

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

S.C. Supreme Court

Opinion No. 4934 (S.C. Ct. App. filed January 25, 2012)

The State of South Carolina, ... Respondent,

v.

Rodney L. Galimore, ... Petitioner.

Appendix

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY L. GALIMORE,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF BEAUFORT) CASE NO.: 2007-GS-07-1584,
1616-1617, 2008-GS07-2690

STATE OF SOUTH CAROLINA,)
)
THE STATE,)
)
V.) TRANSCRIPT OF RECORD
)
RODNEY GALIMORE,)
)
DEFENDANT.)

NOVEMBER 18, 2008
BEAUFORT, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER

APPEARANCES:

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1 **MR. HOOD:** That is correct.

2 **THE COURT:** G-A-L-I-M-O-R-E, Madam Court Reporter.
3 Indictment for felony, driving under the influence, true
4 billed by the Beaufort County Grand Jury. This is a
5 certified copy by the Clerk of Court of Beaufort County.

6 This indictment alleges that at a Court of General
7 Sessions convened on September 20th, 2007, the Grand Jurors
8 of Beaufort County presented upon their oath that in
9 Beaufort County, South Carolina, on or about August the
10 11th, 2007, while driving a vehicle under the influence of
11 alcohol, drugs, or both alcohol and drugs, the defendant,
12 Rodney Galimore, did an act forbidden by law, or neglected a
13 duty imposed by law, in driving of said vehicle, and such
14 act proximately caused death to Merry C. Deon, D-E-O-N, all
15 in violation of SC Code Section 56-5-2945 of the Code of
16 Laws of South Carolina 1976, as amended. Is that the
17 indictment that is the subject matter of your motion?

18 **MR. HOOD:** That is correct.

19 **THE COURT:** Happy to hear from you at this time, Mr.
20 Hood.

21 **MR. HOOD:** Your Honor, in my opinion, based on the
22 present state of the law, that -- that particular indictment
23 fails to state an offense. Specifically, because the State
24 -- I mean, the indictment does not include an act or
25 omission, which is required by law to be stated in the

1 indictment. And that particular item has to be determined
2 by the grand jury when the grand jury indicts the person for
3 the crime, and there is no allegation of what that act or
4 omission is. That was simply a statement taken directly out
5 of the form book which elements -- it states you have to
6 allege certain elements. And then it comes down to that
7 particular element and it's listed just as that. It's
8 either this or that and you have to decide what that element
9 is and fill it in at the time you indict the person. It,
10 basically, without that particular element, it fails to
11 state an offense.

12 **THE COURT:** So you think the indictment lacks
13 sufficient specificity in order to put your client on notice
14 of the charges; is that the basis of your motion?

15 **MR. HOOD:** The basis of my motion is not only that, but
16 it simply fails to state an offense because the Grand Jury
17 did not have the opportunity, and the Grand Jury chose,
18 apparently, not to, you know, list that particular element
19 of the crime at the time it took its action.

20 **THE COURT:** Well, what element are you referring to?

21 **MR. HOOD:** The act or omission that we're here -- the
22 cause -- who was the proximate cause of this.

23 **THE COURT:** So you think the alleging of driving the
24 vehicle in a -- that your client did an act forbidden by law
25 or neglected the duty imposed by law in driving of said

1 vehicle, and that such act proximately caused death to Merry
2 C. Deon, in violation of the code of laws, is insufficient
3 because it fails to allege what?

4 **MR. HOOD:** It fails to allege what the act was that was
5 a violation of the law or an omission.

6 **THE COURT:** And you have case law to support that
7 position?

8 **MR. HOOD:** State v. Grampus.

9 **THE COURT:** And is that "Grampus"?

10 **MR. HOOD:** That is correct, I believe.

11 **THE COURT:** Let the record reflect that counsel for the
12 Defendant has handed the Court 343, SE 2d, 26, State v.
13 Grampus. This is a 1986 case and the Supreme Court --
14 apparently, the Defendant was tried and convicted in
15 magistrate's court -- now, wait a minute. He was tried and
16 convicted in General Sessions of felony, driving under the
17 influence and simple possession of marijuana. He had some
18 other traffic violations which were nol prossed and -- no,
19 he was convicted in his absence, and then, apparently, the
20 tickets were nol prossed after the conviction and absence.
21 He moved before the circuit court to dismiss the felony DUI
22 on the grounds of double jeopardy.

23 His allegation in this case was that his felony DUI
24 prosecution, after his earlier conviction in magistrate
25 court, violated his constitutional protection against double

1 jeopardy, and he cited the United States Supreme Court case
2 of Illinois v. Vitale, V-I-T-A-L-E, which is a 1980 case.

3 In that case, the United States Supreme Court was
4 presented with the question of double jeopardy regarding the
5 speeding violation and a subsequent manslaughter charge.
6 And the manslaughter charge in that case had not taken
7 place, but the Court said if in the pending manslaughter
8 prosecution that Illinois relies on and proves a failure to
9 slow to avoid an accident as a reckless act necessary to
10 prove manslaughter, then Mr. Vitale, V-I-T-A-L-E, would have
11 had a substantial claim of double jeopardy.

12 Therefore, his argument depended on whether his traffic
13 violation of improper use of lanes, crossing the center
14 line, was used to establish an element of felony DUI. The
15 Court went on to say that our statute requires proof of
16 three elements: The actor drives a vehicle while under the
17 influence of alcohol and/or drugs; the actor does an act
18 forbidden by law or neglects a duty imposed by law; and the
19 act or neglect proximately causes great bodily injury or
20 death to another person, which is the elements of 56-5-2945,
21 our code.

22 The Court pointed out, for purposes of the double
23 jeopardy argument in this case, that the lane change
24 violation was critical to establish an act forbidden by law.
25 The State argued that the record is unclear regarding this

1 element.

2 In this particular case, it involved a head-on
3 collision caused by an alleged lane change violation. And
4 according to the Court, the record, on appeal, clearly
5 showed that the lane change violation served as the only
6 basis for the act forbidden by law in the felony DUI
7 prosecution.

8 In a footnote, the Court said this: Footnote 2:
9 "Appellant", and in this case I'm referring to Mr. Grampus,
10 "has not argued the sufficiency of the indictment on its
11 face. However, we note that the indictment must state, with
12 particularity, the act forbidden by law, or duty imposed by
13 law, which will be relied on by the state to support the
14 felony DUI charge." And they cite 56-5-2945, 41 AmJur2nd,
15 Indictments and Information Section 93, Note 8, State v.
16 Tabory, T-A-B-O-R-Y, 202 SE 2nd 852. The Court went on to
17 put -- to say, "Therefore, unlike Vitale, the United States
18 Supreme Court case, the issue of double jeopardy should be
19 apparent on the face of the indictment."

20 All right, Solicitor. I'll be happy to hear from you.
21 And have you had a chance to see this case?

22 **DEPUTY SOLICITOR TANNER:** I'm familiar with Grampus,
23 Your Honor. However, that case is from 1986. There has
24 been a tremendous amount of case law recently about the
25 sufficiency of an indictment, particularly the Gentry case,

1 which makes the indictment a notice document only. And, in
2 fact, in January of --

3 **THE COURT:** I don't think there's any argument that
4 this -- I mean, Mr. Hood is not arguing this is
5 jurisdictional, I don't believe; do you?

6 **MR. HOOD:** Judge, what I'm arguing is that it fails to
7 state an offense.

8 **THE COURT:** Mr. Hood, I'm aware of what you told me,
9 and my question is you are not arguing that the indictment
10 is a jurisdictional argument in light of our recent case
11 law?

12 **MR. HOOD:** That's correct.

13 **THE COURT:** All right. Take a seat, Mr. Hood. One
14 lawyer speaks at a time, one lawyer stands at a time in my
15 courtroom. Yes, ma'am?

16 **DEPUTY SOLICITOR TANNER:** Thank you, Your Honor. In
17 January of 2008, our Court actually noted that an indictment
18 passes legal muster when it charges the crime substantially
19 in the language of the statute prohibiting the crime. This
20 indictment, verbatim, cites the statute. The case I'm
21 citing is from January, 2008. It is State v. Tumbleston and
22 it is at 654 SE 2nd 849.

23 **THE COURT:** Do you have a copy?

24 **DEPUTY SOLICITOR TANNER:** I do not have a copy, Your
25 Honor. So that's the -- if the issue is whether or not this

1 indictment passes legal muster, and it does, it quotes the
2 statute verbatim. It lists every element that the State
3 must prove and the State must prove evidence -- provide
4 evidence that satisfies each element which has been put in
5 the indictment. There is nothing missing from this
6 indictment and it passes legal muster. All the recent case
7 laws support that. Grampus is from 1986.

8 **THE COURT:** Well, Grampus does say in the footnote, and
9 I call that to your attention, that although Mr. Grampus
10 didn't raise in his appeal, because it was a double jeopardy
11 argument -- he did not raise the sufficiency of the
12 indictment. The Court suggested that the indictment must
13 state, with particularity, the act forbidden by law rather
14 than just stating general terms, which is Mr. Hood's
15 argument that the indictment here fails to state, with
16 particularity, the act forbidden by law.

17 Now, I agree with you, Solicitor, that an indictment is
18 a notice document, and Mr. Hood concedes it's not
19 jurisdictional, even though there were arguments in the
20 past. I agree with you this is a 1986 case.

21 The question, I guess, for the Court at this point is
22 whether or not the indictment sufficiently -- he -- he
23 couches it in terms of "fails to state an offense", but I
24 believe that the essence of this argument is whether or not
25 the indictment sufficiently notifies the Defendant from a

1 due process standpoint of the charge against him, so that he
2 can respond to the charge from a due process standpoint. I
3 need to hear from you on that. And given the fact that I'm
4 bound by Grampus, unless it's been overruled -- Mr. Hood,
5 have you Shepardized this case?

6 **MR. HOOD:** I have, Your Honor. Matter of fact, in --
7 let's see, January 9, 2008, Stanley Antonio v. State of
8 South Carolina cites that -- within the body of that
9 particular decision it says, "State v. Grampus is the
10 leading case in South Carolina setting forth the elements of
11 the offense of felony driving under the influence."

12 **THE COURT:** Well, interestingly enough, Mr. Hood, the
13 elements that are set forth in felony DUI in Grampus are
14 included in this indictment. It is the footnote, when they
15 were talking about double jeopardy, which suggests that the
16 indictment "must, with particularity, state the act
17 forbidden by law." The elements that Grampus requires for a
18 felony DUI are "that an actor drive a vehicle while under
19 the influence of alcohol or drugs, and the actor does an act
20 forbidden by law or neglects a duty imposed by law, and the
21 act or neglect proximately causes great bodily injury or
22 death to another person"; those elements, I believe, you
23 concede are alleged in the indictment; isn't that true?

24 **MR. HOOD:** I -- I think those words are alleged in the
25 indictment.

1 **THE COURT:** What you -- what you believe ---

2 **MR. HOOD:** But I see ---

3 **THE COURT:** --- is fatal to the indictment is the
4 failure to state, with particularity, the act forbidden by
5 law?

6 **MR. HOOD:** What I'm saying is that the Grand Jury, who
7 has the responsibility to indict for this particular crime,
8 was not given information for them to indict, for that
9 particular element "a act or omission" that they could
10 allege in the indictment, which would satisfy the
11 indictment. It's like ---

12 **THE COURT:** I understand that. What you're telling me,
13 Mr. Hood -- I'm not trying to mince words with you, I want
14 to make sure the record is clear for purposes of your
15 argument. You're alleging, based on the footnote in the
16 Grampus case, which you've handed to me, that the indictment
17 does not state, with particularity, the act forbidden by law
18 or duty imposed by law?

19 **MR. HOOD:** That's correct. They ---

20 **THE COURT:** Thank you. Anything else, counsel?

21 **DEPUTY SOLICITOR TANNER:** Your Honor, the Grand Jury
22 proceedings are confidential. We don't know what went on.
23 We don't know what the Grand Jury was told. We know that
24 based on the elements they were provided in the statute ---

25 **THE COURT:** Well, I don't think that matters,

1 Solicitor. I agree with Mr. Hood on that. It's the notice
2 of his client, from the Grand Jury, that is critical here,
3 not what - obviously, the Grand Jury's proceedings are
4 secret. The Grand Jury could have considered many things,
5 but its notice to the defendant that is the key here,
6 whether or not the defendant has been placed on notice of
7 the act forbidden by law, so that he can respond to the
8 charge in the indictment issued by the Grand Jury.

9 **DEPUTY SOLICITOR TANNER:** Yes, sir. And the State's
10 position is there's no question he's on notice and it
11 satisfies the current case law. As recent as 2008, January,
12 it says, "An indictment passes legal muster so long as it
13 contains the language of the statute." This indictment
14 contains the -- the language of the statute verbatim. He is
15 absolutely on notice for what he was charged with and what
16 type of evidence the State will present against him.

17 **THE COURT:** All right. I'm going to -- I'm going to
18 take a little, quick look at this for a moment. You had
19 another motion, Mr. Hood, I believe, but it's -- I believe
20 that motion was something that I would have to take up
21 during the course of the trial; is that correct?

22 **MR. HOOD:** One of them, Your Honor, with respect to the
23 -- the suppression of the blood results.

24 **THE COURT:** In -- in order to -- to take up that,
25 you're going to make that contemporaneously with their

1 attempt to introduce it into evidence?

2 MR. HOOD: That's correct. I'll make the objection.

3 THE COURT: Does that take care, now, of all your pre-
4 trial motions?

5 MR. HOOD: No. We also have a motion concerning this
6 animation that the MAIT team has -- has developed and -- and
7 the State intends to play.

8 THE COURT: Are you going to make any mention in
9 opening statement of an animation? Well, I'm ruling that
10 you're not ---

11 DEPUTY SOLICITOR TANNER: Okay.

12 THE COURT: --- until I have an opportunity to rule on
13 it at the trial, Solicitor.

14 DEPUTY SOLICITOR TANNER: That handles that.

15 THE COURT: You can make that contemporaneously -- when
16 you reach the point that they attempt to introduce that,
17 just let me know. Give me the opportunity at that point
18 rather than having rule on it pre-trial. It will not be
19 mentioned in opening statement. You understand, Mr. Hood?

20 MR. HOOD: That is correct. Thank you.

21 THE COURT: Anything else?

22 MR. HOOD: The only ---

23 THE COURT: Because I want to take a minute on this
24 other motion.

25 MR. HOOD: Right. The only other matter is, I -- we

1 have a DUS Third here and above. A DUS Third and above is
2 an indictment that we also have here. And it is --

3 **THE COURT:** Right.

4 **MR. HOOD:** -- alleged that it's non-alcohol related. I
5 would move to have that particular indictment dismissed from
6 the presence of this jury to make a determination, mainly,
7 because, in my opinion, the only thing that that's going to
8 do ---

9 **THE COURT:** I do not send indictments to the jury. I
10 prepare my own verdict forms and have a foreman sign the
11 verdict on the indictment to commemorate it on the
12 indictment after the verdict, so that will not be published
13 to the jury. Mr. Hood, if you're worried about the fact
14 that the indictment alleges third offense, is that your
15 concern?

16 **MR. HOOD:** Well, I think it's already been told to
17 them, Your Honor, at ---

18 **THE COURT:** Is that true?

19 **DEPUTY SOLICITOR TANNER:** The case was called and he's
20 charged with driving under suspension, third offense; that's
21 what he's charged with. It'll be up to the State to prove
22 whether or not it is a third offense. We do have his
23 certified driving record --

24 **THE COURT:** Did you offer to concede it was a third
25 offense prior to the calling of the case, Mr. Hood?

1 **MR. HOOD:** Judge, I didn't even know what cases they
2 were going to call until --

3 **THE COURT:** Well, you certainly knew what indictments
4 had been issued. You were on notice that that indictment
5 had a third offense in it.

6 **MR. HOOD:** I -- I was notified of that, but I also know
7 that it's a magistrate court offense and would be handled in
8 magistrate --

9 **THE COURT:** Not -- third offense is not a magistrate's
10 court offense.

11 **MR. HOOD:** If it's non-DUI related, it is handled in
12 magistrate's court and --

13 **THE COURT:** It might be subject to transfer, but
14 it's -- it's not just within the jurisdiction of
15 magistrate's court.

16 **MR. HOOD:** Well, that particular crime carries with it
17 a punishment of 90 days to six months and the magistrate's
18 courts have been handling all of those DUS non ---

19 **THE COURT:** --- DUI related. I understand that's been
20 the practice, but obviously, that is an offense that's
21 tryable in General Sessions Court, as well as magistrate's
22 court, if it isn't transferred.

23 **MR. HOOD:** Well, I look at this as being simply another
24 aggravating matter which the State just wants to, you
25 know ---

1 **THE COURT:** Well, what's the basis of your grounds to
2 dismiss the DUS Third, Mr. Hood? I assumed it was where --
3 I want to move it along now. Tell me exactly what your
4 argument is, because this is not a motion you advised me of
5 in chambers.

6 **MR. HOOD:** The probative value of that particular crime
7 is far outweighed by the prejudice that it would -- would
8 create, and the confusion that it would create during the
9 course of this trial.

10 **THE COURT:** Very well. Thank you. Solicitor?

11 **DEPUTY SOLICITOR TANNER:** Your Honor, all crimes
12 charged are prejudicial to the defendant. We're accusing
13 him of committing a crime. I don't know how he just gets to
14 dismiss an indictment, because ---

15 **THE COURT:** I agree, Solicitor. Your motion to dismiss
16 the indictment for DUS Third is respectfully denied on those
17 grounds.

18 I want to place on the record I was not here yesterday
19 when the case was called for trial. It is my understanding,
20 even though I was not present, and I'll be happy to confirm
21 this with Judge Mullen, the reason I'm here is because the
22 State advised they could only try this case today due to --
23 to the availability of witnesses and that's why I stopped
24 court in Hampton to come here. And my understanding from
25 Judge Mullen is no motion was made about this indictment

1 prior to the call of the case. I am not going to send the
2 indictments to the jury so that they will not have that in
3 front of them.

4 I'm going to ask the Solicitor -- if Mr. Hood is
5 willing to concede that there are two prior DUI -- I mean,
6 two prior DUS offenses; there is absolutely no reason for
7 you to publish any information to this jury about that. You
8 understand? Because I don't know whether the Defendant's
9 going to testify in this case or not. Are you willing to so
10 concede there are two prior DUS's, Mr. Hood, which you had
11 not done so prior to the call of the case?

12 **MR. HOOD:** Yes, Your Honor.

13 **THE COURT:** Very well. Then that takes care of that.
14 Now, give me five minutes to look over this case. Bring me
15 your computer so I can read your case, and, Ryan, I need 56.
16 I'll be with you in just a moment. I'm going to take a
17 five-minute break while I look at it. Thank you very much.

18 (WHEREUPON, AN IN CAMERA REVIEW OF CASE LAW WAS HELD
19 OFF THE RECORD. THEREAFTER, AT 11:00 A.M., THE JURY ENTERED
20 THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE
21 RECORD IN THE PRESENCE OF THE JURY PANEL:)

22 **THE COURT:** Let the record reflect that I have taken a
23 break and I have reviewed, with particularity, and I use
24 that word because it's in the opinion too much. I've
25 reviewed 56-5-2945. I've reviewed and read again, State v.

1 Grampus, SE 2nd, 26. The Solicitor had me look at -- give
2 me the site for your case, Angie, that I read on the
3 computer.

4 **DEPUTY SOLICITOR TANNER:** State v. Tumbleston, that is
5 654, SE 2d, 849.

6 **THE COURT:** My law clerk then found for me State v.
7 Dantonio and it referred me, also, to State v. Eastler. I
8 read Dantonio which was a 2008 Court of Appeals decision,
9 which said that Grampus is the leading case in South
10 Carolina on the elements of felony DUI.

11 I have Shepardized the Grampus case, which was decided
12 back in 1986, and Grampus has not been overruled. It was
13 abrogated double jeopardy grounds. In Grampus, there is a
14 footnote which states, "The appellant has not argued," as
15 was made here, "the sufficiency of the indictment on its
16 face." Mr. Hood has made his motion prior to the swearing
17 of the jury, which he is required to do. However, we note
18 that the indictment must state, with particularity, the act
19 forbidden by law or duty imposed by law, which will be
20 relied on by the State to support the felony DUI charge.

21 The Court then cites, as I pointed out, several
22 different things, AmJur, the code section in State v.
23 Jaborie, in support of that. I can find no law overruling
24 that requirement. In light of that, I have no choice but to
25 grant defense motion to quash the indictment for felony DUI.

1 The jury has not been sworn, therefore, jeopardy does not
2 attach. The State will be permitted to resubmit the
3 information with "the act forbidden by law" to the Grand
4 Jury, however, we cannot proceed on that indictment today.

5 I assume that in light of my ruling, now, Solicitor,
6 that the State wishes to put off the remaining charges; is
7 that correct?

8 **DEPUTY SOLICITOR TANNER:** I believe the State has to at
9 this point, Your Honor.

10 **THE COURT:** Any objection, Mr. Hood?

11 **MR. HOOD:** Well, Your Honor, I would object to that
12 simply because this case dates back to August 17th of 2007.
13 That indictment was in September of 2007.

14 **THE COURT:** I don't believe you raised the sufficiency
15 of it until today?

16 **MR. HOOD:** That is correct, Your Honor, because I was
17 never given the opportunity to do that until today. The
18 case has been sitting around for over a year and a half. At
19 the last minute ---

20 **THE COURT:** Well, Mr. Hood, I respectfully disagree
21 with that statement in fairness to the Solicitor. This
22 indictment has been issued since September 2007, and you, as
23 counsel for the defendant, could have raised the sufficiency
24 at any time for the past year and a half.

25 **MR. HOOD:** I agree, Your Honor, but I was told

1 initially that this particular indictment went to the Grand
2 Jury and the Grand Jury dismissed that indictment, along
3 with the ---

4 **THE COURT:** Well, now that was never argued to me.

5 **MR. HOOD:** Well, see, I'm just going by the information
6 that I was given, that it was dismissed, not indicted, back
7 in 9-5-07, and they've got these ---

8 **THE COURT:** Now, Mr. Hood, the issue before the Court
9 at this stage, I've got a jury waiting, is whether or not
10 you object to the State's request to continue the remaining
11 charges?

12 **MR. HOOD:** Yes, I do.

13 **THE COURT:** Overruled. I'll grant your motion for
14 continuance, Solicitor. I clearly believe he was the
15 architect of the problem that I had by making the motion
16 today, which I feel could have been made any time for the
17 past year and a half. I will grant your continuance and I
18 will expect you, however, to see that the indictment is
19 cured in compliance with the State v. Grampus and I will
20 point out the footnote in that case. I would also want to
21 point out that I do not like delaying the case, that's why I
22 came here today to try it at the convenience of witnesses.
23 I feel that I don't have any choice in light of the language
24 of the Supreme Court of South Carolina. Bring in the jury.

25 **BAILIFF:** Yes, sir.

1 (11:15 A.M. JURY ENTERS COURTROOM.)

2 **THE COURT:** Good morning, ladies and gentlemen. First
3 of all, let me introduce myself to you. I'm Perry Buckner,
4 and I'm one of the judges of the 14th Circuit. I was not
5 assigned to you this week. I'm actually holding court over
6 in Hampton. I stopped my court in Hampton to come here and
7 try this case today, that is why Judge Mullen, who has run
8 over in a case that is going on simultaneously down the
9 hall, a medical malpractice case, was scheduled to try this
10 case, but she can't finish her case down there and try this
11 case.

12 When I arrived here this morning, the defendant had
13 five pre-trial motions that he wanted me to hear. One of
14 the pre-trial motions involved the sufficiency of the
15 indictment in the case. There is a case from the South
16 Carolina Supreme Court, which I was required to review,
17 which requires that in an indictment, certain facts have to
18 be alleged with particularity.

19 You have not been sworn in this case, therefore,
20 jeopardy has not attached to the defendant. Counsel for the
21 defendant has to make a motion concerning the sufficiency of
22 the indictment prior to the swearing of the jury, which is
23 why I asked for your patience this morning.

24 When I arrived here at 9:15, we begin working on those
25 five pre-trial motions while you were waiting. I had to

1 MS. TANNER: Nothing from the State.

2 MR. HOOD: Nothing, your Honor.

3 THE COURT: All right. I see two three solicitors in
4 the room now so I am sure we've got work to do.

5 Ms. Tanner, you're closest to the bench. Do you want
6 to confer with the galley?

7 MS. TANNER: Yes, sir.

8 THE COURT: Do you want to take a break a minute?

9 MS. TANNER: Your Honor, I don't think we are going to
10 have anything this afternoon. I think all the defense
11 lawyers have already bailed out as well. If we could begin
12 at 9:00 a. m. with the trial?

13 THE COURT: 9:00 a. m. in the morning we will
14 reconvene.

15 MS. TANNER: Thank you, your Honor.

16 THE COURT: Thank all of you.

17 (COURT IN RECESS: TIME IS 4:10 P. M..)

18 (BACK ON THE RECORD DECEMBER 9, 2008 AT 9:00 A. M..)

19 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE THROUGH
20 TWENTY-SIX PREMARKED FOR IDENTIFICATION.)

21 THE COURT: Mr. Hood, you ready to proceed?

22 MR. HOOD: Yes, sir.

23 THE COURT: Bring in the jury.

24 THE COURT: One of the alternates?

25 THE BAILIFF: I'm not sure, sir.

1 call Lieutenant Joseph Dembeck.

2 (WHEREUPON: JOSEPH DEMBECK,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE CLERK: Have a seat. State your full name and
5 spell your last name for the record.

6 A. Joseph Dembeck. J-o-s-e-p-h, D-e-m-b-e-c-k.

7 DIRECT EXAMINATION

8 LIEUTENANT JOSEPH DEMBECK BY MS. TANNER:

9 Q. Good morning, Lieutenant.

10 A. Good morning. How are you?

11 Q. Good. Where are you employed?

12 A. The Bluffton Township Fire District.

13 Q. And what are your duties there?

14 A. I am a firefighter/paramedic.

15 Q. So you do firefighting and I guess what we would
16 commonly call EMS or a paramedic?

17 A. Correct.

18 Q. What we call a paramedic?

19 A. Yes.

20 Q. And what is the difference in a paramedic and anyone
21 else on a scene like that?

22 A. A paramedic can hook people up to a heart monitor;
23 start IV's, plurdy compression, things like that.

24 Q. Is that more advanced than someone who is just
25 starting out with the fire department?

1 A. Yes.

2 Q. What type of education and training do you have to be
3 a paramedic?

4 A. A paramedic you are required to go to school for about
5 -- approximately about a year. You have clinicals, you've
6 got models you have to do. That's pretty much it.

7 Q. And are you trained or skilled in life-saving
8 procedures?

9 A. Yes.

10 Q. And how long have you been doing this?

11 A. As a fire fighter or a paramedic?

12 Q. Both.

13 A. I've been a fire fighter for ten years and a paramedic
14 -- I been in the EMS field for probably about twelve years.

15 Q. And, Lieutenant, were you working on the late evening
16 hours of August the 11th 2007?

17 A. Yes.

18 Q. And were you called to a scene on Highway 46 in the
19 Bluffton area?

20 A. Yes.

21 Q. And can you tell the jury what kind of call did you
22 receive? How do you go out?

23 A. That night we had some people come up to the front pad
24 of the fire station in Prichardville. They were honking
25 their horn and they said there was an accident on the

1 corner of [REDACTED]. So I notified
2 dispatch told them that we would go over there and I found
3 a vehicle versus a motorcycle. And when I got on the scene
4 I found a patient that was unconscious, unresponsive, not
5 breathing. The patient had some trauma to her head and
6 neck and her lower extremities. And from there I hooked
7 the patient up to a heart monitor and the heart monitor
8 read a flat line or a systole and at that point I just
9 decided that the patient was incompatible with life. The
10 highway patrol arrived on the scene and I gave them my
11 report of what I saw and what happened at the fire station
12 with the people coming up and just kind of turned the scene
13 over to them. EMS they also arrived on the scene and they
14 confirmed my findings and they called for the coroner and
15 basically we just kind of waited there and assisted the
16 highway patrol as much as we could.

17 Q. And are you there with the body until it is removed
18 from the scene?

19 A. Yes.

20 Q. Now you said that you put a heart monitor. What other
21 I guess life saving techniques do you try to employ or what
22 type of test are you doing when you get there?

23 Q. Well there's - if there's a lot of trauma to somebody
24 you kind of -- the trauma that she had to her was to the
25 point where I really couldn't do anything. We attempted to

1 do some ventilation to see if we had any response or
2 anything like that and I had some of the fire fighters do
3 some of those to use some of those things. I mean the
4 trauma that she had to her body I mean there wasn't really
5 anything that we could do.

6 Q. Now you said a systole. What does that mean?

7 A. On TV they call it like flat line time type of thing.
8 There's basically -- that means there is no electrical
9 activity in the heart. The heart requires electro activity
10 to live and to beat it didn't have that. But the trauma
11 and the fact that pretty much tells us as rescue people
12 that there's not really much you can do in a situation like
13 that.

14 Q. You said there were no signs of compatible life. What
15 does that mean?

16 A. Well I mean with the trauma and with the heart monitor
17 hooked up and things like that I mean the lady you know she
18 was on a motorcycle and there's just no evidence that she
19 could be alive. I mean there's nothing that we could do.

20 Q. You couldn't restart her heart?

21 A. No.

22 Q. Or make her breath?

23 A. Not with the trauma and stuff like that.

24 Q. Were you able to identify your patient?

25 A. What do you mean by that?

1 Q. Do you know her name? Were you able to identify her
2 name?

3 A. From the Highway Patrol yes.

4 Q. And was it Mary Deon?

5 A. Yes.

6 Q. Thank you, Lieutenant, please answer anything Mr. Hood
7 may have.

8 CROSS EXAMINATION

9 LIEUTENANT JOSEPH DEMBECK BY MR. HOOD:

10 Q. Good morning.

11 A. Good morning. How are you?

12 Q. How long have you been working out there in that area?

13 A. In that area I been out there for about a year and a
14 half.

15 Q. About a year and a half. And have you driven that
16 particular road -- been down that road many times before?

17 A. [REDACTED]?

18 Q. [REDACTED].

19 A. Yes.

20 Q. Did you come in down [REDACTED]?

21 A. Yes.

22 Q. And did you come in the same direction as the other
23 cars had come like the motor cycle had come?

24 A. No.

25 Q. Did you come in the opposite direction?

1 A. I came east bound on [REDACTED].

2 Q. Okay. So you came up behind where the accident was
3 at, is that correct?

4 A. Correct, yes.

5 Q. Okay. Now are you familiar with the road that is in
6 front of where your car or where your vehicle was parked?

7 In other words the [REDACTED] itself.

8 A. Yes.

9 Q. Okay. Now that particular convenient store sits on
10 the corner where there is a stop sign and a road
11 intersects, is that correct?

12 A. That is correct.

13 Q. And what is the name of that particular road?

14 A. That's [REDACTED].

15 Q. [REDACTED], okay. So we have a stop sign and we have
16 a convenient store, is that correct?

17 A. Correct.

18 Q. And that convenient sits fairly close to the road,
19 isn't that correct?

20 A. I agree with that yes.

21 Q. And it's a well lit and it was lit that particular
22 night, isn't that correct?

23 A. The lighting in that area -- I mean I wouldn't think
24 that it would be lit very well no.

25 Q. Was the store lit or not?

1 A. Yes.

2 Q. Okay. So we've got this store, this lighting it on
3 and it's well lit. The road that's in front of you would
4 you describe that as a long straight road?

5 A. [REDACTED]?

6 Q. Yes.

7 A. Yes.

8 Q. So you can clearly see for quite some distance if you
9 were out looking back in the direction of the [REDACTED]
10 [REDACTED] is that correct?

11 A. Correct.

12 Q. Okay. And consequently if you were going the other
13 way you could see the convenient store lights and things of
14 that nature could you not?

15 A. Correct.

16 Q. Okay. Now do you ever drive a motor cycle?

17 A. I have not.

18 Q. Okay. Probably a good idea. Thank you I have no
19 further questions.

20 THE COURT: Redirect?

21 MS. TANNER: Nothing from me, your Honor.

22 THE COURT: You can step down and be excused and we
23 appreciate your time and thank you.

24 LIEUTENANT JOSEPH DEMBECK: Thank you.

25 THE COURT: Call your next witness.

1 MS. TANNER: Your Honor, the State calls Kathryn
2 Richardson.

3 THE CLERK: Raise your left hand and place your right
4 hand on the bible please.

5 (WHEREUPON: KATHRYN
6 RICHARDSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
7 FOLLOWS.)

