custody as far as practicable and when any weakness in the chain of custody was a factor to be considered as to the weight of the evidence rather than its admissibility. Furthermore, any error in admitting the results of Sample A was harmless because Sample A was cumulative to other evidence presented against Appellant.**

Appellant contends the trial court erred in admitting Sample A because the chain of custody for the sample was deficient. Specifically, Appellant alleges that Sample A was unaccounted for during an approximately 30 minute time period after it was drawn from Appellant, but before it reached the hospital lab. Appellant's argument is without merit. The State established the chain of custody for Sample A as far as practicable and produced witnesses who identified where the sample was from the moment it was taken from Appellant's body until it was analyzed by hospital staff.

"This Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). "Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." State v. Sweet, 374 S.C. at 7, 647 S.E.2d at 206. "If the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, absent proof of tampering, bad faith, or ill-motive." State v. Taylor, 360 S.C. 18, 26, 598 S.E.2d 735, 738 (Ct. App. 2004). "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." State v. Sweet, 374 S.C. at 7, 647

S.E.2d at 206. "Where the identity of those who handled the evidence is established, 'evidence regarding its care goes only to the weight of the specimen as credible evidence' and not to its admissibility." State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct. App. 2005) (quoting State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001)).

Here, the State identified each person who handled Sample A and produced testimony from each person in the chain except one. The State established the beginning of the chain of custody with testimony from Angela Waites and Amanda Baker. Waites testified that she believed she saw Amanda Baker draw Sample A from Appellant. (R. 650-51). Baker did not remember drawing the sample from Appellant, but recognized her hospital identification number on the laboratory audit trail for Sample A. (R. 662, 1453). Baker testified that if her number appeared on an audit trail, her typical practice would be to take the blood sample and deliver it to the hospital lab. (R. 661-68). Baker did not remember taking Sample A to the hospital lab, but testified that she or technician Bill Evans would have been the one to take it to the lab. (R. 671-72). Evans did not testify. Laboratory technician Robert Smith did not remember receiving Sample A because he handles numerous samples on a daily basis. (R. 678). However, Smith was able to identify his hospital identification number on the laboratory audit trail which indicated he received Sample A. (R. 675-77, 1453). Smith explained that when he gets a blood sample from the emergency room, he makes sure the sample is properly labeled and then places the sample in a machine to be analyzed. (R. 680-81). The machine produced a result approximately 15 minutes after it was received by Smith. (R. 682, 738).

Accordingly, the State established a complete chain of custody for Sample A. The State established who took the sample, who transported the sample to the hospital lab, and who analyzed the sample. (R. 662, 665-67, 680-81). The only possible witness in the chain who did

not testify was Bill Evans. Appellant, by contrast, did not produce any evidence of tampering, bad faith, or ill-motive. Absent any proof of tampering, the trial judge did not abuse his discretion by admitting Sample A into evidence.

### **Harmless Error**

Even if this Court concludes the trial judge abused his discretion in admitting Sample A, the evidence was merely cumulative to Sample B and other evidence regarding Appellant's impairment rendering any such error harmless. See State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008). ("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence."). Three witnesses testified that the odor of an alcoholic beverage was emanating from Appellant. (R. 138, 292, 316-17). Trooper Smith also testified that he saw at least one open alcoholic beverage inside Appellant's vehicle. (R. 139). Sample B, taken approximately six hours after the wreck, yielded a blood alcohol level of .096. Appellant does not challenge the chain of custody for Sample B. (Final Brief of Respondent 17). Therefore, even if the trial judge erred by admitting Sample A, Sample B proved that Appellant was still impaired six hours after the wreck even after a blood transfusion. Accordingly, any error in admitting Sample A is harmless in light of the admission of Sample B and the rest of the evidence presented against Appellant regarding his impairment. Appellant's convictions and sentences should be affirmed.

## II.

**The trial judge properly admitted blood Sample A into evidence when Appellant's expert admitted that he did not have any proof that the State's results were unreliable and Appellant's expert otherwise conceded the reliability of the State's testing methods.**

Appellant contends the trial judge erred by admitting Sample A when Appellant had approximately 50% of the blood in his body replaced with transfused blood and blood products. Specifically, Appellant contends the trial judge erred because the State did not offer any proof that the test result was reliable. However, Appellant did not question the reliability of the methods used to test Sample A at trial, but merely differed with the results that were reached by the hospital. Appellant offered Dr. Valentine to suggest the results of Sample A were a false positive because the hospital did not account for the presence of lactic acid in Appellant's body, but Appellant did not question the actual method of testing used by the hospital. (R. 1069-83). The trial judge did not abuse his discretion in admitting the results of Sample A because any questions raised about the results of Sample A are related to the weight of the evidence and not its admissibility.

The decision as to whether to admit or exclude expert testimony rests within the trial court's sound discretion and will not be reversed on appeal absent a prejudicial abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). In order to admit scientific evidence under rule 702 SCRE, the trial court must find: (1) the testimony will assist the trier of fact, (2) the witness is qualified, (3) the underlying science is reliable, and (4) the testimony's probative value is not outweighed by its prejudicial effect. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). In considering the reliability of scientific evidence, our appellate courts consider several factors including: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3)

the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." State v. Council 335 S.C. at 19, 515 S.E.2d at 517.

Here, Appellant never challenged the reliability of the methods used to test Sample A by Greenville Hospital. The trial judge heard testimony from four witnesses *in camera* to determine the admissibility of Sample A on chain of custody grounds. (R. 574-638). At the conclusion of the *in camera* hearing, the trial judge ruled that a chain of custody had been established. (R. 638). In responding to the trial judge's ruling, Appellant asserted that he would still challenge the results of Sample A, although he did not specify what grounds he would challenge the results under. (R. 640). Appellant then clarified that he planned to challenge the reliability of Sample A through his expert witness and through cross examination of the State's witnesses. (R. 644-45). However, when the State called Dr. John Reddic to describe how Sample A was tested, Appellant did not object to the admissibility of Sample A on grounds of reliability. (R. 733-39). Appellant cross examined Reddic about whether lactic acid could cause a false positive alcohol result, but Appellant did not question whether the machine used by the hospital was reliable. (R. 742-61). In fact, Appellant's expert, Dr. Valentine, acknowledged the hospital used a different test than SLED because it was a quicker test and was better suited for a Doctor's needs in providing quick care for a patient in an emergency situation. (R. 1067). Valentine did not, however, question the fundamental reliability of the hospital's test for obtaining an alcohol concentration. Valentine merely presented an alternative hypothesis that could account for Appellant's elevated blood alcohol reading. (R. 1065-84). Appellant confuses the trial judge's role in assessing the reliability of a test with the jury's role in determining the weight of the results of that test. Because Appellant did not challenge the reliability of the test used by the

hospital, but merely differed with the result, the trial judge did not abuse his discretion in admitting the results of Sample A. Appellant's convictions and sentences should be affirmed.

### III.

**The trial judge properly admitted blood Sample B into evidence when Appellant's expert admitted that he did not have any proof that the State's results were unreliable and even admitted the State's testing method was the "gold standard" for testing for alcohol concentration.**

Appellant contends the trial judge erred by admitting the results of Sample B because Sample B was drawn from Appellant after approximately 9,000 milliliters of blood and blood products had been transfused into Appellant's body. Appellant also takes issue with the amount of Benadryl that was present in Sample B because Dr. Valentine testified that such a level of Benadryl would have made Appellant comatose. Appellant also complains that the State did not call an expert in rebuttal to contradict Valentine's testimony. (Final Brief of Appellant 18). Appellant's argument is without merit. As discussed previously in regards to Appellant's second issue on appeal, Appellant confuses the trial judge's role in assessing the reliability of a test with a jury's role in determining the weight of the results of that test. As with Sample A, Appellant did not question the reliability of the test used by SLED to analyze Sample B but merely offered an alternative theory to explain why Appellant had such a high blood alcohol level. Because Appellant did not challenge the reliability of the State's method of testing, the trial judge did not abuse his discretion in admitting the results of Sample B.

Appellant's expert took no issue with the testing methods used by SLED. In fact, Valentine praised the test as "the gold standard" to use when testing for alcohol. (R. 813, 1067, 1100, 1105). The trial judge astutely recognized that Appellant was not challenging the reliability of the test used, but merely casting doubt on its results when he made the following ruling:

The Court: In light of the fact that Dr. Valentine is not attacking the reliability of the methodology and science behind the SLED testing and the procedures that they use, he's only attacking the reliability of the results itself, I am not going to suppress the result at this time, assuming that everything else comes into play properly to get the results in. And certainly in the Defense case and chief they can put up Dr. Valentine to offer that same line of testimony. And this is in no way an indication that I don't believe that Dr. Valentine's expert opinion and his testimony was not a good sound basis. I'm sure it is. But again, he's not attacking the methodology of the test, just the results, and that would go to the weight.

(R. 825, lines 6-18). As the trial judge suggested in his ruling, Appellant did try to attack the reliability of the results of Sample B through Valentine's testimony. Valentine suggested that Sample B may have been contaminated by alcohol contained in the foreign blood that had been transfused into Appellant's body. However, Valentine could not offer any scientific studies to substantiate his theory because no studies have been done on the subject because of the unethical nature of such a test. (R. 1097-98). Valentine also offered the alternative hypothesis that the blood from the donor bank could have been contaminated with various drugs, such as Benadryl. (R. 1101-04). However, Valentine also acknowledged that any theory about Appellant receiving contaminated blood would be mere speculation. (R. 1103-04). Furthermore, Valentine admitted the blood alcohol reading in Sample B was consistent with Appellant's blood being diluted from so many transfusions. (R. 816-18, 1130-31).

Appellant maintains the State was obligated to produce rebuttal testimony to contest the findings of Valentine. (Final Brief of Appellant 18, 22). This argument is meritless. The State is under no obligation to call rebuttal witnesses or contest the findings of a defense expert. This is especially true when the defense expert agrees the State's testing method is the "gold standard", there are no scientific studies to support the defense's alternate theories, and when the defense expert admits one of his alternate theories would be mere speculation. (R. 1097-98, 1100, 1103-04). Ultimately, Appellant's expert sought to cast reasonable doubt on the weight of the State's



evidence in regards to Sample B, but they did not question the reliability of the underlying test. The jury concluded Appellant failed in this regard. Because Appellant does not question the reliability of SLED's testing methods, the trial judge did not abuse his discretion in admitting the results of Sample B. Appellant's convictions and sentences should be affirmed.

#### IV.

**Appellant waived any request for an evidentiary hearing regarding Juror 164's failure to disclose his prior arrest and thereby failed to preserve this issue for appeal, because Appellant failed to secure Juror 164 for Appellant's post-trial hearing such that evidence could be presented. Even assuming this issue is properly preserved for appeal, the trial judge did not abuse his broad discretion in refusing to grant Appellant a new trial because the initial method of questioning the jury panel utilized by the trial judge during *voir dire* was confusing to the average juror, therefore there was no probative evidence that Juror 164's failure to disclose his arrest was intentional.**

Appellant contends the trial court erred in not conducting an evidentiary hearing regarding Juror 164's failure to disclose a prior arrest. Appellant also seems to suggest the trial court erred by not granting Appellant a new trial on this basis. (Final Brief of Appellant 28). However, Appellant does not allege that error in the relevant issue statement of his final brief. (Final Brief of Appellant 1, 23)<sup>1</sup>. Appellant did not raise any issues about juror misconduct at trial, but brought the issue to the trial court's attention via a post-trial motion for a new trial (R. 1363-64, 1368-69). A hearing took place to address Appellant's motions on November 27, 2017. At this hearing, Appellant explained to the trial judge that Juror 164 was arrested and charged with possession with intent to distribute marijuana, possession with intent to distribute within proximity of a school, and unlawful neglect of a child in the weeks preceding Appellant's trial in January 2017. (R. 1403-06). Appellant did not clearly articulate what relief he was asking for at

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<sup>1</sup> See Rule 208(b) SCACR ("...The Statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.")

the hearing, but merely stated that "We still are not abandoning this issue of putting somebody with an arrest record on the jury." (R. 1407, lines 7-8). Because Appellant appears to be alleging two separate errors within the fourth issue in his Final Brief, it is instructive to address each issue separately.

### **Evidentiary Hearing**

As an initial matter, Appellant waived any claim he had to an evidentiary hearing on the juror issue, by not attempting to secure Juror 164's appearance for offering evidence at the evidentiary hearing. Appellant failed to develop an adequate record for this Court's review. Indeed, without presenting testimony from Juror 164 about the answers given during *voir dire* and his ability to render a fair verdict, this issue was not raised to and ruled upon by the trial court, and it is not properly preserved for appeal.

"An objection withdrawn at trial constitutes an express waiver of the issue and does not preserve the issue for appellate review." Ligon v. Norris, 371 S.C. 625, 634, 640 S.E.2d 469, 472 (Ct. App. 2006). "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). "Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). "A proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the excluded testimony would have been. State v. Santiago, 370 S.C. 153, 163, 634 S.E.2d

23, 29 (Ct. App. 2006). The burden is on an Appellant to provide a sufficient record for review. State v. Hutto, 279 S.C. 131, 303 S.E. 2d 90 (1983).

Here, Appellant not only did not secure Juror 164's appearance for the post-trial hearing, but Appellant appeared to make little to no effort to do so. Ostensibly, the trial judge held a hearing on November 27, 2017 for that very purpose and yet Appellant did not present any witnesses to prove there had been juror misconduct and openly admitted that he voluntarily chose not to do so. When asked if he wanted to be heard on this issue, Appellant stated:

Mr. Henderson: Your honor, as it relates to this juror – and – and again, nothing has been produced to us indicating that he was a confidential informant. And because he does have a lawyer, Ms. Nelson with the public defender's office, we ethically thought that we can't directly contact him. Even on an unrelated matter, we don't think we're – it's – proper to contact him. But we've contacted Ms. Nelson, and she's made it very clear to us, he has no interest in talking to us.

(R. 1406, lines 5-13). Counsel for Appellant expressed ethical reservations about speaking with Juror 164, but did not issue a subpoena to require Juror 164's attendance at the hearing or ask the trial judge to require his attendance. Juror 164 may very well have invoked his fifth amendment privilege against self-incrimination at such a hearing, but the trial judge could not verify that because Appellant did not present the trial judge with that request. This illustrates the problem of Appellant not creating an adequate record for review. Therefore, to the extent Appellant is arguing that the trial judge erred by not conducting an evidentiary hearing, Appellant has waived that issue and it is not preserved for appeal.

#### **Motion for New Trial**

Assuming for the sake of argument that Appellant means to argue the trial judge erred by not granting a new trial, Appellant's argument is nevertheless without merit. Juror 164 did not disclose that he had recently been arrested to the trial judge. However, Juror 164's failure to

disclose this fact was unintentional because the method in which the question was asked was ambiguous.

“When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party’s peremptory challenges.” State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). The first question an appellate court must address in a juror disqualification analysis is whether the juror intentionally concealed information during *voir dire*. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106-107 (1998). An “intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable.” Woods 345 S.C. at 588, 550 S.E.2d at 284. An unintentional concealment “occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances.” Id. “If a juror’s nondisclosure is unintentional, the trial court may exercise its discretion in determining whether to proceed with the trial with the jury as is, replace the juror with an alternate, or declare a mistrial.” State v. Coaxum, 410 S.C. 320, 328, 764 S.E.2d 242, 246 (2014).

Here, the manner in which the trial judge presented the questions to the jury panel was ambiguous and confusing. The trial judge gave the following instruction that is relevant to Juror 164:

The Court: Now, these next questions – and I’m going to number them right before I read the questions. These next questions, if you need to respond just keep a good mental note of the question and your response and you’ll speak with me privately. I don’t even need for you to stand, okay? But I do need for you to keep

a good mental note so you can speak with me privately. I'm going to go ahead and tell you there will be one, two, three, four, five, six, seven, eight, nine – there's going to be eleven questions. Okay? So, you're going to have to pay really good attention and keep good memory, okay?

Question one, any member of the jury panel or any member of your immediate family members or close personal friends ever been arrested and charged with any criminal offense through whatever state, local, or federal law enforcement agency? It's actually ten questions. I misspoke.

(R. 56, lines 5-21). After asking the aforementioned question, the trial judge asked nine additional questions before the jury panel was allowed to come forward. Neither Appellant nor the State objected to the manner of the questioning.

The manner of questioning utilized by the trial judge was ambiguous and could be confusing to the average juror. Even if Juror 164 had understood and comprehended the first question asked by the trial judge, he was forced to listen to and process nine additional questions before he had a chance to answer. In the trial judge's post-trial order, he conceded that this method of questioning could be confusing to the average juror. (R. 1426). The trial judge also acknowledged that since presiding over Appellant's trial, he has changed his method of questioning potential jurors. (R. 1426). Because the method of questioning used by the trial judge was confusing to the average juror the trial judge effectively concluded, Juror 164's failure to disclose his recent arrest was unintentional. Accordingly, because Juror 164's failure to disclose his arrest was unintentional, the trial judge did not abuse his discretion in refusing to grant Appellant a new trial. Similarly, even if the failure to disclose had been discovered during trial, the trial judge could appropriately have exercised his discretion to proceed with the jury as it was without excusing Juror 164. State v. Coaxum, 410 S.C. at 328, 764 S.E.2d at 246. Appellant's convictions and sentences should be affirmed.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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December 21, 2018

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2018-000022

THE STATE,

Respondent,

v.

ADAM MARTYN ROWELL,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule  
211(b), SCACR.

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December 21, 2018



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions  
Hon. Donald Hocker, Circuit Court Judge

Appellate Case No. 2018-000022

State of South Carolina ..... Respondent,

vs.

Adam Rowell ..... Appellant.

FINAL REPLY BRIEF OF APPELLANT

**RECEIVED**

DEC 12 2018

SC Court of Appeals

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## Argument

### Question I

**Did the trial court err in admitting the blood test results from the 8:54 pm blood draw when the hospital records establish that Adam Martyn. Rowell did not arrive at the emergency room until 9:00 pm, the records do not establish whether the blood was drawn from his arm or a line, the blood is unaccounted for a 30 minute period and a person who allegedly received the blood from the nurse did not testify?**

The State places little concern as to the time of the blood draw in this case. The factual impossibility of a patient who allegedly arrived at the hospital at 8:56 pm, the emergency room at 9:00 pm to have his blood drawn at 8:54 pm is dismissed by simply placing the word "approximately" before the times. Br. of Resp. at 3- 4. This issue is even more complicated when at the post trial motion hearing the State introduced a document that says Mr. Rowell arrived at the emergency room at 8:44 pm. Rec. on App. at 1450 (Post trial exhibit by State). This document shows that the triage time was 20:49 which was several minutes before the helicopter carrying Adam Rowell touched down at the hospital and some 11 minutes before the same document states Mr. Rowell arrived at the emergency room. Rec. on App. at 1450 (Post trial exhibit by State). To further complicate the matter, the document introduced by the State has the admission source for Mr. Rowell being Greenville County and not Greenwood County. The same document has Mr. Rowell arriving by LifeNet on the first page and he arrived by Life Flight on page three of the document. As noted in the opening brief, the testimony was that the blood was taken from a central line which was not placed in Mr. Rowell until after 9 pm, according to the medial record. The trial testimony was that blood was drawn from the central

line at 9:08.

These contradictory facts are ignored by the State and they simply state that Mr. Rowell at trial "did not question the reliability of the methods used to test Sample A at trial but merely differed with the result that were reached by the hospital." Br. of Resp. at 10. This comment ignores the thrust of the argument of Mr. Rowell at trial and in his brief - the State failed to prove the blood tested by the hospital was in fact Mr. Rowell's blood. The times set forth above make the fact that the hospital tested Mr. Rowell's blood, impossible. As the State has failed to prove the blood tested was in fact Mr. Rowell's, then the reliability of the methods used to test the blood are simply not relevant. The first question to be answered is "Whose blood was tested?"

In determining the question of whose blood was tested, the chain of custody and the manner of sealing, handling and the names on the vial containing the blood become extremely important. The State has cited *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (2007) to support the admissibility of the blood analysis in this case. *Sweet* actually supports the position of Mr. Rowell. *Sweet* involved a case in which the State sought to admit the drugs allegedly purchased by the confidential informant when the informant, whose name was known, who allegedly received the drugs from defendant, did not testify. The State relied upon the observations of the officers to try and establish the complete chain of custody. In holding the chain of custody was not proven, the Court said, "[I]n the absence of testimony from the confidential informant, the State's proof of chain of custody is incomplete because it fails to establish the identity of each custodian and the manner of handling of the evidence." *Id.* at 8, 647 S.E.2d at 206. The same is true in this case. The State never produced the testimony of Bill Evans, who, according to the testimony, handled the blood. Rec. on App. at 671, 124 to 672, 19. Without the testimony of

Mr. Evans, who was in possession of the blood for 30 minutes, the chain is not complete. We do not know what he did with the blood. We do not know if Mr. Rowell's name was on the container of blood he carried to the lab nor do we know how it was packaged or sealed. As the Court concluded in *Sweet*, "Although our courts have been willing to fill in gaps in the chain of custody where other evidence reasonably demonstrates the identity of each individual in the chain of custody and the manner of handling of the evidence, such circumstances are not present here." *Id.* at 8-9, 647 S.E.2d at 207. The same is true here. The other evidence required by our courts would be evidence of how it was sealed, evidence of lack of tempering of any sealing, and evidence of the labels contained on the vial. None of those factors are present here.

The error in this case is not harmless. The testimony in this case establishes that two blood draws were made. Both are highly questionable if not completely inadmissible. The hospital blood test is not subject to the inferences established in the implied consent law. *See, State v. Carrigan*, 284 S.C. 610, 328 S.E.2d 119 (Ct. App. 1985). If the jury rejected the SLED blood draw, then they improperly relied upon an inference charge as to the hospital blood draw which was not conducted pursuant to S. C. Code § 56-5-2950. In addition, Mr. Rowell has also questioned the admissibility of the second or SLED blood draw. The jury in this case easily could have used one test to support the validity of the other test when each test individually was not sufficient to satisfy the jury. Mr. Rowell was prejudiced by the admission of this test.

## Question II

**Did the trial court err in admitting into evidence the 8:54 pm blood draw when the testimony established that Adam M. Rowell had approximately 50% of the blood in his body replaced with either blood products or saline solution and the State produced no**

**evidence that the blood products transfusion and saline solution did not impact the reliability of the test administered?**

The State acknowledges that Mr. Rowell had in fact received substantial amounts of blood, blood products and saline solution before the hospital blood test was conducted. The State simply does not respond to the argument of Mr. Rowell that the State must establish the reliability of a blood test under such circumstances. All the State has argued is that the machine that tested the blood of Mr. Rowell was reliable. The reliability of the machine has never been the issue. The question is, "Is a reading from a blood sample in which more than 50% of a person's blood volume has been replaced, reliable?" The State never offered any testimony as to the accuracy of a blood test taken under such circumstances. As noted in the opening brief, the State has the burden of proving the reliability of the test they seek to introduce.

### **Question III**

**Did the trial court err in admitting the test results from the SLED blood draw when the blood draw was conducted after more than 150% of the blood volume of Adam Martyn Rowell had been replaced and the test results contained a level of Benadryl which was near lethal and therefore brought into question the accuracy of the entire test?**

The State in its brief ignores several points made in the brief of Mr. Rowell. A near lethal dose of Benadryl was contained in the blood sample submitted to SLED for analysis. According to expert testimony that the State never attempted to refute, such a level combined with a blood alcohol level of approximately .18 would make a person comatose. Over 150% of the blood volume of Mr. Rowell was replaced before the blood sample was taken. The State has not refuted these facts. The State simply argues Mr. Rowell did not attack the test used by SLED in

making this analysis. The State further argues that "The State is under no obligation to call rebuttal witnesses or contest the findings of a defense expert." As a general principle, this is correct. But in this case the "findings" are not the findings of the defense expert, but of the expert for the State. The expert for the State admitted that the level of Benadryl was 4.9. Rec. on App. at 1142, ll 9 - 14. The test was from a SLED test and not a test conducted by a defense laboratory. All the defense did as to the benadryl is adopt the result of the test conducted by SLED and as acknowledged by the experts for the State. No one disputes the benadryl level was 4.9. To make the test admissible, the State was under an obligation to explain how a near lethal dose of benadryl could have been found in the blood of Mr. Rowell. They did not. The fact that the blood tested contained a near lethal dose of benadryl is not an "alternative theory" but a fact which make the test result completely unreliable.

The State in its brief also ignores that more than 150% of the blood volume of Mr. Rowell had been replaced. The State offered no expert testimony that a blood test conducted under such circumstances is in fact reliable. The State cites no authority that a blood test conducted after such a massive transfusion is reliable, especially when their test result shows a benadryl level of 4.9. As noted in the opening brief, even the expert for the State would not attest to the reliability of a test after such massive transfusions. She simply stated "[M]y results are filed for what I received." Br. of App. at 22.

#### **Question IV**

**Did the trial court err in failing to conduct an evidentiary hearing as to a juror who failed to disclose that he had been arrested and had a pending criminal charge being prosecuted by the office of the solicitor for the 8<sup>th</sup> judicial circuit when such a question was**



**asked during jury voir dire?**

Under the facts of this case, the Defendant was not required to subpoena Juror 164 to the post trial hearing. All Mr. Rowell was required to do at that hearing was establish that Juror 164 was dishonest in his response to the question asked at the trial. Such a showing establishes a prima facie case of juror misconduct. Based upon this showing, the trial judge was required to conduct a hearing. During the email exchanges after the hearing, counsel for Mr. Rowell specifically requested that a hearing be conducted for the juror to testify. The trial judge declined to conduct such a hearing.

In the prior cases in South Carolina, a hearing was held once it was determined that a juror may not have answered a question truthfully. *See, State v. Woods*, 338 S.C. 561, 527 S.E.2d 128 (Ct. App. 2000), *aff'd*, 345 S.C. 583, 550 S.E.2d 282 (2001) and *Long v. Norris & Associates, LTD*, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000). Here, the trial judge, notwithstanding the request of trial counsel, refused to conduct such a hearing.

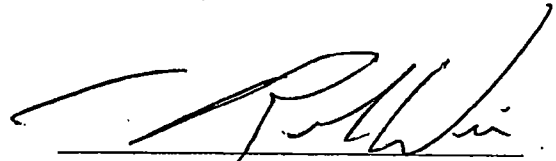
Mr. Rowell has been clear in his brief that a new trial should be ordered because of this error. As noted in the opening brief, this Court could order a hearing with juror 164, but such a hearing would be useless with the time that has passed since the trial. Contrary to the position of the State, the record in this case establishes that the juror did not give a proper response to a question asked by the Court. This is all the showing that is needed for a new trial. If the State wanted to establish that the answer was given in good faith or the juror misunderstood the question, the State had the burden of explaining the false answer given by the juror. The record alone is sufficient to grant a new trial based upon a juror giving a false answer to a question asked by the trial Court. Some 12 other jurors had no problem understanding the question and

giving a correct and truthful answer.

### CONCLUSION

For the foregoing reasons and for the reasons set forth in the opening brief, this conviction and sentence of Adam Martyn Rowell should be reversed and this matter remand for a new trial with instructions that the blood alcohol test result be excluded.

Dec 7<sup>th</sup>, 2018



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**Jul 20 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Greenwood County  
Honorable Donald B. Hocker, Circuit Court Judge  
Appellate Case No. 2018-000022

THE STATE,

Respondent,

vs.

ADAM ROWELL,

Appellant.

PETITION FOR REHEARING

On July 7, 2021, this Court affirmed the convictions of Appellant for felony driving under the influence resulting in death and felony DUI resulting in great bodily injury. State v. Rowell, Opinion No. 5832 (S.C. Ct. App. filed July 7, 2021) (Shearhouse Adv. Sh. No. 23). This Court correctly affirmed Appellant's convictions on each of the four issues raised on appeal by Appellant. As to the first issue raised on appeal by Appellant, this Court held the trial judge did not abuse his discretion in admitting Sample A into evidence, because the State established a chain of custody as far as practicable given the circumstances of Appellant's case. While the State agrees with the holding of the Court that the trial judge did not abuse his discretion in admitting Sample A, the State asks for this Court to reconsider whether the State was required to prove a chain of custody for Sample A at all in light of the fact that Sample A was taken for medical rather than investigative purposes. On this limited issue, the State respectfully submits a Petition for Rehearing.

In Jamison v. Morris our Supreme Court considered whether expert testimony was properly admitted when the expert witness testified regarding a deceased driver's probable level of impairment based on a blood alcohol level test conducted by SLED. Jamison v. Morris, 385 S.C. 215, 226, 684 S.E.2d 168, 174 (2009). The Supreme Court held the trial judge erred in admitting the expert testimony because the expert's testimony was based on a blood sample analyzed by SLED that did not have an adequate chain of custody. Morris 385 S.C. at 227, 684 S.E.2d at 174. Because the sample was drawn for medical purposes but tested for investigative purposes, the Court held the sample was unreliable without a chain of custody. Id. However, citing to their opinion in Ex parte DHEC 350 S.C. 243, 565 S.E.2d 293 (2002), the Court ruled the sample would have been admissible had it been drawn and tested for medical purposes. Id. The Court provided the following rationale for its holding: "Here, we have a situation where a sample was drawn at a hospital for medical purposes but never tested. Had the hospital performed Carlos' BAL test as part of its medical treatment of him, the results would have been a part of Carlos' medical record. Under Ex parte DHEC, those results would be presumed reliable as a business record regardless of chain of custody." Id.

Here, this Court appropriately recognized "Sample A was collected for medical purposes to save Rowell's life and not for any investigative purpose, which makes it unlikely it was tampered with." State v. Rowell, Opinion No. 5832 (S.C. Ct. App. filed July 7, 2021) (Shearhouse Adv. Sh. No. 23 at 53). Indeed, because Sample A was taken and tested for medical purposes, the sample should be deemed trustworthy without a chain of custody being established because it was relied on for the diagnosis and treatment of Appellant. The mere fact that Sample A was subsequently introduced against Appellant in a criminal prosecution should not diminish its trustworthiness. Therefore, the State respectfully asks this Court to reconsider whether the

State was required to produce a chain of custody in light of the circumstances present in Appellant's case.