8 THE CLERK: State your full name and spell your last
9 name.

10 A. My name is Kathryn Richardson, R-i-c-h-a-r-d-s-o-n.

11 DIRECT EXAMINATION

12 KATHRYN RICHARDSON BY MS. TANNER:

13 Q. Good morning, Ms. Richardson.

14 A. Good morning.

15 Q. What part of the county do you live in?

16 A. I live in Bluffton Park.

17 Q. And how long have you been living in the Bluffton
18 area?

19 A. March 19 -- 2006. I'm sorry.

20 Q. And where are you employed?

21 A. Scrontengobble Restaurant.

22 Q. I am going to ask you about some events from August
23 the 11th 2007 around 10:00 p. m.. What were you doing
24 around that time?

25 A. I was coming back from Savannah on Highway 46.

1 Q. And what did you see near the country store?

2 A. As we was approaching the country store I saw a couple
3 of cars pulled over and some brake lights and in the middle
4 of the road was a four-wheel car vehicle and on the left in
5 front of the country store was a motorcycle on it's side
6 and a body a distance away and a couple of people standing
7 there.

8 Q. And when you saw this what did you do?

9 A. Immediately I called 9 1 1. I assumed that someone
10 else was on the phone with them because I saw a gentleman
11 in the parking lot on the phone. I said I'm not sure if
12 anybody else has called 9 1 1 but I'm in front of the
13 country store on Highway 46b and there's been an accident.
14 It looks like a motorcycle has been hit and the person is
15 laying on the ground. And I told them I was going to get
16 out of the car because the motorcycle was whitish -- it was
17 a white motorcycle and my boss drives that kind of
18 motorcycle and from where I stood it looked like a small
19 body and my boss isn't real tall and I got nervous and I
20 got out of the car and looked -- well I finished talking to
21 them and they said nobody else was on the phone but they
22 would send some people out immediately. I got out of the
23 car and ran over to check the person on the ground. It
24 wasn't my boss but it was a small woman and I checked to
25 see if she was breathing and she wasn't. There was a young

1 man standing over the body and to the right about five
2 feet, five, ten feet away was a man on a cell phone all
3 agitated slurring his words and moving weirdly yelling and
4 screaming how he was just run into by a motorcycle and da,
5 da, da, and kept repeating what he said all mad and
6 agitated. You know there was this young boy standing over
7 this body and the woman's not alive and it was just
8 horrific, it was terrible. You could tell by the way the
9 car was parked in the middle of the street that it was not
10 her that was at fault that this person cut in front of her.

11 MR. HOOD: Your Honor, I am going to object.

12 THE COURT: Don't go into what you didn't see.

13 THE WITNESS: Okay.

14 BY MS. TANNER:

15 Q. Ms. Richardson, describe how you seen the vehicle.

16 Let's talk about the vehicle before the motorcycle. How do
17 you see the -- where do you find the vehicle when you get
18 on the scene?

19 A. Okay we're coming up 46 from Savannah. He's not in
20 that lane but he's going in that direction and he's in the
21 other lane at an angle if I'm making any sense. He's on
22 the oncoming traffic lane at an angle.

23 Q. Okay. And where is the motorcycle located?

24 A. The motorcycle -- if this is the front of his vehicle
25 the motorcycle is here in the parking lot of the country

1 store.

2 Q. Now when you arrived are there any fire fighters or
3 paramedics on the scene?

4 A. Not yet.

5 Q. No police officers?

6 A. No police officers.

7 Q. And you said there was a man on a cell phone?

8 A. Yes.

9 Q. And do you see that man in this courtroom?

10 A. Well I see a man that looks very -- this gentleman
11 over here but he is certainly a lot more clean today than
12 he was that day.

13 Q. And describe his appearance that day.

14 A. Just shoveled, dirty. You know you can tell he had
15 been I don't know. He wasn't dressed in a suit and nice
16 and looking good.

17 Q. And what did you hear him say?

18 A. He kept yelling in the phone. You know this person
19 just hit me; this person just hit me taking no
20 responsibility for his actions. He wasn't even checking
21 out to see if the person was okay. He didn't care about
22 that person. I found out later it was his son standing
23 over the body. This child shouldn't even have even been
24 there. This woman is dead on the ground and he's standing
25 over her body. I didn't get that. It made no sense to me.

1 And he's more worried with what ever on the cell phone and
2 he should be concerned with what's going on. He should
3 have called 9 1 1. He should have been concerned about the
4 safety of this human being whoever -- whoever he thought
5 was at fault.

6 Q. Now, Ms. Richardson, how long did you stay on the
7 scene?

8 A. I stayed until the ambulance and the police arrived
9 because it wasn't a very big area and when they arrived and
10 took off I left and then I did inform the policeman they
11 knew from the 9 1 1 call who I was and then the next
12 morning I informed the police that if they needed me for
13 anything that I was there and that the reason I didn't stay
14 it wasn't bit enough for all of us. There was a fire
15 truck, there was an ambulance and there was a police car.
16 There wasn't a lot of room in that vicinity and I just
17 didn't know if I would be in the way or not. Plus I was
18 very upset.

19 Q. Thank you, Ms. Richardson. Please answer anything
20 defense counsel has.

21 CROSS EXAMINATION

22 KATHRYN RICHARDSON BY MR. HOOD:

23 Q. Now Ms. Richardson, which direction did you come from?

24 A. We were coming from Savannah so we were going east on

25 46.

1 Q. So you were on [REDACTED], is that correct?

2 A. Yes.

3 Q. And you were approaching the country store, is that
4 correct?

5 A. Yes.

6 Q. And you would have been coming from the same direction
7 as the motorcycle driver, is that correct?

8 A. No opposite direction.

9 Q. Opposite direction, okay. Now was there somebody with
10 you in the vehicle?

11 A. There was a few of us in the vehicle yes.

12 Q. How many people were in the vehicle?

13 A. Three others besides me..

14 Q. Okay. And were these adults that were in the car with
15 you?

16 A. One was a sixteen year old and two were adults yes.

17 Q. Okay. Were you the only one to exit the vehicle?

18 A. Yes I was.

19 Q. Okay. And you exited the vehicle to check on seeing
20 whether or not this was your boss, is that correct?

21 A. Wanted to see if it was my boss first of all because I
22 got scared but second of all to make sure the person on the
23 ground if they needed any help if I could help them at all.

24 Q. Well you didn't know how long it had been since this
25 accident occurred, is that correct?

1 A. Not a hundred percent sure no.

2 Q. So you didn't see it, is that correct?

3 A. No I did not.

4 Q. Okay. All right so you don't know what took place
5 prior to your arrival is that correct?

6 A. No. I only know where the vehicle was and where the
7 motor cycle was.

8 Q. Okay. Now isn't it true that the first thing you did
9 was went over and checked the motorcycle to make sure it
10 wasn't your boss's?

11 A. No I called 9 1 1 first.

12 Q. 9 1 1 first. But when you got out of the vehicle you
13 went and checked the motorcycle to make sure it wasn't your
14 boss?

15 A. I looked at the motorcycle and then I went to the body
16 because I'm sorry if you were in my position you really
17 don't want to see somebody on the ground in that position.
18 It was disgusting.

19 Q. All right. Well but your first thought was to check
20 the motorcycle to make sure it wasn't your boss.

21 A. Oh yes.

22 Q. All right. So once you check the motorcycle and it's
23 not your boss's then you go over and check the body, is
24 that correct?

25 A. Yes that is correct, sir.

1 Q. Okay. All right. Now was it raining that night?

2 A. Not when I came up on it no. Whether it was earlier
3 I'm not sure.

4 Q. And the lights there at the country store were on and
5 illuminating the area - - -

6 A. Yes they were.

7 Q. - - - isn't that correct?

8 A. Uh-huh.

9 Q. Okay. I don't have any further questions.

10 THE COURT: Redirect?

11 MS. TANNER: Nothing further, your Honor.

12 THE COURT: Ms. Richardson, thank you very much. We
13 appreciate your time and you can be excused.

14 Call your next witness.

15 MS. TANNER: Thank you, your Honor. The State calls
16 Jaqueline Cook-Jackson.

17 THE CLERK: Raise your right hand and place your left
18 hand on the bible.

19 A. Raise my right hand?

20 THE CLERK: Yes, ma'am.

21 (WHEREUPON: JAQUELINE COOK-
22 JACKSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
23 FOLLOWS:)

24 THE CLERK: Have a seat. State your full name and
25 spell your last name for the record.

1 A. My full name is Jaqueline Roberta Cook-Jackson,
2 J-a-c-k-s-o-n.

3 DIRECT EXAMINATION

4 JAQUELINE COOK-JACKSON BY MS. TANNER:

5 Q. Good morning, ma'am.

6 A. Good morning.

7 Q. I am going to start off by asking you if you know
8 Rodney Galimore?

9 A. Yes I do.

10 Q. And could you describe your relationship back in
11 August of 2007?

12 A. We were dating.

13 Q. Pull the microphone just a little bit to you. I'm
14 sorry could you describe your relationship?

15 A. We were dating.

16 Q. I am going to ask you about a specific date August the
17 11th 2007. Did you see him that day?

18 A. Yes.

19 Q. All right and where is the first place you see him?

20 A. At his house.

21 Q. And what were you doing that day?

22 A. I was planning a birthday party well getting ready for
23 a birthday party for my son. We were going to try and tie
24 it in with his son's birthday was around the same time.

25 Q. And about what time were you having the party?

1 A. I would say about 3:30, 4:00.

2 Q. In the afternoon?

3 A. In the afternoon yes.

4 Q. And where were you having the party?

5 A. At my house.

6 Q. And did you actually have that party?

7 A. Yes I did.

8 Q. And who was there?

9 A. Well it was a bunch of kids there. A bunch of kids
10 there and my mom. I think my mom stopped by for a minute
11 earlier. Rodney was there. My girlfriend Denise and her
12 kids were there and myself but most of the kids were
13 dropped off.

14 Q. And - -

15 A. Rodney and his kids were there. His kids were there
16 as well.

17 Q. And when Rodney arrives at the party does Rodney come
18 back to you, come back to your house with you or does he
19 arrive later?

20 A. He arrived later.

21 Q. I'm sorry you said you first saw him at his house.
22 Tell me about that.

23 A. Yea I first saw him at his house. I stopped by his
24 house to let him know that I was breaking it off with him
25 and to let him know that I was basically breaking it off

1 with him; we can still remain friends and that I was still
2 going to do what I said as far as putting his son's name on
3 the birthday cake and celebrating his son's birthday his
4 oldest son's birthday.

5 Q. And did you do that?

6 A. Yes I did.

7 Q. It sounds like they came to the party.

8 A. Yes.

9 Q. And when Mr. Galimore arrives for the party - -

10 A. Well he came earlier and you know and he was drinking.
11 You know he came earlier and he ask me you know was I
12 really serious about doing what I said I was going to do as
13 far as breaking it off with him. And also ask me did I
14 still do what I said I was going to do as far as putting
15 his son's name on the birthday cake and I said yes.

16 Q. So prior to the birthday you say he's already
17 drinking?

18 A. Yes he was drinking.

19 Q. And does he then remain at your house?

20 A. For a little while. He kind of dozed off a little bit
21 and then he woke up and then he got up to go take care of
22 something he went to do something. And then he later on
23 called me and ask me if I needed anything from the store
24 because he called me from my cell phone that he was using
25 at the time.

1 Q. All right. And when is the next time you see him?

2 A. When he came back with some meat to put on the grill
3 and to start the grill.

4 Q. And how does everything go at the party?

5 A. Everything was going okay. Everything was going fine
6 you know and then he left again and came back. And when he
7 came back he had a gun with him and I told him he couldn't
8 have that here. I told him -- I ask Denise if she would
9 watch the kids while I took him home so that he could put
10 it away and that's what I did.

11 Q. And that's what you did?

12 A. Yea. I took him home so that he could put the gun
13 away because I didn't want it at my house. I don't like
14 guns.

15 Q. And then what happened?

16 A. And then you know we talked there for a little while
17 and I ask him to get some clothes so he can take a shower
18 because he was drunk you know he was slurring a little bit.
19 And I told him to get some clothes he could take a shower
20 at my house and lay down while the kids are you know having
21 fun. I thought he put the gun away. You know I didn't
22 know he still had the gun until he got back to the house.
23 I think my son was saying that he had a gun and I was in
24 the house. I was pregnant at the time so Denise went
25 outside. It was like he shouldn't have the gun because he

1 went to his house to put the gun away.

2 Q. And then what happened?

3 A. Then Denise went outside. I don't know what she said
4 to him.

5 Q. Did you see him again?

6 A. I saw him again later on.

7 Q. All right. Describe that for me.

8 A. When I saw him again and he told me he had the gun and
9 I told him I thought I took him to the house to put that
10 gun. When did you get that gun? And I told him I you know
11 I just want you to leave. Just leave. Get your stuff.
12 I've already got your stuff together and leave. I want you
13 to leave. And then at the time I ask him for my cell phone
14 that he was using because I didn't want him to come back to
15 the house. He told me he had some people calling therefore
16 and I said well if they call I will give them a message but
17 I want my cell phone. And I think he got upset to the fact
18 that I wanted my cell phone. I even told him that you can
19 leave you can leave the kids but you have to go. He got
20 mad to the fact pushing me in the house, pushing me in the
21 room and started hitting me.

22 MR. HOOD: Your Honor, I am going to object.

23 THE COURT: I sustain the objection. I sustain the
24 objection about that. Go ahead.

25 BY MS. TANNER:

1 Q. Now Ms. Jackson, earlier you said that Mr. Galimore
2 was drunk. How do you know that?

3 A. Because he was slurring and he was stumbled a little
4 bit. That's why I wanted him to lay down. Take a shower
5 and lay down so he could sleep it off.

6 Q. And did he do that?

7 A. No he didn't.

8 Q. Did he eventually leave your house that night?

9 A. Yes.

10 Q. Was he alone when he left?

11 A. No he took his kids with him.

12 Q. What was he driving?

13 A. He was driving his SUV.

14 Q. Do you recall about what time he left your house?

15 A. No. That's a whole year ago.

16 Q. Was it night time?

17 A. It was night time. I would say maybe ten, eleven
18 o'clock something like that.

19 Q. And could you describe his state when he left your
20 house? How was he acting when he left?

21 A. He was mad.

22 Q. Would you say he was still intoxicated?

23 A. Yea.

24 Q. All right, Ms. Cook-Jackson, you're talking about
25 Rodney Galimore. Do you see him in the courtroom?

1 A. Yes.

2 Q. Could you point him out please?

3 (WITNESS POINTED.)

4 Q. Let the record indicate that she has indicated the
5 defendant.

6 Please answer anything defense counsel has.

7 A. Okay.

8 CROSS EXAMINATION

9 JACQUELINE COOK-JACKSON BY MR. HOOD:

10 Q. Now what time in the morning did you go to Rodney's
11 house?

12 A. I would say probably about nine, nine o'clock, between
13 nine and ten o'clock because I went to Publix to order a
14 cake.

15 Q. And he had been staying in your house previously?

16 A. No he didn't stay there. He spent a couple of nights
17 here and there helping the kids.

18 Q. Well he had a lot of his belongings there didn't he?

19 A. He had some work clothes and because kids always spend
20 the night at my house and so do his kids and they had a
21 couple of items there. He didn't have a lot of stuff
22 there.

23 Q. Well - -

24 A. Just enough to put inside a grocery bag.

25 Q. He had a colored television set didn't he?

1 A. Yea because my TV went out and so he went and got his
2 TV and plus he took the TV either earlier that day or the
3 day -- yea earlier that day or later on that day when he
4 was leaving because I wanted him -- because I had broken
5 things off.

6 Q. Well isn't it true - -

7 A. It was a small TV.

8 Q. Isn't it true that he broke things off with you?

9 A. No.

10 Q. No. Okay. So he takes his colored TV and I believe
11 he had a whole bunch of DVD's and things of that nature and
12 a digital also, isn't that correct?

13 A. No. No not really. He had some of my DVD's I had
14 some of his. There weren't a bunch of them maybe about two
15 or three.

16 Q. He took all of those didn't he?

17 A. No actually his -- I want to say his cousin or his
18 aunt's husband came and picked up the three or four of the
19 DVD's that he had left. I can name them for you if you
20 like.

21 Q. That's all right.

22 A. Okay.

23 Q. Now also he had a vehicle in your garage didn't he?

24 A. He was working on a vehicle there for somebody because
25 he didn't want to work on it at his house because it was

1 outside. I had a garage that he ask me if he could work in
2 my garage on that vehicle. It was a Mercedes for somebody.

3 Q. Yea and he was a mechanic isn't that correct?

4 A. Yea a very good mechanic.

5 Q. Uh-huh. And Rodney was doing quite well isn't that
6 correct?

7 A. I can't answer that. I don't know what his finances
8 were.

9 Q. I mean you were staying with him isn't that correct?

10 A. No I wasn't staying with him. He spent a couple of
11 nights at my house. I've never spent the night at his
12 house.

13 Q. Well wasn't there an issue over whose child you were
14 actually carrying?

15 A. Yea.

16 Q. Whether it was Rodney's. Rodney thought it was his
17 didn't he?

18 A. Yea.

19 Q. And Rodney when he left that particular night he also
20 mentioned the fact that he was going to leave the Mercedes
21 there if he could ask you if you would let him leave the
22 Mercedes there until he could it back together, isn't that
23 correct?

24 A. No. No I don't think that was the discussion when he
25 left.

1 Q. Well was it a discussion earlier?

2 A. Yea if he could work on the Mercedes at my house until
3 he got finished with it and I said yea because we were
4 friends.

5 Q. Yea. And that's after when supposedly you told him
6 you were breaking things off - - -

7 A. Yea.

8 Q. - - - isn't that correct?

9 A. We were friends before we started dating and I wanted
10 to be friends afterwards too.

11 Q. And you were pretty upset at Rodney weren't you?

12 A. No not really. I just -- I didn't like the idea that
13 he was still drinking.

14 Q. Uh-huh. Well isn't it a fact -

15 A. That was my main reason for breaking it off. I know
16 he said he was working on that you know.

17 Q. Uh-huh. Yea well what about the kitchen, your
18 kitchen.

19 A. That he caught on fire?

20 Q. Yea.

21 A. That was an accident. I was sleeping I mean he was
22 trying to cook some chicken for the kids. That was an
23 accident.

24 Q. And I believe you blamed that on him didn't you?

25 A. Well he caught it on fire. I didn't blame it on him.

1 I know he said he was going to fix it so I didn't bring it
2 up and I didn't say anymore about it.

3 Q. Well - -

4 A. It's still burned up. It's still not fixed.

5 Q. And you weren't concerned about that isn't that true?

6 A. Well wouldn't you be?

7 Q. Yea. And after Rodney left that night you called him
8 several times on his cell phone didn't you?

9 A. No. No. Rodney actually when he left I didn't know he
10 grabbed my cell -- he took my cell phone again and my other
11 phone was in the room so I really didn't know he had called
12 me. I didn't call him. He had called me until after the
13 police left.

14 Q. Now wait a minute.

15 A. And then I went and got my phone because I had called
16 the police because he had hit me with a gun.

17 Q. Your Honor, I am going to object to that.

18 THE COURT: I over rule your objection.

19 Q. All right listen. You called Rodney on the cell phone
20 is that correct?

21 A. No. No I didn't.

22 Q. You called Rodney. Did you call him at all?

23 A. No.

24 Q. No?

25 A. For what? He hit me.

1 Q. Oh he hit you?

2 A. He hit me with the gun in my face. I'm three months
3 pregnant. I mean if you was a woman you three months
4 pregnant and some man hit you possibly you could be
5 carrying his baby and he hit you with a gun in your face?

6 Q. Well didn't you tell him it wasn't his baby?

7 A. No I didn't tell him that until he hit me with the
8 gun. I was afraid of him. I didn't want him around me or
9 my unborn baby.

10 Q. So - -

11 A. No I never told him that until he called me from the
12 jail house and because he hurt me and my unborn baby. I
13 told him that.

14 Q. You told him what?

15 A. That it's not his baby.

16 Q. Uh-huh. You never talked to him at all that night
17 after he left your house, is that correct?

18 A. I didn't talk to him until he called me from the jail
19 house.

20 Q. So there was - -

21 A. Even when he called me to come pick up his kids from
22 the accident I didn't talk to him then. I didn't talk to
23 him until he called me from the jail house.

24 Q. Well who called you to have you pick up the kids?

25 A. The officer.

1 Q. From the accident?

2 A. The officer, the female officer.

3 Q. The female officer.

4 A. Uh-huh.

5 Q. And you told them you would pick up the kids is that
6 correct?

7 A. Yea when she called me she ask me she said -- she said
8 we got Mr. Galimore.

9 I said oh.

10 And she said yea. She said does he have any relatives
11 around?

12 And I said well he has an aunt in St. Helena.

13 And she said he doesn't have anybody here?

14 And I said no not that I know of.

15 And she said -- well I'm going to be honest with you
16 she said well will you come pick up the kids?

17 I said no I would rather not.

18 And she said well I'm going to be honest with you Mr.
19 Galimore was involved in an accident.

20 And I said oh my God I'll come get the kids.

21 Q. Okay. All right. So Mr. Galimore has been involved in
22 an accident and I'll come pick up the kids.

23 A. And he killed somebody.

24 Q. Did you pick up the kids?

25 A. I did.

1 Q. Okay. All right.

2 A. I love his kids.

3 Q. Now you indicated that Rodney was dozing off and he
4 was sleeping for a period of time at your house. Was that
5 in your house or his house?

6 A. My house.

7 Q. Your house. And did he go to his house at anytime by
8 himself and stay gone for quite some time?

9 A. I do know he left where he went I don't know.

10 Q. Well you also indicated that you and he talked to each
11 other over the telephone when he was purchasing these from
12 the store isn't that correct?

13 A. Yea. I don't know what he was doing but he was on his
14 way to the store and he ask me did I need anything.

15 Q. Okay. So he ask you if you needed anything. About
16 what time was that?

17 A. I don't know.

18 Q. Well was it dark?

19 A. No it was day time.

20 Q. It was day time?

21 A. It was just before the cook out started.

22 Q. Okay. Now you indicated that Rodney was driving an
23 SUV, is that correct?

24 A. Yes, sir.

25 Q. And was he driving that when he left your house that

1 night?

2 A. Yes.

3 Q. And your house is it located very near to the roadway
4 or some distance from the roadway?

5 A. Well you can see the road. You can see Buck Island
6 Road from the back of my house.

7 Q. And did you see him travel out in that direction?

8 A. Really I was in the house with a pack of ice on my eye
9 so no I did not see. I saw - -

10 Q. So you never saw him operate the vehicle?

11 A. I saw the car driving out when I went to the door with
12 the police.

13 Q. Uh-huh.

14 A. And when I went outside to double check my grill and
15 everything to make sure that the fire was out the SUV was
16 gone.

17 Q. So you never saw him leave?

18 A. Yea. No I didn't see it leave. It was gone out of my
19 driveway where he was parked.

20 Q. Well when did he pack up his television and his DVD's
21 and all of this other stuff?

22 A. Just before he pushed me in the house to hit me.

23 Q. So he didn't pack them up earlier that afternoon?

24 A. Uh-huh.

25 Q. So after you and he get into some kind of an argument

1 he packs up all of his things - -

2 A. Huh-huh. Before we got in -- no there was no
3 argument. That's what I can't understand. There wasn't an
4 argument. He got his TV before I had bagged up his
5 clothes. All he got was his TV and put it in his truck his
6 SUV.

7 Q. And you bagged up his clothes and you put that in his
8 truck too?

9 A. He put it in his truck yea. Him or his kids I don't
10 know exactly.

11 Q. But you bagged it up is that correct?

12 A. Right.

13 Q. And somebody put it into the SUV?

14 A. Uh-huh.

15 Q. Okay. And when he left did his kids get in the
16 vehicle with him?

17 A. I didn't see them get in the vehicle with him but they
18 weren't at my house any more and when I got to the accident
19 they were there.

20 Q. And did you see Rodney at the accident?

21 A. Yea he was laying down in the back seat of the police
22 car.

23 Q. When you say he was laying down in the back seat of
24 the police car how was he laying down in the back seat?

25 A. He was back like that.

1 Q. Was he face down in the floor board of the vehicle?

2 A. No. Back seat.

3 Q. Was he face down in the back seat of the vehicle?

4 A. Uh-huh and then he raised his head up and that's when
5 I turned away.

6 Q. So you looked into the window and he raised up is that
7 correct?

8 A. Uh-huh.

9 Q. Okay. All right. Now so he packs up all of his
10 stuff.

11 A. He packed up the TV I packed his clothes and the kids
12 clothes.

13 Q. And boom they put it all in the vehicle and he gets
14 the kids and away he goes, is that correct?

15 A. Uh-huh.

16 THE COURT: You need to say yes or no.

17 A. Oh, yes, sir.

18 Q. Okay I don't have any further questions.

19 THE COURT: Redirect?

20 MS. TANNER: Nothing further, your Honor.

21 THE COURT: All right you can step down and be
22 excused. We appreciate your time and thank you.

23 Call your next witness.

24 MS. TANNER: Thank you, your Honor. State calls
25 Denise Diggs.

1 THE CLERK: Raise your right hand and place your left
2 hand on the Bible.

3 (WHEREUPON: DENISE DIGGS,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 THE CLERK: Please have a seat. State your full name
6 and spell your last name.

7 A. My full name is Denise Meline Diggs, D-i-g-g-s.

8 DIRECT EXAMINATION

9 DENISE MELINE DIGGS BY MS. TANNER:

10 Q. Good morning, Ms. Diggs. DO you know Jaqueline Cook-
11 Jackson?

12 A. Yes.

13 Q. And how do you know her?

14 A. We were neighbors maybe I would say about eleven years
15 ago and we still remain friends.

16 Q. Do you remain friends today?

17 A. Yes.

18 Q. I am going to ask you were you friends in August of
19 2007?

20 A. Yes.

21 Q. I am going to ask you about a particular date of
22 August the 11th of 2007. Were you visiting Ms. Jackson's
23 house that day?

24 A. Yes.

25 Q. And what was the purpose of your visit?

1 A. Her son was having a birthday party and she invited me
2 and my children.

3 Q. And how many children do you have?

4 A. I have three.

5 Q. And what are their ages?

6 A. Now they are fourteen, ten and nine.

7 Q. And all three of them went to the party with you?

8 A. Yes.

9 Q. Who else was at the party?

10 A. There were some neighborhood children and her
11 boyfriend at the time and his two boys and her children.

12 Q. Do you know boyfriend's name.

13 A. Rodney that's all I know.

14 Q. And would you know Rodney if you saw Robbie again?

15 A. Yes.

16 Q. Do you see him in the courtroom?

17 A. Yes.

18 Q. Could you point to him please?

19 (WITNESS POINTED.)

20 Q. Thank you.

21 Please let the record reflect she indicated the
22 defendant Rodney Galimore.

23 Ms. Diggs, what time did you arrive at the party?

24 A. I don't remember exactly but I would say it was around
25 five o'clock.

1 Q. P. M.?

2 A. P. M. yes.

3 Q. All right and what was going on when you arrived?

4 What was everybody doing?

5 A. Children were outside playing. Rodney was cooking
6 food on the grill; Jaqueline was in the house so I went
7 into the house and Ha how you doing, you know, just started
8 mingling with her and spoke to him. You know it's like
9 really the first time I really seen him but I spoke to him
10 and let the kid go their way and they all have their fun
11 outside playing on the trampoline and running around in the
12 yard.

13 Q. And did you have an opportunity during the party to
14 observe Mr. Galimore?

15 A. Yes.

16 Q. Did you see him drink anything while at the party?

17 A. Beer.

18 Q. Beer? Did you see how many he drank?

19 A. No.

20 Q. And did you have an opportunity to observe his
21 behavior at the party?

22 A. When I first arrived he seemed to be fine but he
23 looked as if he had been drinking already. But as the
24 evening went on things seem to be okay but they kind of
25 like a little out of control.

1 Q. And what do you mean by out of control?

2 A. Before I left the party there was an incident where
3 Rodney's children ran into the house and told me that Mr.
4 Rodney was outside swinging around a gun. So I sent all of
5 the kids to the back of the house to get them away because
6 I didn't know what was going on and I went outside to talk
7 to him. At that time he had a gun in his hand but he was
8 just like pointing it to the sky so I ask him could he you
9 know please put it away because the kids was outside. We
10 talked you and you know he came over and talked to me and I
11 said well can I see it. It was just a threat in my mind
12 and to get it out of his hand and once he did let me see it
13 but then he asked for it back. So he ask for it back and I
14 gave it back to him and then I went in the house and told
15 Jackie to please talk to him because the kids say he's
16 playing with a gun and I don't want anybody to get hurt.

17 Q. And when you were talking to him how did he seem?

18 A. He seemed to be aware of what I was asking him. He
19 didn't argue with me or anything. He just put the gun
20 away.

21 Q. Was his speech slurred at all? Could you understand
22 him?

23 A. Yea I could understand him.

24 Q. Did you notice anything different about the way he was
25 talking from earlier in the party until later in the party?

1 A. No because he really didn't say too much. It was just
2 like yea you know give it back. You know it wasn't like
3 full sentences where you could really say like he was
4 slurring you know slur or anything like that it was like
5 one word answers and stuff.

6 Q. Did you see him when he left Jackie's residence?

7 A. Yes.

8 Q. And how did he appear when he left?

9 A. A little upset, angry. Personally I think he might
10 have had a little bit too much to drink.

11 Q. And what makes you think that?

12 A. Because before he left the house there was a
13 confrontation between him and Jackie. You know I was in
14 her house on the phone talking and I heard thumping and
15 bumping. I didn't know what was going on so when I knocked
16 on her bedroom door to ask her if she was okay instead of
17 her answering he answered and he was like everything was
18 okay. So I ask again Jackie are you okay? And she asked
19 me to call the cops.

20 Q. But you said you had thought he was drunk. What made
21 you think he was drunk?

22 MR. HOOD: Objection, your Honor, that's not what she
23 said.

24 THE COURT: Rephrase your question.

25 MS. TANNER: I'm sorry.

1 You said you thought he had too much to drink. I
2 think that's how you said it. What makes you say that?
3 A. Because during the course of the night you could see
4 he was starting to stagger a little bit. We were cooking
5 outside on the grill and towards the end of the night the
6 food that was made to cook on the grill starting getting
7 burnt. You know he was in control of the grill and
8 everything was starting to burn you know things like that.
9 And I personally brought beer with me to the party in which
10 he drank some of that also. I don't know what he drank
11 prior to me arriving but he also drank some of what I
12 brought too.

13 Q. All right. Thank you, Ms. Diggs, please answer
14 anything Mr. Hood has.

CROSS EXAMINATION

16 DENISE MELINE DIGGS BY MR. HOOD:

17 Q. So you brought beer to the party also, is that
18 correct?

19 A. Yes.

20 Q. And did Jackie have beer already there at that party?

21 A. If there was beer already there I can't say that
22 Jackie brought it because to my knowledge Jackie doesn't
23 drink.

24 Q. But you were drinking, is that correct?

25 A. Yes.

1 Q. Okay. And did you bring a boyfriend or anybody with
2 you at that time?

3 A. No just me and my children.

4 Q. And you and Jackie are close friends, is that correct?

5 A. Yea we been neighbors. We're not neighbors currently
6 but we were neighbors in the past.

7 Q. And I believe its Jackie was the one who indicated to
8 you to call the police, isn't that correct?

9 A. Yes.

10 Q. And you told Jackie no and then said you do it?

11 A. I told Jackie -- I didn't know what was going on.
12 They were behind closed doors.

13 Q. Okay. So in other words you weren't going to get
14 involved in this, isn't that correct?

15 A. No it wasn't that I wasn't going to get involved. I
16 just didn't know what was going on because I don't know why
17 she was asking me to call the cops.

18 Q. Now would you say that you were intoxicated at the
19 time?

20 A. No.

21 Q. And how many beers did you say you had?

22 A. During the course of the night I would say I had about
23 four.

24 Q. About four. And how many hours are we talking about
25 these four beers you are talking about?

- 1 A. I think I arrived at the party around five o'clock.
2 By the time all this stuff took place or whatever it was
3 about 8:30, 9:00.
- 4 Q. 8:30 or 9:00 okay. Now so you had about four beers.
5 What kind of beer did you have?
- 6 A. I drink Icehouse.
- 7 Q. Icehouse. Okay. And were these twelve ounces or
8 twenty-four ounces?
- 9 A. The little short case twelve ounces.
- 10 Q. Okay so you had about four of those?
- 11 A. Yes.
- 12 Q. Could you have had five?
- 13 A. No I had about four.
- 14 Q. About four okay. Now so you are drinking; Rodney is
15 drinking and the two of you have conversations together, is
16 that correct?
- 17 A. The only real conversation him and I had was when I
18 ask him to put the gun away.
- 19 Q. Okay. And he did that, isn't that correct?
- 20 A. Yes.
- 21 Q. Okay. All right now at the time Rodney was leaving he
22 had or did Jacqueline pack up his clothes and give them to
23 him or what?
- 24 A. No we just ask him to leave and we ask him could the
25 kids stay with us because you know he has two children. He

1 said -- he just told his boys to get in the truck.