**CONCLUSION**

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, and find that the State was not required to construct a chain of custody for Sample A because it was taken and tested for the purposes of medical diagnosis.

Respectfully submitted,

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July 20, 2021

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State, Respondent

v.

Adam Rowell, Appellant

Appellate Case No 2018-000022

**RECEIVED**

**Aug 02 2021**

**SC Court of Appeals**

Appeal From Greenwood County  
Heard September 22, 2020 - Filed July 7, 2021

Opinion No 5832

**Petition for Rehearing**

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Adam Rowell hereby requests that this Court re-hear this matter. Further, pursuant to Rule 219(b) of the South Carolina Appellate Court Rules, this Court should re-hear this matter *en banc* as the harmless error standard of review in this case is inconsistent with the standard set forth by this Court in *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996) and the South Carolina Supreme Court in *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (2007). Further, the error preservation decision is in conflict with the standard of this Court in *State v. Williams*, 417 S.C. 209, 789 S.E.2d 582 (Ct. App. 2016). This Petition for Rehearing is based upon the following:

**I: The Objection as to Reliability of Sample A was Preserved**

This Court erred in concluding "Rowell never raised to the trial court the issue that a blood transfusion caused Sample A's BAC testing results to be unreliable," *State v. Rowell*, Op. No. 5832 (S.C. Ct. App. filed July 7, 2021 (Shearhouse Adv.Sh. No. 23 at 54). This Court erred in two respects as to this issue.

A. First, the issue was raised before the trial judge pre-trial, during the trial, and post-trial. In a pre-trial discussion as to the issues involved in the trial, defense counsel told the court:

Again, we would challenge the sufficiency of the chain of custody on both draws, as well as the substance and reliability of both draws.

Rec. on App. at 13, ll 12-14.

In response to this, the assistant solicitor told the Court:

MR. BLACK: Judge, ultimately the State's opinion is that reliability goes to weight and not admissibility. So, whatever the Defense wants to put up is fine with us, but we obviously feel that your ruling will be dependant on what you hear in trial.

Rec. on App. at 15, ll 1-5.

The trial judge also acknowledged the issues involved in this case when he stated:

So it looks like, then, we need to deal with pretrial the issue of alcohol containers found in both vehicles and this reliability of the blood alcohol content analysis with respect to both draws.

Rec. on App. at 15, ll 16-19

As to Sample A, the EMS person who first treated Mr. Rowell was cross-examined by defense counsel as to the saline solution and blood products given to Mr. Rowell. Rec. on App. at 522, ll 23 to 523, ll 1. These are the factors as to reliability.

During the trial, the issue as to the reliability of the hospital test, Sample A, was specifically preserved when the chain of custody issue was argued. As defense counsel stated:

MR. HENDERSON: And, Judge, we just want to confirm. You're



just ruling that you're finding there was a proper chain of custody?  
THE COURT: Yeah. Now, I mean, if there's -- if there's any other issues that we need to address as to the admissibility of the actual results then I will entertain that. I'm just -- even though getting over to Bullcoming I think we kind of deviated just a little bit. But apart from that, I'm finding chain of custody. And if there's any other issues related to the result then I will certainly deal with that at the appropriate time.

MR. HENDERSON: We have a lot of issues dealing with results.  
Rec. on App. at 640, ll 6-18.

The Court then stated:

And then if the Defense wants to attack it's reliability then you have every right to do that in your case and [sic] chief. But I don't think I have to hear from all sides on reliability before I determine admissibility. So again, assuming that the State's witnesses are going to get into the reliability issue, then -- and if I'm satisfied, I'm going to allow it in assuming everything other thing is met. But I'm not going to allow you all to put up your expert at this stage to attack reliability. Okay?

Rec. on App. at 644, ll 12-18.

After this ruling, defense counsel sought further clarification and had this discourse with the trial court:

MS. MERRILL: Your Honor, may I clarify one thing? You want us to do the reliability through cross-examine in front of the jury that was not proffered in camera, right? I'm just making sure that --

THE COURT: Right. Without proffering your expert. That would be done in your case and [sic] chief. But certainly you can cross-examine the State witnesses on reliability.

Rec. on App. at 645, ll 19-25.

At this point, the trial court told defense counsel he was going to admit Sample A over an objection as to reliability. The trial court improperly concluded that reliability was not a threshold issue for the trial court to determine.<sup>1</sup> "The familiar evidentiary mantra that a challenge

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<sup>1</sup> This Court acknowledged the trial court failed to make an independent determination as to the reliability as to Sample B. This Court said, "Specifically, the trial court clarified it did not

to evidence goes to "weight, not admissibility" may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence." *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). Moreover, the trial court specifically prohibited defense counsel from introducing in camera evidence as to the reliability of Sample A. The trial court ruled evidence of the reliability of the blood test could only be raised in the defense case in chief and through cross examination. When the trial court denied the defendant the right to offer testimony as to reliability at the hearing, the issue is preserved. At the in camera hearing as to Sample B, the trial court acknowledged he had ruled upon the reliability of Sample A, the hospital draw. The trial court said, "nor did I make a finding that the results from the hospital was reliable." Rec. on App. at 826, ll 13-14. The statement would have been unnecessary if the trial judge did not understand that defense counsel had previously asked him to rule upon the reliability of Sample A. As the trial judge refused to permit defense testimony as to the validity of the Sample A, Defense counsel was relegated to raising the issue of reliability at the directed verdict motion and in a motion for a new trial. Defense counsel raised the issue at the directed verdict motion and in the post-trial motions. At the directed verdict motion, defense counsel stated, "[W]e would like to review [sic] all prior motions." Rec. on App. at 908, ll 11-12. This would have included the motion as to the reliability of Sample A.

In the post-trial motions, defense counsel again raised the issue of the reliability of Sample A. In specific headings, the issue was referred to as "VI First Blood Draw - Contamination" and "VIII Both Blood Draws - Lack of Scientific Reliability." Rec. on App. at

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find the results reliable, only that the methodologies and procedures used in the testing were reliable." *Rowell*, at 50.

1358 and 1360. The State received a copy of the post-trial Motion. The State never argued at the post-trial hearing that the issue as to the reliability of Sample A was not argued during the trial and ruled upon by the trial judge. In response to this motion, the trial judge stated:

I've gone through your motion and your supplemental motion. I've gone back through all my trial notes. I think basically, there may be two new issues: the juror issue and then -- and I'm just going to refer to it as the "Greenville Hospital" issue. Everything else is basically what was raised during the course of the trial? Is that correct Mr. Henderson?

MR. HENDERSON: That is correct, your honor.  
Rec. on App. at 1380, ll 17-25.

In the order denying the motion for a new trial, the trial court included Issues VI and VIII among those "issues that were argued during trial." Rec. on App. at 1423. The Court denied relief as to VI and VIII and said "These arguments are again denied." Rec. on App. at 1423. In denying the motion for a new trial, he again ruled upon the reliability of both blood draws. At the post-trial hearing, neither the trial judge nor the State contended the Issues VI and VIII were not raised during the trial. "It is a fundamental principle that a contemporaneous objection is required at trial to properly preserve an error for appellate review." *State v. Black*, 319 S.C. 515, 521, 462 S.E.2d 311, 315 (Ct. App. 1995).

The purpose of the preservation of error rule is to ensure that the trial judge had the opportunity to rule on the issue below. The trial judge in this case ruled on the issue below. The trial judge in a written order acknowledged he had ruled upon the issue during the trial. If the trial judge in a written order states he ruled upon a timely objection, this Court should be required to accept that finding at face value and decide this issue on the merits. As this Court has said, "[W]here the question of preservation is subject to multiple interpretations, any doubt

should be resolved in favor of preservation." *State v. Williams*, 417 S.C. 209, 229, 789 S.E.2d 582, 593 (Cl. App. 2016)(internal citations omitted).

This Court found as to Sample B, when over 150% of a person's blood has been replaced by blood, blood products or saline solution, the result is not admissible. As to Sample A, upon a finding that the issue was preserved, this Court should hold that when approximately 50% of a person's blood has been replaced by blood, blood products, or saline solution, the result is not admissible. If 150% replacement is not admissible, this Court has no basis to determine what level of replacement does not taint the blood being tested. If the blood sample is not 100% the blood of the defendant, the State has not provided to this Court or the Court below any basis in law or science as to where the line should be drawn. The Sample A blood draw should also have been excluded by the trial judge.

B. Second, the State never raised the issue of error preservation in its brief. The Court, therefore, erred in finding the issue was not preserved. No party to this appeal raised the issue of error preservation as to Sample A as to reliability. As former Court of Appeals Chief Justice Alex Sanders said, "More simply put, appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Cl. App. 1984), opinion quashed, 286 S.C. 85, 332 S.E.2d 100 (1985). The obvious reason for such a rule is that when neither party briefs an issue, this Court would be well advised not to rule upon the issue without requesting that the issue be briefed. While this Court may affirm a case based upon any reason appearing in the record, this Court should not do so unless the respondent has briefed the issue and the appellant has had the opportunity to respond to the additional sustaining grounds. Such a policy is not only



fair, but demanded by due process. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)

## **II. Court Erred in Finding the Chain of Custody was Sufficient**

The Court erred in failing to hold the chain of custody as to Sample A was not properly established. The Court, in affirming the lower court, ruled the unexplained discrepancies were due to the time differences between the medical and flight personnel. This Court stated, "The factual circumstances of this case reflect that the exact syncing of times between medical and flight personnel was unlikely." *Rowell* at 54. This finding is not correct. The flight records and the hospital records are in sync. The significant and unexplained time discrepancies are solely within the Greenville Hospital System records. Two charts illustrating the discrepancies are attached as Exhibit A.

The flight records show that Mr. Rowell was handed over to the hospital at 8:59 pm. Rec. on App. at 1461. The Greenville Hospital records confirmed he was received at 9:00 pm. (Rec. on App. at 1452, NURSING PROCEDURE: NURSES NOTES 21:00 Patient arrives; 1451, NURSING ASSESSMENT: Patient arrived at 21:00); 1455, Accepting Unit 11/15/20:59 EST). However, the hospital records are not in sync if one assumes they all apply to Mr. Rowell. To further confuse the issue, the hospital records show the triage time as "Sat Nov 15, 2014 20:49." Rec. on App. at 1450. Again, this hospital record is eleven minutes before other hospital records show Mr. Rowell arrived at the hospital.

The records of Greenville Hospital are hopelessly confusing as to Mr. Rowell. For example, the Greenville Hospital records reflect a blood sample was taken at 8:54 pm. Rec. on

App. at 742, II 19-20; 743, II 7-10. This was six minutes before the Greenville Hospital records show he arrived at the hospital. This Court did not discuss or consider that fact. In addition, the Greenville Hospital records also show the "first greet" was at 8:44 pm. (Rec. on App. at 1450, TIME OF GREET Nov. 15, 2014 20:44). Again, this was 16 minutes before the same hospital records show Mr. Rowell arrived at the hospital, but consistent with the triage time discussed earlier. The triage time is inconsistent with the hospital records as to the time of Mr. Rowell's arrival. The arrival time of Mr. Rowell at 9:00 pm was also confirmed by his air ambulance. Two independent sources confirmed he arrived at 9:00 pm. These discrepancies within the records of Greenville Hospital were not discussed by this court nor explained by the state at trial.

The time differences in the hospital records are inconsistent only if one assumes the times all refer to Mr. Rowell. The inconsistent times range from six to 16 minutes. These time differences cannot be explained as "clock slop." Those time difference show something is wrong with the records. The other inconsistencies mentioned here do not relate to times. They simply cannot be explained if they all refer to Mr. Rowell.

This Court further failed to discuss other unexplained discrepancies within the records of the Greenville Hospital System. In the initial report of the hospital, Mr. Rowell is listed as being admitted from Greenville County. (Rec. on App. at 1450, ADMISSION SOURCE). Mr. Rowell was admitted from Greenwood County. Further, the same document, under "TRANSPORT," listed him as being brought to the hospital by LifeNet, a different air ambulance from Life Flight. A few pages over in the same hospital records, under "NURSING PROCEDURE: NURSE NOTES," he is listed as delivered by "Life Flight," which is correct. Rec. on App. at 1452. The NURSING ASSESSMENT also reflects "Life Flight." Rec. on App.

at 1451.

The initial report, under "BEDBOARD ENTRY," states the patient had no equipment or tubes. Rec. on App. at 1450. The same hospital record on the next page under "NURSING ASSESSMENT" states Mr. Rowell had a "C-collar, Intubation." Rec. on App. at 1451. The two comments are factually inconsistent.

This Court found that Sample A was drawn by Dr. Snow. This Court failed, however, to explain that Sample A, drawn at 8:54pm, could not have been drawn by Dr. Snow through a "Central line" from Mr. Rowell, as the hospital records show the central line was not put in Mr. Rowell until 9:08 pm. (Rec. on App. at 1451, PROCEDURES).

This Court in its order also failed to discuss the complete absence of testimony as to the location of the blood for approximately 30 minutes. The often used phrase is a chain of custody must be established "as far as practicable". Here the state neither had the person who might have had possession of the blood for the unexplained 30 minutes testify nor did they produce any electronic system to show where it was. This Court failed to consider the missing witness. As Dr. John Reddic testified at the trial:

A. Specimens can be hand-delivered or transported through a pneumatic tube system.

Q And in this particular case were you -- from the audit trail were you able to identify if it was hand-delivered or tubed?

21 A I'm not able to identify that from the audit trail.

Rec. on App. at 551, ll 16-21.

Robert Smith, the laboratory technician who tested the blood, did not know from whom he received the blood. He testified:

Q. Who gave you the three tubes?

A. I don't know who gave me those tubes.

Rec. on App. at 606, ll 22-23.

As the state could not establish the means of delivery nor even the person who delivered the blood to the lab, the State has not established the chain "as far as practicable." *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (2007). Establishing either through direct testimony or through electronic records who was responsible for the blood for the 30 minutes is essential to establish a complete chain. The record does establish that a tech named Bill Evans might have had possession of the blood. No records or testimony, however, actually establish that fact. Mr. Smith said:

Q. So there might have been a person named Bill Evans who had possession of this blood?

A. Uh-huh.

Rec. on App. at 672, ll 3-5.

Thus, this Court erred in concluding in its order, "(3) Bill Evans was on duty and walked Sample A to the lab." *Rowell*, at 53.

This is not a case where a package is sealed and arrives at its destination in the same sealed condition. Under those circumstances, every person who handled the package on its cross-country trip need not be identified, nor would each person need to testify. The unique sealing would be sufficient. "The lab technician and the officers all testified that no tampering had occurred to the sealed and uniquely-marked tamper-proof package received and tested by the technician." *Barr v. State*, 302 Ga. App. 60, 65, 690 S.E.2d 643, 647 (2010), overruled on other grounds by *Scott v. State*, 295 Ga. 39, 757 S.E.2d 106 (2014). The sealed package would have the name, date, and time on it and could then be introduced as proof it was in the same condition as when originally mailed. The packaging was not kept in this case, therefore, who handled the



blood and what they did with it becomes much more important.

This case actually should also be controlled by *State v. Sweet*, 374 S.C. 1, 8, 647 S.E.2d 202, 207 (2007). In that case an informant who briefly handled the drugs did not testify. The Court held the failure to call the informant or produce an affidavit from the informant was fatal to establishing a proper chain of custody. As the Court said, "In other words, the State simply did not present proof of the chain of custody as far as practicable." The inability, or unwillingness, of the state to produce either Mr. Evans or some other electronic record as to who had the blood, should not be a basis to admit the blood in this case. They have not established the chain as "far as practicable."

Judge Hocker said at the trial:

I can certainly envision that it is controlled chaos and their one goal and one goal only is to try to save a human life, which I appreciate very much. However, I cannot use that as a reason or an excuse to make any sort of legal rulings.

Rec. on App. at 686, 11-4-8.

Efforts to save someone's life are often in conflict with due process. And when that life has been saved and the state seeks to put that person in prison, due process must control. Controlled chaos is not the standard for admissibility of evidence. Controlled chaos cannot trump due process, even if the goal is to save a life.

### **III. Court Improperly Applied the Harmless Error Standard**

A. This Court failed to properly apply the harmless error standard. The South Carolina Supreme Court has said, "Engaging in this harmless error analysis, we note that our jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty

verdict." *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). The facts of this case establish that the error was not harmless.

First, this Court failed to acknowledge that the SLED blood draw, Sample B, was the only blood draw the State used to obtain a jury charge of an inference of intoxication at a level of .08. Without the second blood draw, the Court could not have charged the inference. This Court failed to recognize the prejudice inherent in the inference charge as to the Sample B which the court excluded.

Second, this Court did not analyze the facts of this case based upon the jury rejecting the hospital blood draw, Sample A, and convicting Mr. Rowell solely on the basis of the second blood draw. The jury, under the facts, could have rejected the first blood draw based upon the lack of a chain of custody. The jury heard the confusing times and could easily have discredited the first blood draw because it was taken before Mr. Rowell arrived at the hospital.

Third, the jury could have had a reasonable doubt as to both blood draws but concluded one confirmed the other. While neither alone would have convicted Mr. Rowell, both together did convince the jury.

Under the appropriate standard of review, this Court must conclude that the error was not harmless beyond a reasonable doubt. Under any of the three scenarios, this Court could not conclude, as a matter of law, that the second blood draw did not contribute to the verdict. The standard for finding harmless error is very high. As this Court has said, "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996). No

court could so conclude under the facts of this case.

#### **IV. Defense Counsel and the State Requested a Hearing as to Juror 164**

This Court erred in holding that the issue as to Juror 164 required a hearing before a judge could rule upon the issue. This Court, in its opinion, failed to consider that the record, even without any testimony from Juror 164, establishes that the Juror was asked about pending criminal charges. The Juror did not respond, which simply told the court and the lawyers he had no pending criminal charges. As this Court has said, "It is the duty of every potential juror to make true and full disclosures during voir dire because counsel is entitled to rely on the answers in determining whether to exercise a peremptory strike." *Long v. Norris & Associates, LTD*, 342 S.C. 561, 573, 538 S.E.2d 5, 11 (Ct. App. 2000). The record in this case establishes the response by Juror 164 was not truthful. Once the record establishes the juror's answer was not truthful, the obligation of the moving party is over. The record at that point is sufficient to grant the moving party a new trial.

In ruling on this issue, this Court said, "Without Juror 164's testimony or some other supporting evidence, the record is insufficient to overturn the trial court's order." *Rowell*, at 56. The Court failed to consider the record in this case. As stated above, the record established the fact the Juror was not honest in his response. This Court failed to consider the factual finding by the trial judge that the Juror did not understand the question is not supported by any evidence in the record. Before a trial court could make this factual determination, the trial court would be required to place the Juror under oath and hear his testimony. Thus, the finding of the trial court that the Juror's concealment was unintentional is without any evidence in the record and is, therefore, an error as a matter of law. As the South Carolina Supreme Court has said, "An abuse

of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). With no factual basis to conclude, "[T]he Juror 164's concealment was unintentional." (Rec. on App. at 1426) the trial court erred as a matter of law in making such a conclusion.

This Court further erred in ruling on the juror issue by failing to consider that defense counsel specifically requested a hearing in which the juror could testify. As defense counsel stated in the email exchange dated December 12, 2017, "The defense believes that a hearing should be conducted so that the juror can be questioned under oath." Rec. on App. at 1442. This email was in response to an email from the assistant solicitor dated December 11, 2017 in which the assistant solicitor stated, "At this point, we think it is appropriate for the Court [to] inquire upon Juror #164 this week to determine whether or not the concealment was intentional. He is represented by Janna Nelson, and I imagine at the Courts [sic] request, he could be available this week to answer any questions you might have." Rec. on App. at 1438. Both parties requested a hearing as to the Juror. The trial court refused to conduct a hearing. As both sides requested a hearing, this Court improperly concluded that the issue is not preserved because defense counsel did not subpoena the Juror to the November 27, 2017 hearing.

Subpoenaing the Juror to the November 27 hearing would not have been productive. Prior to that hearing, defense counsel had asked the court reporter what were the questions that related to the Juror issue. The Defense represented to the court what the court reporter had told them. Rec. on App. at 1408, 1112-17. Without the actual transcript of the exact question, any testimony from the Juror would not have been productive. Only after the transcript was produced

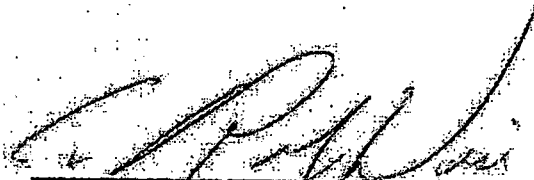


could direct and cross examination of the Juror been effective. On December 7, 2017, defense counsel advised the court the transcript had been ordered. Rec. on App. at 1433. Thus, this Court should not have concluded that defense counsel did not seek to subpoena the Juror to a hearing.

### Conclusion

For the foregoing reasons, this Court should rehear this matter either by the original panel or *en banc*, correct the order as to the factual and legal errors set forth in this Petition, and issue an order reversing the conviction of Adam Rowell in which both blood draws are excluded from evidence.

August 2, 2021



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# Exhibit A

## Timeline of Events

8:26 Life Flight helicopter transporting Adam Rowell departs Greenwood County (Rec. on App. at 1455, III "Depart with Patient")

8:32 Life Flight trauma alert called to Greenville Hospital (Rec. on App. at 1460, III "Event Log")

8:44 Patient later alleged to be Adam Rowell arrives at Greenville Hospital via LifeNet from Greenville County, attended by Dr. Bradley Snow (Rec. on App. at 1450, III "Time of Greet")

8:49 Initial triage for Greenville patient later alleged to be Adam Rowell (Rec. on App. at 1450, III "Triage Time")

8:54 Blood sample later attributed to Adam Rowell drawn from 8:44 patient (Rec. on App. at 742, II 19-20 and Rec. on App. at 743, II 7-10)

8:55 Life Flight transporting Adam Rowell unloads Mr. Rowell from the transporting vehicle (Rec. on App. at 1460, III "Event Log")

8:59 Life Flight indicates acceptance of Adam Rowell by Greenville Hospital (Rec. on App. at 1455, III "Accepting Unit")

9:00 Life Flight signs over Adam Rowell to Greenville Hospital (Rec. on App. at 1455, III "Signover")

9:00 Hospital records indicate Adam Rowell "arrived at 21:00" (Rec. on App. at 1451, III "Prehospital Record") and "2100, Patient Arrives (Rec. on App. at 1452, III "Nurse Notes")

9:08 Central Line inserted into Adam Rowell and blood drawn via central line (Rec. on App. at 1451, III "Procedures")



## Comparison of Records

Hospital records indicate Adam Rowell arrives via Life Flight (1451, Rec. on App. at 1452, III "Prehospital Record"; and Rec. on App. at 1452, III "Nurse Notes")

Hospital records indicate Adam Rowell had a "C-collar, Intubation" (Rec. on App. at 1451, III "Prehospital Record")

Hospital Records indicate Adam Rowell was "intubated en route" (Rec. on App. at 1451, III "Primary Survey")

10:12 Bedboard Entry for 8:44 patient with "Equipment: \*None, Tubes: \*None" attributed to hospital records of Adam Rowell (Rec. on App. at 1450, III "Bedboard Entry")

# The South Carolina Court of Appeals

The State, Respondent,

v.

Adam Rowell, Appellant.

Appellate Case No. 2018-000022

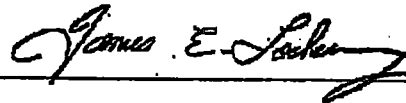
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## ORDER

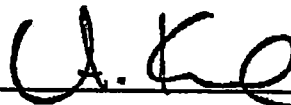
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Appellant and Respondent filed petitions for rehearing. After careful consideration of Appellant's petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

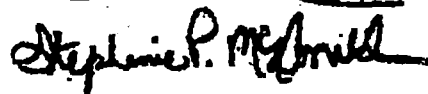
Respondent's petition for rehearing is also denied; however, we order that opinion number 5832, filed July 7, 2021, be withdrawn and that the attached opinion be substituted therefore.



C.J.



J.



J.

Columbia, South Carolina

cc:

**FILED**  
**Aug 25 2021**

Clarence Rauch Wise, Esquire  
Billy J. Garrett, Jr., Esquire  
Carson McCurry Henderson, Esquire  
Jane Hawthorne Merrill, Esquire  
Alan McCrory Wilson, Esquire  
Jonathan Scott Matthews, Esquire  
David Matthew Stumbo, Esquire  
The Honorable Donald B. Hocker

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

Sep 02 2021

SC Court of Appeals

The State, Respondent

v.

Adam Rowell, Appellant

Appellate Case № 2018-000022

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Appeal From Greenwood County  
Heard September 22, 2020 - Filed July 7, 2021  
Withdrawn, Substituted, and Refiled August 25, 2021

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Opinion № 5832

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**Petition for Rehearing**

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Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Adam Rowell hereby requests that this Court re-hear this matter. Further, pursuant to Rule 219(b) of the South Carolina Appellate Court Rules, this Court should re-hear this matter *en banc* as the harmless error standard of review in this case is inconsistent with the standard set forth by this Court in *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996) and the South Carolina Supreme Court in *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (2007). Further, the error preservation decision is in conflict with the standard of this Court in *State v. Williams*, 417 S.C. 209, 789 S.E.2d 582 (Ct. App. 2016).

In the refiled opinion, this Court addressed the concerns of the State in footnote 1. This

Court did not address in the refiled opinion any of the concerns of the Appellant, including the request for a re-hearing *en banc* to address the perceived conflict with other decisions of the Court of Appeals. As the modified order of this Court fails to address the concerns of Adam Rowell, Mr. Rowell re-submits his Petition for Rehearing based upon the following:

**I. The Objection as to Reliability of Sample A was Preserved**

This Court erred in concluding "Rowell never raised to the trial court the issue that a blood transfusion caused Sample A's BAC testing results to be unreliable." *State v. Rowell*, Op. № 5832 (S.C. Ct. App filed August 25, 2021 (Shearhouse Adv.Sh. № 29 at 25)). This Court erred in two respects as to this issue.

A. First, the issue was raised before the trial judge pre-trial, during the trial, and post-trial. In a pre-trial discussion as to the issues involved in the trial, defense counsel told the court:

Again, we would challenge the sufficiency of the chain of custody on both draws, as well as the substance and reliability of both draws.

Rec. on App. at 13, ll 12-14.

In response to this, the assistant solicitor told the Court:

MR. BLACK: Judge, ultimately the State's opinion is that reliability goes to weight and not admissibility. So, whatever the Defense wants to put up is fine with us, but we obviously feel that your ruling will be dependant on what you hear in trial.

Rec. on App. at 15, ll 1-5.

The trial judge also acknowledged the issues involved in this case when he stated:

So it looks like, then, we need to deal with pretrial the issue of alcohol containers found in both vehicles and this reliability of the blood alcohol content analysis with respect to both draws.

Rec. on App. at 15, ll 16-19

As to Sample A, the EMS person who first treated Mr. Rowell was cross-examined by

defense counsel as to the saline solution and blood products given to Mr. Rowell. Rec. on App. at 522, 1 23 to 523, 1 1. These are the factors as to reliability.

During the trial, the issue as to the reliability of the hospital test, Sample A, was specifically preserved when the chain of custody issue was argued. As defense counsel stated:

MR. HENDERSON: And, Judge, we just want to confirm. You're just ruling that you're finding there was a proper chain of custody?

THE COURT: Yeah. Now, I mean, if there's -- if there's any other issues that we need to address as to the admissibility of the actual results then I will entertain that. I'm just -- even though getting over to Bullcoming I think we kind of deviated just a little bit. But apart from that, I'm finding chain of custody. And if there's any other issues related to the result then I will certainly deal with that at the appropriate time.

MR. HENDERSON: We have a lot of issues dealing with results. Rec. on App. at 640, 11 6-18

The Court then stated:

And then if the Defense wants to attack it's reliability then you have every right to do that in your case and [sic] chief. But I don't think I have to hear from all sides on reliability before I determine admissibility. So again, assuming that the State's witnesses are going to get into the reliability issue, then -- and if I'm satisfied, I'm going to allow it in assuming everything other thing is met. But I'm not going to allow you all to put up your expert at this stage to attack reliability. Okay?

Rec. on App. at 644, 11 12-18

After this ruling, defense counsel sought further clarification and had this discourse with the trial court:

MS. MERRILL: Your Honor, may I clarify one thing? You want us to do the reliability through cross-examine in front of the jury that was not proffered in camera, right? I'm just making sure that --

THE COURT: Right. Without proffering your expert. That would be done in your case and [sic] chief. But certainly you can cross-examine the State witnesses on reliability.

Rec. on App. at 645, 11 19-25.

At this point, the trial court told defense counsel he was going to admit Sample A over an objection as to reliability. The trial court improperly concluded that reliability was not a threshold issue for the trial court to determine.<sup>1</sup> “The familiar evidentiary mantra that a challenge to evidence goes to ‘weight, not admissibility’ may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.” *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). Moreover, the trial court specifically prohibited defense counsel from introducing in camera evidence as to the reliability of Sample A. The trial court ruled evidence of the reliability of the blood test could only be raised in the defense case in chief and through cross examination. When the trial court denied the defendant the right to offer testimony as to reliability at the hearing, the issue is preserved. At the in camera hearing as to Sample B, the trial court acknowledged he had ruled upon the reliability of Sample A, the hospital draw. The trial court said, “nor did I make a finding that the results from the hospital was reliable.” Rec. on App. at 826, ll 13-14. The statement would have been unnecessary if the trial judge did not understand that defense counsel had previously asked him to rule upon the reliability of Sample A. As the trial judge refused to permit defense testimony as to the validity of the Sample A, Defense counsel was relegated to raising the issue of reliability at the directed verdict motion and in a motion for a new trial. Defense counsel raised the issue at the directed verdict motion and in the post-trial motions. At the directed verdict motion, defense counsel stated, “[W]e would like to review [sic] all prior motions.” Rec. on App. at 908, ll 11-12. This

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<sup>1</sup> This Court acknowledged the trial court failed to make an independent determination as to the reliability as to Sample B. This Court said, “Specifically, the trial court clarified it did not find the results reliable, only that the methodologies and procedures used in the testing were reliable.” *Rowell*, at 20.

would have included the motion as to the reliability of Sample A.