2 Q. Okay. So they go and get in the vehicle, is that
3 correct?

4 A. Yes.

5 Q. The boys do. And do they get into the back seat or
6 the front seat?

7 A. The truck had a back seat.

8 Q. Okay. Well did they get in the back seat?

9 A. Yes.

10 Q. And I believe they buckled up, isn't that correct?

11 A. I don't know if they buckled up because I didn't walk
12 all the way toward the doors of the vehicle. I stood in
13 the doorway and watched them get into the truck.

14 Q. Okay. But you didn't see Rodney put any items in his
15 vehicle or anything of that nature, is that correct?

16 A. No.

17 Q. Okay. So where was Jaqueline at at that time?

18 A. At the time he got in his vehicle?

19 Q. Yea.

20 A. Obviously I don't know. I don't know if she was there
21 or if she was in the house. I just know I saw him get in
22 the vehicle.

23 Q. Did you go back inside?

24 A. I didn't go back inside the house until he pulled off.

25 Q. Okay. When you went back inside was she inside the

1 house or standing at the door?

2 A. The next time I saw her she was sitting on the couch
3 with an ice bag to her head talking on the phone.

4 Q. Okay. So there is a confrontation in the bedroom.

5 Jackie tells you to call the police. You tell her no I am
6 not getting involved in this you call the police. Rodney
7 leaves and tells his two children to get in the vehicle, is
8 that correct?

9 A. That sounds like it. I mean it's been over a year but
10 that sounds pretty close.

11 Q. And you go outside with Rodney, is that correct?

12 A. I walked outside back yea behind him.

13 Q. Behind him. And were the children in front of Rodney
14 or something of that nature?

15 A. The children were still around the back like playing
16 but he called his kids to come on.

17 Q. Okay. So he called his kids and they came around.

18 A. They came around and we ask him could he leave the
19 kids with us.

20 Q. And he said no he was going to take them home.

21 A. Right.

22 Q. Okay. And so he gets in the vehicle his two kids get
23 in the vehicle and he drives off, is that correct?

24 A. Right.

25 Q. Okay. Well is there anything unusual about his

1 driving? I mean he drives off is that correct?

2 A. Not when he left out of the driveway. You know there
3 was like a camper on the back. Not a camper, like a cargo
4 on the back of the truck but he made it out of the drive-
5 way fine to me.

6 Q. Okay. So he didn't have any problems operating the
7 vehicle is that correct?

8 A. It didn't look like it.

9 Q. Okay. I don't have any further questions.

10 MS. TANNER: Nothing further.

11 THE COURT: Thank you. We appreciate your time you
12 can be excused.

13 Call your next witness.

14 MS. TANNER: Your Honor, may we approach?

15 (BENCH CONFERENCE AT 10:00 A. M. OFF THE RECORD OUT OF
16 THE HEARING OF THE JURY.)

17 THE COURT: Members of the jury panel, we are going to
18 take a break at this time; I am going to let you go to the
19 jury room and we will send for you promptly as we can.
20 Well we'll give you at least ten or so minutes to refresh.

21 (JURY LEAVING COURTROOM AT 10:11 A. M..)

22 THE COURT: We will take a break and while we're on
23 break I'll check with the lawyers in the other situation,
24 the matter we got, and then we'll decide how we'll proceed.

25 Why don't you go ahead and get set up for your next

1 Jurors entering, your Honor.

2 THE COURT: Thank you.

3 (JURY ENTERING COURTROOM AT 10: 44 A. M..)

4 THE COURT: Call your next witness.

5 MS. TANNER: Thank you, your Honor. The State calls
6 Trooper Nick Sprouse to the stand.

7 (WHEREUPON: TROOPER NICK
8 SPROUSE, BEING CALLED AND DULY SWORN, TESTIFIED AS
9 FOLLOWS:)

10 THE CLERK: Please state your full name and spell your
11 last name for the record.

12 A. Nickolas L. Sprouse. Last name S-p-r-o-u-s-e.

13 DIRECT EXAMINATION

14 TROOPER NICK SPROUSE BY MS. TANNER

15 Q. Good afternoon, Trooper.

16 A. Good afternoon.

17 Q. Where are you employed?

18 A. I am employed with the South Carolina Highway Patrol.

19 I am assigned to Beaufort and Jasper Counties.

20 Q. And what are your duties with the Highway Patrol?

21 A. To reduce fatalities of car collisions; enforce the
22 laws and the statutes in the State of South Carolina.

23 Q. And what is your training for this position?

24 A. My training? I been on the job for over three years.

25 I was trained at the South Carolina Criminal Justice

1 Academy for over eighteen weeks; that was the initial
2 training. Since then I have been back for nine months of
3 additional training as far as firearms. I actually
4 reconstruct DUI classes, prosecution radar, field training
5 officer, pretty much anything you could think of I go back
6 to training for.

7 Q. And Trooper, were you working on August the 11, 2007
8 here in Beaufort County?

9 A. I was.

10 Q. And were you dispatched to a fatal collision on
11 Highway 46 - - -

12 A. Yes.

13 Q. - - - known as the [REDACTED]?

14 A. Yes I was.

15 Q. Was that here in Beaufort County?

16 A. Yes it was in Beaufort County.

17 Q. All right when you first arrived on the scene what did
18 you find?

19 A. I find a vehicle in the roadway; I find a motorcycle
20 shortly there from it. I see a body under a sheet well
21 actually I said sheet which I infer there is a body under
22 it. Given the call there are EMS and fire personnel on the
23 scene. There is also Beaufort County Sheriff's Department
24 on the scene which is already roped off my scene for me
25 which is standard protocol for us anytime we have a fatal

1 collision or a possible fatal collision we go ahead and
2 cord off an area to preserve any short term or long term
3 evidence.

4 Q. And as part of your investigation do you identify the
5 body under the sheet?

6 A. I do.

7 Q. And how do you do that?

8 A. I do that through the Beaufort County Sheriff's
9 Department who had have obtained ID from the motorcycle of
10 the victim. We matched up that photo ID with the
11 individual on the ground and identified her as Mary Deon.

12 Q. And did you identify anyone else on the scene that
13 night?

14 A. Mr. Galimore who was identified by the Beaufort County
15 Sheriff's Department to myself and through his ID which I
16 never received from him was placed in the back of a
17 sheriff's department vehicle at that point in time.

18 Q. And did you come in contact with Mr. Galimore that
19 night?

20 A. I did.

21 Q. And can you describe for the jury his demeanor when
22 you came in contact with him on the scene?

23 A. I was instructed to go to the back of the car. Like I
24 say we have a certain protocol what we do with collisions
25 since I have one deceased I cannot talk to the deceased so

1 I talk to the other party. At that point in time I go to
2 the rear of the Beaufort County Sheriff's Department's
3 vehicle to talk to Mr. Galimore to ask him his side of the
4 story. However I did not get a side of the story. I got
5 more or less a man that kept dozing off while I was talking
6 emitting the odor of alcohol which I have detected before
7 on people. His eyes were very glassy and red. The only
8 comments that he made to me was that she was in his lane
9 and it was not his fault. I then instructed Mr. Galimore
10 that this was a collision there was an individual that was
11 on a motorcycle that was deceased. While I was talking to
12 Mr. Galimore he either dozed off or fell asleep again and
13 made no sense while I was talking. He was read his maranda
14 rights even though he was already detained from the
15 Beaufort County Sheriff's Department. My protocol is to
16 read him his rights he was placed under arrest by myself at
17 that scene that night.

18 Q. And you say you read him his Maranda rights. Is that
19 what we see on television you have the right to remain
20 silent?

21 A. Yes, ma'am. But to be fair and accurate we read word
22 for word off the card.

23 Q. And did you do that that night?

24 A. Yes, ma'am.

25 Q. And could you for the jury reenact what you read to

1 Mr. Galimore on the scene that night? I see you are taking
2 something out of your pocket. What is that?

3 A. This would be our Maranda warning. I always keep it in
4 my pocket. This is a training tool that we always were
5 taught in the academy to keep our Maranda warning in our
6 highway patrol of -- actually core values in our front left
7 pocket. The Maranda warning was as follows and read off
8 this Maranda card issued to us by the South Carolina
9 Department of Public Safety. You have the right to remain
10 silent anything you say can and will be used against you in
11 a court of law. You have the right to talk to a lawyer and
12 have him present with you while you are being questioned.
13 If you cannot afford to hire a lawyer one will be appointed
14 to represent you before any questions if you wish. You can
15 decide at any time to exercise these rights and not answer
16 any further questions or make any additional statements.
17 Do you understand each of these rights I've explained to
18 you? Having these rights in mind and do you wish to talk
19 now?

20 Q. And once you read these rights to Mr. Galimore did he
21 make any response?

22 A. The only response he made was like I said it was not
23 his fault she was in his lane.

24 Q. Now as part of your investigation did you collect Mr.
25 Galimore's driving record?

1 A. Yes, ma'am. Not that night but over the radio waves I
2 Did have an official what we call a hard copy I was not
3 able to obtain that that night because the DMV of course
4 was closed however we are able to run a driver's license
5 which I was given and crossed referenced it for South
6 Carolina and at that point in time the violation and
7 description was read to me so technically yes.

8 Q. If I may approach the witness, your Honor.

9 Can I ask you what's been marked as State's Exhibit
10 Number Twenty-Six if you can identify this item?

11 A. This is a Certified Driver Record for Court Purposes
12 issued by the South Carolina Department of Motor Vehicles
13 for a Rodney L. Galimore.

14 Q. Looking at Mr. Galimore's driving record was his
15 privilege to drive suspended on August the 11th 2007?

16 A. At first glance the status of DL says suspended and
17 then it gives the explanation or dates and cause of dates
18 so yes it is suspended and at that time it was suspended.

19 Q. All right can you give me the date or the dates of the
20 suspension of his driver's license?

21 A. Yes, ma'am. The first one showing is dating back to
22 8/25/2006 is a driving under suspension violation. The
23 next one: Driving under suspension 4/26/2007. The next:
24 This would be DUS 3rd driving under suspension; suspension
25 began 7/27 of 2007 which was one month prior to this

1 collision.

2 Q. Thank you, Trooper. Now going back to the scene that
3 night did you -- were there any other passengers involved
4 in this collision?

5 A. Yes, ma'am. There were two young children that were
6 involved in the collision as well. They were in Mr.
7 Galimore's vehicle.

8 Q. And were you able to identify those children and their
9 ages?

10 A. Yes, ma'am. I noted it on my General Sessions Report.

11 Q. And do you recall their ages?

12 A. I believe eleven and six were their ages.

13 Q. And where were these children located when you arrived
14 on the scene?

15 A. They were standing outside. If you were looking at
16 the store down the [REDACTED] side in the shadows where
17 the two children were and they were standing with adults.
18 I don't know exactly who they were but that's where they
19 were located when I arrived on the scene.

20 Q. And were you able to identify which vehicle they had
21 been in?

22 A. Yes, ma'am.

23 Q. And which one was that?

24 A. They were in the dark colored, blue colored Blazer
25 that was still at final rest in the middle of [REDACTED]

1 [REDACTED] which is South Carolina 46.

2 Q. Now let's talk about that. On the scene can you
3 describe the location of the vehicle when you arrived?

4 A. When I arrived the first one I noticed because it was
5 obvious it was the bigger vehicle is the Blazer. The
6 Blazer was what we call in the on-coming traffic lane. I
7 now noticed that it was turned at an angle as in if you got
8 your lanes just like this it's just turned in its lane kind
9 of diagonal. At that point in time I also noticed
10 approximately twenty-five to thirty feet from it was a
11 motorcycle laying on its side with severe damage to it as
12 well. The damage to the Blazer was to the front left which
13 we could pretty much infer that that was the impact point.
14 Prior to my investigation the impact point was on the front
15 left of the motorcycle that was laying down and just
16 probably five feet, six feet from the motorcycle
17 would be where the victim was laying.

18 Q. If I may approach the witness, your Honor.

19 THE COURT: Yes, ma'am.

20 BY MS. TANNER:

21 Q. Trooper, I am going to ask if you can identify what's
22 been marked as State's Exhibit One through Six -- One
23 through Seven, if you can identify those items.

24 A. Do you want me to go through each and every one of
25 them or just tell you that item?

1 Q. Tell us whether or not you can identify them.

2 A. I can identify every one of these photos.

3 Q. And are they a fair and accurate depiction of how that
4 scene looked that night?

5 A. Yes, ma'am. As a matter of fact these pictures were
6 taken prior to any -- prior to any spray painting of our
7 scene which is what we do when we start to investigate the
8 collision and get our measurements. These pictures are how
9 it was.

10 Q. Well start with Picture Number One. What is shown in
11 State's Exhibit Number One?

12 THE COURT: Are these into evidence?

13 MR. HOOD: I'm sorry, your Honor.

14 MS. TANNER: They are not, your Honor. I would move
15 State's One through Seven into evidence and they have been
16 shown to defense counsel.

17 MR. HOOD: I don't have any objections.

18 THE COURT: All right they are in the record.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE THROUGH SEVEN
20 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

21 MS. TANNER: And, your Honor, if I may publish them to
22 the jury on this large screen and have the trooper come

23 - - -

24 THE COURT: That will be fine.

25 MS. TANNER: - - - down and describe - -

1 You can hold those I'll publish these to the jury.

2 Trooper, starting with State's Exhibit Number One can
3 you describe for the jury what is depicted in this
4 photograph?

5 A. This is going to be a scene focusing at an angle of
6 the country store which you would be looking at right now
7 is [REDACTED], South Carolina 46. The intersection
8 right here would be [REDACTED] Road which would run parallel
9 to the side of the store there. This is the vehicle that
10 Mr. Galimore was driving at the time. As you can see a
11 part from there like I said was the motorcycle and just shy
12 of it you can see where the body was laying. This was the
13 scene when we got there. As you can see it was corded off
14 all the important areas; all the debris and everything
15 important as far as skid marks or anything that we needed
16 for our investigation was inside of these lines. This line
17 was not tampered or damaged with or anything. The only
18 people that were in there were law enforcement personnel
19 and the Beaufort County Sheriff's Department. They know
20 any time there is a fatality no body goes in it. And the
21 only time you go in there is to render aid and apparently
22 aid cannot be rendered to the victim at that time.

23 Q. Now I see that the road actually coincides with the
24 yellow double line in this photograph.

25 A. Right.

1 Q. Describe -- I think we all know what a yellow line is
2 but I want to make sure the jury understands on this road
3 what that line indicates.

4 A. A double yellow line indicates that you cannot pass
5 you cannot cross it whatsoever okay. The reason there is a
6 break right here is because there is an intersection there
7 for you to make a left into that intersection so
8 technically you are not crossing a double yellow line.
9 Therefore that line stretches far back. There is another
10 intersection down here but it remains a double yellow line.

11 Q. And Mr. Galimore's vehicle is located on what side of
12 that yellow line?

13 A. This would be the west bound side of South Carolina 46
14 which if you are in that lane it would mean the vehicle
15 would be pointing in the other direction.

16 Q. I am going to show you State's Exhibit Number Two.
17 What is depicted in this exhibit?

18 A. This is the Blazer that was involved in the collision.
19 As you can see this is the final rest where the collision
20 occurred. It is what it is. Here you can see clearly the
21 double yellow line that I explained that you should not
22 cross. It's crossed. The vehicle sets in the opposite
23 lane of the on-coming traffic where on-coming traffic would
24 be coming. Like I say this vehicle had not moved and it
25 was actually unmovable when we got there.

1 Q. What do you mean unmovable?

2 A. We will probably have to do -- I have to see another
3 photo.

4 Q. Let's see that was Three.

5 A. Here is our photo. This is the front end where the
6 impact point was. As you can see that tire was broke and
7 flat to the side so there was no way you can start it and
8 roll without it -- I mean it was not going to move. The
9 wrecker even had to load it up a special way. This right
10 here shows you the complete impact point of the collision
11 which was on the driver's side. The force was so strong
12 that I believe it broke one of the springs and rods down
13 near in the tire.

14 Q. State's Exhibit Number Four.

15 A. As you can see there's the rod I was talking about
16 being broke. This is a little bit more clear picture. All
17 of this was what we call debris as far as the stuff coming
18 out of the radiator the coolant. You can see the
19 headlights were completely busted out. This is the induced
20 damage. The main impact point was here. The induced
21 damage caused a ripple all the way back which would have
22 made it hard for the door open. I can't verify that it
23 caused that however it may have. That's speculation; I'm
24 not going to say it did but as you can see this was a blunt
25 force right here.

1 Q. State's Exhibit Number Five.

2 A. Once again this is the side view where you can see
3 where the impact hit and fluid actually come up out of the
4 vehicle instead of just pouring down so this also notes a
5 significant collision impact. You see the tires are flat
6 and as I showed you in the previous picture that we also
7 have a rod broken.

8 Q. State's Exhibit Number Six.

9 A. This is going to be the struck vehicle, the
10 motorcycle. There's significant damage to this bike. This
11 dent right here most people may think that it was caused
12 because of the hit to the vehicle it's actually not. If
13 anybody rides a motorcycle you will know that that mark
14 right there is caused due to when a motorcycle collides
15 your legs squeeze together. That is the force Ms. Deon's
16 legs flexing when she was preparing for that impact. The
17 main collision as you can see it hits here and it goes all
18 the way back there which the collision was a jarred it. It
19 wasn't a glancing or blow it was kind of a lick. This
20 motorcycle is not that far from the motor vehicle - the
21 Blazer - because it was jam lick. It wasn't a glancing
22 blow and she just fell on the side. It was just like
23 running into a wall and falling over.

24 Q. State's Exhibit Number Seven.

25 A. This here that's a shield from her mask where she had

1 it on. This is a part of the motorcycle I believe its
2 actually a pipe an exhaust pipe. This is just the angle
3 showing where the final lying was in contrast to where her
4 basic maneuver would have had to have been to get out of
5 the way of the oncoming vehicle.

6 Q. Thank you, Trooper, you may return to the stand. Now,
7 Trooper, as part of your investigation did you search Mr.
8 Galimore's vehicle?

9 A. Yes, ma'am.

10 Q. And did you locate anything of interest inside his
11 vehicle?

12 A. Pertaining to the case yes, ma'am, I did. The first
13 thing I look for in any case when I have suspicion of DUI
14 is open containers of course and any other thing that would
15 be relevant such as you know illegal drugs whatever
16 inhibited the driver's vision. At that point in time I did
17 locate a bottle of Sky Vodka that had been opened which is
18 liquor not beer.

19 Q. If I may approach the witness. I ask you if you can
20 identify State's Exhibit Number Eight.

21 A. Yes, ma'am.

22 Q. Is that a fair and accurate depiction of how it
23 appeared that night?

24 A. Yes, ma'am.

25 Q. Now is that location in the photograph where you found

1 it?

2 A. No, ma'am.

3 Q. And what does that indicate, you had moved it?

4 A. Yes, ma'am. I had moved it from the area of the
5 driver's seat. I noticed it laying on the ground. It
6 wasn't in a particular spot where I could say that it was
7 up there the whole time during the collision but it was in
8 the immediate area of the driver's seat.

9 Q. State moves Exhibit Eight into evidence. We have
10 previously shown this photograph to the defense.

11 MR. HOOD: I have no objections.

12 THE COURT: Entered without objection.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER EIGHT IDENTIFIED
14 AND MARKED, ENTERED INTO EVIDENCE.)

15 BY MS. TANNER:

16 Q. If I may publish Number Eight to the jury, your Honor.

17 (STATE'S EXHIBIT NUMBER EIGHT PUBLISHED TO THE JURY.)

18 Q. Now, Trooper, what if anything did you do with this
19 bottle of vodka?

20 A. I took it in for evidence. What we do is we call bag
21 and tag. With a bottle that's large, it was a 1.75 liter
22 bottle, we put it into an evidence bag which we have to
23 have a chain of custody, seal it and send it off to SLED
24 for analyzing. Pretty much we send it to SLED for them to
25 determine what the contents of the bottle is alcohol. That

1 is documented, chain of custody, sent to Columbia, they
2 send us back a confirmation of what the bottle contained.

3 Q. And was this bottle full when you found it?

4 A. I don't recall it being full. I know the seal was
5 broken. I'm not going to say it was completely empty but I
6 would say about half way.

7 Q. If I may approach the witness, your Honor.

8 I am going to show you what's been marked State's
9 Exhibit Number Nine. Can you identify this item?

10 A. Yes, ma'am, this is a South Carolina Department of
11 Public Safety Chain of Custody when I entered it in the one
12 item, the one quantity of the 1.75 liters of Sky Vodka
13 bottle. Do you want me to go through the chain?

14 Q. First the state would move State Exhibit Nine into
15 evidence. It's previously been shown to defense counsel.

16 MR. HOOD: No objection.

17 THE COURT: Entered without objection.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER NINE IDENTIFIED
19 AND MARKED, ENTERED INTO EVIDENCE.)

20 BY MS. TANNER:

21 Q. Now Trooper, what is this form used for again?

22 A. This form is used pretty much to say who touched it
23 and where it has been. That helps us keep up with evidence
24 and evidence tampering and to make sure that we secure the
25 integrity of our evidence preserve it for court.

1 Q. All right. Thank you, sir. Now while you're on the
2 scene are you looking for any other items related to this
3 defendant? For information you've received during your
4 investigation that night.

5 A. Yes, ma'am. We were told of the prior incident which
6 was not our dealing with as far as the Beaufort County
7 Sheriff's Department was at the scene but we were told that
8 there may be a fire arm in the vehicle. If there is we
9 have to investigate that. I searched the vehicle I did not
10 find one in the vehicle. However while I was searching the
11 vehicle it was brought to my attention by a sheriff's
12 county deputy that a gun had been located on the scene.

13 Q. And did you actually view that yourself?

14 A. Yes, ma'am, I did.

15 Q. I show you what's been marked as State's Exhibit Ten
16 and Eleven.

17 If I may approach.

18 Can you identify those two items?

19 A. Yes, ma'am.

20 Q. And is that a fair and accurate depiction of how it
21 appeared that night?

22 A. Yes, ma'am.

23 Q. All right. And at this point the State moves Ten and
24 Eleven into evidence. These are photographs previously
25 shown to defense counsel.

1 MR. HOOD: No objections.

2 THE COURT: Entered without objection.

3 (STATE'S EXHIBIT NUMBER TEN AND ELEVEN IDENTIFIED AND
4 MARKED, ENTERED INTO EVIDENCE.)

5 BY MS. TANNER:

6 Q. Trooper, what is depicted in Ten and Eleven?

7 A. I take it this is Ten?

8 Q. Yes.

9 A. Ten just shows the Ice Box outside of the country
10 store where you're able to purchase ice. It's locked at
11 that point in time. The next photo shows the crevice
12 behind the wall in the ice machine in which a pistol was
13 found and recovered.

14 Q. And Trooper, go back to the previous photographs One
15 through Seven. Are there any photographs - first I publish
16 these to the jury and Ten and Eleven. Going back to the
17 previous photographs showing where this ice box is located
18 and then Number Ten is actually a close up view?

19 A. Yes, ma'am, I believe Picture Number One as a matter
20 of fact.

21 Q. All right. That's the ice box indicated in the
22 photograph Number One that would be between the defendant's
23 vehicle past Ms. Dion's body to the ice box?

24 A. Yes, ma'am, it would be in the west corner of the
25 store.

1 Q. And that's where the gun was located?

2 A. Yes, ma'am.

3 Q. Okay. Thank you. All right, Trooper, going back to
4 your observations on the scene and the roadway itself what
5 if any observations do you make about the actual roadway
6 where this occurred?

7 A. Well first I have to note due to the fact the way we
8 treat fatalities we have to look at weather conditions,
9 roadway conditions, et cetera. The roadway was dry, I
10 noticed that. There is really no -- there was not a curve.
11 I mean it's obvious in the photos that it's a straight a
12 way not really a grade. I noticed that the collision
13 didn't happen in an intersection. The reason I note that
14 is because that is very important to our investigations
15 when we have intersection collisions. The obvious as far
16 as the vehicle being on the opposite of the road I noticed
17 in those skid marks from Ms. Dion's motorcycle which is
18 another important factor that we always look at which helps
19 us determine the speed. I also noticed mud -- mud sandy
20 type tracks on the roadway more west bound behind the
21 vehicle -- the Blazer that was in the roadway.

22 Q. And what are you able to gather from these muddy tire
23 tracks?

24 A. Gathering of our investigation our pictures my
25 experience these tire marks led right to the vehicle's

1 tires which come right out of the parking lot. So we can
2 infer through our investigation that those same tires made
3 those tracks that came out of that parking lot and led
4 right to the back of the tires.

5 Q. And what is the origin of the sand and tire tracks?
6 Are you able to tell?

7 A. Let me see if I can find it here. Those are not the
8 photos that you have given me. In the parking lot there is
9 like any type of run off that you would see from a roadway
10 there is sand and grit and dirt that had washed off the
11 roadway apparently over time -- like I said that night that
12 the roadway was not wet. This sand and this grit had just
13 made a long kind of a little pile where it had rested from
14 off the roadway and it was in the parking lot well past
15 where the parking lot was on South Carolina 46.

16 Q. All right. So going back to Photograph Number One..

17 If I can have the witness to come off the stand again,
18 your Honor.

19 THE COURT: Sure.

20 BY MS. TANNER:

21 q. Could you indicate on State's Exhibit Number One where
22 this muddy puddle is located?

23 A. I'll tell you what right here where her motor cycle is
24 would be where the puddle is because we had difficulty
25 trying to dig up the spray where we had to put the tires.

1 So that right there where that little mark is at would be
2 the line where the sand and the sand was probably about
3 that wide. And like I say it probably extended from the
4 corner there to the other corner of the store where he had
5 pulled up so right past the fine line to where her
6 motorcycle had come to final rest.

7 Q. And why is that important to Mr. Galimore's vehicle?

8 A. A it shows that he did in fact come from that
9 particular area. It shows that he drove in here. The
10 whole pattern is shown from when he entered here went
11 through and made the first tracks. So these other tracks
12 come wide of the sand which what I'm saying is once he
13 entered the right side tires stayed on the clean portion so
14 it left side debris. Now then he enters back into the sand
15 and comes back out and it wrapped right to his tires so it
16 shows his complete route of just turning around.

17 Q. Stand right there for one moment. I ask you if you
18 can identify what's been marked as State's Twelve, Thirteen
19 and Fourteen?

20 A. Yes, ma'am.

21 Q. And is that a fair and accurate depiction of how it
22 appeared that night?

23 A. Yes, ma'am, untouched.

24 Q. Your Honor, the state moves Twelve, Thirteen and
25 Fourteen into evidence. They've been previously shown to

1 defense counsel.

2 MR. HOOD: No objection.

3 THE COURT: Without objection.

4 (WHEREUPON: STATE'S EXHIBIT TWELVE, THIRTEEN AND
5 FOURTEEN IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

6 BY MS. TANNER:

7 Q. Starting with State's Exhibit Number Twelve can you
8 show what is indicated in this exhibit?

9 A. Here's your pool of sand and debris and as you can see
10 the tire mark that goes out it never establishes the
11 correct lane. Stays right here and leads right up to the
12 back left wheel of the violators vehicle.

13 Q. Thirteen?

14 A. This also shows a different angle of the tire marks
15 coming out leading up to the vehicle. These are not
16 related to the scene right here.

17 Q. Now this is the back of Mr. Galimore's vehicle?

18 A. Correct.

19 Q. And we're talking about these sandy tire tracks here?

20 A. Yes, ma'am. We're talking about those tracks right
21 there.

22 Q. And that's just the opposite view of the first
23 photograph?

24 A. Correct.

25 Q. And Fourteen?

1 A. This is even better. This is your little sandy area
2 and once again it shows the tire track. As a matter of
3 fact that's where your left side would have been. And
4 where they cross you can still see that it was well
5 defined. It was able to be seen by the naked eye where it
6 was at.

7 Q. Thank you, Trooper, you may retake the stand. Now
8 once you've observed all of these items and all of these
9 things do you perform any type of measurement for lack of a
10 better word on this area?

11 A. Yes, ma'am. The first thing we do it get the -- both
12 vehicles that are involved and we spray to make sure that
13 we can preserve where they were at the final rest so we can
14 go back if we need to. Had this road happened to not be as
15 busy but for some reason that night there was a lot of
16 traffic maybe people got wind of a collision so we were not
17 able to stay the length we wanted to. However a full
18 investigation with myself and my sergeant out there we
19 spray paint all four tires of the vehicle Mr. Galimore's.
20 We indicate left front, right front, left rear, right rear
21 and so forth and so on; we note the direction of the
22 vehicle. We spray painted the motorcycle, describe where
23 his front tire was; his back tire; which way it was laying.
24 We also have to spray where the victim's body was. We
25 circled, we made note of any relevant debris such as the

1 helmet, the helmet's face mask, any debris from the
2 motorcycle and at what location; any gouge marks whatsoever
3 that we have. And at that point in time once we pretty
4 much get that taken care of we then take post-scene
5 photographs which is just simply showing where we had spray
6 painted and that we had come in and changed the scene as
7 far as spray painting. We then do measurements. We have
8 to get a zero point and so forth and so on so what we do is
9 we do what we call a basing. We get pretty much a ninety
10 degree angle and we get a starting point and what we'll do
11 is we'll go from our starting point which is normally a
12 nail into the ground and at a zero location from GPS and we
13 then go either east, west, north or south however and then
14 once we run out of line we'll go up north or south, down,
15 however from the line to each point of debris and then we
16 can map. So if like everything had washed away once we had
17 done this we can go right back to our center point where it
18 was and put everything back just like it was accurately and
19 that's what we performed.

20 Q. And you did that that night on this scene?

21 A. Yes, ma'am.

22 Q. May I approach the witness, your Honor.

23 See if you can identify Fifteen, Sixteen, Seventeen
24 and Eighteen.

25 A. Yes, ma'am.

1 Q. And is that a fair and accurate depiction of how it
2 appeared that night?

3 A. Yes, ma'am. That is my spray painting and my letters.

4 Q. Your Honor, the State moves Fifteen, Sixteen and
5 Seventeen and Eighteen into evidence. These are
6 photographs previously shown to defense counsel.

7 MR. HOOD: No objections.

8 THE COURT: Entered without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER FIFTEEN, SIXTEEN
10 AND SEVENTEEN IDENTIFIED AND MARKED, ENTERED INTO
11 EVIDENCE.)

12 MS. TANNER: Thank you, your Honor.

13 All right. First, Trooper, starting with Fifteen can
14 you tell the jury what is depicted in that photograph?

15 A. That's going to be your left rear tire. The reason
16 why we have a T shape that the extension that comes out
17 from the T it is the -- shows where the center of the tire
18 is so we know exactly where to put that tire in what
19 particular position. And the left rear they are just to
20 let us know that it's the left rear tire when we go back.

21 Q. All right. The next photograph.

22 A. That's going to be the left front. Positioning is key
23 on that. The reason for it it shows that the tire is
24 broken and that it wasn't straight on and there was damage
25 to the left front vehicle; the left front tire of the

1 vehicle. And once again we made the orange T.

2 Q. And the next photograph.

3 A. Much of the same. It's the right front. It shows
4 that it was straight on and where the intention of the
5 vehicle is going. It is undamaged.

6 Q. And finally.

7 A. The final is the left rear. As you can also see on
8 the right side of the tire underneath the wheel well you
9 should be able to see where there is sandy dirt and debris
10 on there placing that vehicle through that sandy area that
11 I described earlier.

12 Q. And that's the right rear?

13 A. That is the right rear.

14 Q. All right. Thank you, sir. Now you said the reason
15 you do this is so that you can then take measurements for
16 all the involved items, is that correct?

17 A. Correct.

18 Q. And did you do that in this case?

19 A. I did.

20 Q. And did you keep those notes as part of your file?

21 A. I did.

22 Q. If I may approach the witness, your Honor.

23 If you can identify State's Nineteen and Twenty?

24 A. Nineteen is going to be my field sketch of the scene
25 which is mandatory policy for us. Any time we have a

1 collision be it fatal or be it a rear ending we have to
2 draw a field sketch. Just like anybody you can forget but
3 if you do it right now when it's fresh on my mind you
4 remember details. That's what Nineteen is. Twenty is
5 going to be simply all of my measurements as far as the
6 gouges leading to the final rest; my zero point which is my
7 reference point in other words the road width. The lane
8 width where my left right front tires were, left rear
9 tires, motorcycle front, motorcycle rear, the head of the
10 victim, the center mass which is the chest area and the
11 helmet and that is my reference points here.