In the modified order, this Court did not address the issue as to the post trial motion which specifically raised the issue. In the post-trial motions, defense counsel again raised the issue of the reliability of Sample A. In specific headings, the issue was referred to as "VI First Blood Draw - Contamination" and "VIII Both Blood Draws - Lack of Scientific Reliability." Rec. on App. at 1358 and 1360. The State received a copy of the post-trial Motion. The State never argued at the post-trial hearing that the issue as to the reliability of Sample A was not argued during the trial and ruled upon by the trial judge. In response to this motion, the trial judge stated:

I've gone through your motion and your supplemental motion. I've gone back through all my trial notes. I think basically, there may be two new issues: the juror issue and then -- and I'm just going to refer to it as the "Greenville Hospital" issue. Everything else is basically what was raised during the course of the trial? Is that correct Mr. Henderson?

MR. HENDERSON: That is correct, your honor.  
Rec. on App. at 1380, ll 17-25.

In the order denying the motion for a new trial, the trial court included Issues VI and VIII among those "issues that were argued during trial." Rec. on App. at 1423. The Court denied relief as to VI and VIII and said "These arguments are again denied." Rec. on App. at 1423. In denying the motion for a new trial, he again ruled upon the reliability of both blood draws. At the post-trial hearing, neither the trial judge nor the State contended the Issues VI and VIII were not raised during the trial. "It is a fundamental principle that a contemporaneous objection is required at trial to properly preserve an error for appellate review." *State v. Black*, 319 S.C. 515, 521, 462 S.E.2d 311, 315 (Ct. App. 1995). Footnote 1 of the opinion which denied the State



petition for rehearing, is in according with this principle.

The purpose of the preservation of error rule is to ensure that the trial judge had the opportunity to rule on the issue below. The trial judge in this case ruled on the issue below. The trial judge in a written order acknowledged he had ruled upon the issue during the trial. If the trial judge in a written order states he ruled upon a timely objection, this Court should be required to accept that finding at face value and decide this issue on the merits. As this Court has said, “[W]here the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.” *State v. Williams*, 417 S.C. 209, 229, 789 S.E.2d 582, 593 (Ct. App. 2016)(internal citations omitted).

This Court found as to Sample B, when over 150% of a person’s blood has been replaced by blood, blood products or saline solution, the result is not admissible. As to Sample A, upon a finding that the issue was preserved, this Court should hold that when approximately 50% of a person’s blood has been replaced by blood, blood products, or saline solution, the result is not admissible. If 150% replacement is not admissible, this Court has no basis to determine what level of replacement does not taint the blood being tested. If the blood sample is not 100% the blood of the defendant, the State has not provided to this Court or the Court below any basis in law or science as to where the line should be drawn. The Sample A blood draw should also have been excluded by the trial judge.

B. Second, the State never raised the issue of error preservation in its brief. The Court, therefore, erred in finding the issue was not preserved. No party to this appeal raised the issue of error preservation as to Sample A as to reliability. As former Court of Appeals Chief Justice Alex Sanders said, “More simply put, appellate courts in this state, like well-behaved children,

do not speak unless spoken to and do not answer questions they are not asked.” *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), opinion quashed, 286 S.C. 85, 332 S.E.2d 100 (1985). The obvious reason for such a rule is that when neither party briefs an issue, this Court would be well advised not to rule upon the issue without requesting that the issue be briefed. While this Court may affirm a case based upon any reason appearing in the record, this Court should not do so unless the respondent has briefed the issue and the appellant has had the opportunity to respond to the additional sustaining grounds. Such a policy is not only fair, but demanded by due process. “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Kurschner v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)

## **II. Court Erred in Finding the Chain of Custody was Sufficient**

The Court erred in failing to hold the chain of custody as to Sample A was not properly established. The Court, in affirming the lower court, ruled the unexplained discrepancies were due to the time differences between the medical and flight personnel. This Court stated, “The factual circumstances of this case reflect that the exact syncing of times between medical and flight personnel was unlikely.” *Rowell* at 24. This finding is not correct. The flight records and the hospital records are in sync. The significant and unexplained time discrepancies are solely within the Greenville Hospital System records. Two charts illustrating the discrepancies are attached as Exhibit A.

The flight records show that Mr. Rowell was handed over to the hospital at 8:59 pm. Rec. on App. at 1461. The Greenville Hospital records confirmed he was received at 9:00 pm. (Rec. on App. at 1452, NURSING PROCEDURE: NURSES NOTES 21:00 Patient arrives;

1451, NURSING ASSESSMENT: Patient arrived at: 21:00); 1455, Accepting Unit 11/15/ 20:59 EST). However, the hospital records are not in sync if one assumes they all apply to Mr. Rowell. To further confuse the issue, the hospital records show the triage time as "Sat Nov 15, 2014 20:49." Rec. on App. at 1450. Again, this hospital record is eleven minutes before other hospital records show Mr. Rowell arrived at the hospital.

The records of Greenville Hospital are hopelessly confusing as to Mr. Rowell. For example, the Greenville Hospital records reflect a blood sample was taken at 8:54 pm. Rec. on App. at 742, ll 19-20; 743, ll 7-10. This was six minutes before the Greenville Hospital records show he arrived at the hospital. This Court did not discuss or consider that fact. In addition, the Greenville Hospital records also show the "first greet" was at 8:44 pm. (Rec. on App. at 1450, TIME OF GREET Nov. 15, 2014 20:44). Again, this was 16 minutes before the same hospital records show Mr. Rowell arrived at the hospital, but consistent with the triage time discussed earlier. The triage time is inconsistent with the hospital records as to the time of Mr. Rowell's arrival. The arrival time of Mr. Rowell at 9:00 pm was also confirmed by his air ambulance. Two independent sources confirmed he arrived at 9:00 pm. These discrepancies within the records of Greenville Hospital were not discussed by this court nor explained by the state at trial.

The time differences in the hospital records are inconsistent only if one assumes the times all refer to Mr. Rowell. The inconsistent times range from six to 16 minutes. These time differences cannot be explained as "clock slop." Those time difference show something is wrong with the records. The other inconsistencies mentioned here do not relate to times. They simply cannot be explained if they all refer to Mr. Rowell.

This Court further failed to discuss other unexplained discrepancies within the

records of the Greenville Hospital System. In the initial report of the hospital, Mr. Rowell is listed as being admitted from Greenville County. (Rec. on App. at 1450, ADMISSION SOURCE). Mr. Rowell was admitted from Greenwood County. Further, the same document, under "TRANSPORT," listed him as being brought to the hospital by LifeNet, a different air ambulance from Life Flight. A few pages over in the same hospital records, under "NURSING PROCEDURE: NURSE NOTES," he is listed as delivered by "Life Flight," which is correct. Rec. on App. at 1452. The NURSING ASSESSMENT also reflects "Life Flight." Rec. on App. at 1451.

The initial report, under "BEDBOARD ENTRY," states the patient had no equipment or tubes. Rec. on App. at 1450. The same hospital record on the next page under "NURSING ASSESSMENT" states Mr. Rowell had a "C-collar, Intubation." Rec. on App. at 1451. The two comments are factually inconsistent.

This Court found that Sample A was drawn by Dr. Snow. This Court failed, however, to explain that Sample A, drawn at 8:54pm, could not have been drawn by Dr. Snow through a "Central line" from Mr. Rowell, as the hospital records show the central line was not put in Mr. Rowell until 9:08 pm. (Rec. on App. at 1451, PROCEDURES).

This Court in its order also failed to discuss the complete absence of testimony as to the location of the blood for approximately 30 minutes. The often used phrase is a chain of custody must be established "as far as practicable". Here the state neither had the person who might have had possession of the blood for the unexplained 30 minutes testify nor did they produce any electronic system to show where it was. This Court failed to consider the missing witness. As Dr. John Reddic testified at the trial:

A. Specimens can be hand-delivered or transported through a pneumatic tube system.

Q And in this particular case were you -- from the audit trail were you able to identify if it was hand-delivered or tubed?

21 A I'm not able to identify that from the audit trail.

Rec. on App. at 551, ll 16-21.

Robert Smith, the laboratory technician who tested the blood, did not know from whom he received the blood. He testified:

Q. Who gave you the three tubes?

A. I don't know who gave me those tubes.

Rec. on App. at 606, ll 22-23.

As the state could not establish the means of delivery nor even the person who delivered the blood to the lab, the State has not established the chain "as far as practicable." *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (2007). Establishing either through direct testimony or through electronic records who was responsible for the blood for the 30 minutes is essential to establish a complete chain. The record does establish that a tech named Bill Evans might have had possession of the blood. No records or testimony, however, actually establish that fact. Mr. Smith said:

Q. So there might have been a person named Bill Evans who had possession of this blood?

A. Uh-huh.

Rec. on App. at 672, ll 3-5.

Thus, this Court erred in concluding in its order, "(3) Bill Evans was on duty and walked Sample A to the lab." *Rowell*. at 23. This Court failed to correct this factual error.

This is not a case where a package is sealed and arrives at its destination in the same sealed condition. Under those circumstances, every person who handled the package on its cross-country trip need not be identified, nor would each person need to testify. The unique

sealing would be sufficient. "The lab technician and the officers all testified that no tampering had occurred to the sealed and uniquely-marked tamper-proof package received and tested by the technician." *Barr v. State*, 302 Ga. App. 60, 65, 690 S.E.2d 643, 647 (2010), overruled on other grounds by *Scott v. State*, 295 Ga. 39, 757 S.E.2d 106 (2014). The sealed package would have the name, date, and time on it and could then be introduced as proof it was in the same condition as when originally mailed. The packaging was not kept in this case, therefore, who handled the blood and what they did with it becomes much more important.

This case actually should also be controlled by *State v. Sweet*, 374 S.C. 1, 8, 647 S.E.2d 202, 207 (2007). In that case an informant who briefly handled the drugs did not testify. The Court held the failure to call the informant or produce an affidavit from the informant was fatal to establishing a proper chain of custody. As the Court said, "In other words, the State simply did not present proof of the chain of custody as far as practicable." The inability, or unwillingness, of the state to produce either Mr. Evans or some other electronic record as to who had the blood, should not be a basis to admit the blood in this case. They have not established the chain as "far as practicable."

Judge Hocker said at the trial:

I can certainly envision that it is controlled chaos and their one goal and one goal only is to try to save a human life, which I appreciate very much. However, I cannot use that as a reason or an excuse to make any sort of legal rulings.  
Rec. on App. at 686, ll 4-8.

Efforts to save someone's life are often in conflict with due process. And when that life has been saved and the state seeks to put that person in prison, due process must control. Controlled chaos is not the standard for admissibility of evidence. Controlled chaos cannot trump

due process, even if the goal is to save a life.

### **III. Court Improperly Applied the Harmless Error Standard**

A. This Court failed to properly apply the harmless error standard. The South Carolina Supreme Court has said, “Engaging in this harmless error analysis, we note that our jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012). The facts of this case establish that the error was not harmless.

First, this Court failed to acknowledge that the SLED blood draw, Sample B, was the only blood draw the State used to obtain a jury charge of an inference of intoxication at a level of .08. Without the second blood draw, the Court could not have charged the inference. This Court failed to recognize the prejudice inherent in the inference charge as to the Sample B which the court excluded.. This Court failed to address the inference charge and the prejudice that arose from it in the modified opinion.

Second, this Court did not analyze the facts of this case based upon the jury rejecting the hospital blood draw, Sample A, and convicting Mr. Rowell solely on the basis of the second blood draw. The jury, under the facts, could have rejected the first blood draw based upon the lack of a chain of custody. The jury heard the confusing times and could easily have discredited the first blood draw because it was taken before Mr. Rowell arrived at the hospital.

Third, the jury could have had a reasonable doubt as to both blood draws but concluded one confirmed the other. While neither alone would have convicted Mr. Rowell, both together did convince the jury.

Under the appropriate standard of review, this Court must conclude that the error was not harmless beyond a reasonable doubt. Under any of the three scenarios, this Court could not conclude, as a matter of law, that the second blood draw did not contribute to the verdict. The standard for finding harmless error is very high. As this Court has said, "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996). No court could so conclude under the facts of this case.

#### **IV. Defense Counsel and the State Requested a Hearing as to Juror 164**

This Court erred in holding that the issue as to Juror 164 required a hearing before a judge could rule upon the issue. This Court, in its opinion, failed to consider that the record, even without any testimony from Juror 164, establishes that the Juror was asked about pending criminal charges. The Juror did not respond, which simply told the court and the lawyers he had no pending criminal charges. As this Court has said, "It is the duty of every potential juror to make true and full disclosures during voir dire because counsel is entitled to rely on the answers in determining whether to exercise a peremptory strike." *Long v. Norris & Associates, LTD*, 342 S.C. 561, 573, 538 S.E.2d 5, 11 (Ct. App. 2000). The record in this case establishes the response by Juror 164 was not truthful. Once the record establishes the juror's answer was not truthful, the obligation of the moving party is over. The record at that point is sufficient to grant the moving party a new trial.

In ruling on this issue, this Court said, "Without Juror 164's testimony or some other supporting evidence, the record is insufficient to overturn the trial court's order." *Rowell*, at 27.



The Court failed to consider the record in this case. As stated above, the record established the fact the Juror was not honest in his response. This Court failed to consider the factual finding by the trial judge that the Juror did not understand the question is not supported by any evidence in the record. Before a trial court could make this factual determination, the trial court would be required to place the Juror under oath and hear his testimony. Thus, the finding of the trial court that the Juror's concealment was unintentional is without any evidence in the record and is, therefore, an error as a matter of law. As the South Carolina Supreme Court has said, "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). With no factual basis to conclude, "[T]he Juror 164's concealment was unintentional," (Rec. on App. at 1426) the trial court erred as a matter of law in making such a conclusion.

This Court further erred in ruling on the juror issue by failing to consider that defense counsel specifically requested a hearing in which the juror could testify. As defense counsel stated in the email exchange dated December 12, 2017, "The defense believes that a hearing should be conducted so that the juror can be questioned under oath." Rec. on App. at 1442. This email was in response to an email from the assistant solicitor dated December 11, 2017 in which the assistant solicitor stated, "At this point, we think it is appropriate for the Court [to] inquire upon Juror #164 this week to determine whether or not the concealment was intentional. He is represented by Janna Nelson, and I imagine at the Courts [sic] request, he could be available this week to answer any questions you might have." Rec. on App. at 1438. Both parties requested a hearing as to the Juror. The trial court refused to conduct a hearing. As both sides requested a

hearing, this Court improperly concluded that the issue is not preserved because defense counsel did not subpoena the Juror to the November 27, 2017 hearing.

Subpoenaing the Juror to the November 27 hearing would not have been productive. Prior to that hearing, defense counsel had asked the court reporter what were the questions that related to the Juror issue. The Defense represented to the court what the court reporter had told them. Rec. on App. at 1408, ll 112-17. Without the actual transcript of the exact question, any testimony from the Juror would not have been productive. Only after the transcript was produced could direct and cross examination of the Juror been effective. On December 7, 2017, defense counsel advised the court the transcript had been ordered. Rec. on App. at 1433. Thus, this Court should not have concluded that defense counsel did not seek to subpoena the Juror to a hearing.

### Conclusion

For the forgoing reasons, this Court should rehear this matter either by the original panel or *en banc*, correct the order as to the factual and legal errors set forth in this Petition, and issue an order reversing the conviction of Adam Rowell in which both blood draws are excluded from evidence. Furthermore, this Court reverse the conviction because rule Juror 164 was not truthful in his responses to the voir dire.

September 2, 2021



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# The South Carolina Court of Appeals

The State, Respondent,

v.

Adam Rowell, Appellant.

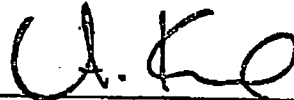
Appellate Case No. 2018-000022

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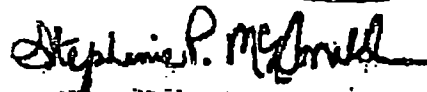
## ORDER

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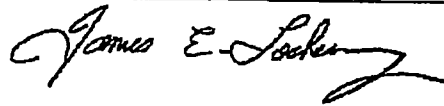
The petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn.



J.



J.



A.J.

Columbia, South Carolina

cc:

Clarence Rauch Wise, Esquire  
Billy J. Garrett, Jr., Esquire  
Carson McCurry Henderson, Esquire  
Jane Hawthorne Merrill, Esquire  
Alan McCrory Wilson, Esquire  
Jonathan Scott Matthews, Esquire

**FILED**  
**Mar 02 2022**

David Matthew Stumbo, Esquire  
The Honorable Donald B. Hocker

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

The State, Respondent,

v.

Adam Rowell, Appellant.

Appellate Case No. 2018-000022

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Appeal From Greenwood County  
Donald B. Hocker, Circuit Court Judge

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Opinion No. 5832  
Heard September 22, 2020 – Filed July 21, 2021  
Previously Withdrawn, Substituted and Refiled August 25, 2021  
Withdrawn, Substituted, and Refiled March 02, 2022

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**AFFIRMED**

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Billy J. Garrett, Jr., of The Garrett Law Firm, PC, Carson  
McCurry Henderson, of The Henderson Law Firm, PC,  
Jane Hawthorne Merrill, of Hawthorne Merrill Law,  
LLC, and Clarence Rauch Wise, all of Greenwood, all  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Jonathan Scott Matthews, both of  
Columbia, and Solicitor David Matthew Stumbo, of  
Greenwood, all for Respondent.

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**LOCKEMY, A.J.:** Adam Rowell appeals his convictions for felony driving under the influence (DUI) resulting in death and felony DUI resulting in great bodily

injury. On appeal, Rowell argues the trial court abused its discretion in admitting blood samples into evidence without the proper chain of custody and because the samples were taken (1) after 50% of Rowell's blood volume was replaced, and (2) after 150% of Rowell's blood volume was replaced. Rowell also asserts the trial court erred in failing to conduct an evidentiary hearing with a juror who failed to disclose his pending criminal charges during voir dire. We affirm.

## **FACTS/PROCEDURAL HISTORY**

On November 15, 2014, Rowell was in a head-on automobile accident, which seriously injured Matthew Sanders and killed Jeremy Cockrell. Cockrell was driving a red pickup truck with Sanders in the passenger seat, and Rowell was in a dark blue pickup truck. Following the collision, Rowell was indicted for felony DUI resulting in death and felony DUI resulting in great bodily injury.

During voir dire, the trial court asked, "[Has] any member of the jury panel or any member of your immediate family members or close personal friends ever been arrested and charged with any criminal offense through whatever state, local or federal law enforcement agency?" The trial court asked another nine questions before asking the jurors to approach the bench if any of the questions applied to them. Juror 164 did not respond and was seated on the jury.

At trial, Sanders testified he and Cockrell were driving to Greenwood when Rowell's truck crashed into them. Cockrell died from blunt force trauma at the scene. Officer Kelly Anderson, a member of the Multidisciplinary Accident Investigation Team (MAIT), explained the collision occurred because Rowell's truck drifted into Cockrell's lane. According the MAIT investigation, one second prior to the collision, Rowell was traveling at sixty-nine miles per hour and Cockrell's truck was traveling at twenty-four miles per hour.

Emergency responders testified they could smell alcohol when they arrived. Open and unopened beers were in Rowell's truck, spilled alcohol was on Rowell's floorboard, and multiple beer cans were on the ground near the collision. Rowell, who was also seriously injured in the collision, received 2000 milliliters of intravenous (IV) fluid and a 500 milliliter blood transfusion on site, and was airlifted to Greenville Memorial Hospital. The flight records show the helicopter arrived at the hospital at 8:59 p.m.

The trial court held an in camera chain of custody hearing to address whether blood drawn from Rowell when he arrived at the hospital (Sample A) was admissible. Angela Waites, the flight nurse, stated it took twenty-four minutes to

get Rowell to Greenville Memorial Hospital. She testified she observed Amanda Baker, an emergency room (ER) nurse, draw Sample A and believed it was drawn from Rowell's right arm because Baker was standing on Rowell's right-hand side.

Nurse Baker testified she did not recall Rowell as a patient because she cares for and draws blood samples from hundreds of patients. She explained that Rowell's medical documentation indicated Dr. Bradley Snow took Sample A from a central line and handed it to her. Nurse Baker testified that after blood is drawn from a central line, a technician takes it to the lab. Bill Evans was the technician listed on the medical records. Rowell's medical records indicated his blood was drawn at 9:08 p.m.; however, the hospital's audit trail indicated it was drawn at 8:54 p.m.

Robert Smith, the lab technician at Greenville Memorial Hospital, testified that according to the audit trail for Sample A, he received it in the lab at 9:24 p.m. Smith did not remember receiving this sample specifically because of the large number of specimens he regularly tested. He testified it was hospital policy to hand-deliver ER specimens to the lab and test them right away.

Dr. John Reddic, an expert in clinical chemistry from Greenville Memorial Hospital, testified the hospital's audit trail showed Nurse Baker drew Sample A and Robert Smith received it for testing. According to Reddic, Sample A showed a blood alcohol concentration (BAC) between .175 and .189. Dr. Reddic noted Sample A was controlled and handled within the hospital's normal protocol.

Rowell argued the conflicting time reports in the medical records suggested there were two separate blood draws, one at 8:54 p.m. and one at 9:08 p.m. However, the State asserted there was only one audit trail for blood and the records did not reflect a second draw. The trial court ruled the State established the chain of custody, the audit trail reflected an 8:54 p.m. blood draw, and a discrepancy in the notation of the time of the blood draw did not render the evidence inadmissible. During trial, the relevant medical witnesses testified similarly to their in camera testimony.

Dr. Reddic testified that a "clock slop" time discrepancy of several minutes can occur where records have been created based on clocks that were not synced. He also explained there is a lag time between when a doctor orders a blood draw, the drawing of the blood, and the subsequent transport of the blood draw to the lab, and "thirty minutes is appropriate."

Dr. Snow, Rowell's surgeon, testified that during surgery, Rowell received 3,150 milliliters of blood, 360 milliliters of plasma, 3,000 milliliters of saline, and 3,000



milliliters of Plasma-Lyte. He stated 53% of Rowell's blood was replaced and he would have died without the transfusion.

After Rowell's surgery, Officer Smith acquired a search warrant for Rowell's blood (Sample B). Rowell objected to the admission of Sample B, arguing that when it was taken, 52% of his blood had been replaced and a BAC test of that blood would be unreliable. The trial court held another in camera hearing.

Dr. Jimmie Valentine, a defense expert, testified that when Sample B was drawn from Rowell, he had received fluids that totaled 161.7% of his blood volume. He explained Sample B was not an accurate indication of what Rowell's blood was like during the collision. He stated that "any value that one would find or try to attach to [Sample B] has very little scientific meaning because of th[e] volume that [went] into him." Dr. Valentine explained Sample B included 4.9 milligrams per liter of Benadryl, which was a toxic dose, and Rowell's medical records indicated the hospital did not give him Benadryl. Further, he explained Sample B had acetones, which was indicative of someone who was diabetic and Rowell's medical records did not indicate he had diabetes. Dr. Valentine testified the methodology and science used in the BAC testing was reliable; however, he questioned the validity of the results.

Dr. Valentine stated the BAC from Sample B was consistent with Rowell's blood having been diluted by transfusions. He explained a person with a BAC of .18 would normally have a BAC of .12 after four hours and that the dilution of the blood due to a transfusion could explain why Sample B's BAC was .09. Dr. Valentine agreed that Sample B would have included a percentage of Rowell's blood that had remained in his system after the transfusion.

The trial court held that because Dr. Valentine did not attack the validity of the methodology of the test, Sample B was admissible. Specifically, the trial court clarified it did not find the results reliable, only that the methodologies and procedures used in the testing were reliable.

Rowell testified he did not have diabetes, nor did he use Benadryl. He stated he drank twenty-four ounces of beer approximately four hours before the accident. The jury convicted Rowell of felony DUI resulting in death and felony DUI resulting in great bodily injury. The trial court sentenced him to thirteen years' imprisonment. After trial, Rowell learned Juror 164 had been arrested and charged with a crime in Greenwood County shortly before his trial. Rowell moved for a new trial, arguing—among other things—that Juror 164 failed to disclose his arrest

during voir dire. However, Rowell did not request that the trial court conduct an evidentiary hearing.

At the hearing on Rowell's motion for a new trial, he argued he would not have seated Juror 164 on the jury had he known of his arrest because the juror could have had an incentive to help the State. Rowell stated he did not contact Juror 164 because Juror 164 was represented by counsel, who told them Juror 164 would not be speaking with them. Rowell did not request a separate evidentiary hearing on the juror issue and did not subpoena Juror 164. Following the hearing and before the trial court issued an order, Rowell sent an email to the trial court requesting a hearing with the juror.

The trial court denied Rowell's motion for a new trial. The trial court stated that on its face, the question asked during voir dire was comprehensible to the average juror; however, the court noted that it was the first of ten questions the juror had to remember and the amount of time between question and answer "could be confusing to the average juror." The trial court further opined because an arrest is a public arrest record, the juror did not conceal his arrest. This appeal followed.

### **ISSUES ON APPEAL**

1. Did the trial court err by admitting Sample A into evidence because the chain of custody was insufficient?
2. Did the trial court err by admitting Sample A into evidence because 50% of Rowell's blood had been replaced when Sample A was taken?
3. Did the trial court err by admitting Sample B into evidence because 150% of Rowell's blood had been replaced when Sample B was taken and the sample contained Benadryl and acetones?
4. Did the trial court err by failing to conduct an evidentiary hearing regarding a juror who failed to disclose his pending criminal charges?

### **STANDARD OF REVIEW**

"In criminal cases, appellate courts sit to review errors of law only . . . ." *State v. Robinson*, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014). "Because the admission of evidence is within the sound discretion of the trial court, appellate courts should not reverse the decision of the trial court absent an abuse of discretion." *Id.* "The

denial of a motion for a new trial will not be reversed absent an abuse of discretion." *State v. South*, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993).

## LAW/ANALYSIS

### I. Chain of Custody for Sample A

Rowell argues the inconsistency between the time that he landed at Greenville Memorial Hospital and the time Sample A was taken established it was factually impossible for Sample A to be Rowell's blood. He asserts the chain of custody was not complete because Bill Evans walked Sample A from Nurse Baker to the lab but never testified. Rowell also asserts an unidentified person brought the blood from the ER to the lab and the sample was unaccounted for during a period of thirty minutes. We disagree.

Our supreme court has held, "a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." *State v. Pulley*, 423 S.C. 371, 377, 815 S.E.2d 461, 464 (2018) (emphasis added) (quoting *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011)). "Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts." *Hatcher*, 392 S.C. at 94, 708 S.E.2d at 754.

Our supreme court has stated it has "never held the chain of custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." *Id.* at 93, 708 S.E.2d at 754 (quoting *S.C. Dep't of Soc. Servs. v. Cochran*, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005)). "[W]e have consistently held that the chain of custody need be established only as far as practicable, and we reiterate that every person handling the evidence need not be identified in all cases." *Id.* at 95, 708 S.E.2d at 755.

"Whether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case." *Id.* at 94, 708 S.E.2d at 754 (quoting *Cochran*, 364 S.C. at 629 n.1, 614 S.E.2d at 646 n.1). "The trial [court's] exercise of discretion must be reviewed in the light of the following factors: '... the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.'" *Id.* at 94-95, 708 S.E.2d at 754-55 (omission in original) (quoting *United States v. De Larosa*, 450 F.2d 1057, 1068 (3d Cir. 1971)).

"In examining issues regarding the chain of custody, a mere suggestion that substitution could possibly have occurred is not enough to establish a break in the chain of custody." *Id.* at 94, 708 S.E.2d at 754.

We hold the trial court did not err in admitting Sample A. During the in camera hearing, the State presented evidence that (1) Sample A was drawn by Dr. Snow via a central line; (2) it was handed to Nurse Baker; (3) Bill Evans was on duty and walked Sample A to the lab, and (4) Robert Smith, the lab technician, received the blood and facilitated the testing. This evidence identified who was in possession of Sample A. Although Evans did not testify and most of the witnesses in the chain did not recall these specifics, the State established through testimony and documentation Sample A's chain of custody as far as practicable given the circumstances.

Further, the circumstances surrounding the preservation and custody of Sample A diminished the likelihood it was tampered with. *See Hatcher*, 392 S.C. at 94-95, 708 S.E.2d at 754-55 ("The trial [court's] exercise of discretion must be reviewed in the light of the following factors: . . . the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it." (omission in original) (quoting *De Larosa*, 450 F.2d at 1068)). Here, Sample A was collected for medical purposes to save Rowell's life and not for any investigative purpose, which makes it unlikely it was tampered with. *Id.* at 95, 708 S.E.2d at 755 ("The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be."); *cf. Ex parte Dep't of Health & Envtl. Control*, 350 S.C. 243, 250, 565 S.E.2d 293, 297 (2002) ("The trustworthiness of medical records is presumed, based on the fact that the test is relied on for diagnosis and treatment.").

As to the timing of the draw for Sample A, the inconsistency within the medical records and flight records regarding the landing time and the time of the blood draw did not establish either a break in the chain of custody or that the blood was from someone else. The factual circumstances of this case reflect that the exact syncing of times between medical and flight personnel records was unlikely. A brief time discrepancy between organizations does not alter the chain of custody analysis because each person who possessed the sample was identified. *See Hatcher*, 392 S.C. at 94, 708 S.E.2d at 754 ("Whether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case." (quoting *Cochran*, 364 S.C. at 629 n.1, 614 S.E.2d at 646 n.1)); *State v. Patterson*, 425 S.C. 500, 508, 823 S.E.2d 217, 222 (Ct. App. 2019) ("Minor discrepancies in the chain of custody implicates the credibility of the evidence, but does not render the evidence inadmissible."). This discrepancy,

as well as the discrepancy of thirty minutes between drawing the blood and delivery to the lab, goes to the weight and credibility of the evidence, not its admissibility. See *State v. Johnson*, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995) (holding a two-day discrepancy in the chain of custody regarding the dates an investigator turned in drug evidence to the evidence custodian did not establish the drugs were inadmissible); *id.* ("A reconciliation of this [two-day] discrepancy was not necessary to establish the chain of custody, but merely reflected upon the credibility of the evidence rather than its admissibility."). Therefore, the trial court did not abuse its discretion in admitting Sample A into evidence.<sup>1</sup>

## II. Blood Transfusion and Testing of Sample A

Rowell argues the trial court erred in admitting Sample A into evidence because roughly half his blood was replaced with liquids prior to the hospital's blood draw. He asserts the State failed to establish the reliability of the BAC test after he received a transfusion. We find this issue unpreserved for our review.