12 Q. And those are your hand written notes?

13 A. Yes, ma'am.

14 Q. Your Honor, the state moves Nineteen and Twenty into
15 evidence. They've previously been shown to defense counsel
16 and he has been provided a copy.

17 MR. HOOD: I would like to see that one more time,
18 your Honor. There's something I'm concerned about.

19 (MR. HOOD REVIEWING STATE'S EXHIBIT NINETEEN AND
20 TWENTY.)

21 MR. HOOD: No objections.

22 THE COURT: All right it will be without objection.

23 MS. TANNER: Thank you, your Honor.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER NINETEEN AND
25 TWENTY IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

1 BY MS. TANNER:

2 Q. Now, Trooper, you said again it was a zero point and
3 you mentioned a nail. Is that where you commonly think of
4 as a nail or is that something special the highway patrol
5 uses?

6 A. No that's a technical term for us. It's just a nail.
7 It's a zero point. It's a nail that drives through asphalt
8 and what we do is we drive it through and we put a circular
9 orange neon tab on it which it says South Carolina Highway
10 Patrol Department of Public Safety and it just helps us go
11 back and identify instead of us walking around and looking
12 around for a nail in the asphalt.

13 Q. How long does that nail stay there do you think?

14 A. It's still there today. I'll put it that a way. I
15 don't know how long they can stay there but I guess until
16 they get paved over but it's still there to this day.

17 Q. And have you been back to the scene and used that nail
18 and used your measurements?

19 A. Yes, ma'am.

20 Q. Since this accident?

21 A. I have.

22 Q. Okay. And were you able to still use your
23 measurements?

24 A. Yes, ma'am.

25 Q. How do you actually take the measurements?

1 A. First what we do is we run -- we get a center point
2 and I'm going to explain how we do that. Find lines that's
3 exactly how we do it. We run measuring tape not like the
4 metal tape but the one with the big roll. We just run it
5 from what was South Carolina 46 the Find line that was
6 nearest the collision we run one line straight out. We
7 went on [REDACTED] and ran one straight out and come up
8 with a reference point and from that reference point we
9 just use our measuring tape. We have a latch on the end
10 just latch it onto the nail and we are able to run it
11 straight out. And then once we have it straight out we
12 take another measuring tape; we had the measuring tape that
13 is on the find line or on a zero point and we stretch you
14 know we make sure it's tight, there's no loose, there's
15 anything, no gap in it so it's fair and accurate and then
16 from that point we go from our zero point measurement and
17 go either -- I believe in this case it was north and south
18 or east and west. I can't really recall which direction we
19 were doing it but that's exactly how we did it from that
20 and that's how we measure from a trooper's level which we
21 are the first on the scene until another team can take care
22 of it.

23 Q. Now these measurements that you take are they kept in
24 a standard way that any other Trooper can pick them up and
25 use them?

1 A. Yes, ma'am, they're universal. We're taught that.

2 Q. And you said that other teams can use them. Have you
3 been out with another team to use these measurements?

4 A. I have.

5 Q. Okay. Now going back to that night aside from the
6 investigation of the crash scene did you have more dealings
7 with Mr. Galimore outside of this crash scene?

8 A. Yea. As a matter of fact during all felony DUI cases
9 involving death or great bodily injury in the State of
10 South Carolina it's mandatory for your blood to be drawn.
11 You don't have an option you have to give it. Once we were
12 at Beaufort County -- at Beaufort Memorial Hospital here in
13 Beaufort we informed Mr. Galimore of the blood draw and the
14 implied consent and the rights again. However he doesn't
15 have an option to refuse but here again as what I've been
16 taught in my protocol I read you your rights just like
17 you're supposed to be read. It was from the same card that
18 I read to you earlier. At that point in time when he was
19 informed that he was going to be given blood he refused.
20 It's by any means a necessary type deal. He had to be
21 held down. He fought; I believe a nurse was kicked during
22 the process and eventually he just gave up and gave consent
23 for the blood. This was nothing against his rights
24 whatsoever. Each and every one of us are held to this same
25 standard when it comes to a felony DUI death or great

1 bodily injury.

2 Q. Now were you present when the blood was drawn from Mr.
3 Galimore?

4 A. I was.

5 Q. And who actually drew the blood?

6 A. I believe Ashley from the emergency room.

7 Q. And does she work at the hospital?

8 A. Yes, ma'am.

9 Q. Do you know what he position at the hospital would be?

10 A. I do not know. She does work in the emergency room.
11 She's still there as of last night. I had to go back.

12 Q. Now once the blood is drawn and in your presence what
13 happens to it?

14 A. It's directly handed to me. I have gloves on I put it
15 in my SLED kit which we have a blood and urine SLED kit
16 issued to every law enforcement officer pretty much in this
17 state. At that point in time I fill out a form stating how
18 many vials of blood, who's it from, pretty much all the
19 vitals of Mr. Galimore who it was drawn from. Next I also
20 put the victim's information of who was involved and who
21 was affected in the collision. At that point in time
22 everything is sealed with an integrity seal twice. Then
23 it's taken by me from Beaufort Memorial to our evidence
24 locker, actually our evidence refrigerator, in Ridgeland,
25 South Carolina which is the Highway Patrol's head quarters

1 for Post C Beaufort and Jasper counties and it is opened by
2 a lock from my sergeant that night. I placed it in there
3 myself. At that point in time we have seventy-two hours to
4 send it up. We sent it up I believe the next day or the
5 day after. I can't really remember it was real soon but it
6 was also taken up there. And the chain of custody as I
7 explained with the alcohol still applies to this so the
8 integrity of the evidence is sealed and contained and
9 everything is preserved for court.

10 Q. All right. If I may approach, your Honor.

11 And have you identify what's been marked as State's
12 Exhibit Number Twenty-One.

13 A. Yes, ma'am. This is an Advisement of Implied Consent
14 Rights. Its' read to anyone and everyone who is either
15 under arrest for driving under the influence or a felony
16 driving under the influence.

17 Q. And is that particular form relevant to this case?

18 A. Yes, ma'am, very much so.

19 Q. And how is it indicated?

20 A. At the bottom there's two sections to it. One the top
21 part is just regular DUI driving under the influence. The
22 bottom is felony driving under the influence. You pretty
23 much read it verbatim. I could not inform to say that he
24 was being video recorded. I did advise him of his rights
25 and I did advise him that we were going to be taking blood.

1 Q. And who's the suspect on this warrant?

2 A. This is Rodney L. Galimore.

3 Q. Your Honor, at this time State moves Twenty-One into
4 evidence. It has been previously shown to defense counsel
5 and he - -

6 MR. HOOD: I have no objections.

7 THE COURT: Without objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-ONE MARKED
9 AND IDENTIFIED, ENTERED INTO EVIDENCE.

10 BY MS. TANNER:

11 Q. If I may approach. If you can identify what's been
12 marked as State's Exhibit Twenty-Three.

13 A. This again is a South Carolina Department of Public
14 Safety Chain of Custody in reference to Item One, Quantity
15 Two, vile of blood from the defendant on his subject slash
16 violator Rodney L. Galimore. And it was taken technically
17 on 8/12 of 07 because of the time it was the next night.
18 This collision happened late at night and this was the date
19 that the blood was taken.

20 Q. So earlier a. m. on the 12th, is that correct?

21 A. Yes, ma'am.

22 Q. And this is the form you were talking about that keeps
23 track of the blood?

24 A. Yes, ma'am.

25 Q. And are you on there?

1 A. I am.

2 Q. If I may approach the witness, your Honor.

3 I show you what's been marked as State's Exhibit
4 Number Twenty-Two. Can you identify what that is and what
5 that item is?

6 A. Yes, ma'am. This is our blood and urine sample kit
7 that we receive from the South Carolina Law Enforcement
8 Division otherwise known as SLED for toxicology reasons
9 only: As you can see every box we get has an integrity
10 seal. If that seal is ripped we do not use it. It's no
11 good to us. Once we have to use it we rip this seal we
12 open it up. You have a urine canister that you can use and
13 you also have two vials, empty vials that you can use to
14 withdraw blood. At that point you put it in a plastic bag
15 that is in here, seal it up, sign it, put your name on it.
16 There is also a form in here like I stated earlier that you
17 have to put the violator and the victims name on it. At
18 that point in time I don't know if any of you can see it
19 but it says affix seal here so once we're done we have to
20 make this side look like that. We have a seal in here that
21 seals this. And if this thing is brought to SLED and the
22 seal is ripped whatsoever they reject it as evidence lost
23 and the integrity of the case is lost.

24 Q. And this is the type of box you used in Mr. Galimore's
25 case?

1 A. This is the exact same box that we use.

2 Q. Your Honor, the state at this time moves Twenty-Two
3 into evidence.

4 MR. HOOD: Is that the box?

5 MS. TANNER: It's not Mr. Galimore's box.

6 A. No, sir, no, sir. That box will be destroyed. These
7 are just the box's we use.

8 MR. HOOD: I don't see any relevance and too, your
9 Honor its not the box that was actually used.

10 THE COURT: I'll allow it in.

11 MS. TANNER: Its demonstrative yes, sir.

12 THE WITNESS: It's to show that that's what we use.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-TWO
14 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

15 And this indicates the safety precautions that are
16 taken in securing this blood sample?

17 A. Yes, ma'am.

18 Q. Now the suspect we're talking about, the one you
19 arrested on the scene of this crash, the one that this
20 blood was drawn from, is he in the courtroom today?

21 A. Yes, ma'am.

22 Q. Can you identify for the jury who you've been talking
23 about that was charged with a felony DUI?

24 A. I'm talking to Mr. Galimore right there in the suit.

25 Q. Thank you, Trooper, please answer anything defense

1 counsel has.

2 A. Yes, ma'am.

3 THE COURT: Members of the jury panel, we are going to
4 break for lunch. I've got another hearing in an unrelated
5 matter that I had set for eleven or as soon as we could
6 break. It's already set up in the next courtroom. We'll
7 just run over there and hear a matter. We are going to
8 break for lunch until two o'clock. Again you remember what
9 I told you about not discussing the case and not let
10 yourself to be exposed to anything, not going to the scene
11 or anything like that. So please be back at two. We'll
12 start promptly at two as we can so have a pleasant lunch.

13 (JURY OUT FOR LUNCH AT 12:35 P. M..)

14 THE COURT: All right. Thank you we'll be at ease
15 until two o'clock.

16 (RECESS FOR LUNCH AT 1:00 P. M.)

17 (BACK ON THE RECORD AT 2:05 P. M.)

18 THE COURT: Come on back up and take the stand and of
19 course you are still under oath.

20 Are you ready for the jury?

21 (JURY IN AT 2:10 P. M..)

22 THE BAILIFF: The jury is seated, your Honor

23 THE COURT: All right cross examination.

24 MR. HOOD: Thank you, your Honor.

25 CROSS EXAMINATION

1 TROOPER NICK SPROUSE BY MR. HOOD:

2 Q. Trooper, let's go back, let's start basically about
3 what time did you receive the call?

4 A. I cannot recall. I know it was late in the night
5 time. I can't really recall off the top of my head.

6 Q. And was there anybody traveling with you?

7 A. No, sir.

8 Q. So you were by yourself is that correct?

9 A. Yes, sir.

10 Q. And is your vehicle equipped with a camera?

11 A. Yes, sir.

12 Q. Okay. And it was on operational, is that correct?

13 A. Yes, sir.

14 Q. When you arrived on the scene did you film what you
15 saw as you arrived?

16 A. No, sir.

17 Q. Why not?

18 A. I just didn't turn my camera on. That's not standard
19 protocol for us.

20 Q. Okay. Now you said there were other officers there
21 and other vehicles, is that correct?

22 A. Yes, sir.

23 Q. And were these vehicles equipped with video tape?

24 A. I could not tell you, sir, it's a different agency.

25 Q. I'm sorry.

1 A. It's a different agency.

2 Q. Okay. Well did you have any conversation with those
3 people who were there also investigating the matter?

4 A. Yes, sir.

5 Q. Okay. And did you ask any of them if they had video
6 taped any of the matters as they arrived?

7 A. No, sir.

8 Q. Okay. So we don't know whether any of it exist or
9 not, is that correct?

10 A. Any of what, sir?

11 Q. Tape of the - - -

12 A. A tape.

13 Q. - - - actual scene.

14 A. On my part I do not know. I do not have anything on
15 their part I cannot answer that.

16 Q. Now when you arrived Rodney Galimore was not present
17 outside standing around - - -

18 A. No, sir.

19 Q. - - - is that correct?

20 A. No, sir, he wasn't.

21 Q. Okay. And who was the first person that you came into
22 contact with?

23 A. I cannot recall who the first person was at that
24 night. There were several people on the scene that night.
25 I cannot remember who the first one was.

1 Q. Well what was the first thing you did when you
2 arrived?

3 A. Evaluate the scene.

4 Q. By evaluate the scene what do you mean?

5 A. I mean I looked at the scene at hand.

6 Q. Okay. And then what did you do from that point?

7 A. At that point in time I figured out who was involved
8 in the collision being it the deceased A; what vehicle they
9 come from, who was in the other vehicle, the Blazer, and at
10 that point in time I talked a Staff Sergeant on the
11 Beaufort County Sheriff's Department.

12 Q. Okay. Now you indicated that you came into contact
13 with Mr. Galimore some time after you arrived.

14 A. Yes, sir.

15 Q. Approximately how long was it after you arrived that
16 you actually made contact with Mr. Galimore?

17 A. Probably ten minutes.

18 Q. Ten minutes. And this was after your contact with the
19 Staff Sergeant from the Sheriff's Department?

20 A. Yes, sir. That's who directed me to Mr. Galimore.

21 Q. Uh-huh. And was that whose vehicle that Mr. Galimore
22 was in?

23 A. No, sir.

24 Q. Okay. Whose vehicle was it?

25 A. I believe it was Deputy Nelson.

1 Q. Okay. So how many officers outside of yourself were
2 present at the scene?

3 A. I could not tell you how many from the sheriff's
4 office. For highway patrol it would be myself and at that
5 point in time a corporal who is now a sergeant, Isaac
6 Gregorie.

7 Q. When did this sergeant arrive? The Corporal Sergeant.

8 A. The Corporal he arrived probably around the time that
9 I began to talk to the Staff Sergeant. He and I left the
10 office at the same time once we were dispatched. He just
11 got caught up in red lights behind me.

12 Q. Okay. Now was he operating his camera?

13 A. Not that I'm aware of.

14 Q. Did you ever ask him about it?

15 A. No, sir.

16 Q. Okay. All right now this Staff Sergeant that you
17 talked to from the Sheriff's Department it wasn't his
18 vehicle that Mr. Galimore was in, is that correct?

19 A. Correct.

20 Q. But did you had found out how -- who put Mr. Galimore
21 in the back of that vehicle?

22 A. No, sir.

23 Q. Okay. And at the time you saw him his hands were
24 handcuffed behind his back, isn't that correct?

25 A. Correct.

1 Q. And he made comments about them being too tight and
2 needed to be loosened, isn't that correct?

3 A. No, sir.

4 Q. Okay. So he never complained about the handcuffs or
5 his being face down in the back seat of the vehicle or
6 anything of that nature?

7 A. Not to me, sir.

8 Q. Okay. Okay. Were you at Mr. Galimore's head as you
9 were talking to him in the back of the vehicle?

10 A. I was on the back left side where he was. He had
11 initially been sitting there but if you will he was kind of
12 leaned over not completely laying down but kind of propped
13 up against the chair such as this and when I was talking to
14 him he was not laying down in the seat or his face was not
15 obstructed if that's the question you're asking.

16 Q. Yea.

17 A. Okay.

18 Q. Yea that's the question I'm asking yea. Now did he
19 understand his rights?

20 A. Sir, I cannot tell you if he understood his rights. I
21 did my part as far as reading them to him.

22 Q. Well did you ask him do you understand?

23 A. I read off the card.

24 Q. Did you say do you understand your rights?

25 A. It was on the Miranda Rights Card therefore I read it

1 so yes, sir, I did.

2 Q. And what was his response?

3 A. He didn't have much of a response.

4 Q. Well what was his response?

5 A. It wasn't a response. The only thing I got was the
6 two statements I told you.

7 Q. The two statements?

8 A. Right. That she was in his lane and it wasn't his
9 fault.

10 Q. Okay. Now she was in his lane and it wasn't his
11 fault?

12 A. Correct.

13 Q. Now you filled out a General Sessions Report, is that
14 correct?

15 A. Yes, sir.

16 Q. And have you had an opportunity to review that?

17 A. Yes, sir.

18 Q. And you filled that out immediately after this event,
19 is that correct?

20 A. Yes, sir.

21 Q. And do you recall stating in there that Mr. Galimore
22 stated that he was turning around in the country store on
23 South Carolina 46 when he struck the motorcycle Ms. Deon
24 was driving?

25 A. Okay.

1 Q. So that's not true?

2 A. That is true. If it was in my report it's true. My
3 recollections are a totally different thing.

4 Q. Well that's what it says in this report isn't it?

5 A. Yes, sir.

6 Q. Okay. But now you're saying that's not true?

7 A. Saying what's not true, sir.

8 Q. Saying that's not true that's not what he said?

9 A. No, sir. I'm not saying that's not what he said. I am
10 not going to contest my own report.

11 Q. Well what I'm asking is you stated that he only made
12 two statements to you?

13 A. Yes, sir, that I recall at this point in time a year
14 later.

15 Q. And those two statements you just gave us, is that
16 correct?

17 A. Correct.

18 Q. And then this report which is back in 2007 you state
19 something exactly the opposite.

20 A. If anything I admit that what I said. I put that in
21 there because that's more than likely what was said if I
22 said -- if it's in that report that happened that night.

23 Q. Okay. Now you also put in this report that neither
24 child was wearing a seat belt - - -

25 A. Correct.

- 1 Q. - - - or a restraint.
- 2 A. Correct.
- 3 Q. Did you see that?
- 4 A. I was told that by the children.
- 5 Q. Okay. So you questioned the children?
- 6 A. The children told me.
- 7 Q. Well did you ask them?
- 8 A. No, sir, I never questioned a child not once that
- 9 night.
- 10 Q. So they come up to you and told you I wasn't wearing a
- 11 seat belt or restraint?
- 12 A. No, sir, they did not come up and tell me. This is
- 13 coming from the Sheriff's Department who questioned them.
- 14 Q. Okay. So you never questioned the children? The
- 15 Sheriff's Department did that?
- 16 A. Correct.
- 17 Q. Who in the Sheriff's Department did all this?
- 18 A. I could not tell you.
- 19 Q. All right. Now at the time you saw Mr. Galimore's
- 20 vehicle did you notice it being some object being towed
- 21 behind that vehicle?
- 22 A. No, sir.
- 23 Q. So there wasn't some kind of a trailer attached to it
- 24 or anything of that nature?
- 25 A. No, sir.

1 Q. Did anybody from any of the agencies tell you that
2 there was a trailer attached to the back of the vehicle?

3 A. No, sir.

4 Q. Have you ever heard that there was a trailer attached
5 to the back of the vehicle?

6 A. Yea, you just shed this light on me if there was one.

7 Q. So you don't recall and you don't believe there was a
8 trailer behind his vehicle?

9 A. What type of trailer are we talking about, Counsel?

10 Q. I don't know something that's being pulled.

11 A. If there was something being pulled it was not within
12 a thousand feet of the collision scene.

13 Q. All right that's good. Now the [REDACTED] did you
14 come in the direction or from the direction that the victim
15 was riding the motorcycle on?

16 A. No, sir.

17 Q. So what direction did you come from?

18 A. I was coming from [REDACTED].

19 Q. [REDACTED] So you came down to the stop sign and
20 that's where you saw the event?

21 A. Yes, sir.

22 Q. Okay. Now did you actually go out to the highway and
23 look down the road left and right?

24 A. Yes, sir.

25 Q. Okay. And if you looked back to the left in other

1 words the direction in which the motorcycle was coming
2 from.

3 A. Okay.

4 Q. It was a clear shot of the road, isn't that correct?

5 A. Yes, sir.

6 Q. A straight clear road. Okay. No obstructions on
7 there okay.

8 THE COURT: You've got to answer.

9 A. Yes, sir. There was no obstruction.

10 Q. Okay. When you looked back the other way are there
11 any obstructions?

12 A. As far as back towards?

13 Q. Back down the other end of [REDACTED]?

14 A. No, sir.

15 Q. Okay. All right. Now did you actually take the
16 pictures that we saw in here earlier?

17 A. I took some of the pictures and the Beaufort Sheriff's
18 Department took some of the pictures.

19 Q. Okay. And do you recall who you got these pictures
20 from?

21 A. I got them from Staff Sergeant Langford.

22 Q. Langford. And was Langford present at the scene that
23 night?

24 A. Yes, sir.

25 Q. So he was one of the officer's, is that correct?

- 1 A. Yes, sir.
- 2 Q. And you say there was another officer in which the
- 3 defendant was placed in the back seat of the car?
- 4 A. Yes, sir.
- 5 Q. Is that correct?
- 6 A. Yes, sir.
- 7 Q. Okay. And who was that officer?
- 8 A. That was Officer Nelson.
- 9 Q. Nelson. Now who was the Staff Sergeant that you were
- 10 talking to from the Sheriff's Department?
- 11 A. Staff Sergeant Langford.
- 12 Q. Langford okay. Were there any other officers there
- 13 other than your sergeant who arrived a little later or
- 14 corporal?
- 15 A. From any other agencies?
- 16 Q. That's correct.
- 17 A. I believe so.
- 18 Q. Okay who were they?
- 19 A. I could not tell you.
- 20 Q. Were they Sheriff's Department?
- 21 A. They were Sheriff's Department.
- 22 Q. Okay. Did you talk to any of these people and get
- 23 statements from them about what they had seen, heard, or
- 24 otherwise?
- 25 A. No, sir.

1 Q. Did you ever get any statements from anybody
2 concerning what had happened?

3 A. As far as who?

4 Q. As far as anybody who arrived on the scene and what
5 they saw, heard or otherwise?

6 A. There were no witnesses at the scene when I arrived.

7 Q. There were no witnesses at the scene?

8 A. Not when I arrived.

9 Q. Not when you arrived okay. Now when you arrived were
10 the children there?

11 A. Yes, sir.

12 Q. Okay. So the children were still there?

13 A. Yes, sir.

14 Q. Okay. All right. What kind of motorcycle was this
15 that Ms. Dion was driving?

16 A. I recall it being a Honda I believe. I can't tell you
17 the exact model. I'm not a motorcycle buff.

18 Q. Well didn't you check out what kind of motorcycle it
19 was and the number of CC's and all these things that give
20 it the power and the strength to do certain things?

21 A. Yes, sir.

22 Q. Okay. So what was it?

23 A. Everything is listed in the report in front of you.

24 Q. Well this is your report, right?

25 A. Yes, sir.

- 1 Q. Take a look at that.
- 2 A. Let me see the General Sessions Report please, sir.
- 3 Q. You need this one too, sir?
- 4 A. Thank you, sir.
- 5 Q. Okay.
- 6 A. It states here as seen on scene is a 2000 Honda BT
- 7 750. As far as the horsepower is concerned I'm real sure
- 8 the MAIT Team would be able to tell you that. That's our
- 9 Multi-Accidental Investigation Team for the Highway Patrol.
- 10 Q. All righty. Now the MAIT Team seems how we brought
- 11 that up did you notify the MAIT Team and have them come out
- 12 to do accidents?
- 13 A. We notified them, sir.
- 14 Q. And did they show up?
- 15 A. No, sir.
- 16 Q. And the MAIT is responsible for actually coming to the
- 17 scenes gathering all of this information whenever there is
- 18 a death involved, isn't that correct?
- 19 A. At that time in our policies they had to qualify for a
- 20 MAIT call. At this point in time in our policies and
- 21 procedures it did not qualify.
- 22 Q. But you called it out?
- 23 A. Correct. That is our standard protocol to call MAIT.
- 24 Q. And they refused?
- 25 A. They didn't refuse; they didn't meet their

1 qualifications.

2 Q. Why didn't it meet their qualifications?

3 A. That's a MAIT Team issue.

4 Q. MAIT Team issue? Okay, okay. So the MAIT Team never
5 came out examined the vehicles or anything of that nature,
6 is that correct?

7 A. Not that night.

8 Q. Not that night?

9 A. Yes, sir.

10 Q. When did they ever come out?

11 A. They came out actually this year to do the scene and
12 do the investigation.

13 Q. And wasn't that about a month ago?

14 A. I'm going to say in October. Possibly October, sir.

15 Q. And that was after I requested from or had been
16 requested for months a copy of the MAIT Team report, isn't
17 that correct?

18 A. I couldn't tell you, sir. You haven't never contacted
19 me.

20 Q. Well to your knowledge was the MAIT Team contacted and
21 requested to provide a report?

22 A. Not to my knowledge.

23 Q. Okay. Do you work in the office with those guys?

24 A. No, sir.

25 Q. Okay. So you don't know what they did is that

1 correct?

2 A. Come again.

3 Q. So you don't know what was requested of them is that

4 correct?

5 A. I understand what was requested of them. I know the

6 MAIT Team's procedures, what they do. I don't know the

7 technicalities of how they do it.

8 Q. Okay. But you were the investigating officer is that

9 correct?

10 A. Yes, sir.

11 Q. Okay. And as the investigating officer you were

12 responsible for gathering all of the evidence and putting

13 this case together, is that correct?

14 A. Correct.

15 Q. Okay. Now the victim in the case do you know where

16 she was coming from?

17 A. Yes, sir, I do.

18 Q. Did you interview any of the people who she was

19 present with prior to her coming out on the [REDACTED]

20 A. I do not.

21 Q. Well did you contact any of them?

22 A. No, sir, I actually didn't. The Sheriff's Department

23 had contacted her last employer. She at that point in time

24 that night had worked two jobs. She worked at Lawn Cove

25 had got off work there went to Lowe's that night where she

1 worked in Bluffton; clocked out at approximately ten
2 something and on the estimated time of death by twenty
3 minutes later she was deceased due to this collision.

4 Q. Yea but you didn't gather that information is that
5 correct?

6 A. I didn't do what?

7 A. You're not the one who personally contacted Lowe's or
8 anybody else is that correct?

9 A. No, sir.

10 Q. So basically all of this is hearsay is that correct?

11 A. No, sir, the time card can be checked at Lowe's if
12 needed be but we didn't document anything but her time card
13 will reflect when she signed -- when she clocked out of
14 work from her second job that night.

15 Q. But none of that is in your report is that correct?

16 A. No, sir, not at the time we were not able to find that
17 out.

18 Q. Okay. All right. Now the two vehicles involved in
19 this event, the motorcycle and the SUV, what did you do
20 with them after you released the accident scene?

21 A. They were towed; both of them were towed.

22 Q. And what happened to them?

23 A. I guess they went to the respective towing company's
24 property.

25 Q. And what happened to them?

1 A. Sir, I'm not really understanding what you're getting
2 at here.

3 Q. Well they are evidence in a homicide, isn't that
4 correct?

5 A. Correct.

6 Q. And you are the officer responsible for determining
7 what happens to that evidence, isn't that correct?

8 A. Correct.

9 Q. What happened to the vehicles?

10 A. The vehicles I believe one went to Morris's and the
11 motorcycle went to National Towing as I recall. At the
12 point in time this is not -- we're not trying to get
13 fingerprints off somebody that's stabbed or shot somebody
14 so once I collect all the evidence at the scene and take
15 pictures and spray paint where the accident how it occurred
16 that's my job that's what my job entails.

17 Q. Well isn't it also important that we maintain the
18 structure of the vehicle in order for someone an expert
19 quote expert to come in and determine the rate of speed of
20 the vehicles; all these kinds of things that are related to
21 the damage done to the vehicle, isn't that correct?

22 A. Yes, sir.

23 Q. What happened to the vehicles?

24 A. To answer your last question or your last statement
25 that's what the MAIT Team is for and the MAIT Team did

1 exactly what you said. They have done the street
2 estimates; they have done the investigation as far as what
3 caused the damage and what caused the induced damage. It's
4 in a full report that you have received.

5 Q. Were those vehicles at least the SUV destroyed back in
6 2007?

7 A. Destroyed?

8 Q. I mean like smashed, smooshed. A big heavy weight
9 comes down on it and it crushes it, isn't that correct?

10 A. Not to my knowledge. If it did it did.

11 Q. Well when did the MAIT Team go out and examine these
12 vehicles?

13 A. That would be an issue you need to take up with the
14 MAIT Team. I cannot tell you.

15 Q. But again you are the investigating officer. You are
16 the person pulling all of this information together. You
17 are responsible for releasing the vehicles which is
18 evidence in this case. Did you not in any way work with
19 the MAIT Team to come up with this MAIT Report?

20 A. Yes, sir, I worked with them back in October at the
21 collision scene.

22 Q. And that was October of this year wasn't it?

23 A. Correct.

24 Q. That's right after I called you guys or somebody after
25 I had been hounding a lot of people about I need a report

1 and they said there was no report, isn't that correct?

2 A. I cannot recall what they told you. I wasn't in the
3 loop on that sir, sorry.

4 Q. So you guys went out in October, is that correct?

5 A. Yes, sir.

6 Q. And you went with them to examine the vehicles is that
7 correct?

8 A. No not the vehicles the collision scene.

9 Q. Well how do you know they examined the vehicles?

10 A. Sir, I didn't ask them. Was it in the report?

11 Q. I have no clue.

12 A. Did you read the report?

13 Q. I got a report about a week ago.

14 A. We did it in October.

15 Q. But I don't recall seeing anything in the report about
16 examining the vehicles or anything of that nature. Okay.

17 All right. Let's go to the report that you prepared here.

18 Now during the course of your testimony on direct

19 examination you indicated that the defendant pulled up into
20 this convenient store and was executing a U turn, is that
21 correct?

22 A. That's correct.

23 Q. And a U turn in this particular state is legal under
24 those conditions, isn't that correct?

25 A. A U turn yes, sir. Unless posted a U turn is legal.

1 Q. Okay. So what he was doing was not illegal when he
2 made the turn and came back out on the highway, is that
3 correct?

4 A. No, sir, but it is illegal to be in another's one
5 lane.

6 Q. Well can you tell me how it's possible to make a U
7 turn from the left hand side of the road to get to the
8 right hand side of the road without going in the other
9 person's lane?

10 A. You are going to have to ask that question again, sir.
11 You went left to right right to left on me so I don't know.

12 Q. You know you have this vehicle here okay.

13 A. Okay.

14 Q. The store is here and you're saying he did this.

15 A. I went into the parking lot.

16 Q. Into the parking lot and did like that?

17 A. Right came back around.

18 Q. And then he was going back towards his lane, isn't
19 that correct?

20 A. No, sir.

21 Q. Oh he wasn't?

22 A. No, sir. In the evidence it even showed that he
23 wasn't going back into his lane, sir.

24 Q. Well now you had -- you took some tire pictures,
25 pictures of tire tracks didn't you?

1 A. Yes, sir.

2 Q. And those tire tracks are turning like that aren't
3 they?

4 A. They were turning. Don't misconstrue me here. When
5 they were turning they were turning and staying in the
6 opposite lane which is unlawful. That's what they were
7 doing. Now what you are looking at right there is not to
8 scale, sir, and they was meant to be to scale.

9 Q. So I can just take this evidence and just get rid of
10 it because it's of no value is that correct?

11 A. Did you read the MAIT Report?

12 Q. Unfortunately you were the officer on the scene; you
13 were the guy that gathered all of the data, all of the
14 information and all of the pictures. The MAIT Team has
15 nothing to do with this other than a failure to show.

16 A. So the MAIT Team has no bearing whatsoever on coming
17 back and placing my measurements that I did, reconstructing
18 the accident scene, finding out coordination's, finding out
19 speed, grade, the level of the road, nothing.

20 Q. You know we don't know what they did.

21 THE COURT: Let's kind of get back on track. Let's
22 get back to the question. Let me - wait a minute. It's
23 not like I'm at home. Just ask questions and answers; keep
24 it like that. We're getting a little bit of a failure
25 here.

1 BY MR. HOOD:

2 Q. Now you took pictures of the tracks of the vehicle,
3 isn't that correct?

4 A. Yes, sir.

5 Q. And we all saw those pictures of the tracks of the
6 vehicle?

7 A. Yes, sir.

8 Q. Now how fast did you estimate the speed of the
9 motorcycle being driven by Ms. Dion?

10 A. At my estimation is on the report right there in front
11 of you.

12 Q. Well do you know what it is?

13 A. Its on the report, sir. I am not going to go from
14 memory anything that's on the report.

15 Q. Let's just say -- I'm going to say what was the speed
16 limit on that, the posted speed limit?

17 A. The posted speed limit to that particular area is 45
18 miles an hour.

19 Q. And would you agree that what you've put in your
20 report here is the speed limit of the motorcycle was 45
21 miles an hour?