Rowell never raised to the trial court the issue that a blood transfusion caused Sample A's BAC testing results to be unreliable. At trial, Rowell extensively challenged the chain of custody for Sample A; however, he never objected to Sample A's admission on the basis that the test was unreliable because he had previously received 500 milliliters of blood and 2000 milliliters of IV fluids. Thus, this issue was not preserved for appellate review because this argument was not raised to and ruled on by the trial court. See *State v. Dunbar*, 356 S.C. 138, 142,

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<sup>1</sup> The State argues the trial court did not err in admitting Sample A into evidence based on our supreme court's opinion in *Jamison v. Morris*, 385 S.C. 215, 227, 684 S.E.2d 168, 174 (2009) (stating that when a blood sample is drawn at a hospital for medical purposes as part of its medical treatment of a patient, the results would have been a part of the patient's medical record and presumed reliable as a business record regardless of a chain of custody). Although we acknowledge the State submitted a supplemental citation to *Jamison* prior to oral argument and raised this argument in its petition for rehearing, the State did not raise this argument to trial court or in its appellate brief. Thus, we decline to address this argument on the merits. See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("Of course, a respondent may abandon an additional sustaining ground . . . by failing to raise it in the appellate brief."); see also Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

### **III. Blood Transfusion and Testing of Sample B**

Rowell argues the trial court erred in admitting Sample B into evidence because more than 150% of his blood had been replaced by blood and other fluids before Sample B was drawn. Even if the admission of Sample B was so unreliable that its admission was error, this error was harmless. The jury received clear evidence of Rowell's intoxication from Sample A, the evidence of open containers in his truck, the alcohol spilled on the floor of his truck, and testimony that his breath smelled of alcohol at the accident scene. *See State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012) ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result."); *State v. Howard*, 296 S.C. 481, 485, 374 S.E.2d 284, 286 (1988) ("Where guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than that the accused is guilty, a conviction will not be set aside because of insubstantial errors not affecting the result.").

### **IV. Juror Concealment**

Rowell argues the trial court erred in denying his request for an evidentiary hearing as to Juror 164's failure to disclose his pending criminal charges during voir dire. Rowell asserts the trial court abused its discretion in failing to hold a hearing because without such hearing, the trial court could not determine the basis for Juror 164's failure to answer truthfully. We disagree.

When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges.

*State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). "Whether a juror's failure to respond is intentional is a fact intensive determination that must be made on a case-by-case basis." *State v. Sparkman*, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004). "The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred." *State v. Kelly*, 331

S.C. 132, 147, 502 S.E.2d 99, 106 (1998) (quoting *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986)). "If the court finds no intentional concealment occurred, the inquiry ends there." *Lynch v. Carolina Self Storage Ctrs., Inc.*, 409 S.C. 146, 155, 760 S.E.2d 111, 116 (Ct. App. 2014).

In *Woods*, our supreme court held,

intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

345 S.C. at 588, 550 S.E.2d at 284.

We find the trial court did not abuse its discretion in failing to conduct an evidentiary hearing with Juror 164. See *South*, 310 S.C. at 507, 427 S.E.2d at 668 ("The denial of a motion for a new trial will not be reversed absent an abuse of discretion."). Nothing required the trial court or a party to hail a juror into court to testify on the issue of juror misconduct under the circumstances presented here. See *State v. Aldret*, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1999) (holding the trial court may, in its discretion, consider juror affidavits on the issue of premature jury deliberations and if the trial court finds the affidavits credible and indicative of misconduct it should hold an evidentiary hearing to assess whether such deliberations occurred); *Lynch*, 409 S.C. at 159 n.2, 760 S.E.2d at 119 n.2 (noting "a trial court is not obligated to take juror testimony when the court determines it can rule" on the misconduct issue without it); *id.* at 155, 760 S.E.2d at 166 (stating "[i]f the court finds no intentional concealment occurred, the inquiry ends there"). In *Woods*, our supreme court rejected a juror's testimony as to why her failure to respond to two questions asked during voir dire was unintentional. 345 S.C. at 589-90, 550 S.E.2d at 285. There, the juror failed to disclose that she worked as a volunteer victims' advocate for the prosecuting solicitor's office and testified during an evidentiary hearing that she either did not hear the questions asked during voir dire or did not realize they applied to her. *Id.* at 585-87, 550 S.E.2d at 283-84. Despite this testimony, our supreme court found the juror's failure to respond was intentional because the questions at issue "were reasonably

comprehensible and should have elicited a positive response from [the j]uror." *Id.* at 589-90, 550 S.E.2d at 285.

Here, after reviewing the voir dire proceedings with the court reporter to ensure it correctly recalled the sequence of events, the trial court concluded that the question, although straightforward when viewed in isolation, was presented in a way that could be confusing to the average juror. The trial court therefore concluded Juror 164's failure to disclose his pending criminal charges was unintentional. Because the trial court's conclusion was based upon its own observations of voir dire, the record supports the trial court's conclusion, and Juror 164's testimony was not necessary for the trial court to rule on the issue. Thus, we find the trial court did not err in failing to conduct an evidentiary hearing and did not abuse its discretion in denying Rowell's motion for a new trial based on Juror 164's concealment.

#### **CONCLUSION**

Based on the foregoing, we find the trial court did not err in admitting Sample A into evidence and any potential error as to Sample B was harmless. Further, we find the trial court did not abuse its discretion in denying Rowell's motion for a new trial based on Juror 164's concealment. Accordingly, Rowell's convictions are

**AFFIRMED.**

**KONDUROS and MCDONALD, JJ., concur.**



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**Mar 15 2022**

**SC Court of Appeals**

The State, Respondent

v.

Adam Rowell, Appellant

Appellate Case № 2018-000022

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Appeal From Greenwood County  
Heard September 22, 2020 - Filed July 7, 2021  
Withdrawn, Substituted, and Refiled August 25, 2021,  
Withdrawn, Substituted, and Refiled, March 2, 2022

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Opinion № 5832

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**Petition for Rehearing and Rehearing En banc**

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Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Adam Rowell hereby requests that this Court re-hear this matter. Further, pursuant to Rule 219(b) of the South Carolina Appellate Court Rules, this Court should re-hear this matter *en banc* as the harmless error standard of review in this case is inconsistent with the standard set forth by this Court in *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996) and the South Carolina Supreme Court in *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (2007). Further, the error preservation decision is in conflict with the standard of this Court in *State v. Williams*, 417 S.C. 209, 789 S.E.2d 582 (Ct. App. 2016).

In the refiled opinion, this Court treated differently the issue of the juror not being truthful in his voir dire responses. This Court did not address in the refiled opinion any of the other concerns of the Appellant. As the modified order of this Court fails to address the concerns of Adam Rowell, Mr. Rowell re-submits his Petition for Rehearing based upon the following:

**I. The Objection as to Reliability of Sample A was Preserved**

This Court erred in again concluding "Rowell never raised to the trial court the issue that a blood transfusion caused Sample A's BAC testing results to be unreliable." *State v. Rowell*, Op. № 5832 (S.C. Ct. App filed March 2, 2022 (Shearhouse Adv.Sh. № 8 at 28)). This Court has again erred in two respects as to this issue.

A. First, the issue was raised before the trial judge pre-trial, during the trial, and post-trial. In a pre-trial discussion as to the issues involved in the trial, defense counsel told the court:

Again, we would challenge the sufficiency of the chain of custody on both draws, as well as the substance and reliability of both draws.

Rec. on App. at 13, ll 12-14.

In response to this, the assistant solicitor told the Court:

MR. BLACK: Judge, ultimately the State's opinion is that reliability goes to weight and not admissibility. So, whatever the Defense wants to put up is fine with us, but we obviously feel that your ruling will be dependant on what you hear in trial.

Rec. on App. at 15, ll 1-5.

The trial judge also acknowledged the issues involved in this case when he stated:

So it looks like, then, we need to deal with pretrial the issue of alcohol containers found in both vehicles and this reliability of the blood alcohol content analysis with respect to both draws.

Rec. on App. at 15, ll 16-19

As to Sample A, the EMS person who first treated Mr. Rowell, was cross-examined by

defense counsel as to the saline solution and blood products given to Mr. Rowell. Rec. on App. at 522, l 23 to 523, l 1. These factors relate to reliability.

During the trial, the issue as to the reliability of the hospital test, Sample A, was specifically preserved when the chain of custody issue was argued. As defense counsel stated:

MR. HENDERSON: And, Judge, we just want to confirm. You're just ruling that you're finding there was a proper chain of custody?

THE COURT: Yeah. Now, I mean, if there's -- if there's any other issues that we need to address as to the admissibility of the actual results then I will entertain that. I'm just -- even though getting over to Bullcoming I think we kind of deviated just a little bit. But apart from that, I'm finding chain of custody. And if there's any other issues related to the result then I will certainly deal with that at the appropriate time.

MR. HENDERSON: We have a lot of issues dealing with results. Rec. on App. at 640, ll 6-18

The Court then stated:

And then if the Defense wants to attack it's reliability then you have every right to do that in your case and [sic] chief. But I don't think I have to hear from all sides on reliability before I determine admissibility. So again, assuming that the State's witnesses are going to get into the reliability issue, then -- and if I'm satisfied, I'm going to allow it in assuming everything other thing is met. But I'm not going to allow you all to put up your expert at this stage to attack reliability. Okay?

Rec. on App. at 644, ll 12-18

After this ruling, defense counsel sought further clarification and had this discourse with the trial court:

MS. MERRILL: Your Honor, may I clarify one thing? You want us to do the reliability through cross-examine in front of the jury that was not proffered in camera, right? I'm just making sure that --

THE COURT: Right. Without proffering your expert. That would be done in your case and [sic] chief. But certainly you can cross-examine the State witnesses on reliability.

Rec. on App. at 645, ll 19-25.

At this point, the trial court told defense counsel he was going to admit Sample A over an objection as to reliability. The trial court improperly concluded that reliability was not a threshold issue for the trial court to determine.<sup>1</sup> "The familiar evidentiary mantra that a challenge to evidence goes to 'weight, not admissibility' may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence." *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). Moreover, the trial court specifically prohibited defense counsel from introducing in camera evidence as to the reliability of Sample A. The trial court ruled evidence of the reliability of the blood test could only be raised in the defense case in chief and through cross examination in the State's case. When the trial court denied the defendant the right to offer testimony as to reliability at the hearing, the issue is preserved. At the in camera hearing as to Sample B, the trial court acknowledged he had ruled upon the reliability of Sample A, the hospital draw. The trial court said, "[N]or did I make a finding that the results from the hospital was reliable." Rec. on App. at 826, ll 13-14. The statement would have been unnecessary if the trial judge did not understand that defense counsel had previously asked him to rule upon the reliability of Sample A. As the trial judge refused to permit defense testimony as to the validity of the Sample A, Defense counsel was relegated to raising the issue of reliability at the directed verdict motion and in a motion for a new trial. Defense counsel raised the issue at the directed verdict motion and in the post-trial motions. At the directed verdict motion, defense counsel stated, "[W]e would like to review [sic] all prior motions." Rec.

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<sup>1</sup> This Court acknowledged the trial court failed to make an independent determination as to the reliability as to Sample B. This Court said, "Specifically, the trial court clarified it did not find the results reliable, only that the methodologies and procedures used in the testing were reliable." *Rowell*, at 31.

on App. at 908, ll 11-12. This would have included the motion as to the reliability of Sample A.

In the modified order, this Court did not address the issue as to the post trial motion. In the post-trial motions, defense counsel again raised the issue of the reliability of Sample A. In specific headings, the issue was referred to as "VI First Blood Draw - Contamination" and "VIII Both Blood Draws - Lack of Scientific Reliability." Rec. on App. at 1358 and 1360. The State received a copy of the post-trial Motion. The State never argued at the post-trial hearing that the issue as to the reliability of Sample A was not argued during the trial and ruled upon by the trial judge. In response to this motion, the trial judge stated:

I've gone through your motion and your supplemental motion. I've gone back through all my trial notes. I think basically, there may be two new issues: the juror issue and then -- and I'm just going to refer to it as the "Greenville Hospital" issue. Everything else is basically what was raised during the course of the trial? Is that correct Mr. Henderson?

MR. HENDERSON: That is correct, your honor.  
Rec. on App. at 1380, ll 17-25.

In the order denying the motion for a new trial, the trial court included Issues VI and VIII among those "issues that were argued during trial." Rec. on App. at 1423. The Court denied relief as to VI and VIII and said "These arguments are again denied." Rec. on App. at 1423. In denying the motion for a new trial, he again ruled upon the reliability of both blood draws. At the post-trial hearing, neither the trial judge nor the State contended the Issues VI and VIII were not raised during the trial. "It is a fundamental principle that a contemporaneous objection is required at trial to properly preserve an error for appellate review." *State v. Black*, 319 S.C. 515, 521, 462 S.E.2d 311, 315 (Ct. App. 1995). Footnote 1 of the opinion which denied the State's petition for rehearing, is in accordance with this principle.

The purpose of the preservation of error rule is to ensure that the trial judge had the opportunity to rule on the issue below. The trial judge in this case ruled on the issue below. The trial judge in a written order acknowledged he had ruled upon the issue during the trial. If the trial judge in a written order states he ruled upon a timely objection, this Court should be required to accept that finding at face value and decide this issue on the merits. As this Court has said, "[W]here the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *State v. Williams*, 417 S.C. 209, 229, 789 S.E.2d 582, 593 (Ct. App. 2016)(internal citations omitted).

In the refiled opinion, this Court has again failed to explain how a trial judge saying in a written post trial order that he had ruled on the reliability issue during the trial, does not preserve the issue. This is especially true when the State never argued at the post trial motion that the issue was not preserved during the trial.

This Court found as to Sample B, when over 150% of a person's blood has been replaced by blood, blood products or saline solution, the result is not admissible. As to Sample A, upon a finding that the issue was preserved, this Court should hold that when approximately 50% of a person's blood has been replaced by blood, blood products, or saline solution, the result is not admissible. If 150% replacement is not admissible, this Court has no basis to determine what level of replacement does not taint the blood being tested. If the blood sample is not 100% the blood of the defendant, the State has not provided to this Court or the Court below any basis in law or science as to where the line should be drawn. The Sample A blood draw should also have been excluded by the trial judge.