22 A. There is no other evidence at the scene to indicate
23 otherwise.

24 Q. So you indicated on your report that she's doing 45
25 miles an hour, is that correct?

1 A. Correct.

2 Q. Now you also have the speed of Mr. Galimore's vehicle,
3 is that correct?

4 A. Yes, sir.

5 Q. And you estimated that speed at 15 miles per hour,
6 isn't that correct?

7 A. Yes, sir.

8 Q. Okay now how many feet would a vehicle travel at 15
9 miles per hour from the point of where you saw the tracks
10 begin and where the tracks ended?

11 A. Exactly where the defendant ended up.

12 Q. Well how many feet was that?

13 A. I don't recall that. MAIT Team has that on their
14 report.

15 Q. Well you didn't measure the distance from the
16 beginning of the tire track to the end of the tire track?

17 A. No, sir.

18 Q. Okay. Now when you looked at the tires that were on
19 the vehicle and on your pictures - - -

20 A. Yes, sir.

21 Q. - - - there was sand, dirt, and other things on the
22 tire wasn't there and on the treads?

23 A. Correct.

24 Q. So it was either barely moving or not moving at all
25 isn't that correct?

1 A. No, sir. It was moving. The vehicle was moving.

2 That's where I laid down the tire tracks as was seen in the
3 pictures.

4 Q. But you don't know whether the vehicle stopped in that
5 road or not do you?

6 A. Well if he stopped that's illegal to stop in the
7 middle of the road wouldn't it?

8 Q. Okay. Did you charge him with that?

9 A. I charged him left to center. Felony DUI here. I
10 mean his action was left to center. He never established
11 his lane.

12 Q. Well let's go to this left to center because you never
13 charged him with left of center until November of this
14 year, isn't that correct?

15 A. Actually I never charged him with left to center, sir.

16 Q. Well you never charged him, isn't that correct?

17 A. No, sir.

18 Q. And the problem was that you guys charged him with
19 felony DUI and did not allege what the act or violation of
20 the law or omission of the law was that was the approximate
21 cause of this accident, isn't that correct?

22 A. I believe what Counsel is referring to is the
23 Indictment.

24 THE COURT: Don't look to me.

25 A. This does not have - does not have no bearing on me.

1 In the State of South Carolina down here in Beaufort/Jasper
2 counties do you not tack on for a DUI or a felony DUI
3 multiple moving violations so if he had ran four stop signs
4 and went through a red light we would only charge him with
5 a felony DUI or a DUI so therefore I do not charge people
6 with multiple offenses. The reason I wrote on this that he
7 went to left to center is it's on the report that he
8 crossed the line.

9 Q. Well how did he cross the line if he never got to the
10 line?

11 A. Well the statute in itself is what says that. Anytime
12 that you do not give right of way to somebody in their lane
13 the statute you know of he never established his lane to be
14 going back east bound. He stayed pretty much -- he only
15 had like one tire that even come close to the yellow line.

16 Q. And that was you know there was an impact is that
17 correct?

18 A. I would say so.

19 Q. And a mighty forceful impact, isn't that correct?

20 A. Yes, sir.

21 Q. Because it ripped and tore and cut the bumper of the
22 vehicle and tore up rods and things and sheared them off,
23 isn't that correct?

24 A. Yes, sir.

25 Q. Now the impact of such a nature and it being that the

1 motorcycle went to the right, is that correct?

2 A. Yes, sir.

3 Q. Would that not indicate to you that the vehicle was
4 pushed and turned back the opposite way in the same
5 direction that the motorcycle goes in?

6 A. I'm not sure what you're asking on this one.

7 Q. Well you're driving down the road you know like this
8 and something hit you this way.

9 A. Okay.

10 Q. You're going to go that way, right?

11 A. Possible yes, sir, you would.

12 Q. Well the tire on that vehicle was turned all the way
13 out this way - - -

14 A. Uh-huh.

15 Q. - - - which would indicate that the vehicle went that
16 way after impact, isn't that correct?

17 A. Are we talking about the violator Mr. Galimore's
18 vehicle?

19 Q. Yes.

20 A. We had three tires that were straight and the only
21 reason that his left front tire even broke like it did was
22 due to the damage to the front end not necessarily saying
23 he was steering to the left. That was just damage caused
24 due to the collision.

25 Q. Well did you examine -- did you find any skid marks

1 anywhere at the scene?

2 A. No, sir.

3 Q. Okay. Did you find any indications of breaking at any
4 point by the motorcycle?

5 A. No, sir.

6 Q. Okay. Now again I go back to what I said before. I
7 ask you about the speed of the defendant's vehicle. You
8 estimated it at 15 miles per hour, is that correct?

9 A. Yes, sir.

10 Q. He pulls out and you can very plainly see the tracks
11 of the vehicle getting out into the roadway, is that
12 correct?

13 A. Yes, sir.

14 Q. And you did not measure the distance between where the
15 track began and where the track ended, is that correct?

16 A. That's correct yes, sir.

17 Q. Okay. Wouldn't that tell you how many feet the
18 vehicle had traveled and how many seconds it took for that
19 vehicle to get from that point to that point?

20 A. It's not relevant to the case.

21 Q. Not relevant to the case?

22 A. No, sir. He could have went one mile an hour and
23 crept if he would a wanted too. Now he could have pushed
24 his vehicle into that spot. It's not relevant the distance
25 that he traveled. The relevancy is that he was in someone

1 else's lane and caused a collision.

2 Q. Well if you were stopped in somebody else's lane if
3 you had an emergency or something and you stopped you know
4 you've got to go across to get to your lane, is that
5 correct?

6 A. If somebody was stopped for an emergency they had to
7 do what now?

8 Q. Well if a car is stopped in the on coming lane of
9 traffic - - -

10 A. Okay.

11 Q. - - - and there is an accident involved.

12 A. Okay.

13 Q. When the person is attempting to get into their lane.
14 Okay in other words you are driving out and you stop and
15 you're going to that lane but you haven't got to that lane
16 yet what have you done that's wrong?

17 A. I'm a very educated individual but I am having a
18 difficult time figure out what you're talking about.

19 Q. Well okay all right let's start again. You said he
20 was driving left of center, is that correct?

21 A. Opposite lane. He was technically driving in on
22 coming traffic. I'm with you.

23 Q. But in order for him to make a U turn to get back up
24 into his lane - - -

25 A. Uh-huh.

1 Q. - - - he must travel in the on coming traffic's lane
2 for a period.

3 A. Absolutely not, absolutely not. It would be no
4 different than somebody at a stop sign and they wanted to
5 go down the roadway to the left to make another left. They
6 wouldn't stay in on coming traffic and drive down that lane
7 just to make a left. They would go into their lane travel
8 the correct way stop put their blinker on and then make a
9 left.

10 Q. Okay. But there at that intersection there is a gap
11 in the double yellow line.

12 A. Correct.

13 Q. Okay now we're on the same sheet of music. So what
14 you are saying is that he was making a proper U turn. You
15 said that earlier, is that correct?

16 A. I'm with you yes, sir.

17 Q. And that he should have gone and pulled around in
18 front of the store and gone all the way back to the stop
19 sign and gone around the stop sign and came out that way in
20 order to avoid driving in the other persons lane?

21 A. No, sir, that would be illegal too what he would be
22 doing. No what I stated was when he made a U turn and he
23 drove down into the parking lot at that point in time just
24 like the law says for failure to yield right of way he
25 needs to wait until its clear necessary and prudent before

1 he can pull out into traffic. Therefore once he pulls out
2 into traffic he must establish his correct lane then go and
3 proceed to make his left turn. He cannot stay in someone
4 else's lane and drive. He's not making a U turn in the
5 parking lot, sir. He come back onto the roadway South
6 Carolina 46 that was his action. I see what you're trying
7 to get at but that is not the case at hand.

8 Q. Okay. Okay. Let's talk about the motorcycle a little
9 bit. Let's forget about the double yellow line and
10 crossing it. Now we know the size of the motorcycle, is
11 that correct?

12 A. Yes, sir.

13 Q. And it's going 45 miles an hour?

14 A. From my estimate.

15 Q. Okay. How many feet would it take that motorcycle to
16 stop?

17 A. I don't have the calculation in front of me. She
18 would have had to have laid down skid marks for it to be
19 able to be determined. The MAIT Team would be able to
20 better assist you in that question.

21 Q. Well would you agree that if you are traveling 45
22 miles an hour that in the normal circumstances how many
23 feet per second are you traveling? Would it be about 66?

24 A. I'm not going to be dead on it and I'm not going to
25 give an estimate.

1 Q. So how did you estimate the speed of the motorcycle?

2 A. There was nothing else at the scene given. A when the
3 collision happened and the vehicle had been going -- if the
4 motorcycle would have been going anywhere faster than 45 or
5 below her body and her motorcycle would not be laying 25
6 feet away from the collision scene. I've worked many a
7 motorcycle fatalities at high rates of speed and let me
8 tell you nothing is near anything and this was tight,
9 bunched together.

10 Q. Now you say you worked many of these.

11 A. Yes, sir.

12 Q. People have difficulties seeing motorcycles don't
13 they?

14 A. They do.

15 Q. That's ninety percent of the problem with motorcycles
16 is that the other drivers don't often see them, isn't that
17 correct, when an accident occurs?

18 A. Not all the time no, sir.

19 Q. Okay. Would you say the majority of the time?

20 A. No, sir, I would not say the majority.

21 Q. Okay. So you have investigated a lot of these
22 accidents?

23 A. Yes, sir.

24 Q. And nobody has ever said to you I didn't see it then?

25 A. No, sir.

1 Q. Okay. All right. Now this store that this accident
2 occurred in front of it had Christmas lights on it didn't
3 it?

4 A. Yes, sir.

5 Q. And it had a great big outside light on a pole that
6 was illuminating, isn't that correct?

7 A. A bug head. Probably two according to the picture.

8 Q. Yea and also there was additional lighting coming from
9 the store, isn't that correct?

10 A. Yes, sir.

11 Q. So in other words if someone were traveling down the
12 [REDACTED] in the direction coming like the motorcycle

13 - - -

14 A. Yes, sir.

15 Q. - - - you would see that particular lit up spot in the
16 road, isn't that correct?

17 A. You should.

18 Q. You should because there are no other spots out there,
19 isn't that correct?

20 A. Not lit that I believe.

21 Q. Okay. So this is the only spot out there. So my
22 client Mr. Galimore executing a U turn driving 15 miles an
23 hour underneath all those lights and boom there's an
24 impact.

25 A. Yes, sir.

- 1 Q. And there's not one skid mark?
- 2 A. Yes, sir.
- 3 Q. Not one braking mark?
- 4 A. No, sir.
- 5 Q. Why not? Do you know?
- 6 A. I can't ask her, sir.
- 7 Q. You can't answer that question can you?
- 8 A. No, sir, I can't.
- 9 Q. But you also identified the fact that you said that
- 10 this particular gas tank had some compression on it?
- 11 A. Yes, sir.
- 12 Q. And that was in your words when she was preparing for
- 13 the impact, is that correct?
- 14 A. Yes, sir. Actually -- yea it's preparing for the
- 15 impact and it is impact. If you've ever worked a
- 16 motorcycle collision you can see that a few times.
- 17 Q. Now you indicated that you don't charge people with a
- 18 lot of crimes and this and that and the other because - -
- 19 A. Well I charge with a lot of crimes I just don't stack
- 20 offenses on somebody when it's not our policy procedure.
- 21 Q. But you also charged this individual with driving an
- 22 uninsured vehicle didn't you?
- 23 A. Yes, sir.
- 24 Q. And that turned out not to be true, correct?
- 25 A. Yes, sir, there just was not any proof in there.

1 Q. And you never charged him with making an illegal U
2 turn did you?

3 A. I thought we discussed that making a U turn wasn't
4 illegal, sir.

5 Q. Well I just saying you did is that correct?

6 A. I won't charge somebody for an unchargeable offense.

7 Q. And it wasn't until October of this year or November -
8 actually it was November of this year when you guys finally
9 decided and you told then that we need to state that the
10 act, violation of the law was in fact driving in the wrong
11 lane?

12 A. No, sir. I believe you brought that up the last time
13 I did not.

14 Q. Well what I brought up was the fact that you guys had
15 never told anybody what violation of the law or omission of
16 the law my client committed that allowed him to be charged
17 with felony DUI, isn't that correct?

18 A. That's what you said.

19 Q. Okay. And immediately thereafter you guys get
20 together the solicitor and yourself.

21 A. Yes, sir.

22 Q. And come up with the fact that we got to come up with
23 some violation of the law so therefore you put in there
24 that he was driving in the wrong lane, isn't that correct?

25 A. You ask for a reason we gave you one.

1 Q. Well you put it in there, isn't that correct?

2 A. Yes, sir.

3 Q. Okay. All right. And that's how we got here today
4 with that particular charge, isn't that correct?

5 A. Yes, sir, along with the felony DUI and DUS.

6 Q. And the MAIT Team did their investigation in October
7 or the last month, the last part of October or the first
8 part of November. I believe it was November but anyway I
9 would say it was November rather than October. They did
10 their investigation in November of this year, is that
11 correct?

12 A. I believe it was October. I think the final report
13 may have came out beginning of November but I'm not sure
14 about that. I'm not going to say exactly when the dates
15 however I believe it was in October.

16 Q. Right. Well okay. Now we're sure that Mr. Galimore
17 made the statement the motorcycle hit me, it was not my
18 fault.

19 A. She was in my lane it was not my fault is what I said.

20 Q. Okay. All right. And you are satisfied that the
21 impact of this motorcycle and the front end of this vehicle
22 did not in any way cause that vehicle to move? I guess it
23 would be to the left.

24 A. Are you talking about it moving more towards the
25 store?

1 Q. Yes.

2 Q. No, sir, it didn't move any at all. I mean the tire
3 marks with the debris that we had talked about earlier the
4 sand and the debris led right up to the tire. There was no
5 shift it was straight on so that leads us to believe as
6 educated law enforcement professionals that the vehicle did
7 not move.

8 Q. Which tire was that?

9 A. I have to look back on the - -

10 Q. It was one tire, is that correct?

11 A. Yes, sir.

12 Q. Okay. And that was the tire on the inside that came
13 out on the parking lot that was doing like that isn't that
14 correct?

15 A. I believe so from the picture.

16 Q. Yea. And that's behind the driver's side, is that
17 correct?

18 A. Yes, sir.

19 Q. Okay. Okay. I don't have anything, Trooper, enough
20 of that. Now whose vehicle did Mr. Galimore travel in to
21 the Beaufort Memorial Hospital?

22 A. It would be Deputy Nelson.

23 Q. Okay. And did you have any contact with him while he
24 was being transported to Beaufort Memorial Hospital?

25 A. Of course not.

- 1 Q. Okay. So you came in your vehicle is that correct?
- 2 A. Yes, sir.
- 3 Q. Okay. And Deputy Nelson is the one that took him to
- 4 the hospital, is that correct?
- 5 A. Correct. She did it for me because I had to finish
- 6 the investigation.
- 7 Q. Okay. And did you arrive on the scene at the
- 8 hospital?
- 9 A. Yes, sir.
- 10 Q. Okay. And who was present when you arrived?
- 11 A. Myself and Deputy Nelson and several ER staff and what
- 12 not. But as far as law enforcement officials it was just
- 13 us pertaining to this case.
- 14 Q. Okay. And about what time did you arrive at the
- 15 scene?
- 16 A. Which scene?
- 17 Q. At the hospital.
- 18 A. At the hospital something like after midnight. I
- 19 cannot exactly remember when I know it was at twelve.
- 20 Q. And how long had they been there before you arrived?
- 21 A. I could not recall to be honest with you.
- 22 Q. Well was it ten minutes or thirty minutes or an hour?
- 23 A. Here again I cannot recall how long it had been.
- 24 Q. Okay. But you recall Officer Nelson taking Mr.
- 25 Galimore and moving him to the hospital is that correct?

1 A. Yes, sir. Yes, sir.

2 Q. All right. And you continued with your investigation?

3 A. Yes, sir.

4 Q. But you don't know how long that actual period of time
5 was?

6 A. No, sir. By the time she decided to take him I was
7 pretty much three quarters of the way through my
8 investigation. I didn't have much longer but he was
9 already detained in her vehicle and she went ahead and
10 transported and waited on my arrival to Beaufort County
11 Hospital.

12 Q. So you never arrested Mr. Galimore at all, is that
13 correct?

14 A. Yes, sir. Once he was already detained by the
15 Beaufort County Sheriff's Department that was the whole
16 reading of the rights and telling him.

17 Q. Okay. All right now did you have any other
18 conversations with Mr. Galimore other than the one in which
19 he was in the back of the vehicle?

20 A. Any time else no, sir.

21 Q. Okay. So you never talked to him at the hospital?

22 A. The only time I talked to him at the hospital was the
23 implied consent, the reading of the rights and in telling
24 him that he didn't have the right to refuse which he was
25 being very belligerent at that point in time.

1 Q. Okay. And he never made any comments to you or did
2 you hear any comments made to any of the other officers
3 about the handcuffs being too tight and they were behind
4 his back and this and that and the other?

5 A. No, sir, I hadn't heard anything about that.

6 Q. And did you make the statement to Mr. Galimore you
7 killed that woman?

8 A. No.

9 Q. Okay. Well did you hear that statement made by any of
10 the other officers at the time you guys were out there at
11 that scene?

12 A. Outside of his presence yea everybody said it.. I mean
13 it was apparently what happened during the case but nobody
14 directly talked to Mr. Galimore from him passing out left
15 and right.

16 Q. So everybody was making those statements is that
17 correct?

18 A. Amongst law enforcement officials we have the right to
19 talk about the case amongst each other yes, sir.

20 Q. So Mr. Galimore was not well thought of at that time
21 isn't that correct?

22 A. He wasn't being corporative but nobody did anything to
23 violate his rights or do anything derogatory towards him.

24 Q. Okay. All right now when you get to the hospital and
25 you ask him about giving the blood what does he say?

1 A. He refuses.

2 Q. Okay. And did he tell you anything about there wasn't
3 anything wrong with him and he needed no medical
4 assistance?

5 A. I don't recall him saying anything about that. He was
6 in the room with the nurses he may have told the nurses
7 that he didn't need medical assistance however I would
8 never render any medical assistance to him I was there to
9 get my evidence.

10 Q. So you were there to get your evidence?

11 A. Correct.

12 Q. Okay. All right now how many officers did it take to
13 subdue Mr. Galimore?

14 A. It took -- Deputy Nelson was involved; a Beaufort City
15 officer who happened to be there for an unrelated incident
16 coming in and I believe four nurses.

17 Q. Well now the Beaufort City Police did you call them?

18 A. No, sir, I just said he was there for an unrelated
19 incident and heard the commotion.

20 Q. Did anybody call the Beaufort City Police and ask for
21 assistance in the taking of blood from an individual?

22 A. I never did. I can't vouch for anybody else.

23 Q. So you don't know whether or not they said no we don't
24 do that kind of thing?

25 A. No, sir, I just said I'm not aware of it.

1 Q. Okay. Now when you say -- Mr. Galimore was still
2 Handcuffed, isn't that correct?

3 A. Yes, sir.

4 Q. And he remained handcuffed the whole time, isn't that
5 correct?

6 A. Correct.

7 Q. Okay. I think you recall the name of the nurse who
8 took the blood, is that correct?

9 A. Yes, sir.

10 Q. Was there a doctor present?

11 A. There probably was. I'm not sure if there was or
12 wasn't.

13 Q. Well did anybody -- did you ever talk to any doctor or
14 anybody or any other staff in there and indicated to you
15 that Mr. Galimore did not have any injuries that were life
16 threatening or anything of that nature?

17 A. I think they got a fully staffed personnel there that
18 would have determined that. A doctor doesn't need to be
19 the only person that can determine if somebody has any
20 injuries but I never discussed it with anybody because I
21 try to stay away because of how crowded it was in the room
22 trying to deal with him.

23 Q. Okay. But you never heard him complain about the
24 handcuffs or anything of that nature?

25 A. Here again at any point in time between the time I got

1 on the scene at the collision and the time I went home and
2 went to bed that night I never heard him complain about
3 that to me.

4 Q. And to your knowledge did EMS render any assistance to
5 Mr. Galimore at the scene?

6 A. If they did they did it before I got there.

7 Q. Okay.

8 A. When I had gotten there they had already tried to do
9 their procedures on Ms. Dion as well and I didn't see them
10 do that. So normally we're the last people to get there;
11 we're not the first responders.

12 Q. And did you offer or try to give Mr. Galimore any
13 field sobriety test?

14 A. I couldn't he was uncooperative.

15 Q. A field sobriety test are what?

16 A. They are simply test that would determine if a
17 person's judgment or physical being is impaired to drive a
18 vehicle.

19 Q. And you never gave him any of those test, isn't that
20 correct?

21 A. You are unable to.

22 Q. You are unable to?

23 A. Yes, sir.

24 Q. Did you ask him to submit to any field sobriety test?

25 A. There was no need. A he had been in a collision and

1 he kept passing out and he was not going to get up. He
2 wasn't even going to give us blood which is his duty he has
3 no choice. He was uncooperative the whole night. It would
4 have been physically impossible for an officer's safety to
5 release him out of handcuffs to let him do a field sobriety
6 test which you cannot do a field sobriety test in handcuffs
7 so therefore why release an individual who has been hostile
8 and uncooperative to do a test? It just doesn't make
9 sense. Officer's safety wise it just makes no sense.

10 Q. Well who was the officer who arrested him and put him
11 in the back of the vehicle before you arrived?

12 A. I cannot tell you who the officer or officers were. I
13 could not tell you. He was already detained while I got
14 there.

15 Q. So you don't know what happened to him prior to his
16 being thrown in the back seat of this car?

17 A. Before he was placed in the back seat of the patrol
18 car I have no clue what had happened to him.

19 Q. Okay. Where was Mr. Galimore from?

20 A. According to his driver's license I believe it was
21 like Rochelle or something New York.

22 Q. So he's not from around here?

23 A. Actually he does have a physical address on [REDACTED]
24 [REDACTED] which was cross referenced with South Carolina
25 so yes, sir, he does have a residence in the State of South

- 1 Carolina.
- 2 Q. And the vehicle license tag was for what state?
- 3 A. For New York.
- 4 Q. Okay. Okay. Okay let's go to the vehicle itself on
- 5 the inside.
- 6 A. Yes, sir.
- 7 Q. Now when you are on the inside of the vehicle when you
- 8 arrive.
- 9 A. Okay.
- 10 Q. What do you see?
- 11 A. I see clutter and mess that's what I see.
- 12 Q. What do you see in the front seat of the vehicle?
- 13 A. Like I say I don't recall what I see. I knew the main
- 14 thing that sticks out in my mind was the absolute or the
- 15 Sky Vodka bottle of liquor.
- 16 Q. Okay. So you missed the color TV that was sitting on
- 17 the front seat?
- 18 A. I missed the color TV that was sitting in the back but
- 19 not in the front seat.
- 20 Q. Well it was in the back seat then.
- 21 A. Yes, sir.
- 22 Q. Well what was in the front seat?
- 23 A. I cannot recall.
- 24 Q. Well you took pictures of it didn't you?
- 25 A. I took pictures of the whole vehicle yes, sir.

1 Q. And what else was in the back area of the vehicle?

2 A. Tools, DVD's, stuff like that. Like I say it was a
3 scattered mess.

4 Q. What about clothing and things of that nature?

5 A. It could have been.

6 Q. So you didn't look at any of that stuff is that
7 correct?

8 A. It wasn't important.

9 Q. It wasn't important. Okay. Now were these bucket
10 seats that we're talking about in this vehicle?

11 A. I don't recall.

12 Q. Well you said it was in the back this bottle of Vodka.

13 A. No I didn't say it was in the back. No, sir, I said
14 the TV was in the back. The bottle as in my statements
15 earlier was in the immediate vicinity of the driver's seat
16 that's what I said.

17 Q. I know that's what you said but you also said the fact
18 is that it could have slid down or something of that
19 nature.

20 A. Yes, sir.

21 Q. You don't know how it got there in other words?

22 A. It could not have slid down underneath the seat. If
23 it would have done that the bottle was too big. There's
24 too much mechanisms up underneath the seat for a bottle of
25 this stature to roll under the seat so it had to be

1 somewhere in the front compartment. But like I say I don't
2 know. When I found it it was near full that's what it was.

3 Q. Near the floor board?

4 A. Actually near was the wrong word. On the floor board.

5 Q. The back floor board?

6 A. No, sir.

7 Q. On the front floor board?

8 A. Yes, sir.

9 Q. So in other words he can just reach right over there
10 and grab it and take a shot?

11 A. There you have it.

12 Q. Uh-huh. Okay. Did you notice whether or not there
13 was anything inside of the vehicle?

14 A. There were lots of things, Counsel, inside the
15 vehicle.

16 Q. But there wasn't any exposed alcohol outside of the
17 bottle, is that correct?

18 A. No there was just a broken seal liquor bottle
19 violation.

20 Q. Were you the only person to have seen that particular
21 Sky Vodka bottle?

22 A. No, sir, I was not the only one.

23 Q. Well who was the first person to actually discover
24 this bottle?

25 A. Who knows who that was? The vehicle was looked at

1 before I got there. I mean the door was already open and
2 everything was out there. I don't know who seen it before
3 I did however I seen it and that's what matters but I could
4 not tell you who the first person to see the bottle was.

5 Q. But the doors were open isn't that correct?

6 A. The driver side door was.

7 Q. Okay. And you indicated that the children had been
8 talked to, is that correct?

9 A. Yes.

10 Q. Okay. Did you ask any of the children was daddy
11 drinking this bottle and riding down the road and driving?

12 A. No, sir, I didn't ask that.

13 Q. And you didn't ask them whether they were wearing seat
14 belts or any restraints?

15 A. I was told from a reliable source of good faith from
16 another officer.

17 Q. Now who took Mr. Galimore to the detention center?

18 A. Officer Nelson.

19 Q. Did you go with him?

20 A. Uh-huh.

21 Q. Well how did he get out of the hospital?

22 A. He was escorted to his car. Actually escorted to the
23 deputies car.

24 Q. So he walked out of the hospital, is that correct?

25 A. Yes, sir.

1 Q. And I believe he had a conversation with one of the
2 doctor's, is that correct?

3 A. I could not tell you.

4 Q. Did he fill out some forms or anything of this nature
5 for the doctors?

6 A. I could not tell you.

7 Q. And he never said anything to you at the hospital
8 other than I am not going to give you my blood?

9 A. That's all he told me because I said that it was
10 mandatory; read the implied consent forms which you have.
11 I read him the Maranda rights and eventually he gave up and
12 said okay but that wasn't to me, that wasn't to me, that
13 was to others when he gave his blood up.

14 Q. Well but you heard it?

15 A. No, sir, I did not hear it. I'm going off from what
16 the phlebotomist said.

17 Q. Well were you present at the time of the taking of the
18 blood?

19 A. I was at the door. I do not hold anybody down for
20 blood I do not get involved in that.

21 Q. Well which officers got involved in it?

22 A. As I stated earlier Officer Nelson and a Beaufort City
23 Officer.

24 Q. Okay. All right. I think that's all I have.

25 Thank you, your Honor.

1 THE COURT: Redirect.

2 MS. TANNER: Very briefly.

3 REDIRECT EXAMINATION

4 TROOPER NICK SPROUSE BY MS. TANNER:

5 Q. And I only ask this because Mr. Hood tried to make it

6 sound like we colluded recently and decided that Mr.

7 Galimore was driving left to center.

8 A. Correct.

9 Q. At what point in your investigation did you determine
10 that Mr. Galimore was driving left of the center?

11 A. That night.

12 Q. No further questions.

13 THE COURT: Recross?

14 MR. HOOD: I only have one question.

15 RECROSS EXAMINATION

16 TROOPER NICK SPROUSE BY MR. HOOD:

17 Q. Why didn't you put that in your report?

18 A. Because I actually put it in the diagram drawing.

19 Q. Why didn't you put it in your report?

20 A. I have to read my report again. Can I have a copy of
21 it?

22 THE COURT: You can step down.

23 A. Yes, sir.

24 THE COURT: You can be excused if you wish or remain
25 as the investigating officer. I thank you for your time.

1 We'll take an afternoon break. If you will just
2 follow the bailiff to the jury room we will take a break.

3 (JURY LEAVING COURTROOM AT 3:15 P. M..)

4 THE COURT: We'll take a ten minute break.

5 (SHORT RECESS AT 3:16 P. M..)

6 (BACK ON THE RECORD AT 3:45 P. M..)

7 THE BAILIFF: All rise.

8 THE COURT: Take your seats.

9 The State ready?

10 MS. TANNER: Yes, sir, your Honor.

11 THE COURT: Defense ready?

12 THE COURT: Ready, your Honor.

13 THE COURT: Bring in the jury.

14 THE BAILIFF: Juror's are entering, your Honor.

15 (JURY ENTERING COURTROOM AT 3:46 P. M..)

16 THE COURT: All right call your next witness.

17 MS. TANNER: Thank you, your Honor. The State calls
18 Ashley Goldman.

19 THE CLERK: Raise your right hand and place your left
20 hand on the bible.

21 (WHEREUPON: ASHLEY GOLDMAN,
22 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 THE CLERK: Please have a seat. State your full name
24 and spell your last name.

25 A. Ashley Marie Goldman, G-o-l-d-m-a-n.

1 DIRECT EXAMINATION

2 ASHLEY MARIE GOLDMAN BY MS. TANNER:

3 Q. Good afternoon, Ms. Goldman. Where are you employed?

4 A. Beaufort Memorial Hospital.

5 Q. You're actually working today?

6 A. I am.

7 Q. And how long have you worked at the hospital?

8 A. About five and a half years now.

9 Q. And what are your duties, your responsibilities at the
10 hospital?

11 A. I'm a charge nurse in the emergency department so
12 anything that comes in or out of the emergency room.

13 Q. And what kind of education or training do you have in
14 that position?

15 A. I have an Associates Degree from a technical college
16 and three months away from my Bachelor's Degree in the same
17 field.

18 Q. And as part of your job in ER would one of your duties
19 be to draw blood from a person?

20 A. It is.

21 Q. Now were you working on August the 11th 2007 the late
22 hours or early morning hours of August 12?

23 A. I was I was working night shift.

24 Q. And do you recall drawing blood from an individual by
25 the name of Rodney Galimore?

1 A. I recall after looking over the notes.

2 Q. All right let me show you what's been marked as
3 State's Exhibit Number Twenty-Seven.

4 If I may approach, your Honor.

5 If you can identify this item?

6 A. Yes the evidence seal that we use.

7 Q. It is still active. I can open it for you.

8 A. I identified the name on this blood drawn that is in
9 my handwriting.

10 Q. And is that your name on the blood drawn?

11 A. It is yes.

12 Q. And who is the blood drawn from according to these
13 documents?

14 A. It's from the subject Rodney L. Galimore.

15 Q. And the date?

16 A. The date says 8/11/07.

17 Q. All right. Thank you, ma'am.

18 Your Honor, at this time -- but before I do that I am
19 going to ask you this has already been entered into
20 evidence State's Exhibit Twenty-Two.

21 A. Yes, ma'am.

22 Q. Have you ever seen one of these before?

23 A. I have numerous times.

24 Q. And what is that and what do you use it for?

25 A. This is our blood draw kit for biological specimens.

1 Sometimes we call them suspect kits and this is what we
2 place the blood in whenever we draw blood.

3 Q. And would you have done that the night Rodney Galimore
4 came in?

5 A. Yes.

6 Q. An item -- the last item I gave you is that part of
7 one of those kits?

8 A. Yes.

9 Q. Your Honor, at this time the State moves Twenty-Five
10 and Twenty-Seven into evidence.

11 MR. HOOD: No objections.

12 THE COURT: Be in without objection.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FIVE AND
14 TWENTY-SEVEN IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)
15 BY MS. TANNER:

16 Q. After the blood is drawn what do you do with it?

17 A. Immediately after drawing it I label it and in this
18 particular case I would hand it to the investigating
19 officer after it was labeled and place it in the kit and
20 seal it.

21 Q. And in this case that was Trooper Sprouse?

22 A. Yes it was.

23 Q. And do you recall anything -- I know it's been over a
24 year ago I can't imagine how many people you've seen in the
25 last year but do you recall anything in particular about

1 this blood draw and how the defendant was acting?

2 A. I do remember that upon arrival to the emergency room
3 he said he didn't need any treatment, didn't need any care.
4 He said I will not cooperate and he said he did not want
5 his blood drawn. I do remember that.

6 Q. And did you have any difficulty drawing his blood that
7 night?

8 A. We did. For my safety and for my staffs' safety that
9 particular night I requested that we have someone in the
10 room to help us obviously with an open needle in drawing
11 blood we have difficult -- I asked the officer to send
12 someone else in to help us do that.

13 Q. Thank you, Ms. Goldman. Please answer anything Mr.
14 Hood has.

15 A. Yes, ma'am.

16 CROSS EXAMINATION

17 ASHLEY MARIE GOLDMAN BY MR. HOOD:

18 Q. Ms. Goldman.

19 A. Yes, sir.

20 Q. You were present at the time that Rodney was brought
21 in, is that correct?

22 A. I was working that night. I mean I wouldn't have been
23 in the room the exact second that he was brought in but I
24 was working that night yes, sir.

25 Q. And I believe that he signed some documents and things

1 of that nature releasing the hospital from any liability
2 and things of that nature, isn't that correct?

3 A. I remember that registration handles the documents
4 that are signed not the emergency room nurses. Generally
5 it is practice for the registration or the registrar to
6 come forward and ask them questions about signing documents
7 but that's not part of my job description or something that
8 I'm responsible for.

9 Q. But before you normally take blood you have to get
10 someone to sign a release, is that correct?

11 A. If the registrar gets them to sign for treatment yes,
12 sir. In the case of someone who voluntarily presents to
13 the emergency room yes.

14 Q. Okay. Did you examine or see any documents concerning
15 the taking of the blood of Rodney Galimore?

16 A. As far as documents different from what we have or
17 just our general consent?

18 Q. General consent.

19 A. No I did not look at it no, sir.

20 Q. Well did you know that you had it?

21 A. We had a person who came in in handcuffs and I was
22 informed by the officer on seeing that this patient could
23 not refuse the blood draw so that's what we knew.

24 Q. Well do you have a doctor that is present during this
25 procedure?

1 A. Of course yes, sir.

2 Q. So who was the doctor that was present?

3 A. Doctor Rehman, R-e-h-m-a-n.

4 Q. Did Doctor Rehman have any conversations with Rodney
5 Galimore?

6 A. Yes, sir.

7 Q. Okay. And Rodney was cooperative with Doctor Rehman,
8 is that correct?

9 A. I'm not sure but the definition of cooperative would
10 be he did say he did not need an exam. He didn't want the
11 doctor to do any x-rays and was not hurt anywhere. He did
12 say that yes, sir.

13 Q. So he made all of those verbal comments to the doctor
14 in your presence, is that correct?

15 A. Per the doctor -- I don't know that I was necessarily
16 in the room the entire time -- the doctor related to me
17 that the patient did not -- he did not want any x-rays and
18 did not want a full physical exam.

19 Q. And in your opinion did Mr. Galimore understand what
20 you guys were telling him?

21 A. He seemed to be. Yes, sir, he seemed to understand.

22 Q. Okay. So he didn't have any problems communicating
23 with you and you didn't have any problems understanding
24 him, isn't that correct?

25 A. He said he did not need any treatment. I understood

1 that yes, sir.

2 Q. Okay. Did he in your presence ever mention anything
3 about the handcuffs being too tight?

4 A. Not that I can recall.

5 Q. When did you have first contact with him?

6 A. I don't remember the exact time. Again we see about
7 thirty-six thousand patients a year. I do know that I was
8 not the primary nurse assigned to this case. Again I was
9 the charge nurse that night. The primary nurse that was
10 assigned to the case or to this particular patient and
11 assigned to that room ask for my help because it was a
12 little bit of a different circumstance than what we would
13 normally see in the emergency room and as the charge nurse
14 she deferred to me and said can you come help me with this.
15 So I'm not sure at what point I entered the room I don't
16 remember.

17 Q. Okay. Now when you say that he was handcuffed behind
18 his back, is that correct?

19 A. I don't remember. That's generally protocol but I
20 don't remember.

21 Q. And you were the one that actually drew the blood?

22 A. Yes, sir, I did draw the blood.

23 Q. All right. And describe what you did and how you did
24 it and what you used.

25 A. We use a non-latex tourniquet. The tourniquet is

1 generally placed above you in a cubical space; the site is
2 then prepped with a solution called cloraprep. After we
3 obviously pat the vein first to clean the particular area
4 that we are going to use with cloraprep and then we proceed
5 to draw the blood. Sometimes we use a butterfly needle,
6 other times we use a syringe with a needle, a safety
7 needle, and then transfer the blood from that syringe into
8 a tube.

9 Q. And is he face down at the time that you are doing
10 this?

11 A. I honestly don't remember. I'm sorry.

12 Q. Okay. Now you say you used a solution to swab the
13 area.

14 A. Yes, sir.

15 Q. What's in that solution?

16 A. Cloraprep?

17 Q. Yea.

18 A. I'm not sure what the active ingredients are. I do
19 know that we use it for patients who are allergic to
20 betadyne. We generally use this on every draw that we use
21 now because we have seen a lot of betadyne allergies so it
22 doesn't have any iodine in it. It also does not contain
23 alcohol which is why we are able to use it for any legal
24 blood draws that we need to do.

25 Q. Okay. How many people were in the room at the time of

1 the taking of the blood? Do you recall?

2 A. Again I don't. I do know that I did ask that we have
3 some help again for the safety of myself and for the staff.
4 I know that there were other people in the room other than
5 just myself and the defendant but I don't know.

6 Q. And you weren't injured during this process?

7 A. No, sir.

8 Q. Or anything of that nature?

9 A. No, sir.

10 Q. Mr. Galimore didn't spit on you or scream at you or
11 anything of that nature did he?

12 A. He didn't spit on me no, sir. I remember the tone of
13 the voice but . . .

14 Q. Okay. Thank you, ma'am.

15 Q. You're welcome.

16 MS. TANNER: Noting further, your Honor.

17 THE COURT: You may be excused. We appreciate your
18 time and thank you.

19 Call your next witness.

20 MS. TANNER: Thank you. Corporal Isaac Gregorie.

21 THE CLERK: Place your right hand please.

22 (WHEREUPON: ISAAC GREGORIE,
23 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 THE CLERK: Be seated. State your full name and spell
25 your last name.

1 A. Excuse me.

2 THE CLERK: State your full name and spell your last
3 name.

4 A. My full name is Isaac Nelson Gregorie, Junior.
5 Gregorie is G-r-e-g-o-r-i-e.

6 DIRECT EXAMINATION

7 CORPORAL ISAAC GREGORIE BY MS. TANNER:

8 Q. Good afternoon, sir. Where are you employed?

9 A. South Carolina Highway Patrol.

10 Q. And how long have you worked there?

11 A. Over thirty-five years.

12 Q. What kind of training and background do you have to
13 work with the Highway Patrol?

14 A. I've been trained in the South Carolina Criminal
15 Justice Academy. I've been through Mid-Level Management
16 Supervision classes; MAIT Classes, Breathalyzer; Radar, all
17 the normal things that a police officer has to do to be on
18 the Highway Patrol.

19 Q. And as part of what you do at the Highway Patrol do
20 you ever handle evidence in a case?

21 A. Yes I do.

22 Q. I am going to ask you about a specific piece of
23 evidence. I am going to show you what's been entered as
24 State's Exhibit Number Twenty-Seven.

25 If I may approach the witness, your Honor.

1 THE COURT: Yes, ma'am.

2 BY MS. TANNER:

3 Q. Can you identify this bag and this item?

4 A. This is an evidence bag that contained the vial of
5 blood that I took to SLED for analyzation on August the 13th
6 of 2007.

7 Q. And where did you get that blood from?

8 A. Out of the blood safe refrigerator that is located in
9 my office at Ridgeland at the Highway Patrol Office in
10 Ridgeland.

11 Q. Now we heard earlier that Trooper Sprouse placed the
12 blood in the refrigerator. Who has access to open that
13 refrigerator?

14 A. Myself and First Sergeant Weiss.

15 Q. And how is it secured?

16 A. It's secured by a lock and has a combination lock and
17 First Sergeant Weiss and myself are the only two that have
18 the combination.

19 Q. And you said on August the 13th you removed it.

20 A. I removed it I did.

21 Q. And once you removed it -- when you removed it what
22 did it look like? Did it look just like this or did it
23 look different?

24 A. It looked different. It was in a box a vile specimen
25 box.

1 Q. Like State's Exhibit Twenty-Two?

2 A. That's exactly what it was in.

3 Q. And once you take it out of the refrigerator what do
4 you do with it?

5 A. I placed in the evidence bag and sealed it and I took
6 it directly to SLED in Columbia and turned it over for
7 analyzation.

8 Q. I ask if you can identify what's been marked as
9 State's Exhibit Twenty-Three?

10 If I may approach the witness?

11 THE COURT: Yes, ma'am.

12 BY MS. TANNER:

13 Q. Can you identify this item?

14 A. Yes I can. This is the chain of custody in evidence
15 that when we are carrying the blood to SLED and putting it
16 in the hospital to give us our chain and this is the form,
17 a copy of the form that I took to SLED and was signed in as
18 evidence at 2:17 p.m. on August the 13th.

19 Q. And does that form indicate everyone who touched it
20 and who passed it to who?

21 A. Yes it does.

22 Q. And where is the beginning of the chain?

23 A. The beginning of the chain was actually with the
24 defendant and the Buford Memorial nurse who actually took
25 the blood.

1 Q. All right and then who does it go to?

2 A. It went from the Buford Memorial nurse to Trooper
3 N. L. Sprouse and from Sprouse to our refrigerator in the
4 office that I secured.

5 Q. And at any point did you tamper with or alter this
6 blood at any point before you turned it over to SLED?

7 A. No I did not.

8 Q. All right. Thank you, sir.

9 Your Honor, State moves Exhibit Number Twenty-Three
10 into evidence. It's previously been shown to the defense
11 counsel and he does have a copy of it.

12 MR. HOOD: I have no objection.

13 THE COURT: In without objection.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-THREE
15 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

16 MS. TANNER: Thank you, your Honor, no further
17 questions.

18 Please answer any questions Mr. Hood has.

19 MR. HOOD: I only have one question.

20 CROSS EXAMINATION

21 CORPORAL ISAAC GREGORIE BY MR. HOOD:

22 Q. You weren't present at the scene of this accident?

23 A. Yes I was.

24 Q. You were? Were you the officer that Officer Sprouse
25 talked about being the Corporal at the time?

1 A. I was a corporal then yes, sir.

2 Q. Oh okay. So you were present?

3 A. Yes, sir.

4 Q. And did you participate in taking any of these
5 pictures that were taken of the vehicle and things of that
6 nature?

7 A. No, sir.

8 Q. Did you examine the vehicle?

9 A. No, sir.

10 Q. Did you ever look inside of the vehicle?

11 A. I walked around it.

12 Q. Okay. Well maybe in the front seat of this vehicle do
13 you recall what was in the front seat on the floor board?

14 A. No, sir, I didn't look inside the vehicle. I was the
15 supervisor on scene. When I arrived Trooper Sprouse was
16 already there. I did not do anything with the vehicle.
17 They were working the accident and I was just notifying our
18 command staff as to what was going on.

19 Q. Okay. Let me show you what's been marked as State's
20 Exhibit Fifteen and tell me if you recognize that.

21 A. This looks like the left rear tire of the Ford vehicle
22 that was on the scene.

23 Q. Uh-huh. And look closer at the -- the door, the
24 driver's door is open isn't it, correct?

25 A. In this picture it is yes, sir.

1 Q. And what's that item that's sitting right over there
2 on the floor board?

3 A. I cannot -- I have no idea.

4 Q. Well does it look like a television to you?

5 A. It's a very good possibility it could be. I can't
6 say. I did not examine the inside of the vehicle.

7 Q. So you never looked inside the vehicle. Now look at
8 State's Exhibit Number Seventeen. What is that that is
9 hanging out of the passenger front door?

10 A. Some type of wire.

11 Q. All right. Does it look like a cable TV connection?

12 A. I could not honestly say. I was on scene but I was
13 not the primary investigating officer. Like I told you I
14 was on the telephone talking to command staff and informing
15 them of the violation. I really did not examine the inside
16 of the vehicle.

17 Q. Okay. And what are those little items sitting out
18 there right outside of the door where this cable is
19 protruding out?

20 A. It looks like two books.

21 Q. Could they be DVD's?

22 A. It's a possibly they could be.

23 Q. Did you see any DVD's that particular night?

24 A. Not that I recall.

25 Q. Okay. I don't have any further questions.

1 MS. TANNER: Nothing further.

2 THE COURT: All right you can step down and be excused
3 and we appreciate your time.

4 Call your next witness.

5 MS. TANNER: Thank you, your Honor. The State calls
6 Agent Shannon Sorrells.

7 THE CLERK: Raise your right hand and put your left
8 hand on the bible.

9 (WHEREUPON: SHANNON
10 SORRELLS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
11 FOLLOWS:)

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

14 A. My name is Shannon Burnette Sorrells. Last name S-o-
15 r-r-e-l-l-s.

16 DIRECT EXAMINATION

17 AGENT SHANNON BURNETTE SORRELLS BY MS. TANNER:

18 Q. Good afternoon. Where are you employed?

19 A. The South Carolina Law Enforcement Division. We're
20 commonly known as SLED.

21 Q. And what do you do at SLED?

22 A. I'm a Forensic Toxicologist.

23 Q. And what kind of training or background do you have to
24 be a Forensic Toxicologist?

25 A. I have my Bachelor's Degree in Chemistry from the

1 University of South Carolina. I also have my Master's
2 Degree in Analytical Chemistry also from the University of
3 South Carolina. I've also been through the Police Academy
4 and attended the Boykin's Vine School for Alcohol and
5 Driving at Indiana University.

6 Q. And what is forensic toxicology?

7 A. Forensic toxicology is a science where we analyze
8 biological samples, blood, urine, tissues such as brain and
9 liver and we analyze those samples for alcohol, drugs and
10 poisons and we interpret what we find in courts of law.

11 Q. And have you ever testified before regarding your
12 area?

13 A. Yes.

14 Q. And have you ever been qualified as an expert in your
15 area of forensic toxicology?

16 A. Yes I have.

17 Q. Your Honor, at this time the State moves that Agent
18 Sorrell's be declared as an expert in the area of forensic
19 toxicology?

20 THE COURT: Any voir dire?

21 MR. HOOD: No, your Honor, we accept her.

22 THE COURT: I find you are qualified.

23 MS. TANNER: Okay.

24 As a forensic toxicologist you said you analyze blood
25 for example for alcohol, is that correct?

1 A. Yes.

2 Q. And are you familiar with the presumptive level of
3 alcohol in South Carolina under the law of intoxication?

4 Are you familiar with what that level would be?

5 A. For impairment yes.

6 Q. Okay. And what would that be?

7 A. Point 08.

8 Q. But what does that mean? In your .08 what does that
9 mean I guess in the context of a person's blood?

10 A. It's a percentage of the weight per volume, the weight
11 of alcohol per the volume of blood so in looking at .08
12 percentage which is a very small amount per volume of
13 blood.

14 Q. But that is the presumptive level in South Carolina
15 for what intoxication?

16 A. Yes it is.

17 Q. Now I am going to ask you specifically if you
18 performed any analysis on items involving a case for Mr.
19 Rodney Galimore?

20 A. Yes I did.

21 Q. I ask you first if you were presented with a bottle of
22 Sky Vodka?

23 A. Yes I was.

24 Q. And did you perform any analysis on that item?

25 A. I did. I performed an alcohol analysis on that.

1 Q. All right and after your analysis what were your
2 results or your findings?

3 A. I do not have my report with me.

4 Q. After you performed your analysis do you then generate
5 a report?

6 A. Yes I do.

7 Q. Then I will ask you if you can identify State's
8 Exhibit Twenty-Five?

9 If I may approach?

10 A. Yes this is my report.

11 Q. All right. And what were your findings regarding this
12 Sky Vodka bottle?

13 A. I found that it had 32.6 percent volume per volume on
14 the alcohol which is equivalent to sixty-five proof.

15 Q. And what does that tell us in regard to Sky Vodka?

16 A. Well most of your average vodka's are eighty proof of
17 forty percent alcohol. So this is very close to what it
18 should have been. A lot of the alcohol could have
19 evaporated it's a volatile compound and it does evaporate
20 after it's been opened.

21 Q. But the substance inside the bottle you would say is
22 consistent with Vodka?

23 A. It's consistent with alcohol. Specifically vodka I
24 couldn't say.

25 Q. Okay. But it is alcohol?

1 A. It is alcohol.

2 Q. All right. And did you also perform an analysis on
3 a blood sample from a Mr. Rodney Galimore?

4 A. Yes I did.

5 Q. And I show you what's been marked State's Exhibit
6 Number Twenty-Seven, it's already been entered into
7 evidence, and if you can identify this item?

8 A. This is the SLED evidence bag that is submitted to me
9 once the officer drops off the evidence.

10 Q. And what would have been contained in this bag?

11 A. Contained in this bag when I received it was the
12 collection kit; the blood urine collection kits that we
13 send out to hospitals and officers and law enforcement
14 agencies. And inside this kit I also received a tube of
15 blood, a gray top tube inside the kit.

16 Q. And when you received it was it tampered with in any
17 way?

18 A. No it was not.

19 Q. And how would you be able to tell if it had been
20 tampered with?

21 A. Down in our evidence log in the officer brings it in
22 and its heat sealed and he initials it. When I receive
23 this bag it still had the heat seal intact and it was
24 initialed and dated as it was supposed to be.

25 Q. So you actually had to cut open the bag to get to it?

1 A. I did.

2 Q. And what happens to that blood sample once you perform
3 your test? Do you put it back in the bag?

4 A. Yes I do. I'm sorry.

5 Q. And do you still have the blood sample from Mr.
6 Galimore?

7 A. No I do not. After six months it is destroyed.

8 Q. All right. And what were the findings of your
9 analysis of the blood from Rodney Galimore?

10 A. I don't know the exact number.

11 Q. And I will provide you with State's Exhibit Number
12 Twenty-Four. Did you prepare a report indicating your
13 findings of the blood results?

14 A. Yes I did.

15 Q. If I may approach, your Honor? .

16 State's Exhibit Number Twenty-Four, if you can
17 identify this item?

18 A. This is my report on the blood for Rodney Galimore?

19 Q. And you prepared that report?

20 A. Yes I did.

21 Q. Your Honor, at this time State moves Number Twenty-
22 Four into evidence.

23 MR. HOOD: No objection.

24 THE COURT: Entered without objection.

25 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FOUR,

AGENT SHANNON SORRELLS: DIRECT EXAMINATION BY MS. TANNER
CROSS EXAMINATION BY MR. HOOD

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1 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

2 MS. TANNER: Thank you, your Honor.

3 Agent, what were findings regarding the blood of
4 Rodney Galimore?

5 A. It had a .153 percent weight per volume of alcohol.

6 Q. Point 153.

7 A. Yes.

8 Q. Almost twice the presumptive legal level?

9 A. Yes.

10 Q. Thank you, Agent. Please answer anything Mr. Hood may
11 have.

12 CROSS EXAMINATION

13 AGENT SHANNON BURNETTE SORRELLS BY MR. HOOD:

14 Q. Now what was the legal limit back in 2007?

15 A. Point 08.

16 Q. When did it change?

17 A. I'm not exactly sure.

18 Q. Well it was 1 for a period time, isn't that correct?

19 A. Yes it was.

20 Q. And do you recall when that took effect?

21 A. No I do not.

22 Q. So it could have taken place after this incident
23 occurred back in August of 2007, isn't that correct?

24 A. As long as I've been working at SLED the legal limit
25 has been .08.

1 Q. So .08 four beers?

2 A. No. For the average hundred and fifty pound man one
3 beer can raise the blood alcohol -- raise the blood alcohol
4 to a .02. If the man weighs more than that it takes more
5 alcohol to raise it.

6 Q. Okay. So depending upon the person that you're
7 dealing with will determine how many ounces of beer or how
8 many ounces of vodka they can take before they reach the
9 grand old limit, is that correct?

10 A. It varies slightly yes.

11 Q. Uh-huh. So if you had four beers would you be over
12 the legal limit?

13 A. It depends on the weight and size of the person.

14 Q. Okay. Well you never saw Mr. Galimore did you?

15 A. No I did not.

16 Q. So you have no idea about any physical attributes of
17 Mr. Galimore, is that correct?

18 A. No I do not.

19 Q. Okay. So the Sky Vodka that you were talking about
20 you said that it was about sixty-five percent proof, is
21 that correct?

22 A. From what I found yes.

23 Q. And what did the label on the bottle say was the proof
24 of that vodka?

25 A. I do not remember. I just know that most Vodka's -

1 I'm not specific on this one -- is about eighty proof.

2 Q. And you said that once it's opened it starts losing
3 its potency?

4 A. The alcohol evaporates; it's very volatile so the
5 alcohol does start evaporating out of the vodka.

6 Q. And it does the same thing in your system doesn't it?

7 A. You eliminate it at a certain rate out of your system.
8 It can be volatile once the blood is open to air yes it
9 does escape.

10 Q. So in other words when you draw blood out of a person
11 does that mean that it goes up?

12 A. No it does not. If you are drawing the blood out of a
13 person you're drawing it directly into the tube. The tube
14 is then directly sealed. That way the blood alcohol is
15 sealed inside that and it would not evaporate.

16 Q. Okay. So what would you say the proof of Mr.
17 Galimore's blood was?

18 A. You can't really put a proof on the blood. Well you
19 probably could. Proof is just twice the alcohol level
20 that's all that proof is. Like if it was sixty proof it
21 was thirty percent alcohol. In this case if you want to
22 put a proof on his blood it would be close to .3 percent
23 proof.

24 Q. So in other words what he was drinking was three
25 percent proof?

1 A. No.

2 Q. His blood was only three percent proof?

3 A. You can't really put a proof on the blood.

4 Distribution in blood you're drinking a small amount and
5 you are spreading it over an entire portion. It's going --

6 you are eliminating about the same amount as you're --

7 almost the same amount as you are drinking if you are

8 drinking it at a slow rate so you can't really put a

9 specific proof on the blood because it's never constant.

10 Q. Okay. So what you're saying is that a person who
11 blows into a data master and a person who gives blood those
12 two results would be different.

13 A. No they would not be different they would be the same.

14 Q. They are going to be exactly the same?

15 A. Just about. The data master will actually read --
16 most of the time it will read just slightly higher than the
17 blood does.

18 Q. So the blood test doesn't give you a more accurate and
19 higher level than the breathalyzer does, is that correct?

20 A. I wouldn't say it gives a more accurate because the
21 breathalyzer and the way it's designed it's designed based
22 on a ratio towards the blood so that they are pretty much
23 one in the same.

24 Q. But you said that it escapes through the air isn't
25 that correct?

1 A. It evaporates over time.

2 Q. So a person who is taking a breathalyzer is constantly
3 breathing, isn't that correct?

4 A. Yes.

5 Q. So that means that the alcohol is constantly escaping,
6 isn't that correct?

7 A. No it's not. It's not constantly escaping. It
8 evaporates over time. That does not mean escaping. When
9 you are blowing out alcohol you're blowing out alcohol but
10 you're blowing out what's in the blood. You're blowing out
11 what's in your system at that time. You're not losing
12 alcohol you're losing the ratio. It's a ratio factor.
13 It's not escaping.

14 Q. Yea. Okay well the bottom line is that what we're
15 talking about here is this is only an inference isn't that
16 correct based on what a person's blood alcohol is isn't
17 that correct? The blood alcohol level that you read off
18 the 153?

19 A. Yes.

20 Q. That is just an inference, okay. Isn't that correct?

21 A. No. That is his alcohol level at that time.

22 Q. No. But as far as his ability to do that, is that
23 correct?

24 A. I don't understand the question.

25 Q. Well one person could have a blood alcohol of 8.8 and

1 another person can have a 153 and they being just as -- and
2 the person with the 8 not be any more capable of doing the
3 things that the person with the 5, is that correct?

4 A. Yes it could be depending on the experience of the
5 drinker.

6 Q. That's right. So we're talking about you know this is
7 merely the alcohol level that a person has is only an
8 inference as to their driving ability, is that correct?

9 A. No not necessarily.

10 Q. No not necessarily?

11 A. What I mean is at a .153 which is what we say.
12 Everybody reacts to the alcohol in a different way. I
13 guess to say that our actions we act differently. Once you
14 been drinking for a while you know how you act when you're
15 at we'll just say a .1 you know that you start stumbling
16 around so you will lean up against the wall to show that
17 you're not stumbling near as much as you used to be but
18 inside you're still reacting the same way. The alcohol is
19 still having the same effect on the brain which is a CNS
20 depression effect or the central nervous system depression
21 effect and it happens the same way on every person. It's
22 always going to be a central nervous system depressant at
23 that level no matter how you're showing on the outside; no
24 matter how you are appearing to be you are still going to
25 have the impairment at a .15 that everybody is going to

1 have that at .15.

2 Q. And you say that in other words people who can hold
3 their alcohol appear differently than people who cannot
4 hold their alcohol per se?

5 A. Yes.

6 Q. Is that correct?

7 A. That is correct.

8 Q. So in other words a 153 might not be anything for a
9 person who repeatedly drinks, isn't that correct?

10 A. It might not appear that way but they are still under
11 the influence and they are still affected by it.

12 Q. But -- okay thank you.

13 THE COURT: Redirect?

14 MS. TANNER: Nothing further, your Honor.

15 THE COURT: You can step down and be excused. We
16 appreciate your time.

17 MS. SORRELLS: Thank you.

18 THE COURT: Call your next witness.

19 MS. TANNER: Our next witness will be here in the
20 morning.

21 THE COURT: All right. Do you want to stop for today?
22 Is that what you're telling me?

23 MS. TANNER: Our next witness is actually arriving
24 into town tonight. He's been on vacation so he'll be here
25 first thing in the morning.

1 MS. TANNER: I do not. I did argue that the charges
2 were meant to be prejudicial. All criminal charges against
3 the defendant are meant to be prejudicial but that piece of
4 evidence I don't think under the analysis of prejudice to
5 the defendant would be too bad.

6 THE COURT: All right. Anything else? Got the jury
7 back at 9:30.

8 MS. TANNER: Nothing from the State, your Honor.

9 MR. HOOD: Nothing, your Honor.

10 THE COURT: All right as soon as the jury is assembled
11 we'll let you know if they get here a little bit before
12 9:30 and if you are ready and we'll start before 9:30.

13 MS. TANNER: Thank you, sir. I am going to get this
14 set up and under way.

15 (NOTE: SHORT RECESS AT 9:20 A. M..)

16 (NOTE: ON THE RECORD AT 10:40 A. M..)

17 THE BAILIFF: Juror's entering, your Honor.

18 THE COURT: Thank you.

19 (JURY ENTERING THE COURTROOM AT 9:41 A. M..)

20 THE BAILIFF: Your Honor, the jury is seated.

21 THE COURT: Good morning.

22 Call your next witness.

23 MS. TANNER: Thank you, your Honor. The State calls
24 Doctor Roger Sorg.

25 THE CLERK: Okay. Raise your right hand and left hand

1 on the bible please.

2 (WHEREUPON: ROGER SORG,

3 BEING CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE CLERK: Please state your full name and spell your
5 last name.

6 A. Thank you. Roger James Sorg, S-o-r-g.

7 DIRECT EXAMINATION

8 DOCTOR ROGER SORG BY MS. TANNER:

9 Q. Good morning, Doctor Sorg.

10 A. Good morning.

11 Q. What line of work are you in?

12 A. I'm a pathologist, an anatomical clinical pathologist
13 and I've been practicing for about forty some years now.

14 Q. All right now - -

15 A. Since '72.

16 Q. And what is a pathologist?

17 A. Pathologist are the physicians that for the most part
18 work in hospitals and develop the laboratories with a
19 dispensing of blood. We do all the chemical test, urine
20 test. And in addition they use the microscopes most of
21 them as the anatomic pathology part and biopsies that are
22 taken by surgeries and physicians; simple pathology and we
23 prepare the specimens and look at them under a microscope
24 and give them the diagnostic, give the diagnosis, the logic
25 diagnosis and issue a report. Most of my time was that.

1 And forensic pathology was a segment of what I did and
2 since '93 when I was a pathologist at Beaufort Memorial
3 coming from Chicago where I had been for ten years. I've
4 also did about half of the coroner's autopsies in Beaufort
5 County and I continue to do about half of the autopsies for
6 the Beaufort County Coroner's system since '93.

7 Q. Now what kind of educational background do you have to
8 allow you to perform these autopsies?

9 A. I got my BS in chemistry from Bowling Green State
10 University in Ohio. I was a resident and raised in Ohio
11 and then I went to medical school in Des Moines, Iowa for
12 four years and received my medical degree and then I spent
13 an additional four years in Detroit, Michigan where I took
14 anatomic and clinical pathology residencies so that was
15 twelve years total. And my first job from Detroit in '72
16 was in Atlanta where I worked for thirteen years as the
17 general pathologist in one of the hospitals doctor's
18 hospital. And then anatomic in clinical pathology. After
19 that I went back to Chicago and taught pathology in one of
20 the medical schools and practiced in two of the hospitals
21 that were related with that medical school. And following
22 that I came down to Beaufort. We always had a condo that
23 we never used that much and had an opportunity to come back
24 and that was in '93 and I practiced here in Beaufort
25 Memorial for four years. I have this amputation which was

1 a complication of being a paraplegic since high school. I
2 broke my back in high school and I had paralyzes since I
3 was age seventeen and then about thirty some years later we
4 had complications and they had to do amputations on both
5 legs at USMC. I'm retired from full practice but I
6 continue to do forensic pathology cases for the coroner
7 part time. I do about twenty-five a year. I also
8 volunteered -- since '93 I volunteered in a clinic where I
9 do help run a diabetes clinic there and I'm on the board.

10 Q. And, Doctor Sorg, have you ever testified in court as
11 an expert regarding your pathology?

12 A. Yes I have probably half a dozen times.

13 Q. Have you been qualified as an expert in court - - -

14 A. Yes I have.

15 Q. - - - as a pathologist?

16 Your Honor, at this time the State moves to have
17 Doctor Sorg qualified as an expert in pathology.

18 THE COURT: Excuse me. Any voir dire?

19 MR. HOOD: None, your Honor.

20 THE COURT: All right I find he is qualified to
21 testify in that area.

22 MS. TANNER: Thank you, your Honor.

23 And, Doctor Sorg, I am going to ask you about a
24 specific autopsy you performed on a lady by the name of
25 Mary Dion. Did you perform that autopsy?

1 A. Yes I did.

2 Q. And can you just give the jury a general idea of what
3 is involved in an autopsy, just what you're doing and what
4 you are looking for?

5 A. Well basically we are looking for cause of death. The
6 other thing that I think is important is that when a person
7 dies all of the medical team that has been associated with
8 the person who died leave the scene. They can't sustain
9 the life and they don't have much of an interest in a
10 person after they die other than the fact that whatever
11 they did practice helped them hopefully to prolong their
12 life. But pathology offers anyone that dies in every
13 county in the country has assisted the coroner related in
14 the investigation of deaths and we offer patients the
15 opportunity to find out why they died. It's an important
16 contribution to society and basically we give the history
17 of the body that is presented to us and go with the history
18 looking for cause of death and related items. So in
19 forensic pathology with Beaufort County the standard that
20 we apply is we do a full toxicology on all of our deaths
21 because it cost several hundred dollars; it involves
22 several hundred deaths that are screened for. The blood
23 and urine are sent to Philadelphia National Medical
24 Services Lab. It's one of only a few large regional labs
25 that have sophisticated looking into analyzed blood and

1 urine for agents that shouldn't be there so this is
2 routinely done by us in Beaufort County and most places so
3 we did do that on this deceased patient.

4 Q. I need to clarify that. Generally you work along side
5 the county coroner but in this case you were actually
6 contacted by the family of Ms. Dion to perform the autopsy?

7 A. Yes I was. I'm not sure how the -- the coroner's get
8 a call on deaths, on all deaths that aren't in a hospital
9 at the time of death. And the coroner who ever answers the
10 phone makes the decision is this something we should look
11 at for cause of death or if it is a patient in a hospital
12 that died after three years of cancer. It's just a routine
13 knowledge. And this one the coroner decided that there was
14 no reason for Beaufort County to bear the expense of the
15 autopsy based on the facts of what happened. And then the
16 family contacted me through information supplied by the
17 coroner's office that I do autopsies and ask if I could do
18 an autopsy for their family member that died.

19 Q. All right let's talk about the findings of your
20 autopsy of Mary Dion. What are some of the significant
21 findings?