B. Second, the State never raised the issue of error preservation in its brief. The Court,

therefore, erred in finding the issue was not preserved. No party to this appeal raised the issue of error preservation as to Sample A as to reliability. As former Court of Appeals Chief Justice Alex Sanders said, "More simply put, appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), opinion quashed, 286 S.C. 85, 332 S.E.2d 100 (1985). The obvious reason for such a rule is that when neither party briefs an issue, this Court would be well advised not to rule upon the issue without requesting that the issue be briefed. While this Court may affirm a case based upon any reason appearing in the record, this Court should not do so unless the respondent has briefed the issue and the appellant has had the opportunity to respond to the additional sustaining grounds. Such a policy is not only fair, but demanded by due process. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)

## **II. Court Erred in Finding the Chain of Custody was Sufficient**

This Court again erred in failing to hold the chain of custody as to Sample A was not properly established. The Court, in affirming the lower court, ruled the unexplained discrepancies were due to the time differences between the medical and flight personnel. This Court stated, "The factual circumstances of this case reflect that the exact syncing of times between medical and flight personnel was unlikely." *Rowell* at 35. This finding is not correct. The flight records and the hospital records are in sync. The significant and unexplained time discrepancies are solely within the Greenville Hospital System records. Two charts illustrating the discrepancies are attached as Exhibit A.

The flight records show that Mr. Rowell was handed over to the hospital at 8:59 pm. Rec. on App. at 1461. The Greenville Hospital records confirmed he was received at 9:00 pm. (Rec. on App. at 1452, NURSING PROCEDURE: NURSES NOTES 21:00 Patient arrives; 1451, NURSING ASSESSMENT: Patient arrived at: 21:00); 1455, Accepting Unit 11/15/ 20:59 EST). However, the hospital records are not in sync if one assumes they all apply to Mr. Rowell. To further confuse the issue, the hospital records show the triage time as "Sat Nov 15, 2014 20:49." Rec. on App. at 1450. Again, this hospital record is eleven minutes before other hospital records show Mr. Rowell arrived at the hospital. This Court and the State have failed to explain how hospital records are out of sync for 11 minutes. This Court erroneously concluded the hospital record and the air ambulance records are out of sync when the record established they are not. The conviction in this case should not be affirmed based upon this incorrect statement of the facts.

The records of Greenville Hospital are hopelessly confusing as to Mr. Rowell. For example, the Greenville Hospital records reflect a blood sample was taken at 8:54 pm. Rec. on App. at 742, ll 19-20; 743, ll 7-10. This was six minutes before the Greenville Hospital records show he arrived at the hospital. This Court did not discuss or consider that fact. In addition, the Greenville Hospital records also show the "first greet" was at 8:44 pm. (Rec. on App. at 1450, TIME OF GREET Nov. 15, 2014 20:44). Again, this was 16 minutes before the same hospital records show Mr. Rowell arrived at the hospital, but consistent with the triage time discussed earlier. The triage time is inconsistent with the hospital records as to the time of Mr. Rowell's arrival. The arrival time of Mr. Rowell at 9:00 pm was also confirmed by his air ambulance records. Two independent sources confirmed he arrived at 9:00 pm. These discrepancies within



the records of Greenville Hospital were not discussed by this court nor explained by the State at trial. This Court should explain how the records from the same hospital are more than 10 minutes out of sync before this conviction is affirmed.

The time differences in the hospital records are inconsistent only if one assumes the times all refer to Mr. Rowell. The inconsistent times range from six to 16 minutes. These time differences cannot be explained as "clock slop." Those time difference show something is wrong with the records. The other inconsistencies mentioned here do not relate to times. They simply cannot be explained if they all refer to Mr. Rowell.

This Court further has again failed to discuss other unexplained discrepancies within the records of the Greenville Hospital System. In the initial report of the hospital, Mr. Rowell is listed as being admitted from Greenville County. (Rec. on App. at 1450, ADMISSION SOURCE). Mr. Rowell was admitted from Greenwood County. Further, the same document, under "TRANSPORT," listed him as being brought to the hospital by LifeNet, a different air ambulance from Life Flight. A few pages over in the same hospital records, under "NURSING PROCEDURE: NURSE NOTES," he is listed as delivered by "Life Flight," which is correct. Rec. on App. at 1452. The NURSING ASSESSMENT also reflects "Life Flight." Rec. on App. at 1451.

The initial report, under "BEDBOARD ENTRY," states the patient had no equipment or tubes. Rec. on App. at 1450. The same hospital record on the next page under "NURSING ASSESSMENT" states Mr. Rowell had a "C-collar, Intubation." Rec. on App. at 1451. The two comments are factually inconsistent.

This Court found that Sample A was drawn by Dr. Snow. This Court has again failed,

however, to explain that Sample A, drawn at 8:54pm, could not have been drawn by Dr. Snow through a "Central line" from Mr. Rowell, as the hospital records show the central line was not put in Mr. Rowell until 9:08 pm. (Rec. on App. at 1451, PROCEDURES).

This Court in its order also again failed to discuss the complete absence of testimony as to the location of the blood for approximately 30 minutes. The often used phrase is a chain of custody must be established "as far as practicable." Here, the state neither had the person who might have had possession of the blood for the unexplained 30 minutes testify nor did they produce any electronic system to show where it was. This Court failed to consider the missing witness. As Dr. John Reddic testified at the trial:

A. Specimens can be hand-delivered or transported through a pneumatic tube system.

Q And in this particular case were you -- from the audit trail were you able to identify if it was hand-delivered or tubed?

A I'm not able to identify that from the audit trail.

Rec. on App. at 551, II 16-21.

Robert Smith, the laboratory technician who tested the blood, did not know from whom he received the blood. He testified:

Q. Who gave you the three tubes?

A. I don't know who gave me those tubes.

Rec. on App. at 606, II 22-23.

As the state could not establish the means of delivery nor even the person who delivered the blood to the lab, the State has not established the chain "as far as practicable." *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (2007). Establishing either through direct testimony or through electronic records who was responsible for the blood for the 30 minutes is essential to establish a complete chain. The record does establish that a tech named Bill Evans might have had

possession of the blood. No records or testimony, however, actually establish that fact. Mr. Smith said:

Q. So there might have been a person named Bill Evans who had possession of this blood?

A. Uh-huh.

Rec. on App. at 672, ll 3-5.

Thus, this Court again erred in concluding in its order, "Bill Evans was on duty and walked Sample A to the lab," *Rowell*, at 33. This Court has again failed to correct this factual error. No conviction should be affirmed with a factual error in the opinion as to the chain of custody.

This is not a case where a package is sealed and arrives at its destination in the same sealed condition. Under those circumstances, every person who handled the package on its cross-country trip need not be identified, nor would each person need to testify. The unique sealing would be sufficient. "The lab technician and the officers all testified that no tampering had occurred to the sealed and uniquely-marked tamper-proof package received and tested by the technician." *Barr v. State*, 302 Ga. App. 60, 65, 690 S.E.2d 643, 647 (2010), overruled on other grounds by *Scott v. State*, 295 Ga. 39, 757 S.E.2d 106 (2014). The sealed package would have the name, date, and time on it and could then be introduced as proof it was in the same condition as when originally mailed. The packaging was not kept in this case, therefore, who handled the blood and what they did with it becomes much more important.

This case actually should also be controlled by *State v. Sweet*, 374 S.C. 1, 8, 647 S.E.2d 202, 207 (2007). In that case an informant, who briefly handled the drugs, did not testify. The Court held the failure to call the informant or produce an affidavit from the informant was fatal

to establishing a proper chain of custody. As the Court said, "In other words, the State simply did not present proof of the chain of custody as far as practicable." The inability, or unwillingness, of the state to produce either Mr. Evans or some other electronic record as to who had the blood, should not be a basis to admit the blood in this case. They have not established the chain as "far as practicable."

Judge Hocker said at the trial:

I can certainly envision that it is controlled chaos and their one goal and one goal only is to try to save a human life, which I appreciate very much. However, I cannot use that as a reason or an excuse to make any sort of legal rulings.

Rec. on App. at 686, 11 4-8.

Efforts to save someone's life are often in conflict with due process. And when that life has been saved and the state seeks to put that person in prison, due process must control. Controlled chaos is not the standard for admissibility of evidence. Controlled chaos cannot trump due process, even if the goal is to save a life.

### **III. Court Improperly Applied the Harmless Error Standard**

A. This Court failed to properly apply the harmless error standard. The South Carolina Supreme Court has said, "Engaging in this harmless error analysis, we note that our jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). The facts of this case establish that the error was not harmless.

First, this Court has again failed to acknowledge that the SLED blood draw, Sample B, was the only blood draw the State used to obtain a jury charge of an inference of intoxication at a

level of .08. Without the second blood draw, the Court could not have charged the inference. This Court failed to recognize or even discuss the prejudice inherent in the inference charge as to the Sample B which the court excluded.. This Court has again failed to address the inference charge and the prejudice that arose from it in the modified opinion.

Second, this Court again did not analyze the facts of this case based upon the jury rejecting the hospital blood draw, Sample A, and convicting Mr. Rowell solely on the basis of the second blood draw. The jury, under the facts, could have rejected the first blood draw based upon the lack of a chain of custody. The jury heard the confusing times and could easily have discredited the first blood draw because it was taken before Mr. Rowell arrived at the hospital.

Third, the jury could have had a reasonable doubt as to both blood draws but concluded one confirmed the other. While neither alone would have convicted Mr. Rowell, both together did convince the jury.

Under the appropriate standard of review, this Court must conclude that the error was not harmless beyond a reasonable doubt. Under any of the three scenarios, this Court could not conclude, as a matter of law, that the second blood draw did not contribute to the verdict. The standard for finding harmless error is very high. As this Court has said, "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996). No court could so conclude under the facts of this case. This Court has not explained how the second blood drawn had little or no impact on the decision for the jury.

#### **IV. Juror 164 failure to disclose requested information**

This Court, in its opinion, again failed to consider that the record, even without any testimony from Juror 164, establishes that the Juror was asked about pending criminal charges. This fact is undisputed. The Juror did not respond, which simply told the court and the lawyers, he had no pending criminal charges. As this Court has said, "It is the duty of every potential juror to make true and full disclosures during voir dire because counsel is entitled to rely on the answers in determining whether to exercise a peremptory strike." *Long v. Norris & Associates, LTD*, 342 S.C. 561, 573, 538 S.E.2d 5, 11 (Ct. App. 2000). The record in this case establishes the response by Juror 164 was not truthful. Once the record establishes the juror's answer was not truthful, the obligation of the moving party is over. The record at that point is sufficient to grant the moving party a new trial.

In ruling on this issue, this Court said, "Nothing required the trial court or a party to hail a juror into court to testify on the issue of juror misconduct under the circumstances presented here." *Rowell*, at 38. The only circumstance this Court discussed to justify this conclusion was that trial judge concluded his juror voir dire was confusing to this juror. Without testimony from the juror, this conclusion was without any evidentiary support in the record when the record established many other jurors did not find the questions confusing. In making this finding, this Court ignored the record in this case. As stated above, the record established the fact the Juror was not honest in his response. This Court has again failed to consider that the factual finding by the trial judge that the Juror did not understand the question, is not supported by any evidence in the record. Before a trial court could make this factual determination, the trial court would be required to place the Juror under oath and hear his testimony. Thus, the finding of the trial court that the Juror's concealment was unintentional is without any evidence in the record and is,

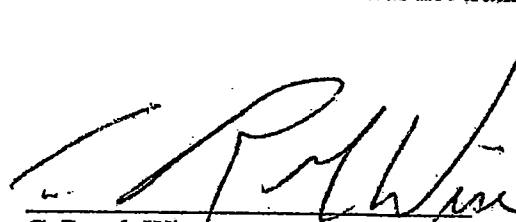
therefore, an error as a matter of law. As the South Carolina Supreme Court has said, "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). With no factual basis to conclude, "[T]he Juror 164's concealment was unintentional," (Rec. on App. at 1426) the trial court erred as a matter of law in making such a conclusion.

This Court erred in failing to acknowledge that *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001) involved an actual hearing where the juror testified. As such, the case could not be used as support for the conclusion of this Court, "We find the trial court did not abuse its discretion in failing to conduct an evidentiary hearing with Juror 164." *Rowell* at 37.

### Conclusion

For the forgoing reasons, this Court should rehear this matter either by the original panel or *en banc*, correct the order as to the factual and legal errors set forth in this Petition, and issue an order reversing the conviction of Adam Rowell in which both blood draws are excluded from evidence. Furthermore, this Court reverse the conviction because rule Juror 164 was not truthful in his responses to the voir dire.

March 14, 2022



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# Exhibit A

## Timeline of Events

8:26 Life Flight helicopter transporting Adam Rowell departs Greenwood County (Rec. on App. at 1455, III "Depart with Patient")

8:32 Life Flight trauma alert called to Greenville Hospital (Rec. on App. at 1460, III "Event Log")

8:44 Patient later alleged to be Adam Rowell arrives at Greenville Hospital via LifeNet from Greenville County, attended by Dr. Bradley Snow (Rec. on App. at 1450, III "Time of Greet")

8:49 Initial triage for Greenville patient later alleged to be Adam Rowell (Rec. on App. at 1450, III "Triage Time")

8:54 Blood sample later attributed to Adam Rowell drawn from 8:44 patient (Rec. on App. at 742, II 19-20 and Rec. on App. at 743, II 7-10)

8:55 Life Flight transporting Adam Rowell unloads Mr. Rowell from the transporting vehicle (Rec. on App. at 1460, III "Event Log")

8:59 Life Flight indicates acceptance of Adam Rowell by Greenville Hospital (Rec. on App. at 1455, III "Accepting Unit")

9:00 Life Flight signs over Adam Rowell to Greenville Hospital (Rec. on App. at 1455, III "Signover")

9:00 Hospital records indicate Adam Rowell "arrived at 21:00" (Rec. on App. at 1451, III "Prehospital Record") and "2100, Patient Arrives (Rec. on App. at 1452, III "Nurse Notes")

9:08 Central Line inserted into Adam Rowell and blood drawn via central line (Rec. on App. at 1451, III "Procedures")

### Comparison of Records

Hospital records indicate Adam Rowell arrives via Life Flight (1451, Rec. on App. at 1452, III "Prehospital Record"; and Rec. on App. at 1452, III "Nurse Notes")

Hospital records indicate Adam Rowell had a "C-collar, Intubation" (Rec. on App. at 1451, III "Prehospital Record")

Hospital Records indicate Adam Rowell was "intubated en route" (Rec. on App. at 1451, III "Primary Survey")

10:12 Bedboard Entry for 8:44 patient with "Equipment: \*None, Tubes: \*None" attributed to hospital records of Adam Rowell (Rec. on App. at 1450, III "Bedboard Entry")

# The South Carolina Court of Appeals

The State, Respondent,

v.

Adam Rowell, Appellant.

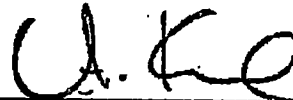
Appellate Case No. 2018-000022

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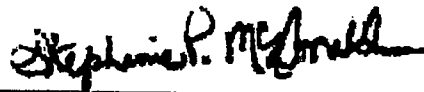
## ORDER

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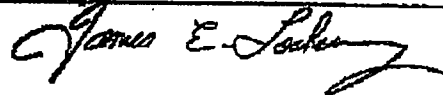
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

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Billy J. Garrett, Jr., Esquire

Carson McCurry Henderson, Esquire

Jane Hawthorne Merrill, Esquire

Alan McCrory Wilson, Esquire

**FILED**  
**Apr 01 2022**

Jonathan Scott Matthews, Esquire  
David Matthew Stumbo, Esquire  
The Honorable Donald B. Hocker