22 A. Well basically Mary was forty-two years old and was
23 involved in a motorcycle-truck or vehicular accident. As I
24 understand the sequence the motorcycle was traveling at a
25 reasonable speed and ran into a truck that suddenly

1 appeared in front of her and resulted in a severe
2 collision. The combined speed it was very high and
3 resulted in her immediate death. And that body was
4 transferred to the hospital where I do the autopsies in the
5 morgue there. And the next day I did the autopsy and her
6 findings were basically negative. And when you look an
7 autopsy includes an external exam and an internal exam. It
8 takes about three hours of study on an autopsy table and
9 additional time is taken later. But on her external exam
10 it shows lots of evidence of trauma from sudden and rapid
11 deceleration when the motorcycle and the truck met. She
12 had multiple fractures, multiple lacerations on the outside
13 of her external surface. After we document all of those
14 and measured them and take accurate drawings of that
15 material and then we do what we call a Unilateral or Y
16 shaped incision on the chest and look at the internal
17 organs and of all the organs are examined; the heart and
18 the respiratory system and her lungs, the liver and the
19 spleen. She had multiple signs of blunt force trauma like
20 a lacerated liver. I believe the spleen was lacerated and
21 in addition to that she had lots of fractures. And the
22 most important one the reason she died instantly was in the
23 skull there's about thirty small bones but she had at the
24 base of the skull complete fracture of that base of the
25 skull where the spinal cord goes through and that fracture

1 injured the medulla and the pons. This is the connection
2 between the brain and the spinal cord and that's where your
3 messages are sent to breath and control all of your normal
4 physiological activities. So because of that sudden blunt
5 force trauma she had several fractures but the most
6 important one was at the base of the skull that damaged the
7 spinal cord at the medulla and the pons and caused lack of
8 respiration and sudden death.

9 Q. Doctor, let me ask you if she is traveling forward and
10 the collision is basically a face forward collision how
11 does that then cause a skull fracture near the spine?

12 A. I'm not sure she had the helmet as it wasn't there
13 when I was examining the body but it may have been there
14 but regardless with the helmet it's the sudden
15 deceleration. The body which weighs about a hundred I
16 think it was probably a hundred and forty pounds, she was
17 an average weight individual stops suddenly but their head
18 is sort of on a tether and so it's going to do like a whip
19 lash no matter whether there's a helmet or not because it
20 has to decelerate independently of the shoulders and the
21 main body mass. And that sudden deceleration and she
22 probably that hit probably hit something in the truck that
23 stopped the head as it was being whipped, thrown
24 independently of the body forward and that sudden stoppage
25 resulted in a fracture.

1 Q. All right now do you find any other significant
2 findings with regards to the injuries?

3 A. If you will let me pull the report that you have. I
4 started at eleven o'clock last night I just got home from
5 San Francisco in a medical meeting and I may be a little
6 slow.

7 Q. That is fine. I ask you specifically about any
8 injuries to her thorax area or her heart.

9 A. Okay. The heart was normal size. A normal heart is
10 about 250 to 300 grams. Hers was 295 and it was in -- the
11 heart is covered with the pericardial sac, a very thin
12 lining that traps a little bit of fluid on the heart. It
13 keeps it moist, the outside of the heart. That's called
14 the pericardial sac. That was ruptured from the blunt
15 force trauma. That sac had been ruptured and there was
16 blood between and in amongst that heart and in the
17 pericardial sac.

18 Q. And what does that do to a person?

19 A. Well you could live without your pericardial sac but
20 all it represents is the fact in order to lacerate that sac
21 just reflects a very massive trauma, a massive force, the
22 heart was trying to push through the pericardial sac and
23 actually busted through that. It's not delicate; it's just
24 a thin fibrous sac and it just reflects that it ruptured.

25 Q. Now does that cause a lot of bleeding?

1 A. We have bleeding yes sure. As soon as you rupture
2 anything inside the body you are going to get bleeding.

3 Q. And what do you note about the bleeding inside the
4 body?

5 A. I think most of the bleeding -- the hearts in the
6 middle here it's called the medium sternum and on each side
7 these are where the lungs are and that's the hemi-thorax.
8 There's a right hemi-thorax or half thorax and then the
9 left and most of her blood there was fifteen hundred C C's
10 of blood I believe in her left -- the left lung cavity
11 contained or held the left lung had fifteen hundred C C's
12 of blood pressure wise. Normally you would have none. So
13 we have a laceration of the lung and the sac that covers
14 the pericardial probably because of rib fracture. She
15 fractured some ribs and that caused holes to occur in the
16 lung tissue and she had a fifteen hundred C C's of blood in
17 that.

18 Q. Is 1500 CC's of blood a lot?

19 A. 1500 CC's is a quart; a little more than a quart

20 Q. Is that a lot for a human body?

21 A. Yea the body has 5,000 CC's of blood; five quarts.

22 You can loose a quart, you can even loose two quarts but
23 you can't have it lost immediately. It has to be lost over
24 a time so if you loose 1500 CC's just in that lung that's
25 enough to cause irregular heart rhythms and you die from

1 that sudden lose of blood. So it's another one of the
2 factors that led to her immediate cause of death was the
3 amount of bleeding that was in the hemi-thorax, the left
4 side, from the lacerations to the left lung probably from
5 the fractures.

6 Q. Now based on both of these injuries that you know how
7 would you characterize how quickly she would have passed?

8 A. Well these things you can live for several minutes but
9 you can't live for more than a few micro-seconds. If you
10 have a fracture in the skull so with that fracture at the
11 base of the skull and the immediate injury to the
12 respiratory center which is the medulla you get sudden
13 death within seconds. And the rest of the time she's
14 unconscious and brain dead probably right within a few
15 seconds. But the heart can still pump for a little bit,
16 several minutes. That's part of the reason there was blood
17 that was accumulated in the hemi-thorax. A total time
18 would be from several minutes but she had been brain dead
19 probably immediately.

20 Q. Now, Doctor, you mentioned that this could have
21 happened; this skull fracture would have happened whether
22 or not she was wearing a helmet, she could have had a
23 helmet on and still the whiplash?

24 A. Yea I think so. Yea and simply because of the
25 mechanics of the tethered skull everything has to stop

1 suddenly and things that in the body to stop together but
2 that head is like a free agent it has an extended range to
3 stop and that's why the fracture.

4 Q. Now, Doctor, you said toxicology was done on Ms. Dion
5 as well. Did you review that as part of the findings?

6 A. I do and I did. Urine and blood was sent out and it
7 takes three or four weeks for that to come back. It comes
8 back quicker when they scan looking for large families of
9 chemicals and agents and they also look for drugs,
10 pharmaceutical drugs, drugs that you might be taking as a
11 patient from a doctor. And most important in our society
12 and most societies we schedule to look for alcohol and
13 drugs of abuse and all of those were done and they were all
14 negative except for caffeine and caffeine she had a normal
15 amount, a couple of cups, reflecting a couple of cups of
16 coffee. It's not uncommon where you have coffee during the
17 last six hours or the last hours of your life the caffeine
18 level will be in that blood.

19 Q. Consistent with someone working two jobs in one day?

20 A. Yea. And also it tells you that a through job was
21 done to find that they are using very sophisticated
22 chemical instruments but all the agents of abuse, all the
23 therapeutic drugs that we screen for were negative.

24 Q. You didn't find anything that could have contributed
25 to a death in that area?

1 A. Nothing at all.

2 Q. So in your professional opinion the cause of death of
3 Mary Dion would be what?

4 A. Well its' actually done -- it's also due to sudden
5 brain injury that caused from the fracture at the base of
6 the skull that resulted in her sudden death.

7 Q. And that could not have been prevented by a helmet?
8 It could not have been stopped by EMS being on the scene
9 within a second? My understanding from your testimony is
10 this is immediate and there's nothing that could have
11 prevented it?

12 A. Yea that's my testimony. Helmets are important on a
13 lot of injuries and they do reduce the number of injuries.
14 They protect the head. But in a high speed accident with
15 sudden - with sudden when the body has to stop suddenly
16 it's that whip force thing. Helmets are good for if you
17 fall down off your motorcycle and you bounce along the
18 ground. If you survive that the sudden removal from your
19 vehicle it protects you in those kinds of injuries but a
20 sudden rapid deceleration I don't have any answers for
21 that.

22 Q. So if you are told this is a lady who wears her helmet
23 she still would have died in this collision?

24 A. Yea I think so. To get that fracture at the base of
25 the skull it all shows that the deceleration between the

1 indicated that as well as just looking at the damaged
2 profile of the vehicle itself. There's nothing to indicate
3 that there would have been enough force of that vehicle to
4 shove that vehicle over that far for it to final rest. As
5 well there would have been a lot of debris on the other
6 side of the roadway if what you're suggesting is that he
7 was in the correct lane and he was forced over there from
8 the motorcycle. There would have been a lot of debris from
9 both vehicles that would been in the other side of the
10 roadway at maybe an area where that first impact was and
11 the vehicle was pushed off. I mean we've all seen
12 collisions. You can just picture in your mind if you have
13 a little motorcycle hitting it there's going to be debris
14 left right there and some debris thrown off too.

15 Q. Well so what you're saying is that this is the
16 absolute position of the vehicle at the time of the impact
17 is that correct?

18 A. No, sir. I'm saying there's no suggestion that the
19 vehicle was too far from where this is at. And when I say
20 too far I mean very close tolerances. Not thirty feet.
21 I'm saying very close tolerances where this vehicle was at
22 was very close to where final impact -- excuse me, where
23 impact was.

24 Q. But what you're saying then is the vehicle actually
25 did move as a result of the impact?

1 A. I didn't say it did; I said it may have. It could
2 have stopped exactly where it was. That is obviously a
3 vehicle that is much heavier and has more kinetic energy
4 than a motorcycle does. There's nothing to suggest that it
5 was very far whatsoever from where it was marked there at
6 the scene, excuse me, from impact to final rest. As well
7 there may not have been anything for him to mark either. A
8 motorcycle striking a large vehicle like that there may not
9 be any gouges in the roadway or on the surface until the
10 motorcycle over turns. There's just not enough force there
11 to drive that many parts down in the ground. Two vehicles
12 hitting head on sometimes the parts will drive down in the
13 ground and we're able to see gouge marks in the roadway and
14 a spot that we can estimate as the exact point of impact.

15 Q. I show you another little picture here. What are all
16 of these little dots running that way in this tire
17 apparently comes out here? Do you see this moving there?

18 THE COURT: I need you to voice up so the jury can
19 hear you.

20 A. I'm not sure about any of these notes or even a mark
21 but as with any collision there are marks in the roadway
22 that were there prior to the collision happening. That's
23 actually quite common. Sometimes you arrive and there may
24 be a set of skid marks that are there that have happened
25 ten minutes prior; ten months prior depending on what they

1 are so it's our job to try to determine which ones are for
2 this particular collision but I wasn't there and I don't
3 know what those marks were and I don't remember seeing them
4 when we were there.

5 Q. Now if you were doing this investigation the night of
6 this event and you had track marks indicating the perhaps
7 trail of the vehicle from where it started to where it came
8 to rest would you want to know how long in other words in
9 feet these particular marks, these tire tracks were?

10 A. What kind of tire marks are we talking about here?
11 Are we talking about skid marks? A skid mark is different
12 than a tire rolling across a roadway.

13 Q. No, no, no, we're talking about tire marks.

14 A. On what surface?

15 Q. We're talking about tire marks on the surface of the
16 road like that.

17 A. Okay I see what you're saying. What I want to know if
18 I can correlate that these marks go to that vehicle then I
19 would probably want to know at least how long but because
20 they're not skid marks I really can't tell any type of
21 speed based on those marks. That would be basically just
22 to show travel path. But I would not be able to use those
23 marks to determine any type of speed only because you don't
24 know if the vehicle is accelerating, decelerating, normal
25 braking without skidding, there's no way for me to

1 determine speed on that. I would have to be able to
2 determine that those were the marks that led up to that
3 vehicle and they do belong to that vehicle.

4 Q. Well you did all this turning radius and all of this
5 kind of stuff and you said that the maximum speed that you
6 could do was about 18, isn't that correct?

7 A. Yes, sir.

8 Q. So it would be relevant to giving you the information
9 as to how long this particular vehicle in terms of seconds
10 was in the actual lane heading towards the other side of
11 the road, isn't that correct?

12 A. Your question is would I find the marks useful?

13 Q. Yes.

14 A. Well yes, sir, I find any evidence useful.

15 Q. Okay. So it would give you an idea of how many feet
16 this vehicle was in the oncoming lane prior to impact?

17 A. It would tell me feet it would not tell me seconds.

18 Q. Okay but it would tell you feet?

19 A. It would tell me feet but yes, sir, but seconds could
20 be -- the time could be from seconds to hours. The vehicle
21 could theoretically if we're going to talk theoretics
22 theoretically it can stop in the middle of the roadway and
23 set there for two or three days and turn again and the mark
24 may look the same.

25 Q. Right. So in other words this vehicle could have been

1 stopped, is that correct?

2 A. There's nothing -- there's nothing to indicate the
3 vehicle was stopped. It could have been stopped it could
4 have been moving but I would not be able to tell simply by
5 looking at the photographs if the vehicle stopped in the
6 roadway on the side of the road or wherever. Again if
7 there are not skid marks and I can't tell what it's doing
8 in time I can only tell you what it's doing in space.

9 Q. But this vehicle that was involved in this accident
10 was clearly all the way into the oncoming lane of traffic
11 headed in the direction to the right side of the road is
12 that correct?

13 A. The final rest of this vehicle is pointing toward that
14 little side road and it's in the wrong lane of travel. Its
15 about forty-five degree -- I don't know what the angle is
16 exactly but it's headed toward that direction. However
17 it's like I said on the wrong side of the roadway not
18 headed toward its correct side that would be the other
19 direction that would be towards the right it's headed
20 toward the left.

21 Q. But that's depending upon the movement of the vehicle
22 isn't that correct upon impact?

23 A. That would depend -- well final rest is all we have
24 and if it's been moved from the impact area to final rest
25 then that would be -- beyond my knowledge there's nothing

1 A. This is the outline of the roadway and this is the
2 area of the building or the small store that was there. It
3 shows both vehicles traveling down the roadway. The Jimmy
4 enters this parking lot and it takes a turn and then its
5 impacted by the motorcycle.

6 q. And this is based on the calculations you received
7 from the crime scene?

8 A. It's based on the information I received from the
9 investigating trooper's report the Coastal MAIT's report.
10 And just clarifying in speaking with Sergeant Leigh and
11 Lance Corporal Ashe.

12 Q. So this is a photographic illustration of their
13 investigation?

14 A. Yes.

15 Q. Thank you, trooper, you can retake your seat.

16 (NOTE: THE COURT AND THE WITNESS RETURNED TO THE
17 BENCH AND THE WITNESS STAND.)

18 MS. TANNER: Thank you, sir, please answer anything
19 the defense counsel has.

20 CROSS EXAMINATION

21 CORPORAL JOHNNY ROSADO BY MR. HOOD:

22 Q. Now in coming up with this animation you were given
23 data by whom again?

24 A. Sergeant Leigh and Lance Corporal Ashe, Coastal MAIT.

25 Q. And were either one of them the investigating officer

1 of this incident back in August of last year?

2 A. I do not know.

3 Q. Do you know where they got their data from?

4 A. In reference to what they provided me?

5 Q. Yes.

6 A. I would have to say they got that through their
7 investigation. The normal recourse would have been that
8 they would have received information from the troop what
9 ever was available. They would have returned to the scene
10 at some point to complete the forensic mapping to come up
11 with their findings and reviewed any information that still
12 existed that was available to them.

13 Q. Well on your animation there how many seconds would
14 you say the Jimmy was in in making its turn in the oncoming
15 traffic lane before impact?

16 A. How many seconds was the Jimmy in the oncoming lane
17 before the impact?

18 Q. Yea.

19 A. I wouldn't care to hazard a guess. It could be
20 checked. You can look at the counter on the animation.

21 Q. And where did you get the speeds from on these
22 vehicles?

23 A. Those were provided by Coastal MAIT.

24 Q. Coastal MAIT?

25 A. When I say Sergeant Leigh and Lance Corporal Ashe and

1 I say Coastal MAIT I'm saying the same thing because they
2 are members of the Coastal MAIT.

3 Q. Did you examine either one of these vehicles?

4 A. No. As I mentioned before as the animator I would not
5 reconstruct the collision. I would simply animate it. I
6 did see photos of the vehicles.

7 Q. I don't have nay other questions.

8 MS. TANNER: Nothing further, your Honor.

9 THE COURT: All right you can step down. Thank you.

10 MR. ROSADO: Thank you.

11 THE COURT: You can be excused if you wish.

12 MS. TANNER: Your Honor, with that the State rest.

13 THE COURT: Members of the jury panel, the State has
14 rested; that is the State has presented its evidence and
15 under circumstances it may have a right to present evidence
16 at a later time but you heard their case. I'm going to let
17 you go to the jury room we have to take up some matters
18 outside of your presence and also while we're out I'll get
19 some idea of the logistics for lunch and those sort of
20 things. I am going to let you got out. It won't be a long
21 break but we do have some matters to take up outside of
22 your presence.

23 (JURY LEAVING COURTROOM AT 11:50 A. M..)

24 THE COURT: All right anything from the State?

25 MS. TANNER: Nothing further from the State.

1 THE COURT: Mr. Hood.

2 MR. HOOD: Your Honor, at this point in time we make a
3 motion for a directed verdict based on the State's evidence
4 that the State presented. It is the defense's intention
5 that we would like for you to inquire - - -

6 THE COURT: I will.

7 MR. HOOD: - - - of my client but we would make a
8 motion for a directed verdict on the charges of child
9 endangerment. The evidence as to felony DUI there is an
10 element of that particular offense which is missing and
11 that is in violation of the law or omission of the law
12 which was the approximate cause of the accident in this
13 case.

14 THE COURT: Well based on the evidence I deny that
15 motion for a directed verdict. I feel there is sufficient
16 direct evidence that this incident occurred in a fashion
17 from which a jury could conclude the findings of fact and
18 there is evidence from which this accident occurred in Ms.
19 Dion's lane of travel. And at the time Mr. Galimore was
20 under suspension; had children in the car while occupying
21 in an improper lane of travel and that he was at that time
22 under the influence of intoxicants so I deny your motion
23 for directed verdict.

24 MR. HOOD: Thank you.

25 THE COURT: Mr. Galimore, can you hear me?

1 MR. GALIMORE: Yes, sir.

2 THE COURT: We have reached the point in the trial
3 where you have a right to present a defense if you wish but
4 you do not have to present a defense because you are
5 presumed innocent of these charges. You can call witnesses
6 and they can testify and you can present whatever defense
7 you wish but you do not have to. You do not have to prove
8 your innocence. The State can prove your guilt beyond a
9 reasonable doubt. Again you are presumed innocent. You
10 have a right to testify but you also have a right to remain
11 silent.

12 Does he have any impeachable offenses?

13 MS. TANNER: He has a possession of a stolen property
14 from New York.

15 THE COURT: What year?

16 MS. TANNER: It was committed in 1988, resisting
17 arrest in 1990, bail jumping 3rd Degree in 1990, attempt to
18 damage property '91, possession of burglary tools, he was
19 committed in '91. These are all New York offenses. An
20 unauthorized use of a vehicle 2001, reckless endangerment
21 2nd Degree; aggravated unlicensed operator of a motor
22 vehicle 2nd and that's in 2003.

23 THE COURT: All right let's maybe go over them a
24 little slower. Under Rule 609 B do you have any
25 suggestions of those that are over ten years, those

1 MR. FOREMAN: Yes, sir, we have, your Honor.

2 THE COURT: Would you hand it to the bailiff please.

3 THE BAILIFF: Your Honor.

4 THE COURT: Thank you.

5 Mr. Clerk.

6 THE CLERK: Yes, sir. Indictment Number 2007-GS-07-

7 01617 the State of South Carolina County of Beaufort versus

8 Rodney Galimore we the jury find the defendant guilty of

9 DUS driving under suspension license now suspended for DUI.

10 Indictment Number 2007-GS-07-01584 the State of South

11 Carolina County of Beaufort State versus Rodney Galimore

12 indictment for child endangerment to commit certain vehicle

13 offense we the jury find the defendant guilty.

14 Indictment Number 2007-GS-07-01616 the State of South

15 Carolina County of Beaufort State versus Rodney Galimore

16 indictment for homicide, reckless homicide death results

17 within one year caused by injury from vehicle we the jury

18 find the defendant guilty.

19 Indictment Number 2008-GS-07-02690 the State of South

20 Carolina County of Beaufort State versus Rodney Galimore

21 indictment for felony driving under the influence death

22 results we the jury find the defendant guilty.

23 THE COURT: This be your verdict so say you all by

24 raising your right hand. All twelve jurors confirmed the

25 verdict.

1 THE COURT: All right the sentence on the felony DUI
2 is twenty-five years. On the reckless homicide sentence is
3 ten years that's to run concurrent. I'm running these
4 concurrent because it was only one fatality even though it
5 did give rise to two separate charges. Driving under
6 suspension six months that's to run concurrent also with
7 the sentence I just imposed on the other two twenty-five
8 and ten.

9 And then on the child endangerment that sentence is
10 for ten years but that's consecutive to the other
11 sentences.

12 Do you understand all of that?

13 MR. GALIMORE: Yes, sir.

14 THE COURT: All right. Thank you.

15 MS. TANNER: Thank you, your Honor.

16 MR. HOOD: Thank you, your Honor.

17 (END OF TRANSCRIPT)

18 (TRIAL ENDED AT 5:25 P.M..)

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2007GS0701584

At a Court of General Sessions, convened on September 20, 2007, the Grand Jurors of Beaufort County present upon their oath:

Child / Child endangerment, commit certain vehicular offense

That in Beaufort County, South Carolina, on or about August 11, 2007, the Defendant, Rodney L. Galimore, did drive a vehicle while under the influence, in violation of Section 56-05-2945, Code of Laws of South Carolina (1976, as amended). That while driving said vehicle and committing a violation of Section 56-05-2945, Code of Laws of South Carolina (1976, as amended), Rodney L. Galimore did have one or more passengers under the age of sixteen in the vehicle; all in violation of Section 56-5-2947, Code of Laws of South Carolina (1976, as amended).

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



Solicitor

Certified - A True Copy



Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

WITNESSES

rouse! - SCHP

REST WARRANT NUMBER

86886

CTION OF GRAND JURY

True Bill

Person of Grand Jury
ite: SEP 2 2007

RDICT

Guilty

Embray
Person of Petit Jury
ite: 12/10/2008
DICT

DOCKET NO. 2007GS0701584

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

Rodney Galimore

COPY

Indictment for

Child / Child endangerment, commit certain
vehicular offense

SC Code: 56-05-2947
CDR Code: 2395

Certified - A True Copy
Elizabeth M. Smith, Clerk of Court
Beaufort County, SC

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

Certified - A True Copy
Elizabeth M. Smith, Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2007GS0701616

At a Court of General Sessions, convened on September 20, 2007, the Grand Jurors of Beaufort County present upon their oath:

Homicide / Reckless Homicide, death results within one year *Year not*

That in Beaufort County, South Carolina, on or about August 11, 2007, the Defendant, Rodney L. Galimore, did drive a vehicle in reckless disregard of the safety of others, and that the Defendant's reckless driving caused injury to Merry C. Deon who died as a proximate result of this injury in Beaufort County on August 11, 2007; in violation of Section 56-5-2910, South Carolina Code of Laws 1976 (as amended).

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

[Signature]
Solicitor

Certified - A True Copy

[Signature]
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

WITNESSES

ouse - SCHP

DOCKET NO. 2007GS0701616

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2007

Hereby appear in my own proper person and plead guilty to the within indictment or to

REST WARRANT NUMBER

5724

THE STATE

vs.

Rodney Gallimore

COPY

Indictment for

Homicide / Reckless Homicide, death results within one Year, caused by injury from vehicle

Defendant

Witness:

SC Code: 56-05-2910
CDR Code:0135

C.C.C. PLS. and G.S.

TION OF GRAND JURY

True Bill

eperson of Grand Jury
e: SEP 2 2007

RDICT

Guilty

eperson of Petit Jury

e: 12/10/2008

ICT

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court

Beaufort County, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

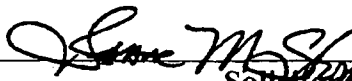
INDICTMENT
2007GS0701617

At a Court of General Sessions, convened on September 20, 2007, the Grand Jurors of Beaufort County present upon their oath:

DUS / Driving under suspension, license not suspended for DU

That in Beaufort County, South Carolina, on or about August 11, 2007, the Defendant, Rodney Galimore, did drive a motor vehicle on a public highway of this State when his license to drive was canceled, suspended, or revoked, such being his 3rd or subsequent offense within a period of five years including and immediately preceding the foregoing date; all in violation of Section 56-1-460, Code of Laws of South Carolina (1976, as amended)

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


Solicitor

Certified - A True Copy


Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

WITNESSES

ouse - SCHP

REST WARRANT NUMBER

5723

TION OF GRAND JURY

True Bill

[Signature]
eperson of Grand Jury
e: SEP 2 6 2008

RDICT
Guilty

CM Gray
eperson of Petit Jury
e: 12/10/2008
DICT

DOCKET NO. 2007GS0701617

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

Rodney Gallimore

COPY

Indictment for

DUS / Driving under suspension, license not
suspended for DUI

SC Code: 56-01-0460(A)(1)(c)
CDR Code: 0175

Certified - A True Copy
[Signature]
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

Beaufort County, SC
Elizabeth M. Smith - Clerk of Court
Certified - A True Copy
[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2008-GS-07-02690

At a Court of General Sessions, convened on November 20, 2008 the Grand Jurors of Beaufort County present upon their oath:

FELONY DRIVING UNDER INFLUENCE (DEATH RESULTS)

That in Beaufort County on or about August 11, 2007, while driving a vehicle under the influence of alcohol, drugs, or both alcohol and drugs, the Defendant, Rodney Galimore, did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle, to wit: defendant failed to drive on the right side of the roadway pursuant to § 56-5-1810 and such act and/or neglect proximately caused the death of Merry Deon; in violation of § 56-5-2945, Code of Laws of South Carolina, (1976), as amended.

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


ISAAC MCDUFFIE STONE, III, SOLICITOR


Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

WITNESSES

Sprouse - SCHP

ARREST WARRANT NUMBER

J332752

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

NOV 20 2008

VERDICT

Guilty

Foreperson of Petit Jury

Date:

12/10/2008

DOCKET NO. 2008-GS-07-02690

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2008

THE STATE

vs.

RODNEY GALIMORE

Indictment for
FELONY DRIVING UNDER
THE INFLUENCE (DEATH RESULTS)

SC Code: 56-5-2945(A)(2)

CDR Code: 0395

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

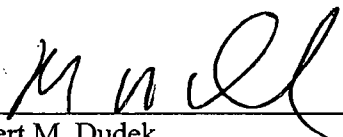
Witness:

C.C.C. PLS. AND G.S.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 2nd, 2010



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY L. GALIMORE,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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The state's own evidence was that appellant made a proper U-turn at the time of the accident. The state did not prove appellant was guilty of felony DUI pursuant to South Carolina Code, §56-5-2945 because it failed to prove appellant did an act forbidden by law or neglected a duty imposed by law that is required under the statute.....	6
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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by refusing to direct a verdict on the charge of felony DUI where the police officer testified appellant made a legal U-turn since an element of felony DUI is an act prohibited by law or the failure to observe a duty imposed by the law and the state failed to prove that element of the offense?

2.

Whether the court erred by refusing to direct a verdict on the charge of child endangerment which was based on a violation of the felony DUI statute since the child endangerment charge was dependant on appellant also being guilty of felony DUI, and the judge erred by refusing to direct a verdict on that charge?

3.

Whether the court erred by granting the state a continuance after quashing the indictment for felony DUI because the state did not specify an act prohibited by law or the failure to follow a duty imposed by law since it incorrectly reasoned that appellant should have had a hearing on his motion to quash the indictment earlier where the state should have been forced to go forward on its remaining charges, including reckless homicide?

STATEMENT OF THE CASE

Appellant was indicted at the September 20, 2007 term of the Beaufort County Grand Jury on the charges of reckless homicide, driving under suspension, child endangerment and felony DUI. R. 205 - 212 Jury selection occurred on November 17, 2008. R.1. A hearing on the motion to quash the indictment was held the next day, November 18, 2008, before the Honorable Perry M. Buckner. The judge ruled the state had failed to allege in the indictment an act "forbidden by law." R. 17, l. 6 - 18, l. 4.

After the felony DUI indictment was quashed, defense counsel objected to the state's request to "put off the remaining charges." Defense counsel pointed out "this case dates back to August 17th of 2007. That indictment was in September of 2007." The following occurred between the court and defense counsel:

The Court: I don't believe you raised the sufficiency of it until today?

Mr. Hood: That is correct, Your Honor, because I was never given the opportunity to do that until today. The case has been sitting around for over a year and a half. At the last minute ---

The Court: Well, Mr. Hood, I respectfully disagree with statement in fairness to the Solicitor. This indictment has been issued since September 2007, and you, as counsel for the defendant, *could have raised the sufficiency at any time for the past year and a half.*

Mr. Hood: I agree, Your Honor, but I was told initially that this particular indictment went to the Grand Jury and the Grand Jury dismissed that indictment, along with the - -

The Court: Well, now that was never argued to me.

Mr. Hood: Well, see, I'm just going by the information that I was given, that it was dismissed, not indicted back in 9-5-07, and they've got these ---

The Court: No, Mr. Hood, the issue before the Court at this stage, I've got a jury waiting, is whether or not you object to the State's request to continue the remaining charges?

Mr. Hood: Yes, I do.

The Court: Overruled. I'll grant your motion for continuance, Solicitor. I clearly believe he was the architect of the problem that I had by making the motion today, which I feel could have been made any time for the past year and a half. I will grant your continuance and I will expect you, however, to see that indictment is cured in compliance with the State v. Grampus and I will point out the footnote in that case.

Tr. 30, l. 14 – 31, l. 20. (emphasis added).

Appellant was then indicted on November 20, 2008 by the Beaufort County Grand Jury for felony DUI. The present indictment alleged appellant "failed to drive on the right side of the roadway . . . " R. 211. As will be seen infra, the state's own evidence was that appellant was making a legal U-turn. The judge denied appellant's motion for a directed verdict on that basis as to felony DUI and child endangerment. R. 201, ll. 1-23.

Defense counsel continued to argue to the jury that appellant was making a "proper U-turn at the time of the accident" and that the state had failed to prove appellant was guilty of felony DUI or reckless homicide.

This appeal follows.

ARGUMENT

1.

The state's own evidence was that appellant was making a proper U-turn at the time of the accident. The state did not prove appellant was guilty of felony DUI pursuant to South Carolina Code §56-5-2945 because it failed to prove appellant did an act forbidden by law or neglected a duty imposed by law that is required under the statute. The felony DUI statute was carefully drafted to make clear that it was not a strict liability offense. The intoxicated driver still must break the law in some other recognized manner – it cannot just be an accident involving a driver who was over the limit.

Relevant Facts

As seen, defense counsel moved to quash the indictment on the grounds that the state failed to even allege appellant committed an act prohibited by law or failed to comply with a duty imposed by the law. The utter failure of the state to allege that act or omission - - even given its lame late indictment - - continued throughout appellant's trial. Trooper Nick Sprouss testified that it is legal to make a U-turn in South Carolina but he claimed, essentially, that appellant was strictly liable because an accident occurred when he failed to see the motorcycle that was coming towards him. The officer admitted it was sometimes hard for motorists to notice motorcycles in the same manner as they would another car. R. 120, l. 22 – 133, l. 25.

The state offered evidence that appellant was drinking at a birthday party and that when he made a U-turn at a country store the motorcycle ran into him and that the woman driving the motorcycle was killed. The motorcycle collided with appellant at his front left driver's side. R. 38, l. 10 – 43, l. 11; R. 107, l. 21 – 108, l. 10; R. 120, l. 23 – 126, l. 8.

Trooper Sprouse testified that there was no indication the motorcycle tried to brake before the collision. R. 128, ll. 3-5. As stated, Sprouse admitted people often have problems seeing motorcycles on the roadway. R. 132, ll. 12-14.¹

Defense counsel moved for a directed verdict continuing to argue that the state had failed to prove an essential element of felony DUI -- that appellant had violated the law in any other way or failed to follow a duty mandated by the law. R. 201, ll. 2-13. The judge stated that the accident occurred in the decedent's "lane of travel" and that was sufficient to take the case to jury. R. 201, ll. 14-23.

Defense counsel argued to the jury -- as he had argued throughout --that appellant made a legal U-turn and that the state had not proved the element of felony DUI because it had failed to prove that appellant had done an act forbidden by law. Counsel argued to the jury that if appellant was intoxicated, he was guilty of reckless homicide but not felony DUI given the circumstances of this case.

Discussion

There were no testifying eyewitnesses to the automobile accident in this case. The state was therefore relying exclusively on circumstantial evidence. The trial judge was only required to submit the case to the jury if there is any *substantial* circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

¹ Appellant's blood-alcohol content in *his blood* was .153. It is important to note that the blood-alcohol inference of intoxication used to be .150, and not .10, and now .08. There is respectfully no rational indication that the inference of intoxication was lowered by the legislature based on people being less able today to handle their alcohol. Instead there is every indication to believe the inference of intoxication was lowered to avoid the loss of federal highway funds.

If the state fails to produce substantial circumstantial evidence the defendant committed the particular crime - - here felony DUI - - the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). Mere suspicion of guilt is insufficient to take the case to the jury and to get beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

The state in this case failed to prove appellant did an act prohibited by law where he made a legal U-turn and simply failed to see the motorcycle. See State v. Martin, 340 S.C. 597, 533 S.E.2d 532 (2000); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). Although the automobile accident involved the tragic death of the driver of the motorcycle, felony DUI is not a "strict liability" offense. The state failed to prove by substantial circumstantial evidence that appellant did an act forbidden by law or failed to follow a duty required by law.

Felony DUI is not a strict liability offense where a driver over the legal blood-alcohol limit *plus* a car accident *equals* guilty of felony DUI. As with many statutory crimes felony DUI seems to get broadened beyond its original intent by overaggressive prosecutors. Consequently, this Court should direct a verdict of acquittal on the charge of felony DUI and the child endangerment conviction that is dependant on the felony DUI conviction.²

² Respectfully, this Court cannot determine why the jury found appellant guilty of reckless homicide. The reckless homicide indictment simply alleges that appellant's "reckless driving" caused the injury and death of the victim. R. 207. Consequently, absent the "driving under the influence" conviction the reckless endangerment conviction for a violation of S.C. Code §56-05-2945 -- the DUI statute -- cannot stand.

The court erred by refusing to direct a verdict on the charge of child endangerment which was based on a violation of the felony DUI statute since the child endangerment charge was dependant on appellant also being guilty of felony DUI.

Defense counsel moved for a directed verdict on the charge of child endangerment at the same time he moved for a directed verdict on the charge of felony DUI. R. 201, ll. 1-23. The indictment alleged appellant endangered the lives his passengers under the age of sixteen by driving "while under the influence." It cited the felony DUI statute. R. 209.

The judge's denial of the directed verdict was based in large part on his belief that appellant was driving intoxicated with children in the car. That ruling -- based on the indictment -- cannot survive a proper holding by this Court that appellant should have been granted a directed verdict on the charge of felony DUI for the reasons stated above.

The state failed to prove appellant intentionally endangered the lives of his children by committing the crime of felony DUI while they were in the car.

Where the state fails to produce substantial circumstantial evidence the defendant committed the particular crime -- here child endangerment -- the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). Mere suspicion of guilt is insufficient to take the case to the jury and to get beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

Appellant was entitled to a directed verdict because the state had failed to offer substantial circumstantial evidence he was guilty of felony DUI and appellant was not indicted for nor was he convicted of regular DUI. See See State v. Martin, 340 S.C. 597, 533 S.E.2d 532 (2000); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). The child

endangerment indictment specifically cited the felony DUI statute as the reason appellant was indicted for child endangerment. R. 205. This Court should now direct a verdict on the attendant child endangerment charge.

3.

The court abused its discretion by granting the state a continuance after quashing the indictment for felony DUI because the state did not specify an act prohibited by law or the failure to follow a duty imposed by law since it incorrectly reasoned that appellant should have had a hearing on his motion to quash the indictment earlier. In this case the state should have been forced to go forward on its remaining charges, including reckless homicide after the judge quashed the indictment.

The jury selection in this case was held on November 17, 2008 before the Honorable Carmen Mullen. R. 1. On November 18, 2008, Judge Buckner heard motions prior to trial. The judge granted appellant's motion to quash the indictment based on the failure of the state to allege an act forbidden by law or the failure to comply with a duty mandated by the DUI statute. R. 17, l. 6 – 18, l. 4.

The judge then invited the state to "put off the remaining charges" until it could seek another felony DUI indictment. Defense counsel vehemently objected to the case not going forward on the remaining charges which included reckless homicide. The judge incorrectly blamed appellant for not having argued his motion to quash on the indictment on an earlier occasion. R. 18, l. 5 – 19, l. 14. The judge granted a continuance for the state over appellant's objection. R. 18, l. 5 – 19, l. 14.

Discussion

The state in this case failed to obtain an indictment for felony DUI charging appellant with a material element of that crime - - the commission of an act forbidden by law or the omission of a duty imposed by law. This was not a case in which the state should

have been caught by surprise at the judge's obviously correct decision to quash the defective indictment. Cf. State v. Rainwater, 376 S.C. 256, 657 S.E.2d 449 (2008).

The state indicted appellant for felony DUI and reckless homicide. The two indictments were based on the same automobile accident. Appellant had suffered for a long time before the state finally called his case to trial. See Doggett v. United States, 505 U.S. 647 (1992)(the anxiety of awaiting trial is substantial and should be strongly weighed when determining whether a speedy trial violation has occurred). This is not a speedy trial violation case but the state should not have been rewarded with a continuance when one of the two charges (felony DUI) arising from the same incident was properly dismissed by way of the improper indictment being quashed.

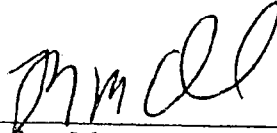
This is an abuse of discretion case where the judge abused his discretion by granting a continuance to the state *as a matter of entitlement rather than upon a showing of cause where the state was without fault*. The state should have been made to go forward with the reckless homicide and the other charges arising from this traffic accident. The state was unjustly enriched by the continuance where it was clearly in the wrong forcing the judge to quash the indictment.

The state and not appellant calls criminal cases to trial in this case. Appellant was obligated to argue the motion to quash the indictment prior to the jury being sworn. He did so. The judge erred and abused his discretion by ruling appellant was at fault by not making the motion sooner, and this Court should reverse that erroneous ruling. This Court should now issue an order of acquittal on the felony DUI indictment and the child endangerment conviction that is dependant on that conviction. Appellant should be granted a new trial on the remaining charges. See Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007).

CONCLUSION

By reason of the foregoing arguments, an order of acquittal on the felony DUI charge and the child endangerment charge should be issued. By reason of argument three appellant should be granted a new trial on the remaining charges.

Respectfully submitted,



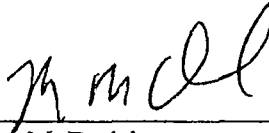
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August 23, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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August 23, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

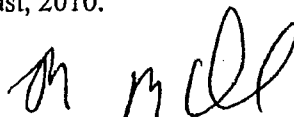
V.

RODNEY L. GALIMORE,

APPELLANT

CERTIFICATE OF SERVICE

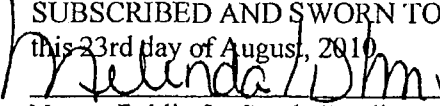
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina Catoe, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 23rd day of August, 2010.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 23rd day of August, 2010

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RODNEY L. GALIMORE,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court acted within its discretion when it granted a continuance of the other charges after quashing the first felony DUI indictment.
- II. The trial court properly denied a directed verdict regarding felony DUI and child endangerment, where the evidence supported that Appellant was improperly driving in the victim's lane of travel when the collision occurred.

STATEMENT OF THE CASE

Appellant was indicted in September 2007 in Beaufort County for reckless homicide, driving under suspension ("DUS"), child endangerment, and felony driving under the influence ("DUI"), death resulting. (R. p. 205-10). Jury selection took place on November 17, 2008, before the Honorable Carmen T. Mullen. On November 18, 2008, Appellant made a motion to quash the felony DUI indictment for failure to state an offense. (R. p. 2-3). The Honorable Perry M. Buckner granted the motion and quashed the indictment, concluding that the State did not specify the "act forbidden by law." (R. p. 17-19). Judge Buckner indicated that the State would be permitted to re-submit an indictment to the grand jury, and he continued the trial with respect to the other three charges. (R. p. 18-19).

Thereafter, on November 20, 2008, Appellant was re-indicted for felony DUI, death resulting. (R. p. 211-12). The new indictment alleged that Appellant violated the law by failing to drive on the right side of the roadway. (See R. p. 211). Appellant proceeded to trial on December 8-10, 2008, before the Honorable John C. Hayes, III. (R. p. 21). The jury found Appellant guilty on all four charges, and Judge Hayes sentenced him to twenty-five (25) years for felony DUI, ten (10) years, concurrent, for reckless homicide, ten (10) years, consecutive, for child endangerment, and six (6) months, concurrent, for DUS. (R. p. 203, lines 6-22; p. 204, lines 1-11). A Notice of Appeal was timely served and filed.

ARGUMENT

I. The trial court acted within its discretion when it granted a continuance of the other charges after quashing the first felony DUI indictment.

After granting Appellant's motion to quash the first felony DUI indictment, the trial judge noted that because the jury had not yet been sworn, double jeopardy had not attached. (R. p. 18, lines 1-2). Therefore, the judge ruled, it was permissible for the State to cure the problem by resubmitting a more specific indictment to the grand jury at a future grand jury term.¹ (R. p. 18-19). After the solicitor indicated her desire to continue the remaining charges in light of the court's ruling, Appellant's counsel stated that he objected "simply because this case dates back to August 17, 2007." (R. p. 18, lines 5-12). He also stated that the indictment had been true-billed in September of 2007. (R. p. 18, line 13). The trial judge pointed out that Appellant could have raised the sufficiency of the indictment issue at any time since the issuance of the indictment. (R. p. 18-19). The judge overruled Appellant's objection and continued the trial of the other charges. (R. p 19, lines 13-24). The trial was ultimately held three weeks later. (See R. p. 21).

A motion for continuance is addressed to the sound discretion of the trial court; a judge's ruling on such a motion will not be reversed absent a clear showing of abuse of discretion. State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989). In Appellant's case, the trial court properly pointed out that double jeopardy had not attached; that the State could resubmit an indictment regarding felony DUI; and that Appellant could have moved to quash the first indictment at any time since September 2007. See State v. Baum, 355 S.C. 209, 214, 584 S.E.2d 419, 422 (Ct. App. 2003) (generally, double jeopardy

¹ The trial court found that the first felony DUI indictment should have been more specific in that it should have alleged with particularity the "act forbidden by law" committed by Appellant that caused the collision. (R. p. 16-18). See S.C. Code Ann. § 56-5-2945(A); see State v. Grampus, 288 S.C. 395, 397, 343 S.E.2d 26, 27 (1986).

attaches once the jury is impaneled and sworn). In addition, there was no reason to believe that the State deliberately did anything improper with respect to the first DUI indictment; the solicitor honestly believed that the first indictment was sufficient. (See R. p. 6-11). Furthermore, it was in the interest of judicial economy and conservation of resources to try the new felony DUI indictment along with the other three charges, since they all arose out of the same set of facts. See, e.g., State v. Grace, 350 S.C. 19, 24, 564 S.E.2d 331, 333 (Ct. App. 2002) (pointing out that judicial economy is fostered when related or interconnected charges are tried together) (citations omitted). In any event, Appellant failed to assert any prejudice he would suffer from a continuance on the three remaining charges.² (See R. p. 18-19; see also p. 22, lines 21-22). See State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002). Accordingly, the trial judge did not abuse his discretion by continuing the case so that all four related charges could be tried together. See State v. Tanner, supra.

II. The trial court properly denied a directed verdict regarding felony DUI and child endangerment, where the evidence supported that Appellant was improperly driving in the victim's lane of travel when the collision occurred.

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). On appeal from the denial of a motion for a directed verdict, the appellate court

² As mentioned previously, the case was only continued for three weeks. (See R. p. 1; p. 21).

may reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Appellant argues that the evidence reflected that he was making a proper U-turn at the time of the accident and that the State failed to show that he broke the law. Respondent submits that, to the contrary, the State's evidence showed that Appellant did violate the law by failing to properly establish his correct lane - instead remaining in the victim's lane - which resulted in the collision and the victim's death. Trooper Sprouse testified that when he arrived at the scene a few minutes after the collision, he found Appellant's vehicle positioned in the oncoming traffic lane. (R. p. 73-76). The vehicle was immobile due to the damage from the collision, and the position of the tires indicated that the vehicle (a Chevy Blazer) had not moved or been pushed as a result of the collision with the victim's motorcycle. (App. p. 76-77; p. 127; p. 137; see also p. 193-94). Trooper Sprouse determined, from the evidence gathered that night, that Appellant had been making a U-turn, but instead of attempting to return to his proper lane after turning around, he continued to drive straight ahead in the oncoming traffic lane. (R. p. 73-76; p. 84-92; p. 107-135; p. 121, lines 18-23; p. 127, lines 20-24; p. 150; see also p. 193-97). The officer agreed that a U-turn is not unlawful in itself; however, he testified that Appellant's conduct in failing to establish his proper lane, and in driving left-of-center in the oncoming traffic lane, was illegal. (R. p. 120-122; p. 130, line 22 - p. 131, line 6; p. 125-35; p. 150, lines 5-18). See S.C. Code Ann. § 56-5-1810 (a).

The above evidence clearly supports that Appellant did, in fact, break the law by improperly driving in the wrong lane of travel immediately prior to the collision. Further, the record also supports that Appellant was driving under the influence of alcohol; that his conduct in violating the law resulted in the death of the victim; and that he had his two

young children, ages 6 and 11, in the car at the time. (R. p. 39-44; p. 56-60; p. 72, lines 2-24; p. 79-80; p. 108, line 23 – p. 109, line 16; p. 121-37; p. 167-173; p. 180-92; p. 193-97). See S.C. Code Ann. § 56-5-2945 (A); S.C. Code Ann. § 56-5-2947 (A). Accordingly, the trial court properly denied Appellant's directed verdict motion as to both felony DUI and child endangerment.³ (See R. p. 201, lines 14-23). See State v. Gaster, *supra*.

CONCLUSION

For all of the reasons discussed above, Respondent requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

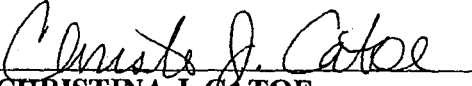
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August 23, 2010

³ Appellant argues that the trial court should have granted a directed verdict regarding child endangerment because it was based upon the felony DUI charge. (See Brief of Appellant, p. 10-11).

STATE OF SOUTH CAROLINA

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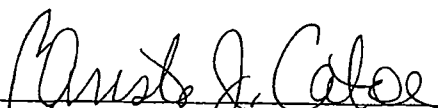
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APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


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ATTORNEYS FOR RESPONDENT

August 23, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

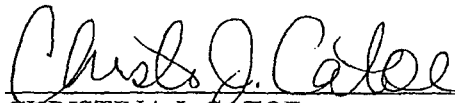
v.

RODNEY L. GALIMORE,

APPELLANT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **ROBERT M. DUDEK**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 23rd day of August, 2010.



CHRISTINA J. CATOE
Assistant Attorney General

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SWORN to before me this 23rd day of August, 2010.


Notary Public for South Carolina.

My Commission Expires: 3-21-2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Rodney L. Galimore,

Appellant.

Appeal from Beaufort County
John C. Hayes III, Circuit Court Judge

Opinion No. 4934
Heard November 17, 2011 – Filed January 25, 2012

AFFIRMED

Chief Appellate Defender Robert M. Dudek and
Michael J. Anzelmo, both of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John McIntosh, Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General Christina J. Catoe, all of Columbia;
and Solicitor Issac McDuffie Ston, III, of Beaufort,
for Respondent.

LOCKEMY, J.: In this criminal action resulting from a vehicular accident, Rodney Galimore contends the trial court erred in (1) denying his motion for a directed verdict on the charge of felony DUI; (2) denying his motion for a directed verdict on the charge of child endangerment; and (3) granting the State a continuance for three indictments after quashing one indictment for felony DUI. We affirm.

FACTS

Galimore was indicted during the September 20, 2007 term of the Beaufort County Grand Jury (Grand Jury) on the charges of reckless homicide, driving under suspension, child endangerment, and felony DUI. A jury was selected for trial of these indictments on November 17, 2008. On November 18, 2008, Galimore raised a motion to quash the indictment on the charge of felony DUI, arguing the State failed to identify a violation of a traffic offense. The trial court ruled the State had failed to allege a specific act "forbidden by law," which is an element of felony DUI, and therefore, it quashed the indictment. The State then made a motion for a continuance on the remaining indictments. Galimore objected to the motion, stating the case dated back to August 17, 2007, and the indictment was issued in September of 2007. The trial court granted the State's motion for a continuance on the three indictments, finding Galimore had the previous year-and-a-half to question the sufficiency of the indictment for felony DUI.

Galimore was re-indicted on November 20, 2008, by the Grand Jury for felony DUI, with the indictment alleging Galimore "failed to drive on the right side of the roadway," in violation of section 56-5-1810 of the South Carolina Code. The case was brought before a jury on December 8, 2008. At the close of evidence, Galimore made motions for directed verdicts on the charges of felony DUI and child endangerment, arguing the State presented no evidence that Galimore acted in a way "forbidden by law." The trial court denied Galimore's motions. The jury found Galimore guilty on all four charges. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err in denying Galimore's motion for a directed verdict on the charge of felony DUI when Galimore contends the State presented no evidence he committed an act prohibited by law or failed to observe a duty imposed by law?
2. Did the trial court err in denying Galimore's motion for a directed verdict on the charge of child endangerment when the charge was based upon the violation of the felony DUI statute, a charge on which Galimore argues he was entitled to a directed verdict?
3. Did the trial court err in granting the State a continuance after quashing the indictment for felony DUI when Galimore contends it incorrectly reasoned he should have had a hearing on his motion earlier?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

LAW/ANALYSIS

I. Directed verdict motion on felony DUI

Galimore contends the trial court erred in denying his motion for a directed verdict on the charge of felony DUI. Specifically, Galimore argues the police officer testified Galimore made a legal turn-around. Thus, the State failed to prove an element of felony DUI because they did not present any evidence Galimore committed an act prohibited by law or failed to observe a duty imposed by the law. We disagree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When

reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this [c]ourt must find the case was properly submitted to the jury." Id. at 292-93; 625 S.E.2d at 648. The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

Here, the indictment for felony DUI states Galimore "failed to drive on the right side of the roadway pursuant to § 56-5-1810" Section 56-5-1810 of the South Carolina Code states:

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway except as follows: (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement; (2) When an obstruction exists making it necessary to drive to the left of the center of the highway. Any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance so as not to constitute an immediate hazard; (3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or (4) Upon a roadway restricted to one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or

when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under item 2 of subsection (a). This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway.

S.C. Code Ann. § 56-5-1810 (2006)

Trooper Nick Sprouse testified many times to evidence supporting that indictment. He explained at length about why debris found in the road was important to show Galimore failed to drive on the right side of the roadway. Sprouse specifically stated, "Here's your pool of sand and debris and as you can see the tire mark that goes out it never established the correct lane." He then stated on cross-examination that the evidence at the scene supports the allegation that Galimore never drove in the proper lane after executing his turn-around. In looking at the record and all reasonable inferences in the light most favorable to the State, we find evidence existed for the jury to weigh whether Galimore violated section 56-5-1810, thus supporting a charge of felony DUI. Accordingly, we affirm the decision of the trial court.

II. Directed verdict on child endangerment charge

Galimore argues the trial court erred in denying his motion for a directed verdict on the charge of child endangerment. He specifically contends that because the charge of child endangerment is premised upon his felony DUI charge, and his motion for a directed verdict on the felony DUI

charge should have been granted, his motion for a directed verdict on the child endangerment charge should have been granted as well. We disagree.

Since we find evidence existed for the jury to weigh whether Galimore violated section 56-5-1810, thus supporting a charge of felony DUI, we also find evidence existed for the jury to weigh the charge of child endangerment. Therefore, we affirm the decision of the trial court as to the denial of a directed verdict on the child endangerment charge.

III. State's motion for continuance

Galimore contends the trial court erred in granting the State's motion for a continuance on the remaining three charges after quashing his indictment for felony DUI. We disagree.

"The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion." State v. Geer, 391 S.C. 179, 189, 705 S.E.2d 441, 447 (Ct. App. 2010) (quoting State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005)). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." Id. (quoting State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)); see also State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249-50 (Ct. App. 2006) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law."). Even if there was no evidentiary support, "[i]n order for an error to warrant reversal, the error must result in prejudice to the appellant." Geer, 391 S.C. at 190, 705 S.E.2d at 447 (quoting State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005)); see also State v. Wyatt, 317 S.C. 370, 372-73, 453 S.E.2d 890, 891-92 (1995) (stating that error without prejudice does not warrant reversal).

Here, the trial court explained its reasoning behind granting the State's motion for a continuance, stating it felt Galimore was "the architect of the problem that [it] had by making the motion [that day]." The trial was held approximately three weeks after the continuance was granted. Considering the high degree of deference this court gives the trial court in granting a

motion for continuance, we find the trial court was within its discretion in this instance. Accordingly, we affirm the trial court.

CONCLUSION

Based on the foregoing reasons, the trial court's decision is

AFFIRMED.

HUFF and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

RECEIVED
FEB 24 2012
SC Court of Appeals

The State of South Carolina, ... Respondent,

v.

Rodney L. Galimore, ... Appellant.

Petition for Rehearing and Suggestion for Rehearing *En Banc*

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Appellant Rodney L. Galimore ("Galimore") hereby files this petition for rehearing and suggestion for rehearing *en banc*. Galimore respectfully submits that rehearing and/or issuance of a new opinion reversing the trial court and granting a direct verdict in favor of Galimore is warranted in this action. The motion is predicated on the basis that the Panel's opinion in this matter overlooked or misapprehended several matters of fact and law. Thus, rehearing or rehearing *en banc* should be granted.

Argument

- I. The Panel misapprehended the testimony on which it relied to affirm the trial court's decision to deny Galimore's motion for direct verdict on the felony DUI charge.

In the opinion, the Panel found sufficient evidence existed to send the issue of whether Galimore violated Section 56-5-1810 of the South Carolina Code to the jury. State v. Galimore, Op. No. 4934 (S.C. Ct. App. filed January 25, 2012) (Shearouse

Adv. Sh. No. 3 at 77, 79-80). The Panel relied solely on the testimony of Trooper Nick Sprouse. Galimore, Op. No. 4934 at 80. However, Trooper Sprouse's testimony contradicts the physical evidence admitted at trial.

This Court and our Supreme Court hold that testimony contradictory or inconsistent with the physical evidence lacks probative value. Lail v. S.C. State Highway Dept., 244 S.C. 237, 136 S.E.2d 306 (1964); Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 580, 629 S.E.2d 375, 377 (Ct. App. 2006) (applying this rule to hold that unsupported testimony cannot be used to overcome the physical evidence). Such testimony does not create issues of fact suitable for resolution by the jury. Legette, 368 S.C. at 581, 629 S.E.2d at 378.

Here, the physical evidence only supports one conclusion—the accident occurred in the decedent's lane of travel immediately upon Galimore exiting the parking lot. Galimore has consistently maintained that the fact that the accident occurred in decedent's lane is insufficient to support a charge under Section 56-5-1810. In fact, Trooper Sprouse's testimony supports Galimore's position. As noted by the Panel, Trooper Sprouse admitted that Galimore "never established the correct lane." Galimore, Op. No. 4934 at 81. This proves that Galimore could not have driven in the wrong lane because he never had the opportunity to establish his correct lane. The evidence unequivocally establishes that the accident occurred immediately upon Galimore exiting the parking lot. {R.131}. Because the accident occurred immediately upon leaving the lot, Galimore could not have had time to establish decedent's lane as his lane of travel as found by the Panel.

evidence and cannot be used to support the denial of Galimore's directed verdict motion. The Panel overlooked this point. Thus, rehearing is warranted.²

While the evidence may be sufficient to support a charge such as failure to yield, failure to keep proper lookout, or a violation of the vehicle entering a roadway statute, the fact of the matter is the State only charged a violation of Section 56-5-1810. Thus, as that violation was the only charge included in the indictment, the State was required to prove the elements of that charge, and that charge alone, in order to obtain a felony DUI conviction. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) (holding a defendant is entitled to a directed verdict when the State fails to produce evidence of the charge included in the indictment). The State and this Court cannot find sufficient evidence of an uncharged offense was sufficient to allow the Section 56-5-1810 charge to go to the jury. The Panel overlooked this fact in rendering the opinion. Thus, because the evidence cannot establish a violation of Section 56-5-1810, rehearing is warranted to enter a directed verdict in favor of Galimore on the felony DUI charge.

The Panel also overlooked Galimore's argument that Section 56-5-1810 applies only to vehicles already established as travelling on the roadway. This section has been applied in State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1998), and State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978). In both cases, the State proved a violation of Section 56-5-1810 when direct evidence established that the driver

² In addition, if the Panel's opinion is left as written, every left turn would be per se illegal from the time the turn is initiated, through the time it is crossing the right lane, and until it completely establishes the left lane. Such a position directly contradicts Section 56-5-2120 of the South Carolina Code. That section governs left turns and specifically authorizes the act of crossing the improper lane while executing a left turn.

This is illustrated by the fact that the evidence shows Galimore entered the parking lot and gathered sand and debris on his tires from the lot. {R.84-86}. The sand and debris tracks left by his car follow directly to the impact point with the motorcycle. {R.77, 85}. Impact occurred immediately because (1) the decedent's motorcycle never hit the breaks prior to impact {R.128} and (2) impact occurred on the driver's side front tire (the precise point where impact would occur on a car exiting a parking lot to complete a left turn) {R.77, 90-91}. Lastly, the evidence definitively proves the impact point of the vehicles was the same as the final resting place of the cars and that the final resting place of Galimore's car was in the decedent's lane. {R.77}.

Thus, the evidence establishes the following absolutes: (1) Galimore never had the opportunity to establish his lane of travel, and (2) he never had time to establish decedent's lane as his lane of travel, either. Both facts lead to the inescapable fact that Galimore was executing a legal left turn out of the parking lot at the time of the accident.¹ While the accident occurred in decedent's lane, Galimore was not driving in decedent's lane as testified by Trooper Sprouse. He was utilizing that lane incident to his left turn out of the parking lot. Stated differently, he did not establish decedent's lane as his lane. Therefore, Trooper Sprouse's testimony conflicts with the physical

¹ Further, Section 56-5-1810 indicates it is inapplicable to vehicles making left turns. The statute exempts its application "when preparing for a left turn at an intersection or into a private road or driveway." S.C. Code Ann. § 56-5-1810(b). Further, the statute "shall not be construed as prohibiting the crossing of the center line in making a left turn or from an alley, private road or driveway." S.C. Code Ann. § 56-5-1810(c). Such a reading of Section 56-5-1810 dovetails with the fact that the State has other charges specifically applicable to a person who improperly executes a left turn or improperly exits a parking lot. See, e.g., S.C. Code Ann. § 56-5-2350 (governing vehicle entering roadway). There is no reason to expand the application of Section 56-5-1810 when other remedies are already available to the State.

established in the correct lane of travel and then crossed the center-line into the wrong lane. In Nathari, this Court found the charge was proper because “[d]irect testimony from three witnesses place Nathari driving outside the right lane numerous times.” Nathari, 303 S.C. at 199, 399 S.E.2d at 604. Such observations were made while observing Nathari “weaving back and forth across the road.” Id. at 192, 399 S.E.2d at 600. Likewise in Parker, the Supreme Court found arrest was proper under Section 56-5-1810 because the arresting officer witnessed Parker driving across the center-line after observing Parker drive down the roadway for some period, including a period in the correct lane. Parker, 271 S.C. at 161-62, 245 S.E.2d at 905. These cases prove that Section 56-5-1810 applies only to vehicles that have previously established the correct lane and/or have been travelling on the roadway for some time. The Panel overlooked these cases in rendering the opinion.

Simply put, Galimore did not commit the offense charged by the State. It was incumbent on the State to charge a provable offense, but the State failed to do so. Felony DUI is not a strict-liability offense, and Galimore cannot be convicted when the evidence (even that cited by the Panel) proves he did not drive on the wrong side of the road in violation of Section 56-5-1810. Thus, rehearing and/or rehearing *en banc* is warranted to correct these issues overlooked and misapprehended by the Panel.

II. The Panel overlooked the fact that the trial court committed an abuse of discretion in improperly shifting the burden of proof to Galimore on the State’s motion for a continuance.

The Panel found the trial court did not abuse its discretion in granting the State’s motion for continuance. However, this holding overlooked the fact that the trial court improperly shifted the burden to prove the entitlement for a continuance away from the

moving party, the State. Instead of requiring the State to carry its burden to prove why a continuance was warranted, the trial court required Galimore to prove why the State was not entitled to a continuance. This decision to grant the State a continuance as a matter of right rather than requiring the State to carry its burden that a continuance was warranted constituted an abuse of discretion.

The requirement that the party requesting the continuance has the burden to prove good cause exists to warrant the continuance is axiomatic in South Carolina. See, e.g., Heyward v. Middleton, 65 S.C. 493, ___, 43 S.E. 956, 957 (1903) (holding that the “burden was on the [moving party] to show good cause for the continuance”). Thus, the trial court’s failure to require the State to carry its burden for the continuance, but instead shift that burden to Galimore, constituted an abuse of discretion. The Panel overlooked this fact in rendering its opinion. Thus, rehearing is warranted, and the Panel should enter an opinion granting the relief request in Galimore’s appellate brief.³

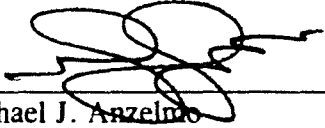
Conclusion

Based on the foregoing, the Panel should grant rehearing or rehearing *en banc* to issue a new opinion acquitting Galimore.

{Signature Page Follows}

³ The State’s judicial economy argument does not alter this analysis. This argument is an attempt to get around the fact that the State failed to carry its burden as to the continuance. Judicial economy cannot be used to overcome an abuse of discretion. Further, had the trial court denied the motion and required the matter to proceed to trial on the reckless homicide charge alone, then jeopardy would have attached to the felony DUI and child endangerment charges. Galimore could not be tried for those charges. Judicial economy cannot be used to avoid jeopardy attaching. Thus, the Panel should order acquittal.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for Rodney L. Galimore

Columbia, South Carolina

February 24, 2012

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Rodney L. Galimore, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Petition for Rehearing

Counsel Served:

Christina J. Catoe
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211



Jennifer Lee
Administrative Assistant

February 24, 2012

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SC COURT OF APPEALS



The South Carolina Court of Appeals

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April 20, 2012

Michael J. Anzelmo, Esquire
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 11070
Columbia, SC 29211

Re: The State v. Galimore, Rodney L.

Dear Mr. Anzelmo:

Enclosed is a copy of an Order of the Court denying your Petition for Rehearing in the above case.

Your Petition for Rehearing En Banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR(amended April 28, 2011).

The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of \$7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson".

Renee S. Johnson
Case Specialist II

A handwritten signature in black ink, appearing to read "JAK/rj".

JAK/rj

cc: Chief Appellate Defender Robert M. Dudek
Rodney Galimore #332336
Assistant Attorney General Christina J. Catoe

The South Carolina Court of Appeals

The State,

Respondent,

v.

Rodney L. Galimore,

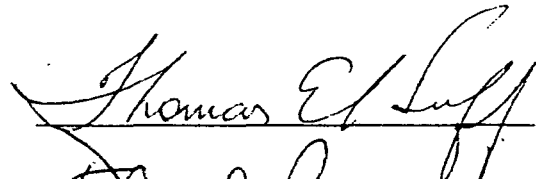
Appellant.

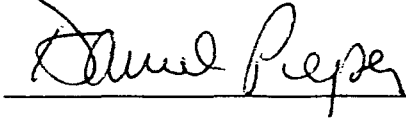
The Honorable John C. Hayes, III
Beaufort County
Trial Court Case No.
2007-GS-07-01584
2007-GS-07-01616
2007-GS-07-01617
2008-GS-07-02690

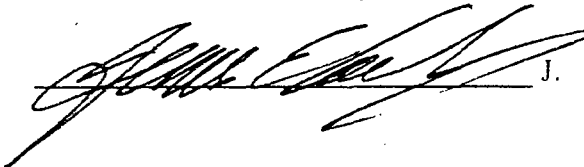
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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.

It is, therefore, ordered that the Petition for Rehearing be denied.



J.


J.


J.

Columbia, South Carolina

cc: Chief Appellate Defender Robert M. Dudek
Michael J. Anzelmo, Esquire
Rodney Galimore #332336
Attorney General Alan Wilson
Chief Deputy Attorney General John McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Christina J. Catoe

FILED

20 April 2012